

JERSEY / JUDGMENT

OO v AG [2024] JRC 240

(08 November 2024)

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judgment

the COMMISSIONER: 1. At a hearing on 30 September 2024, we allowed an appeal by OO ("the Appellant") against part of a sentence imposed by the Youth Panel on 16 April 2024 for an offence of malicious damage. Specifically, the Appellant appealed against the imposition of a Compensation Order of £150 being made against his father, B ("the Father"). 2. We should note at the outset that the appeal was not opposed by the Crown but, as the issues raised in this case may have more general application, we now set out our reasons for allowing the appeal in some detail. 3. The Appellant has been accommodated by the Minister by a voluntary agreement under Article 17 of the Children (Jersey) Law 2002 since 27 June 2022. The Appellant's mother lives in the UK; she did not attend the hearing on 16 April 2024. The Father lives in Jersey and attended the hearing on 16 April 2024 as he was required to do under Article 11 of the Young Offenders (Jersey) Law 2014 . 4. The malicious damage involved the Appellant and another youth throwing a traffic cone through the window of Bauformat Kitchen and Bathroom shop ("Bauformat"), causing the window to smash and damaging items on display. 5. A compensation claim was submitted by Bauformat which comprised the cost price for the damaged items amounting to £3,942 and £618.67 in relation to replacing the smashed window. At the hearing in the Youth Court it was unclear whether the damaged items could be resold at a reduced price, and the Court therefore focused on compensating Bauformat for the damage caused to the window. The Court took into account that the Appellant was jointly charged with another and that the cost of replacing the window should therefore be split. The Court then further took into account that both of the Appellant's parents had parental responsibility for him. However, as the Appellant's mother was outside of the jurisdiction, and any order against her was unenforceable, the Court further halved the compensation to be paid. Accordingly, the Appellant's father was ordered to pay £150 in compensation to Bauformat and it is this order which is the subject of the appeal. 6. When announcing the Court's decision in relation to the compensation order the Magistrate had this to say: "...somebody has to pay and it's right, I think, that we look at compensation being paid by the people who did the damage. Now because you're so young, you're only 14, the Court won't make you pay because you've no means to pay. But the law does say that the parent or guardian can be responsible..... We have looked at the law about the Minister who looks after you - that means the Government - being responsible and there is a case on this and we don't think that we

can hold them responsible. So, we're looking at real parents. So, [B], we've thought about making an order against you and against [OO's] mother. Now, she's out of the island, and we can't make an order against someone who's out of the island, it wouldn't be enforceable. But that doesn't mean we think nobody should pay anything. We have looked at the claim for compensation..... So, we are making an order against your father in the sum of £150 or seven days, if that is not paid. It's a contribution when we look at the full amount of compensation that's been claimed 4,500 and odd pounds, it's a small contribution to that. But we do think that's significant. [B], we appreciate you coming to Court and supporting your son, but part of your support of your son is about that relationship between you and him, and we know that's been very difficult at times, but you're still his father, and it's almost a - a symbolic sum of money to pay that it symbolises you taking responsibility for your son and we know there is shared parental responsibility and this is very much cut down to uhm, a much smaller part of that. So, having started at four and a half thousand pounds, we make the order for £150." 7. Advocate Dix, on behalf of the Appellant, did not seek to challenge the Youth Court's jurisdiction to make an order for compensation nor was issue taken with the way in which the Youth Panel calculated the amount of the compensation order. 8. However Advocate Dix submitted that the Youth Panel's decision to make a compensation order against the Father in respect of loss and damage caused by the Appellant when he was accommodated by the Minister under Article 17 of the Children (Jersey) Law 2002 , was wrong in principle. In particular it was argued that the Youth Panel erred when they concluded that it would not be unreasonable to make this Order against the Father, having regard to the circumstances of the case. The legal framework 9. Article 3 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994 ("the Compensation Law") provides that: "... (4) Where a court makes a compensation order against an offender under the age of 17, the court may, and shall if the offender is under the age of 14, order that the compensation order be paid, and any default sentence be served, by the parent or guardian of the offender instead of the offender, unless the court is satisfied that -

- (a) the parent or guardian cannot be found; or
- (b) that it would be unreasonable to make such an order having regard to the circumstances of the case." 10. In reaching its conclusion the Youth Court had regard to the decision of the Royal Court in *Minister for Health and Social Services v AG*

[2019] JRC 137 . This concerned an appeal by way of case stated by the Minister for Health and Social Services against a compensation order made in the Youth Court, to be paid by the Minister, for damage caused to a vehicle by a child during the commission of an offence. At the time of the offending the child was in the voluntary care of the Minister and was being accommodated under Article 17 of the Children (Jersey) Law 2002 (as the Appellant is in this case). Neither parent was in Court and the Court concluded that as the child's mother was no longer responsible for his day-to-day care, nor in a position to influence the child's behaviour, it would be inappropriate or unreasonable to make a compensation order against the parents. The Youth Court therefore went on to consider whether the compensation order could be paid by the Minister as the child's "guardian". The Royal

Court held that the Minister, who was responsible for the voluntary care of a child was in such circumstances not to be viewed as the child's "guardian" for the purposes of Article 3(4) of the Compensation Law. A compensation order should therefore not have been made against the Minister and accordingly the compensation order imposed in the Youth Court was set aside. 11. In the present case the Youth Court concluded, on the basis of the authority to which we have just referred, that the Minister could not be held responsible for paying compensation. 12. The Youth Court then went on to consider a compensation order being payable by the Appellant's parents. Ultimately the Court concluded that the Appellant's father should be responsible for paying the £150 compensation order imposed. In reaching this conclusion the Youth Court appears to have sought to distinguish the circumstances of the present case with the child in the Minister for Health and Social Services decision. In doing so, the Magistrate stated that the Youth Court took into account that the father "still has a relationship with his son. It is not as though he never sees him ... I think in the other case, there really was no contact between the parents and the defendant - they were remote. In this case, we do not consider that [B's] contact with his son is remote. There is a relationship. There is that responsibility between the son and the father ... there is joint parental responsibility there. So we do think that's distinguishable". The position in England 13. Crown Advocate Sette, for the Attorney General, referred us to a number of relevant English authorities concerning Section 137(1) of the Powers of Criminal Courts (Sentencing) Act 2000 and its predecessor, Section 55 of the Children and Young Persons Act 1933, which were in similar terms to Article 3 of our Compensation Law. 14. Archbold's Criminal Pleading Evidence and Practice, 2024 Ed., at paragraph 5A-1104, offers guidance on the approach to be adopted when considering so-called "parental payment orders". The paragraph suggests that regard should be had to the conduct of the parent or guardian, noting that "It would be "unreasonable" to make an order against the parent / guardian, where it was impossible to identify any fault on their part or anything done by them that may have caused the defendant to commit the crime: JB [2004] EWCA Crim 14; [2004] 2 Cr. App. R. (S.) 41." 15. In the decision in JB to which Archbold refers, the Court held as follows: "The Court had said that it was unreasonable to make an order against a parent who had done what she could to keep her son from criminal ways, and in the case of a county council, that a court should normally find some causative link between a fault proved on the part of the council and the offences." 16. At paragraph 5A-1105 Archbold offers further guidance in respect of a child who has been living in local authority accommodation and notes that "Where the child or young person has been living in local authority accommodation under a voluntary arrangement with a local authority, and while doing so commits an offence, it will normally be unreasonable to make an order requiring the parent or guardian to pay compensation in respect of the offence: see TA v DPP [1997] 1 Cr. App. R. (S.) 1, DC." 17. TA v DPP [1997] 1 Cr. App. R. (S.) 1, DC concerned an appeal against an order requiring the mother to pay a compensation order imposed against her 16-year-old daughter for criminally damaging a police car following the arrest of her ex-boyfriend. At the time of the offending the daughter was voluntarily accommodated in a local authority's children's home. The Court held that the

court was empowered to order a parent to pay compensation for an offence committed by a child or young person unless the court was satisfied that it would be "unreasonable to make an order ... having regard to the circumstances of the case". If the daughter had been living at home with her mother, it might not have been unreasonable to make an order; if the daughter had been subject to the care of the local authority the mother would have had no statutory right to control her conduct, and it would not have been within the power of the court to make an order against the mother. In the present case the mother had the care and control of her daughter, although the daughter was living in local authority accommodation. The Court could not see how any court could hold the mother responsible, knowing that she had no control at all, in practice, over what her child was doing at the relevant time and could have taken no steps at all to prevent her from committing an act of criminal damage. No court could find that it was reasonable to make the order which the Crown Court had made. It was "unreasonable to make an order ... having regard to the circumstances of the case", and the order would be quashed. 18. Regard was had in JB to the case of Bedfordshire CC v DPP

- [1996] 1 Cr. App. R.(S.) 322, in which it was held that "... In the Court's judgment, a court should normally find some causative link between any fault proved on the part of the council [the child who had committed the offence was in the care of Bedfordshire County Council] and the offences committed before making an order under section 55. If no such causative fault was shown to the satisfaction of the court, it was unreasonable to order compensation". 19. In Bedfordshire CC v DPP the Divisional Court had regard to the authority of D (a minor) v Director of Public Prosecutions
- (1995) 16 Cr. App. R.(S.) 1040, quoting the judgment of Leggatt L. J.: "The Court's exercise of this duty or power is only prevented in cases where it would be unreasonable to make an order for payment, having regard to the circumstances of the case. That very broad test applies equally to a parent or guardian and to a local authority, but its application must necessarily differ according to the circumstances. Where a parent has been responsible for the bringing up of a young person it may be difficult to show that it would be unreasonable to make an order for payment against a parent A local authority's position with regard to young persons who are in its care or for whom it has provided accommodation is however different from that of a natural parent or a guardian A local authority may often be entrusted with the care of, or be obliged to provide accommodation for, a young person who is already an offender, or who is of criminal or antisocial propensity. The steps that the local authority should or lawfully can take to restrain such a young person may well be limited. The structure of the Act indicates that the local authority has the same right to assert unreasonableness as does a natural parent; and the particular circumstances of a local authority with care obligations, to which we have just referred, make it entirely appropriate that the local authority should be able to demonstrate, just as may a parent, that it has done all that it reasonably could, within the limits of its powers over the young person, to keep the young person from criminal ways. Where, therefore, as in at least some of the cases presently before the Court, the local

authority is found to have done everything that it reasonably and properly could to protect the public from the young offender, it would be wholly unreasonable and unjust that it should bear a financial penalty. That would place the local authority in a position worse than that of a natural parent: a result that the Act specifically excludes There is no justification ... for taking the approach (no doubt based on sympathy for victims in particular cases) that the local authority should pay compensation for offences committed by a young person in its care even when the local authority is without blame. Instead, the court should consider whether it is satisfied that the local authority has fulfilled its duty to care for the young persons to such an extent as would make it unreasonable to order it to pay compensation." 20. The Court went on to conclude that the sentencing Court should normally find some causative link between any fault proved and the offences committed before exercising its powers. If no such causative fault is shown to the satisfaction of the Court, then it is unreasonable to order compensation. We see no reason why that principle should not be applied in this jurisdiction given the similarity in the relevant statutory frameworks. 21. As well as explicit reference to the principles in Bedfordshire CC, implicit reference is made in the Royal Court's decision in Minister for Health and Social Services to the principles adopted in these cases in respect of there being a "causative link", as is demonstrated by two passages in the Royal Court's judgment, the first (at paragraph 16) being "His mother was no longer the person responsible for his day to day care, nor was she in a position to influence his behaviour. The Court therefore thought it was not appropriate or reasonable to make a compensation order" and the second being the Court's suggestion (at paragraph

- 46) that had it been possible to make the Minister liable the Court could have referred the matter back to the Youth Court for an "assessment of any causative link between the fault proved and the offences committed". 22. We can well understand the Youth Court's concern to demonstrate to the Appellant that his actions had financial consequences to others and that in the absence of his own ability to pay compensation he should feel some responsibility for a liability being imposed on his father. Indeed, the Magistrate referred to the order being "almost a symbolic sum of money to pay that it symbolises you taking responsibility for your son", adding: "So, [OO], when you feel like breaking somebody's window or damaging their property, there are consequences. And one of those consequences today has been for your father, and you need to take some level of responsibility for that. You've cost your father some money, which he'd rather not be paying in compensation." 23. However, the Father was not responsible for the Appellant's day-to-day care, nor could he influence his behaviour in this instance. Accordingly, in our view there was no "causative link" or responsibility sufficient to justify making the compensation order against the Father, and we conclude that the order was therefore unreasonable. 24. We therefore allow the appeal and the order of the Youth Court that the Father pay compensation of £150 is set aside. Authorities Children (Jersey) Law 2002. Young Offenders (Jersey) Law 2014. Criminal Justice (Compensation Orders) (Jersey) Law 1994. Minister for Health and Social Services v AG

[2019] JRC 137 . Archbold's Criminal Pleading Evidence and Practice, 2024 Ed TA v DPP [1997] 1 Cr. App. R. (S.) 1 Bedfordshire CC v DPP [1996] 1 Cr. App. R.(S.) 322 D (a minor) v Director of Public Prosecutions (1995) 16 Cr. App. R.(S.) 1040 Page Last Updated: 24 Dec 2024 Back to top About JLIB Accessibility Contacts Copyright Disclaimer Feedback Privacy policy Site map BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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