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Case No: 201805031 A4, 201805141 A4, 201805183 A4, 201901213 A4 & 201902383 A4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM BIRMINGHAM CROWN COURT
His Honour Judge Mukherjee
T20177955; T20170763; T20170764

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/02/2020

Before:

LORD JUSTICE LEGGATT
MRS JUSTICE CHEEMA-GRUBB DBE
and
HER HONOUR JUDGE ROBINSON
THE RECORDER OF CROYDON
(Sitting as a Judge of the CACD)

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Between:

REGINA	**Respondent**
- and -	
NEIL GREENFIELD	**Appellants**
JOHN EMMINGHAM	
ASIF LAHER	
PETER NEEDHAM	
DARREN PETERS	

- -
- -

Mr M Elwick appeared on behalf of **Greenfield**
Mr P Lazarus appeared on behalf of **Emmingham**
Mr P Taylor QC appeared on behalf of **Laher**
Mr J Beck appeared on behalf of **Needham**
Mr S Csoka QC appeared on behalf of **Peters**
Mr J Cox appeared on behalf of the **Crown**

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Approved Judgment

Lord Justice Leggatt:

1. The appeals and renewed applications for leave to appeal against sentence which are before the court today are brought by five individuals who, along with at least eleven others, were convicted for their parts in some or all of four inter-related conspiracies to supply class A drugs. In summary these conspiracies were:

   (1) a conspiracy to supply cocaine between 1 June 2016 and 9 March 2017;

   (2) a conspiracy to supply heroin between 1 June 2016 and 23 February 2017;

   (3) a second conspiracy to supply heroin between 1 February 2017 and 7 June 2017; and

   (4) a conspiracy to supply crack cocaine between 1 November 2016 and 7 June 2017.

2. All five appellants/applicants pleaded guilty to offences reflecting their various roles in these conspiracies, which we will describe as necessary when considering their individual cases. All the relevant proceedings in the Crown Court were dealt with by His Honour Judge Mukherjee sitting in the Crown Court at Birmingham. Three of the applicants put forward bases of plea which were not accepted by the prosecution. In consequence there was a *Newton* hearing which lasted for seven days and resulted in a ruling given on 6 September 2018.

3. Before we come to the relevant facts and submissions made in the individual cases, it is worth reminding ourselves of a number of legal principles which are relevant to these applications and appeals. They are principally derived from the judgments of this court in R v Cairns [2013] EWCA Crim. 467, R v Cuni [2018] EWCA Crim. 600 and R v Williams [2019] EWCA Crim. 279, and authorities which are cited in or have followed those cases:

   (1) Where a defendant pleads guilty, it is the responsibility of the sentencing judge to determine the facts on which the sentence is based. These will normally be the facts disclosed by the prosecution evidence, unless the judge accepts an agreed basis of plea or material facts are disputed: Cairns, paras 4-5.

   (2) Where it is necessary to hold a *Newton* hearing to resolve a dispute of fact, it is for the judge to make relevant factual findings after holding a trial of the disputed issues without a jury.

   (3) It is well established that the Court of Appeal will not interfere with findings of fact made by the judge following a *Newton* hearing, provided the correct principles of law (including the criminal burden and standard of proof) have been applied and unless the judge has made a finding that no reasonable finder of fact could have reached: see Cairns, para 19. The same principle must apply in our view to any findings made without a *Newton* hearing where such a hearing is unnecessary. Essentially the test is the same as that which applies where the facts are found by a jury – the difference being that judges unlike jurors are required to give reasons for their conclusions, so that it is possible to

consider the adequacy and rationality of those reasons, as well as any other evidence to which the judge may be taken to have had regard.

(4) In cases such as the present where a judge has sentenced many defendants for their roles in a large conspiracy to supply drugs, the Court of Appeal will be similarly slow to interfere with the judge's assessment of the different roles of the various conspirators and the nature and extent of each person's involvement: see Williams, paras 3 – 4.

(5) The Sentencing Council Guideline for offences of supplying or offering to supply a controlled drug are treated as applying to offences of conspiracy to supply: see Cuni, para 43(1).

(6) In accordance with that guideline, where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than Category 1, for which the indicative quantity for heroin or cocaine is five kilograms, sentences of 20 years and above may be appropriate depending on the role of the offender.

(7) Although there is no ceiling, sentences of more than 30 years are reserved for very exceptional cases: see Cuni, para 42.

(8) For very significant commercial offending on a scale which is outside the indicative amounts of the guidelines, there is bound to be an element of bunching in the range of sentences between 20 and 30 years as the scope to differentiate for amounts and roles is very compressed, with the result that sentences on different offenders will be nearer to each other than might otherwise be the case: see Cuni para 43(3).

(9) For such very serious offences many factors which might otherwise mitigate sentence are less important: see Cuni, para 43(4).

(10) The court is not assisted by comparisons with sentences passed or substituted by the Court of Appeal in other cases: see Cuni, para 44.

Emmingham

4. We have heard first a renewed application for leave to appeal against sentence made on behalf of John Emmingham.

5. Emmingham was sentenced on 16 November 2018 to a total of 20 years and three months' imprisonment, comprising two concurrent sentences of that length, for what the judge found to be his leading roles in the first and second heroin conspiracies. His sentence was reduced from a "starting point" of 25 years by one year on account of personal mitigation and by a further 15 per cent because of his guilty plea.

6. Mr Lazarus, who represents Emmingham in this court, has renewed today before us three grounds of appeal. The first relates to the quantities of drugs which Emmingham was found to have conspired to supply. The prosecution case as to the quantities supplied under the first heroin conspiracy was based, so far as Emmingham was concerned, on meetings between him and members of the Midlands organised crime group, which was his supplier. There were some 44 identified meetings

between members of the Midlands group (Greenfield and Needham) and Emmingham during the relevant period. The prosecution argued that it could fairly be inferred that at least half of these meetings were deliveries of heroin and that each delivery was of half a kilogram, this being the amount found when Emmingham was arrested in March 2017 and also the amount of a supply that was being returned by Emmingham because of its low level of purity and was being carried by Greenfield at the time of Greenfield's arrest. In relation to the second heroin conspiracy, in which Emmingham was also involved, there were nine identified trips involving meetings with him.

7. Emmingham put forward a basis of plea which the prosecution did not accept. At the *Newton* hearing he gave evidence about his involvement in which he claimed that only 12 of the 44 meetings during the period of the first heroin conspiracy had involved collections of heroin. He also asserted that not every supply involved a half kilogram quantity and that the early supplies were in much lower amounts which gradually built up to half a kilogram by the time of the seizures was that we have mentioned.

8. The judge rejected that evidence. In those circumstances it was difficult for him to reach a conclusion about which he could be sure as to the number of supplies that had taken place; but he said that the number of 12 supplies as part of the first heroin conspiracy was the very least number that he was prepared to accept. The judge said that he had not been assisted by Emmingham's evidence on the issue as Emmingham was not prepared to be more specific as to how much heroin he had received. The judge also said that he was in fact satisfied that the heroin deliveries were way in excess of the accepted numbers suggested by Emmingham and that he could conclude that half a kilogram at least was being supplied on each occasion. In the result, the judge sentenced Emmingham on the basis that the minimum quantity that he was involved in receiving as a result of both heroin conspiracies was some 9½ kilograms.

9. On behalf of Emmingham, Mr Lazarus seeks to suggest, as he has to do in order to seek to challenge the judge's finding in this court, that no reasonable fact-finder could have come to that conclusion. We regard this as a hopeless submission. It was manifestly reasonable for the judge to have drawn the inference that he did, which indeed was favourable to Emmingham, that as little as 9½ kilograms of heroin were supplied to him. The likelihood, although the judge could not be sure, was that the quantity supplied in fact substantially exceeded that.

10. Mr Lazarus also seeks to argue that the judge mis-appraised the role of Emmingham in characterising him as playing a leading role and in assessing the nature and extent of his involvement in the conspiracy in arriving at a starting point for sentence of 25 years. That again is in our view a hopeless argument, particularly in light of the guidance which this court has recently given about attempts to challenge the judge's assessment of an offender's role and level of culpability within a large conspiracy of this kind. As was said by this court (in a judgment given by a constitution of which I was a member) in R v Williams [2019] EWCA Crim 279, at paras 3 and 4:

> "... it is worth emphasising the general difficulties which face defendants who seek to appeal against their sentence in cases of this kind where a judge has sentenced many defendants for their various parts in a large conspiracy to supply drugs. In such

> a case the judge will usually have had charge of the case over many months and at a series of hearings, will have read or heard the prosecution evidence as it relates to all the defendants and may have conducted trials or *Newton* hearings in relation to some of them. It is self-evident that in these circumstances the sentencing judge is uniquely well placed to consider the different roles of the various conspirators and the nature and extent of each person's involvement. The judge is thus also uniquely well placed to calibrate the sentences imposed so as to achieve parity among the defendants and reflect their relative levels of responsibility.
>
> The Court of Appeal does not have those advantages. So unless it can be shown that in sentencing a particular defendant the judge did so on a factual basis which is obviously mistaken, or that the judge made an error of principle, or that in assessing the weight which should or should not be given to one or more relevant factors the judge formed a view which no reasonable judge, acting reasonably, could have formed, the Court of Appeal is most unlikely to think it right to interfere with the judge's assessment of the appropriate sentence. Arguments that the judge misappraised the level of a defendant's role in the conspiracy or imposed a sentence which is unfair in comparison with the sentences imposed on other defendants will seldom have any realistic prospect of success."

11. Those words apply exactly here. The judge had the advantage of seeing Emmingham give evidence at the *Newton* hearing, an experience which Mr Lazarus realistically described as an "unedifying spectacle". The judge formed the view that Emmingham had been boasting about the large quantities of drugs which he sold on a wholesale basis and the fact that he would have sold more if they had been available. In reaching a starting point of 25 years, the judge also took into account the fact that Emmingham had a recent conviction in 2009 for possession with intent to supply heroin. In these circumstances it is wholly unrealistic to argue that this court should interfere with the assessment made by the judge.

12. The third ground of appeal – which Mr Lazarus in fact put at the forefront of his submissions – is that the judge failed to give adequate credit for Emmingham's guilty plea in giving credit of only 15 per cent.

13. The relevant history in outline was that Emmingham was interviewed on the day after his arrest, that is to say on 15 March 2017, and answered all questions "no comment". His first appearance in the magistrates' court was on the following day – at that point on a charge of possession of heroin which was found in his possession at the time of his arrest. He was represented by solicitors on that occasion, but did not indicate any intention to plead guilty even to that charge. The case was first listed for hearing in the Crown Court on 13 April 2017. He was not arraigned on that day, but equally gave no indication that he intended to plead guilty to the count relating to the heroin found in his possession which was the only charge at that stage. He was interviewed a further three times on 23 April 2017 and again on 31 July 2017 and again answered "no comment" to all questions.

14. The case was listed once more at Nottingham Crown Court for a pretrial and preparation hearing which took place on 7 August 2017. At that stage Emmingham did not plead guilty to any charge, but he indicated that he did intend to plead guilty to count 2 which related to the first heroin conspiracy and also to count 4. On the next hearing in the Crown Court on 28 September 2017 he entered guilty pleas on all the counts relating to him.

15. The guideline on reduction in sentence for a guilty plea which was applicable in this case was the old guideline because the first hearing took place before 1 June 2017. Under this guideline full credit was said to be appropriate where an indication to plead guilty was given at the first reasonable opportunity. The guideline said that the first reasonable opportunity may be the first time that a defendant appears before the court and has an opportunity to plead guilty, but the court may consider that it would be reasonable to have expected an indication of willingness even earlier, perhaps whilst under interview.

16. In our view, the judge in this case cannot be faulted for rejecting the submission that Emmingham had indicated an intention to plead guilty at the first reasonable opportunity in circumstances where, even when attending the magistrates' court and represented by solicitors, he had maintained his position of denial even of the straightforward allegation of possession of heroin.

17. The second point which Mr Lazarus takes in relation to the guilty plea is that the judge should not have reduced the credit given for plea from 25 per cent, which he said was the amount that would otherwise have been given as credit, by a further 10 per cent because of the rejection of Emmingham's evidence at the *Newton* hearing. We have already mentioned the fact that the judge did not accept Emmingham's account of the quantity and weight of deliveries of heroin which he received. That *Newton* hearing was necessitated by Emmingham tendering a basis of plea which in that regard the prosecution did not accept. It is wholly unrealistic to characterise the outcome of the *Newton* hearing as a success so far as Emmingham was concerned and there was nothing wrong with the judge's decision to discount the credit given for plea by the amount that he did for that reason.

18. For these reasons, we are satisfied that there is no substance in any of the grounds of appeal which have been renewed today on behalf of Emmingham, and therefore his application for leave to appeal is refused.

Laher and Peters

(There followed oral submissions on behalf of Asif Laher and Darren Peters)

19. We have heard now the renewed applications for leave to appeal against sentence made on behalf of Asif Laher and Darren Peters. Laher was sentenced on 16 November 2018 to a total of 21 years' imprisonment, comprising three concurrent sentences of that length, for his leading roles in both the first and second heroin conspiracies and the crack cocaine conspiracy. There was also a six month concurrent sentence for possession. The “starting point” in his case was 25 years' imprisonment, which was adjusted upwards to 28 years because of previous convictions and the fact that he was dealing in different class A drugs, before being reduced by 25 per cent for his guilty pleas.

20. Peters was sentenced on 7 March 2019 to 18½ years' imprisonment for his leading role in the first heroin conspiracy, which was the only one of the four conspiracies in which he was involved. The starting point in his case was 20 years' imprisonment, which was adjusted upwards to 22 years on account of previous relevant convictions, but then reduced by 15 per cent for his guilty plea.

21. The conspiracies relevant on these applications were, first of all, what has been referred to as the first heroin conspiracy, which was to supply that drug between 1 June 2016 and 23 February 2017. The applicant Laher was at the top of an organised crime group based in Dewsbury, West Yorkshire, which supplied heroin to a group based in Lincolnshire for onward supply to the East Midlands. The Lincolnshire group was headed by Peters.

22. Laher was also involved in the second heroin conspiracy. Pursuant to that conspiracy heroin was supplied by the West Yorkshire group to a different organised crime group.

23. The crack cocaine conspiracy was a further conspiracy in which Laher was involved, which occurred between 1 November 2016 and 7 June 2017.

24. The prosecution case as to the quantities supplied pursuant to the first heroin conspiracy was based first of all on evidence of 20 identified meetings between members of the West Yorkshire and Lincolnshire groups. The prosecution argued that it could safely be inferred that at least half of those meetings were collections of drugs and that each supply was of two kilograms, based on evidence that this was the size of supplies of cocaine purchased by the Lincolnshire group from the West Yorkshire group and also on evidence that deliveries to Emmingham, who purchased heroin from the Lincolnshire group, were of half kilogram quantities and that the Lincolnshire group was also supplying heroin to a number of other customers.

25. There were 44 meetings between members of the Lincolnshire group and Emmingham and the prosecution invited the judge to find that at least half of those meetings were deliveries of heroin and that each delivery was of half a kilogram. Although the judge was ultimately not satisfied that he could be sure that there were so many deliveries of heroin, he was satisfied that the relevant quantities were of half a kilogram and that at an absolute minimum six kilograms of heroin were supplied by the group headed by Peters to Emmingham and in fact the quantity supplied was almost certainly considerably more than that.

26. There was a *Newton* hearing which took place over seven days and resulted in a ruling given by the judge on 6 September 2018. Both Peters and Laher gave evidence at that hearing, one of the relevant issues being the quantities of drugs supplied. Their evidence was in each case rejected by the judge. In relation to the supplies by the West Yorkshire group headed by Laher to the Lincolnshire group headed by Peters, the judge made the following findings as regards the first heroin conspiracy. He said:

> "I am not satisfied so that I am sure that all 20 identified meetings ... resulted in heroin being obtained by Peters. Some, a small minority of those meetings, are likely to have been cash-related. All of them concern this conspiracy. A reasonable conclusion would be that at least half of them

> concern the collection of heroin. This much is likely to be conceded in due course by the defence."

27. I interpose that it was ultimately common ground that the judge could safely conclude that at least 10 meetings (being half of the 20 identified meetings) did concern the collection of heroin. The judge went on to say:

> "It is difficult to quantify how much heroin was supplied by Dewsbury (ie the West Yorkshire group) on each occasion ... It would, however, be unreasonable to conclude that two kilograms was obtained on every occasion although inevitably some. But I am satisfied, so that I am sure, that the amounts being ferried and dealt with were multiple kilos."

He went on to say that in due course, although he would hear further submissions, it was "highly likely that I will conclude that the amount of heroin traffic is in excess of Category 1."

28. The judge did subsequently hear further submissions at the sentencing hearings. In relation to Laher he made the following relevant findings. First, he said:

> "You supplied country wide multiple kilos of three different class A drugs. [It is agreed that that is a mistake, it should read two different class A drugs, those being heroin and crack cocaine]. It is true, not multi ton but multi kilos, and way in excess of Category 1 by some distance."

He later said:

> "I am not going to guess and I am not going to double count, but the figures on that iPad list relate to both class A drugs and cash linked to the sale of class A drugs. The phrase 'eye-watering' was used. I agree."

29. The reference to the 'iPad list' was to a list found on Mr Laher's iPad which referred, as was conceded, to heroin, crack cocaine and very substantial amounts of money. Although at the sentencing hearing Mr Laher sought to deny that the iPad belonged to him and claimed that it was that of a friend, the judge rejected that explanation as an obvious falsehood.

30. It is convenient to take first the submissions made on behalf of Peters by Mr Csoka QC. His argument proceeds in the following way. He accepts that the judge was entitled to find that there were at least 10 supplies of heroin made to the group headed by Peters as part of the first heroin conspiracy, but he submits there was no proper basis on which the judge could reasonably have concluded that the supplies were of two kilogram amounts, as the prosecution had contended. He points out that the two kilogram figure was based on supplies of a different drug by the West Yorkshire syndicate to the Lincolnshire group as part of a different conspiracy in which it was not shown that Peters was involved. Otherwise, the only basis for this figure was the half kilogram onward supplies to Emmingham, and potentially other customers; but given that the drug may have been adulterated at that point, those supplies did not

provide a safe basis for concluding that the quantities supplied to the Lincolnshire group were two kilograms. The defence had argued that the amount supplied on each occasion to the Lincolnshire syndicate headed by Peters could only safely be taken to be half a kilogram, which on that basis would result in a total supply of five kilograms.

31. If the judge had indeed made a finding that he could be sure that two kilograms had been supplied on every occasion, there might possibly have been a basis, notwithstanding the legal test that we have already mentioned, for seeking to challenge that finding on an appeal. In fact, however, that was not the finding which the judge made. We have already referred to the finding made at the end of the *Newton* hearing, subject to further submissions. When sentencing Peters, the judge said this:

> "It is difficult to quantify how much heroin was supplied by West Yorkshire on each occasion, but these were not insignificant quantities and I am quite satisfied that a journey to West Yorkshire would not be for a tester. It would be unreasonable to conclude that two kilograms was obtained on every occasion, although inevitably on some. I am satisfied so that I am sure that the amounts being ferried and dealt with were multiple kilos.
>
> I consider the seizures that have taken place, both of which were for half-a-kilogram quantities, and I therefore conclude that the amount of heroin trafficked in your conspiracy is well in excess of Category 1. Needham and Greenfield [the two others involved in that conspiracy] accepted that to be the case, you claim not to have known and no other defendant, apart from Emmingham, has offered any estimate to me, which leads me to remind myself of what the guideline tells me, namely: 'Where the operation is on the most serious commercial scale involving a quantity of drugs significantly higher than Category 1, sentences of 20 years and above may be appropriate depending on the role of the offender.'"

He went on to find that Peters, in light of his role, came with that range.

32. In our view, it was plainly reasonable for the judge to draw the factual conclusion that he did about the quantities of drugs supplied. He was entitled to take into account, amongst other matters, the stage in the distribution chain at which the drugs were being distributed by the West Yorkshire group, an operation which he found to be geographically a nationwide operation involving very large quantities of drugs. He was also entitled to take into account the fact that Peters and for that matter Laher had had opportunities to give evidence at the *Newton* hearing and give evidence that would explain what the quantities of drugs in fact were if they disagreed with the prosecution assessment. As it was, they chose to lie about those matters. In our view, it cannot possibly be said that no reasonable finder of fact could have drawn the conclusions which the judge did, which represented the factual basis for his sentence.

33. Mr Csoka's alternative submission was that, even on the findings which the judge did make, it was unreasonable and wrong in principle to regard the case as falling into the most serious and commercial scale of drug operations where the quantity was significantly higher than Category 1. Mr Csoka invited us to conclude that, although the judge felt unable to put a more precise figure on the total quantity of drugs supplied to the Lincolnshire group as part of the first heroin conspiracy, his reference to there not being two kilograms on every occasion but he was sure that the amounts being ferried and dealt with were multiple kilos could properly be interpreted as suggesting that the average quantity might have been something like 1¼ kilos, which would result in a total supply of between 12 and 13 kilograms of drugs. He further submitted that, when one looks within the sentencing guideline at how the indicative quantities of drugs for each category progress through the different categories and then applies the same logic to consider what constitutes a quantity significantly higher than Category 1, a quantity in the region of 12 or 13 kilograms cannot properly be characterised as falling into that class. Mr Csoka drew our attention in that regard to the case of Boakye [2012] EWCA Crim. 838, where Hughes LJ made the point at paragraph 39 that the quantities of drugs listed under the categories of harm in the guideline are not thresholds at which the sentencing range changes; they are indications of the general weight which goes into the relevant categories. Therefore, Mr Csoka submitted, particularly when consideration is given to the sometimes substantial increases that mark the transition in indicative quantity from one category to another, the quantity which the judge by inference found to have been supplied in this case cannot reasonably be considered to be significantly above Category 1. Accordingly, he submitted that the sentence proceeded on a wrong factual basis.

34. We are unable to accept that that is a correct approach. The guideline does not indicate what quantity counts as significantly higher than Category 1 and we do not accept that the matter should be approached on such a mathematical basis by analysing how the quantities change between different categories within the guideline. Inevitably, in our view, there is a question of judgment involved. Particularly in light of the principles to which we have already referred, which should make this court very slow to interfere with evaluative judgments made by a sentencing judge in this type of case, we think it impossible to say that on the facts of this case the judge was not entitled to conclude that the quantity of drugs involved was significantly higher than the five kilogram indicative amount for Category 1.

35. Once that conclusion was properly reached, as in our view it was, in considering whether a sentence as high as 20 years was appropriate, the judge was required to consider the role of the offender. He found that Peters was at the top of the Lincolnshire organised crime group which operated this part in this conspiracy. The judge said in that regard:

> "You used both Greenfield and Needham, they worked for you and they supplied on your behalf and therefore, it leads me to conclude that you played a leading role directing and organising the buying and selling on a commercial scale with substantial links to and influence upon others in the chain with a view to substantial financial gain and that is why I take your starting points for your involvement in this conspiracy as 20 years' imprisonment."

36. In our view, it cannot be said that the judge was wrong in principle to take that view, nor is there any other basis on which that assessment can realistically be challenged.

37. A further point was raised by Mr Csoka about the purity of the relevant quantities of drugs. An argument had been made at the sentencing hearing that the drugs should have been treated as of low purity, which would have been a mitigating factor under the sentencing guideline. However, that was based on the 12 per cent purity of half a kilogram of heroin which Emmingham, who was a customer of the Lincolnshire group, had received and which was found in the possession of Greenfield (who worked, as the judge found, for Peters) at the time of Greenfield's arrest. The judge found that that consignment of heroin was being returned by Emmingham because of its low purity and that the normal purity of drugs supplied was significantly higher than that. Furthermore, that was a supply of heroin by the Lincolnshire group to one of its customers which was further down the supply chain from the drugs being supplied to the Lincolnshire group, which are the relevant drugs for this purpose, and which it was reasonable for the judge to infer were of higher purity. In our view, the judge cannot be faulted for proceeding on the basis that the heroin supplied to the group headed by Peters should not be regarded as either of high purity or low purity for the purpose of the sentencing guideline and was therefore neither an aggravating nor a mitigating factor.

38. For those reasons, we are not persuaded that any of the grounds renewed on behalf of Peters would have any realistic prospect of success on an appeal and we accordingly refuse his application.

39. We turn now to the position of Laher, who has been represented before us today by Mr Taylor QC. Mr Taylor has also sought to focus in his submissions on the findings as to quantities of drugs made by the judge for the purpose of sentencing. Essentially, Mr Taylor makes two submissions in his most helpful skeleton argument which he has developed orally. The first is that no reasonable judge could properly have reached the findings as to quantities that the judge did on the basis of the evidence as to quantities relied on by the prosecution. The second is that the judge erred in failing to make findings as to the specific quantity of drugs involved in each of the three conspiracy counts, and for that reason, even if the findings that he made were themselves valid, the result was that there was no reasonable basis on which to determine to what degree the quantities of drugs exceeded the Category 1 threshold. This, Mr Taylor submitted, was a fundamental error which rendered the starting point of 25 years which the judge took arbitrary and caused the sentence which flowed from that figure to be manifestly excessive.

40. In relation to the first of those arguments, the judge's findings which we have quoted earlier were based, as regards the first heroin conspiracy, on the findings about quantities of heroin supplied to which we have already referred. Those were reasonably specific findings. In relation to the second heroin and crack cocaine conspiracies, the judge's findings were based primarily at least on the list found on an iPad which he was sure belonged to Laher and that Laher had compiled. Mr Taylor sought to argue that the judge could not properly have concluded on the basis of that dealer list that the quantities of drugs supplied by Laher's West Yorkshire group were in the level of multiple kilograms and involved either the payment or receipt of what the judge described as 'eye-watering' amounts of money.

41. It is not for the Court of Appeal to undertake an analysis of the evidence of the kind which the judge had the opportunity to do and did at a seven-day *Newton* hearing; but it is relevant to note that, on the court's own calculation of the numbers included on the list, disregarding sums of money which are said to be running totals rather than separate entries and disregarding sums of money which are identified as relating to rent or wages, the total amount is of the order of £640,000. If Mr Laher had an explanation to give which would displace the inference that that was the financial level of drug dealing in which he was involved, he had the opportunity to give it at the *Newton* hearing, but he did not. In the circumstances, the judge was, in our view, fully entitled to conclude, as he did, that the amounts of drugs being supplied were in the order of many kilos and involved what he reasonably described as 'eye-watering sums of money'.

42. On that basis we turn to Mr Taylor's second submission that the judge was obliged to make more specific findings of fact about the quantities supplied and that his omission or inability to do so resulted in the sentence being arbitrary and for that reason manifestly excessive. We cannot accept that sentencing for offences such as these involves a mathematical exercise or determination which requires precision of that level. True it is that for the purpose of placing on offender within a category within the sentencing guideline it may be necessary to make a finding, with some degree of precision, of the minimum quantity of drugs which the judge can be sure was supplied. But when one is considering sentencing for a quantity of drugs which is significantly higher than the guideline categories, the exercise in our view becomes a much more evaluative one in which the quantity of drugs is only one relevant factor, albeit an important one. Sometimes it is possible for a judge to determine with some precision what that quantity of drugs was or can safely be taken to be; but on other occasions this may not be possible.

43. We do not consider that the judge in this case can properly be criticised for not making a more specific finding than the finding he made that the quantities of drugs supplied pursuant to the three conspiracies in which Laher participated were way in excess of Category 1 by some distance. On the contrary, to have done so would in our view have given a false impression of accuracy when this was all that could safely be concluded on the basis of the iPad list. That does not make the sentence arrived at arbitrary. In the case of large commercial operations such as this which fall outside and well above the guideline categories, the judge has to weigh up a variety of factors, including the quantity supplied as best he can determine it, but also the particular role of the offender in the conspiracy, how far up the supply chain he was, the geographical scope of the operation, the length of time for which it continued, the number of different drugs involved and the number of separate conspiracies in which the offender participated. That is, as we say, an evaluative rather than a scientific exercise and it cannot, we consider, realistically be argued that the judge in this case reached a conclusion which no reasonable judge in his position could have reached or which was wrong in principle. He was plainly entitled to find and to sentence Laher on the basis that he was at the top of the Yorkshire organisation which was supplying on a wide geographical basis, that was he was involved in three separate conspiracies and that the period of the conspiracies covered a substantial period of time; furthermore, that he was making what were clearly very substantial gains from his involvement.

44. In relation to the period of time, Mr Taylor QC raised a specific point whether the judge sentenced Mr Laher on the basis that he was involved in the conspiracy during a period of time when he was in prison, contrary to findings which the judge had himself made. The relevant findings on that point were these. Mr Laher's evidence was that he had started working for the organised crime group when he was released from prison which was on 14 October 2016. He initially said that his work did not begin until his tag came off, which was in early March 2017. He then changed that to December 2016 or January 2017. He then said he may have been working in November 2016 but he could not remember. He later said that, from his release, he was not involved in the drugs trade for about two or three weeks. He started chasing one debt initially, that owed by Greenfield, but a few weeks later he started chasing other debts. In the light of that most unsatisfactory evidence and other evidence which the judge took into account, the judge found in his ruling following the *Newton* hearing as follows:

> "It is clear to me that when he [that is Laher] was picked up by his friend Hussain he was expecting to get back to work as soon as possible. He had, in fact, been working whilst in prison but now his work could carry on in earnest."

The judge further said when sentencing Laher:

> "You resumed your drug trafficking immediately upon your release from prison, which suggests to me that the business was still operating whilst you were in prison."

And then later in his sentencing remarks:

> "I do not sentence you on the basis that you were directing this operation from prison, unlike one of your co-accused, but it is quite clear that it carried on whilst you were in prison."

45. In our view, the reasonable reading of those findings, taken together, is that Laher had continued to participate in drug dealing and had participated in this conspiracy whilst in prison, albeit the judge could not be sure that he was directing the operation from prison and did not sentence him on that basis, but on the basis that he resumed his role as the head of the organisation immediately upon his release.

46. On those findings and the other findings made by the judge, we do not consider it to be reasonably arguable that the judge sentenced Laher on a wrong factual basis or made any error of principle or arrived at a sentence which was manifestly excessive. Accordingly, we also refuse his application for leave to appeal.

Greenfield

(There followed oral submissions on behalf of Neil Greenfield)

47. We have heard submissions from Mr Martin Elwick on behalf of Neil Greenfield who appeals with leave of the single judge against his sentence of 18 years and nine months' imprisonment imposed in the Crown Court at Birmingham on 16 November 2018. Greenfield was found to have played a leading role in what have

been referred to as the cocaine and first heroin conspiracies for which he received concurrent sentences of 18 years and nine months. He received a further concurrent sentence of nine years' imprisonment for a separate offence of possession with intent to supply. This last offence related to half a kilogram of heroin found in his vehicle when he was stopped and arrested on 22 February 2017.

48. The judge found that Greenfield was the head of the Lincolnshire organised crime group and that he directed and co-ordinated others and organised sales and distribution to dealers whom the group supplied. The judge was satisfied that, whatever the precise quantities of drugs involved, they were significantly in excess of Category 1.

49. For Greenfield, the judge's starting point was 25 years' imprisonment, which was reduced by 25 per cent for his guilty pleas.

50. The leave to appeal given by the single judge was confined to the ground that the judge was wrong not to afford Greenfield a full one-third reduction for pleading guilty at what was contended to be the first reasonable opportunity. Leave to appeal on two further grounds was refused. One of those grounds has been renewed before this court and it is convenient to deal with it first before turning to the ground for which leave to appeal was granted.

51. The further ground is that the judge failed to give proper credit to Greenfield for factors that mitigated his offences. In his sentencing remarks the judge said this:

> "There is mitigation. You have no relevant previous convictions, nothing since 2009. This will be your first prison sentence. I have read references on your behalf, including one from a prison officer. I am alive to the fact that you have been waiting since August 2017 to be sentenced. But, of course, you have not been wasting your time because in actual fact you have been serving the sentence that you are about to receive. The effect upon your family will be significant. But I am afraid you knew that during the months that you were dealing in class A drugs and did not consider that at the time. You understood the risks that you were taking and what would happen to you and your family should you be caught. I am afraid I ignore the submission about no hidden assets nor little financial gain. That will become apparent one way or another in due course."

52. The judge manifestly took account of all those factors in reaching his starting point of 25 years' imprisonment.

53. Mr Elwick's submission is that the judge was wrong not to make a reduction from that starting point on the basis of the mitigating factors relied on. We do not regard that as a tenable argument. None of the matters relied on as mitigating factors on behalf of Greenfield represented strong mitigation, particularly in a case of this kind where, as we mentioned in an earlier judgment today, it has been said by this court on several occasions, including in the case of R v Cuni [2018] EWCA Crim 600, that for very serious drugs offences such as these many factors which might otherwise mitigate sentence are less important. Indeed, it may be said that the judge was quite generous

to Greenfield in not holding against him the fact that he had two previous convictions for drugs offences, albeit that the most recent one, which was for possession of cannabis, was in 2009. We therefore refuse the application for permission to appeal on this further ground.

54. Turning to the ground on which Greenfield was given permission to appeal, the relevant chronology is that he was initially accused only in relation to the possession of heroin with intent to supply based on the quantity of half a kilogram found in his possession upon his arrest. At his first interview he gave a prepared statement denying that allegation. On 24 February 2017 he appeared at Nottingham Magistrates' Court. At that stage he made no admission and indeed denied the offence with which he was charged, standing by the prepared statement which he had previously given. He was sent to the Crown Court on 7 April 2017. His first appearance in the Crown Court was later in April. At that stage he was represented for the first time by Mr Elwick and we are told and take it from him that there was an indication given at that hearing of his intention to plead guilty to the offences of conspiracy with which it was by then clear that he would be charged. He subsequently entered a guilty plea at the next hearing on 7 August 2017.

55. Greenfield, unlike other defendants with whom we have been dealing today, did not tender any basis of plea - in other words, he accepted that he should be sentenced on the basis of the prosecution evidence. He attended the *Newton* hearing which subsequently took place in relation to other defendants but that was not because he was seeking to contest any part of the prosecution case against him, but only because other defendants were seeking to put blame on him and it was considered that he ought to be given the opportunity to answer their allegations against him. In fact, he did not avail himself of that opportunity but sat silently whilst those allegations were made.

56. In dealing with credit for plea in sentencing Greenfield, the judge said this:

> "I give you credit, significant credit, one of only two defendants in front of me [we interpose that there were actually three] who pleaded guilty in August 2017 without a basis of plea. It was not the first opportunity that you had to plead guilty, but it was close to it. But no basis, no *Newton* hearing and you have extraordinarily, in my view, sat calmly and quietly, whilst others such as Peters in particular, have attempted to make your position worse while trying to diminish his and you took it all. You are entitled to 25 per cent credit, in my view."

57. Mr Elwick's submissions are essentially two-fold. First, he submits that on the facts of this case and applying the guideline issued by the Sentencing Council for reduction in sentence for a guilty plea that was applicable in this case, the pleas that Greenfield entered should be taken to have been indicated at the first reasonable opportunity. Mr Elwick submits, as must be right, that what represents the first reasonable opportunity depends on the circumstances of the case. He argues that in this case, particularly in circumstances where the major offences of conspiracy were only alleged against Greenfield very shortly before the first hearing in the Crown Court, the indication that he gave at that hearing that he intended to plead guilty ought to

have been taken as an indication at the first reasonable opportunity. Secondly, Mr Elwick submits that, when comparison is made with the amounts of credit given to other defendants, Mr Greenfield was treated unfairly by receiving credit of only 25 per cent. His position can be contrasted with that of Laher who did not indicate any plea of guilty, despite participating in a number of hearings in the Crown Court. On the contrary, Laher gave notice of an intention to make an application to have the charges dismissed, which was only withdrawn at the last moment when the dealer list (which we have referred to in dealing with his application for leave to appeal) was found on his iPad. Laher then took part in the *Newton* hearing where he was found to have given false evidence. Nevertheless, the judge gave in his case an initial credit of one third for pleading guilty, which was only reduced to 25 per cent because of the *Newton* hearing.

58. In other circumstances, and as for example in the case of Emmingham which we have already considered this morning, it might well be said – and indeed had this been the only point made on Greenfield's behalf it would, in our view, reasonably have been said – that the fact that he did not at the outset plead guilty to the offence of possession with intent to supply, but indeed denied that offence until he was sent to the Crown Court, entitled the judge to take the view that a one-third discount for plea was not appropriate.

59. However, we do consider that there is force in the submission that Mr Elwick has eloquently made on Greenfield's behalf that there would be a justifiable sense of grievance on the part of Greenfield if he receives at the end of the day only the same discount as Laher. We consider that Laher was generously dealt with by the judge, as regards the discount made for his plea. Nevertheless, taking the position in the round, and in particular taking into account the fact that Greenfield, unlike other defendants who received similar credit, did not seek to dispute in any way the prosecution case in relation to the major conspiracy charges from immediately after the point when he was first notified of those charges, we consider that in the circumstances of this case the judge was wrong not to give full credit for plea.

60. For those reasons, and on that narrow basis, we allow Greenfield's appeal. The sentence imposed in the Crown Court will be set aside and replaced by a sentence of 16 years and eight months.

Needham

(There followed oral submissions on behalf of Peter Needham)

61. We have heard submissions from Mr Beck, who has appeared pro bono for the applicant Peter Needham in support of his renewed application for leave to appeal against sentence. We are grateful to him for those submissions which he has made concisely and well.

62. Needham was sentenced on 16 November 2018 to a total of 16 years nine months' imprisonment imposed for what the judge found to have been his leading roles in two conspiracies which have been referred to and described in earlier judgments as the cocaine conspiracy and the first heroin conspiracy. He received a concurrent sentence of three months for possession of cannabis. Further sentences of, respectively, 16

months' imprisonment for an offence of dangerous driving and nine months' imprisonment for fraudulent use of a registration mark were also made concurrent.

63. Needham was a member of the Lincolnshire organised crime group and worked closely with Greenfield. He was described by the judge as "Greenfield's trusted lieutenant, an important ally and confidante of his who organised onward supply once drugs were received." The judge found that he was "in it for substantial gain" and "comfortably within a leading role" for the purpose of the sentencing guideline. It was accepted on his behalf that the quantity of drugs supplied pursuant to the conspiracies in which he participated was in excess of Category 1.

64. The dangerous driving offence was committed at the time of his arrest on 2 November 2016. He had stopped in a layby when he was approached by police officers. Police vehicles had attempted to box him in. He tried to get away by mounting the pavement and driving straight towards a police officer who was unable to jump out of the way in time and was struck a glancing blow on the arm and leg as the vehicle drove off. The car that Needham was driving was pursued by a police vehicle which managed to push it onto a verge. He was then arrested. Two kilograms of cocaine was found in the vehicle that he had been driving. The vehicle was also found to have been stolen and bearing false number plates.

65. The judge in sentencing Needham took as a starting point for the drugs offences 22 years' imprisonment, which he uplifted by three years on account of the driving offences and a relevant previous conviction for class A drug trafficking for which he had been sentenced to six years' imprisonment in 2003. Needham was given a full one-third discount for his early guilty pleas, which resulted in the total sentence of 16 years nine months' imprisonment.

66. Mr Beck, on his behalf, has renewed all Needham's grounds of appeal before us but has put at the forefront of his argument a submission that the judge was unjustified in characterising Needham as comfortably within a leading role. Mr Beck has submitted that that was an assessment not reasonably open to the judge. Mr Beck described Needham's role as that of what he called a 'super courier' – someone who collected drugs and delivered drugs and cash. He submitted that there was no evidence that Needham had played any part in organising distribution, as the judge had found.

67. Mr Beck further submitted that, when Needham's role was compared with that of Greenfield, for whom the judge found that Needham acted as a trusted lieutenant, the starting point of 22 years was too high. Mr Beck accepted that, when consideration was also given to the driving offence and Needham's previous drug trafficking conviction, an uplift for those matters was justified. But he submitted that, even when those matters were taken into account, the overall sentence which the judge arrived at in Needham's case was manifestly excessive.

68. Had this been a sentencing hearing, there are points that could be made in support of Mr Beck's arguments. There was scope for debate about exactly how Needham's role should be characterised within the relevant hierarchy of these conspiracies. The prosecution's note for sentence described him as playing a lower leading or upper significant role on the basis that he was Greenfield's right-hand man and trusted lieutenant, he was responsible for much of the day-to-day operation of the network, and his involvement demonstrated characteristics of both leading and significant

roles. The judge plainly made a somewhat different assessment and considered that Needham's role was more important than that, such as to be described as comfortably within a leading role.

69. We have already emphasised today the approach of the Court of Appeal in dealing in cases of this kind with attempts to challenge assessments of the role and extent of involvement of particular individuals who have taken part in major drugs conspiracies where numerous defendants who have played different roles within those conspiracies are before the court and being sentenced by the same judge. As we have already noted, this court last year in R v Williams [2019] EWCA Crim. 279 at paragraphs 3 to 4 pointed out that the sentencing judge is uniquely well placed in cases of this kind to consider the different roles of the various conspirators and the nature and extent of their involvement and to calibrate the sentences accordingly. It was also made clear that the Court of Appeal, which lacks those advantages, will not interfere with an assessment of that kind which the sentencing judge has made unless it can be shown that the judge sentenced on a factual basis which is obviously mistaken or that the judge made an error of principle or that in assessing the weight to be given to one or more relevant factors the judge formed a view that no reasonable judge acting reasonably could have formed. We consider it impossible to say that that test is met in the present case. In our view, on the facts which have been found, it was well open to the judge to form the assessment that he did of the extent of Needham's role and involvement, and this court is in no position to say that he was wrong in that assessment.

70. As for the point about comparison with Greenfield, that is again pre-eminently a matter for the judge who is comparing the roles and relative levels of responsibility of different individuals. But it is plain to us that the judge did take into account and make significant allowance for the difference in their respective roles. In Greenfield's case the starting point taken was one of 25 years, three years therefore above the starting point taken for Needham. Particularly given the point which has been made about the fact that differences in sentence inevitably get compressed in the case of crimes of this degree of seriousness in drugs cases, it is quite impossible to say that the level of disparity between the sentences imposed on Greenfield and Needham was inappropriate, let alone such that no reasonable judge could have come to that conclusion.

71. In our view, the judge was entirely justified for uplifting the total sentence on account of the offence of dangerous driving that we have described and the highly significant previous conviction which Needham had.

72. Accordingly, we do not consider that the grounds of appeal have any reasonable prospect of success and we dismiss the application.

73. Mr Beck, that leaves us only with the matter on which leave to appeal has been given. I do not think that that was a matter on which you were invited to address the court. It is simply a matter of sorting out the calculation.

74. MR BECK: My Lord is absolutely right. I am more than glad that I am not asked to address the Court on that point.

75. LORD JUSTICE LEGGATT: Very good. Thank you for the help you have given. I shall ask my Lady, Cheema-Grubb J, to give the court's judgment on the driving disqualification appeal.

76. MRS JUSTICE CHEEMA-GRUBB: Peter Needham appeals with leave from the single judge against the imposition of disqualification from driving for a total period of eight years. Permission was given for a correction of the order on the papers.

77. The obligation to impose disqualification from driving for a minimum of 12 months arises from section 34 of the Road Traffic Offenders Act 1988 upon conviction for a variety of offences, one of which is dangerous driving, contrary to section 2 of the Road Traffic Act 1988. The appellant pleaded guilty to dangerous driving and fraudulent use of a registration mark, contrary to section 44 of the Vehicle Excise and Registration Act 1994 on 13 November 2018.

78. On 16 November, His Honour Judge Mukherjee sitting at Birmingham Crown Court imposed a sentence of 16 months' imprisonment for dangerous driving and nine months for the fraudulent use of the registration mark. Both sentences were concurrent with each other, but also concurrent to a sentence of 16 years and nine months for two offences of conspiracy to supply controlled drugs (cocaine and heroin) contrary to section 1(1) of the Criminal Law Act 1977.

79. In the circumstances, and as there is no challenge to the sentence imposed for the driving matters, the facts of the dangerous driving can be summarised very briefly. This appellant was under observation during a drugs operation. On 2 November 2016 he was seen meeting another man and he had two kilograms of high purity cocaine in his car when police officers tried to stop him on the A46 south of Newark. He was driving a stolen car bearing cloned number plates. He drove that car into a layby and appeared to be prepared to cooperate, but when an officer approached the vehicle he reversed away from him and then drove suddenly forwards hitting the man's right arm, knee and thigh. The appellant then drove over a footpath and down a grass verge. Other officers acted swiftly to pen the appellant's vehicle in so that he could not escape.

80. Having passed the sentence of 16 months' imprisonment concurrent for this offence, the judge said this:

> "You will be disqualified for one year and six months, but I am obliged to extend that pursuant to section 35 of the Road Traffic Offenders Act by half the term of your custodial sentence, which would amount to eight years and six months. But I take off the two years that you have spent on remand, so the extension is of six years and six months which means you will be disqualified from driving for eight years and you will be obliged to take an extended retest before you drive again."

81. Disqualification runs from its imposition and there had been no interim disqualification in this appellant's case. Disqualification pending an extended retest is also an obligatory requirement for those convicted of dangerous driving, pursuant to section 36 of the Road Traffic Offenders Act 1988. It is clear that the judge intended to apply the spirit of section 35A and 35B of the Road Traffic Offenders Act, which

were inserted by section 137 of schedule 16 of the Coroners and Justice Act 2009 and brought into effect by the time this judge was passing sentence. The purpose of this legislation is to avoid offenders who have been disqualified from driving and sentenced to custody at the same time serving all or part of their disqualification while in custody. The clear intention of Parliament, is this court said in R v Needham and others [2016] EWCA Crim. 455, was that periods of disqualification should be served by an offender while he is at liberty in the community. This is what the judge tried to achieve by imposing a disqualification well in excess of the 18 months he attributed to the offence of dangerous driving. The scheme of sections 35A and 35B is that section 35A applies where an offender is convicted of an offence for which the court imposes a custodial sentence and a disqualification. In those circumstances, the order of disqualification should comprise the discretionary disqualification (here the 18 months) and the appropriate extension period, which is equivalent to the period before he will be released from the custodial sentence. Section 35B comes into play when the offender is sentenced at the same time for other offences which attract a custodial element. The appropriate period by which to increase the disqualification under this head is called "the uplift". In R v Needham the court concluded that the effect of disqualification diminishes in the case of an offender who has to serve punitive sentences in custody and there is a greater discretion available to the judge who has to include a section 35B uplift element. There is no requirement for any or any precise account to be taken of periods served on remand before sentence, but the important sentencing principle of proportionate punishment must be observed.

82. At paragraph 31 of that guideline authority, the court set out a checklist of steps which organises the approach to be taken. Unfortunately, the judge failed to follow that guidance and we must remedy that situation without offending against the rule that no more severe punishment must thereby be imposed. The period under section 35A is 18 months with an extension of eight months. This comes to 26 months. The period under section 35B will be half of 16 years and nine months, but as the sentence for dangerous driving was ordered to be served concurrently with the sentences for the conspiracies, allowance must be made for that feature too.

83. Accordingly, the uplift period should have been no more than half of 15 years and five months. We will say seven years eight months. Although he did not have to do so, the judge plainly intended to allow a reduction for time on remand, and we will do the same. Accordingly, a systematic application of the law would lead to a disqualification of 16 months, with an extension of eight months pursuant to section 35A, plus five years eight months' uplift under section 35B, making a total disqualification period of seven years and 10 months.

84. This restructuring of the disqualification will not offend against section 11(3) of the Criminal Appeal Act 1968 as it is a slightly shorter total disqualification than that imposed by the judge. We direct therefore that in accordance with the limited permission given by the single judge, the period of disqualification is to be recorded as we have set out and reduced thereby from eight years to seven years and 10 months. To that extent only, this appeal succeeds.