

104.10a *Reference to bad character where there is no conviction*

R v LE 2014 EWCA Crim 1939 D pleaded to having sex with an adult relative (×7) and perverting the course of justice and was given an extended sentence. The PSR said D posed a risk to children and vulnerable adults. It was based, at least partially, on V's reports of abuse by the complainant which were the basis of the trial and when she was much younger but the earlier abuse was not accepted. The report also relied on reports of abuse from former partners of D which were again denied. Held. It would not be right for this Court to take account of an assessment which was based, in part at least, on such disputed factors that had not been either admitted or been the subject of convictions. Pre-appeal report set aside. However without that material, we conclude the 'dangerousness' test was made out.

R (S) v Leicestershire & Rutland Probation Trust 2014 EWHC 3154 (Admin) High Court D was convicted of raping his step-daughter (×5) and indecently assaulting another girl. D appealed asking (amongst other matters) for references in the report to the facts for an offence for which a Judge directed an acquittal to be removed and the report to record that D was acquitted of raping his ex-wife. D's concern was the use of the report at Parole Board hearings. After a High Court hearing the report was redrafted. D asserted that the new report should not refer to a) his ex-wife as a victim (because he was acquitted of this matter) and b) a police claim that there were indecent images on his computer when no charges were brought. Held. The OASys¹ assessment in the report must contain all relevant facts, including those relating to an unpursued allegation, provided it is clearly and unequivocally stated that no charges were brought and no conviction ensued. A mere recitation of facts, however vigorously denied, is permissible. The same approach is adopted to the dropped rape charge as it is clear that the judge rejected it as there was no case to answer, a strong finding in favour of D. There is nothing in the report to suggest these matters were treated as correct [or relied on for their recommendations]. If the Parole Board draws an incorrect inference from this, judicial review proceedings could be pursued at least in theory. I reject this application as the inclusion of these matters is neither irrational nor unreasonable. D is able to raise matters of concern with the authorities.

104.10b *Correcting alleged errors*

R (S) v Leicestershire & Rutland Probation Trust 2014 EWHC 3154 (Admin) (For an example of someone taking judicial review proceedings see **104.10a**)

¹ Offender Assessment System.