Neutral Citation No: [2026] NICA 5 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **KEE12857** *ICOS No:* **21/067334/A01** *Delivered:* **30/01/2026**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

CHRISTOPHER FULTON
and
AMANDA FULTON

Mr McNeill KC with Mr Quinn (instructed by McCrudden & Trainor Solicitors) for Amanda Fulton
Mr McMahon KC with Mr Coulter (instructed by Andrew Russell & Co, Solicitors) for Christopher Fulton Mr Hedworth KC with Ms Cheshire (instructed by the Public Prosecution Service) for the Crown

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Before: Keegan LCJ, Treacy LJ and O'Hara J

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

Reporting Restrictions

On 28 March 2025, the judge imposed a reporting restriction preventing the publication of the names or photographs of any child of the applicants. That remains in place; however, the names of the two appellants may be published.

Introduction

[1] This is an appeal against conviction brought by Amanda Fulton and an appeal against sentence by Christopher Fulton for offences perpetrated against their child referred to as "P" in this judgment.

[2] We refer to the bill of indictment as follows:

Count 1

Both Amanda Fulton and Christopher William Ross Fulton were jointly charged with causing grievous bodily harm with intent, contrary to section 18 of the Offences against the Person Act 1861.

Particulars of offence

Amanda Fulton and Christopher William Ross Fulton on a date unknown between the 5th day of November 2019 and the 8th day of November 2019, unlawfully and maliciously caused grievous bodily harm to a child with intent to do him grievous bodily harm.

Count 2

Again, both were jointly charged with causing or allowing a child or vulnerable adult to suffer serious physical harm, contrary to section 5(1) of the Domestic Violence, Crime and Victims Act 2004.

Particulars of offence

Amanda Fulton and Christopher William Ross Fulton, on a date unknown between the 5th day of November 2019 and the 8th day of November 2019, a child, having suffered serious physical harm as a result of an unlawful act, were at the time of the act a member of the same household as the child and had frequent contact with the child and at that time there was a significant risk of serious physical harm caused to the child by the said unlawful act, and you either caused the serious physical harm or were or ought to have been aware of the risk and failed to take such steps as you could reasonably have been expected to take to protect the child from that risk and the act occurred in circumstances of the kind that you foresaw or ought to have foreseen.

Count 3

Both again were jointly charged with cruelty to children, contrary to section 20(1) of the Children and Young Persons Act (Northern Ireland) 1968.

Particulars of offence

Amanda Fulton and Christopher William Ross Fulton, on a date unknown between the 5th day of November 2019 and the 8th day of November 2019, being a person who has attained the age of 16 years and having the custody, charge or care of a child, a child or young person under that age, wilfully neglected the said child in a manner likely to cause unnecessary suffering or injury to health.

Count 4

Both again were jointly charged with cruelty to children, contrary to section 20(1) of the Children and Young Persons Act (Northern Ireland) 1968.

Particulars of offence

Amanda Fulton and Christopher William Ross Fulton, on a date unknown between the 17th day of October 2019 and the 2nd day of November 2019, being a person who has attained the age of 16 years and having the custody, charge or care of a child, a child or young person under that age, wilfully neglected the said child in a manner likely to cause unnecessary suffering or injury to health.

This appeal

[3] Both appellants appeal with leave of the single judge to this court. Amanda Fulton appeals her conviction on two counts, namely count 2 and count 3 - that is causing or allowing a child to suffer significant or serious physical harm and child cruelty. Amanda Fulton was acquitted on count 1 and count 4. The timeframe of offending which encompasses Amanda Fulton's conviction is from 5 November 2019 to 8 November 2019. Amanda Fulton was acquitted of the more serious grievous bodily harm with intent charge encompassed in count 1 and with the additional cruelty count 4 which covered a wider period from 17 October 2019 and 2 November 2019. Amanda Fulton was sentenced to a determinate custodial sentence comprising two years in custody and two years on licence.

[4] Christopher Fulton was convicted of count 1 – the grievous bodily harm with intent charge. He was acquitted of count 2. He was also convicted on count 3 – cruelty to children between the period 5 November 2019 and 8 November 2019, and count 4 – cruelty to children, between the longer period of 17 October 2019 to 2 November 2019. Christopher Fulton was sentenced to an extended custodial sentence comprising 22 years in custody and five years on licence. This was imposed in respect of the section 18 grievous bodily harm with intent charge. In addition, on the two cruelty charges, counts 3 and 4 he was given a sentence of seven years custody running concurrently with each other and concurrent to the headline sentence on the grievous bodily harm with intent.

Factual background

[5] We begin with the case trajectory. Both appellants were returned for trial to Antrim Crown Court on 23 September 2021. They were arraigned on 16 March 2022 and entered not guilty pleas to the four counts they both faced. The first trial in this case took place from 15 January 2024 to 6 February 2024 at which stage it was abandoned. The second trial began on 10 September 2024 and concluded on 9 October 2024 when the jury returned unanimous verdicts as outlined above. Both appellants were sentenced as detailed above on 4 April 2025.

[6] Christopher Fulton and Amanda Fulton are the parents of P, who was born in October 2019. On 7 November 2019, Christopher Fulton contacted a general practitioner about his son having a raw throat and not feeding. The child had been in the care of his parents from the evening before and throughout that night and no one else had contact with him. It was apparent that Christopher Fulton had conducted internet searches in the early hours of that morning about a sore throat or raw throat in infants. It is reported that Christopher Fulton conveyed no sense of urgency during the call to the GP surgery and was later called back and advised that an appointment was available later that day to see the GP. Christopher Fulton had, in the meantime, contacted Antrim Hospital but this call was abandoned as the GP did ring back. A significant aspect of the case history is that Christopher Fulton lied to Amanda Fulton about calling the GP at 10:00 hrs as the call was much later in the afternoon at approximately 13:40 hrs.

[7] When Christopher Fulton attended with the GP, the GP found P to be unresponsive with a bulging fontanelle. The GP suspected a serious head injury and arranged an urgent hospital transfer. It is reported that paramedics described P as "frighteningly pale" and unresponsive. However, Christopher Fulton appeared unconcerned. A CT scan revealed a skull fracture and subdural bleeding necessitating emergency neurosurgery.

[8] P was also found to have suffered significant other injuries, namely liver lacerations and 27 rib fractures which occurred on at least two occasions, fractures in both thigh and shin bones from pulling, twisting or violent shaking, extensive retinal haemorrhages suggestive of shaking and severe traumatic brain injury. Medical experts indicated the injuries resulted from significant impact and violent shaking in P's condition would have been obviously abnormal with a potentially better outcome if immediate medical aid had been sought. One expert stated that the injuries could not occur without someone present being aware.

[9] A further feature of this case is that witnesses gave evidence of concerning behaviour in the household including when Christopher Fulton blew in P's nose and Amanda Fulton told him to stop, when Christopher Fulton smacked P while winding him during which time Amanda Fulton was present and did nothing. Amanda Fulton also described Christopher Fulton bouncing P roughly. As to this, the prosecution case was that Amanda Fulton, while not directly assaulting P, failed to protect P or seek timely medical aid despite clear signs of serious illness and Christopher Fulton's rough handling. Both Christopher Fulton and Amanda Fulton failed to act on the signs of concern in respect of P's condition.

[10] Christopher Fulton and Amanda Fulton were both arrested when police were made aware of P's presentation with apparent non-accidental injuries. In police interviews, both Christopher Fulton and Amanda Fulton claimed P had fed well before midnight on 6/7 November and settled. They stated that P took a feed at midnight, they both fed P in the bedroom, and then they went to sleep. They asserted

that P woke around 04:00 hrs, alert but refusing milk, and again at 07:00 hrs still refusing milk. They claimed that when P woke shortly before 10:00 hrs, P was sleepy and would not feed, prompting them to contact the GP. Neither defendant mentioned Christopher Fulton's internet searches about a sore throat or that P was suffering from one. They both denied knowing how P sustained the injuries and stated they could not believe the other defendant would cause them.

[11] P was in intensive care for 10 days and required deep sedation during that period. Various medical experts all testified to the very severe assault which the child had suffered. As a result of the traumatic brain injury P has been left with the following disabilities:

(i) Severe dystonic cerebral palsy affecting all four limbs.

(ii) Severe visual impairment in that he is blind.

(iii) Severe intellectual disability in that he is unable to speak and communicates mainly by crying.

(iv) Epilepsy.

(v) Cerebral irritability which causes spells of prolonged crying during which he cannot be comforted.

(vi) His nutrition is given artificially by means of a feeding tube.

(vii) He is unable to eat or swallow safely due to his brain injury.

(viii) He has a life limiting condition.

[12] Neither of the appellants have any relevant criminal record. The pre-sentence report reports refer to positive upbringings of both Amanda Fulton and Christopher Fulton. Christopher and Amanda Fulton are also the parents of two older daughters.

[13] However, reporting on Christopher Fulton, the probation officer characterised his position as one of continued denial of the offences and that Christopher Fulton did not demonstrate victim empathy or remorse for his own actions. Christopher Fulton was assessed as posing a high risk of serious harm to a child and a high risk of reoffending. By contrast Amanda Fulton was assessed as presenting with a low likelihood of reoffending and she was not considered to meet the threshold for significant risk of serious harm.

Victim impact

[14] There is a powerful and compelling victim statement filed by the foster mother of P which we have read. This statement was read at the lower court by her with the permission of the judge. As the judge recorded, this woman was the best person to outline to the court the day-to-day interaction that she has with P, and the devastating effects that his injuries have had upon him. This foster mother outlined in graphic detail how the injuries sustained have affected P in every way in that he is non-verbal, blind, life-limited and severely disabled.

[15] We cannot fail to be struck by the extent of the damage caused to P by the actions of Christopher Fulton who committed the index serious offence and who effectively caused an injury which was as close to death as it could have been. Against that awfulness, the foster mother has unselfishly and with great love and empathy taken on the care of this severely compromised child. She is an example of all that is good in our society in the midst of all that is bad.

Grounds of appeal

[16] The appeal against conviction by Amanda Fulton comprises two inter-related grounds as follows:

(i) That the trial judge misdirected the jury in relation to emotion of witnesses, including the accused, in circumstances where the credibility of the accused and witnesses was central to the case against the accused and where the jury were in law properly entitled to assess the presentation, demeanour and emotional responses of the accused and any other witnesses.

(ii) That the trial judge failed to remedy the above misdirection in the context of a requisition prior to the retirement of the jury.

[17] The appeal against sentence by Christopher Fulton is based on four grounds:

(i) The judge failed to identify a starting point for the headline offence and then imposed a sentence almost 50% more than the maximum range without offering a reason for such a substantial deviation.

(ii) The judge imposed identical sentences for counts 3 and 4 despite the circumstances of the offending differing greatly.

(iii) The disparity in sentence on count 3 between Christopher Fulton and Amanda Fulton was such as to create a sense of injustice.

(iv) The judge erred in imposing an extended licence at the maximum period available.

Our consideration of the grounds of appeal

(i) The conviction appeal – Amanda Fulton

[18] The conviction appeal focusses on the adequacy of the judge's charge to the jury on emotion or demeanour. This issue arose during a lengthy charge given by the trial judge over five days when the judge was dealing with the evidence of a witness in the case, Easther McCook, who had become distressed when giving evidence.

[19] On 7 October 2024, so four days into his charge, while reviewing the evidence of Ms McCook's evidence, who began to cry and was distressed when giving her evidence. As a result, the judge provided a direction to the jury concerning emotion displayed during trial framed in the following terms:

> "Now, I just want to give you, at this point in time, a direction upon emotion which is expressed during the course of the trial, whether that be from this particular witness or whether that be from one of the defendants in this case and, in particular, that undoubtedly came from Amanda."

[20] The judge continued:

> "The situation is, as you will appreciate, some witnesses who are giving evidence before you may become distressed and emotional. Some may be calm and unemotional. People react in different ways, obviously, when coming to a court, and it is quite possible for a witness to become distressed when giving evidence, whether or not their account is true."

[21] The judge further instructed the jury on how to approach such displays as follows:

> "So when you see emotion, when you see distress, that is not an indicator, and that is a fact which the courts have taken into account on very many occasions, that it is not a reliable indication of whether the person is telling the truth or being accurate. What you have to focus upon is, effectively, the quality of the evidence that is being given and your assessment of that evidence, members of the jury."

[22] Later on the same day, 7 October 2024, when reviewing the evidence given by the appellant Amanda Fulton, the judge referred to an instance of her displaying

emotion. In the course of this part of his charge he referred back to his earlier direction which had arisen when dealing with the evidence of Easther McCook and said this:

> "And you may recall at that particular juncture when giving her evidence-in-chief, she became emotional and she started to cry, and I have given you the direction which is appropriate in relation to the direction on emotion and how you should approach that in this particular case."

[23] The next day on 8 October 2024, after the judge had concluded the charge and the jury had briefly retired, counsel for Amanda Fulton raised several requisitions. As is apparent from the skeleton argument filed by the defence, most of these requisitions are inconsequential for present purposes. However, one requisition is material in relation to the judge's direction on emotion.

[24] Counsel submitted that the direction that "the presence of emotion is not a reliable indication of whether someone is telling the truth" was too prescriptive and incorrect because how a witness says something can be as important as what they say. Counsel argued that it was a matter for the jury whether an expression of emotion was genuine and assisted in assessing truthfulness.

[25] The judge responded to this requisition, stating:

> "And if they became emotional or were in tears at that particular time - and this applied equally to Easther McCook and to Amanda Fulton - and the direction that I gave the jury in relation to effectively tears or emotion at that stage comes directly from the guidance as given to me from the Compendium."

[26] Following further submissions from counsel that the Crown Court Compendium ("the Compendium") might be wrong or might not support such a definitive direction, the judge maintained the direction. The judge read out the direction given to the jury again as follows:

> "Some of the witnesses who give evidence to you become distressed and emotional. Some are calm and unemotional. People react in different ways when coming to court. It is possible for a witness to become distressed from giving evidence, whether or not their account is true. The presence or absence of emotion when giving evidence is not a reliable indication of whether the person is telling the truth and being accurate or not."

[27] The judge concluded the discussion on this point by stating, "Well, that's - that's your submission. I am not going to alter that."

[28] The sole question that arises is whether the jury were properly equipped to consider not just the emotional reaction of Easther McCook when giving evidence, but the emotional reactions of Amanda Fulton. There are two elements to the submission now made by the defence namely - that the judge should have given a further direction in relation to Amanda Fulton's evidence, but also that the judge should have expanded the direction in relation to assisting the jury on the issue of Amanda Fulton's demeanour or emotion when confronted by the injuries sustained by her baby at the hospital.

[29] This aspect of contemporaneous emotion took on most significance during the appeal, notwithstanding the fact that it was not raised as part of the requisition which, as the defence accept, was related to evidence given at trial. Nonetheless, we have had to consider this issue to determine whether the jury were misdirected or were not fully directed and whether, if there is any deficiency in the judge's charge, the convictions of Amanda Fulton are safe.

[30] Why this aspect of the case takes on some significance is because, the emotional reactions of both Amanda Fulton and Christopher Fulton were substantially raised during the trial and relied on by both the prosecution and the defence. Amanda Fulton's defence maintained that her emotional reactions worked in her favour as she was stressed about what happened to her child and this is corroborated by a range of independent medical professionals who saw her at the time when the injuries became apparent, whereas Christopher Fulton was not. The prosecution also relied upon this difference in presentation against Christopher Fulton.

[31] Amanda Fulton's defence was that her demeanour and emotional responses witnessed close in time to the events in question had probative value consistent with and corroborative of her lack of relevant knowledge. This evidence included:

- Paramedics' observations of AF being upset, crying, and appearing as a "distraught mother" at the hospital, contrasting with CF's demeanour.

- Dr Heffernan's evidence that AF was tearful and "extremely upset and extremely concerned" about the victim.

- Nurse Elaine Clarke's evidence that AF was "quite shocked," "visibly upset and crying", and behaved "like a distraught mother", while CF was not emotional.

- Witnesses Easther McCook, Julie Wilmott, and Sammy Laverty describing AF as confused, panicked, upset, crying, and a "very worried mother" around the time P was taken to the hospital.

- DS Erskine's observation of Amanda Fulton being "visibly upset … crying …" after her arrest and during police interviews.

- The applicant becoming emotional and crying while giving evidence.

[32] Having read the transcripts of the evidence, the submission made in relation to Amanda Fulton's upset is validated. This factual background is also acknowledged in the judge's charge where he specifically states that on reviewing the evidence, displays of emotion by Amanda Fulton were apparent. Summarising the evidence, the paramedics who attended with the baby and his father at the GP surgery noted that Mr Fulton was cold and unconcerned. However, a paramedic witness who saw Amanda Fulton at the Causeway Hospital said there was a contrast between her and her husband, that she appeared tearful and concerned. Another professional agreed that she "reacted as a distraught mother and there was nothing unusual about her demeanour."

[33] In his review of the medical evidence, the judge noted that a treating doctor, Dr Heffernon, had spoken to both parents on several occasions at the hospital. She gave evidence that the appellant was tearful and said that Mr Fulton had minimal eye contact with her, but she described the appellant as extremely upset and extremely concerned about the child. The judge also reviewed the evidence of Aileen Clarke, a paediatric ICU nurse. She, again, referred to Amanda Fulton being shocked, visibly upset and questioning how this could have happened.

[34] Pausing at this point, it is important to note that the judge addressed the issue in his charge as follows:

> "again, you have to decide what inferences, if at all, you can draw from the reaction of the two parents at that time. I have already explained that people react differently to events which are occurring."

[35] In his charge the judge also recounted that when Easther McCook, saw the appellant in her house, she appeared confused, "there was panic in the air, she was getting more upset." The same goes for a civilian witnesses, Julie Wilmot and Sammy Laverty's evidence. This evidence, as the judge faithfully records, was characterised by reports of the appellant getting upset and crying and being panicked in the house.

[36] When reviewing the police evidence from DS Erskine, the judge referred to observations that the appellant, having been arrested, was visibly upset and crying. The judge also reviewed the police interviews of the appellant which included the fact that she was, on occasion, emotional ("crying sore") during the interviews. Dealing with the evidence given at court by Amanda Fulton, the judge noted that during her evidence she became emotional in front of the jury and started to cry. The judge directed in relation to her emotion, as we have outlined above.

[37] Furthermore, the judge reviewed the evidence of Christopher Fulton including cross-examination, in relation to conduct whilst at the Royal Hospital, namely the

prosecution allegation that he was laughing at a mobile phone video shared by the appellant's brother. The judge noted that Christopher Fulton had alleged that the nurse had made a false note and that he was not telling lies and further that he was "holding tears back."

[38] It would unnecessarily add the length of this judgment if we recorded any more of the lengthy charge provided by the judge over five days. Suffice to say that the key elements of the charge set out above make clear that the judge was methodical in detailing all of the evidence including the demeanour of both Amanda Fulton and Christopher Fulton contemporaneous with events.

[39] In addition, prior to giving his charge to the jury on 30 September 2024, the judge had invited submissions of counsel on what other legal direction should be given to the jury. These directions were then given to the jury after discussion and agreement, in particular dealing with lies, good character, expert evidence, delay, cautionary implication of co-accused and the answering of police questions and giving evidence.

[40] The defence now take issue with the fact that there had been no prior discussion or agreement about any legal direction to the jury about the emotion of a witness or the defendant. In our view, this criticism is unfair as the issue arose as we have said, during the judge's discussion of Easther McCook's evidence. It was open to the defence, having been sighted by the judge on the content of the charge, to ask the judge to specifically address the issue of demeanour contemporaneous to the events. However, the defence did not raise the specific issue that is now centre stage in this appeal.

[41] The appellant now argues that the judge misdirected the jury concerning the assessment of emotions and demeanour. The specific direction complained of was a general direction that "the presence or absence of emotion *when giving evidence* is not a good indicator as to whether that person is telling the truth." Counsel contends that while this is a standard direction, its application in this specific case was erroneous for several reasons. He argues in effect that such a standard direction on its own undermined the central plank of the defence case. This is particularly so as Amanda Fulton's demeanour at crucial times, closely associated with the events in 2019, was a central part of her defence, namely that she was a concerned and innocent party to events within the household which led to injury to her child.

[42] The law in this area is summarised in several sections in *Blackstone's Criminal Practice 2025* primarily in relation to the demeanour of a victim, particularly in sexual abuse cases.

[43] Section F1.16 of *Blackstone* reads as follows under the heading 'Demeanour of Victim":

> "The demeanour of a witness can be relevant to the global assessment of his or her evidence. A heavily sarcastic manner may indicate that a witness means the opposite of the words spoken. A witness, in examination-in-chief, may be extremely confident on an issue, but under cross-examination, although giving the same answer on the issue, the confidence may entirely evaporate. However, a judge should direct the jury that a show of emotional distress when giving evidence is not a reliable pointer as to whether a witness is telling the truth (*VJW* [2022] EWCA Crim 164). In *Keast* [1998] Crim LR 748, (applied in *Venn* [2003] EWCA Crim 236) it was held that unless there is some concrete basis for regarding long-term demeanour and state of mind of a victim of sexual abuse is confirming or disproving the occurrence of such abuse, it cannot assist a jury bringing their common sense to bear on who is telling the truth. However, demeanour witnessed close in time to the event in question may have probative value, by analogy with the principle of res gestae (*Townsend* [2003] EWCA Crim 3173). See also *Zala* [2014] EWCA Crim 2181, considered at F5.11. Concerning the demeanour of complainants in sexual cases, see the Crown Court Compendium Chapter 20-1, examples 6 and 7. (The reference to F5.11 is in relation to delayed complaints in sexual cases and cases of domestic abuse where the authors say an appropriate direction may be required to counter the stereotypical assumption on which the defence will often rely, that a late complaint is a false complaint.)"

[44] *Blackstone* F8.47 under the heading 'Behaviour, appearance and demeanour' also states:

> "In addition to material objects, the following may also be regarded as varieties of real evidence (a) a person's behaviour, eg misconduct in court for the purposes of contempt of court; (b) a person's physical appearance, eg for the purposes of identification or on the question of the existence of causation of personal injury; (c) a person's demeanour or attitude which, in the case of a witness, may be relevant to his or her credit, the weight to be attached to the witness's evidence or whether he or she is to be treated as hostile. The relevance of demeanour, as described in (c) was approved in *VJW* [2022] EWCA Crim 164. The court could see no basis for departing from this approach, given that judges will give juries appropriate directions as and when necessary. See also F1.16."

[45] In addition the defence relied upon on one decision in this jurisdiction *R v BZ* [2017] NICA 2 in relation to the demeanour of a complainant in a sexual abuse case. This is obviously in a different context but some of the principles are read across as follows. Specifically, reliance is placed on paras [45]-[50] of *BZ* where Stephens J addresses the issue of evidence of distressed demeanour of the complainant at the time of making a complaint of sexual abuse.

[46] In *BZ*, the appellant argued that the judge ought to have directed the jury that evidence of the distress of the complainants at the time of making a complaint should not be given any separate weight. At paras [43] and [44] Stephens J said:

> "[43] Given that the weight of evidence as to distress will vary according to the circumstances of the case, we consider that whether the evidence is admissible and if so whether a direction is needed and, if it is needed, then in what terms, depends much on the particular circumstances in any given case. In giving consideration to those questions a distinction can be drawn between the complainant's own evidence of distress and evidence from a witness, who may be independent, as to the distress of the complainant. A distinction can also be drawn between evidence of distress at the time or shortly after the alleged offence and distress displayed years later when making a complaint. If the jury is sure that distress at the time is not feigned then the complainant's appearance or state of mind could be considered by the jury to be consistent with the incident. Evidence as to the demeanour at the time of making the complaint may in law be capable of amounting to corroboration but 'quite clearly the jury should be told that they should attach little, if any, weight, to that evidence because it is all part and parcel of the complaint' (*R v Redpath*) and "should be assessed with the complainant and not given any separate weight" (*R v AH*). … It is clear that in relation to the complainant's own evidence of distress and the evidence of a witness as to the distress of the complainant, the jury should be directed that they must be sure that there is no question of it having been feigned before they can rely on it (*R v Romeo*). In that way the jury is reminded that a person fabricating an allegation may support it by an equally false show of distress at the time of making a complaint.
>
> [44] We consider that it is for the judge to look at the circumstances of each case and tailor the direction to the facts of the particular case emphasising to the jury the

> need, before they act on evidence of distress, to make sure that the distress is not feigned and drawing to their attention factors that may affect the weight to be given to the evidence."

[47] The defence recognises that *BZ* concerns a different factual scenario relating to the distress of a complainant making a complaint as opposed to the demeanour of accused persons. However, the defence argue that by logical extension, the contemporaneous demeanour of an accused may be relevant to their innocence or guilt. Therefore, the defence argument is that the judge failed to draw any or sufficient distinction between the appellant's displays of emotion at the time of the alleged offending and any displays of emotion during the giving of her evidence and this could have caused confusion for the jury.

[48] The decision of the Court of Appeal in England & Wales of *R v Townsend* [2023] EWCA Crim 3173, is also relied on. This was a case in which the appellant was convicted of one count of doing an act tending and intended to pervert the course of public justice. He appealed conviction with leave of the single judge. The argument that was raised by the defence was that the judge was wrong to direct the jury that the evidence that the complainant was upset because of what the appellant said during interactions could support the complainant's version of what he had said. In giving judgment Lord Justice Dyson said that this was incorrect and that "evidence of how a person reacts immediately after an event does have probative value." An analogy was drawn with the admission of statements under the doctrine of *res gestae*.

[49] In *R v Andrews* (D) [1987] AC 281, Lord Ackner summarised the relevant factors to be addressed by a judge when considering whether to admit a statement under that doctrine. The purpose for which such a statement is sought to be admitted is to establish the truth of some fact and not merely to show consistency. Para [13] of the judgment is also, perhaps, of most relevance:

> "What underlies the *res gestae* principle is the recognition that a statement 'so closely associated with the event which has excited the statement that it can be fairly stated that the mind of the declarant was still dominated by the event' is admissible to prove that the declarant's account of the event may be true. As with statements, so, too, with evidence as to demeanour. The analogy is not exact, but both statements in evidence as to demeanour are capable of being self-serving. But, if the statement or the demeanour are sufficiently closely associated with the event, they have probative value. That is no more than an application of common sense. If A alleges that B has threatened to kill, it would be extraordinary if evidence could not be adduced to prove that immediately after the conversation A fled in terror in circumstances where B says

> that the conversation was about the previous Saturday's football match. The evidence that A fled in terror has probative value since it tends to support A's account and to show that what was said was very frightening; it tended to disprove B's account."

[50] Of course in the instant case there was no question as to the admissibility of demeanour evidence. It was part of the factual background, relied on by both the prosecution and the defence, dealt with in detail by the judge over five days of his charge. As a matter of common sense this was relevant and could have probative value. Hence, the only question that remains is whether the judge's charge was adequately tailored to the facts and sufficient to assist the jury.

[51] Specific directions on emotion contained within the Compendium (Part I, Chapter 20, Section 20-1) under the heading "Sexual offences - the dangers of assumptions" primarily concern sexual offences and the dangers of stereotypes (such as delay or victim demeanour). The advice contained in the Compendium (Chapter 20-1) that regarding evidence of demeanour, other than when giving evidence or close in time to the offence, to the effect that "great care will need to be exercised when crafting the terms in which the jury are to be directed about that ... a 'standard' direction is unlikely to be of help" is not directly applicable.

[52] However, the Compendium, at 20-1 para 4, explicitly notes that this general cautionary approach extends to other case types. The guidance states that a direction of this kind (warning against stereotypical assumptions) "may also fall to be given in cases other than ones that involve sexual allegations" and provides an example where a jury may need assistance as to how someone may be conditioned by the experience of long-term domestic abuse.

[53] The Crown Court Bench Book for Northern Ireland and the Compendium also refer to general directions to the jury on their assessment of witnesses and facts. Specifically, the Crown Court Compendium, Chapter 4, para 5 refers:

> "Where there are different accounts in the evidence about a particular matter the jury must weigh up the reliability of the witnesses who have given evidence about the matter, taking into account how far in the jury's view their evidence is honest and accurate. It is entirely for the jury to decide what evidence they accept as reliable and what they reject as unreliable."

[54] The direction which was given by the judge in the instant case was that "the presence or absence of emotion when giving evidence is not a reliable indication of whether that person is telling the truth and being accurate or not." The judge explicitly stated during the requisition that this direction came "directly" from the

Compendium guidance. The closest direct comparison is reflected in Example 7 of Chapter 20-1 of the Compendium which states:

> "The presence or absence of emotion or distress when giving evidence is not a good indication of whether the person is telling the truth or not."

[55] In this regard, we note that the October 2025 Compendium refers to the recent case of *R v BUV* [2025] EWCA Crim 327, as an authority relevant to this issue. The *BUV* judgment is notable because the court found no error in the judge admitting evidence of a contemporaneous change in the mood and demeanour of a young complainant from her father. This evidence was central to the prosecution case.

[56] However, while the Court of Appeal in *BUV* ultimately found the judge's directions sufficient in the specific circumstances of that case, it noted concerns that this sort of evidence is "very rarely likely to be of much assistance to a jury." The Court of Appeal upheld the judge's standard warning over the applicant's demeanour in court (emotional) and at ABE (calm and composed) as not being indicative of whether she was telling the truth as legally sound. This the Court of Appeal found was contextualised by the judge reminding the jury that there was no typical response to how someone reacts to being raped, by having admitted evidence of the victim's change in demeanour from her family as relevant to her credibility and by allowing the defence to present evidence that they had asserted countered her supposed change in demeanour (including videos of her dancing). These provided contextual safeguards to the standard direction being given in respect of how her evidence was presented to the court.

[57] More generally, *BUV* engages the principle that a change in a complainant's post-offence behaviour or demeanour (eg refusal to go to school, struggling with friends, anger) can be deemed "real evidence" that is admissible and "capable of giving some support" to the prosecution's case. To our mind, this confirms the principle that a party can actively rely on demeanour observed outside of the witness box. Applied to the facts of this case the prosecution relied on Christopher Fulton's lack of concern and the defence relied on Amanda Fulton's distress.

[58] The single judge highlights the distinction in para [52], as follows:

> "[52] There is a potential distinction to be made between the demeanour of the witness giving evidence during the course of a criminal trial and the demeanour of a witness contemporaneous with relevant events."

[59] In *VJW,* the Court of Appeal observed at para [38]:

> "… in criminal trials … it is often the oral evidence of the witness, standing alone, about which the jury needs to

> make an assessment. Indeed, the jury's evaluation of the witnesses in the case for the Crown and for the defendant, tested by questioning by both sides, is one of the hallmarks of our criminal justice system. This exercise leads to a global assessment of the individual witness's evidence which includes, to the extent appropriate, his or her demeanour."

[60] In para [39] of *VJW* the court also cited with approval an earlier edition of Blackstone which refers *inter alia* to a witness's demeanour as being relevant to his or her credit and the weight to be attached the witness's evidence. At paras [40]-[41], the court observed that "discounting or marginalising the demeanour of a witness could be highly misleading" since "… a witness's demeanour can be extremely important - certainly in the in the context of the evidence that is given in criminal cases."

[59] In this case the judge referred to the demeanour of both the Fulton's during his charge and then provided a warning after Esther McCook's evidence. There is no misdirection. That said, it would have been better for the judge when dealing with emotion displayed in the witness box by Ms McCook to recap with some further direction about the contemporaneous displays of emotion by Amanda Fulton which he had already covered. However, having considered the matter we of the view that any omission on the judge's part is not fatal for the following reasons.

[60] As Lord Alverstone CJ said in *Stoddard* [1909] Cr App R 217:

> "Probably no summing up, and certainly none that attempts to deal with the incidents as to which the evidence is extended over a period of 20 days would fail to be open to some objection … Every summing up must be regarded in the light of the conduct of the trial and the questions which have been raised by counsel for the prosecution and for the defence respectively. This court does not sit to consider whether this or that phrase was the best that might have been chosen, or whether a direction which has been attacked might have been fuller or more conveniently expressed, or whether other topics which might have been dealt with on occasion should be introduced. This court sits here to administer justice and to deal with valid objections to matters which may have led to a miscarriage of justice."

[61] We are satisfied that the judge did not intrude upon from the role of the jury in assessing the quality of the evidence given at trial. The judge's direction on emotion did not remove the question of the overall assessment of emotion or demeanour of all of the witnesses including both defendants from the jury. He caveated his direction of emotion displayed in the witness box by saying that a display of emotion is not

definitive proof of the truth of statements that accompanied it. There is nothing wrong with that.

[62] We are also satisfied that the jury were well sighted on the significance or otherwise of both the Fulton's demeanour contemporaneous to events. This was part and parcel of events. There were of course other aspects of the case against Amanda Fulton for the jury to consider including her false accounts to police. The judge has not omitted or downplayed any of the evidence favourable to Amanda Fulton. As we have said, he could have said more by way of recap during a lengthy charge. However, ultimately the jury had to consider all of the evidence and were entitled to make a choice about Amanda Fulton's position within the household when the child suffered the serious injuries.

[63] The point is illustrated by the fact that the jury were clearly well able to make a choice about each parent's role in events given the fact that the jury convicted Christopher Fulton on the more serious section 18 charge and associated charges of previous abuse and acquitted Amanda Fulton of those offences.

[64] Accordingly, for the reasons we have given the appeal in the case of Amanda Fulton is dismissed on both grounds. Applying *R v Pollock* [2004] NICA 34 at [32], which requires the court to consider the safety of the conviction in all the circumstances of the case the single and simple question is whether the verdict is unsafe?" For all of the reasons we have given we find that Amanda Fulton's convictions are safe.

(ii) Appeal against sentence – Christopher Fulton

[65] We begin our consideration of this appeal against sentence by observing that the maximum sentence for a section 18 grievous bodily harm with intent is now life imprisonment, the maximum sentence for causing or allowing harm is 10 years and the cruelty charge attracts a ten-year sentence.

[66] In assessing the points made by Mr McMahon, we have had the benefit of written sentencing remarks from the trial judge. In these remarks the judge recites out the history of the case. He describes the medical evidence. He describes the serious injuries sustained by this child. He refers to the evidence given at trial. He refers to the victim statement and the pre-sentence report. He then refers to the sentencing principles and considers two decisions *R v Darren Fegan* [2018] NICA 2 and *R v ZB* [2022] NICA 69.

[67] There is rightly no complaint with the judge's assessment at para [27] of his judgment where he says:

> "[27] I have concluded this is a high culpability case. Also, this is a case of high harm. There are a number of aggravating features common to both defendants. P at the

time was a four-week-old baby and small for his age. He was exceptionally vulnerable and entirely reliant on the defendants to care for him and to protect him. The failure to obtain timely medical attention on behalf of both defendants signifies a higher culpability and according to Dr Jayanmohan may ultimately have resulted in a higher level of harm to P.

[28] The repeated and inappropriate physical conduct directed to P by Christopher Fulton prior to the events of 7 February is relevant not only to his culpability but also to Amanda Fulton's culpability. She was present on a number of occasions when he handled P in a rough and unacceptable manner and also in the presence of friends. Whilst there is no suggestion that she handled P in a similar fashion, she took no steps to remove the baby from an obviously dangerous situation and made no attempts herself to seek medical attention for him. She was in complete dereliction of her duties to P in failing to ensure his safety at all times both before the events of 7 November and following on from those events.

[29] In addition to these matters, Christopher Fulton's attitude whilst at the hospital, displayed a total disregard for the wellbeing of the child and is also capable of being considered as an aggravating factor. Furthermore, all offences were committed within a domestic setting which adds to the aggravating features in the case.

[30] There are no mitigating factors identifiable in this case. No remorse has been demonstrated by either defendant. Both defendants maintain their denial of guilt."

[68] Turning to the law in this area, the prosecution accepted that *Fegan* is a guideline case for section 18 grievous bodily harm with intent in this jurisdiction. In *Fegan* at paras [22] and [23] the following guidance is found:

> "[22] In section 18 cases involving very young children the focus has to be on the vulnerability of the child. First, the child has absolutely no defence mechanism against the person who intends to inflict grievous bodily harm upon him. Secondly, because of the child's stage of development the harm likely to be caused by the application of severe force is greater than that which would be expected in relation to an adult.

> [23] Sentencing policy must, therefore, reflect that vulnerability. Where significant force is applied to a young child with intent to cause that child grievous bodily harm, the increased likelihood of significant damage to the child renders the conduct itself highly culpable. In general, therefore, we consider that a range of 7 to 15 years for such conduct is appropriate."

[69] In *Fegan*, the defendant ultimately pleaded guilty to the offence. However, the trial judge set the starting point outside of the range given above at 16 years' imprisonment and the Court of Appeal, whilst describing the starting point as stiff did not regard it as manifestly excessive. What this illustrates self-evidently, is that judges may move outside of the range in appropriate circumstances. However, if moving outside range trial judges must say that they are moving outside the range.

[70] We see no reason to revise the guidance given in *Fegan*. However, we reiterate the fact that judges may move outside that range in cases where it is appropriate and there should be no reticence in doing so, so far as an explanation is given as to why a case falls outside the range and why a particular sentence is arrived at. Unfortunately, in this case, the judge has not properly explained a move outside the usual range to 22 years.

[71] The England & Wales guidelines for section 18 with intent provide some assistance in terms of identifying the factors which assist judges when considering whether a case should move outside range. We should say in England & Wales the range for this type of offending is on a par with this jurisdiction with a range of 10-16 years and a starting point of 12 years. However, to paraphrase, it is noted in that guidance, that there can be a move outside the range where the harm is extreme, where there is extreme disability caused or in circumstances where there is an assault which leaves a child effectively nearing death. To our mind highlighting of these factors reflects good sense. We also adopt the approach that in the extreme cases that arise in this jurisdiction more significant sentences than the 7-15 range set out in *Fegan* should be imposed to mark the seriousness of the offence.

[72] Thus, whilst we are not minded to revise the range established in *Fegan* for section 18 grievous bodily harm with intent, we add to it by providing additional guidance to judges that judges are entitled to move outside the range when the facts of case require it and in an extreme category of case which involves offending against young children, sentences should be imposed greater than 15 years and nearer 20. The judge would have been quite entitled to reach a sentence of 18-20 years for the section 18 alone given the extreme nature of the violence in this case which caused an extreme injury to a very young child. Such an approach is consistent with the case of *ZB* where a global sentence of 22½ years was upheld by the Court of Appeal before reduction for a plea. This was also an extreme case which required appropriate punishment.

[73] The final relevant consideration is totality because in addition to the section 18 offence there were two other convictions for cruelty offences over a different period, involving at least one other separate incident. Whilst the judge refers to totality, he does not deal with it in any detail which is unfortunate given totality guidance provided by this court in the case of *R v Hutton* [2024] NICA 19 at para [58]. Reflecting totality, having chosen the headline offence of section 18, either the judge could have increased the sentence chosen for that to reflect the other offending which involved a separate period of abuse, or he could impose a consecutive sentence.

[74] The judge does not explain his methodology, but it is implicit that in choosing 22 years, he had in mind a sentence which reflected the totality of the offending. This means that the sentence had to go beyond the 18 years which we think was appropriate for the section 18 offence to include the previous abuse. We agree with Mr McMahon's submission that applying a seven-year sentence for the additional abuse and cruelty was disproportionate and out of sync with the four years applied for a similar charge to Mrs Fulton. We will, therefore, reduce the concurrent sentence that the judge imposed from seven years to four years on counts 3 and 4.

[75] However, given the facts of this case, we consider that the judge would have been entitled to apply a consecutive sentence of four years for counts 3 and 4, or alternatively to increase the 18 years upwards to reach the sentence that he did of 22 years. In fact, having reflected upon the facts of this case, we have come to the view that the consecutive methodology is a more attractive one. Hence, we will alter the makeup of the overall sentence by substituting 18 years on the GBH with intent and consecutively four years for the other offending to reach the same result as the judge which is an overall sentence of 22 years.

[76] Accordingly, we, dismiss the appeal against the judge's overall sentence. Save for a transparency failing, the judge has not reached a sentence which is manifestly excessive. We also do not criticise the judge for failing to set out a headline sentence where there was no credit to be given for a guilty plea. However, the judge should have been clearer in setting out his methodology. It can be implied that he thought this was an extreme case meriting the sentence that he imposed, but he should have expressed that view in clearer terms.

[77] The final appeal point relates to the length of the extended sentence; dangerousness having been conceded. The simple point advanced on this is that the judge applied the maximum five years on the extended custodial sentence and should have applied a lesser more proportionate period. We are not attracted to this argument. The application of the length of an extended licence is a discretionary matter for the judge taking into account all the factors in this case. Furthermore, the judge was equipped with a report from Dr Pollock in relation to Mr Fulton which was very unfavourable to him indicating, *inter alia*, that the appellant had shown "no remorse" that he had "no empathy for his son's plight and distress" and that he presented as "psychologically unmoved and impassive in the quality of his reactions to the harm given to his son." It is not enough to say that the appellant is solely a risk

to a small portion of the community, namely young children, because that underestimates the severity of the risk to one of the most vulnerable cohorts of our community. In our view the judge was perfectly entitled to apply the five-year maximum on the extended custodial sentence.

Conclusion

[78] In summary, whilst we adjust the makeup of Mr Fulton's sentence on the various counts, we uphold the overall sentence of 22 years plus an extended licence of five years. We have also dismissed the conviction appeal of Amanda Fulton, and as she has served her sentence, no further issue arises.

[79] This decision will provide guidance on sentencing for section 18 assaults on young children in extreme circumstances. This was a case where this child nearly died and has now been left with a life a limiting condition. The perpetrator of this violence is Christopher Fulton, and he will have to serve the significant sentence that is imposed on him to reflect the gravity of his crime. He will also have to be assessed at the relevant point in his sentence by the Parole Commissioners in relation to dangerousness and risk to the public before he can be released.

[80] Both appeals are dismissed.

Postscript

[81] Given the finding of dangerousness, an extended custodial sentence must be imposed on counts 3 and 4 as these are specified offences under Article 12 of, and Schedule 2 to, the Criminal Justice (NI) Order 2008. (See also para [4] of *R v Playfair* [2024] NICA 21). The judge has wrongly imposed a determinate custodial sentence, although that made no difference to the overall sentence length as he made these sentences concurrent to the extended custodial sentence on the section 18 offence. As the section 18 offence is the headline offence, which attracts 18 years, four years is added as the custodial element for the section 20 child cruelty offences, resulting in a 22-year extended custodial sentence with an extended licence period of five years. On counts 3 and 4, a concurrent extended custodial sentence of four years with a two-year licence is imposed. The date that the appellant becomes eligible for release at the direction of the Parole Commissioners is after 11 years and the length of the extended licence period is five years.