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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 16 October 2018

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE KING

THE RECORDER OF WINCHESTER
HIS HONOUR JUDGE CUTLER CBE

R E G I N A

v

MATTHEW ALEXANDER FALDER

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(Official Shorthand Writers to the Court)

MR ANDREW D SMITH QC appeared on behalf of the **Applicant**
MR TOM FORSTER & MISS RUONA IGUYOVWE OBE appeared on behalf of the
Crown

J U D G M E N T (Approved)

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1. **LORD JUSTICE HOLROYDE:** On 16th October 2017, in the Crown Court at Birmingham, Matthew Falder pleaded guilty to a total of 137 offences, all of which were either of a sexual nature or were sexually motivated. On 19th February 2018 he was sentenced for four of those offences to consecutive extended determinate sentences, amounting in total to an extended sentence of 38 years, comprising a custodial term of 32 years and an extension period of six years, with concurrent determinate sentences for all the other offences. His application for leave to appeal against his total sentence has been referred to the Full Court by the Registrar.
2. We express at the outset our gratitude to all counsel for the care with which they have presented the matter to us.
3. We shall refer to those against whom the offences were committed as the applicant's victims, without naming them. In doing so, we mean no disrespect to those who might prefer to be called 'survivors' of the offences rather than 'victims'.
4. The provisions of the Sexual Offences (Amendment) Act 1992 apply in this case. Under those provisions where a sexual offence has been committed against a person, no matter relating to that person shall, during his or her lifetime, be included in any publication if it is likely to lead members of the public to identify that person as a victim of the offence. This prohibition will continue to apply unless lifted in accordance with section 3 of the Act.
5. The offences were charged in four indictments and in a schedule of offences which had been committed to the Crown Court pursuant to section 41 of the Crime and Disorder Act 1988. The details of the charge and the sentences imposed for each offence are set out in a convenient table which forms an appendix to this judgment.
6. It is sufficient at this stage to summarise the offences as including offences of intentionally encouraging rape, contrary to sections 44 and 58 of the Serious Crime Act 2007; causing or inciting sexual exploitation of a child, contrary to section 48 of the Sexual Offences Act 2003; causing or inciting a child to engage in sexual activity involving penetration, contrary to section 10 of that Act; encouraging an offence of sexual activity with a child family member, contrary to sections 44 and 58 of the Serious Crime Act 2007; blackmail, contrary to section 21 of the Theft Act 1968; conspiracy to commit blackmail; fraud by representation, contrary to section 1(4) of the Fraud Act 2006; forced compulsory labour, contrary to section 1 of Modern Slavery Act 2015;

making indecent images of a child, contrary to section 1 of the Protection of Children Act 1978; distributing indecent images of a child, contrary to section 1 of that Act; conspiracy to take or make indecent images of children; conspiracy to distribute indecent images of children; possession of indecent images with a view to their distribution, contrary to section 1 of the 1978 Act; possession of prohibited images of children, contrary to section 2 of Coroners and Justice Act 2009; possession of extreme pornography, contrary to section 3 of the Criminal Justice and Immigration Act 2008; possession of a paedophile manual, contrary to section 69 of the Serious Crime Act 2015; publishing an obscene article, contrary to section 2 of the Obscene Publications Act 1959; voyeurism - recording a private act, contrary to section 67 of the Sexual Offences Act 2003; malicious communication, contrary to section 1 of the Malicious Communications Act 1988; and conspiracy to send electronic communication with intent to cause distress or anxiety.

7. The offences involved what the learned judge, in his admirably careful sentencing remarks, aptly referred to as "ever increasing depravity". It is a measure of their seriousness that four of the offences to which the appellant pleaded guilty carry life imprisonment, 45 of them are punishable with a maximum of fourteen years' imprisonment and another 55 are punishable with a maximum of ten years' imprisonment.
8. The appellant is now approaching his 30th birthday. No previous convictions had been recorded against him. He grew up in what is clearly a loving and caring family, who are now bewildered by his offending. He excelled at school and university, holds the Degrees of Master of Art and Doctor of Philosophy, and was a university lecturer at the time of his arrest. He enjoyed an active social life and was highly regarded by those who knew him. A number of testimonials were provided to the judge from which it was plain that the applicant's shocking offending was regarded by those who thought they knew him as wholly out of character. No application was made for a pre-sentence report and no report was or is necessary.
9. The disturbing nature of the offences, which were committed between 2007 and 2017, was described in detail to the learned judge, who heard the prosecution opening and defence mitigation over a period of three days. We have read the transcript of the hearing and have the details well in mind. It is sufficient for present purposes for us to give a comparatively brief summary of the nature and circumstances of the offences.
10. The applicant began with offences of voyeurism from 2007 onwards. From 2010 he began to use the internet to commit blackmail and other serious offences. It is a feature of his offending that he displayed considerable technical skill in ensuring, by the use of false names, encryption, untraceable email addresses and the dark web, to avoid being detected and identified. Between 2013 and 2017, not only the police in this country, but also law enforcement authorities in the USA and other countries were investigating his activities. During that time, he not only successfully concealed his identity, but also boasted about his ability to do so in order to increase the terror and distress experienced by his victims.
11. The judge divided the offending into six categories, and we adopt the same approach.

12. The voyeurism offences involved eight female victims, of whom the applicant had taken 27 videos by the use of hidden cameras. He secretly recorded imagery of these women in bathrooms and lavatories, including at student halls of residence, at his parents' home and at the family's holiday home. Some of the victims were young women who regarded the applicant as a friend. As an illustration of what he did with the recordings, he hacked into the Facebook account of one of his victims, and replaced her profile picture with an image which he had recorded of her naked. He sent emails to another of his victims attaching naked pictures of her, saying that unless she responded he was "going to share this". He retained the recordings, which were found on his computer on arrest.
13. The second category of offences involved blackmail, sexual exploitation, fraud and distribution. These offences involved the ruthless targeting by the applicant of more than twenty victims, most of them female and aged under 18. One of his victims was aged only 13, others aged 14 and 15.
14. The applicant targeted victims whom he knew to be both young and vulnerable - for example, by picking out girls who had posted on a website devoted to those suffering from anorexia. He began by offering his chosen victim money, in exchange for naked photographs of herself. In order to make the offer more acceptable, he used a variety of deceptions. He posed, for example, as a female artist who had suffered from depression and who found therapy in making life sketches from photographs. Once his selected victim had been induced to provide initial images, the applicant asked for more. He continued to offer (but never actually to make) payment. Having acquired the images he wanted, he then used the threat of disclosing them to family, friends and neighbours to blackmail his victim into obeying his commands.
15. In contrast to many blackmailers, the applicant does not appear to have been motivated by financial reward. Rather, he appears to have derived pleasure from manipulating, humiliating and distressing his victims.
16. By way of illustration, he blackmailed a 15-year-old girl into sending him increasingly graphic sexual images of herself, which he then threatened to distribute. He was wholly unmoved by her pitiable pleas to be left alone. When she told him that she had informed her parents, who were going to report the matter to the police, the applicant's response was to boast about the fact that he could not be caught and to increase his blackmail threats. He continued to make demands of his victim, eventually driving her to the point where she attempted suicide. Even after that, the applicant continued to blackmail her, and went to the length of conspiring with a boy who went to the same school as her to make further demands.
17. Other victims of the applicant's blackmail were required not only to provide sexual images of themselves but also to engage in utterly degrading and demeaning conduct. By way of illustration, a 15-year-old girl who had been lured into providing naked pictures of herself, was required to make recordings of herself consuming dog food whilst lying naked on the floor, licking a toilet seat and a soiled toilet brush, licking a used tampon, pinning bulldog clips to her breasts and vagina, writing words such as "Slut" on herself, and holding up signs containing racist and homophobic remarks. The

applicant's messages to her made clear that he was enjoying watching her humiliation. He also shared the images of her with others who were using sinister websites on the dark web.

18. An illustration of another way in which the applicant used the product of his blackmail relates to one of the victims whom he had covertly recorded in a voyeurism offence. In correspondence with a fellow user of a particular website, he sent one of the images of his victim. He instructed his correspondent to make further images, in which that picture was covered with semen or stabbed with a knife, and also to display messages addressed to the named victim, making terrifying threats as to what would happen to her. The correspondent sent back such images to the applicant, who replied, complimenting his work so far, but telling him to display further and yet more appalling messages to the named victim. He said:
19. "As for the knife, be creative ... be as scary as you can. LOL."
20. In another email exchange with a like-minded individual about one of his victims whom he knew to be aged 14, the applicant boasted that he was trying to make her trust him so that she would send nude pictures. He added that he was "also encouraging her to try to be anorexic too". He said that he thought he should be able to get some good nude pictures from her willingly, and continued:
21. "Then I will see if I can get enough info to blackmail her. But if not, I'm thinking of just betraying her as harshly as I can to see how much I can mentally fuck her up. I think there's even a bit of a chance of a suicide."
22. The applicant, as we have indicated, plainly derived pleasure from the anguish he caused to others. He expressed complete disregard for their suffering. When threatening his victims as to the consequences of their failing to comply with his demands, he made it clear that in the event of non-compliance he would ruin their lives. He threatened that harm would be caused to a victim, her family or her friends. He threatened one adolescent girl that he would take steps to try to arrange for Social Services to take her younger brother into care. He boasted that, because he was completely untraceable, any attempt by a victim to end communication with him, "won't hurt me but will end badly for you".
23. The blackmail and associated offences inevitably caused the applicant's victims the utmost distress and misery. It appears that, in all, four of his victims attempted suicide. Others began to self-harm. Their ability to form relationships was badly damaged. There were victim personal statements before the sentencing judge, which made plain what they had suffered. We too have read their statements and we take them into account. We pay tribute to their courage in reporting matters, as they eventually did.
24. We turn to the third category of offending, which involved the applicant encouraging rape and other sexual offences against a 2-year-old child in the United States. In this regard the applicant, through the use of the internet, was acting jointly with two US citizens, one of whom was the child's father. That man has recently been sentenced in America. The other has not yet been identified.

25. We summarise the distressing facts very briefly. The applicant instructed the man, whom he believed to be the child's father, to provide images of the child being raped. He thereafter received images of the child being orally raped by a man. The applicant encouraged his correspondent to send further images of the child being raped orally and anally, and having urine poured over him. By way of exchange, the applicant provided images which included imagery of torture.
26. The fourth category of offending identified by the judge related to offences involving forced compulsory labour, blackmail and child sexual exploitation in relation to a young man in the United States then aged 19 or 20, to whom we will refer as 'N'. As with his female victims, the applicant first enticed N into sending him indecent images and then proceeded to blackmail him over many months. During that period, the applicant instructed his victim to carry out and record increasingly degrading and unpleasant acts. He required N, for example, to smear faeces over his face, to eat soiled lavatory paper, to tie weights to his genitals, to make covert recordings of his mother and younger sister using the bathroom, and to upload a video to an internet chat site in which he spelled out, in repellent and racist terms, a fantasy of kidnapping and raping a young black girl. After a time, N tried to refuse further activity, saying that he did not believe the applicant would disclose any of the material because the applicant himself would be at risk of prosecution. In response, the applicant threatened to harm N and members of his family, in particular his mother and sister, "in all sorts of nasty ways". He went on to tell N that he had a choice between "complete destruction and being a slave". He also indicated that even if N committed suicide, as N had indicated he was thinking of doing, that would not stop the applicant from distributing the images both to N's family and online. He went on to instruct N to make a video recording of himself performing a series of degrading and demeaning tasks, and to entitle the video "Hello and welcome to blackmailed boy slut". When N again tried to resist, the applicant boasted about the impossibility of tracing him and repeated his threats to distribute the recorded imagery. He said that rather than go to the trouble of sending the material direct to N's family, he would make it available on sites on the dark web where "blackmail victims are shared and people basically compete to see how much they can ruin the victim's life". He said that he did not especially want to push N on until he committed suicide, he just enjoyed having him do things.
27. The fifth category of offending was summarised by the judge as encouraging others to commit offences and peddling material on chat websites. In summary, the applicant made postings on a number of paedophile chat websites, in which he tried to encourage rape of a child, blackmail and the making and distribution of indecent images of children. He posted videos and images of a sickening and distressing nature. Upon receiving a video showing a new-born baby girl being raped, his response was to post suggestions as to further crimes which should be committed against her. He invited comments from others about his proposal that he should tie N to a tree and leave him for dead.
28. Finally, the sixth category of offending involved the possession and distribution of indecent imagery. A search of his computer following his arrest revealed a total of nearly 14,000 indecent images of children, 1,251 videos, 49 prohibited images and 52 extreme pornographic images.

29. We believe this very brief summary suffices to show the gravity of the offending.
30. In his detailed and thorough sentencing remarks, the judge described the nature of the offending and the terrible harm which the applicant had caused to his victims. He found the applicant to be a dangerous offender, as that term is defined for sentencing purposes. He carefully considered whether the seriousness of the offending justified a life sentence in respect of one or more of the offences which carry life imprisonment. In this regard, he indicated that he had considered the decision of this court in *Leighton* [2017] EWCA (Crim) 2057. He described that case as, "remarkably similar in some respects, though less serious in overall terms". He concluded that public safety would sufficiently be protected by a lengthy extended determinate sentence.
31. The judge considered the relevant sentencing guidelines, and indicated his view as to the categorisation of the individual offences covered by those guidelines. He also indicated, in relation to each of the six categories of offending, what overall sentence he would regard as appropriate for that category, before consideration of totality. He indicated that, giving full credit for the guilty pleas, the appropriate overall sentence for the category 1 voyeurism offences would be one year four months' imprisonment; for the blackmail and related offences in category 2, nine years and four months' imprisonment; for the category 3 offences of encouraging rape, twelve years imprisonment; for the forced compulsory labour and related offences in category 4, six years eight months' imprisonment; for the offences in category 5, ten years eight months' imprisonment; for the offences in category 6, three years four months' imprisonment. Thus the judge, after careful consideration, concluded that simple addition of the appropriate sentences for the categories of offending which he had identified would result in a total sentence after trial of 65 years' imprisonment, reduced by full credit for the guilty pleas to a total of 43 years and four months. The judge then reminded himself of the general principles stated at page 5 of the Sentencing Council's Definitive Guideline on Offences Taken into Consideration and Totality:

"The principle of totality comprises of two elements:

(1) All courts, when sentencing for more than a single offence, should pass a total sentence which reflects *all* the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.

(2) It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with factors personal to the offender as a whole."

32. With those principles in mind, the judge considered that the appropriate overall sentence should be reduced by what he described as a "reasonably substantial margin" to take account of totality, of the applicant's comparatively young age and of personal mitigation. As can be seen in the annexed table, he imposed, in relation to four of the offences, consecutive extended sentences; he passed concurrent determinate sentences

on all other offences. The total sentence was an extended sentence, comprising a custodial term of 32 years and an extended licence period of six years. The judge also made a sexual harm prevention order of indefinite duration.

33. The ground of appeal is that the total custodial term was manifestly excessive in all the circumstances of the case. Mr Andrew Smith QC, on behalf of the applicant, realistically acknowledges that there can be no challenge to the judge's categorisation of the individual offences by reference to relevant sentencing guidelines or to his identification of the many aggravating factors. Mr Smith does not seek to challenge the finding of dangerousness. He further accepts that a very substantial sentence was inevitable for this very grave offending. He submits, however, that a total overall sentence after trial of 65 years was too high. Although this applicant's offences are more numerous than those committed by the offender in the case of *Leighton*, Mr Smith submits that the two cases have many serious features in common and that a difference of 30 years in the sentences after trial for the two cases cannot be justified. He suggests that by grouping the offences into six categories as he did, when particular types of offending can be found represented in more than one of those categories, the judge increased the starting point too dramatically. In any event, submits Mr Smith, insufficient allowance was made for the principle of totality.
34. Mr Smith suggests that the learned judge accepted that the applicant had expressed genuine remorse. However, whilst the judge certainly acknowledged as a point in the applicant's favour that he has expressed remorse, including in a letter to the court, we do not see in the sentencing remarks any specific acceptance that there was genuine remorse. The observation of the judge came in the context of the issue of dangerousness, in relation to which an acknowledgment of responsibility (as opposed to genuine remorse) may well be significant.
35. At the direction of the Registrar, the prosecution has provided a skeleton argument; and Mr Forster QC and Miss Iguyovwe have attended to assist us and to make oral submissions. They submit that the sentence, although severe, was not manifestly excessive, having regard to the gravity of the offending. They submit that the judge had careful regard to totality and, indeed, took it into account at more than one stage of the process. They argue that the judge's approach was in accordance with established principles, was carefully reasoned and involved a thorough examination of the relevant facts.
36. In addition to *Leighton*, they invite the court's attention to the cases of *Watkins* [2015] 1 Cr App R (S) 6, and *DJ* [2015] 2 Cr App R (S) 16. In *Watkins*, the offender pleaded guilty at a late stage to charges including two offences of rape of a child aged under 13 years, sexual assault of that child, conspiracies to rape and to sexually assault another child, taking, possessing and distributing indecent photographs of a child and possessing extreme pornographic images. He was allowed credit of 10% for his late pleas. The evidence made clear that he derived pleasure from the commission of very serious sexual offences against babies. He showed no remorse. The aggravating features of his offences were the very young age of his victims, planning, the targeting of vulnerable victims, the commission of offences jointly with another, abuse of trust, abuse of power, the recording of the offences and the use of drugs in association with the offences. The

judge imposed determinate sentences totalling 15 years' imprisonment, with a consecutive extended sentence, comprising fourteen years' imprisonment and a six-year period of extended licence. Thus, the total custodial term was 29 years after guilty pleas. On appeal, the only issue was whether the total sentence was a just and proportionate reflection of the whole of the offending. This court concluded that offences of "such shocking depravity" demanded a very lengthy sentence. It held that the total sentence was not even arguably manifestly excessive. The renewed application for leave to appeal against sentence was therefore refused.

37. In *DJ*, the offender had committed numerous sexual offences over a period of approximately ten years. He had regularly and repeatedly raped his daughter from the age of 5. He had had regular sexual intercourse with a teenage girl whose mental health problems meant that she functioned at the level of a young child. He had committed other sexual offences against other young victims. Large quantities of indecent imagery were found in his possession. The offender pleaded guilty to many offences and was convicted of others after a trial. He was sentenced to an extended sentence, comprising a custodial term of 33 years and an extended licence period of six years. On appeal, this court noted that nine victims had been identified. There were multiple aggravating features, including breaches of trust, recording of the offending, threats to the victims, deceit, grooming and controlling vulnerable individuals. The duration and scale of the offending was particularly substantial. Although the aspects of seriousness were not as eye catching as those in *Watkins*, the offences were of a comparable level of gravity for different reasons. The individual sentences could not be criticised, but this court concluded that the judge had not made sufficient allowance for totality. The sentence was accordingly reduced to a custodial term of 30 years, with an extended licence of six years.
38. In *Leighton*, the offender pleaded guilty to three offences of rape of a child aged under 13, assault by penetration, offences of causing a child to engage in sexual activity, blackmail and making and distributing indecent photographs of a child. Full credit was given for the guilty pleas. He was sentenced to concurrent extended sentences, comprising a custodial term of sixteen years and an extended licence period of six years. As in the present case, the offending included blackmail by the use of the internet of victims in the United States. On an application by Her Majesty's Attorney-General, this court increased the total sentence to an extended sentence, comprising twenty years' custodial term and seven years' extended licence. In doing so, this court concluded that an appropriate overall sentence after a trial of all matters would have been of the order of 35 years, before having regard to totality, and that the least total sentence that ultimately would have been appropriate would have been 30 years' imprisonment.
39. We have reflected on the submissions in the present case. At this stage of proceedings, our focus must be on the overall length of sentence rather than on its structure. We do, however, make an observation about the use of consecutive extended sentences. Such sentences are not unlawful and on occasions they may be necessary and appropriate. But they can give rise to confusion about the date of eligibility for release on licence and in our view they should, in general, be avoided if possible. We do not criticise the learned judge for the structure of his sentencing in this case; and if they were the only point at issue in this application, we would not interfere with the approach which he

adopted. We do, however, take the view that, in the circumstances of the present case, the use of concurrent extended sentences of a length reflecting the overall gravity of the offending would have been preferable. The powers of this court include the power to amend the structure of the sentence and the length of its component parts, provided that, overall, the applicant is not more severely dealt with than he was in the court below.

40. In our judgment, the most serious aggravating features of the applicant's offending are as follows. First, the duration of the offending, which had extended over about a decade and was continuing when the applicant was arrested. Secondly, the deliberate targeting of many vulnerable victims, followed by the cynical exploitation of their specific weaknesses. Thirdly, the remorseless, protracted pursuit of his selected victims, apparently for the purpose of his own amusement, with disregard of their obvious suffering and of their begging him to leave them alone. Fourthly, the recording and preservation of imagery, to be used not only as leverage for the offences of blackmail, but also as a form of currency to promote his dealings with like-minded individuals on the dark web. Fifthly, his encouragement and incitement of others to commit dreadful crimes against very young victims. Sixthly, his conspiring with others in order to further his own offending. Seventhly, the combination of careful planning of his crimes, with the taking of elaborate and successful steps to conceal his identity and avoid detection for many years.
41. The mitigation available to the applicant is, in our view, very limited. He clearly has a better side to his character. He is comparatively young, with no previous convictions, facing imprisonment for the first time. He has the benefit of his guilty pleas, for which the judge was prepared to give full credit.
42. We have already indicated that the judge acknowledged (but did not expressly accept), the applicant's expressions of remorse. For our part, bearing in mind that the applicant is a highly intelligent man, who has enjoyed a happy family life and many advantages, we find it impossible to accept the assertion in his letter to the court that he has now begun to realise the extent of the harm he has caused. He must, in our view, have been fully aware throughout of exactly what harm he was causing. The message which we have quoted, in which he refers to the possibility of suicide by one young victim, makes that abundantly clear.
43. There is, as we have said, no challenge to the finding of dangerousness. There is nothing in the papers before us to suggest that the applicant has suffered from a formal mental illness or disorder which is susceptible to treatment and which need not be a matter of concern for the future. The disturbing nature of the offending and the clear evidence that the applicant derived pleasure from inflicting suffering on others, coupled with the gravity of the offences, brings the case close to requiring life imprisonment. However, we well understand why the judge concluded that it was not necessary to take that course and that a long extended sentence is sufficient.
44. As to the length of the sentence, we have no doubt that the judge took care to observe the principle of totality, as is evident from the explanations he gave in his sentencing remarks. He was alive to the need to avoid double counting of aggravating features, in

circumstances where there is a clear overlap between some of the categories of offending which he identified.

45. However, whilst we hesitate to differ from the judge, who had considered the case with such care, we accept the submission that he did fall into error in failing to have sufficient regard to totality. He was correct to begin by considering what sentences would have been imposed after trial in the absence of any consideration of totality; and there can be no criticism of his approaching that consideration by dividing the offences into categories. But the degree of overlap between offending and features of offending within the categories, and the consequent risk of double counting of aggravating features, can be illustrated by reference to the fifth and sixth categories which the judge identified. Although of course distinct offending was involved, there was, in our view, much in common between those categories and other categories of offending, yet categories 5 and 6 contributed 21 years to the total of 65 years, which the judge reached before considering credit for pleas and reduction for totality. In our view, that feature in itself illustrates the importance of the principle of totality in a case such as this. It is illustrative of the point made by Mr Smith that the judge's approach, though perfectly understandable, inadvertently caused him to lose sight of the full extent of overlap between categories of offending, and therefore to make insufficient allowance when considering totality in this very difficult case.
46. None of the three previous cases to which we have referred is a guideline case. Each must be regarded as a decision on its own facts. We agree with the judge that the circumstances of *Leighton*, grave though they were, were less serious overall than the present case. There is nonetheless force in Mr Smith's submission that there are significant features of similarity between *Leighton* and this case, and that the difference between the total sentence in *Leighton* and the total sentence here is a further indication that the judge failed fully to apply the important principle of totality.
47. We have considered carefully what total sentence would impose just and proportionate punishment for the grave offences committed by this applicant. In our judgment, the appropriate total custodial term in this case, taking into account the full credit for the guilty pleas and the principle of totality, is one of 25 years. We therefore conclude, with all respect to the learned judge, that the total custodial term imposed below was manifestly excessive in length and must be reduced accordingly. We do, however, also take the view that the extended period of licence should be for the full term permitted by law, namely eight years.
48. The effect of our decision will be that the applicant will serve at least two-thirds of the custodial term of 25 years. He will then be eligible for consideration for release on licence, but there is no guarantee that he will be released at that stage. Depending on the view taken by the Parole Board as to whether he remains dangerous, he may remain in custody for the full term of 25 years. When he is released, he will be on licence for any remaining part of the custodial term and for a further eight years thereafter.
49. We therefore grant leave to appeal. We allow the appeal to the following extent: we quash the consecutive extended sentences imposed on count 89 of indictment 1, count 8 of indictment 3, and count 23 of indictment 4, and we substitute on each of those counts

concurrently an extended sentence of 33 years, comprising a custodial term of 25 years and an extension period of eight years. We order that the sentence on count 15 of indictment 1, namely an extended sentence of nine years six months, comprising a custodial term of eight years and an extension period of eighteen months, should run concurrently with the other extended sentences. In all other respects the sentencing remains as it was in the court below.

50. Mr Smith, Mr Forster, thank you both for your submissions in this difficult case.

Annex

M A FALDER

The individual offences were sentenced as follows:

Count	Offence	Sentence	Maximum (years)
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Substantive consecutive sentences			
Indictment 1 Count 15	Inciting sexual exploitation s.48(1) Sexual Offences Act 2003.	8 years custodial term plus 18 months extended licence	14
Indictment 1 Count 89	Intentionally encouraging an offence of rape s.44(1) and 58 Serious Crime Act 2007	10 years custodial term plus 18 months extended licence	Life
Indictment 3 Count 8	Forced or Compulsory Labour s.1(1)(b) of the Modern Slavery Act 2015	6 years custodial term plus 18 months extended licence	Life
Indictment 4 Count 23	Intentionally encouraging a rape of a child s.44(1) and 58 Serious Crime Act 2007	8 years custodial term plus 18 months extended licence	Life

Concurrent Sentences			
<i>Indictment 1</i>			
1	Fraud by representation s.1 Fraud Act 2006	3 years imprisonment	10
2	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	8 years imprisonment	14
4	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14
7	Causing/Inciting a child to engage in sexual activity involving penetration s.10(1) & (2) Sexual Offences Act 2003.	40 months imprisonment	14
8	Conspiracy to blackmail s.1(1) Criminal Law Act 1977	40 months imprisonment	14
9	Fraud by representation s.1 Fraud Act 2006	3 years imprisonment	10
11	Making of indecent images of a child s.1(1)(a) Protection of Children Act 1978	2 years imprisonment	10

12	Causing/Inciting a child to engage in sexual activity s.10(1) Sexual Offences Act 2003	2 years imprisonment	14
13	Causing/Inciting a child to engage in sexual activity involving penetration s.10(1) & (2) Sexual Offences Act 2003	40 months imprisonment	14
14	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14
16	Fraud by representation s.1 Fraud Act 2006	3 years imprisonment	10
17	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	40 months imprisonment	14
18	Making of indecent images of a child s.1(1)(a) Protection of Children Act 1978	1 year imprisonment	10
19	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14
20	Fraud by representation s.1 Fraud Act 2006	3 years imprisonment	10
21	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	40 months imprisonment	14
22	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14
23	Making of indecent images of a child s.1(1)(a) Protection of Children Act 1978	1 year imprisonment	10
25	Fraud by representation s.1 Fraud Act 2006	3 years imprisonment	10
26	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	40 months imprisonment	14
28	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14
30	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
31	Blackmail s.21(1) Theft Act 1968	40 months imprisonment	14
32	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10

33	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	40 months imprisonment	14
35	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14
36	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	1 year imprisonment	10
37	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
38	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	4 years imprisonment	14
39	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
40	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	30 months imprisonment	14
41	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
42	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	30 month imprisonment	14
43	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
44	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	30 month imprisonment	14
45	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
46	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	30 month imprisonment	14
47	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
48	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	4 years imprisonment	14
50	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
51	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	4 years imprisonment	14
52	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10

53	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
54	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	30 month imprisonment	14
55	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
56	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	4 years imprisonment	14
57	Fraud by representation s.1 Fraud Act 2006	3 years imprisonment	10
59	Making of indecent images of a child s.1(1)(a) Protection of Children Act 1978	1 year imprisonment	10
60	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14
61	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	40 months imprisonment	14
63	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
64	Blackmail s.21(1) Theft Act 1968	40 months imprisonment	14
65	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
66	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	30 month imprisonment	14
68	Fraud by representation s.1 Fraud Act 2006	3 years imprisonment	10
69	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	30 month imprisonment	14
70	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	16 months imprisonment	10
72	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	16 months imprisonment	10
73	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	2 years imprisonment	10
74	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	2 years imprisonment	10

75	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
76	Sending electronic communication with intent to cause distress or anxiety s.1(1)(a) Malicious Communications Act 1988	6 months imprisonment	2
77	Conspiracy to blackmail s.1(1) Criminal Law Act 1977	32 months imprisonment	14
78	Conspiracy to blackmail s.1(1) Criminal Law Act 1977	32 months imprisonment	14
79	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	2 years imprisonment	14
81	Fraud by representation s.1 Fraud Act 2006	2 years imprisonment	10
82	Causing/Inciting sexual exploitation of a child s.48(1) Sexual Offences Act 2003	40 month imprisonment	14
86	Conspiracy to take/make indecent images of a child s.1(1) Criminal Law Act 1977	4 years imprisonment	10
87	Conspiracy to distribute indecent images of a child s.1(1) of the Criminal Law Act 1977	2 years imprisonment	10
93	Conspiracy to take/make indecent images of a child s.1(1) Criminal Law Act 1977	4 years imprisonment	10
94	Conspiracy to distribute indecent images of a child s.1(1) Criminal Law Act 1977	2 years imprisonment	10
96	Intentionally encouraging an offence of rape s.44(1) and 58 Serious Crime Act 2007	10 years imprisonment	Life
99	Intentionally encouraging an offence of sexual activity with a child family member s.44(1) and 58 Serious Crime Act 2007	4 years imprisonment	14
100	Conspiracy to send an electronic communication with intent to cause distress or anxiety s.1(1) Criminal Law Act 1977	6 months imprisonment	2

101	Conspiracy to send an electronic communication with intent to cause distress or anxiety s.1(1) Criminal Law Act 1977	6 months imprisonment	2
102	Conspiracy to send an electronic communication with intent to cause distress or anxiety s.1(1) Criminal Law Act 1977	6 months imprisonment	2
Indictment 2			
1	Possession of indecent images with a view to their distribution s.1(1)(c) Protection of Children Act 1978	40 months imprisonment	10
2	Possession of indecent images with a view to their distribution s.1(1)(c) Protection of Children Act 1978	40 months imprisonment	10
3	Possession of prohibited images of children s.62 Coroners and Justice Act 2009	1 year imprisonment	3
5	Possession of extreme pornography s.63 Criminal Justice and Immigration Act 2008	6 months imprisonment	3
6	Possession of a paedophile manual s.69 Serious Crime Act 2015	1 year imprisonment	3
7	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2
8	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2
11	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2
13	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2
14	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2
16	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2
17	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2
21	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2

22	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2
24	Voyeurism – recording a private act s.67(3) and (5) Sexual Offences Act 2003	16 months imprisonment	2
Indictment 3			
1	Publishing an advertisement about distribution of indecent images s.1(1)(d) of the Protection of Children Act 1978	1 year imprisonment	10
2	Distributing indecent images of a child s.1(1)(b) Protection of Children Act 1978	1 year imprisonment	10
3	Distributing indecent images of a child s.1(1)(b) Protection of Children Act 1978	1 year imprisonment	10
4	Making indecent images of a child s.1(1)(a) Protection of Children Act 1978	1 year imprisonment	10
5	Encouraging/assisting the commission of offences of taking, making or distributing indecent images s.46(1) and 58 Serious Crime Act 2007	1 year imprisonment	10
6	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14
9	Sending electronic communication with intent to cause distress or anxiety s.1(1)(a) Malicious Communications Act 1988	1 year imprisonment	2
10	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14
11	Sending electronic communication with intent to cause distress or anxiety s.1(1)(a) Malicious Communications Act 1988	6 months imprisonment	2
14	Encouraging/assisting the commission of offences of taking, making or distributing indecent images s.46(1) and 58 Serious Crime Act 2007	1 year imprisonment	10
16	Blackmail s.21(1) Theft Act 1968	5 years imprisonment	14

17	Encouraging/assisting the commission of offences of taking, making or distributing indecent images s.46(1) and 58 Serious Crime Act 2007	1 year imprisonment	10
18	Sending electronic communication with intent to cause distress or anxiety s.1(1)(a) Malicious Communications Act 1988	6 months imprisonment	2
20	Arranging/facilitating sexual exploitation of a child s.50(1) Sexual Offences Act 2003	4 years imprisonment	14
21	Conspiracy to blackmail s.1(1) Criminal Law Act 1977	44 months imprisonment	14
23	Sending electronic communication with intent to cause distress or anxiety s.1(1)(a) Malicious Communications Act 1988	6 months imprisonment	2
<i>Indictment 4</i>			
1	Encouraging/assisting an offence of blackmail, believing it will be committed s.45(1) and 58 Serious Crime Act 2007	32 months imprisonment	14
2	Encouraging/assisting the commission of offences of taking, making or distributing indecent images s.46(1) and 58 Serious Crime Act 2007	2 years imprisonment	10
3	Encouraging/assisting an offence of blackmail, believing it will be committed s.45(1) and 58 Serious Crime Act 2007	40 months imprisonment	14
4	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	1 years imprisonment	10
5	Encouraging/assisting the commission of offences of taking, making or distributing indecent images s.46(1) and 58 Serious Crime Act 2007	32 months imprisonment	10
6	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	1 year imprisonment	10
7	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	2 years imprisonment	10

8	Publishing an obscene article s.2(1) Obscene Publications Act 1959 as amended by the Obscene Publications Act 1964	6 months imprisonment	5
10	Publishing an obscene article s.2(1) Obscene Publications Act 1959 as amended by the Obscene Publications Act 1964	6 months imprisonment	5
12	Participating in the activities of an organised crime group s.45 Serious Crime Act 2015	1 year imprisonment	5
13	Participating in the activities of an organised crime group s.45 Serious Crime Act 2015	1 year imprisonment	5
14	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	2 years imprisonment	10
15	Possession of a paedophile manual s.69 Serious Crime Act 2015	1 year imprisonment	3
16	Intentionally encouraging/assisting an offence of blackmail s.44 (1) & 58 Serious Crime Act 2007	32 months imprisonment	14
17	Encouraging/assisting the commission of offences of taking, making or distributing indecent images s.46(1) and 58 Serious Crime Act 2007	2 years imprisonment	10
18	Intentionally encouraging/assisting an offence of child sex exploitation under s.14 SOA 2003 s.44(1) and 58 Serious Crime Act 2007	40 months imprisonment	14
21	Making of indecent images of children s.1(1)(a) Protection of Children Act 1978	1 year imprisonment	10
22	Distribution of indecent images of a child s.1(1)(b) Protection of Children Act 1978	32 months imprisonment	10
24	Making of indecent images of children s.1(1)(a) Protection of Children Act 1978	1 year imprisonment	10
25	Publishing an obscene article s.2(1) Obscene Publications Act 1959 as amended by the Obscene Publications Act 1964	6 months imprisonment	5

27	Participating in the activities of an organised crime group s.45 Serious Crime Act 2015	1 year imprisonment	5
<i>s.41 Offences</i>			
1	Malicious communication s.1(1) Malicious Communications Act 1988	1 month imprisonment	6 months
2	Malicious communication s.1(1) Malicious Communications Act 1988	1 month imprisonment	6 months
3	Malicious communication s.1(1) Malicious Communications Act 1988	1 month imprisonment	6 months
4	Malicious communication s.1(1) Malicious Communications Act 1988	1 month imprisonment	6 months
5	Malicious communication s.1(1) Malicious Communications Act 1988	1 month imprisonment	6 months
Total Sentence:	Extended Sentence of 38 years Custodial term of 32 years and an Extension Period of 6 years		
Other relevant orders: Sexual Harm Prevention Order pursuant to s.103 of the Sexual Offences Act 2003 (until further order)			