

Assault by penetration

This file contains separate directions for assault by penetration where the complainant is an adult and where the complainant is a child

Assault by penetration

A person commits an offence if he

- intentionally penetrates the vagina of a woman. Placing a finger, or indeed anything else, into a vagina is penetration. The penetration does not have to be deep. Any degree of penetration, however slight, is penetration.
- the penetration is sexual. No one has suggested that, if D** put his finger into C**'s vagina, it was anything other than sexual.
- at the time when he penetrated her, she did not consent to the penetration; and
- at that time he did not reasonably believe that she was consenting.

C**'s evidence is that the defendant placed a finger or fingers into her vagina. The prosecution say that her evidence makes it clear that she was not consenting and that the defendant would have known that she was not consenting. If what C** described happened, the defendant is guilty. In evidence in court, the defendant accepts that he placed his finger into C**'s vagina. He says that it was fully consensual foreplay. He says that C** was consenting and that he believed that she was consenting. If what he says may be true, he is not guilty.

So the key questions that you have to answer, having regard to all the evidence and the directions which I give, are

- 1 At the time when he placed his finger in her vagina, did she consent to it?
- 2 At that time, did he reasonably believe that she was consenting?

If you are sure that the answer to both questions is “no”, he is guilty of Count *. If the answer to either question may be “yes”, he is not guilty of Count *.

Assault of a child under 13 by penetration

A person commits an offence if he

- intentionally penetrates the vagina or anus of another person. Placing a finger, or indeed anything else, into the inside of a vagina or anus is penetration. The penetration does not have to be deep. Any degree of penetration, however slight, is penetration. Placing a finger into the

crack, between the cheeks of a bottom is not penetration, if the finger does go inside the anus.

- the penetration is sexual. The reason for this is so that, e.g. doctors carrying out medical examinations are not guilty of any offence. No one has suggested that, if D** put his finger into C**'s vagina and/or anus, it was anything other than sexual.
- the other person is under 13. C** was aged ** at the time. There is no doubt that she was under 13.

So the only questions that you have to answer, separately in relation to Counts * and *, having regard to all the evidence and the directions which I give, are

Did D** place his finger inside C**'s anus?

Did D** place his finger inside C**'s vagina?

If you are sure the answer is “yes”, he is guilty. If the answer may be “no”, he is not guilty of assault by penetration.