

Banks on Sentence

Sentencing Alert No 172

25 Oct 2017

Consumer protection offences

Money lending offences

R v Dowse and Another 2017 EWCA Crim 598, 2 Cr App R (S) 26 D and W pleaded to a consumer credit offence, a money lending offence and two money laundering offences (Proceeds of Crime Act 2002 s 327(1) and 329(1)). For two years nine months, D and W ran an unregistered money lending business, which was therefore unlawful. The business combined cash loans and the selling of motor vehicles on credit. No payment records were provided to the borrowers and there were many other failures to have required documents. The lenders had contacts in the minicab trade and became involved in lending money for the purchase of vehicles to be used as minicabs. The annual interest rates charged ranged from 20% to 50%, which was within the range for those with poor credit ratings. Loans were granted to 107 people. The total value of the loans was about £769,700, and D and W had received £520,000 in repayments. About £261,900 was outstanding. There was no evidence of violence, threats or undue pressure to repay of the kind associated with 'loan sharking'. D was aged 46, when sentenced, and had in 1987 an unrelated previous conviction. W was aged 56 and had numerous convictions. In 1993, there was a fraud and handling conviction, which was his last offence. The pre-sentence report stated that both defendants maintained that they genuinely did not realise they were committing a criminal offence. D suffered from a significant anxiety disorder and the report talked of him becoming visibly distraught when faced with the prospect of custody. The Judge did not draw distinctions between the roles of the appellants and described the enterprise as a fully operational business which would have continued but for the police intervention. She also said that individuals needed to be protected from entering into unscrupulous financial arrangements that would take them further into unmanageable debt. The Judge said this was a Category A case with a starting point of 7 years. She accepted that the bracket should be at the lower end due to the sums involved being less than £1 million. She also accepted D's genuine remorse and considered the impact that custody would have on his family but ultimately decided that she had to impose a custodial sentence, albeit the shortest she could in the circumstances. Held. There were significant breaches of the regulatory regime put in place to control money lending. There was no violence or threats and the interest rates fell far short of the kind one would find in more serious cases. **2 years** for both not 33 months.

Corruption

Police staff misusing the police computer

R v Hamza 2017 EWCA Crim 1217 D pleaded to four counts of misconduct. D was a civilian police employee working as a dispatching officer, which gave him access to the police computer. V1, aged 17, met D by chance in a bank. D said he was a police officer and gave her his mobile number. They exchanged messages, which progressed to offers of money from D and then

offering payment for sex. D was investigated and it was revealed that he had used police computers to access information about V1 and V2, a 19-year-old woman. D messaged and called both victims many times over the period of a few months. They were considered 'high risk' and 'vulnerable'. D was aged 23 at the time of sentence and was of previous good character. A pre-sentence report said that D could not explain his actions, had not meant any harm or malice and was very ashamed of his actions. He had concerns about being separated from his wife and young child. The Judge said these were very serious offences, aggravated by the fact that there were two sets of offences in relation to two different vulnerable victims over a period of time. Held. There was no passing on of information to anyone else. There was significant mitigation, including genuine remorse, letters of reference and D's good character. **8 months** not 16.

Robbery

Defendant aged 14

R v B 2017 EWCA Crim 982 D pleaded to robbery and was committed for sentence. He was aged 14 at the time of the robbery. D and the co-accused O, knocked at V's door in the afternoon. V opened the door and saw O wearing a black waterproof jacket with the hood up and a green goblin mask. O was brandishing a knife and forced his way into the property followed by D, who was also disguised. V recognised D as being a friend of his younger brother. V was ushered upstairs by O, who held a knife to his back and asked where he kept his money. D remained downstairs. V handed over a metal cash tin containing £200 and O continued to search the premises giving V an opportunity to escape, which he did. The motivation for the robbery was that V's younger brother owed D £300. D had no previous convictions. The pre-sentence report noted that D had been drinking to excess and abusing cannabis in the months leading up to the robbery. In his victim personal statement, V said the robbery had a significant effect on him, causing anxiety and making him very concerned about locks and security on his premises. A report by the Youth Offending Service said that D had good and supportive parents who held responsible jobs. D has limited physical growth and the report said that this has had an effect on D, who felt he needed to 'prove himself', which he had been doing in inappropriate ways. D claimed he did not know that O had a knife before they entered the property. The Judge noted that D did not leave when the knife was produced. He started with 18 months and reduced it with plea to 12 months. O, who was aged 18 with significant previous convictions, received 4 years' detention for robbery, perverting the course of justice and possession of a bladed article. Held. D had now spent 10 weeks in detention and the report from the Secure Unit spoke of real progress with D, on a number of occasions, showing great restraint when faced with direct provocation. The staff indicated that they are in favour of release on home detention curfew. **Youth Rehabilitation Order.**

Note: Because of his young age, the Court was able to give more weight to the post-sentence matters than they could with an adult because the welfare of the child principles involve looking at ways of diverting D from criminal behaviour. The probation report said detention would do more harm than good. Ed.

Sex Offences: Historic

Digital penetration Victim then aged 8-10 Defendant then aged 14-16

R v DB 2017 EWCA Crim 1105 D pleaded to three offences of sexual abuse against his sister, V. In the early 1970s, D was aged between 14 and 16 and V was aged 8-10. Over a period of two years and in the initial context of a game, D digitally penetrated V's vagina and encouraged V to masturbate him. The incidents took place in the bedroom and bathroom of the family home. D's father severely punished D by beating him when he found out what had been happening. D was arrested in 2015 after a family rift brought the offending to light. V's victim impact statement revealed that the offending had had a profound emotional effect on her and caused an inability to form loving relationships. D had no previous convictions and had many positive references. He was married with a daughter and cared for his wife, who had serious health problems. D's imprisonment made it very difficult for his wife. The then maximum sentence was two of the counts was 5 years and for the other count, 2 years. The Judge said that the overall criminality of

the counts would be a sentence of 5 years' imprisonment, reduced to 40 months for the guilty plea. Held. The imposition of a custodial sentence cannot be criticised on the facts of the case, but **18 months**, not 40.

Slavery offences

Multiple victims

Att-Gen's Ref 2017 Re Zielinski 2017 EWCA Crim 758 D was convicted of two counts of arranging etc. the travel of another for exploitation and conspiring to require another to perform forced or compulsory labour. Over a period of nine months, D and his family tricked Polish nationals into travelling to the UK on the promise of well-paid work. The Poles, who couldn't speak English, were desperate and unemployed. Once they were in this country, they were put to work in regular employment but most of their wages were taken by D and his family. They were forced to live in houses that were cold, damp and had no furniture. If they complained about their treatment they were often beaten into submission. D's main role was to take the workers to their place of work, which was often a recycling plant. D would then collect them at the end of the day and take them back home. They were not allowed out of the house at night and they were never left unguarded in the day. Bank accounts were opened on behalf of the workers but they never received a bank card and their Polish ID cards were never returned to them. Out of a £170 pay packet the workers would receive around £30. After some months, the Poles were left unguarded as D and his family had travelled to Poland. Cousins of the family came to the house to collect money but the workers barred the door. The police were called and they forced entry into the property where they discovered the operation. D was arrested in London and denied any involvement in the exploitation. He accused the Polish workers of lying and said they had only treated them with kindness. The Court heard from six victims but took into account the other victims that were referred to. D was aged 21 and was treated as being of good character. The Judge said there was a need for deterrence. The Judge found that a) D was an 'able lieutenant' in a family business overseen by his father, b) D was not responsible for as much violence towards the victims as his father, but D was present when it occurred, and c) D had a primary role in the deduction of the workers' earnings. The aggravating factors were a) the level of organisation and planning, b) the deception used to get the victims to the UK, c) the large number of victims, d) the duration and persistence of the conspiracy, e) the poor standard of accommodation, f) the methods used to control the victims, g) the vulnerability of the victims, h) the level of harm caused to the victims, and i) the fact the offending was for financial gain. The Judge also said D's role was a significant one. Held. Although the Judge mentioned all relevant matters, he erred in his evaluation of the gravity of the offending. **7 years** not 4.

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