

**237.10a** *Inappropriate medical treatment*

*R v MB* 2013 EWCA Crim 910, 2014 1 Cr App R (S) 29 (p 173) D was convicted of cruelty to a person under 16. She was a Nigerian national who arrived in the UK in 2012 when heavily pregnant. After the birth, she wanted to have the child circumcised according to her Muslim faith and Nigerian custom. She had two appointments to have the child circumcised but failed to make them. She was given a phone number of a woman who performed circumcisions at her home with scissors. Later, the child's nappy was full of blood. This was noticed by shop staff when she was stopped on suspicion of shoplifting. She had been instructed to keep the child at home for 5–7 days. She had in fact taken him shopping the same day as the circumcision. He required surgical repair to stem the bleeding and fluid resuscitation because of the blood loss. It was potentially life threatening. D had no convictions and was generally a good mother to her children. Held. It was difficult to fit this into any of the relevant guidelines. The Judge was entitled to consider that there had been real neglect of the child. A custodial sentence was appropriate in principle. This was a case of neglect and not intentional harm. She was cavalier about the interests of her child. **4 months**, not 10, would properly reflect the gravity of the offending which would enable immediate release.

**234.11** *Neglect/Leaving a child or children unsupervised*

*R v EMSG* 2014 EWCA Crim 225 D was convicted of one count of neglect and pleaded to one count of neglect. The police attended D's address to report the arrest of her husband for drink/driving. V, aged 2½, opened the front door wearing an unfastened Babygro. D was asleep in the chair, drunk. A breathalyser revealed she had 138µg per 100ml of breath (approximately four times the drink/drive limit). There were signs of drinking all around and the room smelt heavily of cigarette smoke. D was interviewed and bailed, on condition that she seek assistance. She was permitted to keep custody of V. Two months later, she burst into a neighbour's flat with V in a pram. It was 2 degrees but V had no hat or gloves. Her hands were 'frozen' and her nappy heavily soiled. The neighbour called the police and a Police Protection Order was put into effect. The following day, officers arrived at D's address. D arrived 20 minutes later smelling strongly of drink, not knowing where V was. She was arrested. In the intervening hours, she had abandoned the pram with V in it and made no attempt to contact anybody to report her absence. V had been abandoned for almost 11 hours, from 11.15pm until 10am. D had convictions for shoplifting in 2011 and 2012 and a caution for 'being drunk while in charge of a child'. The PSR noted that she did not accept responsibility for her actions. She posed a medium risk to V but not to others. Held. When in drink, D lost sight of the need to care for her child and on the second of the two occasions, abandoned her on a cold winter's night in circumstances where her child could well have come to significant harm. There was no evidence however that V had come to harm. The local authority subsequently made arrangements for V to be adopted. D opposed that process and proceedings were pending. This case should have been dealt with as falling within the third most serious category for which the range is 26 weeks to 2 years. 15 months consecutive to 3 months **making 18 months**, not 27 months.

Note: Taking into account the length of time V was in danger, the fact that the child could have died (when the charge would have been manslaughter), the number of incidents and the previous conviction, it appears the sentencing Judge correctly focused on the danger to the child whereas the Court of Appeal focused on the interests of the mother. Ed.

**234.13** *Punishment etc. to children, Unlawful*

*R v J* 2014 EWCA Crim 1442 D was convicted of 23 child cruelty offences against his three children and one stepchild. The counts were sample counts pleaded from the children's date of birth to their 16th birthday. This made the dates from 1982 to 2000. He hit the children with a belt and with implements sometimes every day. He traced the mother and the children when they were in refuges and carried on the violence. The children's upbringing had been dominated by domestic violence meted out for D's own gratification. D was effectively of good character and was now aged 49. The Judge sentenced him to 30 months for each child and made the sentences consecutive. Held. Our summary can convey little about the appalling nature of these crimes. We apply the *Assaults on Children and Cruelty to a Child Guideline 2008* and *R v H* 2011 EWCA Crim 2753, 2012 2 Cr App R (S) 21 (p 88). These offences would merit **10 years**. However because of the change in maximum sentence from 2 years to 10 years, we reduce it to 8 ½ years.

#### **234.17 Violence to child aged less than 2 years**

*R v MM* 2014 EWCA Crim 1622 D pleaded to child cruelty (25% credit). D's 7-month-old girl, V, fell asleep and after 40 minutes D's partner returned home to find V's ear was very red. V was examined at a hospital and the redness lasted for over nine hours. V's ear had swelling, three bruises and discolouration which it was agreed amounted to ABH. D said V fell asleep on her rattle but medical opinion disagreed. In interview D accepted pulling V's ear when trying to feed her in frustration. D worked night shifts and his partner had been ill. D was 23 at sentence and of positive good character. Social services had no concerns and D was having regular unsupervised access to V. Held. The Judge was entitled to pass immediate custody but suspension should have been seriously considered. **5 months** not 9.

Note: Whether the access was required because the child had been taken into care (which seems unlikely) or because his relationship had broken up is not revealed. Ed.

#### **234.18 Violence to child aged 2-5**

*Att-Gen's Ref No 73 of 2014* 2014 EWCA Crim 1932 D was convicted of cruelty to a child (×2). The offences were carried out over a period of five years or so, beginning in 1997, when V was aged five. V was now in her 20s. The abuse included hitting V to the stomach and other areas where bruising was not visible, pinching, kicking and slapping V. D also threw objects at her, forced V to take cold baths, walked V to and from school using a dog lead and pulled V's hair. D had also blamed V for her problems and described her as "a cancer" and that she should have aborted V and wished that V was dead. D threatened to kill V if she told anyone. It seemed to V that D took pleasure in hurting her. The abuse ended only when D left the family home. V told her father and step-mother after D repeatedly tried to contact her when she had turned 18. V was left with psychological scars which V continued to endure. V suffered from low self-esteem, feelings of isolation and depression. D was in her late forties and of good character. However, she continued to deny the offences and portrayed herself as the victim. D had a low level of intellectual functioning and a psychiatrist noted that immediate imprisonment was likely to severely exacerbate D's anxiety, possibly making her suicidal. Held. This case is very serious which called for a significant custodial sentence. The impacts remain serious. The case falls into the second category. [As it was an old offence] there needed to be exceptional circumstances. [There weren't any.] Even taking her mental state into account, **2 years** was the least sentence available, not 2 years suspended.

*Att-Gen's Ref No 59 of 2014* 2014 EWCA Crim 1926 D was convicted of cruelty to her children (×3). V1 was 12, V2 10 and V3 18 months old. V1, although terrified of the possible consequences flowing from her allegations, disclosed that D had hit her twice with a bottle, causing swelling and bleeding. D had assaulted V1 from the age of two including rubbing chillies in her eyes and vagina, pulling her hair and biting her hands, leaving her unable to write. Punishments were meted out for minor misbehaviour. It was also disclosed that D had assaulted V2 and V3 over a sustained period. When the victims were examined at hospital, V1 then lied about the multiple scars on her forearms as D was listening. A doctor concluded

the scars were consistent with being burnt with hair straighteners. V2 has several small scars on her upper body which were compatible with being stabbed with a pen and hair straightener burns. V2 was once punched, her hair had been pulled and she was locked in the bathroom on one occasion. D told V2 to give false explanations to cover up the injuries. V3 was found uninjured but, when she was a baby, had previously been repeatedly slapped on the face, back and legs and was thrown across the bed. At the hospital D made a phone call in Bengali and when police later called, the bottle used against V1 was missing. The children were then placed in foster care, but during a supervised visit, D told V1 not to say anything. D's violence left her children "really scared". D was 35 at sentence and of good character, but posed a serious risk to children. She provided supposedly innocent explanations for the injuries and showed no remorse. Held. This was a deeply troubling breach of D's duty towards her own offspring and her violence was sometimes administered after a period reflection. There were aggravating factors. The psychological scars will probably be profound and the physical scars will be born throughout the older children's lives. This case is, at the least, towards the top end of the second bracket. **5 years**, not 2 1/2 in all.