

Sentencing in Sex Cases

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Sentencing Guidelines

- Breach of/ abuse of trust

Forbes [2016] EWCA Crim 1388 para 17

Waqar (Mohamed) [2018] Crim EWCA 265

JM [2017] EWCA Crim 2458

- Assessment of harm caused

Forbes: paragraph 26

- Disparity in age
- Particularly vulnerable complainant
- Beware double counting

Inciting sexual activity

- *R v Jacob Cook [2018] EWCA Crim 530 (and other citations at para 8)*
- Attempting to incite (s10 SOA 2003)
- Assessment of harm
- Where the case involves inciting rather than causing sexual activity and where there was no physical contact with or any communication with a real child: Cat 3

Offenders of Particular Concern s236A

s236A

Applies to:

- Rape of a child under 13 (s5 SOA 2003)
- Assault by penetration of child under 13 (s6 SOA 2003)
- “Abolished offences” which would have constituted such an offence
- *Fruen [2016] EWCA Crim 561*

Mandatory sentence

- When a court decides that it is unnecessary to pass a sentence of imprisonment for life or an extended sentence it *must* pass a sentence under s236A in respect of each count to which the section applies
- It is mandatory not discretionary

Effect on sentence

- Custodial term
- Plus one years additional licence
- Cannot exceed the maximum of the offence (inclusive of the 1 year extension period)
- Release will be considered by the parole board at the half way point
- Liable to serve whole of custodial term if not considered safe for release into the community

SHPO's

General principles:

R v Smith [2011] EWCA Crim 1772
(SOPO)

R v Parsons [2017] EWCA Crim 2163

Eligibility criteria

SOPO

“necessary to guard against risk of “*serious* sexual harm””

SHPO

“necessary to protect the public or any particular members of the public from “sexual harm””
(s103A(2)(b)(i))

Child now means a person under 18 as opposed to a person under 16 – s103B(1)

Questions for the court: *R v Parsons*

Question for court when considering making an order (paragraph 4):

- Is the making of the order necessary to protect the public from sexual harm through the commission of scheduled offences?
- If some order is necessary are the terms imposed nevertheless oppressive?
- Overall, are the terms proportionate?

General principles (paragraph 5)

- i) First, as with SOPOs, no order should be made by way of SHPO unless *necessary* to protect the public from sexual harm as set out in the statutory language. If an order is necessary, then the prohibitions imposed must be *effective*; if not, the statutory purpose will not be achieved.
- ii) Secondly and equally, any SHPO prohibitions imposed must be *clear* and *realistic*. They must be readily capable of simple compliance and enforcement. It is to be remembered that breach of a prohibition constitutes a criminal offence punishable by imprisonment.
- iii) Thirdly, as re-stated by *NC*, none of the SHPO terms must be oppressive and, overall, the terms must be proportionate.
- iv) Fourthly, any SHPO must be tailored to the facts. There is no one size that fits all factual circumstances.

Internet access and use

- Importance of internet for everyday living has increased considerably even since decision in *Smith*
- Ability to access internet “the established norm”
- Blanket ban on internet access would not be appropriate in anything other than exceptional cases
- In all other cases unrealistic, oppressive and disproportionate as would cut off offender from legitimate everyday living

- Risk Management software
- Cloud storage
- Encryption software

Age

- No objection in principle to prohibition geared to those under 18 (as opposed to 16) on basis some offences define child as under 18 (ss16 – 19; ss25 and 26 SOA)
- Facts of case may point to confining prohibitions to under 16 (*Smith* para 21)

Prosecution Duty

- Draft SHPO should be lodged with the court in electronic form at least 2 clear days before the sentencing hearing
- CPR Part 31.3(5) makes that a requirement
- Dereliction of counsel's duty not to serve *Smith* compliant SHPO in advance of the hearing: *Jackson [2012] EWCA Crim 2602*

- Usually for a term that does not exceed the notification period but in an appropriate case may be legitimate for it to do so
- S28 and s29A of the Criminal Justice and Court Services Act 2000 abolished (Disqualification from working with children). Prohibition may be added to SHPO

NOTIFICATION Part 2 SOA 2003

- Offences specified in Schedule 3
- Periods set out in s82 SOA
- Regulation 12: provision of bank/ card details
- Extended sentence: notification period calculated by reference to aggregate period
- Automatic if subject to a SHPO

Sexual Offences Act 1956

Strange anomalies

Dates that are important for sentencing purposes

Presumptions that were not abolished retrospectively

Indecency with Children Act 1960

Why the Act was passed

The age of the child

The date of the offence