

**WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.**

**This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.**

IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
Case No: 2022/02682/A1  
[2023] EWCA Crim 371



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Tuesday 7<sup>th</sup> March 2023

**B e f o r e :**

**LORD JUSTICE BEAN**

**MRS JUSTICE FARBEY DBE**

**MR JUSTICE CHAMBERLAIN**

---

---

**R E X**

**- v -**

**LN**

---

---

Computer Aided Transcription of Epiq Europe Ltd,  
Lower Ground, 18-22 Furnival Street, London EC4A 1JS  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

---

---

**Mr J Bartfeld KC and Miss Lee appeared on behalf of the Applicant**

---

---

**J U D G M E N T**

Tuesday 7<sup>th</sup> March 2023

**LORD JUSTICE BEAN:** I shall ask Mr Justice Chamberlain to give the judgment of the court.

**MR JUSTICE CHAMBERLAIN:**

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of the offences. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 19<sup>th</sup> April 2022, in the Crown Court at Woolwich before His Honour Judge Mann, the applicant pleaded guilty to a series of sexual offences against one victim, "D", and to one offence against another victim, "A". Both were children at the time of the offences and were members of his extended family.

3. The applicant was a GP and a respected member of the community. On 10<sup>th</sup> August 2022, the applicant (who was then 79 years old) was sentenced to a total of 15½ years' imprisonment, with two additional years on licence, pursuant to section 278 of the Sentencing Code. Three additional charges (counts 3, 13 and 15 on the indictment) were ordered to lie on the file.

4. The applicant sought leave to appeal against sentence. He contended that the total of 15½ years was manifestly excessive. Leave was refused by the single judge and is now renewed before the full court.

5. The applicant committed all but one of the offences against the victim D. Over a period of years, when she was between the ages of about 4 and 10 or 11, the applicant touched her vagina with his fingers on many occasions, penetrated her vulva and touched her clitoris. He also made her touch or masturbate his penis, sometimes to ejaculation. When she was 12, he made her masturbate him until he ejaculated into a bowl of porridge, which he made her eat. These assaults took place in the bathroom, bedroom and kitchen of the victim's home.

6. The offences were committed before the coming into force of the Sexual Offences Act 2003. The judge correctly noted that he could not impose sentences higher than the maxima available at the time when the offences took place, but recognised that he was obliged to take into account the sentencing guideline for the equivalent modern offences. He explained the equivalences as follows: Counts 2, 6, 7, 10, 12 and 14 were charged as indecent assault, contrary to section 14(1) of the Sexual Offences Act 1956, which carried a maximum sentence of five years' imprisonment. Some of those counts involved penetration of the vagina. Accordingly, the provisions of section 278 of the Sentencing Code applied. If charged today, they would be assault by penetration of a child under 13. The starting point would be 11 years' custody, with a range of seven to 15 years, if the offence was category 2A; and 16 years, with a range of 13 to 19 years, if the offence was category 1A. The culpability was certainly in category A, because of the abuse of trust. The harm, the judge said, was at least category 2, because of the victim's extreme youth and because of the severe psychological damage which the offences had caused.

7. Count 8 was also charged as indecent assault. Because it did not involve penetration, today it would be charged as sexual assault of a child under 13, and categorised as 1A, giving

a starting point of six years' custody, and a range of four to nine years.

8. Count 1 was charged as indecent assault, and counts 4, 5, and 11 as indecency with a child, contrary to section 1(1) of the Indecency with Children Act 1960, which carried a maximum sentence of two years' imprisonment. If charged today, all would be causing or inciting a child under 13 to engage in sexual activity, which would fall into at least category 2A, the judge said, giving a starting point of eight years' custody, and a range of five to ten years.

9. Count 9 was also charged as indecency with a child, but today would be sexual activity in the presence of a child, category 1A, with a starting point of four years' custody, and a range of three to six years.

10. Count 16 in relation to victim A would be sexual activity with a child under 13 – category 2A or 3A, giving a starting point of one year's custody, with a range of six months to two years.

11. The judge explained that he had structured his sentence so as to arrive at the correct total term. The sentences he imposed were as follows: on count 1, three and a half years' imprisonment (reduced from four to reflect credit for the guilty plea); on count 2, three and a half years' imprisonment (reduced from four), plus one year's extended licence period under section 278 of the Sentencing Code; on count 4, 12 months' imprisonment (reduced from 14 months); on count 5, 12 months' imprisonment (reduced from 14 months); on count 6, three and a half years' imprisonment (reduced from four), plus one year's extended licence; on count 7, three and a half years' imprisonment (reduced from four), plus one year's extended licence; on count 8, three years' imprisonment (reduced from three and a half years); on count 9, 12 months' imprisonment (reduced from 14 months); on count 10, three and a half years'

imprisonment (reduced from four), plus one year's extended licence; on count 11, 12 months' imprisonment (reduced from 14 months); on count 12, three and a half years' imprisonment (reduced from four), plus one year's extended licence; on count 14, three and a half years' imprisonment (reduced from four), plus one year's extended licence; and on count 16, 12 months' imprisonment (reduced from 14 months).

12. The judge indicated that the sentences on counts 12 and 14 would be consecutive, making a total sentence of seven years, plus two years extended licence, under section 278. The sentences on counts 2, 6, 7 and 10 would run concurrently with each other and with the sentences on counts 12 and 14. The sentences on counts 8 and 9 would be consecutive to the sentences on counts 12 and 14, giving a running total of 11 years, with two years' extended licence. The sentence on count 1 was ordered to run consecutively to all the preceding sentences, giving a running total of 14½ years, with two years' extended licence. The sentences on counts 4, 5 and 11 were ordered to run concurrently with each other and with the preceding sentences. The sentence on count 6 was ordered to run consecutively, giving a total of 15½ years' imprisonment, with two years' extended licence in respect of counts 12 and 14. The judge said that the applicant would be on the Sex Offenders Register and subject to a Sexual Harm Prevention Order for life. He also made an indefinite restraining order.

13. For the applicant, Mr Jason Bartfeld KC submits that the sentence was too long overall for five reasons: first, the judge placed the offences in the highest category (1A), or too high within the range for category 2A, potentially as a result of the prosecution's over-zealous analysis of the harm and culpability features in the guideline; second, he gave insufficient weight to the applicant's age, ill-health, and therefore the difficulty he would encounter in custody; third, he gave insufficient weight to the impact of the sentence on the applicant's elderly wife; fourth, he adopted uncritically the prosecution's analysis of the fact that the applicant had paid compensation to complainant D; and fifth, he gave insufficient weight to

the long period of time that had passed since the offences were committed and to the evidence of the applicant's character.

14. We say at once that we have carefully considered the judge's sentencing remarks. Like the single judge, we do not accept any of these criticisms. There can be no doubt at all that the offending was in culpability category A, because it involved a grave abuse of trust. As to harm, D's victim personal statement describes the effect that the offending has had on her. It describes her daily struggle and gives details of poor sleep, depression, suicidal ideation and problems in relationships. She describes the offending as "degrading and relentless"; it took place, among other places, in her bedroom, where she should have felt safe. There has been an ongoing effect on her mental health over many years.

15. The compensation issue did not figure in the judge's remarks as a major consideration. In our view, even without taking it into account at all, the offending fell into either category 1 or right at the top of category 2.

16. The judge made clear that he had taken the applicant's age and health into account, and had also had regard to the effect on the applicant's elderly wife. As to the latter, however, a very substantial sentence was inevitable, and alternative arrangements for her care would have to be made.

17. The judge also bore in mind the applicant's lack of previous convictions, and the fact that these offences stretched back almost 40 years. But he was entitled to regard those matters as of relatively little weight, given the extended period over which this offending had taken place. While living an outwardly respectable life, the applicant had repeatedly committed serious offences against D which, as a GP, he must have known were likely to cause serious harm to his young and vulnerable victim.

18. In fixing the overall length of sentence, we can detect no error of approach in the judge's sentencing remarks; and we do not consider it arguable that sentences totalling 15½ years were manifestly excessive. The contrary, in our judgment, is not arguable.

19. However, the way the overall sentence was pronounced did involve an error. A sentence under section 278 of the Sentencing Code is a single, indivisible sentence, comprising a custodial term and an extension period: see *R v LF* [2016] EWCA Crim 561, [2016] 2 Cr App R(S) 30 at [19] to [24]. The sentences under section 278 should, therefore, have been pronounced separately from the standard, determinate sentences. As this court said in *R v Ulhaqdad* [2017] EWCA Crim 1216, [2017] 2 Cr App R(S) 46, at [31], where there is a mix of sentences, the standard determinate sentences should be pronounced first, with sentences under what is now section 278 of the Sentencing Code passed as consecutive sentences.

20. The total sentence of 15½ years' imprisonment should accordingly have been structured as follows: first, standard determinate sentences of three years and six months' imprisonment on count 1; three years consecutive on count 8; one year consecutive on count 9; and one year consecutive on count 16, giving a total determinate sentence of eight years and six months' imprisonment. The determinate sentences for counts 4, 5 and 11 remain unaltered. They are to be served concurrently with the other determinate sentences.

21. Second, sentences for an offender of particular concern, under section 278 of the Sentencing Code, of three years and six months' imprisonment, with an additional year's licence period for count 12, will run consecutively to the determinate sentences we have mentioned; and three years and six months, and an additional one year's licence period, to run consecutively on count 14, giving a total for counts 12 and 14 of nine years, comprising an aggregate custodial term of seven years, and aggregate further licence periods of two years.

22. The sentences for counts 2, 6, 7 and 10 remain unaltered and are to be served concurrently with the other section 278 sentences.

23. The judge was clearly under a misapprehension as to the length of time to be served before the applicant would be considered for parole. He and counsel both thought that the effect of his sentences was that the applicant would be entitled to be considered for release at the halfway point – that is to say, after seven years and nine months. In fact, because the sentencing exercise took place after 26<sup>th</sup> June 2022, the applicant would have to serve two-thirds of the sentences passed under section 278. This error, unfortunate though it was, occurred after the judge had passed sentence. The effect of the release provisions was clearly not taken into account in setting the overall term. The judge was correct as a matter of law to regard the effect of the release provisions as irrelevant to the sentence: see *R v Patel* [2021] EWCA Crim 231, [2021] 2 Cr App R(S) 47, at [42]. They are also irrelevant to our task today.

24. However, it is important that there should now be clarity about the point at which the applicant is entitled to be considered by the Parole Board for release. That is calculated by taking half of the total determinate sentence and two-thirds of the total sentence imposed under section 278, because of the effect of section 244A of the Criminal Justice Act 2003. This means that the applicant will be entitled to be considered for release after eight years and 11 months from the start of the sentence.

25. We accordingly grant leave to appeal and allow the appeal to the extent of substituting the sentence we have described for that imposed by the judge.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Funnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk)

---