

Stuart Rainbird, you were found guilty by a jury of two counts of indecent assault, one count of grooming with intent to expose a young person to indecent material, one count of grooming with intent to procure a young person for sexual abuse and one count of involving a person under the age of 18 years in the production of child exploitation material. It is my duty to sentence you in accordance with the verdicts. It is my responsibility to find facts for sentence, but my findings must be consistent with the verdicts. Facts adverse to you must be proved by the prosecution to my satisfaction beyond reasonable doubt. Facts in your favour must be proved by you on the balance of probabilities.

All of the crimes were committed between about 2014 and 2018 against three girls who were part of the broad friendship group of one of your daughters. When the offending commenced you were about 47. Within that group you knew and socialised with some of the parents. Throughout this period, despite the obvious difference in age and personal circumstances, you interacted with those three girls, as well as others in the same group, on social media, usually Instagram or Snapchat. In each case the contact was initiated by you by responding in some way to messages or images they had posted. I am satisfied, as I think that the jury must have been, that your contact with them was at least in part motivated by sexual attraction to girls of that age. Taking all of the evidence into account, I find that you had a tendency to be sexually attracted to them and that tendency was circumstantial evidence which made the accounts of each complainant more likely to be true. To protect their identities I will, in the published version of these comments, refer to them by pseudonyms.

The first indecent assault was committed against Sally Gladstone. She said that she was about 11 at the time but she may have been slightly older. That made it most likely 2014 or 2015. You became friends with her father. On an occasion when you and your family were visiting her home you sat down between her and your daughter on the couch. Sally said that, after having put your arm around her, you moved your arm down behind her so that your hand exerted subtle pressure on the side of her breast over her clothing. You then moved your hand further down and put it inside her track pants to as to touch the skin on the top or outer part of her upper thigh. It follows from the verdict that the jury was satisfied that indecent touching occurred. I am satisfied that the touching of the breast and the thigh both occurred. I found Sally's account to be coherent and persuasive, and not in the least implausible. Her evidence was given calmly and clearly and she did not waver in cross examination. It is easy to understand how she was too embarrassed, confused and nervous to say anything at the time to her parents and also why, in the circumstances, your actions were not noticed by anyone else. The contact with her breast was subtle and the contact with her thigh was covert and concealed by her clothing, your respective positions and perhaps the side of the couch. I accept her evidence that you had initiated social media contact with her in which you asked, sometimes late at night, what she was wearing in bed. That conduct is not the subject of a charge. However, her evidence was strongly consistent with the evidence of other witnesses about your social media interaction with them. Sally's evidence also corroborated their evidence and supported the evidence of your tendency.

The crime of grooming with intent to expose a young person to indecent material was committed against Sally's older sister Allison. At about the time of her 15th birthday, later in 2016, you initiated contact with her on social media, initially on Messenger but then on Instagram and Snapchat. The fact that you chose to communicate on-line so personally with a girl her age at all suggests an improper motive, but the nature and content of the messages confirmed that to be

so. At first the messages were seemingly friendly and innocuous, but they became increasingly intrusive, frequent, personal and expressly or impliedly sexual. A feature of the Snapchat application is that communications, including messages and images, are temporary unless saved. Only the Messenger messages were saved. However I believe her evidence, as I think the jury must have, about the Instagram and Snapchat messages she received. It was strongly supported by the evidence of a friend of hers who saw some of the messages and was told by Allison about others. The communications continued for a prolonged period, at least many months if not longer. Your messages were very frequent, sometimes daily, and were often sent late at night when she was likely to be alone in her room. You commented on the attractiveness of her bottom. You asked her what her favourite sexual position was. You began to send images of yourself. Most were apparently innocuous but one was of you sprawled on the couch with your hand down your pants. One message conveyed to her that you had found her bottom so attractive in the leggings she was wearing that you masturbated yourself. Her evidence was that this message was a little later by which time she was 17. However her 17th birthday was not until late 2018 and I am satisfied that the message was sent before then. The jury was satisfied beyond reasonable doubt that your intention when communicating with Allison was to expose her to indecent material. I find that the indecent material took the form of the messages to her to which I have referred with suggestive or overtly sexual content and the image of you with your hand down your pants. However, I am satisfied that even the communications which were not indecent were sent as part of a course of conduct with the underlying intention to, over time, introduce sexual material to her. There is no evidence of any express request from you that she respond in a sexual way either by words or images. If there had been you would have been charged with a different offence.

The other indecent assault was committed against Allison in March 2016 when your family and her family shared a weekend away in a rented house in a coastal part of southern Tasmania. Allison was 14. It was before you began communicating with her on-line, but the assault demonstrates an already existing sexual interest in her. The jury must have been satisfied beyond reasonable doubt of the truth of Allison's evidence that, when you and she were together on your small motor boat you grabbed her from behind into a sort of bear hug and, in the course of doing so you indecently touched the front of her breasts over her clothing. She said that she was wearing a bikini at the time. I am not satisfied beyond reasonable doubt that this was so, and find that she was more likely wearing some form of summer clothing although not a life jacket. Whether she was wearing a life jacket or not, consistency with the verdict requires that you be sentenced on the basis that the indecent touching of her breasts occurred. The physical contact was opportunistic and relatively brief. I cannot be satisfied that anyone else was present.

The charge of grooming with intent to procure a young person to engage in an unlawful sexual act and involving a person under the age of 18 years in the production of child exploitation material both concern Jean Harrison. The charges are closely related. Your offending against her was, objectively, the most serious. She was friends with Sally Gladstone. I find that, in 2016, you initiated online contact with her by commenting favourably on messages she put on Instagram wearing tight gym gear. You then began communicating with her privately on Instagram. She was a willing participant. She was flattered by the attention and was flirtatious. However she was, when it began, only about 14. The communications soon became sexual and resulted in the exchange of sexual images. These exchanges continued until about the time of her 16th birthday in mid-2018. Some of the images exchanged were not sexual, but many were. You sent her still and video images of your erect penis including video of you masturbating. She sent you photographs of her naked breasts and vagina, and videos of a similar nature including one of her masturbating her vagina with her hand. The communications were very frequent, at

times almost daily. I am satisfied that the images she sent you of herself were produced and sent at your request. There is no doubt that it was child exploitation material and that you knew it was child exploitation material because it depicted her engaged in sexual activity or in a sexual context, in a way a reasonable person would find offensive.

I also find that, from relatively early in the piece, she requested other things from you: money, alcohol and other gifts. You agreed in return for more images. Money and gifts were dropped off at an agreed hidden location for her to collect. I believe her evidence that she did not want to meet or speak to you in person and so there was never, and never likely to be, any direct physical contact. However it was the intention of your communications which is the important element of this grooming charge. I am left in no doubt that your intention was to have her engage in an unlawful sexual act by receiving material you created which was so indecent that the sending of it amounted to an indecent act with a young person. However I find that your intention went beyond that. On her account, which is the only account we have, you exchanged messages about, to use her words, "we want to maybe have sex", but that she was not 18. You told her that you wished that she was older, the indication being that you would not have sex with her because she was not 18. Yet, she said that on occasions when you were dropping things off for her you sent messages asking her to get into the car with you to "hang out". She never agreed. She thought that it would, again to use her words, "turn sexual" if she got into the car with you. It is your intention, not her expectation, which is relevant, but I find that she was correct. The only reasonable and rational inference to be drawn from all the evidence in the trial is that your intention in communicating with her as you did was to ultimately bring about actual sexual contact of some nature with her. It may have been hopeful speculation but I am satisfied that it was your intention. Any sexual touching of any nature between you and her would have been unlawful because of her age.

Your offending did not come to light until 2021 when those three girls realised that, as between themselves, you had offended against each of them. Until then, none realised what had happened to the other. Mr Gladstone became aware of what had been going on and the police were notified.

I am required to take into account any aggravating circumstance referred to in the *Sentencing Act*, s 11A, which may apply. The only crime which was committed against a victim under 13 was the indecent assault of Sally Gladstone. That crime was committed while others were present. Although none were aware of it, their presence must have added to her embarrassment, discomfort and confusion about how to respond. None of the victims were under your care, supervision or authority except in the case of the indecent assault of Allison Gladstone on the boat. That crime was committed when she was temporarily under your supervision. By assaulting both her and her sister you certainly breached their trust and the trust of their parents in allowing them to be in your immediate presence.

You are not entitled to the mitigation a plea of guilty may otherwise have attracted. Each of the victims gave evidence during the trial. There was some delay prior to resolution of the charges. Your conduct was reported to the police in February 2021 and you were spoken to shortly thereafter. You were left in a state of uncertainty until March 2022, more than a year later, when you were charged. Trial papers were not filed until April 2023 and the trial occurred in September 2024. Delay of itself is not a mitigating factor. In particular, for child sex cases, delay between the commission of an offence and it being reported should not be regarded as mitigating. However delay since then can be relevant, delay before the bringing of charges generally being of greater weight. I would accept that you have had these charges hanging over your head for almost four years, and that has been a source of some anxiety. You lost one job in March 2021

when the reason your phone was confiscated was disclosed to your employer. However you obtained other employment which continued until the verdict. As to rehabilitation, you began counselling with a psychologist soon after the police spoke to you which has furnished you with the skills to address and reduce the risk of re-offending. Conversely, the complainants have also been the subject of prolonged delay before being vindicated by the verdicts.

Your personal circumstances were outlined by your counsel and in a report prepared by a probation officer of your suitability for a home detention order. I was given a number of references as well as a report dated 25 October 2024 from a clinical psychologist, Michael Guy. You are now aged 57. You have no relevant prior convictions. It is not suggested to me that there has been any subsequent offending. During your life you have enjoyed close and supportive relationships with your parents and siblings. Your physical health is reasonable and you have no alcohol or drug issues. You are currently unemployed as a result having been found guilty of these offences but, until then, you were engaged throughout your adulthood in employment and self-employment in project and manufacturing management. References from past employers and clients speak highly of your work and personal qualities. I accept that these convictions will make it much more difficult, if not impossible, to find other employment. You have a long, loving and stable marriage of which there are two adult children. Your wife has written a letter describing your strong love, support and care for her and your children. References from other females within your daughters' friendship group describe their trust of you and the support and friendship you have offered them without a hint of the type conduct of which you were found guilty. However, as Mr Guy describes, you were, at least at the relevant time, living a double life which was kept secret from others.

As a teenager you were subjected to years of serious sexual, physical and psychological abuse perpetrated by a male peer. That was, no doubt, a very distressing part of your past. Mr Guy indicates that you meet the criteria for PTSD. Since March 2021 he has been treating you for that disorder and associated behavioural patterns. The pre-sentence report also refers to a diagnosis of PTSD which you manage with medication and ongoing psychological intervention. According to Mr Guy, the effects of the abuse included a proneness to prove yourself sexually, use of pornography and a pattern of people pleasing. As to the charges on the indictment, the only conduct which you admit is part of the interaction with Ms Harrison. You admit the impropriety of that conduct which you attribute to poor judgment and lack of insight arising from mental health concerns, grief following the death of your father, unhappiness with your employment and a tendency to wish to please. Mr Guy reports that you told him that your contact with her commenced as being supportive and non-sexual, but changed when she sent photos unsolicited and requested photos from you. You reported that when she asked for money, cigarettes and alcohol and threatened disclosure to your family, you felt compelled to comply but declined or ignored other requests. To the extent that this suggests that you only responded to communications she initiated and, at some point, stopped requesting images from her I find it to be inconsistent with the evidence at trial.

Although Mr Guy assesses the risk you pose of future offending as low, there is nothing in his report which would justify the conclusion that the relationship between mental impairment and your crimes is such that the need for general deterrence is moderated or that your criminal culpability is reduced. Mr Guy does indicate that imprisonment might severely affect your PTSD. I take that into account but, in the circumstances, it is a factor which is to be balanced against other sentencing aims. I do not accept that treatment reasonably required will not be available to you while in custody although not to the same level as may be available in the community. Mr Guy and your counsel mention the potential impact on your family. Your wife

has her own challenges. I accept that the impact of a sentence of imprisonment on her and your children will be considerable but, generally, hardship to dependants is not a significant mitigatory factor. It is part of the price to be paid for serious crime and should not be allowed to affect what is otherwise the correct sentence.

The factor of overwhelming importance in sentencing for crimes of this nature is the protection of children. Offenders must not only be punished and denounced, but sentences must serve to, as far as a court is able to achieve, signal to others the likely harsh consequences. Child sexual offences carry the presumption of harm. Your offences carry varying levels of objective gravity and criminal culpability. However all of the conduct had great potential to corrupt and damage the victims. I heard victim impact statements from each which details the profound and lasting effects your behaviour has had on them. It is the type of impact which is to be expected. As always, circumspection is required when considering the statements. I accept that the objective gravity of the indecent assaults, when compared to other sexual offences dealt with by this court, is not high. The sentence I impose must be proportionate to the seriousness of each crime. That does not mean that the psychological impact cannot be real and significant. There may have been other factors at play when considering the impact on Ms Harrison, but I am left in no doubt that your conduct was a significant causative factor in many of the psychological problems she describes. All three victims describe an ongoing lack of trust in adult men which affects their own relationships.

To the extent that your offending consisted of on-line communications between you and the victims, there is a strong need for general deterrence and protection of the public. Offences of that nature are difficult to detect and are almost always committed in private, beyond the notice of those who would be responsible for the safety and protection of the young person. Young persons who participate in such on-line communications must, as far as a court is able to achieve, be protected from their own vulnerability, immaturity and misjudgment by imposition of sentences which seek to deter those who would seek to take advantage of them.

Had I been considering the indecent assaults of Sally and Allison Gladstone, and possibly even the grooming offence against Allison Gladstone, individually and in isolation, then a community based order might have been an appropriate sentence. I do not, by that indication, wish to understate in any respect the seriousness of those crimes or the impact on each of those victims. However those crimes are not to be considered in isolation. They are to be considered in the context that the instances of unlawful sexual acts directed at these children were not isolated, but formed part of a course of conduct which extended over a significant period and affected each of the three victims. For that reason I have concluded that home detention does not adequately address the sentencing aims and is not an appropriate sentence.

I will impose separate sentences for each crime but will make orders of cumulation and concurrency, and suspend some of the terms, with the aim of imposing a sentence which is a just and appropriate measure of your total criminality across all counts, taking into account the interests of, and separate harm to, each of the three victims.

Stuart Rainbird, you are convicted on each count on the indictment. I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act 2005* in the future. I make an order directing that the Registrar cause your name to be placed on the Register and that you comply with the reporting obligations under the Act for a period eight years from your release.

On count 1, the indecent assault of Sally Gladstone, you are sentenced to imprisonment for three months. On count 2, grooming Allison Gladstone with intent to expose her to indecent material, you are sentenced to imprisonment for nine months. On count 3, the indecent assault of Allison Gladstone, you are sentenced to imprisonment for three months. I wholly suspend the terms imposed on counts 1, 2 and 3 for three years from your release. Had I not suspended the terms imposed on those three counts I would have ordered that counts 1 and 3 be served concurrently but cumulatively with count 2, an effective term of one year. I would also have ordered that effective term to be cumulative to the terms I am about to impose. The law imposes a condition on the suspended terms that while orders are in force you not commit any offence punishable by imprisonment. If you breach that condition then you will be required to serve the suspended term unless that is unjust. On count 4, grooming Jean Harrison with intent to procure her for sexual abuse, you are sentenced to imprisonment for 15 months from 12 November 2024, the day you were remanded in custody. On count 5, involving Jean Harrison in the production of child exploitation material, you are sentenced to imprisonment for two years and three months, also from 12 November 2024, thus concurrently with the term imposed on count 4. For each term of actual imprisonment imposed I order that you not be eligible for parole until half of the term is served.

The result is a total term of imprisonment of three years and three months from 12 November 2024, one year of which is suspended for three years from your release. You are not eligible to apply for parole until you have served half of the operative sentence of two years and three months.