Neutral Citation Number: [2022] EWCA Crim 1063

Case Nos: 202200735/A1, 202103375/A1, 202200172/A2, 202104116/A4, 202104117/A4, 202104118/A4, 202201137

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM:

THE CROWN COURT AT LUTON
Mr Justice Bryan
(Stewart)

AND THE CENTRAL CRIMINAL COURT
Lord Justice Fulford, Vice President of the Court of Appeal (Criminal Division)
(Couzens)

AND THE CROWN COURT AT PRESTON
Mr Justice Goose
(Monaghan)

AND THE CROWN COURT AT BIRMINGHAM
Mr Justice Wall
(Hughes and Tustin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2022

Before:

LORD CHIEF JUSTICE OF ENGLAND AND WALES
PRESIDENT OF THE QUEEN'S BENCH DIVISION
LORD JUSTICE HOLROYDE
MR JUSTICE SWEENEY
And
MR JUSTICE JOHNSON

- -

Between:

Regina	**Respondent**
- and -	
(1) Ian Stewart	
(2) Wayne Couzens	
(3) Emma Louise Tustin	
(4) Thomas Samuel Hughes	**Applicants**

AND A REFERENCE BY HER MAJESTY'S SOLICITOR

GENERAL UNDER SECTION 36 OF THE CRIMINAL JUSTICE ACT 1988

Regina
-v-
Jordan Monaghan

AND A REFERENCE BY HER MAJESTY'S ATTORNEY GENERAL UNDER SECTION 36 OF THE CRIMINAL JUSTICE ACT 1988

Regina
-v-
(1) Emma Louise Tustin
(2) Thomas Samuel Hughes

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Amjad Malik QC and **Terry Pedro** (instructed by **Pickup & Scott Solicitors**) for the Applicant **Stewart**
Tom Little QC (instructed by the **Crown Prosecution Service**) for the **Respondent**

Jim Sturman QC and **Shauna Ritchie** (instructed by **Tuckers Solicitors**) for the Applicant **Couzens**
Tom Little QC and **Jocelyn Ledward** (instructed by the **Crown Prosecution Service**) for the **Respondent**

Mary Prior QC and **Paul Prior** (instructed by **Vienna Kang Advocates**) for the Applicant **Tustin**
Bernard Richmond QC and **Chloe Ashley** (instructed by **Clayton Solicitors**) for the Applicant **Hughes**
Tom Little QC (instructed by the **Crown Prosecution Service**) for the **Respondent**

Tom Little QC appeared on behalf of the **Attorney General** in the references (**Tustin, Hughes and Monaghan)**
Benjamin Myers QC and Michael Maher (instructed by **Farleys Solicitors**) for **Monaghan**
Hearing dates: 4 May 2022
- - - - - - - - - - - - - - - - - - - -

Approved Judgment

Lord Burnett of Maldon, CJ:

1. The sentences of four offenders convicted of murder and one of manslaughter are before the court for leave to appeal against sentence or as applications by Her Majesty's Attorney General or Her Majesty's Solicitor General for leave to refer the sentence as unduly lenient:

    i) In February 2022 Ian Stewart was convicted of the murder of his wife, Diane Stewart, in 2010. He had been convicted in 2017 of the murder of his then fiancée, Helen Bailey. On 9 February 2022 he was sentenced by Bryan J to imprisonment for life with no minimum term ("a whole life order"). Stewart seeks leave to appeal against sentence.

    ii) Wayne Couzens pleaded guilty on 8 June 2021 to the kidnapping and rape of Sarah Everard. On 9 July 2021, he pleaded guilty to her murder. On 30 September 2021, he was sentenced by Fulford LJ to imprisonment for life for the murder. Fulford LJ imposed a whole life order. No separate penalty was imposed for the offences of kidnapping and rape. Couzens seeks leave to appeal against sentence.

    iii) Jordan Monaghan was convicted on 17 December 2021 of three counts of murder and two counts of attempted murder. Between January 2013 and October 2016, he murdered two of his children, Ruby at three weeks and Logan at 21 months. He twice attempted to murder his third child. While on police bail when the deaths of his children were under investigation, he murdered his then partner, Evie Adams. He was sentenced by Goose J to imprisonment for life with a minimum term of 40 years. The Solicitor General applies for leave to refer that sentence as unduly lenient and contends that the only proper sentence was a whole life order.

    iv) On 2 December 2021 Emma Tustin was convicted of the murder of Arthur Labinjo-Hughes who was six. She had pleaded guilty to two counts of child cruelty relating to him and was convicted of two more. Thomas Hughes was convicted of Arthur's manslaughter, as an alternative to murder, and two counts of child cruelty. He was Arthur's father. Tustin was his partner. On 3 December 2021 Wall J sentenced Tustin to imprisonment for life with a minimum term of 29 years together with ten years' imprisonment on each count of child cruelty to run concurrently. Hughes was sentenced to 21 years' imprisonment for manslaughter and nine years' imprisonment on each count of child cruelty to run concurrently. Both seek leave to appeal against sentence, Tustin 101 days out of time. The Attorney General seeks leave to refer both sentences as unduly lenient, contending that Tustin should have received a whole life order and Hughes a longer sentence.

Background to whole life orders

2. Since the abolition of the death penalty, the only sentence available for adults convicted of murder is imprisonment for life: section 1 of the Murder (Abolition of Death Penalty) Act 1965.

3. On 30 November 1983, the Home Secretary introduced the tariff system for prisoners serving mandatory life sentences. Under this system, the Home Secretary set the minimum term that a mandatory life prisoner must serve before being considered for release. In the most serious cases, the minimum term could be a whole life tariff. The details of the procedure and practice followed by successive Home Secretaries are discussed in *R (Anderson) v Secretary of State for the Home Department* [2002] UKHL 46, [2003] 1 AC 837 in the speech of Lord Bingham of Cornhill, paras [1] to [12]. There are currently ten prisoners serving whole life tariffs imposed by the Home Secretary.

4. In *Anderson*, in accordance with Strasbourg jurisprudence, the House of Lords held that the system of the Home Secretary setting tariffs was incompatible with article 6 of the European Convention on Human Rights. The executive should not determine the length of a sentence. Shortly thereafter, section 269 of the Criminal Justice Act 2003 provided that the sentencing judge must specify the minimum term to be served by a mandatory life prisoner before release following consideration by the Parole Board, unless (in the case of an offender over the age of 21 at the time of the offence) the offence (together with any associated offence) was so serious that no minimum term should be specified.

5. Schedule 21 of the 2003 Act sets out principles and guidelines for assessing whether a whole life order should be imposed or, if not, the length of the minimum term. Schedule 21 has been amended six times. For example, from 13 April 2015, the murder of a police officer or prison officer in the execution of his or her duty was added to the list of cases that are to be regarded as normally requiring, as a starting point (subject to consideration of the aggravating and mitigating factors), a whole life order. The structure of Schedule 21 provides for different starting points for adults (15 years, 25 years, 30 years and whole life orders) depending on the circumstances of the offence. A different structure is provided for those under 18 which has recently been amended by section 127 of the Police, Crime, Sentencing and Courts Act 2022 which came into force on 28 June 2022.

6. The relevant provisions of the 2003 Act were consolidated in the Sentencing Act 2020 which came into force on 1 December 2020. Those provisions govern the sentences in each of the cases now before the court.

7. There were 59 prisoners serving whole life orders in England and Wales imposed by the courts under the 2003 Act or the 2020 Act on 31 March 2022. These include Wayne Couzens and Ian Stewart.

The statutory framework

8. Sections 321 and 322 of the Sentencing Act 2020 (as in force at the time of the sentences imposed in each of these cases) state:

> "**321 Life sentence: minimum term order or whole life order**
>
> (1) Where a court passes a life sentence, it must make an order under this section.

(2) The order must be a minimum term order unless the court is required to make a whole life order under subsection (3).

(3) The order must be a whole life order if—

(a) the offender was 21 or over when the offence was committed, and

(b) the court is of the opinion that, because of the seriousness of—

(i) the offence, or

(ii) the combination of the offence and one or more offences associated with it, it should not make a minimum term order.

(4) A minimum term order is an order that the early release provisions (see section 324) are to apply to the offender as soon as the offender has served the part of the sentence which is specified in the order in accordance with section 322 or 323 ("the minimum term").

(5) A whole life order is an order that the early release provisions are not to apply to the offender.

322 Mandatory life sentences: further provision

(1) This section applies where a court passes a life sentence for an offence the sentence for which is fixed by law.

Minimum term

(2) If the court makes a minimum term order, the minimum term must be such part of the offender's sentence as the court considers appropriate taking into account—

(a) the seriousness of—

(i) the offence, or

(ii) the combination of the offence and any one or more offences associated with it, and

(b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

(i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);

(ii) and section 240A of that Act (crediting periods on bail subject to certain restrictions); including the effect of any declaration that the court would have made under section 325 or 327 (specifying periods of remand on bail subject to certain restrictions or in custody pending extradition).

Determination of seriousness

(3) In considering the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, under—

(a) section 321(3) (determining whether to make a whole life order), or

(b) subsection (2) (determining the minimum term), the court must have regard to—

(i) the general principles set out in Schedule 21, and

(ii) any sentencing guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.

Duty to give reasons for minimum term order or whole life order

(4) Where the court makes a minimum term order or a whole life order, in complying with the duty under section 52(2) to state its reasons for deciding on the order made, the court must in particular—

(a) state which of the starting points in Schedule 21 it has chosen and its reasons for doing so, and

(b) state its reasons for any departure from that starting point.

…"

9. Schedule 21 to the 2020 Act has effect by reason of section 322(3). Paragraph 2 provides for the circumstances in which the starting point is a whole life order. As in force at the time of the sentences imposed in each of these cases, it states:

"2(1) If—

(a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and

(b) the offender was aged 21 or over when the offence was committed, the appropriate starting point is a whole life order.

(2) Cases that would normally fall within sub-paragraph (1)(a) include—

(a) the murder of two or more persons, where each murder involves any of the following—

(i) a substantial degree of premeditation or planning,

(ii) the abduction of the victim, or

(iii) sexual or sadistic conduct,

(b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,

(c) the murder of a police officer or prison officer in the course of his or her duty, where the offence was committed on or after 13 April 2015,

(d) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or

(e) a murder by an offender previously convicted of murder."

10. Paragraph (2)(a) is clear in providing that when an offender murders two persons and any of the three criteria identified is involved in both murders a whole life order would be the normal starting point. It is also concerned with the murder of more than two persons. The language of the subsection is that "each murder" must involve one of the three criteria. That cannot be interpreted as suggesting that a murder of three or more people would not be covered by the subsection if only two of the murders fell withing the criteria, but not the third murder or more.

11. Section 125 of the Police, Crime, Sentencing and Courts Act 2022 amends paragraph 2(2) in respect of murders of children committed after its commencement to include the murder of a child with a substantial degree of premeditation or planning. That amendment also came into force on 28 June 2022.

12. Paragraph 3 provides for the circumstances in which the starting point is a minimum term of 30 years. It states:

"3(1) If—

(a) the case does not fall within paragraph 2(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and

(b) the offender was aged 18 or over when the offence was committed,

the appropriate starting point, in determining the minimum term, is 30 years.

(2) Cases that (if not falling within paragraph 2(1)) would normally fall within sub-paragraph (1)(a) include—

(a) in the case of an offence committed before 13 April 2015, the murder of a police officer or prison officer in the course of his or her duty,

(b) a murder involving the use of a firearm or explosive,

(c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),

(d) a murder intended to obstruct or interfere with the course of justice,

(e) a murder involving sexual or sadistic conduct,

(f) the murder of two or more persons,

(g) a murder that is aggravated by racial or religious hostility or by hostility related to sexual orientation,

(h) a murder that is aggravated by hostility related to disability or transgender identity, where the offence was committed on or after 3 December 2012 (or over a period, or at some time during a period, ending on or after that date),

(i) a murder falling within paragraph 2(2) committed by an offender who was aged under 21 when the offence was committed.

…"

13. Paragraph 4 provides for a starting point of a minimum term of 25 years for a murder committed with a knife taken to the scene of the crime and paragraph 5 provides for a starting point of a minimum term of 15 years for murders not encompassed in the preceding paragraphs.

14. Paragraphs 7 to 11 of Schedule 21 make provision in respect of aggravating and mitigating factors:

> "**Aggravating and mitigating factors**
>
> 7. Having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.
>
> 8. Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.
>
> 9. Aggravating factors (additional to those mentioned in paragraphs 2(2), 3(2) and 4(2)) that may be relevant to the offence of murder include—
>
> (a) a significant degree of planning or premeditation,
>
> (b) the fact that the victim was particularly vulnerable because of age or disability,
>
> (c) mental or physical suffering inflicted on the victim before death,
>
> (d) the abuse of a position of trust,
>
> (e) the use of duress or threats against another person to facilitate the commission of the offence,
>
> (f) the fact that victim was providing a public service or performing a public duty, and
>
> (g) concealment, destruction or dismemberment of the body.
>
> 10. Mitigating factors that may be relevant to the offence of murder include—
>
> (a) an intention to cause serious bodily harm rather than to kill,
>
> (b) lack of premeditation,
>
> (c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 2(1) of the Homicide Act

1957) lowered the offender's degree of culpability,

(d) the fact that the offender was provoked (for example, by prolonged stress) but, in the case of a murder committed before 4 October 2010, in a way not amounting to a defence of provocation,

(e) the fact that the offender acted to any extent in self-defence or, in the case of a murder committed on or after 4 October 2010, in fear of violence,

(f) a belief by the offender that the murder was an act of mercy, and

(g) the age of the offender.

11. Nothing in this Schedule restricts the application of—

(a) section 65 (previous convictions),

(b) section 64 (bail), or

(c) section 73 (guilty plea), or of section 238(1)(b) or (c) or 239 of the Armed Forces Act 2006."

15. Where an offender has pleaded guilty then the court must take account of the stage of the proceedings when the plea of guilty was indicated and the circumstances in which that indication was given: section 73 of the Sentencing Act 2020.

16. A sentencing judge must follow any sentencing guidelines published by the Sentencing Council which are relevant to the case unless that would be contrary to the interests of justice: section 59(1) of the Sentencing Act 2020.

17. The Sentencing Council's Overarching Guideline "Reduction in sentence for a guilty plea" provides specific guidance as to the effect of a plea of guilty to murder:

> "…Given the special characteristic of the offence of murder and the unique statutory provision in Schedule 21 of the Sentencing Code of starting points for the minimum term to be served by an offender, careful consideration has to be given to the extent of any reduction for a guilty plea and to the need to ensure that the minimum term properly reflects the seriousness of the offence. Whilst the general principles continue to apply (both that a guilty plea should be encouraged and that the extent of any reduction should reduce if the indication of plea is later than the first stage of the proceedings) the process of determining the level of reduction will be different.

Determining the level of reduction

> Whereas a court should consider the fact that an offender has pleaded guilty to murder when deciding whether it is appropriate to order a whole life term, where a court determines that there should be a whole life minimum term, there will be no reduction for a guilty plea.
>
> …"

The application of the statutory framework to making whole life orders

18. The application of the statutory framework has been considered in, amongst other cases: *R v Peters and others* [2005] EWCA Crim 605 2005 Cr App R (S) 101; *R v Jones and others* [2005] EWCA Crim 3115 [2006] 2 Cr App R (S) 19; *R v Height (John)* [2008] EWCA Crim 2500 [2009] 1 Cr App R (S) 117; *R v Wilson* [2009] EWCA Crim 999 [2010] 1 Cr App R (S) 11; *R v Oakes* [2012] EWCA Crim 2435 [2013] QB 979; *R v McLoughlin* [2014] EWCA Crim 188 [2014] 1 WLR 3964; *R v Reynolds* [2014] EWCA Crim 2205 [2015] 1 Cr App R (S) 24; *Hutchinson v United Kingdom* (Judgment of 17 January 2017) 43 BHRC 667; and *R v McCann* [2020] EWCA Crim 1676 [2021] 4 WLR 3.

19. We derive the following principles from the statutory provisions and the authorities:

    i) For offences committed before 28 June 2022, a whole life order may only be considered where a sentence of life imprisonment is imposed on an offender who is over the age of 21 (section 321(3)(a)). Section 126 of the Police, Crime and Sentencing Act 2022 extends the availability of a whole life order to offenders aged 18, 19 and 20 from that date.

    ii) A whole life order may only be imposed if the court considers that the seriousness of the offence(s) is such that it should not make a minimum term order (section 321(3)(b)):

    iii) "A whole life order should be imposed where the seriousness of the offending is so exceptionally high that just punishment requires the offender to be kept in prison for the rest of his or her life. Often, perhaps usually, where such an order is called for the case will not be on the borderline. The facts of the case, considered as a whole, will leave the judge in no doubt that the offender must be kept in prison for the rest of his or her life. Indeed, if the judge is in doubt this may well be an indication that a finite minimum term which leaves open the possibility that the offender may be released for the final years of his or her life is the appropriate disposal. To be imprisoned for a finite period of thirty years or more is a very severe penalty. If the case includes one or more of the factors set out in [the schedule] it is likely to be a case that calls for a whole life order, but the judge must consider all the material facts before concluding that a very lengthy finite term will not be a sufficiently severe penalty." *Jones* at [10].

    iv) It is "a sentence of last resort for cases of the most extreme gravity" which is "reserved for the few exceptionally serious cases" where "the judge is satisfied

that the element of just punishment requires the imposition of a whole life order" – *Wilson* at [14], *Reynolds* at [5(iv)]. In a borderline case, if the judge is in any doubt as to whether this standard is reached, a minimum term order is likely to be the appropriate disposal – *Jones* at [10], *Reynolds* at [5(ii)].

v) The statutory scheme "does not shut the door" on the possibility of a whole life order where a discretionary sentence of life imprisonment is imposed for a crime other than murder, but such a case would be "wholly exceptional" – *McCann* at [89]. All bar one of those currently serving whole life orders were convicted of murder and, in most cases, more than one offence of murder.

vi) In assessing whether the seriousness of the offence(s) warrants a whole life order, the court must have regard to the general principles set out in Schedule 21 (section 322(3)). Each case will depend critically on its particular facts. The sentencing judge must undertake a careful analysis of all the relevant facts as "justice cannot be done by rote" – *Peters* at [5], *Reynolds* at [5(i)], *Jones* at [6]. Schedule 21 must be applied in a flexible, not rigid, way to achieve a just result – *Height* at [29]. Because each case depends on its own facts, comparison with other cases is unlikely to be helpful. It is the application of the principles to a careful assessment of the relevant facts of the case that is important.

vii) The court must first identify the appropriate starting point. Where the seriousness of the offence(s) is exceptionally high, then the starting point is a whole life order. Where the seriousness of the offence(s) is "particularly high" the starting point is a minimum term of 30 years. Otherwise, the starting point will be 15 or 25 years depending on the circumstances.

viii) Cases of murder involve taking human life where the offender intended to kill or cause really serious harm. All murders are necessarily extremely serious crimes. For that reason, they attract the mandatory life sentence. The requirement for the seriousness to be "exceptionally high" before a whole life order is made arises in that context. The case must be exceptionally serious, even in the context of murder. The period that an offender is required to serve, in the case of a minimum term before the parole board can consider release, encompasses every type of murder from true mercy killings at one end of the spectrum to the most evil at the other.

ix) The period that a murderer must serve does not reflect the value the life taken away and does not attempt to do so.

x) Paragraphs 2(2) and 3(2) of Schedule 21 list the types of case where the seriousness is "normally" to be regarded as "exceptionally high" or "particularly high". These are not exhaustive lists. The legislation does not exclude the possibility that other cases might reach the indicted level of seriousness, though such cases are "probably rare" – *Height* at [28] The same applies in reverse: a case that nominally comes within the ambit of paragraphs 2(2) or 3(2) may not reach that level of seriousness because of the particular facts – *Height* ibid. The conclusion in *Height* was that it will be rare for a case that does not come directly within the scope of paragraph 2(2) to be regarded as being exceptionally serious.

xi) Having determined the appropriate starting point, the court must consider the aggravating and mitigating factors. These may result in a departure from the starting point. If the starting point is a whole life order, then the balance of mitigating factors and aggravating factors might result in the imposition of a minimum term order. That balance is not struck by listing aggravating and mitigating factors and then considering which list is the longer. Both aggravating and mitigating factors may vary in potency. The statutory factors which indicate that a whole life order should be considered would themselves normally be aggravating factors. Care must be taken not to double count. Conversely, if the starting point is a minimum term order, then the balance of aggravating factors and mitigating factors might result in the imposition of a whole life order.

xii) A plea of guilty is relevant when determining whether the seriousness of a case is exceptionally high and requires a whole life order – *Jones* at [15], *Reynolds* at [5(iii)].

xiii) If the test in section 321(3) is satisfied, then a whole life order must be imposed. Otherwise, a sentence of life imprisonment must be subject to a minimum term order (section 321(2)).

xiv) A whole life order means that the statutory early release provisions do not apply. It does not preclude the possibility of release by the Home Secretary on compassionate grounds. A decision whether to release on compassionate grounds may be challenged in judicial review proceedings. The Grand Chamber of the European Court of Human Rights has confirmed (in agreement with this court's decision in *McLoughlin*) that "the whole life sentence… [is] in keeping with Article 3 of the Convention" - *Hutchinson* at [72].

xv) The assessment of seriousness is for the sentencing judge. On an appeal, or a reference by the Law Officers, this court will not substitute its own assessment for that of the sentencing judge. On an appeal against the imposition of a whole life order or a reference by the Attorney or Solicitor General this court will interfere only if the sentence was manifestly excessive or unduly lenient, as the case may be: *Peters* at [9].

20. These principles are well-established and were not the subject of dispute before us. It is no part of the cases advanced by Mr Little QC on behalf of the Attorney General and Solicitor General to lower the bar for the imposition of whole life orders. As we have seen Parliament has from time to time intervened to bring new types of case within their scope.

Ian Stewart

21. Ian Stewart, now aged 61, applies for leave to appeal against the whole life order imposed by Bryan J on 9 February 2022. The application has been referred by the Registrar to the full court. We give leave.

22. Stewart has twice murdered his wife or partner. It was only after he had been convicted of the second of those murders that he came under investigation for the first.

Facts

23. On the morning of 25 June 2010 Stewart murdered his wife Diane Stewart ("the first murder"). On the morning of the killing, the couple were alone at home. Their two sons were expected at lunchtime. Although the precise mechanism could not be established, Stewart asphyxiated his wife, possibly by placing a plastic bag over her head or by choking her with his arm. When he was sure she was dead, he called 999. He claimed that he had tried to resuscitate her and said he thought that she may have suffered an epileptic fit. The two boys returned home to see their mother's body lying on the garden patio.

24. Diane Stewart had been diagnosed as epileptic. In the light of Stewart's account, her death was thought to be consistent with sudden unexpected death in epilepsy and was not treated as suspicious. Her body was cremated. She had expressed a wish that her organs be donated for teaching and research. That wish was known to her family and could not be ignored by Stewart without attracting suspicion. Her brain was preserved.

25. Stewart, having avoided investigation by giving his untruthful account, later formed a relationship with Helen Bailey, a successful author. In early 2016 they were engaged to be married. Stewart's two sons by his first marriage lived with them.

26. Over a period of months, Stewart planned to murder his fiancée for financial gain. He regularly sedated her, using a sleeping drug which had been prescribed for him. She was sedated, and therefore unable to resist, when he murdered her on 11 April 2016 by asphyxiation with a pillow ("the second murder").

27. Stewart went to considerable lengths to conceal his crime. He claimed that Ms Bailey had disappeared with her dog, leaving a note to say that she needed some space, though he never produced any such note. He had in fact placed the bodies of both Ms Bailey and her dog into a cess pit beneath a garage, together with the pillowcase and two plastic bags, hoping that the odours from the cess pit would mask the smell of decomposition. He had then parked her car over the manhole cover to the cess pit. Later that day he increased a standing order in his favour from one of her bank accounts. He subsequently attempted to use a power of attorney, which had been granted to him by Ms Bailey, to take control of her financial affairs during the period when others believed her to be missing.

Sentencing for the second murder

28. On 22 February 2017, in the Crown Court at St Albans, he was convicted of the second murder, and of associated offences of fraud, preventing the lawful and decent burial of a dead body and perverting the course of justice. He was sentenced on the following day by the trial judge, HH Judge Bright QC. At that time, Stewart had not been accused of the first murder.

29. In his sentencing remarks, Judge Bright said that he regarded Stewart as posing a very real danger to women with whom he formed a relationship. He found the seriousness of the murder to be particularly high because it was done in the expectation of gain. The starting point was therefore a minimum term of 30 years. The offence was aggravated by the significant degree of planning and premeditation; the attempts by

Stewart to conceal the bodies of Ms Bailey and her dog in the hope that they would never be found; and the calculated and callous lies which he had told over a period of three months, which caused Ms Bailey's family and friends to endure the anguish of not knowing what had become of her. He sentenced Stewart to life imprisonment with a minimum term of 34 years, less the period of 223 days which had been spent on remand in custody. He imposed concurrent determinate sentences for the other offences. The effect of that sentence was that Stewart (then aged 56) would be nearly 90 before he was eligible to apply for release on licence.

30. Diane Stewart's death was then investigated by the police. Detailed examination of her preserved brain showed that she had died, not because of an epileptic seizure, but because someone had interfered with her breathing.

Sentencing for the first murder

31. On 9 February 2022, after a trial in the Crown Court at Huntingdon, Stewart was convicted of the first murder and sentenced to life imprisonment with a whole life order.

32. In his sentencing remarks, Bryan J noted the similarities between the two murders. The judge commented in detail on the elaborate lies which Stewart had told to conceal his responsibility for Diane Stewart's death. The judge said it was a callous murder which had deprived the two sons of their mother and had had a terrible impact on other members of her family. There were several aggravating features. First, Diane Stewart had been murdered in her own home, where she was entitled to feel safe, by the man whom she was entitled to expect to protect her. Secondly, Stewart knew that his sons would return to see their mother's dead body. Thirdly, there was a substantial degree of premeditation and planning. The judge was satisfied that a major motive for the murder was financial gain. He referred to the sheer terror which Diane Stewart would have experienced in the moments preceding her death. He found that there was no mitigating factor.

33. Both counsel had made submissions on the basis that paragraph 2(2)(e) of Schedule 21 applied. The judge agreed, saying –

> "The gravamen of exceptional seriousness of such offending is the commission of two murders separated in time, and the sequence of conviction in no way reduces such seriousness. Even had paragraph 2(2)(e) not been applicable, the sub-paragraphs are merely examples of cases that normally fall within paragraph 2(1)(a), namely where the seriousness of the offending is exceptionally high, and the murder of two women that you were in an intimate relationship with, coupled with the circumstances of your offending and aggravating factors, render the seriousness of your offence exceptionally high.
>
> I would only add that if the murders of Helen Bailey and Diane Stewart had been tried together, I am satisfied that this would have been a paragraph 2(2)(a)(i) situation (in circumstances where I am satisfied that each involve a substantial degree of premeditation and planning for the reasons I have given). In the

> event, that debate is academic given the application of paragraph 2(2)(e). It is, however, another example of a situation that will normally fall within paragraph 2(1)(a) as a situation where the seriousness of the offending will be exceptionally high."

34. The judge went on to say that it was not a borderline case:

> "On two separate occasions separated by a period of 6 years you callously murdered a person with whom you were in a seemingly loving relationship, and did so in a strikingly similar, and chilling, way, and with the numerous aggravating features that I have already identified, which result in the seriousness of your offending being exceptionally high.
>
> …
>
> I am in no doubt whatsoever that the just punishment in your case, having regard to the exceptional seriousness of your offending, and the associated aggravating features of your offending that I have identified coupled with the total lack of any significant mitigating features, is that you be kept in prison for the remainder of your life."

35. The judge noted finally the submission by Mr Malik QC (then, as now, appearing for Stewart) that if a minimum term significantly more than 30 years were imposed, Stewart (who was then approaching his 62nd birthday) might well die in prison. The judge rejected that submission, saying

> "… your punishment must fit the crime not the vagaries of your lifespan. I am satisfied that the seriousness of your offending is so exceptionally high that just punishment requires that you will be kept in prison for the remainder of your life. In the circumstances of your offending, a whole life order is not only justified, it is the just punishment for your callous and chilling murder of two separate women who had the misfortune to be in an intimate relationship with you, and any other sentence would not exhaust the requirements of retribution and deterrence."

36. For those reasons, the judge imposed the whole life order.

Submissions

37. Mr Malik accepts that paragraph 2(2)(e) was engaged and also accepts that if Stewart had been sentenced at the same time for both offences, paragraph 2(2)(a)(i) would have applied. He submits, however, that those sub-paragraphs would only have identified the appropriate starting point, and that the circumstances of the case were not so rare and exceptional that a whole life order was appropriate. He submits that the judge fell into error in adopting an inflexible approach when applying the legislation. He again points out that a minimum term of more than 30 years – which

he accepts would be appropriate – would mean that Stewart would be over 90 before he could be considered for release.

38. Mr Little (who did not appear below) submits that the whole life order was neither wrong in principle nor manifestly excessive. He submits that each of the murders, viewed in isolation, would have merited a minimum term of around 35 years, and that the whole life order was appropriate because the seriousness of the first murder was exceptionally high when considered in conjunction with the second murder.

Discussion

39. In our view, the sequence of offences and convictions in this case gives rise to difficult issues.

40. Paragraphs 2 and 3 of Schedule 21 identify appropriate starting points based on the court's consideration of "the seriousness of the offence (or the combination of the offence and one or more offences associated with it)". The meaning of "associated offence" is defined in section 400 of the 2020 Act, which provides:

> "For the purposes of this Code, an offence is associated with another if –
>
> (a) the offender –
>
> (i) is convicted of it in the proceedings in which the offender is convicted of the other offence, or
>
> (ii)(although convicted of it in earlier proceedings) is sentenced for it at the same time as being sentenced for that offence, or
>
> (b) in the proceedings in which the offender is sentenced for the other offence, the offender –
>
> (i) admits having committed it, and
>
> (ii)asks the court to take it into consideration in sentencing for that other offence."

41. It follows from that definition that, when considering the first murder, the second murder could not be treated as an "associated offence." The judge in applying the provisions of Schedule 21 was therefore required to consider the seriousness of the offence which was before him, namely the first murder.

42. With all respect to those involved in the hearing below, we cannot agree that this case fell within paragraph 2(2)(e). The natural meaning of the wording of that paragraph is that it applies to a person who, having been convicted of a murder, subsequently murders again. In such circumstances, the seriousness of the subsequent murder will usually be exceptionally high precisely because the offender has previously not only committed, but also been convicted of, murder. If paragraph 2(2)(e) is to apply, the court must therefore be sentencing an offender who, at the time when he committed the murder for which he is to be sentenced, previously had been convicted of murder.

At the time when Stewart committed the first murder, he did not fall into the category of "an offender previously convicted of murder."

43. Moreover, the whole structure of paragraphs 2 and 3 is, as we have indicated above, directed at assessing the seriousness of the offence(s) for which the court is sentencing. Hence – as the judge recognised – paragraph 2(1)(a)(i) could only apply if the court was sentencing for two or more murders. That was not the position in the present case: although the judge referred more than once to the seriousness of "the offending", he was only sentencing for one offence, namely the first murder.

44. The somewhat circular test imposed by section 321 is that the court must make a minimum term order unless it is required by section 321(3) to make a whole life order, which it will be required to do if it is of the opinion that, because of the seriousness of the offence (and any associated offence), it should not make a minimum term order. Again, therefore, the focus is on the offence which is before the court, not a different offence for which the offender has already been sentenced.

45. It follows that neither of the specific paragraph 2 criteria to which the judge referred was applicable to this case. With all respect to the judge, who had to grapple with a difficult sentencing process, he fell into error in that regard. It is therefore necessary to consider whether the seriousness of the first murder could nonetheless be regarded as exceptionally high.

46. It is, however, necessary for the assessment of seriousness to relate to the offence which is before the court. Grave though the first murder was, it could not – viewed in isolation from the later second murder – be regarded as an offence of exceptionally high seriousness. There is no suggestion that, at the time when he committed the first murder, Stewart was already planning that it would be the first in a series.

47. The seriousness of the first murder was clearly "particularly high", because it was a murder done for gain. The correct starting point was therefore a minimum term order of 30 years, from which a significant upward adjustment was necessary to reflect the aggravating features of significant premeditation; the domestic context of the murder; the trauma inflicted on the two sons; and the steps taken by Stewart to cover up his crime, as a result of which he remained at liberty for several years and subsequently committed the second murder.

48. What, then, was the correct approach, in the very unusual circumstances of this case, to the overall seriousness of the offending as a whole? It is common ground between the parties that it is not possible for a life sentence to be ordered to run consecutively to another life sentence. Nor is it possible to order that a minimum term order should run consecutively to a minimum term order made at an earlier sentencing hearing.

49. Counsel have not identified any case which is directly comparable to the present. We note, however, that in the case of *Davies*, one of the appeals considered in *R v Hills and others* [2008] EWCA Crim 1871 [2012] 1 WLR 212, the offender was already serving a sentence of imprisonment for public protection when he was convicted of offences which had been committed before the current sentence was imposed. He was sentenced to life imprisonment. The judge concluded that the minimum term order should be based on a notional determinate sentence of 10 years, but that it should in effect be consecutive to the minimum term which he was already serving, of which

four years remained. He accordingly set the minimum term of the life sentence at nine years, being the balance of the current minimum term and the further five years. This court found no error in that approach, which (as Latham LJ said at para [17]) "seems to us to meet the justice of the case".

50. We regard that decision as providing a helpful analogy when considering the present case. We conclude that the judge, although not entitled to treat the first murder as an offence of exceptionally high seriousness, was entitled to adjust what would otherwise be the appropriate minimum term order to achieve just punishment for the first murder and to ensure that the overall sentence was proportionate to Stewart's offending as a whole. That adjustment should reflect the fact that the minimum term of the life sentence for the first murder would start after Stewart had already served about four years of his minimum term for the second murder.

51. Adopting that approach, we conclude that the appropriate minimum term was one of 35 years. We quash the whole life order imposed below, and substitute for it a sentence of life imprisonment with a minimum term order of 35 years. The order takes effect from the day of sentencing in the court below, namely 9 February 2022.

Wayne Couzens

52. Wayne Couzens, now aged 49, applies for leave to appeal against a whole life order imposed by Fulford LJ on 30 September 2021 at the Central Criminal Court. The application has been referred by the Registrar to the full court. We give leave.

Facts

53. The circumstances of Couzens' crimes are notorious. He was a serving police office in the Metropolitan Police. On the evening of 3 March 2021, when the country was in lockdown because of the Covid pandemic, Couzens kidnapped Sarah Everard from the street in London. She was walking home after seeing a friend. He then transported her 80 miles, restrained in handcuffs, and took her to a remote location in Kent. There he raped and murdered her. Over the course of the next two days, he disposed of and burned her body.

54. The unspeakably grim detail (as Fulford LJ was aptly to describe what happened in his sentencing remarks) can be summarised as follows.

55. Sarah Everard was 33 when she was murdered. She was a university graduate who worked in marketing. She was described by her boyfriend as extremely intelligent, savvy and streetwise. On 3 March 2021, she had spent the evening socialising with a friend who lived in the Clapham Junction area. She started walking home just after 21.00, and whilst *en route*, she called her boyfriend, who described her as being in good spirits, but not intoxicated. When she was near Clapham Common, she was stopped by Couzens. He handcuffed her on the pretext that she had committed some form of offence and placed her in the back of a car he had hired, as part of detailed and careful plans he had made for abducting and then raping a woman.

56. The subsequent police investigation was to reveal what those plans were. Automatic number plate recognition ("ANPR") records showed that Couzens had made reconnaissance trips to London on 23 January, 5 February and 14 February 2021. On

10 February 2021, he purchased a handcuff key from Amazon which was capable of being used with police issued handcuffs. His plan was to kidnap a woman on 3 March 2021.

57. On 28 February he hired a car for 3 to 4 March 2021, because, so the judge was to find, it was more likely that he would be able to persuade his victim that a new-looking hire car was an unmarked police car than his own car, which was in a poor and neglected state. Two minutes after he had booked the hire car, Couzens ordered a large quantity of self-adhesive carpet protector which was delivered to his home on 1 March 2021. Couzens was a married man with two young children. He also lied to his wife, saying that he would be working a nightshift on 3 March 2021 when in fact, he had a period of five rest days from 3 to 8 March 2021.

58. On 3 March 2021, Couzens picked up the hire car in Dover, an area he knew well. He left his own car parked nearby, out of sight of any CCTV cameras. He had his warrant card and police issued handcuffs with him, though he was not on duty and there was no reason for him to carry them. He drove to London. At 20.00 he purchased a pack of 14 hairbands at a Tesco's store in London. These were to be used either for the purposes of restraint or to maintain an erection. Couzens then drove around southwest London for a period of at least an hour, looking for a victim. At 21.30, he stopped by Ms Everard, who was walking along a busy main road. CCTV footage subsequently retrieved from a passing haulage vehicle showed Couzens standing on the pavement, showing Ms Everard what appeared to be a warrant card. The hire car was visible in that footage. A lady in a passing car saw Ms Everard, head bowed, being handcuffed (with her arms cuffed behind her back). Ms Everard was placed in the back of the hire car and driven away. She was not seen alive again.

59. Couzens then transported Ms Everard back to Dover where he had parked his own car. He arrived at 23.30. He transferred Ms Everard from the hire car to his car (he must have used physical violence or threats to do this) and drove to a remote rural location where, at midnight, he parked. It was likely that it was during the period he was there (about 45 minutes) that he raped Ms Everard in the back of his car. Velcro straps that were subsequently found in his car are consistent with Ms Everard being restrained at the time. As the prosecution said, it would soon have become clear to Ms Everard that she was being kidnapped, and the ordeal that she must have suffered during that journey, and subsequently, is unimaginable.

60. By 02.34 Couzens, still in the hire car, had driven to a petrol station where he purchased two bottles of still water, an apple juice, Lucozade Orange and a carrier bag. It is likely that Ms Everard had by then been murdered, as it would have been too risky for Couzens to enter that public area, had she been alive.

61. A post-mortem examination showed that Ms Everard was killed by pressure being applied to her neck for a period of at least two minutes. Couzens' own account (given only to Dr Latham, a psychiatrist instructed by the defence for the purposes of sentence) was that he strangled her with a belt.

62. ANPR and cell site evidence showed that after leaving the petrol station, Couzens drove to a plot of land he owned in Hoads Wood. He arrived after 03.22 on 4 March 2021. At some point he left the area and then returned a couple of hours later. He

returned the hire car to the hire company at about 08.30, before buying some items in Costa Coffee in Dover.

63. On 5 March 2021, at 23.05, Couzens purchased petrol which he used later to burn Ms Everard's body inside an abandoned refrigerator, together with her clothing and other incriminating items. Couzens then carried Ms Everard's heavily burned body to a nearby pond. To cover and transport her body he used two builders' bags that he had purchased earlier that day. On 7 March 2021 Couzens took his wife and children to Hoads Wood and allowed his children to play near the pond where he had disposed of her body.

64. All the while, Ms Everard was missing, and her family were beside themselves with worry.

65. CCTV enquires led to the identification of a vehicle suspected of being involved in Ms Everard's abduction. On 9 March 2021, officers attended at Couzens' home address in Kent. He was arrested and questioned by police using an urgent interview procedure. Couzens immediately gave the arresting officers an elaborate, but entirely fabricated account about what had happened to Ms Everard. He claimed a Balkan criminal human trafficking gang had paid him to kidnap Ms Everard, he had done so under duress and he had handed her over to them. Couzens had visible scratch marks to his head. He said that they were caused by his dog.

66. Ms Everard's remains were found on 10 March 2021 in two builder's bags in a pond. They were retrieved from the pond the following day. On 12 March 2021 the refrigerator used by Couzens was found by police. Ms Everard could only be identified from dental records and examination by a forensic orthodontist. Experts concluded that Ms Everard was not wearing her top, her coat or her leggings when her body was burned. Subsequent forensic testing found evidence of components of Couzens' DNA in vaginal swabs taken from Ms Everard's body. Couzens' semen and Ms Everard's blood were found in his car, as was part of Ms Everard's Sim card. Her mobile phone itself had earlier been discarded by Couzens and was recovered by officers from the River Stour in Sandwich on 18 March 2021.

67. Throughout the police investigation and his police interviews Couzens continued to deny his actions and maintained his fabricated account. As we have said, the only account by him was to Dr Latham, whose report was relied on by the defence at the sentencing hearing to support a submission made in mitigation, that Couzens was suffering from underlying depression.

Sentencing

68. Couzens subsequently pleaded guilty to Ms Everard's kidnap, rape and murder at what the judge was to accept, for the purposes of sentence, was the first available opportunity. On 8 June 2021 Couzens pleaded guilty to kidnapping (Count 1) and rape contrary to section 1(1) of the Sexual Offences Act 2003 (Count 2). He pleaded guilty to Ms Everard's murder (Count 3) on 9 July 2021 at the Plea and Trial Preparation Hearing, having admitted responsibility for her killing at the hearing on 8 June.

69. Prior to the sentencing hearing, the judge was given detailed sentencing notes by the prosecution and the defence and a full opening note. The sentencing hearing itself took two days. The judge had before him victim personal statements from Ms Everard's family and friends. Ms Everard's mother, her father and her sister read their statements to the court. These statements described in moving terms, the profundity of their grief at the loss of a much-loved daughter, sister and friend in such terrible circumstances and the way in which Couzens' crimes had blighted their lives for ever.

70. The prosecution submitted to the judge that this murder, and the associated offences of kidnap and rape, was of such exceptional seriousness that it justified the imposition of a whole life order, because it was committed by a serving police constable when acting as if on duty, and because of its particular aggravating features. The defence accepted that the tariff period would be well in excess of 30 years but submitted there had never been a whole life term which did not come within the categories set out expressly in the relevant provisions. A whole life tariff was an exceptional form of sentence that needed to be carefully and unambiguously justified. It was not justified in this case, having regard to mitigation provided by the defendant's guilty pleas, his remorse and his lack of previous convictions.

71. In his sentencing remarks the judge said he had no doubt that Couzens used his position as a police officer to coerce Ms Everard, on a wholly false pretext, into the car that he had hired for this very purpose. It was most likely that Couzens suggested to Ms Everard that she had breached the restrictions on movement that were being enforced during that stage of the pandemic. Any explanation other than coercion, said the judge, failed to take into account Ms Everard's character and the evidence of the occupants of a passing vehicle who saw her being handcuffed.

72. The judge found that Couzens had carefully planned to abduct and rape; the murder was not "a definite outcome" until the events unfolded, but Couzens must have realised that he may well need to commit murder. The judge said that it was clear from the language of Schedule 21 to the 2020 Act that Parliament did not intend a closed list of cases as the only cases that would merit a whole life order. He said that the decisions of the Court of Appeal also stressed that a whole life order is rarely made and reserved for the few exceptionally serious offences in which, after reflecting on all the features of aggravation and mitigation, the judge is satisfied that the element of just punishment and retribution requires the imposition of a whole life order. Couzens had, said the judge, eroded the confidence that the public were entitled to have in the police; he had added to the insecurities felt, particularly by women, walking home alone at night and he had utterly betrayed his family. His actions after the crimes were committed showed quiet and unconcerned determination to cover his tracks and the CCTV footage (of Couzens at the material time) showed no hint of trauma in his demeanour. There was no genuine contrition on his part.

73. The judge's reasons for concluding that a whole life order should be imposed were these:

> "I would stress, therefore, that I have adopted the approach that a judge should only pass a whole-life term in a case such as the present if he or she is confronted with a new category of exceptionally serious case that plainly calls to be treated in this

way, and the decision is, therefore, not a borderline one. Otherwise, a lengthy minimum tariff period will suffice.

The most important question in this sentencing exercise, therefore, revolves around a question of principle. If a police officer uses his office to kidnap, rape and murder a victim, is the seriousness of the offence exceptionally high such that it ought to be treated in the same way as the other examples set out in paragraph 2.2?

In my judgment, the police are in a unique position, which is essentially different from any other public servants. They have powers of coercion and control that are in an exceptional category. In this country it is expected that the police will act in the public interest. Indeed, the authority of the police is, to a truly significant extent, dependent on the public's consent. The power of officers to detain, arrest, and otherwise control important aspects of our lives is only effective because of the critical trust that we repose in the constabulary, that they will act lawfully and in the best interests of society. If that is undermined, one of the enduring safeguards of law and order in this country is inevitably jeopardised.

In my judgment, the misuse of a police officer's role, such as occurred in this case, in order to kidnap, rape and murder a lone victim is of equal seriousness as a murder carried out for the purpose of advancing a political, religious, racial or ideological cause. All of these situations attack different aspects of the fundamental underpinnings of our democratic way of life. It is this vital factor which, in my view, makes the seriousness of this case exceptionally high. Self-evidently, it would need for the police officer to have used his role as a constable in a critical way to facilitate the commission of the offence. If his professional occupation was of little or no relevance to the offending, then these considerations clearly would not apply.

Added to this, the aggravating features in this case are extensive. As I have already rehearsed, there was significant planning and pre-meditation. The victim was abducted. There was the most serious sexual conduct. The defendant was responsible for significant mental and physical suffering, which he inflicted on the victim before her death. And the defendant concealed and attempted to destroy Sarah Everard's body. There is no doubt but that these three offences are inextricably linked and, in considering the correct sentence for murder, I have taken into account the kidnapping and the rape in order to pass a single sentence.

I have borne in mind the fact that the defendant pleaded guilty in deciding whether it is appropriate to make a whole-life order. This has saved the Everard family and Sarah Everard's friends

> from enduring a trial. That said, having determined, as I have, that there should be a whole-life order, given the misuse of the defendant's role as a police officer and the serious aggravating features, self-evidently there can be no reduction for the defendant's guilty pleas."

Submissions

74. Mr Sturman QC who appears for Couzens as he did below, accepts on his behalf that the crimes were abhorrent; and emphasises that nothing is intended to minimise this, or the effect of Ms Everard's murder on her family and wide circle of friends. However, he submits that despite the unprecedented publicity which the case attracted, this was not an exceptional case within the meaning of Schedule 21 which merits a whole life order, given that it involved the killing of one person. Whilst Mr Sturman accepts the categories of exceptionality are non-exhaustive and not closed, he points out that this case is unique amongst the whole life orders that have been imposed, in not falling into one of the Schedule 21 paragraph 2 categories. Further, he submits that the finding that there was no remorse is untenable in circumstances where Couzens did not continue with the false account he gave to the police on his arrest but pleaded guilty before much of the evidence was served. He accepts Couzens deserves many decades in jail but submits the mitigating combination of Couzens' remorse and guilty pleas should have balanced out the aggravating factor that he was a serving police officer.

75. Mr Little for the Crown, who also appeared below, submits the whole life order was not wrong in principle or manifestly excessive. Specifically, there is nothing to support the contention that it is wrong in principle to regard this offending as of the utmost seriousness because the offences were committed by a serving police officer, using his know-how to perpetrate the offences. Police officers are in a uniquely powerful position, as the facts of this case demonstrate, with Ms Everard's detention and kidnap mid-evening on a very busy road. There is, Mr Little says, nothing in the sentencing remarks to support an argument that the judge misapplied the statutory provisions or failed to take account of the relevant case law. In respect of the categories identified in Schedule 21, he submits it is not surprising that Parliament failed to legislate for a case of this nature, which is "so unforeseeable". This is, therefore, a rare *Height* case. The judge's sentencing remarks were clear, coherent and comprehensive; and involved a proper exercise of judgment and application to the facts. For the reasons given by the judge, this was a truly exceptional case meriting a whole life order.

Discussion

76. We deal first with remorse. The judge assessed whether Couzens was truly remorseful. We do not accept that his conclusion on that issue can be impugned. Remorse is different from acceptance of guilt. Couzens' guilty pleas were a mitigating factor. But in gauging whether his contrition was genuine, it was relevant that at no stage had Couzens offered a full explanation for what had occurred. Instead, he had sought to minimise his true responsibility from the moment he had first spoken to the police when he lied about the people-trafficking gang, to the "revealing, and wholly implausible" account (in fact, the only account given by Couzens) to Dr Latham.

77. The examples of this given by the judge were telling. They showed that Couzens had sought to minimise his responsibility for the cold-blooded and calculated planning that had taken place prior to the kidnap, rape and murder, and the chilling and methodical attempts thereafter to cover up his crimes; and that he had thus sought to minimise the true horror of what he had done. In his account to Dr Latham for example, Couzens suggested he had rented a car because he had problems with his own vehicle. As the judge put it, his explanation could not survive the sequence of events prior to his departure for London and after his return with Ms Everard. The true position was that Couzens wished to use a car that was credible as a police vehicle and wanted to avoid his own car being identified as having been in the relevant area when he kidnapped his victim. Couzens also claimed to have driven around London on 3 March 2021 in a state of confusion. As the judge pointed out, this was entirely at odds with the precise and careful steps Couzens had taken before committing these offences, and with the lengths to which he went to avoid detection, which included lying to his family and purchasing items such as the carpet protector. This supposed vague state of mind was also contradicted by Couzens' calculated behaviour over the entire period, including buying food and drink, organising family-related appointments, and coolly taking his family on an outing very close to where he had left Ms Everard's body. It is notable too that many important features of what had happened were never described by Couzens but had to be pieced together by the outstanding police investigation that took place after Ms Everard was kidnapped.

78. The issue at the heart of the appeal, is whether this murder, with its unique features, justified the judge's overall conclusion that it merited a whole life order. We have concluded that it does, albeit we would, with respect, arrive at this conclusion by a different route from the judge.

79. The circumstances of this case were not within the categories in paragraphs 2(2)(a) to (e) of Schedule 21, i.e. cases which would normally be of exceptionally high seriousness: see para [9] above. As a single murder involving sexual conduct, this case fell at first sight within one of the categories of cases (paragraph 3(2)(e) of Schedule 21) which would normally be of particularly high seriousness, with a starting point of a minimum term of 30 years.

80. As the observations of Lord Judge CJ in *Height* make clear (see para [19(x)] above), the seriousness of an offence may be regarded as "exceptionally high" even though the circumstances of the case do not fall within one of the criteria set out in paragraph 2(2) of Schedule 21 because those criteria are not exhaustive. It is for that reason that in some cases, probably rare, the seriousness may be such as to justify the exceptionally high starting point, even when the express criteria normally required for this purpose are absent.

81. It is thus open to a sentencing judge, albeit rarely, to conclude that even though the circumstances of the case do not fall within the paragraph 2(2) criteria, the seriousness of the offence to be sentenced is exceptionally high and therefore a whole life order is justified *on the facts.* Fulford LJ was careful to identify all the facts which led him to conclude that a whole life order was appropriate in this case. But in the opening paragraph of the quotation from his sentencing remarks which we have set out, he spoke also of identifying "a new category" of offending and a point of principle whether a police officer using his office to kidnap, rape and murder a victim should fall within paragraph 2(2) of schedule 21.

82. In our view the correct approach is to focus on the facts which in a rare case might lead to the conclusion that a whole life order is appropriate rather than to create a new category. That would be a matter for Parliament. A careful application of the relevant principles described above provides scope within the statutory scheme for an appropriate sentence by reference to the particular facts of each case. Those principles establish that each case will depend on its particular facts. Schedule 21 must be applied in a flexible and not rigid way to achieve a just result. As we have said, it is the application of the principles to a careful assessment of the relevant facts of the case that is important.

83. The statutory scheme provides that whether the starting point is a whole life order or a minimum term, the aggravating and mitigating factors that the court must consider, may result in a departure from the starting point. If the starting point is a whole life order, then the balance of mitigating factors and aggravating factors might result in the imposition of a minimum term order. Conversely, if the starting point is a minimum term order, then the balance of aggravating factors and mitigating factors might result in the imposition of a whole term order. This was, as the judge said, warped, selfish and brutal offending, which was both sexual and homicidal. It was a case with unique and extreme aggravating features. Chief amongst these, as the judge correctly identified, was the grotesque misuse by Couzens of his position as a police officer, with all that connoted, to facilitate Ms Everard's kidnap, rape and murder. We agree with the observations of the judge about the unique position of the police, the critical importance of their role and the critical trust that the public repose in them.

84. In our view, the starting point for this case, a single murder involving sexual conduct, was a minimum term of 30 years under paragraph 3(2)(e) of Schedule 21; but having regard to its aggravating features we are in no doubt that its seriousness is so exceptionally high such that a whole life order rather than a minimum term order should be made. We consider this to be the correct route to a just result in this case. It provides for its unique and defining feature, which was that Couzens had used his knowledge and status as a police office to perpetrate his appalling crimes against Ms Everard and for the extensive and extreme nature of the other aggravating features which were present: the significant and cold-blooded planning and pre-meditation; the abduction of Ms Everard; the most serious sexual conduct; the mental and physical suffering inflicted on Ms Everard before her death; and the concealment and attempts to destroy Ms Everard's body. We agree with the judge that having determined there should be a whole life order, given the misuse of Couzens' role as a police officer and the serious aggravating features of the offending the guilty pleas did not affect the outcome.

85. It follows that Couzens' appeal is dismissed.

Jordan Monaghan

86. On 17 December 2021, at the conclusion of his trial before Goose J and a jury in the Crown Court at Preston, Monaghan, then aged 30, was convicted of the murder of his 24 day old daughter Ruby in January 2013, when he was aged 21 (Count 1); the murder of his 21 month old son Logan in August 2013, when he was aged 22 (Count 2); the attempted murder of his then 4 month old daughter Leela in late September 2016, when he was aged 25 (Count 3); a second attempted murder of his daughter Leela a few days later in early October 2016 (Count 5); and the murder, in October

2019, when he was aged 28, of his then partner of at least 18 months Evie Adams, who was aged 23 (Count 7). The offences against the children were all committed by smothering their noses and mouths and thereby obstructing their airways. Evie Adams was poisoned over a period of at least a week. At the time of her murder, Monaghan was on police bail in relation to the investigation of the offences against his children.

87. On each of Counts 1, 2 and 7, the judge imposed a sentence of life imprisonment with a minimum term of 40 years. Concurrent terms of 27 years' imprisonment were imposed on Counts 3 and 5. The total sentence imposed was thus one of life imprisonment with a minimum term of 40 years (less 333 days spent on remand).

88. The Solicitor General applies for leave to refer the sentence. In short, it is submitted that the judge fell into error by not imposing a whole life order, which failure renders the sentence unduly lenient. In the alternative, it is submitted that the minimum term of 40 years was unduly lenient. We grant leave.

Facts

89. Monaghan (who was born in July 1991) and Laura Gray (who was born in November 1992 and was the mother of all three of Monaghan's children) had been together since they were teenagers. Logan, their first child, was born on 17 November 2011.

90. By 2012 their relationship was in difficulty because of Monaghan's persistent gambling, financial irresponsibility and lack of candour concerning money, leading to bills being unpaid. On 23 September 2012, Ms Gray, who was then heavily pregnant with their second child Ruby, told Monaghan that their relationship was over. Later that day Monaghan rang Ms Gray and said that Logan had swallowed some paracetamol tablets. Logan was taken to hospital but nothing untoward was found. In the aftermath of the apparent crisis, Monaghan and Ms Gray were reconciled.

91. Ruby was born on 8 December 2012. The relationship appears to have been stable.

92. On 29 December 2012, Monaghan was downstairs in the family home in Blackburn with Ruby and Logan when he told Ms Gray that Ruby appeared to be having difficulty breathing. An ambulance was called. Ruby was taken to hospital. The initial diagnosis was that she had suffered an episode of temporary pause in her breathing due to a viral respiratory infection,. The ultimate diagnosis was early bronchitis.

93. Ruby was discharged from hospital in the afternoon of 31 December 2012. That night Monaghan stayed up saying that he would give Ruby her feed at 02.00. Instead, he murdered her by smothering her nose and mouth. At around 01.45 on 1 January 2013 Ms Gray was woken by Monaghan shouting from downstairs that Ruby was not breathing. An ambulance arrived at 02.13. Ruby was found to be lifeless and despite attempts at resuscitation was pronounced dead at 02.45 (Count 1). There was no immediate obvious cause of death. Post-mortem investigations revealed no evidence of injury or assault, or any other suspicious circumstances. The conclusion, at the time, was that her death had been caused by acute bronchopneumonia.

94. On 26 July 2013, Ms Gray again told Monaghan that she wished to end their relationship. The next day she received a call from him, telling her that Logan had "gone all floppy" and was not breathing properly. Ms Gray went home and an

ambulance was called. Logan was taken to hospital, where doctors considered that his breathing difficulties may have been caused by an upper respiratory tract infection and that he may have been suffering from sunstroke. He was discharged the following day. Although Ms Gray considered the relationship to be over, Monaghan persuaded her to give him another chance.

95. On 16 August 2013, Ms Gray found a credit card bill showing that Monaghan had a £2,000 debt. She was unaware of the debt or that he had the credit card. She confronted him. He admitted that he had spent the money on gambling and that there were various unpaid bills. That led to an argument. The following morning, 17 August 2013, Ms Gray followed Monaghan as he walked to the shops with Logan. She saw him withdraw £300 from an ATM – as a result of which she realised that he had a secret bank account. She again confronted him, and a further argument ensued, during which it emerged that he had not, as claimed, made a payment towards their rent. Once more she told him that the relationship was over. They walked home with Logan, arriving at around noon.

96. About half an hour later Monaghan took Logan out in his push chair, so that Ms Gray could get some sleep. He took Logan to the Waves swimming pool, though neither of them had their swimming trunks. CCTV evidence showed their arrival. Logan was moving freely in the pushchair. They went to the privacy of a changing cubicle where they remained alone together for 27 minutes. There Monaghan murdered Logan by smothering his nose and mouth. CCTV evidence showed them leaving. Monaghan had pulled down the rain cover on the pushchair to obstruct any view of Logan.

97. When Monaghan returned home with Logan at around 14.45 he told Ms Gray that Logan was sleeping. He asked if he could have dinner with Ms Gray and said that he would then leave. She agreed. Monaghan then left the house numerous times. He asked Ms Gray to wake Logan whilst he was out of the house, but she did not try to do so until the last occasion. When she pulled back the rain cover, she found that Logan was lifeless in the pushchair. An ambulance was called and Logan was taken to hospital. After unsuccessful resuscitation attempts, he was pronounced dead at 18.00 that same day (Count 2).

98. A post-mortem examination failed to determine the cause of Logan's death. Changes to his lungs suggested that he was developing pneumonia, albeit that that was not sufficient to explain his sudden death. There was no significant brain injury. One of several possible explanations was that there had been imposed airway obstruction by a third party, but the cause of death was unascertained.

99. Logan's death appeared to bring Monaghan and Ms Gray closer together, and they resumed their relationship. Ten months later, on 13 May 2016, their third child, Leela, was born.

100. On 18 September 2016, the day of Leela's christening, Ms Gray saw Monaghan gambling on a fruit machine. That led to an argument. Ms Gray again told Monaghan that their relationship was over. She agreed that he could still see Leela.

101. On 27 September 2016, Monaghan was alone downstairs with Leela. Suddenly, he started shouting. Ms Gray ran downstairs to find him holding Leela in his arms. Leela was floppy and her eyes were shut. Ms Gray told Monaghan to begin CPR and went

to get help. An ambulance was called, but by the time that paramedics arrived Leela appeared to have recovered. She was taken to hospital, where she remained for observation and testing. She was discharged two days later but the reason for her collapse was unascertained. Monaghan asserted that he had been alerted to the incident when he had heard Leela choking and coughing when, in reality, he had attempted to murder her by smothering her nose and mouth (Count 3).

102. On 2 October 2016, Monaghan was alone in the house with Leela. He rang Ms Gray telling her to come back quickly, as Leela was not breathing properly. Paramedics arrived and found Leela in a reduced state of consciousness, but her condition improved and within a few minutes she had recovered. She was taken to hospital, where she remained for nine days. However, no significant medical issues were identified. Again, Monaghan had attempted to murder her by the same method (Count 5).

103. This time, the relationship between Monaghan and Ms Gray ended permanently. Leela was removed from her mother's care by a court order.

104. What had happened to Ruby, Logan and Leela was reviewed by the authorities. Further expert opinions were obtained from doctors specialising in neurology, disease and genetics, cardiology, paediatric medicine, and respiratory medicine. In the case of each child the experts concluded that there was no natural explanation for the collapse(s) and that, whilst there was no positive sign of injury, the most obvious explanation was that there had been a unified covert mechanism which had stopped their breathing, most obviously deliberate obstruction of the airway by smothering the nose and mouth.

105. On 18 April 2018, Monaghan was interviewed under caution. In short, he denied smothering the children or causing any of the collapses. That was the position that he later maintained at trial.

106. By that time Monaghan was in a volatile relationship with Evie Adams. In May 2018, a 12-month non-molestation order was made against Monaghan in the context of care proceedings concerning Ms Adams' daughter. The order followed an incident during which Monaghan had threatened to burn down the home of Ms Adams' ex-partner, saying that he did not care if her daughter was in the home at the time.

107. Monaghan breached the order by being together with Ms Adams in June 2018, in December 2018 and in March 2019. He was convicted of breach offences as a result. However, the order expired in May 2019, and was not in force at the time of Ms Adams' death. Meanwhile, the relationship continued notwithstanding the fact that, because of the breaches of the order, Ms Adams had lost custody of her daughter.

108. Monaghan and Ms Adams were still together in October 2019, at which time he was on police bail in respect of the investigation into what had happened to his children. However, during a trip to Blackpool over the weekend of 11 to 13 October 2019, an argument took place which led to Monaghan damaging the caravan in which they were staying. It appeared that the relationship might end but, by 15 October, they had agreed to stay together.

109. Two days later, on 17 October 2019, Ms Adams began to feel unwell, complaining of stomach pain. Over the next week Monaghan, who was buying and selling illicit prescription drugs, obtained Tramadol, Diazepam and Pregabalin. As later found by the judge, he gave Ms Adams Tramadol, Diazepam and (to a lesser extent) Pregabalin to poison her. She did not know what the drugs were, but Monaghan pretended to her that they would make her feel better. However, she felt increasingly unwell and thought that she had "stomach flu." Whilst giving the appearance of doing all that he could to help, including trying to arrange for a medical examination, Monaghan controlled any attempts to call doctors and to seek medical assistance. He ignored returned calls from the doctors' surgery and NHS 111. As a result, Ms Adams suffered great pain.

110. By 20 October 2019, Ms Adams and Monaghan were staying at the house of his aunt and uncle in Blackburn. On 24 October 2019 they were alone there for much of the day. She was unable to walk and was in pain. Monaghan gave Ms Adams a large quantity of Tramadol intending to kill her. He left the house at about 18.00, taking her laptop and telephone with him to prevent her contacting the outside world, and leaving her in the house with his aunt. At 20.00 the aunt found Ms Adams dead in bed. (Count 7). The aunt called 999, and an ambulance arrived, followed a short time later by the police.

111. A post-mortem examination established that Ms Adams had died due to drug toxicity. She had consumed a range of broadly sedative drugs (Diazepam and Pregabalin) in the days leading up to 24 October and then, on 24 October itself, had consumed a fatal dose of up to 20 50mg Tramadol tablets in the hours before her death. The effect was fatal owing to the residual sedative drugs in her system. There was no evidence of gastrointestinal disease to explain the stomach pain that she had experienced in the week before death.

112. Monaghan took steps to try to cover up the poisoning and to suggest that Ms Adams had committed suicide. At 15.07 on 24 October 2019, he had sent a text message from her telephone to his own, saying that she had taken an overdose and did not want help. Then, in November 2019, during the police investigation into Ms Adams' death, he manufactured a suicide note he said he had found hidden in the back of a picture frame.

113. Monaghan was interviewed under caution in October 2019 and June 2020. He denied poisoning Evie. He maintained that she must have committed suicide (and that the text message and the suicide note were genuinely written by her). That was the account that he later maintained at trial.

114. Monaghan had 11 previous convictions for 15 offences: in August 2018 (for breach of the non-molestation order in June 2018, for which he was made the subject of a community order); in December 2018 (for breach of the non-molestation order and possession of a bladed article in December 2018, for which he received a suspended sentence); and in June 2019 (for breach of the non-molestation order in March 2019, for which he was sentenced to 12 weeks' imprisonment).

Sentencing

115. Three victim personal statements were before the court: from Ms Gray, Bernard and Yvonne Adams (Evie's parents), and Victoria Astley (Evie's sister). Between them, they spoke movingly about the victims and the appalling effects of Monaghan's crimes on them and their families.

116. In a Note for Sentence the prosecution submitted that the seriousness of the offending, including the combination of the offences, could properly be characterised as "exceptionally high," and that the court could conclude that the appropriate starting point was a whole life order. It was submitted that the murders of Logan Monaghan and Evie Adams had each involved a substantial degree of premeditation or planning so that paragraph 2(2)(a)(i) of Schedule 21 was engaged.

117. By reference to paragraphs 9 and 10 of Schedule 21, the prosecution also relied on the following features in support of the contention that the seriousness of the offending was "exceptionally high". The three offences of murder were committed over a period of nearly seven years. In addition, there were two offences of attempted murder during the same period which, of themselves, were serious offences. The murder of Ruby and the attempted murders of Leela involved at least some degree of premeditation. Each victim was particularly vulnerable. The nature of Logan's death, when he was 21 months old, would have involved, at the very least, mental suffering. Ms Adams' death involved, at the very least, physical suffering. All the offences involved the abuse of a position of trust. On the whole of the evidence, the intention in relation to each murder had been to kill.

118. In the alternative, the prosecution submitted that the offences involved particularly high culpability such that, applying paragraph 3 of Schedule 21, the appropriate starting point for the minimum term was one of 30 years.

119. The prosecution submitted that although there was no evidence that Leela had suffered serious psychological harm, her subsequent removal from her mother by Court Order was equivalent to the harm anticipated in Category 2 of the attempted murder Guideline. It was submitted that, even taken in isolation, culpability was very high. Thus, the appropriate categorisation of the attempted murder offences was A2, and the starting point for each of them was one of 30 years' imprisonment.

120. Mr Myers QC and Mr Maher (appearing then, as now, on Monaghan's behalf) acknowledged the gravity of the offences, both individually and in combination, but argued that it was not a case in which the court was compelled to impose a whole life order.

121. They acknowledged that the court was sentencing for three offences of murder, two of which involved very young children but submitted by reference to paragraph 2(2) of schedule 21 that the fact of multiple offences of murder did not justify the imposition of a whole life order. Neither Count 1 nor Count 2 involved a substantial degree of planning or premeditation. Whilst the offences were not entirely spontaneous, the little planning that had been done could not be described as "substantial". None of the factors described in paragraph 2 of Schedule 21 applied. To the extent that the court found that there was planning or pre-meditation, that was more appropriately considered as an aggravating factor to a minimum term. The vulnerability of the

victims was coterminous with the abuse of a position of trust. The degree of mental or physical suffering of Ruby and Logan could not properly be determined. It was not an aggravating factor. Indeed, given the ages of the child victims, and the medical evidence, there was no basis to posit a degree of mental or physical suffering as a particular aggravating factor, however heinous the actual offences. The suffering inflicted on Ms Adams could properly be recognised by means of an appropriate increase in a minimum term.

122. Finally, it was submitted that, whilst the attempted murders involved very high culpability, the level of harm should, in both instances, be placed in Category 3, meaning that the appropriate categorisation was A3 resulting in a starting point of 25 years for each offence.

123. Goose J observed:

> "…It is difficult to imagine why you carried out these offences but, having listened to the evidence in this trial, I am sure that you are an exceptionally controlling, selfish and cruel man. A striking feature of these offences is that you carried them out calmly and secretively in your home where you lived with the mother of those children and later where you lived with Evie Adams. The trigger for these offences was usually because of your volatile relationships with Laura Gray, the mother of Ruby, Logan and Leela and later with Evie Adams. …."

124. The judge summarised the facts. He concluded that the attempted murders were category A3 offences thus each attracting a starting point of 25 years' custody, with a range from 20 to 30 years. The seriousness of the offending was aggravated because there were two such offences. Fortunately, Leela did not appear to have suffered any significant long term physical harm although loss of contact with her mother was material. Monaghan's previous convictions were insignificant in relation to the instant offending, but there was little by way of mitigation. Hence, concurrent determinate terms of 27 years' imprisonment were imposed on Counts 3 and 5.

125. As to the murders, the judge said:

> "In determining the minimum term of custody to be served by you for the three murder convictions, I must assess the seriousness of the offences. The fact that you murdered three people means that the seriousness of these offences is particularly high. I am not persuaded that it requires me to determine that it is exceptionally so … I find that there are substantial aggravating factors. Firstly, there were three murders not two. Secondly, that by reason of their very young ages, Ruby and Logan were particularly vulnerable. Thirdly, you were in a position of implicit trust in relation to Ruby and Logan as their father, and Evie, when you killed them. Evie accepted the drugs because she trusted you to look after her. Fourthly, that Evie suffered great pain during the week that led to her death, and you frustrated all reasonable efforts to obtain medical assistance. Fifthly, you forged a note to make it appear

> that Evie had taken her own life. Sixthly, there was a significant degree of planning and premeditation in your murder of Evie. Also, I must take into account, in aggregating the seriousness of your offending, your sentences for attempted murder which must be served concurrently.
>
> In mitigation there is little to be said. I am satisfied that you did intend to kill not just cause really serious harm. … That does not mean, however, that your sentence is made more serious, but it does not mean that an intention lesser than to kill is a mitigating factor in your case…."

126. It was against that background that Goose J imposed a sentence of life imprisonment, with a minimum term of 40 years, on each of Counts 1, 2 and 7.

127. In the combination of his written and oral submissions, Mr Little, on behalf of the Solicitor General, recognises that the minimum term imposed was a high one and that the judge had identified the relevant aggravating factors. However, he argued that, for the purposes of Schedule 21, and albeit that the case did not fall within the examples given in paragraph 2(2), the seriousness of the offending was "exceptionally high". The judge's finding that it was "particularly high" was not supportable.

128. It is of significance to note the basis upon which the Solicitor General's reference is made. It unequivocally accepts that the circumstances of this appalling offending did not fall within the criteria found in paragraph 2(2) of schedule 21. It accepts the judge's conclusion that although the murder of Evie Adams involved a substantial degree of planning and premeditation the murder of Logan did not.

129. Mr Little submits that the factors that made the seriousness of the offending "exceptionally high" concerned both the extent of the harm caused, and Monaghan's culpability. There were two striking features of "exceptionally high" seriousness. First, that Monaghan had murdered three people, two of whom were his own very young children and the other was his partner; and he had twice attempted to murder a fourth person, who was also his own very young child. Secondly, the five offences had taken place on different occasions spread over a period of nearly seven years, rather than the same occasion. Monaghan had formed an intention to kill on five separate occasions, each time acting on that intention, and in three cases had ended the life of his victim. Therefore, even in the context of murder, for the purposes of Schedule 21 the crimes could only be characterised as offending of an exceptionally serious degree.

130. Further, Mr Little argues that there were additional aggravating factors which added significantly to the seriousness of the offending, namely the vulnerability of the victims, the degree of planning and premeditation involved in the murder of Evie, and the painful death to which Monaghan had subjected her.

131. Mr Little submits that the totality of the offending could only be regarded as being exceptionally high. There was no mitigation at all. The starting point ought to have been a whole life order and it should have been imposed. Even if a starting point of 30 years was appropriate by virtue of paragraph 3(2)(f) of Schedule 21, the exceptional gravity of the offending and aggravating factors, were such that a whole life order was

ultimately required. It was not a case on the borderline. Therefore, anything other than a whole life order was unduly lenient. Nevertheless, Mr Little recognises that an alternative open to the court would be to increase the length of the minimum term.

132. Mr Myers submits that despite the manifest seriousness of the offending this was not a case in which the judge was compelled to make a whole life order; and, moreover, the minimum term of 40 years set by the judge was not unduly lenient. The trial had lasted for ten weeks. The trial judge had been in an unrivalled position to assess where the seriousness of Monaghan's offences should be placed in the scale. It was clear that he had dealt with the issue with care, in what was not a hallmark whole life order case. There was no sadism, savagery, or depravity.

133. Mr Myers submits that the fact of multiple offences did not justify the imposition of a whole life order. Rather, paragraph 3(2)(f) of Schedule 21 indicates a minimum term starting point of 30 years in a case involving two or more murders. He accepts that the time over which the murders were committed was a factor in the assessment of seriousness. It had been taken into account by the judge. He repeats the submission advanced before the judge, and now accepted by the Solicitor General, that there was no substantial degree of planning or premeditation for the purposes of paragraph 2(2)(a)(i) of Schedule 21 in relation to the murders of Ruby and Logan. He accepts that the murders were not spontaneous, but little was done to plan for, or to put into action, a plan to kill. This aspect, and the breach of trust and vulnerability, were properly considered in arriving at the minimum term having started at 30 years.

134. As to the murder of Evie Adams, the elements of planning and premeditation, and her suffering, could properly be regarded, in accordance with paragraph 9(a) and (c) of Schedule 21, as aggravating factors resulting in an appropriate increase in the minimum term. The offences of attempted murder in Count 3 and 5 were relevant primarily to questions of public protection, rather than the seriousness of the murder charges themselves. Therefore, they did not provide a proper basis for increasing the minimum term on Counts 1 and 2.

135. In the result, Mr Myers submits that the minimum term of 40 years was appropriate.

Discussion

136. The circumstances of this case do not fall within the criteria identified in paragraph 2(2) of Schedule 21 in force at the time which, without more, suggest a whole life term as a starting point. The question is whether the aggravating features identified by the parties and the judge dictate that this is one of those rare cases where, nonetheless, a whole life order was the correct outcome.

137. The question of planning and premeditation in the murders of the two children presents difficulty. Ruby was murdered when the relationship between Monaghan and Ms Gray was in a stable phase. There has never been any suggestion that this murder was other than spontaneous, and, in hindsight, it seems that Monaghan's motivation was to make Ms Gray emotionally dependent upon him. The murder of Logan and the two attempted murders of Leela occurred at times of strife and were calculated by Monaghan to coerce Ms Gray into remaining in the relationship. The murder of Logan was not spontaneous but, as the Solicitor General accepts, there was no substantial planning or premeditation. To adopt the language of this court in respect of one of the

cases considered with *Reynolds* there was a degree of planning, but it fell well short of substantial planning. There is no basis to conclude that when Ms Gray asked Monaghan to take Logan out to enable her to sleep that he was planning to murder him. Equally, there is no doubt that he must have decided to do so shortly afterwards before taking Logan to the swimming pool for that purpose. This cold-blooded, calculated killing of Logan contrasts with murders which result from arguments or events which become heated and violence ensues. It was a significant aggravating feature even though not within the terms of paragraph 2(2).

138. This was as difficult a case to sentence as a judge ever must consider. It did not fall within paragraph 2(2) but called for a substantial uplift from the starting point of 30 years. The question is whether that uplift should have led inexorably to a whole life order.

139. We are not persuaded by the arguments contained in the reference and Mr Little's submissions that the only answer in this case was a whole life order.

140. Goose J was entitled on the material before him in the long trial to consider, for the purpose of schedule 21, that the case was particularly serious and to adopt a statutory minimum term of 30 years as a starting point. There was then a need to increase that sentence because of the multiple aggravating features and associated attempted murder offences to impose a much higher minimum term.

141. In those circumstances, we turn to Mr Little's alternative submission that the minimum term of 40 years was unduly lenient.

142. With respect to the judge, we have concluded that although a minimum term of 40 years is undoubtedly long it was nonetheless unduly lenient given the features of the offending. We note that the minimum term starting point of 30 years was triggered by paragraph 3(2)(f) alone, namely the murder of two or more persons. There were numerous aggravating factors, and the two attempted murders which, in themselves, attracted concurrent terms of 27 years' imprisonment, had to be accommodated within the minimum term.

143. We have set out the facts and the submissions advanced in this case at some length to provide a detailed background to this summary of the aggravating factors which were, at least, the following. There were three murders, each committed on a separate occasion over a period of seven years. Both Ruby and Logan were particularly vulnerable because of their age and the murder of each of them was in abuse of a position of trust. The murder of Logan, whilst not involving substantial planning or premeditation, was not spontaneous and entailed a degree of planning. It was also an aggravating feature that its motivation was to coerce Ms Gray to remain in the relationship. Ms Adams' murder was committed whilst Monaghan was on police bail. It involved substantial planning and premeditation and was in abuse of a position of trust. Monaghan had frustrated all reasonable efforts to obtain medical assistance and had tried (via the phone call and the forged letter) to make it appear that Ms Adams had taken her own life. Monaghan formed an intention to kill on five separate occasions. Ms Gray lost two of her children and endured the near death of her third with a long-term impact on the relationship between her and the surviving child. Monaghan's previous convictions (although a factor of modest weight) were also an aggravating factor.

144. There was little or no mitigation.

145. We conclude, avoiding double counting and with totality in mind, that a very substantial increase from the starting point was required. Putting the attempted murders to one side, the combination of the remaining factors would have justified an increase of 10 years or thereabouts in the minimum term without more. In our view, and with respect to the judge's conclusion, we consider that the minimum term at which he arrived did not adequately reflect both the aggravating factors surrounding the murders and the attempted murders. In our view, the minimum term was unduly lenient. We give leave, allow the reference and substitute a minimum term of 48 years.

Tustin and Hughes

Facts

146. Arthur died on 17 June 2020 of catastrophic brain injury inflicted the day before by violent shaking and his head hitting a solid surface on multiple occasions with a force equivalent to a high-speed traffic accident. He suffered multiple cardiac arrests and irreversible brain damage. He could not be saved.

147. He was the child of Hughes and Olivia Labinjo. They had separated when Arthur was 19 months old. She has since been convicted of an unrelated manslaughter.

148. Arthur lived with his father and saw much of his paternal grandparents. Hughes formed a relationship with Tustin in the early autumn of 2019. Within three months his relationship with his parents became strained because they perceived that Arthur was not being properly treated by Tustin. That included inappropriate discipline. Hughes took Arthur to the doctor in February 2020. He said that Arthur was suffering from behavioural and emotional difficulties linked to the recent separation from his mother. In March 2020 Hughes and Arthur moved in with Tustin and her two children. The events which formed the child cruelty counts took place between the period where the nation went into lockdown on 23 March 2020 and Arthur's death three months later. During that period, he did not attend school.

149. Count 2, to which Tustin pleaded guilty and on which Hughes was convicted, alleged that Arthur was subjected to prolonged periods of forced standing, was isolated from his family and friends and intimidated physically and verbally. Count 3, to which Tustin also pleaded guilty and on which Hughes was convicted, alleged multiple assaults of Arthur during that period. Signs of abuse became apparent in April 2020 when Arthur visited his grandparents. He told them that Tustin grabbed his face and called him an "ugly horrible brat." They observed and photographed bruising and reported their concerns to social services. Social services and the police visited Tustin's home on 17 and 18 April 2020 and saw Arthur. No action was taken but one consequence of the involvement of the authorities was that Hughes cut off contact with his family who did not see Arthur again before his death.

150. The full extent of the abuse suffered by Arthur only became apparent after his death. Much of the abuse was recorded by Tustin and Hughes on CCTV or audio. Arthur was not allowed any friendly interaction or play and was isolated from his extended family. He was made to sleep on the hard floor in the living room. Tustin's children,

aged five and six, lived a normal and happy life within the home whilst the abuse of Arthur took place. He spent many hours of each day standing in isolation. CCTV recovered from inside the home showed Arthur, in the days leading up to his death, standing in the hallway for periods of between six and 14 hours a day. On a hot day he was made to stand in a thick onesie. The CCTV shows Hughes walking past him to go out for ice creams, but not for Arthur. That had been going on for longer. He would be punished for unauthorised movements such as attempts to sit down to relieve his discomfort.

151. Arthur was repeatedly shouted at, sworn at and insulted in the most derogatory and foul-mouthed way. He was also repeatedly directly threatened with violence by Hughes and Tustin. Text messages revealed Hughes making a series of graphic and chilling threats of shocking violence in terms that must have been terrifying for Arthur. On 15 June 2020, the night before the assault that killed him, Hughes sent a message to Tustin saying that she should "just end him".

152. Hughes and Tustin inflicted physical abuse on Arthur. CCTV footage showed them slapping, smacking and grabbing him. Hughes used "pressure pointing" as a method to cause pain with minimal visible injury. Extensive injuries and 130 bruises were found at post-mortem.

153. Tustin alone was convicted on Counts 4 and 5. They related to Arthur being caused unnecessary suffering or injury to health by withholding food and drink (Count 4) and causing unnecessary suffering or injury to health by administering salt to him (Count 5). Arthur's access to food and drink were controlled and restricted. Audio recordings captured Arthur's distress and requests for food and drink. In one Arthur said, "I want my Uncle Blake," "Please help me, help me Uncle Blake, they're not feeding me, I need some food and a drink." When Arthur died, he was emaciated.

154. Blood analysis on admission to hospital showed abnormally high salt levels which suggested a very substantial ingestion of salt shortly before the events leading to Arthur's death or excessive salt consumption over a protracted period. There was evidence of Arthur repeatedly calling for water and rejecting food despite his obvious hunger as well as of significant salt ingestion half an hour before the fatal attack.

155. The injuries which killed Arthur were inflicted by Tustin. She and her children with Hughes and Arthur had spent the morning of 16 June 2020 at the home of Tustin's hairdresser. There Arthur was made to stand facing the wall. Hughes shouted at him "shut up you little c**t." Tustin was heard saying to Hughes "look what he's doing… tell him to stand up." Hughes shouted at Arthur "stand up f***ing straight, you wait till we get home, I'll put you six feet under." Hughes also threatened Arthur that he would "rip his head off and use it as a football." The hairdresser heard Arthur scream. Tustin told her that Hughes was "pressure pointing him" because "it hurts." These observations echoed many such exchanged between Tustin and Hughes during the period of cruelty.

156. Hughes and Tustin returned home at about 13.00. At 13.11 Hughes left the house with Tustin's children for the supermarket. During their absence Arthur was fatally assaulted but messages were exchanged between Hughes and Tustin. She stated that Arthur was "still screaming". She took a photograph of Arthur's reddened and bruised face at 13.55 which was sent to Hughes. Arthur's right eye was closed. He

was clearly in pain. Another photograph was of Arthur sitting crying in the hallway. That too was sent to Hughes. Tustin sent a message to Hughes to say that Arthur had thrown himself against a wall, before "funking" himself against the master bedroom door.

157. At 14.09 Tustin sent a message saying "he ent bruised his face, the marks gone lighter" adding "wont face the door, you ent telling him no more." The pair then spoke on the phone for nearly six minutes.

158. CCTV routinely recorded inside the house showed Arthur crying at 14.15 and being marched by Tustin into the hallway by the scruff of his neck. Arthur's crying was also recorded on her mobile phone. CCTV then showed Tustin, in a state of agitation, entering the hallway at 14.29. That is when and where the fatal assault took place.

159. Tustin returned to the living room and retrieved her phone before going back into the hallway and then into the kitchen. CCTV showed her returning to the hallway holding her phone as if about to use it. At 14.33 she took a photograph of Arthur in a state of collapse. Moments before the photograph was taken, Tustin sent a message to Hughes saying, "Just copped me in the stomach he has threw himself all over the floor wont get up for shit ive shut the door on him."

160. CCTV showed Tustin carrying Arthur between the living room, kitchen and hall; attempting to sit him up, although he was clearly unconscious, his body slumping to the floor, before finally placing him on the sofa. No attempt was made to resuscitate him. At 14.36 Tustin called Hughes. He returned home at 14.37 with her children. He walked past his son and returned with a can of drink for Arthur who was still unconscious. Tustin attempted to administer Calpol. Tustin called an ambulance at 14.42. Paramedics arrived eight minutes later. Once admitted to hospital, following surgery to relieve pressure on the brain, it became clear that the prognosis was fatal and that all treatment would be futile. The emaciation and bruising to which we have already referred was noted.

161. Arthur's death was the result of being shaken by Tustin so that his head was hyperextended and flexed on the neck. At the same time his head was hit against a wall or floor several times. The case against Hughes, who was out of the house at the time of the killing, was that he deliberately encouraged Tustin to use violence. The jury accepted that he did not share Tustin's intent to cause Arthur really serious harm although encouraged her in violence. That resulted in the conviction for manslaughter rather than murder.

Sentencing

162. The prosecution submitted for the purposes of Schedule 21 that the judge should conclude that the seriousness of the murder was "particularly high" and thus proceed from a starting point of a minimum term of 30 years. The aggravating features identified by the prosecution were that Arthur was vulnerable, his killing involved a gross breach of trust and followed an extended period of abuse. The fatal assault was sustained and vicious. It was common ground between the parties that Tustin did not intend to kill Arthur although, as we shall see, the judge took a different view. The prosecution also accepted that there was a lack of premeditation. The prosecution submitted that the minimum term should encompass all the offending and drew

attention to the Sentencing Council definitive guideline for child cruelty which suggested a starting point of six years' custody, with a range of four to eight years, for a single count of the gravity reflected in this case.

163. The same submission was made in respect of the child cruelty counts on which Hughes was convicted. The prosecution submitted that the offence of manslaughter fell within Category B of the material guideline which would suggest a starting point of 12 years' custody and a range of eight to 16 years before taking account of the child cruelty offences.

164. On behalf of Tustin, it was submitted that the starting point for the minimum term should be 15 years, focussing on whether the final assault on Arthur was sadistic or not. The aggravating factors identified by the prosecution were not in issue and nor was the absence of an intention to kill. Counsel agreed that the child cruelty offences should be considered when setting the minimum term for murder and with the individual categorisation advanced by the prosecution.

165. In mitigation it was submitted that there were no relevant previous convictions, the last being when Tustin was 16 (she is now 32 years old) for shoplifting with an earlier conviction for battery when she was 15. She had a difficult and troubled upbringing. She suffered from a combination of mental illness with a history of failing to take medication. She had previously attempted to kill herself by jumping from the sixth floor of a carpark. She suffered very serious injury and was in hospital for about six months. Tustin suffered domestic abuse at the hands of Hughes and earlier partners. She made two more attempts on her life while awaiting trial.

166. On behalf of Hughes it was submitted that the cruelty of which he was convicted was not as serious as suggested by the prosecution and that, for the purposes of the manslaughter guideline, his offending fell within category C. That would deliver a starting point of six years' custody with a range of three to nine years.

167. The trial had started on 11 October 2021. The judge completed his summing up on 1 December. The jury returned their verdicts the following day. He was immersed in all the evidence. The first part of the sentencing remarks summarised the cruelty to which Arthur had been subjected by Tustin and Hughes. The judge described the evidence as "distressing and disturbing" with the protracted cruelty amounting to "unimaginable suffering." Tustin and Hughes knew exactly what they were doing to Arthur and persisted in it. This was not just cruelty, but sadistic cruelty borne of what amounted to a hatred of Arthur: "you both knew the extent of his suffering at the time and were pitiless and indifferent to it. Nobody could have taken or watched the haunting videos we have seen and listened to the audio files … without rescuing that poor boy, unless that was so." Tustin was responsible for the long-term salt poisoning and the large dose of salt given not long before the attack which killed him. In respect of both accused, the judge indicated that he would impose concurrent sentences for the child cruelty with the overall seriousness of the offending being reflected in the minimum term for Tustin and the manslaughter sentence for Hughes.

168. In considering the circumstances of the attack which caused Arthur's death the judge concluded that when Tustin launched the attack, she intended to kill him. The judge reached that conclusion taking account of the amount of force used and because she no longer wanted Arthur in her home. She wanted Hughes to provide for her and her

children untroubled by the presence of Arthur. She also failed get any help for Arthur immediately after the attack when it would have been obvious that he required immediate medical attention. Although this conclusion differed from that advanced by the prosecution, Mrs Prior QC for Tustin accepts that it was open to the judge to reach it. The judge explained that although only one of the factors identified in Schedule 21 as indicating that the offence was of "particularly high" seriousness was present, namely sadism, he nonetheless concluded that, overall, this was a case of particularly high seriousness because of the cruelty that preceded it. He rejected the submission advanced on behalf of Tustin that the starting point for the minimum term should be 15 years and accepted that it should be 30 years. He was careful to note that many aggravating features had already been considered in support of that conclusion. Nonetheless, he identified further aggravating factors, namely the gross breach of trust, Arthur's age and vulnerability and the extensive lies told by Tustin to conceal her conduct.

169. The judge noted that Tustin was effectively of good character. He did not consider the death of Arthur to be premeditated. He noted the difficulty that she would face in custody and accepted there was a real risk of suicide. He indicated that he considered each of the counts of cruelty to be of the most serious type. In the round, he arrived at a minimum term of 29 years to reflect all the criminality and circumstances.

170. In determining the appropriate sentence for the manslaughter offence of which Hughes had been convicted, the judge indicated that he considered that culpability was "high" for the purposes of the guideline. That has a starting point of 12 years' custody and a range of eight to 16 years. He sentenced on the basis that Hughes had encouraged violence intending that it should result in injury just short of really serious bodily harm. He reached that conclusion based on the level of threats made about Arthur and the regularity of Hughes' assaults on him. In reflecting the child cruelty counts in the headline sentence, the judge considered that he should adopt that part of the manslaughter guideline reserved for cases of "very high culpability." That has a starting point of 18 years' custody with a range of 11 to 24 years. He noted the prime responsibility, as Arthur's father, that Hughes bore for protecting him. He gave some credit for good character before arriving at the sentence of 21 years' imprisonment.

Submissions

171. In respect of the sentence imposed upon Tustin, Mr Little submits that given the overall nature of the criminality, she should have received a whole life order. He recognised the difficulty in that submission given that the Crown below had suggested a starting point of 30 years, taken with the absence of any of the factors suggesting a whole life order found in Schedule 21. In the alternative he submits that the minimum term of 29 years should be raised. He reminds us that Tustin's two children witnessed much of the cruelty over three months and saw Arthur after the attack which later proved fatal. Making audio recordings and taking photographs was also a feature. In respect of the sentence imposed upon Hughes, he submits that the judge did not refer to an important feature in this case, namely that Hughes must have appreciated that there was a risk that Tustin would kill Arthur. In view of the serious nature of the manslaughter on its own, coupled with the child cruelty for which he was convicted, Mr Little submits that the sentence of 21 years arrived at was unduly lenient. In terms of the guideline, Mr Little submits that the judge should not have started his

consideration, as the prosecution below had submitted, by treating the manslaughter as one of "high culpability" but rather "very high culpability".

172. Mrs Prior accepts, as we have noted, that the conclusion reached by the judge as to Tustin's intention was open to him. She accepts that he cannot be faulted in these proceedings for adopting the starting point of 30 years for the minimum term. But she contends that the judge could have reduced that minimum term further than he did to take account of the substantial mitigation available. She points to the suicide attempts, a very troubled background including extensive domestic violence, mental illness and the inevitable loss of contact with her children. On any view, submits Mrs Prior, this sentence cannot be stigmatised as being unduly lenient. She submits that the concurrent sentences on the two child cruelty counts to which Tustin pleaded guilty should have been shorter. Mrs Prior submits that should follow from the guilty pleas and the sentence Hughes received for child cruelty.

173. Mr Richmond QC for Hughes submits that the culpability attaching to the manslaughter was not "high" for the purposes of the guideline but should have been placed lower in the hierarchy. Nonetheless, he does not dispute that the very substantial aggravating features, taking into account the cruelty, elevate the sentence into the category of high culpability with a starting point of 12 years' custody. He submits that the judge was wrong to move to the "very high culpability" category and then wrong again to move from a starting point of 18 years to 21 years' imprisonment.

Discussion: Tustin

174. Anyone considering the detailed written materials that we have seen, and CCTV footage, would find it hard to contemplate how anyone, let alone someone with joint responsibility for his care, could have treated Arthur as Tustin did. The child cruelty in which she engaged was at the top end of the scale for sentencing purposes, had it been considered in isolation. The nature, extent and duration of the cruelty would certainly have justified consecutive sentences that took the total some way beyond the maximum of 10 years for a single offence. That is so irrespective of the pleas of guilty.

175. The murder of Arthur is explicable only by reference to that background of cruelty. The judge was right in his observation that only one of the factors identified in paragraph 3(2) of Schedule 21 might have taken the murder into the "particularly high" seriousness category and a minimum term starting point of 30 years, namely 3(2)(e) - "a murder involving sexual or sadistic conduct". However, that does not really describe the circumstances of the attack on Arthur by Tustin which caused his death. The mechanisms of assault reflected explosive violence calculated to cause maximum harm rather than any sadism in the usual sense of the word. It would not alone have taken this case into 30-year minimum territory. It was the antecedent protracted and serious cruelty which did have an element of sadism that, on the judge's reasoning, firmly placed this case at a minimum starting point of 30 years.

176. None of the factors identified in paragraph 2 of Schedule 21 as normally indicating a whole life order is present in this case.

177. In our view the judge was right to take a starting point of 30 years for the principal reason he gave, namely that to do so properly reflected the seriousness of the murder

of Arthur and the dreadful cruelty for which Tustin was responsible that preceded it. Applying, but not repeating, the principles we have identified, this is not one of those rare cases where a whole life order was an appropriate option even though none of the factors identified in Schedule 21 paragraph 2 was present. Had the events which killed Arthur taken place without the antecedent cruelty for which Tustin was convicted the starting point would have been 15 years although subject to inevitable uplift to reflect the breach of trust and vulnerability of Arthur. The circumstances surrounding his murder imported particularly high seriousness necessary to support a starting point of 30 years but not exceptionally high seriousness.

178. The question then becomes whether the sentence imposed on Tustin by the judge was either appropriate, as Mrs Prior submits, or unduly lenient as Mr Little submits.

179. We conclude that it was an appropriate sentence.

180. Tustin's application for leave to appeal against sentence, as we have noted, relates only to the two counts of child cruelty to which she pleaded guilty. She does not seek to challenge the minimum term attached to the life sentence and accepts that the application is, in practical terms, academic. That is why no application was made within the time limits provided by the rules. We can see nothing arguably wrong with the way in which the judge dealt with the child cruelty counts in the context of determining a long minimum term for murder. More generally, the judge took account of the mitigating factors that were in play alongside the aggravating factors. The real issue was the overall result. We refuse to extend time or grant leave to appeal against sentence.

181. The focus of Mr Little's submission was that the judge should not have gone down from 30 years but up significantly. We have considered the points raised on behalf of the Attorney General but none, in our view, supports the conclusion that the judge struck an inappropriate balance when arriving at the minimum term. For example, his sentencing remarks referred to the contrast between the treatment of Tustin's children and Arthur and the conditions in the home. The shocking dynamics in the house underpinned much of what he said. He did not overlook their presence. His reference to Tustin's lack of relevant previous convictions was appropriate with no suggestion that he accorded that fact undue weight. The judge made extensive reference to the audio recordings made by Tustin and identified various photographs sent between the accused. None of the discrete criticisms made of the sentencing remarks supports a conclusion that this sentence was unduly lenient.

182. We give leave to refer Tustin's sentence but conclude that the sentence was not unduly lenient.

Discussion: Hughes

183. Manslaughter is one of the most difficult offences to sentence. That is reflected in the Sentencing Council guideline which speaks of sentences ranging from one year in custody to 24 years. In summarising briefly the competing arguments we heard, we noted references to that guideline and whether the manslaughter fell to be regarded as "high culpability" (starting point 12 years' custody, range eight to 16 years) or as "very high culpability" (starting point 18 years' custody, range 11 to 24 years). Mr Richmond seeks to persuade us that the offence was of "medium culpability" but

could be taken into the "high culpability" sentencing range, but no further, because of the cruelty convictions. Mr Little disavows the approach of the prosecution below in placing manslaughter in the "high culpability" range with an upward lift to reflect the cruelty and instead suggests it should have started as being "very high culpability" and gone up from the identified starting point of 18 years.

184. This summary of the competing positions emphasises, if emphasis is again needed, that the guideline should not be applied mechanistically and, all the more so, when a judge is seeking to reflect multiple and complex offending in a single headline sentence.

185. We cannot accept Mr Richmond's submission that the manslaughter should have been regarded as of "medium culpability." The judge concluded that Hughes intended that Arthur should suffer harm just short of the threshold that would have led to a conviction for murder. That, without more, places the manslaughter firmly in the "high culpability" category. As he put it, "you deliberately encouraged Tustin to use violence on Arthur but not that you intended her to do so with intent to kill him or cause him really serious injury. But … your words and actions were designed to encourage her to violence only just short of that which might cause Arthur grievous bodily harm."

186. That submission was a necessary step in reaching a conclusion that the sentence imposed was manifestly excessive. We refuse leave to appeal against sentence.

187. By contrast we are persuaded, in respectful disagreement with the judge, that when taking account of all the offending and attendant circumstances, the total sentence of 21 years was unduly lenient.

188. We start, as we did with Tustin, in considering the cruelty counts. Hughes was not convicted of the salt and nutrition related cruelty counts. His offending in that regard was less extensive than Tustin's but his culpability greater for the balance. He was Arthur's father and, as the judge observed, was primarily responsible for his care.

189. We consider that there is substance in the Attorney General's argument relating to manslaughter that in encouraging Tustin to harm Arthur in the way he did there was a substantial risk that she would do something that would kill him. That is an additional feature beyond the question of what he intended when he encouraged her to harm Arthur. The manslaughter bristled with aggravating features including as grave a breach of trust as can be imagined in respect of a small boy who was especially vulnerable, not least as a result of Hughes' own conduct. He lied to Arthur's school to keep him at home to protect both himself and Tustin. The judge, in our view, was right to sentence in the range appropriate for manslaughters with "very high culpability". We think the manslaughter itself, given the aggravating features, took it there. But the critical question is whether the overall sentence of 21 years' imprisonment adequately reflects all the circumstances of Hughes' offending.

190. Without the cruelty offences the manslaughter deserved a sentence of 18 years or more. The judge's view was that the offence fell just short of murder and, as we have said, the risk of death, given the preceding conduct, was real. In our view the appropriate sentence is one of 24 years' imprisonment to take account of all the

offending. We grant leave to the Attorney General to refer the sentence. We quash the sentence of 21 years' imprisonment and substitute one of 24 years.

Conclusion

191. In the case of Stewart, we grant leave to appeal against the sentence of life imprisonment, with a whole life order, for murder. We allow the appeal. We quash the sentence imposed by the judge and substitute a sentence of life imprisonment, with a minimum term of 35 years.

192. In the case of Couzens, we grant leave to appeal against the sentence of life imprisonment, with a whole life order, for murder, but we dismiss the appeal.

193. In the case of Monaghan, we grant the Solicitor General's application for leave to refer the sentence of life imprisonment with a minimum term of 40 years, we quash that sentence, and we substitute a sentence of life imprisonment with a minimum term of 48 years.

194. In the case of Tustin, we refuse to extend time or grant leave to appeal against sentence. We grant the Attorney General's application for leave to refer the sentence of life imprisonment with a minimum term of 29 years for murder, but we refuse the reference.

195. In the case of Hughes, we refuse leave to appeal against sentence, we grant the Attorney General's application for leave to refer the sentence of 21 years' imprisonment, we quash that sentence and we substitute one of 24 years.