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IN THE CROWN COURT  
AT GUILDFORD

T20090070.

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The Law Courts,  
Bedford Road,  
Guildford,  
Surrey, GU1 4ST.

11<sup>th</sup> November 2010.

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Before:

**HIS HONOUR JUDGE N. A. STEWART**

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R E G I N A

-v-

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**SEEMA MISRA**

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*(Transcribed from tape by Marten Walsh Cherer Ltd., 1<sup>st</sup> Floor, Quality House,  
6-9 Quality Court, Chancery Lane, London, WC2A 1HP. Telephone: GRO  
Fax: GRO Official Court Reporters and Tape Transcribers).*

MR. M. TATFORD appeared for the prosecution.

MR. K. HADRILL appeared for the defence.

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**TRANSCRIPT OF PROCEEDINGS**

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MR. TATFORD: Your Honour, I prosecute. Mr. Hadrill appears on behalf of the defendant. Your Honour will of course remember the facts of the trial. The Post Office sought to have some more information as to the defendant's finances prior to today and a notice was served asking for information from Mrs. Misra. Unfortunately,

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we have not yet had a reply to that and I don't say that by way of criticism. I think instructions have been given but the reply has not yet been forthcoming. But having regard to the case as a whole and to some aspects mentioned in the pre-sentence report,

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we do ask that the court commences confiscation proceedings.

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Can I pass forward an order we would invite the court to make. This document was served at the end of the trial on the defence and so they have already taken instructions on it, but we would invite your Honour to make the order. I understand the time period appropriate, from speaking to the defence, may be four weeks, perhaps six weeks. We do not have strong views about either, perhaps the shorter times are perhaps better.

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JUDGE STEWART: Well, this is governed by the Proceeds of Crime Act because the earliest date in the indictment is 2005, is it not, so the prosecution have indicated their intention to seek confiscation proceedings and the court has no option then, it must hold a confiscation hearing in due course and must set a timetable for the various stages and the first stage is the service of the section 18 order with a date for the information to be supplied.

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Mr. Hadrill, do you have a submission about the length of time I should allow?

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MR. HADRILL: Well we have a quantity of the information, it is a question whether it is the four or six week period. I would certainly ask for the longer period, six weeks.

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JUDGE STEWART: It is that time of year when it is not as straightforward as some times.

Today is 11<sup>th</sup> November. Six weeks is 23<sup>rd</sup> December, I will allow until then.

MR. HADRILL: Thank you very much.

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MR. TATFORD: And can I ask that the statement of information by the Crown to be served four weeks thereafter.

MR. HADRILL: It is Christmas and New Year weeks, five weeks.

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MR. TATFORD: Yes, did I did think of Christmas, but perhaps five weeks then as Mr. Hadrill ...

JUDGE STEWART: 27<sup>th</sup> January.

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MR. TATFORD: Thank you. And then perhaps the defence response four weeks thereafter.

JUDGE STEWART: 24<sup>th</sup> February.

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MR. TATFORD: Then perhaps it may be appropriate to list the case for mention so that a date can be fixed once both parties are informed of what the likely future prognosis of the hearing will be.

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JUDGE STEWART: No, I need to fix a date for the hearing now and if there are developments they can be brought to the attention of the court, but there needs to be a date set at this stage and I would have thought four weeks after the defendant's response, 24<sup>th</sup> March.

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MR. TATFORD: Perhaps half a day time estimate at present. That, I anticipate, will be a conservative estimate.

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JUDGE STEWART: Well, you do not know what is going to be at this stage, but I am going to say by 10<sup>th</sup> March the prosecution and defence must each confirm to the court, in writing (which may mean paper or e-mail) that the parties are ready, plus an up to date estimate of the length of the hearing.

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MR. HADRILL: Yes, thank you. Is there any other matter that I can assist upon?

JUDGE STEWART: No, thank you.

MITIGATION

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MR. HADRILL: Your Honour, the matter has been adjourned today for the purposes of a pre-sentence report, which is, I hope, before your Honour now.

JUDGE STEWART: It is.

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MR. HADRILL: There are also provided to the court, and hopefully with your Honour, a number of references in regard to the ...

JUDGE STEWART: Yes, they arrived a day or two ago and I have read them.

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MR. HADRILL: Thank you very much. Can I say there has also been handed to me today a letter from the defendant's general practitioner upon the information provided that she is now expecting what will be her second child and that causes some concern because, clearly, as set out in the pre-sentence report at page 7, it is clear that the defendant suffers from a condition known as [GRO] She, obviously, has concerns in regard to the development of [GRO]

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The letter which I have been provided with by my instructing solicitor, dated 9<sup>th</sup> November 2010, obviously has concern that perhaps an assessment should be obtained from an obstetrician with experience with caring for patients in custodial setting.

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I submit that the court may well be assisted with the fullest information and those who instruct me say that, clearly, such a report can be obtained, but is not available today and we have concerns and worries not only for the defendant's health, if she were remanded to custody today, but also for the unborn child and we would submit (perhaps in fairness to all and, clearly, to ensure the court has the fullest information

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when considering the final disposal of this case) that such a report may well be of use and benefit.

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So my application today is to adjourn to obtain such a report from such an expert so we have confidence that all information for future disposal of this case is available.

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JUDGE STEWART: I am reading page 7, the part that you have referred me to, in which the probation officer expresses the view: "While I am sure that Mrs. Misra would receive maternity care were she to be imprisoned" and then she goes on, that is bound to be the case, isn't it?

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MR. HADRILL: Well, it is, if it was an uncomplicated pregnancy and birth, but, clearly, the medical condition of this lady does have complications and we want to be sure the court has the fullest information to ensure the health of both parties has confidence in the (inaudible).

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Has your Honour had a copy of the letter from Dr. Churchill, dated 9<sup>th</sup> November?

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JUDGE STEWART: It is not at all clear what the experience of caring for patients in a custodial setting would add to the opinion of an obstetrician. The caring for patients is a medical/clinical matter, wherever it takes place.

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MR. HADRILL: I can't pass comment because I don't have that particular experience. Clearly, I am concerned that such a report should be before the court and if your Honour is against me, then I will mitigate.

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JUDGE STEWART: I think it will just be prolonging matters to no real purpose and would no be to the benefit of Mrs. Misra.

MR. HADRILL: So be it. Your Honour, general mitigation, can I proffer these: that the defendant is, and has been, a hardworking and industrious woman, trying to support

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her family and business. She was until her pleas of guilty to the false accounting in March of last year of good character.

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She has not tried to deflect the blame and responsibility for the totality of loss on to others. She has accepted it has been her responsibility. Indeed, that the responsibility to her financially settled by reason of the nature of the contract that she has set and signed with the Post Office. Although at first sight this will be taken as a breach of trust, can I say that whatever losses, whether innocent or devious, would be a loss which would have to be settled by this defendant and so, as I say, it is not a question of her conceding the sums in order that another would have to pay and settle, the loss will always fall upon her shoulders and there is technically a breach of trust that she finds herself in, it is not of the same high level as often before the courts of accountants or other managers of businesses who have secreted away sums of money for their own personal gain and then expect another (third party or the employer) to suffer the total loss.

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She signed a contract that would settle such financial positions and so if I say there is breach of trust it does not fall at the highest level of such a crime.

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The offences themselves are of some antiquity. Your Honour may say well, that is partly by reason of her contesting issues, but can I say this although when she was interviewed in January 2008, she was not summonsed to the court to be prosecuted until the January of 2009, so a year has passed. Thereafter she came before the courts. She was to stand trial in May of last year, but by reason of an application made upon computer concerns in regard to the integrity of the Horizon system, your Honour knows about that, having heard the trial ...

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JUDGE STEWART: Yes.

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MR. HADRILL: ... the earliest it could possibly be tried was before your Honour and so there has been delay, not necessarily caused by her, but to ensure that the fullest information was put before the court for there to be an understanding of this computer system and as to its integrity.

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Can I say, the evidence that was revealed to you in the course of the trial showed mismanagement by her. There were, clearly, losses which were accruing, we know the Lottery was £20,000 was to be settled by her. There was the other loss of £5,000 soon after she started with the business. She started in June '05 and we know there was an order on 5<sup>th</sup> October '05, which resulted in a £5,000 loss. Much was mismanagement and, indeed, the prosecution expert (who had the benefit of looking at the computer evidence) agreed as such as did Mr. McLachland. We have the deviance charts of highs and lows.

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So how this crime came to be was partly because of her own incompetence and mismanagement, her wanting to make good losses and then falsifying the accounts, which she pleaded guilty to, and the losses accrued for one reason or another to the sum total of £74,000 as we now have.

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Can I say there is no suggestion or allegation made that it was to fund a high living or squandered. It would appear that the monies were spent in one form or another to run the business and the business has been a large financial loss to her for this reason: having started off in business with good intentions in the Luton area, having sold that business, the totality of the funds from the hard work and endeavour from Luton, were then invested into the West Byfleet post office. As we know in June of 2005 she paid some £200,000 for that business.

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(Inaudible) concerns that if she lost her Post Office franchise the business would be worth significantly less, as has proved to be the picture, because in March this year it was sold, but could only gather in regard to its sale £60,000 and so there has been a huge financial loss to her and he husband.

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They continue to live a meagre life, her husband now drives a minicab and she taking telephone calls. They have no real savings, but that is a matter to be investigated for the purposes of the Proceeds of Crime Act.

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So it is not before you a defendant who has squandered significant sums of money on gambling, high living. It is a frugal life that she eked out with her husband. She started with good intentions and became subsumed in this crime over a period of time, not intending to start dishonestly falsifying accounts or appropriating money, but that is the end result.

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So can I pray in aid, first of all, the good character? That she is a mother who has endeavoured to support her family. The mother of ten-year old son who is expecting a second child and the loss of the role of caring for her son will have a devastating effect upon her as well as him.

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She is fearful and concerned as to what will happen today and also for the unborn child.

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She has not been in a position to date to settle the totality of the outstanding £74,000. Again, that will be a matter for the Proceeds of Crime Act and the investigation there.

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So by and large we have before your Honour a woman of good character who has been hardworking, has endeavoured to live a law-abiding life, who had high hopes by investing her savings and her husband's savings from previous hard work in his

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business, which has been a failure and she is now before the court for offences of dishonesty.

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But, again, offences, which, when they came to light in January 2008, are nearly three years old now and it has been a worry and anxiety hanging over her head.

Is there anything else I can sensibly say on her behalf or you wish to hear from me?

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JUDGE STEWART: No, thank you. I should have said this, I have to of course have regard to the guidelines issued by the Sentencing Guidelines Council, as was, the Sentencing Council as it is now re-named.

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MR. HADRILL: Does your Honour wish me to ... There is a starting point, there is a bracket of the two years, beginning, starting point of three years. I would certainly ask your Honour, having regard to the facts of this case and it is not that the Crown necessarily has a number of aggravating features, start very much at the lower end.

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JUDGE STEWART: It seems to me that it comes within the second level of the boxes in the guideline, theft of £20,000 or more, but less than £125,000.

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MR. HADRILL: Yes, your Honour.

JUDGE STEWART: I do not consider that there is such a degree of trust to move it up into the top category.

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MR. HADRILL: Thank you very much.

### SENTENCE

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JUDGE STEWART: You may remain sitting down while I say what I have to say. Seema Misra, the jury found you guilty at the end of your trial on count one of this indictment. Count one was an allegation of stealing just under £75,000 from the Post Office in a period between June 2005 and January 2008. You had previously pleaded guilty to the

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other counts in the indictment, counts two to seven, each of which alleged an offence of false accounting in respect of entries that you made in the accounting records of the sub-post office at West Byfleet where you were the sub-postmistress during that three year period, or nearly three years.

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You are entitled to credit for the fact that you admitted the offences of false accounting at an early opportunity in this court, but there can be no such credit so far as count one is concerned for you maintained your statement that you had not appropriated any of that money dishonestly right through to the end of the trial, but the jury rejected your case so far as that was concerned and concluded that they were sure that you had stolen at least a substantial part of that £75,000.

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The fact that there was this money missing was discovered in January of 2008 when auditors came to the post office and conducted an audit of the records and it transpired that the shortfall existed. You had been performing a number of actions to obscure the shortfall over the preceding months. For example, putting figures in for cash in hand which were untrue and dealing with envelopes for remittances of cash out so as to make it appear that there was cash in the post office when it simply was not.

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This sequence of events had continued, as I have said, for a substantial period of time, two and a half years.

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It is right to say that there was no evidence of what became of the money that was stolen. No evidence of extravagant living or anything of that kind, but the jury were sure that you had appropriated the money for whatever purpose it might have been.

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When you were interviewed and when you came to give evidence you maintained that the money initially was missing because staff had stolen a very substantial sum, even more than the £75,000, and you also maintained that you were not competent and

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not sufficiently trained to operate the Post Office computer system and you tried to maintain that the losses continued as a result of mismanagement.

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Well, the jury heard evidence from experts over a considerable period of time as to the operation of the Horizon system, which is installed at post offices throughout the country, and the jury reached their conclusion. The two experts agreed that there was evidence of a degree of mismanagement, but, plainly, not on such a scale as to explain away the whole of the shortfall in the cash.

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In considering this case and the sentence that I have to impose today I have been provided with a number of documents and other material. The pre-sentence report has been prepared by Heather Sale. I have read and considered that. I was sent a couple of days ago a bundle of character testimonials from a number of people who have known you and your husband over the years. Also, an acknowledgement from a charity as to some fund raising that you engaged in and a letter from the superintendent of Surrey Police thanking you for assisting in preventing a crime against another gentleman.

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The testimonials all speak highly of you. People who know you and feel you are hardworking, honest, truthful and reliable. Those references, unfortunately, fail to take account of the offences for which I have to sentence you today, the offences of dishonesty which you admitted through your pleas and the more serious offence of dishonesty represented by count one.

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I have also been provided this morning with a letter from your general practitioner, along with a record relating to your discharge from hospital in 2000 at a time when, as I read it, you had suffered a ... I think this is right, is this right, Mr. Hadrill, a **GRO** at that time?

MR. HADRILL: She suffered two, 2004 and 2005.

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JUDGE STEWART: Yes, that is a document relating to a GRO The pre-sentence report and the letter confirm that you are currently pregnant, about eight weeks pregnant, and you have a condition, GRO which has resulted in difficulties in GRO and the need for care and monitoring during your pregnancy.

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That was a conception which took place as the trial was approaching and you conceived that child in full knowledge of the circumstances in which you found yourself.

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I have had to consider when Mr. Hadrill asked me to think about it, whether I should adjourn for further medical reports to be prepared, but I have taken the view that that is not necessary or appropriate today, it would simply prolong matters and ultimately without any benefit to you.

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The probation officer observes, and I agree with her, that she is sure that you would receive maternity care were you to be in prison. I have full confidence in the medical care available within the Prison Service, particularly for pregnant women.

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It is also a sad fact that your husband and your son (who is nine) are going to be devastated by your conviction and by the sentence which I am, I am afraid, constrained to pass today. I say "afraid" because from your point of view it will, no doubt, be a considerable shock and hardship to face a period of custody, but for reasons that I am going to explain I see no alternative to that, but I am, equally, as I have said, confident that you will receive the appropriate care during the period that you are imprisoned.

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The reason why I have reached this conclusion is that I have to have regard to the Sentencing Guidelines Council guideline on theft in breach of trust. This is such an offence. As I observed a short time ago, I regard this as falling within the second level of such offences as set out in this guideline, a theft of £20,000 or more, but less than

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£125,000. I do not regard it as being in breach of such a high degree of trust as to raise it to the highest level, but the Sentencing Guidelines Council has made it plain that two years' custody is the starting point for such offences for a person such as you who pleaded not guilty but was convicted and who is a first offender with a sentencing range from as low as twelve months to three years' custody.

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The guideline sets out a number of factors which have to be taken into account. Aggravating features that are present is a long course of offending. Mr. Hadrill submits that this is not a case where suspicion was deliberately thrown on others or where you deliberately left others to pick up the pieces of your offending because you are contractually bound to the Post Office to make good any shortfall in the accounts. Well, you did not deliberately throw suspicion on any person who directly suffered by way of being arrested, but you did try to maintain that the theft was initially the responsibility of previous employees.

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I do not consider you, on the evidence that was available to the jury, to have been incompetent or incapable of running a sub-post office, the jury heard ample evidence as to the degree of training that is available and the amount of experience and skill that is required. They also heard about your education and employment history, which demonstrated a good deal of experience of computers and of positions of responsibility.

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Again dealing with the factors set out in the guidelines, this is not a case where it can be said that you stopped offending voluntarily before being discovered. It was only that audit in early 2008 that led to the cessation of the offending.

I also have to take account of the passage of time since that day. It is now approaching three years (I speak in November 2010) since the audit which revealed

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this shortfall. No doubt the three years have been stressful for you and that is a factor that I take into account, but I also cannot ignore the fact that had you admitted the offence, which the jury found you guilty of at the outset, the whole case would have been dealt with very much more rapidly. There was a period of a year between your

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interview and the issuing of a summons and then the proceedings in this court were very much delayed by the process of obtaining the expert evidence which ultimately the jury had to consider. But, ultimately, it was because you contested the case that all that time passed.

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The consequences for your husband and son, regrettable and unhappy though they are, are equally the consequence of your offending, and so I have to apply the guideline and follow it unless there are grounds for me to depart from it and I am unable to perceive that there are any such grounds in this case. The only factor which has given me any cause to pause so far as that is concerned is the fact that you have recently become pregnant, but for the reasons I have already dealt with, I do not consider, ultimately, that they require me or justify me in departing from the application of the guidelines.

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But taking account of all the factors that I have identified, you are thirty-five; never been in trouble before; you have a record of working hard and many people think very highly of you, I have decided that I can pass a sentence which while it has to be custody because nothing else would be justified given the gravity of count one, it can be very much at the lower end of the range identified by the Sentencing Guideline Council.

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The consequence is that the sentence will be on count one, fifteen months' imprisonment. On the remaining counts there will be six months on each, but they will

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be concurrent with the sentence on count one, so it is a total sentence of fifteen months, taking account of the totality of the offending.

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The effect of that is that you will be required to serve half as the custodial part before your release.

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I take it there are no days to count towards that. If it transpires that I am wrong and there are days in custody or on tag curfew that have to be taken into account, that will be dealt with administratively without the need for a further hearing.

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The Prison Service also of course have the power, in certain circumstances, to order early release on home detention curfew but that is not a matter for me.

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When released you will be on licence and there will be conditions and if you breach a condition of your licence you will be returned to prison to complete the sentence in full.

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There will be confiscation proceedings in due course. Whether any order is made and whether any sum is ordered to be paid by way of compensation will have to await the outcome of that hearing, but I can make no order for the costs of these proceedings today because of the sentence I have imposed.

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