

CONSULTATION PAPER ON ASSAULTS AND OTHER OFFENCES AGAINST THE PERSON

RESPONSE SUBMITTED ON BEHALF OF THE UNITED KINGDOM ASSOCIATION OF WOMEN JUDGES

The Association welcomes the opportunity to respond to this consultation paper and comments as follows.

We note at the outset that the Sentencing Guidelines Council is considering gender issues in sentencing during this year. There are several points in this Consultation Paper in which gender may be a particularly relevant factor but requires much deeper and separate consideration. We would welcome a Consultation Paper discussing this.

- Do you agree that so long as the sentence for an offence is within the maximum provided in legislation for the offence charged, the court may properly take account of an injury that could have been the subject of a more serious charge?
- We have no issue with this. So long as the court sentences at an appropriate level for the offence charged the injury should be taken into account.
 - Do you agree that the aggravating and mitigating factors listed in paragraph 35 are applicable to assaults and other offences against the person? Should the fact that an offence took place at night be an aggravating factor? Are there any other factors that should be included in the list?

Yes. An offence at night can be an aggravating factor as help/support from others is not so easily available or accessible. An assault within the victim's home should be considered as a further aggravating circumstances as that is a place where a victim should be entitled to feel secure. However, a factor indicating lower culpability is the vulnerability of the offender in relation to the victim, eg a physically weaker spouse or partner who over-reacts to violence or the threat of violence.

- How far do you agree with the factors we have identified and their significance as provocation in offences against the person? Are there any other factors that should be included?

We do not have any issue with the factors identified; however, in addition to the vulnerability of the offender in relation to the victim, the vulnerability of the victim in relation to the offender should be included.

- Do you agree that, in relation to offences of assault and other offences against the person, the factors listed [at paragraph 49] are relevant to assessing the degree of aggravation resulting from hostility on account of race, religion, disability or sexual orientation?

We do not have any issue with the listed factors.

- Are there any other factors that should be included in this list, now that statutory aggravating factors include additional forms of prejudice?

No

- Do you agree that the aggravating factors listed at paragraph 52 will often be present in assaults against children?

Yes

- Are there any other aggravating or mitigating factors that should be included in the list?

For as long as any physical punishment of a child is permitted by the law, fine judgments will be expected, often of hard-pressed primary carers who may go too far in the difficult task of controlling young children. The attempt to control is very different from deliberate chastisement or even boiling over in exasperation with disastrous results.

- To what degree should national, rather than local, prevalence influence sentencing for particular types of assault and what evidence does a court need to obtain to inform its decision?

The court should take into account national prevalence to reflect the concern of society in general but would need to have evidence from for example the local Criminal Justice Board about prevalence to justify a heavier sentence.

When sentencing for an assault or other offence against the person, should higher priority be given to considering a compensation order, either as a sentence in its own right or as an ancillary order?

The ability to pay compensation may be a strong argument for a non-custodial sentence. However, the court will still have to assess the level of that compensation, which may be difficult and balance this against the

means to pay. Compensation cannot outweigh the need to protect the public, and neither should it be allowed to become a sentence only available to the better off section of society who could be seen to be “buying their way “ out of a prison sentence.

- Do you agree with the Panel’s approach of basing starting points on a standard offence of its type?

We have no issues with the Panel’s approach.

- Do you agree with the starting points suggested for each offence? It should be noted that they relate to sentencing for a first offence after a plea of not guilty and take account of the changes to custodial sentences and community orders in the sentencing framework introduced by the Criminal Justice Act 2003.

Yes

- Do you agree with the common aggravating and mitigating factors suggested for each offence? Are there any other relevant factors?

Yes. Previous convictions for violence

- How should the likelihood that the victim will suffer long-term psychological harm be reflected in sentencing for the offence of child cruelty?

As evidence of actual psychological harm is unlikely to be available at the point of sentence a higher starting point would appear to be the only way of reflecting it, **but see below.**

- When reflecting the likelihood of long-term psychological harm in sentencing starting points for the offence of child cruelty, how relevant is the particular nature (e.g. assault and ill-treatment or neglect) of the offence perpetrated?

This is a bit speculative and has to be counter-balanced by the immediate impact of the sentence upon the victim. If there is to be a higher starting point it should be for those serious, repeated or prolonged, callous or sadistic abuses which are likely to have such results.

- Is it possible to rank the different types of child cruelty (i.e. assault, neglect and abandonment) in terms of seriousness in order to guide sentencing starting points? If so, how would you rank them?

Save for the most obvious and serious of assaults it is difficult to rank the varying types of cruelty in order of seriousness bearing in mind the effect

on the child. **Prolonged and uncaring neglect may be much more damaging than occasional violence.**

- Do you agree with the starting points suggested for each offence? It should be noted that they relate to sentencing for a first offence after a plea of not guilty and take account of the changes to custodial sentences and community orders in the new sentencing framework introduced by the Criminal Justice Act 2003.

We do not have any issues with the starting points suggested.

- Are there any other common aggravating or mitigating factors, other than those identified in the table, that would make an offence of child cruelty more or less serious?

As noted earlier under assault, not enough weight has been given to the fine judgement expected of a hard-pressed carer who goes too far in the difficult task of controlling children. The attempt to control is very different from deliberate **chastisement** or even boiling-over in exasperation with disastrous results.

The difference between one-off or rare lapses in an otherwise good carer and prolonged **ill-treatment**, indifference or neglect

The very real possibility that failure to protect is the result of fear or oppression by another offender or household member.

The age of the child – especially in cases of abandonment.

It is worth considering whether a greater than usual discount should be made for early and full co-operation with the investigating authorities, including social services. The children's interests are often better served by full and frank co-operation than by punishment of the offender.

- How should concerns over a child's welfare influence the sentence imposed for an offence of child cruelty?

The court must always take into account the continuing relationship the child will have with a parent/carer even if in very serious cases it cannot be the determining factor. The courts should be fully aware, not only of the long term effects of serious or prolonged abuse, but also of the long term effects of separation from a primary carer particularly if this **means** going into care. There should be liaison in criminal and family justice **systems**.

- What factors should mitigate sentence in cases of child cruelty?

The culpability of the offender who may well have been brought up in an abusive household, be suffering from a mental disorder or be otherwise socially inadequate. The future expected relationship with the child should also be considered.

The welfare needs of the child (Section 1(3) Children Act 1989) should always be a factor in sentencing a carer, but particularly a primary carer.

- When sentencing for an offence of child cruelty, which factors, if any, should lead to a difference in sentencing for male and female offenders?

A female is more likely to have the responsibility for the care of this or other children or family members.

- When sentencing for an offence of child cruelty, which should carry the greater weight - the offender's position as the primary carer of the victim and/or any other children, or his or her gender?

The position as primary carer.