

Attempted abduction of a child out of the jurisdiction, contrary to section 74 of the Children (Guernsey and Alderney) Law 2008. Failure to comply with a notice contrary to section 49(1) RIPL.

[2023]GRC072

**THESE SENTENCING REMARKS HAVE BEEN ANONYMISED FOR PUBLICATION**

**For the sake of the record, I reiterate the Reporting Restriction under Section 115 of The Children Law which prohibits the publication of any details which might identify the child who is the subject of these proceedings and that publication includes any form of social media discussion.**

**ROYAL COURT  
FULL COURT**

**29<sup>th</sup> November, 2023**

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:  
Stephen Murray Jones OBE, Steven John Morris,  
Stuart Michael Crisp, Tina Jane Le Poidevin, Paul Martin Burnard,  
Felicity Jane Quevâtre and Heather Reed.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**M and F**

**Advocate P F Cobb appeared for the Crown**

**Advocate C J Fletcher appeared for the first Defendant (M)**

**Advocate C B Green appeared for the second Defendant (F)**

**JUDGE OF THE ROYAL COURT:**

**Background**

M and F, you have both pleaded guilty to the attempted abduction on 5<sup>th</sup> July 2023 of your child out of the jurisdiction contrary to section 74 of the Children (Guernsey and Alderney) Law 2008 (“the Children Law”) and section 1 of the Criminal Justice Attempts Conspiracy and Jurisdiction (Bailiwick of Guernsey) Law 2006 (“the Children Law”). The maximum penalty is 7 years’ imprisonment and/or a fine not exceeding level 5 on the uniform scale.

The offence is committed in your case by removing a child under the age of 16 from the jurisdiction of Guernsey and Alderney without the consent of the Committee for Health and Social Care whose consent was required under section 74 of the Children Law, or without the leave of the Court. You had neither consent nor leave.

F, you face a second count namely that, you failed to comply with a Disclosure Notice served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003 (“the RIPL offence”). The maximum sentence for this offence is now 5 years’ imprisonment or a fine up to Level 5 or both.

The facts are your child was the subject of a Care Requirement dated 20<sup>th</sup> March 2023 which contained a number of conditions as to his residence – with the maternal grandparents and his contact with you both. On 30<sup>th</sup> June 2023, F booked three one-way seats on the 13:25 sailing to England on 5<sup>th</sup> July. On 5<sup>th</sup> July at 10.30 am, the maternal grandmother took the child to M’s home. M told her mother that she was taking the child to visit F’s grandmother and that he would be present, which was permissible under the contact conditions. At 11.30 am, M attended the Greffe and purchased birth certificates for both of you and the child. At 12.30 pm a social worker alerted the maternal grandfather to the fact there was information that M was planning to leave Guernsey with the child. He immediately went to the Harbour where he found M with the child and she handed the child over to him.

You were both then stopped by Police as you entered the ferry terminal with a large amount of luggage including important documents, cash and clothing for you both and the child and the birth certificates. You were both observed to be “out of it”. F admitted that you were both under the influence of drugs. Sadly, M was suffering a miscarriage and was in a poor mental state. She was later taken to hospital.

You were arrested and made comments to the effect that you had changed your minds about taking the child away. F, your phone was seized and you refused to provide the passcode when required by notice so to do (Count 2) . You both exercised your right to silence at interview.

You both candidly told the Probation Officers who interviewed you that plans were made a few weeks prior to the planned departure date and that you were intending to move away to be out of reach of Health and Social Care and other services. You also admitted that you would have gone had you not been stopped. You had begun taking drugs which F knew placed you in breach of the Probation Order, so you were also at risk of custody in relation to that breach and the others.

M, you are a local woman of 35 years of age. You have 3 children. F, you are a local man of 31 years of age. You have 4 children. Neither of you is currently working; you have been remanded in custody since 5<sup>th</sup> July 2023.

You both have previous convictions. M, you have just two previous convictions, the second one being for taking a controlled drug into the Prison on 21<sup>st</sup> January 2021 for F, for which on 4<sup>th</sup> August 2022 you received a suspended sentence of 4 months from the Magistrate’s Court. The Prosecution has outlined the facts of this offence today. You have breached that suspended sentence by committing the child abduction offence.

F, you have a long record going back to your teens including offences of dishonesty, drugs, public order and assault. You were sentenced by this Court as recently as 28<sup>th</sup> April 2023 for burglary, for which you received a suspended sentence of 2 years suspended for 3 years and having an Offensive Weapon, for which you were sentenced to a 2 year Probation Order and 180 hours Community Service Order, as a direct alternative to 1 year in prison, concurrent with the suspended sentence. The facts of those matters are set out in this Court’s sentencing remarks of 28<sup>th</sup> April 2023. You have breached those sentences by committing the child abduction and RIPL offences.

The Court will deal with the breach by M of the Magistrate’s Court suspended sentence and the breaches by F of the Royal Court sentences. F is also in breach of Magistrate’s Court sentences which will be dealt with separately.

### **Sentencing Considerations**

There are no sentencing guidelines for the offence of child abduction in Guernsey. As we often do, we have looked to the English regime for guidance in such cases. There are no guidelines set by the Sentencing Council in England but the English Court of Appeal gave guidance in the case of In RH [2016] EWCA Crim 1754 which we have found helpful and on which we were addressed by counsel. The principles are summarised in Blackstone’s Criminal Practice 2024 B2.131. The approach in that case is to follow the general principles of sentencing in England looking at culpability and harm. The

learned Judges of Appeal identified three categories of offending, the most serious involving high culpability and serious harm to the child where the starting point should be 5 to 7 years; cases where there is a combination of high culpability but low harm or vice versa, where the starting point should be 18 months to 5 years and cases at the lowest end of harm and culpability where the starting point should be a community based sentence or custody up to 18 months. All cases are fact specific. As always, we bear in mind that those guidelines are based on circumstances in England where, sadly, such offences are not so rare and the circumstances of them quite different. We sentence on Guernsey considerations, in this case with a particular eye on attempts to remove from the jurisdiction. An element of deterrence is justified.

In your case, the child was recovered quickly before being taken off-island and remained with you, the child's parents, rather than being taken by a stranger and there is no evidence of particular distress or harm caused at the time, although the child has had a significant change of circumstances as a consequence. This lack of particular harm or distress at the time and the fact that you were the child's parents, places the offence in the lowest category of harm but, the trip was well planned and was known to be in breach of a Care Requirement and the intention was to remove the child from the jurisdiction which we consider places the offence in the mid-range. We therefore take a starting point of 3 years.

You are being sentenced for an attempt rather than the completed offence which entitles you to a reduction in the starting point. We consider therefore that the starting point should be adjusted to 2 years and 6 months.

In terms of aggravating factors, both of you have previous convictions, particularly F. Both of you are in breach of various sentences from this Court (in the case of F) and the Magistrate's Court (both of you).

There was a risk of significant harm to the child had you been successful as you were not equipped to care for the child. The child is still very young and is vulnerable and these are aggravating factors.

We therefore set the revised starting point for M before consideration of plea and personal mitigation at 32 months (2 years and 8 months). We set the revised starting point for F before consideration of plea and personal mitigation at 3 years.

F, you are also to be sentenced for the RIPL offence. The Guernsey Court of Appeal in Barras, Watt and Orchard considered the sentencing in respect of RIPL offences and it made four observations:

1. Failing to make the disclosure required by a Notice issued under section 46 of RIPL is a serious matter; it will almost invariably call for an immediate custodial sentence.
2. The sentencing court is entitled to proceed on the basis that the failure to provide access is motivated by a desire to hide something, either to protect others involved in criminal activity, or to conceal the accused's own more extensive criminality.
3. Deterrence is an important aspect of sentencing in this context.
4. The appropriate sentence will, of course, depend on the particular circumstances of the case.

Whilst the maximum penalty has been increased since that case was heard from 2 to 5 years, those factors set out by the learned Judges of the Court of Appeal remain relevant, whatever the maximum penalty.

We consider that there are no particular aggravating or mitigating factors in this particular matter and we would take a starting point of 15 months, reflecting the increase in the maximum sentence introduced by the States of Guernsey.

## **Mitigation**

## Plea

In terms of plea, we consider that you are not entitled to full credit because you both had no alternative other than to plead guilty, as you were caught trying to leave the Island with the child so we afford you a 25% discount.

## Personal Mitigation

The Court has considered very carefully the very helpful Social Enquiry Report prepared in respect of you and we have also listened carefully to the submissions of your Advocates.

We take into account your frank admissions to the Probation Officers which disclosed the full extent of the planning for the trip to England.

In the case of F, we note your adverse childhood experiences, your longstanding drug abuse, your terrible record and your historic good work ethic. You have accepted responsibility for the offending and expressed regret at the consequences of that offending. It is clear that you came out of Prison and went back to your old ways. You had received a final warning for positive drug testing which was placing you in breach of the Probation Order. You accept that there is considerable work to be done on your drug abuse. Regarding the phone, you have offered no satisfactory explanation as to the failure to provide your passcode and it is reasonable to infer that there was something incriminating on that phone regarding this offence. The Court acknowledges that on 5<sup>th</sup> July it was an emotional time for you, but your thinking at that time was clouded by your voluntary consumption of substances and the Court cannot ignore the fact that the planning had already taken place.

You are assessed as having a very high likelihood of re-offending which we must take into account. In view of the serious risk of harm to the child, MAPPA registration will be considered post release.

M, we note the trauma and difficulties in your life, both medical and personal. We note the various diagnoses and the need for therapy which you accept. You are motivated to engage in psychological therapy which is to your credit and that therapy has already started. We note also your misuse of drugs from a young age. You had successfully worked with CDAT on treatment for your drug misuse but relapsed a few weeks before the attempted abduction. We note that you have only two previous convictions. You have also accepted responsibility for your offending. You have admitted understanding that taking your son away would have been wrong and you know that your actions have had a negative impact on your family, including your child, whose daily contact with you has ceased and on your two daughters who were living with you. The Court accepts that on the day you were heavily medicated and suffering a miscarriage and were vulnerable. You put yourself at risk as well as your child. It is to your credit that you are also taking the education opportunities afforded to you in Prison.

You are assessed also as having a very high risk of re-offending which must be taken into account and again, MAPPA will be considered in the case.

## **Sentence**

There can be no doubt that the custody threshold is passed and your counsel have sensibly conceded this. We have taken into account all your personal circumstances and balanced them with the seriousness of the offence, in F's case, offences, and the public interest in imposing appropriate punishment for serious offending.

Although not raised by counsel, you both have children, so we have, as required by Bourgaize v the Law Officers of the Crown 2014 (Jmt 49), considered the Article 8 rights of the minor children affected by your being imprisoned as well as you yourself, including the proportionality of any such sentence. All your children are in the care of others as a consequence of your behaviours and offending and any

contact you have with them is supervised. In your cases, sentences of immediate custody are inevitable, but we have considered the impact on your children of the length of sentence, especially in the case of M, whose children have been particularly impacted by her imprisonment.

## **Breaches**

I turn now to the breaches. This Court notes that you have both breached sentences of this Court or the Magistrate's Court.

F's Royal Court Orders were the 28<sup>th</sup> April and the breaches were just over 2 months later. Not only have you reoffended but the plan was to leave the jurisdiction and therefore not comply with your Probation and Community Service Orders. We have the addendum report which sets out your lack of progress with the Community Service Order and the work under the Probation Order which states that you were close to being breached for non-compliance with the conditions of the Probation Order.

### Breaches of Suspended sentence

In respect of the breaches of Suspended Sentence, which applies to both of you, section 2(1) of the the Criminal Justice (Powers To Suspend Sentence) (Bailiwick of Guernsey) Law 1972 under which, on 28<sup>th</sup> April 2023, F received a sentence of 2 years suspended for 3 years for burglary and, under which, on 4<sup>th</sup> August 2022, M received a sentence of 4 months in prison suspended for 2 years gives this Court the following options when dealing with a breach:

- a. to activate the suspended sentence in full;
- b. to activate it but reduce the term;
- c. to vary the period of suspension by extending it up to a maximum of 3 years from the original order (which of course does not apply to F); or
- d. to make no order.

The sub-section continues:

*“That the Court **shall** make an order under the provisions of the subsection which says that the sentence should be activated in full **unless** the Court is of the opinion that it would be **unjust** to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence.”*

There is therefore a presumption that the sentence will be activated in full and our starting point is that these sentences should be activated in full, subject to consideration of the totality principle.

### Breach of Probation Order

In relation to F only, there was also a breach of the Royal Court Probation Order and CSO. Section 15 of the Probation (Bailiwick of Guernsey) Law 2018 means that your conviction of further offences by this Court gives this Court the following powers as respects that breach:

- a. to continue the Probation Order, with or without variation and with or without adding a fine;
- b. to revoke the Order and deal with the offence in any manner in which you could have been dealt with for the offence originally; or
- c. to revoke the Order.

### Breach of Community Service Order

In respect of F's breach of the Community Service Order, the Court's powers are the same but they are under section 11 of the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law 2006.

The Court has decided that the only viable option is to revoke the Community Service Order and Probation Order and to impose instead, a sentence of immediate custody. The Community Service Order was ordered as a direct alternative to 1 year's custody, concurrent with the suspended sentence for the burglary. We are minded to adopt that concurrent sentencing approach.

This Court cannot sentence you for the breach of the Magistrate's Court Community Service Orders, but the Magistrate's Court will be convened once this Court has risen.

In sentencing you both we have taken into account the totality principle.

The offence of attempting to abduct a child is a very serious one. Whilst you failed, this Court is very concerned at the risk to the child of serious harm had you succeeded.

F, in April of this year, I told you to be in no doubt of the consequences should you breach any of the Orders. The Court gave you a chance, which your Advocate has described as "too much too soon" in terms of your substance addiction. You will now have a long time in Prison to do the work you need to do, so that, next time you are released, you are not straight back here, but whether you are or not is entirely in your hands.

M, the Court acknowledges that you were unwell on the day of the alleged offence but cannot ignore the careful planning beforehand. You too must go to Prison today and we hope that you will take what opportunities there are to better your chances of staying out of the Court system on your release.

The circumstances in which you find yourselves before this Court are sad. The root cause is substance abuse and tackling that must be your priority.

In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any parole period if applicable), you will be subject to supervision by the Probation Service for a period equal to one quarter of the total sentence or the period you would have served had you not received remission, whichever is the shorter. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine, or both.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006, which was not opposed, for forfeiture of the lawfully seized phone belonging to F valued at £150, which the Court inferred was used in relation to the offences is also granted. The Court has also considered the likely effects on you of that forfeiture.

Taking into account all the above and applying the appropriate discounts and, in particular, factoring in totality, the sentences will be as follows:

- **M**, for Count 1 (the abduction offence), a total term of imprisonment of 16 months from 5<sup>th</sup> July 2023.
- **M**, in relation to the breach of suspended sentence, imposed by the Magistrate's Court, for the offence of taking drugs into the Prison, the sentence is one of 2 months' imprisonment consecutive.
- So that is a **total of 18 months' imprisonment.**
- **F**, for Count 1 (the abduction offence), the term of imprisonment is 24 months from 5<sup>th</sup> July 2023.

- **F**, for Count 2 (the RIPL offence), a term of imprisonment of 12 months consecutive which makes a **total of 3 years** from 5<sup>th</sup> July 2023.
- **F**, for the breaches of the Probation Order and Community Service Orders, these will be revoked. In relation to the breach of the Community Service Order, this Court also imposes an immediate custodial sentence of 1 year but that is concurrent. In terms of the breach of Suspended Sentence, the sentence is activated, but in the reduced term of 1 year and the only reason for that reduction is totality, otherwise it would have been activated in full and that sentence is consecutive.
- **F**, that now makes a **total of 4 years**' immediate custody.
- The Court orders the forfeiture of **F**'s phone.

### Summary

- For **M** - a total immediate custodial sentence of **18 months** from 5<sup>th</sup> July 2023 and;
- For **F** - a total immediate custodial sentence of **4 years** with effect from 5<sup>th</sup> July 2023, together with the forfeiture of the phone.

**Catherine Maureen Fooks**  
**Judge of the Royal Court**

**29<sup>th</sup> November 2023**