



IN THE CROWN COURT AT LEEDS

THE KING

v

HAYLEY MacFARLANE

SENTENCING REMARKS

The Honourable Mrs Justice Lambert DBE

17 July 2024

1. On 10 July 2023 you gave birth to your daughter Evelyn. She was a healthy baby and during her short life the medical professionals had no concerns about her health or development. You have pleaded guilty to the offence of infanticide. You did so on the first opportunity. By that plea you have admitted that on 20 December 2023 you caused Evelyn's death, a child under the age of 12 months, by a wilful act at a time when the balance of your mind was disturbed by reason of your not having recovered fully from the effect of giving birth. The prosecution has accepted your plea of guilty to that offence given the joint view of Dr Al Tair and Dr Shenoy that, on 20 December 2023 you were suffering from postpartum psychosis and depression; that these conditions were caused by childbirth and that your offending was due to your suffering from that condition. I must now sentence you for that offence.
2. At the time of Evelyn's birth, you were aged 39. You had suffered an episode of anxiety and depression in August 2005 when you were 21. You were referred to the psychological services in Selby and York Trust and prescribed an antidepressant.
3. Following Evelyn's birth, your anxiety and depression recurred. You referred yourself to the perinatal mental health team at the Yorkshire Trust on 20 October 2023. You reported that you were worrying about getting things right for Evelyn. You said that you felt a constant dread that your mental health was affecting Evelyn and that you felt guilty. You were worried about Evelyn meeting her developmental milestones and you

could not be reassured that your worries were without foundation. You reported not being able to sleep and that you had lost weight. You denied any thoughts, plans, or wishes to harm yourself or end your life. You said that you wanted to access professional support to improve your mental health because of the negative impact of your mental health on Evelyn's wellbeing. You were discharged from the perinatal mental health team care on 24 October 2023.

4. On 31 October 2023 you were seen urgently by the consultant perinatal psychiatrist and a nurse from the perinatal health team in Dewsbury. You had been seen earlier in the day by colleagues who were sufficiently worried by your presentation to organise a senior face to face review. You were seen with Evelyn. Evelyn was judged to be healthy, meeting her milestones, to be feeding well and putting on weight. You were thought to be suffering from symptoms of postnatal depression, anxiety, and some OCD type behaviour. Evelyn was the focus of your depression and anxiety. You were not taking her out because you were frightened that something may go wrong, and you were worried about her development. You described thoughts of running away which you did not act upon, but which made you feel guilty. You had been prescribed an antidepressant, but you said that you had not felt able to take the medication because you were worried that it might poison the baby.
5. On 2 November 2023, you took Evelyn downstairs and filled the kitchen sink with water and placed her in the sink. You regained self-control quite quickly. Your husband came into the room, and you told him that you had had thoughts of harming Evelyn followed by an overwhelming need to save her. Later that day you were admitted as a voluntary patient to Fieldhead Hospital in Wakefield where you were diagnosed with severe post-natal depression with delusional beliefs regarding your baby's wellbeing and other psychotic symptoms.
6. On 9th November you were transferred to the Leeds Mother and Baby Unit. You had severe depression. You were certain that you were failing Evelyn and that you were not caring sufficiently for her. After a few days of continuing symptoms, you were prescribed anti-psychotic medication, but you struggled to decide whether to accept the medication and had exaggerated worries about it. When it was finally dispensed you struggled with the decision as to whether to take it. You were deemed to lack capacity

to consent to the admission and were detained under section 2 Mental Health Act 1983. You responded well to the anti-psychotic medication, going from being profoundly depressed with fixed negative beliefs to being bright and reactive. You were seen to be very gentle with Evelyn but sometimes confused. The section was rescinded after this improvement in your mental state, and you agreed to remain in hospital informally.

7. You remained an inpatient at the Leeds Mother and Baby Unit until 20 December 2023. On that day you were seen by a trainee psychologist who described your progress in very positive terms. There was a Christmas party which you attended. That afternoon you were permitted to take Evelyn out for a walk unescorted. You went to Hyde Park in Leeds. It was during this walk that you killed Evelyn by smothering her with a muslin cloth which you placed over her face.
8. You called your husband and called the emergency services. You told the operator immediately about what you had done. When the police arrived, you told them that you had killed your baby, that it was awful and terrible and that you should be taken away. You were hysterical and told the police that you deserved everything that was going to happen to you. You were interviewed by the police. At no stage did you deny what you had done.
9. You have been seen and assessed by two psychiatrists for the purpose of these proceedings. Dr Husanen Al Taiar is a consultant forensic psychiatrist employed by Oxford Health NHS Foundation Trust. He works at the Oxford Clinic Medium Secure Unit at Littlemore Mental Health Centre in Oxford. Dr Suraj Shenoy is a consultant forensic psychiatrist based at Newton Lodge Medium Secure Unit in Wakefield. Between them they have enormous clinical experience. Both are approved under s. 12 Mental Health Act 1983.
10. Dr Al Taiar interviewed you on 2 occasions: on 20 February 2024 and 12 June 2024. He has reviewed your clinical records, including the records made by the clinicians at Cygnet Low Secure Hospital to where you were transferred urgently from prison following your arrest. When he assessed you, he concluded that you were suffering from severe depression with psychotic symptoms and that you had been suffering from that illness for a number of months following the birth of your daughter. The formal diagnosis was

of postpartum psychosis otherwise called puerperal psychosis involving the onset of psychotic symptoms shortly following childbirth. Postpartum psychosis is a severe mental health condition which can occur in some women shortly after childbirth. The condition is a rare one but, when present, it poses significant risks to both the mother and child. Typically, the condition will be characterised by psychotic delusions, impaired judgement, impulsivity and lack of insight. Dr Al Taiar said that when you killed Evelyn you were in a psychotic state and that your thoughts and actions at the time of the offence were driven by psychotic experiences or beliefs.

11. Dr Shenoy has also assessed you. He interviewed you on 18 March 2024 and 11 June 2024. I have read both of his reports and he gave detailed evidence in court before me on 28 June. He concluded that the primary diagnosis was one of postpartum psychosis, characterised by your developing delusional and obsessive beliefs that you were not a good mother and that you were harming Evelyn and preventing her from reaching her developmental milestones. These symptoms were associated with depressive symptoms including poor sleep, low mood, and problems with concentration. Dr Shenoy explained that postnatal depression and postpartum psychosis are linked conditions in the sense that moderate depression, if undertreated, can develop into a psychotic state. He said that you were vulnerable to developing depression and had experienced the condition in the past. This pre-disposition to depression in conjunction with your perfectionist personality type and the hormonal changes of pregnancy had led to your experiencing depression after Evelyn's birth. This had developed into a psychosis.
12. Like Dr Al Taiar, Dr Shenoy describes a direct link between your psychosis and the commission of the index offence. Dr Shenoy said that it is impossible to know what is going on in someone's mind. However, by 20 December it was unlikely that the antipsychotic medication was at a therapeutic level. He said that your condition made you feel that you were harming Evelyn, that you were not good enough and that you were unable to look after her. He notes in this context that you have no previous history of any offending, let alone offences of violence, and that all of those who know you and have observed you with Evelyn describe you as gentle and caring. He told me that, but for your illness, you would not have harmed Evelyn.

13. You are now aged 39 years old. You have no previous convictions for any offences. You were brought up in south Yorkshire. You were bullied at school but did well academically and, when you left at age 16, you went on to Barnsley College where you completed the A level course and went on to tertiary education at St John's University in York where you were awarded a BA in theatre, film, and television. You met your partner when you were aged 19. I have read a large number of character references from members of your family and friends who speak of your caring and empathetic nature and the very real shock that many felt as they witnessed your decline into depression and psychosis following Evelyn's birth.
14. I have received a letter from you. I have read it with care. You acknowledge the enormity of what you have done and the devastation which your offending has caused Evelyn's father and your wider family. You express considerable insight into your ill health and your commitment to your recovery.
15. There is no sentencing guideline for the offence of infanticide. The Sentencing Council's General Guideline: Overarching Principles sets out that, where no definitive guideline for the offence exists, then the court should take into account the statutory maximum sentence (which for the offence of infanticide is life imprisonment) any sentencing judgments of the Court of Appeal Criminal Division and definitive sentencing guidelines for analogous offences.
16. Both counsel submit that for the purpose of reaching a provisional sentence I should take into account the Sentencing Council's Guideline for Manslaughter by Diminished Responsibility on the basis that this offence is analogous to the offence of infanticide. I accept that the use of these Guidelines is apt. The offences of infanticide and manslaughter by diminished responsibility are analogous and section 1(1) of the Infanticide Act sets out that a person guilty of infanticide "*may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.*"
17. Under those Guidelines the first step is to consider the "degree of responsibility retained." The guidelines provide three categories: high, medium, or lower. The court must assess that level of responsibility as it was at the time of the offence by reference to medical evidence and all relevant information available to the court. Both counsel

submit that your retained responsibility for the offence falls into the lowest of the three categories.

18. I agree with this submission. Indeed, I am sure that your responsibility falls towards the lowest end of that lower category. In reaching this conclusion I take into account that the psychiatrists agree that you were suffering from postpartum psychosis in combination with severe depression at the time of your offending. Both have said that there is a clear link between your mental health condition and your commission of this offence and that you were affected by psychosis at the time of the offence. I am satisfied that, but for your condition, you would not have harmed your baby. I also take into account that you have never acted violently in the past and your character references speak of your gentle and caring nature. You sought treatment on a number of occasions before you were admitted to the mother and baby unit. You were aware that you were unwell, but it appears that the psychotic element of your mental illness was not recognised until you were admitted to hospital (and I pause to note that the Leeds and York Partnership NHS Foundation Trust has very recently published a review into your care and identified a number of learning points). Once the order made under s. 2 Mental Health Act 1983 had lapsed you remained in the unit as a voluntary patient. When you left the unit after the Christmas party that afternoon, you did so with the full knowledge of the staff at the unit. I note that when initially prescribed the antidepressant drug, Sertraline, you did not take it because you were worried that it would poison Evelyn whom you were breast feeding. I regard this however in the as a symptom of your psychosis and paranoid worry over Evelyn's wellbeing.
19. The effect of this conclusion is that, if a determinate sentence were to be imposed, then the range of that sentence would be between 3 to 12 years' custody with a starting point of 7 years before aggravating and mitigating factors were to be considered. Potential statutory aggravating factors include that the victim was a vulnerable baby and that the cause of death was suffocation. There are a number of mitigating factors including your good character and your profound remorse. If a determinate sentence were to be imposed, then these factors would have to be evaluated and reflected in the court's provisional sentence. It would also follow, if a determinate sentence were to be imposed that I would need to discount that sentence by one third for your plea of guilty at the first opportunity.

20. I must then go on to consider whether there is a significant risk to members of the public of serious harm occasioned by the commission by you of further specified offences. Dr Shenoy addresses the risk which you may pose in the future in this way: “*the risk of Ms MacFarlane developing mood disorder and psychotic symptoms in the future is largely limited to the postpartum period again if she were to have a second child. Continued compliance with antidepressant and antipsychotic medication is very likely to decrease the risk but the fact remains that pregnancy/delivery will be a stressor on her mental state and there is therefore a risk of Ms MacFarlane relapsing into depressive symptoms and psychotic symptoms again.*” The fact that your condition is one which has the potential to relapse if not treated and that if it were to relapse any newborn child of yours would be at risk, taken together with the seriousness of this offence, mean that if a custodial sentence were appropriate, you would satisfy the test of dangerousness in section 285(1) Sentencing Act 2020. However, it would still be necessary to consider whether the offence (the only one of which you have ever been convicted) is such as to justify the imposition of a life sentence. In my judgement that test is not met. A life sentence would be a wholly disproportionate punishment given your low level of retained responsibility.
21. I must then consider mental health disposals. I have had regard to the Guidelines for Sentencing Offenders with Mental Disorders. I have taken into account the guidance in the cases of R v Vowles [2015] 2 Cr App Rep (s) 6; R v Edwards [2018] EWCA Crim 595 and R v Calocane [2024] EWCA Crim 490.
22. The following considerations are relevant to the question of whether I impose a mental health disposal and, if so, whether I impose an order under s. 45A Mental Health Act 1983 (“the Act”) or make a hospital order under s. 37 of the Act with or without restrictions under s. 41 of the Act:
- a. the extent to which you need treatment for the mental disorder from which you suffer;
 - b. the extent to which your offending is attributable to the mental disorder;
 - c. the extent to which punishment is required;

- d. the protection of the public including the regime for deciding release and the regime after release.
23. I bear in mind that, if I were to consider that a hospital order may be appropriate, then I must consider all powers at the court's disposal including an order under s. 45A of the Act which includes a penal element (a so-called hybrid order) and that there must always be sound reasons for departing from the usual course of imposing a penal sentence. The fact that two psychiatrists are of the opinion that a hospital order with restrictions under ss. 37/41 is the right disposal is not a reason on its own to make such an order.
24. I agree with the joint position of prosecution and defence that, in the light of the medical evidence, it is in principle open to me to make a hospital order under s. 37 of the Act. Dr Al Taiar and Dr Shenoy consider that, if such an order were made, it should be accompanied by a restriction order without limit of time under s. 41 of the Act.
25. I must then consider whether your offending requires me to impose a sentence which includes a penal element. Whilst the fact that, but for your condition, you would not have harmed Evelyn does not in itself relieve you of all responsibility and is not in itself determinative, it is a factor pointing away from the need for the court to impose a penal sanction. I also take into other factors relevant to the question of your culpability, or retained responsibility: you have no previous convictions; you sought medical help on a number of occasions following Evelyn's birth and you have complied with medical treatment. Taking these matters into account, I am satisfied that, in your case, no penal element to your sentence is required.
26. My conclusion on this issue points towards the imposition of a hospital order rather than a hybrid order. However, I must also take into account protection of the public. I heard detailed evidence from Dr Shenoy on this topic. He told me that you had good insight into your illness and that you were engaging with treatment. You have no drug or alcohol dependency. These are all positive prognostic factors. He thought that our risk of relapse was low and that the only real risk was presented by a future pregnancy.

27. It is impossible to be sure about how long you will remain detained if orders under ss. 37 and 41 are imposed. The regime under ss. 37 and 41 requires the consent of the Secretary of State for any leave from hospital, escorted or unescorted. In practice, the Secretary of State exercises her powers with public protection very firmly in mind. Discharge from hospital requires the consent of the Secretary of State or the First-tier Tribunal and will depend on the level of risk you are assessed to pose to others, this in turn will depend upon how you respond to treatment and on the assessment of your treating clinicians, the Secretary of State, and the First-tier Tribunal.
28. Dr Shenoy told me that you would be likely to remain in hospital for at least the next 2.5 to 3 years before your discharge was planned. The discharge planning process was itself likely to last for many months. Once discharged you would be subject to the care of a consultant psychiatrist in the community and any change in medication would be his or her responsibility. You would have a social supervisor who would assist you with any accommodation needs or benefit needs, and you would be appointed a nurse as a care coordinator whom you would see once per week. If you fell pregnant, then you would be subject to intense supervision during the pregnancy and following childbirth. You would be required to give birth in hospital. There would be, as Dr Shenoy put it, a lot of professional input. If there were concerns that you were relapsing, or the risk of relapse were not manageable, then you would be recalled to hospital. In practice, recall can occur within a very short period of time requiring only a telephone call for the recall measures to be put in place.
29. If you were subject to an order under s. 45A of the Act, then you would remain in hospital until the point at which you were judged fit enough for escorted leave. You would then be transferred to a local prison. On release, your supervision would be undertaken by a local community offender manager who would refer you to the local mental health team if there was a concern. However, the local mental health team would not be obliged to accept you. There would be a choice depending upon how you presented and other competing needs on the service. Likewise, if you fell pregnant, the community mental health team would be under no obligation to provide you with care.
30. In this case, the real benefit of the regime under ss. 37 and 41 of the Act, over that under s. 45A, is the care regime following discharge or release. The risk which you pose will

eventuate only if there is relapse in your mental health. When I consider public safety therefore I focus upon the regime which will most effectively monitor and manage your mental condition when you are in the community. When released from hospital (following an order under ss 37 and 41) you will be seen regularly by your responsible clinician, a consultant psychiatrist, or by a community psychiatric nurse. They will be able to pick up any deterioration quickly and report it to the Secretary of State so that you are recalled to hospital quickly for further treatment. The supervision will continue unless and until you are discharged absolutely by the Secretary of State or a Tribunal. Dr Shenoy informs me that, in contrast, if I were to impose an order under s. 45A of the Act, following release, the community psychiatric team would have a choice whether to treat you. In these circumstances, as he put it, your care, and the management of the risk which you pose would be left to an “arbitrary decision” by an “arbitrary physician” at some point in the future. In this case, the evidence makes clear to me that the discharge regime available under ss. 37 and 41 would provide a substantially higher level of long-term protection for the public than an order under s. 45A of the Act.

Conclusion:

31. I am satisfied on the basis of the medical evidence to which I have referred that you are suffering from a mental disorder, namely postpartum psychosis with depression; and that this disorder is of a nature which makes it appropriate for you to be detained in a hospital for medical treatment; and that appropriate medical treatment is available for you at the Cygnet Hospital where you have already been for many months..

32. I have concluded that the most suitable method of dealing with your case is by making a hospital order under s 37 of the Act. I have reached that view having considered all the circumstances of your case, including the nature of the offence of infanticide to which you have pleaded guilty, your history of postpartum psychosis and depression and having considered all the other available ways in which I might deal with you. In addition, having regard to the nature of your offence and the risk of your committing further offences in the event of you falling pregnant again it is necessary for the protection of the public from serious harm to impose a restriction order under s 41 of the Act.

Hayley MacFarlane, upon your conviction of the infanticide of Evelyn MacFarlane, I impose an order pursuant to s. 37 of the Mental Health Act 1983 that you be re-admitted to and detained at the Cygnet Hospital together with a restriction order under s. 41 of that Act. I am satisfied that arrangements have been made for you to be re-admitted to Cygnet Hospital today.