

327.6 Abuse of trust

Att-Gen's Ref 2018 Re Blake 2018 EWCA Crim 384 D pleaded (25% discount) to 11 counts of indecent assault. In 1975 when he was a teacher at a boarding school he touched the genitals of a pupil, J, under his nightwear in a dormitory. On two occasions D pressed his genitals against J in a class. J was then aged 13 or 14 and had lost his father when aged 5. He saw D as a father figure. Between 1980 and 1982, when he was a housemaster, D committed three similar offences against X. Between 1982 and 1984, when T was aged 11 or 12, D touched his genitals in a dormitory causing T's penis to become erect. D tried on another occasion and T told him to go away. In 1983 or 1984, D tickled Y's stomach under his pyjama top in a dormitory. Two of the boys said they were affected by the abuse and suffered anxiety and sleeplessness. In 2015, D pleaded to three offences against R, who had been of a similar age to the other boys. D had interfered with R's genitals under his pyjamas. At the time D made some admission to other offending but this was not investigated. It did not refer to J, X, T or Y. D received 18 months and never worked with children again. The prosecution said the offences were aggravated by being committed at night, in a dormitory in the presence of other children and for some when under the influence of alcohol. Held. There was some mitigation for the earlier non-specific admissions. The Judge's 4 years did not reflect the four vulnerable victims, the serious breach of trust and all the offending. **5½ years**.

327.11 Digital/oral penetration Child then aged under 10 Defendant then aged 25+

Att-Gen's Ref 2018 Re Griffith 2018 EWCA Crim 977 D was convicted of 10 counts of indecent assault and an indecency count all involving V. V was aged 6 when her mother, R, started a relationship with D. D had recently been released from prison. He assaulted R, which V saw, and sexually abused V. While R was at work, D rubbed his penis on V's thigh until he ejaculated. After taking heroin, D repeatedly entered V's room and digitally entered her vagina when V pretended to be asleep. D would masturbate himself and place his penis in V's mouth until ejaculation. V said she cried herself to sleep. Sometimes D took V downstairs and abused her in the same way. The regular digital penetration caused V vaginal pain. The abuse occurred about once a week over four years. It ended with D masturbating in front of V (the indecency count). D's relationship with V stopped in about 2009, when R discovered he was involved with another woman and had two children by her. In 2015 V, now aged 28, reported the abuse. D was now aged 53 and had 33 previous convictions on 17 occasions. They included: a) in 1987, robbery, possession of a firearm with intent and wounding (11 years), b) in 1998, 26 months for burglary, and c) other offences (26 months). His last conviction was in 2002. He had no previous conviction for sex offences. In 2016, D suffered a major heart attack. The Judge made the offence Category 2A. Held. **15 years** in total, not 12 years, Offender of Public Concern Order, based on three 5-year sentences for three of the offences consecutive, with a 3-year extended licence.

327.23 Physical etc. Child then aged 10-12 Defendant then aged 25+

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and never worked with children again. The prosecution said the offences were aggravated by being committed at night, in a dormitory in the presence of other children and for some when under the influence of alcohol. Held. There was some mitigation for the earlier non-specific admissions. The Judge's 4 years did not reflect the four vulnerable victims, the serious breach of trust and all the offending. **5½ years**.

R v MD 2018 EWCA Crim 829 D was convicted of indecent assault. In the summer of 1959, when D was in his late 20s, he went on a family holiday to Wales. D shared a bed with his 12-year-old nephew, V. In the middle of the night D put his hand inside V's underpants and tried to masturbate him. V pulled the hand away and went to sleep in another room. D was now aged 87 with many medical issues and a good character. Held. This was an isolated incident which was out of character. The circumstances were exceptional, so **9 months'** suspended not 2½ years.

See also: *Att-Gen's Ref 2018 Re Burr 2018 EWCA Crim 737* (D pleaded to nine counts of indecent assault. Some counts were multi-incident counts. Between 1969 and 1975, D was a house master at a boarding school and he touched four boys aged 11-13 or 14 on their bottoms and crotch area etc. Sometimes it was over clothing and sometimes under clothing. D was now aged 73, with a positive good character. The worst incidents were: a) undoing the breeches of a boy he had summoned to his room, and touching and rubbing his penis, and b) opening a 13- or 14-year-old boy's flies and masturbating him. Held. It was a gross breach of trust. We start at 10 years, so with plea **79 months** not 4 years.)