



Suspension of a Custodial Sentence, Appropriate Punishment and Caring Responsibilities

R v Cromwell [2025] EWCA Crim 1315

Keywords

Sentencing, suspended sentences, custodial sentences, caring responsibilities, sentencing guidelines

The appellant, C, in *R v Tracey Cromwell [2025] EWCA Crim 1315*, had been sentenced to two concurrent 12-month custodial sentences for offences relating to an attack on C's estranged husband and his new partner. Although the two sentences were within the 14-days to 2-year range capable of being suspended under Section 277 of the Sentencing Act 2020, the trial judge concluded that only immediate custody was appropriate in the circumstances. C appealed, arguing that this decision gave insufficient consideration to C's caring responsibilities.

C's partner left the relationship abruptly in early November 2023. After discovering that her partner was now residing with another woman in Morecambe, C travelled there from South Yorkshire along with her two adult children and the partner of one of those children. The four forced their way into the property at which the two complainants were residing and carried out an assault causing physical injury to both, as well as significant distress. The appellant was initially charged with both assault occasioning actual bodily harm and conspiracy to kidnap. However, the latter offence was left to lie, and the appellant entered a guilty plea to the former at the plea and trial preparation hearing. The appellant's plea was on the basis that she instigated what was a premeditated attack on the two complainants.

The appellant was sentenced to two concurrent 12-month custodial sentences by HHJ Knowles KC, who placed the offence in category A1 of the assaults sentencing guideline. The sentence incorporated a one-fourth reduction to account for the appellant's guilty plea and also featured two restraining orders preventing contact with the two complainants. Taking into account a pre-sentence report, HHJ Knowles determined that the case was not suitable for suspension, instead requiring the imposition of custody. The appellant appealed this aspect of the sentence, alongside a narrower appeal on the distance of the two restraining orders, arguing that that the determination that the sentence was unsuitable for suspension was in error and did not sufficiently consider the appellant's caring responsibilities towards her dependent children, reflecting the principles set out in *R v Petherick [2013] 1 Cr App R (S) 116*.

HELD, DISMISSING THE APPEAL, that the seriousness of the offence combined with the availability of alternative sources of care for the appellant's dependants were sufficiently accounted for in the decision not to suspend the appellant's sentence, and that the terms of the two restraining orders were sufficiently clear and practical to enable the appellant to abide by them.

Commentary

The circumstances of the offence in *Cromwell* are, in a sense, unremarkable, save for the appellant's role as instigator of the offences committed by the remaining three adult offenders involved in the attack.

During sentencing, the impact of a custodial sentence on the appellant's dependents, her four youngest children, and in particular two of these children who have additional complex needs and for whom the appellant was the primary care giver were highlighted. In the Court of Appeal, before Jeremy Baker LJ, Mr Justice Saini and Mr Justice Cavanagh, the appellant put forward that the trial judge's decision not to suspend the sentence on the basis of these caring responsibilities meant that the sentence was outside the range of reasonable outcomes and should be overturned.

A number of cases in recent years have considered the factors which might support the suspension of a custodial sentence, set out in the *Imposition of Community and Custodial Sentences* guideline. That guideline includes, at Section 8.3, a table listing factors which indicate that suspension 'may be appropriate' and 'may not be appropriate' (emphasis within the guideline). Included among these factors and of most relevance to *Cromwell* are (indicating suspension may be appropriate) that 'immediate custody will result in significant harmful impact upon others, including any dependent children...' and (indicating that suspension may not be appropriate) that 'the seriousness of the offence means that appropriate punishment can only be achieved by immediate custody'. In *Tharamaratnam* [2017] 2 Cr App R (S) 36 at [12], Edis J echoes the emphasis on sentencer discretion included within the guidelines, explaining that the guideline is non-exhaustive and that identifying that one or more factors indicating that suspension may be appropriate are present does not mean that a sentence *is* appropriate for suspension or that it necessarily should be suspended.

C's argument in *Cromwell* that an immediate custodial sentence would significantly impact her children, for whom she had caring responsibilities, placed some reliance on the principles discussed in *Petherick* [2012] EWCA Crim 2214. In that case, the defendant's appeal raised questions about the impact of the sentence on the defendant's (at the point of sentencing) 2-year-old child. Considering this, Hughes LJ in *Petherick* at [17] observed:

the sentencing of a defendant inevitably engages not only her own article 8 family life but also that of her family and that includes (but is not limited to) any dependent child or children. The same will apply in some cases to an adult for whom a male or female defendant is a carer and whether there is a marital or parental link or not. Almost by definition, imprisonment interferes with, and often severely, the family life not only of the defendant but of those with whom the defendant normally lives and often with others as well. Even without the potentially heart-rending effects on children or other dependents, a family is likely to be deprived of its breadwinner, the family home not infrequently has to go, schools may have to be changed. Lives may be turned upside down by crime.

In subsequent cases, it has been acknowledged that the impact of a sentence upon the defendant's children will, to some extent, vary with age and that impact is likely to be more significant for children at key stages of their development: *Lindsay* [2018] EWCA Crim 2171 at [16]; *Cheeseman* [2020] EWCA Crim 794 at [23]–[24]. The extent of the impact and the extent to which this might support the suspension of an immediate sentence is also, dependent upon the circumstances of the case, likely to be impacted by the availability of other sources of care, or absence thereof (see *Byrne* [2024] EWCA Crim 801 at [34]–[35]), although the mere existence of other sources of care is not determinative. For example, in *Vincent* [2017] EWCA Crim 333, whilst others were now involved in managing what had been the defendant's caring responsibilities for her disabled adult daughter, the 'considerable burden in providing support' (at [17]) which the defendant held and the impact which the defendant's absence had on her daughter were relevant and resulted in the defendant's sentence being reduced from 20 months immediate custody to a 12-month suspended sentence.

The availability of other sources of care does, however, appear to have significantly impacted the court's reasoning in *Cromwell*. As well as highlighting the limited evidence of the likely impact of custody on the C's dependents, Mr Justice Cavanagh (at [32]) notes that one of the defendant's other children had taken over caring responsibilities in relation to the younger children for whom C was previously the sole carer. This approach accords with that taken in another recent case, *Douglas* [2024] EWCA Crim

1632, where (at [14]) the Court of Appeal upheld the ‘reluctant conclusion’ reached by the trial judge that an immediate custodial sentence was necessary where a defendant was convicted of conveying drugs into a prison, in part, because of the availability of care provided by the defendant’s mother and the father of the children.

In *Cromwell*, the Court (at [24]) placed emphasis on the fact that the case involved ‘a planned attack by a group on two victims in which the appellant was the driving force’ and that this made the immediate custodial sentence imposed ‘plainly appropriate’. To this extent, both *Cromwell* and *Douglas* illustrate that the seriousness of the offence can make custody all-but-inevitable notwithstanding the significance of a defendant’s caring responsibilities. On the one hand, this is not particularly surprising; *Middleton* [2019] EWCA Crim 663 at [28] demonstrates that the seriousness of the offence, making immediate custody the only appropriate punishment, can outweigh a combination of factors supporting suspension. Whilst there has been some criticism of trial judges for failing to consider the balancing exercise prompted by the table within the guidelines (see, for example, *Cowell* [2023] EWCA Crim 162 at [21]–[23] and discussion in D. Ormerod and D. Perry (eds) *Blackstone’s Criminal Practice 2026* (36th edn, OUP 2025) at E14.3), as explained by Lees J in *Lawson* [2023] EWCA Crim 827, this does not require (at [22]) ‘lengthy discussion’ but merely ‘some evidence ... that those factors were in the judge’s mind’. On the other hand, the potential for the seriousness of the offence making immediate custody the only appropriate punishment to consistently be the single factor outweighing arguments for suspension during the balancing exercise arguably risks such a balancing exercise operating somewhat artificially.

Put another way, whilst the seriousness of the offence is, and clearly should be, a relevant factor in determining the suitability of suspension of an otherwise immediate custodial sentence, it might be suggested that the binary phrasing employed in the guideline is ultimately unhelpful. Where an offence is so serious that only immediate custody is suitable to achieve punishment, this is likely to be a determining factor even where there is strong personal mitigation and a likelihood of significantly detrimental impact on the defendant’s dependants. The Court in *Cromwell* agreed (at [31]) with the trial judge’s conclusion that ‘this case was not on the cusp of a non-custodial sentence’ but was instead ‘so serious that the judge was entitled to conclude that only an immediate custodial sentence’ could be passed. The benefit of artificially weighting the factors listed in the guideline in such cases, it is suggested, is less clear, particularly given the limited exposition given by the Courts regarding the balancing exercise.

Although included as part of a detailed balancing exercise, it is interesting to observe that during sentencing for contempt in *North Bristol NHS Trust v White* [2022] EWHC 1313 (at [99]), the High Court set out the factors identified in the guidelines as an ordered series of points:

- (1) whether the offender presents a risk or danger to the public;
- (2) whether the appropriate punishment can only be achieved by immediate custody;
- (3) whether there is a history of poor compliance with Court orders;
- (4) whether there’s a realistic prospect of rehabilitation;
- (5) whether there is strong personal mitigation; and
- (6) whether immediate custody will result in a significant, harmful impact upon others.

There is, perhaps, some sense in acknowledging that the binary nature of several of the factors identified within the guidelines makes some better suited to analysis as a series of questions. Such an approach would result in cases in which suspension would be entirely inappropriate benefitting from a clearer recognition that significant caring responsibilities for dependents will not shift the balance in favour of suspension, mitigating the potential for appeals along the lines of *Cromwell*. This might be assessed prior to a retained balancing exercise in which offence seriousness, other than seriousness making immediate custody the only appropriate punishment, could be taken into consideration.

None of this is to suggest that the approach and decision taken by the trial judge or by the Court of Appeal in *Cromwell* are themselves anything other than clear and well-reasoned. Furthermore, as the

Court of Appeal's analysis exemplifies (at [21]), interference in the exercise of discretion by sentencers is rarely justifiable save where there is an error in the legal principles being applied or a conclusion which is irrational. Nor is this note intended as a critique of the relevance of caring responsibilities to decisions on suspension. Acknowledgement that custodial sentences have a significant likelihood to interfere with the Article 8 rights of the defendant's dependents is important, and it is right that this does give weight to arguments in favour of suspension in borderline cases, as has been the case in other recent authorities cited in *Cromwell*, including *Foster [2023] EWCA Crim 1196*. Yet, whilst it is appropriate that discretion exists surrounding the suspension of custodial sentences, it is argued that *Cromwell* demonstrates where clearer guidelines, which distinguish between arguably determinative factors and non-determinative but relevant factors, might be beneficial.

Future Developments

Although the guideline in question has recently been updated by the Sentencing Council, the principles applied in *Cromwell*, including sentencer discretion, even in cases of serious offending, are well-established (see L. Harris, *Thomas' Sentencing Referencer 2025* (Sweet & Maxwell, 2025) at p. 227). There are, however, significant reasons to consider the approach taken to suspension within the guidelines going forward.

The Sentencing Act 2026, Section 1, introduces a presumption (in the form of Section 277A of the Sentencing Code) that custodial sentences of 12 months and under will be suspended where a suspension is available. The Act goes on to explain that:

The court must make a suspended sentence order in relation to the sentence where this section applies unless the court is of the opinion that there are exceptional circumstances which—

- (a) relate to the offence (or the combination of the offence and one or more offences associated with it) or the offender, and
- (b) justify not making the order.

Previously, the Court of Appeal has resisted arguments that a presumptive approach to suspension could be taken under the existing framework (see Ormerod and Perry, above, at E14.3, and *Hussain [2019] EWCA Crim 1542* at [14], discussing *Shuttleworth [2019] EWCA Crim 333* at [22]). As the Sentencing Act 2026 creates such a presumption, a consistent approach to the exceptional circumstances where suspension is not appropriate and acknowledging where offence seriousness precludes suspension of sentences over 12 months in length, irrespective of other factors, may have some merit.

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