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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 1624



No. 202202947 A2;

202202949 A2

Royal Courts of Justice

Thursday, 17 November 2022

Before:

LORD JUSTICE WILLIAM DAVIS

MR JUSTICE MURRAY

HIS HONOUR JUDGE KATZ KC

**REFERENCE BY HIS MAJESTY'S ATTORNEY GENERAL UNDER
Section 36 Criminal Justice Act 1988**

(1) LORNA ELIZABETH DENNINGTON

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MR B LLOYD appeared on behalf of the Attorney General.

MS M TURNER appeared on behalf of the First Offender.

MR A NIXON appeared on behalf of the Second Offender.

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

Introduction

- 1 On 13 June 2022, the first offender, Lorna Dennington, pleaded guilty to three counts of cruelty to a person under 16 years. On the same day, the second offender, Christopher Dennington, pleaded guilty to a count of fraud. On 14 June 2022, the second offender pleaded guilty to the same counts of cruelty to which the first offender had pleaded guilty the day before.
- 2 On 6 September 2022, the offenders were sentenced as follows:

Lorna Dennington

- Count 1 (cruelty) - nine months' imprisonment
- Count 2 (cruelty) - three months' imprisonment consecutive
- Count 3 (cruelty) - three months' imprisonment concurrent

Christopher Dennington

- Count 1 (cruelty) - three months' imprisonment
- Count 2 (cruelty) - three months' imprisonment concurrent
- Count 3 (cruelty) - three months' imprisonment concurrent
- Count 4 (fraud) - nine months' imprisonment consecutive

It follows that the total sentence in relation to each offender was 12 months' imprisonment.

- 3 The Solicitor General seeks leave, pursuant to Section 36 of the Criminal Justice Act 1988, to refer the total sentence in each case, and the constituent parts thereof, to this court as unduly lenient. The offence of cruelty to a person under 16 years is an offence specified by order as one to which the provisions of Section 36 apply. The sentence in respect of the offence of fraud was passed in the same proceeding. As such, it also can be the subject of review: see Section 36(3) and Section 11(3) of the Criminal Appeal Act 1968.

The Facts

- 4 Christopher Dennington (born on 1 August 1971) and Lorna Dennington (born on 2 June 1975) were in a relationship and living together from about 1998 onwards. Christopher Dennington had three children when the relationship began. Lorna Dennington became stepmother to those children. The youngest child was a girl named Charlotte, born in February 1993. In early 2006, Matthew Smith (born on 12 April 2001) came to live with the Denningtons. He was Christopher Dennington's nephew, the son of Christopher Dennington's sister. His sister had significant personal problems which had led to intervention from children's services. Christopher Dennington agreed to let Matthew live with him and his partner. Matthew's sister, Hayley (born on 8 April 1992), initially went to live with another member of the extended family, but soon moved to live with the Denningtons. She, apparently, did so because she was concerned to look after her much younger brother.
- 5 The three counts of cruelty related to Matthew (Count 1), Hayley (Count 2) and Charlotte (Count 3). In each case, the indictment period began in early 2006. In Matthew's case, it continued until 2017; namely, his sixteenth birthday. In relation to Hayley and Charlotte, it ended in 2008 and 2009, respectively, those being the years in which they reached their sixteenth birthdays.

- 6 The cruelty towards Matthew and Hayley began as soon as they moved in. Matthew's general description of how things were was as follows:

"I have strong memories of Lorna being awful towards me and very strict. On a weekly basis I would be punished for minor things and these punishments would usually be a slap to the head or being screamed at by her with uncle Christopher always on her side. We all had jobs to do around the house and if they were not done or done poorly Lorna would scream at us and often swear and almost without fail slap us either across the face or on the bottom. I can remember being made to line up with the others because something would not have been done right or something was wrong and Lorna would scream and swear at us getting really close to our faces and then slap us. Tea time could also be an awful time, we would be made to sit at the table if we hadn't finished our food and could end up being sat there for hours..."

Hayley's account of the general behaviour was similar:

"From the word go Lorna was a monster, she was extremely strict and if jobs weren't done right the punishment would usually be a full force slap to the face or other parts of the body. All of us experienced these assaults on a weekly basis. Add to this Lorna's unpleasantness in the way she talked to us and belittled us. The girls when they were younger had to show Lorna their knickers and if they were dirty she would slap them, Lorna would only allow them to use two sheets of toilet paper. We were all made to remain at the dinner table until the food was fully eaten. This could result in not being allowed to leave the table for hours or being slapped..."

- 7 There were specific occasions of violence recalled by Matthew. On an occasion when he came home late from school following a detention, Lorna Dennington was cross. She followed Matthew to his bedroom and hit his head on a cupboard door about four times. This was when he was aged around 13. Matthew also described a time when he was around the same age, when he was watching TV with Christopher Dennington, who had a BB gun. Christopher said he was going to shoot Matthew and he fired the BB gun at Matthew's leg, leaving a bruise, which he showed to Hayley. We note that this did not fall within the basis of plea of Mr Dennington to which we shall refer in due course.
- 8 When he was 14, Matthew arrived home with wet trousers after he had retrieved a football from a river. Lorna Dennington was unhappy. She pushed Matthew into the bathroom and he fell into the bath. She then turned on the shower, holding it close to his face, and she said that if he wanted to be in a river, how did he feel about this? Matthew was struggling to breathe and tried to cover his face with his hands. She pulled them away so the water hit his face directly. After she stopped, Matthew went into the living room, where she now was holding a baseball. She threw it at him, and it struck him on the head. This caused bruising which was observed by teachers at the time.
- 9 Hayley referred to two particular incidents. First, on one occasion when she was being forced to sit at the table until everyone had eaten their food, she was sick having eaten some Hunter's chicken. Lorna Dennington made Hayley pick up the vomit from the floor and forced her to eat it. On another occasion, when she was coming up to her sixteenth birthday, Hayley was in the kitchen. She was punched on the nose by Lorna Dennington. Her nose bled. She later developed a black eye which she had to hide with make-up.

- 10 Charlotte was subjected to the same general behaviour as her cousins. There were specific episodes of violence in her case. Lorna Dennington would pull Charlotte from her bunkbed by her hair. On one occasion, she pulled her by the hair down the stairs. On another, she pulled her up from the bunk bed by the hair, grabbed her by the neck and pushed her up against the wardrobe, causing her to struggle to breath. Lorna Dennington bought tablets which showed up plaque on the children's teeth. In Charlotte's case, if there was any, she would scrub Charlotte's gums until they bled. At bath times, if Charlotte tried to get out before Lorna Dennington thought that she should, an abrasive kitchen pad would be used to scrub Charlotte causing her skin to become sore.
- 11 If the children did not like the food offered to them, they would be left without any. On one such occasion, Charlotte went into a cupboard reserved for the Denningtons and took a packet of crisps. She was caught doing this by Lorna Dennington, who took out a knife and waved it in Charlotte's face and swore at her. Eventually, she put the knife down and pushed her out of the kitchen, slapping her left arm as she went.
- 12 When Charlotte was on her period, Lorna Dennington would check her underwear. If she had not been prepared for her period, Lorna Dennington would slap her. This led to Charlotte hiding her underwear. On one occasion, this was found by Lorna Dennington, who screamed and shouted at Charlotte and slapped her. As she got older, if she had any accident, Lorna Dennington would ridicule and embarrass Charlotte in front of the other children, often taunting Charlotte by calling her fat, which affected Charlotte's self-esteem.
- 13 Charlotte left home when she was 16 and went to live with other relatives. This was to escape the ill-treatment she had suffered. Hayley moved out of the Denningtons' house when she was 21. She had had enough of their behaviour, though she felt guilty about leaving Matthew who was by then aged 13. His ill-treatment continued. He left the Denningtons in 2018 by which time he was 17. Together with Hayley and Charlotte, he went to the police to complain what had been going on since his early childhood.
- 14 The fraud related to a trust fund set up by Matthew Smith's father before he had died. The value of the fund was just short of £59,000. It was intended to benefit Matthew once he reached his eighteenth birthday. In June 2016, an account was set up at Santander Bank in the joint names of Lorna and Christopher Dennington into which the trust moneys were placed. By July 2017, just over a year later, the account contained barely £1,000. Around £40,000 had simply been transferred on a regular basis in varying amounts to Christopher Dennington. The balance of the moneys had been used to buy a variety of items. The extent to which any of the items were for the benefit of Matthew was and is unclear. In his evidence, he recalled the purchase of a bicycle, a television and some clothing for him, the total cost being little over £1,000.
- 15 The Denningtons were arrested in October 2018. They were interviewed more than once both in 2018 and 2019. Lorna Dennington accepted that she had chastised the children from time to time but denied any physical abuse. She described Charlotte as spiteful and horrible, she said that Hayley had a lot of pent-up aggression and she asserted that Matthew was prone to lying. Christopher Dennington's assessment of the children and how they were treated was similar to Lorna's. In relation to the money taken from the trust fund, he said that Matthew had agreed to the withdrawals. He said that he had used the money because the family had been under financial pressure. When it was pointed out to him that the combined total of moneys taken from the trust fund and benefits he received over the same period totalled £87,000, he said that he planned to return the moneys to the trust fund. He was not able to explain how he might be able to do this and he agreed that nothing, in fact, had been repaid.

The course of the proceedings

- 16 The offenders were not charged until April 2021 when they were sent a postal requisition. They appeared at the magistrates' court on 25 May 2021. The case was sent for trial at the Crown Court. At the PTPH, on 22 June 2021, both offenders pleaded not guilty to all counts. The case was adjourned for trial. The case was finally listed for trial on 13 June 2022. We have already observed that it was on the first day of the trial that Lorna Dennington pleaded guilty to the counts of cruelty and Christopher Dennington pleaded guilty to fraud. That was the first point at which the pleas were indicated.
- 17 Lorna Dennington provided a written basis of plea. It stated that, at the relevant time, she was caring for five children with little support and was overwhelmed by the responsibility. It said that she accepted the prosecution case in full. There was no basis of plea tendered by Christopher Dennington in relation to the fraud.
- 18 A jury then was empanelled in order to try Christopher Dennington on the counts of cruelty. On 14 June and before the case was opened to the jury, he pleaded guilty to those counts. He provided a written basis of plea asserting that he was guilty of neglect. He said this:

“I did not know about or was ever aware or was made aware of (save for during these proceedings) the standard of parenting of Lorna Dennington as described by the complainants. I know there was shouting and arguments between the children and Lorna, I know that the children had issues requiring better than good enough parenting, and having in essence delegated the primary care of the children to my partner, I neglected in my responsibilities to the children to ensure that the care that they were receiving was of a standard that it would be reasonable to expect a parent to give. I never saw anything of a physical nature inflicted upon the complainants by my partner.”

Material placed before the judge

- 19 Each of the complainants in the cruelty counts made victim personal statements. Matthew Smith said this:

“My time living with Lorna and Christopher has deeply affected me, I suffer mood swings and I'm very anxious. I also have a very poor sleep pattern, I wake up often thinking about all the things they did to me. All these things played a part in me leaving my job at Amazon, they had noticed that I struggled with focus and concentration. This was because I constantly found myself thinking about the abuse. I was initially put on the sick for a week and then had a further period of sick for the same reason and finally it became impossible for me to hold the job down. I am gutted that the money left to me after my father's death has gone. In my head I had always planned to use the money to buy a house. I feel betrayed by Christopher and Lorna, not only did they abuse me physically but they have also taken away my dream by stealing the money.”

In a further statement made after the offenders had pleaded guilty, he said:

“I just feel I have not got the emotional strength to deal with what life is going to throw at me. As well there are times, I do not want to leave the house for fear of bumping into Lorna and Christopher. When I do go out, I

am always looking over my shoulder or scanning the area just in case they are there, it means my thoughts are never calm because of this constant anxiety... I was totally fazed when we accidentally saw Lorna and Christopher on the court landing. This left me feeling sick and I did think I was going to defecate myself when we bumped into them. I felt a great relief when they pleaded guilty but that has not offset how I feel generally. This added to the fact that I know I will never get back the money from the trust fund leaves me just feeling like every day there is a huge weight dragging me down.”

- 20 Hayley also made two victim personal statements, the second being after the offenders pleaded guilty. In her first statement she said:

“When I was 21, I went to the doctors because I felt I was having a break down, I felt I wanted to die, I had nobody I could talk to. Those feelings were all because of what happened to me and what I saw happening to the others, I was prescribed Sertraline [a drug used to treat depression]. Even after moving out of Christopher and Lorna's house I have found it difficult to talk about the abuse I experienced. A direct link to those times is when I am presented with certain food, I suffer flash backs particularly if the meal is Hunters Chicken. I was recently informed that Chris and Lorna had been charged, I thought I would be ok, but it has brought it all back up. I am now suffering panic attacks and I cry a lot.”

In the second statement, she said,

“On the day of the court case we were accidentally directed to the court landing by security. As a result, we came face to face with Lorna and Christopher. I turned and ran; this was the first time I had seen them in a very long time. I felt sick and when sat in the witness room I found myself shaking, I lost all my will to give evidence. It just sums up how frightened of Lorna particularly, that I am. I was terrified that when I gave my evidence that she would still be able to see me and that I might have to see her again. I am actively seeking counselling for how I feel and just the day before I wrote this statement I had a break down at work.”

- 21 Charlotte described the effect on her as follows:

“I have now been diagnosed with complex PTSD due to childhood trauma. I am receiving counselling for this and that is still ongoing. A couple of months ago I did attempt suicide and that was directly attributable to what they did to me. I've been told from medical experts that I have no tolerance window. This means when even normal events happen, my reaction is really extreme. Again this is directly attributable to how Lorna was with us. I should feel elated that Lorna particularly has pleaded guilty, but in fact I'm really angry. Both her and my father have always made it be me that was the problem and made me suffer accordingly, so the fact that they now are both admitting that not to be the case, has left me as I say very angry...

I have no fond memories of childhood, my father and Lorna took that away from me. My childhood was spent constantly worrying about what horrible things would happen next.”

- 21 Both offenders had previous convictions for offences of dishonesty. Between 1989 and 1991, when he was in his late teens, Christopher Dennington was convicted on four occasions of burglary and/or theft. On the last occasion, he was sent to detention for three months. Between 1994 and 1996, Lorna Dennington was convicted of theft and obtaining property by deception. She was 21 at the time of her last conviction. She was never the subject of a custodial sentence.
- 22 Pre-sentence reports and reports from a liaison and diversion practitioner were available in relation to the offenders. The pre-sentence report in each case set out the offender's account of the offending. Christopher Dennington told the author of the report that the complainants had conspired to bring the charges of cruelty. When asked what he thought of them now, he said that he hated them all. He said that they should be grateful for the care he and his partner had given them. He did not accept that they had been caused physical or mental harm. He regarded Lorna as the true victim in the case. All of the children were very difficult. In relation to the offence of fraud, he said that Matthew had been aware throughout of what the money had been used and for what.
- 23 Lorna Dennington gave a particular view of each complainant. She said that Matthew had behavioural problems and was prone to lying. She described Hayley as feral. She said that Charlotte had manipulated the other two complainants and that she was dirty and revolting. Unsurprisingly, the author of the report concluded that Lorna Dennington had no remorse for what she had done nor any empathy for her victims.
- 24 The liaison and diversion report in relation to Christopher Dennington set out various mental difficulties, which were summarised as depression, communication deficits and experienced trauma. The report in Lorna Dennington's case also identified mental problems, namely emotional dysregulation, experienced trauma, anxiety and low mood. The liaison and diversion practitioner considered that there were traits of emotional unstable personality disorder. It was suggested that both offenders would benefit from cognitive behavioural therapy or some similar psychological intervention.

The sentencing hearing

- 25 The sentencing judge was Mr Recorder Barnett. He had not been the judge who had considered the matter on the day of trial. His first and only dealing with the case was on the day of sentence. The case was fully opened to him, the facts being set out as we have rehearsed them. The victim personal statements were read out by prosecution counsel.
- 26 Counsel then turned to the relevant sentencing guidelines. In relation to the child cruelty offences, he said that harm plainly fell into Category 1 in relation to each of the complainants. All of them had suffered serious psychological and/or emotional harm. As to culpability, he submitted that there were aspects of the ill-treatment which fell into high culpability, namely use of a weapon and, in the case of Hayley and the vomit on the floor, degradation of the victim. At the very least, culpability was medium in all cases because of the prolonged ill-treatment. As a Category B1 case, the starting point would be three years' custody with a range of two to six years' custody. Counsel said that credit for plea in each case should be 10 per cent. In respect of the offence of fraud, counsel submitted that culpability was high because of the abuse of trust. Given the amount involved, harm was in Category 3. There was a considerable detrimental effect on the victim. Therefore, by reference to the guideline, there should be an uplift from the starting point of three years' custody for a Category 3A case, the upper end of the category range being four years' custody.

- 27 Mr Nixon, who represented Christopher Dennington throughout at the Crown Court and who has appeared before us today, invited the judge to conclude that, because of the basis of plea, the level of culpability did not fall into the medium level; rather it was lower culpability. The culpability was of an inadequate man who had not sought help when he should have done. The Recorder said that his understanding was that it had been agreed at the time that the plea was tendered that this was a case of medium culpability. He further offered the view that the harm fell at the border of Category 1 and Category 2. There was then a somewhat unfocused debate as to whether a Newton hearing might be required. It was never made entirely clear what issues were to be determined in any such hearing. The purpose of a Newton hearing is to determine disputed facts: what facts were disputed was never made clear. In any event, Mr Nixon indicated – after a substantial opportunity to speak to Dennington – that no such hearing would be necessary.
- 28 Mr Nixon then moved on to make submissions as to the proper categorisation of the offence of fraud by reference to the guideline. He argued that, although there was a breach of trust, there was an element of lesser culpability because the fraud was not motivated by personal gain. He submitted that Matthew Smith was “kept in the picture, his views [were] taken into consideration...” He said that there had always been an intention to pay back the money.
- 29 The submission made on behalf of Lorna Dennington was that she was ill-equipped and ill-prepared to take on the care of five children. The children were already damaged when they came into their care. In relation to the guideline, it was argued that culpability was Category B, with harm falling between Categories 1 and 2. The starting point ought to be in the region of two and a half years. Taking into account the pleas and, most particularly, the delay in bringing the proceedings, a sentence of two years’ custody would be appropriate; namely, a period of custody capable of suspension.

The sentence

- 30 The Recorder did not rehearse all of the facts in relation to ill-treatment as outlined by the prosecution. However, he made sufficient reference to them to establish that he accepted that factual case for the purposes of sentence. He addressed the victim impact statements. He noted the serious consequences suffered by each of the victims. In relation to the offence of fraud, he observed that Christopher Dennington continued to try to assign blame to Matthew Smith: this suggestion being wholly at odds with the evidence of Matthew. The Recorder concluded, without giving any reasons, that the truth lay somewhere between the two accounts.
- 31 Having reviewed the material in the pre-sentence and liaison and diversion reports, the Recorder said that the offences of neglect called for a sentence in the region of two years’ custody, possibly a higher starting point. In relation to the fraud count, the Recorder said that there was no dispute about where the offence lay in the guideline. That was not the position. However, he said that Christopher Dennington had been in a position of trust and had systemically dissipated the trust fund in a callous way. In respect of the discount for plea, the Recorder said this:

“I’ve taken into account the pleas of guilty that you both entered; you, Ms Dennington, before the trial and you, Mr Dennington, Christopher Dennington, actually on day two of the trial. They attract a discount nowadays of about 10 per cent. Well, I’m actually going to give you a bigger discount than that, because I take the view that any step that is taken to avoid the necessity for victims who have been abused throughout their childhood to have to relive their terrors in open court in public in these

circumstances, even if there are special measures, any steps that are taken to avoid such a public giving of evidence should be encouraged and I propose to demonstrate that in one way by a reduction of the length of sentence that I propose to impose.”

- 32 Having delivered that proposition as to credit for plea, the Recorder turned to sentence Lorna Dennington. He determined that the appropriate starting point after a trial, and taking into account aggravating and mitigating factors, was between two and two and a half years’ custody. He said that he reduced that period because of the pleas of guilty and because it was to be her first custodial sentence. As we have said already, the total sentence eventually imposed was a total of 12 months’ imprisonment. On the face of it, that represented a discount for plea very significantly in excess of one third, which, by reference to the guideline, is the maximum level of reduction ever to be applied. In respect of Christopher Dennington, he considered that the most serious offence was the offence of fraud. The Recorder did not identify what the sentence would have been but for the plea of guilty. He simply said that he had in mind the guidelines and that he would substantially reduce the appropriate sentence, primarily because of the plea of guilty. The sentence imposed was nine months’ imprisonment. In relation to the offences of child cruelty, the Recorder said that Christopher Dennington played a lesser role. Nevertheless, he found that the offender knew what was going on. Without explaining how he arrived at the sentence for these offences, the Recorder imposed concurrent terms of three months’ imprisonment to be served consecutively to the sentence of nine months’ imprisonment.

Discussion

- 33 We remind ourselves of what was said by Lord Lane CJ in *Attorney General's Reference No 4 of 1989* [1990] 1 WLR 41 when section 36 of the 1988 Act was in its infancy:
- “A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection regard must of course be had to reported cases, and in particular to the guidance given by this court from time to time in so called guideline cases. However it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice.”
- 34 Those principles hold good today, save that, of course, a sentence now must be considered by reference to the relevant Sentencing Council guidelines. In short, we have to ask whether the minimum term imposed by this Judge in each case fell outside the range reasonably open to him.
- 35 The Solicitor General submits that multiple errors were made in this case which led to a sentence well outside the reasonable range: the offences of child cruelty were miscategorised; in any event, no account was taken of the fact that there were three separate victims, the guideline being directed to a single offence and a single victim; there was no proper basis to depart from the Sentencing Council Definitive Guideline “Reduction in sentence for a guilty plea”, the reduction for those pleading guilty on the day of trial being 10 per cent; the sentence for the offence of fraud bore no relation at all to the sentence indicated by the guideline.

- 36 This is a case in which no written response was received in relation to either offender. Both Mr Nixon and Ms Turner, who appeared for the offenders at trial, have appeared before us. They have explained that they consider that there was no sensible response that they could lodge and, therefore, none was lodged. However, we have in more than one respect been assisted by their presence in relation to matters arising at trial.
- 37 We are quite satisfied that each of the submissions made by the Solicitor General has force. The test in *Attorney General's Reference Number 4 of 1989* is met.
- 38 We begin by observing that the basis of plea tendered by Christopher Dennington ought to have been the subject of more focused scrutiny. On one reading – or, arguably, on any reading – it did not amount to an admission of all of the elements of the offence. According to the basis of plea, Christopher Dennington did not know about the standard of his partner's parenting. All that he was aware of was that there was shouting and arguing between his partner and the children. His wilful neglect was said to have been his failure to ensure that the standard of care given to the children was sufficient. We emphasise the word "wilful". This requires the mental element, as explained in *Sheppard* [1981] AC 394. What is required is either actual knowledge of the relevant factual position or not caring whether that position existed or not. We will have to assume that the intention, on the part of Mr Dennington, was to admit that he did not care. Given that he pleaded guilty, we cannot assume anything less. We did invite Mr Nixon's assistance in relation to the basis of plea. We say no more about the exchange between the court and Mr Nixon. We can only deal with this case today on the basis that he admitted that he had, by his behaviour, wilfully neglected the welfare of the three complainants.
- 39 We also consider that, if Mr Dennington intended to limit his culpability for or the harm caused to Matthew Smith by the fraud offence, this should have been made clear at the time the plea was tendered. Nothing was said at that point. What he said to the author of the presentence report amounted to a denial of guilt, in that what he said was inconsistent with any dishonesty. Thus, there was nothing to alert anyone to the way that it was put by Mr Nixon in the course of mitigation. With respect to him, the Recorder was not entitled, without explanation, to say that there was any substance to the assertion made by Christopher Dennington. We consider that the only proper basis on which we can deal with the offence of fraud is the way in which it was put by the prosecution based on the evidence of Matthew Smith. The Recorder should have done likewise. The suggestion that Christopher Dennington had any genuine intention of repaying the money cannot be regarded as credible.
- 40 We turn then to the sentences imposed. In relation to the offences of child cruelty, we consider first the case of Lorna Dennington. We acknowledge that, in terms of culpability, there were elements both of high and medium culpability. The sentence for those offences had to reflect that feature. Harm was without doubt at the highest level. One Category B1 offence would require a starting point of three years with a range of two to six years. Given the existence of elements to be found in high culpability, some upward movement from the starting point is appropriate. In this case, there were three victims and three separate offences. The appropriate course, therefore, is to impose a sentence in relation to each count reflecting the totality of the offending. That inevitably will require further upward movement. In our judgment, before consideration of aggravating and mitigating factors, the sentence after trial should have been at the top of the category range for Category B1. The obvious aggravating factor was that the ill-treatment of each victim was carried out, as often as not, in the presence of other children who themselves were victims. Amongst other things, this factor led each victim to a sense of hopelessness. Each saw no escape from the dreadful home life to which they were exposed.

- 41 In the case of Lorna Dennington, her mental state did not amount to significant mitigation. To some extent, she behaved as she did because of her inadequacies. However, she functioned perfectly well as an adult and this is not a case in which her culpability was significantly reduced. We apply the sentencing council guideline on sentencing offenders with mental disorders, not a guideline to which any reference appears to have been made in the Crown Court.
- 42 Leaving delay aside, in our view, the appropriate sentence before any discount for the plea should have been close to six years' imprisonment. The delay here was unexplained i.e. the delay between the case being ready to be prosecuted at some point in early or mid-2019 and the sending out of the postal requisition approximately two years later. That kind of delay affects victims but similarly affects offenders. The delay in the case was a mitigating factor. In our judgment, the sentence should have been discounted by approximately six months to allow for that delay before any credit for plea.
- 43 The Recorder was required to apply any relevant Sentencing Council guideline at all stages of the sentencing process unless it was contrary to the interests of justice to do so. The "Reduction in sentence for a guilty plea" guideline to which he was referred is in clear terms. The reduction of sentence for a plea indicated on the day of trial is a maximum of one-tenth. The guideline recognises exceptions to the level of reduction set out in the guideline. None applied in this case. The reason given by the Recorder's for giving what, on the starting points he identified, a discount of at least one third (if not significantly more) was that the pleas had prevented the victims from giving evidence. This reasoning is untenable. It is not reflected anywhere in the guideline: quite the reverse. The key principles of the guideline are set out at Section B of the guideline:

“Although a guilty person is entitled not to admit the offence and to put the prosecution to proof of its case, an acceptance of guilt:

normally reduces the impact of the crime upon victims;

saves victims and witnesses from having to testify; and

is in the public interest in that it saves public time and money on investigations and trials.

A guilty plea produces greater benefits the earlier the plea is indicated. In order to maximise the above benefits and to provide an incentive to those who are guilty to indicate a guilty plea as early as possible, this guideline makes a clear distinction between a reduction in the sentence available at the first stage of the proceedings and a reduction in the sentence available at a later stage of the proceedings.”

Here the fact that the Recorder wholly failed to recognise the very late stage at which the pleas were indicated meant that the victims came to court expecting to give evidence. We have heard already, in two of the victims' personal statements, how that affected them personally. It follows that the late pleas negated most of the benefit that was supposedly gained by the pleas.

- 44 The Recorder's reasoning represented an approach completely at odds with the principles set out in the guideline. Insofar as a judge does not abide by those principles, then he or she will be falling into the same gross error as this Recorder did. The Recorder's reasoning

undermined the principle of fairness to all defendants in all courts, which the guideline is intended to maintain. There was nothing said by the Recorder which was sufficient to show that it was contrary to the interests of justice to apply the discount identified in the guideline. It follows that the reduction in the case of Lorna Dennington should have been 10 per cent.

- 45 Applying that discount to the correct sentence after trial allowing for mitigating factors of delay and (to a very modest degree) mental inadequacy leads to a total sentence in Lorna Dennington's case is of four years, ten months' imprisonment.
- 46 Everything that we have said about the categorisation of the child cruelty offences in relation to Lorna Dennington applies equally to Christopher Dennington. We note the argument put to the court below in relation to his mental difficulties. There was nothing in the material available to the Recorder which supported a conclusion that his responsibility was substantially reduced by any such difficulties. However, we do accept that there was a distinction to be drawn between them in respect of the role each played. He fell to be sentenced for complete disregard for the welfare of children in his care – including his own child, Charlotte – when he was aware of problems of parenting that had arisen. By that route, he neglected them. It is of significance that this neglect was not short-lived. It continued for many years. The proper sentence after trial in relation to Lorna Dennington was six years' custody before consideration of aggravating and mitigating factors. The proper sentence in Christopher Dennington's case should have been at least three and a half years. The same additional factors applied to him as in his partner's case. Thus, before discount for plea and allowing for delay, the appropriate sentence would have been in excess of three years' imprisonment. In his case, he pleaded guilty to the child cruelty offences after the jury had been empanelled. The reduction for the pleas of guilty in his case should have been less than 10 per cent. Taking the case in the round, it seems to us that the Recorder would have been quite entitled to impose a sentence of three years' imprisonment for the offences of child cruelty in his case.
- 47 The offence of fraud fell squarely into Category 3A in the fraud guideline. The particular harm caused to Matthew Smith required an uplift towards the top of the category range. Such mental issues as afflicted Christopher Dennington did not begin to affect his culpability for this element of his offending. There were no other mitigating factors. In this instance, the plea of guilty was indicated on the first day of the trial, so a reduction of 10 per cent was appropriate. A consecutive sentence was inevitable. It followed, therefore, that the consideration of the total sentence and the proportionality of that total sentence was necessary. Applying a reduction of 10 per cent to a sentence of three years nine months' imprisonment (which would have been appropriate for the offence of fraud taken in isolation) would lead to a sentence of three years four months' imprisonment. Simply to add that period of imprisonment to the sentence to be imposed for child cruelty would, to some limited degree, give a disproportionate sentence. Although the ill-treatment of Matthew was quite separate from the fraudulent use of his trust fund, it was linked in the sense that it formed part of the psychological damage done to him by the actions of the offenders. In order to ensure an overall proportionate sentence, the term to be imposed for the offence of fraud should be reduced to three years' imprisonment.

Conclusion

- 48 For the reasons we have given, the sentences imposed on these offenders were unduly lenient. We give leave to the Solicitor General to refer the sentences to this court.
- 49 We shall quash the sentences imposed on 6 September 2022. In their place, we shall substitute the following sentences. In relation to Lorna Dennington, on each Count, the

sentence will be four years ten months' imprisonment, those sentences to run concurrently. In relation to Christopher Dennington, the sentence on Counts 1, 2 and 3, for the Counts of cruelty, it will be three years' imprisonment. The sentence to be served in relation to the offence of fraud, will be a consecutive sentence also of three years' imprisonment, making a total sentence of six years' imprisonment in all.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This has been approved by the Judge.