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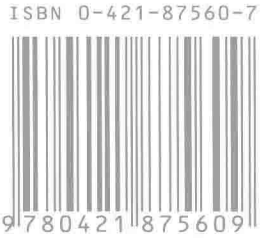

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Appellants

Ahmed, J. [2003] 2 Cr.App.R.(S.) 30 137
Anderson, M.J. [2003] 2 Cr.App.R.(S.) 28. 131
Arrowsmith, P.W. [2003] 2 Cr.App.R.(S.) 46 301
Atkin, S.M. [2003] 2 Cr.App.R.(S.) 40 263
Att-Gen's Reference No. 90 of 2001 (Mark Simon Hilton) [2003] 2 Cr.App.R.(S.) 33 164
Att-Gen's Reference Nos. 48, 49, 50 and 51 of 2002 (Hans Constantin Paulssen and others) [2003] 2 Cr.App.R.(S.) 36 192
Att-Gen's Reference Nos. 74 of 2002, 95 of 2002 and 118 of 2002 (Darren Anthony Suratan, Leslie Humes and Mark Paul Wilkinson) [2003] 2 Cr.App.R.(S.) 42. 273
Att-Gen's Reference No. 82 of 2002 [2003] 2 Cr.App.R(S.) 115 673
Att-Gen's Reference No. 88 of 2002 (Thomas Joseph Joyce) [2003] 2 Cr.App.R.(S.) 83 491
Att-Gen's Reference Nos 91, 119, and 120 of 2002 [2003] 2 Cr.App.R.(S.) 55 338
Att-Gen's Reference No. 92 of 2002 (Alan Moulden) [2003] 1 Cr.App.R.(S.) 16 80
Att-Gen's Reference No. 98 of 2002 (Barry John Bishop) [2003] 2 Cr.App.R.(S.) 95 563
Att-Gen's Reference No. 99 of 2002 (John Deeley) [2003] 2 Cr.App.R.(S.) 43 290
Att-Gen's Reference No. 104 of 2002 (Aaron Harding Beanland) [2003] 2 Cr.App.R.(S.) 116. 682
Att-Gen's Reference No. 105 of 2002 (Leon Ronald Lawrence) [2003] 2 Cr.App.R.(S.) 50 319
Att-Gen's Reference No. 106 of 2002 (Nigel Robert Hall) [2003] 2 Cr.App.R.(S.) 70 423
Att-Gen's References Nos. 108 and 109 of 2002 (Damien Melford Fielding and Ghadgsin Wilfred Adgebenle) [2003] 2 Cr.App.R.(S.) 102 608
Att-Gen's Reference No. 110 of 2002 (Robert James) [2003] 2 Cr.App.R.(S.) 78 464
Att-Gen's Reference No. 133 of 2002 (William David Knight) [2003] Cr.App.R.(S.) 108 645
Att-Gen's Reference No. 135 of 2002 (Robert Terry Gray) [2003] 2 Cr.App.R.(S.) 109 649
Att-Gen's Reference No. 136 of 2002 (Anthony John Richardson) [2003] 2 Cr.App.R.(S.) 92. 544
Att-Gen's Reference No. 139 of 2002 (Mazhar Ali) [2003] 2 Cr.App.R.(S.) 110 653
Att-Gen's Reference No. 146 of 2002 (Robert Stewart) [2003] 2 Cr.App.R.(S.) 107 640
Att-Gen's Reference No. 149 of 2002 (Bryan Lockwood) [2003] 2 Cr.App.R.(S.) 94 559
Att-Gen's References Nos. 150 and 151 of 2002 (Ashley Leon Warren and Kyrt Anthony Whellams) [2003] 2 Cr.App.R.(S.) 111. 658
Baff, K.W. [2003] 2 Cr.App.R.(S.) 37 201
Ball, J.R. [2003] 1 Cr.App.R.(S.) 18 92
Barker, B. [2003] 1 Cr.App.R.(S.) 22 110
Barnes, A.G. [2003] 2 Cr.App.R.(S.) 56 . . .346
Bevan, M. [2003] 2 Cr.App.R.(S.) 48 311
Bracken, T.D. [2003] 2 Cr.App.R.(S.) 51 . . .324
Bridge, L.M. [2003] Cr.App.R.(S.) 5. 23
Briggs, P. [2003] 2 Cr.App.R.(S.) 103 615
Bush, S.T. [2003] 2 Cr.App.R.(S.) 117 686
Carter, S.L. [2003] 4 Cr.App.R.(S.) 88 524
Chute, P. [2003] 2 Cr.App.R.(S.) 74 445
Cook, T.J. [2003] 2 Cr.App.R.(S.) 49 315
Couldridge, P.L. [2003] 1 Cr.App.R.(S.) 11. 43
Daljit Singh Sekhon and others [2003] 2 Cr.App.R.(S.) 38 207
Davies, C.D. [2003] 2 Cr.App.R(S.) 104 . . .621
Davy, M.A. [2003] 2 Cr.App.R.(S.) 101 . . .603
Delamere, I. [2003] 2 Cr.App.R.(S.) 80. . . .474
Delaney, M.S. [2003] 2 Cr.App.R.(S.) 81 . . .477
Dickson, A. [2003] 2 Cr.App.R.(S.) 75 452
Donovan, T. [2003] 1 Cr.App.R.(S.) 6 27
Dunn, M. [2003] 2 Cr.App.R.(S.) 90 535
Elkington, W. [2003] 2 Cr.App.R. 112 662
F. A. and Others [2003] 4 Cr.App.R.(S.) 84. 503
Field, B.J., Young, A. [2003] 2 Cr.App.R.(S.) 35 175
Foggon, J.J. [2003] 2 Cr.App.R.(S.) 85 507
Francis, R.W. [2003] 2 Cr.App.R.(S.) 118. 689
Ghafoor, R.U. [2003] 2 Cr.App.R.(S.) 89 . . .531
Gibbons, J.L. [2003] 2 Cr.App.R.(S.) 34 . . .169
Gonzalez, C.J. and Sarumento, D. [2003] 1 Cr.App.R.(S.) 9. 35
Gwynn, R.M. [2003] 2 Cr.App.R.(S.) 41 . . .267
Hahn, R. [2003] 2 Cr.App.R.(S.) 106 636
Hand, B., Ricketts, D.C. [2003] 2 Cr.App.R.(S.) 68 398
Harley, R.K. [2003] 1 Cr.App.R.(S.) 3. 16

Healy, T.J. [2003] 2 Cr.App.R.(S.) 87 520
Heightley, M. [2003] 1 Cr.App.R.(S.) 19 95
Hinds, G.D. [2003] 2 Cr.App.R.(S.) 76 455
Hodgson, G.L. and Others [2003] 1 Cr.App.R.(S.) 12 46
Hooper, M. [2003] 2 Cr.App.R.(S.) 96 569
Hudson, N.L. [2003] 2 Cr.App.R.(S.) 52. . . .327
Israel, A. and Lyons, P. [2003] 2 Cr.App.R.(S.) 79 470
James, D.E. [2003] 2 Cr.App.R.(S.) 97 574
Jannaway, T.S. [2003] 2 Cr.App.R.(S.) 98. 580
Kearney, M.M. [2003] 1 Cr.App.R.(S.) 17. 85
Khan, A.J. [2003] 1 Cr.App.R.(S.) 20 100
L.M.; [2003] 2 Cr.App.R.(S.) 26 124
Law, C.M. [2003] 2 Cr.App.R.(S.) 99 593
Lees, S. [2003] 2 Cr.App.R.(S.) 47 306
Malik, W. [2003] 2 Cr.App.R.(S.) 113. 668
Mapp, R.J. [2003] 2 Cr.App.R.(S.) 44 293
McDonnell, W.L. [2003] 2 Cr.App.R.(S.) 24 117
McGuire, G. [2003] 1 Cr.App.R.(S.) 10 40
McKinnon, N. and White, A.R. [2003] 2 Cr.App.R.(S.) 29 133
McInerney, W.J. [2003] 2 Cr.App.R.(S.) 39. 240
McWilliam, M.J. and McWilliam, S.D. [2003] 1 Cr.App.R.(S.) 1. 1
Melender, D. [2003] 2 Cr.App.R.(S.) 63 . . .370
Millberry, W.C. and others [2003] 2 Cr.App.R.(S.) 31 142
Najeeb, P. [2003] 2 Cr.App.R.(S.) 69. 408
Nazir, K. [2003] 2 Cr.App.R.(S.) 114 671
Newton, A.R. [2003] 2 Cr.App.R.(S.) 72 . . .437
O'Brien, D.P. [2003] 2 Cr.App.R.(S.) 100. 599
O'Brien, R.S. [2003] 2 Cr.App.R.(S.) 66 . . .390
O'Carroll, T.V. [2003] 1 Cr.App.R.(S.) 21. 104
O'Hara, B. [2003] 2 Cr.App.R.(S.) 25 121
Oliver, M.D. and Others [2003] 1 Cr.App.R.(S.) 15 64
Palmer, J. (NO. 2) [2003] 1 Cr.App.R.(S.) 2 5
Parfeni, A. [2003] 2 Cr.App.R.(S.) 61 362
Parkinson, S.D. [2003] 2 Cr.App.R.(S.) 32. 160
Phillips, C. [2003] 1 Cr.App.R.(S.) 14 61
Price, D. [2003] 2 Cr.App.R.(S.) 73. 440
R. v Avon Lippiatt Hobbs (Contracting) Ltd [2003] 2 Cr.App.R.(S.) 71 427
R. v Yorkshire Sheeting and Insulation Ltd [2003] 2 Cr.App.R.(S.) 93 548
R. (on the application of Cunningham) v Exeter Crown Court [2003] 2 Cr.App.R.(S.) 64 374
Ratcliffe, A.D. [2003] 2 Cr.App.R.(S.) 62. 367
Riahi, F.A. [2003] 1 Cr.App.R.(S.) 7 29
Robinson, P. [2003] 1 Cr.App.R.(S) 13 54
Robinson, S. [2003] 2 Cr.App.R.(S.) 86 . . .515
Ruffell, S.D. [2003] 2 Cr.App.R.(S.) 53 . . .330
Sallis, A.E. [2003] 2 Cr.App.R.(S.) 67 394
Schilling, R. [2003] 2 Cr.App.R.(S.) 45. . . .295
Sharpe, M.A. and Ors [2003] 2 Cr.App.R.(S.) 82 480
Smart, D.E. [2003] 3 Cr.App.R.(S.) 65 384
Smith, J. [2003] 1 Cr.App.R.(S.) 4 18
Starsmeare, S.E. [2003] 2 Cr.App.R.(S.) 77. 461
Stocker, D.P. [2003] 2 Cr.App.R.(S.) 54 . . .335
Sullivan, F.P. [2003] 2 Cr.App.R.(S.) 91 . . .540
Toor, A.H. and Toor, M.H. [2003] 2 Cr.App.R.(S.) 57 349
Vear, P.B. [2003] 2 Cr.App.R.(S.) 27. 129
Walker, L.C. [2003] 2 Cr.App.R.(S.) 58 . . .351
White, D.S. [2003] 2 Cr.App.R.(S.) 59 354
Wilkes, G.J. [2003] 2 Cr.App.R.(S.) 105 . . .625
Willoughby, A.S. [2003] 2 Cr.App.R.(S.) 60. 357
Witten, S.J. [2003] 1 Cr.App.R.(S.) 8 33

Table of Statutes

1861 Offences Against the Person Act (24 & 25 Vict. c.100)
s.18 . . . . . 26[1]
s.20 . . 12[22], 26[H3], 26[1], 43[4], 72[6]
s.22 . . . . . 87[13]
s.47 . . . . . 72[7], 116[3]
1889 Public Bodies Corrupt Practices Act (c.52 & 53 Vict. c.69)
s.1(1) . . . . . 65[1]
1906 Prevention of Corruption Act (6 Edw.7 c.34) . . . . . 117[10]
1933 Children and Young Persons Act (c.23 & 24 Geo. 5 c.12)
s.1(1)(a) . . . . . 55[1]
1956 Sexual Offences Act (4 & 5 Eliz. 2 c.69)
s.5 . . . . . 70[1]
s.6 . . . . . 76[12]
s.14 . . . . . 15[41]
s.14(1) . . . . . 115[2]
1957 Homicide Act (c.11) . . . . . 42[10]
s.3 . . . . . 42[H3], 42[11], 42[23]
1964 Criminal Procedure (Insanity) Act (c.84) . . . . . 35[H4], 35[22]
s.4A . . . . . 35[22]
1967 Criminal Justice Act (c.80)
s.17 2[5], 14[1]—41[3], 63[2], 68[26]
s.56 . . . . . 41[8]
s.67 . . . . . 54[9]
1968 Criminal Appeal Act (c.19)
s.11(1)(a) . . . . . 26[6]
s.11(3) . . . . . 67[7]
Firearms Act (c.27) . . . . . 37[11]
s.57 . . . . . 37[12]
Theft Act (c.60)
s.7(7)(a) . . . . . 34[49]
s.9 . . . . . 39[18]
s.10 . . . . . 116[2]
s.12(1) . . . . . 29[10]
s.15 . . . . . 34[50]—34[52]
s.15(2) . . . . . 34[50]
1971 Courts Act (c.23)
s.7(4) . . . . . 38[H24], 38[32]
Misuse of Drugs Act (c.38) . . . . 33[6], 33[8], 101[4]
Sch.4 . . . . . 67[6]
Criminal Damage Act (c.48)
s.1 . . . . . 41[H4], 41[5]
1973 Powers of the Criminal Courts Act (c.62)
s.22(3) . 112[H4], 112[21]—112[23]
1974 Health and Safety at Work etc Act (c.37) 71[H1], 93[H1], 93[2], 93[23]
s.2(1) . 71[H3], 71[1], 71[16], 71[37]
s.3(1) . 71[H3], 71[1], 71[15], 93[3], 93[20]
1974 Rehabilitation of Offenders Act (c.53) 35[14], 35[40]
1976 Bail Act (c.63) . . . . . 25[H3]
s.6 . . . . . 29[H3], 29[H4], 29[2]
1978 Protection of Children Act (c.37) 15[7]
s.1 . . . . . 15[7], 15[32], 87[1]
s.1(1) . . . . . 15[H3], 15[3]
s.1(1)(a) . . . . . 15[41]
s.1(1)(b) . . . . . 15[41]
s.6 . . . . . 15[32]
1979 Customs and Excise Management Act (c.2)
s.170(1)(b) . . . . . 38[68]
1980 Licensed Premises (Exclusion of Certain Persons) Act (c.32) . . . . 46[H1], 46[H2], 46[H3]
s.1 . . . 46[1], 46[10], 46[13], 46[16]
s.2 . . . . . 46[12]
s.3 . . . . . 46[12], 46[13]
s.4(1) . . . . . 46[7], 46[11]
s.4(3) . . . . . 46[12]
Magistrates Courts Act (c.43)
s.17 . . . . . 41[5]
s.17A . . . . . 67[H1], 67[H3], 67[5]
s.22 . . . . . 41[H4], 41[5], 41[13]
s.22(2) . . . . . 41[H4], 41[5], 41[7]
s.22(11) . . . . . 41[5]
s.24 . . . . . 26[H3], 26[1]
s.33(1) . . . . . 41[5]
s.111 . . . . . 38[11]
s.133 . . . . . 41[8], 74[H6]
s.133(1) . . . . . 41[H4], 41[6], 74[15]
s.133(2) . . . . . 74[15]
Sch.1, para.29 . . . . . 41[5]
Sch.2 . . . . . 41[7], 41[9]
1981 Supreme Court Act (c.54)
s.43 . . . . . 74[H6], 74[17]
s.79(3) . . . . . 64[H3], 64[2]
1982 Local Government (Miscellaneous Provisions) Act (c.30) . . . . . 64[H3]
Sched.1, para.12(2) . . . . . 64[1]
Criminal Justice Act (c.48) . . . . . 97[9]
1983 Mental Health Act (c.20) . . . . 17[H1], 17[10], 17[15], 100[14]
s.37 . 17[H3], 17[H4], 17[1], 17[11], 17[18], 17[19], 17[21]
s.41 . . 17[H2]–17[H4], 17[1], 17[2], 17[11], 17[21]–17[23], 17[27], 17[28]
s.41(1) . . . . . 17[5]
1985 Prosecution of Offences Act (c.23)
s.16 . . . . . 64[H1], 64[H4], 64[5]
s.18 . . . . . 65[17]
1986 Drug Trafficking Offences Act (c.32) 35[32], 35[37], 38[H9], 38[6], 38[10]
Public Order Act (c.64) . . . . . 41[11]
s.2(1) . . . . . 12[H3], 12[1]

1986 Public Order Act (c.64)—*cont.*
s.4A . . . . . 41[11]
1987 Criminal Justice Act (c.38)
s.12(3) . . . . . 36[27]
1988 Criminal Justice Act (c.33) 4[1], 15[7], 34[H1], 38[H8], 38[H12], 38[H19], 38[H35], 38[6], 38[10], 38[12], 38[20], 38[27], 38[36], 38[57], 38[58], 38[75], 65[H1], 65[H4], 65[22], 85[H1], 85[H4], 85[4], 85[5], 98[H1], 98[H2], 98[H6], 98[10], 98[17], 98[19], 98[20], 98[24], 101[16], 105[H1]
Pt IV . . . . . 38[H11], 38[18]
Pt VI . . 38[H9], 38[6], 38[9], 38[16]
s.36 . . . . 42[5], 43[6], 50[1], 55[4], 55[34], 70[2], 78[1], 83[1], 92[1], 95[1], 102[1], 107[1], 108[1], 109[1], 110[1], 111[1], 115[1], 116[1]
s.40 . . . . . 41[H4], 41[7]
s.40(2) . . . . . 41[8]
s.41 . . . . . 63[1], 63[2]
s.71 4[2], 4[5], 34[2], 34[58], 38[H8], 38[H23], 38[6], 38[7], 38[11], 38[13], 38[30], 38[82], 65[12], 85[H2], 98[H3], 98[H4], 98[H6], 98[1], 98[4], 98[10], 101[H1], 101[H4], 101[10], 101[11], 105[H3]—105[H4], 105[2], 105[7], 105[23], 105[34]
s.71(1) . . . . . 38[13], 38[21], 85[26], 98[H4], 98[H6], 98[9], 98[12], 98[13], 98[15], 98[17], 98[24]
s.71(1)(a) . . 38[52], 85[9], 101[H4], 101[2], 101[6]
s.71(1)(d) . . . . . 101[H4], 101[6]
s.71(1B) . . . . . 105[19]
s.71(1C) . . . . . 98[21]
s.71(1)–(7) . . . . . 85[6]
s.71(2) . . . . . 38[21]
s.71(2)(b)(i) . . . . . 38[11]
s.71(4) . . . 4[1], 4[4], 4[18], 34[H4], 34[49], 34[52], 34[59], 38[H8], 38[8], 38[75], 85[H4], 85[9], 85[10]—85[12], 85[16], 85[18], 85[21], 98[22], 101[H4], 101[H5], 101[6], 105[H2], 105[H5], 105[12], 105[16], 105[23], 105[24], 105[32]
s.71(5) . . . . 85[H4], 85[10], 85[19], 98[14], 98[22], 101[H4], 101[6], 105[H5], 105[12], 105[23], 105[24], 105[32]
s.71(6) . . . . . 38[80, 38[82], 38[83], 105[19]
s.71(7A) . . . . . 38[9], 38[83]
s.71(7A)(c) . . . . . 105[20]
s.71(9)(c)(ii) . . . . . 105[12]
s.71(10) . . . . . 105[16], 105[17]
1988 Criminal Justice Act (c.33)—*cont.*
s.72 . . . . 38[H8], 38[H23], 38[H24], 38[H29], 38[6], 38[8], 38[11], 38[30], 38[32], 38[51], 38[70], 98[10], 98[18]
s.72(1) . . . . 38[H8], 38[H23], 38[8], 38[31], 38[52]
s.72(2) . . . . . 38[H8], 38[8], 65[12]
s.72(3) 65[12], 98[H5], 98[9], 98[15], 98[19], 98[21]
s.72(4) . . . . . 38[H35], 38[63]
s.72(5) . . . . 65[H4], 65[20], 65[22], 98[19]
s.72(5)(b) . . . . . 38[11]
s.72(5)(c) . . . . . 38[11]
s.72(7) . 98[H5], 98[15], c#98[19]—98[20]
s.72A . 38[H9], 38[H19], 38[H35]—38[H37], 38[9], 38[11], 38[27], 38[62], 38[63], 38[65], 38[71], 65[13]
s.72A(4) . . . . . 101[2]
s.72A(5) . . . . . 65[H4], 65[17]
s.72A(6) . . . . . 38[H20], 38[27]
s.72AA . 4[H1], 4[H2], 4[H4], 4[2], 4[13], 4[14], 4[18], 38[14], 105[H1], 105[H2], 105[H4], 105[H5], 105[9]—105[11], 105[13], 105[23], 105[28]—105[30], 105[33]
s.72AA(1) . . . . . 4[2]
s.72AA(2) . . . . . 4[2], 105[11]
s.72AA(3) 105[H4], 105[H5], 105[7], 105[13], 105[21]
s.72AA(4) 105[H5], 105[14], 105[21]
s.72AA(5) . . . . . 105[H5], 105[15]
s.72AA(5)(c) . . . . . 105[H4], 105[7], 105[21]
s.72AA(6) . . . . . 105[16], 105[18]
s.73 . . . . . 38[H8], 38[6], 38[15]
s.73A . . . . . 38[16]
s.74 38[H8], 38[6], 101[12], 105[19]
s.74(5) . . . . . 85[8]
s.75 . . . . . 38[6]
s.75A . . . . . 98[24]
ss.76–79 . . . . . 38[6]
ss.80–82 . . . . . 38[6]
s.102(1) . . . . . 85[7]
s.102(5) . . . . . 85[7], 85[17]
s.160 . . . . . 15[7]
s.160(1) . . . . . 15[H3], 15[5]
1989 Football Spectators Act (c.37)
s.14A . . . . . 35[H4], 35[23], 35[24]
s.14A(4)(a) . . . . . 35[25]
s.14B 35[H4], 35[23], 35[24], 35[46]
s.14B(4)(a) . . . . . 35[24]
1990 Computer Misuse Act (c.18)
s.2(1)(b) . . . . . 80[H3], 80[1]
Aviation and Maritime Security Act (c.31)
s.1(2)(b) . . . . . 47[H3], 47[1]

1990 Aviation and Maritime Security Act (c.31)—*cont.*
s.1(5) . . . . . 47[H3], 47[1]
1991 Criminal Justice Act (c.53) . . . 115[24]
s.2(2)(b) . . . . . 83[21]
s.33 . . . . . 54[10]
s.39 . . . . . 54[3], 54[7], 54[9]
s.39(1) . . . . . 54[H4]
s.40 . . . . . 54[7]
s.47(2) . . . . . 36[33]
Sch.2, para.3 . . . . . 74[H4]
Sch.2, para.3(1)(d) . . . . . 74[9]
1992 Sexual Offences (Amendment) Act (c.34) . . . . . 31[6]
1993 Criminal Justice Act (c.36) . . . . . 4[2], 38[H9], 38[H11], 38[9], 38[18], 38[57], 38[58], 38[75]
Pt III . . . . . 38[9]
s.27 . . . . . 38[9]
ss.27–35 . . . . . 38[9]
s.28 38[H9], 38[H19], 38[9], 38[27]
1994 Criminal Justice and Public Order Act (c.33) 31[6], 38[H10], 38[12], 76[21]
s.25 . . . . . 35[22]
s.51 . . . . . 40[H2], 40[H3]
s.51(2) . . . . . 40[1]
s.51(6) . . . . . 40[1]
s.142 . . . . . 31[6], 76[H4], 76[8]
Drug Trafficking Act (c.37) . 38[H36], 38[36], 38[38], 38[40], 38[49]
s.2 . . . . . 38[65]
s.3 . . . . . 38[H25], 38[40], 38[65]
s.3(1) . . . . . 38[50]
1995 Proceeds of Crime Act (c.11) . . . 4[2], 38[H10], 38[H19], 38[H23], 38[12], 38[17], 38[18], 38[52], 38[57], 38[58], 38[75], 85[H4], 85[4], 85[5], 105[H4], 105[9]
s.1 . . . . . 38[13], 105[7]
s.2 . . . . . 38[14], 105[11]
s.3 . . . . . 38[15]
s.4 . . . . . 38[16]
ss.5–10 . . . . . 38[17]
1996 Family Law Act (c.27) . . . . . 95[4]
1997 Protection from Harassment Act (c.40)
s.2 . . . . . 45[13]
s.4 . 45[H3], 45[H4], 45[13], 45[14]
Crime (Sentences) Act (c.43) . . 39[15]
Pt IV . . . . . 39[7]
s.2 . . . 31[6], 37[H3], 37[H4], 37[1], 37[10], 37[14], 37[17], 37[19]
s.3 . . . . . 60[6]
s.3(2) . . . . . 60[6]
s.3(3) . . . . . 60[6]
s.28 . . . . . 37[H3], 37[1], 37[25]
Sex Offenders Act (c.51) . . . . 15[H3], 15[H6], 15[H13], 15[14], 15[23], 15[29], 21[21], 31[57], 35[50]
Pt 1 . . . . . 15[6]
s.1 . . . . . 15[27], 106[6]
s.1(4) . . . . . 15[28]
1998 Crime and Disorder Act (c.37) 23[H2], 23[H3], 31[35]
s.1 . . . . . 35[H4]
s.2 . . 35[H4], 35[48], 35[53], 35[54]
ss.29–32 . . . . . 66[8]
s.30 . . . . . 66[2]
s.82 . . . . . 66[7]
s.51 41[H1], 41[H2], 41[H4], 41[9], 116[3]
s.52(6) . . . . . 41[H4], 41[9]
s.53 . . . . . 116[14]
s.80(3)(d) . . . . . 39[8]
Sch.3 41[H2], 41[H4], 41[9], 41[13]
Sch.3, para.14 . . . . . 41[H4]
Sch.3, para.14(3) . . . . . 41[9]
Human Rights Act (c.42) . . . . 38[19], 64[12]
s.3 . . . . . 35[H4], 35[18], 37[14]
1999 Protection of Children Act (c.14) 15[6]
s.9 . . . . . 35[15]
Immigration and Asylum Act (c.33) 57[8]
2000 Powers of the Criminal Courts (Sentencing) Act (c.6) . . . 10[H3], 10[4], 12[35], 35[H4], 35[1], 35[4], 35[7], 35[9], 35[10], 35[17], 35[25], 35[36], 35[58], 35[59], 38[H21], 38[28], 54[12], 112[21]
Pt 2 . . . . . 35[36]
s.3 . . . 15[23], 41[H4], 41[5], 50[3], 67[H3], 67[5], 67[7], 67[8], 74[H5]
s.3(2) . . . . . 74[12]
s.4 . . 67[H1]—67[H3], 67[1], 67[5], 67[7], 74[H3], 74[H5], 74[H6], 74[4], 74[8], 74[11], 74[14], 112[1]
s.4(1) . . . . . 67[6]
s.4(1)(d) . . . . . 74[9]
s.4(2) . . . . . 67[6], 74[11]
s.4(4) . . . . . 67[6]
s.4(5) . . . . . 67[6]
s.5 . . . . . 67[5]
s.5(1) . . . . . 67[H3]
s.6 . . 74[H3], 74[H6], 74[4], 74[13], 74[16], 112[1]
s.7 . . . . . 74[H6]
s.7(1) . . . . . 74[13], 74[14]
s.11 . . . . . 12[34]
s.14(11) . . . . . 38[H21], 38[28]
s.26 . . . . . 35[12]
s.28 35[H1]—35[H4], 35[1]—35[4], 35[7], 35[10], 35[11], 35[13], 35[15], 35[18], 35[21], 35[25], 35[27], 35[30], 35[34], 35[36]—35[38], 35[44], 35[46], 35[47], 35[49]—35[51], 35[54], 35[57]—35[61]
s.28(1) . . . . . 35[22]
s.28(2)(a) . . . . . 35[60]
s.28(3) . . . . . 35[22]
s.28(5) . . . . 35[H4], 35[22], 35[27], 35[36], 35[40]

2000 Powers of the Criminal Courts (Sentencing) Act (c.6)—*cont.*
s.29 . . . . . 35[36]
s.29(4) . . . . . 35[36]
s.30 . . . . . 35[12]
s.31(1) . . . . . 35[14]
s.32 . . . . . 35[15], 35[31]
s.32(3) . . . . . 35[15]
s.34 . 35[H4], 35[16], 35[31], 35[36]
s.35 . . . . . 35[13]
s.38 . . . . . 35[14]
s.42(1)(a). . . . . 50[H3], 50[4]
s.79(2) . . . . . 115[23], 115[24]
s.79(2)(a). . . . . 90[6]
s.80 . . . . . 31[H2], 31[33], 78[19]
s.80(2) . . 115[H5], 115[23], 115[24]
s.80(2)(b). . 16[H4], 16[18], 78[11], 78[17], 78[18], 78[22], 83[22], 83[25], 103[H3], 103[1]
s.81(3) . . . . . 31[35]
s.81(4) . . . . . 115[23]
s.82A . . . . . 30[H2], 37[25], 68[H2], 68[H3], 83[21], 83[22]
s.85 15[23], 16[H4], 16[22], 31[H2], 31[33], 31[36], 55[34], 89[H3], 103[1], 103[17], 103[19]
s.85(2) . . . . . 15[27]
s.86 15[41], 55[H7], 78[H3], 78[H4], 78[2], 78[24]
s.90 . . . . . 106[11]
s.91 . . 26[H2], 26[H3], 26[1], 26[3], 39[H2], 48[H3], 48[1], 106[H4], 106[10]—106[12]
s.91(1) . . . . . 106[11]
s.91(3) . . . . . 106[11]
s.93 . . . . . 106[11]
s.93(6) . . . . . 26[7]
s.100 . . 106[H4], 106[10]—106[12]
s.100(2) . . . . . 26[H3]
s.100(2)(a). . 26[H2], 26[H3], 26[4]
s.101(1) . . . . . 106[10]
s.109 . 31[6], 31[23], 32[2], 37[H4], 37[10], 37[17], 37[19]

2000 Powers of the Criminal Courts (Sentencing) Act (c.6)—*cont.*
s.109(5)(a). . . . . 10[H3], 10[4]
s.109(5)(e). . . . . 10[H3], 10[4]
s.110 39[H2], 60[H2], 60[H3], 60[5], 60[6], 60[7], 60[9], 60[11], 60[12]
s.111 . 10[H1], 10[H3], 10[1], 10[4], 10[5], 39[H2], 39[7], 39[14], 39[16], 39[27], 39[30], 39[31], 39[33], 39[35], 39[52], 39[61]
s.116 54[H1], 54[H2], 54[H4], 54[2], 54[4], 54[7]
s.118(1) . 112[H4], 112[12], 112[17]
s.118(6) . 112[H4], 112[16], 112[24]
s.119 . . . 112[H4], 112[14], 112[24]
s.19(1)(c). . . . . 112[16]
s.130(4) . . . . . 97[H4], 97[9]
s.143 . . . 9[H3], 9[1], 13[H4], 13[1], 13[26], 18[H1]—18[H4], 18[5], 18[7], 18[10], 18[11]
s.143(1) . . . . . 13[26]
s.143(5) . . . . . 18[H4], 18[5]
s.152 . 15[21], 31[H2], 31[27], 60[7]
s.152(3) . . . . 60[H3], 60[10], 60[11]
s.161 . . . . . 115[H5]
s.161(1) . . . . . 115[23]
s.161(1)(a). . . . . 115[24]
s.161(1)(b). . . . . 115[24]
s.161(4) . . . . . 16[19], 83[37]
s.200(2)(a). . . . . 26[7]
Sch.3 . . . . . 74[H5], 74[10]
Sch.3, para.4 . . . . . 74[H4]
Sch.4 . . . . . 35[12]
Criminal Justice and Courts Services Act (c.43) . . . . . 15[H3]
ss.26–34 . . . . . 15[6]
s.41(1) . . . . . 15[4]
s.41(3) . . . . . 15[5]
s.74 . . . . . 39[7]
Sch.7, para.191 . . . . . 39[7]

Table of Statutory Instruments

1971 Indictment Rules (SI 1971/1253) 38[H16], 38[24]
r.4(2) . . . . . 115[27]
1982 Crown Court Rules (SI 1982/1109) 38[H16], 38[24]
r.19 . . . . . 38[33]
2000 Education (Restriction of Employment) Regulations (SI 2000/2419) . . 15[6]
Criminal Justice and Court Services Act 2000 (Commencement No.1) Order (SI 2000/3302) . . . . 35[H4], 35[17]
2002 Release of Short-term Prisoners on Licence (Amendment of Requisite Period) Order . . . . . 39[H2], 39[9]

R. v MICHELLE JEAN MCWILLIAM, SIMON DAVID MCWILLIAM

COURT OF APPEAL (Mr Justice Hughes and Mr Justice Royce): November 1, 2002

[2002] EWCA Crim 2667; [2003] 2 Cr.App.R.(S.) 1

H1 *Cruelty to child—foster child dying as a result of injuries inflicted while in care of foster parents—length of sentence*

H2 Eight years' imprisonment upheld on each of two foster parents for cruelty to a child who died from injuries inflicted while in their care.

H3 The appellants were convicted of cruelty to a child. The appellants fostered two children, a boy aged four and his sister aged two, with a view to adoption. A third child, aged 13 months, was also in their care. The boy was seen by social workers and schools staff with bruises and abrasions to his body. The appellants explained that these had been caused either accidentally or by the boy deliberately harming himself. Later, the social worker saw that the boy had massive bruising to his face. One morning, the appellants' neighbours heard rhythmic banging for half an hour from the appellant's front bedroom. Later, the first appellant called for an ambulance. The boy was taken to hospital unconscious. He was found to have 55 separate injuries including bruises and bite marks and a split cranium. He died the next day from a large subdural haemorrhage which was thought to have been caused by impacts to the head. The appellants were arrested and maintained that the boy had inflicted the injuries on himself. The appellants were convicted by the jury after a trial. Sentenced in each case to eight years' imprisonment.

H4 **Held:** the sentencing judge had indicated that he did not sentence the appellants for murder or manslaughter, with which they had not been charged. The case had aggravating features. The sentencing judge had found on the evidence that the deceased had been coached to maintain to social workers and others that he had injured himself. Both of the appellants had lied consistently to explain away the injuries to which the boy was subject. It was unclear who had caused the physical injuries except in relation to the bite marks. The Court considered that the sentencing judge had correctly treated the appellants equally. While it was correct to say that the sentence of eight years' imprisonment was at the top end of the appropriate bracket, the Court was not persuaded that it would be right to interfere with the sentences of eight years' imprisonment in either case.

H5 **Cases cited:** *Yates* [2001] 1 Cr.App.R.(S.) 124 (p.428), *Adams and Sherrington* [1999] 1 Cr.App.R.(S.) 240.

H6 **References:** cruelty to child, *Current Sentencing Practice* B 2-7.3C

H7 *A. Bajwa* for the first appellant.
P. Forbes for the second appellant.

JUDGMENT

1 **ROYCE J.:** On October 22, 2001 in the Crown Court at Lewes, before H.H. Judge Scott-Gall, the appellants were convicted and sentenced as follows: on one offence of cruelty to a child, they both received eight years' imprisonment.

2 The facts are harrowing. The appellants fostered two siblings, a boy aged four and his sister aged two, in June 1999, with a view to adoption. A third girl, from the same family, was fostered by them when she was 13 months old, in November of the same year. The children had been taken into the care of the local authority because they were considered to be 'at risk' of sexual abuse by their natural father.

3 Throughout the time the boy, who was four years and seven months old when he died, lived with the appellants. A number of witnesses, such as social workers and staff at his school, noticed bruises, cuts and abrasions to his face and body. The appellants explained these away by telling those concerned they were caused accidentally or more often by the boy deliberately harming himself. They said that he poked and prodded his own face, he threw himself downstairs and against radiators and rubbed his face against the carpet and made himself vomit. Social workers who visited the family were also told by the boy that he had inflicted the injuries on himself.

4 During the last 10 days of his life, the number and seriousness of the injuries he received increased significantly. In particular, on December 20, a social worker who had visited the family noted that there was massive bruising to his face. The boy told him that he poked and punched his own face and hit himself against a radiator. Later that day, however, a different social worker visited the family, saw the same injuries but the boy gave a different explanation, namely that he had thrown himself downstairs.

5 On the morning of December 23, between 7.00 and 8.00, neighbours heard a rhythmic banging for half-an-hour from the area of the appellants' front bedroom. Later that morning at 8.48 a.m., Michelle McWilliam telephoned the emergency services and followed with a second call eight minutes later. Two minutes after her second call an ambulance arrived and the boy was taken to hospital in an unconscious state. On examination, his body was found to have 55 separate injuries, including bruises of various ages and not less than three bite marks, two on the leg, one on an arm and a possible further bite mark on the other arm. He also had a split cranium. A CT scan was carried out which revealed a subdural haemorrhage. He was transferred to another hospital, but he never

recovered consciousness and was certified dead at 3.30 on the morning of Christmas Eve, after the life support machine was switched off.

6 The cause of death was the large subdural brain haemorrhage and the neuro pathologist was of the view that there had been several impacts to the head, one or more of which could have caused the brain to move leading to rupture of the blood vessels which resulted in subdural bleeding over the surface of the brain. There were also signs of bleeding in the retina of each eye, again, indicative of an impact or shaking.

7 When the appellants were arrested later that day, they both maintained that the boy had inflicted the injuries on himself or, alternatively, they were accidental.

8 The learned judge who presided over the trial, lasting some three weeks, sentenced the two appellants, following these remarks:

> "Both of you were convicted by this jury, on the clearest evidence, of cruelty to a child and I regard each of you equally responsible. It is hard, having heard the evidence in this harrowing trial, to imagine a worse case. That little boy died, as a result of that cruelty at your hands, finally on 24th December; a little boy to whom you both owed a duty of care and had responsibility, in law, for. Let me make it abundantly clear that I do not sentence you this afternoon either for murder or manslaughter, you are not charged with or convicted of either of those offences.
>
> Whilst I do not doubt that you were both utterly genuine in your desire to adopt children, it is clear, from the evidence, that that was to be, so far as the children placed for adoption were concerned, on your terms and according to your own requirements and expectations. It is quite clear that little John Anthony was not to your liking; whether it was because he saw through your attempts at affection and did not respond as you thought he should, or whether you disliked his residual affection for others who had been part of his life, and resented it, only you two know the answer to that.
>
> But between the late summer and December 23, 1999, I am quite satisfied, as were the jury, that you systematically set about abusing that little boy who wanted no more out of life than to be loved and give love, you made a mockery of those wishes. You both failed him dreadfully, painfully and repeatedly. You lied and lied to members of the public, teachers and two social workers who were trying to help you; you successfully pulled the wool over their eyes, but not this jury who saw through your deceit and your crocodile tears and recognised what a cruel, heartless pair of individuals you really are."

He went on to deal with their personal mitigation, saying this: he treated them both of being of good character. He put out of his mind the two minor court appearances of the appellant Michelle McWilliam. He said both had a lot to offer society and both had let society down dreadfully. He emphasised that he had to treat them both equally in the circumstances of this case.

9 It is argued, on behalf of both appellants, that the sentence of eight years, in each case, was manifestly excessive and out of line with similar authorities. I

deal not with all of those which have been drawn to our attention, but to those which seem to us to be of greatest relevance.

10 In *Paul Yates* [2001] 1 Cr.App.R.(S.) 124 (p.428), the appellant had received a sentence of seven years' imprisonment, for manslaughter, of a three month old baby boy, by shaking that child. The facts were these. The appellant had pleaded guilty to manslaughter on the indictment charging murder. The appellant was left to care for his three month old daughter, when his wife was unwell. The child did not stop crying after feeding and the appellant shook her violently as a result of which she became limp and silent. His wife called an ambulance and the child was taken to hospital where it was found that her head was swollen because of bleeding in her brain. Attempts to relieve the condition had not been successful and the baby died. The appellant pleaded guilty on the basis that he had lost his temper with the baby and he was unable to settle her down and he had shaken her on two separate occasions. He had not subjected her to any direct violence, and had not caused the fracture of her skull which was found at postmortem. He was sentenced, as I have indicated, to a term of seven years' imprisonment.

11 The Court took the view that, in the circumstances of that case, where it was accepted that apart from the two occasions when the appellant had shaken the baby, he had been a normal and loving father. Various cases had been cited to the Court, indicating that the appropriate sentence for manslaughter of a baby was, save in the exceptional cases, one of immediate imprisonment. The range of sentence was between two and five years' imprisonment, occasionally higher when there was evidence of persistent cruel conduct. In the case of *Yates* there was no evidence of remorse. The Court was persuaded nonetheless that the sentence was excessive and the appropriate sentence was five years' imprisonment. It is to be observed that in that case there was a plea of guilty.

12 In *Adams & Sherrington* [1999] 1 Cr.App.R.(S.) 240, the appellants had each pleaded guilty to three counts of cruelty to a child. Each appellant admitted cruelty by assaulting the child. Both appellants admitted cruelty by failing to prevent ill treatment and failing to seek medical treatment. The first appellant had moved in to live with the second appellant who was bringing up her two young children. The older child, aged about 15 months was subject to a sustained course of violent treatment. The second appellant admitted squeezing her head between his legs; the first appellant admitted biting her. Other acts of violence could not be attributed to either appellant individually. Eventually the child was taken to hospital where she was found to have a fractured skull and irreversible brain damage. She died a few days later. Postmortem examination disclosed numerous injuries including bruises consistent with her face having been gripped between fingers and thumbs and bite marks. The sentence of seven years on the first appellant was upheld, but the sentence of five years on the second appellant was reduced to four years. It is argued that the facts of that case were more serious than those of the case before us. As we say, other authorities have been drawn to our attention; it seems to us that those are the two that are of the greatest relevance to this appeal. It is important to note, as we have already outlined, that in each case there were pleas of guilty.

13 The present case does have distinct aggravating features. It is clear, on the finding of the judge, that he was entitled to reach on the evidence, that this little boy had been coached by these appellants to maintain to social workers and others that he had injured himself. Secondly, it is clear, (and this is not a wholly unusual feature of these cases) that both of these appellants had lied and lied consistently to members of the public and to two social workers and to others to explain away the injuries to which this boy was subject.

14 We take into account the matters urged and attractively urged upon us by counsel for each of these appellants, in relation to personal mitigation; we also take into accountthe previous decisions of this Court, and the fact that the trial judge had, in effect, to treat each of these appellants on the basis that there had been neglect rather than direct physical abuse carried out by the particular appellant. It was unclear, apart from one aspect, who had caused the physical injuries. That one aspect related to the three bite marks that were consistent with having been caused by the male appellant but Michelle McWilliam could not have caused them from the dental evidence that was given.

15 We have considered whether it is right for the two appellants to have been treated equally by this judge. We have come to the conclusion that no one was in a better position than he to determine culpability and it would be wrong, in our judgment, to distinguish between them. Whilst it is correct to say that the sentence of eight years was at the top end of the appropriate bracket, we are not persuaded that it would be right, in either instance, to interfere with the sentences of eight years. In consequence this appeal, in each case, must be dismissed.

R. v JOHN PALMER (NO. 2)

Court of Appeal (Lord Justice Longmore, Mr Justice Poole and Judge Findlay Baker): November 4, 2002

[2002] EWCA Crim 2683; [2003] 2 Cr.App.R.(S.) 2

H1 *Conspiracy to defraud—timeshare fraud carried on over a period of years and involving large numbers of persons—length of sentence*

H2 Sentences totalling eight years' imprisonment upheld for participation in a conspiracy to defraud involving the sale of timeshares to large numbers of persons over a long period of time.

H3 The appellant was convicted of two counts of conspiring to defraud. It was alleged that over a period of about eight years in all he conspired with others to defraud owners of timeshare properties by persuading them to buy further timeshares. Potential customers were told that they could sell their existing timeshares at highly attractive prices, or that they could rent out their existing timeshare and purchase the new timeshare out of the rental income. It was alleged