Neutral Citation No: [2025] NICA 37	*Ref:* **KEE12809**
	ICOS No: **24/34065/A01**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **20/06/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

_____

THE KING

v

MICHAEL COSTAR

_____

Mr D McDowell KC with Mr M Tierney (instructed by Wilson Nesbitt Solicitors) for the Appellant
Ms L Cheshire (instructed by Public Prosecution Service) for the Crown

_____

Before: Keegan LCJ, McCloskey LJ and McLaughlin J

_____

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

We have anonymised the appellant's name to protect the identity of the complainant. She is entitled to automatic anonymity in respect of these matters by virtue of section 1 of the Sexual Offences (Amendment) Act 1992. The appellant is a referred to as a cypher to avoid jigsaw identification of the complainant.

[1] This is an appeal brought with leave of the single judge from a decision of His Honour Judge Lynch on 25 September 2024 wherein he sentenced the appellant to a total determinate custodial sentence of eight years' imprisonment split equally between custody and licence. This sentence covered a wide range of serious sexual offences as follows:

(i) Two counts, one specific and one specimen of meeting a child following sexual grooming.

(ii) Five counts, three specific and two specimen counts of sexual activity with a child, contrary to Article 16(1) of the Sexual Offences (Northern Ireland) Order 2008 ("the 2008 Order").

(iii) Fourteen counts, nine specific and five specimen of sexual activity with a child involving penetration, contrary to Article 16(2) of the 2008 Order.

(iv) One sample count of causing or inciting a child to engage in sexual activity, contrary to Article 17(1) of the 2008 Order.

(v) Four counts of making indecent photographs of children.

(vi) Three counts of possession of indecent photographs of children.

(vii) A Sexual Offences Prevention Order for seven years was also imposed. The appellant was disqualified from working with children and his name placed on the Barred List. There is no issue taken with any of these ancillary orders.

[2] We summarised our decision dismissing the appeal at the hearing with written reasons to follow. These are the written reasons of the court.

Background

[3] The background to the case is set out comprehensively in the single judge's ruling from paras [6]-[14]. From that ruling we can see that this offending took place over a three-year period between 2009 and 2012, when the complainant was aged from 13 to just before her 16th birthday and the appellant aged 39-41. Their relationship began on an on-line chat forum. Following initial on-line chats, the appellant travelled from his home in Blackburn, England to meet the victim at Lisburn train station. The appellant had told the victim he was aged 18. On meeting the appellant, the victim realised he was not 18 but she said that a level of fear compelled her to go along with the appellant.

[4] The first of the sexual offences were committed at Lisburn train station when the appellant asked the victim to remove her underwear in the toilets of the train station. He groped the victim's buttocks as they made their way to the toilets. The appellant and the victim then took the train to Belfast. Whilst on the train the appellant touched the victim by putting his hand on her leg and then moved his hand up, ultimately digitally penetrating the victim. Thereafter the appellant took the victim to a hotel telling staff that she was his niece. He locked the hotel room door and removed the victim's clothing. The appellant and victim engaged in oral sex and ultimately full sexual intercourse.

[5] Over the next two years the appellant regularly travelled to meet the victim and engage in further sexual encounters with her. On each occasion the appellant ejaculated, either into the victim's mouth or her vagina, including one occasion while the victim was on her period.

[6] On some occasions the appellant turned up in a taxi outside the victim's school. The appellant pressurised the victim into engaging in sexual acts by referring to the travel he had undertaken to come and see her and the money he had spent on travel and hotels. The victim had to take the emergency contraceptive pill on two or three occasions after encounters with the appellant. The appellant often bought the victim presents including chocolate, lingerie, DVDs and flowers.

[7] The appellant took sexual photographs and videos of the victim without seeking her consent. He told the victim that he shown some of these photos to his friends. The appellant told the victim what poses to make while he took photographs. He also recorded a video of himself engaging in full penetrative sex with the victim. The appellant told the victim not to tell anyone about the images he had taken.

[8] The victim's family moved house in October 2012. This ended the encounters between the appellant and victim, however, the appellant still sought to contact the victim. The victim later made a formal complaint to police which resulted in the appellant being arrested at his home in England and being brought to Belfast for questioning by the police. His phone was seized and examined. The phone contained 580 images and videos of the victim, 52 of which were Category A images, 42 of which were Category B and the remaining 486 were in Category C.

[9] The appellant was interviewed and during his third interview began to make admissions. He acknowledged that he knew the victim was 14 but denied that she thought he was 18. He indicated that all sexual encounters had been consensual and that he did not force the victim to do anything that she did not want to do. He accepted taking photographs of the victim.

[10] Also of note as reflected by the sentencing judge, is the considerable victim impact that this offending has had on the complainant in this case, amply set out in a victim statement and obvious from the nature of this persistent predatory behaviour that was inflicted on this victim at a very formative stage of her life.

This appeal

[11] The appeal has been argued on one discrete point. Mr McDowell KC, who has characteristically filed a comprehensive skeleton argument, submits that the starting point chosen by the judge before reduction for the guilty plea in this case was too high. That starting point was 12 years to cover all of the offending. The reduction for the guilty plea which is not under challenge was one third which led to the eight-year sentence.

[12] In analysing whether the defence argument is correct, we have considered the judge's sentencing remarks. Summarising them, they accurately refer to the maximum sentence on the headline offences being 14 years, that is for the Article 16 and 17 offences and 10 years for the indecent image offences. There is no question

that the judge applies an appropriate methodology as he correctly refers to aggravation and mitigation. In addition, the judge relied upon the Court of Appeal decision in *R v Hutton* [2024] NICA 19 which was a case of serious sexual offending involving two victims and a breach of trust. In that case the Court of Appeal found that high culpability and high harm was established. The trial judge applied consecutive sentences in respect of each victim. After considering the principle of totality the court did not interfere with a starting point of 18 years before reduction for a guilty plea which brought the final sentence to 12 years.

[13] Mr McDowell submitted that *R v Hutton* was something of an "outlier" in terms of sentencing in this area. He further argued that, whilst the offending in this case was serious, it did not sit at the very upper end of the scale because it lacked the following features, necessary to place it near the maximum such as:

- Abuse of trust.
- The use of threats or blackmail.
- Targeting of a particularly vulnerable child.
- Pregnancy or STI as a consequence of the offence.
- Severe psychological harm.
- Previous convictions for sexual offending.
- Failure to respond to previous warnings.
- The offence being committed on bail.
- Acting with others to commit the offence.
- The presence of others, especially other children.
- Racial aggravation.
- Commercial motivation.

[14] The appellant's case was therefore that the starting point was too high having regard to similar fact cases and the lack of aggravating features which would place it at the maximum end of the scale. Mr McDowell submitted that a starting point in the region of eight to nine years would have been appropriate in all the circumstances of this case. An argument was also advanced by Mr McDowell that if this case is compared with some cases in England & Wales and the England & Wales Sentencing Guidance, a lower starting point should be preferred in the region of nine years given the identified range of four to ten years.

[15] We have read the cases from England & Wales which reach lower sentences for similar offending patterns and briefly reference some of them as follows. In *R v Pipe* [2015] 1 Cr App R 42, the appellant had engaged in regular intercourse with the 15-year-old sister of a work colleague who had come to live with him. Intercourse occurred once every three or four days over a three-month period. The victim had vulnerabilities over and above her age. The offending involved grooming behaviour, a gross breach of trust, planning, the use of alcohol and ejaculation occurred. The court upheld a sentence of nine years' imprisonment

imposed after a trial, noting that it was "an extensive campaign of sexual abuse against a vulnerable 15-year-old."

[16] Mr McDowell also relied on *R v B* [2015] 2 Cr App R (S) 78, which was a case with a number of similarities to the present, with grooming behaviour and deceit about the offender's age but which also involved the use of alcohol, the use of threats and degrading conduct during their sexual contact. The defendant had previous convictions for sexual assault of five separate victims, one of whom was the same age as the victim and was assessed as dangerous such that an extended sentence was imposed. The court deemed that a custodial sentence of nine years nine months was appropriate. While the defendant had pleaded guilty, he had done so on the third day of trial such that he received no reduction therefor.

[17] In *R v Edmonds* [2017] EWCA Crim 637, a 32-year-old had a sexual relationship with the daughter of a friend who was initially aged just under 14 and who regarded him as a father-figure. We note that in that case the court accepted the submission that a starting point of 10 years should be reserved for the most serious of cases involving psychological and physical harm to the victim, pregnancy, transmission of disease, or cases where there was clear evidence of attempts to dispose of or conceal evidence or attempts to prevent the complainant from reporting matters, indicating that the starting point should have been one of seven years six months, resulting in a custodial element (to the extended sentence) of five years.

[18] Finally, in *Attorney-General's Reference (No.106 of 2014)* [2015] EWCA Crim 379, the Court of Appeal increased a sentence to one of 4½ years, with a starting point of seven years. The defendant, aged 33, pleaded guilty to five offences of sexual activity with a 15-year-old girl in hotels. Intercourse was unprotected with ejaculation outside the vagina and there was evidence of grooming and deceit.

[19] Against these decisions from England & Wales, the Court of Appeal in this jurisdiction in the more recent case of *R v Hutton,* upheld a starting point of 18 years to reflect offending in relation to two victims, with significant aggravating factors. The court also stated at para [47]:

> "In this regard we reiterate the comments of the Northern Ireland Court of Appeal in the case of *R v DM* [2012] NICA 36, that the circumstances in which this type of sexual offending occurs vary widely and so it is unwise to set prescriptive or rigid guidelines and we decline to do so."

Our conclusions

[20] We reiterate the point that cases in this area are fact sensitive and that reliable comparisons between the facts of different cases are not easy, albeit the authorities

do refer to some matters of principle. We recognise that there are some English authorities where lower sentences were imposed which are discussed by way of comparison by Mr McDowell.

[21] However there was considerable aggravation in this case. There is no issue taken with that. Ms Cheshire's skeleton argument places more emphasis on the aggravation but, in essence, the parameters of it are clear. This was a case of high culpability and high harm. The appellant accepts the offending was aggravated by the following:

- Grooming behaviour.
- Period of the offending.
- Significant degree of planning.
- Sexual images of the victim recorded and retained.
- Offender lied about his age.
- Significant disparity in age.
- Ejaculation, coupled with lack of protection hence the risk of pregnancy or STI, such that emergency contraception was required.

[22] Furthermore, Mr McDowell also accepted that the only mitigating features were the appellant's guilty plea and the absence of any previous convictions.

[23] This court has already articulated the progression in law and sentencing in this area in a case of *R v GM* [2020] NICA 49 and in *R v Hutton*. In *R v GM* the court explained at para [39] that:

> "The 2008 Order, in tandem with its English counterpart, namely the Sexual Offences Act 2003, represented the legislature's response to the growing prevalence of this kind of offending, the compelling need to protect the vulnerable, the necessity of greater deterrence and society's revulsion at this type of criminality. "

[24] To recap, the principle underlying sentencing in this area, as numerous decisions have stressed, is that a court must have the flexibility to achieve appropriate punishment taking into account the circumstances.

[25] This case concerns offending at the high end of the range involving as it did a campaign of serious sexual offending and an escalation from grooming up to serious and persistent penetrative offences that included oral and vaginal penetration on numerous occasions represented by 14 counts. Of additional significance in this case, is that the appellant engaged in further degradation of the victim by way of taking indecent photographs of her and telling her that he had shared one photograph with a friend.

[26] There was an option open to the judge in this case to consider consecutive sentences, but that is a method that is rarely enough used, although it has been used on some occasions in this jurisdiction. We cannot fault the judge for applying the principle of totality to look at an overall sentence. The only question is whether given the multiple nature of offending, the 12 years that he chose as a starting point is within a reasonable range, bearing in mind the discretion open to a sentencing judge. We do not think that he has erred in this. He was properly guided by a recent decision of this court in *R v Hutton* and by the aggravating factors in this case. Significant sentences need to be applied to this type of offending to reflect society's condemnation, particularly at the higher end.

[27] The final sentence reached is near to the maximum for the most serious offence, but not quite at it, which accommodates an even more serious case being sentenced at a higher level. We see no issue with the fact that the starting point chosen is near to the maximum for the most serious headline offence given the range of offending and the need to reach a proportionate and appropriate global sentence.

[28] As to application of the England & Wales Sentencing Guidelines, we reiterate the consistent view expressed by this court that those guidelines are not binding in this jurisdiction. The guidelines also start from a proposition that the sentences reflected in them relate to single offences, a point made in the case of *R v Pipe* which has been raised before us. Para [40] of that decision specifically refers:

> "In our judgement, whilst the Sentencing Council's guidelines are a useful indication of the appropriate range for this kind of offending, it is critical to remember that they start from the position of a single offence. If, as here, an offender is convicted of numerous, repeat offences, then he or she can expect a sentence which is towards, or at the very top of, the recommended range within the category in which that offence falls."

[29] We can see that in England & Wales these cases may result in lower sentences on the basis of the guidelines. However, that is not a reason to depart from the guidance provided by this court. If the result of our decision in this case is that sentencing for this type of sexual offending is higher in Northern Ireland, that is not a reason to then reduce the sentence that the Crown Court judge in this case imposed. We reiterate the point already made that, given society's condemnation of this type of predatory sexual offending, in future significant sentences of imprisonment should be imposed.

[30] In all of the circumstances in this case, we dismiss this appeal.