

# Banks on Sentence

## Sentencing Alert No 160

13 June 2017

### Attorney-General's References

#### *Prosecution puts case on wrong basis*

*R v Rudd* 2017 EWCA Crim 492 D pleaded to four child-sex offences. A prosecution sentencing note said the offences were Category 1B. Prosecution counsel presented the case on this basis. Held. The case plainly fell into Category 1A. There is no bar in principle to this court increasing a sentence because the prosecution acceded to a mistaken category, see *R v Stewart* 2016 EWCA Crim 2238. However, the fact the Solicitor-General is departing from a concession as to categorisation made in the court below may in an appropriate case have an impact on the sentence, see *Att-Gen's Ref 2016 Re Susorovs* 2016 EWCA Crim 1856, 2017 1 Cr App R (S) 15 (p 99).

### Benefit fraud

#### *Person of good character*

*R v Kaur* 2017 EWCA Crim 511 D pleaded at the Magistrates' Court to three offences of failing to notify a change in circumstances. Between 2010 and 2015 she received £9,000 in various benefits when she had begun some work. Prior to that, D had received benefits entirely properly. D made admissions when first approached. A year later she appeared at the Magistrates' Court and the agreement that had been made for repayment meant she had repaid about £3,000. D was aged 58 and of good character with references. She had significant health problems. The Judge decided the range was low-community order to 26 weeks and indicated a 21-week starting point. With full credit, he passed 14 weeks. Held. That was wrong because there was no discount from 21-weeks for all the mitigation. The exceptions in the *Imposition of Community and Custodial Sentences guideline 2017* for not having a non-custodial sentence did not present. There was genuine remorse. The proper sentence was **8 months**. All the factors indicate a **suspended** sentence was appropriate. As she had served the sentence it would be wrong to suspend it.

### Cruelty to Children etc.

Today, 13 June 2017, the Sentencing Council issued a consultation paper on a) child cruelty, b) causing a child to suffer serious physical harm/to die and c) failing to protect a girl from the risk of female genital mutilation. The consultation document can be found [here](#) on our website. The consultation closes on 13 Sept 2017.

### Defendant

#### *Elderly defendants*

*Att-Gen's Ref 2017 Re F 2017 EWCA Crim 481* D pleaded to 12 counts of indecent assault. D abused two victims, V1, when she was aged 10-11, in 1959 to 1960, and V2, when she was aged 6 to 10, in 1967 to 1973. Two counts involved forcing the second victim to perform oral sex. Specimen counts represented multiple offending but no vaginal rape. In 1973, D's wife confronted him about V2 and she made sure D was never alone with V2. D agreed to never repeat the activity and to seek psychiatric help. There was no more offending. In 1999, D's wife learnt about V1. D was arrested in 2015 and said, "I've been waiting 40 years for this. That's a relief." He made full admissions. D was now aged 80 and has a benign tumour of his colon. It was agreed that, without the mitigating factors, the sentence would be close to 20 years. The maximum sentence for the first three offences was 2 years and 5 years for the rest. The defence relied on D's good character, his genuine remorse, the fact D had addressed his offending, his age and his infirmity. Held. This court has recently affirmed the principles in *R v Millberry 2002*, see above. D is in relatively good health for his age. We start at approaching 20 years, not 8 years 3 months. With the mitigation, we move to 16 years and with the plea, 10 years and 8 months. We also add an Offender of Particular Concern Order which should have been imposed.

## **Money laundering**

### ***Applying the guideline      Judicial guidance***

*R v Fulton and Wood 2017 EWCA Crim 308* F and W were convicted of a conspiracy to disguise, convert or transfer criminal property, (section 327). They were involved in a Missing Trader Intra Community fraud. There were 597 transfers involving about €35m, worth £38m. The Judge treated the relevant harm based on £30m. On appeal the defence said the relevant tax loss was the loss to foreign revenue authorities. As the tax in Germany and the Czech Republic was 19% and 20% the relevant figure in the harm category was an equivalent loss of £6.1m. F's counsel said that as he was involved in only 60% of the trading; his sentence should be based on 60% of £6.1m making £3.6m. Held. para 21 The offences in question were disguising, converting and transferring criminal property. It is inherent in the concept of money laundering by transfer, disguise or conversion that criminal property will often be moved into a financial system and mixed with other money within it. The criminality of the money laundering offence has to be gauged in the first instance by the nature and scale of that activity, not the nature and scale of the underlying crime. It is the money laundering activity, which is separate criminality from the underlying crime, which falls to be sentenced. It is the whole amount involved, not merely that part which comprises criminal property, which impacts on the system. para 24 The court may not know what crime gave rise to the proceeds which were being laundered, nor how much those criminal proceeds were before becoming mixed in the money laundering operation. For this reason too, when sentencing for money laundering offences it is necessary to focus on the scale of the money laundering activity itself. para 29 As to F's point, the number of transactions in which he was directly involved does not affect the scale of the conspiracy with which he was charged and convicted. He was not charged with the specific offences. The judge made no error in taking the £30 million figure in this case as the relevant amount for determining the guideline category.

## **Rape**

### ***Fathers, by***

*Att-Gen's Ref 2017 Re PG 2017 EWCA Crim 306* D pleaded to nine rapes and 17 other child sex offences. The rapes were penal penetration of his daughter, V, when she was aged 6-10. Four of them were captured as an image and four of them were specimen counts. Five counts were image offences. One count was an attempt assault by penetration. D had attempted to digitally assault V when she was aged 5-7. Police learnt of D's internet use and arrested him. His computer had 899 indecent stills and videos and 42 of them were of his daughter. In interview, he claimed not to have physically hurt V and refused to provide the password for his encrypted hard drive. D accepted he had encouraged V to keep the activity secret. Asked how someone could get a young girl naked he said, "Have a daughter of your own is my best tip". D advised others how to abuse children and traded indecent pictures of his daughter. V, [now aged 12], continued to support D.

On his release on bail he contacted V in breach of his conditions. D had no previous convictions. He told the probation that his sexual preference was for girls aged 4-13 and minimized his conduct. The Judge assessed there was severe psychological harm to V and said the effect was devastating. Held. D had destroyed V's life with far reaching consequences. There was an element of degradation and humiliation. There was gross breach of trust and significant planning. The offence was aggravated by a) the persistent multiplicity of the offences, b) the prolonged period it lasted, c) the distribution of the images, d) the ejaculation and e) the steps taken to prevent reporting of the offences. D's disinclination to confront his wrongdoing was illustrated by the bail breach and his refusal to provide the password for the hard drive. A life sentence was not merited. We start around 24 years and so with the plea, 24 not 16 years' extended sentence (**16 years** not 12 years' custody and 8 not 4 years' extended licence).

## **Perverting the course of justice**

### ***Witness interference***

*R v Lansley* 2017 EWCA Crim 476 D pleaded to perverting the course of Justice and two offences of battery (16 weeks consecutive). D screamed and shouted at his partner, V, and then threw items at her. Next, he moved into the living room and threw a bottle at V which struck her face causing a black eye and bruising. D left and on his return, he attacked V again causing bruising to her neck. V contacted Women's Aid who contacted the police. When the police attended the house V would not let them in. The police reattended and V again failed to co-operate. Next day V made a statement and D was arrested and charged. D was remanded into custody and in a recorded call he told his daughter to visit V and tell her to say in court she had just fallen over. He pressed this on several occasions. There was no evidence his daughter did contact V. D was now 47 with 23 previous convictions. In 2009, he received 14 months for a section 20 stabbing. In 2014, he was fined for violent behaviour. Held. The offence was aggravated by the previous convictions and the pervert was directed to a vulnerable person. We move to 18 months, so with plea, **12 months** not 16.

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