

<b>Neutral Citation No: [2023] NICC 36</b>	<b>Ref: MIL12376</b>
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No: 23/049402</b>
	<b>Delivered: 27/11/2023</b>

**IN THE CROWN COURT IN NORTHERN IRELAND  
SITTING AT DOWNPATRICK COURTHOUSE**

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**THE KING**

**v**

**DAMIEN CRAIG**

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**Ms Ievers BL (instructed by the PPS) for the Crown  
Mr Boyd BL (instructed by J Mulholland & Co Solicitors) for the defendant**

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**SENTENCING REMARKS**

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**HIS HONOUR JUDGE MILLER KC**

**The complainants are entitled to automatic lifetime anonymity in respect of these matters by virtue of section 1 of the Sexual Offences (Amendment) Act 1992.**

***Introduction***

[1] On 19 September 2023 the defendant was arraigned and pleaded guilty to counts 1 to 5. He pleaded not guilty to count 6. A trial date was not set at that time.

[2] At a review on 3 October, he applied to be re-arraigned in respect of count 6.

[3] The defendant therefore falls to be sentenced for the following:

- Count 1 Sexual assault – child under 13.
- Count 2 Sexual assault by penetration – child under 13.
- Count 3 Sexual assault – child under 13.
- Count 4 Sexual assault – child under 13.
- Count 5 Sexual assault – child under 13.
- Count 6 Sexual assault – child under 13.

[4] The defendant's wife was a registered childminder in Downpatrick. It appears that she had been child-minding for over 20 years. The injured parties had been entrusted into her care.

[5] The defendant was born on 16 October 1959 and is now 64 years of age.

***Counts 1 and 2 relate to LK (DOB 6.10.18)***

[6] On 2 September 2022 LK was left with the defendant while Mrs Craig went to the shops. At that time LK was aged nearly 3 years and 11 months. LK would have referred to the defendant as "Granda."

[7] There is a statement from LK's mother at p1. She sets out the history of her close relationship with the Craigs.

[8] Over the period of lock-down the defendant started working from home and therefore would have been more often in LK's company.

[9] When LK's mother collected her on this particular Friday afternoon, unusually the defendant was not at home.

[10] After dinner LK's mother was helping her shower when she spontaneously made the disclosure that "Granda" had "tickled" her "Minnie" that day. LK used the word Minnie when referring to the vagina. She demonstrated his actions by placing her fingers between her legs. She said that it had happened in the living room and in the bedroom and that she had been given skittles sweets.

[11] Over the weekend LK's parents debated about their next course of action (and this is set out in her mother's statement). On Monday 5 September LK's mother contacted Mrs Craig and arranged to meet with her. During this conversation Mrs Craig said that she had left LK alone with the defendant on the date in question. She refused to believe that the defendant had offended against the child.

[12] LK engaged in an ABE interview on 7 September 2022 (pp4 to 33 documentary exhibits refer). She repeated her allegations and said that she had been touched in the living room as she sat on the sofa watching television. She said that he touched her under clothing. She then said he had asked her to go upstairs to the bedroom and that it happened again there. She said that they were on the bed and that he put his hand inside her pants. She used a chart to point out body parts. She said that the defendant's conduct had made her sad "because he tickled me too hard."

[13] On 6 September the defendant was arrested and interviewed. He declined a solicitor.

[14] When asked if he wished to say anything he replied, "I just want to say I did do those things."

[15] He said that while his wife was at the shops LK had been watching TV. She then sat on his knee "like a horse." He reached over and put his hand down her pants, making skin on skin contact. He rubbed her vagina for about 10 seconds.

[16] On the second occasion he went to the computer room upstairs and called LK to him. On this occasion he touched her for about 20 seconds during which he digitally penetrated her vagina. He said that he called her up as he "wanted to do what he had done before."

[17] He claimed there was no sexual gratification, that he was not attracted to young girls and that he had not done such a thing before.

[18] He said that he loved children and that he loved LK.

[19] He said that he felt guilty after the first time and could not explain why he did it again.

[20] He did not say anything to LK about matters and she simply continued as normal by playing and watching TV.

[21] He said that when his wife had confronted him about the allegations, he denied wrongdoing as he was ashamed and did not want to put her through it.

***Counts 3 to 6 relate to RT (DOB 11.11.06)***

[22] The relevant offending was during the period 11 November 2013 to 11 November 2017 from RT's 7<sup>th</sup> birthday to her 11<sup>th</sup>.

[23] RT's complaint was made on 8 September 2022 following a news report on sexual allegations against the defendant.

[24] The defendant's wife looked after RT from the age of nine months to 11 years. The relationship between the families was close. The defendant and his wife took RT to Bulgaria for a week when she was in Primary 7, and she would have had sleepovers at their house. Her mother describes the Craigs as "like extended family." (Mother's statement at p5 refers.)

[25] When RT was told by her parents of the news report she was visibly impacted and eventually said to her mother, "I could have stopped it." She started to cry and disclosed that he had touched her too. Police were contacted.

[26] RT engaged in an ABE interview on 13 September 2022.

[27] She told police of a number of incidents. She could not remember her precise age but believed she was about eight or nine.

[28] On one occasion she arrived at the Craigs' house from school. RT's mother had rung her while she was on the bus to say that Mrs Craig had popped out to the shop but that the defendant was there. She said hello to him. He sat down beside her on the sofa as they watched TV and put his hand down her pants and touched her vagina. This came to an end when Mrs Craig returned (count 3).

[29] On another occasion she was sitting in the front seat of his car. They had returned home after leaving others to the cinema. They were parked in the driveway. When she went to get out, he said "Wait" and proceeded to touch her vagina again, making skin to skin contact. She eventually got out of the car and went into the house where Mrs Craig was present (count 4).

[30] On a third occasion she was staying overnight with her friend (Mrs Craig's granddaughter) who lived across the road from the defendant. He exploited another opportunity when alone with RT to touch her vagina as she sat in the living room. She had been under a blanket, and he put his hand under it. She had been wearing pants and leggings. There was skin to skin contact. He again moved his fingers in a circular motion; there was no penetration. This offending came to an end when RT's friend came into the room and invited her out to play (count 5).

[31] On another occasion the defendant called RT up to the bedroom while his wife was outside looking after the other children. He told her to take down her lower clothing and again he touched her exposed vaginal area. She believes this incident came to an end when he was disturbed by his wife calling out (count 6).

[32] The defendant was arrested and interviewed on 25 October 2022. He agreed that he would have treated RT as family. He admitted touching her privates on a few occasions. He said that it started when she had asked him to tickle her. He said he could not recall her age nor the precise details of the abuse. Over the course of the interview, he told police that he would have touched her over and under her clothing and that she may at times have been in her school uniform. He said that he would have been messing about and that he would have tickled her "there." He did not think that he was causing any harm. He said he did not do it for sexual gratification.

[33] The defendant is now a 64-year-old man born and raised just outside Downpatrick. He is married with two grown up children and three grandchildren.

[34] The defendant's background is set out in some detail in the helpful pre-sentence report but suffice to say that he had a largely settled childhood, raised by his parents along with his eight siblings. The defendant has a long history of stable employment and was a well-respected civil servant until his dismissal on foot of his arrest.

### *Victim Impact Statements & Reports*

[35] The court is in receipt of a detailed victim impact report on LK prepared by Dr Edel Fitzpatrick (Clinical Psychologist), dated 20.11.23 together with statements filed by LK's parents setting out how they have been impacted by their daughter's disclosure of the abuse. These are raw and visceral in content and tone. They each speak of the utter betrayal they rightly feel as the defendant was someone in whom they placed their complete trust by leaving their daughter in his care. He was someone regarded as family, someone in whose care their daughter could be safe. Not for one minute did they ever imagine that trust would be broken let alone violated in the way the defendant abused their child. LK's parents speak of the devastation they feel and the impact upon all aspects of their lives including moving house so as not to have to encounter the defendant and his family. Both parents speak of their sense of guilt at leaving their child in the defendant's care and that translates into neither having any trust in anyone outside of their own family unit. This in turn has impacted upon the parent's daily lives and ability to maintain their respective careers.

[36] Dr Fitzpatrick observes that LK is a very bright and articulate child. Based on what she was told by the parents she notes that LK has become clingier and requiring greater reassurance. The doctor continues:

"It is highly important to note that from a developmental perspective, [LK] is continuing to develop which means that her thought processes about the trauma are continuing to develop and evolve and may heighten in the future as she reaches certain stages of later childhood and adolescence and develops maturity in cognitive development.

In my clinical opinion, it is evident that [LK] is a child who presents with symptoms consistent with a Post Traumatic Stress response as detailed by reports from her parents and significant people around her in nursery and school. It is hypothesised by the author that as [LK] continues to further develop in relation to cognitive ability throughout her childhood, it is likely that these events will manifest into a post-traumatic stress disorder presentation as defined by the Diagnostic and Statistical Manual - Fifth Edition- Text Revision.

From a psychological perspective trauma occurring in the developmental timeframe of early childhood can lead to an 'assault' on the child's development over time (Van Der Kolk, 2015) The period at which the abuse occurred for [LK] has occurred during a crucial window of her development. In more recent years in particular, the toxicity of trauma on brain development in the first three years of life has been extensively documented and

unfortunately this is the window of time where the abuse occurred for [LK].”

[37] All of the above factors mean that it is difficult to assess what the ongoing and future impact will be for LK. What is clear, however is that the abuse has had a fundamental effect upon her at this stage of her development. This is illustrated, inter alia, by her needing to sleep with her mother and being guarded in how she relates to male supportive figures including her father and both grandfathers. Clearly, the level of harm in such circumstances is very significant.

[38] A statement has also been filed by RT. In this she articulates how she had tried to block out what the defendant did to her, not speaking of what had happened until his arrest in relation to LK’s allegations. Again, there can be little doubt that RT has experienced serious trauma and has a sense of her childhood having been stolen as a result of the abuse she suffered at the hands of the defendant.

[39] A victim impact report prepared by Dr Clodagh O’Connell (Clinical Psychologist) dated 31.10.23 has also been lodged in respect of RT. The doctor records RT’s feelings as follows:

“[RT] reported that she feels intense anger towards the accused, Mr Craig and towards her former childminder. [RT] advised that her mood has been acutely impacted by the memories of the abuse. She described that she now thinks very negatively about herself, feels different from her peers, and reports a persistent fluctuating negative affective state. She described that leaving her family residence is frightening and when she is home alone feels intense anxiety symptoms. [RT] advised that it is hard to experience positive emotions such as joy, excitement, and happiness.”

[40] Nightmares, flashbacks, fear of boys/ men, fear of the dark, anger, an inability to be open with her friends and peers, uncertainty over career path at school and impact on self-esteem are all just some of the ongoing symptoms she continues to experience. Dr O’Connell concludes that RT is clearly suffering from PTSD, and she opines:

“It is my opinion that the childhood sexual abuse that she has been subjected to by the accused, Mr Damien Craig, has ultimately had a significant negative impact on her development and psychological wellbeing. I believe that this trauma could leave a lifelong imprint and will particularly affect [RT] at various points in her life such as during relationships and sexual activities within these, navigating social situations, giving birth, becoming a

parent, and going for medical examinations. Despite this, I believe that [RT] has several protective influences that should serve as a buffer to the long-term impact of the abuse, which includes a highly supportive parent system, a close emotional relationship with (her mother), and her obvious intelligence.”

[41] There can be no doubt that the families of each child and the two victims have been greatly harmed by the defendant’s actions and the hurt he has caused.

### *The defendant in his life setting*

[42] The court is in receipt of a pre-sentence report, dated 17.11.23, prepared by the Probation Board for Northern Ireland (“PBNI”) which, together with Mr Boyd’s written submissions, have been of great assistance in considering the approach to sentence in this sensitive case.

[43] Damien Craig grew up and has lived all his life in the Downpatrick area. He was one of nine children and after leaving school at 17 he joined the Civil Service as an Administrative Assistant. He worked his way up to be a senior administrative officer by the time he semi-retired at the age of 60, reducing his work to three days a week. He was summarily dismissed when charged with the index offences. He comes before the court with no previous convictions.

[44] The defendant is a married man with three adult children and three grandchildren, with whom contact is maintained, notwithstanding the nature of the offending and that he has been remanded in custody since his arrest in September of last year.

[45] The pre-sentence report notes that the defendant was himself abused as a child. It is not clear, however as to how, if at all, this impacted upon his own offending behaviour as there is no suggestion of any deviant sexual activity outside of the index offences.

[46] Although the defendant readily accepts his guilt and indeed, he immediately made admissions when interviewed by police, as Mr Boyd notes, this is unusual in cases of this type where defendants struggle to accept what they have done. Nevertheless, I note that he continues to deny having any sexual interest in children or to have been motivated to commit these crimes by a desire for sexual gratification. PBNI correctly observes that the court would view such an assertion with scepticism, particularly in light of the nature of the touching and that it was repeated on several occasions against two victims of such tender years.

[47] The breach of trust in this case is very high on several levels. First the defendant’s wife was acting as child minder and babysitter. The children were in the home as a place of safety akin to being in their own home. As noted, the parents trusted the defendant’s wife and by extension implicitly him too. He took advantage

of that situation to commit these acts thus betraying the children, their parents and also his own wife.

[48] PBNI assesses the defendant as presenting a medium likelihood of general re-offending over the next two years. This is based primarily on his age, lack of previous convictions and stable family background and ongoing support. These factors are, however, counterbalanced by the impulsive and risk-taking nature of the offending. After application of the STABLE-2007 combined with the Risk Matrix 2000 programmes designed to assess the likelihood of sexual recidivism, the defendant is deemed to fall into the low priority category for supervision and intervention.

[49] Offences of this nature give rise to both a sense of abhorrence but also to a concern that the perpetrator may pose a significant risk of serious harm by the commission of further offences. Mr Craig has expressed remorse and disgust at what he has done but persists in his denial of acting out of a desire for sexual gratification and out of a sexual attraction to young children. Nevertheless, taking account of the absence of an identified pattern of causing significant harm, PBNI concludes that he does not pass the threshold of posing a significant risk of serious harm. Having considered all the reports I agree with this assessment and have therefore concluded that the defendant does not fall to be sentenced as a dangerous offender within the meaning of Article 15 of the Criminal Justice (NI) Order 2008. I shall therefore sentence the defendant to a determinate custodial sentence, pursuant to Article 8 of the Order.

### *Sentencing considerations*

[50] In approaching the delicate sentencing task in cases of sexual abuse the court takes account of the Sentencing Advisory Panel principles, these being:

- \* the level of harm
- \* the level of culpability
- \* the risk of harm to the public at large.

[51] I have already set out the detail of the impact upon the two victims and am satisfied that the level of harm is high in the case of both LK and RT.

[52] Mrs Ievers has identified the following aggravating features, with none of which does Mr Boyd raise an objection and which I find are established:

- Abuse of trust
- Two injured parties
- Penetrative activity
- Skin to skin contact
- Children were particularly vulnerable – aged under 13 at all times (one was pre-school)
- Escalation in the offending – younger child and penetrative activity



- Defendant was significantly older than the injured parties.
- Numerous offences over lengthy period of time

[53] I am satisfied that the defendant's level of culpability is very high in this case.

[54] In terms of mitigation the defendant's clear record is of limited significance but his admissions at interview and pleas to all but one of the six charges at arraignment, with the final plea entered shortly thereafter, are important.

[55] First by his admission of guilt he acknowledges his wrong-doing and thus vindicates LK and RT, without either having to endure the additional trauma of giving evidence and facing the prospect of cross-examination. Second, the pleas are indicative of remorse and regret on the defendant's part, I accept are genuine. Third, I take account of the matters in mitigation, personal to the defendant rather than relevant to the actual offending, for which I find there to be no mitigation. I shall therefore allow the maximum reduction of one third on the sentence that would have applied had he been convicted of these offences after a contested trial.

[56] Finally, I am satisfied that the defendant's acknowledgement of his guilt and the steps that will be taken both during the custodial and licence elements of his sentence lead me to conclude he presents a low risk of harm to the general public.

[57] The court acknowledges the relevance of the guideline cases cited in the Crown submission and in particular that of *R v GM* [2020] NICA 49 in which the court made clear that sexual offences call for a deterrent sentence and the requirement that if the custodial threshold is passed, such sentence should only be suspended in exceptional circumstances (*R v McKeown DPP Ref No 2 of 2013*) [2013] NICA 28). Clearly this does not apply in the current case.

[58] In the recent decision of the Court of Appeal in *R v WY* [2022] NICA 28, which consolidates the position and approach to these type of cases as set out in the earlier guidelines. The Lady Chief Justice reiterated in that judgment the reality facing all sentencing judges that each case must be considered on its own facts and sentences imposed in other cases are of only general assistance rather than imposing specific tramlines.

[59] There are two victims in this case with the charges drawn over two distinct timeframes. Consecutive sentences will therefore apply as between the two sets of charges. The assaults on LK were each committed on the same day with the second involving the digital penetration being the more serious and attracting a higher sentence with that imposed for the first assault running concurrently.

[60] The assaults upon RT were more numerous though these are drawn over a single timeframe. The sentences for these offences will therefore run concurrent to each other but the multiplicity of charges will justify a higher starting point to take account of totality, (see *AG's Reference (No 9 of 2003) (Thompson)* [2004] NICA 111).

[61] I take a starting point including all aggravating and mitigating factors aside from the guilty pleas of 12 years to take account of the totality principle. This is the global sentence I would have imposed had the defendant been convicted of these charges after a contested trial. Applying the aforementioned reduction of one third leaves a sentence of eight years.

### *Sentence*

Count 1	Sexual assault – child under 13 – 3 years (18 months custody followed by 18 months licence)
Count 2	Sexual assault by penetration – child under 13 – 5 years (2 years 6 months custody followed by 2 years 6 months licence)
Count 3	Sexual assault – child under 13 – 3 years (18 months custody followed by 18 months licence)
Count 4	Sexual assault – child under 13 - 3 years (18 months custody followed by 18 months licence)
Count 5	Sexual assault – child under 13 - 3 years (18 months custody followed by 18 months licence)
Count 6	Sexual assault – child under 13 - 3 years (18 months custody followed by 18 months licence)

**Total Sentence = 8 years (4 years custody followed by 4 years licence)**

[62] Counts 1 and 2 are concurrent to each other. Counts 3–6 are also concurrent to each other but consecutive to Counts 1 and 2. The terms of the licence should reflect those advocated by PBNI in the conclusion to the pre-sentence report.

### *Ancillary Orders*

- Sexual Offences Prevention Order – As per the draft terms - 10 years from date of release from custodial element of determinate custodial sentence.
- Sex Offenders Register - Notification period - Indefinite
- Disqualification from working with children – Protection of Children and Vulnerable Adults (NI) Order 2003
- Barred lists – Safeguarding Children and Vulnerable Adults (NI) Order 2007
- Offender Levy - £50.00