

Sexual Activity

This file contains four directions relating to sexual activity

- 1, Sexual activity with a family member;
- 2, Sexual activity with a child (touching)
- 3, Sexual activity with a child (only issue – knowledge of child’s age)
- 4, Sexual activity with a child (incitement)

Sexual activity with a child family member

The prosecution must prove that, during the period set out in Count *

- C** was under the age of 18 and a family member;
- the defendant intentionally touched her;
- the circumstances of the touching were sexual;
- he knew or could reasonably have been expected to know that she was a family member; and
- he did not reasonably believe that she was aged 18 or over.

C**’s evidence is that

The defendant denies this.

No one has suggested that, if it happened, what she described is anything other than “sexual touching”.

So, the key question for you to answer in relation to Count **, having regard to all the evidence and the directions which I give you, is this

Did D** ***?

If you are sure that the answer is “yes”, the defendant is guilty of Count *.
If the answer may be “no”, he is not guilty.

Sexual activity with a child (touching)

D** would be guilty of sexual activity with a child if:

- he was aged over 18; and
- C** was under the age of 16; and
- he intentionally touched C**; and
- the circumstances of the touching were sexual; and
- he did not reasonably believe that she was aged 16 or over.

There is no doubt that the defendant was aged over 18. Nor is there any doubt that C** was aged ** or that the defendant knew that she was aged **.

C**’s evidence is that **.

D** denies that there was any sexual touching. He says that ***.

So, the key questions for you to answer in relation to Count *, having regard to all the evidence and the directions which I give you, is this

Did D**?

If he did, were the circumstances of any such touching sexual?

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

Sexual activity with a child (only issue knowledge of age)

A defendant is guilty of sexual activity with a child if, at the time:

- he was aged over 18; and
- the girl was under the age of 16; and
- he intentionally touched the girl; and
- the circumstances of the touching were sexual; and
- he did not reasonably believe that she was aged 16 or over.

In this case, there is no doubt that the defendant was aged over 18. At the relevant time, D** was aged **. Nor is there any doubt that C** was under the age of 16. At the time she was **.

The prosecution say that D** had sexual intercourse with C** once. He agrees. Sexual intercourse obviously amounts to sexual touching.

In relation to C**'s age, the prosecution case is that C** told the defendant that she was **. They also say that her physical appearance and manner at the time made it obvious that she was very young. They say that she was tiny, and that her height, her immature body and face were those of a child.

D** says that **

So, there is therefore only one issue for you to decide. What did D** reasonably believe about C**'s age?

Offenders very rarely say out loud what they believe or don't believe. So how do you decide what the defendant believed? The answer is that you can infer it, by looking at all the circumstances. Look at all the evidence, including C**'s appearance at the time, and decide what, if anything, the defendant actually believed.

A man who does not think about a girl's age when he has sexual intercourse with her does not believe that she is sixteen or over.

In relation to the defendant's belief, the prosecution may either prove that the defendant did not actually believe that C** was aged sixteen, or that, even if he did believe that she was aged sixteen, that was not a reasonable belief.

So, a defendant is guilty if he did not believe that C** was aged 16 or over. He is also guilty, even if he may actually have believed that she was aged 16 or over, if that was not a reasonable belief, if it was not a belief that a reasonable man would have held.

It is for you to decide, having regard to all the circumstances and what the defendant knew at the time, whether anything that the defendant believed was reasonable.

The defendant gave evidence that he did not know that the age of consent in this country is sixteen. That though is no defence. Ignorance of the law is not a defence.

So, the key question for you to answer, having regard to all the evidence and the directions which I give you, is this

Are you sure that at the time when D** admits that he had sexual intercourse with C** he did not reasonably believe that she was aged 16 or over?

If you are sure, he is guilty. If you are not sure, he is not guilty.

Sexual activity with a child (incitement)

Inciting a child to engage in sexual activity

being a person aged 18 or over

That is not in dispute. D** is aged over 18.

a child under the age of 16

Again, that is not in dispute. C** was aged ** at the time of the alleged offences.

intentionally incited them to engage in sexual activity, namely kissing and having sex
“inciting” simply means “suggesting”, “encouraging” or “trying to persuade”.

In the circumstances of this case, kissing and having sex would be a sexual activity.

did not reasonably believe that the girl was aged 16 or over

There is no suggestion that anyone would reasonably believe that C** was aged over 16 and so there is no need to consider this in any detail.

The prosecution case is D**, ... called over to C** and suggested that ***. If that is what happened, D** is guilty of the offence of inciting a child to engage in sexual activity.

The defence ****.

So, the key question for you to answer, having regard to all the evidence and the directions which I give you, is this

Did D** ****?

If you are sure that the answer is “yes”, the defendant is guilty. If the answer may be “no”, he is not guilty.