

241.6 Conduct of the defence during a trial

R v Begley 2018 EWCA Crim 336 D was convicted of assault by penetration. He digitally penetrated V. V suffered extreme stress when giving evidence. She had two panic attacks and was violently sick. Her evidence lasted nearly a week, due to illness of others, breaks, her refusal to continue and the need for V to be assessed. The Judge considered the case was Category 2B because she was vulnerable due to her personal circumstances and that she had to relive the offence. Held. The vulnerability must be particular and must be found at the time of the offence. It must be remembered D was acquitted of raping V and another assault by penetration of V. D was not to be punished more heavily because of the way he had conducted his trial.

241.39 Mentally disordered defendants

See also: *R v H* 2018 EWCA Crim 1535 (D pleaded to assault by penetration and other child sex offences. She was convicted of conspiracy to rape. She digitally penetrated V, a 2-year-old, on two occasions. D was related to V and D helped ‘to look after her’. She acted with C, who was given a 16-year extended sentence (12 years’ custody 4 years’ extended licence). Some of the offences were committed by D while C watched on Skype. D encouraged C to rape V. Both D and C had significant mental problems about which the doctors did not agree. Some thought D was unfit to plead. D had an IQ of 59 and her social ability was placed in the borderline range of functioning. [D’s age was not revealed.] She had no previous convictions. In prison, D displayed bizarre sexualised behaviour. One doctor thought she was unsuitable for prison. The Judge gave D a 60% discount from the appropriate sentence for an adult without D’s difficulties. Held. We do not think the Judge could or should have given a greater discount. Offender of Particular Concern Order (6 years’ custody 1 year’s extended licence) upheld.)

241.60 Socially challenged, Defendant

See also: *R v H* 2018 EWCA Crim 1535 (D pleaded to assault by penetration and other child sex offences. She was convicted of conspiracy to rape. She digitally penetrated V, a 2-year-old, on two occasions. D was related to V and D helped ‘to look after her’. She acted with C, who was given a 16-year extended sentence (12 years’ custody 4 years’ extended licence). Some of the offences were committed by D while C watched on Skype. D encouraged C to rape V. Both D and C had significant mental problems about which the doctors did not agree. Some thought D was unfit to plead. D had an IQ of 59 and her social ability was placed in the borderline range of functioning. [D’s age was not revealed.] She had no previous convictions. In prison, D displayed bizarre sexualised behaviour. One doctor thought she was unsuitable for prison. The Judge gave D a 60% discount from the appropriate sentence for an adult without D’s difficulties. Held. We do not think the Judge could or should have given a greater discount. Offender of Particular Concern Order (6 years’ custody 1 year’s extended licence) upheld.)

241.63 Totality Defendant sentenced on separate occasions

R v Craggs 2018 EWCA Crim 1117 In October 2017, D pleaded to two dwelling burglaries, causing serious injury when driving dangerously and associated other offences. These offences were committed on 28 August 2016. D received 7 years 2 months in total. The sentence was made consecutive to a 5-year sentence imposed in December 2016 for two burglaries committed on 20 November 2016. No complaint was made about the length of either sentence, partly because D was a ‘prolific and professional burglar’. D appealed the total sentence, saying 12 years 2 months in total (15 years before the plea discount) was too long. Held. We don’t know why D was not charged with the August 2016 offences until March 2017. para 23 We need to look at the appropriate sentence for the overall offending if all the offences had been dealt with on the same day. The total sentence should not be

disproportionate, although it was not purely a mathematical exercise. The overall sentence was disproportionate, so we keep the sentences the same but make the sentences passed on the two occasions concurrent. [With the 22 months D had served, which was the equivalent of a 44-month term, and the 7 years 2 months' sentence, the total was the equivalent of a 10 years 10 months' sentence.]