



Neutral Citation Number: [2021] EWCA Crim 1839

Case Nos: 2021/102748/A1, 2021/102744/A1, 2021/102746/A1, 2021/102745, 2021/102747 & 2021/102749/A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT IN LEEDS

MR JUSTICE KERR

T.20207347, 20207357, 20207347, 20207399 & 20207731

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/12/2021

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE HOLGATE

and

MR JUSTICE MURRAY

REFERENCE BY THE ATTORNEY GENERAL UNDER s.36 OF THE CRIMINAL JUSTICE ACT

Between:

Usman Karolia (1), Raja Nawaz (2), Ahmed Karolia (3), Nabeel Naseer (4), Nikash Hussain (5) & Irfan Hussain (6)

- and -

REGINA

Mr Richard Wright QC (instructed by Hurairah Harris Solicitors) for the **Usman Karolia**

Mr Naeem Mian QC (instructed by Kingsman Solicitors) for the **Raja Hamza**

Mr Abdul Iqbal QC (instructed by Hurairah Solicitors) for the **Ahmed Karolia**

Mr Christopher Tehrani QC (instructed by Carr & Co) for the **Nabeel Nasser**

Mr Jason Pitter QC (instructed by **Bernard Solicitors**) for the **Nikash Hussain**

Mr John Ryder QC (instructed Qamar Solicitors LLP) **Irfan Hussain**

Mr William Emlyn-Jones QC (instructed by **Her Majesty's Solicitor General**) for the **Attorney General**

Hearing date: 4 November 2021

Approved Judgment

Macur LJ:

Introduction

1.

Her Majesty's Solicitor General, by Mr Emlyn-Jones QC, applies to refer the sentences of six co-offenders which he regards as unduly lenient pursuant to section 36 of the Criminal Justice Act 1988. We grant leave.

2.

The six offenders are: Usman Karolia (Offender 1), Raja Nawaz (Offender 2), Ahmed Karolia (Offender 3), Nabeel Naseer (Offender 4), Nikash Hussain (Offender 5) and Irfan Hussain (Offender 6).

3.

All six offenders were convicted of murder. Offenders 1, 3, 4 and 6 were also convicted of attempted murder. Offender 1 was also convicted of causing grievous bodily harm with intent.

4.

The offences took place on the 21 June 2020. The trial took place between 22 April and 2 June 2021. The offenders were sentenced, as follows on 30 July 2021:

Offender 1: Custody for Life with a minimum of 21 years less 403 days spent on remand; 18 years detention in a Young Offender Institution concurrent; and 5 years detention in a Young Offender Institution concurrent, for the offences of murder, attempted murder and causing grievous bodily harm with intent respectively.

Offender 2: Custody for Life with a minimum of 12 years less 402 days spent on remand for the offence of murder.

Offender 3: Life imprisonment with a minimum of 16 years less 403 days spent on remand; and 14 years imprisonment concurrent for the offences of murder and attempted murder respectively.

Offender 4: To be Detained at Her Majesty's Pleasure with a minimum term of 11 years less 400 days spent on remand; and 8 years detention in a Young Offender Institution concurrent for the offences of murder and attempted murder respectively.

Offender 5: To be Detained at Her Majesty's Pleasure with a minimum term of 10 years less 378 days spent on remand for the offence of murder .

Offender 6: To be Detained at Her Majesty's Pleasure with a minimum term of 11 years less 331 days spent on remand; and 10 years detention in a Young Offender Institution concurrent for the offences of murder and attempted murder respectively.

5.

Offender 1 was 20 at the time of sentence. He had just turned 19 at the time he committed the offences. He has no previous convictions. He is represented by Mr Wright QC.

Offender 2 was 19 at the time of sentence. He was 18 at the time he committed the offence. He has a previous conviction for robbery in 2016. He is represented by Mr Mian QC.

Offender 3 was 24 at the time of sentence. He was 23 at the time he committed the offences. He has previous convictions for driving offences. He is represented by Mr Iqbal QC.

Offender 4 was 18 at the time of sentence, but is now 19. He was 17 when he committed the offences. He has two previous convictions for having possession of a bladed article in a public place and one of using threatening words and behaviour. He is represented by Mr Tehrani QC.

Offender 5 was 17 at the time of sentence but is now just 18. He was 16 at the time he committed the offence. He has no previous convictions He is represented by Mr Pitter QC.

Offender 6 was 17 at the time of sentence but is now 18. He was 16 at the time he committed the offences. He has no previous convictions. He is represented by Mr Ryder QC.

6.

The victims of the offences were also young men. It does not appear that they were previously known to the offenders.

The Facts

7.

In brief, the offenders were seen on CCTV cameras in Park Croft in Batley, a residential area, during the course of the evening of 21 June 2020. Some of them were clearly intoxicated and their behaviour unruly. Shortly after 10.15pm they came across the three victims in an alleyway leading to an open park area. A physical confrontation occurred between Bradley Gledhill and one of the offenders. Very shortly afterwards he and his two friends, Joel Ramsden and Kasey Hall, were chased out of the alley way and into the road by all six offenders.

8.

Kasey Hall had been stabbed to the back of his chest and in his upper arm whilst still in the alley way. Fortunately, he managed to get back to his motor car and drove away.

9.

Joel Ramsden was chased by Offenders 1, 3, 4 and 6 who tried to corner him. Offender 1 struck Joel Ramsden to the rear of his neck with a knife, and he was stabbed six times more to the left abdomen, chest and loin area. Offender 4 kicked out at Joel Ramsden. Offenders 3 and 6 were part of the group trying to encircle him. Joel Ramsden eventually managed to escape and get into the car being driven by Kasey Hall. Joel Ramsey sustained a collapsed left lung, damage to the bowel and spleen and a contusion to his kidney.

10.

Bradley Gledhill attempted to flee the offenders. Offenders 1, 3, 4 and 6 joined offenders 2 and 5 who had been attempting to block his escape. He was brought to the ground and restrained there by Offender 2 as others kicked, stabbed and stamped on him albeit that he was obviously critically injured. It appears that he died at the scene. He was found to have sustained three stab wounds, one penetrating the heart. There were multiple abrasions and bruises.

11.

Offender 1 had sustained a flesh wound whilst in the alley way, probably from a knuckle duster that was later found in Kasey Hall's car. When seen by the police the following day, Offender 1 claimed to have been randomly attacked by three youths.

12.

Offenders 2 and 3 were arrested on 23 June 2020. Offender 2's clothing and footwear were heavily stained with Bradley Gledhill's blood. Offender 4 was found to have burnt the clothing that he had been wearing during the attack. He was arrested on 25 June 2020. Offenders 5 and 6 were arrested in July and September respectively.

13.

Somewhat unusually, CCTV and a mobile phone video recording captured the scene and therefore permitted a more detailed expose of the parts that the offenders played in the assaults which, despite the jury clearly determining that they were involved in a joint enterprise, has led to submissions seeking to differentiate the offenders beyond the aspects of their age and ultimate convictions.

14.

We were invited and have watched the relevant clips as shown to the jury at trial. The Offenders were convicted as indicated above.

Sentence

15.

Pre-sentence reports were prepared in relation to all the offenders except Offender 3. Character references were provided and counsel's notes for sentence provided in advance.

16.

Victim impact statements were made by Bradley Gledhill's bereaved mother and sister and are poignantly indicative of the devastating consequences that they and the wider family have suffered.

17.

Prosecution counsel prepared notes for sentence in relation to each offender. Effectively, we are asked to consider the same case as that made by the prosecution at the sentencing hearing in this application.

18.

Consequently, we note that in the case of each Offender it was submitted that:

i.

"Whilst not an aggravating feature, but rather an absence of mitigation, the Crown submit the defendant falls to be sentenced on the basis of an intention to kill as opposed to an intention to cause GBH..."

In the case of Offenders 2 and 5, and implicitly the other Offenders, the prosecution referred to the brutal nature of the attack, the nature of the injury sustained. In the case of Offender 2 that he had held the victim in place throughout the later part of the attack and could not have failed to witness the knife blows inflicted. In the case of Offender 4, that "depending on the view the Court takes of the evidence" he had struck the victim with a knife causing the most severe chest wound. In the case of Offenders 1, 3, 4 and 6 the prosecution relied upon their convictions for the attempted murder of Joel Ramsden which meant that the jury had been sure of an intention to kill, and which attack had preceded that upon Bradley Gledhill.

ii.

"...the only proper interpretation from the Jury's verdict is that the defendant was a joint participant in a murder where at least one knife (very likely more than one knife) was taken to the scene by a

participant or participants in the joint enterprise intending to have it available to use as a weapon, and that knife was used by those jointly participating in committing the murder.”

In the case of Offenders 1, 2 and 3, this had obvious implications regarding the appropriate starting point in reference to the application of Schedule 21, paragraph 4(1) and (2). In the case of Offenders 4, 5 and 6, who were under 18 at the time of committing the offence, the use of a knife in the course of the offending was nevertheless an aggravating feature and the circumstances were such that they may be regarded to have continued to participate in the assault in the knowledge of, at least, the knife being used by Offender 1.

iii.

In relation to all Offenders, the offence was aggravated by the public location of the vicious and deadly assaults and witnessed by members of the public, including a child, and the sustained, persistent and repeated gang attack. In relation to Offender 1, he had a leading role. In relation to Offender 4, he had destroyed evidence, namely his clothing, post offence involving an innocent other in the process and “depending on the view the court takes of the evidence given at trial in this regard”, had assisted in the disposal of the knife. In relation to Offender 5, he had taken Bradley Gledhill’s mobile phone during the attack and had later disposed of it to avoid detection.

iv.

In relation to Offenders 1,3,4 and 6, who were convicted of attempted murder, the relevant guideline indicated level B Culpability and category 2 harm, aggravated by similar features present in relation to the murder.

v.

In relation to Offenders 4,5 and 6 their youth was already “reflected in the Schedule 21 starting point”.

vi.

It was accepted that the attacks were unplanned and not pre-meditated , but “ought to be seen in the context of [their] conduct prior to the attack when ... they were plainly looking for trouble and seeking out confrontation”.

19.

Offender 1 did not seek to suggest that he had no intention to kill nor that he did not fall within Schedule 21, paragraph 4(2) in relation to taking a knife to the scene and using it in committing the murder. Whilst recognising that the sentence must reflect the totality of the offending, it was submitted that the sentencing judge should guard against “double counting” when aggregating the offending and determining the minimum term to be specified pursuant to the Sentencing Act 2020, section 321; this was a group attack with three victims, and not separate episodes of violence. Offender 1 had surrendered himself to custody on the evening of the incident.

20.

Offender 2 submitted that there was no evidence that he was ever in possession of a knife at the scene, or was aware that Offender 1, or other Offenders, had a knife or used one at the scene prior to the fatal incident. He had not been present when the altercation started in the alleyway. His actual involvement had been holding Bradley Gledhill to the ground for a matter of seconds as two of the other Offenders kicked him. He cannot be safely held on the evidence to have held him whilst he was stabbed. There was no intention to kill.

21.

Offender 3 submitted that he did not take a knife to the scene, nor was there evidence from which it could be safely concluded that he was aware that a knife had been taken to the scene by his brother, Offender 1. He was not present during the trigger offence, and therefore his initial participation may well have been in self-defence of another. His convictions for murder and attempted murder were based upon a short period of time and his acts of violence were minimal.

22.

Offender 4 submitted that there was no evidence that he had taken a knife to the scene or knew that a knife had been taken to the scene to be available for use as a weapon. Starting points provided by Schedule 21 should not be approached in a "mechanistic way". His "age, immaturity, lesser culpability and lack of significant antecedent history are sufficiently recognised in the differential in minimum terms as between him and [the other offenders]." His previous convictions should be viewed in the context of his own self-protection from others; he arrived at the scene of violence "late" and did not physically attack Bradley Gledhill, had kicked Joel Ramsden twice before retreating and was unarmed. He had no intention to kill. He denied disposing of a knife beneath a bin. In terms of the attempted murder, this was a medium culpability category 3 harm case.

23.

Offender 5 submitted that there was insufficient evidence to conclude that he had possession of a knife, that the sentencing judge should be slow to conclude that he had the intention to kill, was the youngest of all the Offenders and had acted out of character. There should be no uplift to the minimum term prescribed by Schedule 21.

24.

Offender 6 submitted that Schedule 21 does not provide a structure to offenders under 18 at the time of the offence as it does to those aged 18 and over, where three starting points identify categorisation of seriousness. The starting point in his case was 12 years, and whilst the sentencing judge was entitled to take account of the features identified in the adult starting points, the resulting term must maintain a proportionate relationship with the prescribed starting point. "Nowhere has the court suggested that the 12 year starting point should be adjusted upwards simply to reduce the divergence of sentence between younger and older offenders involved in the same offence. Such adjustment might properly be made if the younger person's role or activity is more serious than that of the older offender or if there are greater aggravating factors in the younger person's case." It was conceded that "in light of the associated conviction for attempted murder, the court is entitled to infer an intention to kill Bradley Gledhill." He did not carry a knife. He did not personally inflict violence upon Joel Ramsden. There was hope of future rehabilitation.

25.

The sentencing judge acknowledged "the unending pain" caused to Bradley Gledhill's family. He noted the youth of all the Offenders. He took into account the provisions of the Sentencing Act 2020, and the Definitive Sentencing Guideline in relation to attempted murder and the Overarching Guideline on sentencing children and young people. He explained that a minimum term was the time that must be served before the individual Offender's case may be referred to the Parole Board for consideration of their release on license. Thereafter the Offenders would be on license and may be recalled to prison. He determined that the offences were closely linked to each other on the facts and his "reasoning will reflect the common factual context in which the offences were committed." He identified the "aggravating features" in respect to all of the Offenders as the location of the killing, in a public place and witnessed by members of the public, including the child who videoed part of the fatal attack. Also

this was a sustained and repeated gang attack. Overall, this was an attack of “hideous brutality” against three victims. So far as points of mitigation that applied to all, there had been no planning or pre-meditation. The group had been “looking for trouble” but had not targeted the victims beforehand. The sentencing judge could not be satisfied that any of them had the requisite intent to kill, rather than to cause grievous bodily harm. He was not satisfied that Offenders 2,3,4,5 and 6 were aware that Offender 1 intended to use the knife as a weapon, although they would have been aware of the knife being used. The Offenders were all young.

26.

In respect of each Offender he made observations as to additional aggravating and mitigating features as he found them to be.

27.

Offender 1 had been seen to stamp on Bradley Gledhill and “drag him” when bleeding and wounded across the road. In mitigation, the sentencing judge was not satisfied that Offender 1 had an intention to kill. He had been only 19 at the time of the offence.

28.

Offender 2 had cornered the deceased. His “part in Bradley’s death was vile”. He had held Bradley Gledhill to the ground whilst he was helpless and bleeding and others “landed blow after blow on him and his blood was pooling in the road. He had then given a “mocking salute” as he departed. He had a relevant previous conviction.

29.

Offender 3 had helped to immobilise Joel Ramsden to prevent his assistance to Bradley Gledhill. He had delivered a “casual vicious kick” to Bradley Gledhill’s head as he lay helpless and bleeding on the ground. He was the oldest and should have exerted a positive influence over the others. He was drunk.

30.

Offender 4 had attacked Joel Ramsden to prevent his assistance to Bradley Gledhill. The pre-sentence report made “disturbing reading” indicating “on the one hand, a callous absence of remorse or, on the other, youth and immaturity combined with the shock of conviction, as your counsel emphasises.” In mitigation, the sentencing judge accepted that he played “less of a role in the murder than the other five” Offenders and did not strike a blow to Bradley Gledhill.

31.

Offender 5 “lunged” at Bradley Gledhill when he was between the cars, and had penned him in. Nevertheless, the sentencing judge was not satisfied that the Offender carried a knife. He did, however, deliver three kicks, two of which were to Bradley Gledhill’s head. He had destroyed evidence, namely by the disposal of the mobile phone. In mitigation, he had shown remorse. He was the youngest of the Offenders.

32.

Offender 6 had a “very aggressive” role. He was “pumped up with alcohol and adrenalin”. He had launched several powerful and vicious kicks to both Bradley Gledhill and Joel Ramsden. He was heavily built and “capable of doing real damage”. He had gestured in an “arrogant gloating manner” on leaving the scene. The sentencing judge gave “particular weight” to his young age in mitigation.

33.

So far as the attempted murder was concerned, the judge agreed that it was high culpability and category 2 harm so far as Offender 1 was concerned, and medium culpability and category 2 harm so far as Offenders 3, 4 and 6 were concerned, since they did not use the knife, nor was the judge satisfied that they knew beforehand that "someone else would".

34.

Her Majesty's Solicitor General takes no issue with the sentence passed concurrently in relation to the wounding with intent and we do not refer to it further, beyond noting that a third victim was involved in so far as fixing the minimum term in relation to Offender 1 is concerned.

35.

The sentencing judge reasoned the minimum terms he imposed as follows.

i.

Offender 1: The starting point was 25 years because of his taking a knife to the scene intending to have it available as a weapon. Balancing aggravating and mitigating features, in particular youth, this was reduced to 17 years, increased by a further three years to reflect the attempted murder of Joel Ramsden and one year for the causing grievous bodily harm with intent, a total of 21 years in all.

ii.

Offender 2: The starting point was 15 years, since although it was likely that he knew that a knife had been taken to the scene, the sentencing judge was not sure that Offender 2 knew that it was intended to be available as a weapon. Balancing aggravating and mitigating features and noting that "the starting point would have been 12 years had you been a little younger still" . The minimum term was 12 years.

iii.

Offender 3: The starting point was 15 years, since although it was likely that he knew that a knife had been taken to the scene, the sentencing judge was not sure that Offender 3 knew that it was intended to be available as a weapon. Balancing aggravating and mitigating features, the starting point would be 14 years, increased by two years because of the attempted murder of Joel Ramsden, making a total of 16 years.

iv.

Offender 4: The minimum starting point was 12 years for the murder. Balancing aggravating and mitigating features, the minimum term for the murder would have been 10 years, "particularly because of your limited role in the murder", increased to 11 years to reflect the uplift necessary in relation to the conviction of attempted murder of Joel Ramsden .

v.

Offender 5: The starting point for the minimum term was 12 years. Balancing aggravating and mitigating features this would be reduced to 10 years.

vi.

Offender 6: The starting point for the minimum term for murder was 12 years. Balancing aggravating and mitigating features this would have been reduced to nine years, but would be increased by two years to reflect the uplift necessary in relation to the conviction of attempted murder of Joel Ramsden.

Submissions

36.

There is no issue that the sentencing judge was alert to the relevant provisions of Schedule 21 of the Sentencing Act 2020 as it applied to each of the Offenders by reason of their age at the time of committing the offence. In summary, Her Majesty's Solicitor General submits that the minimum terms set were simply too low. First, whilst the respective age of the Offenders was an important mitigating factor, it was already catered for, to a large extent, in Schedule 21. In the circumstances of this case the sentencing judge had given "a pre-eminence" to this factor which failed to reflect the seriousness of the offending. Second, the sentencing judge had been wrong not to factor into the sentencing exercise that Offenders 2, 3, 4, 5, and 6 had knowledge of the knife and had participated in the assaults, and continued to do so when the knife was being used as a weapon, even if they had not been aware that it was taken to the scene for that purpose. The sentencing judge should have considered that Schedule 21, paragraph 4(2) did apply to Offenders 2 and 3 since the judge found that they knew/ were aware that Offender 1 had taken a knife to the scene, and it was difficult in those circumstances to understand how they could think that it was for any other use than "available to use as a weapon". Offenders 4, 5 and 6 fell outside Schedule 21, paragraph 4(2) but the obvious mortal danger posed by a knife being carried by another in the group, the prevalence and scourge of knife crime, and the use of the knife in their presence during offences for which they were jointly responsible and in which they continued to participate, should have resulted in an uplift to the minimum term in line with the comments of Lord Judge CJ's judgment in [R v M, AM, and Kika \[2009\] EWCA Crim 2544](#). Third, it was irrational for the sentencing judge to conclude that there was no intent to kill, most certainly in regard to Offenders 1, 3, 4 and 6 who had been convicted of attempted murder in relation to the attack upon Joel Ramsden which immediately preceded their joint attack upon Bradley Gledhill. In any event, the sentencing judge should have recognised the nature of the mitigation indicated by a lack of intent to kill was non-binary in the sense that there was a sliding scale depending upon the nature of the harm intended which could be "just short of an intent to kill".

37.

Summarising the arguments that Her Majesty's Solicitor General made in addition in relation to the individual Offenders.

i.

Offender 1: The sentencing judge erred in his approach to Schedule 21. A 25-year starting point was appropriate since he was over 18 at the time of the offence. There was no sufficiently reasoned justification for the significant downward variation. It was not said to meet the point of any disparity in sentencing that would flow in respect of other Offenders. Sentencing co-offenders of different ages and Schedule 21 thresholds could not take place in a vacuum but should do no more than reflect fairly the age differences, other offending and relevant mitigation: Attorney General's Reference (No 143 and 144 of 2006) [\[2007\] EWCA Crim 1245](#). Thereafter, the uplift for the other two offences did not adequately reflect the gravamen of the offence of attempted murder. It was "symptomatic of a failure to grapple with the seriousness of the totality of the offending.... which involved knives". The minimum sentence imposed in his case set too low a bar when considering the sentences of the other Offenders.

ii.

Offender 2: Too much of a reduction had been given for his age at the time of the offence.

iii.

Offender 3: The minimum term of 15 years should have been aggravated to reflect his age and maturity and ensure the greater level of parity with Offender 1. He had committed a second offence.

No sufficient uplift had been applied in respect of that, even if the sentencing judge was correct to categorise the case in his regard as medium culpability.

iv.

Offender 4: Insufficient attention had been given to his asserted “maturity” or the aggravating circumstances of the offences. He was only just short of 18 at the time of the offence. He had participated in the attempted murder. He had relevant previous convictions involving the possession of bladed instruments. He had also been convicted of attempted murder. No sufficient uplift had been applied in relation to this second offence, even if the sentencing judge was correct to categorise the case in his regard as medium culpability since he had not used a knife.

v.

Offender 5: The minimum starting point of 12 years, if anything, should have been aggravated to reflect his maturity and his role in the murder and not mitigated by reason of age.

vi.

Offender 6: The minimum term should reflect his major participation in the attacks. The minimum sentence selected for the murder lacked internal coherence when seen in the context of Offender 5’s sentence. He had also been involved in the attempted murder of another. No sufficient uplift had been applied, even if the sentencing judge was correct to categorise the case in his regard as medium culpability.

38.

A Respondent’s Notice in accordance with CPR 41.1 was served on behalf of all Offenders apart from Offender 2. Nevertheless, in the circumstances and to avoid any possible prejudice that may flow, we gave leave to Mr Mian QC to make oral representations in response to Her Majesty’s Solicitor General’s application. All Offenders made reference to the sentencing notes prepared for the court below and the mitigation that was made. It was a common submission that we should give due deference to the findings of fact made by the sentencing judge, and the weight that he gave to these issues, bearing in mind the advantage afforded to him as trial judge who had heard all the evidence and who had had an opportunity to assess the individual Offenders. The sentencing judge had acted in accordance with the principal aim in sentencing young people. His approach was individualistic and principled in that it prioritised rehabilitation. Schedule 21 did not provide a sentencing grid. The minimum terms should be seen from the perspective of the young Offenders, they would be “accountable” for the rest of their lives. A well informed, objective and reasonable bystander would not understand the minimum term, which represented one half of a determinate sentence, to be unduly lenient. There was no “cliff edge” in terms of chronological age, which in many cases may not reflect emotional maturity. Overall, if the sentences were lenient, they were not unduly so, and each fell within the band of reasonable sentences predicated on all the circumstances of the case and the Offender. If this Court reached the conclusion that the sentences, or any of them, were unduly lenient we were invited to exercise our discretion and not increase the minimum terms.

39.

We are grateful to all counsel for their submissions, written and oral, which were advanced in measured terms and to the fullest extent commensurate with their duties to their respective clients, whilst paying due regard to the continuing grief of those members of Bradley Gledhill’s family who attended the hearing before us.

Assessment and conclusions

40.

This was, as Her Majesty's Solicitor General rightly acknowledges, a most difficult sentencing exercise. All the offenders were convicted of murder. Four of them were also convicted of attempted murder, and one of them of causing grievous bodily harm, all distinct acts but arising in a short intensely violent incident. The Offenders acted as a pack, undertaking different roles in first separating and isolating their victims and then physically assaulting them, and the consequences of the assaults they committed grew in seriousness. All the offenders are still young, three of them were juveniles at the time of the offences and one of them crossed a significant age threshold for the purposes of sentence between the commission of the offence/s and sentence.

41.

However, we have needed little persuasion that all of these sentences are unduly lenient. By and large we agree with Mr Emlyn-Jones QC's submissions which reflect the prosecution case after trial. In short, whilst it was necessary for the sentencing judge in selecting the appropriate minimum term to have close regard to these Offenders' ages, and more particularly their emotional development and maturity, he did not adequately reflect the seriousness of the offending, significantly aggravated by the repeated use of at least one knife against more than one victim, the nature of the gang attack and the devastating consequential harm that ensued.

42.

We have reminded ourselves of the principles of sentencing in criminal youth justice as explained in the Overarching Guideline which must apply in so far as they are "not incompatible with the provisions of Schedule 21" in assessing the seriousness of the offences, or the combination of the offence and one or more offences associated with it: Sentencing Act 2020, s 3(ii). One of the Offenders reached 18 before sentence. The starting point should normally be that attributable to the age of the offender at the commission of the offence, however, as made clear in paragraph 6.2 of the Overarching Guideline, when an Offender becomes 18 between the commission of the offence and the finding of guilt, the purpose of sentencing adult offenders must be borne in mind which includes, the punishment of offenders, the reduction of crime including by deterrence, the protection of the public and the making of reparation as well as reform and rehabilitation.

43.

We are acutely conscious of the need for deterrence in the ever-increasing incidence of knife crime. The ease of acquisition and concealment of a knife, the inevitable and obvious risk when it is available in the midst of confrontations, especially in circumstances of inebriation or heightened adrenalin response, or to secure peer group approval or dominance and the mortal consequences that follow are amply demonstrated in the circumstances of this case.

44.

Equally, we bear in mind the inevitable advantage which the sentencing judge, especially one who had presided over a trial of the offenders lasting almost six weeks, will usually have over this Court. We note the obvious care with which this sentencing judge's remarks were prepared. Nevertheless, we feel bound to express our surprise at some of the conclusions he drew from the available evidence, and which we have seen on the CCTV and video footage, and having regard to the guilty verdicts returned against Offenders 1, 3, 4 and 6 for the attempted murder of Joel Ramsden.

45.

In the circumstances, we do not set aside the findings made by the sentencing judge as regards the possession and use of a knife by Offender 5 and disposing of a knife by Offender 4. We bear in mind

that Offender 4 was found not to have struck Bradley Gledhill whilst he lay on the floor, however we do proceed on the basis that the jury convicted him of two joint enterprises in which a knife was repeatedly used. As to the Offenders' intention, and despite the realistic concessions made by two of the Offenders' counsel in the court below that the sentencing judge would be able reasonably to draw an inference of an intention to kill, we proceed on the basis that the intention was to commit grievous bodily harm. However, the brutality of the attacks and the use of at least one knife and the multiple stab wounds to the torso and kicks to the head and body of a prone and obviously seriously injured and helpless man suggest an intention to cause really serious harm just short of an intention to kill and calls for little, if any, mitigation.

46.

We do not regard previous good character to attract great weight in the circumstances of these offences. The previous convictions of Offender 4, in particular, are significant aggravating features. We were invited by Mr Tehrani QC, specifically on the instruction of Offender 4's family, to watch a short video clip that had been posted on social media and showed Offender 4 being verbally and physically abused by a gang of youths, and which, it was said, demonstrated why he had thereafter carried knives for his own self protection. This clip had been shown to the sentencing judge. We are disquieted that the irony escapes the family. That is, if as the sentencing judge found in this case, any one of his assailants had been carrying a knife "pumped up by alcohol and adrenalin", then they themselves may have been mourning Offender 4.

47.

We follow the principles to be derived from the judgements in *R v Peters* [2005] EWCA Crim 2005; *R v Clarke and others* [2018] EWCA Crim 185; and *R v Daniels* [2019] EWCA Crim 296 drawn to our attention by Mr Emlyn-Jones QC and echoed, appropriately, by counsel for the Offenders. Specifically, as indicated in *R v Peters* @ [12]:

"The principle is simple. Where the offender's age, as it affects his culpability and the seriousness of the crime justifies it, a substantial, or even a very substantial discount, from the starting point may be appropriate. One way in which the judge may check that the discount is proportionate would be for him to consider it in the context of the overall statutory framework, as if Sch.21 envisaged a flexible starting point for offenders between 18 and 21. This would have the advantage of linking the mitigation which would normally arise from the offender's relative youth with the statutory provisions which apply to an offender a year or two older, or younger, and would contribute to a desirable level of sentencing consistency. Due allowance should then be made for the relevant aggravating and mitigating features to produce the final determination of the minimum term, and thereafter the judge should explain the reasons for the determination" (Emphasis provided)

48.

We acknowledge that Schedule 21 does not provide a mathematical equation to arrive at the appropriate sentence, and that starting points based on chronological age still must factor in the possible statutory mitigating feature of the age of the offender. Culpability is dependent upon actual levels of maturity regardless of chronological age. Small differences in chronological age, measured in months, may be reflected in significantly different suggested starting points.

49.

We have carefully considered the submissions of the Offenders' Counsel, which could not have been more skilfully advanced, but are not satisfied that there are any circumstances which influence us in the exercise of our discretion not to increase the Offenders' sentences. We have reached our

conclusions bearing in mind that disparity in the sentences should fairly reflect the different ages and criminality of the Offenders.

50.

Offender 1: The Schedule 21 suggested starting point for the murder of Bradley Gledhill is 25 years. There are the aggravating features which have already been identified above beyond the fact of the carriage of the knife to the scene for use as a weapon and which was used in the murder which gives rise to the statutory suggested increase in starting point. Allowing appropriate discount in relation to the limited available mitigation, predominantly his youth, and having regard to totality, the minimum term should be one of 27 years. The sentence of Custody for Life with a minimum term of 21 years for the offence of murder will be quashed and substituted with a sentence of custody for life with a minimum term of 27 years less 403 days served on remand. The other concurrent sentences will remain unaltered.

Offender 2: The Schedule 21 suggested starting point for the murder of Bradley Gledhill is 15 years. There are the significantly aggravating features which have already been identified above, specifically with regards to the joint and continued participation in the offence which involved the use of a knife, and which substantially outweigh the available mitigation. The sentence of Custody for Life with a minimum term of 12 years for the offence of murder will be quashed, and substituted with a sentence of custody for life with a minimum term of 16 years less 402 days served on remand.

51.

Offender 3: The Schedule 21 suggested starting point for the murder of Bradley Gledhill is 15 years. There are the significantly aggravating features which have already been identified above, specifically with regards to the joint and continued participation in two offences which involved the use of a knife, and which substantially outweigh the available mitigation. The sentence of imprisonment for life with a minimum term of 16 years for the offence of murder will be quashed, and substituted with a sentence of imprisonment with a minimum term of 21 years less 403 days served on remand. The concurrent sentence will remain unaltered.

52.

Offender 4: The Schedule 21 suggested starting point for the murder of Bradley Gledhill is 12 years. There are the significantly aggravating features which have already been identified above, specifically with regards to the joint and continued participation in two offences which involved the use of a knife and his relevant previous convictions for possession of bladed instruments in a public place, and which substantially outweigh the available mitigation. The sentence of Detention at Her Majesty's Pleasure with a minimum term of 11 years for the offence of murder will be quashed, and substituted with a sentence of Detention at Her Majesty's Pleasure with a minimum term of 16 years less 400 days served on remand. The concurrent sentence will remain unaltered.

53.

Offender 5: The Schedule 21 suggested starting point for the murder of Bradley Gledhill is 12 years. There are the significantly aggravating features which have already been identified above, specifically with regards to the joint and continued participation in an offence which involved the use of a knife, and which substantially outweigh the available mitigation of youth. The sentence of Detention at Her Majesty's Pleasure with a minimum term of 10 years for the offence of murder will be quashed, and substituted with a sentence of Detention at Her Majesty's Pleasure with a minimum term of 13 years less 378 days served on remand.

54.

Offender 6: The Schedule 21 suggested starting point for the murder of Bradley Gledhill is 12 years. There are the significantly aggravating features which have already been identified above, specifically with regards to the joint and continued participation in two offences which involved the use of a knife, and which substantially outweigh the available mitigation. The sentence of Detention at Her Majesty's Pleasure with a minimum term of 11 years for the offence of murder will be quashed, and substituted with a sentence of Detention at Her Majesty's Pleasure with a minimum term of 16 years less 246 days served on remand. The concurrent sentence will remain unaltered.