

IMPORTATION OF CHILD SEX DOLLS – A NEED FOR GUIDANCE?

In recent months, there have been a number of prosecutions under the Customs and Excise Management Act 1979 (CEMA); an Act drafted in the latter part of the last century and covering the physical importation of “prohibited items” into the UK and the evasion of duties more generally. At the time, the Act caught those seeking to import pornographic videos and magazines.

Such legislation seems redundant given the evolution of the internet where a borderless “superhighway” facilitates the exchange of intangible digital indecent and obscene material; and yet, the wheel has come full circle. A trend is emerging where a more tangible form of sexual gratification is now being sought. Recent customs seizures reveal a developing market for lifelike, anatomically correct, child sex dolls which have moveable metal skeletons, synthetic skin, functioning orifices and a USB charging function to warm them before use.

The seizures by Customs Officers of dolls being imported from the Far East, which have founded notable prosecutions in Norfolk, Cheshire and Kent (*R v Larkins*, *R v Dobson* and *R v Turner*), have posed a number of questions for the Prosecution and for the Courts: has an offence been

committed and how should such be sentenced absent any relevant Guidelines?

Those who have been prosecuted thus far have also been indicted for possession and/or the making of indecent images of children pursuant to provisions under the Criminal Justice Act 1988 (CJA 88) and the Protection of Children Act 1978 (PCA 78). The Sentencing Guidelines Council has published Definitive Guidelines for sentencing such offences (see Sexual Offences) but no such Guideline exists regarding the importation of child sex dolls.

S.50(3) CEMA creates an offence if:

“... any person imports or is concerned in importing any goods contrary to any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to those goods, whether or not the goods are unloaded, and does so with intent to evade the prohibition or restriction, he shall be guilty of an offence under this subsection and may be detained.”

CEMA seeks to criminalise the importation of “prohibited or restricted” goods. One needs therefore to look to other legislation to determine what goods might be covered by this either-way offence, which carries a maximum of a seven-year custodial sentence. The Crown



AUTHOR:
OLIVER HASWELL

oliver.haswell@drystone.com



Courts where the “sex doll” cases have been heard have all resolved that the dolls are “obscene” within the prohibitions created by otherwise antiquated legislation, namely, S.42 Customs Consolidation Act 1876. S.50(3) CEMA is thereby triggered. While challenges to such findings have been made at first instance, no appeals as yet are known of regarding the propriety of pleas or the Crown Courts’ findings – common sense, no doubt, has underpinned such hesitation. This leaves then the more significant question: how should the Courts sentence absent any specific Guideline?

While the Definitive “Fraud, Bribery and Money Laundering” Guidelines refer to CEMA offences, the sex doll cases, thus far, have been perpetrated by individuals in pursuit of sexual gratification rather than the

evasion of duties or securing other financial gain. The Guidelines do not seem to cover the mischief.

As stated above, the “sex doll” offenders were all also prosecuted for making/possessing indecent images of children. Allowing for “Totality”, the Court might conclude that an appropriate approach to sentencing an offence under S.50(3) would be to treat the CMEA offence as a significant aggravating feature of those offences falling to be sentenced under the CJA 88 or PCA 78.

That said, the sourcing of the doll evidences a worrying step beyond the gratification obtained by viewing images alone. Given the dolls would be used to simulate sexual activity with children, the Court might conclude that the defendant had taken a step beyond visual stimulation and was seeking to

embark upon the next stage of deviant sexual activity, namely, physically acting out his sexual desires towards children but short of committing acts directly involving the same. Does such a step not merit its very own Guideline? What if there were no accompanying indecent image offences?

Police Constabularies and the National Crime Agency have acknowledged that these offences are likely to become more prevalent. The reported cases thus far have not seemingly detailed the mechanics of the sentencing process. Advocates and Sentencers alike will be in need of clarification as to the approach to be taken.

Oliver Haswell
Drystone Chambers



DRYSTONE
CHAMBERS

Drystone Chambers
35 Bedford Row London WC1R 4JH
T: 020 7404 1881
E: clerks@drystone.com
www.drystone.com

OLIVER HASWELL

oliver.haswell@drystone.com



Oliver joined Chambers in 2017 after spending his first ten years of practice with the Crown Prosecution Service. After securing an overall grade of 'Outstanding' in his Bar Exams, Oliver undertook his pupillage with the CPS where he quickly became known for his advocacy skills.

Since becoming a Senior Crown Prosecutor in 2008 Oliver's work has featured advising upon and managing a diverse range of serious Crown Court cases, including rape, murder, explosive substances and multi-handed drugs prosecutions. He has prosecuted trials in the Magistrates' and Youth Courts as well as conducting lengthy GAP, NGAP and remand lists.