

Full Court Disposal Hearing of YP following finding in Ordinary Court that YP unfit to plead. YP found to have carried out the acts set out in the 7 indictments concerning indecent images of children.

[2024]GRC072

**Anonymised and Perfected for Publication**

**Section 11 of The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 applies to this case so there must be no publication of any report containing the name address or any particulars likely to lead to the identification of the young person or any other young person associated with the case and there must be no publication of any picture of any such person. Any publication in any medium whether that is in writing or by broadcast or by means of the internet including social media is an offence.**

**IN THE ROYAL COURT OF GUERNSEY  
(CRIMINAL DIVISION)**

**FULL COURT**

**THE LAW OFFICERS OF THE CROWN**

- v -

**YOUNG PERSON**

**Disposal Hearing (Full Court)**

**19<sup>th</sup> August 2024**

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:**

**Stephen Murray Jones OBE, Steven John Morris, David John Robilliard MBE, Tina Jane Le Poidevin, Heather Reed, James Robert Toynton, Jillian Clark.**

**Advocate S G Watson appeared for the Crown  
Advocate P Lockwood appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Background**

1. Young Person, on [date] 2023, you were found by the Royal Court (Ordinary Division), to be unfit to plead in the broad sense of not being able to participate in proceedings. On [date] 2024 this Court made the findings that you had carried out all the acts set out in the 7 counts on the Indictment and adjourned to today for reports. All those counts concern indecent images of children. The images are graded in the usual way according to the Child Abuse Images Database (“CAID”). The most serious is Category A, which includes penetrative sexual activity, sadism or sexual activity between children and animals. Category B covers non-penetrative sexual activity and Category C covers all other indecent images not in the first two categories. Counts 1-2 are of making such images under The Protection of Children Law, 1985 and Counts 3-5 are of making such images under The Sexual Offences Law, 2020. The difference is the different dates of the application of those respective Laws. The images

comprise 1 video of Category A (Count 1), 2 images of Category C (Count 2), 84 still images and 23 videos of Category A (Count 3), 36 images and 13 videos of Category B (Count 4) and 73 images and 2 videos of Category C (Count 5). The total figure is 234. Count 6 concerns 5 images of Category C which you took of Child X while Child X was sleeping and Count 7 concerns your sending 2 of the images of Child X to a third-party via the messaging app Telegram. The photographs have been provided again today.

2. The Prosecuting Advocate, Advocate Watson, has outlined the facts in detail and highlighted certain extracts from the expert reports. The acts came to light as a result of information received by Guernsey Police that accounts linked to you had accessed indecent images of children online. Your home was searched and devices seized, the analysis of which revealed evidence of the activity and the act in Counts 6 and 7, together with other evidence which Advocate Watson summarised by way of context for the activity.
3. You were interviewed and this Court considered those interviews in the context of your difficulties when it was deciding whether or not you had committed the acts. Much of the evidence at that hearing was agreed. There were some points taken on the date range of some of the Counts. Advocate Watson has also provided details of what you have said about the acts to Professor Craig.

### **The Legal Framework**

4. After your committal to this Court, your Advocate raised an issue about your fitness to plead in the wider sense of your ability to participate in a trial. Such proceedings in Guernsey are rare and it has taken time and many hearings to establish the right interpretation of the applicable Law which is the Criminal Justice (Special Verdicts (Guernsey)) Law, 1961 (“the 1961 Law”) and the right procedure so as to ensure compliance with your rights under the European Convention of Human Rights (“ECHR”) incorporated into Guernsey Law via the Human Rights (Bailiwick of Guernsey) Law, 2000 and to meet the needs of your particular case.
5. As the first stage in those proceedings, the Ordinary Court sat to decide whether you were fit to plead or perhaps more correctly, unfit to plead. The Ordinary Court applied the test, as the Guernsey Court has previously, from the English case of R v Pritchard (1836) 7C & P303 and refined more recently in R v M (John) (2003) EWCA Crim 3452. In the past, the Full Court would have decided issues of unfitness to plead, but the 1961 Law was amended to provide that the appropriate Court to make such a finding is now the Ordinary Court.
6. On [date] 2023, the Ordinary Court found that you were unfit to plead in the broader sense. Section 1 of the 1961 Law provides that the Ordinary Court should, following that finding, make an order that you be detained at His Majesty’s Pleasure (“DAHMP Order”) which means that you should be detained in an approved establishment which, by definition, means Les Oberlands or certain parts of the PEH. Any order for your detention in such a place without a finding that you had carried out any acts would be a breach of your right, under Article 5 of ECHR, not to be deprived of your liberty, except in the circumstances provided for by that Article and such an order would, therefore, be unlawful. In order to deal first with that issue, I adjourned the proceedings before the Ordinary Court without the DAHMP Order having been made, so that there could be a hearing to decide if you had carried out the acts.
7. In the absence of any precedent for a findings hearing process in Guernsey, I decided that we should adopt a similar process to that in England under section 4A of the Insanity Act 1964, as amended, and so convened the Full Court, which I decided was the appropriate Court, to decide whether or not you had carried out the acts alleged. The Full Court Jurats were directed to ignore any mental element such as intention, or any defence based on any mental element or any explanation there might be. On [date] 2024, the Full Court sat and decided that you had

carried out the acts. Those findings are not convictions. You will not, cannot and should not be punished as you have been found unfit.

8. The next issue to be considered was whether you needed any form of treatment or intervention to assist you and to protect the public. The making of a DAHMP Order for your detention in an approved establishment if you did not require treatment would also be a breach of your Article 5 rights.
9. It was clear from the expert evidence given at the fitness hearing, and since, including the reports before us today, that you do not require any treatment and specifically do not require to be detained in an approved establishment for treatment. This is relevant to the decision to be made by the Ordinary Court later in terms of final disposal of your case but I decided that, before that Court re-convenes, it was necessary and appropriate to see what Orders might flow from the findings or might otherwise be possible to assist you to ensure that you have any appropriate treatment and to protect the public. There are Orders that flow from the findings because, although the 1961 Law has not kept pace with developments elsewhere and in terms of the ECHR Convention Rights (and that Law is rightly described by Counsel as ‘outdated’ which is an understatement), there is reference in certain Guernsey Laws to findings that a person has carried out acts as falling within the definition of convictions and thereby leading to certain orders (for example Notification) or the possibility of orders - in your case under the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008 (“the 2008 Law”). I decided that the Full Court, which made the findings that you had carried out the acts, should consider any such Orders, adopting the same procedure and constitution of the Court as a criminal sentencing hearing and that I would retire with the Jurats to consider whether any orders should be made.
10. In view of your age, there were possible orders under the 2008 Law as follows:
  - 1) Referral to the CYCT/Children’s Convenor – this is an option under the 2008 Law, but we are not being asked to consider that either by the Youth Justice Officer or by either counsel. We agree with them that this would cause further delay and that the Supervision Order represents the best available option; and
  - 2) A Supervision Order under section 15 of the 2008 Law which was the Youth Justice report writer’s recommendation and which your Advocate and the Advocate for the Law Officers asked the Court to make and we will make that order. It can only be made for 2 years or until your 18<sup>th</sup> birthday, whichever is the earlier.
11. The finding that you had carried out the acts is also, by virtue of Section 54(2) of the Criminal Justice (Sexual Offences and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, (“the 2013 Law”), a conviction for the purposes of Notification under that Law. You became a Notifier, therefore, on [date] 2024.
12. It is also to be noted that Section 18 of the 2013 Law enables the Court to make a Sexual Offences Prevention Order (“SOPO”) if the statutory grounds are met. The power to make this Order (and other orders under the 2013 Law which are not applicable in your case) does not rely on a conviction or findings. There has to be an application by His Majesty’s Procureur (“HMP”). In your case, in view of the low level of risk identified in the Youth Justice and Expert Reports, HMP does not consider that the grounds are met, so this is not an option today in respect of you. It is not the recommendation of Youth Justice in any event. It could be revisited were you to commit any further acts or breach the Supervision Order.
13. For the record, I make it clear that the above interpretation and development of the Law has been to meet the needs of your particular case which include your young age.

## Reports and submissions

14. The Youth Justice Service has provided a helpful and informative report to help this Court understand why you carried out the acts, what work is needed to ensure that you do not do so again and what level of risk there is that you will do so or commit more serious criminal acts especially of a sexual nature. Youth Justice has had the benefit of the report of Professor Leam Craig, Consultant Forensic Clinical Psychologist. We have also been assisted by the report of Dr Simon Hill Consultant Forensic Psychiatrist.
15. We have taken into account all that has been said on your behalf by Advocate Lockwood who has represented you throughout. Following the Finding that you were unfit, his role was reviewed and he was appointed by the Court to act in your best interests. He has performed this novel role with considerable skill and professionalism.
16. Addressing us today, Advocate Lockwood explained how his concerns about your fitness arose and that this may change as you mature. He referenced the urgent need for the reform of the Law. He said that you are a very different person from the one at the start of these proceedings and he urged the Court to make the Supervision Order and made representations in respect of the conditions.
17. The factors which we consider are particularly relevant in your case:
  - Your age at the time offending and, as the Youth Justice Report says, your undiagnosed Autism Spectrum Disorder and early experiences, which have left you ill-equipped to cope with the advent of adolescence;
  - the way that you have matured over the course of the proceedings. The difficult and protracted nature of those proceedings has undoubtedly been salutary;
  - the good family support that you have, particularly from [R]; and we also note that you have started to make friends which will help you;
  - your lack of previous convictions;
  - the remorse which you have shown, together with the ability to reflect and show some insight as to the harm caused by such acts;
  - the fact (and this is very much to your credit) that you have managed to achieve a qualification and that you have been offered a [job] while going through these proceedings. We note the positive report [about you];
  - you have already been working with Youth Justice for an extended period and it is reported that you are now asking for help and are motivated for change;
  - the recommendations of the Experts as to how to manage the residual risks that you pose. Risk has been assessed by Youth Justice, Dr Hill and Professor Craig. You are said to pose a low risk to others and a relatively lower risk of sexual reoffending /recidivism. You are not considered to pose a risk to pre-pubescent children.
18. Dr Hill reported that it would serve no purpose to detain you in a mental institution and you do not need to be under the care of a Mental Health team.

19. The recommendation of Professor Craig and the Youth Justice is the NSPCC Change for Good Programme along with the Good Lives Model approach to rehabilitation. Professor Craig also recommends psycho-educative work, together with collaboration with speech and language work. All of this is possible within the Supervision Order which is the recommendation. Dr Hill also recommends a Community Order as a condition of which you should work through why you have committed the acts and that is part of the Supervision Order.
20. We note that you will be subject to Notification and are to be managed by MAPPA.
21. We note that you have been on conditional bail throughout these long proceedings. The conditions have been tough in that your access to the internet has been very restricted. You have largely abided by the conditions with no issue since [date] 2023. It is time to give you more access to the internet as any continuation of the ban would be disproportionate. In view of this and the positive things said about you, we are able to set the Supervision Order restrictions so as to give you more freedom.
22. We must record that Dr Hill was of the view that you are fit to plead and he suggests that that should be revisited. He gave expert evidence to the effect that you were fit to plead at the fitness hearing. The Ordinary Court rejected that evidence. No-one is asking that the matter be revisited now but, in the usual way, if you find yourself before any Court again, the question of your fitness will be reconsidered.

### **The Supervision Order**

23. We have decided to make the Supervision Order, which is made under the 2008 Law and that is the Order which is as recommended by the Youth Justice Service.
24. The Order will run until [date] and, during that period, you will be supervised by Mr Foote who will advise and assist you, and you will be subject to the following provisions. It is really important that you listen carefully to this and you will have it in written form. If at any time you are not sure whether you can do something or you can't do something, ask [R], ask Mr Foote and, if he is not there, ask someone else at Youth Justice, but do not guess. This is really important because you just do not want to be coming back here.
25. The conditions are going to be as follows:- [note: these were explained in appropriate terms to the Young Person.]
  - i. you must meet with Mr Foote, who is going to be your Supervising Officer, weekly to complete the Change for Good programme for young people who display Harmful Sexual Behaviour, together with the Good Lives Model for Rehabilitation and any psycho-educative work which is recommended by Mr Foote;
  - ii. you must reside (live and sleep and to have your settled home) with [R]. You must also not reside with any child under the age of 16 years, unless that has been approved in advance by Mr Foote;
  - iii. you must not use any camera or internet enabled device (other than at [place]) except as authorised by Mr Foote, who shall also approve the email and other accounts and applications that you may use on such devices. Devices is a broad term that includes phones, a games console and a Sky Q box;
  - iv. you must not delete any browsing history on any internet enabled device or camera and remember that it is actually very easy to see if somebody has deleted the browser history;
  - v. you must comply with the police in relation to monitoring your use of internet enabled devices both personal and at [place]; and

- vi. you will make it available or allow access to any camera or device you have been using to Mr Foote and/or any officer of Police on request and comply with any technology contract.
26. These Conditions are necessary to ensure that you work with Youth Justice and to minimise the risk that you will repeat your behaviour. We are allowing you to have more freedom in terms of internet enabled devices so that you can start to lead a more normal life. We are satisfied that the conditions are proportionate.
  27. If you breach the Order, you can be arrested and brought back before this Court and the Court at that time could consider making a Sexual Offences Prevention Order in respect of you, if the grounds are met.

### **Notification**

28. The Court has also decided to make the Notification Period for you at 5 years from [date] 2024 (the date of the Findings) as recommended in the Youth Justice report. Your Advocate and Mr Foote will be able to explain to you how Notification works and answer any questions that you have. Your Advocate is already on top of the date which you must put in your calendar so that you do not forget to update the Police.
29. This period is a precaution against any risk you may pose and can be further extended. You will be given a written Notice setting out all the requirements of being a Notifier, but in summary they are:
  - You should by now have provided the Police with your personal details as required by the Law and was explained to you when the Notification Order was made.
  - You must notify the Police of any change of name or home address at least 24 hours in advance of the change occurring, or within 24 hours if you had no prior knowledge of the change occurring. Remember though Young Person, that you have to live with [R], so you cannot change it until [date].
  - You must notify the Police of any address where you reside or stay for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12-month period. Again, that really applies after [date].
  - You must notify the Police of your details every 12 months on the anniversary of the initial Notification which is [date] 2024, even if there is no change in these details.
  - You must notify the Police at least 7 days in advance of any plans to travel abroad.

### **Forfeiture**

30. You voluntarily forfeit your Samsung mobile phone and desktop PC so there are no Orders required in that regard.

### **General**

31. Young Person, you have a further hearing before me and different Jurats in the Ordinary Court this afternoon, but the Jurats of this Court wanted to say this to you: *“Keep away from indecent images of children. Concentrate on your [job] and keep looking forward.”*

32. I would like to add the Court's thanks to Counsel in this matter who have greatly assisted the Court in a complex and important case. I also thank [R] and the Youth Justice Service, Mr Foote particularly, who have supported the Young Person through numerous hearings and through the process generally and I also thank [R] who has allowed her life to be impacted by the bail conditions made out and will still have to live slightly differently from how [R] would choose to live otherwise. You are doing that for the Young Person's benefit and the Court is grateful to you.
33. These remarks have been re-ordered for publication. At the hearing the Young Person was told the outcome at the start in appropriate language.

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

**28<sup>th</sup> October, 2024**