

Mr Butterworth, you have pleaded guilty to one count of penetrative sexual abuse of a young person.

The crime was committed in August 2019. The female complainant had turned 16 on 25 March of that year. You and she had met early in the year, sometime before her birthday. You were 40 years of age at that time. She was subject to a care and protection order and residing in supervised accommodation operated by Catholic care. You met when she approached you in the street to ask for a cigarette. You quickly developed a close relationship. According to your counsel, you acted protectively towards her, and from time to time, she would stay at the home of your then partner and yourself. You regularly purchased gifts for her.

As a result of the developing relationship, the complainant spent long periods away from her group home and became disengaged from supports. Catholic care became aware of this in March 2019. They attempted to warn the complainant of the risk of associating with you but she ignored these warnings. In June 2019, child safety services obtained a restraining order against you which prevented you from having contact with the complainant. You breached this order, both by electronic communication and by having ongoing physical contact with her. You have since been convicted of and sentenced for offences relating to some of these breaches.

This ongoing contact provided the context in which you committed the crime to which you have pleaded guilty. You moved into Flint house on 24 August 2019, after your relationship with your partner broke down. The complainant came to stay with you there, and soon after she did, you engaged in vaginal intercourse with her. You did not use a condom and you ejaculated during the course of this act. It is not alleged that the act was without her agreement, although this is of little significance because of her age.

You are now 43 years of age. Your counsel tells me that you had a deprived and abusive childhood. You have recently had employment as a cleaner but have lost this employment because of this charge. You have children from a prior relationship and have now commenced a new relationship with a partner who has physical and mental health issues. You have been hoping to act as her carer. Your only prior convictions consist of what appear to be some relatively minor offences of dishonesty. You have no criminal history for conduct of this nature.

I regard your crime as a relatively serious example of its type. Although the complainant was approximately four months away from turning 17 when this happened, the fact of the matter is that she was underage, and the age disparity between you was significant. The law prohibits conduct of this nature because of the potential harm that can result to young persons from premature sexual activity. The law recognises that a person of this age is not mature nor experienced enough to make considered decisions about engaging in such activity, and not able to adequately recognise or assess the harm that might result from it. The complainant has not provided a victim impact statement, but it is well recognised that sexual abuse of young persons can have significant and long-term adverse consequences. Further, it is reasonable to infer that the complainant in this case was particularly vulnerable because of her life circumstances at the time. I will not proceed on the basis that your conduct in developing and nurturing a relationship with her was for the purpose of procuring her to engage in sexual intercourse with you, as was suggested by the prosecution. You have not been charged with the crime of grooming with that intent, and it may well be that your decision to engage in sexual intercourse with her was formed shortly before the occurrence of that act. However, at the very least, the

relationship that you had developed with her placed you in a position of trust in relation to her, and this of course compounded her vulnerability to abuse by you. This relationship of trust, and the fact that you were 40 years of age when you committed this crime are, in my view, significant aggravating factors. In short, you took advantage of her youth and her vulnerability. Your moral culpability is further aggravated by the fact that this all occurred in breach of a restraint order, although I note that you have been separately punished for that offence. In my view, there is a clear need for an emphasis on general deterrence and denunciation of your conduct in the assessment of sentence.

Accordingly, I am of the opinion that the only appropriate sentence is one of imprisonment, and that some of the sentence should be served in actual custody. However, I accept that you should receive credit for an early plea of guilty, and that the plea provides some support for your claim of remorse. Because of this, I intend to partially suspend the sentence.

Matthew Butterworth, you are convicted of the crime to which you have pleaded guilty and sentenced to imprisonment for a term of 15 months. That term will commence on the date that you were remanded in custody which is 21 October 2022. The last nine months of the sentence will be suspended for a period of two years commencing on the day of your release from custody, on condition that you are not to commit an offence punishable by imprisonment during that time. You are not eligible for parole in respect of the custodial part of the sentence.

I am required to make an order under the *Community Protection (Offender Reporting) Act* 2005, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. The maximum reporting period is 15 years. Having regard to the circumstances of this case, I think that there is a moderate risk of future offending and, accordingly, must make an order. I order that your name be placed on the register pursuant to that Act and that you comply with the reporting obligations under that Act for a period of five years from now.