

## THEFT Volume 2

### 357.1

**Consultation paper** In April 2014, the Sentencing Council produced a consultation paper for theft offences including theft from a shop or stall and abstracting electricity. The consultation period ends on 26 June 2014.

#### **357.11 Breach of trust                      Value £10,001-£50,000**

*R v Nawara* 2014 EWCA Crim 1912 D pleaded (10% credit) to theft (×2). D had entered the UK illegally and was employed in a restaurant at £3 per hour. The manager, V, asked D to deposit cash, £10,180 for the restaurant and £200 for V's personal benefit. D made off with the cash and V sent him text messages with Koranic references to peace and mercy, albeit that D did not know of them until his trial. V saw D as his friend, had helped him significantly and had lent money to him. A month later, V spotted D and gave chase. D was stopped, arrested and gave a no comment interview. D considered returning the money and was remorseful, but gave large amounts to his friends who had supported him and spent some on consumer goods. D believed V had taken advantage of him and had also refused to give D time off, in line with a doctor's recommendation, following a work-related injury. V had lost sleep due to financial worries and felt used and abused by D. D was aged 27 with no antecedents. He was Palestinian but had moved to Libya, aged four. Due to political difficulties and war he had been smuggled into the UK. The Judge placed this into Category 2 as D had breached a high degree of trust. Held. Giving an employee over £10,000 in cash to take to the bank did involve placing in him a high degree of trust. We cannot agree that there was justification for giving consecutive sentences as the money was given to D on the same occasion. This was a single act of criminality. Starting at 27 months, **2 years and 3 months concurrent**, not 39 months in all.

#### **357.32 Persons in public places, Theft from      Cases**

*R v Varga* 2014 EWCA Crim 703 D pleaded early (although not at the first opportunity) to theft. D went to a Primark store with his cousin, C, who was eight years older than him. On an escalator, C removed his baseball cap and placed it over his other hand. He placed his hand into V's coat pocket, removed a camera and passed it to D. V was unaware of the theft but the incident was caught on CCTV. Both D and C had previous for dishonesty but C's convictions were worse. D was in breach of a conditional discharge. The Judge said the offence was planned, more serious because there were two of them and cameras often had photographs important to the victims. He started at 12 months and with the plea gave **9 months**. Held. The guideline is not to be read like a statute. V was not vulnerable as defined by the guideline. The first aggravating factor was the offence was planned by two people. The second aggravating factor is, if the victim had resisted, there could have been a very unpleasant confrontation. Appeal dismissed.

#### **357.43 Shop theft                      Organised gangs**

*R v Heatley and Others* 2014 EWCA Crim 790 D, H and S pleaded (full credit) to conspiracy to steal, burglary and attempted burglary. At about 9.15am, the three entered a pawnbrokers disguised with a sledgehammer in a laundry bag. At that time the shop would normally have had jewellery on display worth £30,000. On that day, there had been a delay in putting the jewellery out and at that time the cabinets were empty. On seeing this the three left. On the same day, again armed with the sledgehammer, they broke a window and forced a door to steal a little over £1,000 in a domestic burglary. The next day,

they prised open the main entrance door of a block of flats and were seen when they tried to break open a flat door. D was aged 27 was on licence for a 2-year sentence. H was aged 23 and was given 2 years for robbery in 2010. S was about 32 and had previously received 5-year and 7-year sentences. The defence said the 5-year starting point for the conspiracy was too high. Held. The three are professional criminals. The staff said they thought the item in the bag was a baseball bat. That would have been very frightening. This was a planned job targeting high value goods. **3 years 4 months** for the conspiracy and 12 months consecutive for the first burglary was not manifestly excessive.

### **357.45 Shop theft      *Persistent offenders***

*R v Raisis* 2014 EWCA Crim 1887 D pleaded (full credit) to two thefts from jewellers' shops. D also breached a suspended sentence, which was activated concurrently. D asked to look closely at a ring worth £11,500 and then ran off with it. He then, with an accomplice, stole five rings and a chain, though he later handed the chain back. D had a very poor record, including violence offences and five dishonesty offences, but this was an escalation in offending. He was a drug user and assessed at high risk of reconviction, albeit that he had managed to break his habit. Held. The fact that D's offences were motivated by drug addiction is not a reason for reducing a sentence. **3 years** concurrent, not 3 years and 18 months consecutive.

### **357.47 Vehicles      *Stealing from them***

*R v McDonagh and Lawrence* 2014 EWCA Crim 478 M and L pleaded to theft. One night, they went out in a car looking for parked lorries from which to steal diesel. For that purpose they had in their car 13 25-litre containers, gloves and two screwdrivers. They went to a lorry park and were seen acting suspiciously. They then went to a layby where four lorries were parked. They forced open the fuel cap on one of the lorries whose driver was asleep and stole diesel worth £150-180. At about 11.50pm, a police car saw their car and stopped them. M and L ran off and the police gave chase. A police helicopter was summoned and M and L were arrested about a mile away. M claimed they had been having a picnic. M had no convictions. He assisted his mother with the care of his brothers and sisters. L had a caution for making off without payment and theft from a vehicle. He also had a conviction for fraud (2013). The PSR noted that he did not accept responsibility for the offence. The Judge imposed deterrent sentences on the basis that the offence was prevalent in that area. Held. The Judge was entitled to consider that the case against M and L was overwhelming and reduced their plea credit accordingly, to presumably 20%. There were a number of aggravating features including that the offence was planned, it was committed at night and there were two offenders. The lorry driver was vulnerable because he was asleep and was deliberately targeted. On the other hand, the value of the diesel stolen was relatively modest and both defendants were young and neither had previously been to custody. Whilst there was an element of being on the cusp in this case, the Judge was entitled to impose a custodial sentence. For M, **2 months' YOI** not 8 and for L, **3 months' YOI** not 10.