

## R v Barker [2010] EWCA Crim 4

Barker was convicted and sentenced to life imprisonment for the anal rape of a child under 13 years old in 2009. This is the appeal of that case, against both conviction and sentence. The appeal was that the conviction was unsafe because it was dependent upon the evidence of the child aged 3 years. Due to the young age, the appeal court had to consider whether the conviction was unsafe because the competency requirement of the witness was not satisfied.

Barker had previously been convicted of causing or allowing the death of a child and had received a 12 year sentence for that offence. The case aroused much media exposure and public outrage and was known as the 'Baby P' case. Based on the danger that he may not receive a fair trial as a result of his previous conviction, Barker was tried at first instance, for the anal rape of Baby P's sister, 'X', under a pseudonym. The sister was 4 by the time the case went to trial.

Following the death of Baby P in 2007, the sister X and her elder sisters were taken into care. Whilst in care X told her foster mother that her 'other Dad' (Barker) had touched her inappropriately. The foster carer alerted the authorities and in 2008, X and her sisters were interviewed by a child psychiatrist at Great Ormond Street Hospital. Once again, X re-iterated that the Barker had sexually abused her on a number of occasions and that on some of those occasions, X had told her mother, Tracey Connelly, about the abuse.

Counsel for the Barker criticised the interview techniques used, particularly in relation to leading questions. It was also argued that due to the passage of time since the alleged rapes and the young age of sister X at the time of the abuse, the child was not a competent witness.

### **Section 53 of the Youth Justice and Criminal Evidence Act 1999 provides that:**

Competence of witnesses to give evidence:

- (1) At every stage in criminal proceedings all persons are (whatever their age) competent to give evidence.
- (2) Subsection (1) has effect subject to subsection (3) and (4).
- (3) A person is not competent to give evidence in criminal proceedings if it appears to the court that he is not a person who is able to –
  - (a) Understand questions put to him as a witness and
  - (b) Give answers to them which can be understood
- (4) A person charged in criminal proceedings is not competent to give evidence in the proceedings for the prosecution (whether he is the only person, or is one of two or more persons, charged in the proceedings)
- (5) In sub-section (4) the reference to a person charged in criminal proceedings does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

The ultimate question before the appeal court was whether a conviction based on the truthfulness and accuracy of a very young child could be safe.

The court concluded that ***the ultimate decision as to the competency of a child witness rested with the jury*** and that in finding the appellant guilty of the offence, there was no basis for quashing the appellant's conviction.

*The interpretation and comments made within this document are not to be considered as legal advice.  
Reference should always be made to the original case.*