

318.20 *Abuse of trust Meaning*

Post-2014 guideline case

R v O (D) 2014 EWCA Crim 2202, 2015 1 Cr App R (S) 41 (p 299) D pleaded to the rape of his partner and sexual abuse of child relations of his partners. The Judge placed the rape in Category 2 because the victim was particularly vulnerable due to personal circumstances and Category A because of the abuse of trust. Held. Due to the psychological effects on the family which were immeasurable, the Judge was entitled to find the case fell into Category 2, on the basis of severe psychological harm. The gross betrayal was an aggravating factor. The Sentencing Council did not intend that every rape within an established relationship should be treated as a breach of trust. The case fell into Category 2B, but the overall sentence was not manifestly excessive.

318.39 *Fathers/Stepfathers etc., By*

Example: *R v DL* 2015 EWCA Crim 74, 1 Cr App R (S) 58 (p 404) (D was convicted of two rapes on his daughter when she was aged 13-14. Two other sex offences against her. She was vulnerable. D was aged 33 with, in 2007, 3 sex assault previous convictions (Victim just aged 14. 3 years imprisonment on a plea) and significant non-sex previous. Judge made offence Category 2A. Held. Particularly gross breach of trust. 20 years extended sentence (**15 years** custody and 5 years extended licence) was not manifestly excessive.)

318.48

Post-2014 guideline case

R v Carroll 2014 EWCA Crim 2818, 2015 1 Cr App R (S) 54 (p 381) D was convicted of rape and attempting to cause GBH with intent. He was sentenced in August 2014. In 1996, D left a wedding reception near Lowestoft and drove to Norwich where he stopped his car and V asked him if he was looking for business. The price of £30 in the car was agreed. V gave D directions where to go and she told him she was pregnant. They stopped in a layby and V put a condom on his erect penis. After some minutes of vaginal sex, D put his hands around V's neck and began to strangle her. V struggled, tried to kick him and scratched his face. She lost consciousness. When she came round, she was on the ground and D was gone. V was half-naked. She had lacerations, bruising, (including her tongue) and two of her teeth were loose. In 2013, D was arrested. He claimed self-defence. D was now aged 56. In 2008, he had a conviction for assaulting his wife. The Judge found V was in a very dark place and was therefore vulnerable. Further D had left her severely traumatised and the psychological damage D had caused was extreme. She was still suffering 18 years later. Even now she is wary of men and does not go out at night even to put the dustbin out. The Judge placed the offence at Category 1 and at the top end of Category B. Held. The violence and fear cannot be underestimated. The violence was correctly categorised as extreme. It was Category 1B. However there was nothing to lift the sentence from the starting point. There were no [extra] aggravating factors. We start and remain at the **12-year** starting point. The extended sentence was correct with its 5-year extended licence.

318.55 *Relationship rape Post-2014 guideline cases*

Att-Gen's Ref No 19 of 2015 2015 EWCA Crim 760 (**20 years**, see **351.58**)

See also: *Att-Gen's Ref No 4 of 2015 2015 EWCA Crim 481* (Plea during trial which D tried to vacate. 4 (it seems) rapes, two of which were specimen. Rape of three women he was in relationship with. One when on bail for the other rapes. Violent, abusive, controlling and threatening behaviour. Now aged 28. Relatively few previous convictions. Category 2B. Held. Starting at 14 years, with plea, **12 years** not 9.)

318.57 Series of rapes/Campaign of rape

Post-2014 guideline case

Att-Gen's Ref No 52 of 2015 2015 EWCA 1594 D was convicted of five rapes and three ABHs. Between 1997 and 2013, he committed rapes against four females. When aged 25 and 26, he was in a flat where V1, a 15-year-old school girl, sometimes slept. V1 woke up to find D raping her and eventually she managed to push him off. Then and in the morning he treated the rape with callous indifference. D gave her a sexual disease. At the time she was coping with the death of her brother. She later became a police officer dealing with sex cases and endured psychological problems. She only spoke out when she learnt D had been arrested. In 2001, V2 and D began a sexual relationship, when she was aged 30 and D was 29. D became violent (the ABH counts). In 2001, he strangled her with a scarf. In 2003, there was a) strangulation with D hitting her with a broom and kicking her and b) 'driving away while she was being dragged by her hair'. Intercourse became non-consensual (where the two counts of rape reflected specimen offences) while on other occasions there was consent. In 2010, D persuaded V3 to get in his car and against her wishes drove her to a club. In the club she had a drink and passed out. She awoke in her home to find him in bed with her rubbing her clitoris. Her vagina was sore and it was clear he had had sexual intercourse with her. D showed a callous indifference to her. D met V4 in a pub. They drank and D took her back to another woman's flat. V4 woke up to find D having intercourse with her. He treated her with callous indifference. Shortly before she was due to give evidence, V4 tried to hang herself. D had a number of convictions including ABH and possession of an offensive weapon in 2010 (2 years prison). The pre-sentence report said D posed a very high risk of serious harm to females and he was willing to manipulate the vulnerable. Held. Over 16 years, D had callously sexually degraded four women. One was aged 15, sad, vulnerable and in mourning. We increase one of the concurrent ABH sentences to 4 years. An extended sentence of 24 years (**20-year** custodial term not 10 and 4 years' extended licence).

318.58 Series of rapes/campaign of rape Starting point 18+ years Post-2014 guideline case

Att-Gen's Ref No 19 of 2015 2015 EWCA Crim 760 D was convicted of six rapes with V1, his wife, (all specimen counts), two rapes with V2 and three rapes with V3. D had a relationship with V1 for 28 years. They had six children and he treated her poorly. Her life was miserable. Between 2004 and 2011, D raped her vaginally, anally and orally usually after he had been drinking. Sometimes their son in a cot was present. The anal rapes often left V bleeding and in pain and fear. If V1 complained D would slap her. Rapes were achieved through violence. In January 2011, the relationship ended. In 1992 and January 2011, V1 reported the rapes but no action was taken. Immediately after the end of the relationship, D began a relationship with V2. There was physical and sexual violence against V2. He raped her vaginally and anally which made her bleed and cry. This annoyed D who made V2 perform oral sex with her hair grabbed and force used. In one argument, D kicked V2 and shut her head in a wardrobe. The relationship ended in December 2012, and she reported the rapes to the police who reconsidered the complaints made by V1. In March 2013, D started a relationship with V3. She was raped vaginally and anally after he had been drinking. After which he beat her with a belt and forced his penis into her mouth to the point of ejaculation. He was charged with the rapes of V1 and V2 and said to V3 if he was charged he might as well do it and raped V3 again. He had his hand round her neck. She then went to the police. D was now aged 47 with 32 convictions. There were numerous convictions for violence. The pre-sentence report said he posed a serious risk of harm to women if he was in a relationship with them. It was agreed V1's rapes

were in Category 1A and V2 and V3's rapes were in Category 2A. The Judge found there were steps to prevent the offences being reported. This and the location of the offences he considered were additional aggravating factors. Held. The Judge failed to have sufficient regard to the fact there were three victims and the profound consequences the rapes had had. **20 years** in all, not 16.

R v K and Others 2015 EWCA Crim 850 K was convicted of three conspiracies to rape, 5 rapes, two of arranging child prostitution and trafficking. AD was involved in the same counts save there was one less conspiracy. J and B were convicted of slightly fewer charges. It was a campaign of rape against three vulnerable children aged 11+. [Over what period of time is far from clear. Ed.] The children were ordered to recruit others. The girls were given gifts, supplied with drugs (including cocaine and heroin) and shown apparent affection. They also suffered extreme physical and sexual violence and threats were issued if they tried to escape. V1 was told her house would be burnt down. In particular there was oral, vaginal and anal rape and gang rape. Knives, meat cleavers and sex toys were used causing physical injuries. A hairbrush was inserted into V1's vagina. Girls were bitten, scratched, urinated on, suffocated, tied up and burnt with cigarettes. Some had to endure men licking their injured vaginas and watch the abusers smell their dirty and stained underwear. The girls were sold to other men to have sex with them. V2 was threatened with a gun. A baseball bat was inserted into V3's vagina. AD was aged 22-26 and had testimonials. He started offending in 2004 and stopped offending in 2008. He wasn't arrested until 2009. The Judge started at 34 years for D and AD. J was aged 19-21 when he was involved, was of effective good character and was described by the Judge as a follower and not a leader. He was only involved with two victims and stopped offending on his own account. B was involved with two girls and he was not a prime mover. His involvement ended in about 2009. Held. The impact on the girls had been devastating and of the utmost severity. They had been scarred for life. There was a multiplicity of aggravating factors. **Life** was appropriate in all cases. For D and AD a **17-year** minimum term was justified. For J no complaint can be made of a **12-year** minimum term. For B a **15-year** term reflected the behaviour.

318.65 Victim aged under 13 Judicial guidance

Post-2014 guideline advice

Att-Gen's Ref No 105 of 2014 2014 EWCA Crim 2751 D pleaded to rape. *R v Corran* 2005 (see above) where the defendant pleaded to a section 5 rape, has limited value as a sentencing authority. However the following part holds good today. 'There will be very few cases in which immediate custody is not called for, even in relation to a young offender, because the purpose of the legislation is to protect children under 13 from themselves, as well as from others minded to prey upon them.' para 23 The legislation and the thinking behind the guidelines concentrates on the actions of the offender rather than the attitude of the victim. Girls under 13 are to be regarded as vulnerable and on occasion, if need be, are to be protected from themselves.

318.65a Victim(s) aged under 10 Defendant aged under 18

Post-2014 guideline

R v Smith 2015 EWCA Crim 722 D was convicted of rape of a child aged under 13 and pleaded to various sex assault charges on children¹. When aged 14 he became a volunteer at a deaf club. His job was to look after young children of people who were deaf. When he was aged about 17, he put the penises of boys aged between 5 and 8 in his mouth on various occasions. He put his penis in a boy's mouth who was aged 6. It did not go in far and was out in seconds. This was the rape. When his computer was searched it was

¹ What D pleaded to and was convicted of is not completely clear. Ed.

discovered D had searched for images of ‘oral sex with 7-year-old boy’ and ‘naked children’. There was a modest number of images of children on his computer. The pre-sentence report said D had major deficits in his thinking and behaviour. He himself had been sexually abused and bullied because of his Tourettes Syndrome over a number of years and he suffered from social isolation and low-self-esteem. The Judge considered the starting point for an adult was 14 years, because of the grooming and the child’s vulnerability. He reduced the sentence by one-third because of D’s age. Held. This was not a sustained incident and it was very short lived. [All victims for this offence would be vulnerable.] D had significant features over and above his age. He was emotionally damaged and immature. **7 years detention** not 9 years 4 months with the rest of the counts remaining concurrent.

R v W 2015 EWCA Crim 578 D was convicted of rape, assault on a child by penetration, indecent assault, sexual assault and inciting a child to engage in sexual activity. In 2004, D was aged 10 and V1, a friend of his sister was aged 6. They, with two others played hide and seek. D found G inside a wardrobe and began to stroke her legs. D picked up a coat hanger and put her feet through it to keep her legs together. Next he took the coat hanger off and began to stroke her side with it and he kissed her. D took off his trainers and trousers and got on top of V and inserted his penis into her vagina. V said it hurt and began to cry. The next day, at D’s home the four children were playing teachers. D told the others it was break time and told G to stay behind as a punishment. The others were sent out of the room. Next he said the punishment was for her to take her clothes off and use a hula hoop. V asked to keep her clothes on and D said ‘No’. She took her clothes off and D wrote on the wall ‘I love’ and then V’s name. V was on the bed and D gave her three quick kisses on the lips and told her to lie down. D stroked her hand, legs and vagina. Then he took off his trousers and underwear and said, “Touch me here,” meaning his penis. V did not know what to do. D took her hand and put it around his penis. He moved her hand, backwards and forwards. Next he told her to put her finger in a pencil sharpener which she did. D took the finger out and unscrewed the blade. He gave her the blade and she held it in her hand and cut herself slightly. He told her to take the blade home and every time she thought of him she was to mark her body with the blade.

On Christmas Day 2004², V went to D’s house and the two ended up on a bed. D put a pillow over her face and she began to cry. D took off his trousers and began licking and kissing V’s vagina. Telling her repeatedly to be quiet, he put his fingers in her vagina and she screamed. D told her she had to touch him and he took her hand and put it on his penis. She still had a pillow over her face so D guided her hand. In 2012, V went to the police. D made denials. V was now aged 17 and said the court proceedings had caused her a lot of pain. D was now aged 22, with a reprimand for ABH and a caution for obstructing a constable. There were positive references. D had an extremely low IQ and probably had deficits in day-to-day functioning. He also had significant speech and language difficulties and struggled socially and academically. His parents had physical and mental health conditions. The family was victimised and they had to move five times in 11 years to try to escape it. The pre-sentence report suggested a community disposal. The Judge accepted that if D had been prosecuted at the time it was likely he would have been given help and not punishment. **12 months** not 18.

318.66a *Victim(s) aged under 10* *Defendant aged 25+*

Pre-2014 guideline case

R v DJ 2015 EWCA Crim 563, 2 Cr App R (S) 16 (p 164) D pleaded to six rapes, 24 child sex offences, 18 child image offences and two extreme image offences. He was convicted of five rapes, 13 child sex offences and two abduction counts. The conviction matters were as follows. When SJ, his daughter, was aged 4 ½ he started touching her. When she was aged 5, he vaginally and anally raped her. This lasted

² The report says 2004, but the ages given for D and V would indicate it was 2005.

about 10 years. He said it was punishment for her being bad. He would hit her and verbally abuse her. D also held her nose to force her to open her mouth for oral sex. Threats were made that if she did not comply with his demands he would hurt her and her mother. D met AF, a runaway, when she was aged 15. She was a vulnerable child who functioned like a 6 to 8-year-old. He had regular sex with her. D also made LS masturbate him when she was aged 8-10. When DC was aged 15 he put his hands on her vaginal area.

The matters he pleaded to were as follows. When his niece, LJ was aged 8-11, he entered her bedroom at night and touched her. This led to anal and vaginal rape and digital penetration. There was oral abuse as well. Threats were made to keep her quiet. He took photographs of this and on occasions her brother, aged 8, was present. When LJ wanted to end their sex sessions, he threatened to send sex photographs he had taken of them to her father and her school. Sinister texts were also sent to her. D met JD, aged 14, on the Internet and took her to a hotel where he plied her with alcohol and gave her gifts. She declined sex and when she was asleep he raped her. They met again and he was rough with her and made her perform oral sex. He groomed BP, aged 14, to meet him in a hotel. When it happened he received a text from her mother and he took her home. Police were informed and his mobile was searched. BP had to be sectioned when she self-harmed. Between 2007 and 2013, he created or obtained 500 images. Over 200 involved himself. Two videos involved a 2-year-old girl masturbating him. Many of the images were of adults pretending to be children and fathers sexually involved with their children.

D was arrested and bailed. He did not co-operate to find the victims in the images and carried on seeking child sex and child sex images. All the abuse was over 12 years. D was now aged 49 and had no convictions. The Judge considered a) in many cases the evidence was overwhelming, b) the defendant was a clever, confident and manipulative sexual predator, c) he manipulated the court processes and d) there was extreme harm. Held. There was great misery and lasting harm. The paternal breach of trust was serious. All the girls were vulnerable. The Judge's comments were correct. There were multiple aggravating factors namely: a) nine victims, b) breaches of trust, c) recordings made, d) threats made, e) deceit, f) grooming and controlling, g) suborning his daughters to give false evidence, h) his isolation of SJ within the family and i) the exploitation of the vulnerable. Grave as the offending was, the extended sentence should have an overall custodial term of **30 years** not 33 with a 6-year extended licence.

Post-2014 guideline case

R v W 2015 EWCA Crim 960 D pleaded (full credit) to four rapes, three indecent assaults and three gross indecencies with a child. The counts were specimen counts covering regular activity. Between 1971 and 1982, starting when he was about 25, he abused V (who appears to be his niece) when she was aged 7 to 18. The first act was digital penetration which was painful. D was told to stop but didn't. D bought her treats and groomed her. Also in 1971, he bought V a large teddy bear and asked her to his flat to see it. He then raped her. V was also obliged to suck D's penis and masturbate him. The second rape was in 1977. During the next five years the rapes became regular. The other sex offences related to when he licked her vagina and put his penis into her mouth. It stopped when V left the country. V said D swore her to secrecy by threats. In interview he did not dispute the account and claimed not to recall specific incidents. He also said he had been running [away] from these allegations for 40 years. D was now aged 68 and had no previous convictions. V now thought a long custodial sentence would not benefit anyone and she did not believe she had sustained long term harm. The Judge passed consecutive sentences making 19 years 10 months in all. Held. That would mean a starting point of almost 30 years. The case involves the destruction of a childhood. We start at 24 years making **16 years** after the plea.

318.68 Victim(s) aged 10-12 Defendant aged 18-24

Att-Gen Ref No 1 of 2015 2015 EWCA Crim 380 D pleaded early to six rapes of a child under 13 (two

specimen counts of vaginal, two specimen counts of anal and two specimen counts of oral). D was aged 19. He met V, a virgin and a 12-year-old distant relative. D soon progressed to frequent sexual conduct to which V reluctantly acquiesced. V was scared of D. Rapes were several times a week. D did not use a contraceptive but would withdraw and ejaculate. D gave her Chlamydia. He persisted in anal rape despite her saying it was painful. Once D raped her in front of a 10 or 11-year-old friend. D sent V pictures of his penis and asked for pictures of herself to 'make it up'. D lied to V's mother about the activity. The mother went to the police. In interview D said there was sexual touching with V's initiation and consent. Further it was V who wanted anal intercourse and it had only happened three or four times. Vaginal and oral penetration was accepted. D had only minor previous convictions. He had a troubled and disruptive upbringing. He was bullied regularly. D had a limited intellectual capacity and in many ways was immature. There had been suicide attempts and regular self-harming. The pre-sentence report assessed a high risk of serious harm to children. It was a Category 2A case. Held. The starting point was 13 years. The conduct was persistent. However the mitigation was very powerful. **9 years** not 6.

318.71 Victim(s) aged 10-12 Pre-guideline case

R v K and Others 2015 EWCA Crim 850 K was convicted of three conspiracies to rape, 5 rapes, two of arranging child prostitution and trafficking. AD was involved in the same counts save there was one less conspiracy. J and B were convicted of slightly fewer charges. It was a campaign of rape against three vulnerable children aged 11+. [Over what period of time is far from clear. Ed.] The children were ordered to recruit others. The girls were given gifts, supplied with drugs (including cocaine and heroin) and shown apparent affection. They also suffered extreme physical and sexual violence and threats were issued if they tried to escape. V1 was told her house would be burnt down. In particular there was oral, vaginal and anal rape and gang rape. Knives, meat cleavers and sex toys were used causing physical injuries. A hairbrush was inserted into V1's vagina. Girls were bitten, scratched, urinated on, suffocated, tied up and burnt with cigarettes. Some had to endure men licking their injured vaginas and watch the abusers smell their dirty and stained underwear. The girls were sold to other men to have sex with them. V2 was threatened with a gun. A baseball bat was inserted into V3's vagina. AD was aged 22-26 and had testimonials. He started offending in 2004 and stopped offending in 2008. He wasn't arrested until 2009. The Judge started at 34 years for D and AD. J was aged 19-21 when he was involved, was of effective good character and was described by the Judge as a follower and not a leader. He was only involved with two victims and stopped offending on his own account. B was involved with two girls and he was not a prime mover. His involvement ended in about 2009. Held. The impact on the girls had been devastating and of the utmost severity. They had been scarred for life. There was a multiplicity of aggravating factors. **Life** was appropriate in all cases. For D and AD a **17-year** minimum term was justified. For J no complaint can be made of a **12-year** minimum term. For B a **15-year** term reflected the behaviour.

318.71a Victim aged 13-15 Pre-2014 guideline case

Example: *R v DL* 2015 EWCA Crim 74, 1 Cr App R (S) 58 (p 404) (D was convicted of two rapes on his daughter when she was aged 13-14. Two other sex offences against her. She was vulnerable. D was aged 33 with, in 2007, 3 sex assault previous convictions (Victim just aged 14. 3 years imprisonment on a plea) and significant non-sex previous. Judge made offence Category 2A. Held. Particularly gross breach of trust. 20 years extended sentence (**15 years** custody and 5 years extended licence) was not manifestly excessive.)

318.72 Victim asleep, drunk etc.

Post-2014 guideline cases

Att-Gen's Ref No 51 of 2015 2015 EWCA Crim 1699 D pleaded early to rape. V, who was now aged 19

and a virgin, was very drunk. She vomited in a taxi and had to walk home. She was nearly home when D took her to an alleyway where he vaginally raped her causing her pain and a tearing sensation. The impact on V was severe, causing her panic attacks and to break down in tears over little things. D had no convictions. He did have a reprimand for common assault. The pre-sentence report said D posed a high risk of harm to vulnerable women. Held. As the victim was particularly vulnerable, it was in Category 2B not 3B, so we start at 8 years not 6, making **6 years** not 4.

See also: *R v W 2015 EWCA Crim 1021* (Convicted. W and victim, V, both aged 16. W took down her jeans and knickers when V was asleep. V found wet ejaculate between her legs. W apologised. Relationship continued, then broke up. V reported it. Starting point 5 years. With W's age and his good character, **2 ½ years**, not 3 ½.)

318.86a *Defendant aged 10-14*

Example: *R v BH 2015 EWCA Crim 1289* (Convicted. Three rapes and other sex offences. Victim aged 6 to about 12. Defendant then aged 9-15. Now aged 22. At some stage sexual activity turned to rape. Mascara tube inserted. Threats made. **9 years** had a substantial discount.)

318.86b *Defendant aged 15-17*

Post-2014 guideline Case

See also: *R v W 2015 EWCA Crim 1021* (Convicted. W and victim, V, both aged 16. W took down her jeans and knickers when V was asleep. V found wet ejaculate between her legs. W apologised. Relationship continued, then broke up. V reported it. Starting point 5 years. With W's age and his good character, **2 ½ years**, not 3 ½.)