

328.20 Abuse of trust Meaning

See also: *R v R* 2013 EWCA Crim 2056 (Convicted of sexual activity with a child. V, aged 12, was D's partner's friend's child. He was vulnerable with some learning difficulties. V went to stay with D and his partner for a week. Whilst V was in bed, D entered the bedroom and gave V a head massage. He then touched V's penis and put it in his mouth. V gave evidence. Judge was perfectly entitled to find that D had adopted a degree of responsibility for V's welfare and therefore was in breach of trust.)

328.32 Digital penetration Cases

See also: *R v PT* 2014 EWCA Crim 537 (Plea. Committed over 20 years against eight victims, aged 2 to 13. Assault by penetration, indecent assault and sexual assault. Specimen counts. Touching over and under clothing. Breach of trust. Committed further offences after initially being interviewed. Filmed himself digitally penetrating his niece and her two sisters, aged 2 to 4, 3 and 5 respectively. Indecent images also found including 10 at level 3 and four at level 4. 25% credit. Life imprisonment was correct. 20-year notional term was severe but within the range. **Life with minimum of 7½ years** was not manifestly excessive.)

328.37 Historic cases Judicial guidance

R v PT 2014 EWCA Crim 537 In 2000, D was arrested for historic sex offences. No charges were brought. He went onto commit further offences. Held. para 5 This was highly significant, both to the assessment of the gravity of the overall offending and to the assessment of the risk of the defendant committing further offences causing serious harm in the future.

328.63a Victim aged under 13 Starting point less than 18 years

R v Ahmad 2014 EWCA Crim 388 D was convicted of two assaults by penetration of a child under 13 and sexual assault of a child under 13. V was born in 1997 and was D's cousin. She lived near to D and often stayed the night. When she was aged 10 or 11, D entered the bedroom where V lay half asleep. She was lying on her stomach. D pulled off her knickers and pyjama trousers and inserted his finger into her anus. She was frightened and embarrassed. On another occasion, D came into the bedroom and again tried to pull down her knickers and pyjama trousers. V resisted. D touched her breasts over her pyjama top. The next incident occurred when V was aged 12. D sat on the bed beside V and pulled up her pyjama top. He touched and kissed her all over except on her face. He pulled down her knickers and pyjamas again and this time he put his finger into V's vagina, lying on top of her. After D went to the bathroom he tried to do it again. He was unsuccessful. V told D's wife but the offences were not reported for some 9 months. D was aged 43 and had no previous convictions. His marriage broke down and he lost contact with his children. V said the offences had had a minimal impact on her life. The Judge treated the case as a bad breach of trust case as V's parents trusted D and allowed V to stay at his house. Held. There was no penile penetration, no threats nor any accompanying aggravating circumstances of that kind. However, the offences were committed over some months and in breach of trust. **8 years** was appropriate, not 10.

328.64 Victim aged under 13 Starting point 18+ years

R v Hall 2014 EWCA Crim 534 D was convicted of assault by penetration of a child under 13 (×4), indecent assault (×9) and sexual assault of a child under 13 (×5). Between 2000 and 2008, when V was

aged 5 to 12, D systematically sexually abused her. D was the partner of V's grandmother. V would stay with them at weekends whilst her mother worked. It began with D touching and rubbing V's vagina and progressed to digital penetration. There was one occasion where D licked V's vagina. D denied the allegations but subsequently pleaded guilty. The PSR noted that he was in some respects remorseful but also minimised his culpability. D was aged 73 at appeal. He had no relevant convictions. Held. Given the circumstances and the grave breach of trust, the assault by penetration fell into the top category. The real complaint is as to totality. D had pleaded at an early stage, had no relevant convictions and had not previously been to custody. The Judge had taken an overall starting point of 24 years. That was simply too long. There was a significant impact upon the victim but with the plea and other mitigation, **13 years** not 16. (This gives a starting point of 19½ years. Ed.)

See also: *R v Watkins and P* 2014 EWCA Crim 1677 (D pleaded to attempted oral and anal rape, two conspiracies to rape and 19 other sexual assault and image offences. He sexually abused babies anally and orally, with the involvement of their two mothers. The two babies were about a year old. The acts were photographed and there were references to the babies being drugged with crack. [There were the most alarming] messages including that D would like to "fuck her a little bit every day until she can take all of daddy's dick." The Judge said he passed a 35-year extended sentence made up of two 15-year (concurrent) and two 14-year (concurrent) sentences but they were consecutive to each other with a 6-year extended licence. The defence said the total was too long. Held. It wasn't. Because of what the Judge said we make one set of the offences determinate.)

328.64a *Victim aged 10-12*

Example: *R v NA* 2014 EWCA Crim 536 (Convicted. Assault by penetration of child under 13 and four sexual assaults of a child under 13. Victim was his foster daughter, aged 11 to 12. He gave her alcohol and then penetrated her vagina with his fingers. Asked for sexual intercourse but she refused. Kissed her on the lips. Touched her breasts inside her clothing. Committed over the course of 2 years. Dreadful abuse of trust. Aged 52. Effective good character. **14 years** was stiff, but not manifestly excessive.)

328.76a *Defendant aged 15-16*

Example: *R v JW* 2014 EWCA Crim 1407 (Plea. Five rapes of a child under 13. V was D's brother, three years younger than D. D raped V every two to three weeks. Both boys in foster care and autistic. V was an elective mute and D had Asperger's. D was obsessed with violence and death. D told Social Services about inappropriate touching, admitted rapes and how he was attracted to children. Age 19, but offending occurred when he was 14 to 16. No convictions. D gained gratification from offending and the control he exerted but had had a significantly disturbed childhood. For an adult we would start at 18 years. With age etc. 10-11 years. **Extended sentence (7 years' custody and 4 years' extended licence)** not excessive.)