

Consultation on the Sentencing Council's Sentencing Youths – Overarching Principles and Offence-Specific Guidelines for Sexual Offences and Robbery

Response by the Youth Justice Board for England and Wales

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Introduction

The Youth Justice Board for England and Wales

Vision

Every child and young person lives a safe and crime-free life, and makes a positive contribution to society.

Strategic end benefits

- 1) To reduce the number of children and young people entering the youth justice system
- 2) To reduce reoffending from children and young people in the youth justice system
- 3) To improve the safety and wellbeing of children and young people in the youth justice system
- 4) To improve the positive outcomes of children and young people in the youth justice system

Mission statement

- Developing and championing a **child-centred and distinct youth justice system**, in which a designated youth justice service keeps children and young people safe and addresses the age-specific needs of the child, to the benefit of the community.
- Developing a '**centre of excellence approach**' in youth justice which will support innovation by using and interpreting available evidence to support the delivery of youth justice services in custody and the community. Also more effectively drawing on the contribution of academic institutions and other relevant bodies.
- **Driving continuous performance improvement in youth justice services** delivered in custody and the community through our robust monitoring system and by identifying and promoting best practice.

Our role

The role of the Youth Justice Board (YJB) is to oversee the youth justice system in England and Wales. The statutory responsibilities of the YJB include:

- Advising the Secretary of State on the operation of, and standards for, the youth justice system;
- Monitoring the performance of the youth justice system;
- Purchasing secure accommodation places for, and placing, children and young people remanded or sentenced by the courts to custody;
- Identifying and promoting effective practice;
- Commissioning research and publishing information

While the YJB is responsible for overseeing the performance of youth justice services including multi-agency youth offending teams (YOTs) and commissioning secure accommodation providers, the YJB does not directly deliver or manage any of these services.

Background

Children and young people are among the most vulnerable users of the justice system. The structure and ethos of the adult justice system, the adult court and the adult sentencing framework are inappropriate for use with children and young people, who frequently have a range of complex needs which these adult systems and processes are not designed to meet.

In recognition of this, youth justice is delivered in accordance with the youth sentencing framework. This framework is distinct from the adult framework, and provides a greater focus on individualistic responses than its adult equivalent.

When sentencing an individual aged under 18, a court must have regard to:

- a) the principal aim of the youth justice system (YJS) (to prevent offending by children and young persons); and
- b) the welfare and best interests of the child or young person.

A court sentencing a child or young person must be aware of obligations under a range of international conventions which emphasise the importance of avoiding “criminalisation” of young people whilst ensuring that they are held responsible for their actions and, where possible, take part in repairing the damage that they have caused. This includes recognition of the damage caused to the victims. Within a system that provides for both the acknowledgement of guilt and sanctions which rehabilitate, the intention is to establish responsibility and, at the same time, to promote re-integration rather than impose retribution.

Youth offending teams (YOTs) play a vital role, providing assessments and making recommendations on the nature and content of a sentence through pre-sentence reports. In preparing that report, an individual’s circumstances and needs are a key consideration for the YOT as they seek to identify an appropriate balance between the seriousness of the offence, the individual’s needs and the risk of harm in the future from any further offences the child or young person might commit.

The YJB is responding to this consultation based on consideration of the needs of children and young people and what it has learnt about opportunities to enhance youth sentencing, from stakeholders and from children and young people themselves, supplemented by our operational knowledge and the expertise of our board members and staff seconded into the YJB from the sector.

Consultation questions and responses

General comments on the Sentencing Youths – Overarching Principles and Offence-Specific Guidelines

The YJB welcomes the updated youth specific overarching sentencing principles and the ambition to make them more accessible. We welcome improvements on the existing guidelines such as:

- The strengthened focus on welfare and the needs and circumstances of the child, including explicit consideration of learning difficulties, disabilities and speech, language and communication needs;
- The clear recognition of the differences between adults and young people;
- The recognition of the correlation between background vulnerability factors and offending behaviour;
- The assumption that the vast majority of cases will be retained in the youth court; and,
- The continued use of custody as a last resort.

While we welcome the simplification of the guidelines we wish to reiterate the fundamental importance of sentencers retaining discretion at all steps of the process to ensure a genuinely individualistic approach which prioritises welfare needs. We would not want to see the guidelines or any flowcharts within them prompting a formulaic approach to sentencing.

We note the Sentencing Council's commitment to carefully consider the Taylor Review into youth justice when it is published. As it now appears that the Taylor Review report and recommendations will not be published until later in 2016, we think it is worthwhile to proceed with the finalisation of these revised guidelines. Any reforms resulting from the Taylor Review would take time to further develop and implement so it would be useful to roll these revised guidelines out in the meantime.

We would also like to highlight the overrepresentation of black, Asian and minority ethnic (BAME) children and young people at every stage of the youth justice system and, in particular, how this overrepresentation increases at the point of sentencing. BAME children and young people are much more likely to be sentenced to custody than their white peers, for example, a greater proportion of young people from black backgrounds received custodial sentences (11%) and a smaller proportion received community sentences (70%) compared with white young people (8% and 74% respectively)¹. There

¹ *Statistics in race and the criminal justice system 2014 – Ministry of Justice*
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf

are some key assessment stages in the courts and sentencing process where unconscious bias may be a relevant factor and the YJB would encourage consideration of how these guidelines could help tackle this.

Additionally, having earlier this year reviewed the proposed reduction in sentence for a guilty plea guideline, we would urge the Council to consider incorporating this guideline into the Sentencing Youths guideline to ensure that all guidance regarding sentencing of children and young people is available in one place. Whilst we recognise appropriate reference to the guilty plea guideline is made throughout we feel it would be much easier for sentencers to reference if it was included in this guideline.

On a more specific point, we wanted to ask the Council to consider whether the guidelines may helpfully comment on the principles of video links in sentencing of children and young people. We believe children and young people should never be sentenced over video link. The YJB is engaging with HM Courts and Tribunals Service as they progress their extensive courts reform programme. Our aim is to ensure a distinct child-centred approach remains, and is enhanced, for children and young people going through court proceedings.

We recognise the need to find efficiencies within the courts estate and are open to new ways of working, including greater use of technology. However, we are clear that a 'digital by default' approach is not acceptable for children and young people as many already struggle to understand court processes and have special educational needs, disabilities, learning difficulties, and/or speech, language and communication needs.

We believe use of technology and video links can be appropriate for administrative hearings, providing the court, the YOT and, where applicable the secure establishment, have assessed that it is in the best interests of the child or young person and the child or young person agrees. The YJB is clear that video links are never appropriate for trial or sentencing of children and young people (except potentially in very exceptional circumstances where it has been assessed as being in the individual's best interests). Sentencing over video link may limit the child or young person's understanding and engagement with the sentence and their rehabilitation. We are also concerned about the support and representation available to children and young people when video link is used. We believe this is an important principle of youth sentencing – enabling maximum understanding, engagement and support for the child or young person, and therefore would urge the Sentencing Council to include face-to-face sentencing as a principle under the welfare section of the guidelines.

Finally, it is the YJB's view that with some additional amendments bringing greater clarity and child-centeredness to the revised guidelines we believe they could be further enhanced.

Responses to consultation questions

Q1

Do you agree with the general principles for sentencing youths?

In general yes, and we think it would be useful to add “encouraging responsibility for own actions” to “foster a sense of responsibility to others”, as per the existing guidelines (section 1.3, p. 11).

The YJB queries whether there is evidence that punishment is an effective deterrent to offending by children and young people. Therefore we support the focus on welfare rather than deterrence.

Are there any additional principles that should be included?

Parents and guardians should, where appropriate, be involved in court proceedings and should attend to provide support to the child or young person through the process and the sentence. It should be clear that there may, of course, be certain instances where the young person or partners to the process, including YOTs, legal representatives and the court, consider it is not appropriate for parents or guardians to be involved.

When looked-after children come to the court, we believe the responsible local authority should be compelled to involve a person of appropriate seniority in the court proceedings.

Q2

Do you agree with the factors that should be taken into account when considering the welfare of a young person? Are there any additional factors that should be included?

Yes in general we agree but believe the factors could be enhanced with some amendments:

- Section 1.11: We believe this should include specific reference to the developmental impact of traumatic life experiences and brain injury. Both can impact on the behaviour of the young person, including offending behaviour, as well as affecting engagement with services. This would helpfully add to the reference to mental health issues, and make more specific links with offending itself.
- Section 1.11: Examples of why a young person may conduct themselves inappropriately in court could also include: cultural and ethnic customs, and being accompanied by a stranger.
- Section 1.12: Additional factors should also include exclusion from school/education and access to health services.
- Section 1.14: It could be clearer about the circumstances under which a “proper assessment” is required, including the type of assessment and who might carry it out.

Q3

Are you content that the guidance on grave crimes clearly and accurately reflects the relevant legislation and case law? If you disagree please state why.

Given the provisions in the Criminal Justice and Courts Act 2015, which enable youth courts to retain more serious cases, we believe section 2.8 could be simplified by stating “unless there is a real prospect that a sentence in excess of two years will be imposed, a case should remain in the youth court”.

The YJB is not able to comment on whether the guidance accurately reflects relevant case law.

Q4

Does the allocation section include all the necessary considerations?

Section 2.5 (p. 14): Could be clearer about the assessment of dangerousness and should always require a pre-sentence report as a minimum standard for sentencing. This should apply regardless of the offence.

Do you have any general observations on this section?

No.

Q5

a) Do the flowcharts include all the necessary considerations for allocation?

We welcome the inclusion of the flowcharts and believe they could be a useful addition. We think it should be explicitly reinforced here that the flowcharts do not remove or restrict judicial discretion at any stage and that they are to be used as a guide for consideration only. We would not want sentencers to see this as a prescribed approach to follow, they must be reminded in the guidelines to use any flowcharts only as an aid to their thinking and decision-making based on the circumstances of the case and the needs of the young person.

The flowcharts could set out that the test of whether to send a young person to the Crown Court should refer to a “real prospect” of a sentence beyond two years.

b) Do you think you would refer to these flowcharts on a regular basis when considering sentence levels (legal practitioners/sentencers)?

The YJB has spoken with some sentencers who think they would be unlikely to refer to these flowcharts regularly when considering sentencing levels. Perhaps this is partly because they are not currently in the habit of referring to such a tool as a guide.

c) Do you have any general observations about these flowcharts?

We would restate the importance of discretion and individualistic sentencing.

We think it would be useful to add references to the flowcharts so sentencers can easily refer back to the detail of the guideline.

Q6

Do you agree with the approach taken to the assessment of seriousness? Is the approach useful and does it provide you with greater structure when assessing seriousness?

Yes, however, “mental health issues, learning disabilities and level of maturity” should be added as considerations to the last sentence in section 4.6 (p.22).

Q7

Do you agree with the aggravating and mitigating factors included? Please state which, if any, should be removed or added.

The inclusion of example aggravating and mitigating factors, whilst useful and clearly illustrative, could encourage their use in a way that assumes they are exhaustive. For instance, sentencers may refer to and place greater weight on the factors listed, rather than use their own discretion. The use of discretion should therefore be stated very clearly alongside the lists of factors, in order to make this clearer.

Aggravating factors listed could be enhanced by adding:

- “Manipulation and coercion” to “involvement of others through peer pressure or bullying or manipulation and coercion”

Mitigating factors listed could be enhanced by adding:

- “Experience of trauma and loss” added to “unstable upbringing including but not limited to...”

Q8

Do you agree with the Council’s approach to ‘persistent offenders’? If you disagree, please give your reasons why.

On the whole we agree but we would recommend a few, mainly small, changes.

Point “i” in the persistent offenders narrative should read, “in all circumstances, the expectation is that the offender will have had some contact with authority in which the offending conduct was being challenged”, otherwise a young person could be considered persistent without ever having been given an opportunity to address their offending.

Section 5.5: We believe it is important to be clear that previous convictions and findings of guilt are what should be used to identify persistence, rather than general “contacts with authority as a result of criminal behaviour”. We believe the latter description can be interpreted too broadly, as for instance, we know looked-after children are at greater risk of having such contact with authorities and being criminalised. This is particularly the case for those in residential care, as the police are more likely to be involved in minor incidents which would have been dealt with informally for other children.

Section 5.5: Should also refer to restorative justice disposals.

Section 5.7: Should also be amended to include “less serious offences” as an example of a relevant change in patterns of criminal behaviour.

Section 5.9: We disagree that a young person, when being sentenced in a single appearance, for a series of separate, comparable offences committed over a short space of time, with no previous findings of guilt, could justifiably be considered a “persistent offender”. Again, if this were the case this would mean a young person could be considered persistent without ever having been given an opportunity to address their offending by an authority.

Q9

Should there be any other considerations taken into account when assessing whether a young offender should be categorised as a ‘persistent offender’?

Please refer to our response to question 8.

Q10

Is the table helpful? Are you likely to use it as a quick reference tool?

Yes, the table seems that it could be a helpful quick reference tool. It would be useful to add the “spent” element into the table too.

Q11

Do you agree that the varying long-term effects of different sentences should be taken into consideration when determining the sentence?

Yes, we agree the varying long-term effects of different sentences should be taken into consideration when determining the sentence, we believe this is extremely important. For example, custodial sentences can have a range of effects on individuals and, based on reoffending rates, young people who enter custody are more likely to reoffend than those who receive a community sentence.

Greater clarity is required around the conditional discharge statement.

Q12

Is there sufficient guidance offered on the suitability of discretionary referral orders, in particular when they may no longer be the most suitable disposal for preventing re-offending?

We welcome guidance on discretionary referral orders and believe it is useful. It must be clear that this is always based on discretion of sentencers having considered whether the referral order is likely to support the young person’s rehabilitation and effectively address their needs, as well as considering the seriousness of the offence. To support this we would welcome inclusion of an explicit reference to welfare and needs of the young person within this section.

In section 5.22 it would be useful to highlight that Referral Order Panels determine the requirements of the order having liaised with the young person, their parents/carers, youth justice practitioners and considered the victim of the offence and the needs of the young person.

Q13

Is the additional detail regarding the requirements of a YRO helpful? If you are a sentencer do you feel that this will make you better informed when considering the requirements proposed in youth sentencing reports?

Yes, from the YJB's perspective this seems helpful.

At the table at 5.29, we think it is important that the requirements of orders in the 'intensive' category must also seek to "enable help or change for the young person", not just to ensure control. It must be clear that sentencing should always aim to be supportive and transformative for young people, including the most challenging and dangerous young people.

We were concerned about the reference at 5.39 to the right to apply for legal representation being "withdrawn because of the offender's conduct", this statement should be removed. All children and young people appearing as defendants in court must have access to quality legal representation at all times. As the guidelines highlight, a young person's conduct and behaviour may be affected by a range of factors and it is important to consider the individual's needs to ensure measures are in place so that a young person is adequately supported throughout the entire court process.

Q14

Do you agree that, in light of current sentencing practice, the provisional starting point for 15 – 17 years old compared to the appropriate adult sentence should be changed, to between one half and two thirds?

The YJB is not convinced by this proposed change as set out in the draft guideline and would urge further careful consideration before introducing such a change. We have reservations about the value of this approach. We recognise it could potentially provide greater consistency in sentences for 15-17 year olds for similar offences, which could support fairer sentencing between all groups and, for instance, help tackle overrepresentation of BAME children and young people in custody. However, we are concerned that judging individuals on their chronological age alone could, in effect, be arbitrary if an individual's needs, such as level of maturity, learning disabilities and so on are not considered.

The guidelines throughout recognise the effect of maturity, learning disabilities and other relevant factors on an individual's behaviour so this should not be omitted or undermined here. Furthermore, we would be very concerned if any sentencers felt that this was a target or tariff that they should aim to achieve in all or the majority of relevant cases.

Ultimately we think this approach can only be considered acceptable if it is made absolutely clear that this is merely a suggestion for consideration alongside careful consideration of every individual's specific needs and circumstances and what is in their best interests. If sentencers are in any doubt

in specific cases they should disregard this 'target' altogether. We think the current wording in the guidelines would need to be amended to make the preeminent role of sentencer discretion much clearer.

Q15

Is it helpful to have guidance on breach of all orders, rather than just guidance on breach of a YRO?

Yes.

Q16

Do you agree that this information is best placed as an appendix, rather than incorporated into the main body of the text?

Yes, we agree the information is best placed as an appendix.

Q17

Reviewing the draft Overarching Principles guideline as a whole (Annex C) do you have any observations or comments about any parts of the guideline?

The evidence referred to in the guideline is primarily based on the views of sentencers and limited mention is made of youth justice practitioners being consulted. We believe the sections would benefit from a broader input of evidence from youth justice practitioners.

Breach of conditional discharge (appendix 1)

- Section 6.1: clarification is required regarding “the offender should be dealt with on the basis of their current age.....” However, should this not be “dealt with on their age at the time of their new offence”? Reference should be made to the bench book.

Determining the sentence

- We welcome the emphasis on considering the emotional, and not just chronological, age of the young person in determining the sentence. Could the word 'maturity' also be included in the relevant bullet point under section 4.1, particularly as this is the accepted terminology and is indeed referred to later in the guidelines. We think referring to 'emotional' age only does not capture all aspects of intellectual, psychological and neurological development.

Custodial sentences

- We welcome the continuing, clear principle of custodial sentences always being used as a last resort, and the drive to ensure that custodial sentences are rare exceptions for those aged 14 and under. It must remain clear that maturity and not just chronological age should be considered as pivotal factors in sentencing, including in sentencing to custody.

- We welcome the inclusion of section 5.49 on welfare. We feel though that section 5.44 must include an explicit reference to the welfare and needs of the young person so this features alongside consideration of seriousness, and risk of serious future harm. Perhaps another way to ensure welfare is not forgotten or seen as unimportant could be to move 5.49 up above 5.44.
- We believe section 5.45 should be amended to read “in order to consider the appropriate length of the sentence” rather than, “in order to decide upon the appropriate length of the sentence”. This should be changed to help emphasise that consideration of adult sentencing is only ever appropriate as an advisory measure to inform thinking, rather than a decision-making tool.
- Section 5.47 should be revised – The narrowing of sentence reduction the closer a young person gets to the age of 18, should be explicitly undertaken only in the absence of other vulnerability factors. This needs to be stated explicitly in order to ensure maturity is always considered alongside chronological age of the young person.

Sexual offences guideline consultation questions

Q18

Do you find the short narrative on sentencing youths for sexual offences is helpful? If not please specify what you would add or remove and why.

Yes the short narrative is useful and the guideline is useful but should make welfare a more central feature throughout. We have a few suggestions for amendments to the narrative. We think there should be three amendments to the first section:

“The primary difference is the age, immaturity *and understanding*”

“gang or peer group pressure” should be amended to, “gang or peer group pressure, or pressure *or control of another individual*”

“a lack of understanding regarding consent, exploitation, coercion and *appropriate sexual behaviour*” should be added to the end of the final sentence.

The narrative should also make explicit reference to welfare and needs of the young person. It is important to ensure this is a central feature of the sexual offences guideline, so recognition of this underpinning aim is not dependent on referring to the overarching principles.

We suggest it would be helpful to add to the background factors two additional bullet points:

- The young person has witnessed or been exposed to other children, young people or adults being abused.
- The young person may have learning disabilities or difficulties.

We believe the reference to sexual offending arising from “confusion about sexual identity or orientation” should be removed. We recognise that a similar reference appears in existing guidelines. We think the reference to “inappropriate sexual experimentation” should cover concerns for young people of all sexual orientations and identities – otherwise it suggests that people of some sexual orientations are particularly likely to offend which we do not believe to be the case. Sentencing must consider and promote equality between groups with different protected characteristics as set out in the Equality Act 2010.

Q19

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

We are concerned that it may be counter-productive to list the factors which indicate that a non-custodial would be warranted. We are concerned about how you would define some of these factors without ambiguity. There are always difficulties in assessing harm to victims, particularly when harm to victims may not be immediately apparent. This may be especially true of psychological harm experienced by child victims of sexual offences, which is important to consider

as we know that sexual offences perpetrated by children and young people are likely to have other children and young people as their victims.

It is also important to weigh the needs of victims against the needs of the children and young people who perpetrated the offence. This is particularly important as we know that many of these children and young people have themselves experienced abuse or trauma and need support and help to overcome the underlying causes of their offending or harmful sexual behaviour.

Q20

Do you agree with the harm and culpability factors proposed at step one which indicate that the starting point should be a custodial sentence? If not, please specify which you would add or remove and why.

Yes, this seems a reasonable approach.

Q21

Do you agree with the aggravating factors for this offence? Please state which, if any, should be removed or added.

Generally we would agree with the aggravating factors set out. We thought it would be highly beneficial to include in the guidelines themselves the accompanying explanatory text on each aggravating factor which has been provided in the consultation document (pp. 42 and 43).

We think the factors should also cover the various protected characteristics in the Equality Act 2010. Namely: age, race, religion, gender, gender identity/reassignment, sexual orientation, disability and pregnancy and maternity.

Could some detail be added to show relevant grooming and exploitation factors, such as building an emotional connection with an individual in order to abuse or exploit them, offering money, goods, alcohol, drugs or protection and so on?

Specific targeting of a particularly vulnerable victim – could this provide details of who could be considered ‘particularly vulnerable’? This could be in the accompanying explanation rather than in the table itself. This must reference children and young people with disabilities, including learning disabilities as according to NSPCC figures, they are three times as likely to be a victim of sexual abuse.

In terms of whether a sexually transmitted infection (STI) was passed on; it may be that the young person committing the offence did not know they had it or did not know it could be passed on. There could also be a chance that some individuals perpetrating offences may have an STI due to abuse or exploitation they had suffered. For these reasons it would be more appropriate to consider that *knowingly* passing on an STI is an aggravating factor.

Could another factor be, sustained abuse or repeat instances against the same individual over a long period of time?

Q22

Should any of the factors be considered at step one? If so, why?

Perhaps group activity and social media should be considered at step one.

Q23

Are there any offence-specific mitigating factors that should be added?

We believe insignificant disparity of age between offender and victim could be added. This could be a factor in a young person thinking that or attempting to engage in a form of face-to-face or online sexual activity with another child or young person is acceptable and lawful if they are both the same age or a year or so apart.

Q24

Are there any offender-specific mitigating factors that should be added?

Yes there should be three additions:

- 1) Witnessing or being exposed to abuse of others.
- 2) Exposure to sexual content, materials and pornography which are age-inappropriate and/or promote coercion, control, violence or other unlawful or unsuitable activity.
- 3) Special education needs should also be added to mental disorder or learning disability.

Q25

Do you agree with the inclusion of this step? Please state what, if anything, should be removed or added?

Yes we agree with this step. Welfare should also be referenced as a vital principle in reviewing the sentence. This must not be omitted as it may lead to sentencers neglecting this factor when sentencing defendants for sexual offences.

Q26

Do you consider that the sentence passed in case study A is proportionate? If you do not agree, please tell us what sentence should be passed and why.

This is not an appropriate example to illustrate the factors contributing to aggravation and mitigation as it will likely lead to cases being sentenced which should be dealt with via a pre-court disposal or a police caution. We suggest re-drafting using a more appropriate example for a referral order, particularly, a case study which reinforces that sentencers must use discretion, not just follow mechanistic approach of steps or ticking boxes.

In this example we do not consider the sentence passed in case study A is proportionate and question whether it merits prosecution at all. It seems to

reflect an episode of age appropriate sexual experimentation (exacerbated by alcohol), rather than “offending”.

Q27

Do you consider that the sentence passed in case study B is proportionate? If you do not agree, please tell us what sentence should be passed and why.

We feel another referral order, possibly of high intensity, seems more suitable than a YRO due to the number of mitigating factors present including the individual’s immaturity, mental health issues and special educational needs, added to steps having already been taken and a strong prospect of rehabilitation.

The example could be revised by discussing a greater number of factors to help magistrates consider how to apply their discretion based on all factors.

Robbery guideline consultation questions

Q28

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

We welcome the culpability and victim harm factors being cited as a starting point only, prior to the weighing up of aggravating and mitigating factors (young person or offence-related). We believe there is a danger that by listing factors that indicate a non-custodial sentence there will be cases that sit in the mid-tier between non-custodial and custodial and therefore suggest that it should be noted that custody can be considered when certain factors indicate a certain level of seriousness.

Furthermore, greater clarity is needed around the meaning of minimal and very significant force, particularly as these are the likely polarities of the weighing up process for appropriateness for custody.

Lastly, we also believe this section could be enhanced by including a short introductory paragraph as has been done for the sexual offences guidelines.

Q29

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

Yes.

Q30

Do you agree with the aggravating factors for this offence? Please state which, if any, should be removed or added.

Yes.

Q31

Should any of the factors be considered at step one? If so, why?

Taking the leading role in a group.

Q32

Are there any mitigating factors that should be added?

No.

Q33

Do you consider that the sentence passed in case study C is proportionate? If you do not agree, please tell us what sentence should be passed and why.

No, we believe a high intensity Referral Order is the more appropriate sentence. Little consideration is given to the existence of familial criminality; the fact that the father is a relevant person and has been a lifelong offender appears to be a key feature in the development of the boy's offending. Moreover, little consideration is given to the stated intention to provide financial support for his mother and given the guilty plea, another Referral Order, of a higher intensity, seems more appropriate.

If a standard length YRO were issued for this offence, there is little latitude left to escalate in the event of a genuinely more serious offence, thus heightening the likelihood of a premature escalation to custody for this young person.

Lastly, we think the case study should also make reference to the possible psychological impact on the victim.

Q34

Do you consider that the sentence passed in case study D is proportionate? If you do not agree, please tell us what sentence should be passed and why.

Yes we agree the sentence (a DTO) is proportionate. We take this view because: a knife was used, (since the government introduced the new mandatory sentence last year two instances of possession of a knife should, in itself, result in a DTO); one victim was kicked repeatedly; several individuals were involved in the robbery; there is also a previous finding of guilt for robbery; they targeted vulnerable people (vulnerable due to young age) and had not complied with previous orders.