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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 5th November 2013

B e f o r e:
PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR BRIAN LEVESON)
MR JUSTICE ROYCE
SIR DAVID MADDISON

R E G I N A

v

RICHARD DYER
REGINALD DAVIS
MARK REID
TANYA FRANCENE EDWARDS
RICHARD MCKRIETH
GEORGE WESTON THOMPSON
NADIA PECCO
PAMELA MARIA BAILEY

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(Official Shorthand Writers to the Court)

Mr C Weston appeared on behalf of the Appellant Dyer
Mr R Thomas appeared on behalf of the Appellant Davis
Mr R Headlam appeared on behalf of the Appellant Reid
Mr E Amoah-Nyamekye appeared on behalf of the Appellant Edwards
Miss S Paul appeared on behalf of the Appellants McKrieth & Thompson
Mr P Marquis appeared on behalf of the Appellant Pecco
Miss L Plant appeared on behalf of the Appellant Bailey
Mr M Whitehouse appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

1. PRESIDENT OF THE QUEEN'S BENCH DIVISION: In early 2012, both as a result of complaints and otherwise, the Metropolitan Police were concerned about the extent of what appeared to be wholesale drug dealing in an area around Wardour Street in Soho: this activity had become a significant public nuisance. As a result, a substantial exercise (known as Operation Jolt) was commenced with test purchase officers acquiring crack cocaine and heroin from a large number of suppliers, some 32 of whom who were ultimately arrested and prosecuted. Twenty-eight have now been sentenced in the Crown Court at Southwark on different occasions by a number of different judges with at least two receiving community-based penalties (involving requirements for drug treatment); 25 received custodial sentences from between 16 months and 8 years. These appeals are brought by eight offenders (it being said that seven others had been sentenced by that stage) all of whom were sentenced by His Honour Judge Robbins on 14 September 2012. Their offending consisted of street dealing in Class A drugs albeit to different extents and with different background circumstances.

2. The principal arguments advanced on this appeal concern the way in which the judge applied the Definitive Guideline issued by the Sentencing Council in relation to drugs offences, the applicability of the decision of this court in R v Afonso [2005] 1 Cr App R (S) 99, page 560, [2004] EWCA Crim 2342 and arguments regarding disparity with sentences imposed in the large number of other prosecutions that have emanated from this police operation such that "right-thinking members of the public, with full knowledge of the relevant facts and circumstances [would] consider that something had gone wrong with the administration of justice" (see per Lawton LJ in R v Fawcett 5 Cr App R(S) 158). Before dealing with the individual cases, it is worth enunciating the principles.

The Guideline

3. The Definitive Guideline in respect of drug offences was issued in accordance with section 120 of the Coroners and Justice Act 2009 and applies to all offenders aged 18 and over who are sentenced on or after 27 February 2012 regardless of the date of the offence. Subject to complying with provisions such as impose minimum sentences and when dealing with mentally disordered offenders, section 125(1) of the Act mandates (using the word 'must') every court, in sentencing an offender, to follow any relevant guideline unless satisfied that it would be contrary to the interests of justice to do so.

4. In relation to selling directly to users ('street dealing'), harm is not categorised by quantity: the fact of street dealing is sufficient to put the offending into category 3 irrespective of the quantity of the drugs involved. It will inevitably be the case that street dealing will be in quantities far smaller than those listed in the guideline. Furthermore, the fact that supply is to a test purchase or undercover police officer is

equally not a reason to reduce the category: the position is put beyond doubt in the lowest category (category 4) which identifies indicative quantities of drugs of different class and goes on to provide an alternative in identical language: "where the offence is selling directly to users* ('street dealing') the starting point is not based on quantity - go to category 3." The footnote to which the asterisk refers includes within the guideline selling to test purchase officers.

5. It is appropriate to say a few words about the asterisk and the explanation. The Council consulted widely on the issue of supply to undercover (or test purchase) officers: in reality, there is no question of a street dealer deliberately approaching an undercover officer (intending less harm) and the identity of the person with whom the defendant engages when supplying or offering to supply drugs is entirely a matter of chance. The respondents to the consultation agreed and in the Council's published response, the conclusion was reached:

> "The Council agrees that 'supply to an undercover officer' should not be a factor for consideration at either step 1 or step 2 and it will not be included in the definitive guideline."

6. As to the culpability of the offender as demonstrated by his or her role, it is important to emphasise that the descriptions cover a wide range of activities and circumstances in which the offence of supplying a controlled drug might be committed. For that reason one or more of the characteristics may demonstrate the role and the lists are not exhaustive. Among the descriptors for a significant role is included "motivated by financial or other advantage, whether or not operating alone". Lesser role, on the other hand, includes "involvement through naivety/exploitation", "if own operation, absence of any financial gain, for example joint purchase for no profit, or sharing minimal quantities between peers on non-commercial basis." Street dealers funding their own habit, or, perhaps, an extremely meagre living for food and the like are motivated by financial or other advantage and are not the same as those who, for example, are funded by friends to purchase for the group without any question of financial or other reward.

7. We ought to say something about the descriptions "some awareness and understanding of the scale of the operation" in relation to significant role and "very little, if any, awareness or understanding of the scale of the operation" in the lesser role. This is intended to encompass not only street dealers but also those who are being sentenced based on the quantity of drug concerned: it is not difficult to visualise a courier or low-level participant in a very substantial drug dealing operation who had no idea of the scale of that operation but who, unless these descriptors were provided, could find the starting point for the sentence at a level far in excess of that which would be justified for the criminality of which the offender was aware. Given that street dealing is always likely to be at low level and the category is fixed, this descriptor has far less relevance.

8. Against the background of this guideline, the earlier authorities have only very

limited (if any) relevance; there is no point in referring (as a number of skeleton arguments do in this case) to cases such as R v Djahit [1999] 2 Cr App R(S) 142: the pre-guideline authorities have been overtaken by the guideline itself. To suggest (as is also asserted) that Afonso can be applied directly to the facts of the present cases is to fail to appreciate the effect of the guideline (although it is appropriate to add that the facts giving rise to the approach adopted in Afonso were very specific and, in submissions to this court over the years, have often been misunderstood). In the light of the guideline, further reliance on Afonso is no longer appropriate.

9. That does not mean that potentially mitigating circumstances are not important. Thus, by way of example, the scope for a less severe approach to lack of previous convictions and demonstration of steps taken to address addiction is contained within the guideline as reducing seriousness. Again, there is a further recognition of the importance of tailoring the case to meet the needs of an offender in the rubric to Step 2 which makes it clear:

> "Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under s. 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence."

Disparity

10. Most of the arguments advanced in the appeals before us alleged disparity of sentences with those passed on different offenders, by different judges, at different times (many of which were subsequent to these sentences): the common link is only that the offenders were arrested as part of Operation Jolt. None of these offenders were involved in a joint enterprise and any disparity in sentence (to such extent as it exists or cannot be explained by reference to the specific facts of the case, including those individual to the offender) cannot be a grounds for appeal any more than if attempts were made to argue disparity based on similar street dealing sentences from different parts of the country at different times. The purpose of the guideline has been to introduce what is hoped to be an increasingly consistent approach to sentence: that is not the same as saying that the outcome in each case must be the same.

11. R v Broadbridge [1983] 5 Cr App R(S) 269 is authority for the proposition that an offender cannot justifiably be aggrieved if he or she receives an appropriate sentence simply because a co-offender (even more so, we add, someone who is not a co-offender) has fortuitously received an unduly lenient sentence. As was made clear in R v Parveez Saddieq [2011] EWCA Crim 1052, that principle is not inconsistent with the observation in Fawcett set out in paragraph 2 of this judgment on the basis that Broadbridge identifies the correct principle save only where to pass such a sentence would cause right thinking and properly informed members of the public to consider that its imposition would give the offender a justified sense of grievance. Right thinking and properly informed members of the public would not expect different

judges sentencing different offenders for different offences at different times (even if the location of the offending was similar) to be bound by sentences out of line with authority or guidelines, the purpose of which is specifically to encourage consistency of approach to sentencing generally. Thus, following the guideline approach in each case effectively removes arguments surrounding disparity flowing from different outcomes. It is highly relevant that in Parveez Saddieq itself, the court was concerned with disparate sentences for two men involved in the same joint enterprise.

12. The existence of the guideline is not to underplay the influence of this court in the way in which those convicted of crime are sentenced. In R v Thornley [2011] EWCA Crim 153, [2011] 2 Cr App R(S) 62, page 361, Lord Judge CJ said (at paragraph 13):

> "The 'interests of justice' consideration which now, and we assume always has and always will underpin the work of the Sentencing Guidelines Council (now the Sentencing Council) undoubtedly involves consideration of the subsequent thinking of this court and of the legislature on sentencing issues which may impact on every original definitive guidance. Just as the guidelines are not tramlines - an observation made time and time again - nor are they ring-fenced."

13. Thus, a Definitive Guideline sets out the approach which the court must follow; subsequent decisions of this court may help to interpret the guidance contained within the guideline and provide illustrations of the circumstances in which it operates and, of equal importance, when the interests of justice might justify departure from it. The guideline is intended to encapsulate the approach to the vast majority - but necessarily all - the cases that come before the court: the interests of justice permit departure from the guidelines in appropriate cases.

14. That is precisely the point being made in Attorney General's References (No 73, 75 of 2010 and 03 of 2011) [2011] EWCA Crim 633, [2011] 2 Cr App R (S) 100 page 555 in which Lord Judge CJ said (at para 5):

> "[T]he jurisdiction of the Court of Appeal Criminal Division to amplify, to explain or to offer a definitive sentencing guideline of its own, to issue guidelines if it thinks fit, is undiminished. The relevant statutory provisions emphasise the obvious truth that no sentence should be an unjust sentence and that no guideline can require that an unjust sentence should be imposed."

15. What Lord Judge was not saying was that this court could issue its own guideline in conflict with a Definitive Guideline issued by the Council; neither was he suggesting that it is appropriate to go back to the pre-guideline authorities and seek to argue that they, rather than the guideline, provide the approach that the court should follow. Amplification and explanation is precisely the function of this court as is issuing guidelines in areas or circumstances not covered by a Definitive Guideline. If

the interests of justice demonstrate that a guideline requires revision, the court will undoubtedly identify that fact: it will then be for the Council, pursuing its statutory remit, to revisit the guideline and undertake the necessary consultation which precedes the issue of all guidelines. Given the composition of the Council, we doubt that substantial differences of approach are likely ever to emerge.

These Appeals

16. In each case the judge made it clear that he had borne in mind what had been said in a pre-sentence report about the gravity of dealing in drugs which observed:

> "Drugs destroy lives and have a negative impact on society. The supply of drugs is an evil occupation that profits out of the despair of others who are vulnerable and those who engage in such activities should expect to be severely punished by the courts."

17. The judge concluded that in each case, only immediate custodial sentences were appropriate sending out a message that those involved in drug trafficking could only expect to receive substantial custodial sentences. All had provided essential links in the chain of drugs supply: the roles of each were "somewhat different but certainly quite significant". Undercover police officers had frequently put themselves in danger in these necessary operations. These observations were fully justified.

18. The judge further said that he was conscious of sentences passed on others arrested in Operation Jolt but did not know their antecedents. He said that he had had regard to the guidelines and also to the case of Afonso (which, in any event, has been overtaken by the guideline). He also took account of the fact that guilty pleas that had been tendered at the first available opportunity.

19. Before turning to the facts of the individual cases, it is worth identifying the guideline starting point and range for each offence of supplying a controlled drug of Class A, offering to supply such a drug or being in possession with intent to supply. Category 3 (street dealing) with a significant role (motivated by financial or other advantage whether or not operating alone) justifies for each offence a starting point of 4½ years' imprisonment and a range of 3½ to 7 years. A lesser role in relation to street dealing which does not relate to quantity (limited function under direction, engaged by pressure, coercion, intimidation, involvement through naivety/exploitation) for each offence justifies a starting point of 3½ years and a range of 2-5 years. Without seeking to be exhaustive, factors increasing seriousness (thereby affecting movement in the range) include previous convictions and failure to comply with current orders. Demonstration of steps to address addiction and primary caring for dependent relatives are among the factors that reduce seriousness and a guilty plea justifies a discount the size of which is dependent on its timing.

20. Having regard to that background, the circumstances of the offending and the

appeals of these individual appellants can be summarised quite shortly.

21. Richard Dyer (now aged 44) pleaded guilty to seven offences of supplying a controlled drug of Class A (four involving crack cocaine and three of heroin) and one offence of offering to supply such a drug, in each case to an undercover test purchase officer. The offences were committed over five days and the eight offences referred to 5 individual deals; he provided officers with two different mobile numbers. On one occasion, after a request for two deals, the appellant said that he had just sold £100 of heroin and would have to 're-load'. Dyer had 21 previous convictions for 59 offences including robbery, burglary, aggravated burglary and a variety of drugs offences, his last drugs offence being in 2011 for possession of drugs of class A.

22. Dyer accepted his involvement and said that he had been brought in at the last minute and paid £300 to act as a lookout, then becoming involved to service rent arrears and drug debts; drug use, peer pressure, lack of employment and finances all contributed to his offending. He was assessed as posing a low risk of harm to the public and a medium risk of re-offending. He was sentenced to a term of 5 years imprisonment.

23. Although it is contended that the role of this appellant fell into the lesser category, we have no doubt that the judge was entitled, if not inevitably bound, to conclude that he was motivated by financial or other advantage (in his case access to drugs for his own use). The extent of the offending required a higher starting point than 4½ although, in our judgment, given the period involved, it should not have exceeded 6 years. Giving credit for his guilty pleas, the appropriate sentence should have been 4 years' imprisonment on each count concurrent. To that extent this appeal is allowed.

24. Nadia Pecco is now 35 years of age. She pleaded guilty to no fewer than 15 offences of supplying a controlled drug of Class A, ten of which concerned crack cocaine and five heroin. The basis of her plea was that she was placed under pressure (not amounting to duress) by threats to her family; she had been taking crack cocaine for a year and was paid in the form of 5 rocks of crack cocaine a day. She had appeared before the courts on nine previous occasions for 14 offences although the judge incorrectly referred to a further conviction for robbery which had been quashed by this court although she had then served a substantial part of the sentence imposed: none involved drugs and she had once served a sentence of 4 months' imprisonment for theft.

25. The pre-sentence report identifies a truly chaotic lifestyle with volatile, violent and pro-criminal relationships and responsibility for three children with two partners (these children were then being looked after by a friend). While in custody, she has been engaging with drug treatment programmes. Given the scale of her offending, she was sentenced to 5 years' imprisonment on each count concurrent; destruction of the I-phone and BlackBerry found in her possession were ordered.

26. The Crown contended and maintain that this appellant, as with all the others, had a significant role (and her possession of two phones is clearly indicative); equally,

however, the basis of plea (referring to pressure and intimidation) which was not challenged and is evidenced by the pre-sentence report is significant. Mr Marquis argued in the circumstances, she should have been identified as fulfilling a lesser role. We do not agree. But we do believe appropriate to take a starting point between 'significant' and 'lesser' roles which must be increased to reflect the number of days upon which she was offering drugs for sale. Reflecting these offences, her caring responsibilities and all the circumstances outlined in the pre-sentence report, the sentence after a trial should have been 4½ years; discounting that sentence for her guilty plea, we believe that the appropriate sentence is 3 years' imprisonment on each count concurrent.

27. Pamela Bailey (who is now 50 years of age) pleaded guilty to one offence of supplying a controlled drug of Class A (heroin). She was involved with Nadia Pecco and handed 0.114 grams of heroin to a test purchase officer after he had paid Pecco for the drug and claimed to have been concerned in this supply in order to obtain drugs for her own consumption. She clearly played a limited role in this transaction (working to the most prolific offender involved in this operation) but she was motivated by advantage to herself; the very seriously aggravating feature of her offending is that she has twice previously been convicted of supplying Class A drugs. On 8 January 1996, she was sentenced to 4 years' imprisonment for four such offences and on 3 May 2005 she received a similar sentence for conspiracy to supply Class A drugs. It is of note that had the first of those offences occurred after 30 September 1997, she would have been liable to a mandatory minimum term of 7 years: see section 110 Powers of Criminal Courts (Sentencing) Act 2000: in the event, of course, she was not.

28. The pre-sentence report tells an extremely depressing story of coercion, peer pressure, financial gain and sustained drug use; her oldest son was murdered some ten years ago and another has been stabbed; her two younger children reside with their father; she had previously refused all types of rehabilitative and mental health support. Her letter to the judge (and that of her daughter) only underline the nature and extent of the problems that she faces.

29. It is not entirely easy to categorise this case - which itself may demonstrate the importance of flexibility in applying the guidelines. There are features which justify putting Ms Bailey in either significant or lesser roles; if the former, not least reflecting the money found on her and her possession of two phones, the involvement under the direction of another can reduce the starting point whereas in the latter, it is already taken into account. In either case, her previous convictions, being a statutory aggravating factor, must be adequately reflected alongside any other factors reducing seriousness. Although the judge passed a sentence of 5 years' imprisonment (after allowing for the guilty plea), in our judgment, that was the correct sentence before allowing for the plea of guilty. Giving full credit for the guilty plea, that sentence is reduced to 40 months' imprisonment. Orders for forfeiture of the £985.90, the Nokia mobile phone and an Apple iPhone must remain.

30. Reginald Davis (who is now 59 years of age) pleaded guilty to two counts of

conspiracy to supply drugs of Class A (that is to say, heroin and crack cocaine). By his basis of plea, he admitted effectively introducing two test purchase officers to drug dealers (on a total of three occasions). In mitigation, it was put that he hoped to curry favour with one or other of the dealers and obtain drugs to feed his own addiction: the conspiracies were, it was said, opportunistic, informal and unsophisticated.

31. The record of this appellant is nothing short of shocking. He has appeared before the courts on 32 occasions for a wide variety of some 57 offences, no fewer than 7 being for drugs offending. He undeniably qualified for a minimum 7 year term having previously been convicted of drug trafficking offences on three occasions since 1997, receiving sentences of 3 years, 30 months and 5 years' imprisonment respectively for five, one and 10 offences involving supply. A report spoke of his present commitment to address substance misuse (which had extended over 30 years) and it was argued that he should be the subject of a drug rehabilitation programme. In the event, the judge concluded that this appellant had played a 'very significant role' and should be subject to the mandatory provisions and sentenced him to 8 years' imprisonment on each count concurrent; his Nokia mobile phone was ordered to be destroyed.

32. Mr Richard Thomas argues that the basis of plea (accepted by the Crown and the judge) does not justify the conclusion that he played a 'very significant role'; he talked to the officers and took them to dealers. In the circumstances, the judge should have accepted that this very low level of offending (which was similar to that which had led to the earlier convictions) could and should have led to a finding that it would be unjust to impose the minimum term. Alternatively, the term should not have been more than 5½years (being 7 years less approximately 20% discount for the guilty plea: see section 144 Criminal Justice Act 2003).

33.

34. This being the fourth occasion on which this appellant had been convicted of trafficking offences, we reject the submission that the judge should have exercised his discretion on the basis that it was unjust to impose the minimum term. Nevertheless, we see force in the remaining arguments advanced by Mr Thomas and, in the circumstances, reduce the sentence imposed concurrently on each count to five-and-a-half years' imprisonment.

35. We can deal with George Thompson (who is 24 years of age) and Richard McKrieth (who is 49 years old) together, having been jointly represented both in the Crown Court and before us. Thompson pleaded guilty to five counts of supplying a drug of Class A (between 21 March 2012 and 13 April 2012): he had personally dealt drugs to test purchase officers dir ectly, the total of the five deals amounting to 1.105 grams. McKrieth pleaded guilty to eight counts of supplying a drug of Class A (between 30 March 2012 and 3 May 2012). On two occasions, he supplied the drugs directly; on the other six, he worked with Nadia Pecco who negotiated the sale. In his case, the quality of drugs involved was 1.11 grams. Both were sentenced to 5 years'

imprisonment on each count, the sentences to run concurrently; the BlackBerry found on Thompson and two Nokia mobile telephones found on McKreith were ordered destroyed.

36. Thompson had four previous convictions, two of which were for possession of cannabis; none involved drugs supply and he had never previously lost his liberty. He had difficulty supporting his family because of scarcity of work in the construction industry and had been presented with the opportunity to earn extra money by selling drugs and keeping a proportion of the price.

37. McKreith had eight previous convictions for 11 offences, three being for drug possession offences. In the pre-sentence report, he described himself as a 'scammer', targeting tourists, selling crushed paracetamol as drugs and making sufficient to purchase drugs for his own use. He did, however, accept that he often got customers for known drugs dealers and, at times, would complete the transaction. The writer of the report spoke of him attempting to minimise his behaviour, using drug use to excuse that behaviour and draw attention away from his offending.

38. Before the judge it was submitted that even if it was correct to categorise both of these men as falling within the significant role at Category 3, their cases should be viewed at the lowest end of the category given that it includes weights up to 150 grams. That submission was not advanced to this court. For reasons explained above, it misunderstands the guideline: the quantity is intended to deal with offences involving bulk deliveries, usually by or involving a team; street dealing falls within this category irrespective of the quantity involved.

39. We recognise however that once a street dealer is identified the precise number of purchases on a particular occasion may not affect the sentence very substantially.
Given the discount available for the plea of guilty at the first reasonable opportunity, we agree with the submission that a starting point of 7½ years in each case was too high. In the light of the background and circumstances of each, the appropriate starting point, albeit for slightly different reasons, was 4½ years; in those circumstances, the proper sentence after allowing for the guilty plea was one of 3 years' imprisonment on each count concurrent.

40. Mark Reid is now 50 years of age. He pleaded guilty to six offences of supplying a drug of Class A, five involving crack cocaine and one of heroin. He was sentenced to six years' imprisonment on each count concurrent; his BlackBerry was ordered to be destroyed. According to the pre-sentence report, while he maintained that he was not a drug dealer, he acknowledged that he bought drugs in bulk for £100, used quantity for himself and sold the remainder for £100, thus financing his own long standing drug addiction. In relation to crack cocaine and heroin, this addiction had lasted 8 years, smoking around £100 worth of crack cocaine every day, while spending £20 a day on cannabis.

41. Reid had five convictions on five previous occasions, one of which (in 2003)

involved possession of crack cocaine with intent to supply for which, after a plea of guilty, he was sentenced to 2 years' imprisonment. He also had a conviction for possession of heroin and an earlier caution in relation to possession of cocaine. Married with four children, although he had not previously considered his substance misuse to be a problem (notwithstanding the 2 year sentence) he had now engaged with a drug treatment programme while in custody.

42. Mr Headlam has argued that the categorisation of 'significant role' was not appropriate or consistent with the basis of plea. Mr Whitehouse for the Crown, in writing, did not accept that any concession of lesser role was made and, in any event, it was plainly wrong. The offending was clearly motivated by financial gain or other advantage and, in his case, was entrenched: this does not, of itself, increase the sentence but it does not permit of the mitigation that this was one off, that the operation in which he was involved was not his or that it was a consequence of pressure or naivety. His role was clearly significant and aggravated by his previous conviction, the only factor reducing seriousness being that he supplied only drugs to which he was addicted.

43. It is argued that a starting point, prior to the discount for guilty plea, was too high. We agree. In our judgment, bearing in mind the circumstances of this case, the appropriate starting point was 6 years' imprisonment. Making proper allowance for the guilty plea at the earliest opportunity, the sentence is 4 years' imprisonment on each count concurrent.

44. Tanya Francene Edwards (now 37 years of age) pleaded guilty to a single offence of supplying a drug of Class A (heroin); she produced a small wrap from her mouth for a test purchase officer. Of real importance in her case, however, was a previous conviction for two offences of possession of drugs of Class a (cocaine and heroin) with intent to supply, for which, in November 2008, she was sentenced to 3 years' imprisonment; she had eight other appearances before the courts and, as recently as April 2010, had been sentenced to 15 months' imprisonment for an identity document offence. In the event, for this offence of supply, she was sentenced to 5 years' imprisonment. She had no fewer than three mobile telephones and £259 in cash, all of which were ordered to be forfeited or destroy.

45. The personal circumstances of this appellant are particularly difficult. In the pre-sentence report, it is said that she minimised her involvement, (saying that she was holding an 'item' for a friend and was unaware that it was a class A drug). We were told this report followed a misunderstanding and did not represent the extent of her admissions. She certainly told the probation officer that she committed the offence because she had accommodation issues and required money for rent while, at the same time, saying that she had no financial concerns. She said that she had no current issues with drugs misuse or alcohol.

46. Two of her four children live with her ex-partner; the other two (15 and 8) reside with her aunt. Of real significance, however, is that she was pregnant when remanded into custody and gave birth at the beginning of 2013. Her son has remained in the mother

and baby unit at Holloway, but at some stage will have to leave: the appellant has become increasingly concerned and anxious at that prospect. She has the support of the Hibiscus group.

47. Although it is argued that this appellant had only a lesser, rather than a significant, role, that ignores that her offending was clearly for financial gain and it is difficult to see how she was unaware of the operation, given the assistance that she was providing, the number of her telephones and the money in her possession. Further, her prior identical conviction is important. On the other hand, her actual participation is among the least of these offenders. Sad though it is that a mother should be separated from her baby, or give birth to a baby while in custody while in custody, a substantial custodial sentence was inevitable.

48. We accept that a starting point of 7½ years, reduced for her early plea of guilty, was too long. Balancing all the circumstances, the lowest sentence reached by balancing the reduced participation (albeit in a significant role) and the personal circumstances against the aggravating feature of her record, leads back to a starting point of 4½ years. Giving credit for the plea of guilty, the proper sentence therefore is one of 3 years' imprisonment.

49. In the event, each of these appeals is allowed to the extent to which we have identified.