

340.4 *Buggery/Anal rape*

R v S 2014 EWCA Crim 272 D pleaded (in the same month his retrial was due to start) to buggery (×2). In 1977, D was aged 17 and V, D's cousin, was aged 8. D began an apprenticeship and would frequently visit his aunt's house while his aunt and uncle were out at work. While he was there he would take V upstairs and penetrate him until ejaculation. He then used V's underwear to wipe both of them. Thereafter relationships remained on an outwardly friendly basis. There was frequent contact over the ensuing years and there were 'happy' photographs of the two together. In 2010, V suffered flashbacks and mood swings. After seeing a social worker, V confronted D whilst wearing a recording device. A confession followed, including an indication that D had suffered far worse at the hands of others before he himself was brought to the UK from India. D offered an apology and agreed to see a social worker. There was some discussion as to whether sums of money should be paid to a reputable charity in addition to a full letter of apology in order for the matter to be finally dealt with. D was unable to pay the sum of money and things developed such that the police were involved and D was arrested. There was a trial but the prosecution decided the tape should be analysed and the trial was stopped. The Judge ordered a retrial. In the PSR, D accepted that V was vulnerable and unable to forget the experiences. He only then realised the full impact of his actions. D suffered from depression and was taking medication. There were over 100 character references of a universally high character. Held. The sentencing exercise was extraordinarily difficult. The Judge noted this was not a case of experimentation and at the time, D was twice V's age. The Judge correctly identified the starting point was around 15 years. D had spent the intervening 35/36 years in an exemplary way, was a happy family man, and had contributed hugely to the community. These were objectively atrocious acts. There were sufficient exceptional circumstances to take the sentence well below the guidelines. The appropriate starting point was 6½ years on each count, concurrent so with the plea, **6 years** not 9½.

See also: *R v G* 2014 EWCA Crim 1221 (LCJ D Convicted of rape and other sex offences. Main victims were a boy aged 15-17 and wife. Boy repeatedly raped over 2 years. Wife raped on number of occasions which hurt her and made her cry. Former Chief Superintendent. Aged 64. Good character. **20 years** not life with a 12-year minimum term.)

340.6 *Indecent assault Victim under 10 Defendant then aged 21+*

R v G 2014 EWCA Crim 393 D was convicted of four indecent assaults. V1 and V2 were sisters. V3 was their cousin. All three were nieces of D's wife. Between 1987 and 1994, when the victims were aged 8 and 11 and D was aged around 30, the victims used to visit D. Over that period, D gave each victim rides on a fork lift truck and on a lawn mower, sitting on his lap. He would touch their vaginas and in many instances, penetrate them with his finger. There were similar episodes in the garden shed in respect of V1, and in the house in respect of V3. There were also incidents of sexual assault where D touched V3 over clothing. D was aged 55 on appeal. In February 1991, he had been cautioned for an assault on V1. He had put his hand inside her knickers and touched her vagina. D still protested his innocence to the PSR writer. Held. There were a large number of glowing testimonials attesting to D's positive good character and he had not offended since 1993. A just and proportionate sentence was **8 years**, not 10.

Post-guideline cases

Att-Gen's Ref No 53 of 2014 2014 EWCA Crim 1929 D was convicted of two indecent assaults and indecency with a child. The offences occurred in 1991 against a backdrop of persistent regular violence

towards both children of D's then-partner. V was aged seven, and her brother, aged ten, who both saw D as a step-father figure. D confronted V when she was on the toilet. D slapped V's head and told her to kneel and close her eyes. He then placed his penis in her mouth, instructing her to suck it. When she did not, he hit her again. A few minutes later, V's mother had left and D told V to bend over. He then touched V's stomach, waist and vagina, going on to insert his fingers. He also struck her bottom and threatened to kill V if she told anyone. Sometime later in 1991, in similar circumstances to the first assault, D told V to kneel and kiss his penis. She refused and was hit. The assault ended when V's mother called from downstairs. V complained to police in 1999, but withdrew her evidence when D resumed the relationship with V's mother. The offences considerably affected V and she had left school and suffered panic attacks continuing into adulthood. D's denial persisted throughout. D was now aged 48 and had several convictions. He pleaded in 1991 to ABH against V and assault against her brother but had only had a caution since. D had a back problem, bipolar disorder, depression and anxiety. D's references were positive, especially of his behaviour since 1991. The Judge, although aware of *R v H 2011 EWCA Crim 2753, 2012 2 Cr App R (S) 21*, was reluctant to transpose these offences into their modern day equivalents. Held. V was cowed by a background of bullying and violence and today [the penetration] would be rape. Offences under the Sexual Offences Act 2003 s 7 and 9 contain factors in the guideline capable of encompassing the sort of conduct in this case. But the Court should also have regard to factors which are in play when more serious offences of rape and assault by penetration on a child under 13 are considered. The approach should be to look at relevant guidelines in the round and make adjustments for the change in sentencing levels. **7 years** in all, not 4.

Att-Gen's Ref No 61 of 2014 2014 EWCA Crim 1933 D was convicted of seven indecent assaults. One count was a specimen count against V2. In the late 1980s D was 15 or 16 and he would lie naked on top of V1, his step-brother, make him remove his clothing in bed and rub up and down until D ejaculated. He told V1 not to tell anyone and this occurred over a 12-month period. This was similarly perpetrated against V2, D's step-sister, but over an 18-month period. In addition, D had touched V2's vagina and had rubbed his groin against V2's under the pretence of playing a game. The offences took place when their parents were out of the house and D was left in charge. V1 was five and V2 six or seven at the time. The abuse ended when the V1 told his mother, coinciding with D leaving for the Army at 16. D admitted the offences to his parents who then sought advice from a vicar. V1 and V2 received counselling and the Judge found the offences to have had a profound effect. D was now aged 42 and had a conviction for other sexual offences from 2010 (taking a child, who was 15, without authority and meeting her following grooming when he was a teacher). D was made subject to a SOPO which he breached three years later by still being in contact with that victim. It was then varied when she became an adult, to permit contact between the two. He was currently engaged in a Sexual Offender Treatment Programme (SOTP), and had continued on the community order imposed then, but now breached. The PSR noted that custody would be of insufficient length to enable work to occur with D to reduce his risk of harm. Research showed that non or partial completion can increase the risk of re-offending. There was some acceptance of guilt. Held. D's conviction shows that, many years after the [instant] offending, he was prepared to indulge his proclivities at the expense of his responsibilities. To bring the SOTP to an end by imposing immediate custody would not only frustrate such work, but might exacerbate the situation. This is a difficult and unusual case. We conclude that the interruption of the SOTP, with concomitant exacerbation of the situation, is an exceptional circumstance justifying the suspension of the sentence. **18 months, suspended for 2 years** unaltered.

340.8 Victim aged 10+ 3+ years' imprisonment

Post-guideline case

Att-Gen's Ref No 72 of 2014 2014 EWCA Crim 2003 D was convicted of five specimen indecent assault counts. D was V's step-grandfather and V was between the ages of 11 and 16. D had always been

physically affectionate towards V but on one occasion, when V was 11, D put her on his knee and, placing his hand inside her knickers, D digitally penetrated V, hurting her. Afterwards, D asked V whether she had been “enjoying it”. On another occasion, D stroked V’s genitalia and penetrated her, pretending to be affectionate. There were nine or ten incidents of abuse, with some occurring when V’s family was present but D would disguise his actions, for example, by using a cushion. On the final occasion, D was babysitting V and stroked her under her bedclothes and at some point, either then or on a separate occasion, exposed his penis to her. D was aged 67 on appeal and was of good character, but expressed no remorse. V felt that her childhood had ended when D began the abuse and she had become shy and wary of contact with males. Held. **6 years**, not 3 1/2 concurrent.