



Neutral Citation Number: [2019] EWCA Crim 685

Case No: 201800921/B5 & 201800924/B5

IN THE COURT OF APPEAL
(CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/02/2019

Before :

LORD JUSTICE COULSON
MRS JUSTICE CUTTS DBE

and

HIS HONOUR JUDGE PAUL THOMAS QC
(SITTING AS A JUDGE OF THE COURT OF APPEAL CRIMINAL DIVISION)

Between :

REGINA

- and -

DANIELLE GILLIAN PERRETT

Miss S Bennett-Jenkins QC appeared on behalf of the **Applicant**

Hearing date: Thursday 14th February 2019

Approved Judgment

Lord Justice Coulson :

1. The applicant is now 60. On 31 January 2018, in the Crown Court at Ipswich, she was convicted of six counts of indecent assault of a boy under 16, contrary to s.15 of the Sexual Offences Act 1956 (“the 1956 Act”). On 27 February 2018, she was sentenced to a total of 4 years and 9 months imprisonment. She renews her applications for permission to appeal against both conviction and sentence following their refusal by the single judge.
2. The victim in this case was a boy under 16 years of age. Because of that, and because of the nature of the offences, the usual statutory restrictions apply to any reporting of this case. There can be no reporting which would or might allow the identity of the victim to be revealed. We have anonymised him for the purposes of our judgment.
3. In the early 1980s, the complainant, M, was a pupil at a school in Suffolk. Richard Barton-Wood was a teacher at the school and at the time was in a relationship with the applicant, a renowned harpist. She was about 25 at the time of the offences. Starting in 1983, Barton-Wood sexually abused M. In 1984, when M was 14, Barton-Wood took him to London to see the applicant in concert. They then both went back to her London flat. After M had gone to bed, the applicant came into his room, got undressed and got into bed with him. She got on top of him, put his erect penis into her vagina and had sex with him (Count 9). He ejaculated inside her. Subsequently, Barton-Wood joined them in the bed. The following morning, M and the applicant took a shower and she performed oral sex upon him (Count 10).
4. On a second visit to her flat, a similar pattern was followed, namely full intercourse (Count 11) followed by oral sex (Count 12). There was a separate allegation of oral sex being performed on M by the applicant at the Suffolk cottage owned by Barton-Wood (Count 13). There was also a further allegation that the applicant masturbated M in a bath at the cottage (Count 14). It appears that the offending ceased when the applicant separated from Barton-Wood. M had not considered the sexual activity as abuse at the time and referred to it in his evidence as “lovely” and “brilliant”. He later made persistent efforts to contact the applicant and Barton-Wood in order to confront them about what they had done.
5. The applicant denied the allegations and said that M had made them up for financial reward. In addition, she claimed that, on the first occasion at her London flat, she was in the shower when M came into the bathroom and grabbed her wrists and thrust his erect penis against her pubic bone. This was therefore an allegation of attempted rape made by the applicant against M.
6. On counts 9 and 10 – those involving the first visit to the applicant’s London flat – the applicant was convicted by a majority of 11 – 1. In relation to counts 11 and 12, relating to the second visit to the London flat, the applicant was convicted by a majority of 10 – 2. She was convicted by a similar majority on counts 13 and 14, relating to the oral sex and the masturbation in the bath at the cottage in Suffolk.
7. When he came to sentence the applicant, HHJ Overbury had regard to the fact that the maximum term for offences under s.15 is 10 years; that under the Sexual Offences Act 2003, the legislation now in force, the equivalent offence was s.9, which carried a maximum of 14 years imprisonment; and that he should have regard to the current

Sentencing Guidelines, but always bear in mind that difference in the maximum sentence.

8. For sentencing purposes, the judge focused on the most serious offence, namely Count 9, the first occasion of sexual intercourse at the applicant's London flat. The judge found that this offence, as well as the other count involving sexual intercourse and the three counts of oral sex, fell within the highest category of harm identified in the sentencing guidelines, and involved a number of factors demonstrating the applicant's culpability. In consequence, the judge took the 5-year starting point recommended by the guidelines, increased that to a notional 5 and a half years to reflect a number of aggravating factors, and then made a reduction for mitigation, in particular the applicant's good character, to arrive at an overall term of 4 years and 9 months.
9. As we have said, the applicant sought permission to appeal against both conviction and sentence. Those applications were refused, in brief terms, by the single judge. Those are the applications renewed before this court today. We deal with the application in respect of conviction first, and then sentence.

Conviction

10. The first complaint which, so it is said, goes to the safety of the applicant's conviction is the suggestion that, although the trial took place on the basis that M was at least 14 years old at the time of the relevant events, the judge during his sentencing remarks suggested that M "was 13, 14" at the time of the offence. Ms Bennett-Jenkins submits that, if M had only been 13 at the time of the offending, the presumption of incapacity under common law would have applied. M would then not in law have been considered capable of penetrative sexual intercourse, and the counts could not have succeeded.
11. In our view, this submission is misconceived. At the trial, everyone proceeded on the basis that M was at least 14 at the time of the relevant events. The case was prosecuted and defended on that basis. Indeed, during the summing up, the judge's chronology pointed to the first event at the applicant's London flat occurring at a time when M was 14 and a half. Accordingly, capacity was never an issue at the trial.
12. It seems clear to us that the judge's reference when sentencing to M being "13, 14" when the abuse by Barton-Wood began was a slip of the tongue. It had no relevance to the convictions. It was irrelevant to the allegations against the applicant in any event. There is therefore nothing in the age point.
13. The other argument in relation to conviction is rather more elaborate but, so it seems to us, no less difficult. It runs something like this. If the applicant had been a male, and M had been a girl under the age of 16, then this would have been an offence of unlawful sexual intercourse under s.6 of the 1956 Act, and there would have been a time bar for prosecution of 12 months after the offence. Accordingly, it is submitted that, by analogy, the Crown's use of s.15 in this case, for what is in reality a charge of unlawful sexual intercourse, amounted to an abuse of process of the court to get around a time bar. There is also a related submission that to charge a female defendant with indecent assault, when what is actually being alleged is sexual intercourse, is both impermissible and even discriminatory on the basis of gender.

14. These might be regarded as rather ambitious submissions. In our view, they are a long way from the established criminal law in this area. The proper analysis is as follows.
15. Section 6 of the 1956 Act makes it unlawful to have sexual intercourse with a girl under 16. For an offence to be prosecuted under s.6, proceedings have to be commenced within 12 months of the offence (see s.37). In *R v J* [2005] 1 AC 562, the only issue for the House of Lords was whether, because there had not been a prosecution within the 12-month period, the Crown could use s.14 of the 1956 Act (indecent assault on a woman) to prosecute the unlawful sexual intercourse. The House of Lords found that they could not because there was a clear and unambiguous statutory provision – the time bar - to which the court had to give effect. Thus, if it was only evidence of sexual intercourse with a girl under 16 that was relied upon in support of a prosecution under s.14 of the 1956 Act, the defendant could not be prosecuted for indecent assault after 12 months had elapsed.
16. Of course, in the present case, neither s.6 nor s.14 of the 1956 Act has any application or relevance at all. There is no equivalent offence of unlawful sexual intercourse with a boy in the 1956 Act. There is therefore no statutory time bar, and no basis on which it could be said that in this case the criminal process had been manipulated by the prosecution. In the present case, there is a prosecution only under s.15 (indecent assault of a male).
17. The remaining point of principle is whether sexual intercourse comprised an indecent assault by a woman on a male in contravention of s.15. There is significant authority in support of that proposition. In *R v McCormack* 53 Crim. App R(S) 514, this court concluded that penetration of the vagina with something other than a penis (in that case, a finger) was an indecent assault unless done with valid consent (which could not arise here because M was under 16). As the judge in this case noted in his ruling on this issue, “no rational distinction can be drawn between the different sorts of penetration for this purpose”.
18. More significantly, *Faulkner v Talbot* [1982] 74 Crim. App R(S) 1 was a case with considerable similarities to this one. The victim was a 14 year old boy; the defendant a woman who placed his penis inside her vagina. In the Divisional Court, Lord Lane, then Lord Chief Justice, said:

“I read a passage from the judgment of the Court delivered by Fenton Atkinson L.J., pp. 517, 518 and p. 455 of the respective reports:

“Then there followed an argument by Mr. Hunt, which he has repeated to this Court and put very attractively before us, whether in view of the girl's consent, there could be a conviction of indecent assault, there being here a willing girl and no evidence of any compulsion or hostility: and he referred to a line of authorities such as *FAIRCLOUGH v. WHIPP* (1951) 35 Cr.App.R. 138; [1951] W.N. 528 and *DIRECTOR OF PUBLIC PROSECUTIONS v. ROGERS* (1953) 37 Cr.App.R. 137; [1953] 1 W.L.R. 1017, cases which have shown that where the accused adult invites a child, for example, to touch his private parts, but exercises no sort of compulsion and

there is no hostile act, the charge of indecent assault is not appropriate. But, in our view, that line of authorities has no application here, and, in the view of the members of this Court, it is plain beyond argument that, if a man inserts a finger into the vagina of a girl under sixteen, that is an indecent assault, in view of her age, and it is an indecent assault however willing and co-operative she may in fact be."

Finally, so far as authorities are concerned, I turn to SUTTON (1977) 66 Cr.App.R. 21; [1977] 1 W.L.R. 1086. In that case the facts were that the appellant took three boys, all under the age of 14, to his home and photographed them partially clothed and in the nude. He remained fully clothed. He neither touched or fondled the boys, except to touch them on the hands and legs and bodies in order to arrange their poses for the purpose of photography. The boys consented to these acts.

The appellant was charged with indecently assaulting the boys contrary to section 15(1) of the Sexual Offences 1956 Act. The jury were directed that any touching without consent was an assault and the law did not permit persons under 16 to consent to the touching, if it was accompanied by circumstances of indecency. The jury convicted. On appeal it was held by the Court of Appeal (Criminal Division) that they had been misdirected.

The holding in 66 Cr.App.R. 21 was: "that whereas section 15 (2) of the Sexual Offences Act 1956 bars consent from preventing an act with a boy under 16 from being an indecent assault-i.e. if the act alleged to constitute the assault is itself an indecent act-and thus the defence of consent will not avail a defendant; in the present case the touching of the boys by the appellant, which was merely to indicate a pose, was not of itself indecent. was consented to and was not hostile or threatening, the consent of the boys to the acts complained of prevented such acts being an assault. and, therefore. an indecent assault; thus the question of indecency did not arise; accordingly, the jury had been misdirected and the appeal would be allowed and the conviction quashed."

One turns, in the light of those authorities, to the present case. First of all what is an assault? An assault is any intentional touching of another person without the consent of that person and without lawful excuse. It need not necessarily be hostile or rude or aggressive, as some of the cases seem to indicate. If the touching is an indecent touching, as in this case it plainly was because the defendant took hold of the boy's penis, then the provisions in section 15 (2) of the Sexual Offences Act 1956 come into play, "A boy under the age of sixteen cannot in law give any consent which would prevent an act being an assault for the purposes of this section." Consequently, the touching

undoubtedly being indecent, the boy in this case, being aged 14, could not consent to it. It was intentional touching; it was touching without lawful excuse, and in view of section 15(2) it was a touching to which the boy could not in law consent and therefore did not consent. Accordingly, as I see it, one has all the necessary ingredients of the offence of indecent assault, and the consequence is that the learned recorder was correct in the conclusion to which he came.

The question which is asked by the case is as follows: "Whether the acts of the defendant to which the complainant consented in pulling him on top of her and touching his penis immediately before sexual intercourse by him with her were an indecent assault by the defendant on the complainant contrary to section 15(1) of the Sexual Offences Act 1956?" The answer I would give to that is "Yes, it was an indecent assault." In my judgment the decision of Veale J. in *MASON (supra)* to which reference has been made was wrong, and in so far as it is necessary to refer to the matter, where Wien J. in *UPWARD (supra)* was making explanation to the jury, he was likewise in error. For these reasons I would dismiss this appeal."

19. It seems to us that this is unambiguous authority in support of the proposition that sexual touching by a woman of a boy under 16, even as part of or preliminary to an act of sexual intercourse, is an offence contrary to s.15. Boreham J in the same case said:

"Where in a charge of indecent assault on a person under the age of 16 the act complained of is indecent and that act would, if it were done without consent be an assault, then the offence is made out."

Again as Judge Overbury correctly concluded, it could not be said that the insertion of the penis of a male under 16 into the vagina of an adult woman is not an indecent act.

20. On this basis there is the highest possible authority for the basic proposition that what happened here comprised an offence under s.15 of the Sexual Offences Act 1956. Counts 9 – 11 were indeed offences under that Act. Although we accept that, in those days, Parliament did not think it necessary to legislate expressly for other offences which might be committed by a woman rather than a man, it has been clear at least since *Faulkner v Talbot* in 1982 that this kind of offending by a woman was plainly caught by s.15.
21. Thus, it is wrong to suggest, as Ms Bennett-Jenkins does, that the use of s.15 in this way is discriminatory. On the contrary, it is designed to ensure that the predatory sexual offending, particularly on those under 16 years of age, can be appropriately dealt with by the courts, regardless of whether the offender is man or a woman.
22. Accordingly, we are in no doubt that the application for permission to appeal against conviction is hopeless. It is refused.

23. We then turn to the sentence in this case. In Ms Bennett-Jenkins' grounds of appeal against sentence, no fewer than 18 separate complaints are raised. We deal with each and every one in turn, although we have slightly reordered them so as, we hope, to provide greater clarity.

(i) There Should Have Been a PSR/Psychiatric Report

24. The judge concluded that it was unnecessary to adjourn the sentencing hearing in order for a PSR or a psychiatric report to be prepared. That was a matter within the judge's discretion. We can see no particular reasons, on the facts of this case, which made a report of either type a necessity. The judge had heard lengthy evidence from the applicant and had heard character evidence. He rightly concluded that custody was inevitable and therefore a PSR and a psychiatric report was going to be of no assistance in the sentencing exercise.
25. Indeed, in some ways, the proof of that pudding is in the eating. For the purposes of this appeal we have been provided with a psychiatric report. This deals in some details with the difficulties that the applicant has faced at the start of her present sentence. Sadly, none of those points can come as any surprise to anyone with a knowledge of the prison system. We acknowledge that the effects on the applicant of her custodial sentence has been profound. It almost always is on offenders who go to prison late in life in relation to offences that occurred 30 or more years ago. But this court has said repeatedly, albeit in the context of male defendants, that the age of the defendant is not a reason for them avoid what would otherwise be the appropriate prison sentence.
26. Accordingly, we consider that, even if there had been a report, it could have made no difference to the sentencing exercise in this case.

(ii) Two Years Maximum

27. In her written grounds Ms Bennett-Jenkins suggests that "authority indicated that the sentence should be treated as being limited to a maximum of two years imprisonment". We asked Ms Bennett-Jenkins about this during the course of argument, because it was common ground that the maximum sentence for this offence under the 1956 Act was 10 years imprisonment. That was the term that the judge had in mind. She explained that the 2 years related to s.6 of the 1956 Act. That of course has no application in the present case for the reasons we have already explained.

(iv) The Reference to M Being "13, 14"

28. We have already dealt with this point in the context of the application for permission to appeal against conviction. It was plainly just a slip of the tongue. In any event, there is nothing in the grounds which indicates that this could or should have had any relevance to the sentencing exercise.

(v) The Length of M's cross-examination

(vi) The Nature of the Applicant's Defence

29. The complaint is that the judge wrongly regarded as an aggravating feature the points raised by the applicant and Barton-Wood in their defence, and thus the length of time that M was cross-examined.
30. That is not an entirely accurate summation of what the judge said. He said:

“Since your arrests in 2016 both of you have continuously denied the allegations, each of you has sought to blacken [M’s] character either with fictitious accusations of blackmail or with counter allegations of the most serious sexual misconduct, the attempted rape in the shower at Miss Perrett’s London flat. Each of you has sought to diminish his credibility as a witness through an extensive examination of his medical and mental health history.

No stone has been left unturned in your attempts to undermine his entire integrity, resulting in him not only having to relive the horrors of his early teens, but also the various tribulations of his later life. Counsel are not responsible in any way for the length of his time in the witness box. You bear that responsibility because of the nature of the defences you presented. I am satisfied that your false accusations as to M’s character and behaviour are significant aggravating features of this case.”

31. In our view, no complaint can be made about that passage. On the contrary, the judge was entitled to regard as an aggravating factor the nature of the applicant’s defence, and in particular the fact that an allegation of attempted rape was made as part of it. That was a gratuitous allegation, and one which the jury, by their verdict, emphatically rejected. It was in our judgment inevitable that the making of such a serious false allegation would play a part, albeit a modest one, in this subsequent sentencing exercise.

(viii) Failure to Take Account of the Investigative Process

32. The complaint is that the judge failed to take any proper account of the length of the investigative process before trial and its effect on the applicant. We reject that complaint and the premise on which it is based. The investigative process in this case was not overlong. And if it was longer than it might have been, that was at least in part because of the nature of the applicant’s defence and, in particular, the false allegation of attempted rape to which we have already referred. There is therefore nothing in this point.

(ix) The Finding that M was Vulnerable

33. The complaint here is that the judge was wrong to find that M was particularly vulnerable. Again, that is not an entirely accurate depiction of what the judge said. The relevant part of the sentencing remarks was as follows:

“You [the applicant] were the first person with whom M had any sexual contact. He was in many ways a shy teenage boy

and even thought the sexual experience afforded to him by you were in his mind ‘brilliant’ he wasn’t even mentally or legally capable of participating in a sexual relationship with you. Children in the 1980s were not exposed to sex as they are today, particularly on social media. He would therefore in my judgment have been more vulnerable and mentally unprepared for sexual contact than would perhaps a teenage boy today. But that in fact matters little since no child of 13 or 14 whether male or female should have their childhood violated by premature sexual experiences and even more so when it involves an adult.”

34. That was in our view a measured conclusion reached by the judge who had heard all the evidence in the case and seen M subjected to extensive cross-examination. It is not possible to raise a substantive complaint about that passage.
35. Unhappily, as it seems to us, Ms Bennett-Jenkins prayed in aid on this point a much later Facebook entry in which M boasted of his many sexual conquests by the time he was 21. Not only does a much later boast of sexual conquests have no bearing on the issue of whether, when he was 14, M was vulnerable or otherwise, but there will be those who would draw a direct link between the assaults which M suffered at the hands of the applicant when he was 14, and the hollow boasting of his later years.

(x) Failure to Differentiate Between the Assaults by Barton-Wood and the Consensual Sex with the Applicant

(xi) Failure to Differentiate Between M’s Views of His Relationship with Barton-Wood on the One Hand and M on the Other

36. The complaints here are rooted in the same point, namely that, because M remained positive about his sexual relationship with the applicant, whilst he had a high degree of animus towards Barton-Wood, this difference should somehow have been reflected in the sentencing. We disagree. One of the principal purposes of the criminal law is to protect people who are too young to form a reliable opinion or make a considered decision. We have already noted that the judge expressly referred in his sentencing remarks to the fact that M regarded his sexual experiences with the applicant as “brilliant”. But that is not point. As the judge correctly noted, what mattered was that M was not “either mentally or legally capable of participating in a sexual relationship” with the applicant. Thus, the fact that he now retains a more positive view of one of his abusers as opposed to the other is irrelevant.
37. Finally on this point, some of Ms Bennett-Jenkins’ submissions really went to the suggestion that Barton-Wood was treated leniently by the judge. We are of course unable to form a view about that and it is in any event irrelevant to the exercise before us. What we have to do is consider whether the sentence given to the applicant was in all the circumstances manifestly excessive.

(xii) Failure to Take Account of the Limited Nature and Number of Occurrences of Sexual Contact

38. We consider that this criticism is misplaced. The important thing from the sentencing judge's perspective was that these were not isolated events. As the judge said, the three separate counts of oral sex demonstrated "a persistence" in the applicant's offending. He was right to say that that was an aggravating feature. It also gave rise to a finding of premeditation.

(xiii) Failure to Reflect the Fact that the Applicant Had Voluntarily Desisted in Her Conduct

39. Again, the framing of this submission in this way demonstrates the applicant's ability to ignore inconvenient elements of the evidence at trial. That evidence was clear that the applicant and Barton-Wood ended their relationship in 1985. Since Barton-Wood was the only way in which the applicant came into contact with M, her assaults of M were naturally going to desist. There is again nothing in this point.

(xviii) Failure to Consider Suspended Sentence for a Woman of Exemplary Character

40. It cannot be said that the judge failed to take into account the applicant's exemplary character: he heard evidence about it and his sentencing remarks are peppered with references to it. As to the possibility of a suspended sentence, that was always an unrealistic submission in the circumstances of this case. As we shall see when we turn in a moment to the sentencing exercise itself, the sentencing guidelines, applied flexibly and with common sense to offences under the 1956 Act, indicated a custodial term far in excess of two years for just one assault, let alone the six separate assaults for which the applicant was convicted. The judge concluded that this was a case in which only an immediate and lengthy term of imprisonment was appropriate. We respectfully agree with that conclusion.

41. That leaves the sentencing exercise itself. There are a number of grounds raised which seek to criticise the mechanics of this. Some of them are internally contradictory. We identify the grounds that have been raised and we then go on to consider the sentencing exercise by reference to the guidelines.

42. The six separate grounds are:

(iii) It was contrary to the interests of justice to apply the sentencing guidelines;

(vii) The judge failed to take account of the ability of the court to move outside the guidelines;

(xiv) There was an over-rigid application of categories of harm;

(xv) The judge was wrong to find an abuse of trust;

(xvi) The judge erred in finding a significant disparity of age;

(xvii) The judge erred in taking a starting point of 5 years.

43. The first issue is whether the guidelines should have been applied at all. That is the norm in cases like this because the principal purpose of the guidelines is to promote consistency and uniformity in sentencing. No cogent reason has been offered as to why the guidelines should not have been considered when the applicant was

sentenced. This is not, as was suggested by Ms Bennett-Jenkins, a unique case. The only potentially unusual feature that was proffered was the fact that, in this case, the defendant was a female. It is certainly right that it is more common in these sorts of cases for the defendant to be a man, but that is not to say that female defendants are facing allegations of sexual offending are unknown to the courts. In any event, the guidelines are applicable in principle whatever the sex of the offender. They are gender-blind guidelines to assist judges in all cases of sexual offending.

44. The next question is how the guidelines should have been applied. The decision of this court in *R v Forbes* [2016] 2 Crim. App R(S) 44, sets out the correct approach to sentencing for historic sexual offences and the interplay between the law as it then existed and the current sentencing guidelines. In essence, the sentencing judge has to adopt a flexible and common-sense view of the current guidelines when applied to the offending for which the defendant has been convicted. This required a number of steps.
45. *Step 1*: this required the judge to identify the equivalent offence in the modern legislation. The judge said that the modern equivalent to s.15 of the 1956 Act in the present case was s.9 of the 2003 Act (sexual activity with a child, that is to say, someone under the age of 16). In our view he was right to do so. Section 9 carries with it a maximum of 14 years imprisonment (rather than 10 years for s.15 of the 1956 Act), a difference which the judge again rightly noted and bore in mind for his sentencing exercise.
46. *Step 2*: The judge needed to identify the principal count for sentencing purposes. He chose Count 9. Again we consider that was the logical choice as the focus of the sentencing exercise: it was the first count of assault against the applicant, and it involved the first occurrence of sexual intercourse at her London flat.
47. *Step 3*: The judge had to identify the correct category of harm. As set out in the guidelines, category one is the only appropriate category for anything involving penetrative sex or oral sex, which covered Count 9 (and Counts, 10, 11, 12 and 13). It is a dangerous fallacy to say, as Ms Bennett-Jenkins did, that this was an unfair characterisation of harm because M enjoyed it; that misses the point which we have already explained, that the law is there to protect people like M because they are underage. A court would be surprised to be told by a defence advocate that the top category of harm was not appropriate because the underage female victim had enjoyed the experience, and there is no reason to react differently merely because, in this case, the victim was male.
48. *Step 4*: Culpability. The presence of one of the statutory factors indicating culpability justifies categorisation in category 1A. Here the judge correctly found a number of culpability factors. The most obvious was the significant disparity in age. M was 14. The applicant was 25 or 26. Although Ms Bennett-Jenkins endeavoured to argue that the disparity was not significant, we consider that to be a hopeless submission. Another way of putting the disparity in the present case is that the applicant was almost twice the age of M. That is on any view significant, a conclusion confirmed by the knowledge that M was just 14.

49. In addition, the judge found other culpability factors, including elements of grooming and a significant degree of planning. In our view, the judge heard the evidence and was entitled to make those findings.
50. Ms Bennett-Jenkins argued that the judge was wrong to find one last culpability factor, namely an abuse of trust. However, the judge was careful to differentiate between the clear abuse of trust by Barton-Wood, as M's teacher, and the more nuanced position of the applicant. He said expressly that she did **not** hold the same position of trust as Barton-Wood. He did say that he was satisfied that the applicant was "acting in *loco parentis*, as M was away from home and in your charge and care as a responsible adult". That finding may have been sufficient to justify the judge's subsequent reference to the abuse of trust. But even if, in the light of *Forbes*, it was not, it makes no difference to the sentence. There were a large number of culpability factors here, so the presence or absence this one factor could have made no difference to the sentencing exercise overall.
51. *Step 5: Overall categorisation.* In terms of harm and culpability, Count 9 was plainly in category 1A as described in the sentencing guidelines. The recommended starting point for a single offence is five years imprisonment. That is the figure the judge took as his starting point.
52. It is right just to pause at this stage and note that the five years properly reflected Count 9 alone. On that basis, it might be said that a term of five and a half years for a total of 6 separate assaults was relatively generous to the applicant; by reference to the guidelines, even taking into account totality and the difference in the maximum sentence, it would have been possible to reach a starting point of six or even six and a half years. We do not consider that the applicant can have any complaints about the judge's starting point of 5 years.
53. There were then other aggravating features noted by the judge, including the fact that M ejaculated, and the period of offending. That latter consideration obviously took into account the other offences. The judge was clear that these factors would increase the starting point, before considering mitigation, to one of five and a half years.
54. *Step 6: Mitigation:* This was principally advanced by reference to the applicant's good character. Taking that into account, the judge reduced the overall sentence to one of four years and nine months imprisonment. No complaint is or could be raised about that reduction.
55. In our view, this was an exemplary sentencing exercise in which the judge adopted the flexible and common-sense approach outlined in *Forbes*. He did not slavishly follow the various categories and factors, but demonstrated, by reference to the sentencing guidelines, how and why a sentence of 4 years and 9 months was appropriate. Not only was the sentence not manifestly excessive, and not only was it not wrong in law, but it was the product of real thought and appropriate compassion. We commend it. We refuse the renewed application for permission to appeal against sentence.
56. We are conscious that, because of the importance to the applicant of the points raised, and because of their sheer number, this has been a relatively lengthy judgment. We should therefore express our thanks to Ms Bennett-Jenkins for her help. In our view, it

would have been better if the single judge had dealt in detail with the points that she raised in her written advice and grounds, in order that the applicant could see that they had been fully considered. For that reason, although a number of the arguments raised were, in our view, hopeless, they deserved a fuller answer than the one they first received. Accordingly, we do not make a loss of time order in this case. We would also ask that a transcript of this judgment, once it has been prepared and approved, be provided to the applicant so that she can see the answer to the points that have been raised.