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*(subject to editorial corrections)**

IN THE CROWN COURT SITTING IN NORTHERN IRELAND

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THE QUEEN

-v-

RYAN LESLIE

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STEPHENS J

Introduction

[1] Ryan Leslie on 22 February 2011 by a unanimous jury verdict and after a six week trial you were found guilty:-

(a) On count 1 of murder on 6 September 2008 of Cameron Jay Leslie ("Cameron"); and

(b) On count 2 of causing Cameron grievous bodily harm with intent between 25 August 2008 and 1 September 2008 contrary to Section 18 of the Offences Against the Person Act 1861.

[2] In relation to the offence of murder and on 22 February 2011 I imposed a life sentence. It is now my responsibility, in relation to that offence and in accordance with Article 5 of the Life Sentence (Northern Ireland) Order 2001, to determine the length of the minimum term that you will be required to serve in prison before you will first become eligible to be released on licence by the Parole Commission. The minimum term is fixed by reference to retribution and deterrence. The risk that you pose is a matter for the Parole Commission it being for that Commission to consider whether, and if so when, you are to be released on licence based on their consideration of risk.

[3] When you are released on licence you will for the remainder of your life be liable to be recalled to prison if at any time you do not comply with the terms of that licence.

[4] A minimum term is not the same as a fixed term of imprisonment. A fixed term of imprisonment may, if a prisoner is of good behaviour, attract

remission. You will receive no remission for any part of the minimum term that I am now about to determine.

[5] It is also now my responsibility to sentence you in respect of the offence in count 2 of causing grievous bodily harm with intent to Cameron.

Factual background

[6] On 14 October 2006 you and Sheree Black started a relationship. She moved into your flat at 12 Ballyvesey Green, New Mossley. She was then nearly 17 and you were 23. Sheree Black gave birth to your son Cameron on 30 May 2008 and you all lived together as a family until 12 August 2008 at 12 Ballyvesey Green. On that date your relationship with Sheree Black came to an end. She and Cameron left to live in her mother's house. You remained living on your own at 12 Ballyvesey Green. Sheree Black recognised the importance for Cameron of maintaining contact with you his father. Accordingly arrangements were made for you to have direct unsupervised contact with your baby son.

[7] The first overnight contact was from 4.00 pm on Friday 29 August 2008 to 11.00 am on Saturday 30 August 2008. During that overnight contact you squeezed Cameron's ribcage so hard with both hands that you fractured 14 of his ribs. The expert medical evidence was that when you caused those injuries to Cameron he initially felt pain and let this be known to you. That any one else subsequently handling Cameron would have known that Cameron was unhappy but would not have known why. The injuries to Cameron's ribs did not cause or contribute to his death. The degree of injury is not to be compared with a flail chest where there are so many fractures that the rib cage is able to move around. These were un-displaced fractures.

[8] Prior to returning Cameron to Sheree Black on the morning of Saturday 31 August 2008 you told her that "Cameron was crying and crying his heart out". On his return to Sheree Black she found that his routine was disturbed and he appeared to be upset. She started him on Calpol. She had no idea as to the reason why he was unhappy. It is now known that the reason was that you had fractured 14 of Cameron's ribs.

[9] You subsequently asked for further overnight contacts with Cameron. Sheree Black agreed without any way of knowing what you had done to Cameron. Cameron was taken by her to your flat at 2.00 pm on Tuesday 2 September 2008 and remained with you until he left in an ambulance at 8.48 am on Thursday 4 September 2008 to be admitted first to Antrim Area Hospital and then on the same day to the Royal Belfast Hospital for Sick Children. Cameron was grievously unwell and he was pronounced dead on Saturday 6 September 2008 at 2.15pm. He had 14 fractured ribs, massive

brain damage, bilateral and extensive retinal haemorrhages, and bruising to many areas of his body.

[10] The prosecution case at trial was that shortly before Cameron was admitted to hospital on Thursday 4 September 2008 you caused a severe blow to the back of his head thereby inflicting injuries from which Cameron died. It was the prosecution case that the blow you inflicted to the back of Cameron's head caused massive bleeding on the surface of his brain thereby causing extensive and fatal brain damage.

[11] The expert medical witnesses called on your behalf at trial accepted that Cameron had sustained a non-accidental injury to his head causing his death but gave a different date for the head injury and a different mechanism by which death was caused. Their evidence was to the effect that Cameron had sustained a blow to the side of his head, as evidenced by observed swelling on the side of his head on the afternoon of Saturday 30 August 2008, which in turn caused a cerebral venous sinus thrombosis, which is a blood clot in a vein in his head. The defence experts stated that the symptoms from this clot began some four days later on Wednesday 3 September 2008 and in turn this caused brain swelling which caused a sub-dural bleed and Cameron's brain damage and death.

[12] The prosecution relied on a number of factors for the proposition that the defence expert evidence should be rejected by the jury. For instance that there was uncontested medical evidence that Cameron had sustained extensive bilateral retinal haemorrhages caused by severe trauma some 48 to 72 hours prior to death. This evidence was given by Dr McCarthy, a consultant ophthalmic pathologist, who was working independently of Dr Mirakhur, consultant neuropathologist called on behalf of the prosecution. Dr McCarthy and Dr Mirakhur independently of each other after examining Cameron's eyes (Dr McCarthy) and his brain (Dr Mirakhur) arrived at a time period of 48 to 72 hours prior to death for severe trauma being inflicted on Cameron.

[13] The prosecution not only invited the jury to reject the defence medical evidence but also contended that if the mechanism by which Cameron died was from an earlier head injury causing a cerebral venous sinus thrombosis causing death then this earlier head injury was inflicted by you at the same time as the rib fractures that is during Cameron's overnight contact on Friday 30 August 2008 to Saturday 31 August 2008.

[14] The jury found you guilty of the murder of Cameron but the exact date upon which you inflicted a head injury to Cameron and the exact mechanism by which he died is not clear from the verdict of jury. The prosecution accepted that I should sentence you on the factual scenario most favourable to

you. Accordingly I sentence you on the basis that you caused a head injury at the same time as causing the rib fractures.

[15] There are further matters in the factual background which are relevant. Your relationship with Sheree Black was marked by physical and verbal violence. You stated in evidence that you had physically assaulted her on seven occasions including kicking her on the upper leg when she was pregnant, throwing a TV remote control at her striking her on her face causing her a bruise and pulling and dragging her by the hair. You have problems controlling your temper and had sought assistance from your general practitioner and a psychiatrist. It was suggested that you attend, but you did not, an anger management course. You not only assaulted Sheree Black but also in fits of temper and violence punched and damaged doors in your flat. You used cannabis and this causes you a degree of paranoia. Your aggression was not confined to Sheree Black but you were also verbally aggressive in response to Cameron crying. On 12 August 2008 you shouted at Cameron that he was "a spoilt wee brat, a fucking wee cunt". On Wednesday 3 September 2008 you screamed at Cameron to "shut the fuck up" in response to him crying. Your aggression to Cameron was not only in what you said but in how you said it. It is also significant that it was in response to him crying.

[16] A further striking feature of the factual background is how you behaved when it became apparent that Cameron was seriously ill. You delayed seeking medical assistance for your son. Furthermore after you had belatedly sought medical assistance you did not assist the treating doctors with a history of what had in fact occurred to Cameron. Rather you evaded answering questions. For instance at an early stage after Cameron was admitted to hospital you did not tell the doctors anything about Cameron potentially being injured whilst in your care. This changed once you had been informed by the doctors that they had found a head injury and injuries to Cameron's ribs. At that stage you then attempted to provide innocent explanations. In relation to the head injury you stated that Cameron had hit his head on a plastic bath on Wednesday 3 September 2008. In relation to the rib fractures of which you were then aware, you told the doctors that you had performed cardio pulmonary resuscitation ("CPR") in the early hours of the morning of Thursday 4 September 2008 and that this may have been responsible for those fractures. Neither of those explanations stood up to any scrutiny. All of the expert medical witnesses agreed that the nature of the head injuries could not have been caused by Cameron hitting his head on the edge of a plastic bath. The forces involved in such an incident on the basis of the most favourable factual scenario would have been inadequate or at the least at the wrong time. On expert microscopic examination it was established that the 14 rib fractures could not have been sustained in the early hours of Thursday 4 September 2008 when you stated that you had

performed CPR. They were older than that. Furthermore CPR on a 14 week old baby could not have caused these rib fractures.

[17] Your delay in seeking medical assistance is illustrated by what you say transpired at 3.00 am, 5.00 am and 7.30 am on Thursday 4 September 2008. At 3.00 am you found Cameron to be "pinky, paley pink". His lips were a bluey colour. There were abnormal eye movements. He looked like a boy who had overdosed, that is a person who was not in control of his senses. You performed CPR. You described breathing into Cameron's mouth by closing Cameron's nostrils with your right hand. You opened Cameron's mouth with your left hand. You used two fingers and your thumb to pull his jaw down. You then placed your mouth over Cameron's mouth and breathed into Cameron's mouth to try and fill his lungs. Breathing not hard and not soft, sort of in between. In relation to chest compressions this involved you placing one hand on top of the other and depressing Cameron's chest. Despite taking the extraordinary measure of performing CPR on your 14 week old son and despite your description of his physical condition you did not call an ambulance.

[18] By 5.00 am Cameron had deteriorated. You described him to the police as looking dead. You stated that he looked like a zombie. That he was just reacting lifting both arms up in the air and you knew there was something wrong. You stated that he was chain breathing which was a type of breathing you had heard from a relative shortly before he died. Again you performed CPR. Again despite the obvious and really serious physical condition that Cameron was in you did not call an ambulance.

[19] It was not until 8.37 am that you called an ambulance despite waking at 7.50 am and realising that Cameron was even worse. In short you delayed seeking medical assistance knowing that once you did so your brutality to Cameron could well be discovered. Not only did you inflict horrific and fatal injuries on your son but you failed to obtain the medical treatment that you knew he so desperately needed and you did this for your selfish ends. Even when your son looked dead at 5.00 am you were unmoved.

[20] Your attempts to avoid detection included telling what transpired to be the most preposterous and farcical lies to the police. You related to the police how you had adjusted Cameron's cot to perform CPR on him. The story that you told was intricate and detailed. You persisted in it over a number of interviews. Indeed it became more and more involved and lacking in any credibility with each interview and yet you persisted. You were assertive. Asserting that the task was simple, that you were right, and that a child of two could adjust the cot. In other words you gave your backing to a story which you knew to be untrue with complete conviction and with authority. You are a dishonest and deeply manipulative individual.

[21] During the trial you asserted that you loved your son. I accept that you had some bond with your son but not to the extent that you claimed. I consider that one of your feelings for Cameron was the use you could make of him in your relationship with Sheree Black.

[22] You have offered no truthful explanation as to what you did and when you did it. I consider that you lost your temper with a 14 week old baby your son, in response to him crying.

[23] There is a spectrum in relation to a loss of control by a parent. At one end of the spectrum there is a parent who himself or herself faces many problems in life including for instance mental illness, low levels of intellectual functioning, lack of family supports, social deprivation, financial hardship, poor housing conditions, social isolation, social exclusion, extremes of physical and mental tiredness. Such afflictions or hardships either individually depending on their degree or in combination can create enormous pressures when combined with the persistent demands and perpetual crying of a young baby. Unfortunately in such circumstances a parent can lose control and physical and emotional injuries can be sustained by the baby followed by deep regret and deep remorse on the part of the parent. At the other end of the spectrum is an angry individual who cannot control his or her temper, who appreciates that he or she has problems with anger management and yet does not avail of assistance by going on an anger management course. A person who has family supports available to him or her together with the support of friends who is not socially isolated and has appropriate housing conditions. Furthermore a person who inflicts horrendous and fatal injuries without remorse. I consider that you fall towards the latter end of that spectrum but I recognise that you had a degree of emotional and mental instability. You had lost your job. You had attempted to commit suicide.

Personal circumstances

[24] You have lived in Northern Ireland since you were 4. As you grew up you experienced anti social behaviour and paramilitary activity in the area in which your family resided. You had behavioural problems at school. Your parents state that you associated with the wrong people and got involved in drug use as a result of peer associations. Your drug use lead to family conflict especially with your father and you obtained your own separate accommodation. You continue to have the support of your immediate family.

[25] Since the termination of your relationship with Sheree Black you have entered into a new relationship. Your current partner is 5-6 weeks pregnant.

[26] Substance misuse most notably recreational drugs has been a significant factor in your life resulting in family disputes, negative peer associations, a hedonistic lifestyle and a negative impact on relationships.

[27] Mark Smith the probation officer, who prepared the pre sentence report completed on 14 March 2011, considers that you present as an individual with a capability for losing his temper resulting in unpredictable reactions when sufficiently frustrated or exasperated by the behaviour of others. I agree.

Risk of harm to the public and likelihood of re offending

[28] Mark Smith records that you informed him that you did not harm Cameron and that you consider yourself to be innocent. Mr Smith advises that based upon the convictions and using PBNI ACE assessment tools that he assesses you as having a high likelihood of re-offending with issues in your personal domain such as potential substance misuse, temper, stress management, impulsiveness and your emotional health being factors of note coupled with your attitude to theses offences. He adds that this assessment is broad based and is not necessarily indicative of your likelihood to commit a similar offence to these offences. He also assesses you as posing a risk of serious harm. I agree with that assessment. You have no insight and no remorse. You have demonstrated that you are a violent individual who has been unable to control his temper. You have led a hedonistic life and I do not anticipate any change in your approach.

The impact of the killing on the family of the victim

[29] I have been provided with comprehensive statements from Sheree Black, Cameron's mother, and Margaret Black, Cameron's maternal grandmother, as to the impact that Cameron's death has had on them. In essence they were being asked the most difficult question as to what it is like to lose a son or a grandson in circumstances as such as these. I would observe that no judge could fail to be moved by their sensitive and eloquent statements in response. I am not going to add to their distress by placing their private thoughts and experiences in the wider public domain. They are of course free to do so if they wish. However I am satisfied that the consequences for both of them particularly Sheree Black are of a marked and enduring character. I would also add that they do not have the consolation of an honest explanation from you as to what occurred and why it occurred. They do not have your acceptance of responsibility together with expressions of remorse for what you did. You continue immune to their suffering.

Legal principles relating to setting the appropriate minimum term

[30] In fixing the minimum term I seek to apply the material portions of the Life Sentences (Northern Ireland) Order 2001 including Articles 5(1) and 5(2). In *R v McCandless & Ors* [2004] NICA 1 and *Attorney General's Reference No 6 of 2004 (Connor Gerard Doyle)* [2004] NICA 33 the Court of Appeal in Northern Ireland ruled that the Practice Statement issued by Lord Woolf CJ on 31 May 2002 should be taken into account when fixing the minimum term. The Practice Statement is reported at [2002] 3 All ER 412. I refer in particular to paragraphs 10-19.

Legal principles relating to the offence under section 18: Grievous bodily harm with intent

[31] The maximum sentence in respect of the offence under section 18 is life. However in *R v Daniel McArdle* [2008] NICA 29 at 28, the Court of Appeal concluded:-

> "that for offences of wounding with intent to cause grievous bodily harm, the sentencing range should be between 7 and 15 years imprisonment following conviction after trial. An appropriate reduction on this range should be made where the offender has pleaded guilty …"

[32] The section 18 offence comes within the provisions of the Criminal Justice (Northern Ireland) Order 2008. It is both a serious offence within schedule 1 paragraph 7 of the Criminal Justice (Northern Ireland) Order 2008 and a specified violent offence within schedule 2 paragraph 6 of that Order. Accordingly under Article 13 (1) (b) of the Criminal Justice (Northern Ireland) Order 2008 I have to consider the predictive risk that is whether there is a significant risk to members of the public of serious harm occasioned by the commission by you of further specified offences.

[33] In relation to the predictive risk I emphasise that a significant risk must be shown in relation to two matters; first, the commission of further specified (but not necessarily serious) offences, and secondly, the causing thereby of serious harm to members of the public. In assessing whether there is a significant risk in your case I take into account the matters set out in Article 15 (2) of the Criminal Justice (Northern Ireland) Order 2008. The enquiry and determination is in relation to future risk and the future protection of the public.

[34] I remind myself of the statutory test in relation to dangerousness contained in Article 13 (1) (b) of the Criminal Justice (Northern Ireland) Order 2008 which is in the following terms:-

> "This Article applies where –
>
> (a)…; and
> (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences."

[35] It could be suggested that as I have already imposed a life sentence on count one that I could never be satisfied that there is a significant risk to members of the public of serious harm as you will not be released from prison until in accordance with Article 6 (4) (b) of the Life Sentences (Northern Ireland) Order 2001 the Parole Commissioners have considered your case and

> "the Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that (you) should be confined."

Accordingly I cannot be satisfied that you are dangerous within the meaning of Article 13(1)(b) and that the sentence that I should impose in relation to count two should be a determinate sentence of imprisonment.

[36] I have not had the benefit of detailed submissions from counsel in relation to this matter or reference to authorities. I have reservations about adopting such an approach. *First* as a general proposition I perceive that it is the obligation on this court to pass appropriate sentences in relation to each count. Performing that exercise involves separate consideration of all the features in relation to each count, including as far as the Criminal Justice (Northern Ireland) Order 2008 is concerned, separate consideration of the issue of dangerousness, without regard to the effect of the sentences imposed in relation to the other offences. The only exception to that general proposition is the concept of totality. *Second* the responsibility at this stage to consider the issue of dangerousness is imposed by the Criminal Justice (Northern Ireland) Order 2008 on the court and not on the Parole Commission. It would be an abdication of a responsibility placed on this court if I did not consider the issue of dangerousness in relation to count two. *Third* there is no express restriction in the Criminal Justice (Northern Ireland) Order 2008 preventing the court from considering the issue of dangerousness in circumstances where a life sentence has already been imposed. *Fourth* there should not be the potential for a determinate custodial sentence to be passed on one count because a life sentence has been passed on another count only to find that the conviction in relation to which the life sentence was

passed is quashed on appeal leaving a determinate sentence on the other count when an extended or indeterminate sentence ought to have been imposed ("the appeal test"). *Fifth* the predictive risk of dangerousness in relation to each count may differ. It should be the predictive risk in relation to each individual count that informs the sentence to be imposed in relation to that count.

[37] In relation to the fourth point the Court of Appeal in allowing an appeal in respect of part of the indictment, may in respect of any count on the *same indictment* on which the offender remains convicted pass such sentence, in substitution for the sentence passed thereon at the trial, as it thinks proper and is authorised by law for the offence of which he remains convicted, see section 4 (1) of the Criminal Appeal (Northern Ireland) Act 1980. Accordingly if the Court of Appeal quashed a conviction carrying a life sentence it could only change a determinate sentence to an indeterminate or extended sentence in relation to another count if it was on the *same indictment*. If it is not on the same indictment then an offender would no longer be subject to a life sentence and the reasoning for not applying the dangerousness provisions in relation to the count on the other indictment would no longer apply in that he would no longer only be released if the Parole Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that he should be confined. Accordingly an inappropriate sentence would have been imposed and the purpose of the Criminal Justice (Northern Ireland) Order 2008 would not have been fulfilled in that there would not be the added protection for the public from dangerous offenders by the imposition of an indeterminate or extended sentence. The particular need to pass appropriate sentences in relation to each count in relation to offences which come within the provisions of the Criminal Justice (Northern Ireland) Order 2008 is illustrated by what could occur on appeal depending on whether there are one or two indictments.

[38] In relation to the fifth point the effect of considering the predictive test of dangerousness in Article 13 (1)(b) separately in relation to each count without regard to the sentence to be imposed in relation to the other counts is illustrated by the facts of your case. The nature of the prediction changes because one is contemplating your release from prison on count two after a more limited period when you would be capable of having further children and in relation to whom I consider that there would be a significant risk of serious harm by a sudden loss of temper on your behalf followed by an assault with the intention of causing grievous bodily harm. I consider that to be the exercise that the legislation requires namely to consider the predictive risk in relation to each count separately.

[39] I have invited submissions from counsel in relation to the decision of the Court of Appeal in England and Wales in *R. v Nicholas Smith* [2010] EWCA Crim 246 [2010] 2 Cr. App. R. (S.) 63 (leave to appeal to the Supreme Court

was given on 16 June 2010). In that case it was submitted by an appellant that the sentence of imprisonment for public protection imposed by the trial judge was wrong in principle because the appellant had been recalled to prison under a previous life sentence and would remain in prison pursuant to that sentence until the Parole Board was satisfied that it was no longer necessary for the protection of the public that he be confined. Accordingly that future public protection was already underwritten by the existing life sentence. It was submitted on behalf of the appellant that the sentencing judge should simply have passed the appropriate determinate sentence. The Court of Appeal in England and Wales did not accept those submissions stating that the sentence of imprisonment for public protection was imposed under the dangerous offender provisions of the Criminal Justice Act 2003 in the exercise of the discretion conferred on the judge by that statute. The discretion conferred by the statute was not expressly constrained where there was an existing indeterminate sentence. There was nothing anomalous or unusual about two indeterminate sentences being imposed on different occasions, or even in different forms. I rely on this authority for the approach that I adopt to the sentencing exercise in your case.

[40] The decision in *R. v Nicholas Smith* is also an illustration of the "appeal test". In that case the life sentence had been imposed at an earlier date on a different indictment. There always remains the possibility of a successful appeal against conviction in relation to that earlier indictment regardless as to the date of conviction. If there was such an appeal then upon quashing the conviction to which the life sentence was attached the Court of Appeal in Northern Ireland could not vary the sentence on the counts in relation to the later indictment. The remaining sentence after such a successful appeal must be of a nature that would protect the public in accordance with the purpose of the Criminal Justice (Northern Ireland) Order 2008. I consider that the approach of this court should not be influenced by whether there are one or two indictments. The approach to the concept of dangerousness should be consistent. The sentence imposed should be appropriate for each count irrespective of what transpires on appeal in relation to the sentence imposed on another count or on another indictment.

[41] I consider that the purpose of the Criminal Justice (Northern Ireland) Order 2008 is achieved if the predictive test of dangerousness in Article 13 (1)(b) is considered separately in relation to each count without regard to the sentence to be imposed in relation to any other count or any other indictment. I make it expressly clear that this proposition is of course subject to the concept of totality.

[42] I am confirmed in the conclusion which I have reached by a consideration of what occurs if Article 13 (1) of the Criminal Justice (Northern Ireland) Order 2008 does apply and the court then goes on to consider the provisions of Article 13 (2). Article 13 (2) requires the court to consider not

only the seriousness of the offence but also of the offence and one or more associated offences. An associated offence includes offences of which the offender is convicted in the same proceedings, see Article 3(2)(a). In this case this would mean that in considering the sentence to impose on count two I am required to consider the seriousness of the offence in count two and the associated offence in count one of murder. If the seriousness of both of those offences justifies the imposition of a life sentence then the court shall impose a life sentence in respect of count two. If one applied the test of what would happen on a successful appeal against conviction on count one to the sentence on count two then it would be apparent to the Court of Appeal that in fixing the sentence on count two this court had taken into consideration an associated offence when in the event it ought not to. The Court of Appeal could then vary the sentence on count two and impose an appropriate sentence which could be an extended sentence, an indeterminate custodial sentence or a determinate custodial sentence. This would be in contrast with the earlier position where the Court of Appeal on quashing the conviction on count one would only be able to vary the sentence on another count to take into account that there was no longer a mandatory life sentence if it was on the same indictment.

[43] If there is a predictive risk then in accordance with the provisions of Article 13(2) if, in this case, the condition in Article 13(2) (b) is met, that is the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a life sentence, then I have to impose such a sentence. In that respect I seek to follow the guidance of the Court of Appeal in England and Wales for instance as to the distinction between a life sentence and an indeterminate custodial sentence see *R v Wilkinson* [2009] EWCA Crim 1925. In that case it was stated that

> "In our judgment it is clear that as a matter of principle the discretionary life sentence under section 225 (which is the equivalent to Article 13(2)) should continue to be reserved for offences of the utmost gravity. Without being prescriptive, we suggest that the sentence should come into contemplation when the judgment of the court is that the seriousness is such that the life sentence would have what Lord Bingham observed in *Lichniak* [2003] 1 AC 903, would be a "denunciatory" value, reflective of public abhorrence of the offence, and where, because of its seriousness, the notional determinate sentence would be very long, measured in very many years."

The starting point in relation to setting the appropriate minimum term

[44] The higher starting point of 15/16 years applies in your case as "the victim was a child or was otherwise vulnerable", see paragraph 12 (f) of the *Practice Statement*.

[45] I have given consideration to the question as to whether your case also requires the higher starting point given that you fractured 14 of Cameron's ribs. The relevant paragraph is 12 (j) of the Practice Statement which is as follows:

> "extensive and/or multiple injuries were inflicted on the victim before death"

It was suggested on behalf of the prosecution that this feature is ordinarily reserved for situations where there were for instance multiple stabbings before death. That is a form of mutilation of the body in the process of inflicting death. In such circumstances the victim would have to endure not only the physical injuries but also the realisation of relentless assaults. The prosecution considered that this case was different and that this factor should be treated as an aggravating factor rather than one falling with paragraph 12 (j). I consider that the Practice Statement should not be applied overly mechanistically and on that basis I will take the 14 rib fractures into account as an aggravating feature rather than as a feature within paragraph 12 (j).

[46] In taking into account the rib fractures as an aggravating feature and in view of the fact that I will be imposing concurrent sentences I bear in mind that the overriding concern must be that the total global sentence must be appropriate and that separate punishment for your offences must be by the imposition of concurrent sentences of sufficient length as to ensure that you do not escape punishment entirely by subsuming the sentence for one offence into the penalty imposed for the other. The total sentence that I will impose on you will be proportionate to the offending behaviour, properly balanced so that it reflects appropriate and just punishment.

[47] On the basis of the feature in paragraph 12 (f) of the Practice Statement I set the starting point at 16 years.

Aggravating and mitigating features

[48] The Practice Statement continues at paragraph 13 to provide that it may be appropriate for the trial judge to vary the starting point upwards or downwards to take account of aggravating or mitigating features which relate to either the offence or the offender in the particular case.

Aggravating features in relation to the offence of murder

[49] You inflicted multiple rib fractures on Cameron.

[50] You were Cameron's father and you were in breach of the trust which is fundamental to that relationship.

[51] You took Cameron into your care knowing that you were emotionally unstable.

[52] You failed to seek medical assistance for Cameron despite knowing that you had inflicted injuries on him and knowing of his very serious condition.

[53] You failed to assist the medical investigation by giving a truthful account to the treating doctors.

Mitigating factors in relation to the offence of murder

[54] I consider, though the prosecution does not concede, that you intended to cause grievous bodily harm rather than to kill.

[55] The offence was not planned but rather it was committed spontaneously in response to the stress of Cameron crying.

[56] You have shown no remorse and accordingly this feature is not present.

Mitigating features in relation to the offender

[57] You had a degree of emotional and mental instability.

[58] I have set out and taken into account your personal circumstances but in doing so I bear in mind that in cases of this gravity your personal circumstances are of limited effect in the choice of sentence, see *Attorney General's Reference (No 7 of 2004) (Gary Edward Holmes)* 2004 NICA 42 and *Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33.

Aggravating features in relation to the offender

[59] You have previous convictions but the prosecution accept, as do I, that your record is relatively clear. I do not consider this to be an aggravating feature.

Balance of aggravating and mitigating features

[60] My overall conclusion is that the aggravating features are greater than the mitigating features.

Predictive risk and a consideration of a life sentence in relation to count two.

[61] As I have indicated you have no insight and no remorse. You have demonstrated that you are a violent individual who has been unable to control his temper. Based on my assessment of you and on the report of the probation officer I consider that there is a significant risk that you will commit further specified offences and that there is a significant risk of serious harm to members of the public.

[62] Applying the test in *R v Wilkinson* I consider that the determinate sentence for count two and the associated offence in count one would be very long, measured in very many years. I also consider that these two offences taken together clearly call for denunciation reflective of public abhorrence of both offences. Accordingly I impose a life sentence on count two.

Conclusion

[63] I have determined in relation to the offence of murder in count one that the appropriate minimum term of imprisonment that you will be required to serve before the release provisions will apply to your case is one of 17 years. This will include the time spent by you on remand. What if any further period you will spend in prison thereafter will be for the Parole Commission to determine. I direct that it is to receive a copy of these sentencing remarks.

[64] I have determined in relation to the offence in count two that the appropriate minimum term of imprisonment that you will be required to serve before the release provisions will apply to your case is one of 4 years. This will include the time spent by you on remand. The minimum term in count two is concurrent to that imposed on count one.

[65] I make a disqualification order under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. The effect of such an order is that it makes it a criminal offence for you to work, offer to work or to apply to work with children. It is not time bound but you can apply to a Social Care Tribunal for a review of the order.