

331.16 Extended sentence

R v D 2015 EWCA Crim 1456 D pleaded (full credit) to five counts of making indecent photographs and six counts of possession of indecent photographs. Police on a SOPO check visited D at home. He tried to put them off saying he was expecting guests. In his bedroom they found various USB sticks in a vase and one in his hand. About 44,000 indecent images were found. They were categorised as follows:

	Category A	Category B	Category C
Possession offences	24	66	21,864
Moving images	22	2	6
Making images	29	66	22,633
Moving images	29	2	14

The age range of the children was from 4 to 13. In interview, D explained he downloaded the images straight onto a USB stick. In 2010, D pleaded to 18 offences of making or possessing indecent photographs. He was given 28 months and a SOPO. He had breached one of the computer conditions but no indecent images were found. The pre-sentence report said D had a history of mental health difficulties and there was a high risk of serious harm to children. There was however a clear motivation to address his behaviour. A psychiatrist said D had an adjustment disorder. The Judge put the case in Category A and passed an extended sentence (4 years custody and 2 years extended licence). Held. For an extended sentence there must be a close link between the type of offending and the serious harm that would be occasioned. Here there was no escalation in the seriousness of the offences committed. The level of image was essentially the same as the previous time. There was no suggestion D actually took or distributed the photographs. There was no evidence there was a potential for contact offences. We quash the extended sentence. **18 months.**

331.20 Category A Penetration Possessing 1,000+ images Post-2014 guideline case

R v Nestoros 2015 EWCA Crim 1424 D pleaded (full credit) to ten counts of making and possessing indecent images and two counts of possession of prohibited images. Police visited D at home and he was candid and helpful. Over two years he had downloaded 4.2 million images. 10,000 were graded. 5,000 were grade A. 643 were grade B. 2009 were grade C. There were 60 prohibited images. There were 463 Category B moving images and 1,000 Category C moving images. D was 64 and in 1989 he was fined £75 for possession of one indecent photograph. He had chronic health issues which required three-monthly visits to a hospital. The defence said it was difficult to see how he could have used so many images. Held. The guidelines give a starting point of 12 months. The Judge must have started at more than 7 ½ years. We start at 4 years, so with the plea, **2 years 8 months** not 5 years.

R v E 2015 EWCA 1599 D pleaded to 32 offences of indecent photographs of a child and an extreme pornographic image count. Police searched D's home and found on various devices about 2,600 indecent images. There were 394 Category A images, (39 moving); 535 Category B images (17 moving); and 1,674 Category C images (36 moving). There was oral sex, vaginal sex and a child performing oral sex on a dog and dog penis in a child's vagina. For the Category A offences, the children were aged 4/5 years to 10/11. For the Category B offences, the children were aged 3/4 years to about 12. The Category C offences included children as young as 12 months. D was aged 41 and in good and stable employment.

There were testimonials. In 2008, D was sentenced to a community order for making an indecent photograph of a child. He received a police caution for a breach of his notification requirements. The Judge noted the following aggravating factors, a) the children's ages, b) the children's distress, c) the number of images, d) the moving images, e) the large number of different victims, f) the convictions, g) D's notification period ended shortly before these offences were committed and h) D had been involved in a paedophile Internet chat room. Held. We start at 4 ½ years not 6, making **3 years** not 4.

331.20b *Category B*

R v D 2015 EWCA Crim 1456 D pleaded (full credit) to five counts of making indecent photographs and six counts of possession of indecent photographs. Police on a SOPO check visited D at home. He tried to put them off saying he was expecting guests. In his bedroom they found various USB sticks in a vase and one in his hand. About 44,000 indecent images were found. They were categorised as follows:

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The age range of the children was from 4 to 13. In interview, D explained he downloaded the images straight onto a USB stick. In 2010, D pleaded to 18 offences of making or possessing indecent photographs. He was given 28 months and a SOPO. He had breached one of the computer conditions but no indecent images were found. The pre-sentence report said D had a history of mental health difficulties and there was a high risk of serious harm to children. There was however a clear motivation to address his behaviour. A psychiatrist said D had an adjustment disorder. The Judge put the case in Category A. Held. [As there were so many Category C images] it was a Category B case which reflected an overall assessment, so adjusting for his previous convictions, **18 months** not 6 years extended sentence (4 years custody and 2 years extended licence).

331.22 *Victim unaware of filming/Images of associates misused/Breach of trust*

Post-2014 guideline case

See also: *R v GW 2014 EWCA Crim 2471* (Pleas to 29 counts of voyeurism and making indecent photographs of children, aged 9-17. Deputy-head at school photographing pupils and other children elsewhere. Internet programme to defeat police detectors. Nearly 16,500 images, almost all at level 1. 26 moving images. Exemplary good character. We start at 6 years, so with plea **4 years** not 5.

331.30 *Persistent offenders/Previous image convictions*

R v Kerry 2015 EWCA Crim 827 D pleaded guilty to three counts of making indecent photographs of a child and three counts of distribution of such photographs. He sold his phone and the new owner found it had five indecent images of children on it. One photo was Category B and four were Category C. D told the police he liked young boys and had requested images of young boys from other men. In recent years he had taken M-CAT which had increased his sexual arousal. D was aged 52, and between 1982 and 2005, he had nine court appearances for 51 offences, including four buggeries, two gross indecencies, 14 indecent assaults on boys under 16 with 63 TICs, five indecent assaults on girls aged under 13 and a

conspiracy to commit gross indecency (given 8 years). He breached his licence and was not released until March 2013. The pre-sentence report said there was a very high risk of him committing 'further offences of this nature'. The psychiatrist said his risk of sexual offending had reduced in recent years. The Judge departed from the guideline and gave D an extended sentence with a global 4-year custodial term and a 6-year extended licence. Held. D is a prolific sex offender and throughout his life has failed to abide by his licence conditions. The court should always have a note of the guidelines. The Judge was entitled to conclude that D satisfied the dangerousness criteria, but applying the guideline, **2 ½ years**, with little discount for the plea because of the weight [of evidence] against him.