

Mr G, a jury has found you guilty of two counts of persistent sexual abuse of a young person. You committed these crimes against your biological daughters, M and C. Count one was committed against M between 2008 and 2012, when she was aged between 12 and 15. The crime against C was committed between 2012 and 2015, when she was aged between 14 and 16. M is approximately 2 years older than C.

The jury returned a general verdict on each count and, accordingly, it is necessary for me to determine the factual basis of sentence. It is clear from the verdicts that the jury accepted the honesty and accuracy of the testimony of each complainant, and I am also satisfied of this. It follows that sentence will be determined on the basis that each of the unlawful sexual acts which they described in evidence and which constituted each respective crime committed by you. However, in relation to some of the occasions, the jury was invited to consider alternative crimes as constituting the relevant unlawful sexual act. It is obviously necessary for me to make pertinent findings in respect of these occasions.

Before I describe the specific unlawful sexual acts which constitute each crime, I should make a general observation about another factual issue that arose on the trial in respect of several of the acts. In respect of one occasion relating to M, and all of the occasions relating to C, an issue arose as to whether you were asleep when you committed the act in question. In respect of those occasions, no real dispute was raised by your counsel as to whether you had performed the act as described by the complainant, but the question of whether the act was voluntary and intentional arose on the evidence because the complainant said that you seemed to be asleep when you were committing the act in question. You also adduced evidence from a neurologist, who expressed the opinion that on the basis of the history that you had provided to him, and if you were truly asleep at the time of committing the act, then the commission of the act while asleep is consistent with a diagnosis of non-rapid eye movement parasomnias. These are sleep disorders, during which the person concerned will engage in sleepwalking and/or sexual behaviour, without conscious knowledge or memory. It was left to the jury that you would only be guilty of the unlawful sexual act in question if the jury was satisfied beyond reasonable doubt that you were not asleep when you committed the act. An important, and perhaps obvious, qualification on the opinion expressed by the expert witness was that a diagnosis of relevant parasomnias depended entirely on the truth of your account to him. In particular, if you were feigning sleep at the time of committing the act, then the diagnosis would not apply. Because this issue was left to the jury in respect of all of the occasions relating to count 2, the verdict of guilty on that count necessarily implies that the jury were satisfied that on at least three occasions relevant to that count, you were not asleep when you committed the unlawful sexual act. Because C's evidence, which you did not dispute, was that you appeared or claimed to be asleep on all occasions relating to her, the only possible conclusion consistent with the jury's verdict is that you feigned sleep on at least three of these occasions. In fact, I am satisfied that on all occasions relating to both M and C, in respect of which you appeared to be or claimed to have been asleep while performing the relevant act, you were simply pretending to be asleep and that you were, in fact, conscious and awake during the offending. This finding is consistent with the jury's verdict as I have already explained, and is supported by the evidence. For example, the testimony of C was that your eyes were closed during all of the unlawful sexual acts committed against her. The neurologist's evidence was that it is typical for the eyes to be open while acting under

a parasomnia. Further, and particularly in respect of C, you continued to enter her bed at night, despite promising that you would not do so. Further, your general response when confronted by the complainants with the acts after their commission, and the obvious grooming behaviour in which you engaged in respect of both complainants, which I will describe in more detail shortly, supports my conclusion that you committed all of this conduct consciously and deliberately, and your claim to be asleep was simply pretence. You engaged in this pretence in a pathetic attempt to avoid taking responsibility for your conduct.

The family and relationship context of the commission of these crimes is as follows. You have four children in total. The complainants are the children of yourself and a former partner. The other children, a male and a female, are younger than the complainants and come from your relationship with a woman, which followed your separation from the complainants' mother. Your relationship with this woman had ended before you started to abuse M.

A further matter of context is this. Both complainants described in some detail how your general conduct towards and conversation with them was often of a sexualised nature. In C case, she said that this started well before the sexual abuse against her commenced. This is consistent with a pattern of grooming your daughters for sexual abuse, by normalising sexualised and intimate touching and conversation by making it an inherent part of your relationship with them. It is also relevant to moral culpability and impact.

When you started to offend against M, you were living with your mother in her unit. The first five specified occasions in respect of count 1 were committed in this unit. You then moved to your own unit, and the balance of the offending was committed there. You were having regular overnight contact with M throughout the period of the offending, usually on weekends. This was by arrangement with her mother.

The jury was asked to consider eight separate occasions on which unlawful sexual acts were committed during the relevant period. However, the complainant made it clear that these were not isolated occasions and that sexual offences of the same nature were perpetrated against her by you on a frequent and regular basis.

The offending stopped when M was 15 years of age, and she had commenced a relationship with a male around her age. This person would often stay over. I infer that you stopped offending because of a combination of the complainant's developing maturity, which increased her capacity to protect herself from you, and the added scrutiny occasioned by her boyfriend's regular presence in the home. I observe also that the cessation of your offending against M seems to have roughly coincided with the commencement of similar offending against her sister.

The specific unlawful sexual acts which constitute the crime are as follows. When M was 12 years of age, you indecently assaulted her by kissing her in a sexualised way on her mouth and inserting your tongue into her mouth. You described this to her as "French kissing" and told her that you were teaching her what boys would do when they kissed her. This act was committed at your mother's premises but your mother was not at home at that time. On the second occasion, you took the complainant into a bedroom at your mother's unit and kissed her in a similar way while you were both lying on a mattress. You then told her to remove her top because you needed to check something. You touched her breasts with your hands, your mouth and your tongue. When you stopped, you told her that she was not mature enough because her nipples did not become erect. Your mother came home at around that time. The complainant described how,

when you realised this, you threw her off you and told her that she could not tell anyone what you had done.

On another occasion in your mother's unit, while you and the complainant were lying on a lounge watching television, you pulled her shorts and underwear down and started to play with her vagina. You then simulated sexual intercourse by thrusting your naked and erect penis between the complainant's legs. This ended when you ejaculated over her legs. You again told her that she could not tell anyone because if she did, she would get into trouble.

The fourth unlawful sexual act also took place at your mother's unit. On this occasion, you held the complainant against a wall, kissed her on the lips, and again inserted your tongue into her mouth. You asked her what she would do if a male did this to her. She told you to put her down but you did not.

The final specified occasion which occurred at your mother's unit commenced when the complainant was asleep. You got onto the bed in which she was sleeping. She woke up to find you taking off her pants and touching her on the vagina and clitoris. You inserted your fingers into her vagina and moved them around for a time. She then describes how you tried to push your erect penis into her anus. She felt pain and tried to resist but was unable to stop you. Her evidence was that you "got it inside". At that point, she said to you "Dad that hurts" and started to cry. You desisted and claimed that you had been asleep. You asked her if you had got it inside and the complainant recalls that you had a smirk on your face when you did so. When she went to the toilet after this incident she was bleeding from her anus. The jury was left with the alternatives of rape, attempted rape and indecent assault in relation to the anal penetration. I am satisfied that you did actually penetrate her anus with your penis on this occasion, and that this penetration caused an injury which caused anal bleeding. It follows that I find that you committed the crime of rape on this occasion. As I have already found, your claim of sleep was a pretence to avoid facing your daughter's accusation about your conduct.

The remaining three occasions occurred after you had moved into your own unit. The complainant was by then living with you there. The first occurred while she was having a shower. Before the shower, you had engaged in a sexualised conversation with her, which included talking about how males masturbated and women gave "blow jobs". You entered the bathroom while the complainant was showering despite her having locked the door. You removed your clothing and entered the shower with her. Despite her resistance, you penetrated her vagina by taking hold of her and forcing her down onto your erect penis. This was a clear and brutal act of sexual penetration and the complainant described experiencing a lot of pain while it was happening. Eventually, she managed to get off you and sat on the shower bay floor with her face between her legs. She was clearly upset but rather than comfort her or apologise, you tried to place your penis against her face. She resisted this by keeping her head down between her legs.

The next unlawful sexual act was committed shortly after you both left the bathroom. You called her into a bedroom and told her to sit on the bed and then stood in front of her and smacked her in the face with your naked penis. You laughed as she ran off crying to her bedroom.

The last occasion which constitutes this crime occurred when M awoke during the night, to find you in her bed touching her clitoris. You then inserted your fingers into her vagina. She told you to stop but you continued for some time and then left.

I will now make findings in respect of count 2. C was approximately two years of age when you and her mother separated. She continued to live with her mother but visited you on weekends.

The first specific occasion occurred when she was 14 years of age. You had returned to the home in an intoxicated state, after a darts event. You got into her bed to cuddle her which was a regular occurrence, and in my view consistent with the type of sexualised and physically intimate interaction fostered by you, which I have already mentioned. The complainant fell asleep with you still in her bed, but woke some time later to find you penetrating her vagina with your fingers and your hand on her breast. You were moving your fingers inside her vagina. As with all other occasions involving C, you pretended to be asleep while you were doing this. She assumed you were asleep and woke you up. You claimed that you did not recall what you had done. You promised to stop sleeping in her bed. This was, of course, a promise that you had no intention of keeping.

The second occasion occurred after you had been watching a movie together on the complainant's bed. She fell asleep, but awoke to find you groping her breasts and using your finger to rub her clitoris. Your hand was under her clothing. She successfully resisted you by pushing your hand away and demanding that you stop.

The third occasion occurred shortly after she had turned 15. On this occasion, she woke with you in her bed, rubbing her breasts and grinding your naked and erect penis against her backside, over her clothing. The fourth occasion involved a similar act. This time, she felt your erect and naked penis pushing against her anus but over her clothing. She described a considerable amount of pressure and pain.

The fifth occasion occurred shortly before C turned 16. On this occasion, you had removed her pyjamas while she was sleeping and she woke up to find pushing your erect penis against her naked anus, in an attempt to penetrate her. She recalls you using your hands to spread her bottom cheeks so as to facilitate penetration. Her evidence was that you inserted the tip of your penis into her anus. She felt pressure and pain when this occurred. I am satisfied beyond reasonable doubt that you achieved penetration on this occasion, and accordingly committed the crime of rape.

The final act also took place just before she turned 16. You and she had watched a television program together. Before she went to sleep, you told her that a demon had told you that you needed to make her pregnant. Your reference to demons was a constant feature of your conversation with both complainants. I am satisfied that this was part of your general attempt to normalise and explain your sexualised behaviour towards your daughters. On this occasion, the complainant woke during the night to find you in her bed. You were trying to penetrate her vagina with your penis. You had pulled her pyjama bottoms down. Her evidence was that the tip of your penis entered her vagina and, when this happened, she experienced pain. I am satisfied to the requisite standard that you achieved penetration. Once again, you committed the crime of rape. On the following day, you supplied C with alcohol, and told her that she had an addiction to sex, and if she could not control herself, she was allowed to have sex with you. The fact that this was a pathetic attempt to normalise your sexual conduct towards the complainant was not lost on her. She told you that you were disgusting and to leave the room.

The offending against this complainant ended around this time. The complainant commenced a relationship with a male, who stayed over, and as had happened with her sister, this helped to

stop your offending. I make the point that you did not voluntarily desist in respect of either complainant. Your criminal conduct was brought to an end ultimately by her capacity to more effectively resist you as she grew older and by the scrutiny of someone outside the family.

As with M, these specified occasions in respect of C did not occur in isolation. They were part of an ongoing course of sexually abusive conduct. C evidence, which I accept, was that the sexual acts against her were "really frequent" during the relevant period. The fact that each offence was committed as part of a course of wider conduct against the complainant in question is relevant to my assessment of your moral culpability for and the impact of your crimes on each complainant.

Both complainants have provided impact statements. The impact on them was also readily apparent from their evidence. As can be expected, both recognise and describe the significant impact which is an inevitable consequence of offending such as this. It is very clear that both experienced conflicting emotions and confusion while you were perpetrating this abuse. Each was effectively trapped in a dilemma. On the one hand, they loved you as their father and relied upon you for parental support and care. This reliance was accentuated from time to time because of a problematic relationship with their mother. It is clear from the evidence that you promoted these difficulties, including by telling each of them that their mother did not love them. You clearly did this as a cynical ploy to maintain their loyalty to you. You also continually told them that they should not tell anyone about the offending, and warned them that if anyone found out what you were doing, you would go to jail and they would not be able to see you. This conduct in respect of each complainant was in my view emotionally and psychologically abusive, and is relevant to sentencing because it compounds the impact of your offending on each complainant. As is often the case with offending such as this, each complainant has experienced emotions of self-blame for what they perceive as a failure to stop you and protect themselves and each other. While I acknowledge and understand these emotions, neither, of course, has any reason to accept any blame for your conduct. These feelings are part of the impact upon them of your criminal conduct. As your children, they were entitled to your care and support, but instead of providing that, you abused their trust in a most horrific and appalling way. You have stolen critical years of their adolescence, years which were crucial to their personal and psychological development. You have also now deprived each of them permanently of the loving parental relationship to which each of them was and is entitled. My perception is that each complainant is keenly aware of what you have taken from her. Each woman has demonstrated extraordinary courage by reporting your conduct to police and then giving evidence against you. Although your counsel must be commended for the professional and dignified way in which she discharged her duties in this case, including the cross-examination of the complainants, and you must not be punished for exercising your right to a trial, I have no doubt that each complainant found the court process and in particular giving evidence at the trial to be an ordeal. This, of course, is part of the impact of your criminal conduct on them. I also have no doubt that they will continue to experience the impact of your crimes well into the future, and probably for the rest of their lives.

There are numerous aggravating factors in this case. I have already discussed the serious breach of trust. Your conduct was deviant and incestuous, and involved inherent violence. On some occasions, you overcame physical resistance by exerting force. An example of this is the rape perpetrated by you on M in the shower. All of the offending was committed within the home, and in many cases in the complainant's bedroom and bed, places which should have been a safe refuge for them. The offending against M commenced when she was 12, which is by law, an aggravating factor. All of the acts simply by reason of their nature and incestuous character, were

likely to seriously and substantially degrade and humiliate each complainant. Some of them were clearly intended to do so, and I refer to the anal rapes of both complainants, and your conduct in and after the shower in respect of M in that regard. On many of the occasions, there were other siblings in the premises, and sometimes in the same room when you perpetrated the abuse.

There is little, if anything, that can be said by way of mitigation. You are now 49 years of age. Your criminal history consists only of traffic offences, and you have a reasonable and unremarkable industrial history. However, any claim to prior good character arising from this background does not assist you. Clearly, you would not have been in a position to commit these crimes if you had any prior history of similar offending. You are not entitled to the benefit of a plea of guilty, and I cannot detect any evidence of remorse or insight. Approximately 16 years ago, you suffered a significant work-related injury and you are now receiving a disability support pension. It is asserted that this injury requires significant pain relief, which is achieved by medication, and this may make your time in custody more uncomfortable than would otherwise be the case.

Because I am dealing with two crimes, each encompassing a discrete course of criminal conduct against different complainants, it is necessary to consider the question of totality. In a case such as this, totality becomes relevant not only in assessing the individual sentence warranted for each crime, which of course incorporates multiple episodes of criminal conduct, but also with respect to the aggregate sentence imposed across both crimes.

There are two pertinent aspects of the totality principle, which require my consideration in this case. Firstly, the principle requires "a last look" at the aggregate sentence to ensure that it is proportionate to the overall criminality. Secondly, I must ensure that you are not subjected to a crushing sentence, not in keeping with your record and prospects.

In respect of proportionality, the overall sentence must reflect that these crimes were committed against separate complainants and at different times. Each complainant experienced significant harm as a result of your separate offending against her. Each crime clearly warrants a lengthy sentence, and, in my view, the aggregate of those sentences, without significant reduction, is proportionate to the overall offending across both crimes.

In respect of the second limb of the totality principle, the requirement that the final aggregate sentence must not be crushing, is a relative concept. It must, of course, be balanced and judged against the gravity of the offending across both crimes. Crimes such as this cause lifelong harm to the victims. Further, the formulation of what is crushing requires an assessment against your "record and prospects". As I have noted, the Court is precluded by statute from taking into account your lack of prior convictions and good character when determining the appropriate sentence. It is also difficult to see how, in a case like this, your "prospects", can have any great significance. However, there is an aspect of this concept which has relevance to this case. As Wood J explained in *DPP v Harrington*, a sentencing court dealing with multiple serious crimes, each of which warrant a lengthy sentence, must bear in mind the reality that the severity of a sentence increases exponentially with its length. Further, after a certain point, a sentence of a greater length may not add anything to the capacity of the global sentence to address sentencing aims such as general deterrence, personal deterrence and denunciation. I intend to impose a global sentence in this case but will take into account these considerations when assessing that sentence.

Because I intend to impose a global sentence, I am required to identify the sentence which would have been imposed for each crime separately. As I have indicated on other occasions, this identification will not take into account totality arising from the overall sentence. The sentences which I would impose for each crime separately in this case are as follows:

(a) Count 1, a term of imprisonment of 12 years.

(b) Count 2, a term of imprisonment of 10 years.

In my view, the proper application of the principles I have discussed requires an aggregate sentence of a length which is somewhat less than the total of these sentences. I will permit eligibility for parole, but only after a period which I consider to be the minimum term that you should spend in custody, having regard in particular to the serious nature of the criminal conduct.

Mr G, you are convicted of the crimes of which you have been found guilty and sentenced to a global term of imprisonment of 16 years. This sentence will be backdated to the day on which you were remanded in custody which is 5 April 2023. You are not eligible for parole until you have served 10 years of that sentence.

I am required to make an order under the *Community Protection (Offender Reporting) Act 2005*, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. Having regard to the circumstances of this case, I am not satisfied of that matter and, accordingly, must make an order. Given that you are being sentenced for two class 2 offences, the maximum reporting period is for the rest of your life. In my view, there is no proper basis for a reduction in that period. In particular, I am of the view that it is simply not possible to envisage that you could ever again be trusted in circumstances in which children come under your care, supervision or authority, for example as a result of a future relationship. Accordingly, I order that your name be placed on the register pursuant to that Act and that you comply with the reporting obligations under that Act for the rest of your life.