

332.25

Post-2014 guideline cases

R v S 2014 EWCA Crim 2980 D pleaded (almost full credit) to sexual activity with a person with a mental disorder procured by an inducement (section 34(1)). V was aged 22 and did not have the capacity to make decisions for herself. She had an IQ of 71/72. V had previously been in an abusive relationship and had a son for whom she wanted parental access and custody. When V talked about this she would get upset. She was a very vulnerable lady. In 2010, D met V's parents and befriended them. He saw them regularly and encouraged V to visit him to meet his daughter who was the same age as V. D said he would help V and listen to her problems. It was agreed V could stay with D and did so. V and D had sex. When returning V home, D asked V's mother, "How she would feel if V and I were in a relationship." She said she would not mind as long as V was not hurt. V's aunt, R, said it was up to V and then began to become increasingly concerned. The next day she asked why V was with someone old enough to be her father. D told R that X had contacted him and said he had a DVD of V¹ having sex with X. Further X had threatened to show the DVD to the father of V's son and V's family and this would make it more difficult for V to win her court case. It transpired the DVD was the reason V had sex with D. D said he now had bought the DVD with copies from X and that V was told she would never see her son if the court got a copy of the video. V said to the police D had threatened her with the DVD if she did not have a relationship with him. The prosecution were unable to say whether the DVD existed. D was then aged 48 and now aged 51. He was then of good character but since then had a conviction for harassment and wasting police time. He was of limited intellectual capacity (with an IQ of 61) and fragile mental health. The judge found D had used V's vulnerability to manipulate, threaten her and blackmail her. Held. There was an unpleasant side of the deception. We are cautious about ascribing the whole responsibility for any serious psychological harm suffered by V to D. It was a Category A offence. The effect on the victim moved it to Category 1 giving a 5 year starting point. There was no need to move the case higher, so 3 ½ years not 5.

R v Taylor 2015 EWCA 322 D was convicted of five counts of sexual activity with a person with a mental disorder. He was a care manager at hospital for those with learning difficulties complicated by mental health difficulties. One count was a specimen count covering three incidents of vaginal intercourse with V1, who was aged 24-25 at the time. She suffered from mental retardation, post traumatic disorder and an emotionally unstable personality disorder. Another count dealt with D touching V1's vagina under her underwear. These offences took place when D took V1 back to his house within the hospital grounds. The Judge said V1 craved attention and friendship which is why D targeted her. D also unlocked the door of V2's room and had sex with her. The observation window was covered. She was aged 25-26 with an emotionally unstable personality. He also took V2 cycling and had sex with her in a secluded place. In 1999, D was warned about inappropriate behaviour to staff. D was aged 51 with no convictions. He had lost his accommodation. D was suspended in May 2007, charged in January 2013 and he was not convicted until April 2014. The Judge put the offending in the top category. He considered the aggravating factors were the high degree of planning, the repetitive nature of the offending, there were two victims, steps were taken to conceal the evidence and the warning given. Held. These offences were

¹ The judgment appears to suggest the DVD was about S and X having sex but in the context of the case that would not make sense.

extremely grave and were an appalling breach of trust. The victims were extremely vulnerable and fragile individuals. Their recent deterioration was attributable to the offences. We pay some regard to the fact that under the guideline that was enforced at the time, the penalties were less. The delay was a mitigating factor. The sentencing for each victim (V1 6 years and V2 6 ½ years) was at the very top of the bracket. Because of totality we reduce the sentences to 4 years 9 months and 5 years 3 months because of totality making **10 years** not 12 ½ years in all.