

## Issues of Indecent Image Classification

Offences relating to the possession and/or distribution of indecent images are increasingly common in the 21<sup>st</sup> century largely due to the development and proliferation of computer technologies and their application in media and communication. Now that images can be captured digitally, stored electronically and transmitted from one (internet connected) user to another, it is important to know what action will be taken when it is suspected someone possesses or distributes indecent images.

A place to begin would be an explanation of how the offences operate and how someone becomes liable under them.

### Section 1(1) of the Protection of Children Act 1978 states that:

#### *It is an offence for a person*

- ***To take or to permit to be taken, or to make any indecent photographs or pseudo-photographs of a child***

A person is considered to be a child if they are less than 18 years of age (s45 (1) of the Sexual Offences Act 2003). Previously the legal age of a child was 16; this alteration allows new liability in that the legal age for marriage in the UK is only 16, meaning a married couple would be prevented from possessing any sexual images of one another if either were under the age of 18. Under section 160(A) of the Criminal Justice Act 1988 (inserted by the Sexual Offences Act 2003, s.45 (4)) it will be a defence to prove that at the time of the offence (when charged with possession) and at the time the defendant obtained the image (when it was taken) that the child and the defendant were "*married or civil partners or living together in an enduring family relationship*".

A person under the age of 18 is considered to be a child but how would somebody identify the age of someone based purely on an image? Direct evidence of a subject's age in an indecent image is very difficult to obtain, therefore the determination of age should always be left to the jury (the court's decision in *R v Land [1998] 1 Cr App R 301, CA* made expert evidence on the subject inadmissible), Protection of Children Act 1978 section 2 (3) stating "*in proceedings under this Act a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of 18.*"

The act of 'making' any indecent image has the effect of extending this offence to cover any access of indecent images with a computer. The case of *R. v. Smith (Graham Westgarth); R. v. Jayson* [2003] 1 Cr.App.R. 13, CA, stated that downloading an (indecent) image that was capable of being converted into a photograph on to a screen or opening an email attachment is an act of making that image and that no intention to copy it to a hard-drive is necessary (knowledge of the indecent image being a child is required *Atkins v DPP; Goodlands v DPP* [2000] 2 Cr.App.R. 248). When an image is accessed digitally the original image is not removed from its source; a copy is made onto the person accessing the images' hard-drive (importantly this can happen without any express intention by the user and will be discussed further as part of a defence).

In the simplest terms 'pseudo-photographs' are those images which have been altered to show some event or action which has not happened or some circumstance which did not exist e.g. using a composite of two images, a naked adult woman and a non-indecent image of a child to create an image showing a naked child by moving the head of the child onto the woman's body. The notion of pseudo-photographs is relatively new and has arisen as a consequence of increasingly sophisticated image manipulation software being widely available. The Criminal Justice and Public Order Act 1994 updated the Protection of Children Act 1978, section 7 (which interprets the meaning of terms in the Act for clarification purposes). Section 7 states that a "pseudo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph," and goes on to say, "If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult." The issue of whether an image is deemed 'indecent' should be left to the jury in any particular case based on "the recognised standard of propriety" (*R v Stamford* [1972] 2 Q.B. 391), as image classification is best left to be judged on a case-by-case basis where expert opinion has no more importance than that of the layperson.

- ***To distribute or show such indecent photographs or pseudo-photographs***

Section 1 (2) states that "for purposes of this Act, a person is to be regarded as distributing an indecent photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person."

- ***To have in his possession such indecent photographs or pseudo-photographs with a view to their being distributed or shown by himself or others***

It would be insufficient for a defendant to have left indecent images in a location where they were likely to be seen by others, the prosecution would have to show one of his reasons for having them

in that location was for them to be viewed as a result of them being where they were located (*R. v. Dooley (Michael) (Appeal against Conviction) [2006] 1 Cr.App.R. 21, CA*). In the case of *Fellows and Arnold [1997] 1 Cr App R 244* providing another with a password to enable him to access pornographic data stored on a computer was said to be 'showing' him the data.

- ***To publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs or intends to do so.***

To prove an offence contrary this section you do not have to show that there is an indecent photograph of a child in existence. It is sufficient if the advertisement is likely to be understood as conveying that the advertiser distributes or shows such indecent photographs. This offence would be applicable to Internet Service Providers (ISPs) who host material online and could commit this offence passively, to ensure that ISPs are aware of the third party content they are carrying, the police or Internet Watch Foundation should notify the ISP concerned and request that they stop advertising/publishing such material.

**Section 1 (4) of the Protection of Children Act 1978 states that:**

***Where a person is charged with an offence under this subsection it shall be a defence for him/her to prove***

- ***That he/she had a legitimate reason for distributing or showing the photographs or pseudo photographs or having them in his or her possession***

The legitimate reasons for possessing/distributing indecent images are restricted to those people who can prove that it was necessary to do so for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings. This defence is intended to allow people instructed to act for the defence or prosecution who need to be able to identify and act on the receipt of an indecent photograph or pseudo-photograph, to deal with such images. This defence will also apply to defence solicitors, police officers, prosecutors, Judges and others who have to deal with indecent images of children in the course of their work.

The guidelines on who will be allowed this defence are outlined in the 2004 Memorandum of Understanding published by the CPS and ACPO and can be found here <http://www.cps.gov.uk/publications/agencies/mouaccp.html>

- ***That he/she had not himself seen the photographs or pseudo photographs and did not know, nor had any cause to suspect them to be indecent.***

This defence is available if the defendant had not seen the photographs and did not know them to be indecent and did not have cause to believe them to be indecent. Defendants in cases concerning images on their computer will frequently claim this defence. Accordingly it will be up to the prosecution to present evidence to show that the defendant had seen the pictures. Problems in this area will be presented in the form of the Internet Cache; a 'copy' of onscreen information is stored by a computer hard-drive to allow faster performance when retrieving information from previously visited web-addresses. However this is no guarantee the image has been viewed; some images on a website are of 'thumb-nail' size, the user may not have viewed the entire page and the images stored in the Internet Cache were below the area he viewed on a webpage (again; it will be the responsibility of the prosecution to present evidence showing the defendant had seen the pictures (see *Atkins v DPP; Goodlands v DPP [2000] 2 Cr.App.R. 248* which will be discussed below)).

#### **Section 160 (1) of the Criminal Justice Act 1988 states that:**

##### ***It is an offence for a person***

- ***To have any indecent photograph or pseudo photograph of a child in his or her possession***

The sequence of events that immediately come to mind would be a computer user purposefully downloading an image and saving it to a hard-drive for further viewing at a later date. Whilst this is no doubt the ideal scenario from a prosecution viewpoint due to the easy forensic trail left to follow, it is quite rare for this to be the case. More likely is that the image will be 'held' in the Internet Cache or has been deleted but is still present (although not 'usable') somewhere within the computer hard-drive – these scenario's obviously require clarification from the courts as to whether a computer user is in possession of any indecent images found stored onto a computer hard-drive in these ways.

Interestingly what appears to be an almost strict liability crime in its wording does most certainly have a mental element. 'Possession' in the case of indecent images of children on a hard-drive is said to occur when the user has 'knowledge' of the photographs/pseudo-photographs being in his possession (*Atkins v Director of Public Prosecutions (DPP) [2002] 2 Cr App R 248*). Therefore indecent images that have been 'cached' cannot be used as proof of possession (as this is an automated process) provided the folder (area in which the images are stored) has not been accessed. Accessing the Internet Cache folder would show knowledge of the 'cache' process (if not the image), images stored in a cache will have a creation, modification and last access date, accessing images will update the 'last access date' and will display knowledge of the images and therefore possession could be established.

The decision in Atkins v DPP has been updated in the case of *R. v. Porter (Ross Warwick)[2006] 2 Cr.App.R. 25, CA*, an image will only be in the possession of the defendant if he had “custody or control of the image at that time. If at the time of possession the image is beyond his control, then...he will not possess it”. ‘Control’ of an image is difficult to determine. The courts were concerned with a defendant deleting an indecent image and still being in possession of it as it is not removed from disk-space until it is completely overwritten. The act of sending a file to a recycle bin and deleting it merely removes the directory or index file which prevents further access of the file until it is randomly overwritten by new information. So therefore an indecent image could still exist in whole or in part within a hard-disk even though it is considered to be ‘deleted’ from the understanding of the user. The decision in *R v Porter* is such that possession of indecent images does not occur provided they have been deleted and “*he believes that they can only be retrieved and removed by specialists who have software and equipment which he does not have. It does not occur to him to seek to acquire the software or engage a specialist for this purpose. So far as he is concerned, he has no intention of ever seeking to retrieve the images and he has done all that is reasonably necessary to make them irretrievable. We think that it would be surprising if Parliament had intended that such a person should be guilty of an offence under section 160(1) of the 1988 Act.*”

A charge of ‘making’ an indecent image of children could potentially be successful even if possession cannot be proven.

***Anyone charged with an offence under s160 (1)(A) will have a defence provided they can prove***

- ***That the subject of the image in question was over 16 years of age and married to the accused***

The marriage defence applies provided that at the time of the offence (when charged with possession) and at the time the defendant obtained the image (when it was taken) that the child and the defendant were “*married or civil partners or living together in an enduring family relationship*”.

**Section 160 (2) states where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove**

- ***That they had a legitimate reason for having the photograph in his or her possession***

As with Section 1 of the Protection of Children Act 1978 defence concerning legitimate reasons for possession of indecent images this defence is restricted in its application to those involved in the legal process (see above to the defences under the Protection of Children Act 1978).

- ***That they had not seen the photograph and did not know or have any cause to suspect it to be indecent***

Defendants in cases concerning images on their computer will frequently claim this defence. Accordingly it will be up to the police to present evidence to show that the defendant had seen the pictures. This is often referred to as the 'Browsing defence' in that the user was merely browsing a site and did not view all of its content or more specifically the content which is considered to be indecent images of children.

- ***That the photograph was sent to the defendant without any prior request made by them or by a third party and that he did not keep it for an unreasonable amount of time.***

The Act does not prescribe what constitutes a 'prior request', nor does it define the parameters of 'unreasonable time'. In particular, it is not clear whether time runs from when the image was received by the computer, or when it was known by a defendant to have been received. Consistent with the necessary mental element, the latter is likely. Some discussion of these issues was undertaken in the *R. v. Porter (Ross Warwick)*[2006] 2 Cr.App.R. 25, CA case, "this provision shows that Parliament intended that persons who inadvertently come into possession of images and get rid of them within a reasonable time are not guilty of the offence of possession. In these circumstances, it would be surprising if Parliament had intended that this defence should not be available to persons who inadvertently come into possession of images on their computers."

It has been noted that the prosecution has a heavier burden of proof under Section 1 Protection of Children Act 1978 than Section 160 of the Criminal Justice Act 1988 (*R v Collier- [2005] 1 WLR 843*). Since there is a statutory defence to section 160 the prosecution need only prove that the defendant was knowingly in possession of an indecent image of a child and the defendant would then have to prove that he had not seen the image and did not know, or have cause to suspect, that it was an indecent image of a child. Under section 1(1)(a) and (d) however no such statutory defence applies and so the prosecution need to prove not only that the defendant knowingly made an indecent image of a child but also that the defendant knew it was, or was likely to be, of a child (i.e. the onus is on the prosecution not the defence).

## Classification of Indecent Images

Once an image is determined to be indecent and depicting a child it will be assigned a level or 'grading' as not every indecent image has the same attributes and therefore is not judged at the same level of severity. The current system of classification originates from the COPINE Scale (COmbating Paedophile Information Networks in Europe) established in the 1990s which outlined ten distinct levels indecent images could potentially fall within. These levels started at 'Level 1' or indicative images meaning "*Non-erotic and non-sexualised pictures showing children in their underwear, swimming costumes from either commercial sources or family albums. Pictures of children playing in normal settings, in which the context or organisation of pictures by the collector indicates inappropriateness.*" The highest level or often most offensive type of image is 'Level 10' or 'Sadism/Bestiality' whereby there are "*Pictures showing a child being tied, bound, beaten, whipped or otherwise subject to something that implies pain or pictures where an animal is involved in some form of sexual behaviour with a child.*"

Although useful in its classification of severity of images, several levels of the COPINE scale were considered unnecessary and refined by the Court of Appeal in the case of *R-v-Oliver, Hartrey and Baldwin [2003] Cr App R(S) 15* to the following five point scale:

- Level 1**            **Images depicting erotic posing with no sexual activity**
- Level 2**            **Non-penetrative sexual activity between children, or solo masturbation by a child**
- Level 3**            **Non-penetrative sexual activity between adults and children**
- Level 4**            **Penetrative sexual activity involving a child or children, or both children and adults**
- Level 5**            **Sadism or penetration of, or by, an animal**

Offences involving any form of sexual penetration of the vagina or anus, or penile penetration of the mouth (activity which would carry a maximum sentence of life imprisonment) (except when involving sadism or intercourse with an animal, which fall within level 5), should be classified as activity at level 4.

This scale was adopted by the Sentencing Advisory Panel in 2002 in its sentencing guidelines for cases involving indecent images and is often referred to as the **SAP** scale (sometimes mistakenly as the older COPINE scale) (the sentencing guidelines will be discussed below).

## Incorrect use of the Tanner Scale

As has been discussed earlier the crucial element of any offence involving images is the need for the subject of an image to be a child under the age of 18. Unless the subject of an indecent image was known to the prosecution and it could be proven they were the person depicted within it and were under 18 at the time of the offence, then there will be a problem of classification. The SAP scale exists to help with classification of activity however it does not help with the initial estimation of a subject's age. It will be the role of the police/prosecution analyst to provide the initial review of any images of interest and outline which of those images are indecent and assign the activity depicted a level on the SAP scale. The probable age of a subject once they have been identified as being less than 18 years old at the time the image was created is under no circumstances an issue for any prosecution or defence expert. The decision in *R v Land [1998] 1 Cr App R 301, CA* makes it clear that any expert witness testimony is inadmissible in relation to determining the age of a child, *"a jury is as well placed as an expert (e.g. a paediatrician) to assess any argument addressed to the question whether the prosecution had established that the person depicted in the photograph was a child, and in any event expert evidence would be admissible: expert evidence is admitted only to assist the court with information which was outside the normal experience and knowledge of the judge or jury."*

The forensic investigators role is to retrieve and present 'potential' indecent images to the courts, by clarifying the age of the subject of an indecent image beyond the belief they were under 18, an investigator has gone beyond the scope of his authority. Some confusion on this subject still exists and it is not unknown for expert paediatricians to be consulted by prosecution or defence counsel with the aim of establishing the age of a subject in a potentially indecent image. A flaw presents itself in the reasoning for the use of a paediatrician; they are experts in the physical development and maturity of children, but sexual maturity and age are not necessarily intertwined.

What is known as the 'Tanner Scale' is often referenced as a means of determining the chronological age of somebody from their level of sexual maturity. This is a scale which relies upon 'proper staging' to show visual indicators in the chest and pubic area (if a subject is not properly 'staged' it can make it more difficult to determine the chronological age). The Tanner Scale should not be utilised in the determination of chronological age as its own authors have expressed how it this is an incorrect use of its methodology, *"no equations exist estimating age from stage, and even if they did, the degree of unreliability in the staging the independent variable would introduce large errors into the estimation of age"* and go onto say *"It is not designed for estimating chronologic age and, therefore, not properly used for this purpose"* (PEDIATRICS Vol. 102 No. 6 December 1998, pp. 1494).

Regardless of the protestations made by the authors of the Tanner Scale it is to this day being used around the world as means to identify the age of a person from their sexual development, guidelines sent out by the National Police Improvement Agency in 2009 suggest, *"there have been many occasions when requests have been made to the COEP Centre's Victim Identification team asking them to provide details of suitably qualified paediatricians in order to provide expert testimony regarding the ages of children."*

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(The full document can be found here)

[http://www.npia.police.uk/en/docs/Investigating\\_Child\\_Abuse\\_WEBSITE.pdf](http://www.npia.police.uk/en/docs/Investigating_Child_Abuse_WEBSITE.pdf)

The idea of improper staging would be an image showing some or all of a person's genitalia but posed in such a way that a paediatrician would be unable to perform a full examination and review, the most common way this would happen would be pornography. An example of the Tanner Scale being used in an indecent image case comes as recently as 2010. In August 2009, a New York resident returning from Venezuela was charged with possession of child pornography after customs officials discovered his baggage contained two adult videos featuring an adult-film actress Lupe Fuentes. When the case went to trial in April 2010, federal prosecutors presented testimony from a paediatrician who relied on the Tanner scale to conclude that Fuentes was under the age of 18 in the video images. Fuentes was contacted and provided corroborating documents to confirm she was 19 years old—a legal adult—at the time the videos were filmed. The child pornography case was subsequently dismissed and all charges against the defendant were dropped.

The important element here is that whilst images are classified as indecent by the prosecution, this is to highlight the 'potential' an image has to be classed as indecent, it is for the jury to decide if the images are indecent by making a determination of the age of any subjects when additional information is not available and it is for the judge to direct the jury that this is the case. It is not uncommon for a prosecution analyst to state the age of a subject alongside the description of the activity shown when reviewing indecent images, without having any further information as to the identity of the subject, the statement of age is inadmissible as evidence in court proceedings.

### **Misuse of Tanner Puberty Stages to Estimate Chronological Age**

<http://www.sytech-consultants.com/articles/misutann.htm>

## Sentencing in Indecent Image Prosecutions

Sentencing in an Indecent Image case can carry very heavy penalties or be comparatively light; it operates to not unduly punish those beyond the gravity of offence they have committed. It is worth noting that even in cases where a potential punishment could be rather minor (in relative terms) most defendants will resist making 'guilty' pleas due to the stigma of being placed on the sex offenders register in the UK. Without a proper understanding of the various offences and punishments it is difficult for the ordinary 'man in the street' to comprehend that someone on the sex offenders register is a 'sex offender' but not inherently a paedophile, due in large part to the connotations associated with the term 'sex offender'. The sex offenders register contains the details of anyone convicted, cautioned or released from prison for sexual offence against children or adults since September 1997, when it was set up. Those given a jail sentence of more than 30 months for sexual offending are placed on the register indefinitely. Those imprisoned for between six and 30 months remain on the register for 10 years, or five years if they are under 18. Those sentenced for six months or less are placed on the register for seven years, or three and a half years if under 18. Those cautioned for a sexual offence are put on the register for two years, or one year if under 18. Those guilty of very serious offences such as the sexual assault or molestation of a child will be placed on the register as part of a sentence for a lengthy period upon release from imprisonment, those guilty of possessing a low number of Indecent Images of someone 16 or 17 (still considered a child but above the age of consent) that are classified as 'Level 1' under the SAP scale may only be placed on the register for a short time and pay a fine or be subject to a community order, regardless, the mere fact of being on the register will predispose people to assume the crime committed to have you placed on it will be the more serious of these two offences, and as such anyone charged with a crime which would result in sex offender registration will strongly deny and fight any charges against them.

Due to the inherent seriousness of being on the register, it is not always viewed as being in the interests of justice to have someone under the age of 18 placed on it for an offence under the Protection of Children Act 1978 ('making' an Indecent Image) or the Criminal Justice Act 1988 ('possession' of an Indecent Image). An obvious issue with making/possessing indecent Images of children arises from the modern proliferation of mobile telephones and the (sexual) experimentation of teenagers; what punishments should be imposed on a young person who take and share indecent photographs of themselves, friends and partners? The Association of Chief Police Officers Child Protection and Abuse Investigation (CPAI) Group recommend avoiding criminal prosecution for children in the case of a first offence, obviously repeat offenders will face reprimands but sexual offender registration should be a 'last resort' for children who are involved in indecent images in this specific way (clearly this is not a recommendation for more serious offenders to avoid prosecution). They state, "*ACPO does not support the prosecution or criminalisation of children for taking indecent images of themselves and sharing them...The label of 'sex offender' that would be applied to a child or young person convicted of such offences is regrettable, unjust and clearly detrimental to their future health and wellbeing.*" The full ACPO position is outlined here

[http://www.ceop.police.uk/Documents/ceopdocs/externaldocs/ACPO\\_Lead\\_position\\_on\\_Self\\_Take\\_n\\_Images.pdf](http://www.ceop.police.uk/Documents/ceopdocs/externaldocs/ACPO_Lead_position_on_Self_Take_n_Images.pdf)

This recommendation is supported by the Sentencing Advisory Panel in that in the guidelines published with an aim to assist the Magistrates Court have the following provision, *“In accordance with section 80 and schedule 3 of the Sexual Offences Act 2003, automatic notification requirements apply upon conviction to an offender aged 18 or over where the offence involved photographs of children aged under 16.”* The obligation of sex offender registration is only mandatory upon the conviction of somebody over the age of 18, those classed as children themselves are often placed on the register but some deliberation on this matter is permitted before a decision is made.

The current guidance on sentencing has been outlined by the Sentencing Advisory Panel in two separate documents; the sentencing guidelines to the Magistrates Court and the guidelines on sentences for all offences under the Sexual Offences Act 2003 which are found here

[http://sentencingcouncil.judiciary.gov.uk/docs/Magistrates\\_Guidelines\\_including\\_update\\_1\\_2\\_3\\_4\\_web.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Magistrates_Guidelines_including_update_1_2_3_4_web.pdf)

[http://sentencingcouncil.judiciary.gov.uk/docs/web\\_SexualOffencesAct\\_2003.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/web_SexualOffencesAct_2003.pdf)

A range of sentences can be passed depending upon the seriousness of the offence and where it would fit within the SAP scale. There are certain principles which apply when considering sentencing.

- For obvious reasons pseudo-photographs generally should be treated less seriously than real photographs.
- Starting points for sentencing for possession of indecent photographs should be higher where the subject of the indecent photograph(s) is a child under 13.
- If an offender possesses only a few indecent photographs, none of which includes sadism or penetration of, or by, an animal ('Level 5' in the SAP scale); and the images are of children aged 16 or 17; and the photographs are retained solely for the use of the offender then the courts are permitted to recommend a lower sentence, (the fact that the subject of the indecent photograph(s) is aged 16 or 17 has no impact on sentencing starting points where the activity depicted is at level 5).
- Courts should consider making an order disqualifying an offender (adult or juvenile) from working with children regardless of the sentence imposed.
- Courts should consider making an order for the forfeiture of any possessions (for example, computers or cameras) used in connection with the commission of the offence.

There are also mitigating and aggravating factors which will affect the weight of a sentence:

#### Mitigating factors

- A few images held solely for personal use
- Images viewed but not stored
- A few images held solely for personal use and it is established both that the subject is aged 16 or 17 and that he or she was consenting

#### Aggravating factors

- Images shown or distributed to others, especially children
- Collection is systematically stored or organised, indicating a sophisticated approach to trading or a high level of personal interest
- Images stored, made available or distributed in such a way that they can be inadvertently accessed by others
- Use of drugs, alcohol or other substance to facilitate the offence of making or taking
- Background of intimidation or coercion
- Threats to prevent victim reporting the activity
- Threats to disclose victim's activity to friends or relatives
- Financial or other gain

It is important to remember these guidelines are just that, guidance for those unsure of how to proceed in terms of how heavy a sentence should be when someone is found guilty for these offences, the court is not bound by any precedent as to sentencing provided it is within the maximum allowable sentence (otherwise it could be appealed). As such it is not possible to give a definite answer as to exactly what a sentence will be should a defendant be found guilty. Using the guidelines will give an indication as to the 'likely' sentence depending upon what exactly a defendant is charged with and found guilty of. From the factors listed previously any charges of possessing or 'making' Indecent Images judged to be at 'Level 5' would automatically lose the option of a lesser sentence, large amounts of images in an organised structure would be an aggravating factor adding to the weight of any sentence (which would likely be a custodial sentence starting at 3 years possibly up to 5 years in length in addition to being placed on the sex offenders register for a number of years). Contrast this with somebody who is found guilty of an offence but had a few images; all of which were at 'Level 1' as they were, for example, pictures of someone with whom they had been involved in a relationship (who was 16 or 17) so can show the images were for personal use and there was consent for them to be taken and stored. This person would be subject to the lowest possible punishment, most likely a community order or fine (although as discussed previously, being found guilty of these offences could (depending on age) result in being placed on the sex offenders

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register and prevented from ever working with children, the effect on a person's life from these measures could be profound and should not be underestimated).

There are some (deliberately) vague terms in the sentencing guidelines which make it difficult to determine how sentencing in any particular case will operate. How many images would constitute 'a few' or a 'small number'? What would constitute a 'large quantity'? If a defendant is shown to have one hundred indecent images on a hard-drive after a forensic investigation, is this a 'large quantity'? What if (as has happened previously in the course of our investigations) the hard-drive has over 250,000 pornographic images; would one hundred now be a 'large quantity'? The guidelines have been left vague to allow flexibility, giving a fixed value as to how many images are considered 'a few' would undoubtedly lead to difficult issues at a later date. These terms are left to the subjective view of the presiding judge in each individual case to determine based upon the facts before them.

