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*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING AT BELFAST

_____

THE QUEEN

-v-

W
X
PATRICK KILMARTIN
THOMAS FITZPATRICK
Y
Z

Defendants.

_____

Publication of any information that would identify the victims is prohibited. For the purposes of these sentencing remarks I have referred to the first named defendant, the mother of the victims, as "W"; the second named defendant, the father of the victims, as "X"; the fifth named defendant, an uncle of the victims, as "Y"; and the sixth named defendant, another uncle, as "Z". The defendants Patrick Kilmartin and Thomas Fitzpatrick are not related to the victims and can therefore be identified provided nothing is published which could lead to the victims being identified.

HORNER J
Introduction

[1] W, the first named defendant, is aged 58 years. She was married to X the second named defendant in 1971 when they eloped to Gretna Green. The second named defendant is aged 60 years. They had six children together, almost one after the other when they were very young, four of whom were the victims of their criminal behaviour. They are A, a male, aged 39, B, a female, aged 35, C, a female, who is aged 36 and D, a female, who is aged 38.

[2] The first and second named defendants lived with their six children at various addresses in and around South Down until they divorced in the 1990's. All six

children were taken into care in 1986. The children, during and after the marriage, all spent time in children's homes, training schools and under the care of foster parents. The family was dysfunctional and hopelessly chaotic.

[3] What these four children had to endure is almost unimaginable. They were neither properly clothed nor fed. They were often hungry. Their diet was poor. They were allowed to run wild. What discipline was administered by their parents was often physically abusive. The first defendant was often drunk or under the influence of drugs. She often brought men back to the family home for drinking sessions during the day and to enjoy sexual relations with them. Some of the children were sexually abused by these visitors, one of these was their uncle, the fifth named defendant. Another uncle, the sixth named defendant watched as the first named defendant abused her own child. The children were unwashed. They wore the same clothes for days. No attempt was made to see whether they attended school, never mind do the homework which they had been set. Some of them suffered arrested physical and mental development because of a lack of stimulation. For example, B was confined to her cot for the convenience of the first named defendant. The social worker recalls:

> "B was almost 2 years and should have been walking and talking with an extensive vocabulary when, in reality, she couldn't speak or stand alone. This is quite shocking. She should have a considerable range of motor skills."

The home was filthy. C describes one of the houses as being "a dirty hole". There were mice droppings in the Cornflakes box in one of the homes, hardened dog excrement on the floor of another house and one witness describes seeing urine and faeces lying in a wardrobe at one of their residences. There were holes in the walls and broken windows at another of the houses where they lived during this period in the 1980's. There were no sheets or pillows on the beds. Mattresses were ripped and full of holes. D, who suffered from bedwetting, was often left lying in her own urine. The children were the subject of ridicule by their parents. D was referred to as being a penny short of a shilling by her father. The second named defendant was away working long hours, but he did nothing to intervene. He preferred to turn a blind eye to what was happening when he was away working. Indeed, the first named defendant's callous disregard for the welfare of her offspring was almost matched by the second named defendant who was fully aware of their living conditions and did little, if anything, to improve them.

[4] The social worker for the family at the time, says that she had no doubt that the children were physically neglected, emotionally neglected and psychologically damaged. However, she never saw any signs of physical abuse. It is only fair to record that she described the children's mother in one report as being "a warm and affectionate mother, generally concerned for her children's wellbeing although unable to appreciate or adopt suggestions or advice from either her health visitor or social worker". That description owes more to the first-named defendant's ability to

hoodwink the social worker as to her behaviour and her lack of any real maternal instinct.

[5] The first and second named defendants were inconsistent in their treatment of the four children, content most of the time to let them run wild. When they did administer chastisement, this often involved physical beatings of the most brutal kind. For example, the first defendant used a poker to administer a beating on A. The second defendant was guilty of physically assaulting, D, C, and B. Indeed, on occasions he beat B so severely she wet herself.

[6] But it was not enough to neglect and physically ill-treat these defenceless young children. The first named defendant brought back some of her drinking companions and sexual partners to the family home. These included Patrick Kilmartin, the third named defendant, born on 23 May 1954, a baker from Newcastle. Thomas Fitzpatrick, the fourth named defendant, born on 11 May 1960, a policeman from Dundrum and two of the children's uncles and the first named defendant's brothers, Y who is aged 64 and Z who is aged 70. These men were involved and/or connived in the sexual abuse of some of these children. Their behaviour was criminal, shameful and despicable.

[7] Carson McCullers in the Ballad of the Sad Café and Other Stories said:

> "But the hearts of small children are delicate organs. A cruel beginning in this world can twist them into curious shapes. The heart of a hurt child can shrink so that forever afterwards it is hard and pitted as the seed of a peach. Or again, the heart of such a child may fester and swell until it is a misery to carry within the body, easily chafed and hurt by the most ordinary things."

It is impossible now to say what the effect of the actions of the defendants have had on each of the children. Some of those who were guilty of abuse are not before the court because they have died or are unfit to plead. Dr Patterson, Consultant Clinical Psychologist, in his reports on these four victims described the effects as being like soup. Once soup is made it is impossible to isolate the individual constituents. However, there can be no doubt that each of these four children has suffered psychological damage. A is described in his Victim Impact Report by Dr Patterson as having a long history of involvement with mental health services and that he has attempted suicide on multiple occasions. He has been diagnosed as having a trauma related disorder due to an adjustment-like disorder. C, B and D all suffer from post-traumatic stress disorder, a debilitating condition which has a marked effect on the sufferer's psychological and social functioning.

Sentencing Principles

[8] There can be no doubt that dealing with historical offences presents the courts with all sorts of difficulties. This is especially true of offences of cruelty to children which 30 years ago attracted a maximum sentence of 2 years. Now such behaviour merits a maximum of 10 years reflecting society's view of this type of offending. Gross indecency with a child now carries a maximum sentence of 10 years and indecent assault is the same. At the time of the offending the maximum prison terms available to a judge when sentencing was 2 years.

Historic cases

[9] In R v H and others [2012] 1 WLR 1416 the Court of Appeal in England and Wales offered guidance as to what approach should be taken in such cases. It reviewed the various authorities and summarised the principles at paragraph 48:

> "(a) Sentence will be imposed at the date of the sentencing hearing, on the basis of the legislative provisions then current, and by measured reference to any definitive sentencing guidelines relevant to the situation revealed by the established facts.
>
> (b) Although sentence must be limited to the maximum sentence at the date when the offences were committed, it is wholly unrealistic to attempt an assessment of sentence by seeking to identify in 2011 what the sentence for the individual offence was likely to have been if the offence had come to light at or shortly after the date when it was committed. Similarly, if maximum sentence had been reduced, as in some instances, for example theft, they have, the more severe attitude to the offence in the earlier years, even if it could be established, should not apply.
>
> (c) As always, the particular circumstances in which the offence was committed and its seriousness must be the main focus. Due allowance for the passage of time may be appropriate. The date may have a considerable bearing on the offender's culpability. If, for example, the offender was very young and immature at the time when the offence was committed, that remains a continuing feature of the sentencing decision. Similarly, if the allegations had come to light many years earlier,

and when confronted with them, the defendant had admitted them, but for whatever reason, the complaint had not been drawn to the attention of, or investigated by, the police, or had been investigated and not then pursued to trial, these too would be relevant features.

(d) In some cases it may be safe to assume the fact that, notwithstanding the passage of years, the victim has chosen spontaneously to report what happened to him or her in his or her childhood or younger years would be an indication of continuing inner turmoil. However, the circumstances in which the facts come to light varies, and careful judgment of the harm done to the victim is always a critical feature of the sentencing decision. Simultaneously, equal care needs to be taken to assess the true extent of the defendant's criminality by reference to what he actually did. And the circumstances in which he did it.

(e) The passing of the years may demonstrate aggravating features if, for example, the defendant has continued to commit sexual crime or he represents a continuing risk to the public. On the other hand, mitigation may be found in a non-blemished life over the years since the offences were committed, particularly if accompanied by evidence of positive good character.

(g)(sic) Early admissions and a guilty plea are of particular importance in historic cases. Just because they relate to facts which are long past, the defendant will inevitably be tempted to lie his way out of the allegations. It is greatly to his credit if he makes early admissions. Even more powerful mitigation is available to the offender who out of a sense of guilt and remorse reports himself to the authorities. Considerations like these provide the victim with vindication, often a feature of great importance to them."

[10] Further, it is clear from that decision that in considering the seriousness of the offence the court was directed to look at the defendant's culpability in committing the offence and any harm which the offence caused, or was intended to cause or

might foreseeably have caused. The harm caused might be very longstanding harm and in historic cases the evidence might show that the impact of the crime years after it was committed was still disturbing and painful to the individual who is now an adult. There is no doubt that if these crimes were committed today the sentencing judge would be able to impose much heavier sentences. There is even a new offence under Article 21 of the Sexual Offences (NI) Order 2008 of causing a child under 16 years to watch sexual activity that carries a maximum period of 14 years.

Concurrent or consecutive sentences

[11] Whether sentences should be made consecutive or concurrent is a matter of discretion for the trial judge: see 6.240 of Sentencing Law and Practice in Northern Ireland (3rd Edition). In Attorney General for Northern Ireland's Reference (No.1/1991) [1991] NI 218 at 224 Hutton LJ said that in Northern Ireland:

> "Concurrent sentences are imposed more frequently than in England."

It follows therefore that caution must be exercised in looking at the English authorities where a much more "prescriptive approach" is adopted to the situations in which consecutive sentences should be imposed.

[12] However, in deciding whether to make sentences consecutive or concurrent it is necessary to consider two central principles which are discussed at 6.241-6.249 of Sentencing Law and Practice in Northern Ireland (3rd Edition). The first principle is that where offences arise out of the same transaction the sentences should normally be concurrent. The offence of cruelty by neglect can be a continuing offence that might go on for a long period even at different addresses. It is however not open to a judge to use consecutive sentences merely because he regards the maximum sentence to be inadequate: see R v Magill [1989] NI 51. In this particular case, the maximum sentence of 2 years for cruelty, for example, available at the time of commission of these offences, can now be seen to be grossly inadequate. The present maximum sentence is now 10 years, five times as long.

[13] The second principle is where offences do not arise out of the same transaction, then the court has to decide whether to impose consecutive or concurrent sentences. In deciding whether to make a sentence consecutive or concurrent the trial judge has to have regard to the principle of totality. Banks on Sentencing states at 245.56 that this principle comprises two elements:

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

> concurrent sentences will ordinarily be longer than a single sentence for a single offence.
>
> 2. It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole."

Basis of the Plea

[14] The court having accepted the basis of the plea, put forward by all the offenders as fair and in the interests of justice, must pass sentence in accordance with the agreed facts. Where an offender has pleaded guilty to what is clearly a specimen count, the court can take that into account: see Criminal Procedure in Northern Ireland (2nd Edition) at 18.12.

Discount for a plea

[15] It has been made clear many times by different courts that to obtain the greatest discount available for pleading guilty, it is necessary that the plea should be entered to the charge at the earliest opportunity. In Attorney General's Reference (No.1/2006) [2006] NICA 4 Kerr LJ said at paragraph 19:

> "To benefit from the maximum discount on the penalty appropriate to any specific charge a defendant must have admitted his guilt of that charge at the earliest opportunity. In this regard the attitude of the offender during interview is relevant. The greatest discount is reserved for those cases where a defendant admits his guilt at the outset."

[16] The maximum discount for a plea should normally not exceed one third. The later the decision to plead, the more modest the discount eg see AG's Reference (No.1/1997) (F) [1997] NIJB 105.

[17] It is important to note that the admission of guilt and remorse are not synonymous but credit can be given where:

(a) the plea spares the injured party or parties the trauma of having to give evidence; and

(b) the case against the accused is by no means watertight and could be the subject of vigorous challenge in court.

[18] In this case the following considerations have been taken into account in deciding the appropriate discounts for each of the defendants:

(a) The cases against the defendants, and especially the first and second named defendants, were complex.

(b) Additional evidence of importance was served late on the defendants.

(c) Convictions were by no means certain in respect of the crimes involving sexual abuse at the very least.

(d) There is a lack of remorse evidenced by the comments of the majority of the defendants in almost all cases to the probation officers who prepared the pre-sentence reports and an unwillingness to accept full responsibility for what they had done.

[19] I have concluded that a discount of 20 per cent is appropriate in all the cases save that of Patrick Kilmartin and Z. In the case of Z the prosecutor accepts that there is a real change in the nature of the case that he ought to meet and he did display empathy with the victim evidencing at least some remorse. There is no doubt that Kilmartin has admitted his wrongdoing but most importantly has displayed some remorse for his totally unacceptable action. I consider the appropriate discount in their cases to be 25 per cent.

[20] Before I deal with each of the defendants I should record that I have read the documents provided to the court including the skeleton arguments and submissions by both the prosecution and the defence, the relevant authorities, the relevant extracts from the Sentencing Guidelines Council in England and Wales, the pre-sentence reports, the medical evidence and the transcripts of the two days of submissions. I have also read the Victim Impact Statements prepared by Dr Patterson, Consultant Clinical Psychologist. I have taken everything into account when determining the sentences which I will now pass and will only refer to those matters which are of particular significance. I want to express my gratitude and admiration for the way in which the case has been conducted by counsel for both the prosecution and the defence. I am indebted to them and their instructing solicitors for their contributions in what has been a difficult case.

W

[21] You have pleaded guilty to 12 counts of cruelty to a child by wilful neglect involving A, D, C and B, 5 counts of cruelty by wilful assault involving A and B and 6 counts of gross indecency involving A, C and B.

[22] The case against you and the counts of wilful neglect are entered upon the basis that you at an extreme level failed to look after your children. You failed to provide basic standards of care and nutrition as I have outlined above. The counts

reflect the different locations where you have lived over the dates as charged. You also physically abused A and B while they were in your care. During this period the children were neglected, they were also subject to sexual abuse by you and other persons and suffered trauma. Your sexual offending is conceded as separate acts from the conceded neglect. The acts of gross indecency are accepted upon the basis of the complainants being forced to touch your breasts and further the defendant engaging in sexual acts with adult males in the presence of the complainants which they had to watch. I am still uncertain whether your motivation was sexual gratification or sexual arousal from the children's humiliation or whether it was simply because of the need to control or, perhaps, you did what you did just because you could.

[23] The prosecution acknowledge the following features of your offending:

(a) At the time of the offending you were aged between 19 and 28 years.

(b) You were married at a very young age and had six children born between 1973 and 1978.

(c) Your close family were renowned alcoholics and it was during this period that you too became an alcoholic.

(d) You were also a victim of regular domestic violence.

[24] It is accepted by the prosecution that the presentation of the case against you was, at best, rushed. Volumes of unused material were received at the eleventh hour. The original case made against you was far more grave as compared to that to which you have pleaded. You have spared the vulnerable witnesses the trauma of having to give evidence. While the abuse was persistent and serious in the light of the child neglect or the wilful assaults, it falls short of extreme. It is of course aggravated by the length of time over which it took place. You have pleaded guilty to specific counts and not to specimen counts. You do not accept that it is an aggravating feature of specific neglect that the children fell to be abused, by others, during this period. Attention is drawn in many contemporaneous documents which highlight your low intelligence and the fact that you appeared to be oblivious to the more important aspects of childcare. It is also clear that during this period when you were looking after six children, you received minimal assistance from your husband and you were also the victim of regular domestic violence.

[25] It is true that your social worker described you at the time as:

> "A warm and affectionate mother genuinely concerned for her children's wellbeing although unable to appreciate or adopt suggestions for advice from either the health visitor or social worker."

[26] The social worker did not know of your sexual delinquency and the pain and hurt that you must have inflicted on your young children. This was not the behaviour of a loving and caring parent. Your denials when you were interviewed by the police and your assertions that you were a mother who cared for her children are compounded by your refusal to countenance any responsibility when you were interviewed by the probation officer for the preparation of the pre-sentence report. The probation officer assessed you as "cold and callous". You have sought to blame your husband, the second named defendant, for what has happened and he has reciprocated. Neither of you have been prepared to take any responsibility. Your chilly indifference to your children's welfare generally and your complicity in the sexually deviant behaviour you inflicted on A, C and D speaks of a heartless tormentor interested primarily in her own pleasures and enjoyment. However, I do accept that you are not a predatory paedophile. Not only are you pathetic, weak willed and inept but you are also selfish and uncaring. Seneca, the Roman stoic philosopher, spoke the truth when he said:

> "All cruelty springs from weakness."

[27] I consider that the aggravating factors in respect of your offending behaviour are:

(i) Your position of trust.

(ii) As one of the two primary carers you were looking after young and vulnerable children. Your offending was in the presence of other children.

(iii) Your coercion of A, C and D in respect of the gross indecencies.

(iv) The fact that this offending took place over a prolonged period of time.

(v) The absence of genuine remorse.

(vi) The serious adverse psychological effects on all four victims.

[28] I consider that the mitigating factors are:

(i) Your clear record in respect of these types of offences.

(ii) Your indifference and apathy towards your children resulted from a culmination of low intelligence and was induced by your alcohol and drug ingestion.

(iii) Your immaturity and inability to cope, your physical and mental problems including depression.

[29] I am of the view that the appropriate starting point in respect of each of the counts of cruelty by wilful neglect is 18 months. I consider that the appropriate term taking into account the mitigating and aggravating factors is 20 months. I then discount this by 20 per cent for your plea to 16 months. I give terms of custody in respect of each of the counts of wilful neglect of 16 months, all of them to run concurrently. In respect of the cruelty by wilful assaults, I also give a sentence of 16 months imprisonment in respect of each of them, to run concurrently but consecutively with the periods of imprisonment for wilful neglect. In respect of counts 11 and 12 of gross indecency I consider that the starting point is 1 year. Taking into account the mitigating and aggravating factors I consider that the appropriate term of imprisonment is 15 months. Taking into account the discount for a plea, this produces a period of imprisonment of 1 year. These are to run concurrently but consecutively with the wilful neglect counts and the wilful assaults counts. I consider that for count 97 which involved Z performing sexual acts not involving intercourse on you the proper term of imprisonment is 1 year after carrying out the same exercise as in counts 11 and 12. In respect of count 96 whereby you made A watch your brother, his uncle, perform sexual acts upon you not involving sexual intercourse, I consider the proper term of imprisonment is the same as count 97 namely 1 year. This to run concurrently with 97 but consecutively with the cruelty by wilful neglect and wilful assault and counts 11 and 12. In respect of counts 43 and 48 which involved you making A and B watch you having sexual intercourse with other men I conclude that the starting point is 18 months. When the mitigating and aggravating factors are taken into account together with the discount for a plea, the proper period is 12 months. Counts 43 and 48 are to run concurrently with each other and consecutively with the other counts of gross indecency and the counts of wilful neglect and assault.

[30] The consequence should be a total sentence of 5 years and 8 months. I stand back to consider whether or not this satisfies the principle of totality. In the light of your culpability and what has happened to these vulnerable children over a long period of time for events that occurred 30 years ago, I consider that it is an entirely appropriate term of imprisonment.

X

[31] You have pleaded guilty to counts 3, 4, 5, 6, 7 and 9 being counts of neglect and in so doing you have accepted the children's general living conditions during the relevant years were substandard. You accepted the children's educational, hygiene, emotional and medical needs were not properly met by you and your wife. This is demonstrated by the conditions of squalor in which you all had to live and which are outlined earlier in this judgment. As asserted by all of the complainants, the first named defendant, W, their mother, had primary responsibility for their day to day care. You were seldom in the house during the day. You were guilty of neglect by virtue of the fact that you left the primary care of the children to the first named defendant whom you knew was incapable of properly caring for the needs of her children because of her chronic alcoholism and general ineptitude. You accept

that as their father you recognised the deficiencies in the level of care they were receiving from their mother and failed to take sufficient steps to address these matters. You have also pleaded guilty to various counts of cruelty by wilful assault. For example you have pleaded guilty to assaulting D, your daughter, when you gave her a beating because she stroked one of the pups of your Springer Spaniel dog. You also pleaded guilty to a specimen account in respect of other beatings you gave to D. Furthermore, after D was put into care and she returned to you for a weekend to visit you with your new partner, you gave her another savage beating in which in her words:

> "He beat the crap out of me with his hands, he did not care, he just hit me on the back, head, arms, legs wherever."

You also administered a number of beatings to C and to B. These were often savage beatings provoked by such trivialities as C getting sauce on her communion dress and B refusing to eat something she did not like. On occasions you beat B so hard that she wet herself. It is accepted there was no evidence of injury to any of the children from the admitted assaults and that the social worker did not see any signs of the children being physically abused. I have no doubt that you feel that the first defendant is primarily responsible for what happened. By the same token she blames you and complains of your domestic violence. It is true that you can be distinguished from the first named defendant in that:

(a) You were away working for most of the day and returned at night.

(b) You had no idea that the children were being exposed to sexual acts by their mother and others.

(c) From in or about 1985 you had left and were living elsewhere.

(d) You could be capable of acts of kindness as recorded by A and C.

[32] However, I consider the starting point for the counts of wilful neglect is 16 months. The starting point for the wilful assaults is 18 months. The aggravating factors are:

(a) You were in a position of trust and one of the two primary carers, although you held a job that was very demanding in terms of time.

(b) These were young and vulnerable children.

(c) There were other children present.

(d) There were a number of children who were neglected.

(e) You have shown no genuine remorse.

(f) You have caused your children to suffer adverse psychological effects.

[33] The mitigating factors can be summarised as follows:

(a) Your clear record and your positive good character given your employment record.

(b) Your indifference and apathy resulting from your limited intelligence.

(c) Your immaturity and inability to cope.

[34] In respect of the counts of wilful neglect, when I have taken into account the aggravating and mitigating factors listed above, I consider that the term of imprisonment together with a discount of 20 per cent for the plea of guilty is 12 months.

[35] In respect of all of the counts of assault which were against your daughters, D, C and B, I consider the starting point to be 18 months. When the mitigating and aggravating factors are taken into account, together with a discount of 20 per cent on account of your plea, the appropriate term is 16 months. All of the counts of neglect will run concurrently. In respect of counts 50, 51 and 52 against D these will run concurrently but consecutively with counts 53, 54, 55 and 59 against C which will also run consecutively with counts 60, 61, 64 and 65 against B. This produces a total period of imprisonment 4 years. I am satisfied that this accords with the principle of totality in respect of your criminal wrongdoing and the effect it has had on 4 of your offspring.

Patrick Kilmartin

[36] You have pleaded guilty to count 66, namely that you touched the vagina of B, the daughter of the first and second named defendant. You touched her below her pants. This did not involve penetration of the vagina by you. You were going through a difficult time following your divorce from your wife. You formed a relationship with W. You became her drinking companion and one of her sexual partners. On this occasion when you committed the indecent assault on B you had gone back to the first named defendant's house having drunk a lot of alcohol. I consider that the starting point for this offence is 15 months. I consider that the aggravating factors are:

(a) This was a young and vulnerable child.

(b) You assaulted this child in her own home.

(c) You touched the child's vagina.

(d) The child suffered serious adverse psychological effects as a consequence.

[37] I consider the mitigating factors to be:

(a) Your clear record and your good character. You have no convictions and you have been in employment.

(b) The updated pre-sentence report strongly suggests that you do seem to be genuinely remorseful.

(c) At the time you were going through significant matrimonial disharmony having divorced and were drinking to excess. You have now foresworn alcohol as a consequence of your behaviour on this occasion.

(d) There is a significant level of victim empathy.

(e) You are of low intelligence.

(f) You have also suffered a personal tragedy in that your son was badly beaten up, is significantly disabled and is in long-term care. Your brother is suffering from cancer and you are the main carer.

[38] When all these factors are taken into account I consider the appropriate term is 16 months. I discount this because of your plea of guilty to 1 year. I do not consider that I should suspend the sentence given what has happened. I do not consider that there are such exceptional circumstances present as requires me to suspend this sentence.

Thomas Fitzpatrick

[39] You have pleaded guilty to indecent assault on the basis that you touched D on her vagina over her clothes. You also were involved in an act of sexual intercourse with W when she required A to be present to watch. You also assaulted C by punching her on a single occasion.

[40] I consider that the starting point for indecent assault against D to be 1 year; I consider the starting point for the gross indecency which involved A to be 14 months; and for the common assault the starting point is 3 months.

[41] The aggravating factors are:

(a) These were young and vulnerable children.

(b) There were other children present.

(c) The offences committed at the children's home.

(d) There is no evidence of any genuine remorse.

(e) The offences occurred on three separate dates.

(f) The children who were victims suffered real harm and suffering.

[42] The mitigating factors are:

(a) Your clear record and your good character.

(b) You were intoxicated at the time you committed these offences. You claim your heavy drinking was in part due to your role as a policeman and the stress you were under in carrying out your duties at a difficult time because of terrorist activity in the area. There may be some force in this.

(c) You have suffered significant upset yourself in that one of your children died in a road traffic accident and you have been separated from your wife, living in rented accommodation while these charges are pending.

[43] I have taken all these factors into account and I consider that the appropriate period of imprisonment for count 80 on indecent assault is 10 months which has to be discounted to 8 months for the plea of guilty. I consider that the appropriate period of imprisonment in respect of the gross indecency taking into account the factors listed above and when discounted for the plea is 10 months. In respect of the common assault I consider that the appropriate period taking into account the various factors and the plea is 2½ months. I consider that the periods of imprisonment for indecent assault and gross indecency should run consecutively giving a total period of 18 months. The term of imprisonment for the assault should run concurrently. Standing back this period seems to accord with the totality principle. There are no exceptional circumstances requiring it to be suspended.

Y

[44] You are charged with count 86 of indecent assault by touching with your hand the penis of A while you were drunk. You are charged under count 87 of playing with your penis while the first named defendant forced A to kiss her breasts. Under count 88 you touched the exposed breasts of the first defendant while A was forced to be present by his mother. Lastly, under count 89 you had oral sex with W, your sister, in front of A who was made to be present by his mother.

[45] The aggravating factors are:

(a) A was a young and vulnerable child.

(b) You were the uncle of the child and it was committed in the child's home.

(c) There was repeated offending

(e) Significant psychological damage had been suffered by A.

(f) You display no remorse.

(g) Your attitude to these proceedings has been disappointing. You have been unco-operative and I have had to issue a bench warrant to ensure your attendance at court and I have also had to keep you in custody for the duration of the trial

[46] The mitigating factors are:

(a) You were an alcoholic and abused alcohol.

(b) You have a difficult family background and are of low intelligence.

(c) The first named defendant instigated the wrongdoing.

[47] I consider that the starting point in respect of counts 86 and 89 is 15 months. Taking into account the various aggravating and mitigating factors the appropriate period is 15 months. This has to be discounted for the plea of guilty to 1 year. Counts 87 and 88, taking into account all the various factors including the discount for a plea, merit 9 months imprisonment. Counts 86 and 89 will run consecutively. Counts 87 and 88 will run concurrently but consecutively with the 2 other counts. This produces a total period of imprisonment of 2 years and 9 months which I consider satisfies the principle of totality.

Z

[48] You have pleaded guilty to the offence of gross indecency. The facts which you have admitted are that you were involved in a sexual act with W that did not involve intercourse when A, her young child, was required to be present. I note that the prosecution accept there was a real change in the case you had to meet and this can be a feature which I can take into account on the issue of credit. I also note that the prosecution accept you are at the bottom of the ladder on culpability as compared with the other defendants. I accept that you are now a solitary and isolated figure.

[49] I consider the aggravating factors are:

(a) You were A's uncle.

(b) This was a young and vulnerable child.

(d) It happened at A's home.

(e) There had been serious adverse psychological consequences.

[50] The mitigating factors are:

(a) Your clear record and positive good character.

(b) Your addiction to alcohol.

(c) Your low intelligence and your learning disability. You were easily led and were not the instigating party.

(d) Your admission of guilt and your victim empathy.

[51] I note that you are presently in residence at a Residential Home and that you are considered to present a low likelihood of re-offending and do not present a significant risk of serious harm. Significantly, you are not now consuming alcohol. The starting point in respect of this offence is 1 year. Taking into account the mitigating and aggravating factors, I consider the appropriate period is 8 months. In the circumstances and given the further discount for your plea, I consider the appropriate period of imprisonment is 6 months. However, given your compelling personal circumstances which I consider to be exceptional, I suspend it for a period of 2 years. This means that if you commit a further imprisonable offence within the period of 2 years it is liable that a court will give effect to this sentence.

[52] I confirm that the periods any of the Defendants have already served in custody should be set off against the terms of imprisonment I have imposed.