

338.44 *Seeking/asking for sexual activity with children* *Pre-guideline case*

R v Willett 2014 EWCA Crim 194 (Internet. Community order not a suspended sentence. See **338.67a**)

338.44a *Seeking/asking for sexual activity with children* *Post-guideline case*

R v Simms 2014 EWCA Crim 1888 D pleaded (25% credit¹) to attempting to meet a child after sexual grooming, thereby breaching a SOPO. D also pleaded to possessing indecent photographs of a child (×4), with one Level 4 and the others at Level 1. The offences were committed shortly after D had been released on licence. Police discovered these offences following a check of D's laptop, pursuant to the SOPO. D had accessed a chatroom called 'Teen chat' and contacted a 14-year-old girl whom he had arranged to meet. There was intent to have sexual relations conveyed by the conversation. D was emotionally immature and displayed some remorse but he had almost ten similar convictions. Two involved meeting or communicating with girls under 16. The Judge said he arrived at 7 years by giving the meeting offence 4 years, SOPO offence 2 years and 2 years for the photos. Held. The critical feature is that D committed precisely the same sorts of offending very recently, committed whilst on licence and breaching a SOPO. **10-year EDS** (7 years' custody and 3 years' extended licence) was severe, but not excessive.

338.49 *Internet sexual activity Defendant aged 25+* *Pre-guideline case*

R v Ellis 2014 EWCA Crim 586 D pleaded early to attempting to engage in sexual activity in the presence of a child (×2), attempting to cause a child to look at an image² and making an indecent image of a child. D engaged with a police woman, P, posing as a 12-year-old child on a social media site for children. D said he was aged 54 and from Watford. D sent P a picture of his erect penis and invited P to watch him masturbating on a webcam. About three weeks later that activity was repeated. Ten days later, during an online chat, he sent to a girl a video clip of a man masturbating, saying untruthfully that that was him. When D was arrested at his home which wasn't in Watford, police found a film of a girl aged 14 or 15, in school uniform doing a strip tease although stopping short of her being naked. D was of good character. The Judge said he did not feel bound by the guidelines as there was more than one offence. Held. There is no reason to depart from the guideline. With the mitigation (which must have included there was no 12-year old girl. Ed.) and full credit for the plea, 18 months was appropriate for the first two offences. For the next offence 9 months concurrent and the making an indecent image offence, no penalty, making **18 months** in all not 3 years.

338.52a *Physical contact under clothing* *Child aged 13-15* *Defendant aged 21+***Post-guideline case**

R v DE 2014 EWCA Crim 1960 D was convicted of sexual activity with a child family member, his granddaughter. V was aged 13 and visited D's home to be congratulated on her school report. When V's mother and D's wife were out of the way, D showed V some holiday pictures on a computer, also intended for V's mother. D, sitting on the computer chair, put his arm around V and moved it under her skirt. He squeezed V's bottom which was bare, her knickers having ridden up. D denied the offence throughout. He was aged 71 on appeal and of positive good character with flattering references. The

¹ This is what the Judge gave on one offence and it is assumed that is what he gave on all the offences.

² Presumably this is SOA 2003 s 12 (causing a child to watch a sexual act). Ed.

episode caused huge family upset. D became suicidal but showed no empathy and was arrogant. He was assessed as suitable for a sexual offenders treatment programme and a three-year community order was also recommended. The Judge concluded the offending straddled Categories 2 and 3. Held. It is hard to see how this offence is other than a straightforward Category 3 offence. It is to be distinguished from touching naked genitalia or naked breasts. The single culpability factor of age disparity certainly does not take the matter into Category 3A, but the Judge was required to bear in mind there was only the single factor operating to do so. **8 months**, not 12.

338.61 Breach of trust, Grave Pre-guideline case

See also: *R v Islam* 2013 EWCA Crim 2355 (Convicted of numerous indecent assaults committed between the 1970s and 1990s. He was a doctor and the victims were six female patients aged 13 to mid-20s and one practice nurse. Previous good character. 11 years was severe but not manifestly excessive. For more details see **28.39**.)

338.66 Defendant under 16

Post-guideline case

***R v G* 2014 EWCA Crim 1939** D pleaded to two and was convicted of three assaults on a child under 13 and of three offences of causing or inciting a child under 13 to engage in sexual activity. The offences began in 2008 when D was 11 and went on for four years. V1 was almost three years younger and V2 two and a half and they were D's female and male cousins respectively. The offending was minor to begin with, but grew more serious once D realised that, as instructed, V1 would not tell anyone. D touched V1's vaginal area and, around six times a year, would digitally penetrate her. V1 was made to masturbate D to ejaculation. This continued even when V1 wept. V2 witnessed many such assaults, which were committed in D's room during family gatherings. V2 also fell victim to one such assault himself as D made V2 masturbate him. D would also masturbate in front of both V1 and V2 and showed them adult pornography. Both V1 and V2 said "no", but D threatened them and told them not to tell anyone as they wouldn't be believed and any allegations would lead to their father being ill and give their grandmother a heart attack. V1 reported the offences six months after D had ceased them. D was deceitful and sought to minimise his actions and blamed both V1 and V2 for initiating activities. D was aged 17 and only had a warning for robbery in 2011. He posed a moderate risk of future sexual offending. He was bullied and exposed to emotional abuse, neglect and violence in his adolescence, leaving him with a sense of no control over his life. He was a "tremendous academic success" but suffered from setbacks since sentencing, being excluded after his arrest. D was noted to have helped students with revision and was universally admired as a mentor for the young at school. D also showed no remorse and the family was split but his mother unswervingly supported him, despite her own grave health difficulties. There was also a stark difference in his life during the offending and now. D would have no access to treatment in custody and an expert was worried that it would expose him to a highly delinquent population. V1's behaviour at home was affected and avoided male attention, drastically changing her appearance to do so. She also self-harmed. The Judge identified the adult starting point as 6 years. Held. There is no abuse of trust here. This case is odd as D is highly intelligent, more than capable of devoting himself to his studies coming extremely close to a scholarship at a prestigious school. This case is singular and very difficult, even for this Court, to categorise. Reflecting the traumas endured by V1 and V2 and to acknowledge the circumstances of the offending but also ensuring that D, at the earliest possible opportunity, comes back into a community capable of welcoming him and picks up his life again, we impose a **12-month DTO**, not 31/2 years' detention.

338.66a Defendant aged 16-17 Pre-guideline case

R v B 2013 EWCA Crim 2774 (Plea to sexual assault and sexual activity with a child (×4). Aged 15. Three victims. Ejaculated onto knickers of previous girlfriend aged 16 whilst she was asleep. Simulated intercourse with another aged 15 and pressed erect penis against her. Whilst on bail, he pulled down clothing of a third girl aged 13 and inserted his finger into her vagina. Third victim suffered ongoing psychological effects. Caution for theft. Aged 17 at appeal. Persistent offender over 10-month period. 18-month DTO severe but reflected the totality of the offending. SOPO quashed as due to his age the test was not met and the terms were unworkably wide.)

338.67 *Female defendants* *Pre-guideline case*

R v Willett 2014 EWCA Crim 194 (Internet. Community order not a suspended sentence. See **338.67a**.)

338.67a *Secondary parties* *Pre-guideline case*

R v Willett 2014 EWCA Crim 194 D, aged 20, pleaded to causing a child under 13 to engage in sexual activity (×2). In 2012, V was aged 15. She registered with an adult social networking site. In her profile, she stated that she was aged 15. P, aged 26, was D's partner. He targeted V via the website to become sexually involved in his relationship with D. Over a two-week period P asked V if she would like to meet D and P and said that they thought she was cute. He engaged in an explicit discussion with her as to what they would do together, and asked her for her address, details of her sexual experience, for telephone sex and for explicit pictures. P sent V photographs of himself and D having sex. An email account was set up to make communication easier, with V referring to D and P as 'mummy' and 'daddy' and them referring to V as 'their little girl' or 'baby girl'. V's mother discovered what had been going on and contacted the police. D's role was limited to two sexually explicit exchanges on the Internet where D described what was going to happen when they met. In interview, D said: a) that P had told her that he had found a 15-year-old for a threesome. b) she said she did not want to do anything until the girl was aged 16, but P asked her to communicate with V and she had done so. c) P made sexual demands against her including degradation and mother and child scenarios. D had a troubled background and had had a number of other failed relationships acquired via the Internet besides D. D had also suffered abuse and violence at P's hand and she feared that the relationship would end if she refused P's requests. D was aged 21 with no convictions. The PSR recommended a community order as a custodial sentence would have a detrimental effect on her emotional well-being. P pleaded to 13 child sex counts. He was aged 26 and was sentenced to 2 years' imprisonment. Held. D is not far from being a victim in her own right who had been under the influence of a much older man. That caused her to commit these offences out of character. The gap between V and D was not as large as between V and P. A suspended sentence was inappropriate. The supervision requirement imposed as part of that had been in force for five months at the appeal. An **18-month community order with 18 months' supervision**, not 2 years suspended with a 2-year supervision requirement.