

221.17 Dwelling, Occupied *One offence*

R v Kirmse 2014 EWCA Crim 79 D pleaded to burglary and (late) to damaging property. At about 5am, he forced his way into a residential flat above a pub. The 22-year-old householder was disturbed by the noise and awoke. She went to the kitchen and was confronted by D. He was intoxicated. She asked him to leave and he began to do so. The police arrived and arrested him. The Judge held that D was equipped with an implement as a result of the damage caused to the kitchen window. The suggestion was that he picked up an implement nearby. It was said that it was not a category 1 burglary. Held. It was clear that D used an implement in order to force open the kitchen window. It may well be that he became equipped to carry out the burglary at a very late stage, but equipped he was. There was also the high culpability that followed from the devastating effect on the victim. The case just came within category 1. Bearing in mind that D equipped himself for the burglary at a late stage, it was not appropriate to move up from the starting point of 3 years. With 10% credit for the late plea, **2 years 8 months** not 3 years.

R v Shaban 2014 EWCA Crim 133 D pleaded to dwelling burglary. The house was occupied with a family of five who were asleep at the time. D gained entry through an insecure patio door. He stole property including a rucksack, wallet and credit cards, as well as keys to the house and vehicles. D was arrested the next day and some of the property was recovered. D was aged 38 at appeal and had 51 convictions for 109 offences. This was not a ‘third strike’ burglary however. There was a history of failing to comply with community orders and he also fell to be sentenced for a bail offence. Held. There was little mitigation save for the guilty plea. The Judge placed this into Category 2, and was entitled to sentence above that, because of D’s record. **Starting at 3 years** would not have been excessive. With full credit, **2 years** not 3 was appropriate. 2 months consecutive for the bail offence was not excessive.

221.18 Dwelling, Occupied *More than one offence*

R v Parsonage 2014 EWCA Crim 306 D pleaded to burglary (count 1 and 3 early, count 2 late). V1 and his family returned home to find their property had been broken into. A dog flap had been removed in order to gain entry. Property to the value of £4,400 had been stolen, a small amount of which had been recovered. (This was count 3, category 1.) V1 recalled that some 9 months earlier some items of jewellery had gone missing whilst they had employed D as an ‘odd-job’ man. Those items were worth £4,500 including items of sentimental value. D had not been permitted to go into the upstairs room where the jewellery was kept. (This was count 2, category 2.) At the same time, D had been doing work at a property around the corner, owned by V2. The burglary of those victims came to light after D was arrested in respect of V1’s property. (This was count 1, cat 2) D was aged 26 when sentenced and had seven convictions for eight offences. A previous PSR (theft of a motor vehicle) did not speak well of him. There was a history of poor compliance with community orders and the commission of offences whilst on bail. Held. This is a man of relatively young years. But it is plainly clear that the Judge was entitled to take the view that the sentences should be and property were consecutive. Although counts 2 and 3 were burglaries of the same victims, D treated them as distinct by originally pleading not guilty to count 2, and they occurred on different occasions, each netting D a substantial haul. The 5 years given by the Judge does not take account of totality. **4 years** was appropriate, so 12 months on count 1, 6 months (not 18) on count 2 and 30 months on count 3, all consecutive.

221.60 Shops etc.

R v Grieves and Others 2014 EWCA Crim 540 G, R and F pleaded to burglary (25% credit). At about 12.30am, G and F disabled the alarm and security camera at a bookmakers. The shutters in front of the premises were disabled so that they could not be opened. One and a half hours later, G and F returned to the premises with R. Two of them gained entry by forcing open the rear fire door. R acted as a lookout. They had cutting tools and gloves. They sprayed two bottles of bleach at the windows in an attempt to conceal scientific evidence. An attempt was made to break into the gaming machines and the safe was pulled from its mounting. The premises were 'wrecked'. The police attended and all three ran from the premises but were arrested. G had five burglary convictions but none since 2002. He suffered from panic attacks and had been looking after three children. F, aged 27 at the time, had two court appearances but nothing of this type. R had a very long record with 49 convictions for 137 offences including numerous convictions for burglary. There were none between 2006 and 2011. Held. This was a highly professional, determined, criminal venture with all the hallmarks of expertise gained from previous ventures. There was a significant degree of planning. The premises were targeted by a gang. There was major disturbance of the property and it was a burglary for high stakes. A starting point of 4 years was correct. Marking the fact that F had never previously been convicted of burglary or been to custody, **2 years** not 3. For R and G, **3 years** was not manifestly excessive.