

**322.16 Banks, building societies, high-value targets etc.**

*Att-Gen's Ref No 53 of 2015* 2015 EWCA 1580 M and C pleaded to robbery at their PCMH. H was convicted of the same count. After planning, observing the premises for about two hours and stealing a getaway car, M and C approached a security guard, V, who was about to take a cash box from a petrol station to his van. C said, "Cut him" and M produced a large knife and stabbed at V's head and face several times. The knife did not connect. V let go of the cash box and the two men ran to the getaway car with it where H was waiting. At a safe distance the two changed to another car. £12,000 was stolen. H was aged 34. He had 37 convictions between 1994 and 2009. Six were for robberies. There were: 1997, plea, attempt, (business premises with gun, axe and knife) 2 years detention; 1999, with knife; 2002, convicted, (jewellers, £5,000 worth of jewellery taken, two staff attacked), 7 years; and 2009, convicted, (jewellers with M and hammers and tools, owner attacked with fists, feet and hammers and slashed about the face), 7 years, (M received 56 months). M was aged 30 and had 21 convictions. He had two robberies. The other one was in 2004 (4 years). C was aged 20 and only had minor convictions. The pre-sentence report said H and M had taken advantage of C. Held. The robbery fell outside the guidelines. It was aggravated by pre-planning, the fact it was a group offence, the disguises, the vulnerable victim, the large sum and the stolen car. For H, a 16-year extended sentence (**13 years** custodial term not 10 and 3 years extended licence). For M, we start at 11 years, so with plea, **7 years 4 months**, not 64 months. For C because of his age, his lack of criminal experience, manipulation and naivety we start at 5 ½ years, so with plea, **3 years 8 months** not 32 months.

**322.19 Commercial/industrial premises      'More sophisticated' robbery**

*R v Graham* 2015 EWCA 503 D pleaded (full credit) to robbery. He worked for a small high-value electronics firm. He and V were engaged in loading five pallets of iPhones, worth £1.4m to £1.6m, onto a van. The two were attacked and V was punched repeatedly and struck in the face with what appeared to be a hard object. Next V was dragged into an office. D was seized by a hooded man and also taken to the office. They were tied up with cable ties. Their mobiles were taken and the goods were stolen. While freeing himself, V injured his leg. V suffered injuries to his eye, bruising, swelling, cuts to the face and wrist, torn ligaments and a broken finger. Because of the robbery the firm lost contracts. D was dismissed and went to live in Spain. Sixteen months later, D returned and went to the police and said he was the inside man. He said he had informed the gang about the cargo and the time to strike. D also said he had positioned the van to assist the gang and disabled various security locks. D was now aged 67 with 21 court appearances for 72 offences. They included 18 months for two burglaries and 9 years for a robbery. D's last conviction was in 2003. He said he had wanted a pension and believed he would receive £200,000. D said he only received about £35,000. He had lung and liver problems. D also said he was missing his family, worried about health care and feeling remorse. The Judge found there was a) gross breach of trust, b) violence, c) use of a weapon and, because of the high value, started at 15 years. He took into account the confession was borne out of remorse and his medical problems. Held. The movement of the goods was a vulnerable process. D played a vital role in the robbery. The company had given him a chance of honest employment after years of crime and that was an additional breach of trust. The motive was greed. 15 years was the correct starting point. His confession was the reason why he was charged and merits more than a third off for the plea. With that and his relative short life expectancy, **6 years** not 8.

### 322.24 *Victim over 65 or vulnerable Cases*

See also: *Att-Gen's Ref No 18 of 2015* 2015 EWCA Crim 950 (Late plea (15% credit) to robbery and offences connected with car theft from a home. Car used in robbery. Three robbers. Five occupants including a 75-year-old, who was knocked over. Knife and hammer waved and faces covered. Injury caused. **8 ½ years** not 4.)

*R v Smith* 2015 EWCA Crim 1047, 2 Cr App R (S) 35 (p 288) (Plea (full credit) to burglary and robbery on different days. Same victim, V, confined to wheel chair. Both offences in his flat. Key fob taken from him in shop by force. Knife used. Laptop taken which was only method V could communicate. Substantial record. Because of totality, 3 years for the burglary and **10 years** for the robbery consecutive making with plea, 8 years 8 months in all not 10.).

### 322.38 *Firearms, With Post offices*

*Att-Gen's Ref No 112 of 2014* 2014 EWCA 2903 D pleaded to robbery and possession of an imitation firearm with intent. V was working alone in a village post office. Just after 9.30 am, D, in dark clothing and something on his head, followed by X, a second similarly dressed male, entered the post office. D said to V, "I want some money. Open the safe." D pointed a handgun at the safe and said, "Open it". V did so and he told her she would not be hurt if she did as she was told. D seized cash and stamps. V was terrified D would turn the gun on her. D took money from the cash drawer and told V to calm down and said, "I won't hurt you." X, holding a crow bar, which V thought was a shotgun, stood in the door keeping watch. D and X confronted V's partner who entered the post office. D pointed his handgun at him. D and X left and a third man drove the getaway car. £10,780 and £2,560-worth of stamps were stolen. Between 2004 and 2011, D had 17 court appearances for 46 offences. They included violence and burglary. In 2011, he received 7 years' detention for robbery and armed robbery at V's post office. A shotgun was used to steal £8,000 in cash. The latest offence took place two weeks after V was released on licence. The prosecution said the offence was planned, V was profoundly affected, it was by a group and D was on licence for an identical offence at the same venue. Held. That view was unanswerable. We start the custodial term of the extended sentence at the guideline figure of 8 years in the more serious range. With the identical previous, we move to 9 years, so with plea, a 9-year extended sentence (**6-years** not 4-year custodial term and 3 years' extended licence).

*R v Gilling* 2015 EWCA 685 D was convicted of robbery and possessing an imitation firearm. He and another drove to a village post office. One of them, R went in. He was wearing a hooded top and a scarf around his face and he shouted at V, who was on duty there, "Get me the fucking money." V saw a plastic bag with what looked to her like a firearm. R approached her and again demanded money. He kicked the post office counter and shouted, "Open the fucking money." R seized V around the neck and forced her through the door. He then leaned across and seized some notes and coins from the drawer which was just under £4,220. R ran off and joined his colleague in the car. V was effected by the robbery both mentally and financially. The Post Office held her liable for the money stolen, until there was a successful appeal. D was aged 31 and on bail. He had shoplifting, criminal damage and assault convictions. For some of those offences he had received short prison sentences. Held. It was Category 2. Because he was not of good character and he was on bail it should be a little over the Category 2 maximum of 7 years. So **8 years** not 10

### 322.41 *Firearms, With Bookmakers/Shops High value*

See also: *R v Shine* 2015 EWCA Crim 841, 2 Cr App R (S) 34 (p 284) (Plea (25%). Attempted robbery and having an imitation firearm. Bookmakers. Bag with screwdriver-type tool used. Glass screen smashed

with hammer. Nothing in the till so the two men fled. Six court appearances for relatively minor offences. **6 years** upheld.)

### **322.55 Shops, Petrol stations One offence**

*R v Rickett* 2015 EWCA Crim 1179 D pleaded to robbery and possession of a bladed article. At 11 pm, as a convenience store was closing, D barged in. He was wearing a hooded jacket and a home-made balaclava. At the counter, he waved a small knife and shouted at C, who was behind the till, “Where’s the fucking money?” He demanded the till be opened. He took about £119 from the till and demanded to know where the safe was. Staff told him they did not have access to it. One of the staff, J, used a shopping trolley to try to stop D fleeing. Unfortunately, J fell and cracked two of his ribs and suffered bruising. C was physically sick and became nervous and fearful of late shifts. D was aged 48 with a long record mostly for dishonesty. In 2009, he received an extended sentence for robbery (with a 6-year custodial term). It was a robbery of a convenience store when D wore a balaclava and was armed with a knife. D punched a member of staff. D had a drug and alcohol problem. The Judge started at 12 years because the offence was aggravated by a) pre-planning, b) the disguise, c) it was committed at night, d) the staff were vulnerable, e) the use of the knife, f) that D was under the influence of alcohol and drugs and g) the similar previous conviction. Held. It should be an extended sentence. We start at in the order of 10 years, so with full credit, **7 years**. 3 ½ years extended licence not 5.

### **322.56 Shop, petrol stations etc. More than one offence**

*R v Baboukhan* 2015 EWCA Crim 863 D pleaded to three attempted robberies (full credit). In the early evening, he entered a betting shop and went to the counter. He said to a female cashier, C, “Do me a favour put £500 on the counter. If you don’t I’ll pull something on these guys,” indicating a man on a gambling machine. C asked what he was going to pull and D said, “A knife.” C went to a staff area and D followed her. There was a brief struggle between the two and D said, “Do you think I am scared of the police.” D then walked off. About a half an hour later he entered another betting shop nearby and D told the manager to go behind the counter and get £500. He appeared to be rambling and the manager, M, didn’t take it seriously. D then offered to fight for the money, put his hand in his waistband and said it was a weapon. M thought he was about to be attacked. D left. 20 minutes later, at another betting shop nearby, D again asked for £500. The female staff member thought he was joking even when D said he had a knife. Putting his hands through a gap in the counter, D tried to grab some coins. Then he pushed two machines off the counter, hit the fire alarm and left. D was 24 now and had six sentencing appearances. They were mostly when he was a juvenile. In 2008, he received 42 months detention for attempted robbery and possession of an imitation firearm. D told probation that on the day he had been drinking and taking Class A drugs. A psychiatric report said he exhibited traits of an anti-social personality disorder and other disorders, but he was not mentally unwell. Held. The range was up to three years after a trial. We start at 6 years not 9, so with plea **4 years** not 6. The sentences to be concurrent not consecutive.

### **322.64 Street etc. robbery Defendant has significant record 5+ years suitable**

See also: *R v Lewis* 2015 EWCA Crim 165, 1 Cr App R (S) 66 (p 467) (D pleaded early to robbery. One man attacked a woman from behind, putting her in a stranglehold, while D removed her diamond ring, valued at £40,000. Victim lost consciousness and was injured. Attempts made to steal her Rolex watch. 80 convictions including robbery (33 months) and firearms (5 years). Cat 2 Level 2 with a range of 2-7 years. The aggravating factors meant starting at 9 years making **6 years** on a plea not manifestly excessive.)

### **322.66 Street etc. robbery More than one robber**

*R v Abdallah and Others* 2015 EWCA Crim 730 D, R and E were convicted of robbery. V, aged 49, was cycling and he was set upon by four or five youths. V tried to keep hold of his bicycle and a holdall containing his laptop. V was hit severely on the back of his head and he continued to struggle. V saw one of them draw a knife which was used to stab him in the back causing injury to his kidney. It was a 4 cm laceration. The group managed to steal the bicycle and the laptop. The Judge found the venue of the robbery was selected because there were no CCTV cameras, unlike the neighbouring streets. D was aged 19 and had a conviction for robbery in 2010 when a knife was used to threaten the victim. He was in breach of a conditional discharge for assaulting a PC. R was aged 19 and had no convictions. He did, however, have a caution for possession of an offensive weapon. D and R had positive references. E was aged just 17 and had a conviction for attempted robbery when he was aged 16. V continues to have long-term problems including bladder control connected with his kidney injury. The Judge found that the defendants knew that a knife was in existence and might be used. Held. The Judge was entitled to conclude it was a level 3 injury. Bearing in mind the knife was small, the Judge was not able to conclude so he was sure that the defendants knew about the knife. A sentence at the top of Level 2 was appropriate. For D **6 ½ years** YOI not 8. For R **6 years** YOI not 7. For E **5 years 9 months** YOI not 8.

*R v Lewis* 2015 EWCA Crim 1088 D was convicted of robbery. V was walking down an alleyway texting. D, another male and a female approached him and he was asked for £5. V tried to walk away saying he had no money. One male pushed him to the ground causing him to drop his phone. That man snatched V's phone and ran. The female threatened V with her dog. The other male picked up a stick and threatened V with it and the two ran off. D was 53 with long-term drug problems. He had 12 previous convictions. Before 2014, there was a 10-year offending gap. Just before the offence there was a shoplifting matter and just after there was a vehicle interference offence. The Judge said the offence was nasty, opportunist and frightening, making it Level 1. Held. More than one robber was an aggravating factor, but **2 years** not 2 years 9 months.

### **322.84 Persistent offenders**

*R v Brown* 2015 EWCA 707 D pleaded to robbery. He and two others entered a Wandsworth post office. A sliding door was wedged open and all three jumped over the counter. V1, an employee was knocked backwards in his chair and his shin was cut. V1 struggled and a second robber tried to make V1 release him. This was unsuccessful so the second man seized V2, another employee, around the throat and told V1 not to do anything stupid or V2 would be hurt. V1 released his grip and the robbers began stealing cash. D was in the secure area and stealing cash. As he jumped back over the counter he slipped or was kicked and he fell. He dropped his cash. All three robbers left and £5,000 was stolen. The only injury was V1's shin which did not need any medical attention. Eight days later, D rang 999 saying he wanted to hand himself in. Later that day he went to the police station and made full admissions. D was aged 37. He had 20 previous offences. In 1994 and 1998, there was a robbery. In 2000, there were five robberies of post offices (8 years). In 2007, there were three conspiracy to rob offences (9 years 8 months). There were also burglaries and other dishonesty offences. The Judge considered it was a Level 2 robbery but disapplied the guidelines. Held. We start at 12 years, so with plea **8 years** not 10.

### **322.85 Persistent offenders Firearms, With**

*R v Fernandez* 2014 EWCA Crim 2405, 2015 1 Cr App R (S) 35 (268) D pleaded to two robberies and an attempt and three associated counts of possession of an imitation firearm. In the first two robberies, which were ten weeks apart, he entered a Lloyds Bank wearing a crash helmet and holding a plastic gun. He demanded money and money was handed over. He escaped on a bike. Just under £5,430 and just under £4,040 were taken. Two months later he did exactly the same but before any money was handed over,

someone in the bank, R, said, "Look you prick, why don't you just fuck off?" D said he would just start shooting and shoot through the glass and demanded money again. Money was handed over, but R said, "Fuck off you prick. It's a fake gun anyway, it's plastic." D said, "Chris bring the shooter in" as a bluff. D escaped on his bike empty-handed. R chased him and twice threw a fire extinguisher at him knocking him off his bike. D hit R with his helmet. D was chased by R and another and detained. Police found D's van nearby. In interview he denied the first two robberies. One of the cashiers had been subjected to six previous robberies and had suffered severe trauma. D had 35 previous convictions on 12 occasions. In 1986, when aged 19, he was sentenced to 5 years youth custody for armed robbery. In 1990, when aged 23, he was sentenced to 7 years for robbery. In 1995, when aged 28, he was sentenced to 11 years for robbery and two firearm counts. Held. The offences were pre-planned, D was disguised, vulnerable victims were targeted, the premises were vulnerable and D had caused terror. D was clearly dangerous. **17-18 years**, as given, was an accurate starting point. The Judge was wrong to deduct less than half when fixing the minimum term. With plea, life with a minimum term of **6 ½ years**.