



# Judiciary of England and Wales

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-v-

**Morgan Smith**  
**Winchester Crown Court**  
**Sentencing Remarks of Mrs Justice Cockerill**  
**21 November 2023**

*The defendant is to remain seated until told to stand.*

## **INTRODUCTION**

1. In the early hours of Monday 2 May 2022 a brilliant and much-loved young man, David Haw, lost his life in Poole Harbour. He was just 24 years old. He had achieved a First Class degree. He was starting to excel in the working world. But that night he was a passenger on a ridged hull inflatable boat (RIB) named “Fargo” when it collided at high speed with a large metal navigation buoy known as Diver Buoy. He was thrown from the vessel and died in the water.
2. The precise physical cause of his death remains unknown. However what is known is that that collision, as a result of which David Haw tragically lost his life, was significantly caused by the operation of the RIB by the defendant, Morgan Smith who was the helmsman of the RIB.
3. Morgan Smith, you have accepted by your guilty plea, that your operation of the RIB on the night in question was grossly negligent and was a significant cause of Mr Haw’s death. I must now sentence you for that offence.
4. I have had the benefit of arguments on sentence from Mr Powell for Morgan Smith and Mr Watson KC for the Crown. I take account of everything they have eloquently said.
5. I have read - more than once - the extremely moving victim personal statement from David’s mother Gill, written on behalf of both herself and David’s father Richard. It was also read out in open court. It is a heartrending document. It speaks eloquently of the terrible loss that she has endured - and also tells of how other members of her family have suffered. Mrs Haw reminds us all that David was a son, an only child, grandson, nephew, cousin, friend, work colleague. She is right to say that this tragedy has not only affected their lives but a whole community.

6. The loss suffered by Mr and Mrs Haw is of course the greatest. They had followed his brilliant career with love and pride through all his life. Everything they did was built on a knowledge of David there, thriving, within reach of a message. And now they will not get to see how his story goes on, see him continue to flourish academically and in his career. As she says, they will never again experience what most families do –share WhatsApps, experiences and holidays with David and they will never attend his wedding, never hold and cuddle a grandchild in our arms. They will not be able to look to him for support as they themselves get older.
7. It is plain to me from that statement that their lives will never be the same again and I am sure that everyone in court will join with me in extending to them our wholehearted condolences.
8. The prosecution described David as a young man in his prime; in fact David was just starting out on an adult life of immense promise. What he would become his family will now never know. That is because of your actions, Morgan Smith.

### **THE FACTS**

9. In deciding upon the sentence for this offence I must set out my conclusions upon the evidence that I have been provided with. I must sentence you only upon the basis of the facts that I am sure about. If I am not certain about something I must give you the benefit of the doubt.
10. The material with which I have been provided is lengthy and detailed. It includes an expert report by an expert instructed by the prosecution. It does not appear that the findings of that report are disputed, because it was following the provision of that report that you decided, on legal advice, to plead guilty.
11. I have also watched the following:
  - a. A chronological compilation of CCTV on the night of the incident showing: yourself departing Poole Yacht Club with others; the transit of the RIB from Poole Yacht Club to Poole Quay Boat Haven (where three passengers disembark); the transit of the RIB from Poole Yacht Club to the point of collision with Diver Buoy at approximately 00:18 hours; and the subsequent arrival ashore of the unpowered RIB at Parkstone Yacht Club at approximately 01:48 hours.
  - b. A reconstruction of the critical final leg of the RIB's transit from Port of Poole Marina to the Diver Buoy, conducted in daylight at an

estimated speed of 35 knots (similar to that which has been calculated as the speed at the time of the incident for this leg of the transit).

- c. A reconstruction of that same leg of the RIB's transit from Port of Poole Marina to the Diver Buoy, conducted at night at an estimated speed of 10 knots (reduced from 35 knots for safety reasons). It demonstrates vividly the difficult visibility conditions on the night of the incident.
  - d. An overlay of the reconstruction evidence of a RIB travelling at approximately 35 knots as shown tracked on a chart, together with the CCTV footage of the collision on 2 May 2022. The live footage gives a very helpful impression of the speed involved.
  - e. A chronological compilation of the CCTV showing yourself, Morgan Smith, drinking at a Wetherspoons bar in Poole and subsequently at Pool Yacht Club.
12. I will not recite the full facts, or even the longer summary contained in the prosecution opening. The essential facts, on the basis of which I will sentence you are as follows.
  13. On the weekend of 1 May, the Poole Regatta was taking place. On the evening of Sunday 1 May 2022, you and David Haw both attended a Regatta prize giving event at the Poole Yacht club. You had attended that event on the RIB with a number of other participants in the Regatta. You had use of the RIB because you had been engaged to helm it as a support boat to a yacht participating in the Poole Regatta.. David Haw was present because he was also participating in the Regatta on a yacht known as "Off Beat".
  14. Although only 19 you were an experienced and skilful sailor – having represented GB since the age of 14 - and already qualified to helm the RIB in daytime. That Royal Yachting Association (RYA) Powerboat Level 2 (PB2) qualification gained following a 2 day course in June 2018 allows a skipper to operate 3 miles from a Nominated Departure Point during daylight. It included training on the risk and avoidance of collisions and the duty of the skipper to keep those on board safe. You were not however qualified for night time driving, which the expert estimates requires over 20 days of training. As the prosecution submitted, this differential, which is vividly apparent from the footage I have seen of a nighttime journey at 10 knots, provides some perspective on the additional level of difficulty and risk which helming a vessel at night presents.

15. During that Sunday afternoon and evening, you purchased and consumed alcohol, together with other acquaintances including Mr Haw. The pair of you had met up with those acquaintances at a pub on Poole Quay in the late afternoon. At about 1700 you went on to another bar a short distance away. In the CCTV footage from that evening, he can only be seen to purchase one non-alcoholic drink but a barman recalls you buying at least 2 drinks at that bar. When your group then went on to the Poole Yacht Club for the prizegiving ceremony (minus Mr Haw who went to dinner with his team and rejoined you at about 2125), your group between you bought a number of bottles of rose wine. Mr Haw, after his arrival, also purchased and consumed a number of drinks.
16. I have to consider whether you were under the influence of alcohol when in control of the RIB. I am sure that you were and that you had drunk considerably more than the 2 glasses of wine you estimated. Although you only bought non-alcoholic drinks at the Yacht Club yourself, your group of four bought a large amount of alcohol (7 bottles of rose and 11 other alcoholic drinks). The number of non-alcoholic drinks purchased would not be sufficient to last through the hours which passed. One of the group estimates that each of you had had about a bottle of wine each; he did not indicate that you had not been drinking or had drunk less than the rest. Alcohol could be smelled on you by the police even after the return to Poole after the incident. And finally you can be seen on the CCTV regularly drinking from a wine glass in the hour before you left the event. You were still holding that glass and drinking as you made preparations to leave.
17. When you left, shortly after midnight, you agreed to take all of the group and two other acquaintances from another yacht on board. You agreed to take Mr Haw back to his accommodation near Sandbanks, having first dropped off three people at Poole Quay. This journey was unnecessary. The Regatta organisers had provided a continuous water taxi service between Parkstone Yacht Club, Poole Yacht Club and Poole Quay on Saturday 30 April and Sunday 1 May 2022. They also provided on both evenings a late-night service by minibus between 22:00 and 00:00 hours, as a continuous shuttle with no times, leaving when the shuttle had customers. You and they were not alone in taking this approach – another two RIBS seem to have left at a similar time.
18. You however nonetheless agreed to take five others to their destinations.

19. You accepted these passengers onto the RIB. The RIB was manufactured in 2004 and was 5.8m in length and was plated by the manufacturers to carry up to 10 people. There were specific seating arrangements in place. There were two sets of parallel jockey seats (which passengers sit astride of), with back rests, fitted behind the RIB control console. Each of these jockey seats can accommodate two seated passengers. There was also a bench seat in front of the console (which could accommodate up to two people). Any other passengers would need to sit on the tubes around the boat and secure themselves to a holding point or points.
20. The equipment carried on the RIB included six emergency hand held flares (stored under the port side jockey seat), five lifejackets and two paddles.
21. The Harbour has several large marker buoys which are used to indicate the safe navigating channels for vessels. These buoys are painted various colours and have distinctive light sequences (and, in some instances, colours). One of these, Diver Buoy, is a substantial structure painted yellow black and red which is nearly 4 metres high and 2 metres wide. Another, known as Hamish, is a green buoy.
22. For the transits involved, the applicable speed limits ranged between 6 and 10 knots. Although you estimated your speed at not much above this, the prosecution expert analysis has demonstrated that you had the RIB travelling at over 30 knots in the first leg of the journey to the Ferry Terminal – between 4 and 6 times the speed limit. For the second leg to the Quay the speed was more than twice the limit.
23. For the fatal third leg there were only two passengers in the RIB. Mr Haw was, according to the other passenger, at the front of the boat. Talking to a friend from the Quay before the final leg of the journey, he admitted to being slightly the worse for wear after a jolly evening. He was lying up against the side of the RIB at the front, with his head below the inflatable side. That was a position which, the expert tells us would have put him at risk of being subject to a considerable impact, if the RIB so much as crossed the wake of another boat.
24. You set off gently and then increased the speed considerably. The other passenger recalls Mr Haw laughing as the boat planed in an exhilarating fashion. It did that because, as the expert analysis reveals, you sped up very considerably. Because the exact route taken is not clear the two experts who have looked at this question cannot be absolutely precise about this, but the evidence, including that of the experts and the Harbour Master, makes me

sure that the speed at which you were taking the RIB was over 25 knots and towards the point of impact was over 30 knots. In other words the vessel was going around 3 times the speed limit. The width of the ship channel at that speed can be covered in 12 seconds, which gives a sense of the ease with which it is possible to make a mistake.

25. You were navigating using your mobile phone. You were using a navigation app, but in the first place that is not an approved method of navigation, and in the second place the light created by the phone would negatively impact your night vision.
26. At 00:18:45 the RIB hit Diver Buoy. The conclusion as to speed is reinforced by the fact that the impact was so significant that the buoy was knocked over so that its light was temporarily obscured. The other passenger, who had just observed Mr Haw laughing, had been texting a friend. He was whipped forward and thrown into the water, some 20-30 metres from the RIB. Mr Haw was also catapulted out of the boat.
27. I will take the aftermath in some detail because Mr and Mrs Haw have expressed regret that the absence of a trial means that they will not hear the evidence of what happened next, and why it took so long to notify the police. It is important to give them the best chance of coming to terms with their appalling loss that they do get to hear that clear account of the facts which I am sure of.
28. The collision was certainly with Diver Buoy. Although you later stated that your impression was that you hit Hamish Buoy that marker suffered no damage, whereas Diver Buoy both suffered damage and ceased to flash exactly around the moment of impact. In addition there was a yellow paint transfer from Diver Buoy to the RIB; Hamish Buoy is green and could not provide that transfer. The RIB itself suffered considerable structural damage to the bow and foredeck.
29. There was no sign of Mr Haw. Surfacing, the other passenger could see the RIB. He swam back to it and climbed in. The other passenger called David's name repeatedly. There was no response. There was some moonlight and it was calm but there was a limited field of vision. You and he scanned the water frantically for any sign of Mr Haw in the area you could see. There was none. Unable to see him you thought of two things: starting the RIB and calling for help. The latter course could not be followed. Both phones had been lost in the collision. There was no radio because one is not required for a deemed pleasure vessel. You searched under all the seats, to no avail. It

appears that the flares, though present, and apparently capable of working, were not located. Certainly they were not used.

30. Then the RIB would not start. You tried repeatedly and no matter how hard you tried, and I am quite satisfied that you tried very hard, it would not start. The other passenger was continuing to scan the water for David. The boat was starting to drift quite quickly. The passenger threw the anchor out and came to try to start the RIB while you searched visually for David. Neither of you had any success at all. It occurred to one of you that the problem might be fuel, so you filled up using a jerry can. By this stage you had both tried so hard to start the RIB that the key had snapped in the ignition. You were forced to conclude that the boat was plainly not going to start.
31. There was therefore no alternative but to paddle for the shore. You set off. After a while you came to an empty moored up yacht and looked to see if there was a radio there, as this would be the quickest means of notification. Again however you had no success – the yacht had a radio but no power. With the best of intentions valuable time had been lost. You returned to the RIB and continued to paddle to shore. The other passenger says that it seemed to take forever.
32. You made land at Parkstone Yacht club, but there was no-one there. You ran through the car park and climbed over the gate. Finally you found a house which had lights on. You approached and were able to raise the alarm. The 999 call was timed at 01:59 hours.
33. Pausing here let me note this: I am sure that you and the other passenger did both try very hard to locate David Haw, and to notify his loss and that the delay in notification was not due to any lack of effort on your part.
34. Despite an extensive search and rescue exercise, Mr Haw was not located until 13:40 hours on Saturday 14 May 2022 when his body was found about 100 metres from Diver Buoy. It was not possible to establish cause of death.
35. You were interviewed under caution on 3 May 2022 and 19 October 2022. You exercised your right to silence on both occasions.
36. Extensive work was done to investigate what had happened. The Prosecution's Marine Expert Witness prepared a report. He concluded that there were a number of failures on your part:
  - a. No evidence of a safety brief or offer of lifejackets to passengers;
  - b. No pilotage plan;

- c. Allowing Mr Haw to sit in the bow on the deck which exposed him to the risk of a considerable impact should the RIB pass over the wash of another vessel or in the event of any impact;
  - d. Excessive speed, both relative to the limits and bearing in mind the challenging environment (many hazards and shallow areas) and the fact that it was night;
  - e. Navigation using a phone. The expert comments that trying to alternate between looking at a chart on a small screen whilst then maintaining a good all-round look-out whilst also driving at 30 knots is, in his opinion, impossible almost anywhere and certainly in an area like Poole Harbour where there is no room for error;
  - f. As a result of both of these, failure to keep a proper look out at all times – a fundamental plank of the International Regulations for Preventing Collisions at Sea 1972;
  - g. Navigating at night without a relevant qualification;
  - h. Failure to act so as to maximise night vision (both in terms of the change from well lit boat haven to harbour and the use of a mobile phone);
  - i. Impairment of judgment due to consumption of alcohol.
37. Overall his view was that given the combination of high speed, potentially compromised night vision, a very challenging boating location at night with many hazards including large navigation marks, the negative effect of alcohol on competence and judgement, the collision with another vessel or navigation mark was a significant and real possibility. Any such collision would bring an obvious risk of death or serious injury and should have been clear even to a relatively inexperienced power boater only holding RYA Powerboat level 2. For these reasons you operated the vessel to a level that fell very far below what would be expected of a reasonable and competent skipper.
38. Following an extensive investigation, you were served with a Charge and Requisition for the offence of gross negligence manslaughter on 22 May 2023. You attended the Poole Magistrates' Court on 19 June 2023 where no plea was indicated and were bailed to attend Bournemouth Crown Court on 20 July 2023 for a PTPH.
39. At the PTPH at Bournemouth Crown Court before HHJ Evans on 20 July 2023 you entered a guilty plea to gross negligence manslaughter.
40. Before I proceed to sentence, I would add one further thing, Mr Haw's parents have said that their wish would be that their son's death not be in vain – that lessons be learnt and acted upon. You, Morgan Smith have, alongside



the remorse you have expressed, echoed that wish. A need for such lessons to be learnt is apparent from a number of things.

41. It is apparent from the fact that a young man who was an experienced sailor and qualified RIB helmsman and whose mitigation references paint him as a responsible person could have committed all the breaches of safe practice – many of them basic and obvious - which the expert has identified. It is apparent from the fact that all his passengers, older and more experienced than he, did not think twice about this journey at the time, or even afterwards - save for its outcome. It is apparent from the fact that you indicated to the author of the PSR that such practices occurred regularly.
42. Many in the sailing community will be aware of and interested in this case, which concerns the death of a much-loved member of that community, as the result of events which were an obvious risk when safety rules and practices were not observed. I join with Mr and Mrs Haw and Morgan Smith in urging those who are here and who follow this case to take this literally vitally important issue away and ensure that careful thought is given to how to ensure that such a tragic case never occurs again.

### **SENTENCING PRINCIPLES**

43. I appreciate that to Mr Haw's loved ones it will seem that no sentence I can impose is adequate. However I am bound to sentence you in accordance with the principles set down by law.
44. The objects of sentencing in criminal cases are set out in s 57 Sentencing Act 2020. I have regard to those objects, which include punishment, deterrence and rehabilitation.
45. The Sentencing Council has provided guidelines to judges sentencing for this type of offence. Pursuant to s. 59 of the Sentencing Act I must follow any sentencing guidelines which are relevant to the offender's case unless I am satisfied that it would be contrary to the interests of justice to do so. That is because the guidelines are intended and very carefully designed to do exactly what their name suggests and assist any court in achieving a right and proper balanced sentence according to the facts of the individual case. In general terms guidelines provide a range of categories for two key features – the culpability of the offending and the harm caused.
46. In this case I have regard to the Guideline for Manslaughter. That Guideline explains that the harm in the case of manslaughter is taken as being of the

utmost seriousness. As a result, I need only assess the culpability of your offence.

47. There are four categories, A being the highest and D the lowest. I am required to consider the listed “indications of the level of culpability that may attach to the offender’s conduct” and to “balance these characteristics to reach a fair assessment of the offender’s overall culpability in the context of the circumstances of the offence.”

### **THE PRINCIPLES APPLIED**

48. Both Prosecution and Defence agree that this case crosses the custody threshold, and they agree that it cannot be seen as either a Category A or a Category D case.
49. The Prosecution submits that this case falls within Category B making it an offence of High Culpability on the basis that “the offence was particularly serious because the offender showed a blatant disregard for a very high risk of death resultant from the negligent conduct”. This is by reference to the very high speed, no proper look out, navigating in darkness, risk of collision, absence of safety steps (seating and lifejacket).
50. The Defence submits that this is not a case of “blatant disregard” or of “very high risk of death” and reminds me that I must not double count aspects which are already included in the offence – which requires “gross” negligence. It is submitted that the correct categorisation is C which covers cases where there are factors from B and D which balance each other out or where culpability falls between the factors. It contends that following this approach one arrives at a sentence which is capable of suspension, and urges me to follow that course.
51. Both Prosecution and Defence agree that one analysis would be to see this as a case of a borderline between Category B and C. The respective ranges for the two categories are 6-12 years and 3-7 years with starting points of 8 years (B) and 4 years (C).
52. Having considered these submissions carefully, I conclude that this is, properly analysed, a high category C case. The starting point is that to be guilty of gross negligence manslaughter there must be a breach of duty which is “truly exceptionally bad”. That being the case, there must be care taken not to double count.

53. To come within Culpability B on the basis contended for both blatancy of disregard and for that disregard to relate to a very high risk of death must be established. In this case your conduct comes perilously close to blatant disregard, in that the failings which go to constitute the gross negligence are multiple and at points both obvious and basic. However in my judgment your conduct falls just short of it. I am not particularly impressed by the relevance of the character references in this context; these go to your generally responsible behaviour, but cannot impact on what you admittedly did in this case. But at the same time this is not a classic case of blatant disregard - where risks are drawn to an offender's attention and then explicitly disregarded. And there is real force in the submission that such risks are naturally less present to the mind of a 19 year old however well trained in safety they are. 19 is just into adulthood. It is an age where even for the most mature and responsible young person the high tide of vitality which goes with youth often gives a sense of immortality which becomes foreign to those of us of more mature years.
54. Nor I am persuaded that this was – quite - a case of very high risk of death. That is not how the expert puts it. He speaks of collision with another vessel or navigation mark as being “a significant and real possibility” giving rise to “an obvious risk of death or serious injury and should have been clear even to a relatively inexperienced power boater only holding RYA Powerboat level 2.”
55. This is therefore a Category C case, and I would consider it to be definitely above the starting point given by the Guideline. I consider the appropriate starting point to be 6 years: within Category C but also touching the bottom of the Category B range.
56. Having chosen that starting point I am required then to take into account aggravating and mitigating factors in your case.
57. The aggravating and mitigation factors identified are:
- a. Aggravation:
    - i. Commission of the offence while under the influence of alcohol (agreed – subject to evidence that no-one seems to have perceived you as drunk)
    - ii. Others put at risk of harm by the offending (agreed).
  - b. Mitigation:
    - i. No previous convictions (agreed)
    - ii. Good character (agreed)

- iii. Age (agreed)
- iv. Remorse (defence)
- v. Attempt to assist (defence)
- vi. Self-reporting/full co-operation (defence)
- vii. Pressure from those older (defence).

58. To the extent that there is disagreement on these points I tend to accept the defence submissions with the following exceptions:
- a. Alcohol: the evidence relied on is from later in the day, after a sobering shock and a lot of physical exertion. The evidence makes me sure that you were affected by alcohol at the time of the collision;
  - b. Pressure from those older: this is of limited assistance. They had no power to compel and you had the responsibility, as you knew from your considerable experience of boats and your training.
59. I would like to add in respect of mitigation that I have read repeatedly the extensive mitigation materials provided and that I give full weight to them. Your good character as testified to in these statements goes beyond a mere absence of convictions, to showing a positively good character and how the actions on the fateful night were against character.
60. On your age I do take this into account – as I have noted before the perception of the risks is something which in my judgment is seen differently by the young – well over the age of 18. Your fault is not that of the mature experienced helmsman of middle years.
61. I have indicated before that I entirely accept your attempts to assist and your co-operation.
62. I also bear well in mind Mr Smith, that you sent a powerful letter on the day of the hearing. That makes entirely clear your profound remorse and grief at the consequences of the wrong you have done. You have asked for your regrets and your apologies to be conveyed to Mr and Mrs Haw in open court. The evidence is clear that you have yourself been acutely affected, now suffer from PTSD for which you are receiving treatment and that the events of 2 May 2022 will haunt you throughout your life. I am glad to hear that you have ceased to lean on alcohol to dull the pain of your sense of guilt.
63. The net result is that even allowing for the seriousness of the aggravating factors, the mitigating factors exceed the aggravating factors. Accordingly, I conclude the least sentence which I could impose following a trial would be four and a half years.

64. It was contended that the exceptionality of this case is such that I could and should step outside the Guideline. Powerful submissions were made as to the effect of custody on your progress, your sobriety and your family. Let me make clear that I have thought well on those points and given them very anxious thought. I fully perceive the tragedy for you which is involved in any conclusion that you must serve a custodial sentence.
65. However this argument is driven not by any exceptionality of this case, but rather by a desire to progress the analysis to a point at which suspension of the sentence becomes possible. Such an approach would be wrong in principle. In any event it assumes the next stage of the argument – that suspension would be the correct course if one could reason down to 2 years.
66. But as I made clear in argument, this is an offence which in nearly all cases falls into the category that “appropriate punishment can only be achieved by immediate custody”. The cases make clear that custodial sentences in gross negligence manslaughter cases are almost inevitable because of the presence of the most severe harm (death) and truly exceptionally bad negligence. Because of that it is actually not unusual for sentences for this offence even of suspendable length, to be made immediate custodial sentences. Ultimately I consider that suspension (were it an option) would focus too much on the question of rehabilitation, and give insufficient weight to the punishment for the grave crime committed, for which the harm is of the very highest and to the element of deterrence. This sentence must be one of immediate imprisonment and there is no basis for stepping outside the guideline.
67. There is then the question of credit for plea. Since the plea was given at the PTPH you are certainly entitled to a credit of 25%. The question is whether the reduction of 30% given for a plea at the first reasonable opportunity should be given. I conclude that it should.
68. Your former solicitors were served with a set of the case papers only 14 days before your first appearance. Your current solicitors were instructed on 12 June 2023, just 7 days before the appearance. This is considerably less than might usually be expected. This is not a straightforward case. Gross negligence is a notoriously difficult concept. I entirely accept that in order to be in a position to offer a plea, it was necessary for you to obtain expert evidence and legal advice and to have an opportunity to understand that advice. I am not at all surprised that it was not possible to obtain expert evidence between service of the case papers on 5 June 2023 and the first appearance. A willingness to plead was then indicated ahead of the PTPH.

69. In the circumstances it is right in my judgment to regard this as a plea entered at the first reasonable opportunity. I am therefore prepared to allow a reduction of 30%.
70. The surcharge applies to this offence and will be added to the Court record in the appropriate amount.

### **THE SENTENCE OF THE COURT**

*The defendant is to stand up when addressed, and to remain standing until dismissed*

71. Having regard to the seriousness of the offence and taking into account the Guideline and the aggravating and mitigating features which I have identified, the sentence which I impose is one of **3 years imprisonment**.
72. You will be released no later than half way through your sentence: in 18 months. You will serve the remainder on licence in the community. You must keep to the terms of your licence and commit no further offence or you will be liable to be recalled and you may then serve the rest of your sentence in custody.