Judgment Approved by the court for handing down.

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IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CENTRAL CRIMINAL COURT
THE RECORDER OF LONDON HHJ LUCRAFT K.C
T20237120 and T20237121

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/04/2025

Before :

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE GRIFFITHS
and
HIS HONOUR JUDGE DREW KC

- -

Between :

MARIUS GUSTAVSON
DAVID CARRUTHERS
JANUS ATKIN
DAMIEN BYRNES
JACOB CRIMI-APPLEBY
ASHLEY WILLIAMS — **Appellants**

- and –

REX — **Respondent**

- -
- -

Julia Smart KC and Rishy Panesar (instructed by **Hetheringtons Solicitors**) for **Gustavson**
Alexander Greenwood (instructed by **Public Defender Service (PDS)**) for **Carruthers**

Judgment Approved by the court for handing down.

Andrew Taylor (instructed by **Merthyr Tydfil**) for **Atkin**
Lisa Bald (instructed by **Stuart Miller Solicitors**) for **Byrnes**
Sean Poulier (instructed by **Messrs Malcom and Co**) for **Crimi-Appleby**
Stephen Thomas (instructed by **Public Defender Service (PDS)**) for **Williams**
Caroline Carberry KC (instructed by **Appeals Unit of the CPS**) for the **Crown**

Hearing dates: 27 February 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 30 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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LORD JUSTICE WILLIAM DAVIS:

Introduction

1. On 15 January 2024 and 9 May 2024 in the Central Criminal Court ten men were sentenced for offences of conspiracy to cause grievous bodily harm and/or for substantive offences of causing grievous bodily harm with intent. The sentences were imposed by the Recorder of London, HH Judge Lucraft KC ("the judge"), each of the defendants having pleaded guilty at different stages of the proceedings. One of the defendants, Marius Gustavson, had also pleaded guilty to offences relating to indecent images of children and to extreme pornography and to an offence of possession of criminal property. Significant sentences of imprisonment were imposed in almost all cases. Gustavson was made the subject of an indeterminate sentence with a minimum term of 22 years.

2. Six of those sentenced by the judge applied for leave to appeal against the sentences imposed. On 22 October 2024 the full Court gave the applicants leave to appeal. In brief reasons the Court said that the case overall was highly unusual. It concerned extreme body modifications being carried out on people. Those who underwent the modifications consented to what was done to them. The Court considered that it was at least arguable that it was wrong in principle for the judge to have determined his sentence by first having regard to the Sentencing Council Guideline for offences of grievous bodily harm with intent. It was said that those offences by definition were non-consensual assaults. Arguably it was inappropriate to apply those guidelines and thereafter to make a downward adjustment for the fact that the body modifications were consensual, before considering mitigation and discount for plea. The full Court further considered that, assuming that the judge's approach to sentence was correct, it was arguable that the downward adjustment applied to some defendants was out of kilter with the adjustment applied to others. Finally, leave was given to Gustavson to argue that the minimum term applied to his life sentence was manifestly excessive.

3. We heard the appeals on 27 February 2025. Submissions were made on behalf of each individual appellant in relation to the particular circumstances of their case. Prior that we heard submissions from Julia Smart KC on behalf of the appellants and from Caroline Carberry KC on behalf of the respondent prosecutor in relation to the "overarching common issues" as they were described by the full Court when giving leave. We shall deal with those issues first.

Overarching common issues

4. To understand how the overarching issues arise we must set out in very summary form the nature of the prosecution case. Detailed consideration of the factual background can be postponed until we turn to the individual cases. The conspiracy in which three of the appellants including Gustavson participated involved overt acts causing grievous bodily harm on various dates between 2017 and 2020. Gustavson also pleaded guilty to five substantive counts of causing grievous bodily harm with intent over the same period. The other three appellants were involved in different individual offences of causing grievous bodily harm with intent over that period.

5. The harm caused by the appellants can be categorised broadly as extreme body modifications. Predominantly these involved castration either by quasi-surgical

removal of one or both testicles or by the use of Burdizzo clamps as used in the castration of farm animals. There were also instances of removal of the penis and freezing of a leg so that it required amputation. The modifications were carried out either at Gustavson's home or in an hotel room or rented apartment. Usually the procedure was filmed. It then would be uploaded onto a website operated by Gustavson called eunuchmaker.com. The footage was made available to subscribers who paid to access the material on the site.

6. Those who were subjected to extreme body modification consented to what was done to them. There were instances of the victims suffering greater pain that they had expected. A few victims came to regret what had been done to them and/or to consider that they had been manipulated. For the purposes of the core overarching submission these factors are not of significance. The critical feature is that the harm was inflicted with the consent of the victim.

Was the Sentencing Council guideline applicable?

7. Ms Smart submitted that the Sentencing Council guideline for the offence of causing grievous bodily harm with intent had been devised only to deal with non-consensual injuries. The Council cannot have had in mind offending where the victim had consented to their injury. She said there is a gulf between the usual case of non-consensual infliction of really serious harm and what happened in this case. Therefore, the factors in the guideline, in particular in respect of culpability, were incapable of being applied. Ms Smart argued that, in order to identify an appropriate sentence, the judge ought to have devised what amounted to a fourth column in the grid found at Step 2 of the guideline so as to create a further category of culpability i.e. a lower level of culpability resulting from the consensual nature of the offending. The further category of culpability could be referred to as category D. The starting points for each category of harm in this extra notional column necessarily would be less than for cases of culpability C. The starting points for culpability C cases are 5 years, 4 years and 3 years depending on the level of harm. In the notional fourth column the starting points would have to be significantly lower. Ms Smart's argument was that none of the culpability factors at any level in the guideline properly could be applied to consensual offending. By the route she submitted that an appropriate level of sentence could be achieved.

8. Ms Smart acknowledged that, even though offending of the kind with which we are concerned is highly unusual, some principled basis for sentencing such cases was required. Her submission in relation to a notional fourth column at Step 2 of the guideline was intended to provide such a principled basis. When we asked how a judge required to sentence a case of consensual grievous bodily harm was to fix the appropriate starting point and category range, Ms Smart submitted that we should provide authoritative guidance supplementing the Council guideline.

9. Ms Carberry argued that the correct approach was that taken by the judge, namely to apply the relevant Sentencing Council guideline and to adjust the resulting sentence to cater for the issue of consent. In the court below, no suggestion of any alternative principled approach was made. Even if the notion of an additional culpability factor had been put before the Recorder of London, he would have been right to reject it. The approach now advocated on behalf of the appellants had no basis in principle. It was contrary to recent authority of this Court, namely *McCarthy* [2019] EWCA Crim 2202; [2020] 4 WLR 45.

10. The starting point for consideration of the effect of consent in relation to offences of violence is the decision of the House of Lords in *R v Brown and others* [1994] 1 AC 212. The appellants had been convicted of assault occasioning actual bodily harm contrary to section 47 of the Offences against the Person Act 1861 and, in some cases, of unlawful wounding contrary to section 20 of the 1861 Act. The incidents which led to each conviction occurred in the course of consensual sado-masochistic homosexual encounters. At their trial the judge had ruled that consent was no defence in relation to both offences under the 1861 Act. The majority in the House of Lords agreed. They said that, although a prosecutor had to prove absence of consent in order to secure a conviction for mere assault, it was not in the public interest that a person should wound or cause actual bodily harm to another for no good reason. The satisfying of sado-masochistic desires did not constitute such a good reason. Therefore, the victim's consent afforded no defence to either charge under the 1861 Act.

11. The House of Lords was concerned only with whether consent could be a defence to an assault where some harm resulted. The House upheld the judgment of the Court of Appeal (Criminal Division) on this issue. The Court of Appeal had also been concerned with the sentences imposed. With one exception the appellants had been sentenced to terms of immediate custody. The Court reduced the sentences imposed by the judge, in some instances the reduction being substantial. However, sentences of immediate imprisonment were maintained. Lord Lane CJ said:

> "We are prepared to accept that the appellants did not appreciate that their actions in inflicting injuries were criminal and that the sentences upon them therefore should be comparatively lenient. In future, however, that argument will not be open to a defendant in circumstances such as these."

In saying that, the Court acknowledged that the legal position of those engaged in consensual acts of violence causing injury may not have been apparent when the offending occurred. That would not be the position in the future. In 1992 (when the cases were heard in the Court of Appeal) there were no sentencing guidelines. It follows that nothing was said about the relevance of such guidelines in cases of harm being inflicted consensually.

12. In *McCarthy* the appellant ran a body tattooing and piercing business in Wolverhampton. From the same business premises he ran a business advertising itself as "body modification". He was charged with three offences of causing grievous bodily harm with intent. In one case he had removed a man's ear. In another he had removed a man's nipple. The third offence involved splitting the tongue of a woman down the middle of the tongue. Each person involved had consented to the violence inflicted on them. This Court considered his case twice. First, in 2018 the Court heard an appeal from an interlocutory ruling by the judge in the Crown Court that consent provided no defence to the charges. On the interlocutory appeal the Court concluded that body modification was not to be exempted from the general rule in *Brown*. The Court set out eight reasons for reaching that conclusion at [39] to [44] of the judgment. They were (as summarised in the second appeal at [49]):

> " i. There is a general interest of society in limiting the approbation of the law for significant violence, albeit inflicted with consent [39].

> ii. There is some need to protect from themselves those who have consented, most particularly because they may be vulnerable or even mentally unwell [39]."
>
> iii. Serious injury, even consented to, brings with it the risk of unwanted injury, disease or even death and may impose on society as a whole substantial cost [39].
>
> iv. What the appellant undertook for reward was a series of medical procedures performed for no medical reason [42].
>
> v. The professional and regulatory structure which governs how doctors and other medical professionals practise is there to protect the public [42].
>
> vi. The protections provided to patients, some of which were referred to in the medical evidence before the judge…..and which include reputable medical practitioners not removing parts of the body simply when asked to do so by the patient, were not available to the appellant's customers or more widely to the customers of those who set themselves up as body modifiers [42/3].
>
> vii. The protection of the public in the context of body modification extends beyond the risks of infection, bungled or poor surgery or an inability to deal with immediate complications, to the protection of those seeking body modification – many of whom will be vulnerable and some of whom will be suffering from an identifiable mental illness [43].
>
> viii. The personal autonomy of his customers did not provide the appellant with a justification for removing body modification from the ambit of the law of assault [44]."

In due course McCarthy pleaded guilty to three offences of causing grievous bodily harm with intent. He was sentenced to 40 months' imprisonment concurrently on each count. He appealed against his sentence.

13. At the time of McCarthy's sentence there was a guideline for the offence of causing grievous bodily harm with intent. It was in force from 13 June 2011. It was no longer in force by the time of the sentences of the appellants in this case. The guideline provided for three categories of offence. It set out factors indicating greater or lesser harm and higher or lower culpability. A category 1 offence involved greater harm and higher culpability. Category 2 covered an offence where either harm or culpability were in the upper category. A category 3 offence related to offending of lower culpability causing lesser harm.

14. The judge in the Crown Court had concluded that harm was greater because the injury had been serious in the context of the offence charged, that being the language of the guideline at that time. He had found that culpability was at the lower level because of the absence of any factors indicating higher culpability. In particular, the judge had

found that the use of a weapon (a knife) was inbuilt into the activity on which the prosecution relied. The starting point in the guideline for a category 2 offence was 6 years' custody with a range of 5 to 9 years. Taking into account personal mitigation and the passage of time since the offending, the judge determined that the proper sentence after a trial would have been 5 years' imprisonment. The sentence of 40 months' imprisonment on each count concurrently reflected a one-third reduction for the pleas of guilty.

15. This Court dismissed McCarthy's appeal against his sentence. In the course of the judgment Lord Burnett CJ said that the sentencing judge was required to follow the relevant guideline save where it was not in the interests of justice to do so. He observed that the guideline was not drafted to cater for circumstances in which the injury was inflicted with consent. He said that it was unsurprising that the guideline did not mention consent. Cases in which consent is an issue will be extremely rare. The Court found that, depending upon the facts, harm may fall to be assessed in a different way from that usually associated with assaults causing serious injury. Culpability would more obviously be affected by genuine consent. Taking those matters into account, genuine consent will have an impact on the appropriate sentence but not such as to lead to a penalty entirely divorced from the ordinary case. It would be more likely for culpability to be reduced than harm.

16. The Court agreed with the view taken by the sentencing judge in relation to the effect on culpability of using a knife to cause the injury in each case. On the other hand, the judge was correct to consider the element of deterrence in fixing the level of sentence. The judge used the relevant category range in the guideline in order to identify the appropriate sentence after trial. The Court rejected the proposition that the judge ought to have used the starting point in a lower category range. It follows that *McCarthy* provides no support for the appellants' argument before us: rather the reverse.

17. The Sentencing Council assault guideline applicable when the appellants were sentenced came into force on 1 July 2021. The guideline was subject to a consultation process, the consultation period being 16 April 2020 to 15 September 2020. The process involved the publication of a draft guideline with questions posed in relation each offence. No part of the draft guideline sought to exclude consensual infliction of harm from the ambit of the guideline. In relation to the guideline for causing grievous bodily harm with intent, consultees were asked whether they agreed with the approach to assessing culpability and harm set out in the draft guideline and with the factors included under each level of culpability and harm. There was also a general question asking whether consultees had any other comments on the guideline. The published consultation response document does not indicate that any consultee suggested the guideline should not apply to offences committed with the consent of the victim. The judgment in *McCarthy* was published on 11 December 2019. The Sentencing Council is always aware of published Court of Appeal authority which might have an impact on a guideline in the course of preparation. The Lord Chief Justice delivered the judgment in *McCarthy.* As its President, the Chief Justice of the day is briefed regularly on the current work of the Council. In those circumstances, we consider that the proposition that the Council intended that the guideline in force from 1 July 2021 would not apply to cases where the victim had consented to their injury is unsustainable. Whatever Lord Burnett said in relation to the previous guideline did not apply to the guideline in force from 1 July 2021. Had the Council wished to create a separate level of culpability for

consensually inflicted injury, it would have done so. Had it been intended that such injury was to be excluded from the guideline, this would have been made explicit. In the grounds of appeal lodged on behalf of one of Gustavson's co-conspirators, it was said that "the guidelines are clearly designed for acts of unlawful violence, not consensual acts". This proposition fails to recognise the fundamental proposition in *Brown*: consensual violence which causes any significant injury is unlawful.

18. As was said in *McCarthy* in relation to the previous iteration of the assault guideline, a sentencing judge has a duty to apply any relevant guideline. The current iteration of the duty is set out in section 59(1) of the Sentencing Act 2020:

> "Every court—(a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
>
> (b)must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,
>
> unless the court is satisfied that it would be contrary to the interests of justice to do so."

Council guidelines are not a rigid structure. Each category of offence in any guideline will have a sentencing range. In the case of a serious offence such as causing grievous bodily harm with intent the category range will be relatively broad. By way of example a case of high culpability and Category 2 harm will have a starting point of 7 years' custody but a range of 6 to 10 years' custody. Where the nature or multiplicity of the culpability factors are of particular gravity, there can be upward adjustment within the category range before consideration of aggravating and mitigating factors. Equally, there may be downward movement within the category range if there is only a single high culpability factor of limited weight. Within the terms of the guideline there is flexibility. Moreover, in an appropriate case, the court may conclude that it is in the interests of justice to depart from the relevant guideline.

19. Given the flexibility inherent in the structure of the guideline, it is unnecessary to engage in the re-writing of the guideline as suggested by Ms Smart. We have explained why there is no evidential basis for any wholesale departure from the 2021 guideline. The matters of principle set out in *McCarthy* as referred to at [12] above apply to the circumstances of these cases. Given the extreme nature of the body modifications here, the public policy issues identified in *McCarthy* have greater force and substance. They support a conclusion that, whilst consent will be a relevant factor, its weight is very likely to be limited in cases of particular seriousness. Moreover, consent is not a hard and fast concept. The extent to which consent is genuine and fully informed will vary from case to case. There will be cases in which proper assessment of the victim will lead to the conclusion that they require particular protection from themselves. This is a factor referred to in *McCarthy* list of principles.

20. The judge in this case identified the appropriate sentence in relation to each defendant by reference to the guideline and then reduced the sentence to a greater or lesser degree to allow for the element of consent. The sentence was then reduced further to take account of the plea of guilty. We shall consider in due course whether the extent of the

reduction to allow for consent was appropriate in individual cases. We endorse the general approach taken by the judge in reflecting consent. We do not consider that we can provide a scale of reductions of the kind found in the Sentencing Council guideline on reduction in sentence for a plea of guilty. There are two reasons for that. First, cases of causing grievous bodily harm with intent involving the consent of the victim are rare. In those rare cases the individual judge can assess the appropriate level of reduction by reference to the particular circumstances. Second, the extent to which consent will reduce the sentence in an individual case will be specific to the circumstances of that case. It is impossible to set out a set of homogeneous factors which can be applied. Whilst there is a need for consistency in sentencing, the variation in circumstances can be great. Because cases of consensual grievous bodily harm are rare, consistency must give way to the judge in each case assessing the issue of consent by reference to the individual circumstances of the case. When we come to look at the case of each appellant, we will consider the reduction for consent afforded by the judge. We will be able to consider whether the factors applicable to each appellant merited the reduction given.

How was harm to be categorised?

21. A discrete issue raised by all appellants relates to the appropriate level of harm in the relevant guideline. Category 1 harm applies when one or more of three factors apply, namely: particularly grave or life-threatening injury caused; injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment; offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out their normal day to day activities or on their ability to work. Category 2 harm will arise when there is a grave injury or offence results in a permanent, irreversible injury or condition not falling within category 1. Category 3 harm consists of all other cases. As we have said, the predominant injury which was caused by the appellants was castration by one means or another. There were instances of removal of the penis and freezing of a leg leading to amputation. The judge took the view that the injuries caused fell into Category 1 harm.

22. The appellants rely on *Noor* [2024] EWCA Crim 714; [2024] 4 WLR 62 in support of a general proposition that the injuries inflicted on victims in this case fell into Category 2. *Noor* involved female genital mutilation. In 2006 the appellant in that case had travelled from the UK to Kenya with a three year old girl. Both were UK citizens. Whilst in Kenya the appellant had taken the girl to a private house where the girl was subject to genital mutilation. Her clitoris was removed. The appellant and the girl returned to the UK. It was not until 2018 that the girl said anything to anyone. By then she was 16. She told a teacher at school that she had undergone female genital mutilation. As a result she was medically examined. The examination confirmed the position. That was the sum total of the medical evidence in relation to the girl. The appellant was convicted of assisting a non-UK person to mutilate overseas a girl's genitalia whilst outside the United Kingdom. This is an offence in respect of which there is no Sentencing Council offence specific guideline. Therefore, in accordance with the Council general guideline, the sentencing judge considered guidelines for analogous offences. One such guideline was the guideline for causing grievous bodily harm with intent. The sentencing judge found that removal of the clitoris constituted a particularly grave injury. This court concluded that, on the available evidence about the

girl's injury and current position, the appropriate category of harm by reference to that guideline was Category 2. The appellants' submission is that the injuries inflicted in this case are at the same level as the injury inflicted by the appellant in *Noor.* The Recorder of London placed the injuries in this case into Category 1. *Noor* had not been decided when he sentenced. Had the judgment in *Noor* been available to him, he would have categorised the harm differently.

23. We do not consider that *Noor* has the significance ascribed to it by the appellants. The court in *Noor* was considering very different circumstances to those which applied to the appellants. First, the court was assessing the application of the guideline with which we are concerned but as an analogous guideline. The appellant in *Noor* was not convicted of causing grievous bodily harm with intent. Second, the court had very limited information about the girl's injury. The evidence fell far short of what would have been required to satisfy the second and third limbs of Category 1 harm in the guideline. Third, the court concluded that the guideline for causing or allowing a child to suffer serious harm was more analogous to the offence of which the appellant in *Noor* was convicted. That offence had a maximum sentence of 14 years i.e. the same as assisting in genital mutilation. The different categories of harm in the guideline for causing grievous bodily harm with intent inevitably are influenced by the gravity of the offence reflected in the maximum sentence of life imprisonment. Fourth, even after taking all of these issues into account, the court in *Noor* found that the appropriate sentence before allowing for mitigating factors was 9 years' custody which is just below the bottom of the category range for a Category 1A offence of causing grievous bodily harm with intent. We shall consider the judge's categorisation of harm when we come to consider the cases of individual appellants. We reject the proposition that *Noor* dictates that all of the injuries inflicted by the appellants fall into Category 2 harm.

24. Potentially of greater significance is the factor as explained at [53] in *McCarthy:*

> "A serious injury which has been received freely following consent may well import fewer adverse consequences than usually associated with an injury of the same sort. It is at least possible that the injury brings positive feelings of wellbeing. In this way 'harm' may fall to be assessed in a different way from that usually associated with sentencing serious assaults."

In relation to at least some of those who suffered injuries at the hands of the appellants this factor applies. However, the court in *McCarthy* was not concerned with victims who experienced any particular positivity as a result of the injuries inflicted on them. No indication was given as to how the different way of assessing harm might be reflected in the categorisation of harm. Moreover, the structure of the guideline under consideration in *McCarthy* was very different to the guideline in force since July 2021. Whatever the supposed feelings of the victims, in relation to harm the sentence must reflect the injury caused and the risk of serious complications resulting from the manner of the infliction of the injury. Supposed feelings of well-being may mean that there is no adverse psychological effect of serious physical harm. That will have some limited relevance to the overall seriousness of the injury. It cannot move the level of harm from one category to another in the guideline as it now applies.

25. We do not consider that this conclusion is undermined by what appears at the start of the table within the guideline in relation to harm. The rubric reads: "The court should

assess the level of harm caused with reference to the impact on the victim". The physical impact of an injury such as surgical removal of the penis with the concomitant problems relating to micturition and the like will be the same whatever the psychological consequences.

The applicability of culpability factors in the guideline

26. In *McCarthy* the court referred to culpability factors. At [56] the court contrasted how harm was to be treated with the assessment of culpability:

> "It is possible that the category of 'harm' will be reduced; but it is more likely that real consent will affect the evaluation of 'culpability' and lead to a reduction in the sentence that would be appropriate in the ordinary course."

Dealing with culpability factors as they appeared in the guideline in force at the time of the judgment, the court at [57] said:

> "Pre-meditation is present but it is of a different nature from that genuinely envisaged in the Guideline. A consensual assault of this nature cannot be committed without pre-meditation. Like the judge, we conclude that the use of a knife in these circumstances is part and parcel of the unusual nature of the offending rather than a factor which tells in favour of a finding of higher culpability."

The appellants argue that these propositions apply equally to the circumstances of their cases. In our view what the court said in *McCarthy* in relation to premeditation has to be considered in the light of (a) the circumstances of the offending in that case and (b) the wording of the guideline in force which referred to "a significant degree of premeditation" as a higher culpability factor. The appellant in *McCarthy* ran a tattoo business at a shop in Wolverhampton. From the same premises he ran a body modification business. He committed the offences to which he pleaded guilty in the course of that business. Other than holding himself out as someone ready to engage in body modification, there was no planning involved. The offences committed by the appellants in this case were planned significantly in advance. In some cases the infliction of really serious injury was weeks or months in the planning. The offences were intended to be monetised by being filmed and uploaded onto a subscription website. The guideline in force from July 2021 identifies "significant degree of planning or premeditation" as a higher culpability factor. The terms of the guideline coupled with the circumstances of the offending in this case justified a conclusion that there was a significant degree of planning or premeditation. The element of consent did not affect the position other than marginally.

27. What was said in *McCarthy* in relation to the use of a knife applies equally in this case. But the use of a weapon is not the only relevant culpability factor. We have referred to the element of premeditation and planning. The offending in this case generally involved a prolonged assault. The procedures undertaken by the appellants were not straightforward and they were prolonged. Prolonged assault is a high culpability factor within the guideline in force from July 2021. There were no lower culpability factors as set out in the guideline which applied to any appellant in this case. Save for any

appellant who could be described as playing a lesser role in group activity, there were also no medium culpability factors. In our judgment, the offences committed by the appellants prima facie involved high culpability within the relevant guideline. As we already have said, the judge was correct to use the guideline to reach an appropriate sentence and then to make some deduction to allow for the element of consent.

28. Having considered those general issues we shall turn to the individual appellants.

Marius Gustavson

29. Gustavson is now aged 47. He is a Norwegian national. He was convicted of offences of dishonesty in Norway when he was a young man. He had been resident in the UK from around 2000. From the beginning of 2017 he had had no employment. He pleaded guilty to conspiracy to cause grievous bodily harm, the conspiracy operating between 2017 and 2020. Gustavson was the driving force behind the criminal agreement which also involved David Carruthers, Janus Atkin, Peter Wates and Ion Ciucur. He ran the website eunuchmaker.com on which he advertised extreme body modification services. Many of the procedures were carried out at his home in North London. On other occasions Gustavson rented an apartment or an hotel room to conduct the body modification process.

30. Gustavson's motivation was in part financial and in part sexual. He filmed or caused to be filmed many of the procedures. The films were uploaded on to the website eunuchmaker.com to which those interested could subscribe. Although those who underwent the procedures supposedly were to receive significant reward from their participation, over the course of the conspiracy approximately £300,000 was transferred from the payment platform used by subscribers into accounts held by Gustavson. On the films taken of the procedures Gustavson was seen to masturbate many of those who then were subjected to body modification procedures. Messaging between him and others involved in the conspiracy and/or victims of procedures also demonstrated a sexual motivation on the part of Gustavson.

31. The conspiracy was represented by sixteen separate procedures. Gustavson was involved in all of them. He organised the procedures. He provided the venue and the equipment needed. In some cases he played an active role in the assault. In many others he filmed what was done to the victims. We shall not set out each procedure in detail. A brief description will be sufficient to convey the gravity of what was undertaken. The victims were identified by name in the course of the proceedings. We shall refer to them in each case by the first two letters of their surname. We set out the particular events in date order.

    a) 21 July 2017 – removal of MA's testicle with a scalpel followed by cauterisation – Wates carried out the procedure – Gustavson passed him the surgical instruments.

    b) 9 September 2017 – removal of MA's other testicle – Carruthers carried out the procedure – Gustavson passed him the surgical instruments.

    c) 7 November 2017 – removal of Atkin's testicles – Carruthers carried out the procedure – Williams passed him the surgical instruments – Gustavson filmed the procedure.

d) 3 February 2018 – removal of LE's testicle – Wates carried out the procedure – Gustavson assisted Wates.

e) 6 May 2018 – removal of FO's penis – Wates carried out the procedure with Atkin's assistance – Gustavson filmed the procedure.

f) 23 September 2018 – removal of SO's testicle – Atkin carried out the procedure with Wates's assistance – Gustavson filmed the procedure.

g) 6 October 2018 – cutting of LE's penile nerve – Atkin carried out the procedure with Wates's assistance – Gustavson filmed the procedure.

h) 19 January 2019 – removal of SO's other testicle – no footage available but the participation of Gustavson, Wates and Atkin apparent from messaging between them before and after the event.

i) 20 July 2019 – insertion of needles into CR's scrotum so that the needles passed through the scrotum – Ciucur used the needles at the direction of Gustavson who also was filming.

j) 25 July 2019 – removal of CL's testicle – procedure initially carried out by Stefan Scharf – Wates assisted and then put the testicle back into the scrotum – this reversal of the process ordered by Gustavson.

k) 4 August 2019 – clamping of MAN's testicles – MAN strapped to a bed whilst Gustavson made two injections into MAN's scrotum and Ciucur then applied clamps – testicles crushed – Gustavson stated that the clamps would remain in place for one hour.

l) 26 October 2019 – second removal of CL's testicle – Atkin conducted the procedure with Wates and Gustavson acting as consultants – attempts made to remove both testicles – CL eventually unable to take the pain and the testicle which had been removed was replaced.

m) 27 October 2019 – removal of SZ's testicle – Carruthers carried out the procedure – Gustavson filmed the process.

n) 23 November 2019 – removal of GR's penile nerve involving cutting open the penis with scissors – Carruthers carried out the procedure with the assistance of Atkin – filmed by Gustavson.

o) 26 November 2019 – removal of GO's testicle – Carruthers carried out the procedure with Atkin giving active assistance – Gustavson was present and provided encouragement.

p) 18.1.2020 – removal and reinsertion of PA's testicle – PA's testicles had been clamped about some months beforehand by Gustavson causing damages to the scrotum and the testicles – Carruthers and Atkins carried out the surgical procedure with Gustavson present.

32. The judge described the procedures as being in some instances as little more than human butchery. He observed that they were carried out in non-sterile environments by

people without proper medical or similar qualifications. Whilst medical equipment was used in some cases, in other instances ordinary kitchen implements would be used. The clamps used were designed and made for use on livestock, not humans. The judge used the terms "grisly and gruesome" to describe the activity reflected in the conspiracy. Many of the filmed procedures involved extensive blood loss. Some of the victims were in severe pain during the procedures.

33. As well as the procedures carried out with Wates and the others which were reflected in the conspiracy count, Gustavson pleaded guilty to five further offences of causing grievous bodily harm with intent which he committed alone. On 8 April 2017 he removed the penis and both testicles of CN. Gustavson carried out the procedure with such little regard for CN's safety that he had to call an ambulance. CN lost a very significant amount of blood before the ambulance arrived. At the Royal London Hospital CN underwent emergency surgery. He had to have a catheter to drain his urine. In later messages between CN and Gustavson, CN said "please don't do this again though this could have been far worse". Gustavson responded to say that he never would attempt surgery again. Rather, he would only use clamps. He did not abide by his undertaking to CN. All the procedures reflected by the count of conspiracy took place after April 2017. Many of them involved surgical procedures.

34. Three of the offences committed by Gustavson alone did involve the use of clamps. On 4 February 2018 he used clamps on the testicles of FO. The outcome was surgical castration two days later in hospital. The victim was then the subject of surgical removal of his penis as part of the conspiracy as summarised at 31(e) above. On 20 September 2019 he clamped PA's testicles: see 31(p) above. On 17 October 2019 he clamped GO's testicles and split GO's penis. As summarised at 31(o) above, GO's testicle was surgically removed the following month.

35. The final count involving Gustavson alone was different from the other forms of grievous bodily harm in that it involved the freezing of SA's leg with ice and dry ice. Gustavson immersed the leg in dry ice for a substantial number of hours. The effect of this immersion was to cause tissue damage and necrotic bone injury in the lower leg. SA's leg was surgically amputated in hospital.

36. Gustavson's criminality extended beyond causing grievous bodily harm. We have referred already to the movement of around £300,000 from the eunuchmaker.com account to Gustavson's personal accounts. Those funds were criminal property. Gustavson pleaded guilty to an offence of possession of criminal property between 2017 and 2022.

37. In December 2017 Gustavson filmed what he did to a sixteen year old to whom we shall refer as J. The footage began with a shot of J's genitalia with wires coming out of tape around the head of his penis. Another wire was attached to the anus area. Gustavson touched the wire connector to J's penis/anus area so as to electrocute him while adjusting the intensity. J told him to stop. Gustavson removed the tape and masturbated J briefly. There was then a second piece of footage. J was naked and restrained on a bed with a gag in his mouth. Gustavson masturbated J's penis and touched his testicles. He went to clamp J's testicles with a Burdizzo clamp. J said that he couldn't and screamed. Gustavson removed the clamp. J masturbated himself as did Gustavson.

38. Having made these indecent videos of J, Gustavson then distributed them by placing them on the eunuchmaker.com website to be viewed by subscribers to the website. Gustavson pleaded guilty to offences of making and distributing indecent photographs contrary to the Protection of Children Act 1978.

39. Finally, Gustavson pleaded guilty to four counts on a separate indictment reflecting material recovered from an iPad recovered from his home and material sent by him via his telephone to someone referred to in messages as David. The material on his iPad consisted of extreme pornographic images including images of bestiality and an image of a body on a marble table. The head and penis had been cut off the body and placed separately on the table. The material sent to David consisted of indecent pseudo-images of a child. There was a small number of each category of image. The category A images included one of a small child being anally raped.

40. When sentencing Gustavson the judge had a comprehensive pre-sentence report and a psychiatric report. Both reports concluded that Gustavson presented a high risk of serious harm resulting from further specified offences. The author of the pre-sentence report did not find any concern on the part of Gustavson for the victims of the assaults or any appreciation of their vulnerability. Gustavson expressed the view that he was not the leading light in the conspiracy to cause grievous bodily harm. He said that he was just one piece in the puzzle. Gustavson was diagnosed as suffering from body integrity identity disorder, a recognised mental disorder involving the desire to become physically disabled. He had undergone very significant body modification himself.

41. The judge considered the sentencing guidelines for causing grievous bodily harm with intent. He concluded that there was high culpability because there had been significant planning or premeditation. He relied in particular on the planning involved. The judge determined that some of the victims were vulnerable due to their circumstances. Whilst they consented to the procedures inflicted on them, their mental state made them vulnerable to persuasion and pressure from Gustavson and other leading conspirators. The judge also found that Gustavson played a leading role and that the assault in respect of most if not all of the victims was prolonged. All of those matters combined to place Gustavson's offending into high culpability. The judge considered that the nature of the weapons used was something to be taken into account. However, it was not determinative of the category of culpability.

42. In relation to harm, the judge found that it fell into Category 1. Removal of the penis or the testicles by people without medical training in non-sterile conditions amounted to particularly grave or life threatening injury. The fact that the victim consented did not affect the physical impact of the injury. The judge also concluded that some of the procedures conducted by Gustavson would have a lifelong effect on the victims' normal day to day activities. Some of the victims would require long term medical assistance.

43. The starting point for a single Category 1A offence is 12 years' custody with a category range of 10 years to 16 years. The guideline contains this rubric: "For category A1 offences the extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors may attract a sentence higher than the category range." The judge did not refer specifically to these words in his sentencing remarks. However, he cited the combination of high culpability factors which applied in Gustavson's case.

44. The judge said that the offence of possession of criminal property was one of high culpability because Gustavson played a leading role in group activity and the criminal activity was sustained over a long period of time. Harm fell into Category 4. The starting point for a Category 4A offence was 5 years' custody. The seriousness of the underlying offending required an upwards adjustment to 7 years' custody. The offences in relation to the images of J involved production of the images so that a starting point of 6 years' custody was appropriate. The distribution of indecent images involved a starting point of 3 years' custody.

45. The judge decided that Gustavson was dangerous within the meaning of the relevant provisions in the Sentencing Act 2020. The issue was whether an extended determinate sentence or a life sentence was appropriate. The judge concluded that the seriousness of the offence of conspiracy to cause grievous bodily harm and the offences associated with it was such as to justify the imposition of a sentence of imprisonment for life. Pursuant to section 285(3) of the 2020 Act, the judge thus was obliged to impose a life sentence.

46. In determining the minimum term to be served, the judge had to take into account the appropriate sentences for the offences other than conspiracy to cause grievous bodily harm. In relation to the substantive counts of causing grievous bodily harm with intent, the judge identified a sentence after trial before any reduction for consent and the pleas of guilty of 10 years' custody. In relation to the offence concerning J and the distribution of the videos, the judge said that the sentence after trial would have been 8 years' custody. For possession of criminal property, the sentence after trial would have been 7 years' custody. For the separate offences of possession of extreme pornography and distribution of indecent images, the overall sentence after trial would have been 2 years' custody.

47. The judge determined that the total determinate sentence to be imposed after a trial and prior to any reduction for consent and for pleas of guilty would have been 50 years' custody. He did not explain the route by which he reached that figure. However, it appears to us to have been arrived at in the following way. There were consecutive terms for the offences involving J (8 years), the possession of criminal property (7 years) and the indecent images offences (2 years). Thus, the total sentence for those offences before reduction for plea would have been 17 years' custody. That arithmetic leads to a sentence before reduction for consent and pleas in relation to the entirety of the offending involving the infliction of grievous bodily harm of 33 years' custody.

48. The judge then reduced the notional determinate term by 6 years, from 50 years to 44 years, to take account of the factor of consent. That reduction only could apply to the part of the sentence relating to the infliction of grievous bodily harm. He then reduced the notional determinate sentence by 25% for the pleas of guilty. That gave a notional determinate sentence of 33 years' custody. Allowing for the effect of release provisions, the minimum term was set at 22 years less the 415 days Gustavson had spent in custody.

49. On behalf of Gustavson it is argued that: no reason was given for what the judge described as the "overall initial start point for sentence of 50 years; no reason was given for the starting point of 10 years' custody for the substantive counts of causing grievous bodily harm with intent; the culpability factors relied on by the judge did not apply; the judge erred in his categorisation of harm; the discount for consent afforded to Gustavson was less than that afforded to other defendants when there was no

justification for such disparity; insufficient account was given to the mitigating factor of Gustavson's mental disorder; a life sentence was wrong in principle.

50. We do not agree that the judge gave no reason for the overall determinate sentence of 50 years. He explained the different sentences which could have been imposed on the separate offending. The fact that those sentences could have been consecutive to the sentences for the principal offending was self-evident. By that route the judge did explain the notional overall sentence. The judge was obliged to take account of totality i.e. to ensure that the notional overall sentence was just and proportionate. It is arguable that the judge did not pay sufficient attention to that principle. However, we have to consider whether the final sentence imposed was manifestly excessive. In doing so, we must consider all of the elements of the sentencing exercise.

51. The identification by the judge of a determinate term of 10 years' custody for the substantive offences of causing grievous bodily harm with intent was fully explained. He generously determined that, although each offence fell into Category 1A, the sentence before reductions would have been at the bottom of the category range. There were five substantive offences committed by Gustavson acting alone. One of the offences – that involving CN – was particularly serious. Another – the injury to the leg of SA – led to particularly severe physical consequences for SA. The notional determinate sentence for each of the five substantive offences should have been at the upper end of the category range.

52. We have already explained why we do not accept the submissions made in relation to culpability made on behalf of Gustavson and the other appellants. As to harm, we reject the proposition that the judge overstated the nature and effects of the injuries inflicted. He explained why the injuries were particularly grave. The judge properly had in mind the long term consequences. In Gustavson's case the judge discounted the sentences in relation to the injuries caused to the victims by around 18% to allow for the element of consent. This was less than the percentage reduction allowed in the case of other defendants. We consider that there was and is a proper distinction to be drawn between Gustavson and the other defendants in the case. He was the leading light and organiser of the conspiracy. At the very least he encouraged his victims to consent to body modification. He did so when he was aware of their potential vulnerability and without any true regard for their wellbeing. His motivation for the offending was in part sexual and in substantial measure financial. He benefited greatly from the income generated by the website on which footage of the procedures was posted. If anything, the reduction to allow for consent was generous.

53. The judge reduced the sentence by 25% across the board to reflect the pleas of guilty. In our judgment this reduction was overly generous. On the main indictment credit of 25% was preserved until a hearing on 31 May 2023. At that hearing Gustavson pleaded guilty to the offences relating to J. He did not plead guilty to the other counts on that indictment at that stage. A trial date was set for 4 March 2024. Gustavson pleaded guilty to the count of conspiracy together with some other counts on 13 October 2023. He pleaded guilty to the remaining counts on 19 December 2023. On any view Gustavson was not entitled to more than a 20% reduction for plea on the main indictment. In relation to the offences of distributing indecent images, Gustavson only pleaded guilty a week before that indictment was listed for trial. The reduction for plea ought to have been little more than 10%.

54. At first blush a minimum term based on a notional overall determinate term of 50 years' custody appears to be excessive. Once the overall extent and seriousness of the offending is taken into account together with the limited reductions properly to be made for consent and the pleas of guilty, it becomes apparent that the minimum term was not excessive. We reject the submission that a life sentence was inappropriate or unnecessary. The facts of the case demonstrated that Gustavson was a dangerous man who presented a grave risk to vulnerable people suffering from body dysphoria. In *Burinskas* [2014] EWCA Crim 334 this court explained at [23] one consequence of the abolition of the sentence of IPP;

> "It is inevitable that the application of s.225 in its current form will lead to the imposition of life sentences in circumstances where previously the sentence would have been one of IPP. It is what Parliament intended and also ensures (as Parliament also intended), so far as is possible, the effective protection of the public."

The circumstances of this case are a paradigm example of such a case. Gustavson is a mature adult. There is no indication that the danger he currently presents will reduce in the foreseeable future. A life sentence was undoubtedly merited.

55. The mitigating effect of Gustavson's mental disorder, namely body integrity identity disorder, was referred to in the course of the judge's sentencing remarks. He did not state in specific terms the extent to which it mitigated the overall sentence. In our judgment, Gustavson's mental disorder did not significantly affect his culpability. By reference to the overarching guideline for sentencing offenders with a mental disorder, the judge was entitled to give limited weight to this factor. Gustavson was well aware of the unlawfulness of what he was doing. He knew about the decision in *McCarthy* because he discussed it with a co-conspirator.

56. As we have said, there were points at which the judge, in sentencing Gustavson, failed to take full account of totality and of the appropriate overall sentence after trial for the offences involving the infliction of grievous bodily harm. However, the judge was generous in his assessment of the substantive offences of causing grievous bodily harm with intent and the reduction for plea. Standing back, we conclude that the sentence imposed was not manifestly excessive. His appeal against sentence is dismissed.

Janus Atkin and David Carruthers

57. We deal with these appellants together since they both pleaded guilty to the count of conspiracy. Atkin is now aged 40. Carruthers is 62. Neither has any previous convictions. Both had some past experience which meant that they were not wholly without knowledge of how to carry out surgical procedures. Atkin had studied veterinary science after leaving school until he had dropped out of the course. In the 1990s Carruthers had been employed in a hospital operating department which meant that he had seen operations being carried out by qualified surgeons. As Atkin put it when speaking to a probation officer, "I roughly knew what I was doing".

58. Both of these appellants had had issues with their own bodies. In relation to Carruthers there was psychiatric evidence that he suffered from body integrity dysphoria. Both men had had their testicles removed. Carruthers had carried out the procedure on

himself. Atkin had contacted the eunuchmaker.com website as a result of which Gustavson had arranged the procedure to which we have referred at 31(c) above.

59. Carruthers was involved in six separate procedures. Atkin took an active role in eight procedures. We have identified those procedures at 30 above. The last procedure was carried out by these appellants on the individual to whom we have referred as PA. He suffered significant problems as a result of the procedure. In due course he went to the police to complain about what had been done to him. It was his complaint which led to the prosecutions.

60. The pre-sentence report in relation to Carruthers said that he appeared to have a "saviour complex" in relation to the men on which he carried out procedures. He expressed pride in having modified their bodies. The author of the report concluded that Carruthers did not have any concept of the grave risk to which he had exposed the victims. Contrary to the view expressed by Carruthers, the author of the report concluded that there was a clear sexual element to his offending. The pre-sentence report in relation to Atkin also found a sexual motivation on his part. When asked why he had become involved to such a significant extent with Gustavson's activity, Atkin was not able to say. The author of the report found that Atkin had no empathy with those on whom he carried out procedures. He did not see them as victims.

61. For his part in the conspiracy Carruthers was sentenced to 11 years' imprisonment. The judge found that, by reference to the guideline for the substantive offence of causing grievous bodily with intent, the offence involved high culpability and Category 1 harm. Taking into account that Carruthers had been involved in six separate procedures, the sentence after trial was set at 17 years' custody. The judge reduced the sentence by 4 years to take account of the element of consent. The sentence was further reduced for the plea of guilty. The reduction applied was 15% because the plea was only indicated some time after the trial date had been set.

62. Adopting the same analysis the judge imposed a sentence of 12 years' imprisonment on Atkin for his participation in the conspiracy. The sentence after trial was set out at 18 years, Atkin having been involved in eight rather than six procedures. The reduction in years to take account of consent and the percentage reduction for plea were the same as in the case of Carruthers.

63. On behalf of Carruthers, the following submissions were made: the Council guideline ought not to have been applied since it was not designed for consensual acts; insofar as application of the guideline was appropriate, culpability should not have been high and harm should have been put into Category 2; adopting the approach taken by the judge to consent, namely a reduction from the sentence which otherwise would flow from the guideline, the judge's reduction for consent was insufficient; the sentence failed to reflect that Carruthers was acting under the control and direction of Gustavson; the plea of guilty was delayed in order for the judge to rule on whether it was appropriate for Carruthers to be prosecuted when the victims consented in which event the reduction for plea ought to have been at least 25%.

64. We have dealt with and dismissed the arguments relating to the applicability of the guideline in the circumstances which applied in this case. It was in the written grounds of appeal lodged on behalf of Carruthers that a distinction was sought to be made between unlawful violence and consensual acts. As we have identified, this supposed

distinction is false. We also have considered the arguments in respect of culpability and harm. For the reasons we previously have given in relation to Gustavson's case, we are satisfied that the judge was justified in his conclusion that the overall offending represented by the conspiracy count was in Category 1A in the guideline.

65. The judge's reduction for the element of consent in percentage terms was approximately 23.5%. Two arguments are put. First, leaving aside the reduction applied in the case of other defendants, the level of reduction in relation to Carruthers ought to have been greater than the percentage applied by the judge. Second, the reduction applied in the case of the appellant Williams was 40%. The disparity between that reduction and the reduction applied in the case of Carruthers was so great that it would have led the well-informed observer to conclude that something had gone wrong with the administration of justice. As to the first argument, no principle is advanced nor is there any suggestion as to what would have been an appropriate reduction. We have already noted that the reduction of around 18% in Gustavson's case arguably was generous. Given the number of procedures with which Carruthers was involved and his attitude to those on whom the injuries had been inflicted, we are satisfied that the reduction for consent in Carruthers's case was more than sufficient. The disparity argument has no merit. The position of Williams was not similar to that of Carruthers since he was involved in a single procedure. In any event, the principle in *Saliuka* [2014] EWCA Crim 1907 is relevant. In that case the appellant argued that his sentence should be equivalent to the sentence imposed on another defendant in the same case. The court said:

> "The logical extension to the appellant's argument is that if an unduly lenient sentence was passed upon one of them, that requires the court to pass an unduly lenient sentence upon another offender. Right-thinking members of the public would then rightly think that something had gone wrong with the administration of justice. In our judgment, one sentencing error is not cured by making another."

If the reduction in Williams's case was excessive, that cannot be a reason to make the same error in relation to Carruthers.

66. We acknowledge that Gustavson was the leading light in the conspiracy. His overall sentence after trial in relation to the conspiracy and associated offences of causing grievous bodily harm with intent reflected his leading role. But Carruthers played a very significant role. He and Atkin were at the forefront of carrying out the surgical procedures. Whilst the scheme of eunuchmaker.com was Gustavson's operation, it could not have succeeded without the active assistance of Carruthers and Atkin. The control and direction of Gustavson in some respects was limited. The role of Carruthers was correctly reflected in the sentence after trial.

67. There will be cases in which there is a genuine dispute as to whether an offence has been committed or whether the evidence on the papers is sufficient to support the offences charged. It may that, in those cases, a defendant will be justified in testing the position before indicating a plea. It then would be unreasonable to limit the reduction for the plea of guilty. In this case Carruthers (and Atkin) argued that the consent of the victims meant that no offence had been committed. This argument was bound to fail. *McCarthy* was very recent authority which was well known to the appellants. There

was no sensible distinction to be drawn between the circumstances in *McCarthy* and the actions of the appellants. We consider that it was not reasonable to withhold the plea of guilty to await the outcome of an argument that, as the appellants ought to have known, was without merit.

68. In relation to Atkin, it was argued that: application of the guideline in relation to causing grievous bodily harm with intent rendered the sentence unfair since all those on whom injury had been inflicted had consented to the procedures; what was done to the victims was not possible via legitimate medical treatment in the UK but could have carried out in other countries; there should have been a greater reduction for plea since Atkin was entitled to test the law in relation to consent.

69. For all the reasons we have set out above, we reject the argument that applying the guideline led to unfairness or injustice. Atkin was involved in eight separate incidents where grave injury was caused. The judge was entitled to conclude that the offending had a sexual motivation with Atkin showing little regard for those he had injured. Leaving aside the issue of consent, it was inevitable that the sentence after trial would be beyond the category range for a 1A offence in the guideline. The plea of guilty to the conspiracy count was the equivalent of pleas of guilty to eight separate substantive counts. The judge reduced the sentence to take account of the issue of consent. In percentage terms, the reduction was marginally less than that afforded to Carruthers. This marginal difference could be taken to reflect the marginally greater participation in the conspiracy on Atkin's part. The distinction is so small that it cannot form the basis of any adjustment to Atkin's sentence.

70. The fact that Atkin was undertaking procedures which could have been undertaken by qualified professionals in other countries was irrelevant to the judge's sentencing exercise. In another jurisdiction anyone wanting such a procedure would have been fully advised and assessed before any professional agreed to conduct it. Moreover, the procedure would have taken place in a properly controlled and sterile environment as opposed to in Gustavson's flat or in an hotel room.

71. The argument in relation to the reduction for plea put by Atkin is the same as the submission made on behalf of Carruthers. We reject it for the same reasons as we have set out in Carruthers's case.

72. For all of those reasons the sentences imposed on Carruthers and Atkin were not manifestly excessive or wrong in principle. Their appeals are dismissed.

Damien Byrnes, Jacob Crimi-Appleby and Ashley Williams

73. We shall deal with the remaining appellants together. Each of them pleaded guilty to a single count of causing grievous bodily harm with intent. In each case their victim was a defendant charged on the indictment. Byrnes and Crimi-Appleby inflicted injury on Gustavson. Williams's victim was Atkin.

74. Byrnes was 29 at the date of his offending. In 2016 he was a sex worker. He had been used as such by Gustavson. At the end of 2016 he agreed to carry out a procedure in which he was to cut off Gustavson's penis. It was Gustavson who had instigated the procedure. Byrnes was to be paid for doing it. On 18 February 2017 at Gustavson's flat, after Gustavson had anaesthetised his penis, Brynes strapped him to the bed by his

wrists and ankles. Byrnes then cut off Gustavson's penis with a kitchen knife. The process was filmed. Later on the same day Gustavson called for an ambulance. He told the team who attended that he had tried to carry out surgery on his own penis. He was taken to hospital. He was suffering from blood loss and sepsis of the urinary tract. He required emergency treatment. Some months later an operation to create a permanent opening to the urethra was required. Over the following twelve months Byrnes received around £1,500 from Gustavson. Some of this may have been for sex work. Byrnes was not arrested until February 2022. When interviewed he admitted removing Gustavson's penis. He did it because he was short of money.

75. Crimi-Appleby was 18 at the date of his offending. He first was in contact with Gustavson when he was 17. By the beginning of 2019 the two of them were in a sexual relationship. In the course of their relationship Gustavson encouraged Crimi-Appleby to undergo extreme body modification. It was in the context of such conversations that the removal of Gustavson's leg was discussed. In the first half of February 2019 Gustavson explained the process he had in mind and provided Crimi-Appleby with instructions on how to carry out the procedure. On 21 February 2019 Crimi-Appleby went to Gustavson's home. He filled a large bucket with a mixture of ice and dry ice into which Gustavson put his leg. Over the course of several hours Crimi-Appleby topped up the mixture to ensure that the temperature was kept sufficiently low. He left Gustavson's address before the process was complete but continued to speak to Gustavson by telephone to encourage him to keep the leg in the ice/dry ice mixture for at least eight hours. Later on 21 February Gustavson sent Crimi-Appleby images of the his blistered and dying leg.

76. The entire process was filmed and then uploaded onto Gustavson's website. Gustavson was admitted to the Royal Free Hospital. He remained there for about two weeks as attempts were made to save his leg. These attempts failed and the leg was amputated below the knee on 9 March 2019. Not only did the process of removing Gustavson's leg mean that valuable hospital resources were taken up but also Gustavson applied for disability benefit because of the loss of his leg. He received nearly £18,000 in benefits before he was arrested.

77. Ashley Williams was 26 at the point of his offence. He lived with Carruthers who was his husband. He pleaded guilty to a substantive count of causing grievous bodily harm with intent. This count reflected the same occasion as set out at 31(c) above. Williams assisted Carruthers by using clamps to stem the bleeding after removal of Atkin's testicles and before the wound was cauterised.

78. Byrnes indicated a plea of guilty at his first appearance at the magistrates' court. In due course a reduction of one-third was applied to the sentence after trial and reduction for consent. Crimi-Appleby and Williams pleaded guilty in May and June 2023 respectively. This was at the Central Criminal Court.

79. In sentencing Byrnes the judge said that he took into account the mitigation. At the time of the offence Byrnes had been abusing drugs and engaged as a sex worker. In the succeeding six years he had turned his life around. He expressed remorse for what he had done. The judge concluded that the offence fell into Category 1A. He reduced the sentence after trial and before any further reduction to 10 years' custody, namely the bottom of the category range for a Category 1A offence.

80. Because the offence was committed with the consent of Gustavson, the judge reduced the sentence by 25% to seven years six months' imprisonment. To that period the judge applied a full one third reduction for the plea of guilty. The sentence imposed was five years' imprisonment.

81. In sentencing Crimi-Appleby the judge paid particular regard to his age and immaturity at the date of the offence. Although the offence fell into Category 1A in the guideline, he set the sentence after trial at eight years' custody. He reduced that term to five years six months to allow for the factor of consent. This represented a percentage reduction of approximately 31%. He gave full credit for the plea of guilty even though the plea had not been indicated until the first hearing at the Central Criminal Court. The sentence imposed was three years eight months' imprisonment.

82. In respect of Ashley Williams the judge noted that, because he was the husband of Carruthers, he was more aware of the extent of the overall offending that his involvement in a single incident might suggest. The sentence after trial would have been 10 years' custody, the offence falling into Category 1A in the guideline but at the lower end of the category range. The judge reduced the sentence by four years to take account of the consent of Atkin to the relevant procedure. He then applied a reduction of 18 months (or 25%) to take account of the plea of guilty. The sentence imposed was four years six months' imprisonment.

83. On behalf of Byrnes it is argued that his case provides a good example of how conventional application of the guideline leads to a perverse result. Byrnes acted on the direction of Gustavson throughout. The injury sustained by Gustavson did not fall into Category 2 harm because he was walking around outside his flat when waiting for the ambulance. The factors of high culpability could not sensibly be applied to Byres's case. At its highest the sentence should have been based on Category 2B in the guideline with a starting point of 5 years' custody. From that starting point there should have been a substantial discount for mitigating factors before reduction for consent and for the plea of guilty. In the circumstances the sentence could and should have been of a length capable of being suspended.

84. We do not agree with this analysis of Byrnes's offending. Whilst it is true that there were significant mitigating factors available to him, the sentence before such factors were considered would have been 12 years' custody. The removal of Gustavson's penis was a particularly grave injury. Its long term effects were significant. The fact that he was able to walk around in the immediate aftermath is of no significance. The offence was planned and the removal of the penis was overall a prolonged process. The offence fell squarely into Category 1A. All that we have said previously in relation to the applicability of the guideline and the culpability factors therein applies equally in Byrnes's case. The judge reduced the sentence from the starting point of 12 years' custody to take account of the mitigating factors. The reductions thereafter for consent and plea were appropriate. We do not consider that the eventual sentence was manifestly excessive or wrong in principle. The appeal in his case is dismissed.

85. The core submission on behalf of Crimi-Appleby is that it was wrong to apply the guideline in the way that the judge did. It was contrary to the interests of justice to do so. The elements of culpability and harm as set out in the guideline could not be applied when the victim consented to the injury. That proposition applied with particular force when the victim was a man whose whole life was taken up with the very kind of

offending for which Crimi-Appleby had to be sentenced. It is also argued that the reduction for the factor of consent was applied inconsistently. The reduction should have 40% throughout.

86. We shall not repeat our conclusions in relation to the applicability of the guideline and the culpability and harm factors therein. What Crimi-Appleby did was to cause a man's leg to be so badly damaged that it had to be amputated. We consider that this can only have been Category 1 harm because Gustavson suffered a permanent, irreversible injury affecting substantially his ability to carry out normal day to day activities. The clear evidence of that is the disability benefit which he was paid until the true circumstances became known. Culpability was high because of the planning involved and the prolonged nature of the act required to damage the leg.

The judge took full account of Crimi-Appleby's age. It was that factor which brought down the sentence before reductions for consent and the plea of guilty to eight years' custody. The reduction for consent was less than that afforded to Williams. We have previously explained why the disparity argument cannot succeed on the facts of this case. The reduction afforded to Crimi-Appleby was generous. Even more generous was the reduction for the plea of guilty. The final sentence imposed in his case was neither manifestly excessive nor wrong in principle. His appeal is dismissed.

87. On behalf of Williams the submission is that a correct application of the guideline should have led to a significantly lower sentence. Because Williams played a secondary role in the procedure involving the removal of Atkin's testicle, culpability should have been medium i.e. a lesser role in a group activity. Even if harm were to be placed in Category 1, the offence was no more than Category 1B with a starting point of seven years' custody. From that figure there ought to have been some allowance for the mitigating factors, in particular Williams's good character. The judge correctly reduced the sentence substantially to allow for the element of consent. He failed to apply a one third reduction for the plea of guilty. Taking the correct approach, the judge would have reached a sentence capable of being suspended.

88. We accept that Carruthers (who was Williams's husband) carried out the procedure in which Atkin's testicle was removed. However, Williams played an essential role. The outcome of the procedure could not have been achieved had Williams not been on hand to clamp the wound. Moreover, Williams was part of the planning of the offence which involved a prolonged assault. We are not persuaded that a sentence after trial but before appropriate reductions of 10 years' custody was manifestly excessive. More to the point, we have to consider whether the eventual sentence of four years six months' was manifestly excessive. This included a reduction of 40% for the factor of consent. As we already have noted, this was a significantly greater reduction than was afforded to other defendants in the case. The reduction was excessive. It amounted to undue leniency. Had a reduction of 25% been applied to a sentence after trial of eight years' custody (which would have been within the category range for a Category 1B offence) the outcome would have been the same as applying an excessive reduction to a sentence of ten years' custody. On that basis there is no conceivable argument that the period to which the reduction for the plea of guilty was applied was excessive. Williams's plea was tendered at the first hearing at the Central Criminal Court. He was entitled to a reduction of 25%. That was the reduction applied by the judge. The sentence of four years six months' was not manifestly excessive or wrong in principle. Williams's appeal is dismissed.

Conclusion

89. The Recorder of London carried out a difficult sentencing exercise on two days separated by several months. Such minor differences we have had with his approach on particular issues have been of no consequence to the overall sentence imposed in each case. None of the appeals has succeeded. This was an extremely unusual case. That did not mean that it was not to be sentenced by reference to the relevant guideline. The adjustments made to the sentences to allow for the unusual circumstances were reasonable and proportionate. The sentences were intended to give a message to anyone minded to engage in highly dangerous procedures involving body modifications. That reflected an appropriate purpose of sentencing.