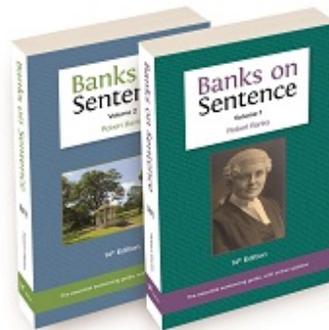


Banks on Sentence

Sentencing Alert No 223

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EU exit

Immigration, Nationality and Asylum (EU Exit) Regulations 2019 2019/745 make minor amendments to the Immigration Act 1971, Serious Crime Act 2007, Criminal Justice and Immigration Act 2008, Modern Slavery Act 2015 and many other Acts. Commencement occurs on 'exit day'. Criminal Procedure (Amendment) (EU Exit) Regulations 2019 2019/908 make similar minor amendments to Criminal Procedure Rules 2015. Again, commencement only occurs on 'exit day'.

Firearms

Minimum sentences* *Appeals

R v Nancarrow 2019 EWCA Crim 470 D pleaded to possessing five stun guns, an electrified knuckle-duster and other offences. The Judge found there were no exceptional circumstances. Held. Unless the judge is clearly wrong in identifying exceptional circumstances where they do not exist or clearly wrong in not identifying exceptional circumstances where they do exist, this Court will not readily interfere, see *R v Rehman and Wood* 2005 EWCA Crim 2056, 2006 1 Cr App R (S) 77 (p 404) para 14.

Perverting the course of justice

False rape claims

R v Beale 2019 EWCA 665 D was convicted of three counts of perjury and four of perverting the course of justice. In 2005, when aged 13, she was raped. In 2008, she claimed rape (retracted). In 2010, she claimed abduction and rape falsely. The victim was tried twice and sentenced to 7 years and served 2 years 9 months. D received £11,000 in compensation. In 2012, she claimed robbery and sexual assault, involving barbed wire at the entrance to her vagina. The victim, V, was charged and bailed and fled the country. CCTV showed the allegation was false and her gloating at V's misfortune. In 2012, D claimed she had been attacked by seven men including her ex-boyfriend, leaving her unconscious. This allegation was withdrawn. In 2013, D claimed attempted rape. Later she claimed rape where there had been consensual sex. One victim proved he was at home at the time. The other was on bail for two years. During the trial two victims were attacked as rapists with their character blackened. D was aged 18-21 during the offending and aged 25 when sentenced. She was of good character and had a borderline personality disorder. Held. The victims had suffered incalculable harm. The system of justice had suffered significant harm. Considerable resources had been expended. **10 years** was stern but not excessive.

Procedure, Sentencing

Defendant sentenced on different occasions for similar offences

R v Green 2019 EWCA Crim 108 In February 2014, D was sentenced for buggery and other child sex offences. He had targeted boys in his charge as a sports coach and teacher. The offending was from 1980 to 1994. D received 9 years and was released in July 2018. In September 2018, he was convicted of 17 indecent assaults against other boys aged 12-16, also in his charge. The offences were from about 1980. D had been interviewed about the second set of offences in 2014¹, 2016 and 2017. D was aged 76 and in deteriorating health. The Judge said she was not going to factor in the earlier sentence because of the gravity of the latest offences and gave D 12 years. Held. If the 12 years stood on its own, no complaint could be made. para 14 The Judge's decision was wrong. Judges should consider all the circumstances in deciding what, if any, impact the previous sentence should have on the new sentence to be passed. The circumstances may include:

- a) - how recently the previous sentence was imposed;
- b) - the similarity of the previous offences to the instant offences: in this regard, we would remark that it will usually be helpful to obtain as much information as possible about the previous offences;
- c) - whether the offences overlap in terms of the time they were committed;
- d) - whether on the previous occasion the offender could realistically have 'cleaned the slate' by admitting other offending;
- e) - whether to take the previous sentence into account would, on the facts of the case, give the offender 'an undeserved, uncovenanted bonus which would be contrary to the public interest';
- f) - the age and health of the offender, particularly if the latter has deteriorated significantly as a result of his incarceration and any other relevant circumstances including, for example, his conduct whilst in prison; and
- g) - whether, if no account is taken of the previous sentence, the length of the two sentences is such that, had they been passed together to be served consecutively, that would have offended the totality principle.

Here, notwithstanding D had not admitted the offences earlier and that he pleaded not guilty, 10 years for the second set of offending, not 12, making in total **19 years** not 21.

Note: One factor not mentioned is was there an excessive delay between the police hearing about the offences and the CPS starting a prosecution. Another factor is whether there was an excessive delay during the proceedings. If there was a 4-year delay with little effort to prosecute the

offences, it seems wrong that D should serve about 3 extra years because of the delay. It also seems wrong to penalise a defendant for not admitting offences earlier and pleading not guilty. Those matters would have been reflected in the discounts that are available if D had acted differently. Most sensible Crown Court judges consider what the appropriate sentence would have been if the offending had been sentenced at the same time and choose not to imprison ill, old defendants longer than absolutely necessary, both for their benefit and that of the prison service and the taxpayer. Ed.

1. The judgment says D was interviewed in 104, which I assume is a typo for 2014.

Sex Offences: Basic principles

Female defendants

R v Perrett 2019 EWCA Crim 695 D was convicted of six counts of indecent assault against a boy. She had sex with a 14-year-old boy, B, on two occasions. Held. The guidelines are gender-blind to assist judges in all cases of sexual offending.

Stalking

Stalking Protection Order and Interim Stalking Protection Orders

Stalking Protection Act 2019 creates a civil, stand-alone Stalking Protection Order which enables requirements and prohibitions to be made, see section 2. Notification is required, see section 9. To make the order the defendant must: a) have carried out stalking acts, b) pose a risk associated with stalking and c) the order must be necessary, see section 2. The order can be varied, renewed and discharged, see section 4. An Interim Stalking Order can be made, see section 5. Breach of an order is an either-way offence, with a 5-year maximum sentence, see section 8. Sentencing guidance is at *Breach Offences Guideline 2018*, see www.banksr.com Other Matters Guidelines tab page 56: '**Other breach offences** Where an offence is not covered by a sentencing guideline a court is entitled to use, and may be assisted by, a guideline for an analogous offence subject to differences in the elements of the offences and the statutory maxima.' Commencement is awaited.

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