

## S67. Voyeurism

### How to use this Legal Guidance

**Date Updated:** January 2012

**Title:** Sexual Offences

**Offence:** Voyeurism

**Legislation:** Sexual Offences Act 2003 S67

**Commencement date:** 1/05/2004

**Mode of Trial:** Either Way

**Statutory Limitations & Maximum Penalty:**

- On Indictment - 2 years
- Summary Conviction - 6 months imprisonment and/or statutory maximum fine

## Culpability & Harm

The sentences for public protection must be considered in all cases. They are designed to ensure that sexual offenders are not released into the community if they present a significant risk of serious harm.

The offence of voyeurism covers cases where someone who has a reasonable expectation of privacy is secretly observed. The offence may be committed in a number of ways:

- by direct observation on the part of the offender;
- by operating equipment with the intention of enabling someone else to observe the victim;
- by recording someone doing a private act, with the intention that the recorded image will be viewed by the offender or another person; or
- by installing equipment or constructing or adapting a structure with the intention of enabling the offender or another person to observe a private act.

In all cases the observation, or intended observation, must be for the purpose of obtaining sexual gratification and must take place, or be intended to take place, without the consent of the person observed.

The SOA 2003 defines a 'private act', in the context of this offence, as an act carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is 'doing a sexual act that is not of a kind ordinarily done in public'.

The harm inherent in this offence is intrusion of the victim's privacy. Whilst less serious than non-consensual touching, it may nevertheless cause severe distress, embarrassment or humiliation to the victim, especially in cases where a private act is not simply observed by one person, but where an image of it is disseminated for wider viewing. A higher sentencing starting point is recommended for cases where the offender records and shares images with others.

For offences involving the lowest level of offending behaviour, i.e. spying on someone for private pleasure, a non-custodial sentence is recommended as the starting point.

A pre-sentence report,<sup>5</sup> which can identify sexually deviant tendencies, will be extremely helpful in determining the most appropriate disposal. It will also help determine whether an offender would benefit from participation in a programme designed to help them address those tendencies.

Where this offence is being dealt with in a magistrates' court, more detailed guidance is provided in the Magistrates' Court Sentencing Guidelines (MCSG).

## Aggravating & Mitigating Factors

### Aggravating

- Threats to prevent the victim reporting the offence
- Recording activity and circulating pictures / videos
- Circulating pictures or videos for commercial gain - particularly if victim is vulnerable e.g. a child or person with a mental or physical disorder
- Distress to victim e.g. where the pictures/ videos are circulated to people known to the victim

### Relevant Sentencing Council Guideline (if any)

1. Guidelines effective for offences sentenced on or after the 14th May 2007.
2. The starting points are for an adult offender, of previous good character who was convicted after trial.

Type/nature of activity: Offence with serious aggravating factors such as recording sexual activity and placing it on a website or circulating it for commercial gain

**Starting points:** 12 months custody

**Sentencing ranges:** 26 weeks - 2 years custody

Type/nature of activity: Offence with aggravating factors such as recording sexual activity and showing it to others

**Starting points:** 26 weeks custody

**Sentencing ranges:** 4 weeks - 18 months custody

Type/nature of activity: Basic offence as defined in the SOA 2003, assuming no aggravating or mitigating factors, e.g. the offender spies through a hole he or she has made in a changing room wall

**Starting points:** Community order

**Sentencing ranges:** An appropriate non-custodial sentence

*'Non-custodial sentence' in this context suggests a community order or a fine. In most instances, an offence will have crossed the threshold for a community order. However, in accordance with normal sentencing practice, a court is not precluded from imposing a financial penalty where that is determined to be the appropriate sentence.*

### Relevant Sentencing Case Law

**R v Turner** [2006] 2 Cr App R (S) 51 D 30 no previous was employed as manager of a sports centre. He set up a camera over a shower. The victim noticed and ran out. Videos of two other women were found at his home. V was sick she suffered with stress related skin complaint as a result and was off work. He expressed remorse. The PSR concluded he posed a risk to adult females. He was motivated to seek help. HELD: The effect on the victim of this type of offence may be as traumatic as some forms of sexual assault. In view of his position custody but 9 months not 14.

**R v Sippings** [2008] EWCA Crim 46 D 44 of good character. Pleaded to five counts of taking an indecent image of a child and 2 of voyeurism. His kitchen window looked into his victims bedroom. She was aged between 14 and 19 at the time of the offences. The pictures showed her from the waist up. PSR said D denied the offence was motivated by sexual gratification and blamed his mental illness. Medium risk of reconviction. He was socially isolated. Reports said he was compliant with the prison regime poor at coping with it. HELD D was a sad, lonely man with mental health difficulties who needed continuing help. A custodial sentence was not appropriate. Community Rehabilitation Order with conditions of attending a sex offenders programme and to receive mental health treatment not 9 months custody with a 3 year extension period.

**R v Hodgson** [2008] EWCA Crim 1180 D 44 no previous convictions. Pleaded guilty on re-arraignment. He was employed by a small firm and he set up a camera to watch female colleagues in the lavatory. The equipment did not record. The risk of repeat offending and harm was assessed as low. HELD: The offence did not fall neatly into either of the two categories in the sentencing guidelines. It was more serious as it was continuing not a single instance. It involved the use of quite sophisticated equipment, implying a high degree of planning and premeditation and the targets were colleagues. This was an aggravating feature. As he had served the equivalent of 6 weeks in custody a community rehabilitation order for 3 years with supervision and a sex offenders programme.

## Ancillary Orders

- Notification (S83 to 96 Sexual Offences Act 2003)
- Sexual Offences Prevention Order (S104 Sexual Offences Act 2003)
- Where the offence is committed against a child and the defendant is aged 18 or over he or she is automatically barred from engaging in regulated activity with children and with vulnerable adults. (Safeguarding Vulnerable Groups Act 2006).

## Consider Also

- Dangerous Offender provisions apply. Sentences for public protection must be considered.

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