

“Severe psychological harm” – expanded explanation

“The assessment of psychological harm experienced by the victim is for the sentencer. Whilst it may be assisted by expert evidence, such evidence is not necessary for a finding of psychological harm, including severe psychological harm. A sentencer may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a Victim Personal Statement (VPS), or on his or her observation of the victim whilst giving evidence.”

“Abuse of trust” – expanded explanation

- *A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.*
- *In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.*
- *Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, employer and employee, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.*
- *Additionally an offence may be made more serious where an offender has abused their position to facilitate and/or conceal offending.*
- *Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.*

Proposed amendments to historic sex offences guidance

Approach to sentencing historic sexual offences

When sentencing sexual offences under the Sexual Offences Act 1956, or other legislation pre-dating the 2003 Act, the court should apply the following principles:¹

¹ R v H and others [2011] EWCA Crim 2753

1. The offender must be sentenced in accordance with the sentencing regime applicable at the **date of sentence**. Under sections 57 and 63 of the Sentencing Code the court must have regard to the statutory purposes of sentencing and must base the sentencing exercise on its assessment of the seriousness of the offence.
2. The sentence is limited to the maximum sentence available at the **date of the commission of the offence**. If the maximum sentence has been reduced, the lower maximum will be applicable.
3. The court should ~~have regard~~ **sentence by reference** to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003. Where the offence, if committed on the day on which the offender was convicted, would have constituted an offence contrary to section 5 or section 6 of the Sexual Offences Act 2003, sections 265 and 278 of the Sentencing Code (special custodial sentence for certain offenders of particular concern) apply.
4. The seriousness of the offence, assessed by the culpability of the offender and the harm caused or intended, is the main consideration for the court. The court should not seek to establish the likely sentence had the offender been convicted shortly after the date of the offence.
5. When assessing the culpability of the offender, the court should have regard to relevant culpability factors set out in any applicable guideline.
6. The court must assess carefully the harm done to the victim based on the facts available to it, having regard to relevant harm factors set out in any applicable guideline. Consideration of the circumstances which brought the offence to light will be of importance.
7. The court must consider the relevance of the passage of time carefully as it has the potential to aggravate or mitigate the seriousness of the offence. It will be an aggravating factor where the offender has continued to commit sexual offences against the victim or others or has continued to prevent the victim reporting the offence.
8. Where there is an absence of further offending over a long period of time, especially combined with evidence of good character, this may be treated by the court as a mitigating factor. However, as with offences dealt with under the Sexual Offences Act 2003, previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.
9. If the offender was very young and immature at the time of the offence, depending on the circumstances of the offence, this may ~~be regarded as personal mitigation~~ **significantly reduce the offender's culpability**.
10. If the offender made admissions at the time of the offence that were not investigated this is likely to be regarded as personal mitigation. Even greater mitigation is available to the offender who reported himself to the police and/or made early admissions.
11. A reduction for an early guilty plea should be made in the usual manner.