

341.12 *Need for sentence to address the behaviour as well as to punish*

Note: This paragraph applies to other sex offending as well image offences. Ed.

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.

341.15 *Extended sentences*

R v Cheshire 2014 EWCA Crim 627 D pleaded early to 'child pornography offences'. Police visited his home and he tried to conceal a stylus pen. It was seen and he claimed it was for a sat nav device. He showed the officers such a device and they left. They later discovered that the stylus pen could be used on devices such as Internet smartphones and iPads. They returned to D's home and D denied having any device that could access the Internet. Police found a hidden pouch on D containing a mobile phone capable of accessing the Internet. The mobile had about 1,700 child images in it which were Levels 1-5. On a memory card and the memory within the phone there were 55 Level 4 images and at least three Level 5 images including a 9-10-year old girl having oral sex with a dog. D was now aged 63. In 1978, he received 9 months for indecent assault on a male aged over 16. In 1995, he received 3 months for distributing indecent images of children. In 1998, he was convicted of inciting a child to commit gross indecency by leaving notes and money in a park. In 1999, a Sex Offender Order was made following his approach to two children under the age of 10. By 2000, there were eight breaches of the Sex Offender Order. Also in 2000, there were three offences involving him being in prohibited areas, four other breaches and five sexual image offences. D received 7 years. In 2006, D pleaded to further child pornography offences and was sentenced to IPP (subsequently quashed by the Court of Appeal who substituted a sentence of two years). In 2011, D was sentenced for further indecent images offences. The

Judge felt unable to pass an extended sentence and sentenced D to 3 years and a SOPO. D breached that order by committing the instant offences. In 2013, for the instant offences the Judge gave him an extended sentence (4 years' custody and a 3-year extended licence). The PSR had requested such a sentence saying, 'should the opportunity arise, D would commit contact sexual offences against children.' D was aged 63 at appeal. Held. A finding of 'dangerousness' may be appropriate if the significant risk of serious harm can properly be inferred from, for example, a greater frequency of offending, a risk of contact offending or an escalation in the gravity of the relevant images. Since 2009, there had been a significant escalation in the risk posed by D, in particular, the sheer persistence and scale of offending since 2009, the extreme lengths to which D was prepared to go to conceal his offending (including the concealed pouch) and D's failure to engage with processes designed to help him. There was an escalation in offending and there was a clear risk that D could revert to contact offences of the type he committed previously. The Judge was therefore entitled to find that D was dangerous and impose an extended sentence (4 years' custody and a 3-year extended licence). Appeal dismissed.

Note: The problem is that the decision was formulated by the author of the PSR who does not give any convincing reasons why there would be an escalation to contact offences involving serious harm and was not available for cross-examination. The reason given by the sentencing Judge and the Court of Appeal appears to be the frequency of the offending and the image seriousness is escalating. Why that would establish an escalation is not revealed. Normally one looks to someone's past behaviour to determine future behaviour. That past from when he was 18, over 45 years ago, indicates D did not progress to child contact offences. Now D was aged 63, it would be hoped his interest would wane not escalate. Although the result might be attractive, the reasons don't point to the substantial risk of serious harm. Ed.

See also: *R v Joy* 2007 EWCA Crim 3281 (It was not reasonable to draw such an inference. IPP was not appropriate.)

341.20 Category A Penetration

R v Horn 2014 EWCA Crim 653 D pleaded early to nine child sex image offences. D said he was interested in children aged between 10 and 14 and had collected 'a large number' of images. About half of the 90 videos were Level 4 or 5. Some involved the rape of children as young as six. He admitted to using file sharing software to search for images. He was a deputy head master of a primary school with specific responsibilities for child protection. The PSR said he was extremely remorseful and distressed. He suffered from a genetic disorder which affected his skin. He was bullied as a child and had low self-confidence. D was socially isolated and suffered from stress at work. He was assessed as having a low risk of further offending. Held. There was no suggestion he had assaulted any children in his care. The low risk assessment related to image offences and not contact offences. Starting at 12 months, which would be increased to 18 to reflect the young age of some of the victims. That would be reduced to 15 months because of the strong personal mitigation. With the plea, **10 months** not 18.