

SEX OFFENCES: HISTORICAL Volume 2

330.6 *Buggery/anal rape*

Post-2014 guideline case

Att-Gen's Ref No 44 of 2015 2015 EWCA Crim 1330 D was convicted of four specimen counts of buggery, four rapes, seven indecent assaults/indecency counts/sexual assaults and ABH. D had a relationship with W since she was aged 15. He married her and W said he had a violent temper and was excessively controlling. She was afraid of him. Between 1982 and 1985, when he was 15-18, he encouraged his nephew, N, to masturbate him. This led to touching of N's penis, oral sex and after gifts, anal rape of N. N was then aged between 9 and 12. N treated D like an uncle. D made threats that if N told anyone, D would kill him. N didn't report the abuse because he thought D was a violent man. In about 2004, when his daughter, M, was aged about 9, D demanded she took an ash tray to his bedroom. When she did, he got out of bed naked and seized her. He forced her to suck his penis and then undressed her. Next he forced her onto his bed and raped her. M was told not to tell anyone. When M was between 10 and 13, D would touch her breasts, which was dealt by one specimen count. When S, another daughter, was aged between 13 and 15, he touched her breasts and genitals. It happened about once a month. On an unknown date, he raped W. She cried during the rape and it lasted 25 minutes. In 2014, he anally raped W. Also in 2014, S intervened in an argument and D hit her with his fist or hand. It caused bruising over a large area of S's cheek. That led her school to report the matter to the police. In interview, D made denials of all matters. He was now aged 48 with one trifling conviction. He had had a heart attack and there were indications he had been abused as a child. The pre-sentence report said D had a complete lack of insight into what he had done and was preoccupied with his sexual gratification. The risk of serious harm to family members and others was high. N had experienced significant psychological harm. He had attempted suicide and had become an alcoholic and drug user. The police considered the victims as part of a travelling community who found it difficult to talk to the authorities. The Judge was misled into believing the maximum for the historic buggery counts was only one year. Held. Bearing in mind his age when N was abused, the least sentence that can be imposed is **20 years** not 16.

330.7b *Incest*

R v GB 2015 EWCA Crim 1501 D pleaded (full credit) to incest and two indecent assaults. D was now aged 68 When he was a child he lived with his parents, V, his sister and two younger siblings. All six slept in the same bedroom. V was 15 months younger than D. When D was age 14 and V aged 13, D would touch V between her legs under her bedsheets. He would also digitally penetrate her. This lasted for six months and ended when the family moved house and V was given her own bedroom. Subsequently when D was aged 15 and V aged 14, he came home from work and went to V's bedroom. He told her to lie on her side and told her not to make a sound. He had vaginal sex with her but did not ejaculate. When he had finished he gave her a £1 note. V had a troubled adult life. She suffered from depression and self-harmed and made two attempts to kill herself. She blamed D for the breakdown of all three of her marriages. In 2008, V confronted D about the incidents and recorded admissions and an apology by him. D was of positive good character and had nine letters of support from his family including V's daughter who he had looked after at V's request when V was aged 18. D has supported the whole family financially including V. He paid for one of her weddings and took her on family holidays. Held. The maximum sentence for incest at the time was 7 years and the maximum for the assaults was 2 years. The modern equivalent offences would be [Sexual Offences Act 2003 s 25](#) (sexual activity with a child family member). The current guideline provides a starting point of 18 months DTO when there is penetration. In cases where there are no aggravating factors the starting point is a community order. The

guideline also states that for younger offenders, that is those under 17, a court should consider a lower starting point because of the offender's age and maturity. There were no aggravating factors here and the disparity in age was small.

D is not being sentenced as a 15-year old youth. It is necessarily artificial for a court to put itself directly into the position of [sentencing him as if he was]. The court must do its best. Today a 15-year-old offender might receive a non-custodial. D had not contributed to the delay [by threats etc.]. He had lived an honest and industrious life for 50 years. He had been of considerable assistance to his family. He is remorseful. We do not overlook the harm suffered by V, but an immediate custodial was wrong in principle. Because D had served 11 weeks, we substitute a community order with a one week residential condition.

Note: The Court did not say they had factored in the early acceptance of guilt and the full plea discount which would be a significant factor. Ed.

330.8 Indecent assault Victim(s) under 10 Defendant then aged 21+ 3+ years' custody

Post-2014 guideline case

R v JW and KW 2015 EWCA Crim 572 D was convicted of three indecent assaults, four gross indecency offences, two watching sex act offences, one engaging in sexual activity, two sexual assaults, two cruelty offences and an ABH. The offences took place between 1988 and 2013 against his children and grandchildren. When V1 was aged about 6, D and another pinned him to a bed, took down his trousers, squirted washing up liquid over his anus and inserted the tip of the bottle into the anus. V1 felt he had been cut. When N was aged between 5 and 13, D showed him pornographic films, while D masturbated in the presence of V1 and other children. When V1 was aged 10-11, D told his wife K, to remove her lower clothing and told V1 to lick K's vagina. V1 when aged between 11 and 13, watched D and K engaging in sexual conduct. D tickled and kissed V2, who was aged 8 to 9. D also rubbed her knicker area. D slapped, punched her and pushed her when V2 was aged 10. When V2 was aged 17, D punched and kicked her when she was on the ground causing bleeding. D threw hot coffee over V3, when he was aged between 6 and 12. D touched his visible erect penis in front of V3 when he was a little older than the other offence. The other offences were similar. V1 went on to commit the most appalling series of sexual offences for which he was given life. The Judge said a) D was without moral purpose, b) he never cared or loved or disciplined V1 and c) the impact on the children and grandchildren was catastrophic with extreme psychological harm. **15 years** in all, not 19.

330.8b Penetration Child under 10 Defendant aged 21+

Post-2014 guideline

R v P 2015 EWCA Crim 1320 D was convicted of six specimen indecent assaults. Between 1983 and 1986, D was a close friend of V's father and was a regular visitor. V was aged between 8 and 10. Once a week, while V's mother was preparing the evening meal, D and V would play fight and then D would push V against a sofa and touch and digitally penetrate her vagina under her clothes. This stopped when V went to secondary school. V was never threatened. She was however adversely affected and later had difficulties in forming relationships. D was now aged 70 and of good character. There were five character witnesses. The pre-sentence report said he presented a low risk of offending and recommended a non-

custodial penalty. The Judge described him as an unofficial uncle. Held. There was devastating long term impact for V. The Judge should have given more weight to D's good character and that there was no offending for 30 years. **8 years** in all not 10.

330.8c *Digital/oral penetration Victim(s) aged under 10* *Defendant then aged 16-20*

Att-Gen's Ref No 57 of 2015 2015 EWCA Crim 1762 D was convicted of two indecent assaults and two indecencies with a child. When aged 20 or 21 he lived opposite V, aged 7 or 8. When babysitting V, D played what he called a game which ended with both of them fully naked. They touched each other's penises. Later with V's mother's permission, D took V to an isolated wooded area. D produced his erect penis and made V masturbate him. At the same time D touched V's penis and told V to kiss it and to open his mouth. He held V's head back and put his penis in V's mouth and thrust it back and forth. The impact on V was lasting and severe. He suffered with depression and suicidal thoughts. Recently V visited D and assaulted him. D was now aged 48 and had previous convictions including arson which was the only one he was given custody for. There were none after 1991 and no sexual ones. D was injured in a motorcycle accident and was on disability benefits. Held. We consider the modern appropriate guideline would be the sexual assault of a child under 13 (section 7) one. With the severe psychological harm the case would be in Category 1A. The last count was aggravated by the breach of trust, the victim's age was significantly below 13, the isolated location and that D ejaculated. The lack of later sex offending and D's personal difficulties were mitigation. **5 years** was indeed lenient but not unduly lenient.

330.8d *Digital/oral penetration* *Victim(s) aged 10-12*

See also: *R v W* 2015 EWCA Crim 569 (Plea. Plea discounts, full and 25%. Three indecent assaults. Two sexual activity with a child counts. Sexually abused four boys aged between 11 and 15 over 15 years. Oral sex. No complaints. Evidence in photos. 13 indecent photograph counts. Four other child sex offences. A pervert justice count for destroying a hard drive with photos on it. D now aged 49. **8 years** not 11 years 8 months.)

330.10b *Digital/oral penetration Victim(s) aged under 10* *Defendant then under 16*
Post-2014 guideline case

R v CG 2015 EWCA Crim 316 D was convicted of three indecent assaults dating from when V was aged between seven and nine and D was aged between 11 and 13. The counts involved two occasions when V sucked D's penis and one occasion when D put his penis between V's legs. He started with a dare which required V to kiss D or his friend. The dares escalated to digital penetration and other forms of sexual touching. V reported these matters when D was aged 19. He was now aged 29 and was serving a 14-year extended sentence for a section 18 wounding. He had no sex convictions. The Judge decided the case was in Category 1A and made the sentence consecutive to that sentence. Held. There is something slightly repugnant about sentencing an adult for offences committed when he was a child or young teenager. The maximum D could have received at the Youth Court if prosecuted [at the time] was two years. That is not conclusive but we take it into account. **2 years** not 4.

330.11a *Digital/oral penetration* *Victim(s) aged 10-12* *Defendant then aged 21+*

Att-Gen's Ref No 52 of 2015 2015 EWCA 1581 D pleaded on the day his trial was listed to seven indecent assaults and four indecency counts. When D was aged between 25 and 30, he abused his sister, V1 who was then aged between 11 and 15. On five occasions, once on each year, D digitally abused V1. On two occasions he rubbed his erect penis on her vagina when she was aged 13 and 15. He also asked his brother, V2, V1's twin, aged 11 to perform oral sex on him. V2 refused in vehement terms and ran off. D was then married with children. D was now aged 68. When the offending ceased he had not offended

again. D had some health problems. The trial process was delayed and this was very stressful to the victims. Held. There were no threats of violence or force. V2 was not touched. The victims were vulnerable. In some cases D was brought to ejaculation. The starting point should have been **at least 6 years**. 10% credit makes 5 years 4 months. Because D had complied with his supervision we make it 5 years.

330.11c *Indecent assault* *Victim(s) aged 16+*

R v Kerr 2015 EWCA Crim 1234 D, a teacher, was convicted of three indecent assaults committed between 1999 and 2002 or 2003. Two were against his pupils. D was highly regarded and popular. He was an enthusiastic supporter of extracurricular activity. In 1999, following an allegation of sexual misconduct which was not sustained, D was warned not to invite pupils unaccompanied to his home. He developed a particularly close relationship with V1 who had personal difficulties at home. They would share a shower together naked. V1 found this uncomfortable. When V1 was aged 15 or 16 he complained of some muscle pain. D took V1 to his home and put V1 on a bed and massaged his back. Next he pulled down his lower clothing and massaged his naked buttocks and touched his anus for about five seconds without penetrating it. V1 said he did not want to be touched there and D stopped. On the pretext of helping him with a bad exam mark, D invited V2, aged 17, to his home. They played squash and showered naked afterwards. Next, D took him to a pub and bought him two pints and drove V2 to his home. V2 complained of pain from the squash game, and D said he would give V2 a massage. D rubbed V2's back with oil for five minutes and then pulled D's trunks down exposing his bottom. D told V2 to close his eyes and turned him over and massaged his penis for 30 seconds. V2 then left. V2 complained and D resigned as a teacher. Other pupils disapproved because they had lost a popular teacher. V3, aged 17 was openly gay and was not a pupil of D. He declined to shower with D. D called him to his office to ask why. Later he asked V3 to have a coffee in his house. There he tried to kiss V3. V3 said he was not going to kiss D. D said it was acceptable and tried to hug and kiss him. V3 resisted. D was aged 53, with no convictions. V1 and V2's victim impact statements focused on the stress of the trial. Held. There was obviously a clear breach of trust. For V2, there had been planning and the supply of alcohol. There was high culpability. V1 and V2's offences were Category 2A. V3 offence was Category 3. The Judge was entitled to make the sentences consecutive. For V1, 2 ½ years, for V2, 2 years, and V3 6 months, making **5 years** in all not 7.