The provisions of the Sexual Offences (Amendment) Act 1992 apply to the offences in this case. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. For this reason, this case has been anonymised as has the name of the appellant.

Neutral Citation Number: [2025] EWCA Crim 778

Case No: 20240/3542/A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM WOLVERHAMPTOM CROWN COURT
MR RECORDER ADRIAN JACK

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 July 2025

Before :

LORD JUSTICE FRASER
MRS JUSTICE McGOWAN
HIS HONOUR JUDGE PICTON

- -

Between :

Rex
- and -
ANZ

- -

Hearing date: Tuesday 10 June 2025

MR DAFYD ROBERTS appeared on behalf of the Appellant

LORD JUSTICE FRASER:

1. This is an appeal against sentence by the appellant, leave having been granted by the Single Judge, who also granted the necessary extension of time. The provisions of the Sexual Offences (Amendment) Act 1992 apply in this case. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act, and there has been no such waiver or lifting of restrictions in this case. For this reason, this case has been anonymised with randomly generated initials, as has the name of the appellant. This is due to the risk of identification of the victim as she is a family member of the appellant. We shall therefore refer to the appellant simply as ANZ. Mr Roberts appeared before us for ANZ as he did in the Crown Court, and we are very grateful to him. We reserved judgment.

2. On 23 February 2024, in the Crown Court at Shrewsbury before Mr Recorder Adrian Jack, the appellant ANZ, who was at that date aged 59, was convicted of four offences. These were three offences of sexual activity with a child family member (contrary to section 25(1) of the Sexual Offences Act 2003); and one offence of cruelty to a person under 16 years (contrary to section 1(1) of the Children and Young Persons Act 1933). In the case of all four offences, the child in question who was the victim of his offending was his daughter. The offending had taken place between the years of 2003 and 2007. ANZ was acquitted of five other similar offences which were also on the indictment, and we will say no more about them as they are not relevant to his sentence or his appeal. Notwithstanding those acquittals on some of the charges he faced, the sexual abuse which the victim endured at his hands whilst living at home with him was a pattern of repetitive frequent acts over a period of three years, and he was convicted of multiple incident counts.

3. On 30 April 2024 he was sentenced by the same judge for the offences of which he had been convicted. The sentences that were imposed were all ordered to run concurrently, and they were all the same. The sentences were each of 18 months' imprisonment, which were suspended for 2 years. Two other requirements were imposed upon ANZ, namely a Rehabilitation Activity Requirement for 20 days and an Unpaid Work Requirement of 100 hours. A Restraining Order was also made for a period of 5 years and the relevant notification provisions under Part 2 of the Sexual Offences Act 2003 were imposed upon him for a period of 10 years. A Compensation Order was also made in the sum of £10,000, with that amount ordered to be paid at the rate of £400 per month from 1 July 2024. It is in respect of that latter order only that this appeal is brought. We note at this point, as it is relevant to the way that the Compensation Order was imposed, that ANZ was in custody at the point when he was sentenced, having been remanded upon the date of his conviction.

4. Originally other grounds of appeal, in addition to the one in relation to the Compensation Order, were also lodged. Those grounds were refused by the Single Judge and have not been renewed before us. The sole ground of appeal before us today therefore is that relating to the order that ANZ pay compensation to his daughter for his offending by way of sexual and child-cruelty offences. In those circumstances we can deal with the facts of the offending relatively briefly. We do not, however, by doing so, seek to minimise the impact of that offending upon ANZ's daughter, which was

considerable. It had a marked and profoundly damaging effect upon her.

5. The crimes were committed between 2004 and 2007 and related to offences by ANZ against his daughter, to whom we shall refer as the victim, who was aged between 13 and 15 years of age at that time. Up until she was 13 years of age she had lived with both her mother and father. However, when she was that age the relationship between her parents ended and her mother moved some distance away. The pre-sentence report states that this was when her mother left the family home to flee to a women's refuge. The victim remained living with her father. Once her mother had left, ANZ began his offending against his daughter. One count related to an occasion when ANZ groped her breasts over her clothing. Two of the other counts related to occasions when ANZ rubbed her between her legs, that offending having taken place regularly over the period, and one of those counts was a multiple incident count. The victim had told ANZ that what he was doing was wrong, and ANZ responded to this by threatening to tell her mother false complaints that she had been stealing from him. The offence of cruelty occurred throughout the indictment period of 2004 to 2007, and to quote from the indictment it was that he "wilfully assaulted, ill-treated, neglected, abandoned or exposed [her] in a manner likely to cause [her] unnecessary suffering or injury to health." Details of that offending were that he would leave her alone in the home overnight, there had been no gas to warm the house and no electricity to light the home, and he failed to cook her any food. Indeed, she explained that there had rarely been any food for her to eat at home, and she had spent many of her teenage years hungry. Her clothes were usually dirty, as she had no ability to wash them at home; to try and resolve this, she had taken to washing her school shirts at a bus station in town, or in the school toilets. She was gradually both ostracised and also bullied at school during this period. It is only common sense to observe that the conditions in which ANZ compelled her to live while she was a teenager would have had, and indeed did have, a significant impact upon her during those vital formative years. She eventually resorted to stealing clothes and shoes to replace clothing that had been worn out, as there was no way she could otherwise replace them.

6. The victim made a report to the police in 2021 and the appellant was interviewed on 11 March 2022. In interview he denied that he had sexually abused his daughter, stating that the complaints that she was making were malicious, and had been motivated by his inability to care for her when she had been a child. He effectively said that she was making up this account of offending by him and none of it had occurred. We observe at this point that it must have taken great courage on her part to make this report to the police. Offending of this type against a child, particularly by her own father, has very serious consequences upon the victim and it is not unusual for many years to pass, after such offending has occurred, before the victim comes forward and reports what has occurred.

7. The sentencing judge had the benefit of a powerful victim personal statement from her. She explained that she had been silenced for so long, not only because her father did his best to keep her quiet by threatening her, but also because when she had told her mother, with whom she had had a very close relationship, her mother told her to keep quiet about it. She felt as though she had lost both parents, and her own children had lost their grandmother, as a result of her reporting these offences. She also explained that she found it very upsetting and difficult to think about how much she had to bear as a child, all that had happened to her at home, including strong memories of the

computer room where the abuse by her father used to take place. She said her father had taken advantage of her and her close relationship with her mother.

8. We observe that, in particular, the threats that ANZ made against her to keep her quiet in relation to his offending against her appear specifically designed to have undermined this close relationship that she had with her mother. Threatening the victim of such offending in order to keep them quiet is an aggravating factor, and recognised as such in the Sentencing Guidelines. The victim also said in her statement that she finally felt that she had been heard as a result of the criminal proceedings. There is no doubt that both the abuse and the cruelty that she had endured at ANZ's hands during these years has taken its toll upon her. Given the nature of this appeal as we will explain, and the offending by ANZ against his own daughter, it is particularly regrettable that the sentencing exercise unfolded as it did.

9. The appellant had some previous convictions of some age, which the judge found not to be relevant. Two of these were offences of indecent exposure in 1997 and 2002. The judge had the benefit of a pre-sentence report. He said that he took account of the fact that the appellant had been on remand for almost 10 weeks already as at the date of sentence, and he went on to impose the suspended sentences to which we have referred.

10. So far as the Compensation Order itself is concerned, none had been sought by the prosecution and there was no reference to such an order in the prosecution sentencing note. As a result Mr Roberts for ANZ made no submissions in mitigation about the imposition of one. He focused his submissions on whether what he recognised as an inevitable custodial sentence should be suspended. The closest that there was in terms of any discussion about compensation orders at all in the submissions on mitigation was an exchange regarding ANZ's employment status. He had been a bus driver for over 20 years and in the pre-sentence report there was reference to this service entitling him to "a good pension". He had lost this job as a result of the charges, and then obtained employment as a delivery driver, but lost that job upon his conviction. He was on remand as at the date of sentence and therefore not in employment at all. At the end of the submissions on mitigation the judge observed the following, as it appears in the transcript:

    "THE RECORDER: Can I just clarify that he did have a job as a delivery driver? I assume he can't carry on as a bus driver because he is on the barring list but he's presumably going to be able to find it fairly easy to get delivery work, isn't he?
    MR ROBERTS: I'm afraid I've not been able to speak to (Inaudible), herself; I know that my instructing solicitor is there in court.
    THE RECORDER: She seems to be saying, yes.
    MR ROBERTS: I'm grateful."

11. Mr Roberts confirmed before us that by "she seems to be saying, yes" the Recorder was referring to confirmation being provided by ANZ's solicitor during that exchange, as she was nodding that his presumption that ANZ could obtain a job as a delivery driver was correct.

12. The sentencing judge said this in his sentencing remarks, after suspending the sentences:
    "In addition, it seems to me that you are going to be in a position to pay compensation

to [your daughter] for the matters for which you have been found guilty, and I am going to order that you pay her compensation of £10,000, payable at a rate of £400 per month, the first payment to be made by 1 July 2024."

13. The ground of appeal for which leave was granted by the Single Judge is as follows. It has two elements to it, and is that:
    1. The Court failed to make enquiries of the appellant's means before making the Compensation Order;
    2. That failure resulted in a Compensation Order being made in the sum of £10,000 which was both wrong in law and manifestly excessive.

14. In granting leave, the Single Judge also ordered that the appellant:
    "should provide to the Court an up-to-date statement as to his means: counsel's advice was written in September 2024, and the full Court may wish to know the up-to-date position. The applicant should, in that context, explain to the court the position in relation to his "good pension" referred to on page 3 of the pre-sentence report, and whether any pension monies could be available to meet a Compensation Order."

15. The extract in the pre-sentence report to which the Single Judge referred stated that the author of that report had been told by ANZ that he "had a good pension from his time on the buses and I could take it early if I wanted to". He had worked as a bus driver for 24 years in the area.

16. The final part of the background which we recite before coming to the legal analysis is that after the sentencing hearing, Mr Roberts realised that the mandatory requirement upon the court to consider the means of an offender prior to imposing a Compensation Order had simply not been complied with. Accordingly, he sent an email to the sentencing judge inviting him to relist the matter under the slip rule in order that this deficiency could be addressed, together with making other submissions including the amount of the order, the difficulty of ANZ paying the sum ordered, and that ANZ was then still out of work. Quite apart from whether, technically, something of this nature could be remedied under the slip rule, the Recorder simply refused to entertain re-listing the matter. In an email to Mr Roberts from the Court sent on the Recorder's behalf, three points were made:
    1. That the figure of £10,000 was far less than would be ordered by the civil courts and that there was no way it would be considered to be manifestly excessive;
    2. "As to your client being out of work, you give no explanation for what you say happened to him after his release from prison. There is a demand for drivers. You give no account of what efforts he has made to find work".
    3. He could raise the matter of genuine financial difficulties at the enforcement stage, if he were finding it hard to make the payments ordered.

Discussion

17. We turn firstly to the way in which Compensation Orders ought to be imposed by the court. This is governed by sections 133 to 135 of the Sentencing Act 2020. The amount ordered must be appropriate. In particular under section 135(3)(b), the court *must* have regard to the offender's means before making such an order. Section 135 is headed as follows and states:
    "Making a compensation order
    (1) A compensation order must specify the amount to be paid under it.

(2) That amount must be the amount that the court considers appropriate, having regard to any evidence and any representations that are made by or on behalf of the offender or the prosecution.
But see also sections 136 to 139.

(3) In determining—
(a) whether to make a compensation order against an offender, or
(b) the amount to be paid under such an order,
the court must have regard to the offender's means, so far as they appear or are known to the court."

18. There is no doubt about the meaning of the word "must". Its effect is clear; this is a mandatory requirement. The offender's means must be considered.

19. Here, there were no details provided of his means and this requirement was not drawn to the attention of the sentencing judge at the time by his counsel. To be fair to Mr Roberts, he has apologised for this, but in any event we observe that given the stance of the prosecution in the sentencing note, the imposition of such an order appears to have taken everybody by surprise. The only tangential indication that such an order might be made is the exchange at [10] above, which was a vague enquiry about his job prospects. The appellant was, in any event, in custody on remand at that point, had no employment at that point and had no income. A vague supposition by the judge, or confirmation sought of a presumption, that ANZ ought to be able to get a job fairly easily if he were to be released does not, in our judgment, equate with having regard to his means. This is not to say that there need necessarily be a detailed examination of means before a court imposes a compensation order at all; outline details such as whether they are employed or not, their financial position, income and major heads of expenditure such as rent should suffice. There is always the possibility that an offender might have savings, and here as at the date of the appeal it appears that ANZ does have some modest savings of £1000. But the mandatory requirement to have regard to an offender's means does require *some* basic information about their means being before the court. Here, there was none.

20. In ***R v York*** [2018] EWCA Crim 2754 the Court of Appeal (Hickinbottom LJ, Elisabeth Laing J and William Davis J, as they both then were) said at [19] that there are six principles that require application by the court when considering whether to impose a compensation order. They are:
(1) the offender must give details of their means;
(2) the judge must enquire about and make clear findings about their means;
(3) before making such an order, the court must take account of the offender's means;
(4) an order should not be made unless it is realistic, namely that the court is satisfied that the offender has the means to pay the amount and to do so within a reasonable period of time. A repayment order of 2 to 3 years in an exceptional case would not be open to criticism, although in general long periods of repayment should be avoided;
(5) the court should not make a compensation order against someone on the assumption someone else would pay it, a relative for example;
(6) it would be wrong to make an order without considering the amount of instalments and the period of time over which it would be paid, on the basis that these would be sorted out by the Magistrates.

21. That case concerned an out of control Rottweiler puppy who bit a member of the public very severely. We consider the principles outlined in [19] of that case to be of wide application, and not limited to the facts of that case, notwithstanding the introductory wording of that paragraph itself which could potentially be interpreted in that way. The approach to the case as stating principle is reflected in its inclusion in the Crown Court Compendium. We would only add that depending upon the facts of the case, the court should also consider any exceptional factors that arise which appear to the court to be relevant to the issue of compensation.

22. Here, the sentencing judge did not comply with any of (1), (2) and (3) of those principles. In those circumstances it was not possible for the court to know whether the order made was realistic or not, thus also contravening (4).

23. We consider that here there was no attempt by the court to enquire into ANZ's means in any respect, and as a result, Mr Roberts had no opportunity to make representations under section 135(2) as part of the exercise whereby the court considers the amount that would be appropriate for the order. The first Ground of Appeal is therefore made out, the Compensation Order made by the Judge in this case is therefore unlawful and must be set aside.

24. We make the following observations. Obviously the sexual abuse of his daughter was the more serious offending, and would, and did, have a significant effect upon her. The neglect and cruelty that she also suffered at his hands for a number of years was considerable. Even without considering the damage that he inflicted on his own daughter due to his sexual abuse, he was not prepared to spend any money – even though he was in full time employment – on her most basic needs such as food, shoes, clothing and heating. She was forced to steal to replace her clothing when it wore out; she used to have to wash her school clothes at the bus station in the toilets; and she suffered bullying and unfair treatment as a result. Being a parent, and having a child, comes with the assumption of a certain basic level of responsibility for that child. ANZ not only ignored this responsibility, he also inflicted dreadful treatment upon his daughter.

25. Setting aside the Compensation Order is the correct decision in law, notwithstanding our view that ANZ is a wholly unmeritorious appellant. As at the date of the appeal, he has paid only desultory sums toward the total in any event, even though he has since the date of sentencing obtained regular and full-time employment. A collection order has been made in order to enforce the order, but only in the amount of £20 per week. At that rate, repayment would take almost 10 years. That in itself is an indication that the approach that was taken in this case is misplaced.

26. We conclude that the sentencing judge made errors of principle and the Compensation Order has to be set aside. We therefore turn to consider whether to impose one in different terms, or to remit the matter to the Crown Court so that the issue of whether to make an order, and if so in what amount, should be reconsidered. The appellant has provided a statement of his means and the exercise required in ***York*** could be undertaken, if we were satisfied that the imposition of such an order were justified in this case.

27. However, compensation orders are designed to be used only in clear and straightforward cases. The ability to make such an order pre-dates the Sentencing Act 2020. The precursor to the Sentencing Act that provided for compensation orders was the Powers of Criminal Courts (Sentencing) Act 2000, although the jurisdiction to make such an order has been available since the early 1970s when it was included in the Criminal Justice Act 1972. In ***R v Inwood*** (1974) 60 Cr App R 70, Scarman LJ (as he then was) said:
"Compensation orders were not introduced into our law to enable the convicted to buy themselves out of the penalties for crime. Compensation orders [are] a convenient and rapid means of avoiding the expense of resort to civil litigation when the criminal clearly has means which would enable the compensation to be paid."

28. They are not an alternative to the sentence that ought to be imposed upon an offender such as this appellant. In ***R v Donovan*** (1981) 3 Cr App R (S) 192, another of the authorities on the previous statutes dealing with compensation orders, in, Eveleigh LJ said:
"A compensation order is designed for the simple, straightforward case where the amount of the compensation can be readily and easily ascertained."

29. That case has been cited and approved. In ***R v Stapylton*** [2012] EWCA Crim 728 the Court of Appeal heard an appeal concerning a compensation order imposed in relation to damage to a car and a garage. The court (Stanley Burnton LJ, Cranston J and HHJ Rook) stated per Cranston J the following at [12]:
"Since the first legislation enabling compensation to be awarded by the criminal courts was enacted, section 1(1) of the Criminal Justice Act 1972, the courts have laid down a number of principles about the making of compensation orders. First, the court has no jurisdiction to make an order where there are real issues as to whether those to benefit have suffered any, and if so, what loss: *R v Horsham Justices ex p Richards* [1985] 1 WLR 986, 993. Thus in *R v Christopher Paul Watson* (1990–91) 12 Cr. App. R. (S.) 508 no award was made in favour of insurers because there was no evidence as to the loss. Coupled with that is that because compensation orders are for straightforward cases: *R v Donovan* (1981) 3 Cr app R(S) 192, a court should not embark on a detailed inquiry as to the extent of any injury, loss or damage. If the matter demands such attention it is better left for civil proceedings."
(emphasis added)

30. Both ***Donovan*** and ***Inwood*** were considered by the Court of Appeal in ***Pola v Health and Safety Executive*** [2009] EWCA Crim 655. In that case a compensation order of £90,000 was upheld against a person who was found to be an employer, and guilty of an offence under section 33(1) Health and Safety at Work etc Act 1974. He had employed a number of non-qualified Slovakian nationals to work on a building for him, with totally inadequate workplace safety. One day whilst demolishing a wall, one of the workers fell from a raised platform, and the wall then collapsed on top of him, causing him very severe brain injuries. The Court of Appeal (Moses LJ, Hedley J and HHJ Russell) dismissed appeals both against conviction and the imposition of the compensation order. The court said this:

"[28] In this case there is no doubt but that the person affected by the breach of Regulations has suffered personal injuries and that the appellant is good for the sum of £90,000 ordered by the judge…..

[31] The judge gave a full and careful ruling in respect of the making of the compensation order. The learned judge carefully reviewed and considered the above evidence. He reminded himself that he could have regard to the Judicial Studies Board "Guidelines for the Assessment of General Damages in Personal Injuries Cases." In the 9th Edition (2008), if one took this to be moderate brain damage in which there is moderate to modest intellectual deficit, the ability to work is greatly reduced if not removed and there is some risk of epilepsy, the suggested bracket for general damages for pain and suffering alone is £58,000 to £96,000. There are some features which might arguably put this case in a higher bracket.

[32] The judge had satisfied himself that this injured man could not benefit from an insurance policy and was unlikely to have an effective civil remedy in damages…It was also clear that he was entitled to state benefits neither here nor in Slovakia and, of course, the offence committed was not within the criminal injuries compensation scheme. In all the circumstances it was unsurprising that the judge should conclude that it was just to make the order that he did."
(emphasis added)

31. That detailed approach by the judge in that case is very different to the one adopted by the sentencing judge in this case, particularly in respect of the offender's means. In ***Pola*** there was detailed evidence and a proper finding as to loss. It is also notable that the court in that case took into account that the offence was *not* within the Criminal Injuries Compensation Scheme.

32. The Criminal Injuries Compensation Scheme is administered by the Criminal Injuries Compensation Authority. This is a state body that exists to provide compensation from the state to victims of violent crime. This includes victims of sexual offending, as such offences are listed in Annex B section 2(d) of the scheme. The scheme includes a specific tariff payable in respect of certain injuries. However, that scheme is intended to be one of "last resort". That means that it will take into account, and deduct from a compensation award that would otherwise be payable by the state to a victim, *any* sums ordered by the court to be paid under a compensation order. This means that the sum awarded here against ANZ, payable over many years in a small amount per month, would be deducted from any award under the scheme to which the victim is entitled. This is yet a further reason not to make an order such as the one that was made against ANZ in this case. Although we do not doubt that the sentencing judge had the best of intentions, in practical terms it may well be that – at least until this order is quashed as a result of this appeal – the victim was worse off as a result of the compensation order being imposed than might otherwise have been the case.

33. There is another consideration to take into account in this case too. The victim in this case, ANZ's daughter, endured years of sexual abuse, neglect and cruelty at his hands. The dates on the indictment cover a three year span. Imposing a compensation order upon ANZ, in addition to what should have been the appropriate custodial sentence, would or could prolong the way in which he could continue to impact adversely upon her life, particularly when it would take him so many years to discharge the order (if he were even to succeed in satisfying the whole sum). We wish to make it crystal clear that we are not stating that the abuse she suffered, if it even could be translated into money terms, was "worth" only £x or £y, and how that figure compared with the

£10,000 ordered. But that alone demonstrates how difficult it would be to make a suitable compensation order in this case, even had it been done correctly, and also how far away from a clear and straightforward assessment of loss that would have entailed. The Criminal Injuries Compensation Scheme is the best forum for assessing such an award for a victim in these circumstances, and any delay in her making any application will have been caused by the imposition of the compensation order in the Crown Court and the quashing of that order on appeal.

34. We would end this judgment by making the point that it would be contrary to principle to suspend a custodial sentence merely because of an ability (or perceived ability) on the part of an offender to pay compensation. If this were otherwise, this would mean that an offender with significant means could avoid immediate custody, whereas a different offender on broadly the same facts, but of limited means, would be sentenced to immediate imprisonment. That would be an example of someone buying themselves out of a penalty, to use the phrase in ***Inwood***, and would plainly be wrong in principle.

35. In all those circumstances, we allow the appeal, quash the Compensation Order and do not remit the matter to the Crown Court.