

SENTENCING FOR SEXUAL OR  
VIOLENT OFFENCES AGAINST  
CHILDREN AND OFFENCES UNDER  
S1 OF THE CHILDREN AND YOUNG  
PERSONS ACT 1933

A Report for the NSPCC

July 2011

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## ACKNOWLEDGEMENTS

The impetus for this report came from the Barnet Branch of the NSPCC Council by calling on the NSPCC policy department to campaign for longer sentences for offences against children. We are most grateful to the Barnet Branch for highlighting their concerns to us which has enabled us to deal with the points that are of wider public concern.

Barbara Esam, Policy Lawyer, Strategy and Development Department, NSPCC and Project Manager for this exercise, investigated the concerns by consulting with the Crown Prosecution Service; the Sentencing Guidelines Council (as was) and Child Exploitation and On Line Protection Centre (CEOP). These preliminary consultations did not support the view that sentences for offences against children are too lenient. However, the NSPCC considered that there would be merit in further investigating the matter and in providing information on sentencing that could be available to our supporters as well as to the general public. To that end, Barbara Esam recruited a very distinguished panel of external experts to join her in a working group panel. The NSPCC is enormously grateful to the panel members for generously donating their valuable time and expertise to this project over the period of a year from July 2010 to July 2011. The panel members were:

Jo Bailey – Lead Psychologist, Public Sector Prisons National Offender Management Service

Michael Bowes QC, (Chair) – Outer Temple Chambers; Recorder

David Butterworth – Deputy Multi-Agency Public Protection Panel Manager (retired), Norfolk

Barbara Esam – (Project Manager) Public Policy Lawyer, National Society for the Prevention of Cruelty to Children

Nicola Padfield – Fitzwilliam College, University of Cambridge; Recorder

HH Judge Isobel Plumstead, Honorary Secretary – The Council of Her Majesty’s Circuit Judges; Cambridge County Court

The NSPCC is also grateful to Sarah Latimer, LLM graduate at Cambridge University whose help was invaluable in turning the panel’s oral and email discussions into various early drafts of the report. Thanks are also due to Verity Marriott, NSPCC Administrator for producing transcripts of panel discussions and word processing the report.

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# EXECUTIVE SUMMARY

This summary seeks to draw together the key issues identified during our work and to provide a brief summary of our findings. A fuller explanation can be found in the main body of this report.

Questions about the effectiveness and appropriateness of sentences for those who commit sexual or violent offences against children or offences of cruelty/neglect are very difficult to answer. The first part of the report seeks to show that it is difficult to measure the amount of offending against children, and that public perceptions do not always accord with reality. There is a marked discrepancy between media reports and the perceptions these create in the minds of many of the general public and what occurs in practice. The sources of these misconceptions can be summarised as:

- 1 Media reporting of sentencing decisions that is often misleading .
- 2 The public perception that the crime rate is increasing when in fact it has been steadily reducing.
- 3 The impression that “Stranger Danger” is the higher risk in respect of sexual offending against children, whereas evidence shows that approximately 80% of sexual offences against children are committed within the family or by persons known to the child/ren (often in positions of trust).
- 4 A widespread belief that sentences are too lenient, whereas they have been getting longer in recent years, and the prison population has been increasing (from 64,602 in 2000 to 84,275 in 2010, for example: see [www.parliament.uk/briefing-papers/SN04334.pdf](http://www.parliament.uk/briefing-papers/SN04334.pdf)). By comparison, in France, with the same population as Britain, prison numbers are 59,655 and in Germany with over 20 million more people, 72,043.
- 5 Perhaps the most commonly misreported and misunderstood sentences imposed are indeterminate sentences.
- 6 Imprisonment for Public Protection (IPP). is often reported along the lines of “Only 7 years for raping a 6 year old!” leading to a sense of appalled indignation, disbelief and loss of faith in the criminal justice system. Reporting the IPP sentence imposed on the mother of Baby Peter the Daily Mail said:

*“Free in three years? Outrage as mother of Baby P is given a ‘soft’ jail sentence” and “The official line is that she has been jailed ‘indefinitely’. But in reality she could be out in three years.”*

In fact an IPP is an indeterminate sentence, i.e. a sentence potentially without end (a life sentence) from which the prisoner will not be released until he satisfies the Parole Board that his risk of harm to others is reduced and can be managed. The minimum term or tariff is the earliest the offender can be considered for release. A reduction of the risk of harm has to be evidenced to the Parole Board. However, due to a lack of resources many prisons are struggling to provide the programmes that are one means by which some offenders can demonstrate risk reduction. (See below at F for release on licence).

Sentencing of offenders is a complex exercise. In addition to having regard to the five statutory purposes of sentencing (see below at C:11), a judge or magistrate will consider the seriousness of the offence, the

offenders previous convictions, aggravating or mitigating factors, personal mitigation, whether and at what stage a guilty plea has been entered, totality (where an offender is being sentenced for more than one offence), the relevant law and any relevant sentencing guidelines. The Report seeks to explain these complexities by looking in detail at what has become known as the “Baby Peter case” (see HHJ Kramer QC’s sentencing remarks in *R v B, C and Owen (Baby Peter)* attached at Appendix 1).

Once a person sentenced to custody is released on licence, he is subject to supervision by the Probation Service and in the case of most violent and sex offenders, also the police. In many cases nowadays, police and probation officers will undertake joint supervision of violent and sexual offenders utilising the skills and resources of both organisations under MAPPA (multi agency public protection arrangements). Thus those assessed as presenting a high risk of harm to others are likely to be managed via MAPPA’s, multi-agency meetings designed to facilitate the sharing of relevant information and produce an agreed risk management plan that is regularly reviewed. Many additional conditions that either require an offender to do something or prohibit him from doing something are imposed. Failure to adhere to licence conditions frequently results in recall to prison.

The report also reviews treatment and other programmes. We conclude that sentence levels are not in fact as low as many people may believe and nor are re-offending rates as high as people may fear.

## A. INTRODUCTION

1. This report seeks to address concerns that were initially raised by NSPCC supporters who were concerned that offenders may be receiving inappropriately short sentences for offences against children. A motion was passed at an NSPCC Council Meeting to address these concerns. As a response, the NSPCC set up a working group panel to address these issues. The members of the panel were:

Jo Bailey – Lead Psychologist, Public Sector Prisons National Offender Management Service

Michael Bowes QC, (Chair) – Outer Temple Chambers; Recorder

David Butterworth – Deputy Multi-Agency Public Protection Panel Manager (retired), Norfolk

Barbara Esam – (Project Manager) Public Policy Lawyer, National Society for the Prevention of Cruelty to Children

Nicola Padfield – Fitzwilliam College, University of Cambridge; Recorder

HH Judge Isobel Plumstead, Honorary Secretary – The Council of Her Majesty’s Circuit Judges; Cambridge County Court

2. Beginning in July 2010, the panel explored a variety of ways in which the concerns could be addressed. The panel intended to focus this report on answering two key questions:
  - 1) whether sentences (both custodial and non-custodial) are appropriate in length; and
  - 2) whether sentences are effective in modifying offending behaviour.
3. The panel explored a number of ways of addressing these questions. They decided that the issues were too complex to be addressed directly in this paper, particularly because the only way to obtain the necessary information on sentencing would have been by engaging in major empirical research. The reality is that little data is collected on individual sentencing decisions. We would welcome more research.
4. The panel agreed to examine briefly public perceptions of crime, as well as theories of punishment and to describe the current sentencing framework in England and Wales. Through this exercise, they hope to provide an explanation as to why the above two questions are so difficult to answer, while at the same time providing useful insights into sentencing for crimes against children and sentencing generally.

## B. RATE OF CRIME AND PUBLIC PERCEPTIONS

5. The level of crime in the UK is considered to be lower now than it was 15 years ago (detailed statistics are available in the Home Office Statistical Bulletin: see [www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1011/hosb1011?view=Binary](http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1011/hosb1011?view=Binary)). According to the British Crime Survey (BCS), a victim survey which has been carried out regularly since 1981, crime rose steadily from then, through the 1990s, peaked in 1995, and thereafter fell until it reached a plateau in 2004/2005. Indeed, the level of crime the BCS recorded in 2007/2008 was the lowest since the first recorded results in 1981 and has varied very little since then. According to the latest report (Chaplin et al (eds), 2011) overall BCS reported crime remains at its lowest levels since the survey was introduced in 1981. Police recorded crime showed a four

per cent reduction between 2010/11 (4.2 million offences) and 2009/10 (4.3 million offences). This places police recorded crime at its lowest level since the National Crime Recording Standard (NCRS) was introduced in April 2002. Of course, it is particularly difficult to obtain reliable information about sexual offences and offences against children, with crimes of these types being particularly subject to under-reporting. Thus there were 45,326 serious sexual offences recorded by the police in 2010/11 – a four per cent increase compared with 2009/10 and 11 per cent higher than 2008/09 (although these are not child specific). This increase has to be seen in the context of steps that have been taken over the last two years to improve the service and level of support provided to such victims and to enhance the recording of serious sexual offences. Until recently the BCS did not cover crimes against those aged under 16, but since January 2009 interviews have been carried out with children aged 10 to 15. The results from the 2010/11 BCS extension reveal that a higher proportion of 10 to 15 year olds were victims of violent crime than adults, even when excluding minor offences between children or family members: 3.1 per cent of adults were victims of a violent crime compared to 6.9 per cent of 10 to 15 year olds (on the preferred measure).

6. There is a gap between the recorded rate of crime and public perceptions of the rate of crime. The BCS has consistently shown that the proportion of respondents who thought that crime had increased nationally is higher than the proportion who thought that crime had increased in their local area. The gap between perceptions of change in national and local crime levels widened between 2003/04 and 2008/09. It then narrowed slightly in 2009/10 and 2010/11 following a sharp increase in the proportion of adults who thought that crime had gone up nationally and a decrease in the proportion who thought it had gone up locally in 2008/09 (see Chaplin et al (eds), 2011, p. 82).
7. The gap between public perception and incidence of crime is particularly stark with respect to sexual offences against children. Despite media reports to the contrary, the majority of perpetrators sexually assault children known to them, with about 80% of offences taking place in the home of either the offender or the victim” (Grubin D, 1998). A research study in Queensland found that only 6.5% of sexual offences against children were committed by strangers (<http://www.criminologyresearchcouncil.gov.au/reports/51-98-9.pdf>).
8. Unfortunately, public faith in sentencing often appears low. This may well be because they systematically underestimate severity of sentencing patterns (see Roberts and Hough, 1999), Roberts et al (2009)).
9. The more detail people are given about a crime and the available penalties, the more public perceptions about appropriate sentencing levels begin to mirror actual sentencing decisions. Warner et al (2011) suggest that the key to bolstering public faith in sentences lies in equipping the public with accurate information about the criminal justice system and the sentencing framework. In this study, Australian jurors who had sat through a criminal trial (and thus were fully informed of the case details and the offender’s background) were asked what sentence they would have imposed and whether they thought the judge’s actual sentence was appropriate. Interestingly, 52% of jurors would have chosen a more *lenient* sentence than the one the judge imposed and 90% of jurors thought the actual sentence imposed by the judge was very or fairly appropriate. Educative initiatives as well as community involvement in the supervision of offenders can also increase public confidence in community sentences, which are often misunderstood.
10. It is the hope of the working group that this report can help boost public confidence in the sentencing of offenders by providing a comprehensive guide on the sentencing framework as it applies to offenders against children.



## C. PURPOSES OF PUNISHMENT

11. In every sentencing decision, a judge has to have regard to the following five purposes of sentencing: (1) punishment of offenders, (2) reduction of crime (including its reduction by deterrence), (3) reform and rehabilitation of offenders, (4) protection of the public, and (5) making of reparation by offenders to persons affected by their offences (see s. 142 of the Criminal Justice Act 2003).
12. These five purposes are very broad, not consistent, and do not point to any clear objective. This is highly problematic because it is impossible to measure whether sentencing is effective if there is no clear purpose or goal against which we can measure success or failure.
13. One thing we do know is that a sentencing framework that is based on deterring future crime by imposing heavy sentences on convicted offenders does not work. This is because for a deterrence approach to be effective, a potential offender must (1) realise that sentence levels have increased, (2) think about these heavier sentence levels when they are contemplating their offences, (3) believe that they have at least a reasonable chance of being caught, (4) believe that if they are caught the heavier sentencing policy will be applied, *and* (5) be prepared to refrain from committing the crime. There is no sound evidence to indicate that potential offenders think in a way that satisfies these five preconditions for a deterrence model (see von Hirsch et al 1999).
14. The current sentencing system aims to punish at a level of severity proportionate to the seriousness of the offence. Sentencers are encouraged to reach consistent and transparent decisions.

## D. INFLUENCES ON THE SENTENCING DECISION

15. A judge's sentencing decision is influenced by three key factors: legislation from Parliament, the Sentencing Council guidelines and decisions of the Court of Appeal .
16. Parliament lays down the maximum sentence for every offence, leaving it to the judge to decide the precise sentence within an appropriate range. There is a very complicated legislative framework to which a judge must have regard, with guidance to be found across a number of statutes, including Criminal Justice Act 1991, Powers of Criminal Courts (Sentencing) Act 2000, Sexual Offences Act 2003, Criminal Justice Act 2003, and Criminal Justice Immigration Act 2008, the Coroners and Justice Act 2009. There is a new Bill currently before Parliament which will make detailed changes to the framework.
17. The Sentencing Council is a body of experts whose guidelines on sentencing have an important influence on the sentencing decision. Judges and magistrates must follow any sentencing guideline unless they are satisfied that it would be contrary to the interests of justice to do so. They must give reasons if they pass a sentence outside the range the Sentencing Council indicated. We will review the guidelines with respect to child sex offences in Chapter E below. Note that this body was called the Sentencing Guidelines Council until 2010. An enormous amount of useful information for the public is to be found on the Sentencing Council's website:

[sentencingcouncil.judiciary.gov.uk/index.htm](http://sentencingcouncil.judiciary.gov.uk/index.htm).

18. A sentencing judge also has a duty to follow the guidance the Court of Appeal has laid down in its judgments. The Court of Appeal will allow an appeal where a sentence is manifestly excessive or wrong in principle (defence appeal) or where the Court is satisfied that the sentence is unduly lenient (prosecution appeal). Thus both the defence and the prosecution have rights of appeal.
19. The “Baby Peter” case provides a good example of a defence appeal against sentence and it is particularly instructive for us to work through the sentencing decisions of the Court of Appeal because these sentences triggered concerns among children’s charities, including the NSPCC. The cases are reported fully at [2009] EWCA Crim 2259 and [2010] EWCA Crim 4.
20. Baby Peter died in August 2007, at the age of 17 months, as a result of horrific injuries and a prolonged history of abuse. His three older sisters were subsequently taken into care, with the youngest revealing allegations of sexual abuse. Baby Peter’s mother, Tracey Connelly, was tried, convicted and sentenced, but here we focus on the sentences and subsequent Court of Appeal decisions in relation to the sentences imposed on Jason Owen and Stephen Barker.
21. Jason Owen, aged 37, was found guilty of causing or allowing the death of a child. At the time of Baby Peter’s death, Jason Owen had been living in the household with his 15 year old girlfriend and three of his children for approximately 5 weeks. He was originally sentenced to an indeterminate sentence of imprisonment for public protection (IPP) with a minimum term of three years (IPPs will be explained in more detail in Chapter E below). The Court of Appeal was not satisfied that Jason Owen posed a sufficient risk in the future to justify a sentence of Imprisonment for Public Protection and substituted it with a determinate sentence of six years imprisonment.
22. To understand the Court of Appeal’s decision, we must first look at the seriousness of the offences, based on the harm caused and the personal culpability of the offender. Then the offender’s history of offending. Jason Owen had been convicted on four previous occasions: at age 16 and again at age 18 for stealing and burglary (fined and on probation), at age 20 for carrying a weapon (fined), and at age 33 for committing two burglaries to support a drug habit and arson. With this background in mind, the Court of Appeal found that Jason Owen was not at a significant risk of committing future offences involving death or serious injury to the public and therefore the statutory criteria for the imposition of an indeterminate prison sentence for public protection were not fulfilled.
23. The Court of Appeal held that this defendant had a sufficient patchwork of rather disconnected previous offences and a sufficiently feckless and irresponsible outlook on life to have at any rate some possible potential to commit an offence in the future which might cause harm and, it may be, serious harm, to someone.
24. As the probation officer recognised, whether that might happen or not is largely speculative. Some risk of serious harm is not the test. If it were there would be an enormous number of defendants who need to be in prison indefinitely. The test is the existence of a significant risk, enough to warrant a sentence, which may never end. This man has no history of either violence or exploitative or dangerous sexual offending. The probation officer said of him: “Outside of the confines of the present case, all the people I have spoken to, including the family social worker, have seen no evidence written or otherwise of him being violent.”
25. The Court of Appeal held that (judgment, paragraph 20):

“His present offence is deeply unpleasant because a completely innocent child whom he could have protected was not protected by him against harm by others. He displays a willingness to deceive, in

particular the father of his girlfriend, which is unattractive. But to translate that into a significant risk that he will himself in the future commit offences involving death or serious personal injury to the public is, on the material which was available to the judge and is available to us, simply a step too far.”

26. The Court of Appeal held (judgment paragraph 21):

“We are satisfied that this appeal must be allowed to the extent of quashing the sentence of imprisonment for public protection. There is nothing remotely wrong with the substantial sentence of six years. We substitute for the sentence of imprisonment for public protection with a minimum term of three years a determinate sentence of six years.”

27. The Court of Appeal decision came to a very different conclusion in respect of Stephen Barker, aged 33, who was also convicted of causing or allowing the death of a child and was sentenced to imprisonment for life with a specified minimum term of 20 years. The Court of Appeal stated (judgment paragraph 56 onwards):

“56 [Defence counsel] maintained a life sentence with a minimum term of 10 years was excessive.

57 We disagree. The flaw in [defence counsel’s] argument is that the judge stated in terms the minimum term was intended to reflect the seriousness not simply of the anal rape “aggravated by Baby P’s death” but the totality of the appellant’s crimes. The questions for this court, therefore, are whether a life sentence was justified and the minimum term excessive for these associated offences of causing or allowing the death of Baby Peter and the anal rape of X. Both P and X were very young children and both entrusted to the care of the appellant. One died aged 17 months of appalling injuries and the other suffered an anal rape when she was under 3 years old. The trial judge was satisfied, on the evidence before him, that the appellant played a major role in the events of December 2006 to August 2007 which led to P’s death. At about the same time as he was causing or allowing one toddler to be physically abused he abused another sexually.

58 All the reports upon the appellant indicate he is a danger to young children. We agree with the judge that his culpability was high and the offences particularly grave. These crimes were simultaneously incomprehensible and truly appalling. The sentence of life imprisonment was merited, and further, given the gravity of the two offences, for which consecutive determinate sentences could with every justification have been passed, the minimum term was neither excessive nor wrong in principle. The appeal against sentence is dismissed.”

28. Again, the sentencing judge had to focus on the seriousness of the offences. Stephen Barker played a more severe and more direct role in the abuse compared with Jason Owen, and as we will see below, the Court of Appeal considered Stephen Barker a significant risk.

29. Barker had no previous convictions or cautions. The Court of Appeal described him as “a man of limited intelligence who claims to have been the victim of sexual abuse as a child. He suffers from depression. When interviewed by the author of a pre sentence report he maintained that the allegations were untrue. Given his denials, the writer was unable to offer any real insight into his offending behaviour and suggested that a psychological assessment should be carried out. The probation officer assessed the applicant as posing a low risk of re-offending against an adult, but a significant risk of causing serious harm to children by the commission of further specified

offences, as defined by the Criminal Justice Act 2003. A psychiatrist found no evidence of mental illness”.

30. In summary, the Court of Appeal held that the trial judge rightly bore in mind that Barker had been convicted of two different offences in relation to two children under the age of three within the same family. X had suffered an anal rape. Baby Peter died in horrific circumstances, suffering a catalogue of abuse and injuries of increasing severity culminating in his death aged just 17 months.
31. Barker was one of the adults who caused or allowed this to happen. He was the only adult who interfered sexually with X. Both Baby Peter and X were exceptionally vulnerable by reason of their ages, and Barker’s activity represented a gross breach of trust. The judge took the view that the offences were very grave and the level of culpability particularly high.
32. The Court of Appeal took the view that the sentence of life imprisonment was merited, and further, given the gravity of the two offences, the minimum term was neither excessive nor wrong in principle. The appeal against sentence was dismissed.
33. Thus the Court of Appeal found that the trial judge’s sentence for Jason Owen was too severe, while the sentence for Stephen Barker was appropriately severe for his very serious crimes. The Attorney General did not appeal the decisions: the prosecution did not suggest that the sentences were unduly lenient.
34. Every year, the Attorney General *does* refer some cases to the Court of Appeal that he considers to be unduly lenient. In these prosecution appeals, the Court of Appeal has the power to increase a sentence, as it did, for example, in the Attorney General’s Reference No. 31 of 2010. In that case the Court of Appeal held that seven years’ imprisonment for the indecent assault and rape of a young girl was unduly lenient and raised the sentence to 10 years’ imprisonment.

## E. GETTING IN: THE SENTENCING DECISION

35. Overall, it is important to recognize that sentences have been getting longer, not shorter, in recent times as discussed at B:4 above). The number of prisoners serving indeterminate sentences (either a life sentence or an Indeterminate sentence for Public Protection – an IPP) in March 2011 was at its highest ever at 14,650 (<http://www.justice.gov.uk/downloads/publications/statistics-and-ata/mojstats/provisional-ipp-figures.pdf>).
36. A starting point for any sentencing decision is to look at the Sentencing Council guidelines, to which all judges must have regard. With respect to child sex offences, the Sentencing Council sets high starting points that render a number of milder, non-custodial sentencing options unavailable. We have included information here from the Guidelines regarding the offence of Cruelty to a child; Familial child sex offences; Sexual activity with a child and Rape. Further information can be found on the Sentencing Council website: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk). The relevant sentencing guidelines are set out on the following pages.

## Part 2: Cruelty to a child

### A. Statutory provision

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

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

### B. Forms of cruelty to a child

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

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

25. With regard to assaults, the CPS Charging Standard<sup>10</sup> suggests that an assault charged as child cruelty will differ in nature from that which is generally charged as an offence against the person and notes that “the offence is particularly relevant in cases of cruelty over a period of time.” As such, it is more likely to apply to offences where there is evidence that a child was assaulted by someone with caring responsibility during a certain period but where there is no clear evidence of any particular incidents, the extent of those incidents or the specific time of the incidents.

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

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

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

10 The Charging Standard on Offences Against the Person; [www.cps.gov.uk](http://www.cps.gov.uk)

11 *Child Cruelty: Charging Practice*; [www.cps.gov.uk/legal/section7](http://www.cps.gov.uk/legal/section7)

## Cruelty to a child

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

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

**Maximum penalty:** 10 years imprisonment

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

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

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

## Familial child sex offences

Factors to take into consideration:

1. The new sentences for public protection *must* be considered in all cases. They are designed to ensure that sexual offenders are not released into the community if they present a significant risk of serious harm.
2. The culpability of the offender will be the primary indicator of offence seriousness, and the nature of the sexual activity will provide a guide as to the seriousness of the harm caused to the victim. Other factors will include:
  - the age and degree of vulnerability of the victim – as a general indication, the younger the child, the more vulnerable he or she is likely to be, although older children may also suffer serious and long-term psychological damage as a result of sexual abuse;
  - the age gap between the child and the offender; and
  - the youth and immaturity of the offender.
3. The starting points for sentencing for the familial child sex offences should be between 25% and 50% higher than those for the generic child sex offences in all cases where the victim is aged 13 or over but under 16; the closer the familial relationship, using the statutory definitions as a guide, the higher the increase that should be applied.
4. Where a victim is over the age of consent, the starting points assume that the offender is a close relative.
5. Where the victim of a familial child sex offence is aged 16 or 17 when the sexual activity is commenced and the sexual relationship is unlawful only because it takes place within a familial setting, the starting points for sentencing should be in line with those for the generic abuse of trust offences.
6. Evidence that a victim has been ‘groomed’ by the offender to agree to take part in sexual activity will aggravate the seriousness of the offence.



## Familial child sex offences

### THESE ARE SERIOUS OFFENCES FOR THE PURPOSES OF SECTION 224 CJA 2003

1. **Sexual activity with a child family member** (section 25)
2. **Inciting a child family member to engage in sexual activity** (section 26)

*Maximum penalty for both offences: 14 years (5 years if offender is under 18)*

#### For use in cases where:

(a) the victim is 13 or over but under 16, regardless of the familial relationship with the offender; (b) the victim is 16 or 17 but the sexual relationship commenced when the victim was under 16; or (c) the victim is aged 16 or 17 and the offender is a blood relative.

Type/nature of activity	Starting points	Sentencing ranges
Penile penetration of the vagina, anus or mouth or penetration of the vagina or anus with another body part or an object	<b>5 years custody</b>	<b>4–8 years custody</b>
Contact between naked genitalia of offender and naked genitalia of victim	<b>4 years custody</b>	<b>3–7 years custody</b>
Contact between naked genitalia of offender or victim and clothed genitalia of the victim or offender  Contact between naked genitalia of victim by another part of the offender's body or an object, or between the naked genitalia of offender and another part of victim's body	<b>18 months custody</b>	<b>12 months–2 years 6 months custody</b>
Contact between part of offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)	<b>Community order</b>	<b>An appropriate non-custodial sentence*</b>

\* 'Non-custodial sentence' in this context suggests a community order or a fine. In most instances, an offence will have crossed the threshold for a community order. However, in accordance with normal sentencing practice, a court is not precluded from imposing a financial penalty where that is determined to be the appropriate sentence.

**For use in cases where** the victim was aged 16 or 17 when the sexual relationship commenced and the relationship is only unlawful because of the abuse of trust implicit in the offence.

Type/nature of activity	Starting points	Sentencing ranges
Penile penetration of the vagina, anus or mouth or penetration of the vagina or anus with another body part or an object	<b>2 years custody</b>	<b>1–4 years custody</b>
Any other form of non-penetrative sexual activity involving the naked contact between the offender and victim	<b>12 months custody</b>	<b>26 weeks–2 years custody</b>
Contact between clothed part of offender’s body (other than the genitalia) with clothed part of victim’s body (other than the genitalia)	<b>Community order</b>	<b>An appropriate non-custodial sentence*</b>

\* ‘Non-custodial sentence’ in this context suggests a community order or a fine. In most instances, an offence will have crossed the threshold for a community order. However, in accordance with normal sentencing practice, a court is not precluded from imposing a financial penalty where that is determined to be the appropriate sentence.

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> <li>1. Background of intimidation or coercion</li> <li>2. Use of drugs, alcohol or other substance</li> <li>3. Threats deterring the victim from reporting the incident</li> <li>4. Offender aware that he or she is suffering from a sexually transmitted infection</li> <li>5. Closeness of familial relationship</li> </ol>	<ol style="list-style-type: none"> <li>1. Small disparity in age between victim and offender</li> </ol>

An offender convicted of these offences is automatically subject to notification requirements.<sup>2</sup>

<sup>2</sup> In accordance with the SOA 2003, s.80 and schedule 3

## Sexual activity with a child

Factors to take into consideration:

1. The sentences for public protection *must* be considered in all cases. They are designed to ensure that sexual offenders are not released into the community if they present a significant risk of serious harm.
2. The culpability of the offender will be the primary indicator of offence seriousness, and the nature of the sexual activity will provide a guide as to the seriousness of the harm caused to the victim. Other factors will include:
  - the age and degree of vulnerability of the victim – as a general indication, the younger the child, the more vulnerable he or she is likely to be, although older children may also suffer serious and long-term psychological damage as a result of sexual abuse;
  - the age gap between the child and the offender;
  - the youth and immaturity of the offender; and
  - except where it is inherent in an offence, any breach of trust arising from a family relationship between the child and the offender, or from the offender’s professional or other responsibility for the child’s welfare, will make an offence more serious.
3. The same starting points apply whether the activity was caused or incited. Where an offence was incited but did not take place as a result of the voluntary intervention of the offender, that is likely to reduce the severity of the sentence imposed.

## Sexual activity with a child

### THESE ARE SERIOUS OFFENCES FOR THE PURPOSES OF SECTION 224 CJA 2003

1. **Sexual activity with a child** (section 9): Intentional sexual touching of a person under 16
2. **Causing or inciting a child to engage in sexual activity** (section 10): Intentionally causing or inciting a person under 16 to engage in sexual activity

*Maximum penalty for both offences: 14 years (5 years if offender is under 18)*

Type/nature of activity	Starting points	Sentencing ranges
Penile penetration of the vagina, anus or mouth or penetration of the vagina or anus with another body part or an object	<b>4 years custody</b>	<b>3–7 years custody</b>
Contact between naked genitalia of offender and naked genitalia or another part of victim's body, particularly face or mouth	<b>2 years custody</b>	<b>1–4 years custody</b>
Contact between naked genitalia of offender or victim and clothed genitalia of victim or offender or contact with naked genitalia of victim by offender using part of his or her body other than the genitalia or an object	<b>12 months custody</b>	<b>26 weeks–2 years custody</b>
Contact between part of offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)	<b>Community order</b>	<b>An appropriate non-custodial sentence*</b>

\* 'Non-custodial sentence' in this context suggests a community order or a fine. In most instances, an offence will have crossed the threshold for a community order. However, in accordance with normal sentencing practice, a court is not precluded from imposing a financial penalty where that is determined to be the appropriate sentence.

<b>Additional aggravating factors</b>	<b>Additional mitigating factors</b>
<ol style="list-style-type: none"><li>1. Offender ejaculated or caused victim to ejaculate</li><li>2. Threats to prevent victim reporting the incident</li><li>3. Offender aware that he or she is suffering from a sexually transmitted infection</li></ol>	<ol style="list-style-type: none"><li>1. Offender intervenes to prevent incited offence from taking place</li><li>2. Small disparity in age between the offender and the victim</li></ol>

An offender convicted of these offences is automatically subject to notification requirements.<sup>1</sup>

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<sup>1</sup> In accordance with the SOA 2003, s.80 and schedule 3

## Rape

Factors to take into consideration:

1. The sentences for public protection *must* be considered in all cases of rape.
  - a) As a result, imprisonment for life or an order of imprisonment for public protection will be imposed in some cases. Both sentences are designed to ensure that sexual offenders are not released into the community if they present a significant risk of serious harm.
  - b) Life imprisonment is the maximum for the offence. Such a sentence may be imposed either as a result of the offence itself where a number of aggravating factors are present, or because the offender meets the dangerousness criterion.
  - c) Within any indeterminate sentence, the minimum term will generally be half the appropriate determinate sentence. The starting points will be relevant, therefore, to the process of fixing any minimum term that may be necessary.
2. Rape includes penile penetration of the mouth.
3. There is no distinction in the starting points for penetration of the vagina, anus or mouth.
4. All the non-consensual offences involve a high level of culpability on the part of the offender, since that person will have acted either deliberately without the victim's consent or without giving due care to whether the victim was able to or did, in fact, consent.
5. The planning of an offence indicates a higher level of culpability than an opportunistic or impulsive offence.
6. An offender's culpability may be reduced if the offender and victim engaged in consensual sexual activity on the same occasion and immediately before the offence took place. Factors relevant to culpability in such circumstances include the type of consensual activity that occurred, similarity to what then occurs, and timing. However, the seriousness of the non-consensual act may overwhelm any other consideration.
7. The seriousness of the violation of the victim's sexual autonomy may depend on a number of factors, but the nature of the sexual behaviour will be the primary indicator of the degree of harm caused in the first instance.
8. The presence of any of the general aggravating factors identified in the Council guideline on seriousness or any of the additional factors identified in the guidelines will indicate a sentence above the normal starting point.

## Rape

### THESE ARE SERIOUS OFFENCES FOR THE PURPOSES OF SECTION 224 CJA 2003

1. **Rape** (section 1): Intentional non-consensual penile penetration of the vagina, anus or mouth
2. **Rape of a child under 13** (section 5): Intentional penile penetration of the vagina, anus or mouth of a person under 13

*Maximum penalty for both offences: Life imprisonment*

Type/nature of activity	Starting points	Sentencing ranges
Repeated rape of same victim over a course of time or rape involving multiple victims	<b>15 years custody</b>	<b>13–19 years custody</b>
Rape accompanied by any one of the following: abduction or detention; offender aware that he is suffering from a sexually transmitted infection; more than one offender acting together; abuse of trust; offence motivated by prejudice (race, religion, sexual orientation, physical disability); sustained attack	<b>13 years custody</b> if the victim is under 13 <b>10 years custody</b> if the victim is a child aged 13 or over but under 16 <b>8 years custody</b> if the victim is 16 or over	<b>11–17 years custody</b> <b>8–13 years custody</b> <b>6–11 years custody</b>
Single offence of rape by single offender	<b>10 years custody</b> if the victim is under 13 <b>8 years custody</b> if the victim is 13 or over but under 16 <b>5 years custody</b> if the victim is 16 or over	<b>8–13 years custody</b> <b>6–11 years custody</b> <b>4–8 years custody</b>

<b>Additional aggravating factors</b>	<b>Additional mitigating factors</b>
<ol style="list-style-type: none"><li>1. Offender ejaculated or caused victim to ejaculate</li><li>2. Background of intimidation or coercion</li><li>3. Use of drugs, alcohol or other substance to facilitate the offence</li><li>4. Threats to prevent victim reporting the incident</li><li>5. Abduction or detention</li><li>6. Offender aware that he is suffering from a sexually transmitted infection</li><li>7. Pregnancy or infection results</li></ol>	<p><i>Where the victim is aged 16 or over</i></p> <p>Victim engaged in consensual sexual activity with the offender on the same occasion and immediately before the offence</p> <p><i>Where the victim is under 16</i></p> <ul style="list-style-type: none"><li>• Sexual activity between two children (one of whom is the offender) was mutually agreed and experimental</li><li>• Reasonable belief (by a young offender) that the victim was aged 16 or over</li></ul>

An offender convicted of these offences is automatically subject to notification requirements.<sup>4</sup>

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<sup>4</sup> In accordance with the SOA 2003, s.80 and schedule 3



37. The most severe sentences are reserved for those who have committed the most heinous crimes, and for those who pass the “dangerousness” threshold, and receive indeterminate sentences. If a judge considers that there is a significant risk of serious harm to the public by the offender committing future offences, the threshold is passed and the offender is considered dangerous.
38. An offender who passes the dangerousness threshold may be subject to one of three sentences. An extended sentence extends the period of time an offender will be supervised in the community in order to provide protection to the public, with a maximum of 5 extra years for violent offenders or 8 extra years for sexual offenders. If the offender is recalled to prison because the probation officer decides the he or she cannot be supervised appropriately in the community, they may be recalled to prison to serve this period in custody.
39. An offender could instead be subject to an imprisonment for public protection sentence (IPP). An offender serving an IPP will serve a stipulated minimum term in prison, after which the offender may be released by the Parole Board to serve the remainder of his sentence under close supervision and strict conditions in the community. If (and only if) the Parole Board is satisfied that the offender is no longer a threat to the public, the offender can be released on licence and serve out the rest of his or her sentence in the community. The crucial component of an IPP is that it is a life sentence. Whether the sentence is served in prison or in the community on licence, an offender could be on licence for the rest of his or her life. IPPs are often imposed for sexual offenders. A released IPP prisoner can apply to the Parole Board for discharge of the licence 10 years after release. As we shall see, release is rare and no IPP prisoner has yet had their licence conditions discharged.
40. Finally, the most severe sentence that can be imposed is imprisonment for life. Everyone convicted of homicide (murder) is automatically sentenced to life, but other offenders can also be sentenced to imprisonment for life. After a stipulated minimum term is served in prison, an offender can apply to serve out the remainder of his or her sentence under close supervision and with strict conditions in the community, but only if the Parole Board is convinced that the offender is no longer a threat to the public. An offender will be serving his or her sentence, either in prison or on licence in the community, for the remainder of his or her life. In the most serious cases (normally murder) the court may impose a “whole life term”.
41. Thus as we saw in the Baby Peter case, the trial judge made a finding that Jason Owen was deemed dangerous and sentenced him to an IPP. The Court of Appeal, however, made a finding that this sentence was inappropriate and that Jason Owen did not pass the dangerousness test because he did not pose a significant risk of committing an offence that would cause serious harm to a member of the public. The Court of Appeal substituted a six year determinate prison term equivalent to the three year minimum term specified by the trial judge.
42. Offenders who do not pass the dangerousness test will be sentenced to a determinate sentence. An offender subject to a determinate sentence will spend a stipulated amount of time in prison, which is calculated based on the seriousness of the offence. When half of that stipulated time has been served in prison, an offender will serve the remainder of his or her sentence in the community under supervision and subject to conditions. What it means to be “released on licence” will be explored further in Chapter F below.
43. There are a number of non-custodial sentencing options in which an offender serves out his or her entire sentence in the community, however these are reserved for less serious offences and would not be available for those who commit serious offences against children.

44. Judges must ensure that the sentence they impose is proportionate to the seriousness of the offence. The Criminal Justice Act 2003 stipulates that judges must determine seriousness by balancing the culpability of the offender on one hand, with the harm the offender caused, intended to cause, or foreseeably could have caused on the other hand.
45. As we discussed above, this balancing process was evident in the Court of Appeal decisions of both Jason Owen and Stephen Barker. With respect to Jason Owen, the Court of Appeal held that while he could have protected the child and failed to do so, his culpability did not warrant passing the dangerous threshold and a 6-year determinate sentence was more commensurate with his culpability. In contrast, the Court of Appeal held that Stephen Barker played a major role in the events that led to Baby Peter's death, that he was sufficiently dangerous to pass the threshold, and that his heinous crimes justified the strict imprisonment for life sentence with a minimum term of 20 years.
46. Judges consider a number of other factors in determining the level of sentencing severity, including aggravating factors that tip the scale in favour of a more severe sentence and mitigating factors that tip the scale in favour of a more lenient sentence.
47. Offences that were committed while on bail or offences that were motivated by the religious or racial background of the victim will automatically be considered aggravating. There are a number of general aggravating factors a judge will also consider, including the degree of planning and the particular vulnerability of the victim. In addition, the Sentencing Council guidelines outline a number of specific aggravating factors to consider for individual offences. As we saw from the *Sexual Activity with a Child* offences listed above, a judge is to consider as aggravating,

Additional aggravating factors in sexual offences:

1. Offender ejaculated or caused victim to ejaculate,
2. Threats to prevent victim reporting the incident,
3. Offender aware that he or she is suffering from a sexually transmitted infection

48. Judges also consider a number of general mitigating factors that reduce the severity of the sentence, including whether the crime was committed impulsively or whether the offender suffers from a disability that falls short of being a full defence for the crime. In addition, the Sentencing Council guidelines refer to a number of specific mitigating factors for individual offences. As we saw from the *Sexual Activity with a Child* offences listed above, a judge is to consider as mitigating,

Additional mitigating factors:

1. Offender intervenes to prevent incited offence from taking place,
2. Small disparity in age between the offender and the victim

49. When an offender pleads guilty it is a mitigating factor that automatically results in a less severe sentence. This discount for a guilty plea is stipulated in the law and is justified as improving the efficiency of the system, saving witnesses from the distress of trials, and recognising the importance of remorse. There are, however, widespread concerns about pressure to plead guilty, innocent guilty pleas, and whether it is compliant with the European Convention on Human Rights.
50. The Sentencing Council calculates the discount for a guilty plea on a sliding scale: a maximum reduction of 1/3rd of the sentence is available if the guilty plea is lodged at the first reasonable opportunity, a maximum reduction of 1/4th is available if the trial date was already set, and a

maximum reduction of 1/10th is available if the plea of guilty comes at the door of the court or once the trial had already begun.

51. Another feature of the sentencing system is the availability of what is known as a Goodyear indication. If a judge is confident that a written request for a Goodyear indication has been made freely and voluntarily by the accused, a judge may give an advance indication of what the discounted sentence would likely be if the accused pleaded guilty to the offence charged.
52. Finally, if an offender is convicted of more than one offence, his or her sentence is determined by looking at the totality of the offender's criminal conduct to determine a just and appropriate sentence overall, rather than sentencing for the individual offences in isolation. This totality method preserves the need for sentences to be proportionate to the seriousness of the offence.
53. So much for guidance. We actually know very little about sentencing in practice – beyond what can be read in judgments from the Court of Appeal. We know how many people have been sent to prison and for what principal offences (see the statistics on the Ministry of Justice's website), but little about the reasons for individual decisions. We would welcome greater investment in research into understanding sentencing decisions.

## F. GETTING OUT: RELEASE AND RECALL

54. The vast majority of offenders serve a proportion of their sentence in the community rather than in custody. Offenders serving a determinate sentence, like Jason Owen, serve half of their stipulated sentence in prison and are automatically released to serve the second half of their sentence in the community on what is called a licence. This applies to sentences exceeding one year.
55. Release on licence is not automatic for more serious offenders who have passed the dangerousness threshold and have been subject to an IPP or life sentence. Once these offenders have served a stipulated minimum term in prison, set at 20 years for Stephen Barker for example, they become *eligible* for release on licence. However, these offenders will only be released on licence if the Parole Board is satisfied that they no longer pose a significant threat of harm to the public.
56. Established in 1968, the Parole Board is an independent body whose mandate is to protect the public from risk, pursue rehabilitation where appropriate, and determine whether it is safe for offenders serving an extended sentence, IPP or life sentence to serve out the remainder of their sentence in the community.
57. The Parole Board exercises its discretion cautiously. In 2007, they granted release on licence to only 36% of eligible offenders (which included at that stage a significant number of determinate sentence prisoners: the law has since changed). In 2009-10, they were releasing many fewer: only 11% of eligible lifers were released, and only 5% of eligible IPP sentenced prisoners (see Annual Reports of the Parole Board for detailed statistics). Decisions on risk are taken based on a wide variety of factors including actuarial and clinical assessments. The Parole Board is particularly cautious when it comes to the risk posed by sex offenders. Hood et al (2002) commenting on the low rate of release for sex offenders, showed that of those who had been imprisoned for sexual offences against children in their own family unit, none were reconvicted for a sexual or a serious violent crime within a 6-year follow-up. The study also shows a high rate of false positives – of the offenders the Parole Board deemed “high risk”, 92% of them were not reconvicted for a sexual offence in a 4-year follow up period.

58. When offenders are released on licence, either automatically at half-term for a determinate sentence or at the discretion of the Parole Board for more serious offences, it means that they may serve out the remainder of their sentence in the community rather than in prison. It does not, however, in any way mean that the offender is now “free” – quite the opposite. An offender released on licence is subject to close supervision by a probation officer or Offender Manager and must comply with a number of conditions until the full term of their sentence expires. Those subject to an IPP or a life sentence could spend the rest of their lives supervised and subject to strict conditions in a state of conditional release. The life sentence prisoner will be on licence for life whereas the IPP prisoner may apply to the Parole Board after ten years on licence for the lifting of the licence.
59. A licence is a set of terms and conditions to which offenders must comply in order to serve out the remainder of their sentences in the community. A standard licence looks like this,
1. Under the provisions of Sections 244-253 of the Criminal Justice Act 2003 you are being released on licence. You will be under the supervision of a probation officer or a social worker of a local authority social services department and must comply with the conditions of this licence. The objectives of this supervision are to (a) protect the public, (b) prevent re-offending and (c) achieve your successful re-integration into the community.
  2. Your supervision commences on \_\_\_\_\_ and expires on \_\_\_\_\_ unless this licence is previously revoked.
  3. On release you must report without delay to  
Name:  
  
Address:
  4. You must place yourself under the supervision of whichever probation officer or social worker is nominated for this purpose from time to time.
  5. While under supervision you must:
    - (i) keep in touch with your supervising officer in accordance with any reasonable instructions that you may from time to time be given;
    - (ii) if required, receive visits from your supervising officer at your home at reasonable hours and for reasonable periods;
    - (iii) live where reasonably approved by your supervising officer and notify him or her in advance of any proposed change of address;
    - (iv) undertake only such employment as your supervising officer reasonably approves and notify him or her in advance of any proposed change in employment or occupation;
    - (v) not travel outside the United Kingdom without obtaining the prior permission of your supervising officer (which will be given in exceptional circumstances only);
    - (vi) be of good behaviour, not commit any offence and not take any action which would jeopardise the objectives of your supervision, namely to protect the public, prevent you from re-offending and secure your successful reintegration into the community;
    - (vii) *Additional licence conditions (see list below)*

6. The Secretary of State may vary or cancel any of the above conditions, in accordance with Section 250 of the Criminal Justice Act 2003.
7. If you fail to comply with any requirement of your probation supervision (set out in paragraphs 3, 4 and 5 above), or if you otherwise pose a risk to the public, you will be liable to have your licence revoked and be recalled to custody until the date on which your licence would otherwise have expired. If you are sent back to prison and released before the end of the licence period, you will still be subject to supervision.

Signed:

Status:

Date:

for the Secretary of State

This licence has been given to me and its requirements have been explained.

Signed:

Date:

60. As may be seen from clause 5(vii) above, provision is made for additional licence conditions that will be added when it is deemed necessary and proportionate. A number of these additional licence conditions are particularly relevant to sexual offenders against children,

Prohibited Residency Requirement (a) Not to reside (not to even stay for one night) in the same household as any child under the age of ... without the prior approval of your supervising officer

Programme Requirement (a) To comply with any requirements specified by your supervising officer for the purposes of ensuring you address your.../sexual/...offending behaviour problems

Exclusion Requirement (a) Not to enter the area of [CLEARLY SPECIFIED AREA] as defined by the attached map without the prior approval of your supervising officer. (b) Not to enter [NAME OF PREMISES/ADDRESS/ROAD] without the prior approval of your supervising officer. (c) Not to enter or remain in sight of [CHILDREN'S PLAY AREA, SWIMMING BATHS, SCHOOL ETC] without the prior approval of your supervising officer.

Prohibited Activity Requirement (a) Not to undertake work or other organised activity which will involve a person under the age of ..., either on a paid or unpaid basis without the prior approval of your supervising officer. (b) Not to use a computer or other electronic device for the purpose of accessing the Internet or have access to instant messaging services or any other on line message board/forum or community without the prior approval of your supervising officer. (c) Not to own or use any computer without the prior approval of your supervising officer.

61. There are a number of other ways in which the risk to public protection of the offender on licence is managed. Many of those who offend will have to live in Approved Premises, with regular and tight monitoring conditions. MAPPAs, or Multi-Agency Public Protection Arrangements, are a set of arrangements established by police, probation and prison services to assist the offender to avoid further offending. A duty to co-operate is placed on the following: Youth Offending Teams, Job-Centre-Plus, Local Authority Children's Services, Adult Services, Local Housing Authorities, Registered Social Landlords, Health Bodies, Electronic Monitoring Providers. Methods may include, (1) intensive supervision by probation officer offender manager and/or public protection police, (2) police visits, (3) treatment to reduce re-offending, or (4) surveillance of highest-risk offenders.

62. Sexual Offence Prevention Orders (SOPOs) are another way to manage the risk of, particularly, sexual offenders on release. A SOPO prohibits an offender from doing anything listed in the order and lasts for a fixed period of not less than 5 years. Only prohibitions that are necessary for protecting the public from serious sexual harm by the offender can be included in the SOPO, and may include, for example, entering an area containing a school or a playground.
63. Risk of Sexual Harm Orders (RSHOs) are a third way to manage the risk to the public on release. If there is reasonable cause to believe the order is necessary for child protection purposes, a RSHO can impose prohibitions on an adult who has engaged in a course of sexual conduct towards a child, even if the adult has not been convicted of any offence.
64. A Foreign Travel Order prevents offenders with convictions with sexual offences against children from travelling abroad where there is evidence that they intend to commit further sexual offences against children overseas. The order can be a blanket prohibition against foreign travel or prohibit travel to specific countries.
65. There is also a new power that enables police to search and enter the homes of registered sex offenders for the purposes of risk assessment at times when there is not enough evidence to secure a search and seizure warrant under the existing legislation. A magistrate can issue a warrant to a senior police officer to enter and search the last notified address of the registered sex offender if there have been two failed attempts to enter the premises.
66. Finally, all persons convicted of certain sexual offences are automatically required to notify the local police force of their name, address and other details in what is called a Notification Order. Offenders are automatically added to this “Sex Offender Register” if they qualify – Notification Orders are not subject to the discretion of the court nor a right of appeal.
67. If offenders breach the conditions of the licence (including the additional licence conditions and additional orders), their licence to serve their sentence in the community can be revoked and they are arrested and returned to prison in a process known as “recall”. Offenders are entitled to know the reasons for their recall and can make representations to the Parole Board challenging their recall. Offenders can be recalled to prison for a number of reasons, which do not have to include further offences. If their probation officer or Offender Manager believes that the offender can no longer be safely managed in the community, they are likely to initiate a recall to prison.
68. There are three types of recall. Under a fixed term recall, offenders will be recalled for a fixed period of 28 days and then will usually be re-released on licence, provided that they do not present an identifiable risk of serious physical or psychological harm to the public.
69. Offenders serving an extended sentence for a violent or sexual offence will be subject to a standard recall. These offenders will remain in prison for the rest of their sentence or until the Parole Board deems them safe enough to be re-released on licence. The Government plans in the current Bill before Parliament to allow more executive re-release, relieving the workload of the Parole Board.
70. Finally, an emergency recall is used when the risk of reoffending or serious harm is deemed “unmanageable or imminent”. Again, these offenders serve the remainder of their sentence in prison unless the Parole Board is satisfied that they no longer pose a threat to public safety and can be re-released on licence. In 2009-10, a total of 13,900 determinate sentenced offenders were recalled to custody, up 18 per cent from 2008-09 (11,800). Many of these prisoners will end up serving the rest of their sentence in prison, without re-release. The number of people on life licence

who were recalled to custody in 2009 increased from 108 in 2008 to 124 in 2009. The number of lifers recalled every year is often nearly as high as the number released. So the public is wrong to believe that once a prisoner is released part way through their sentence they simply 'go free'.

## G. WHAT WORKS?

71. Whether sentences “work” is a very difficult question because it depends on the ability to measure success against a clearly defined goal and, as we saw in Chapter C above, the purposes of sentencing listed in the Criminal Justice Act 2003 do not point to one clear objective. In the absence of a clearer alternative, the success of sentencing tends to be measured by reconviction rates. Not only is measuring the efficacy of sentencing by reconviction rates alone a blunt tool, it is of little utility for very serious crimes with an inherently low rate of reconviction, like child sexual offending.
72. Nonetheless, cognitive-behavioural treatment programmes have shown some measurable success in modifying offending behaviour, and may include targeted sex offender treatment programmes. For these psychological interventions to have any success, however, the programmes must be well structured and implemented by well-trained, well-supported and well-supervised staff. The Ministry of Justice has produced findings on ‘What works with Sex Offenders?’ ([www.rapt.org.uk/core/core\\_picker/download.asp?...sex+offenders](http://www.rapt.org.uk/core/core_picker/download.asp?...sex+offenders)); ‘What works in Offender Rehabilitation’ ([www.rapt.org.uk/core/core\\_picker/download.asp?...offender+rehabilitation](http://www.rapt.org.uk/core/core_picker/download.asp?...offender+rehabilitation)); and ‘Do Cognitive Skills Programmes work with Offenders?’ ([www.rapt.org.uk/core/core\\_picker/download.asp?...cognitive+skills](http://www.rapt.org.uk/core/core_picker/download.asp?...cognitive+skills)).
73. These treatment programmes are more likely to be effective if they incorporate the other needs of the offenders and address their social, economic and community needs as well. Releasing offenders into the community without the practical support of helping to secure accommodation, employment and social networks is not a realistic way to reduce future offending. For more details, see Padfield (2011).
74. Monitoring offenders while they serve the remainder of their sentences in the community is indeed an important component of release, and MAPPA initiatives as well as the other orders listed above, emphasise the need to ensure public protection is not compromised on release. There are, however, concerns about the controversial introduction of the Child Sex Offender Disclosure Scheme, or “Sarah’s Law”, that allows members of the public to check whether those in contact with their children are subject to a notification order and are thus on the Sex Offender Register. There is a real risk that Sarah’s Law will enable a type of vigilante justice from members of the community against offenders whom the Parole Board has, in their own expert discretion, deemed not to be a danger to the public and whom are already under supervision and subject to conditions of their licence.
75. Some initiatives, particularly cognitive-behavioural treatments coupled with social and community support on release, do tend to have a positive impact on reducing offending behaviour. However, these programmes can be expensive and may be in jeopardy due to recent funding cuts across the criminal justice system. If we are serious about reducing re-offending we need to be serious about funding initiatives that do work and funding research into what else can work to modify offending behaviour.

## CONCLUSION

This paper is much broader in scope than our original intention to address two key questions; that relating to sentence lengths and that relating to the effectiveness of sentences in modifying offending behaviour.

We have sought to identify some of the reasons why public perception of sentencing is often at odds with the reality of what takes place. Much of press reporting can be misleading, in part because some newspapers focus on the minimum term in relation to sentences of IPP, rather than the true nature of IPP and in part because sentencing is an immensely complex exercise that is frequently misunderstood by the general public. Through the detailed reporting and observations about the “Baby Peter” case we have illustrated in a practical and hopefully understandable way, how the complex sentences are applied in practice. The inclusion of the sentencing guidelines as they relate to sexual offences against children, should also provide added understanding of some of the issues involved in sentencing such offenders.

Measuring the effectiveness of sentences is problematic because the five purposes of sentencing: (1) punishment of offenders, (2) reduction of crime (including its reduction by deterrence), (3) reform and rehabilitation of offenders, (4) protection of the public, and (5) making of reparation by offenders to persons affected by their offences are very broad, not consistent, and do not point to one clear objective. We do know that prison sentences have been getting longer, and also that (despite a general belief) crime rates have been falling. Measuring success by measuring re-offending is also unreliable: much re-offending is under-reported. Much serious offending is committed by those who have not previously been known to have offended (at least seriously) before (see Ministry of Justice’s regular statistical bulletins on Reoffending of Adults).

Examination of the supervision and licence requirements placed upon released offenders, the practicalities of supervision, risk management arrangements and the consequences for an offender of failing to comply are clear. But the rehabilitative element of a prison sentence and post-release supervision must not be overlooked and it is perhaps this element that is in jeopardy in the current financial climate.

There is no easy, straightforward response to the concerns expressed by NSPCC supporters that offenders are routinely being given inappropriately short sentences for offences against children, other than to say that there is no evidence to support their concerns. We have sought to address those concerns by considering the many factors that a Judge must have regard to in passing sentence and looked at release arrangements and post-release arrangements for those sentenced to imprisonment in the hope that by doing so, we have enhanced understanding of the Criminal Justice System as it applies to serious offences against children.

Our enquiries do not support the popular belief that offenders against children are leniently sentenced.



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# APPENDIX 1

HH J Kramer QC's sentencing remarks in RvB,C and Owen (Baby Peter)

**The Queen**

**-v-**

**(B) (*The boyfriend of Baby Peter's mother*)**

**(C) (*Baby Peter's mother*)**

**and**

**Jason Owen**

**SENTENCING REMARKS**

**22<sup>nd</sup> May 2009**

1. Any decent person who heard the catalogue of medical conditions and non-accidental injuries, steadily mounting in seriousness, suffered by Peter between December 2006, when he was only 9 months old, and his death on 3<sup>rd</sup> August 2007, when he was only 17 months old, cannot fail to have been appalled. Those medical conditions and injuries included
  - i. 11<sup>th</sup> December 2006: bruising to his forehead, nose, to the right cheek but not on the bony prominence, to the breastbone and breast and right shoulder, bruises to both buttocks (which required significant force in order for them to be inflicted) and a faint bruise on the left shin;
  - ii. 9<sup>th</sup> April 2007: bruising to the back of his head with a boggy swelling that was soft to the touch. Peter seemed to be in pain

and cried when he moved his neck. There was bruising round his eyes, scratches to the left of his face and on the left ear lobe, a bruise on his upper lip and two bruises on his back (as well as head lice);

iii. 1<sup>st</sup> June 2007: bruises, a red linear mark under an eye to the side of the nose, a big bruise under his chin and a scratch mark in an ear. When examined at hospital he was found to have 12 marks of bruises, scratches and marks on the right lower jaw, to the left ear lobe, under the left eye, on the left nostril, and left corner of the mouth, to the right chest, lower back, just below the umbilicus, the tip of the left middle finger and on the left lower leg;

iv. June/July 2007: a scalp infection which it was said that he scratched, leaving him with scabs and a rash, causing him hair loss, and an ear infection and bruising round the ear (as well head lice);

v. July 2007: blood coming from his left ear (as well as head lice);

vi. Some time after the 19<sup>th</sup> July 2007: injuries to the fingers of the right hand including loss of soft tissue to the right middle finger  
[ex 3, p 5];

- vii. Some months before death: a fractured tibia;
  
- viii. Up to 2 weeks before his death: fractures to his ribs. The pathologist found 7 fractures to the front of the 3<sup>rd</sup> to 9<sup>th</sup> left ribs. The evidence was that considerable force would have been required to inflict these injuries because a child's rib is very pliable and that they were inflicted as the result of very forceful squeezing of the child's chest;
  
- ix. About 3 or 4 days before his death: a broken spinal cord. This was an inflicted injury. It was the most serious and significant of the injuries suffered by Peter before death. It was caused when the back was forcefully bent over a fulcrum of some sort, such as a knee, a banister or the side of the cot. It required a large amount of force That force had been applied uniformly to the spine;
  
- x. 1<sup>st</sup> August 2007: 3 bruises to the left side of his face with an infected raw area in front of the left ear and about 10 bruises on his upper back between the shoulder blades;
  
- xi. 2<sup>nd</sup> August 2007: the forceful knocking into his mouth of a tooth which he ingested. That forceful knocking could have caused the injury to his upper spine to re-bleed and in turn

could have affected his respiratory and cardiac functions. It could well have been the immediate cause of his death.

2. Examination of Peter post mortem revealed a total of 22 injuries over his body, including the recently inflicted non-accidental injuries to his ribs, his broken back, and the forceful knocking of a tooth into him which I have already mentioned and all of which caused or contributed to his death.

There were

- i. 10 injuries to his head, face and ears including a torn frenulum indicating another forceful inflicted injury, a raw injury to the gum and an area where the skin of the left ear had been split and pulled away from its base, consistent with the action of gripping the lobe and pulling,
- ii. 5 injuries to the back and chest,
- iii. 3 injuries to his hands including the removal of a fingernail which, according to the evidence, was more likely than not to have been removed deliberately,
- iv. 4 injuries to his legs and feet, including the apparently deliberate removal of the nail of the right great toe.

3. He had also lost weight and became lethargic. It is clear that significant force had been used on Peter on a number of occasions.
  
4. During the relevant period you, B, C were his carers, and you, Jason Owen, were in a position in which you would have been expected to have taken steps to protect Peter from the risk of serious physical harm. I have to sentence you all for causing or allowing his death. On the 11<sup>th</sup> November 2008, you, B and Jason Owen, were found guilty of that offence by the jury. On the 9<sup>th</sup> September 2008, effectively on the first day of trial, you, C, pleaded guilty to that offence on the basis of allowing but not causing Peter's death.
  
5. This offence is a serious specified violent offence under the Criminal Justice Act 2003. Parliament has decided that the maximum sentence that I can pass for the offence of causing or allowing the death of a child is limited to 14 years imprisonment.
  
6. I have read the pre-Sentence Reports in relation to each of you. Each of you denies responsibility for causing injuries to Peter. You each maintain that you did not know about the injuries or the seriousness of them. Nor did you witness anyone causing them. None of you, except you C on a limited basis to which I shall come shortly, accepted any responsibility for Peter's injuries and death. Your alleged ignorance of what was happening to Peter in that small house in Tottenham defies belief. As Dr Cumming said in paragraph 71 of his report concerning you B, "The family home

seems to have developed a climate of abuse and neglect which should have been obvious to all of the adults present in the home”.

7. I bear in mind the words of Judge LJ, The President, (as he then was) at paragraphs 67-68 of the case of *R v Ikram and Parveen* (2008) 2 Cr App R (S) 114/EWCA Crim 586:

“67...section 5 of the Act created a new offence. It provides a route to conviction whenever the jury are unable to say which of two (or sometimes more) defendants caused or allowed the death of a child or vulnerable adult. Even if the identity of the person responsible for the fatal injuries cannot be established, the possible range of culpability, both in relation to the circumstances in which death occurred and as between the different defendants, is very wide. The victim may have been killed in circumstances which amount to murder. Culpability for the death may also encompass all the levels of manslaughter, both at the higher and towards the lower end of the scale...the defendant who allows the fatal injury to be inflicted may on the evidence be very close to an accomplice to virtually but not quite the full extent of that violence, or a doomed pathetic individual, so dominated by the other defendant, that notwithstanding his awareness of the risk that really serious bodily harm might be inflicted on the victim, lacked a will of his own. Wherever the case may fall in terms of the culpability of the perpetrator, a conviction of the section 5 offence means that it has been established that the defendant who failed to protect the victim either appreciated or ought to have appreciated that there was a significant risk that the victim would endure serious harm at the hands of the ultimate perpetrator, in circumstances which that defendant foresaw or ought to have foreseen. Although section 5 of the 2004 Act created a new offence, its link with manslaughter is clear, and the general



approach to sentencing in manslaughter cases provides useful assistance to the court considering the sentencing decision after conviction of the section 5 offence...

68. In the present case... the identity of the defendant responsible for causing his death (whether by a guilty plea or jury verdict) was not established. The judge rightly decided that when neither defendant was convicted of either manslaughter or murder he could not second guess these verdicts and decide for himself which of them caused the fatal injury, and he did not allow himself to make the mistake of approaching the sentencing decision on the basis that as one or other of them had caused [the] death, they were both to be sentenced as if they had”

8. And so, as none of you was convicted of either manslaughter or murder I cannot second guess the verdicts and decide for myself which of you caused the fatal injury. I shall not approach my sentencing decision on the basis of what was called in the case of *R v. Khan* (2009) 1 Cr App R 28 “judicial speculation” that a particular one or other of you caused Peter’s death. But, as is aptly said at paragraph 2.13 of the pre-Sentence Report concerning you B, “Whatever the truth of what took place and the role and motivation of each individual, the result was that a child died in horrific circumstances with injuries and ailments that can only have caused great pain and distress prior to his death”.

9. In addition I also have to sentence you, B, for the offence of anally raping another child between the 1<sup>st</sup> February 2007 and the 3<sup>rd</sup> August 2007. At the time of this offence she was only 2½ years old. On the 1<sup>st</sup> May 2009

you were convicted by a jury of that offence on the basis of the unprompted and unexpected allegation made and the graphic demonstration given by her to Dr De Jong and Charlotte Seymour on the 11<sup>th</sup> January 2008. She repeated that allegation and demonstration clearly in the ABE interview, and again verbally to Dr Hodes. The allegation was supported by the independent medical evidence of Dr Hodes who said that on examining her she found an abnormality in her back passage which was capable of supporting her evidence.

10. This offence is a serious specified sexual offence under the Criminal Justice Act 2003. The maximum sentence is life imprisonment.

11. I have heard and take note of the moving victim impact statement made by the natural father of Peter.

12. This is a case to which the CJA 2003 applies. The offence of rape is a serious specified offence within the Act. Accordingly, in the case of each of you, I am required to consider the question whether you pose a significant risk to members of the public of serious harm by the commission of further serious offences.

13. I have read the pre-Sentence Reports on each of you, the report from Dr Cumming on you B and the other documents appended to the report on you Jason Owen. I have come to the firm conclusion that, based on what I have seen during the trials and read in the documents supplied to me, it is

necessary for the public, and in particular young and vulnerable children, to be protected from each of you for a substantial time.

**14. B**

You are now 32 years old. I take into account

- i. the fact that you have no previous convictions, cautions or reprimands,
- ii. what has been written in the pre-Sentence Report about you, in particular in relation to your difficult childhood and upbringing and other matters set out at paragraph 3,
- iii. the contents of the medical report. You have had problems in the past but you have not been found to be suffering from a mental illness; no specific intervention beyond monitoring of the lowering in your mood is required,
- iv. the mitigation on your behalf, especially as to your mental limitations, to which Mr Richmond QC alluded and to which reference is made elsewhere.

I also take into account the fact that you were acquitted of both murder and manslaughter. I am not sentencing you for either of those offences.

15. I am satisfied that on the evidence, whatever your role and motivation, you played a major role in the events between December 2006 and August which culminated in Peter's death. You abused the position of trust you held towards a toddler, and in a situation where, living in the same household, there were other young children who are likely to be damaged psychologically by what they have lived through. Had the offence of causing or allowing his death stood on its own the sentence would have been 12 years imprisonment.

16. But it does not. You have been found guilty of the rape of another child. In my judgement this offence combines the aggravating features of a massive breach of trust and rape of the most vulnerable of victims, a very young child. In my judgement, the seriousness and extraordinary and abhorrent features of this offence call for a sentence outside the Guidelines suggested by the Sentencing Guidelines Council.

17. It is open to me to make the sentence for that consecutive to the sentence for causing or allowing the death of Peter. However, I have to have regard to the totality of the sentence I pass on you.

18. You have been convicted of two separate and different offences in relation to two children under 3 years of age. Both children were exceptionally vulnerable by virtue of their age and by virtue of your position of power over them. In my judgement, you do not just pose a significant risk of serious harm by the commission of further serious offences to members of

the public, particularly to children who come within your care, but you are a threat to young children. I am satisfied that, taken together, the offences of which you have been convicted are very grave and that your culpability is particularly high

19. In all the circumstances the sentence which I impose for the rape is one of life imprisonment.

20. I have to specify in the order I make, the minimum term of the sentence of life imprisonment which you should serve, applying the provisions of the Criminal Justice Act 2003. I make it clear that, in setting the specified minimum period for the purposes of the life sentence, once you have served the minimum term I have specified that that does not mean that you will then automatically be released. The making of a direction will be for the Parole Board to determine when or if you are deemed no longer to be a risk to the public and in particular to small children.

21. I shall follow the approach approved by the Court of Appeal in cases such as *R v O'Brien* (2007) 1 Cr App R (S) 75 and *R v Frederic Edwards* (2007) 1 Cr App R (S) 106 (Archbold 5-307a) by setting that minimum term by reference to the totality of your offending.

22. The minimum term of the life sentence will be 20 years. I order that the minimum term to be served to reflect the requirements of punishment and deterrence and before your case can be considered by the Parole Board

shall be 10 years, less time spent in custody awaiting sentence, agreed to be 644 days.

23. That will be concurrent with a sentence of 12 years imprisonment for causing or allowing the death of Peter.

24. I also order

- i. that for the purpose of protecting children from serious sexual harm from you, you will be subject to a Sexual Offences Prevention Order until further order,
- ii. that, as you have been convicted of an offence against a child and I have concluded that you pose a risk to children, you will be disqualified from working with children, and
- iii. that you will be subject to the notification requirements under section 80-82 of the Sexual Offences Act 2003 for an indefinite period.

25. C

I do not regard the basis of your last minute plea of guilty to causing or allowing the death of Peter as realistic. I saw you over a period of weeks and heard you give evidence over several days. You said in evidence a

number of things about that plea which, having observed and heard you, I do not accept, namely,

- i. that you pleaded guilty to Count 3 even though you did not know until afterwards that Peter had suffered the catalogue of non-accidental injuries about which we have heard,
- ii. that your plea was on the basis that you allowed the death of Peter in the sense that you should have known on the 2<sup>nd</sup> August when you saw the missing tooth that there was then a heavy risk that he would be harmed and should then have called the police and ambulance services,
- iii. that you did not know how you could have prevented Peter's death,
- iv. (in answer to a question by counsel for Jason Owen) that you did not know who it was who you allowed to cause Peter's death

while acknowledging that you could have done more to prevent it.

26. You are now 27 years old. I take into account

- i. the fact that you have no previous convictions,

- ii. what is said about you in Section C of the Mitigation Document placed before me and at paragraph 3 of the pre-Sentence Report, in particular about your difficult childhood and upbringing, and at paragraphs 4.5 and 4.6,
  
- iii. the contents of the file placed before me by your counsel and the submissions made in mitigation to me. I have particular regard to the submissions
  - (a) that you did take Peter unprompted to the GP in December 2006 and to hospital in April 2007,
  - (b) that there is no evidence to suggest that the infection to Peter's head was caused deliberately,
  - (c) that you have recognised that you failed in your duty as a mother,
  - (d) that there is a side to you in which witnesses have seen you as a loving mother to your children,
  
- iv. the contents of the letter you have written to the court in which you now express remorse and guilt.

27. However, you are, as is said at paragraph 3.3 of the pre-Sentence Report, “a vocal and not unintelligent young woman who is fairly articulate”. Having seen and observed you over many weeks, I have concluded that



you are also a manipulative and self-centred person, with a calculating side as well as a temper.

28. I sentence you for a course of conduct lasting weeks if not months during which time Peter was abused, injured and finally killed. I reject the suggestion that you were blind to what was happening in that house or that you were naive. I am also satisfied - and you now accept - that your conduct over the months prevented Peter from being seen by Social Services. You actively deceived the authorities. I do note that health professionals who saw Peter shortly before he died seem at the least to have missed the import of the injuries to him. However, that does not, in my judgement, absolve you from your culpability.

29. I am satisfied that you acted selfishly because your priority was your relationship with B. You too abused the position of trust you held towards your son in a situation where, living in the same household, there were other young children who are likely to be damaged psychologically by what they have lived through.

30. I completely accept what the writer of the pre-Sentence Report says at paragraph 4.4, namely that, taking into account the nature and seriousness of the offence, the pattern of neglect and chastisement to children demonstrated by you, your potential to obstruct those seeking to protect and care for your children, your lack of insight into your behaviour coupled with a failure to do much to moderate the risk you pose, and the

other matters concerning your personality set out in that paragraph, you “...present a high risk of causing harm to children in [your] care through potential neglect”.

31. In those circumstances the sentence of the court is an indeterminate one of imprisonment for public protection. As I have said, the maximum sentence of this offence is 14 years. I have to specify in the order I make, the minimum term of the sentence of imprisonment which you should serve, applying the provisions of the Criminal Justice Act 2003. I make it clear that, in setting the specified minimum period for the purposes of the sentence, once you have served the minimum term I have specified, that does not mean that you will then automatically be released. The making of a direction will be for the Parole Board to determine when or if you are deemed no longer to be a risk to the public and in particular to children.

32. Had it not been appropriate to impose a sentence for public protection and without your plea of guilty, the sentence I would have passed, taking into account the seriousness of the offence and the mitigating factors, would have been one of 12 years imprisonment. I give you some credit for that plea, but it is necessarily limited. I reduce the sentence that I would have imposed to one of 10 years imprisonment, of which you would have spent one half in custody. Accordingly, I order that the minimum term to be served to reflect the requirements of punishment and deterrence shall be 5 years, less time spent in custody awaiting sentence, agreed to be 644 days.

**33. Jason Owen**

You lived in the household from about 29<sup>th</sup> June 2007 onwards, together with your 15 year old girl friend and your children. The period that you were there coincided with an escalation in the injuries suffered by Peter.

34. I have read the pre-Sentence Report and the documents concerning you with considerable care. On the one hand you portray yourself and are seen by some as a caring father for your own children. There was evidence that you realised that Peter was not well and that a few days before he died you asked C to take him to hospital but she refused. On the other hand, it is rightly said that what happened to Peter in the time that you were there, happened in an atmosphere that allowed a complete lack of care to be ingrained with a sickening and descending loss of personal responsibility. You were more concerned about your own situation, about being discovered, and about the horror of what was happening to Peter being discovered, than taking steps to protect him.

35. You are now 37 years old. You too had a difficult childhood and upbringing. You have previous convictions for arson, a specified offence under the Criminal Justice Act 2003, and burglary.

36. Even though you have suffered from a long-standing depressive illness for which you have received medication, there is no suggestion that a medical disposal of your case is appropriate.

37. So, I have to decide if you pose a significant risk to members of the public of serious harm by the commission of further serious offences. I have considered the factors that clearly troubled the writer of the pre-Sentence Report:

- i. in taking a 15 year old girl and your own children into a situation that you must have realised was laden with problems, you demonstrated a very severe distortion in your capacity to recognise and think through what was going on around you;
- ii. you ignored Peter's needs, the needs of a child obviously at risk, preferring instead to shield yourself and your entourage from discovery;
- iii. the facts of your previous offending and in particular of the offence of arson, set out at paragraphs 4.6 to 4.8 of the report.

38. You have also sought to minimise your own involvement and culpability.

39. The conclusions at paragraphs 4.12 and 5.3 of the report are that you have the potential to commit further serious specified offences at random, even in the imminent future.

40. Even though I have not heard you in the witness box, I saw and heard enough during the trial to be able to agree with those concerns. I have

concluded that you do, indeed, pose a significant risk to members of the public of serious harm by the commission of further serious offences.

41. In those circumstances the sentence of the court is an indeterminate one of imprisonment for public protection. As I have said, the maximum sentence for this offence is 14 years. I have to specify in the order I make, the minimum term of the sentence of imprisonment which you should serve, applying the provisions of the Criminal Justice Act 2003. I make it clear that, in setting the specified minimum period for the purposes of the sentence, once you have served the minimum term I have specified that does not mean that you will then automatically be released. The making of a direction will be for the Parole Board to determine when or if you are deemed no longer to be a risk to the public and in particular to children.

42. Had it not been appropriate to impose a sentence for public protection I would have passed a sentence of 6 years imprisonment, taking into account the seriousness of the offence and the mitigating factors. Of that period you would have spent one half in custody. Accordingly, the minimum period I specify is 3 years from which should be deducted the time spent in custody awaiting sentence agreed to be 289 days.

