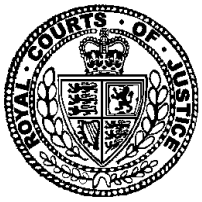

Neutral Citation Number: [2023] EWCA Crim 596

Case No: 202202473 A1

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL CRIMINAL DIVISION
ON APPEAL FROM THE CENTRAL CRIMINAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 May 2023

Before :

LORD JUSTICE WILLIAM DAVIS
MRS JUSTICE MAY DBE
HIS HONOUR JUDGE LOCKHART KC

ZA

- and -

REX

Isabella Forshall KC and Maryam Mir instructed by Morgan Has Solicitors for the Appellant
Philip Evans KC for the Crown Prosecution Service

Hearing date: 30 March 2023

Approved Judgment

Mrs Justice May DBE:

Introduction

1. This appeal raises important learning points concerning the correct approach to sentencing children and young people.

2. Between October 2021 and February 2022 the appellant, together with four others, was tried at the Central Criminal Court on an indictment containing charges of conspiracy to steal (count 1), conspiracy to rob (count 2), possession of a bladed article (count 3), murder (count 4) and manslaughter (count 5). Shortly before trial, on 22 October 2021, the appellant pleaded guilty to possessing a bladed article. On 25 February 2022, at the end of the prosecution case, he was re-arraigned and pleaded guilty to conspiracy to steal. On 15 March 2022 he was convicted by the jury of conspiracy to rob but acquitted of murder and manslaughter.

3. On 8 July 2022, by then aged 16, the appellant was sentenced to 5 years detention on count 2 (conspiracy to rob), with concurrent sentences of 6 months detention on the remaining counts 1 and 3. He appeals against sentence by leave of the full court (Singh LJ, May J and His Honour Judge Lockhart KC) who also granted an extension of time of 6 days. At the same time the full court granted a representation order for leading and junior counsel, required the prosecution to attend and expedited the appeal. We are grateful to Ms Forshall KC and Ms Mir who appeared for the appellant, and Mr Evans KC for the Crown, for their written and oral submissions.

4. Following the hearing on 30 March 2023 we allowed the appeal and reduced the appellant's sentence to one of three years detention, with full reasons to be given later. These are our reasons.

Reporting restrictions

5. There are reporting restrictions in this case, by the application of two separate provisions: first, pursuant to section 4(2) Contempt of Court Act 1981, as there is an outstanding trial listed to be heard later this year of a young person, AF, charged with the same offences as the appellant and his co-accused at trial, arising out of the same events. AF was not fit to be tried at the trial of the appellant and other co-accused, which took place from October 2021 to February 2022.

6. There are also reporting restrictions by reason of the order made in these proceedings under section 45 Youth Justice and Criminal Evidence Act 1999 on account of the appellant's age. There is also an order under section 45A of the same act restricting any reporting of details which may identify any witness under the age of 18.

7. In view of these restrictions we have anonymised the names of the appellant, his co-accused and any young witnesses in this judgment.

Background facts

8. Events giving rise to the appellant's convictions occurred in early 2021. They may shortly be summarised as follows: the appellant and co-defendants DA, RR, AC and KD, along with others, conspired to steal mobile telephones (count 1) and conspired to

rob taxi drivers of their vehicles (count 2). On 17th February 2021 RR and the appellant were seen in possession of a machete with a 16 inch blade while on the London Underground (count 3). Later the same day the group attempted to rob a taxi driver, Gabriel Bringye, of his car and possessions. In the course of that robbery Mr Bringye was fatally stabbed, giving rise to the charges of murder and manslaughter under counts 4 and 5. We set out the events of 17 February 2021 in more detail below.

9. The appellant, KD and AC were all aged 15 at time of the offending; AD and RR were 17. The sixth member of the group, AF (to whom we have referred above), was also aged 15. As AF was found to be unfit at the time of the scheduled trial last year, his trial was severed from the others and is due to take place later this year.

10. The appellant, AC and KD's involvement in the conspiracies was in each case restricted to events on 17 February 2021. However it is necessary for the purposes of this judgment to summarise the earlier offending comprised within the wider conspiracies, before turning to 17 February 2021.

16th January 2021

11. P was contacted by her friend AF. He asked her to book a taxi for him and provided the pick-up and drop off details. Mini cab driver Muhammad Ali Ajaz drove a black Volkswagen Passat. At 22:23 he accepted a job to collect people outside 24 Sussex Way, N19. While Mr Ajaz was waiting a male on an electric scooter knocked on the minicab window and asked Mr Ajaz where he was going. Another four males then surrounded the vehicle. They opened the boot and placed the scooter inside. Three of the males got inside and confirmed their destination as N17. As Mr Ajaz began to drive away he realised that the boot was not properly shut. When he got out of the vehicle to close it two of the males followed him, one produced a knife and asked for the car key. As Mr Ajaz handed it over he saw two other males running towards him. One of them slapped Mr Ajaz on the head as he ran past. The group of five males then got into the vehicle and drove away.

18th January 2021 (first offence)

12. S was contacted by a friend named "Lloyd" via Snapchat. At his request she booked a taxi for him through Ambassador Cars. Khasay Tesfay was the driver. He arrived at Cornwallis Road and telephoned S who told him that her friends were on their way. Two males approached and got inside Mr Tesfay's Toyota Prius. A third male asked Mr Tesfay to open the boot. As Mr Tesfay began to open the boot he saw a knife in the hand of the third male who jumped into the driver's seat and drove away a short distance. Mr Tesfay was still in possession of the car keys which prevented the car from being driven any real distance. Mr Tesfay reported the offence to police; the vehicle was found abandoned on Cornwallis Road the same night.

18th January 2021 (second offence)

13. At approximately 21:00 M was contacted by "Little Z", a nickname of AF's. He asked her to book a taxi for him. M sent "Little Z" a screenshot of the message to confirm the booking. M was later contacted by the taxi company and told that the driver had been robbed and had not been paid. M tried to contact "Little Z". He called her back at 22:00

and admitted to having robbed the taxi; he was laughing. Ali Sharif Mohamed was the taxi driver who was robbed. At 21:27 he accepted a job to collect a fare from outside the Arts and Media School on Turle Road, N4 3LS. The booking was made under the name "Cobi" using M's mobile telephone number. As he waited Mr Mohamed's black Citroen Grand Picasso was surrounded by five males. One opened the door and told Mr Mohamed to get out. The male asked where the car keys were and reached into his waistband to indicate that he had a knife. Mr Mohamed said the keys were in the car. All five males got inside the vehicle. Mr Mohamed ran away along Tollington Park. The group had difficulty starting the vehicle, two of the males began to chase Mr Mohamed. He ran to the taxi office and called the police.

24th January 2021

14. At 17:30 Shae Roberts had been walking with his husband along Elmore Street in Islington when two males appeared in front of him. One stood very close to Mr Roberts and asked him the brand of his jacket. The second male stood to Mr Roberts' right, both males were in possession of knives. They repeatedly asked where Mr Roberts' mobile telephone was. He was also told to take off his jacket. Mr Roberts' handed over the jacket which had his Apple iPhone in a pocket. Mr Roberts' provided the pin number to the mobile telephone before the pair ran away. Mr Roberts went home and telephoned the police. He later received a number of emails advising him of an Uber journey having been booked from the Uber application on his mobile telephone. At 22:25 Robert Pearlman accepted a job to collect three customers at the London Gateway, located at the southern end of the M1 in north London. Mr Pearlman collected three males in his Mercedes motor vehicle and drove them to Edgwarebury Lane, HA8. Once there one of the group opened Mr Pearlman's door and told him to get out. Mr Pearlman was told to empty his pockets and hand over his mobile telephone, also the keys to the Mercedes. Mr Pearlman did as he was instructed, the three males got back inside the vehicle and drove away. Mr Pearlman sought assistance from the occupants of 182 Edgewarbury Lane from where he was allowed to call the police. It was later established that Mr Pearlman's Uber was booked via an Uber application on Mr Robert's mobile telephone. On 3rd March 2021 Lloyd Agyapong and Nathan Mohalland were arrested on suspicion of having committed the robbery of Roberts. Both pleaded guilty to robbery and possession of a bladed article on 23rd March 2021. Meanwhile, on 26th January 202,1 AF was arrested on an unrelated matter. While at Romford police station Mr Roberts' mobile telephone was seized from him.

2nd February 2021

15. J was with her friend A when A was contacted by "Little Z" (AF) via Snap Chat. "Little Z" asked A to book him a taxi and provided the number of Bluebird mini-taxi company. A stayed on the Snap Chat call to "Little Z" while J made the booking. "Little Z" called A again to enquire about the whereabouts of the taxi and its estimated arrival time. J called the taxi company and was told the car would be 5 minutes. Fozal Miah was a driver for Bluebird cars. At 20:10 he accepted the booking to collect two passengers from outside Totteridge and Whetstone station and take them to 1 Eileen Lenton Court, Tottenham Green East N15 4UR. Miah arrived at 20:32 and two males got inside the rear. Mr Miah asked them to pay upfront. They told him they did not have any money but would be able to withdraw some if he stopped at a cash point on route. Mr Miah stopped at a nearby cashpoint on Whetstone Road. The males then said they did not

have any money and asked to be returned to the station to which Mr Miah agreed. When they got back to Totteridge and Whetstone station one of the males got out of the minicab and tried to open the driver's door. In response Mr Miah locked the doors with the other male still inside before eventually unlocking the doors. Mr Miah was pulled from the vehicle and demands were made for his car keys. Mr Miah started to run away. He saw one of the males pull a machete from the waistband of his trousers. The two males ran away after Mr Miah shouted for help. Mobile telephone cell site evidence showed DA's mobile telephone was in the vicinity of Totteridge and Whetstone station at the time of the offence.

3rd February 2021 (first offence)

16. At approximately 17:20 JW boarded an empty carriage towards the rear of a southbound Northern Line tube train at High Barnet. At the same time three teenage males entered the same carriage, two were dressed all in black and the third wore a grey coat. The male in grey approached JW and asked the time. JW took out his iPhone to check. The male in grey demanded the mobile telephone, intimating that he had a weapon. JW handed over the telephone and entered the passcode. The other two males then went over and demanded JW's wallet. The train then pulled into Woodside Park Station and the group exited without taking the wallet. Grey clothing seized from AF's bedroom on 18th February 2021 matched the grey clothing worn by one of the males on 3rd February. RR was identified as one of the other males present. JW remained on the tube until 17:40 after which he reported the robbery to station staff. JW later received several emails from Uber indicating that two taxi journeys had been booked from the application on his mobile telephone. His Apple ID and password had been changed. The address provided was Andover Road, London N7 7RA along with a mobile telephone number. Those personal details related to DA. At 17:33 Uber driver Stefan Tendeleu accepted a job to collect passengers from Woodside Garage Road and take them to an address in EN5. The booking was made from JW's Uber account. Three males got inside the rear of Mr Tendeleu's BMW. Approximately 5 minutes after starting the journey the drop off location was changed via the Uber application to Daws Lane NW4SD. This was an address in Mill Hill close to the M1 Gateway services. When they arrived at Dawes Lane two of the males exited the vehicle. The third passenger remained inside. Male one opened the passenger door and told Mr Tendeleu to get out of the vehicle before removing a large kitchen knife from his waistband. Male two got back inside and he and male three began to punch Mr Tendeleu from inside while male one attempted to physically pull Mr Tendeleu out of the car. As the vehicle began to roll forward Mr Tendeleu put his foot down on the accelerator and drove away. Male two and three jumped from the moving vehicle. Mr Tendeleu drove to nearby Esso garage and called the police.

3rd February 2021 (second offence)

17. Following the attempted robbery of Mr Tendeleu's BMW a second booking was made from JW's Uber account. The job was accepted by Guled Sudi who drove a white Kia Niro. The pick-up location was Daws Lane, NW7. Mr Sudi collected three males from Daws Lane. The destination was originally an address in N10 but was later changed to Western Way, EN5. As the vehicle arrived two of the males got out with the third remaining inside. Demands were made for Mr Sudi to hand over the keys to the car. Mr Sudi got out of the vehicle and began to run away. He was pursued by one of the males who produced a knife and threatened Mr Sudi. Mr Sudi handed over the keys and the

three got inside the vehicle and drove away. Cell site analysis placed DA at the relevant locations at the time of the offence. It was the Prosecution case that AF, RR and DA were the males who committed the offences against Stefan Tendeleu and Guled Sudi.

15th February 2021

18. Eduardo Lasco boarded a Northern Line tube at Belsize Park heading towards High Barnet. Soon after a group of six males boarded the train. At around 18:45 the tube arrived at Woodside Park. The six males got up and made their way to exit the tube. As they did one of the group snatched Mr Lasco's mobile telephone from his hand. Mr Lasco chased after them but was unsuccessful. He contacted the police while at the station and called his bank to cancel his bank card. While speaking with the bank Mr Lasco was informed that his account had just been debited with a payment to Uber. Mr Lasco had an Uber application on his stolen iPhone. A mobile telephone attributed to DA was in the vicinity of Woodside Park station at the relevant time. At 18:45 Uber driver Kwabena Agyei accepted a job to collect a passenger from Woodside Park Road, N12 and take them to Mill Hill Broadway. Mr Agyei drove a seven-seater Chevrolet. He collected four teenage males from the station. Due to the corona virus all four had to sit in the rear of the vehicle. During the journey the drop off location was changed via the Uber application to Tennyson Road, NW7. Upon arrival Mr Agyei got out of the vehicle to help the passengers exit. At the same time one of the males removed the car keys from the ignition. When Mr Agyei tried to grab him another member of the group produced a knife and threatened to stab Mr Agyei unless he moved back. The four then drove the Chevrolet away. Mr Agyei flagged down a passing motorist and called the police. Mr Agyei's Chevrolet was seized by police and submitted for forensic analysis. A swab from a Faygo grape can found inside matched the DNA profile of RR. A hand rolled cigarette found in the rear offside foot well matched the DNA profile of DA. DA was arrested at his home address on 3rd March 2021. Police seized an iPad containing 3 videos all of which included footage from inside the stolen Chevrolet. Cell site analysis placed RR and DA's mobile telephones in the relevant locations when the offence occurred. The videos taken from DA's iPad showed both RR and AF driving the Chevrolet.

16th February 2021 (first offence)

19. At 15:00 Robert Egyir was sent by Fairwood and Kenwood cars to collect a customer from 20 Goldersway, NW11 and take them to Muswell Hill, NW10. Mr Egyir collected a male calling himself "David" who said that he was going to meet his three brothers.

At the drop off location "David" rang someone on his mobile telephone. He then left the rear of the car and got into the front passenger seat. Three other males got into the back of the vehicle and asked Mr Egyir to drive them somewhere else. After initially refusing Mr Egyir did agree to drop them at Wood Lane, behind Highgate Station. As Mr Egyir approached some woodland close to Wood Lane the males asked him to stop. He refused but did pull over close to a residential section of road. The males pulled up their hoods, one of them grabbed Mr Egyir's neck from behind and told him they were going to take the car. Mr Egyir shouted for help and beeped his horn. He managed to get out of the vehicle with the key fob still in his possession. One of males got out of the car and demanded the keys before running aggressively toward Mr Egyir, who punched him in the chest in response. The group ran into Highgate Woods when people started coming out of their homes to investigate the disturbance. The police were called and Mr Egyir discovered that his mobile telephone had been stolen. The booking of Mr

Egyir's car was made from DA's mobile telephone. Cell site analysis showed that RR's mobile telephone was also in the vicinity at the relevant times.

16th February 2021 (second offence)

20. Abdul Rahim worked for the private mini-cab company Swift Cars. At 22:18 he was sent to collect a customer from High Road, Whetstone N20. He arrived at 22:22 and picked up three males. The drop off location was Hammers Lane / Tennyson Road NW7 4AA. When he stopped the vehicle one of the males got out and attempted to pull Mr Rahim out of the car. The other two joined in and prised Mr Rahim from the vehicle. He was repeatedly punched and sprayed in the face with a liquid blurring his vision and hurting his eyes. Mr Rahim saw one of the males get into the vehicle and drive it away. A member of the public came to his aid and the police were called. The cab had been booked from DA's mobile telephone. Cell site evidence indicated that RR had been another of the males involved in the robbery.

17th February 2021

21. After robbing Mr Rahim on 16th February RR went back to AF's care home at 33 Bayham Street and stayed there overnight with him. The two left the premises together at 13:00 on 17th February and headed to Tottenham. CCTV footage showed the appellant leaving his address at 13:21 and heading towards Erskine Crescent where KD lived. AF and RR also made their way to Erskine Crescent to meet with KD. CCTV footage captured AC and KD riding an electric scooter towards KDs address. By 14:15 all five were together at KD's home.

22. Just under an hour later AF, RR, the appellant, AC and KD were seen on CCTV walking towards Tottenham Hale tube station. At approximately 15:11 AF, RR, the appellant and AC travelled on the underground from Tottenham Hale to Golders Green to collect DA from his home. KD remained in Tottenham Hale. While travelling on the Northern Line two off- duty police officers saw a knife being passed from RR to the appellant and were sufficiently concerned to take photographs of the exchange. The group went to a Kentucky Fried Chicken Restaurant before meeting up with DA at 16:20 at outside his address. At 17:00 the five were seen loitering outside the tube station. The appellant and AC, both wearing white gloves, forced their way through the ticket barriers. AF stayed outside the station whilst RR and DA remained in the immediate vicinity. The appellant and AC walked along the tube platform. AC entered a carriage and snatched an iPhone 11 from Thais Gomes de Araujo. The appellant and AC then ran out of the station. They handed the mobile telephone to AF after which the three re-joined RR and DA.

23. AF used the stolen iPhone to book a cab. The first car that arrived was too small and so a second booking was made. The driver of the second car arrived and spoke with AF but did not pick up the group. At 17:22 another cab was ordered using the "Bolt" application on the stolen iPhone. The cab was booked to collect them from 18C Alderton Crescent and take them to 9 Erskine Crescent in Tottenham. They were collected in a taxi van and arrived in Tottenham at 18:00. RR used the stolen iPhone to order clothing from JD Sports while in the taxi. The group met up with KD again at 18:39.

24. The stolen mobile telephone was used to book another minicab through the "Bolt" application. The pick-up address was 22 Runcorn Close, located close to Erskine Crescent. At 18:43 driver Gabriel Bringye arrived in his black Mercedes. AF went over to Mr Bringye and directed him towards Ferry Lane Primary School on the pretence that he had to collect his scooter. Mr Bringye pulled up alongside the school and opened his boot. Two people were seen to walk behind the boot and move around. Mr Bringye turned off the car's engine and got out of the vehicle. The group attempted to rob Mr Bringye of his car. CCTV footage showed that AF stabbed Mr Bringye before the group fled. At 18:53 Mr Bringye managed to get back inside his car and call 999. By this point he was seriously injured and was unable to communicate. Ian White, a site manager for the primary school, saw Mr Bringye in his vehicle. There was blood and vomit on the ground nearby. Mr White called the emergency services at 19:21. Paramedics attended the scene. Despite medical intervention Mr Bringye was declared dead at 20:00. A post-mortem examination established that he had been stabbed in the right thigh, severing his femoral artery. There were also defensive injuries to both of his hands. Mr Bringye was aged 37 when he died.

25. AF and RR returned to AF's care home. Another resident was asked to bring out a change of clothes for AF. At 01:00 on 18th February a member of staff retrieved blood stained clothing that had been disposed of in an outside bin. At 08:30 on 18th February police attended 33 Bayham Street and arrested AF on suspicion of an unrelated knife point robbery. RR was still at the residence but was allowed to leave. Staff handed police the bloodstained clothing recovered the night before.

26. Two identical knives were found in AF's room, they were large non-serrated knives with a 26.8 centimetre blade. One of the knives had some bloodstaining on the handle area of the sheath which matched the DNA profile of Mr Bringye. The appellant's DNA profile was found on the second knife. Mr Bringye's DNA was also found on AF's bloodstained clothing and trainers.

The co-accused

27. DA was aged 17 at the time of the offending, 18 at trial and sentence. He pleaded guilty to conspiracies to theft and rob. At trial he was acquitted of murder but convicted of manslaughter. DA was sentenced to 10 years' detention in a young offender institution on the charge of manslaughter, with concurrent sentences of 6 years each for the conspiracies to steal and to rob. The single judge refused leave to appeal his sentence; he later abandoned a renewed application.

28. RR was aged 17 at the time of the offending, 18 at trial and sentence. He pleaded guilty to both conspiracies and to possession of a bladed article. Like DA he was acquitted of murder at trial but convicted of manslaughter. RR also pleaded guilty to an additional, entirely separate, offence of assault occasioning actual bodily harm, committed on a different occasion. He was sentenced to a total of 11 years' detention in a young offender institution, with concurrent sentences of 6 years each for the conspiracies to steal and to rob. The single judge refused leave to appeal his sentence; he later abandoned a renewed application.

29. AC was aged 15 at the time of the offending, 17 at sentence. He pleaded guilty to the conspiracy to steal and was convicted at trial of conspiracy to rob. The jury acquitted him of manslaughter. AC was sentenced to a total of 5 years' detention in a young

offender institution. His application for leave to appeal his sentence was refused by the single Judge and has lapsed in the absence of renewal.

30. KD was also aged 15 at the time of the offending, and 17 at sentence. He was convicted by the jury of conspiracy to rob and acquitted of manslaughter. He was sentenced to 4 years' detention in a young offender institution and, on the same occasion, to a further term of 1 year, consecutive, for an unrelated robbery offence.

Sentence

31. Following trial, the judge was faced with sentencing five defendants, of whom the older two only (DA and RR) had been convicted of unlawfully causing Mr Bringye's death. A series of delays resulted in the three younger defendants - the appellant, KD and AC - being listed for sentence separately, on 8 July 2022. RR and DA were sentenced later, on 22 July 2023.

32. The appellant, who had been remanded to Oak Hill detention centre since his arrest in February 2021, had been in custody for just under 17 months prior to sentence, passing his sixteenth and seventeenth birthdays there.

33. So far as the appellant was concerned, the judge had available to her the report of Dr Halsey, a consultant forensic clinical psychologist, prepared before trial on the instruction of the appellant's solicitors. She also had a closely typed 12-page report prepared by Kyle Campbell, senior practitioner (social worker) with Haringey Youth Justice Service.

34. The judge began her sentence by referring to the case as a series of offences "planned to target and to terrify innocent members of the public….purely [for] financial gain", before noting that the three younger defendants before her for sentence on this occasion, including the appellant, had not been involved in the conspiracies prior to 17 February (mis-recorded in the transcript as September) 2021. She referred to the stabbing and to Mr Bringye's death, noting that the group had simply run away without making any effort to help him, or to call help for him. The judge referred to the expressions of grief and loss expressed by Mr Bringye's family in their victim personal statements.

35. Having observed shortly that she had read all that she had been provided about the three young people before her the judge said that sentencing guidelines applied to the crimes of which they had been convicted. Referring to the cases of *Khan* [2014] 1 Cr App R (S) 10 and *Doherty* [2018] EWCA 1924 (Crim) she noted the Crown's case that she was entitled to look at all the harm caused during the course of the conspiracies. She rejected any submission that the younger boys had not known of the knives.

36. The judge then proceeded to find that the robbery of Mr Bringye fell into category 1A of the (adult) guideline dealing with street robberies, rejecting defence submissions that a lesser level of harm and culpability applied to the three defendants before her, stating:

> " The guideline is quite clear, the court should consider the factors set out, including to determine the level of the harm that has been caused. In this case, Mr Bringye is dead."

The judge went on to say that she would take account of the Sentencing Council guideline *Sentencing Children and Young People* ("the overarching youth guideline") and deal with each defendant individually for their roles in the offending, before noting that each had been well aware that knives were to be involved and would be used to threaten the taxi driver. She pointed out that the appellant had had one of the knives, which she described as a "16-incher", on the Tube. The judge referred again to the fact that a knife had been used to stab Mr Bringye, causing his death, pointing out that "[t]his is the most extreme type of harm that it is possible to have". She concluded that harm and culpability for each of the boys was at the highest level, noting that for an adult the starting point would be a sentence of 12 years imprisonment. Turning to the conspiracy to steal, the judge said that both the appellant and KD fell into category B in the (adult) guideline.

37. The judge observed shortly that she had read all the reports and assessments which had been prepared, and that she had had regard to the overarching youth guideline. She noted that custodial sentences were a measure of last resort, before expressing the view that there was no other possible sanction here.

38. In relation to the appellant the judge recorded that he was of previous good character. She said she had read the report from Dr Halsey and noted briefly that the appellant had taken steps to reform in custody and had expressed remorse. Having made similarly succinct remarks in relation to the other two young defendants the judge again noted that the overarching youth guideline applied, concluding as follows:

> "…as I have said, this conspiracy to rob clearly crosses the custody threshold. No community penalty would, in my judgment, be suitable for any of you. The conspiracy itself qualifies…for a sentence outside and above the guidelines. But, for you three I will take note of your individual roles within it and the fact that you were acquitted of manslaughter.
>
> However, you did all take part in a robbery that resulted in a man's death…"

39. The judge then proceeded to pass sentences of 5 years detention on each of the three defendants before her, including this appellant.

Grounds of appeal and the parties' submissions

40. In her revised written grounds Ms Forshall made a number of separate points which, in oral submissions, she distilled into two critical errors affecting the sentencing process: First, she submitted the judge had wrongly allowed the tragic death of Mr Bringye to affect her consideration of the seriousness of offending as it related to the appellant. The jury had acquitted him of manslaughter, she emphasised. Had the jury been sure that the appellant intended, or had even foreseen, any harm being caused to Mr Bringye by use of the knives during the robbery, then on the judge's directions they must have convicted him of manslaughter, as they had done in respect of DA and RR. Instead, they acquitted him. It was inconsistent with this view of the evidence taken by the jury to sentence the appellant on the basis that he was to be held responsible for the highest level of harm, namely the death of Mr Bringye.

41. Mr Evans, for the Crown, responded that the rubric above the table for harm in the (adult) robbery guideline refers to "… the level of harm that has been caused or was intended to be caused to the victim". Robberies can encompass varying degrees of

harm, he pointed out, from minimal physical harm at one end to very serious harm at the other. If a group embarks on a robbery with knives then there is an obvious risk of very serious harm resulting, and in such circumstances why should the robbers not be visited in sentence with the harm that has in fact resulted?

42. Ms Forshall's second general ground concerned the failure at sentence to refer to the Sentencing Council guideline *Robbery, Sentencing Children and Young People* ("the youth robbery guideline"). The prosecution and three sets of defence counsel had produced sentencing notes in advance of the hearing, yet in none of those notes had the youth robbery guideline been mentioned. Ms Forshall accepted responsibility and apologised to us, as did Mr Evans. But whereas Ms Forshall went on to argue that had the youth robbery guideline been explicitly referred to and applied then the appellant's sentence must have been different, Mr Evans submitted that, properly understood, the judge's remarks showed that she had effectively gone through all the steps and/or that there would have been no difference to the sentence if she had.

43. Ms Forshall submitted that sentencing children and young people requires a "root and branch difference of approach" to that which courts adopt when sentencing adults. The youth robbery guideline provides guidance, which the courts are required by section 59 of the Sentencing Act 2020 to follow, as to the correct line of approach to be taken when sentencing a young person convicted of robbery, expressly stating that the youth robbery guideline is "to be read alongside the [overarching youth guideline]". Ms Forshall referred in particular to the general principles of sentencing at section 1 and the general sentencing steps at section 4 of the overarching youth guideline, seen alongside the stepped approach to robbery offences in particular which the youth robbery guideline requires.

44. Ms Forshall argued that going straight to the culpability/harm factors set out in the adult guideline was to ignore the very different considerations affecting culpability and harm set out in the youth robbery guideline at step 1. She drew particular attention to the second of the two boxes at step 1 in the youth robbery guideline where it is noted that a youth rehabilitation order with intensive supervision and surveillance ("YRO with ISS") may be an alternative to custody even where very significant force has been used or where a knife or firearm has been produced and where significant physical or psychological harm has been caused. She referred across to the guidance at section 6.42 of the overarching youth guideline, requiring a court which is passing a sentence of custody to explain why it has decided not to pass a YRO with ISS instead.

45. Miss Forshall submitted that if the judge had gone step by step through the youth robbery guideline, then there were obvious aspects of the appellant's circumstances which called for consideration of an alternative to custody: for instance at step 3, personal mitigation, she suggested that each of the (non-exhaustive) mitigating factors identified in the youth robbery guideline applied to her client, where the guidance given above the table of mitigating factors notes: "The effect of personal mitigation may reduce what would otherwise be a custodial sentence to a non-custodial one.."

46. Miss Forshall further submitted that even if the judge had gone through each of the steps in the youth robbery guideline and had nevertheless properly determined that custody was necessary, then she was wrong to have applied Cat 1A of the adult guideline. The report of Dr Halsey, as considered in Mr Campbell's pre-sentence report, suggested that this appellant, at age 15, was unusually suggestible and compliant; when

considered together with parental concerns about his being exploited, which they had reported to Social Services, and equivalent police concerns recorded just two days before the events of 17 February, these were considerations which must have reduced culpability to level B in the adult guideline. As to harm, Ms Forshall argued that if responsibility for the death of Mr Bringye is excluded, as on the jury's verdict the judge should have done, the level of harm was also not at the highest. On any basis, therefore, a sentence of 5 years was too high.

47. Even then, Ms Forshall pointed out, it was necessary to move to step 5 in the youth robbery guideline and to review the sentence: to consider whether, taking into account all the circumstances of the individual child or young person, a sentence of 5 years detention was appropriate. In July 2022, when he was sentenced, the appellant had already served around 17 months in detention, the equivalent of a sentence of 34months. As appears from the pre-sentence report, he had been detained under very difficult circumstances, at a failing establishment which had not met his educational needs. Applying the general principles set out in the overarching youth guideline would have called for a disposal that promoted his welfare, amongst other things through the provision of proper education. A YRO with ISS would have done that more effectively than detention, as at July last year, Ms Forshall pointed out.

48. In response Mr Evans stressed the seriousness of the offences. There had been no evidence at trial suggesting that the appellant was coerced or intimidated. On the contrary, he had been wholly engaged as a member of the group which had stood together, discussing their plans during 45 minutes at KD's house with two large knives out and ready to be taken to the ambush. When RR gave evidence at trial (the only one of the defendants to do so) it had never been suggested to him that the appellant was a reluctant participant, coerced or frightened into taking part. Mr Evans emphasised that the judge had heard all the evidence over a long trial and had had the overarching youth guideline well in mind. She had rightly identified custody as a last resort, but had decided that it was necessary. She had correctly characterised the offending as falling into the highest level of the adult guideline and had reduced the adult sentence by more than 60% in coming down to 5 years for the appellant and the other younger defendants. Standing back and reviewing the sentence, as advocated at step 5 of the youth robbery guideline, could not have changed her conclusion as to the appropriate sentence for the younger offenders, including the appellant, reflecting the seriousness of the offending and their individual circumstances as she had taken care to do.

Discussion and decision

49. Sentencing children and young people is a difficult and time-consuming endeavour, if it is to be done properly in accordance with Sentencing Council guidance. All too often judges' lists allow too little time to prepare for a sentencing hearing, for the hearing itself and then for the judge to take time to reflect and to weigh up all relevant, often conflicting, considerations in arriving at the appropriate sentence. Full and accurate sentencing notes from prosecution and the defence are critical in ensuring that the judge's deliberations are directed correctly by reference to material considerations set out in the relevant Sentencing Council guidelines, together with reference to important assistance with sentencing and the sentencing process located in the Criminal Practice Directions and a youth-specific Judicial College publication to which we refer further below.

50. The prosecution note prepared for the sentencing hearing of this appellant and his two young co-accused last July was not very helpful. First, there was no hard-line distinction drawn between the older and younger defendants as there should have been, both because of their ages but also by reason of their very different roles in, and responsibility for, events up to and including Mr Bringye's death. Next, in relation to the robberies the prosecution note suggested that the adult robbery guideline applied to all the defendants, when in fact it only applied to the older two, who were not before the judge for sentence on this occasion. This error was compounded by a reference to the cases of *Khan* and *Doherty* in support of a submission that the court should look to the conspiracy as a whole "and not to the part played by the individual offender". Neither of those cases involved young people under 18. A prosecution submission like this, made in reliance on those cases, is directly contrary to the individualistic approach courts are required to adopt in relation to the sentencing of children and young people. The prosecution note went on to suggest that the adult theft guideline applied to all the defendants, when it did not. There was likewise a reference to the adult bladed articles guideline, when there is a youth-specific bladed articles guideline to which the court should have been directed in the case of the younger defendants. Finally, the prosecution note did not mention the overarching youth guideline until the penultimate page of the note, and then only to that part of the overarching youth guideline where reference is made to using a relevant adult guideline as a starting point for a custodial disposal (at section 6.46).

51. The defence note prepared on behalf of the appellant was more helpful, in that it referred extensively to principles set out in the overarching youth guideline, drawing the court's attention to matters of particular relevance to the appellant. Nevertheless, as Ms Forshall accepted, the court's attention was not directed to the specific guidance provided by the youth robbery guideline.

52. It has been recognised for some time that the brains of young people are still developing up to the age of 25, particularly in the areas of the frontal cortex and hippocampus. These areas are the seat of emotional control, restraint, awareness of risk and the ability to appreciate the consequences of one's own and others' actions; in short, the processes of thought engaged in by, and the hallmark of, mature and responsible adults. It is also known that adverse childhood experiences, educational difficulties and mental health issues negatively affect the development of those adult thought processes. Accordingly very particular considerations apply to sentencing children and young people who commit offences. It is categorically wrong to set about the sentencing of children and young people as if they are "mini-adults". An entirely different approach is required.

53. In our view, the criticisms advanced by Ms Forshall on this appeal are well-made. The collective failure of counsel and court to have regard to the youth robbery guideline in addition to the overarching youth guideline, together with errors of approach by the judge in sentencing this appellant have resulted in a sentence that was both wrong in principle, and manifestly excessive.

54. We turn first to the two principal sources of guidance which the court was required to apply when sentencing this appellant for his part in the conspiracy to rob of which the jury convicted him.

The overarching youth guideline

55. It will generally be unhelpful for the prosecution to start by directing the court straight to paragraph 6.46 of the overarching youth guideline, which contains a suggestion that an appropriate custodial sentence for a youth may be "half to two-thirds of the adult sentence". This is to ignore all previous sections of that guideline, where important principles are set out and developed, designed to emphasise the necessity for an individualistic approach and to guide the court in adopting that approach to the particular child or young person before it for sentence.

56. The key guiding principle is set out at paragraph 1.1 of the overarching youth guideline, reflecting the statutory requirement in section 58 of the Sentencing Code:

> *"When sentencing children or young people (those under 18 at the date of the finding of guilt) a court must have regard to:*
>
> - *The principal aim of the youth justice system (to prevent offending by children and young people); and*
>
> - *The welfare of the child or young person."*

As the following paragraphs of section 1 of the guideline go on to make clear, preventing offending, and welfare, have far more to do with education, promoting integration and providing opportunities for the young person to learn and change, than with punishment or retribution. The guidance in section 1 includes the following:

> *"Whilst the seriousness of the offence will be the starting point, the approach to sentencing should be individualistic and focused on the child or young person.."* (para 1.2)
>
> *"…the primary purpose of the youth justice system is to encourage children and young people to take responsibility for their own actions and promote re-integration into society rather than to punish"* (para 1.4)
>
> *" It is important to bear in mind any factors that may diminish the culpability of a child or young person. Children and young people are not fully developed and they have not attained full maturity…their emotional and developmental age is or at least equal importance to their chronological age (if not greater)* (para 1.5)
>
> *"They should, if possible, be given the opportunity to learn from their mistakes without undue penalisation or stigma, especially as a court sanction might have a significant effect on the prospects and opportunities of the child or young person and hinder their re-integration into society."* (para 1.6)
>
> *"the impact of punishment is likely to be felt more heavily by a child or young person in comparison to an adult as any sentence will seem longer due to their young age. In addition penal interventions may interfere with a child or young person's education and this should be considered by a court at sentencing."* (para 1.8)

57. Under the heading "Welfare", paragraphs 1.11 to 1.21 of the overarching youth guideline deal with matters to which the court must have regard when considering the

welfare of the young person before it. Paragraph 1.21 is set out in bold in the guideline, for emphasis:

> "***In having regard to the welfare of the child or young person, a court should ensure that it is alert to:***
>
> - ***any mental health problems or learning difficulties/disabilities;***
> - ***any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;***
> - ***any speech and language difficulties and the effect this may have on the ability of the child or young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;***
> - ***the vulnerability of children and young people to self-harm, particularly within a custodial environment; and***
> - ***the effect on children and young people of experiences of loss and neglect and/or abuse."***

58. Section 2 of the overarching youth guideline deals with allocation, containing a useful summary of the complex factors bearing on proper location of trial of a young person (not relevant for the purposes of this appeal). Section 3 addresses parental responsibilities, reminding judges that for any child or young person aged under 16 there is a statutory requirement that parents/guardians attend at all stages of proceedings, and that for young people over 16 the court has a discretion to require such attendance. The facilitation of attendance and participation of parents in the trial and sentencing process is also covered in Criminal Practice Directions, as to which see further below.

59. Section 4 of the overarching youth guideline, headed "Determining the sentence", discusses specific matters relevant to the particular sentence. At this point courts are referred to any youth-specific offence guidelines, when considering the seriousness of the offence and any aggravating/mitigating factors. We deal with the youth robbery guideline and its application in this case below. In relation to age, the guidance contained in the overarching youth guideline is as follows (at para 4.10)

> *"Although chronological age dictates in some instances what sentence can be imposed…the developmental and emotional age of the child or young person should always be considered and it is of at least equal importance as their chronological age…"*

60. Section 5 of the overarching youth guideline deals with guilty pleas and the effect on sentence/type of sentence for children and young people. Section 6, entitled "Available sentences" sets out considerations which apply to sentencing at different ages and different levels of seriousness of offence. Paragraphs 6.23 to 6.41 cover Youth Rehabilitation Orders ("YROs"), including YROs with intensive supervision and surveillance ("ISS") or with fostering, indicating as follows:

> *"6.32 An intensive supervision and surveillance requirement and a fostering requirement are both community alternatives to custody.*
>
> *6.33 The offence must be punishable by imprisonment, cross the custody threshold and a custodial sentence must be merited before one of these requirements can be imposed."*

61. Custodial sentences are covered starting at paragraph 6.42, which prefaces what follows with this preliminary observation, again emphasised in bold in the guideline:

> ***"A custodial sentence should always be used as a last resort. If offence specific guidelines for children and young people are available then the court should consult them in the first instance to assess whether custody is the most appropriate disposal"***

Paragraphs 6.42 to 6.49 contain general principles for courts to bear in mind when arriving at a decision to impose a custodial sentence, including:

> *"If a custodial sentence is imposed, a court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with intensive supervision and surveillance or fostering could not be justified.* (para 6.42)
>
> *" Only if the court is satisfied that the offence crosses the custody threshold, and that no other sentence is appropriate, the court may, as a preliminary consideration, consult the equivalent adult guideline…"* (para 6.45)
>
> *"When considering the relevant adult guideline, the court* ***may*** *feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15-17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically…* ***the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age."*** (para 6.46, emphasis in the original)
>
> *"The individual factors relating to the offence and the child or young person are of the greatest importance and may present good reason to impose a sentence outside of this range…"* (para 6.47)
>
> *"The welfare of the child or young person must be considered when imposing any sentence but is especially important when a custodial sentence is being considered. A custodial sentence could have a significant effect on the prospects and opportunities of the child or young person and a child or young person is likely to be more susceptible than an adult to the contaminating influences that can be expected within a custodial setting…."* (para 6.49)

62. We turn now to the relevant parts of the youth robbery guideline.

The youth robbery guideline

63. There are currently four youth-specific guidelines issued by the Sentencing Council, covering bladed articles, robbery and sexual offences (two guidelines for the latter).

The circumstances of the present case engaged the youth robbery guideline primarily, although the youth-specific guideline relating to possession of bladed articles was also of relevance.

64. The youth robbery guideline stipulates that it is to be read alongside the overarching youth guideline. It adopts a stepped approach to be followed when sentencing a child or young person for robbery, in a format that is familiar to all courts using Sentencing Council guidelines.

65. Step 1 involves determining the seriousness of the offence by reference to harm and culpability, giving examples of the types of factors *"which may indicate that a particular threshold of sentence has been crossed"*. Use of very significant force and/or threat or use of a bladed article, firearm or imitation firearm and/or significant physical or psychological harm are given as factors indicating that a custodial sentence or YRO with ISS may be justified.

66. At Step 2, the court is required to consider aggravating and mitigating factors *"[t]o complete the assessment of seriousness"*. Non-exhaustive lists of factors are set out. Aggravating features include a significant degree of planning and targeting of high-value goods. Mitigating factors include no previous findings of guilt, participation due to peer pressure or coercion, and remorse.

67. Having assessed the offence seriousness at Steps 1 and 2, Step 3 requires the court to consider aspects of personal mitigation separately, indicating that:

> *"The effect of personal mitigation may reduce what would otherwise be a custodial sentence to a non-custodial one, or a community sentence to a different means of disposal"*

A non-exhaustive list of personal mitigating factors is given at Step 3 as follows:

- *Communication or learning disabilities or mental health concerns*
- *Unstable upbringing including but not limited to:*
  - *Time spent looked after*
  - *Lack of familial presence or support*
  - *Disrupted experiences in accommodation or education*
  - *Exposure to drug/alcohol abuse, familial criminal behaviour or domestic abuse*
  - *Victim of neglect or abuse, or exposure to neglect or abuse of others*
  - *Experiences of trauma or loss"*
- *Determination and/or demonstration of steps taken to address offending behaviour*
- *Child or young person in education, training or employment*

68. Step 4 deals with reduction for guilty plea, referring back to the overarching youth guideline before going on, at Step 5, to require the sentencing court to step back and consider its sentence once more:

> *"The court must now review the sentence to ensure it is the most appropriate one for the child or young person. This will include an assessment of the likelihood of reoffending and the risk of causing serious harm."*

The guideline then sets out the different types of sentences which are available to the court. In relation to a YRO with ISS, the guidance repeats what is said in the overarching youth guideline: that an order of this type can only be imposed where the court would otherwise be considering custody. Under "Custodial Sentences" at Step 5 there is reference again to the need for a court imposing a custodial sentence to explain why a YRO with ISS or fostering could not be justified. The section concludes by indicating that a court may want to consider the equivalent adult guideline when arriving at length of sentence, in essence repeating the guidance given at para 6.46 of the overarching youth guideline, set out at [61] above.

Application of the guidelines to the present case

69. As the judge was not referred to the youth robbery guideline, she did not go through the steps advocated in that guideline, referred to above. In particular, she did not indicate what factors she had had regard to, relating to this appellant, in determining seriousness of the offending in his case.

70. We have set out relevant passages from the two guidelines in some detail in order to emphasise the necessity for an approach to sentence which takes in all the guidance which a court sentencing a child or young person is required to consider before turning for reference to the equivalent adult guideline. It is critical to note that the suggested resort to the adult guideline comes at the end of the process, not the beginning.

71. In the present case there were key aspects of the appellant and the appellant's offending to be considered at Steps 1 and 2 in the youth robbery guideline: although charged as a conspiracy, the appellant's involvement was limited to a single robbery on the afternoon of 17 February 2020. That robbery involved use of a bladed article and it resulted in the most serious harm, leading to Mr Bringye's death. But in the case of the appellant, the court's consideration of offence seriousness had to take into account, and properly to reflect, the jury's decision to acquit him of manslaughter. As Ms Forshall pointed out, the jury cannot have been sure that the appellant foresaw any harm being caused to the taxi driver, notwithstanding that knives had been taken to the scene; if they had been sure then, in accordance with the judge's directions of law, the jury would have convicted him of manslaughter. Accordingly he should only have been sentenced on the basis that he anticipated the knives being used to threaten, not to cause any injury. The planning beforehand and the targeting of a high-value Mercedes car were factors increasing seriousness, but as Ms Forshall also pointed out, the appellant's previous good character and his remorse were factors identified in the youth robbery guideline as weighing in the other direction.

72. Ms Forshall sought to rely on a further mitigating factor before us, suggesting that her client had been bullied, coerced or manipulated into participating in the robbery. However we think Mr Evans was right in inviting us to reject this, in circumstances

where coercion/manipulation had not been raised in evidence at trial, the appellant did not give evidence and where no suggestion of coercion or manipulation had been put to RR (the only defendant to give evidence). We decline to include coercion as a further factor mitigating against seriousness.

73. Nevertheless, the fact that this appellant had been involved in one robbery only, the last of a long sequence of robberies conducted by others, and that his level of culpability must be taken to exclude any involvement in or responsibility for Mr Bringye's death, were in our view powerful considerations to be taken into account when assessing offence seriousness in his case. It appears from the judge's reliance on the cases of *Khan* and *Doherty* and her repeated reference to Mr Bringye's death in her sentencing remarks that she permitted the long string of (very serious) robberies conducted by others and the death of Mr Bringye occurring on the occasion of the last one, to influence her assessment of seriousness when considering sentence in the appellant's case. We think that she was wrong to do so. Had she approached the circumstances of this appellant in the individualistic way advocated in the overarching youth guideline, properly accounting for the jury's verdict in his case, and by reference to the stepped approach taken in the youth robbery guideline, we believe that she must have arrived at a different conclusion regarding the appropriate sentence <u>for him</u>. That the judge failed sufficiently to discriminate between the roles of the appellant and his (older) co-accused in relation to the robbery conspiracy is evident from the fact that she passed a sentence of 6 years on each of AD and RR in relation to that conspiracy, despite their each having been (a) 2 years older and (b) involved in multiple robberies. By contrast, the sentence passed on KD (who was sentenced for the conspiracy to rob only only) was one of 4 years detention. Whilst it is right that the appellant's sentence had also to take into account the offences of theft and possession of the bladed article on the train these could not have accounted for a further full year on that sentence (we discuss the appropriate sentence for these offences, given the appellant's age and guilty pleas, below).

74. The appellant was aged 15 (his birthday falls in April) when he involved himself in the events of the afternoon of the 17 February 2020. He had no previous convictions or cautions. His parents had already reported their concerns about him to social services and just two days before the incident, the police had identified him as susceptible to grooming and gang involvement. There were recorded family difficulties. As reported by Dr Halsey, the appellant has communication and learning difficulties and is highly suggestible, rendering him particularly vulnerable to the influence of others. Along with many other children of his age he had missed school through COVID and was plainly in want of educational opportunities at a key period of his adolescence – around GCSEs.

75. We agree with Ms Forshall that the combination of all the above factors in the appellant's case would have made him highly suitable for a YRO with ISS, as suggested by probation in the pre-sentence report. Moreover the extended time taken in hearing the trial and thereafter in listing sentence (doubtless unavoidable but nevertheless regrettable) meant that, by the time of the sentencing hearing in July 2022, the appellant had served 16 months 16 days in youth detention, having been remanded in February 2021 and subsequently refused bail. The time which he had already served prior to sentence would in our view have rendered a YRO with attendant supervision and educational requirements a particularly suitable disposal for the appellant <u>as at July last year</u>. Unfortunately, since the judge did not explain why she regarded a YRO with ISS

as unsuitable for this appellant, it is not clear to what extent she had given proper consideration to this as an alternative to custody for him.

76. But even setting aside a YRO with ISS, a sentence of 5 years detention in the appellant's case was in our view excessively long. His offending on the afternoon of 17 February 2021 was undoubtedly serious: in addition to the robbery of Mr Bringye there was the prior theft undertaken together with AC, and possession of the large knife on the Tube. The judge placed the robbery of Mr Bringye at the top of Cat 1A in the adult guideline, where there is a starting point of 8 years and a range of 7-12 years. We would not necessarily disagree with the selection of that category as an indicative starting place for a custodial sentence, but as we have sought to indicate above, taking the stepped approach to seriousness set out in the youth robbery guideline calls for a radical distinction between the appellant's position and that of his older co-accused, even before consideration of the personal mitigating factors which applied to him.

77. Taking all this into account, making proper adjustment for the aggravating factors of the other offending (in respect of which guilty pleas were entered), for his personal mitigation and for his age at the time, we think that the proper length of detention in the case of this appellant would have been no more than 3 years detention.

78. By the time of the hearing of this appeal in March 2023, the appellant had spent a further 7 months in detention and was some two weeks short of his 18th birthday. A YRO with ISS after this length of time, and at his age, would no longer have been appropriate or indeed justified (given the time he had already served). It is regrettable that the appellant will not have the level of supervision in the community, or the educational provision, which a YRO with ISS would have afforded him. Nevertheless, we understand that, as a young person leaving detention, the appellant will be supervised to some extent upon his release.

79. It is for these reasons that we allowed the appeal, quashing the sentence of 5 years and replacing it with one of 3 years.

80. As neither the theft nor the bladed article offences were grave crimes, the concurrent sentences of detention passed by the judge were unlawful; the only possible custodial sentence for these offences, given the appellant's age, would have been a detention and training order. But in view of his lack of previous convictions/cautions together with his guilty pleas, the most likely disposal for these offences on their own, at age 15, would have been a referral order. In those circumstances we quash the concurrent sentences of detention on counts 1 and 3, replacing them with an order for no separate penalty.

81. Finally we are grateful to the Criminal Appeal Office for pointing out that although the court record notes a victim surcharge order in the amount of £34, the judge does not appear to have made such an order when sentencing. Had we not reduced the sentence which she passed then, in accordance with the observations of this court in *Jones* [2018] EWCA Crim 2994, the surcharge could not now have been imposed. As it is, having reduced the sentence, we confirm that a victim surcharge applies.

Summary – sentencing children and young people

82. This appeal has generated a number of lessons to be learned when sentencing children and young people, especially when they have been tried together with older co-accused, as the appellant was here. An entirely different approach to sentence is required than that which courts routinely apply to adult offenders. We suggest the following as a checklist for counsel and courts undertaking what are invariably complex and difficult sentencing exercises:

(1) Court listing should ensure that there is sufficient time for the judge, even if that judge heard the trial and knows the case well, to read and consider all reports and to prepare sentencing remarks in age-appropriate language.

(2) Consideration should be given to listing separately, and as a priority, the sentence of any child(ren) or young person(s) jointly convicted with adult co-defendants.

(3) The courtroom should be set up and arranged to ensure that the child or young person to be sentenced is treated appropriately, namely as a vulnerable defendant entitled to proper support. So far as possible the judge should be seated on a level with the child or young person, and the latter should be able to sit near to counsel, with parental or other support seated next to them (see further below).

(4) Counsel must expect to submit full sentencing notes identifying all relevant Sentencing Council Guidelines, in particular any youth-specific guideline(s), addressing material considerations in an individualistic way for each defendant separately (if more than one young defendant is to be sentenced). Where an individualistic approach is mandated, as it is for a child or young person, a note which addresses all defendants compendiously risks missing important distinctions. These notes should be uploaded well in advance of the sentencing hearing.

(5) The contents of the Youth Justice Service pre-sentence report and any medical/psychiatric/psychological reports will be key. Courts should consider these reports bearing in mind the general principles at section 1 of the overarching youth guideline, together with any youth-specific offence guideline, carefully working through each.

(6) In general it will not be helpful to go straight to paragraph 6.46 of the overarching youth guideline without having first directed the court to general principles canvassed earlier in that guideline, as well as to any youth-specific guideline. The stepped approach in the overarching youth guideline and any youth-specific offence guideline should be followed. Working through the guideline(s) in this way will enable the court to arrive at the most appropriate sentence for the particular child or young person, bearing in mind their individual circumstances together with the dual aims of youth sentencing.

(7) If the court considers that the offence(s) is(are) so serious as to pass the custody threshold, the court must consider whether a YRO with ISS can be imposed instead. If it cannot, then the court must explain why.

Courtroom set-up and use of age-appropriate language

83. Finally, it may be helpful to remind courts of certain practical matters which are required to be addressed when sentencing children or young people in the Crown Court. These form part of the "root and branch" difference of approach which must be undertaken when sentencing a child or young person.

84. We invited submissions from counsel directed specifically at facilitating the effective participation of the appellant on this appeal. In response Ms Forshall helpfully addressed general matters including presence in person or over the link, having a parent or key worker present with the appellant in the link room, court dress, use of first names, familiarisation, positioning in court, adequate breaks during the hearing and use of age-appropriate language. In the event we sat unrobed, the appellant was on the link with his key worker beside him and we used his first name throughout.

Criminal Practice Directions

85. There are directions in the current Criminal Practice Directions providing for court familiarisation, ground rules hearings, court dress, where young people are to be located in the courtroom, and how sentencing hearings are to be managed. These include:

> **"The trial, sentencing or appeal hearing**
> 3G.7 Subject to the need for appropriate security arrangements, the proceedings should, if practicable, be held in a courtroom in which all the participants are on the same or almost the same level.
> 3G.8 Subject again to the need for appropriate security arrangements, a vulnerable defendant, especially if he is young, should normally, if he wishes, be free to sit with members of his family or others in a like relationship, and with some other suitable supporting adult such as a social worker, and in a place which permits easy, informal communication with his legal representatives."

86. The revised Criminal Practice Directions, which come into effect from 29 May 2023, have been re-organised but express essentially the same requirements for young defendants at section 6.4. Para 6.4.1 provides that there should be a ground rules hearing for all young defendants. More detail is to be found at para 6.4.2:

> "6.4.2 Where one or more defendants is young or otherwise vulnerable consideration should be given to the following matters:
>
> a. The need to sit in a court in which communication is more readily facilitated.
>
> b. An opportunity for a vulnerable defendant to visit the courtroom, out of court hours, before the hearing so that they can familiarise themselves with it. Where an intermediary is being used to help the defendant communicate, the intermediary should accompany the defendant on any pre-trial visit.
>
> c. If the defendant's use of the live link is being considered, they should have an opportunity to have a practice session.

> d. The opportunity (subject to security arrangements) for a young or otherwise vulnerable defendant to sit with family or other supporting adult in a place which permits easy, informal communication with their legal representatives. This is especially important where vulnerability arises by reason of age. The court should ensure that a suitable supporting adult is available throughout the course of the proceedings.
>
> e. The need to timetable the case to accommodate the defendant's ability to concentrate.
>
> f. The impact on the non-vulnerable defendants in a multi-handed trial;
>
> g. In the Crown Court, the judge should consider whether robes and wigs should be worn, and should take account of the wishes of both a vulnerable defendant and any vulnerable witnesses.
>
> h. It is generally desirable that those responsible for the security of a vulnerable defendant who is in custody, especially if they are young, should not be in uniform, and that there should be no recognisable police presence in the courtroom save for good reason.
>
> i. Some cases against vulnerable defendants attract widespread public or media interest. In any such case, the assistance of the police should be enlisted to avoid the defendant being exposed to intimidation, vilification or abuse when attending the court. See further the Judicial College Guide on Press Reporting etc.
>
> j. Where appropriate the defence will provide information about the defendant's welfare."

Youth Bench Book

87. Further guidance, drawing on expert sources of good practice in addition to the overarching youth guideline and Criminal Practice Directions, is to be found in the "Children and Young People in the Crown Court Bench Book" ("Youth Bench Book"), published by the Judicial College. All courts called upon to try and/or sentence a child or young person should be thoroughly well-acquainted with the contents of this essential guide.

88. Rule 25.16(7)(b)(iii) of the Criminal Procedure Rules requires judges to explain their sentence in a way that the defendant can understand. When sentencing a child or young person this means taking care to explain the sentence, and the reasons for it <u>to them</u>, in a way and using words that they can easily grasp. Remarks which properly speak to the child or young person before the court require time to get right but experience shows that it can make a real difference. To this end, Appendix II to the Youth Bench Book usefully includes a glossary of terms used in adult courts, with corresponding suggestions for age-appropriate alternatives.

Note: The court heard, last week, of the very sad passing of Isabella Forshall KC. This judgment has drawn extensively on the comprehensive oral and written submissions which she made to us. We extend our sincere condolences to her family, and to her friends and colleagues.