Courts and Tribunals Judiciary

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Amina Noor

Central Criminal Court
Sentencing Remarks of Mr Justice Bryan
16 February 2024

1. Amina Noor you have been found guilty of assisting a non-United Kingdom person to mutilate a girl's genitalia whilst outside of the United Kingdom contrary to section 3 of the Female Genital Mutilation Act 2003. This is the first successful prosecution in respect of this offence. I must now sentence you for this truly horrific, and abhorrent, crime.

2. Your child victim, who was only 3 years old at the time, and is now 21, is entitled to lifetime anonymity. Pursuant to paragraph 1(2) of Schedule 1 to the Female Genital Mutilation Act 2003, no matter likely to lead members of the public to identify the person as the person against whom the offence has been committed may be included in any publication during that person's lifetime.

3. These sentencing remarks have been drafted accordingly. It is, however, important that the victim of this appalling offence is not dehumanised by the use of an anonymous initial, for she is a young woman whose life has been irrevocably altered by your actions, and who will have to deal with the consequences of your actions for the rest of her life. I shall accordingly call her Jade.

4. I confirm that in sentencing you I have taken into account all that I know about you, and all that I have been told by the prosecution and the defence, and those instructed on their behalf, even if it has not been possible, in the context of your victim's right to anonymity, to make express reference to aspects of the same in these sentencing remarks.

5. When I make factual findings in these sentencing remarks, I am satisfied so that I am sure of such facts having presided over your trial and heard the overwhelming evidence against you in relation to what you knew, and what you did.

6. In order to identify the seriousness of your offending, and in circumstances where you do not accept the extent of the female genital mutilation that you intended would be performed on Jade, it is necessary for me to make findings of fact in that regard, and to include descriptions of female genitalia, and the practice of female genital mutilation, that some may find uncomfortable or distressing to hear about.

7. However, not only is it necessary for me to do so, but it is of the greatest importance that I do so. No person, woman or man, should be embarrassed to talk about such matters, still less should any woman be embarrassed or ashamed to talk about what has been done to her genitalia without her consent. Indeed, it is under a cloak of secrecy, with a reluctance to talk

about such matters, that female genital mutilation is all too often perpetrated and perpetuated. It often goes unspoken about and, as result, all too often goes undetected. It is to Jade's very great credit that she came forward and had the confidence to speak to a teacher about what had been done to her, and it is to be hoped that her courage in doing so will inspire other women to do the same, so that the perpetrators of such vile practices are prosecuted, and such vile practices are deterred.

8. Since 1995 the World Health Organisation (WHO) has classified female genital mutilation into four types ranging from "pricking" the genitals with a needle or other sharp instrument so as to cause bleeding/draw blood (Type 4), through acts of cutting to, or the partial or total removal of, a girl's labia majora and/or minora (or the stitching up thereof), to the total or partial removal of the clitoris (Type 1).

9. Female Genital Mutilation is often referred to by its initials "FGM" but there is a danger, in the use of such initials, of losing sight of what it actually is, namely the mutilation of or, in the most serious cases, the total removal of, parts of a girl's genitalia (I say girl's for sadly it is young girls that are the most usual victims of FGM).

10. As already noted, Type 1 FGM involves the removal (in whole or part) of the clitoris. The clitoris is a neurovascular organ with an abundant blood and nerve supply meaning that it is vulnerable to the effects of trauma and at risk of significant pain and bleeding if cut (agreed facts at [19]).

11. The nature of the act that is undertaken, and the seriousness of the potential consequences of the same, should not be overlooked, underestimated or minimised. The total removal of the clitoris is nothing less than the removal, and therefore destruction, of an organ of the body. As such it is a serious assault of similar gravity to other forms of grievous bodily harm and, save in case of medical need, it is difficult to conceive of a situation where even an informed adult could consent to the removal of such an organ for a non-medical purpose - just as no adult can consent to other such forms of non-medical assault being performed upon them (see *R v Donovan [1934] 2 KB 498* at 507 and *R v Brown (Anthony Joseph)* 1994 1 AC 212) - such assaults being contrary to the public interest and illegal.

12. However, this is not a case of any form of allegedly consensual procedure performed on an adult, but rather you have been found guilty of encouraging and assisting in an act of female genital mutilation performed upon a very young and vulnerable child when she was only 3 years old, and in your care, namely the complete removal of her clitoral hood and her clitoris, Type 1 FGM.

13. There are both immediate and long-term potential consequences (and complications) of female genital mutilation. As noted in the agreed facts (at [21]) the immediate complications of all types of female genital mutilation include, pain, bleeding, swelling, delayed wound healing, urine retention and infection. Infection can, of course, lead to sepsis and death. That risk extends even to "pricking" (hence why, in the context of routine blood tests in a medical environment, an alcohol swab is applied to the skin before blood is drawn using a sterile needle by a qualified phlebotomist, and why even a prick from a rose thorn suffered by a gardener has the potential to cause sepsis and death).

14. There is no evidence as to whether anaesthetic was used during the procedure on Jade, and if so, what in the "house" where the operation was performed. Had a local anaesthetic been used that contained lignocaine and adrenaline there would have been a high chance of minimal pain for up to 6 hours, but sadly, if predictably, in the present case , and by night time, the evidence is that Jade suffered sustained pain as she "cried the whole night" with cotton wool being stuck to the "wound" after the procedure was carried out, as you candidly recounted to a social worker at the UK National FGM centre when you were questioned in January 2019.

15. The long-term consequences of FGM are well-known and life changing. As Baroness Hale said in *K v. Secretary of State for the Home Department; Fornah v Secretary of State for the Home Department* [2007] 1 A.C. 412**,** at [92] to [94]:-

> "92. …these procedures are irreversible and their effects last a life time. They are usually performed by traditional practitioners using crude instruments and without anaesthetic. Immediate complications include severe pain, shock, haemorrhage, tetanus or sepsis, urine retention, ulceration of the genital region and injury to adjacent tissue. Long term consequences include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse) and sexual dysfunction…
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> 93. Nor can the context be compared to male circumcision, As the UNICEF Innocenti Digest, Changing a Harmful Social Convention: Female Genital Mutilation/Cutting (2005) observes:
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> > "In the case of girls and women, the phenomenon is a manifestation of deep-rooted gender inequality that assigns them an inferior position in society and has profound physical and social consequences. This is not the case for male circumcision, which may help to prevent the transmission of HIV/AIDS."
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> As can be seen, almost all FGM involves the removal of part or all of the clitoris, the main female sexual organ, equivalent in anatomy and physiology to the male penis. The underlying purposes of doing this are to lessen the woman's sexual desire, maintain her chastity and virginity before marriage and her fidelity within it, and possibly to increase male sexual pleasure…
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> 94. … it is a human rights issue, not only because of the unequal treatment of men and women, but also because the procedure will almost inevitably amount either to torture or to other cruel, inhuman or degrading treatment within the meaning, not only of article 3 of the European Convention on Human Rights , but also of article 1 or 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment , article 7 of the International Covenant on Civil and Political Rights , and article 37(a) of the Convention on the Rights of the Child."

16. Turning to your own background. You were born on 1 January 1984 in Somalia. You lived there until you left Somalia due to the war in Somalia, travelling together with the rest of your family, to Kenya when you were 8 years old. You remained in Kenya until you were 16 when you came to the United Kingdom to be with other family members (brothers and sisters), whilst some family members (including your mother) remained in Kenya. The following year (when you were 17) you married your first cousin in England, and in the many years since your marriage you have had 7 children (now ranging in age between 21 and 2 years). In 2003 you were granted refugee status in the United Kingdom, and in 2005 you were naturalized and given UK citizenship.

17. FGM is extremely common in both Somalia and Kenya. The evidence before the jury was that FGM rates in Somalia are the highest in the world, with the overall rate being at least 99% (Agreed Facts at [19]). Equally FGM is prevalent in Kenya, with those of Somali ethnicity most likely to undergo FGM, with the prevalence rate of FGM in the most affected ethic group in the country being 94% (Agreed Facts at [16f]). You have recounted that your elder sister had told you that you yourself underwent FGM as a young child, and I accept that evidence. Your evidence to the jury was that you do not know what form of FGM was performed upon you. I find that hard to believe, and cannot be sure that such evidence is true, not least in the context of the gynaecological problems that you have yourself suffered.

18. As the jury were directed, in terms approved by counsel, the United Kingdom is a country of all cultures. We meet on the streets of this capital city people of all faiths and none; we have the privilege to live in a United Kingdom of wide differences in political and social views. The law applies to everyone. Parliament has outlawed any form of female genital mutilation in very clear terms. Ignorance of the law is no defence. Nor is pressure falling short of duress (which means acting under threat of violence, which is not suggested in this case). Equally, the law prohibiting female genital mutilation does not distinguish between the possible purposes for which it is carried out. Nor does the law limit liability to someone of a particular religion or cultural background or require a jury to be sure what the purpose of a particular incident of female genital mutilation was. The issue for the jury was whether you aided, abetted, counselled or procured a person to do a relevant act of female genital mutilation on a UK national girl out of the UK. By their verdict they found that you did so, a verdict that I consider was inevitable on the damning evidence against you that was before the jury.

19. I turn to the facts surrounding your offending. Between March and May 2006, you travelled to Kenya together with, amongst others, a young 3 year old girl, Jade, who was and is herself a UK citizen. You were staying with your mother in a village outside Mombasa. You say that whilst there you were told by your mother and another female family member that "this girl needs to be "Gudniin"". It is an agreed fact ([18]) that in Somali, "Gudniin" is a general term for female genital mutilation, whilst "Sunnah Gudniin", which is sometimes abbreviated to "Sunnah" is specifically FGM Type 1, and whilst the words have different meanings they can be used interchangeably when talking about FGM Type 1. You were also to refer to the procedure that you understood was to be performed as "Sunnah" – i.e. FGM Type 1.

20. You say that you came under pressure from your mother and family in Kenya for such a procedure to be performed on Jade who was travelling with you. You say that they said that otherwise it would bring shame. In your oral evidence (although not previously in your police interview) you alleged that your mother said that if you did not agree to the procedure upon Jade you would be disowned by your own mother and would be cursed.

21. I am willing to accept that you did come under pressure to agree to the procedure (though I have only your word for that and I am satisfied that you lied in other aspects of your evidence), but I do not accept that you were threatened with being disowned or cursed – you did not mention that in your lengthy full comment police interview, and that evidence has all the hallmarks of you tailoring your account at a later time to fit your defence case, and I reject such evidence.

22. What is clear (and has the ring of truth about it) is that you repeatedly confirmed that you were not threatened with violence; and it must be obvious to you, then and now, that pressure is no excuse whatsoever for what you agreed to be done to this young girl. Your initial protestations (allegedly persisted in for four days) show that you knew perfectly well that it was wrong for such a procedure to be performed on a 3 year old girl in your care, as you put it, you "did not want to allow it whatever it might be". But as you admitted in cross-examination you eventually agreed to take Jade to a "clinic" for the procedure, and as the jury have found, encouraged and assisted in the commission of a relevant act of female genital mutilation. What you should have done was refused to agree to the procedure. You were effectively in loco parentis and under a duty to intervene to prevent Jade being ill-treated and assaulted.

23. However, far from doing so, you carried through such agreement by taking Jade, accompanied by another woman, who you did not know well, but to whom you were in some way related, in a tuk-tuk to a place where the procedure was to take place, your presence no doubt being to reassure Jade, and keep her "calmer" (as you put it in cross-examination) without which she might have refused to go with the stranger or in due course might have resisted as she was held down (as held down she sadly would have had to have been) whilst the vile assault was perpetrated upon her.

24. You were to say that you had been told that the procedure would be undertaken at a "clinic place", but as you candidly admitted in evidence it was clear on arrival that this was no clinic, and you saw no doctor. Rather it was an ordinary house. I am sure (as you had told a social worker but were to deny in your oral evidence) that you went inside the house to what was like a living room with 3 doors coming off it "where girls went to have the procedure" (for there were also other girls present having the procedure as you well knew). There you met an African lady who called Jade in. This all has the ring of truth, otherwise why say so, and give such a detailed account?

25. I am satisfied it was a lie when you were later to say that you never went into the house. Such evidence was a blatant attempt to distance yourself from knowledge as to what was to occur, and what did occur. I am also satisfied that you in all probability lied when you said

that you declined to go into the room when invited to do so by the African lady. You, of course, had to say that, for if you were in the room (as I consider in all likelihood you were) you would have known full well that Jade's clitoral hood and clitoris were removed, and you were desperate to minimise your knowledge, involvement and intention. But it defies belief that any woman would have let a little girl in her charge go into that room alone, not least to reassure her, keep her calm, and secure her cooperation as she was held down and the operation performed upon her. No woman would abandon a 3 year old girl to such a fate unless they were cruel hearted, callous and devoid of all compassion and humanity, which is not the impression I formed when you gave evidence. Just as you confirmed you went in with your children when they were ill and you took them to a doctor in England so too I am satisfied that you would have gone in with Jade who was a young girl in your care.

26. You are guilty of the offence charged whether the act performed upon Jade was Type 1 genital mutilation (the removal of Jade's clitoral hood and clitoris) or Type 4 (the injection or piercing of Jade's genitals to produce blood) each being an act that would inevitably result in at least some form of physical injury or tissue damage for which there was no medical purpose, and which each carried serious risks. You were to say that you believed only the latter was to be performed upon Jade based on what you had allegedly been told by your mother and allegedly understood.

27. On either scenario your culpability is very high. Culpability is assessed according to your role and level of intention (see the General Guideline: Overarching Principles) and it is common ground that I need to make a finding in that regard, as your culpability is even higher if you intended to assist or encourage Type 1 FGM upon Jade involving as it did a grave assault upon her with the total removal of an organ of her body (albeit that either procedure had the potential to lead to complications including sepsis and death and long term physical and psychological consequences).

28. I am in no doubt whatsoever on the evidence before the jury, and I am satisfied so that I am sure, that you knew perfectly well, and intended, that the relevant act of female genital mutilation that was to be performed on Jade was Type 1 FGM, and that is so for any number of reasons:-

    (1) The word in Somali you repeatedly used in your police interview translated into English as "circumcision", when you referred to "this circumcision", "we went to the circumcision place", "the place she is going to be circumcised", "she is going to be circumcised", "there she was circumcised", "the African Kenyan lady who was going to perform the circumcision procedure" was "Gudniin", and you admitted that by the time of your police interview on 16 January 2019 when you used this word you knew (from an interpreter) that the word meant to cut something out – yet you used that word to describe what was going to be done, evidencing your knowledge that Type 1 FGM was to be performed.

    (2) You also said that you had heard the word "Sunnah" from your mother which you alleged that you understood meant some injection or something to draw blood (also saying in interview that you tried to explain [to Jade] that she was going to be circumcised and injected and nothing will be taken away from her body"). You also

used the word "Sunnah" when you were interviewed by the social worker Ms Monteith in December 2018. It is an agreed fact that "Sunnah Gudniin", which is sometimes abbreviated to "Sunnah" is specifically Type 1 FGM (removal of the clitoris). I reject that your understanding of "Sunnah" was as you allege, as that is the word you used to describe the fact that your own boys have (perfectly properly) been circumcised, with the removal of their foreskin, which led you to make the absurd suggestion in cross-examination, and for the first time, that "Sunnah", contrary to the agreed fact as to its meaning, meant something different for boys and girls. The reality is that you knew perfectly well that Jade was going to be circumcised with her clitoris being cut out, and you have subsequently sought, without success, to distance yourself from such knowledge.

(3) As I have already found, it defies belief that you would have let a little girl in your charge go into the room alone – in consequence you would have been present in the operation room, and you would have known and appreciated what was to occur and what was about to occur (from what you could see with your own eyes even before the procedure commenced), and as the operation was performed - it would have been readily apparent that it was no injection or prick to draw blood, but rather the removal of an organ of the body and inevitably copious bleeding would have followed at the injury/wound site, of which you would have been aware.

(4) It also defies belief (contrary to your evidence which was not credible) that you did not look to see what had been done to Jade thereafter (such as that night when you were back at your mother's house and Jade "cried all night"). Jade was in your charge and was in obvious pain, it would be the natural thing to do, and I am sure that you would have done so. After all you would have wanted to know why she was in so much pain given that she continued to cry throughout the night. The reality is that you knew (and intended) what was going to happen before it happened. You then witnessed it happening, and you then were aware of the consequences including the pain caused by the operation and associated wound as Jade cried throughout the night. Even set against the backdrop of such existing knowledge, anyone in your position would then have checked the wound.

(5) Tellingly, you also gave yourself away when you spoke to the social worker Ms Mahachi on 15 January 2019 (the day before your police interview) when you said (agreed fact [8])), "the cotton wool that had been put on the **wound** had dried and got stuck". The word you used was "wound" a description consistent with Type 1 FGM not Type 4 FGM, the cotton wool obviously being required to stem the bleeding from the wound/injury, and it was dried blood that the cotton wool was stuck to. If the truth was that you did not know something was going to be cut out you would not have used the word "wound", and that night you would also have been surprised and questioned why there was a wound if your alleged understanding of what was to be done was as you said. The reason you did not do so was because you were not surprised, you knew what had been done and why there was a wound.

29. In this regard I bear well in mind that you facilitated the examination of Jade at the hospital, but the fact is that by this stage you had already admitted that Jade had been subject to

female genital mutilation when in your charge and you therefore knew that this would be shown to be the case on examination (given that you knew she had suffered a wound). I have no doubt that you were distressed as it was confirmed that she had suffered Type 1 FGM as the reality of what you already knew, but were keen to distance yourself from, was driven home in a public forum, reliving what I have no doubt you had been trying to put to the back of your mind for many years. This does not detract from the fact that you knew perfectly well, and intended, that the relevant act of female genital mutilation that was to be performed on Jade was Type 1 FGM.

30. There are no Sentencing Guidelines in relation to the offence of assisting a non-United Kingdom person to mutilate a girl's genitalia whilst outside of the United Kingdom contrary to section 3 of the Female Genital Mutilation Act 2003, and as already noted, there has been no previous successful prosecution under this section. It is common ground that in such circumstances there is no direct sentencing guidance. The maximum sentence under section 3 is 14 years' imprisonment which I am satisfied indicates the considerable seriousness of the offence.

31. The prosecution submit that it may assist to consider a number of sentencing guidelines that do exist, namely the Sentencing Council Guideline for Wounding with Intent contrary to s.18 of the Offences Against the Person Act 1861 (maximum sentence life imprisonment); the Sentencing Council Guideline for Causing or Allowing a Child to Suffer Serious Physical Harm, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004 (maximum sentence of 14 years for offending after 28th June 2022, 10 years for offending before that date); the Sentencing Council Guideline for Child Cruelty (offending contrary to section 1 of the Children and Young Persons Act 1933 (maximum sentence of 14 years' imprisonment for offences committed on or after 28th June 2022, 10 years imprisonment for offending before that); the Sentencing Council Guideline for Failing to Protect a Girl from the Risk of Genital Mutilation, contrary to s.3A of the Female Genital Mutilation Act 2003 (this offence did not exist at the time of the offending, and the maximum sentence for the offence is 7 years, so half that of the section under consideration); and the Sentencing Council Guideline for Domestic Abuse.

32. What is under consideration in the present case is the total removal of an organ of the body from a 3 year old child, which is a particularly grave injury. Such a procedure carries the risk of sepsis and death. Even more invidiously, and as identified by Baroness Hale in *K*, supra, such a procedure is irreversible and the effects last a life time, effects that a victim may be reluctant to speak out about, or even acknowledge. I consider the nature of the injury, and the potential effects (both physical and mental and short term and long term) are the key indicators of seriousness. That can only be militated to a limited extent should it transpire that in a particular case the very worst outcome has not transpired – not least because a victim may be reluctant to talk about, or even admit, the consequences that result from the total removal of such an organ – again it is under such cloak of secrecy and denial that such injury is perpetuated.

33. In this context, a particularly relevant Guideline, given the nature and seriousness of the injury is, I am satisfied, that in respect of Wounding with Intent, you aided and abetted just such a wounding with intent upon Jade. The harm caused by this offending would fall within

Category 1 (particularly grave injury – the removal of an entire organ) and Culpability A (victim obviously vulnerable due to her age (3)), with a starting point for Category 1A of 12 years' imprisonment and a range of 10 to 16 years' imprisonment. It is important, however, to recognise that such Guideline is, in the context of an offence which carries a maximum of life imprisonment. Some downward adjustment would be appropriate in respect of the differing, though very substantial, maximum sentence for the offence under consideration.

34. I consider that the Sentencing Guideline for Causing or Allowing a Child to Suffer Serious Physical Harm is also of some assistance. There are numerous Culpability B factors present (use of very significant force, use of weapon, deliberate disregard of welfare of a child and failure to take any steps to protect the victim) which by their combination would, I am satisfied, amount to Culpability A. Equally I am satisfied that the harm would fall within Category 2 (serious physical harm which has a substantial and/or long term effect and a permanent and irreversible condition). Category 2A offending has a starting point of 9 years and a sentencing range of 7 to 12 years (maximum sentence of 14 years for offending after 28 June 2022, previously 10 years).

35. I have also considered the Child Cruelty Guideline, though I consider a child cruelty offence to be less apt given the more obvious correlation with the Wounding with Intent Guideline and the Causing or Allowing a Child to Suffer Serious Physical Harm Guideline. I am satisfied it would be Culpability A due to the extreme character of the degradation of the victim (FGM Type 1 with your knowledge thereof as I have found) and Harm Category 1 (serious physical harm), with a starting point for Category 1A of 9 years' imprisonment and a sentencing range of 7 to 12 years' imprisonment (maximum sentence of 14 years for offending after 28 June 2022, previously 10 years).

36. The defence submit that the only relevant and appropriate guideline for the circumstances of your offending would be that of Failing to Protect a Girl from the Risk of Female Genital Mutilation, in respect of an offence under section 3A of the Female Genital Mutilation Act 2003. Under that Guideline (if applicable) the culpability would be Category A (failure to take any steps to protect victim from the FGM) and Harm Category 1 (serious physical harm which has a substantial or long term effect), Category 1A offending has a starting point of 5 years and a sentencing range of 3 to 6 years' imprisonment (maximum sentence 7 years).

37. Contrary to the defence submissions, I do not consider this Guideline to be of particular assistance, still less the relevant or appropriate guideline for a number of reasons. First, the statutory offence under section 3A did not even exist at the time of your offending. Secondly, it is a far less serious offence than the offence with which you have been found guilty (as reflected in the maximum sentence of 7 years' imprisonment which is only <u>half</u> the 14 year maximum in respect of the section 3 offence) and as such any use of it would require a very substantial uplift. Thirdly, it is less apt in terms of culpability for you did not merely fail to take any steps to protect Jade from FGM (the highest category of culpability under that Guideline), your culpability was much higher as you aided and abetted Type 1 FGM by providing positive assistance and encouragement in the commission of the offence, as you did by taking Jade to the clinic and (as I am satisfied was the case) being present with her, no doubt to reassure her, as the procedure was performed. This is very much more

than failing to protect a girl from the risk of FGM. Fourthly, the Guidelines were not in place at the time of your offending (as the offence did not even exist).

38. I bear in mind that in the Defence Sentencing Note, the defence accept that it would be Culpability A (failing to take any steps to protect Jade) and harm category 1 "due to the serious harm caused which has a substantial long term effect" under that Guideline, and such acceptance as to the serious nature of the harm is of equal importance when considering the seriousness of the harm under the other (and more apt) guidelines already addressed above. Given such acceptance it cannot be argued that there was not "serious harm caused" or that it did not have "a substantial and long term effect" (and I am sure that there was and that it did).

39. I have also borne in mind the Domestic Abuse Guideline which provides, at paragraph 3, that "For the purposes of this guideline domestic abuse also includes so-called 'honour' based abuse, female genital mutilation (FGM) and forced marriage." That Guideline recognises the impact of domestic abuse at paragraphs 9 to 11:

> "9. The domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship. Additionally, there may be a continuing threat to the victim's safety, and in the worst cases a threat to their life or the lives of others around them.
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> 10. Domestic abuse offences are regarded as particularly serious within the criminal justice system. Domestic abuse is likely to become increasingly frequent and more serious the longer it continues, and may result in death. Domestic abuse can inflict lasting trauma on victims and their extended families, especially children and young people who either witness the abuse or are aware of it having occurred. Domestic abuse is rarely a one-off incident and it is the cumulative and interlinked physical, psychological, sexual, emotional or financial abuse that has a particularly damaging effect on the victims and those around them.
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> 11. Cases in which the victim has withdrawn from the prosecution do not indicate a lack of seriousness and no inference should be made regarding the lack of involvement of the victim in a case."

40. I have also been referred to the sentencing remarks of Whipple J (as she then was) in the case of *R v. N* (Central Criminal Court, 8th March 2019), which is the only occasion on which an individual has been sentenced for an offence of FGM in this country. The facts of that case were somewhat different, concerning the infliction of FGM by a mother on her 3 year old daughter at the family home in England where she should have felt safe. The victim suffered three separate cutting injuries to the labia minora which excised the right labia, and caused the left labia minora to hang by a sliver of skin, and a cut to the clitoris. The cutting injuries caused significant blood loss which resulted in emergency hospital admission. The

prosecution was brought under section 1 of the 2003 Act. Whipple J sentenced the offender to 11 years' imprisonment (and a consecutive sentence of 2 years for other unrelated offending). Whipple J noted, in that case, that "Let's be clear: FGM is a form of child abuse. It involves deliberate physical mutilation. It is a barbaric practice and a serious crime. It is an offence which targets women, typically being inflicted on women when they are young and vulnerable. It is often done with the collusion of family members. And then it is hidden.".

41. In sentencing you I have had regard to the purposes of sentencing in section 57 of the Sentencing Act 2020. Female genital mutilation is a vile offence resulting in the violation and permanent injury to a woman's body with lifelong adverse consequences. Those that perform, or who aid and abet the performance of, such mutilation need to know that very substantial sentences of imprisonment will be the norm, as appropriate punishment, and to deter others from such vile practices.

42. I have had careful regard to all the guidelines to which I have been referred (as addressed above) as well as the General Guideline: Overarching Principles, when identifying the appropriate starting point. In this regard I consider that harm caused by your offending is very high due to the grave injury/serious physical harm (total removal of an organ) which has a substantial long term effect, and that your culpability is also very high (victim very vulnerable and very young, positive involvement with assistance and/or encouragement knowing that Type 1 FGM was to be performed, with the extreme character of the degradation and the use of a knife).

43. In such circumstances I consider that the appropriate starting point is one of 9 years 6 months' imprisonment.

44. There are a number of factors that are common ground, which aggravate your offending. These are offending in breach of trust (culpability), vulnerable victim (culpability), complete removal of clitoris (harm), and the fact that such removal will have an inevitable long term impact on Jade's ability to experience sexual pleasure (harm). Some of these matters would be aggravating factors under a particular Guideline whilst they would be inherent in another Guideline. The approach I have adopted is to bear all such matters in mind when setting my chosen starting point before consideration of available mitigation. By adopting this approach I have been careful to avoid any possibility of double-counting, of which there would be a risk if I identified a notional starting point (in a case where there is no directly applicable Guideline starting point) and then increased the sentence from that notional starting point.

45. Turning to you, and your personal available mitigation. I bear in mind that you were 22 when you committed the offence, and a mother of 3 young children and, as I have already identified, you had yourself been a victim of FGM when you were 3. I accept, as I have already addressed, that you were under cultural/family pressure, and I bear well in mind the expert evidence of Karen O'Reilly in this regard, though you were an adult, with a husband and children and you knew that what you were aiding and abetting was wrong. You could, and should, have stood up to such pressure, not least in circumstances where you would soon have been returning to the UK where you would have had the support of your husband.

46. You are now 40, and you have no previous convictions or cautions. You are the mother of 7 children ranging in age from 2 to 21. I note that your youngest children have been medically examined, and they have not had FGM inflicted upon them. I bear very well in mind that you have young children, and I have had careful regard to the impact your sentence will have on such children in accordance with the guidance in *R v Petherick* [2012] EWCA Crim 2214 (in particular at [17] to [18]), and the case of *R v Carla Foster* [2023] EWCA Crim 1196 as well as paragraphs [131] to [135] of the Equal Treatment Bench Book.

47. In this regard I have also had careful regard to the defence witness statements available to me at the time of sentencing (from your adult children), so far as they are relevant to sentencing (including in relation to harm). However whilst it is clear that they would not wish you to be sent to prison, their opinions as to what the sentence should be are not relevant (see, by analogy, both the Criminal Practice Directions 2023 para 9.5.8 and paragraph 11 of the Domestic Abuse Guideline as quoted above), and I must sentence you by reference to the seriousness of your offending including the harm inherent in such offending.

48. There will undoubtably be an interference with family life, albeit such interference is in accordance with the law and due to legitimate aims in the context of such serious offending. I am satisfied that the interference that will occur is proportionate having regard to all that I have been told and know about you, and your offending which, on any view is very serious offending.

49. As you acknowledged to the author of the presentence report, your husband, along with your adult and older children, will care for your younger children, whilst you are in custody. On the day of the sentencing hearing I have also been presented with a letter from the First Response Team at The London Borough of Harrow. It recounted that in November 2023 they assessed whether there were any ongoing safeguarding issues and also sought to ensure that the family had adequate support in place given the potential outcome of your trial. No safeguarding concerns were identified during the assessment and the parents were clear to them that they have a robust family and friend network to support them in case you receive a custodial sentence. Mr Noor reported that he would take over as the main carer to the children with the support from his family. The case was subsequently closed in January 2024.

50. Then on 15 February 2024, a Strategy Meeting was held when concerns were shared about the adult siblings having reported that should their mother be incarcerated, they would need to drop out of university to care for their younger siblings. Given the complexities, it was felt appropriate to re-open a Child and Family assessment in order to revisit care arrangements for the children and support systems in place post sentencing. The social worker Zera Bai Rajan visited the family on 15 February 2024 when Mr Noor explained that he is self-employed and can thus be flexible with his work to meet the needs of the children. You and your husband shared that you both want all your children to continue their education and that under no circumstances would you compromise this. You and your husband reported that the adult siblings will assist with caring for the children when they are off and that they will reach out to extended family for practical support if required. Your

family has provided details of 6 family members to be invited to a Family Group Conference when a robust support plan will be agreed with wider family. In such circumstances, I am satisfied that whilst there will be an increased burden on your husband, adult children and wider family members whilst you are in custody, they will be in a position to cope without damaging your adult children's career aspirations.

51. I accept that with your limited command of English, life will not be easy for you in prison, albeit that I note the psychiatrists' evidence that you are an intellectually able and insightful person, who has no cognitive impairments, and that your command of English is sufficient to communicate your difficulties.

52. Whilst you expressed remorse for your actions to the author of the pre-sentence report, and additionally recognised to the psychiatrists that your actions were wrong, the author of the pre-sentence report also identified behaviour suggestive of you not taking full responsibility for your behaviour and not being willing to fully admit your involvement (in the context of it beggaring belief that you would not have checked Jade's injury when she was crying and in pain). I too, consider that you continue to downplay your involvement and knowledge. I note that, in contrast to other members of your family, you have not yourself written to the Court, and it appears to me that you remain in denial in terms of your involvement and knowledge, and there is a failure to acknowledge the seriousness of your offending.

53. I have had careful regard to the pre-sentence report. The author acknowledges that custody may be the most likely outcome (as she puts it), though she also addressed community-based punishments. However, on any view, and notwithstanding Ms Akudolu KC's plea for mercy, it is not a realistic submission that your inevitable custodial sentence could be of a length capable of suspension, or that your offending is not so serious that only a custodial sentence is appropriate (even had the section 3A Guideline been appropriate, which it is not for the reasons I have given, as that would have required a sentence well outside that Guideline, a Guideline in relation to an offence that is far less serious, and which has a far lower maximum sentence). Had the Imposition Guideline been of relevance, and having regard to all the factors identified therein as applied to you and the facts of your offending, I would in any event have been in no doubt whatsoever that your offending was so serious that only an immediate custodial sentence was appropriate.

54. Turning to your own health. I have had careful regard to the report from your GP, and all that is disclosed therein. You suffer from the painful chronic condition fibromyalgia, and have suffered lifelong gynaecological problems which are likely the result of the FGM, as well as other medical conditions, to which I have had regard. It was also understood that you had been diagnosed with Post Traumatic Stress Disorder (in relation to events in war-torn Somalia as a young child including the witnessing of your uncle being killed). As evidenced by your GP records, you have suffered from periods of low mood and depression.

55. In the light of evidence from your GP records and what was revealed as to your periods of low mood and depression, I agreed to adjourn the date fixed for sentence to allow time for preparation of a defence psychiatric report which has now been served. It is a report of Dr Bianca Igna and Dr Elizabeth Zachariah (both consultant forensic psychiatrists registered under section 12(2) of the Mental Health Act 1983) dated 12 February 2024. In that report

they identify that in their opinion you appear to have experienced symptoms suggestive of Post Traumatic Stress Disorder (most in keeping with a diagnosis of complex PTSD) as well as a history suggestive of recurrent depressive disorder and that you would fulfil the diagnostic criteria for generalized anxiety disorder.

56. However neither psychiatrist recommends, or even suggests, that a hospital order would be appropriate so as to facilitate any form of treatment, and I am satisfied that a hospital order would not be an appropriate disposal on the evidence before me and all that I know of you. Whilst they identify that appropriate medication and treatment is available as part of secondary care mental health services in the community, I am satisfied, based on their expressed expert opinions, that appropriate care is available within the prison environment. In this regard they express their opinions as follows,

> "Prison Health Care service have provisions to provide Mrs Noor with pharmacological and psychological treatment for her mental disorder. She will have access to Mental Health In-reach services which would include care coordinator, Consultant psychiatric input, and Mental Health Nursing. The In-Reach team would be able to monitor Mrs Noor regularly and facilitate a transfer to hospital should that be necessary. With an increased frequency of healthcare contacts in custody, including Psychology contacts and clinic reviews, any deterioration in her mental state and escalation in associated risks can be reviewed regularly".

I accept such expert evidence.

57. For completeness, I confirm that I have also had careful regard to the Sentencing Offenders with Mental Disorders, Developmental Disorders, or Neurological Impairments. As the Guideline makes clear culpability may be reduced if an offender was at the time of the offence suffering from an impairment or disorder (which includes a personality disorder). However culpability will only be reduced if there is sufficient connection between the offender's impairment or disorder and the offending behaviour. On a careful consideration of all relevant circumstances, I do not consider that any of the disorders that you may have suffered from at the time of offending (even assuming that you were so suffering from such disorders at that time as compared to today) had any, still less sufficient, connection with your offending behaviour or that the same reduced your culpability. In that context, I am sure that no disorder from which you may have been suffering (and I accept that that could possibly have includes PTSD and/or low mood) impaired your ability to exercise appropriate judgement, to make rational choices and to understand the nature and consequences of your actions. In such circumstances I do not consider that your culpability was reduced.

58. In addition to your personal mitigation, the defence say that there has been unjustifiable delay, referring to the fact that Jade made her disclosures in November 2018, you were interviewed in January 2019 (at a time when Jade has already been medically examined and found to be a victim of Type 1 FGM) and you were only charged in October 2022. They pray in aid the decision in *R v Beattie-Milligan* [2020] 2 Cr.App. R. (S.) at [22] to [23]) in

that regard. In this regard I have also had regard to the Overarching Guideline General Principles (in the context of detriment).

59. No one can suggest that this was a simple or straight-forward case and the upmost scrutiny would have been necessary before a decision to prosecute was taken. The delay that undoubtably occurred before charge must be seen in that context. In this regard I have a detailed "case history chronology" which I have had regard to, which shows gaps and delays in progressing matters. For example on 30 July 2020 the Deputy Chief Crown Prosecutor wrote to the Deputy Assistant Commissioner regarding the lack of progress of the investigation, and it was to be another two years before you were charged. Many other examples of delay were given by Ms Akudolu KC with delays in instructing counsel and an expert with the matter passing through a number of reviewing lawyers and officers in the case. I do not consider that the entirety of such delay pre-charge was justified, and conclude that there was some unjustified delay prior to charge.

60. I accept, based on the evidence that I have heard today, that such unjustified delay will inevitably have placed a detrimental strain on you and your family as you were left in limbo, not knowing why it was taking so long, what was going to happen, and what the outcome would be, as I heard in the oral witness evidence. I do not consider that there was any unjustified delay post charge. You chose to plead not guilty as was your right, and the matter proceeded to trial with as much expedition as was possible in the circumstances facing the court. I will make an appropriate downward adjustment for unjustified delay pre-charge in circumstances where I am satisfied that it caused you detriment.

61. In my opinion, your offence is so serious that neither a fine alone nor a community sentence can be justified for it, and I am therefore going to pass a sentence of imprisonment. This will be the shortest which in my opinion matches the seriousness of your offending and takes into account the mitigating factors in your case.

62. In the context of the very serious nature of your offending, and the associated very high harm and very high culpability, and associated aggravating factors, I start from a sentence of 9 years 6 months' imprisonment and then reduce that down to reflect your available mitigation, as I have identified, to one of 7 years 6 months' imprisonment, and make a further downward adjustment of 6 months to reflect the detrimental effect of delay. The sentence I pass is therefore one of 7 years' imprisonment.

63. Unless you are released earlier under supervision, you will serve one half of this sentence in custody. You will then be released, but this will not bring your sentence to an end. If after your release and before the end of the period covered by your sentence you commit any further offence, you may be ordered to return to custody to serve the balance of this sentence outstanding at the date of the further offence, as well as being punished for that new offence.