

Due to a typesetting error, some of the footnotes in the book have been printed incorrectly. We have listed the relevant footnote corrections in these chapter updates.

Footnote number 102 should read: Powers of Criminal Courts (Sentencing) Act 2000 s 111

Footnote number 103 should read: Criminal Justice Act 2003 s 226A-226B as inserted by Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 124

Footnote number 104 should read: Powers of Criminal Courts (Sentencing) Act 2000 s 148(2)

Footnote number 105 should read: Sexual Offences Act 2003 s 103A as inserted by Anti-social Behaviour, Crime and Policing Act 2014 Sch 5 para 2 and Sexual Offences Act 2003 Sch 5

Footnote number 106 should read: A full discount from 11 years makes 7 years 4 months. Maybe the Judge just rounded down the final figure.

221.7 Dwellings

R v Surgenor 2018 EWCA Crim 357 D pleaded to aggravated burglary. H contacted D and told him that he could buy some nitrous oxide from V1. They both went to V1's cottage and H went inside. V1 was given the money but no nitrous oxide was supplied as V1 asserted that H owed him £200. This led to a row in which D punched V1. V1 contacted the police. At 6.40 pm the same evening, V2, who lived at the same address as V1, discovered five youths in the hallway of the property. Their faces were covered and at least three of them were holding pieces of wood. One of the group demanded money and V2 said it was nothing to do with him. V2 was struck across the legs with the wood and the group fled in a car driven by D. D was aged 19 and had no previous convictions. After he had pleaded guilty, D went to live with an aunt in order to distance himself from his associates. Many references spoke of an excellent work ethic that D developed whilst working with his uncle. D's aunt said that the burglary had been "a wake-up call" for him. D had also done much work in the community both before and after his guilty plea. The basis of plea was that D had waited outside and only entered the address because and H asked him in. D had had to wait over a year for the sentence. The Judge described the offence as very serious and placed D's culpability in the most serious category. He said that D had organised and instigated the offence and had gone to the premises mob-handed at night time. The Judge placed the offence in Category 1 and started at 9 years. On appeal, the defence said that the offence was not one of the most serious cases of this nature and that the Judge erred by stating that a considerable amount of violence had been used, that the offence had been committed at night and that masks had been worn. Held. We start at 5 years, so with plea, **3 years 4 months' YOI**, not 6 years.

221.8a Relationship offences

Att-Gen's Ref 2018 Re White 2018 EWCA Crim 2142 D pleaded early to aggravated burglary and two threats to kill. An unlawful wounding count was not proceeded with. In June 2017, V, D's partner, broke up with him partly due to his gambling addiction, his debts and his controlling nature. They had a two-year-old son, S, and she had a 11-year-old son and a 15-year-old daughter. D was granted supervised access to the children. In November 2017, D started threatening V by phone and text. On 22 November 2017, D complained he had not seen S and told V to "watch her back", that he would snatch S and he knew people who could hurt her. There were other insulting and controlling messages. On 24 December 2017, he told V to tell S about him¹ as he was going to a better place and he had taken an overdose and slashed his wrists. An ambulance and the police were called but there had been no suicide attempt. D also took over V's Facebook account and he found out that V was thinking of changing S's surname. D next said V could have access to her Facebook account if he could have access to S. D also accessed V's e-mail account and changed the password. In January 2018, he was charged with

¹ Assuming I have amended a typo correctly.

harassment and was released on bail. At 7.45 pm on 9 February 2018, V was at her home with her children. D knocked on the door and V ignored it. He then kicked it at least 10 times and banged on the windows. He smashed one and climbed in, brandishing a large kitchen knife. As V tried to run away, D pulled her back by her hair and threw her on the floor. He tried to stab her in the upper chest and throat. V tried to seize the blade of the knife and D punched her in the face at least three times. As V tried to get up, D put her in a headlock and squeezed her 'really hard'. V reached for her mobile and D stamped on it and smashed it. D demanded to see S and said he would kill her, [one of the threats to kill counts]. V said he could see S if he dropped the knife. The two went upstairs and saw S and the other children who were all crying. One was in the middle of calling the police. V persuaded D to drop the knife. D took S downstairs and put him on his knee. He told V that voices had made him 'do it'. V called her parents who came to the address. D said if they came in he would kill them, [the other threat to kill count]. Further if the police arrived he would 'kick off'. When the police arrived, D gave himself up. The incident had lasted about 45 minutes. V had cuts to her fingers and at the sentencing hearing she said she still suffered pain and had been referred for plastic surgery. She and two of the children had received or would receive counselling. V feared for her children when D was released. She felt obliged to leave the area. D was aged 31 and had 11 convictions on six occasions. In 2006, he battered his stepmother. In 2010, he was fined for harassing his ex-wife which involved his contact with his child (a fine). In 2003, D received 4 years 8 months for arson, common assault and criminal damage and he was given a Restraining Order. The case involved another partner of his, V2. She was repeatedly punched in the stomach and he set fire to her curtains. About a month later, V2 was threatened with a knife and D damaged her property. A mental health report said D suffered from an emotionally unstable personality disorder, He was given anti-psychotic medication which he was not taking at the time of the offence. The pre-sentence report said D was particularly susceptible to aggressive and impulsive behaviour when mentally ill. The prosecution said there were the following aggravating factors: a) a weapon was taken to the scene, b) D's previous similar behaviour including previous offending against the same victim, c) children were present, d) the offences were committed when D was on bail, e) there was offending against the same victim, f) the impact on V and her children including the fact they were forced to leave their home, g) threats were made to [stop] V reporting the matter to the police and h) the offence may have been committed under the influence of alcohol.² Held. It was necessary to factor in the number of factors that made the offence Category 1. There were three greater harm factors. The two threats to kill needed to be factored in as well. With full plea credit, we move to 9 years, so 14 years' extended sentence (**9 years'** custody, not 6, and 5 years' extended licence, not 3).

221.12 Dwellings Victim over 65

Post-guideline case

R v Smith 2018 EWCA Crim 761 D was convicted of aggravated burglary and false imprisonment. V was an 87-year-old jeweller who continued his work at home. He lived alone. At 10.25 pm, his outer front door was smashed open by D and another who were masked and armed with sledgehammers. V saw them smash his inner door. The two men surrounded V and threatened him with the sledgehammers. V, who was terrified, complied with their demands. The men demanded a key to the workshop from V and locked him in a room. Using the key and the sledgehammers, they stole £150,000 worth of jewellery including V's late wife's ring. V was scared by the attack. D was aged 28. When aged 20, he had convictions for dwelling burglary and robbery (28 months' YOI). When aged 22, there were more burglaries (3 years). In 2013, D had a fraud conviction (a suspended sentence). The Judge considered the dreadful circumstances and D's convictions permitted him to move above the sentencing range in the guideline. Held. It was a Category 1 offence. The Judge was entitled to go to the top of the range before taking into account the previous convictions. It was a dreadful offence but there was no actual violence to V so **13 years** not 15.

² All facts for the sentencing hearing have to be established to the criminal standard of proof, so this factor cannot be an aggravating factor, see [57.4](#).

Note: It is surprising the Court considered no actual violence was a factor when the victim had been clearly terrorised and scared by the incident. Causing extreme fear is a form of violence. Ed.