

NDT, you were found guilty by a jury of persistent sexual abuse of a child. It is my duty to, consistent with the verdict, find the factual basis of sentence. First some background is necessary.

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The victim of the crime is your daughter. She was born in 2006 of a brief relationship between you and her mother. You did not know that your daughter was born, or that her mother had become pregnant, until your daughter was nearly two. You were then in a long term relationship with another woman which commenced around the time your daughter was born. You and your partner, who later became your wife, had four children: three boys and a girl. Sadly, one of the boys died as a baby. After you became aware that you had a daughter, you had regular weekend contact with her. Such contact took place in the home you shared with your family. Those arrangements continued until her mother became very ill and died in about 2012 when your daughter was 6 or 7. From 2013 she lived on alternate weeks either with you and your family or with a man who acted as her maternal grandfather. When at your home she shared a bedroom with her sister.

Your relationship with your wife ended at the end of 2016. Upon that separation she stayed in what had been the family home and you moved to a different address. Your daughter continued to stay with you at your new home. You are now aged 35. You are in a new relationship. You were raised by your mother who is supportive of you. You have a good industrial record and no relevant prior convictions, in particular for sexual offending.

The first formal allegation of sexual abuse made by your daughter was in 2017. She was then aged 11. She approached a police officer who attended her school to give a presentation about such matters. She was referred on the same day to a social worker. Your daughter told the social worker that you had been touching her on the private parts since she was five or six, but that it had stopped the previous year before Christmas, when you had moved house. She was interviewed by a different police officer three days later. In light of what she said told the police officer you were approached and interviewed. You denied any wrong doing. Your daughter was interviewed again by the same police officer more than a year later in 2018, by which time she was 12. Her evidence was taken at a special hearing conducted in 2020. By then she was 14. Her evidence was audio visually recorded, and presented at trial in the form of that audio

visual recording. Audio visual recordings of both police interviews were admitted into evidence.

The prosecution case at trial was that your daughter was subjected to a course of prolonged sexual abuse consisting of indecent acts and assaults, and vaginal, oral and anal rapes. Seven particular occasions were identified. It follows from the verdict that the jury was unanimously satisfied that at least one unlawful sexual act was perpetrated against her on at least three of those separate occasions. The jury was asked whether it was able to reach agreement on which of the occasions were proved, and declined to answer. It thus falls to me, as trial judge, to make findings of fact for sentencing purposes. For the purpose of determining the facts for sentence, I may only make findings adverse to you if satisfied beyond reasonable doubt they have been proved and I may only make findings of fact in your favour if they are proved on the balance of probabilities. Although it is my responsibility to find facts, it may be taken from the verdict that the jury accepted the truth of your daughter's evidence that sexual acts were perpetrated against her. The jury could only have reached that conclusion having rejected, beyond reasonable doubt, the account you gave to the police during which you denied any sexual wrongdoing of any nature.

The seven occasions specified by the prosecution involve unlawful sexual acts of varying seriousness. One involved touching the complainant's vagina in the shower. Another involved you touching her vagina in the shower and having her touch your penis. One occasion involved you, in your bed, having her touch your penis and suck on it. One occasion involved you having her kiss your penis.

The remaining specified occasions allege also penetration of the vagina and anus. Without wishing to understate the seriousness of the sexual acts I first described, whether there was penetration of the vagina or anus either by penis or objects, or on one occasion with your finger, is a question relevant to the overall gravity of your conduct. It is the principal matter of controversy on sentencing.

It is submitted on your behalf that I should not be satisfied beyond reasonable doubt that unlawful sexual acts involving penetration of her vagina and anus were performed. Your daughter gave no evidence that any of the sexual acts caused pain or bleeding. There is no evidence of injury or physical change which tends to support the allegation of penetration.

Your daughter was examined by a paediatric physician, Dr Evelyn Funk, in 2018, but that was not until more than a year after her complaint to police was first made. Dr Funk's case notes recorded that your daughter told her that you had inserted your penis and sometimes used a fake rubber penis. The notes also recorded that she had not experienced pain, and at the time of examination had no urinary symptoms, and no vaginal discharge, that she had an intact annular hymen and a normal anus. An annular hymen, according to Dr Funk, is round and is the most common form. Dr Funk was asked whether the results of her examination were inconsistent with the history she had been given and her firm answer was that it was not.

It is contended on your behalf that the absence of evidence of any complaint of pain or bleeding, and the finding of an intact annular hymen on examination, is inconsistent with vaginal penetration, such that I could not be satisfied beyond reasonable doubt of any acts of that nature. It is argued that the absence of pain or bleeding is a proposition which is implausible if penetration with an adult penis was occurring. Dr Funk's evidence is, it is argued, confined to hearing a complaint of insertion, without it being established what that means. In my view, the only reasonable conclusion to be drawn from Dr Funk's evidence is that she understood the history she took as including insertion of a penis and use of a fake rubber penis into at least the vagina. It is inconceivable to me that she would have understood reference to insertion of a penis in any other way, or at least she would have said so. It follows that her opinion that nothing in her examination was inconsistent with the history she was given is to be properly understood as meaning that the history of penetration she was given is not inconsistent with a normal anus, the presence of an intact annular hymen and the absence of any other physical sign. There was no other evidence that presence of an intact annular hymen is inconsistent with vaginal penetration and, in my view, it cannot be confidently concluded that it is a matter of common human experience.

I find that the penetrative acts did occur substantially as described by your daughter because, in all essential respects, I found her to be a truthful witness and I consider her evidence to have been compelling.

When interviewed in 2017, she was then 11 years old. She was describing events which she said occurred from about age seven until ceasing almost a year before. She told the police officer who interviewed her that you touched her on her private parts. Her description was initially hesitant. She said she didn't really like having to explain it. Her account did not have

the flavour of a person, particularly a child of her age, giving a fabricated or fictitious or imagined account. She used simple language to make clear that she was referring to her vagina and anus, and that she clearly understood what those two parts of her body were. In the same interview, when asked where you were putting your penis, she said that it was inside her vagina and her bum and in her mouth. She said this happened lots and lots, that it generally occurred when your partner was out or asleep, and that you told her to keep her mouth shut about it. Again, in her own terms she referred to things being put in her vagina which she described with names like "doodle toys" or "pretend doodles", and by describing colours, which obviously referred to imitation penises or dildos. She described lying in the bath and how you would use a thing, she said she did not know what it was called, to "stick it in her front body part." She said it didn't make her feel good and as she got older you started putting bigger objects inside her. She described one occasion of having to suck your penis and rub her hands along it. She described how it would make her choke. She said that she had told her friends but asked them to not say anything about it.

Just over a year later in 2018, in the second interview, allowing for some inconsistencies mostly about collateral matters which I am satisfied are explained by her age, by the passage of time, and by the difficulty of identifying specific examples from a course of conduct, she gave an essentially consistent account which contained more detail. When cross-examined in 2020 she did not waiver from the essence of her account. Some of the answers she gave were especially compelling. For example, it was suggested to her that she knew about the sex toys because she had gone through the drawers in your bedroom. She answered "I knew he had them because he used them on me." At trial, some attention was given to her admission that, at some time during the period of offending, she was found by her grandmother to have been looking at pornography on a computer, the inference being that it formed the basis of a fabricated or imagined account. It was suggested that the complaint somehow arose from tension in the relationship with your former partner. I reject such suggestions as inconsistent with the type of language she used, her initial reluctance to divulge information and the consistency of her complaint, even under cross examination, over an extended period. I find that she was describing events which happened to her. She put up with the conduct because of, at first, lack of understanding, because you were her father, because you told her to keep quiet about it, and because the conduct was normalised until her increasing awareness and maturity, and the presentation at school, gave her the insight, will and opportunity to at last say something about what had been happening to her.

Her evidence was corroborated by the complaints she made to friends, although there was some variation between their respective versions of what they were told, and by some limited DNA evidence, although the latter did not add much. Her account is also consistent with the evidence of the complaint she made to Dr Funk.

I would sentence you on the basis that, during the period of something around three years after your daughter came to live with you and until the end of 2016 you subjected her to all of the abuse referred to in the occasions identified by the prosecution at trial and identified to the jury in the written memorandum. By reference to the identified occasions, that conduct included not only the sexual touching which the jury must at least have found proved, but also one instance of penetration of her mouth by your penis, two occasions involving both vaginal and anal penetration by penis, and one occasion of penetration of her vagina with a penis shaped object, a sex toy. All of the unlawful sexual acts are to be considered as part of a period of sustained sexual abuse which included acts of both vaginal and anal and oral penetration as well as other sexual touching.

It hardly needs to be repeated that sexual abuse of children is of the utmost seriousness. The primary reason is the enormous potential for harm that it may cause. Abuse of this nature almost inevitably causes serious psychological harm, very likely lifelong. Your daughter, in her victim impact statement, speaks of feeling emotionally withdrawn, unclean, fearful and unsafe. Her sleep is disturbed. I have little doubt that further impacts will emerge with her emotional, psychological and sexual development and as she starts to form relationships. I am required to have regard to the aggravating circumstances referred to in the *Sentencing Act*, s 11A. She was under your care, supervision and authority. There could hardly have been a greater breach of trust, not only of her, but of her mother who entrusted her to your care before her death. The offending commenced when she was young, much younger than 13. Anal rape is a particularly degrading form of abuse. Your daughter has been deprived of the secure, safe and loving childhood she was entitled to expect. I am required to make an order under the *Community Protection (Offender Reporting) Act 2005* unless satisfied that you do not pose a risk of committing a reportable offence in the future. In light of the circumstances of this offending I am not so satisfied. You are not entitled to the mitigation a plea of guilty would have attracted, which is a significant matter in cases such as this. In addition to the need for punishment and vindication of the victim, general deterrence is a prominent sentencing objective as part of the

Court's duty to protect children. The sentence will commence on 17 September 2021, the day you were taken into custody. I will allow eligibility for parole to facilitate your supervised release into the community if approved by the Parole Board.

NDT, you are convicted. I make an order directing that the Registrar *Community Protection (Offender Reporting) Act* 2005 cause your name to be placed on the Register and that you comply with the reporting obligations under the Act for a period 15 years from your release. You are sentenced to imprisonment for 12 years from 17 September 2021. I order that you not be eligible for parole until having served half of that sentence.