**No victim, no harm? Holly Thompson reviews the sentencing guidelines for sexual grooming offences**

Over the last few years, we have seen the emergence of “Paedophile Hunter” organisations across the country. These vigilante groups often lure and confront paedophiles through posing as child ‘decoys’ on social media. This involves one or more workers from the organisation pretending to be a child and engaging in discussions with the offender about their ‘age’ and their hobbies. What we see too often in our courts are these discussions turning intimate, with the offender sending explicit messages or photographs to the ‘child’ and sometimes, even asking to meet them in person. Videos are then taken of the group confronting the offender and reports are made to the police, leading to prosecutions for sexual offences. This can also be the case where, instead of vigilante groups, the offender has been in contact with undercover police officers directly.

This type of criminality often falls into the bracket of the following offences:

* S.14 Sexual Offences Act 2003 – Arranging or facilitating the commission of a child sex offence; or
* S.10 Sexual Offences Act 2003 – Causing or inciting a child to engage in sexual activity.

On conviction, judges and benches of magistrates’ have had the difficult task of sentencing these offences. As per the Sentencing Guidelines, one of the considerations they have to take into account is the level of ‘harm’ which has been caused to the victim. Obviously, when there is no actual ‘victim’, this creates some difficulty. The Sentencing Council have noted that the previous guidelines have been interpreted, in some cases, to suggest that the level of harm was low or that the absence of harm counted as a mitigating factor, where there were arrangements or incitements of sexual activity but it did not actually happen.

Previous guidance

Prior to 31st May 2022, there were two main cases which could be relied on in sentencing these offences – *R v Privett & Others* [2020] EWCA Crim 557and *R v Reed & Others* [2021] EWCA Crim 572. These two cases concerned the above offences in circumstances where there was a fictitious child and no actual harm was caused.

The guidance from these cases was summarised by Lord Justice Fulford VP:

1. “For a section 14 offence the position under the guideline was clear: the judge should, first, identify the category of harm on the basis of the sexual activity that the defendant intended (“*the level of harm should be determined by reference to the type of activity arranged or facilitated*”); and, second, adjust the sentence in order to ensure it was commensurate with, or proportionate to, the applicable starting point and range if no sexual activity had occurred (including because the victim was fictional) (see [59]–[67]).
2. “This decision will end the rigid distinction between those cases where particular sexual activity takes place and those cases where the defendant, for instance, does everything he is able to bring that sexual activity about but for reasons beyond his control it does not materialise. The sentencing judge should make an appropriate downward adjustment to recognise the fact that no sexual activity occurred, as demonstrated by the court in *Privett*(at [67]. Furthermore, we consider this approach should apply to all of the offences set out in [5] above when the defendant attempts to commit these offences or incites a child to engage in certain activity, but the activity does not take place. The harm should always be assessed in the first instance by reference to his or her intentions, followed by a downward movement from the starting point to reflect the fact that the sexual act did not occur, either because there was no real child or for any other reason.”
3. The extent of downward adjustment will depend on the facts of the case. Where an offender is only prevented from carrying out the offence at a late stage, or when the child victim did not exist and otherwise the offender would have carried out the offence, a small reduction within the category range will usually be appropriate. Where relevant, no additional reduction should be made for the fact that the offending is an attempt.
4. But when an offender voluntarily desisted at an early stage, and particularly if the offending has been short-lived, a larger reduction is likely to be appropriate, potentially going outside the category range.
5. As indicated in *Privett* at [72]*,* it may eventuate that a more severe sentence is imposed in a case where very serious sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.”

Although slightly different, both cases were monumental in providing the courts with guidance for how to approach the assessment of harm when there is no real child victim. Still, practitioners and the Court of Appeal have requested clarification from the Sentencing Council and asked for a revised guideline to be published covering these circumstances.

Revised guidelines

As of 31st May 2022, we now have revised guidelines for the above offences, with more published guidelines coming our way. The revisions cover:

* [Arranging or facilitating the commission of a child sex offence](https://www.sentencingcouncil.org.uk/offences/crown-court/item/arranging-or-facilitating-the-commission-of-a-child-sex-offence) (s14 Sexual Offences Act 2003) even where no sexual activity takes place or no child victim exists. The maximum sentence depends on the activity being arranged but is life imprisonment if the rape of a child under 12 years old is being planned.
* [Causing or inciting a child to engage in sexual activity](https://www.sentencingcouncil.org.uk/offences/crown-court/item/sexual-activity-with-a-child/) (s10 Sexual Offences Act 2003) and other similar offences, even where activity is incited but does not take place or no child victim exists. The maximum sentence is 14 years’ imprisonment.

As per the new guidelines, the level of harm should be determined by reference to the type of activity arranged, facilitated, caused, or incited. Where no sexual activity takes place, the court should identify the category of harm on the basis of the sexual activity the offender had intended, and a downward adjustment at step 2 should be applied to reflect the fact no harm or lesser harm occurred. The adjustment is to be determined by the specific facts of the case. The sentence will then be subject to adjustment by the aggravating and mitigating features, as it would ordinarily be. In cases where the activity actually does takes place, sentences commensurate with the applicable starting point and range will likely be appropriate.

Additionally, from 1st July 2022, we will have new guidelines for sexual communication with a child under s.15A Sexual Offences Act 2003. There will be a maximum penalty of 2 years custody for sharing images, causing psychological harm, abuse of trust, or the use of threats or bribes.

The publication of these revised guidelines is clearly a positive step from a practitioners’ perspective and should now provide greater clarity to the courts and more consistency moving forward.

**Holly Thompson**

Pupil Barrister

Wilberforce Barristers