314.17a *Attempted rape Judicial guidance*

Att-Gen's Ref 2018 Re Zaheer 2018 EWCA Crim 1708 D was convicted of attempted rape of V. Held. A sentence for an attempted offence will ordinarily be less than a sentence for the substantive offence itself. But the degree of reduction will depend on the circumstances, including the stage at which the attempt failed and the reason for non-completion. Here D only stopped because V had succeeded in frustrating his designs.

Note: One of the reasons why there needs to be a significant reduction for an attempt is that V did not suffer the actual penile entry. Ed.

For more detail, see **314.18**.

314.18 *Attempted rape*

Att-Gen's Ref 2018 Re Zaheer 2018 EWCA Crim 1708 D was convicted of attempted rape. D owned a mobile repair shop. V, who was aged 16, took her mobile to be repaired. V returned three days later as the shop was closing. She spoke to D, who said she should come back between 7.30 and 8.00 pm. At 7.40 D called V and said the mobile was ready for collection. At 7.45, she returned and only D was there. The shop shutters were half down. For 10 minutes, D remained behind the counter. D said the phone would not be ready for another 10 minutes and tried to flirt with her. When V complained about the cold, D shut and locked the front door. D put his arms round V and said he could do a very good deal for her and he wanted a relationship with her. V said she was just there for her phone. D continued to flirt with V and V felt sorry for him and gave him a hug. He put his arm under V's outer clothing and took her to the rear of the shop saying he was going to show her some jewellery. D put his arm around her and she said, "Don't touch me". He led her to a storage area and put his hands all over her body. V was scared. She had had no previous sexual experience. D said he was going to the lavatory and V headed for the door. D met her and led her back to the storeroom. He undid his trousers, which fell to his knees while he was standing behind her with his body up against V's. D put his hands under her top and touched her bra. V went to the lavatory followed by D. She went to the front door and found it locked. The CCTV shows her resignation as she returns to the rear of the shop with D. She begs D not to do 'this'. D lifted up her skirt and pulled her knickers down. Next he put his fingers around V's vagina. He tried to insert his penis and she 'made it not go in'. Several attempts failed. D rubbed his penis against her vagina. She asked why he was doing this and he said he was sorry. D asked her not to tell anyone and gave her £20 and her phone. D then unlocked the door and V left. The CCTV showed V was visibly upset. There was about 19 minutes before the first physical contact and 14 minutes afterwards. For four months V did not want to go out. She left her A-level course. There were sleepless nights and flashbacks and she would cry uncontrollably. When D was arrested he claimed not to have been present. D was now aged 25 with no convictions. He had references. Held. The Judge was able to place the case in Category 3B. It was close to 2B and there was planning, a significant age gap and an element of false imprisonment. The Judge was able to start at 6 years. However, as D made several attempts and was stopped by V, the Judge's reduction was too great. Because it was 'pretty close to the full offence' and the aggravating factors, we move to **5½ years** not 3 years 9 months.

314.23 *Digital penetration Cases*

R v Begley 2018 EWCA Crim 336 D was convicted of assault by penetration. He was acquitted of rape and another assault by penetration count. D was in a club with a friend and the two socialised with V and her two friends. V left and D and V sat on the steps of the club. V asked for D's phone number and was given it. They kissed. D suggested they go to a friend's house, but V declined. V said goodbye and walked away. D followed her and they kissed again. In a nearby alleyway D digitally penetrated V. She

tried to push him away. V said someone was coming and D stopped. V was distressed. In interview D said he had drunk 10 bottles of lager and a few shots. D called V a lying bitch yet expressed remorse. D was aged 22, in work and of good character. He was assessed as having a high risk of reconviction for a sexual offence. 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 found at the time of the offence. This was a Category 3 case aggravated by the drink, the timing of the offence and the location. **18 months** not 4 years.

314.30 ***Fathers/Stepfathers etc.*** ***Child aged 13-15***

R v JCD 2018 EWCA Crim 1286 D was convicted of rape, indecent assault, sexual assault of a child aged under 13, two counts of sexual activity with a child and two counts of sexual assault. All these counts involved V1 and all except the last one were multiple occasion counts. D was also convicted of sexual assault of a child under 13 and three counts of making indecent photographs of a child (including eight images at Level A). These counts involved V2. [How the two sets of counts matched the evidence is not clear.] V1 was D's stepdaughter and the offending was from when she was aged 6 to 15. V2 was a 9-year-old friend of V1. D was residing at the same caravan park where V2 was staying. Both V1 and V2 spent the night at D's caravan. While V2 was asleep, D pulled down her pyjamas and touched her vagina. V2 told her mother. V1 was spoken to and she revealed that D had abused her for 10 years. In the early hours, D would come into her room, often after he had been drinking, and move her hand on his penis. He would hold open her mouth and insert his penis. This happened from when she was 13-15. D also performed oral sex on V1. After this D would visit the bathroom and come back to her bedroom and say how sorry he was. In interview D denied the incidents. His phone revealed Internet searches about child sex and bestiality. There were indecent photographs on D's laptop. The impact on V1's mother and V2 had been profound. D was now aged 50 with convictions for assault and battery. There were no sex convictions. The pre-sentence report recorded D's denials and concluded D posed a high risk of harm to girls. The Judge found D had groomed V1 to ensure her silence, there was a flagrant breach of trust and D's denials were a grave cause of concern. Held. It would have been surprising if the Judge had not found D dangerous. Standing back and looking at the whole case, 21 years' extended sentence (**16 years**' custody 5 years' extended licence) not 25 years' extended sentence (20 years' custody 5 years' extended licence).

314.34 ***Historical cases etc. Victim then aged 10-12*** ***Defendant then aged 21+***

See also: *R v Jones* 2018 EWCA Crim 1499 (D was convicted of 11 buggery offences, two attempted buggeries[1] and 30 indecent assaults. He pleaded to seven indecent assaults. D was a football coach who abused 11 boys from aged 8 upwards between 1979 and 1991. There was buggery of four boys when aged 11-13 and attempted buggery on three boys aged 11+. One boy was buggered more than 100 times. Steps were taken to stop boys reporting incidents. D was now aged 64 and had suffered from cancer, which meant he had to be fed through a tube. In 1995, in the USA, D received '3 or 4 years' for indecent assault. In 1998, D received 9 years for indecent assaults and buggery of young boys. There was no reoffending since the US offences. An Offender of Particular Concern Order (**30 years'** custody 1 year's extended licence) was severe but not manifestly excessive.)

314.35 ***Historical cases etc.*** ***Victim then aged 13-15 Defendant aged 21+***

Att-Gen's Ref 2017 Re Joyce, 2017 EWCA Crim 1457 D pleaded to 15 offences on his trial date. They were two offences of attempted buggery of a child, 11 offences of indecent assault on a male and two offences of indecency with a child. There were four victims, then aged 12-14. The attempted buggery involved a boy, V, then aged 13 or 14 and an older boy when a 'degree of force was used'. Some of the offences were specimen offences. D had been a house parent at a boys' boarding school in Devon between 1980 and 1993. He was then aged between late-20s and late-30s. The school catered for boys aged between 11 and 16 with a range of difficulties and behavioural problems which meant they were unsuitable for mainstream schools. D's role as a house parent was pastoral rather than academic. Over

1 The judgment, when dealing with the facts, refers to attempted buggery of three boys.

a number of years, D committed a large number of sexual offences against a number of young boys at the school. Some of the victims would be taken out of their dormitories in the middle of the night to other rooms and masturbated by D. D would often give oral sex to the boys and sometimes get them to do the same to him. There were some attempts at anal intercourse by D but none succeeded. V was taken out of his dormitory up to three or four times a week. The offences took place mostly in a staff overnight room at the school but also in D's cottage, his car and the school van. D gave one boy a motorbike and others chocolate and a £10 note. The victim personal statements told how the victims' lives had been ruined. D was now aged 66. He suffered from poor physical and mental health. Before his plea he had repeatedly denied any improper behaviour towards any of the victims. There had been police investigations in 1991, 2011, 2015 and 2017. In 1999, D had been convicted of six offences of indecent assault on two males under the age of 16 and had been sentenced to 3 years' imprisonment. The Judge gave a 10% credit for the late guilty pleas and made the sentences concurrent. He also indicated that he had taken into account the sentence of 3 years that D had received in 1999. Held. The Judge could have made all sentences concurrent, but the sentence had to factor in the totality of the offending. **14 years 4 months** not 7 years 2 months.

314.39 ***Intruder/Uninvited entrant rape***

R v Swift 2017 EWCA Crim EWCA Crim 2611 D was convicted of rape. He had known V and her partner for many years. In the early hours, D entered V's home while her partner had gone to the garage to buy some alcohol. V was with her 22-month son who was asleep. D got into V's bed and tried to engage in sexual activity with her. She pushed him away. D grabbed her hair and forced his erect penis into her mouth. V moved her head and D tried to insert his penis again. The two ended up on the floor and he simulated sex with her. He only stopped when her son woke up. V screamed at him to get out. Not long after, D was arrested in a drunken condition. D was aged 25 and had a relatively minor criminal record. V no longer felt safe in her home and the impact on her had been 'significant' and was likely to be long lasting. The Judge found: a) D had gone to the home for sex, knowing that V's partner would not be there, b) V was particularly vulnerable and c) the attack would have gone further had the son not woken up, because D had wet his penis with spit. Held. The attack lasted many minutes and was determined. D had used force. The offence was borderline Category 1 and 2 not 1. **10 years** not 12.

314.51 ***Racially or religiously aggravated offences***

Att-Gen's Ref 2018 Re Abdoule 2018 EWCA Crim 1758 D was convicted of an anal and a vaginal rape. D's 17-year-old sister, S, was best friends with V. D went on holiday to Scotland and unknown to D, S obtained the keys to the flat and held a series of parties there. At one, S and V were present with other young people and some alcohol was drunk, but not much. D returned home unexpectedly. After having some alcohol, at about 4 am, he went to the flat and evicted those there. He wasn't drunk. S and V were present. D remonstrated with S for the state of the flat and taking the keys. S was frightened of D, and S and V left the flat. They walked off in different directions. D got in his car and found V. He told her to get in the car. At that stage D intended to rape V. D brought her back to the flat on the pretext of making V tidy up the flat. D also lied saying that S was at the flat. D was frightened and felt she had no choice but to get in the car. She also trusted D as the brother of her best friend. D drove V to a shop and bought some alcohol and took V back to his flat. Once inside D locked V in the flat. D went to the kitchen and smashed a rolling pin on the floor. The inner handle was broken and a sharp 10-inch point was created. D instructed V to drink some of the alcohol. She declined. D didn't drink any and said V was boring. V was in tears and pleaded for D to release her. D held the rolling pin as a weapon. D ordered her upstairs and on her way there he poked the weapon in her stomach. He called her white trash. In a panic attack V was violently sick three times. While V begged to be allowed to leave, D made her lie on the bed still holding the weapon. He lay next to her and touched over and under her clothing. When V tried to get away he put the weapon to her neck. V said she was a virgin and D said, "You can't be, you are white". He told V to stop crying and pulled her top over her face. D removed both of their lower clothing. V was menstruating at the time. He tried to insert his penis in her vagina while she cried and while the weapon was still held to her neck. Then he turned V over and anally raped her causing

her extreme pain for several minutes. Next, he put V on her back and tried to rape her vaginally. She struggled and D put the weapon to her neck again. He succeeded in that and told V that she was not the only girl to be punished. After he had finished, D drove V to near her home. V was extremely distressed. In interview D claimed he was the victim of V's sexual advances and he pushed her off. D was aged 32 with relatively minor convictions which included ABH (7 months). There were no sex convictions. V now felt unsafe and was unable to talk to men or boys. The Judge concluded the offending was all about punishment and degradation. Held. V was right to describe the wooden knife as a weapon. The word abduction does not precisely describe D's conduct with him making V get in the car, but there was a distinct element of cunning and coercion. The incident was sustained, lasting about 2½ hours, there were threats of violence beyond what was inherent in the offence, V was vulnerable and half D's age. D was very much stronger than her. For culpability there was a degree of planning, the rape was racially aggravated, it was in D's home so V could not escape and there were threats to kill V if she reported the offence. It was a Category 1A case not 2A. There was no mitigation. The starting point was **15 years** which we substitute.

Note: I consider forcing V into the car and into the flat and then locking the flat door is clear evidence of an abduction. Fear can be as effective as a weapon. V felt she had no choice but to get in the car. Ed.

314.59a ***Two or more men acting together***

Att-Gen's Ref 2018 Re Mamaliga and Mamaliga 2018 EWCA Crim 515 D and M, who were brothers, were convicted of rape. At 7.15 am, they chatted on a canal towpath with V, who was on her narrowboat in Acton. The conversation lasted about five minutes and D and M were friendly. A few hours later the two returned intent on [raping] V. V invited them onto her boat and V went swimming. She wore a top and some leggings. On her return to the boat, she went to her bedroom and D asked to use her lavatory. V pointed to the bushes. D then seized her. M joined him and put her face down on the bed. They tied V's hands together, forced a towel in her mouth and her face was pushed into a pillow. V's tights and swimming costume were removed and her hands and legs were bound with shoelaces which the two had brought to the scene. One held V while the other put his fingers into her vagina. While one parted her buttocks the other tried to anally rape V. That failed only because V struggled. V was then raped vaginally. During the attack V was physically attacked and the scratches and bruises to her body, neck and face were the ABH. The attack lasted about 25 minutes. The two stole V's mother's jewellery, which was of great sentimental value to her. It was not recovered. D and M were identified by DNA from a French database. V thought she was going to die through asphyxiation during the attack. Her life was 'in ruins'. The attack had a psychological effect on her. D was aged 29 and M was aged 30. In 2012, both of them were jointly convicted of aggravated rape of a stranger in France. They each held the victim down while the other raped her. They had recently been released from prison after serving the 10-year sentence for that. Held. We agree with the Judge, the offence was beyond hideous, beyond horrific and beyond heinous. We place the cases in Category 1A not 2A, because of the extreme nature of one or more of the Category 2 factors. We are alert to the risk of double accounting of the aggravating factors which go to the categorisation but see grooming, the ties and the theft of the sentimental items as aggravating factors. We start at 15 years and with the aggravating factors move to 18 years, which makes a 24-year extended sentence (**18 years**' custody 6 years' extended licence) not a 20-year extended sentence (12 years' custody 8 years' extended licence).

Note: This case neatly shows a common misapplication of the guidelines. It is one of many cases where it should not make any difference which starting point is used, because the aggravating features for the lower starting point would be greater than for the higher starting point and both starting points should be increased to the same sentence, because the sentence is set by the facts of the case and the starting point is only an entry point. If the starting point in the guidelines is misapplied it can be the equivalent of a roulette wheel. These issues are particularly acute in murder cases, where the difference between a 15-year starting point and a 30-year starting point may be factually very small.

Where there are two or more aggravating factors which make the offence Category 1A, the Judge is not restricted from giving full effect to those factors. It is not double accounting to take into account the additional factors which categorise an offence. I consider the dominant sentencing factors here are: a) there were two men acting together with one holding V while the other raped and abused V, b) there was vaginal, digital and attempted anal rape, c) the sheer terror of the event, d) V's fear of being asphyxiated, e) V's arms and legs were tied up, f) the use of the pillow and the towel, g) the catastrophic effect the offence had on V, and h) the exceptionally relevant previous convictions. Having just been released from serving a sentence for a very similar offence must be worth 3 years extra. These factors (whether or not they go to categorisation) should raise the 12-year or 15-year starting point to 22-24 years. The Court mentioned the so-called grooming and the theft as aggravating factors, which are relevant, but the horrific nature of the rape needs to be properly reflected in the sentence. Ed.

314.69a*Victim(s) aged under 10 Defendant then aged 10-15*

R v H 2018 EWCA Crim 541 D pleaded to assault by penetration of a child under 13 and sexual assault on a person under 13. V was D's half-brother[2] and was then aged 5. D was then aged 12-13. V told his mother that D had been tickling him. When asked where, V replied it was on his neck. V also said, "He tickles my willy and sucks my willy." The mother asked if D touched V's bum and V said, "He touches my bum and puts his thing that he goes to wee in my bum." The police attended later that day and D said that he had had anal intercourse with V on three occasions and performed oral sex on him on five occasions. D was placed in foster care and his behaviour was exemplary. He had been fully compliant with his social workers, the police and psychologists. D was now aged 14 with no convictions. Despite D's early admissions, he was not charged with the offences until almost a year later. The pre-sentence report noted that D was ashamed and embarrassed about the offending and had experienced a number of traumatic events which had contributed to his offending behaviour and had a significant impact on his emotional, mental and psychological development. The report proposed a Youth Rehabilitation Order. The psychological report suggested that the impact of a prosecution on D's welfare, development and future prospects could be more severe than for many other young people, due to the fact that D had a physical disability and that he had experienced developmental adversity as a child. The Judge placed the case in Category 2B. The Judge reduced the 9-year starting point by half to reflect D's age at the time of the offending, saying that only a custodial sentence could be justified. He gave full credit for the pleas. Held. The Judge referred to the *Sentencing Children and Young People Guideline 2017* but did not consider whether the custody threshold was crossed before considering the *Sexual Offences Guideline 2014*. Nor did he refer to the specific sexual offences guideline within the *Sentencing Children and Young People Guideline 2017*, which set out five steps which should be followed in sentencing. Further, the Judge did not follow the recommendation of the guideline, which was to apply a reduction of half to two-thirds for those aged between 15 and 17 but to apply a greater reduction for those aged under 15. The 50% deduction the Judge did give was insufficient. The aggravating factors were: a) the disparity in age, the extreme youth and vulnerability of V, the effect on V and the repetition of the offending. The mitigating factors were: D's disabilities, his unstable upbringing, his steps to address his offending, his good character, the immediate admissions, D's youth, the remorse and the 1-year delay. There was no doubt that these were very serious offences against a young victim and that they caused serious harm. However, D himself was young and immature and pleaded early and has demonstrated a positive and fully co-operative attitude. **Youth Rehabilitation Order** not 3 years.

314.72 *Victim(s) aged under 10 Defendant then aged 25+*

See also: *R v Treavartha* 2018 EWCA Crim 1522 (D pleaded (full credit) to two rapes of a child aged under 13, an attempted rape of a child aged under 13 and seven other child sex offences. Between January 2014 and 2017, he abused three girls: LC, aged 7-9; BS, aged 11; and RL, aged 8-9. The rapes

2 The judgment also says D was V's step-brother.

were oral. The other offending included masturbating beneath LC, LC masturbating D, D licking LC's vagina, D touching BS's penis and D masturbating over RL. D was now aged 34.[3] LC and BS said the abuse had ruined their life. The Judge found planning, grooming and abuse of trust. The Judge passed a 23-year extended sentence (18 years' custody 5 years' extended licence) Held. That meant a pre-plea discount sentence of 27 years. With the three victims and considerations of totality we arrive at 22½ years. With the plea discount, 20 years' extended sentence (**15 years**' custody 5 years' extended licence.)

314.76 ***Victim then aged 13-15*** ***Defendant then aged 10-17*** ***Post guideline case***

R v S and N 2017 EWCA Crim 2208 S and N pleaded to two rapes and N pleaded to possession of an imitation firearm (30 months concurrent and no appeal). S was aged 15 years 9 months. N was aged 16½. In a friend's home V, aged 13, was shown a gun by N. N said it was a BB gun. S arrived at the house and the group were told by the house owner to 'move on'. The group left and V was told she wasn't going anywhere. N punched V in the cheek. V was told she had to kiss all the young men in the group and she couldn't go until she had done so.[4] Next she was told she had to expose her breasts, which she did under duress. One younger boy did not want to join in. He was made to undress down to his shorts. V was then forced to perform oral sex on S, N and another [who was presumably dealt with at the Youth Court]. S and N both ejaculated in V's mouth. The group then went to a restaurant. After leaving the restaurant, they again forced V down an alleyway and again forced her with threats to perform oral sex on N and S. The threat was that otherwise she would be vaginally raped by everyone and she would be stabbed. Eventually V was allowed home. In interview S and N lied. There were profound long-term effects on V. S had 13 offences on 11 occasions, including assaults, fraud, public order offences, drug offences and possession of weapons. Earlier on the day of the offence he had been in court and given a referral order for possessing a knife, damaging property and TDA. A psychological report said S had a troubled family upbringing with a history of emotional abuse and he lacked boundaries. S had a long history of poor attendance at school and was very troubled from a young age. The pre-sentence report said he actively encouraged what took place. N had an absent father and he was a carer for his ill mother. He was disruptive at school. The pre-sentence report said N had a lack of understanding of what he had done, calling it a joke. N accepted he took a lead in the threats. He had three convictions, one each for selling cannabis, heroin and cocaine. The Judge said the ordeal lasted about 5 hours and V was terrified. He made the case Category 2A with severe psychological harm to the victim. The Judge said for an adult the starting point would be 18 years. Held. This offending was terrible and was group offending. The two treated V as an object. The 18-year figure was correct. From that we give a 1/3 discount for their age. N's aggravating and mitigating factors cancel each other out. We give 10% for the plea as before. For S, who was younger than N, **9 years** not 11. For N, the leader, **10 years 9 months** not 12 years.

R v Storie 2018 EWCA Crim 501 D was convicted of three rapes, eight sexual assaults and three counts of causing a person to engage in sexual activity. In 2015, when D's wife died, a friend of hers, M, showed some kindness to D and they became friends. M had two sons, V1, then aged 15 to 16, and V2, then aged 14. D took V1 and V2 on holiday where all three of them shared two beds that had been placed together. One night, D pulled down V1's boxer shorts and started to masturbate him. V1 asked him to stop, which D initially ignored, but then did stop when V1 asked more forcefully. The offending continued over the next few months with D masturbating V1 every two weeks. D would stop when V1 told him to. Sometimes D would stay overnight in the family home and would text V1 with a message such as whether he would like a drink. D would use this as a pretext to visit V1 in his room. D performed oral sex on V1 even though V1 made it clear he did not want it. D would stop when asked but also said that he thought V1 was welcoming his actions. On one occasion D tried to insert V1's penis into his anus. He achieved partial penetration before V1 pushed him away shouting, "What the hell are you doing?" In 2016, V1 disclosed these offences to his older sister and D was confronted with them. He threw himself on the floor saying he could "not live with this". D then denied the allegation and left the

3 According to a news report.
4 It is not stated whether she did this or not.

family home. He next attempted suicide. The police became involved a week later. V2 was spoken to by police in the light of V1's allegations and denied that D had committed any offence against him. However, six months later V2 admitted to his mother that D had kissed him on the lips, masturbated him and penetrated him anally. Various offences of this nature were committed against V2 regularly over the space of year. D denied any sexual offending against V1 and V2. The victim personal statements spoke of the effect on their mental well-being, their ability to concentrate, which had impacted on their school studies, and their ability to trust and make friends. D was aged 54 at the time of sentence and had two previous convictions for indecent assault on a male under 14 years of age. When aged 19, D had been babysitting a child and had masturbated him and placed his finger in the child's anus. In 1983, D received a 2-year probation order. In the pre-sentence report, D continued to deny all offences and showed no remorse. The report identified D as posing a significant risk of harm to the public, particularly to adolescent males. The Judge placed the rapes in Category 2 due to the vulnerability of the boys and their relationship with D, and Category A. This gave a starting point of 10 years. The sexual assaults were placed within Category 2A. The aggravating factors were a) relevant previous convictions, b) the location of the offending, c) the presence of others, and d) there was ejaculation. Held. The number and nature of the offences with the insidious psychological pressure called for a long determinate sentence. We don't think this can be described as a 'campaign of rape'. The Judge was right to pass a global sentence on the rape count. **18 years** not 21.

314.87 *Weapon or other item used to frighten or injure*

Att-Gen's Ref 2018 Re Abdoule 2018 EWCA Crim 1758 D was convicted of an anal and a vaginal rape. D's 17-year-old sister, S, was best friends with V. D went on holiday to Scotland and unknown to D, S obtained the keys to the flat and held a series of parties there. At one, S and V were present with other young people and some alcohol was drunk, but not much. D returned home unexpectedly. After having some alcohol, at about 4 am, he went to the flat and evicted those there. He wasn't drunk. S and V were present. D remonstrated with S for the state of the flat and taking the keys. S was frightened of D, and S and V left the flat. They walked off in different directions. D got in his car and found V. He told her to get in the car. At that stage D intended to rape V. D brought her back to the flat on the pretext of making V tidy up the flat. D also lied saying that S was at the flat. D was frightened and felt she had no choice but to get in the car. She also trusted D as the brother of her best friend. D drove V to a shop and bought some alcohol and took V back to his flat. Once inside D locked V in the flat. D went to the kitchen and smashed a rolling pin on the floor. The inner handle was broken and a sharp 10-inch point was created. D instructed V to drink some of the alcohol. She declined. D didn't drink any and said V was boring. V was in tears and pleaded for D to release her. D held the rolling pin as a weapon. D ordered her upstairs and on her way there he poked the weapon in her stomach. He called her white trash. In a panic attack V was violently sick three times. While V begged to be allowed to leave, D made her lie on the bed still holding the weapon. He lay next to her and touched over and under her clothing. When V tried to get away he put the weapon to her neck. V said she was a virgin and D said, "You can't be, you are white". He told V to stop crying and pulled her top over her face. D removed both of their lower clothing. V was menstruating at the time. He tried to insert his penis in her vagina while she cried and while the weapon was still held to her neck. Then he turned V over and anally raped her causing her extreme pain for several minutes. Next, he put V on her back and tried to rape her vaginally. She struggled and D put the weapon to her neck again. He succeeded in that and told V that she was not the only girl to be punished. After he had finished, D drove V to near her home. V was extremely distressed. In interview D claimed he was the victim of V's sexual advances and he pushed her off. D was aged 32 with relatively minor convictions which included ABH (7 months). There were no sex convictions. V now felt unsafe and was unable to talk to men or boys. The Judge concluded the offending was all about punishment and degradation. Held. V was right to describe the wooden knife as a weapon. The word abduction does not precisely describe D's conduct with him making V get in the car, but there was a distinct element of cunning and coercion. The incident was sustained, lasting about 2½ hours, there were threats of violence beyond what was inherent in the offence, V was vulnerable and half D's age. D was very much stronger than her. For culpability there was a degree of planning, the rape was racially aggravated, it was in D's home so V could not escape and there were threats to kill V if she reported

the offence. It was a Category 1A case not 2A. There was no mitigation. The starting point was **15 years** which we substitute.

Note: I consider forcing V into the car and into the flat and then locking the flat door is clear evidence of an abduction. Fear can be as effective as a weapon. V felt she had no choice but to get in the car. Ed.

314.92 ***Defendant then aged 15-17***

See also: *R v SG* 2017 EWCA Crim 1501 (D pleaded to three assaults by penetration. Digital penetration of his sister on three occasions. She was aged 16. D was aged 14½-15 and of good character. Held. The proper sentence for an adult would be 5 years. 24 months' DTO not 30 months' detention.)

314.95 ***Mental disorder etc.***

Att-Gen's Ref 2018 Re Waddoups 2018 EWCA Crim 1711 D was convicted of four rapes. In 2014, D, then aged 20, and V, then aged 19 or 20, were students at a specialist residential college for those over 16 with learning difficulties. V's difficulties were more severe than D's. V had a severe language disorder with a language ability of about an 8-year-old. He did not have a proper understanding of sexual matters. D had autism spectrum disorder. One expert said he suffered from a personality disorder based on D's lack of empathy and disregard of social norms. D had an intermediary at trial. Twice D seized V round the neck, dragged him into V's room and removed V's trousers. D locked the door and raped V anally. D persisted despite V telling him to stop. The two other rapes took place in a shed in the college premises. D threated V that if he disclosed the offences D would assault V or rape his sister. V made a general complaint to staff but did not specify rape. They took no action. Later V told his mother about them and they were degrading and very painful. In the mother's impact statement for V, she said V had been profoundly affected and suffered nightmares. V was on medication and had bouts of uncontrolled crying every few days. Both V's parents had been seriously affected too. D was now aged 24 and of good character. The Judge made the offences Category 2B and gave D 7 years. Held. They were Category 2B offences with severe psychological harm to V. Because of the multiple Category 2 factors we move upwards. There was also: a) targeting of a vulnerable victim, b) ejaculation, c) the causing of V to leave the college, d) the threats made to stop reporting, and e) the harm to V's parents. The most important mitigation was D's mental health and his lack of maturity. The four rapes were a highly material factor. That factor elevates the case from Category 2B to 1B, so a 12-year starting point. The aggravating factors move that to 14 years. The mitigation moves it to **10 years**. The section 45A hybrid order was not challenged.

Note: The alternative approach is to have a pre-discount figure of 12 years (which is 50% more than the Category 2B starting point) and reduce it by 5 years for the mental problems (both concerning the offence and the future), D's vulnerability, his age and lack of maturity and his good character. That would arrive at the same figure as the Judge and go some way to keep the mentally ill and very vulnerable out of custody. This is particularly so as judges can't decide how hybrid orders are implemented. Ed.