Neutral Citation Number: [2017] EWCA Crim 739

Case No: 201605644-45 A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT NOTTINGHAM
MR JUSTICE HADDON-CAVE
T20167538

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/06/2017

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR BRIAN LEVESON)
MR JUSTICE BLAKE
and
MR JUSTICE LEWIS

- -

Between :

STAN LUCAS MARKHAM **KIM ROSE EDWARDS**	**Appellants**
- and -	
THE QUEEN	**Respondent**

- -
- -

Simon Myerson Q.C. for Stan Lucas Markham
Sam Green Q.C. for the Kim Rose Edwards
Peter Joyce Q.C. for the Crown

Hearing date : 4 May 2017

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Approved Judgment

Sir Brian Leveson P :

1. In most cases involving young persons, s. 45 of the Youth and Criminal Justice Act 1999 ("the 1999 Act") which came into force from April 2015, replacing s. 39 of the Children and Young Persons Act 1933 ("the CYPA 1933") protects their identity from publication until they attain the age of 18. The court may, however, dispense with the restriction on publication if it is in the interests of justice to do so (s. 45(4) of the 1999 Act), or if its effect would be to impose a substantial and unreasonable restriction on reporting of the proceedings and it is in the public interest to remove or relax that restriction (s. 45(5) of the 1999 Act). In either case, it must have regard to the welfare of the child or young person: s. 45(6).

2. In this exceptional case, Haddon-Cave J concluded that there was a strong public interest in full and unrestricted reporting, notwithstanding that both defendants (now appellants) were then 15 years of age. Accordingly, he ruled that the protective Order should be lifted, but granted a stay in order to permit an application for judicial review. Thereafter, with the leave of Jay J, permission was granted to apply for judicial review of the decision, but this appeal (which carries with it the need for this court to make its own assessment of the position) has superseded the full hearing with the result that the proceedings in the Administrative Court become academic. In order to reach a conclusion on the matter, we have been provided with the skeleton argument being prepared for those proceedings and, on the basis that the campaign group Just for Kids Law had applied successfully to intervene in the judicial review proceedings, we allowed them time to provide written submissions: this has led to a delay in the promulgation of this judgment.

3. We have carefully considered all the material put before us. Notwithstanding the arguments advanced on behalf of both appellants and Just for Kids Law, for reasons which we explain in detail below, we endorse the approach of the judge and remove the protective Order that we made at the hearing of the appeal, pending the review of his decision. In the circumstances, we set out the facts in full, identifying those involved and the nature of their relationships.

4. On 10 October 2016, in the Crown Court at Nottingham before Haddon-Cave J, Stan Lucas Markham (who was born on 1 August 2001 and was then, and now, 15 years of age) pleaded guilty on re-arraignment to two counts of murder. His co-accused, Kim Rose Edwards (born on 13 June 2001 and now nearly 16 years of age) admitted two counts of manslaughter by reason of diminished responsibility; this plea was not accepted and a trial followed. On 18 October, she was convicted of both charges. On 10 November, Haddon-Cave J sentenced each to be detained at Her Majesty's pleasure and ordered, in both cases, that the minimum term specified under s. 269(2) of the Criminal Justice Act 2003 ("the 2003 Act") should be 20 years less 206 days spent on remand. Both now appeal against sentence by leave of the single judge.

The Facts

5. Lucas Markham and Kim Edwards had been at school together and, in due course, became boyfriend and girlfriend. They clearly became besotted with each other and the relationship became sexual. It was also clear that, together with another girl, they became obsessed with discussing suicide. Despite that, when Kim Edwards attempted suicide, it was Lucas Markham who sought help for her.

6. Both were unhappy in their respective homes. Kim Edwards lived with her mother, Elizabeth, and her younger sister, Katie. She held grudges against them and resented the relationship between the two of them: Kim Edwards believed that her sister was favoured over her. Lucas Markham lived at the opposite end of Kim Edwards' street with his aunt and brothers. He came to share her grudges and hatred towards her mother and sister.

7. Doubtless because of their unhappiness, together, the two had previously run away from home; they were found some miles away and returned to their families. Over the weekend before the killings, they barricaded themselves in Lucas Markham's room before leaving, through a window, returning to Kim Edwards' home in order to collect her contraceptives. When they returned, Lucas Markham was rugby tackled and restrained by his family, and Kim Edwards was returned to her home where she found that her mother had moved her belongings from the room she shared with her younger sister. Lucas Markham's room had also been cleared out by his family.

8. Following these events, they met up again and jointly decided to kill Kim Edwards' mother and younger sister, planning what they intended to do in detail. The agreement was that both would meet at Kim Edwards' home late on Monday night, that is to say, on 11 April. He would tap on the window of the bedroom which Kim Edwards shared with her sister and she would then go to the nearby bathroom, open the window and let him into her home. He would bring a selection of knives and a change of clothing for use after the killings. At that stage, the agreement was for Lucas Markham to kill Elizabeth Edwards (then 49 years of age), and for Kim Edwards to kill her younger, 13 year-old sister.

9. This plan involved Lucas Markham walking for about half an hour in the dark from his home along a track, going up an alley at the back of her home, scaling a fence, and climbing a single storey extension at the back of the house to reach her bedroom window. That Monday night, he went to Kim Edwards' home as planned, but she had fallen asleep and did not hear the knocking and so he went home, returning the knives he had taken to the place from which he had taken them. They met up again on Tuesday after school (Lucas Markham having been excluded from the school that they had both been attending so that they could not meet during the day). Again, they discussed the plans to kill both mother and sister, and agreed to do so that night. Thus, for a second time, Lucas Markham walked to Kim Edwards' house, but events followed exactly the same pattern as had occurred the previous night.

10. The following day, Wednesday 13 April 2016, they met at the end of the school day, discussed the plans again, confirmed that they still wished to go through with the murders and arranged to do so that night. On this, the third occasion, Lucas Markham traversed the same route but, this time, Kim Edwards stayed awake and, as arranged, when she heard the knock, went into the bathroom, opened the window and let him in. She removed items from the sill to allow him easy, silent access.

11. Once inside the house, they unpacked his backpack and took out the four knives that he had selected and brought with him wrapped inside his change of clothing. Kim Edwards handled one of the knives in order to choose the weapon she was to use to kill her younger sister. They had a further conversation, agreeing, yet again, that they wished to go through with their plan to kill mother and sister. In the event, Kim

Edwards decided that she could not kill her younger sister herself, so it was agreed that Lucas Markham would kill both.

12. At this time, the plan had developed to include the decision that both victims would be stabbed in their throats, through their voice boxes, in order to prevent them crying out. Whilst Kim Edwards stayed in the bathroom, Lucas Markham went into the mother's bedroom, and stabbed her in the throat. For part of the time, he pinned the mother down on the bed, kneeling astride her. Kim Edwards was able to hear sounds of her mother struggling and gurgling while the killing took place, so she went into the bedroom and saw Lucas Markham with a pillow over her mother's head. There were blood spatters on the wall, blood on the bed and the floor. Lucas Markham checked for a pulse, and confirmed death.

13. Kim Edwards then went into the bathroom, while Lucas Markham went into her younger sister's room, and killed her as well; from the position of her body, it appeared that Katie might have tried to move away from her killer. Her face was later covered with a sheet as Kim Edwards did not like the smell of blood.

14. In the aftermath of the killings, the two took a bath together and changed into clean clothing. They took the mattress from Kim Edwards' bed, which involved going back into the room where her younger sister's body lay, and took it downstairs into the living room. Over the course of the next 36 hours, they watched Twilight films, had sex, and set out drink from the shed on the kitchen table. They later explained that they had intended to kill themselves with alcohol and pills but did not, in the end, attempt to do so.

15. Lucas Markham was reported missing by his aunt and, on 14 April, they were both reported missing by their schools. Kim Edwards' house was visited twice that day by Lucas Markham's aunt, and once by a police officer. The two of them were inside, but no response was obtained from any of those visits. The police officer returned to the address the following morning, and, again, there was no response, but he heard a dog barking from inside the house. He subsequently made enquiries at the place where Elizabeth Edwards worked and with the school; he was told there had been no contact with any of the Edwards family since 13 April.

16. Thus, at noon, the police returned to the address at and forced entry through the front living room window. They found Kim Edwards and Lucas Markham lying on the mattress on the living room floor. Kim Edwards was asked where her mother was, she replied, "Upstairs". She was asked what had happened to her mother and Lucas Markham replied, "Why don't you go and see". Officers went upstairs to find the two bodies, whereupon they were both arrested. After caution, Kim Edwards made no reply but, referring to a box of medication, said: "We were going to take them". When arrested and cautioned, Lucas Markham replied, "Fuck life".

17. Both bodies were examined by the pathologist. Eight sharp force injuries were found on the body of Elizabeth Edwards, five of which were on her hands, suggesting that she might have been trying to fend off her killer, or to defend herself. The remaining sharp force injuries were stab wounds, one located to her right shoulder and two to her neck. The stab wounds to the neck had resulted in injuries to her internal jugular veins, and one had almost completely severed her windpipe. The cause of death was the stab wounds to the neck. The injuries would not have been instantly fatal, and there was

evidence that she survived for a short time after they were inflicted. The degree of force used was described as being mild to moderate because the tracks of the wounds had not passed through any bone tissue.

18. To the body of 13 year-old Katie, there were two stab wounds to the neck, one of which entered the left side resulting in a small defect within the right vertical artery which caused a moderate amount of bleeding, but not of sufficient volume to have compromised her cerebral blood flow to be the sole cause of death. Since her body was found with a pillow over her face, subsequent examination of her lungs led to the conclusion that she had died due to a haemorrhage from a stab wound to the neck, and smothering. The fact that there was injury to one of the vertebra suggested the use of severe force.

19. The interviews can be summarised shortly. In his first two interviews, Lucas Markham declined to comment, but he then produced a prepared statement in which he admitted to having killed both of the victims. He described killing Mrs Elizabeth Edwards saying that during the attack, she had struggled and scratched his face, back and bum. After about three minutes, she stopped struggling and went limp. He got off the bed, took off his trainers, since it made the floorboards creak, picked up the knife, whereupon Kim came through and asked if it was done. He replied yes. She asked if her mother struggled, and he said yes. After that, she went back to the bathroom.

20. He then went into her younger sister's room. She was lying on her back, with her head facing away from him. He bent down and pushed the knife through her throat. He then picked up a pillow and pushed it over her face. She had not struggled but her arms had twitched. He was asked if he was happy that they were dead and he said yea and no. He also said that he didn't enjoy anything towards death but that he and Kim had wanted to murder them and he understood everything that he had done.

21. In her first interview, Kim Edwards said that her boyfriend, Lucas, had attended her home address as prearranged to kill her mother. She was going to kill her sister but she didn't have the mental strength to do so, so Lucas agreed that he would do it. He took a large knife and went into her mother's room, where he stabbed her through the neck. She was able to hear noises, so she left the bathroom, and went into the bedroom, where she saw Lucas astride her mother with a pillow over her mother's face. After about ten minutes had passed, he checked for a pulse, and said her mother was dead. As she went back to the bathroom, he then went into her sister's bedroom. He proceeded to kill her sister, although she never saw this. She stated that the plan was formulated because her mother had told her that she was going to turn out like her father. This had upset her and she had confided in Lucas.

22. At a second interview, Kim confirmed that she was aware that Lucas was coming round to murder her mother and sister. She had wanted to kill them before this as she felt that, ever since she was young, her mother had favoured her younger sister and felt left out and depressed. Lucas was the first person really to listen to her, and he didn't like to see her depressed. She didn't want to take the overdose as she couldn't stand the smell of alcohol.

23. Victim impact statements were provided by Elizabeth Edwards' partner, Katie's (and Kim's) older half-sister, and her father. They speak of the devastation caused by their

loss and there are references to the nightmare into which they have been thrust, affecting their daily lives. In the light of the circumstances, this is entirely understandable.

Lucas Markham

24. At the time of the murders, Lucas Markham was 14 years 8 months old, and of previous good character. A pre-sentence report revealed that he fully intended to kill both victims, and that his relationship with Kim Edwards was clearly a critical factor. He described that upon beginning his relationship with her, he felt needed and wanted, which in turn generated a need for him to protect her from any perceived threat. Her suicide attempt three weeks prior to the offence, particularly as it occurred within the week that he moved schools away from her, escalated these concerns, providing more short-term trauma and pressure for him. When committing the murder, he had a sense of calmness and happiness surrounding the belief that he was protecting Kim Edwards. When questioned, regarding his feelings and thoughts about his actions after he had had time to reflect on them, he indicated limited remorse. He continued to present as disconnected from his actions. He demonstrated no empathy towards the victim's family, presenting as hostile towards some of them.

25. It was noted that there had previously been a number of concerns linked to his use of violence and aggression. He would punch and headbutt walls and doors within the family home causing damage. There were additional physical fights between him and his younger brother, causing his aunt with whom he had been living to seek support, both from children services and the police, although it was primarily the younger brother's behaviour that his aunt struggled to control. He had previously self-harmed by cutting.

26. The report went on to say that he had experienced significant disruption and changes in care providers within an influential period of his development. This led to patterns of insecure attachment, where he learned that others could not be trusted to meet his needs, and he developed deep conflicts between a need for nurturance and a fear of abandonment. His aunt had continued to care for him but struggled in relation to his behaviour and in accepting the offences that he had committed. He had had a difficult relationship with his father in the past, although he felt that it had improved after the offences. His primary care has been provided by staff within the secure unit (while he was on remand). He had limited attachment to the staff, and could regularly be verbally aggressive towards them.

27. Lucas Markham clearly had difficulties regulating and recognising his own emotions which led to conflicts and emotional difficulties. This, in turn, predominantly led to episodes of aggressive and abusive language, along with threats of violence. While he displayed this behaviour across all spectrums, aggression and verbal abuse was likely to be triggered by his experiencing a sense of loss of control, or criticism, especially when delivered by an adult. Considering past and current behaviour, there was a clear risk of interpersonal violence, including the intention to cause life-threatening injuries and with the use of weapons.

28. It was assessed that within the community, Lucas Markham would present a high risk of causing serious harm, of re-offending and of exhibiting further violent behaviour. There were a limited number of internal protective factors towards further offending, but the author requested that the court recognise that the childhood traumas of

experiencing domestic violence, inconsistent care and bereavement. While the experiences and the impact that they had had on his psychological development did not amount to a defence, they represented significant factors in relation to his behaviour and how he viewed his relationship with Kim Edwards.

29. A psychiatric report by Dr Oliver White, dated 15 August 2016, concluded that Lucas Markham was not then suffering, either from a severe or enduring mental illness, or from a depressive episode, although his mood instability was an important feature of his emerging personality structure. He recounted the history of his experience of domestic violence between his parents and the multiple different foster care placements which flowed from the breakdown of their relationship, culminating in his living with his aunt from the age of four or five years (which was around the time that his mother died of cancer). He had a longstanding, difficult relationship with his father, which appeared to have been highly influenced by his father's drinking, resulting in a lack of care, supervision and nurturing to the children. A consequence of his experiences during his childhood was that he had lacked the opportunity to develop skills in self-regulation of his own emotions. It was assessed that his specific emerging personality traits were in the domains of emotionally unstable and dissocial personality disorder but, due to his age, he fell short of a formal diagnosis of personality disorder. Dr White assessed Lucas Markham as a high risk of continuing his trajectory with regards to his personality development, such that formal diagnosis of personality disorder was likely when he became an adult.

30. In addition, in a report dated 5 September 2016, Dr Tracy King, a psychologist, concluded that there were no concerns regarding his intellectual functioning such that might have led to a greater tendency to be influenced by others, or to not understand consequences of actions. He had a history of early childhood trauma in the form of exposure to domestic violence and his father's drinking behaviours. These experiences had been shown to have organic neurochemical correlates in the brain. There could be gross alteration in the amygdala (emotional centre); these would be evident in adulthood, and would lead to emotional regulation difficulties. His exposure to domestic violence and the fear that this would have instilled in a young child activated his primitive brain on a consistent 'fight or flight' pathway. For him, this meant that minor threats and challenges could feel like a real threat to his existence, so he could then act disproportionately to the circumstances. When threatened, he was likely to experience a greater degree of dissociative symptoms than he reported.

Kim Edwards

31. Psychiatric evidence was advanced in support of the partial defence of diminished responsibility. Those representing Kim Edwards relied on the views of Dr Indranil Chakrabarti, in reports dated 26 August 2016 and 5 October 2016 (which referred to the report of a psychologist, by Dr Darren Spooner, dated 23 December 2014, prepared for family proceedings, which described the adverse family circumstances that she had endured, including domestic violence that she had witnessed and to which she had been subject). Dr Chakrabarti concluded that, at the time of the offence, Kim Edwards had developed an adjustment disorder against a background of severe attachment problems, due to multiple stressors within a short space of time, aggravated by her relationship with Lucas. The final stressor was when she found that her belongings had been either thrown away, or been given to her sister.

32. Having seen the psychological assessment, Dr Chakrabarti went on to underline Dr Spooner's description of Kim Edwards as a person who was emotionally vulnerable and had significant attachment problem with her mother. This supported her diagnoses and conclusion that she had initially expressed namely that, on the balance of probability, Kim Edwards' mental illness significantly impaired her ability to form a rational judgement, exercise self-control and provided an explanation of her acts and omissions in doing and being a party to the killing.

33. In response, the Crown sought the assistance of Dr Philip Joseph who, in a report dated 22 September 2016, concluded that Kim Edwards was not suffering from an abnormality of mental functioning caused by a recognised medical condition, and, therefore, did not have a defence to murder of manslaughter on the grounds of diminished responsibility. The family dynamics were explored and her attachment difficulties with her mother were noted. She explained the circumstances leading up to the killings of her mother and sister, accepting that it was jointly planned and, that she was not forced to go along with it, in any way. She saw her mother as the main problem in her life, felt excited about the thought of killing her, and remained glad that her mother was dead, although she felt bad about the death of her sister and missed her. Dr Joseph did not accept that the loss of her belongings triggered an acute stress reaction which developed into an adjustment disorder. If she had been suffering from such a disorder, she would not now continue to express satisfaction that her mother was dead. In the event, both psychiatrists gave evidence, and the jury rejected the defence analysis of the psychiatric position, convicting of murder.

34. The pre-sentence report (dated 25 October 2016) also made clear that Kim Edwards did not regret what had happened, and felt relieved that the offences were committed. She was of the view that she was emotionally abused by her mother, and, as such, had no remorse or regret for what had happened to her. However, she said that she had a little regret towards her sister because she was still young and did not deserve to die. Nonetheless, at the time of the index offence, she wanted her sister to be murdered because she had felt angry and resentful towards her. While it was clear that she had set out to kill her mother and sister, and planned this to the last detail, the intent of committing suicide afterwards did not seem to have the same level of planning.

35. It was reported that the unhealthy relationship between Kim Edwards and Lucas Markham was clearly a significant factor to the crime committed, but that her feelings towards him had changed significantly since being in the secure unit; she now realised that he was controlling, she had moved on, and she no longer had feelings for him. She expressed no emotional reaction to his pending sentence: it was her view that he had made an informed decision and was not forced into it, and, therefore, would face the consequences of his actions.

36. Kim Edwards presented as calm and friendly, but she had difficulty with regulating her emotions. She clearly lacked empathy towards her victims (in respect of whom the evidence suggested that she had a deep hatred) but was able to recognise the trauma they would have gone through. She seemed to enjoy the attention that she was receiving from a number of professionals and had suggested, in the future, writing a book of her life. This suggested that she had an inappropriate level of self-esteem and self-importance, and also felt a sense of justification in the harm that she caused to her mother and sister, who she felt had wronged her. She presented as a high risk of serious harm within the community due to the nature, planning and lack of remorse for the

index offence. There was the potential for her to plan and carry out future harm if she were to struggle with certain aspects of her life. She was assessed as a low risk of re-offending. Mitigation included her age, and what was described as the limited evidence of persistent emotional trauma in her childhood and adolescent years.

The Sentence

37. Haddon-Cave J described the crimes as having "few parallels in modern criminal history". He made it clear:

> *"People who know the full facts of this case may struggle to comprehend how you both could have committed this terrible and unnatural crime, which has devastated two families and a community. The answer lies partly, in my view, in what Dr Joseph described as your toxic relationship. You were, in my view, in a hermetically sealed, pathetic world of your own, of deep, deep selfishness and immaturity, where only your feelings and desires matter, and nobody else's. I sentence you as children, which you are. I sentence based on hope for you and for society, rather than in the expectation of failure."*

38. Having explained the mandatory nature of the indeterminate life sentence (expressed, for those under 18, as detention at Her Majesty's pleasure), the judge correctly identified that the starting point for the assessment of the minimum term to be served by anyone of that age convicted of murder was 12 years (see s. 269 and para. 7 of Schedule 21 to the 2003 Act). He then passed to the aggravating and mitigating factors of which the court should take account to the extent not encompassed in the choice of starting point (as identified in paras. 10 and 11 of Schedule 21).

39. Haddon-Cave J identified nine aggravating factors. These were the fact that this was a double murder (the defining feature), one of the victims being a young girl. The second and third were the clear intention to kill and the "remarkable premeditation and planning" after several false starts; he considered it "substantial, meticulous and repeated". The fourth factor was the gross and unnatural betrayal of the relationship "matricide and sororicide" in which Lucas played an equal part. Fifth and sixth, he considered the victims vulnerable, being attacked in their beds, with Katie only 13½ years-old, the killings being brutal "in the form of executions" and Mrs Edwards, in particular, having suffered terribly in the last minutes of her life. The seventh factor was the use of a knife (which, he could have added, was brought to the scene), and the eighth the "grotesque conduct" in the 36 hours after the killings, albeit to be judged in the context of their age and maturity. The last factor was their "expressed happiness" at what they had done.

40. As for mitigation, the judge accepted that it was too early to judge remorse. In relation to both, their age at the time and previous good character were important mitigation. Both were allowed a discount of 5% for their pleas – Lucas Markham to murder and Kim Edwards for her admission of manslaughter – the trial only being a consequence of the psychiatric evidence: this, he said, was in accordance with the guideline issued by the Sentencing Guidelines Council on guilty pleas, and their willingness to admit responsibility for what they had done. He also recognised that both had encountered problems with their upbringing, and that they were still developing as people. That lack

of development included the fact that what lay at the heart of the case was the effect of the relationship on each of them.

41. In relation to Kim Edwards, he added as mitigation both her psychiatric problems and the fact of her emotional turmoil; she was yet to come to terms with what she had done. He noted that there were some signs that her attitude was beginning to change. In relation to Lucas Markham, he noted his psychological and psychiatric problems. For both, he took account of the overarching principles of sentencing youths, the UN Convention on the Rights of the Child 1989 ("the UNC") and the European Convention on Human Rights ("the ECHR"), together with the decision of the Supreme Court in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 AC 166 regarding the treatment of children.

42. In imposing a minimum term for Kim Edwards and Lucas Markham of 20 years (which must have started at 21 years before allowing for the discount of 5%), Haddon-Cave concluded:

> *"This was an entirely joint offence. You were in it together from the beginning. You conceived of the killings together. You planned it together, you re-planned it when you failed to carry it out the first and second time, you carried it out together, step by step. Whilst you, Lucas, did the actual killings, you, Kim, willed it to happen and assisted all the way through. Both of you are perfectly intelligent and knew exactly what you were doing.*
>
> *Either of you could have backed out at any time. But you were selfishly determined to do it together. And you killed Kim's mother and little sister. And you then revelled in what you had achieved.*
>
> *You both accept that you are equally liable as each other and should be treated equally. Nor is any distinction suggested by counsel. I see no reason to distinguish between you in any way."*

It is appropriate to identify that Peter Joyce Q.C. for the Crown made it clear that the prosecution endorsed the approach that the minimum terms in relation to both defendants should be the same, even if that meant (in relation to Kim Edwards) that she was given credit for her admissions, although she had not, in fact, admitted the offences for which she was convicted.

The Appeal

43. In both cases, appeals against sentence are mounted on a number of grounds. The first is that the judge should not have taken the intention to kill (or the fact of betrayal) as an aggravating feature. The second ground is that he failed to conduct an exercise that recognised the appellants as children, and gave proper effect to their rights and the adoption by the U.K. of the relevant international convention. Third, in relation to Lucas Markham, it is argued that he received insufficient credit for his guilty plea which was only on the morning of the trial because psychiatric evidence (and, thus, an informed decision as to the proper plea) was delayed.

Aggravating and Mitigating Factors

44. The judge certainly took the intention to kill as a feature of the case which aggravated the circumstances of the murders and, Simon Myerson Q.C. for Lucas Markham and Sam Green Q.C. for Kim Edwards recognise that, in one sense, it did. They argue, however, that, in the context of moving from the appropriate starting point set out in Schedule 21, it did not, because para. 11(a) of the Schedule identifies an intention to cause serious bodily harm (rather than to kill) as a mitigating feature, which presupposes that an intention to kill is built into the starting point otherwise prescribed. Mr Joyce, however, submits that since the starting point in sentencing any child for murder is set by law at 12 years, the judge is under a duty to look for aggravating and mitigating features, none of which could have played any part in the consideration of the starting point. It was entirely right, therefore, to look for those features, since in the case of an adult, they would have been included in the assessment of the starting point.

45. In our judgment, the Schedule provides a self-contained code which governs the approach to fixing the minimum term and it is significant that the various starting points in each case are identified: these are whole life (para. 4); 30 years (para. 5); 25 years (para. 5A); 15 years for offenders over 18 years old that are not otherwise identified (para. 6); and 12 years for all those committing murder when under 18 years old (para 7). It is only after having chosen a starting point that the court then goes on to consider aggravating or mitigating factors to the extent not allowed for them in the choice of starting point (para. 8).

46. Having determined the correct starting point (12 years), the aggravating factors included those which, for an adult, would have justified a starting point of a higher order. Thus, for an offender over 21 years-old, cases in which the starting point would 'normally' be a whole life order include a double murder where each involved a substantial degree of premeditation or planning; for an offender over 18 years-old, a double murder would, in any event, 'normally' justify a starting point of 30 years, and any murder involving a knife or weapon brought to the scene, a starting point of 25 years is identified. Given that, for those under 18, the appropriate starting point is always 12 years, features which would have changed the starting point for an adult become relevant as aggravating the offence and can affect the appropriate minimum term.

47. There are further, specifically identified aggravating features set out in para. 10 of Schedule 21 which, in the context of this case, include the vulnerability of the victim, suffering inflicted before death, and abuse of trust. To identify the careful gradation of aggravation, it is also worth noting that another such feature is a significant degree of planning or premeditation (a substantial degree of such planning being identified in para. 4(2)(a)(i), and, therefore, catered for as a potentially aggravating feature if the murder does not justify a whole life starting point). On the other side of the equation, mitigating factors include an intention to cause serious bodily harm rather than to kill, along with mental disorder which lowers culpability but is short of providing a partial defence of diminished responsibility, and age of the offender: see para. 11 of Schedule 21.

48. Thus, Mr Myerson and Mr Green are right to argue that built into the starting point, even for a young offender under the age of 18 years-old, is the intention to kill; a lesser intention would have mitigated the 12-year starting point. Given the extent of the

premeditation and planning, together with the decision to kill mother and sister, both of which in any event substantially aggravate the murders in this case, we do not consider that this error of statutory construction will have affected the outcome to any real or substantial extent. Similarly, although "the gross and unnatural betrayal of the relationship" was properly regarded as an extremely serious feature of the case, this feature can be taken with the vulnerability of the two victims, asleep in their beds; these are articulations of the gravity of what does truly aggravate these offences.

The Appellants as Children

49. It is beyond argument that crimes committed by children and young persons should be considered in a different light to similar crimes committed by adults. That does not, however, mean that punishment in appropriate cases is not an entirely proper approach. Thus, in *T v United Kingdom* [2000] 30 EHRR 121, the European Court of Human Rights considered the determination (prior to the Criminal Justice Act 2003) of the appropriate tariff for detention at Her Majesty's pleasure of the two child murderers of James Bulger. It observed:

> *"97. In assessing whether the above facts constitute ill-treatment of sufficient severity to violate Article 3 (see [68] above), the Court has regard to the fact that Article 37 of the UN Convention [on the Rights of the Child] prohibits life imprisonment without the possibility of release in respect of offences committed by persons below the age of eighteen and provides that the detention of a child 'shall be used only as a measure of last resort and for the shortest appropriate period of time', and that Rule 17.1(b) of the Beijing Rules recommends that '[r]estrictions on the personal liberty of the juvenile shall ... be limited to the possible minimum' (see [43]-[44] above).*
>
> *98. The Court recalls that States have a duty under the Convention to take measures for the protection of the public from violent crime (see, for example, the A v the United Kingdom judgment of 23 September 1998, Reports 1998-VI, p. 2699, § 22, and the Osman v United Kingdom judgment of 28 October 1998, Reports 1998-VIII, p. 3159, § 115). It does not consider that the punitive element inherent in the tariff approach itself gives rise to a breach of Article 3, or that the Convention prohibits States from subjecting a child or young person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention or recall to detention following release where necessary for the protection of the public (see the Hussain judgment cited above, p. 269, § 53)."*

50. Neither is the decision in *ZH (Tanzania)* (*supra*), referring to Arts. 3.1, 4 and 37(b) of the UNC inconsistent with this approach, when it requires that the welfare of the child is a primary (but not the only) consideration in decision-making by public authorities, even outside the field of family law adjudications. In this case, of course, child welfare considerations last only until the age of 18 years.

51. With that introduction, we turn to the approach mandated by the 2003 Act. First, in this country, murder is regarded as different in kind from any other class of criminal offending, in that the sentence (a mandatory indeterminate sentence) is fixed by law, whatever the age of the offender. Secondly, the general purposes of sentencing, set out in s. 142(1) of the 2003 Act (punishment; reduction of crime; reform and rehabilitation; the protection of the public; and reparation), do not apply: see s. 142(2)(b). Third, by s. 125(1) of the Coroners and Justice Act 2009, unless it is in the interests of justice not to do so, the court must follow the guidance issued by the Sentencing Guidelines Council in Overarching Principles – Sentencing Youths.

52. This guideline refers to the statutory obligations to have regard to the principal aim of the youth justice system to prevent offending by children and young persons, and the welfare of the offender (set out in s. 37(1) of the Crime and Disorder Act 1998 and s. 44(1) of the Children and Young Persons Act 1933). It is made clear that that it does not apply when imposing a mandatory life sentence: see footnote 2 at para. 1.2 of the guideline. We add that, although not in force, the same guidance is given at para. 1.1 in the recent Definitive Guideline on Sentencing Children issued by the Sentencing Council, and which came into force on 1 June 2017.

53. In place of these provisions (as described in [45] above), through Schedule 21 of the 2003 Act, Parliament has identified a free-standing approach to fixing the minimum term to be served as part of the indeterminate sentence imposed on those under the age of 18 for murder. It is clear that this is intended to reflect the different place from which sentencing children and young persons for murder should start. It identifies a starting point of 12 years, whatever the category of murder into which the case would fall for someone over 21, or over 18 years of age, which can then be varied up or down according to the aggravating and mitigating factors by taking them into account "to the extent that it has not allowed for them in its choice of starting point" (para. 8 of Schedule 21).

54. Mr Myerson complains that insufficient attention was paid by the judge to the minimum appropriate term for Lucas Markham, in his interests, and argues that the judge approached the case in the same way as he would have sentenced an adult. Thus, having accepted that the double murder was an aggravating feature, he said that premeditation should not be, on the basis that two excited children would have done so even in the absence of crime. There could be no betrayal of a relationship, and vulnerability by reason of being asleep was not that which was envisaged by the Schedule. The use of a knife ought not to have aggravated the crime to the same extent as would have been the case for an adult (for a single murder, from a starting point of 15 years to 25 years). Finally, the grotesque conduct to which the judge referred and the expression of happiness should have been viewed as a child's response to a unique situation, and been offset by the obvious psychological difficulties of which the judge was aware.

55. For our part, we see that some of the features mentioned by Haddon-Cave J might coalesce into one articulation of adolescent willingness to behave without thought of the consequences, and, there is research to the effect that adolescent brains may behave differently to those which are more mature. This might go some way to explaining how the attitude of each potentiated the willingness to commit truly dreadful acts, which, on their own, they might not have contemplated carrying through. Be that as it might, these are features which we have no doubt will be addressed by medical and

psychological services well in advance of a successful Parole Board decision (after the minimum term has been served) to the effect that they pose no risk to the public.

56. In our judgment, it is beyond argument that these offences, committed jointly, were very considerably aggravated by the circumstances that there was a double murder of members of Kim Edwards' family, who were then sleeping, and which was committed after considerable pre-planning (and persisted in after further conversations following two aborted efforts), with, on each occasion, a number of knives taken to the scene. Their behaviour then, and subsequently, is also a relevant feature, demonstrating a lack of compassion, although we recognise that their psychiatric and psychological problems can be seen as mitigating. If Mr Myerson was contending that, because of his youth, Luke Markham's interests are paramount, and require that we do not pay appropriate regard to these features, we reject the submission.

57. In our judgment, Haddon-Cave J approached these sentences entirely in accord with the statutory requirements set out in Schedule 21 to the 2003 Act, entirely mindful of his duties to the defendants as children: he specifically identified the relevant provisions. As to the minimum term before discount for guilty plea (which it appears that he put at 21 years, although he did not specifically identify it), we point to the approach adopted in *AG's Reference No 126 of 2006 (R v H)* [2007] EWCA Crim 53; [2007] 1 All ER 1254. This concerned a killing by an emotionally damaged 14 year old of an 11 year old physically vulnerable boy with cystic fibrosis. This was after the older boy had made some kind of sexual approach to the younger boy.

58. Giving the judgment of the court, Sir Igor Judge P (as he then was) rejected the conclusion of the trial judge that the aggravating and mitigating circumstances balanced out. He explained the features of that case in these terms (at [40]):

> *"The offender's culpability, and the consequent seriousness of the offence, are undoubtedly reduced by his age and mental illness, but in our judgment there are some striking features of the case which cannot be treated as wholly consistent with the offender's extreme youth. These include the deliberate selection of the victim for the purpose of exposing him to bullying and some form of sexual abuse, the elements of planning, which survived the intervention of school staff on the day of the killing itself, the sustained violence with more than one weapon and the murderous nature of the attack, and finally the calm efforts at concealment are all significant in themselves, but even for an offender of this age, with this offender's disadvantages, taken together they represent a formidable level of culpability and seriousness."*

59. There are some of the same elements (planning; persistence; the murderous nature of the attack; and the use of a knife with subsequent calmness) in this case. There was no question of sexual abuse or selection for the purpose of exposing to bullying but, on the other hand, there was an element of revenge directed to Kim Edwards' mother and, even more significant, the fact of two murders, the second being of her entirely innocent 13 year-old sister. Suffice to say that, in *H*, the starting point adopted by the trial judge was increased to 18 years. By reason of the double murder, this case is undeniably more serious: we do not accept the proposition that the judge's approach of a starting

point (after aggravating and mitigating features but before discount for guilty plea) of 21 years was either wrong in principle, or manifestly excessive. Accordingly, submissions from counsel to the contrary are rejected.

The Guilty Plea Discount

60. On the face of it, there is an argument for saying that: Lucas Markham was only entitled to 5% because he pleaded guilty on the morning of the trial; and that Kim Edwards is not entitled to any discount on the basis that she did not, in fact, plead guilty. Admissions of manslaughter do not generally generate a discount. On the other hand, both the prosecution and the judge took the view that the same sentence should be imposed on both defendants.

61. Mr Myerson submits that Lucas Markham admitted what he had done in interview and admitted murder, on advice, as soon as leading counsel had been able to discuss with experts whether or not a partial defence based on his psychiatric condition might be available: this, he argues, was hardly unreasonable for a 14 year old facing such a lengthy sentence. Mr Green underlines that the judge accepted that the trial in the case of Kim Edwards was only on the basis of expert opinion and that, in interview, she admitted that she wanted to murder her mother and sister. He submits that it would have been negligent not to explore the availability of a partial defence based on diminished responsibility and, having received support from a psychiatrist for such a course, it was inevitable that it had to be placed before a jury.

62. Mr Joyce makes the point that, in cases of murder, the recommended maximum reduction to reflect a plea of guilty at the first reasonable opportunity is one sixth, with a recommended discount of 5% for a late guilty plea, conceding only that Kim Edwards should receive a similar discount, on the basis that she only fought the counts of murder on the basis of medical evidence. This lesser discount was appropriate because one substantial justification for the discount was the pragmatic saving of public time and money in the preparation for a trial which, in these cases, was not avoided.

63. The Definitive Guideline in relation to Reduction in Sentence for a Guilty Plea remains that issued by the Sentencing Guidelines Council in 2007. It provides the justification for a discount (at para. 2.2) in these terms:

> *"A reduction in sentence is appropriate because a guilty plea avoids the need for a trial (thus enabling other cases to be disposed of more expeditiously), shortens the gap between charge and sentence, saves considerable cost, and, in the case of an early plea, saves victims and witnesses from the concern about having to give evidence. The reduction principle derives from the need for the effective administration of justice and not as an aspect of mitigation."*

64. As for the level of reduction, para 4.3 makes it clear that:

> *"The level of reduction should reflect the stage at which the offender indicated a willingness to admit guilt to the offence for which he is eventually sentenced:*

> *(i) the largest recommended reduction will not normally be given unless the offender indicated willingness to admit guilt at the first reasonable opportunity; when this occurs will vary from case to case …"*

65. For completeness, although in force with effect from 1 June 2017, it is worth identifying what the new Definitive Guideline issued by the Sentencing Council identifies as an exception to the general rule (which remains broadly the same, namely one third at the first stage of proceedings) under the heading "Further information, assistance or advice necessary before indicating plea" (at para. F1):

> *"Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a reduction of one-third should still be made.*
>
> *In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal."*

66. In our judgment, although not specifically articulated in the earlier Definitive Guideline, the word 'normally' permits considerations of the type specified more fully in the Guideline which is about to come into force. The exercise of judgment is similarly preserved by s. 125(1) of the Coroners and Justice Act 2009, which requires guidelines to be followed "unless the court is satisfied that it would be contrary to the interests of justice to do so". In that event, it would be the responsibility of the sentencing judge to explain why the court was so satisfied.

67. In the usual case, the general rule should operate without modification, but this case reveals features which are far from normal. The critical facts are that, in relation to both victims, Lucas Markham and Kim Edwards admitted killing with murderous intent: the issue with which those advising them had to grapple was whether there was some psychiatric disorder which might mitigate their responsibility, particularly bearing in mind what was known of their social and developmental backgrounds. It would have been professionally improper for that step not to have been taken, irrespective of the wishes of the children involved.

68. Thus, assuming that there is a legitimate basis for any defendant's legal advisers to take the view that psychiatric evidence is necessary to investigate either fitness to plead, insanity or diminished responsibility, in circumstances where there is no issue as to the commission of the crime with the relevant intent, the first available opportunity might be as soon as that evidence is available. That would require the Crown to have been kept informed of the position so that any preparatory arrangements could be made with an eye to what could be the only possible issues that required to be tried. On that basis, given that we also understand that the position that Lucas Markham would plead guilty

to murder was made clear as soon as the psychiatric evidence ruled out any partial defence based on diminished responsibility, it is difficult to see why credit for timely admissions should be withheld from him.

69. The position in relation to Kim Edwards is more difficult because, although she admitted the offences of manslaughter (and admitted participation in killing both victims with murderous intent), she did not, in fact, ever admit murder. The reason, however, was entirely based on the supportive expert evidence which her legal advisers obtained. Furthermore, the challenge to that psychiatric evidence by the Crown was not based on a rejection of factual evidence that Kim Edwards provided, but, rather, on a disagreement between the psychiatrists as to the appropriate diagnosis and whether, ultimately, an abnormality of mental functioning caused by a recognised medical condition could be established.

70. Both the prosecution submission and the judge's conclusions were to the effect that the same sentence should be passed on both appellants. Given that the difference between the two was that, in the case of Kim Edwards, the psychiatrist instructed by her legal team supported a defence of diminished responsibility, whereas the investigation of Lucas Markham did not support such a conclusion, it is difficult to see why that should undermine that conclusion. In the circumstances, this is not a 'normal' situation and the credit should attach to the admission of killing with murderous intent even if, in the event, there had to be a trial.

71. This analysis should not be taken as indicating that in every case of murder, pursuing a defence of diminished responsibility should not deprive a defendant of credit as if a guilty plea had been entered at the first available opportunity. In most cases, a defence of diminished responsibility depends on a version of facts which in large part emanates from the defendant; if those facts are rejected by the jury, there should be no question of credit for admitting manslaughter beyond that which is identified in para. 11(c) of Schedule 21 to the 2003 Act ("mental disorder or mental disability which (although not falling within section 2(1) of the Homicide Act 1957), lowered his degree of culpability"). Furthermore, depending on the nature of any disorder or disability, adults will be in a different position to children, and more likely to be able to make informed decisions based on an assessment of the evidence. The facts in this case are very unusual, and must be seen as such.

72. Each case must be considered on its own merits. In the specific circumstances of these cases, we have come to the conclusion that the proper course is to reduce the minimum term specified under s. 269 of the 2003 Act from that which would have been appropriate having taken the starting point and applied the aggravating and mitigating features (which we have confirmed to be the judge's assessment of 21 years) by one sixth, that is to say, by 3½ years, so that the specified minimum term is 17½ years less time spent on remand.

Reporting Restrictions

73. Prior to the trial, after Lucas Markham had pleaded guilty to murder and Kim Edwards to manslaughter, the press applied to lift the order made, following their first appearance, that, prior to further order, the defendants should not be identified. The grounds advanced were the requirements of open justice, the gravity of the crime and what was described as the unreasonable burden placed on the press properly and

substantially reporting the case not least because knowledge of the crimes and identity of both defendants had "widely travelled among friends, relatives and wider family". It was also doubtless known by all or most in the communities in which they lived. The application was resisted on the basis of Kim Edwards' welfare, the inappropriateness of reporting the details during a trial which focussed on her mental state and the potential for a "social media storm" if the identity of either was revealed.

74. Having summarised the law, Haddon-Cave J conducted the balancing exercise and concluded, at that time, that it came down firmly on the side of maintaining the order. Of particular significance was the need to preserve the integrity of the trial process and a primary consideration was to have regard to Kim Edwards' welfare. In that regard, Kim Edwards was described as 'emotionally and physically vulnerable'; she had intimated suicide and concern for her was heightened as the trial approached and pressure felt by her increased. He concluded that the deterrent effect of naming the children would have little effect and the fact that her identity was known to some was not a good reason for waiving further restrictions. He was also conscious of the immediate and virulent social media storm likely to be engendered and the unwanted press intrusion at the secure unit in which she was housed. It was also conceded by defence counsel that the maintenance of the order could properly be reconsidered after the trial, a week or so hence, when the integrity of the process would no longer feature and the verdicts would be known.

75. At the conclusion of the trial, Haddon-Cave J revisited the order in a detailed and comprehensive analysis of the law and facts. On that occasion, he heard representatives from newspaper organisations and the Press Association (who sought a lifting of the order) and from the defendants and the local authority (who sought to maintain it). The Crown Prosecution Service adopted a neutral position. The argument started with a dispute as to the burden of proof based on the different language of s. 45 of the Youth Justice and Criminal Evidence Act 1999 ("the 1999 Act") compared to s. 39 of the Children and Young Persons Act 1933 ("the 1933 Act"): given that the court had to exercise a judgment based on balancing the different factors involved, the existence of which was not in issue, in our judgment, the burden of proof takes the argument no further.

76. The press relied on a number of factors. First, the considerations relating to the integrity of the trial process had fallen away. Secondly, there was a strong public interest in fully understanding the events which would be fatally undermined by the restrictions. Third, their identification would have a deterrent effect and its adverse impact did not cross the high threshold applicable where rights under article 2 of the ECHR were concerned and, in relation to article 8, did not outweigh the strong public interest in open justice encapsulated by article 10. Finally, the point was made that the defendants were then over the age of 15 years and that any order would, in any event, expire in three years' time: see *R (JC & RT) v Central Criminal Court* [2014] EWCA Civ 177 affirming [2014] EWHC 1041 (Admin) [2014] 1 WLR 3697 which has not been affected by s. 45A of the 1999 Act.

77. For the defendants, reference was made to Articles 3 and 40 of the UNC and the UN Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), the former of which it was contended was an important source of international law in deciding issues under articles 6 and 8 of the ECHR and was referred to by Lord Steyn in *Re S (A Child) (Identification: Restriction on Publication)* [2004] UKHL 47;

[2005] 1 AC 593 (at [26]). The latter (at 8.1) required the right to privacy of juveniles to be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. The significance of the welfare of the child identified in *ZH (Tanzania) v Secretary of State for the Home Department* (see [50] above) was similarly emphasised.

78. Haddon-Cave J concluded that the two defendants were guilty of exceptionally grave crime such that there was a high public interest in their identification. If unable to report their identity, the trial would be deprived of meaning and context (cf the observations of Lord Steyn in *Re S (supra)* at [34]) because it would be impossible properly to understand that the murders took place in a closed family context, leaving a vacuum "which exacerbates the risk of uninformed and inaccurate comment". He noted that the order would, in any event, expire for each defendant on attaining the age of 18 and that the tariff would stretch for many years beyond that date.

79. Having reviewed the medical evidence, the judge rejected the contentions made by Mr Myerson in relation to article 2 (none were pursued in relation to that provision of the ECHR by counsel then acting for Kim Edwards). He also considered that although some weight attached to the article 8 considerations, it was "not substantial". In the circumstances, he considered that the balance was "strongly in favour" of the article 10 and 'open justice' principles.

80. In this court, the appellants and (in written submissions) Just for Kids Law argue that Haddon-Cave J failed to have sufficient regard to the international instruments. These submissions, however, ignore the well-established domestic law which itself takes the international dimension relating to the protection of children into account. Thus, in *R v Leicester Crown Court, ex parte S (A Minor)* [1993] 1 WLR 111; (1992) 94 Cr App R 153, Watkins LJ identified the approach (at 156):

> *"In our judgment, the correct approach to the exercise of the power given by section 39 is that reports of proceedings should not be restricted unless there are reasons to do so which outweigh the legitimate interest of the public in receiving fair and accurate reports of criminal proceedings and knowing the identity of those in the community who have been guilty of criminal conduct and who may, therefore, present a danger or threat to the community in which they live. The mere fact that the person before the court is a child or young person will normally be a good reason for restricting reports of the proceedings in the ways permitted by section 39 and it will, in our opinion, only be in rare and exceptional cases that directions under section 39 will not be given or having been given will be discharged."*

81. This approach was followed in *McKerry v Teesdale and Wear Valley Justices* (2000) 164 JP 355; [2001] EMLR 5 which considered a challenge to a decision of the Youth Court to lift a restriction made under s. 49 of the 1933 Act, on naming a juvenile defendant aged 15 who had pleaded guilty to an offence of taking and driving away. Lord Bingham CJ noted (at [12]) that the provisions of domestic law were to be read against the international instruments, although they had long preceded them. He nevertheless concluded that the Justices had acted lawfully in lifting the restriction, to the extent that they did, having regard to the public interest. He observed (at [19]):

> *"It is in my judgment plain that there is in a situation such as the present some tension between competing principles. It is a hallowed principle that justice is administered in public, open to full and fair reporting of the proceedings in court, so that the public may be informed about the justice administered in their name. That principle comes into collision with another important principle, also of great importance and reflected in the international instruments to which I have made reference, that the privacy of a child or young person involved in legal proceedings must be carefully protected, and very great weight must be given to the welfare of such child or young person. It is in my judgment plain that power to dispense with anonymity, as permitted in certain circumstances by section 49(4A), must be exercised with very great care, caution and circumspection. It would be wholly wrong for any court to dispense with a juvenile's prima facie right to anonymity as an additional punishment. It is also very difficult to see any place for 'naming and shaming'. The court must be satisfied that the statutory criterion that it is in the public interest to dispense with the reporting restriction is satisfied. This will very rarely be the case, and justices making an order under section 49(4A) must be clear in their minds why it is in the public interest to dispense with the restrictions."*

82. Even the circumstances in that case, where the statutory regime under s. 47 of the CYPA 1933 is that Youth Court proceedings should be held in private and the public excluded, the international material did not require that lifting a restriction could never occur: the welfare of the child was a matter of weight to be given proper consideration when exercising the discretion set out in the legislation.

83. The same is so when a juvenile is tried on indictment in the Crown Court, where there is a strong presumption that justice takes place in open, and the press may report the proceedings. It was this presumption that prevailed in *In Re S* (*supra*), in which the House of Lords upheld the decision of the Family Court to lift an injunction that had prevented the press from identifying a defendant mother who was on trial for murder of her infant son, notwithstanding that there was a risk of jigsaw identification of her surviving son. Lord Steyn, with whose speech the other members of the Appellate Committee agreed, identified the issue as the assessment of the weight of the competing claims to respect for privacy and open justice, notwithstanding the international obligations set out above. We do not consider that the replacement of the 1933 Act by the 1999 Act alters this approach.

84. In our judgment, Haddon-Cave J recognised and, when conducting the balancing exercise, gave full weight to the international obligations which the United Kingdom has adopted. Furthermore, for the future, submissions in this area of the law should focus on the facts of the particular case relevant to the exercise of the court's judgment, rather than the siren calls of abstract principles that have already informed the approach which the courts adopt. This conclusion says no more than the submission made by Just for Kids Law that the court must analyse the content of each right in the light of the particular circumstances of the case.

85. Mr Green advances a further argument to the effect that Haddon-Cave J "properly recognised" that the press could not have renewed their application to lift reporting restrictions without a material change of circumstances but then relied on the fact that the proceedings had been determined as a reason for doing so. He pointed to s. 45(5) of the 1999 Act as identifying that this was a prohibited reason. It provides:

> *"The court or an appellate court may also by direction ("an excepting direction") dispense … with the restrictions imposed by a direction under subsection (3) if it is satisfied –*
>
> > *(a) that their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings and*
> >
> > *(b) that it is in the public interest to remove or relax that restriction;*
>
> *but no excepting direction shall be given under this subsection by reason only of the fact that the proceedings have been determined in any way or have been abandoned."*

86. It is quite wrong to characterise the approach of the judge as having given an excepting direction by reason only of the conclusion of the proceedings. He spoke of the picture having changed post-trial not only because the integrity and smooth running of the trial process had then fallen away as a justification or was of much less significance but also that it was now known that both defendants were guilty of murder and there was more up-to-date medical and other evidence in relation to each and to their welfare. The restriction on identification was not removed simply because the trial had been concluded but because the overall picture (and, thus, the interests of justice) had changed.

87. If Mr Green's submission was correct, it would mean that the judge should not postpone publication only because there was concern about the impact on the trial process on the child or young person being tried although that could well, at that stage, be a compelling reason on the basis that, if he did so, the statute would forbid his revisiting the question at the conclusion of the trial. That cannot be right and, indeed, at the trial, counsel then acting for Kim Edwards conceded that anonymity could properly be reconsidered at its conclusion because the risk to its integrity would be over and the verdicts known.

88. As for the exercise of discretion in this case, in our judgment, reviewing his decision and exercising our discretion independently, Haddon-Cave J reached the correct conclusion on the facts of the case. The facts of the case (and, in addition, the sentencing remarks) cannot be properly understood without identifying that the appellants murdered the mother and 13 year-old sister of Kim Edwards. Furthermore, no new material has been put before us to justify the conclusion that lifting anonymity would cause harm to either appellant and the assessment of Haddon-Cave J in relation to substantial grounds for fearing a real risk of self harm that would engage an obligation under articles 2 or 3 of the ECHR is faultless.

89. Further, there is no evidence before us that reporting their identities would adversely affect the future rehabilitation of the appellants, and, thus, be contrary to the welfare of

a child, which would give rise to a weighty consideration in the balancing of competing considerations in the assessment that we must make. The reality is that anonymity lasts only until 18 years of age and both appellants face a very considerable term of detention that will stretch long into their adult life. The process of reflecting on their dreadful crimes, addressing their offending behaviour, and starting a process of rehabilitation will be a lengthy one. Having said that, we recognise that there will be some need for special attention for them both at the time when their identities can be revealed in the press, but, the stay on the lifting of the Order granted by Haddon-Cave J, and the request of this court that attention be given to this possibility when this court reserved its judgment, sufficiently addresses this aspect of the matter.

90. In the circumstances of this case, notwithstanding that the appellants are only 15 years of age, we have no doubt that the lifting of reporting restrictions is in accordance with law, pursues a legitimate aim and is a reasonable and proportionate measure, properly balancing the welfare of the appellants (and other factors identified within article 8 ECHR) against the article 10 rights of the press and the interests of the public. The stay granted by Haddon-Cave J pending determination of this issue by this court (or the Divisional Court) is removed.

Conclusion

91. Although we commend the care that Haddon-Cave J gave to this exceedingly difficult sentencing exercise, we have come to the conclusion that he failed properly to allow for the effect of the full admissions of fact which both appellants (then under 15 years of age) made, such that the only issue which their legal advisers were duty bound to consider was whether psychiatric examination justified the presentation of an argument based on insanity or diminished responsibility. In the circumstances, these appeals are allowed and in place of minimum terms of 20 years, in each case we substitute a term of 17½ years less time spent on remand. We add that this is the period which must elapse before either can be considered eligible for release on parole: whether they are then released will depend on the progress that they have made in custody, and will be for the Parole Board to decide.

92. Although we are grateful for the assistance of counsel and Just for Kids Law, we make an excepting direction within s. 45(5) of the 1999 Act on the grounds that we are satisfied that the restrictions imposed by a direction under s. 45(3) imposes a substantial and unreasonable restriction on the reporting of the proceedings and that it is in the public interest to remove or relax that restriction. The challenge to the excepting direction made by Haddon-Cave J is dismissed.