



Bar Council response to the Sentencing Council Child Cruelty consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Sentencing Council consultation paper entitled Child Cruelty Consultation.¹
2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Overview

4. Whilst the Bar Council does not intend to respond in full to this consultation, it would like to offer the following observations:
5. We recognise and applaud the efforts of the Sentencing Council to provide guidance on the offences of

(1) cruelty to a child;

¹ the Sentencing Council (2017) Child Cruelty Consultation
https://www.sentencingcouncil.org.uk/wp-content/uploads/Child-cruelty-consultation_FINAL_WEB.pdf

- (2) causing or allowing a child to die or suffer serious physical harm and;
- (3) failing to protect a girl from the risk of FGM.

6. The structure of the proposed guideline follows that of other guidelines with which the profession and courts have become familiar. We do not otherwise comment on the structure.

7. We have only two comments to make about the content of the guidelines:

- a. The lowest category of culpability in each case - Category C – includes victims of domestic abuse where the abuse is linked to the commission of the offence. That category omits victims of human trafficking who are as vulnerable and as deserving of leniency as are victims of domestic abuse where their status as victim is linked to the commission of the offence. This is particularly important since s.45 of and Sch 4 to the Modern Slavery Act (MSA) 2015 exclude from the statutory defence available to victims of trafficking offences of child cruelty contrary to s.1 of the Children and Young Persons Act 1933, as well as offences contrary to s.27 of the Offences Against the Person Act 1861 (abandoning a child), s.1 of the Infant Life (Preservation) Act 1929, s.1 of the Infanticide Act 1938, ss.1-3 of the Female Genital Mutilation Act 2003 and s.5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing a child to die or suffer serious physical harm). For some reason s.3A of the Female Genital Mutilation Act 2003 which forms a specific part of this guideline is not (yet) excluded from the statutory defence in s.45 of the MSA. Given the prevalence of human trafficking and the international focus on it, the Sentencing Council should have included such persons expressly within Category C. The Sentencing Council does not even include them among the residual mitigating factors.
- b. On p.41 and 42 of the consultation document the Council sets out the statutory requirements of its guidelines. These include having regard to “the cost of different sentences and their relative effectiveness in preventing re-offending” as well as a duty to produce an assessment of the effect of the guidelines on resources for prison places, probation and youth justice services. However the draft provides none of these. Recent reports have identified the parlous states of our prisons, youth detention centres and the probation service. For the Sentencing Council to take current actual sentencing practice and adopt it as the basis of guidelines without regard to the inadequacy of our penal system to fulfil the requirements of reform and rehabilitation as well as to inflict punishment is to omit an important aspect of its function.

Bar Council
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