



**Sentencing Council Sexual Offences Guideline Consultation
Response of the Criminal Bar Association**

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INTRODUCTION

The Criminal Bar Association (“CBA”) represents about 4,000 employed and self-employed members of the Bar who appear to prosecute and defend the most serious criminal cases across the whole of England and Wales. It is the largest specialist bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts, ensuring on our part that all persons enjoy a fair trial and that the adversarial system, which is at the heart of criminal justice, is maintained.

We note that the aim is that the sentencing process should be transparent to the victims and the public and that 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

We welcome the opportunity to respond to this consultation paper. We broadly agree with the proposals but observe that there should be consistency of approach to harm and culpability factors, and to aggravating and mitigating factors, particularly where the elements of the different offences are similar.

RESPONSE

Section 1: Background

Applicability of the guideline

Whilst appreciating that these guidelines represent a consistent approach with all recent guidelines in their application to all offenders, not just first time offenders with no previous convictions, we are bound to point out that that repeated offending and multiplicity of offences in sex cases tends to fall into specific offences i.e. historic/child/grooming over a period of time. The vast majority of rape cases do, in fact involve first time offenders.

Sentencing Youths

We agree that this should be dealt with as an entirely separate sentencing exercise. Youth sentencing has received prominence in recent years because due to more young offenders

being charged and convicted with offences committed in circumstances that do not easily fall within adult guidelines.

However, we suggest that these guidelines should specifically direct sentencers' attention to the Overarching Principles and any future guideline for sentencing youths and be mindful of their guidance when considering cases involving offenders who have only just reached the age 18 years.

Section 2: Sentencing sexual offences and public protection

We welcome the flexibility introduced by the inclusion of Community Sentences for offences where the circumstances of the case demand an alternative to custody.

Section 3: Developing the guideline

We agree with the step by step process of sentencing and simply note at this stage, that step nine is no longer necessary due to the implementation of s.192 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO").

Section 4: 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?

1.1 We agree that the guidelines should acknowledge that any rape involves a level of harm to the victim and therefore there should be a lower category for an offence with no additional features. The CBA agrees that sexual offences carry a particular and unique trauma which distinguish them from other offences. However, it should be noted that a limited number of rapes do involve lower culpability for example where the defendant is young or has a particularly low I.Q. and/or has been encouraged by consensual sexual activity and does not have the maturity to stop when asked.

1.2 We agree that the lowest category should be defined as the absence of factors in the higher categories. We also agree that it should be permissible to combine category 2 factors and elevate an offence to category 1.

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.

2.1 Harm factors: We agree, save in respect of the following:

2.1.1 We disagree that pregnancy and or infection as a consequence of rape should move to step 1; they are 2 totally separate concerns. Many complainants are already using contraception and those who are not are advised about the 'morning after pill' as a matter of course and the actual diagnosed infection of an STI is rare.

2.1.2 However, the fear of pregnancy and infection and the ordeal of having to take steps to prevent or seek diagnosis (waiting for test results, attending clinic etc.) is very real to complainants on top of the actual rape itself.

2.1.3 By including it in step one the guidelines ignore this fear because it only deals with actual pregnancy and infection and not the fear of it; if it remains as an aggravating feature it can be taken into account in cases where it is appropriate to reflect it in sentencing. Even if you disagree and it remains a step 1 factor, we suggest that it should be expanded to include 'or fear of pregnancy or STI'.

2.1.4 Vaginal followed by anal rape are inevitably indicted as 2 separate counts but masturbation/ digital/oral penetration immediately preceding vaginal intercourse are usually not. There is a danger that inclusion of 'prolonged/sustained incident' as it is presently explained at p.17 might introduce an element of double jeopardy. We do not disagree that 'prolonged and sustained' incident should be included but urge clearer guidance in the

definition, specifically excluding cases where additional counts have been added to reflect additional acts during the commission of the rape.

2.1.5 We agree that 'use of violence' should be a step 1 factor but note in passing that lack of injury is more of a problem with juries and gaining convictions and the guidelines should not reiterate the misconception that no injury equals a mitigating feature.

2.1.6 Additional violence, over and above that required to carry out the act of rape itself should be reflected in sentence where there is no additional count on the indictment. We observe that 'extreme violence' is more likely to be subject to an additional count. We suggest that this be made clear in the guidance at p.17.

2.1.7 We agree that 'context of habitual sexual abuse' is most commonly relevant to historical abuse cases when there is an escalation in the offending over a period of time. It is also relevant when a victim is known to an offender to have been abused by others and targeted for that reason. We agree it should be included in step one and that the guidance should make clear it is intended to reflect that situation and not just habitual abuse at the hands of the offender.

2.1.8 However, we consider it is too narrowly defined. The consultation paper states
"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" [pg 18]

2.1.9 We consider the impact upon a victim who is inherently vulnerable as a result of habitual physical, other than sexual, or emotional abuse should be reflected too. We would suggest therefore 'context of habitual abuse' with clear guidance that the abuse can be physical and/or emotional and/or sexual.

2.2 Culpability factors: We agree, save in respect of the following:

2.2.1 The term 'gang' may be misleading and we would suggest the phrase 'more than one offender acting together' better reflects the aim of the reference to group or gang action.

2.2.2 We agree that 'use of alcohol or drugs on the victim to facilitate the offence' should be included but note that drunkenness is a wholly different type of vulnerability to that of the elderly, frail and mentally ill complainant and that the difference should be recognized as such.

2.2.3 As indicated in question I we are of the view that there are lower culpability rapes and suggest that the offender's age/maturity/IQ and mental disability should be recognised as such in step 1.

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.

3.1 Aggravating factors: We agree, save in respect of the following:

3.1.1 The guidance in respect of 'victim compelled to leave their home' on page 24 should include the fact that the elderly are often compelled to leave their homes through fear of living alone after the attack.

3.2 Mitigating factors: We agree, save we refer to our observations at paragraph 2.2.3

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.

4.1 We agree with the starting points and ranges.

Q5: Do you agree that assault by penetration and rape should be treated separately in the guideline?

5.1 We agree.

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.

6.1 We agree, save we refer to our observations at paragraphs 2.1 and 2.2

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.

7.1 We agree, save we refer to our observations at paragraphs 3.1 and 3.2.

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.

8.1 We agree with the starting points and ranges.

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.

9.1 We agree, save in respect of the following:

9.1.1 We note the Council's rationale behind inclusion of use of violence, abduction/detention, forced entry into victim's home in category 1 only in relation to sexual assault but category 2 in relation to rape and assault by penetration but disagree with the analysis. The statutory maxima of course reflects the severity of the offence but that does

not mean that a sexual assault cannot occur in circumstances where extreme violence, for instance, is used. We suggest the appropriate way to deal with differences in severity of the offence is to adjust the starting points and ranges rather than to omit important factors relating to the harm caused.

9.1.2. In most cases a distinction will be made between over and under clothing and our concern is that the distinction will continue to be made unless the Court of Appeal gives definitive guidance. In the absence of such guidance, inconsistencies may arise. We would suggest the Council includes in its guidance that there is no distinction to be made by including the words 'over or under clothing' or makes a distinction between the two in terms of categorization.

9.1.3 In addition, we refer to our observations at paragraphs 2.1 and 2.2

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.

10.1 We agree, save we refer to our observations at paragraphs 3.1 and 3.2.

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.

11.1 We agree with the starting points and ranges.

Q12: Do you agree with the Council's approach to the guideline on sexual activity without consent?

12.1 We agree, save for our observations at paragraphs 2.1, 2.2, 3.1 and 3.2

Section 5: 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.

13.1 We agree, save we refer to our observations at paragraphs 2.1, 2.2 and 9.1

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.

14.1 We agree, save for our observations at paragraph 3.2.

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?

15.1 We agree. It is the experience of this working party, which includes those who deal almost exclusively with sexual offences, that there are judges who will try to rigidly adhere to the guidelines and in doing so do not necessarily reach the 'right' sentence in those exceptional cases. Flexibility of approach in the circumstances outlined is to be welcomed.

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.

16.1 We agree with the starting points and ranges.

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.

17.1 We agree.

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?

18.1 We agree, save we refer to our observations at paragraphs 2.1, 2.2, 3.2 and 9.1.

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?

19.1 We do.

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.

20.1 We agree, save we refer to our observations at paragraphs 2.1 and 2.2 and 9.1

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.

21.1 We agree, save we refer to our observations at paragraph 3.2

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.

22.1 We agree with the proposed starting points and ranges.

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.

23.1 We do.

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.

24.1 We agree, save we refer to our observations at paragraphs 2.1, 2.2 and 9.1.

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.

25.1 We agree, save we refer to our observations at paragraph 3.2

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.

26.1 We agree with the proposed starting points and ranges.

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.

27.1 We do.

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.

28.1 We agree.

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.

29.1 We agree, save we refer to our observations at paragraph 3.2

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.

30.1 We agree with the proposed starting points and ranges.

Q31: Do you agree with the format of the guideline for the offence of meeting a child following sexual grooming?

31.1 We agree.

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.

32.1 We agree.

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.

33.1 We agree with the starting points and ranges.

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.

34.1 We agree, save we refer to our observations at paragraphs 2.1 and 2.2 and 9.1

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.

35.1 We agree, save we refer to our observations at paragraph 3.2

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.

36.1 We agree with the proposed starting points and ranges.

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.

37.1 We agree.

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.

38.1 We agree with the starting points and ranges.

Section 6: Indecent images of children

Q39: Do you agree with the proposed rationalisation of the current levels 1 to 5 of indecent images of children?

39.1 We agree. The existing categorization is over complicated and resource intensive. We are also of the view that it unnecessarily proscribes the nature of the offending/appropriate sentence.

Q40: Do you agree with the approach suggested to dealing with mixed collections of indecent images of children? If not, please state why.

40.1 We agree, save in respect of the following:

40.1.1 It is often the case that where an offender is in possession of a large number of images the bulk of the images will be in the lower categories and fewer will be in higher categories. This may be more representative of the easier availability of lower category images rather than an offender's culpability.

40.1.2 The proposal is of greatest assistance when dealing with an offender charged only with possession of images. Where an offender is in possession of images but has also produced (or distributed) images then he/she is likely to be dealt with in respect of a number of different charges including those in the higher sentencing bracket. We also query whether it is appropriate to limit the caveat only to offenders who have produced images of a higher category. Involvement in the production of images at any level is likely to inform the possession of higher category material.

40.1.3 We would invite consideration be given to amending the proposed wording;

"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. In making this assessment it should be borne in mind that the mere fact that an offender possesses a lesser number of more serious images may not necessarily indicate lesser culpability or harm. A lower category will not, in any event, be appropriate if the offender has produced or taken (ie photographed) any of the images"

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.

41.1 We agree, save that we think penetration of the mouth should not be limited to penile penetration. Children are often photographed performing oral sex on a variety of objects and sex toys which are equally degrading and abusive.

Q42: Do you have any suggestions for how level C ‘erotic posing’ could be re-labelled within the guideline for the indecent images offences?

42.1 This label has been used for a number of years and the only alternative we can think of is “Images of a sexual nature not captured in categories A and B”

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.

43.1 We would include the following aggravating factors:

43.1.1 Visible distress suffered by the child depicted. We think visible physical pain is too narrow and in any event visible distress is indicative of increased harm. Where infliction of pain is shown this would in any event impact on the category of the image.

43.1.2 Images stored on a number of devices as this suggests portability and runs the greater risk of images being lost or stolen.

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.

44.1 We do not consider that the starting points and category ranges are high enough for possession offences. The proposal envisages a range that is less than half the maximum of 5 years for possession of the most serious images with all the aggravating factors.

44.1.1 Possession of images perpetrates the abuse of the subject and encourages the commercial market both here and abroad. Often the images are produced overseas and often the same images appear again and again. Once images are in the public domain they remain there in perpetuity. The fact that a victim is anonymous or overseas does not make the offending less serious or the responsibility of the criminal justice system in tackling it less serious.

44.1.2 Where an offender is in possession of images of a child known to him/her he has first hand knowledge of sexual abuse and often of the abuser and does nothing.

44.1.3 We consider that there are many cases which would justify a sentence closer to the maximum of 5 years.

44.1.4 By way of example:

Male offender in possession of over 300 images (levels 1-5, but in terms of numbers mostly lower level) of a female child. The images showed the child from approximately aged 7 to 10 posing and engaging in a variety of sexual activity alone and with male and female adults. Some images showed penetrative sexual activity with the mother with whom the offender had previously had a sexual relationship.

The images were stored on a number of different devices. Correspondence seized by police depicted sexual fantasies involving young female children. There was no evidence that the offender had been involved in any of the sexual activity with the child or that he had taken/ distributed any of the images. In terms of possession the offender had a large number of images which catalogued the serious sexual abuse of a young child by her mother and persons unknown over a number of years. Little or no care had been taken to secure the images in order to prevent others coming into possession of them.

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.

45.1 We agree and make the following observations for exploitation offences in general:

45.1.1 Offender culpability/level of involvement of the offender should be the primary factor shaping the length of sentence. We therefore agree with the need to have three categories of culpability as it will allow the sentencing guidelines to reflect the wide range of culpability apparent in these cases

45.1.2 In light of the difficulties ascertaining whether a victim is “known” to be trafficked, we would consider amending the culpability element of subcategory A to “*known or suspected*” to be trafficked.

45.1.3 We consider that “violence or threats of violence”, rather than “violence” may the capture the culpability element of subcategory A more fully.

45.1.4 We consider the use of the word “substantial” in relation to financial gain is an unnecessary qualification and may be ambiguous. The value of the reward may be subjective or entirely relative to the facts of the offence. By way of example £100 may be worth more to a non-UK resident trafficking into the UK than to a resident trafficking within the UK. The significance in terms of culpability is the financial motive. In any event we agree that there should not be a monetary value ascribed to the term. If there is a need to categorise the gain it could be an aggravating feature; ie any commercial gain increases culpability, the greater the financial gain the greater the aggravation. This observation is of equal application to other offences in this section where financial gain is identified as a feature of culpability.

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.

46.1 We agree and would only add that we consider the timescale over which the operation has been run to be an additional aggravating feature.

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.

47.1 We agree with the proposed sentence levels, in particular the higher starting point reflecting the commercial aspect of exploitation and the likely financial gain to offenders.

47.1.1 We agree with the range which specifies a community order (rather than, for

example, the wording in the existing guideline which allows for “an appropriate non-custodial sentence”) where there has been little harm to the victim, and no coercion on behalf of the offender.

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.

48.1 We agree. We also agree with the Council’s position that the main focus for sentencing purposes is the role played by the offender and the level of deliberate exploitation and corruption of those working in the brothel.

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.

49.1 We agree.

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.

50.1 We agree with the proposed starting points and ranges.

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.

51.1 We agree, save in respect of the following:

51.1.1 The proposal to include as a harm factor the following: “victim coerced or forced to participate in unsafe/particularly degrading sexual activity” might be better expressed as “victim coerced or forced to participate in unsafe/degrading sexual activity beyond that which is necessarily inherent in the commission of the offence”

51.1.2 We agree in particular that the culpability factor should be broadened from organised commercial exploitation to cover situations in which the exploitation might not be formally organised.

51.1.3 In relation to culpability the term “with an expectation of **substantial** financial or other gain” is please see our observations in relation to Q45. The words “or other gain” are not used in relation to the section 52/53 offences. We see no reason why there should not be a consistency of approach.

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.

52.1 We agree.

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?

53.1 We agree with the proposed starting points and ranges. We consider the approach as set out in the proposal is more straightforward than existing guidance.

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.

54.1 We agree with the starting points and ranges.

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?

55.1 We agree. It would be appropriate to refer the sentencer to the guidelines for ss5-9 SOA 2003, and then add the aggravating feature of commercial exploitation addressed by this offence.

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.

56.1 We agree and would only add that we consider the timescale over which the operation has been run to be an additional aggravating feature.

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.

57.1 We agree.

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.

58.1 We agree with the proposed starting points and ranges.

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.

59.1 We agree. We agree in particular with the proposal to recognise the harm to the victim where coercion is not obvious.

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.

60.1 We agree, save we note additional aggravating features might include:

60.1.1 Abusive working conditions (length of hours made to work)

60.1.2 Degrading living conditions (for example, a trafficked victim will often be forced to share a small living space with multiple occupants, in poor quality housing, with limited access to washing facilities, restricted movement outside working hours etc).

60.1.3 Use of force, *or* threat of the use of force on trafficked victim.

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.

61.1 The maximum sentence for these offences is 14 years'. The proposed starting point and range for the most serious offences is 8 years', range from 6 to 10 years. A range which comes closer to the maximum for the most serious offences would better reflect the degree of organization and coercion involved in large scale trafficking operations. They inevitably involved the most vulnerable individuals who are targeted precisely for this reason.

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.

62.1 We agree.

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.

63.1 We agree, save we refer to our observations at paragraphs 2.1 and 2.2

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.

64.1 We agree, save we refer to our observations at paragraphs 3.1 and 3.2

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.

65. We agree with the proposed starting points and ranges.

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?

66.1 We agree.

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?

67.1 We agree.

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?

68.1 We agree.

Q67: 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.

67.1 We agree, save we refer to our observations at paragraphs 2.1, 2.2 and 9.1

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.

70.1 We agree, save we refer to our observations at paragraphs 3.1 and 3.2

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.

71.1 We agree with the starting points and ranges.

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?

72.1 We agree.

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.

73.1 We agree, save in respect of the following:

73.1.1 We do not think 'Abuse of a position of trust' is a common enough factor to be included. More often it is an offence committed by a complete stranger.

73.1.2 We would add victim/ location targeted on more than one occasion as a factor indicating raised culpability.

73.1.3 We would express "vulnerable victim" as "vulnerable victim or victims and children" as offenders often target groups for example groups of school children walking home from school together. This may not increase harm but it does demonstrate a deliberate intention to cause alarm/distress to more people.

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.

74.1 We agree.

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.

75.1 We agree with the proposed starting points and ranges.

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.

76.1 We agree.

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.

77.1 We agree.

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.

78.1 We agree with the proposed starting points and ranges.

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.

79.1 We agree.

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.

80.1 We agree.

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.

81.1 We agree with the starting points and ranges.

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.

82.1 We agree, save in respect of the following:

82.1.1 We think 'Breach of Trust' is better expressed as a 'Abuse of a position of trust' if, for example, it is to cover the barman who spikes the victims drink

82.1.2 Use of the word 'gang' may be misleading. Further the offence is administering the substance with the necessary intent – this is unlikely to be a group activity. What indicates a raised culpability is the intention that intended sexual activity should be carried out by more than one person. This may be better expressed as "Intended sexual activity involving more than one offender acting together"

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.

83.1 We agree, save we make the following observation:

83.1.1 We invite consideration of whether the nature of the substance is capable of being an aggravating factor. Spiking a drink with alcohol may be viewed differently from administering an illegal substance or one that could have serious adverse side effects.

83.2 We agree that 'Offender intervenes to stop the sexual activity taking place' should be a mitigating factor. An appropriate scenario for this would be where an offender intervened when the intended activity of a group went beyond that which he had envisaged or if he changed his mind for some other reason.

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.

84.1 We agree with the proposed starting points and ranges.

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.

85.1 We agree.

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.

86.1 We agree, save in the following respects:

86.1.1 Raised harm may be indicated by entry to the victim's home but we suggest that this is need not be confined to forced entry. A victim may be traumatized when entry to the home is gained by artifice; for example the elderly victim persuaded by the offender that he is collecting money for charity or there to read the meter.

86.1.2 As above we consider the use of the word 'gang' is liable to misinterpretation. Further whilst trespass in numbers may indicate raised culpability it is whether the intended sexual activity is to be committed by a group that is the real indicator.

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.

87.1 We agree, save in respect of the following:

87.1.1 Location of offence is a suitable aggravating feature provided it is not simply duplication of a factor indicating raised harm (i.e. forced entry to victim's home).

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.

88.1 We agree with the proposed starting points and ranges.

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?

89.1 We agree in principle but care would need to be taken where the definition of offences has changed to ensure that like with like is being compared.

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.

90.1 We agree.

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.

91.1 We agree.

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.

92.1 We agree, save we refer to our observations at paragraphs 2.1, 2.2 and 9.1

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.

93.1 We agree. The youth and immaturity of the offender is reflected as a mitigating factor that can be of greater or lesser importance depending on the circumstances

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.

94.1 We agree.

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.

95.1 We agree with the proposed starting points and ranges.

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.

96.1 We agree.

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.

97.1 We agree.

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.

98.1 We agree.

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.

99.1 In Category 1A, 12 months is too low for some of the range of behaviours and serious nature of grooming that can be taking place at the more serious end of engaging in sexual activity in the presence of a child. In line with the other categories the range should go up to 24 months. If this cannot be reflected as the appropriate upper point in the Category range as the breadth of possible behaviour is just too broad with both sets of offences together, then the offences need to be separated.

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.

100. We agree.

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.

101.1 We agree, save we refer to our observations at paragraphs 2.1, 2.2 and 9.1

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.

102.1 We agree with the starting points and ranges.

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