86.19 *Defendant sentenced on different occasions for similar offences*

R v Green 2019 EWCA Crim 108 In February 2014, D was sentenced for buggery and other child sex offences. He had targeted boys in his charge as a sports coach and teacher. The offending was from 1980 to 1994. D received 9 years and was released in July 2018. In September 2018, he was convicted of 17 indecent assaults against other boys aged 12-16, also in his charge. The offences were from about 1980. D had been interviewed about the second set of offences in 2014,[1] 2016 and 2017. D was aged 76 and in deteriorating health. The Judge said she was not going to factor in the earlier sentence because of the gravity of the latest offences and gave D 12 years. Held. If the 12 years stood on its own, no complaint could be made. para 14 The Judge's decision was wrong. Judges should consider all the circumstances in deciding what, if any, impact the previous sentence should have on the new sentence to be passed. The circumstances may include:

a) how recently the previous sentence was imposed;

b) the similarity of the previous offences to the instant offences: in this regard, we would remark that it will usually be helpful to obtain as much information as possible about the previous offences;

c) whether the offences overlap in terms of the time they were committed;

d) whether on the previous occasion the offender could realistically have 'cleaned the slate' by admitting other offending;

e) whether to take the previous sentence into account would, on the facts of the case, give the offender 'an undeserved, uncovenanted bonus which would be contrary to the public interest';

f) the age and health of the offender, particularly if the latter has deteriorated significantly as a result of his incarceration and any other relevant circumstances including, for example, his conduct whilst in prison; and

g) whether, if no account is taken of the previous sentence, the length of the two sentences is such that, had they been passed together to be served consecutively, that would have offended the totality principle.

Here, notwithstanding D had not admitted the offences earlier and that he pleaded not guilty, 10 years for the second set of offending, not 12, making in total 19 years not 21.

Note: One factor not mentioned is was there an excessive delay between the police hearing about the offences and the CPS starting a prosecution. Another factor is whether there was an excessive delay during the proceedings. If there was a 4-year delay with little effort to prosecute the offences, it seems wrong that D should serve about 3 extra years because of the delay. It also seems wrong to penalise a defendant for not admitting offences earlier and pleading not guilty. Those matters would have been reflected in the discounts that are available if D had acted differently. Most sensible Crown Court judges consider what the appropriate sentence would have been if the offending had been sentenced at the same time and choose not to imprison ill, old defendants longer than absolutely necessary, both for their benefit and that of the prison service and the taxpayer. Ed.

1 The judgment says D was interviewed in 104, which I assume is a typo for 2014.