

## 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:<sup>[1]</sup>

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.

[\[1\]](#) R v H and others [2011] EWCA Crim 2753