Neutral Citation Number: [2026] EWCA Crim 947

Case No: 202501935 B4, 2025028670 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SOUTHWARK
HIS HONOUR JUDGE GREGORY PERRINS
T20237059

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23rd July 2026

Before:

LADY JUSTICE MAY DBE
MR JUSTICE SAINI
and
HIS HONOUR JUDGE PICTON
(Sitting as a Judge of the CACD)

- -

Between:

Mohammad Alazawi	**Appellant**
- and -	
Rex	**Respondent**

- -
- -

Paul Jackson and Emily Mattin (instructed by **ABV Solicitors**) for the **Appellant**
Ben Douglas-Jones KC and Charlene Sumnall (instructed by **CPS Serious Economic Organised Crime and International Directorate**) for the **Respondent**

Hearing date: Friday 12th June 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23rd July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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The provisions of s.45 Youth Justice and Criminal Evidence Act 1999 are engaged in this case, under the terms of an order made by Southwark Crown Court on 3 March 2025. That order prohibits the reporting of any matter likely to lead to identification of any of the children involved in proceedings. Restrictions imposed under s.45 in respect of a victim, witness, or defendant apply until that individual reaches the age of 18. We have taken care in this judgment not to name or otherwise given any identifying details of any child involved.

Lady Justice May:

Introduction

1. This appeal concerns non-therapeutic male circumcisions performed on babies and young children within the Muslim community. As we discuss later in this judgment, the law currently permits non-medically qualified persons to carry out religious circumcisions. The Registrar has referred these applications for leave to appeal conviction and sentence to the full court. We grant leave on both and refer to the applicant hereafter as the appellant.

2. The appellant was originally indicted with 51 counts comprising allegations of fraud, section 18 wounding with intent, assault occasioning actual bodily harm, medicines offences under the Human Medicines Regulations Act 2012, and possession of an article for use in fraud. All the allegations derived from the appellant performing non-therapeutic male circumcisions on young children.

3. On 28 February 2025 in the Crown Court at Southwark, the appellant pleaded guilty to fifteen offences of parenteral administration of a prescription only medicine, contrary to regulation 214(2) and regulation 255(1)(b) of the Human Medicines Regulations 2012. At the same time, he also pleaded guilty to three offences of supply of a prescription only medicine, contrary to regulation 214(1) and regulation 255(1)(a) of the Human Medicines Regulations 2012, and two offences of supply of a pharmacy medicine, contrary to regulation 220(1) and regulation 255(1)(c) of the Human Medicines Regulations 2012.

4. The remaining charges were contained in a 28 count indictment and were tried over the course of a nine-week trial at Southwark Crown Court before His Honour Judge Gregory Perrins and a jury between 10 March and 8 May 2025. On 8 May the appellant was convicted on 20 of the 28 counts including six counts of fraud, seven counts of wounding with intent and one count of assault occasioning actual bodily harm.

5. On 16 July 2025 the appellant was sentenced as follows: 42 months imprisonment on each of the fraud offences, all concurrent; 4 years imprisonment on each of the wounding offences, concurrent with each other but consecutive to the fraud offences; 18 months imprisonment for each of the offences of parenteral administration of prescription medicines, concurrent with each other but consecutive to the fraud and wounding offences. He received concurrent sentences of between 12 months and 2 years for the remaining offences of supply of medicines and assault occasioning actual bodily harm. The total sentence was accordingly one of 9 years. There were ancillary orders which are not the subject of any challenge on this appeal.

Factual background, trial and sentence

6. The appellant performed circumcisions at the request of parents of mainly Muslim babies and children. The circumcisions were performed for religious reasons rather than any medical need. The appellant was not medically qualified. He provided a mobile service, travelling to the family home of the young child, carrying out the procedure there.

7. Circumcision is the removal of the foreskin of the penis. It is a procedure that is prevalent in Islamic culture, as it is in Judaism and some Orthodox Christian cultures. Where it is carried out for non-therapeutic reasons, it does not have to be carried out by a medical practitioner, and it is an unregulated practice. As we discuss further at [38]-[47] below, the law permits the circumcision of boys for a non-medical reason to be carried out as a lawful exception to the rule that one human being may not assault or injure another.

8. The circumcision procedure adopted by the appellant may be described briefly as follows: having described the procedure and obtained the parent's consent he would inject local anaesthetic in two places at the base of the child's penis. Once satisfied that the area was numb the appellant would pull back the foreskin, apply the appropriate size of Plastibell ring, pull the foreskin back over the ring, circle with a thread and cut around that, removing the foreskin.

9. The Prosecution case at trial was that the appellant's circumcisions of a number of infants and young children from separate families amounted to criminal activity. First, the appellant was said to have committed fraud on the parents of the children he circumcised by asserting that he was a doctor/surgeon when he was not. This led to parents consenting to, and paying for, circumcision procedures that they would otherwise not have agreed to. It was said that the fraud vitiated parental consent, effectively nullifying it, removing any defence of consent to the circumcisions and thereby rendering each completed circumcision an unlawful wounding. This was referred to at trial as "Route one" liability. Next, the prosecution case was that the circumcisions had in any event been carried out in such an unsafe and unsanitary manner as to change the "nature and quality" of the act, exposing the child in each case to a significant and unnecessary risk of additional harm. This changed the circumcision, as performed by the appellant, from an act capable of being lawful to an unsafe act to which no parent could provide consent: at trial this was termed "Route two" liability. Finally, as part of the circumcision procedure, it was said that the appellant was supplying and/or administering medicines when he was unqualified to do so, as he was not a doctor or approved practitioner.

10. The offence of assault occasioning actual bodily harm arose from an occasion when the appellant had started to conduct a circumcision procedure on a three-year nine month old child by attempting to apply a Plastibell ring to the child's penis. The procedure was discontinued by the parents when the child showed signs of pain, the ring being too small, leaving the child with a bruised penis.

11. The allegations at trial concerned around 20 circumcision procedures. Not every procedure was charged as an unlawful assault. There were 10 procedures where an unlawful assault was alleged (nine offences of s18 wounding and one offence of assault occasioning actual bodily harm). There were a number of procedures where the prosecution only charged the appellant with offences contrary to the Human Medicines Regulations 2012.

12. To prove the case, the prosecution relied on:

    1) Evidence from parents as to how the appellant presented himself in terms of his qualifications to undertake the procedure.

2) Evidence from parents as to how the appellant conducted the procedure.

3) Evidence as to how the appellant obtained the medications he used on the babies and children during the procedure and/or gave to the parents for use after it.

4) Evidence from exhibits seized during searches, including leaflets advertising the appellant's services as a circumciser, the medications he used, and diaries containing details of his appointments.

5) Expert evidence from Mr Amir Khan, a consultant surgeon who had established a circumcision clinic in the West Midlands, specifically to cater for members of the Muslim community who wanted their sons circumcised for cultural and religious reasons. Mr Khan gave general evidence about the practice of circumcisions and explained how a particular procedure involving a Plastibell ring is carried out.

6) Expert evidence from Dr Alistair Baxter, a consultant paediatric anaesthetist. His evidence focused on the practice of administering local anaesthetic to children.

13. The defence case at trial was that the appellant had operated a circumcision service, visiting family homes to carry out the procedure. He charged around £100 per circumcision, performing hundreds of them. He advertised in mosques but mainly received work through 'word of mouth'. The appellant's case was that he did not refer to himself as a Doctor, and that he performed the circumcisions safely. The only offences of which he accepted being guilty were the matters contrary to the Human Medicines Regulations 2012. He thought he had obtained the medicines/anaesthetic appropriately and was not aware that he was not permitted to supply or administer them. His defence statement set out a short basis of plea for the medicines offences: *"Whilst the [appellant] did not know/was not aware that he was committing an offence at the time, he accepts he has parenterally administered/supplied prescription only/pharmacy medicines otherwise than by or under the direction of an appropriate practitioner."*

14. The appellant gave evidence. Save for two children from one family, the appellant accepted performing all of the circumcisions in respect of which he was charged.

15. He described his background and his experience of the circumcision procedure. Both his grandfather and father had performed the procedure in Iraq. He said he had helped his father since the age of 13, and it was something he had always been involved in. He came to the UK in 1997. From 2001 to 2012 he was employed as a healthcare assistant with Imperial College NHS trust. He had also worked as an assistant to a Dr Saad between 2008 and 2016. Together they would visit people in their homes to carry out the circumcision procedure. He said Dr Saad taught him modern methods of circumcision, including the correct use of local anaesthetic. He believed that he had assisted with several thousand such procedures. The appellant started his own circumcision service in 2016, continuing to do ad hoc work alongside Dr Saed until the latter's death in 2021.

16. He started doing circumcisions on his own around 2017. He advertised for business and had flyers made. There were some flyers that referred to him as a surgeon. He said this was a mistake by the printer. He had not intended for the word 'surgeon' to appear on

the flyers and said he could not read or write English. He gave evidence about how he would conduct the circumcision procedure. He said he carried the circumcisions out appropriately and safely. He would have an assistant who was an adult man. He said he would wash his hands or use hand sanitiser. He would then carry out an inspection to check that the child was suitable for circumcision. He would explain the procedure to the parents and ask them if they were happy to begin. He said he kept his equipment sterile. He would inject local anaesthetic, in two injections either side of the penis. He waited approximately 5-10 minutes for it to take effect and then checked the area to ensure that there was no sensitivity.

17. The appellant said that he used a procedure with a Plastibell ring; the foreskin is pulled back, the head of the penis is cleaned with antiseptic, a Plastibell ring is applied and the foreskin pulled over the ring, thread is tied tightly around the ring, and then the foreskin is cut around the shape of the ring. At the end of the procedure, he said he would give the parents an aftercare package containing various medications.

18. The appellant denied referring to himself as a doctor or surgeon.

19. The jury were given written directions of law with a route to verdict. The route to verdict included the following instruction relating to Route one and Route two liability in relation to the counts of unlawful wounding:

*"**WOUNDING WITH INTENT COUNTS***

91. When considering the counts of wounding with intent (Counts 2, 5, 7, 9, 14, 20, 22, 25 and 27) there are two possible ways in which you could find the defendant guilty. The first requires you to focus upon what the defendant said to the parents of the boys about his qualifications (route one). The second focuses upon the way in which the circumcision was performed (route two).

92. You must consider route one first. If you find the defendant guilty of this route you do not need to consider route two. It is only if you find the defendant not guilty of route one that you then go on to consider route two.

Route One

93. When you are considering route one you should ask yourselves the following questions in relation to each count:

1) Are you all sure that the defendant is guilty of fraud in relation to the parents of the boy whose case you are considering?

- *Yes – go on to consider question 2*
- *No – go on to consider route two*

2) Are you all sure that the parent or parents of the boy whose case you are considering gave their consent for the defendant to circumcise their son based wholly or in part upon the assurance that he was a doctor?

- *Yes – verdict 'guilty' and you do not need to consider route two*

- *No – go on to consider route two*

Route Two

94. When considering route two you should ask yourselves the following questions in the following order in relation to each count:

1) Are you all sure that the defendant cut the foreskin of the boy named in the count you are considering, thereby causing a wound?

- *Yes – go on to question two (note that it is not in dispute)*
- *No – verdict 'not guilty'*

2) Are you all sure that the defendant intended to cut the foreskin of the boy named in the count you are considering, thereby intending to cause him really serious bodily harm?

- *Yes – go on to consider question three (note that this is not in dispute)*
- *No – verdict 'not guilty'*

3)Are you sure that the circumcision was conducted in an unsafe manner so as to expose the child in question to a significant and unnecessary risk of additional harm?

- *Yes – verdict 'guilty'*
- *No – verdict 'not guilty'"*

Defence application to exclude evidence

20. Before the trial began, by an application dated 8 February 2025, the defence applied to exclude all evidence concerning the conduct of the circumcision procedures, pursuant to section 78 of the Police and Criminal Evidence Act 1984, including expert evidence relating to the conduct of medical circumcisions. The application concerned the prosecution case that liability could be established via Route two. It was argued that there was no legal foundation for Route two and that the highly emotive description of the procedures conducted on baby boys as young as two weeks old was irrelevant to the issue of fraud and therefore should be excluded.

21. The application was supported by a skeleton argument dated 12 February 2025 to which the prosecution responded in a skeleton argument dated 3 March 2025. The defence then served a further short skeleton argument in response dated 9 March 2025. We have read and considered them all.

22. The judge heard oral submissions on 12 March 2025. On 13 March 2025 he refused the defence application finding that evidence relating to the conduct of the circumcision procedures was admissible. He ruled that Route two was a permissible way for the

appellant to be found guilty of a wounding with intent offence. He provided a written ruling on 19 March 2025.

Parties' submissions at trial regarding jury directions

23. Following the judge's dismissal of the application to exclude evidence the defence provided submissions about the way in which it was said the jury should be directed as to liability via Route two. The submissions were set out in a written document uploaded to DCS on 20 March 2025.

24. The defence submitted that the jury should be directed to ask themselves the following questions:

> *"1) Are you sure that [the appellant] performed the circumcision you are considering in such a way that fell far below what would be expected of a competent and careful non-qualified circumciser and thereby created an unnecessary risk of serious injury? If yes go to question 2, if no not guilty.*
>
> *2) Are you sure that it would be obvious to a competent and careful non-qualified circumciser that his actions were so unsafe that he thereby created an unnecessary risk of serious injury". If yes guilty. If no not guilty."*

25. The judge disagreed with the defence submissions. Instead, he directed the jury as follows:

> *"21. I have already directed you that a circumcision can be performed by a non-medically trained professional and still be lawful. There is also no legal requirement for a circumciser to necessarily follow the same guidance that a doctor would have to follow nor do they have to meet the same high standards that you would expect from a doctor or surgeon. However, that does not mean that an individual has complete freedom to perform a circumcision in whatever manner they see fit and be immune from prosecution. You may think as a matter of common sense there comes a point when a circumcision is performed to such a poor standard that it ceases to be lawful and constitutes a criminal assault.*
>
> *22. All medical procedures which involve the administering of an anaesthetic and the cutting of skin carry a risk of harm to the patient. No such procedure can ever be risk free even if carried out by a skilled surgeon in a sterile surgical setting such as an operating theatre. It is also difficult to precisely quantify any such risk. As such if you took the view that the defendant performed a circumcision in such a way as to create marginally more risk of harm to the patient than would exist had the same procedure been carried out by a surgeon in a surgical setting he would not be guilty of an assault. However, a circumcision which is conducted in an unsafe manner so as to expose the child in question to a significant and unnecessary risk of additional harm will be unlawful.*
>
> *23. Whether or not the circumcision was conducted in an unsafe manner so as to expose the child in question to a significant and unnecessary risk of additional harm is a matter for you to assess. However, you must do so taking each*

circumcision in turn and considering the circumstances relevant to each. You are not being asked to make a global assessment of the defendant's practices generally, you need to look at each circumcision individually and make a specific assessment in each case.

24. When you do so you should have regard to all the evidence that you have heard from both the prosecution and the defence. This will involve a consideration of issues of cleanliness, hygiene and sterility, the administration of medicine and anaesthetic, the use of appropriate assistants, the extent to which a history was taken in relation to each child and the amount of relevant information that was requested before performing the procedure. It will also include consideration of the overall standard of the circumcision actually performed and any steps that were taken to deal with potential complications which may have arisen during the procedure including the extent to which the defendant kept himself informed of up-to-date guidance and best practice in relation to the performance of circumcisions."

26. We have set out above the questions which the jury were directed to ask concerning Route two liability in the judge's written Route to Verdict.

Ruling on defence submission of no case to answer

27. By an application dated 9 April 2025 the defence submitted that there was no case to answer in respect of Route two liability in connection with the s.18 wounding counts. The defence argued that the circumcisions involved two separate acts, each carrying risks of a separate type and degree. First, there was the act of injecting anaesthetic; the second activity, undertaken some 5 to 15 minutes later, was the actual cutting away and removal of the foreskin. The defence submitted that the harm caused by the two separate acts was very different and that this should have been reflected in the way in which the offences were indicted, namely as two separate assaults.

28. The judge provided a written ruling in which he ruled against the defence, and found that the circumcision process was a single continuing act:

"12. In my judgement the circumcision procedure needs to be looked at as a whole, just as one would do in the case of a defendant who stabbed someone several times during the course of an assault. For good reasons those cases are charged as a single assault because each individual stab is seen as part of a continuous course of violent conduct towards the victim rather than separate and distinct offences in their own right. In my judgement this case is no different.

13. It is for the jury to consider D's conduct from the beginning of the procedure to the end when asking whether they are sure an unlawful assault took place. The injection of anaesthetic is an integral part of the circumcision procedure and as such it would be wholly artificial to separate out the different parts of the procedure and look at each in isolation. Each circumcision involved the injection of anaesthetic, the foreskin being cut and a ligature applied. These are not separate assaults, they are all part of one relatively short and simple procedure and as such constitute a continuous course of conduct. The jury will need to consider the procedure as a whole when asking whether the standard of

> the circumcision was so low that it constitutes an unlawful assault consistent with the directions that they will receive in due course in relation to RTV2."

29. As indicated above, following the trial the jury found the appellant guilty on six counts of fraud, seven counts of s.18 wounding with intent and one count of assault occasioning actual bodily harm. He was acquitted of six counts of fraud and two of s.18 wounding.

Sentence

30. Having set out the facts of the offending, the judge observed that the appellant had not only deceived parents into thinking that he was a specialist surgeon, but he had also lied to the pharmacy in order to obtain the medication, signing for drugs as "Dr Alazawi". The judge said that this deception had gone on "for years" and that although the jury had heard from only a few families at trial, the appellant's diaries showed he had performed "hundreds of circumcisions each year". The judge had "no doubt that the vast majority of them were taken in by [the appellant's] lies". He went on to note that, even accepting that non-therapeutic male circumcisions may be carried out by people who are not medically trained, the level of care which the appellant had provided "illustrates just how little care [the appellant] took to ensure that these infant boys were treated properly". The judge referred to evidence of the shortcomings in the appellant's procedures: attending with an untrained assistant, often a teenager; failing to take any meaningful history; failing to explain the procedure to parents or to warn them of risks; minimal sanitation. The offending was made "significantly worse" by the fact that the appellant had administered medicines to children which could only be supplied to, or administered by, medically trained professionals.

31. The judge accepted that the majority of the procedures had not resulted in complications or other injury but he did not accept that because the trial had only heard from "20 or so families out of the hundreds who engaged [the appellant's] services" it followed that every other procedure was a success. In any event, the judge pointed out, the real gravamen of the offending was not in the actual harm the appellant had caused but the risk of harm that he created. It was a risk that the appellant had created "on a vast scale", where the potential complications were serious. The judge reverted to the diaries, noting that

> "They show you performed hundreds and hundreds of such circumcisions each year and although the evidence at trial related to only a small proportion of the total number of procedures that you carried out, the overwhelming inference is that each of them were performed in the same way on the basis of the same deception that you were a surgeon and by administering strong anaesthetic medicines that you had no business possessing let alone injecting into infant boys".

It was clear, the judge observed, that even now the appellant did not accept he had done anything wrong. Even after having been arrested and released on bail the appellant had ignored the bail conditions, placing a substantial order with a pharmacy intended to replace all the stock that police had seized.

32. Moving to the guidelines, the judge said that this was a novel case. He accepted the defence suggestion that the assaults did not fit into high culpability in the s.18 guideline.

He also agreed with the defence that the level of risk of harm fell into category 3, not 2 as the prosecution had suggested. Observing that the starting point in the guideline for a category 3C offence is 3 years with a range of 2-4 years the judge said that as he was dealing with a significant number of wounding offences there would be an uplift to 4 years. Dealing with the ABH offence involving an attempt at carrying out the Plastibell procedure on a 4-year-old boy the judge observed that this had been particularly serious, placing the offence into category A2 with a starting point of 1 ½ years and a range of 36 weeks to 2 ½ years. As to the fraud offences, having identified the culpability as high but the financial harm as low, where there is a starting point of 36 weeks with a range of high-level community order to 1 year custody, the judge concluded that it would be contrary to the interests of justice to apply the fraud guidelines to the present case. As to the medicines offences, the judge noted that there were no guidelines and that the maximum sentence for each offence was 2 years. The offending had been on a broad scale involving many victims, the drugs being administered in a domestic setting with none of the usual precautions. The judge commented "it is difficult to think of a more serious example of this particular offence".

33. The offender had previous convictions, including one for assault occasioning actual bodily harm dating from 1997 which the judge declined to treat as aggravating the offending. He recorded the appellant's mitigation as to providing for family and health problems but noted that these considerations had not prevented the appellant from attempting to abscond to Ireland during the course of the trial, being stopped only as he was boarding the ferry at Holyhead.

34. The guilty pleas to the medicines offences would attract a 20% discount.

35. The judge then said this:

> "In assessing the appropriate sentence… I make it plain that were I sentencing you for simply performing circumcisions in a way which was unsafe, the sentence would be significantly lower than the sentence I am about to impose. However, as I sought to make clear, that is not all you did. Each offence was committed in the context of a deliberate and wide-ranging deceit in which you told the parents of the boys you were circumcising that you were a doctor when that was not the case and that deception, in my judgement, makes your offending significantly more serious than it might otherwise have been had I been dealing with you for the assault counts only."

36. The judge emphasised that although the sentences could be structured in different ways, his concern was to reach an overall sentence which properly reflected the overall seriousness of the offending, taking totality into account. He declined to find the appellant dangerous, indicating that the serious crime prevention order would provide adequate protection against any continuing risk.

37. The judge went on to pass the sentences we have noted above.

The law – assault and consent

38. The distinction between consensual activity involving infliction of harm which is lawful (e.g. contact sports such as rugby or boxing) and that which is unlawful (e.g. duelling, prize fighting) has long been the subject of debate in the courts. In *Reg. v*

Coney (1866) 10 Cox CC 371 participants and spectators to a prize-fight had been convicted of assault. On appeal the court held that where participants in such fighting activity are at risk of suffering severe injury and endangerment of life and are encouraged to take the risk by the presence of spectators, it was against the public interest that such risks should be run, irrespective of whether the participants had consented. Cave J, at p.539 distinguished between blows struck in anger or likely or intended to "do corporal hurt" and playing with single-sticks or "boxing with gloves **in the ordinary way**" (our emphasis). Mathew J, at p.547 observed that "There is, however, abundant authority for saying that no consent can render that innocent which is in fact dangerous", a passage cited with approval by Lord Jauncey in *Brown*, below.

39. In *Attorney General's Reference (No 6 of 1980)* [1981] 715 the respondent and the victim had a fistfight in a public street which resulted in actual bodily harm to the victim. The respondent was charged with assault causing actual bodily harm and was acquitted. The question referred to the Court of Appeal was, at [717]:

> *"Where two persons fight (otherwise than in the course of sport) in a public place can it be a defence for one of those persons to a charge of assault arising out of the fight that the other consented to fight?"*

40. The court answered that question in the negative, Lord Lane observing, at [718-719]:

> "Bearing in mind the various cases and the views of the textbook writers cited to us and starting with the proposition that ordinarily an act consented to will not constitute an assault, the question is: at what point does the public interest require the court to hold otherwise?...
>
> The answer to this question, in our judgment, is that it is not in the public interest that people should try to cause, or should cause, each other actual bodily harm for no good reason. Minor struggles are another matter. So, in our judgment, it is immaterial whether the act occurs in private or in public; it is an assault if actual bodily harm is intended and/or caused. This means that most fights will be unlawful regardless of consent. Nothing we have said is intended to cast doubt upon the accepted legality of **properly conducted** games and sports, lawful chastisement or correction, **reasonable** surgical interference, dangerous exhibitions etc. These apparent exceptions can be justified as involving the exercise of a legal right, in the case of chastisement or correction, or as needed in the public interest, in the other cases." (our emphasis)

41. The most authoritative recent case dealing with assault and consent is the decision of the House of Lords in *R v. Brown* [1994] 1 AC 212. *Brown* concerned charges of assault arising from consensual acts of extreme masochism. The majority (Lord Slynn and Lord Mustill dissenting) dismissed the appellants' appeals against conviction. Their Lordships held that consent could provide no defence to wounding or causing actual bodily harm to another for no good reason. The satisfaction of sado-masochistic desires was not a good reason. In the course of their speeches their Lordships identified and discussed "good reason" exceptions. One such exception was ritual circumcision. Lord Templeman explained at [231]:

> "In some circumstances violence is not punishable under the criminal law. When no actual bodily harm is caused, the consent of the person affected

> precludes him from complaining. There can be no conviction for the summary offence of common assault if he victim has consented to the assault Even when violence is intentionally inflicted and results in actual bodily harm, wounding or serious bodily harm, the accused is entitled to be acquitted if the injury was a foreseeable incident of a lawful activity in which the person injured was participating. Surgery involves intentional violence resulting in actual or sometimes serious bodily harm but surgery is a lawful activity. Other activities carried on with consent by or on behalf of the injured person have been accepted as lawful notwithstanding that they involve actual bodily harm or may cause serious bodily harm. Ritual circumcision, tattooing, ear-piercing and violent sports including boxing are lawful activities."

Lord Templeman went on, at [234]

> "My Lords, the authorities dealing with the intentional infliction of bodily harm do not establish that consent is a defence to a charge under the Act of 1861. They establish that the courts have accepted that consent is a defence to the infliction of bodily harm in the course of some lawful activities."

42. Lord Mustill dissented from the result on other grounds, whilst following the majority in relation to the identification of a general rule and its exceptions. At [257] onwards he listed the types of activity which are lawful, notwithstanding that they can lead to harm which is more than trifling:

> "Thus, for example, surgical treatment which requires a degree of bodily invasion well on the upper side of the critical level will nevertheless be legitimate **if performed in accordance with good medical practice** and with the consent of the patient. Conversely there will be cases where even a moderate degree of harm cannot be legitimated by consent." (our emphasis)

In relation to surgery Lord Mustill went on to say this, at [266]:

> "Many of the acts done by surgeons would be very serious crimes if done by anyone else, and yet the surgeons incur no liability. Actual consent, or the substitute for consent deemed by the law to exist where an emergency creates a need for action, is an essential element in this immunity; but it cannot be a direct explanation for it, since much of the bodily invasion involved in surgery lies well above any point at which consent could even arguably be regarded as furnishing a defence. Why is this so? The answer must in my opinion be that **proper** medical treatment, for which actual or deemed consent is a pre-requisite, is in a category of its own." (our emphasis)

43. The most recent case in this court dealing with s.18 assault and consent is the case of *R v BM* [2019] 1 QB 1. BM was a tattooist who had expanded his services into body modification, performing procedures such as removing a nipple or ear, and tongue splitting (to give a lizard-like "forked" effect). Each of the customers on whom such procedures had been performed had sought to have them done, was provided with full information and had given full consent; none sustained any complications or further injury. The trial judge had ruled at a preliminary hearing that consent could provide no defence to the charges; the defendant appealed, arguing that body modification was a

natural extension of tattooing and piercing to which consent has long been accepted as a defence to a criminal charge.

44. The appeal was dismissed. Lord Burnett CJ, giving the judgment of the court, traced the history of the defence of consent, discussing in detail the speeches of their Lordships in *Brown*, summarising the position thus, at [24]:

> " The majority of the House of Lords endorsed the approach of Lord Lane CJ [in the AG Ref case cited above], with the result that for the defendants to avoid criminal liability, it was necessary for the committee to conclude that the conduct in question fell into a special exception to which the general rule did not apply. It is perhaps unfair to suggest that the special categories hitherto identified in the cases do not lend themselves to a coherent statement of underlying principle. They are at best ad hoc, and reflect the values of society recognised from time to time by the judges…"

45. The following points emerge from the discussion in the judgment at [38]-[45]:

(1) The established exceptions to assault (like boxing, sports or consensual piercing) are not susceptible of easy definition. They represent a complex balancing act by judges over time.

(2) The law balances society's interest in preventing serious violence with the need to accept practices that have been culturally acceptable over many years such as tattooing, piercing and ritual circumcision. The court noted that these exceptions have existed for so long that only Parliament could now make them criminal.

(3) Two key features of the exceptions could be identified: they provide a discernible societal benefit; and it would be unreasonable for the common law to criminalise them.

(4) Body modification, which involves removing body parts or mutilation, is fundamentally different from activities like tattooing or piercing, comprising medical procedures performed without any medical reason by an unqualified person.

(5) The legal and regulatory framework for doctors exists to protect people from irreversible surgery, infection, and incompetence. These protections are not available with amateur body modifiers. While a person is free to harm themselves, that personal autonomy does not extend to involving another person in an act which would otherwise be a crime.

46. The Court concluded that there was no good reason to create a new exception for body modification. The level of harm involved was considered "really serious"; allowing consent to be a defence in such cases would be a radical shift in the law. This was a bold step which, if it was to be taken, would require a policy decision in Parliament.

Arguments on this appeal

Conviction

47. The written Advice and Grounds of appeal prepared by Paul Jackson and Emily Mattin for the appellant advanced three grounds of appeal against conviction: first, that the judge was wrong to leave Route two liability to the jury and to permit the prosecution to call medical evidence critiquing a non-medical procedure. Next, it was said that the judge's directions on Route two were insufficiently clear as to the test which the jury should apply; lastly they contended that the judge was wrong to rule that the injection of local anaesthetic was a part of the circumcision procedure, rather than a separate activity amounting to an assault preceding the circumcision itself.

48. At the hearing Mr Jackson submitted that the judge was wrong to leave Route two liability to the jury. The infants had been circumcised using a recognised procedure, none had sustained any long-term complications or injury. Mr Jackson accepted, as he had at trial, that fraud vitiating consent leading to Route 1 liability was valid. But he said that, leaving fraud and Route 1 liability to one side, in circumstances where religious circumcisions by non-medical persons may lawfully be performed and where Parliament has not laid down any regulations as to how they are to be performed, the circumcisions undertaken by the appellant could not constitute an unlawful assault. Evidence from families and experts regarding the detail of the circumcision procedures was irrelevant and prejudicial and should not have been admitted. The prosecution case that the appellant's procedures somehow changed the "nature and quality of the act" so as to render the circumcisions unlawful was not susceptible of definition with any legal certainty; it was unfair to leave it to a jury in an individual case, after the circumcisions had been (successfully) performed, to determine where any line between lawfulness and non-lawfulness should lie.

49. Mr Jackson said further that the introduction of expert medical evidence from Mr Khan (a consultant surgeon) and Dr Baxter (consultant anaesthetist) as to the procedures for, and standards required of, medical circumcisions taking place in a hospital or clinic setting was inappropriate for application to religious circumcisions carried out in the home. Circumcisions performed by medically trained professionals are subject to regulations and standards which do not apply to non-medical circumcisions. The evidence of medical professionals was irrelevant and/or prejudicial to the jury's consideration of the procedures adopted by the appellant, as a non-medical professional. Mr Jackson emphasised again that Parliament has so far declined to impose any standards on religious circumcisions. It has done so in relation to, for instance, tattooing or ear-piercing, but not for circumcisions conducted by non-medical persons in religious ceremonies or for religious reasons. Comparing medical circumcisions with non-medical ones is to compare apples with pears and must inevitably cause unfair prejudice to a person in the position of the appellant. That prejudice was not adequately met by the judicial direction to the effect that the appellant was not required to meet the same standard as a surgeon performing circumcisions in a hospital setting.

50. Mr Jackson went on to argue that the unfairness was compounded by the formulation of the judge's direction to the jury on Route two which left the jury with an insufficiently clear standard by which to assess the appellant's conduct. The direction to the jury that the appellant did not have to meet the same standard as a doctor had left the jury without any clear appreciation of what standard they should expect the

appellant to meet. There was no legal certainty as to the required standard of competence, capable of being known to the appellant at the time he performed the procedures. It was particularly unfair to him in circumstances where none of the babies or children had experienced any issues or difficulties after the procedure, save only in one case where a minor surgical correction may have been needed, as can happen with any such procedure, even when performed by medical professionals. Mr Jackson's primary case was that Route two was not a proper route to criminal liability in this case, but if it was, then he said that the jury should have been told to ask themselves:

> *1) Whether the way the circumcision was performed fell far below that which would be expected of a competent and careful non-medically qualified circumciser and thereby created an unnecessary risk of serious injury, and*
>
> *2) Whether it would be obvious to a competent and careful non-medically qualified circumciser that the appellant's procedures were so unsafe that they gave rise to such a risk.*

51. Mr Jackson accepted that the jury had been correctly directed in respect of Route one liability, where fraud had vitiated consent, however he did not accept that where the s.18 convictions were paired with a fraud conviction (which was the case for 5 of the 7 s.18 convictions) it necessarily followed that the s.18 convictions were safe. He submitted that as the Route one direction required the jury to be sure that parents had relied upon the fraudulent representation in consenting to the circumcision it was possible that whilst the jury were sure the appellant had misrepresented his qualifications to a particular set of parents (leading to a fraud conviction) they may not have been sure that those parents had relied on the representation in consenting to the circumcision; in that event the jury can only have convicted the appellant on the s.18 offence via Route two. Mr Jackson pointed out that it was impossible to tell from the verdicts by which route the jury had arrived at the s.18 convictions, and thus all must be regarded as unsafe.

52. When pressed, Mr Jackson accepted that not every circumcision carried out for religious reasons by a non-medical practitioner will be lawful. He agreed that there will be a spectrum of practice from a hospital-based procedure at one end to the most unhygienic cutting at the other and that there must be a line at some point on the spectrum beyond which a circumcision cannot be lawful, even where parental consent is given. His primary submission was that identifying where that line fell was a matter for Parliament, which has so far declined to regulate ritual circumcisions. Here the appellant had used a proper procedure and the circumcisions had been performed successfully without complications. His alternative argument was that identifying where the line fell should not be left to a jury assisted only by evidence from medical professionals, they should have had relevant assistance as to standards adopted by non-medical circumcisers conducting circumcisions in the family home.

53. Turning to his third ground, Mr Jackson submitted that the administration of local anaesthetic to each of the children was a separate act, taking place between 10 and 15 minutes before the circumcision procedure involving application of the Plastibell ring and cutting of the foreskin. This was important as the main focus of the prosecution's case on Route two liability at trial had evolved to an attack on the appellant's unauthorised injection of a local anaesthetic. The appellant could not have been said to

have intended grievous bodily harm when administering the local anaesthetic so that the offence was at most a s.20 offence, not the far more serious s.18 offence.

54. In response Ben Douglas-Jones KC who, together with Ms Sumnall, represented the prosecution, emphasised just how far below any acceptable standards the evidence at trial had demonstrated that appellant's procedures fell. He referred to evidence of circumcisions being performed on the carpet, changing table, kitchen table, unprepared and uncovered by any sterile cloth in wholly unsterile surroundings, with unsterilised equipment, pre-loaded syringes of anaesthetic brought in the same bag as gloves, the appellant not washing his hands before putting on gloves, and having with him teenage assistants who did not appear to have had any training and whose names he did not seem even to know.

55. Mr Douglas-Jones argued that the administration of the anaesthetic alone rendered the appellant's procedures very far below any acceptable standard, since non-medical persons are not permitted to obtain, still less to administer, such drugs. Dr Baxter's evidence had been necessary to inform the jury about the need for any person administering such drugs to a baby to take a full history, to weigh the child so as to arrive at the proper dose, to use sterile equipment, and to highlight the risks to the baby's health from omitting to take any of these steps. Non-medical circumcisers will either conduct the procedure in a clinic where a medical professional can administer anaesthetic and prescribe post-procedure medication, or a circumciser will conduct the procedure without anaesthetic, he pointed out.

Discussion and decision

56. This has been a most interesting case. We are very grateful to all counsel for their detailed research into, and assistance with, the issues generated by this appeal.

Grounds 1 and 2

57. The Route one direction to the jury, which we have set out above, was to the effect that if the jury were satisfied that the appellant had told the parents he was a doctor and they relied at least in part on that in employing him to circumcise their son then parental consent was invalid and guilt on s.18 followed. Both sides were agreed that the act of removing foreskin was wounding/GBH and that the appellant had the necessary intention.

58. Mr Jackson did not seek to contend that s.18 convictions via Route one would be unsafe. His case was that the Route two convictions were unsafe and that, as it was impossible to tell by which route the jury had convicted on any of the s.18 counts, the court should conclude that all the s.18 convictions were unsafe.

59. We note that the defence submissions in relation to the sentence appeal (see further below) tend to contradict this argument, suggesting that the judge should have approached sentence on the basis that only two of the s.18 convictions were via Route two. Having regard to the directions and the pattern of the verdicts we are satisfied that it is appropriate to proceed on the basis that where a s.18 conviction is paired with a fraud conviction the jury will have found guilt via Route one and the convictions are safe. In any event, for reasons we shall come to, we are satisfied that any Route two convictions are also safe.

60. The extracts from the cases which we have cited above suggest that where the court has identified instances where harmful activity is rendered lawful through consent (surgery, contact sports, ritual circumcision are all mentioned) it has used words of qualification, referring to rules of sport, reasonable medical or other professional standards - we have highlighted the relevant passages. In all bar one of the "public policy" exceptions identified in the cases, the activity in question is governed by industry/sporting rules or regulations: e.g. the rules of boxing or of rugby, hospital procedures applicable to surgery, local authority regulations regarding the operation of tattoo or ear-piercing establishments. It is relatively straightforward to determine, by reference to those rules or regulations, when the activity has gone beyond what is permitted to the point where it reverts to being an unlawful assault, whether consented to or not.

61. Ritual circumcision is the exception. What "proper" or "reasonable" standards are in relation to ritual circumcisions, and at what point a diversion from such standards renders a circumcision procedure, to which consent has been given, an unlawful assault is the key issue concerning us here. It would clearly be preferable for Parliament to regulate non-medical circumcisions. Having said that, we disagree with Mr Jackson's primary submission that, in the absence of regulation, ritual/religious circumcision procedures are not susceptible of prosecution unless the prosecution can demonstrate gross error or injury.

62. The question is where on the spectrum of possible procedures the line is to be drawn between lawful and unlawful, and what evidence may properly be relied on to establish that that line has been crossed in an individual case. Mr Douglas-Jones' reference to the "nature and quality of the act being changed" begs the question of (i) what is the reference point from which "change" is to be determined and (ii) what degree of "change" is required for an otherwise lawful activity to become unlawful? He was unable to answer these questions, beyond saying that it would be a matter for the jury in any particular case and that the judge's formulation of the question the jury would need to ask themselves here had sufficiently addressed the issue in this case.

63. The judge's question to the jury in his Route to Verdict was in these terms:

> *"Are you sure that the circumcision was conducted in an unsafe manner so as to expose the child in question to a significant and unnecessary risk of additional harm?"*

We are troubled by the absence of any clear direction to the jury as to what standard they were to apply when determining whether the circumcision was conducted in a safe or unsafe manner such as to expose the child to significant and unnecessary risk. This is not a matter which would be in the experience of members of a jury and where they could draw upon their own knowledge. Related to this is the point we make below that a direction in this form would be likely to make a jury place reliance on the evidence of medical professionals.

64. It seemed to us that inviting a jury to determine whether a procedure conducted by a non-medical professional was safe or unsafe and/or whether it had exposed the child to the risk of additional harm by reference to the evidence of medical professionals who are subject to, and bound to apply, medical standards, was unfair. Even if the jury is reminded, as they were here, that the appellant is not a medical practitioner and that it is lawful for a non-medical person to conduct circumcisions, in the absence of any other

evidence as to what a proper non-medical procedure would be, the jury would be likely to apply inappropriate standards of comparison by relying on the medical evidence and holding the appellant to a standard to which (as a matter of common ground) he was not subject.

65. We have every sympathy with the dilemma faced by the judge in this case. We agree with him that, at least in principle, there should be a valid route to liability addressing the standard of a non-medically qualified religious circumciser's procedures. But although we have accepted, contrary to Mr Jackson's primary submission, that a line has to be drawn, we think that that should be done by reference to appropriate, relevant evidence. We agree with Mr Jackson that expert evidence from a surgeon is inappropriate. However, when we asked counsel, it appeared that neither the prosecution nor the defence had sought to obtain evidence at the appellant's trial from a non-medically qualified religious circumciser. We find it hard to understand why this course was not taken, given that such circumcisions are a well-established practice across a number of faith groups.

66. In our view the proper question for the jury would have been:

> *"Are you sure that the circumcision was conducted in a manner so far from that which a competent and careful non-medical circumciser would have adopted that the child was exposed to a significant and unnecessary risk of additional harm?"*

67. For the reasons we have given above, we do not consider that calling evidence from medical practitioners as to the standards applicable to procedures carried out in hospital settings and asking a jury to apply those to religious circumcisions conducted in a family home was appropriate. That is so despite the qualifications and caveats concerning that evidence which the judge sought to given in his directions.

68. But that is not the end of the matter. The decision for us on this appeal is whether the convictions are safe. Mr Douglas-Jones argued that, even if the judge had formulated the question for the jury in the above form, the jury's decision in respect of this appellant must have been to convict since no non-medical circumciser would have injected anaesthetic as part of their procedure. The appellant, as a non-medically qualified person, was not entitled to give those injections, as he had accepted by his guilty pleas. Dr Baxter's evidence would still have been required, to explain to the jury why administering anaesthetic as an unqualified person carries such risk: the baby needs to be weighed and history taken to guard against allergy, giving too much anaesthetic, or unwanted side-effects.

69. We remain somewhat unclear as to why, if the administration of anaesthetic was of itself sufficient to render the activity illegal, the prosecution needed to bring evidence and rely on other aspects of the procedure in order to establish guilt; further why it was necessary for the judge to direct the jury that the anaesthetic offences, to which the appellant had earlier pleaded guilty were insufficient to prove his guilt on the s.18 counts. If, as a non-medically qualified circumciser, injecting babies with anaesthetic is sufficient to render the procedure unreasonable and unsafe and therefore unlawful, on the basis that no competent and careful non-medical circumciser could or would inject anaesthetic, then the judge's direction would have been different. We were left with the impression that Mr Jackson was right and that the prosecution case was less

focussed than perhaps it should have been at the start of trial, sharpening up subsequently to concentrate on the appellant's (mis)use of anaesthetic medicines.

70. Having regard to the appellant's use of anaesthetics we are persuaded that (subject to our decision on Mr Jackson's third point, as to which see further below) even if the judge had directed the jury by reference to the standard of a reasonably competent non-medical circumciser, the injection of anaesthetic by the appellant would have been sufficient to render the procedure as adopted by this appellant unlawful such that any Route 2 convictions were safe. The judge's direction to the effect that the jury should not convict solely on the basis of the appellant's unauthorised use of anaesthetic does not affect this conclusion since it can only have acted on the jury deliberations in the appellant's favour.

Ground 3

71. We have considered Mr Jackson's third ground, which seeks to separate the injection of anaesthetic from the circumcision itself. We agree with the judge below that this is breaking up the procedure artificially. The circumcision was a single procedure starting with the appellant injecting local anaesthetic and going on to cut and remove the foreskin.

Conclusion - appeal against conviction

72. If this case had turned solely upon other aspects of the home circumcision procedures relied on by the prosecution at trial – such as use of kitchen table/floor, or a young male assistant – then we may well have found the convictions unsafe. The use of medical evidence to critique home-circumcisions by reference to hospital-based procedures, together with the absence of a clear direction to the jury based on the standard of a competent non-medical circumciser, must have affected the safety of convictions based on these aspects of the home circumcisions. But in this particular case, we are satisfied that the use of anaesthetic as part of the overall procedure was sufficiently far from that which a competent and careful non-medically trained circumciser would have done that a jury must have convicted, even adopting the Route two test in the different form we have identified above. We are satisfied that the appellant's convictions are safe, whether the jury arrived at them via Route 1 or via Route 2. Accordingly, although we have given leave, the appeal against conviction will be dismissed.

Appeal against sentence

73. We turn to the appeal against sentence. Grounds 1 and 2 are linked: It is said that taking a sentence for all the s.18 offences and making it consecutive to a sentence for all the fraud offences has resulted in an excessive total. Mr Jackson pointed out that 5 of the 7 s.18 convictions were accompanied by a fraud conviction. He suggested that there should have been a single sentence for these, based upon the fraud. There should then have been a separate sentence for the two remaining s.18 offences, being the only two in respect of which the jury convicted via Route 2.

74. Ground 3 avers that the judge took too high a starting point for the s.18 offences. Mr Jackson pointed to evidence gathered by the police that the appellant had undertaken and completed 541 procedures. Despite the majority of these being followed up by police the appellant was convicted of a s.18 assault in connection with just 7 of the 541,

5 of which it is to be inferred were convictions via Route one on account of the appellant having misrepresented himself as medically qualified. In no case had the appellant's conduct of circumcisions resulted in serious complications to the babies or children on whom he had conducted the procedure. Mr Jackson argued that the maximum 2-year sentence for the administration of anaesthetic offence should provide a more reliable guide to the proper penalty here. Pointing to the body "modifications" undertaken by the defendant in the case of BM (the court's decision on the subsequent appeal against sentence is at *McCarthy* [2019] EWCA Crim 2202), where the judge took a starting point of 5 years, Mr Jackson argued that the appellant's procedures here were considerably less serious.

75. Ground 4 makes a similar point regarding the sentence for the fraud offences, where it is said that the judge again took too high a starting point. Mr Jackson accepted that the fraud fell into higher culpability by virtue of the abuse of trust but he argued that no serious harm had been caused. The appellant had been trained, he followed a proper procedure and no serious complications had resulted. Mr Jackson made the further point that although harm fell into category 5, the guideline starting point for that category is based on a figure of £2,500 whereas the relevant amount here was lower, in the region of £1000, moreover the victim impact was "lesser" accordingly no adjustment should be made. The starting point in the fraud guideline for a cat 5A offence is 36 weeks, with a range of high-level community order to 1 year custody. Whilst accepting that the fraud guideline, directed at financial harm, is less well suited to the present offences, Mr Jackson submitted that the judge's starting point of 3 ½ years was too far in excess of that given for Cat 5A in the fraud guideline.

76. Ground 5: finally Mr Jackson submitted that ordering the sentences for the three categories of offending: section 18 (4 years), fraud (3 ½ years) and parenteral administration of anaesthetic (1 ½ years) to run consecutively failed to take proper account of totality, having regard to the fact that all the offending arose from the same set of incidents. The total sentence of nine years was just too high, he argued.

77. Ms Sumnall, in response, emphasised the seriousness of this offending, sentencing for which needed to address the persistence of, and level of risk occasioned by, the appellant's activities. She submitted that the judge was right not to have distinguished between the routes by which the jury had arrived at their verdicts since the level of risk was the same for all, the procedures having all been carried out in the same way. It followed that all the s.18 convictions paired with a fraud could equally have been arrived at by Route 2. Separating the assault and fraud offences and making them consecutive correctly reflected separate victims: the parents were the victims of the fraud whilst the babies and children were the victims of the assaults. As to the level of sentence for the assaults and the frauds. Ms Sumnall submitted that these were lenient given the numbers of offences. Moreover, the judge based his sentences on Category 3C in the assault guideline when, on his findings of fact and seriousness he could well have categorised them as 3B. The fraud guideline was agreed to be inapplicable. The judge had applied his mind to totality. There were 40 separate offences, the judge took lead offences for each separate class, making all the other sentences concurrent. The total sentence of 9 years after a trial was not excessive.

Conclusion - appeal against sentence

78. This was not at all a straightforward sentencing exercise. The judge was faced with a large number of separate offences of which the most serious were the seven s.18 wounding offences involving circumcisions for which the appellant did not have valid or effective consent, whether under Route 1 or Route 2 liability.

79. As the judge pointed out, there were different ways in which the overall sentence might have been structured. As is evident from his remarks, having heard all the evidence at trial the judge was concerned properly to reflect what he saw as the separately culpable elements of this offending: (i) deception of parents for financial gain (ii) the use of sub-optimal procedures creating additional risk to the babies and children and (iii) unauthorised use of strong medicines.

80. Irrespective of how the sentence was structured the issue for us is whether the overall sentence of 9 years was a just and proportionate sentence after trial for this collection of offending.

81. After careful consideration we have reached the conclusion that the sentence was excessive. There are a number of reasons for this.

82. First, although the judge said that he had been careful to avoid double-counting we have concluded that, by making the s.18, the fraud and the medicines sentences consecutive, an element of double-counting has nevertheless occurred. We think that the judge was right to regard the deception on the parents as having aggravated the s.18 offence; on the other hand, the fraud was also an essential part of the prosecution case that consent was ineffective, there was a great degree of overlap. We agree with the judge that the fraud guideline does not readily apply to the nature of this particular fraud on parents, it is better seen perhaps as an aggravating feature of the s.18 wounding. In any event, in whatever way the fraud element of the offending is approached, an (effective) uplift of 3 ½ years to the 4-year sentence for the s.18 offences appears to us too high. Nor are we persuaded by Ms Sumnall's submission that the proper approach was to sentence in respect of two separate sets of victims, (i) parents and (ii) children. The case was constructed and advanced at trial as an offence or set of offences against parents and child/children together.

83. Moving to the anaesthetics offences we have rejected the defence argument in relation to conviction that the administration of anaesthetics was a separate activity from the circumcision, in our view the judge was right to regard the administration of the local anaesthetics and the giving of aftercare medication as part and parcel of one overall circumcision procedure. Mr Douglas-Jones' answer to Mr Jackson's Route 2 argument on conviction (see above) was that the use of local anaesthetic was the feature of these circumcisions which must have persuaded the jury, even had they been directed as Mr Jackson suggested by reference to the standard of a reasonable non-medical circumciser, to convict this appellant. Again, therefore, whilst the unauthorised use of local anaesthetic was rightly to be regarded as an aggravating feature, there was a considerable degree of overlap. We concluded that an uplift of a further 1 ½ years (by making the sentence consecutive) was too much.

84. Finally we were concerned, looking at the judge's sentencing remarks, that he may have been over-influenced in his approach to totality by taking into account the total number

of circumcisions which the appellant had conducted (we understood that the evidence indicated a total of 541 procedures over several years), rather than restricting his consideration to the particular offences of which the appellant had been convicted and for which he was to be sentenced. We refer to passages from the judge's sentencing remarks which we have set out at [31] above.

85. We acknowledge that the sentences for the seven separate s.18 wounding offences were ordered to run concurrently with each other, also that there were a great number of medicines offences whose sentences were all ordered to run concurrently with each other, likewise the sentence for the separate ABH offence. As we have said, this was not at all a straightforward sentencing exercise. Nor was the appellant assisted by attempting to re-stock his store of medicines whilst he was on bail, or by his actions in attempting to flee the jurisdiction during the course of his trial.

86. Taking all this into account in our view the just and proportionate sentence to reflect the overall criminality of the offences in respect of which this appellant was convicted was one of 6 years. We propose to arrive at this total by taking the s.18 offences as the lead and passing concurrent sentences for all the other offences.

87. Accordingly, we allow the appeal against sentence. We quash the sentences of 4 years on Counts 2, 12, 15, 33, 37, 41 and 44, replacing them with sentences of 6 years. Each will run concurrently as before. The length of all other sentences will remain the same but will now all run concurrently. The overall sentence is accordingly one of 6 years. All other orders remain the same.