

Court Users Group Updater

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Introduction

As readers will know, I include a caveat on the updater to emphasise that there is no substitute for reading the judgment itself. My aim is simply to highlight cases that may be of interest or of practical importance when undertaking work in the CACD. I make this point because cases are often nuanced, fact-specific, or raise multiple issues of interest. Many are detailed and/or contain extensive analysis of legislation and case law, and no summary (certainly not mine) can do them full justice. Moreover, you may disagree with the view I have taken or feel that I have missed a key point altogether.

Although I read the commentary of others, I always go back to the case itself when preparing these summaries.

Out of curiosity, I decided to run one or two cases through Copilot (AI) to see whether it might simplify the task. The result was not bad, but it did misunderstand a couple of points. I am sure that AI has its place and is a useful tool. I would urge caution in its use - just as I would caution against relying entirely on this updater. Update: Crimeline drew attention to [Re B – Fact Finding \(Use of AI for Judgment Summary for Parents with Learning Difficulties\) - Find Case Law - The National Archives](#) which used the **secure Judicial Copilot AI application** to produce two summaries to assist the parents who have learning disabilities (see annex 1 and 2).

So, for this edition at least, it is my imperfect brain and typing (save where credited). Any errors or misunderstandings are mine, but I hope this at least highlights cases that you may not otherwise have spotted.

Court of Appeal, Criminal Division

Fresh evidence – s.23 Criminal Appeal Act 1968

[R v Melusi Brian Madaweni \[2025\] EWCA Crim 1427](#)

Fresh legal representatives sought to introduce fresh evidence of psychiatric reports, a statement from the applicant's mother and a transcript of calls recorded by his mother prior to the murder. The psychiatric evidence, it was submitted, provides

“...compelling evidence that the defence of diminished responsibility was available to the applicant at trial and would have been likely to have succeeded. However, the pre-trial investigations into the applicant's mental health history were inadequate; no psychiatric evidence was relied upon at trial; and no defence of diminished responsibility was raised”. [14]

The Court, however, was not persuaded that the fresh evidence significantly altered the position that had prevailed at trial. Having examined both the material available at the time and the newly obtained expert reports, the Court concluded that there was “little or no difference” between them. In essence, the fresh psychiatric evidence did not meaningfully advance the case beyond what had already been known or could have been explored at trial [43].

The difficulty for the Court was that the report did not set out a basis for concluding that the psychotic illness provided an explanation for his actions on the night in question and his actions in causing the death. The issue at trial had been self-defence/lack of intent. Counsel at trial had an expert opinion that the mental state and to “to have pursued a defence of diminished responsibility would, in the circumstances, have been contrary to the instructions they were being given by the applicant and would potentially have undermined the defence which he was wanting to put forward.” [44] – [46]

However, the Court did consider that the original expert report should have been before the sentencing judge as it was it was potentially relevant to the assessment of culpability and mitigation. The Court referred the sentence application to another hearing to deal with the issue of fresh evidence etc. The date is TBC.

Conviction

Evidence given to jury post-retirement

[Stuttle \[2025\] EWCA Crim 256](#)

After a car was stolen and chased by the police, the driver decamped and ran off (captured by BWV and verbally recorded that the driver was wearing grey). The appellant was arrested nearby and a grey hoodie recovered in the area. “The hoodie was not forensically examined. It was not, it seems, even searched by the police.” [3] The issue at trial was identification and the appellant denied that the hoodie was his. [4] – [6]. The jury retired with the exhibit bag and sent a note to say that they had found a bank card belonging to the appellant’s partner (and mud on the sleeve consistent with the BWV of the driver slipping on a muddy surface). The judge said that it was exhibit they were entitled to see and before he decided on the application to discharge received information that the jury had reached their verdicts. [7] – [8]. Having considered the authorities [17] – [18] the CACD considered that the bank card amounted to new evidence on which the appellant had no opportunity to address and no direction to the jury that it should be ignored [19] – [22].

As the editorial team of the judicial college eLetter noted – this case involved inadvertent introduction, but where there are applications for permission to adduce additional evidence there is no “absolute rule” to prohibit. See *Hallam* [2007] EWCA Crim 1495, *Khan* [2008] EWCA Crim 1112 and [Dunster \[2021\] EWCA Crim 1555](#).

Refusal to adjourn – consequences to the trial.

[R v Paul Harris & Ors \[2025\] EWCA Crim 1442 \(originally published as PBN\)](#)

NB the full judgment was published post the Crown Court proceedings which concluded in March 2026.

This was a prosecution appeal (s.58 CJA 2003) against the self-described terminating ruling of the trial judge.

Lord Justice Edis, VPCACD, gave judgment and immediately acknowledged that

“This case reflects a very difficult situation in the Crown Courts of England and Wales. Many of the problems which afflict the criminal justice system have surfaced in it at one time or another. This case has waited for trial for an unacceptably long period of time, despite the efforts of the court to deal with it. The delay here is not typical, being unusually long. However, it is probably not unique” [1].

An incident of street violence in October 2019 resulted in the charging (by postal requisition) of the four defendants of ABH, assault by beating and affray. The PTPH was heard in November 2020 and from 2022 to 2025 it had appeared in the warned lists on several occasions. During May 2025 in the warned list period, it was given a fixed date of 11th August 2025 with a 5-day time-estimate. The breakdown of communication and information sharing (and ownership) that followed will be familiar to those practising in the lower courts including judicial pressure/encouragement for cases to be resolved to reduce the backlog.

On the first day of trial there was no prosecution advocate. On the second day a prosecutor attended and said they were ready for trial and would proceed without the two independent prosecution witnesses who did not attend (addressed in [32] – [33], [35] – [39]). Day 3 saw an application by the defendants for a stay (“slightly surprising” to use “limb 2”) which was rejected (“less surprising”) by the judge [27], [34].

As the CACD noted in [24], [26] and [28] no one had applied for an adjournment and no order to that effect had been made so the expected next step would have been to empanel the jury. Instead, the judge gave a ruling that culminated in him saying “I am not prepared to adjourn this trial. This decision I have made today, of course, amounts to a terminating ruling”.

“In reality these [ground 1, that the trial ought to have proceeded and ground 2, that if for any reason it could not proceed that week, the judge ought to have granted an adjournment] are two different ways of addressing the part of the

judge's decision to which the Crown objects. They succeeded in resisting the application for a stay on the ground of abuse and obviously do not complain about that. They also succeeded in persuading the judge that the trial ought not to be adjourned. The part of the ruling to which they object is the decision that a refusal to adjourn the case was a terminating ruling. If that was wrong, then they say the judge should either have proceeded with the trial then or adjourned to another date when it could proceed" [30]

The CACD found that the judge was correct to say that the case should not be adjourned, but it should have proceeded and the jury empanelled (*c.f the position where there is no prosecutor*) [40]. It is not for the judge to say the ruling is a terminating ruling and his decision was wrong in law [41]. The Court also stated that the indication of sentence should not have been given by the judge (when asking the CPS to review).

[45] – [53] were originally published and remain in the final judgment. This case is to be read in the context of the backlog and the consequential problems that it causes but perhaps one of the takeaway points is that the wider issues of delay and desire to reduce the backlog should not be conflated with what is happening in a particular case and care should be taken to consider all options available.

Unsworn evidence

[Giscombe \[2026\] EWCA Crim 82](#)

During a rape trial one of the complainants (C2) gave her evidence in-chief through an ABE interview and was cross-examined, but it was only later discovered that she had not been sworn or affirmed before doing so. This oversight came to light after both complainants had given their evidence. Defence counsel submitted that, in those circumstances, C2's evidence was inadmissible and that the jury should be discharged [15] – [16].

After hearing arguments on ss.55 and 56 Youth Justice and Criminal Evidence Act 1999, the trial judge directed that the complainant be recalled, sworn, and asked to confirm that her earlier evidence had been truthful. The defence was then permitted to cross-examine her further. The judge concluded that this course would cure any potential unfairness and allow the trial to continue fairly [17] – [23].

The Court examined the statutory framework and noted that, although the complainant should have been sworn (as she was over 14 and competent), section 56(5) makes clear that a conviction is not to be regarded as unsafe merely because a witness gave unsworn evidence when they ought to have been sworn. The Court rejected any narrow reading of that provision and held that it applies generally, including to cases where the failure to administer the oath was simply an error rather than a conscious judicial determination. The Court distinguished authorities which predated the 1999 Act [28] – [38].

Applying section 56(5), the Court emphasised that the issue must be considered “in the round” rather than by focusing solely on the procedural defect. It was therefore necessary to examine the entirety of the evidence and the fairness of the trial as a whole. In this case there was ample evidence [40] – [43].

On the issue of recalling the witness, The Court did not consider that this had caused unfair prejudice; the jury would have understood that there had been a procedural error [47] – [51].

Unfitness to plead

[R v Wood \[2026\] EWCA Crim 480](#)

This case shines a light on the inadequacies of the criminal justice system, mental health provision and disposals when dealing with those with complex issues and challenges, but who do not tick the right boxes [11] – [12], [56] – [63]. It will be noted that the appellant started the proceedings as an LIP and it was sometime before the difficulties that the appellant faced were recognised and a representation order granted [36].

The CACD considered that the appellant had been unfit to stand trial applying the Pritchard criteria for fitness to plead. Although the appellant may have had a basic understanding of the charge, his impairments meant he could not effectively participate in the trial process. His communication difficulties compounded the problem, and the absence of an intermediary—despite concerns raised at the time—further exacerbated the situation. The Court was satisfied that this amounted to a significant procedural injustice, rendering the conviction unsafe; see [21] – [35]) for arson (reckless as to whether life is endangered) [5], [41] – [43]. The Court found that he had started the fire [7], [13] – [20], [44] – [46].

S.6(2) Criminal Appeal Act 1968 restricted the Court to making a hospital order, a supervision order or an absolute discharge [47]. The appellant’s conditions are not treatable by means of a Hospital Order, he could not be detained under the Mental Health Act 1983 and had mental capacity so the Mental Capacity Act 2005 could not be used to deprive him of his liberty [5], [7]. The Court gave a detailed narrative of the practicalities against the legal framework [48] – [64] but concluded that the Court had no power to do anything other than order an absolute discharge [65].

The case is a useful reminder of the proactivity of the CACD; having ruled out a Hospital Order, the court acknowledged that it would prefer a supervision order to an absolute discharge and adjourned the appeal with directions for further reports [7] – [8]. Testament is paid by the Court to counsel, solicitors, the probation service and local City Council for the work that they all did [9] – [10]. The court were troubled by the legal and practical hurdles and the ultimate position of the relevant agencies but could not “impugn their reasons for declining to [provide a supervising officer] [64].

Sexual activity with a person with a mental disorder by a care worker

[Culverwell \[2026\] EWCA Crim 203](#)

The issue in this case was whether the accepted sexual activity with a person with a mental disorder by her care worker whilst he was on sick leave (on full pay) came within the definition in s.42(3) Sexual Offences Act 2003 (SOA 2003) and was therefore guilty of the offence (s.38 SOA 2003). The judge had ruled that the statutory interpretation was a question of law for him rather than a question of fact for the jury and on this point the appellant appealed, having then pleaded guilty [4], [9], [10], [22], [23], [25] – [27]. The Lady Chief Justice, perhaps unsurprisingly, held that

“...it is clear that Parliament intended section 38, by reference to section 42, to capture care workers on sick leave. This is so as a matter of the ordinary and natural meaning of the statutory wording; it is also consistent with legislative purpose. Abuse of a position of trust is the essence of the section 38 offence. That abuse exists whether the sexual activity occurs on-shift or off-shift” [32].

To hold otherwise would result in

“...A care worker who wanted to have sexual contact with someone for whom he cared would be able to do so with impunity by taking sick leave or booking holiday for the period of any anticipated sexual encounter between them” [40].

As to whether the issues should have been left to the jury the LCJ said

“...There was no factual question for the jury to determine in this case. On the agreed facts and/or evidence that was common ground, the appellant fell within the scope of section 38. What the appellant challenges is the legal effect of undisputed facts. There may be cases where, armed with our interpretation of sections 38 and 42(3), there are still factual questions for the jury to answer, but this was not one of them” [43].

Section 5 of the Domestic Violence, Crime and Victims Act 2004

[R v Fartun Jamal \[2026\] EWCA Crim 135](#)

This case was brought in consequence of the decision in *R v ATT and BWY* [2024] EWCA Crim 460 (see updater March 2025) which had been handed down after the appellant’s trial (and changes to commentary and the Crown Court Compendium¹) see [26]- [28]. The facts are set out at [7] to [11] but in short, the prosecution case was that the appellant had caused the child’s death through wilful neglect in not obtaining medical assistance to a child who was obviously unwell. The appeal centred on the requirement for a pre-existing risk of serious physical harm. The jury, in accordance with the pre-*ATT* position, had been directed that there was no requirement to find a pre-existing risk of serious physical harm; it was sufficient if the jury found that such a risk arose from the unlawful act which caused the child’s death [13] – [14], [25]. In *ATT*

¹ Note that the March 2026 Crown Court Compendium has updated 19-6 to reflect the judgment.

the defendants were accused of allowing; the prosecution were unable to say which person had caused the death. Lady Justice May, giving judgment, sets out in detail the reasoning and decision in *ATT* that [20] – [24].

“We have no doubt that the requirement under section 5(1)(c) for a pre-existing risk of serious physical harm applies whether the person charged with an offence pursuant to section 5 of the 2004 Act is alleged to have caused the injury or to have allowed the injury... *ATT* at [59].

The Court concluded that

“...all s.5(1)(c) requires is that a risk exists coterminous with the unlawful act. Nothing in the words used imports an additional requirement that the existence of the risk must be based on prior behaviour, or that the risk must be shown to have pre-dated the time of the unlawful act”[37], [40] and that

“...section 5(1)(c) is a gateway through which both causers and allowers must pass” [38].

The difference or separation between the causer and allowers comes down to s.5(1)(d) for causers and (d) (i) – (iii) for allowers:

“...additional matters to be proved as regards awareness of risk on the part of the allowers. In practice, in most cases where liability is sought to be attached to a person as an allowers, the prosecution will need to demonstrate a pre-existing risk in order for (i) to (iii) to be satisfied (though see below for a course of conduct involving omissions). It will depend on the facts of each case. But the requirements in section 5(1)(d)(i) to (iii) do not apply to a causer...” [38]

This judgment is essential reading for those involved in one of these cases (causers and allowers) and it is worthwhile reading by everyone else. For a relatively short judgment, it is packed with analysis. A summary cannot really do it justice. Ultimately the Court did not agree with *ATT* preferring *Ikram* [2009] 1 WLR 1419 but it does seem likely that this will be the go-to judgment in this area.

Child cruelty

[R v BCZ \[2025\] EWCA Crim 1465](#)

The prosecution case was that the appellant had wilfully assaulted his son by twisting his ear, causing pain which was by its nature likely to cause unnecessary injury or suffering. The appellant accepted that he had grabbed and pulled his son’s ear to a limited extent to teach his son a lesson in response to his son slapping him. He did not intend it to hurt, and it did not amount to an assault. The issue before the court related to the issue of *mens rea* and the (in)adequacy of the judge’s directions.

“...it is common ground that the judge should have directed the jury about the *mens rea* for this offence and further that the *mens rea* included intention

or recklessness as to the manner of the assault on the complainant” [24]; *R v Sheppard* [1981] AC 394 and *R v G* [2003] UKHL 50 [18] – [23].

The dispute between the parties centred on the “precise content of the recklessness direction” [25] – [31]. However, the Court did not resolve this issue [40] as the judge’s directions had contained no mention of intention or recklessness [32]

“...at its height, the Appellant maintained that he did not intend to hurt his son, only to censure and educate him. If the jury accepted that explanation as possibly true (and we cannot know whether they did or did not, because they were not asked about that) the issue of recklessness would have been live, because, in that event, the prosecution would have had to prove that the Appellant had been reckless as to the risk (even though the injury was unintended) in order to secure conviction. That is why the arguments on appeal have focussed on recklessness rather than intention [36].

When it comes to recklessness, however, the Appellant was not asked whether he was aware of a risk that he would cause unnecessary suffering to his son by his actions. He had no opportunity to give his answer, fair and square, on whether he foresaw a risk of harm by his actions. There was a gap in the evidence on what now emerges as a material issue [37].

There was, in addition, a gap in the directions, which meant that the jury never applied their collective mind to whether the Appellant was aware of the risk of causing unnecessary suffering [38].

Those gaps cannot, in our judgment, be fairly plugged on appeal. The issue of recklessness was for the jury to determine on the basis of relevant evidence going to that issue. We would usurp the function of a trial and the role of the jury if we made assumptions about what evidence might have been given and what the jury might have decided if it had been given [39].

The court noted that it was “regrettable” that the arguments in the appeal had not been made to the trial judge and she “did not receive the degree of assistance which she was entitled to expect from counsel” [16].

As was pointed out by the Court and the Judicial College Crime eLetter editorial team; the disputed formulation of the *G* test is “still a gap to be filled”.

Modern Slavery Act 2015 - Slavery – Servitude

[Webb and Somerset-How \[2025\] EWCA Crim 1491](#)

The appellants were convicted with holding a person in slavery or servitude (s.1(1)(a) MSA 2015).

Without going into the facts (see [15] – [34] save that the court summarised the prosecution case as the complainant “was effectively imprisoned for a period of 2½

years, confined to his bed, having lost all ‘autonomy’ such that the only ‘decision’ he could take for himself was to limit his consumption of food and drink in the hope that he would not soil the bed before one of the appellants would empty the bottle he used to urinate in or help him on to the lavatory. This was evidence of slavery. By enslaving him they were able to enjoy the use of his home and income”)

“In essence the central question for this Appeal what is meant by “slavery” and “servitude” when **no work or function** is performed by the individual kept in slavery/servitude.” [7] (*my emphasis*)

And whether two offences are alleged and is therefore bad for duplicity [8].

The Court had to consider whether the decisions on the application to dismiss, submissions of no case to answer and the directions to the jury were right in law although the court acknowledged the challenges for the trial judge (complex act, lack of guidance in other cases and three judges with more time to reflect) [12] – [14].

Sections 1 and 3 MSA 2015 provide the legal framework and the Court noted that the intention was to create a “very serious offence” [9] – [11] and considered the definitions of slavery and servitude at [43] – [58]. They then considered “is the provision of work or services essential for servitude or will it suffice if D preserves a benefit by coercing V?” [59] – [62] and then “How many offences created by [section 1\(1\)\(a\)](#) of the 2015, Duplicity and the *Brown* Direction” [63] – [70].

The Court, Lord Justice Edis VPCACD, reformulated [35] – [41] the issues to [42]

- i) Whether the judge was right to leave it open to the jury to convict if they were not satisfied that the prosecution had established slavery but were sure that they had established servitude. The directions, including the *Brown* direction leave open the possibility that this was the basis of conviction. In a case where the victim provided no work or services for the appellants is that, in law, a proper basis for conviction?

[71] – [78]. Servitude must involve the provision of work or services under coercion. The complainant never did provide any services or do any work for either appellant. It was not open to the jury to find that he had been held in servitude.

- ii) Associated with Question (i) is the further question of whether [section 1\(1\)\(a\)](#) contain one offence which may be committed in two ways, or two offences.

[79] – [82] – One offence

“ involving conduct of a kind which involves slavery or servitude which are closely related concepts. Both will usually involve the domination of a person to induce them to provide work or services, and to constitute

servitude, as we have held, that element must be present. We are about to consider the definition of slavery to show what additional conduct the inclusion of that word might capture. There is no purpose to be achieved by interpreting this statutory provision so that it creates two offences where the distinction between the different ingredients is so fine and where in very many cases both will be present... This was one of those cases where there is a palpable difference between slavery and servitude because the domination of TSH was not done so that he would provide work or services. ”

- iii) What is the definition of “in slavery” for the purposes of [section 1\(1\)\(a\) of the 2015 Act](#)?
- iv) Was there evidence of slavery, properly defined, fit to go to the jury?

[83] – [101]

“We consider that the essence of slavery is the domination of another person’s life so that they are deprived of any real personal autonomy. They are deprived of important freedoms by the coercion and controlling behaviour of another person. This may involve a form of imprisonment, forced work, demands for sexual and other “services”, or forced compliance with demands for obedience. They may have no freedom to decide where to live, or with whom... Slavery is a status and not a condition which lasts only for a short time. The same is true of servitude....

In our judgment the best way to direct a jury about the meaning of slavery is to produce a legal direction which is tailored to the facts of the case, rather as our paragraph [92] begins with a general statement of principle but then brings it to the facts of TSH’s life during the period of the slavery. It will always be helpful to identify the conduct of the defendant which is said to amount to holding the person in slavery, and to direct the jury that they must decide whether that conduct had the effect of reducing the person’s personal autonomy to such an extent and for such a period that it amounted to holding them in slavery.

The way in which a question may be framed for the jury may benefit from consideration by the authors of the Crown Court Compendium. We have two formulations of the general principle to offer for consideration, but repeat that it will be necessary in all cases to tailor this to the facts of the case:-

- i) Are you sure that the defendant exercised power over V, as one might as an owner, which deprived him of the exercise of his free will as a person in his own right?

- ii) Are you sure that the defendant made V his slave, that is, stopped him being a person in his own right by exercising coercive power over him, treating him as if he owned him?...

The offence is committed when a person holds another in slavery. Slavery is a change in the status of the victim from being free to exercise choice to being subject in all important matters to the will of another. The direction must of course identify the conduct which is said to have brought about that change (“the holding”) but must also clearly direct the jury that slavery concerns the condition of the victim and the impact of the conduct on it. The judge’s direction failed to make that clear.”

- v) If the answer to (i) is No, and that to (iv) is Yes, was the evidence of slavery so overwhelming that we should find that the error in relation to servitude does not render the conviction unsafe?
- vi) If the conviction is otherwise safe, is there a technical defect in count 1 on this indictment, called “duplicity”, which means that it should be quashed, nonetheless?

[102] – [103] – short answer given ii) above is no duplicity.

Overall, the CACD ruled that s.1(1)(a) created a single offence that can be committed in two ways but held that there was a misdirection in relation to both servitude (where there was no evidence) and slavery (where there some but “ the evidence was not such as to drive us to the conclusion that the jury must inevitably have concluded that TSH was held in slavery given the findings which they reached on the facts”) that rendered the convictions unsafe whichever manifestation of the offence the jury had considered as the basis for the conviction.

Again, for practitioners in this area, this judgment is a must read.

[Moon Swee How & Anor v R \[2026\] EWCA Crim 476](#)

The appellants were charged with conspiracy to recruit sex workers and cause them to travel to Portsmouth with a view to them working in the brothel (s.2 (1) MSA). The appeal concerned the elements that were required to be proved. The appellant argued that the sex worker must have been “trafficked” as per Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings (“ECAT”) (see [5] and [20] – [21]; threats, coercion etc). The prosecution agreed that the conduct did not meet the definition, but that s.2 wording was clear and that it was enough “to conclude that sex workers were being trafficked when the appellants arranged for them to travel to Portsmouth for the purposes of controlling their prostitution.” [6]

The Court also considered sections 1, 3 and 45 and the explanatory notes, CPS and Home Office guidance. The discussion is at [27] – [42]. The key was “(2) It is irrelevant

whether V consents to the travel (whether V is an adult or a child)” and that “[Section 2\(2\)](#) of the MSA 2015 is therefore materially, and intentionally, inconsistent with Article 4”.

Back-to-back with *Moon Swee How*, the case of *Finch* was heard by the same constitution (Lord Justice Edis VP, CACD presiding):

Youth – s.45 MSA 2015

[Charlotte Finch v R \[2026\] EWCA Crim 477](#)

The Court was concerned with the questions as to whether

“The judge erred in directing the jury that to “establish forced and compulsory labour for the purposes of [section 45\(4\)](#) of the MSA 2015 there had to be evidence of a menace of penalty in the circumstances of the appellant’s case”[5] and

“... was wrong to limit this limb of the defence [victim of trafficking, s.45(5)] to a finding by the jury that “another person arranged or facilitated her travel within the UK” and emphasise the “travel” rather than the “recruitment” aspect of the MSA 2015 defence.” (see [28] and [39])

Again, the Court considered sections 1, 2, 3 and 45 and ECAT Article 4. The question posed was at [23], [25] – [26]:

“How does the judge identify what forced or compulsory labour is without implying that “compulsion” is a necessary element of the defence? The question for us on ground 1 is whether the judge achieved that difficult objective by repeatedly using the phrase “menace of penalty.”

The Court deprecated the use of the legalistic phrase “menace of penalty” by the Judge to explain the pressure required for the defence to be made out [32] – [35] but found that the directions were otherwise correct/convictions safe.

Fresh evidence – complainant admission of lies told at trial

[Kieron Joseph \[2026\] EWCA Crim 22](#)

In brief, the complainant, 6 years after having given evidence that she was raped, told police that she had lied about the detail of her complaint albeit that she maintained that she had not consented to sexual intercourse. The issue at trial had been consent. The Court, Lord Justice Jeremy Baker, considered in detail the provisions of s.23 CAA 1968 and [60]

“The correct approach to these issues, as suggested in an obiter passage *in R v Ahmed* [2010] EWCA Crim 2899, has been more recently confirmed as representing the law in [R v Barker \[2021\] EWCA Crim 603](#), where Edis LJ stated at [24] – [25]...”

The Court considered that the change in account was relevant to the issue of consent and noted that the prosecution had relied on the consistency of her evidence at trial, the judge had directed the jury in relation to credibility and the detail she had given. The conviction was unsafe [61] – [67] although the conviction in respect of another complainant was not affected. The Court did have “misgivings” about the delay in bringing the application [49] – [50], [6].

Indictment misstating age of child victim of sexual offences

[BDZ \(Indictment misstating age of child victim of sexual offences\) \[2026\] EWCA Crim 10](#)

The applicant was convicted of 11 counts of sexual abuse of his stepdaughter. Count 1 to 5 alleged offences that took place when she was aged 12 and charged as offences against a child under 13. Count 6 to 11 were charged as if she was aged 13. The particulars for count 6 to 11 stated the complainants age as 13 and gave a date range as if she was 13.

At trial the complainant’s evidence was that all offending took place when she was aged 12. No one noticed any issue about the drafting of counts 6 to 11 [9] – [18], [26].

Fresh counsels’ ground of appeal was that the convictions on count 6 to 11 were unsafe because the evidence of the complainant child was clear that no offences occurred after her 13th birthday.

“The consequence of the error which actually occurred in this case was that the jury was directed that the prosecution had to prove lack of consent and lack of reasonable belief of consent in those cases when that issue did not in truth arise. It is impossible to see that this is capable of rendering the convictions unsafe. No relevant issue was withdrawn from the jury, but an irrelevant one was left to them. No adverse consequence flowed to the Appellant from the error which was made”

Regarding count 6 to 11 the court said that the age of the victim was not an element of the offence. “The real issue was whether these sexual offences had been committed not when” [24] – [25].

The court concluded that the convictions were safe, and that the errors in the drafting of the indictment were not material.

Filming – negating consent – s.74 Sexual Offences Act

[R v BVA \[2025\] EWCA Crim 1359](#)

“...the prosecution conceded that C2 seemed prepared to accept that she may have allowed the appellant to touch her in a sexual manner while she slept. However, her evidence was that she would not have done so had she known that he intended to film his actions (to which she had not consented). The

prosecution case was that the filming was so closely connected to the nature and purpose of the sexual activity itself that the appellant's failure to tell C2 about it negated any consent that she may have given to the sexual touching" [9].

The CACD, LCJ, dismissed that "as a matter of law, that filming of the sexual touching was not capable of negating consent to the sexual touching" [4] and stated that

"We would emphasise that we have reached these conclusions on the specific facts before us. There may be cases when a failure to disclose filming of sexual activity will not vitiate consent, for example when the filming is no more than a background circumstance and an aggravating factor (as identified in the Sentencing Council's Guideline on Sexual Assault). But that is not this case" [54].

Here

"The filming was intimately connected to the performance of the sexual activity, here touching. The filming was temporally and proximally connected to the touching: the filming started and stopped alongside the touching; the phone on which the film was being recorded was held right up close to C2's face and breasts; the appellant was holding the phone in one hand and touching C2's breasts with the other....The filming was also integral to the sexual touching. If not the sole purpose, then a central purpose of the sexual touching was to film the sexual activity [48] - [49]

The case is worth reading for its analysis of the authorities on ss.74 – 76 and noted that the authorities on s.74 on which this appeal turned were not easy to reconcile, that there may be no bright lines to draw" and had been the subject of academic interest [45].

"However, the following basic propositions of law can be identified:

- i) there is no material difference for present purposes between an express deception or, as here, a failure to disclose (*Lawrance* at [41]);
- ii) the "but for" test is insufficient of itself to vitiate consent (*Lawrance* at [34]);
- iii) consent is capable of being negated as a matter of law if the deception (or failure to disclose) relates to the sexual activity itself rather than the broad circumstances surrounding it (*Monica* at [72]). The issue is whether the relevant matter was sufficiently closely connected to the sexual activity (by reference to its nature, purpose and performance), rather than the broad circumstances surrounding it (*Lawrance* at [35] and [41]);
- iv) broad common sense has a role to play in finding the answer but does not relieve a court from the obligation of identifying the boundaries within which a jury should be asked to bear its common sense (*R(F)* at

[26]; *McNally* at [26]; *Monica* at [82] approved in *Lawrance* at [33]). So, a vitiating deception is not limited to the strict (narrow) physical performance of the act (see, for example, the facts of *McNally*).[46]

The LCJ noted that

“...the facts of this case give rise to novel circumstances which this court has not considered before. We approach the exercise by reference to the statutory definition, namely whether C2 agreed by choice and had the freedom and capacity to make that choice, and adopting a broad common sense yet principled approach. The question is whether a failure by the appellant to disclose to C2 the filming that took place was capable in law of negating her consent. Choice is crucial to the issue of consent. Was the filming that took place sufficiently closely connected to the sexual touching such that a lack of consent deprived C2 of her choice? Or was the filming simply part of the broad circumstances surrounding the sexual touching?” [47]

Sexual offence - ABE – hearsay – deceased complainant

[McNair \[2025\] EWCA Crim 1376](#)

By the time of trial, the complainant had died, and her ABE interview and body-worn police footage was admitted as hearsay under s.116 Criminal Justice Act 2003. The complainant who had serious alcohol dependency had alleged that the appellant entered her room and had sexual intercourse with her without consent. The account was supported to some extent by surrounding evidence from other residents in the property, including the fact that the appellant had been heard seeking sex shortly beforehand, had gone into the complainant’s room, and was found in a state of partial undress when confronted. There was no forensic evidence, and the defence case was that there had been no sexual contact whatsoever. At trial (and after the judge’s ruling), the prosecution case rested largely on the deceased complainant’s account and the evidence of a single live witness who had admitted lying in an earlier statement. Applications were made both to revisit the admissibility ruling and to dismiss the case under s.125 on the basis that the evidence was unconvincing and unsafe. On appeal, it was argued that the judge had erred in failing to exclude the hearsay evidence considering the changed evidential landscape, and in allowing the trial to proceed when the case effectively depended on untested and unreliable material. The appellant contended that there had been insufficient “testing material” available to compensate for the inability to cross-examine the complainant, and that the conviction was therefore unsafe.

The Court held that the complainant’s evidence was properly admitted under s. 116 and that there was no error in the refusal to exclude it under s.126 or s.78 PACE. The crucial question was whether the evidence was capable of proper evaluation, rather than whether it could be tested through cross-examination, and the Court concluded that it was [44] – [46].

The Court accepted that some witnesses had not been called but concluded that this did not amount to a material change requiring the hearsay ruling to be revisited. They had not been eyewitnesses and would not have been able to speak directly to the central issue of penetration. Their evidence would likely have supported, rather than undermined, the prosecution case. Their absence therefore did not deprive the defence of meaningful opportunities to challenge the complainant's account [47].

Looking at the case in the round the complainant's evidence was capable of proper testing and assessment. The defence had been able to rely on inconsistencies in her accounts, her alcohol consumption, and issues affecting her reliability, all of which were matters squarely before the jury. In addition, the appellant gave evidence himself, enabling the jury to compare the competing accounts directly. These features provided a sufficient basis for the jury to evaluate the reliability of the hearsay evidence [48].

The threshold for stopping the case under section 125 had not been met. The complainant's evidence, although untested, was not "unconvincing" in the statutory sense. Its weaknesses were properly matters for the jury to assess, particularly in light of the surrounding evidence, including events before and after the alleged incident and the contemporaneous complaint [48] – [51].

NB There is a passing reference to R v BOB [\[2024\] EWCA Crim 1494](#) but not to R v Riat [\[2012\] EWCA Crim 1509](#). There is a similar case that will be heard in June 2026 which relies on Riat.

Encrochat

[Danyal Aziz v R \[2026\] EWCA Crim 127](#)

Macur LJ gave leave on two grounds; 1. That the trial judge should have allowed an application to vacate the trial to allow the applicant to call expert evidence and 2. That the prosecution should not have given a closing speech against him.

The backdrop had some of the regular features in these cases including the sacking of legal representatives the day before the Crown expert (Luke Shrimpton) gave evidence. What was slightly different was that a judge had previously ordered the disclosure of (additional) data packages to allow the defence expert to match up the chat and assess reliability. However, there were issues between the defence expert and the solicitors over funding etc. The trial judge lost patience (the case had been adjourned whilst all the other appeal attempts were made in other cases) and directed that the trial proceed.

Notwithstanding the issues with the defence expert, several reports had been prepared on the data that had been disclosed including an opinion that "*For the handles Lushmace and KneeTown, more than 97% of counterpart messages are*

missing” but in a joint report with Mr Shrimpton “*the lack of a counterpart message does not make the message unreliable*”.

The defence expert “*accepted that one of the ways in which the accuracy and reliability of messages could be ascertained, is from external evidence, such as the results of searches of premises, ANPR imagery and the like*” (of which, as the Court pointed out, there was plenty). The Court noted that the applicant had not sought to produce a report for the purposes of the appeal. There was no reason why the expert evidence could not have been called and the co-defendant did cross examine on the report. See [77] – [96]

The other difficulty for the applicant was that he did not engage with giving counsel instructions as to why there might be reliability issues leading the Court to say at [85] “Although we accept that any accused is entitled to sit back and put the prosecution to proof of its evidential case at trial, the fact that an accused does so, including the appellant in this case, is of relevance when it comes to consider the extent to which the expert evidence may have been of assistance to his defence”.

On ground 2, this had been a multi-handed trial and everyone else was represented at [103]:

“We consider, as the respondent accepts, that there are passages in the closing address where less could have been said about the appellant. However, given the central role which, on the basis of the prosecution evidence, the appellant had in these offences, we are satisfied that the nature and extent of those references were not such as to give unfair prominence to the appellant’s alleged involvement in these offences, as opposed to providing necessary context to the involvement of his co-accused”.

The Court also noted T [99]

“We, like the court granting leave on this ground, are not in a position to know the outcome of any ruling which the judge would have provided in relation to this issue. However, we consider that in the context of this case, the judge would have been entitled to have taken into account that not only had the appellant been represented for much of the trial, but as the judge himself had observed, the appellant’s decision to dispense with the services of his counsel had the hallmarks of someone seeking to manipulate the proceedings; a matter which in our judgment is supported by the fact that the appellant has continued to instruct trial counsel in this appeal”.

You won’t be surprised that the appeal was dismissed

Restraining Order on acquittal under s5A Protection from Harassment Act 1997.

[R v DFB \[2026\] EWCA Crim 399](#)

In short, adhering to the legal framework set out in the statute and following the correct procedure in the criminal procedure rules matters. The Court noted and followed the similar cases of [John Baldwin \[2021\] EWCA Crim 703](#) and [Khan \[2021\] EWCA Crim 1526](#) which set out the principle and the consequences of an unfair trial and s.11(3) Criminal Appeal Act 1968 (that the prosecution can make a further application). It would be advisable for advocates to have these three cases in their toolkits for these types of case.

s.76A PACE – confessions – multi-handed trials

[Leslie and Gordon \[2025\] EWCA Crim 1045](#)

I have borrowed the analysis from the editorial team of the Judicial College:

“The case provides clarification on the approach to be taken in multi-handed trials where the confession evidence of a co-accused may exculpate one defendant and inculpate others. It confirms that such a confession will be admissible under s.76A PACE even when this creates a risk of prejudice to others in the case. The CACD rejected the notion that the trial judge retains any residual discretion to exclude relevant confession evidence sought to be deployed by a defendant on the basis that it is prejudicial to others involved in a joint trial. In doing so, the CACD rejected the approach taken at first instance where the judge sought to balance fairness between the defendants. Instead, the trial judge must manage the risk of prejudice by way of directions to the jury or, in cases where this is an insufficient safeguard, by severance, but they cannot exclude strictly relevant confession evidence on fairness grounds alone”.

In-game currency – property – Theft Act

[R v Andrew Lakeman \[2026\] EWCA Crim 4](#)

The Court held that ‘gold pieces’ (in game currency) fulfilled the definition of “property” in section 4 of the Theft Act 1968. Permission to appeal has been lodged in the Supreme Court: [R v Lakeman \(Appellant\) - UK Supreme Court](#)

CCRC

[Benjamin Luke Field v R \[2026\] EWCA Crim 413](#)

This is an interesting case for so many reasons, but where the story might end is not known currently. The case will be known to many for the BBC drama series The Sixth Commandment and this was its third outing in the CACD and perhaps naturally *R v*

Hayes; R v Palombo [2025] UKSC 29 got its first consideration. The nub of this issue was that “...this conviction is being referred on the ground that the jury were misdirected in relation to causation as regards the death of Mr Farquhar.” In deciding that the conviction was unsafe (and disagreeing with CACD number 1), the CACD took the unusual step of granting leave to the prosecution to appeal to the Supreme Court and certify a point of law of general importance:

“1. Were the directions given to the jury by the trial judge in this case right in law?

2. Did either the first or third Court of Appeal err in their understanding and application of *R v Kennedy (no 2)* [2007] UKHL 38; [2008] 1 AC 269; and is any reconsideration of that decision required?

A retrial was also directed.

Sentencing

Committals for sentence

There are still issues arising post *Gould* and *Butt* etc.

[R v Sabrina Latty \[2026\] EWCA Crim 538](#)

The applicant pleaded guilty to dwelling burglary in the MC and was committed for sentence. In the Crown Court she was sentenced to 3 months imprisonment, consecutive to a sentence of 6 years and 9 months that she was already serving. The application was lodged on the basis the 3-month sentence should have been concurrent.

During the proceedings it was recognised that she was a third strike burglar, but the effect of s314 Sentencing Act 2020 was not appreciated, in that the offence became indictable only. Accordingly, she should have been sent for trial under s51 Crime and Disorder Act, and the MC had no power to convict or to commit for sentence. The court were referred to *Butt* [2023] EWCA Crim 1131 and *Gould* [2021] EWCA Crim 447.

To correct the procedural and fundamental error the court sat as a Divisional Court, pursuant to s.66 Senior Courts Act 1981, and dealt with the matter as an application for judicial review of the MC decision to commit for sentence. They quashed the committal for sentence and set aside the conviction. Goose J then sat as a district judge pursuant to s66 Courts Act 2003. He said he was re-opening the case under s142 of the Mags Courts Act 1980, and he then sent the case for trial pursuant to s51 Crime and Disorder Act 1988. Pursuant to s8 Senior Courts Act 1981 Goose J sat as a judge of the Crown Court. The applicant was arraigned, pleaded guilty, the prosecution opened the facts, the defence provided mitigation, and Goose J passed sentence (which does appear to have had the effect of allowing the appeal).

A different course of action had been taken in

[R v Daryll Henderson \[2025\] EWCA Crim 1180](#)

The applicant pleaded guilty in the MC to two charges of death by dangerous driving, and one charge of causing serious harm by careless driving. He was committed for sentence to the Crown Court and sentenced to a total of 10 years imprisonment.

On appeal it was noted that death by dangerous driving is indictable only and the charges should have been sent for trial under s51 Crime and Disorder Act 1988 and no lawful power for the charges to have been committed for sentence.

The CACD first dealt with this on 26 June 2025 (no published judgment for this hearing yet). They re-constituted as a divisional court and quashed the convictions for death by dangerous driving. The either way offence of causing serious harm by careless driving was committed lawfully and so no action was taken about that. One member of the constitution then sat as a DJ pursuant to section 66 Courts Act 2003, to send the two offences for trial to the Crown Court. They sent the matter back to Guildford Crown Court for the applicant to be re-arraigned and sentenced (as they would be hearing an appeal of their own sentence). In the Crown Court the applicant pleaded guilty, was re-sentenced by the same judge in the same terms as the original sentencing hearing. Grounds of appeal were submitted and the Registrar referred to the Court.

The resumed appeal hearing took place on 22 July 2025. The CACD found the 10 years was not manifestly excessive although they did allow the appeal to correct some part of the driving disqualification.

(credit Jamie Ritchie).

Sentencing children

In the light of ZA [2023] EWCA Crim 596, section 52 SA 2020, CrimPR 25.16 and Crim PD 9.6.1, it is encouraging to see the Court adopt a style of judgment that addresses the child in language that the Court hoped they would understand.

[TJ \[2025\] EWCA Crim 1391](#)

The appellant was 16 (offences committed when he was 13 and 15). A total sentence of 7 years 4 months which included a term of detention of 4 years and 4 months, and a licence period of 3 years was passed.

The judgment does highlight the complexities of sentencing young people: the sentencing judge should have imposed a sentence of detention and training order rather than YOI detention (only available to 18 – 20-year-olds), therefore one of the sentences of 4 weeks was unlawful (the minimum is 4 months). In respect of a GBH, the sentence should have been detention not imprisonment. It was agreed that the detention and training orders cannot be made concurrently to an extended sentence [25]. The Court upheld the extended sentence of detention (s.254 SA), of 7 years and

4 months which comprises a custodial term of 4 years and 4 months and an extension period of 3 years in relation to causing grievous bodily harm with intent and all other sentences were quashed and replaced with no separate penalty.

Young adult – youth guidelines – reduction for age

[R v Muaz Musa Ali \[2026\] EWCA Crim 593](#)

In short: [13] – [14]

“Consistent with the Youth Guidelines the judge then considered the appropriate reduction to reflect the applicant's age at the time of the offence. Paragraph 6.46 of the Guideline provides that:

"When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence **the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.**"

The reduction applied was not confined to age alone but reflected broader mitigating factors, including immaturity, and there was no requirement to apply any fixed percentage discount. The guideline permitted a reduction to around half to two-thirds of the adult sentence, and the judge's approach fell within that range and was not open to criticism.

Analogous sentencing guidelines - applying a corrosive substance with intent, s.29 Offences Against the Person Act 1861

[R v Stevan Newton \[2026\] EWCA Crim 519](#)

Although this was a non-counsel renewal, the judgment given by Mrs Justice O'Farrell is worth reading as it reiterates the approach that is to be taken in respect of offences that have no specific sentencing guidelines:

“In such circumstances a useful starting point is the guidance in the overarching principles of the general sentencing guideline, which indicates that to arrive at a provisional sentence, the court should take account of the following, if they apply:

1. The statutory maximum sentence (and any minimum sentence) for the offence.
2. Sentencing judgments of the Court of Appeal Criminal Division for the offence; and
3. Definitive sentencing guidelines for analogous offences.

When considering definitive guidelines for analogous offences, the court must apply them carefully, making adjustments for any differences in the statutory maximum sentence and in the elements of the offence. This will not be a merely arithmetical exercise. Where possible, the court should follow the stepped approach of sentencing guidelines to arrive at the sentence” [21] – [22]

In this case the court held that for the offence of applying a corrosive substance with intent, contrary to s.29 Offences Against the Person Act 1861, the sentencing judge may properly use the section 18 GBH with intent guideline by analogy, even where the actual injuries are limited; harm includes the foreseeable risk of serious injury, not only the harm actually caused. The maximum sentence is the same as opposed to 5 years for ABH [23], [25]. The court cited *Attorney General's Reference (R v Rouf)* [2022] [EWCA Crim 63](#) and echoed the comments made by the then VP Lord Justice Fulford ([37])

“The throwing of a corrosive substance at innocent members of the public in a pub was a nasty offence. The offence under [section 29](#) of [the 1861 Act](#) involves an intention to burn, maim, disfigure or disable the person, or to inflict grievous bodily harm, whether or not any injury is actually inflicted” [28]

Analogous sentencing guidelines - having a corrosive substance in a public place, contrary to section 6 of the Offensive Weapons Act 2019

[Thorpe \[2025\] EWCA Crim 1334](#)

In this case, the appellant had pleaded guilty to having a corrosive substance in a public place, contrary to [section 6](#) of the [Offensive Weapons Act 2019](#). The judge had used guidelines for having bladed articles and other offensive weapons in a public place.

“We agree...that the guideline for possession of bladed articles and offensive weapons in a public place does not on its face apply to offences under [section 6](#) of [the 2019 Act](#). The guideline does, however, expressly apply to like offences concerned with having offensive weapons in a public place, which, like the offence under [section 6](#), are also subject to a maximum sentence of four years' imprisonment. Further, the guideline expressly refers to a corrosive substance as an example of a highly dangerous offensive weapon.

We do not consider that the Sentencing Council deliberately excluded the [section 6](#) offence from its guideline; rather we note that the guideline has been in force since 1 June 2018 and was therefore published before either the passage of [the 2019 Act](#) or the subsequent date in 2022 when [section 6](#) came into force. We therefore conclude that the judge was right to apply this closely analogous guideline to the offence under [section 6](#) ...”[24] – [25]

s.21A Terrorism Act 2000 – guidance

[Ojiri \[2025\] EWCA Crim 1489](#)

This judgment is worth reading from the point of view of a model of sentencing practice.

The appellant pleaded guilty to eight offences in the MC and the statutory maximum is five years imprisonment and attracts a special custodial sentence as an offender of particular concern (s.278 SA 2020). Between 24 October 2020 and 18 December 2021, the appellant had, as an art dealer (regulated sector January 2020) believed Nazeem Ahmad to be engaged in fundraising for terrorism (Hezbollah) and failed to disclose information to the authorities. Ahmad had been designated (December 2019) as a financier of the proscribed terrorist organisation and subject of sanctions by the USA but not in the UK although there was considerable publicity in the art world of which the appellant was aware. The appellant went to some effort to conceal that the transactions amounting to £140,000 concealed Ahmad as the purchaser and false evidence of identification was provided for the AML checks. Initially he lied in interview before making several admissions.

In short

“The sentencing judge, whose experience of this type of work is unrivalled, approached the case by reminding herself of the relevant guidelines: the general guideline overarching principles; the totality guideline; the reduction in sentence for a guilty plea guideline; and the imposition of community and custodial sentences guideline. She followed meticulously the approach stipulated in the general guideline overarching principles for sentencers dealing with offences for which there is no offence specific guideline”. [14] see [16] - [22] for the step-by-step approach and facts found.

The judge and the CACD rejected that the appellant had been naïve [30] but the sentencing judge had noted that the art sold was at market value and it was not clear what Ahmad was up to. Money had not moved from the appellant to a terrorist organisation.

The CACD did not agree that the POCA regime held any analogy (and noted for good measure that *R v Swan* [2011] EWCA Crim 2275 was of some “antiquity” and unlikely to be persuasive in any event [27] – [28]). The Court, Lord Justice Edis VPCACD also issued a reminder that to suspend a sentence of imprisonment it would have to be 12 months or less [26] and that these facts amounted to serious criminal activity [29].

The CACD could not fault the approach of the sentencing judge or her reasoning.

Extended sentence – multiple offences – aggregation

Reed [2025] EWCA Crim 1471

The issues: [1] the extended determinate sentence (EDS) wrong in law (it was conceded that appellant was a dangerous offender [33]), [2] the ABH had wrong starting point and [3] the sentence was manifestly excessive

Offences and [sentences] assault occasioning actual bodily harm* [2 yrs 3 m] and false imprisonment* [3 yrs 9 m; assault of an emergency worker x 2 [4mths on each] and making a threat to kill* [12 m]. *Specified offences

"The total sentence is one of 84 months' imprisonment, that is 7 years. There will be an extended licence period of 2 years. The sentence is to be expressed as an extended determinate sentence of 9 years, with a custodial element of 7 years and an extended licence period of 2 years..."

To pass an EDS, the four-year term criteria would need to be met in this case and as presently constructed is not met.

"Neither can the four-year term be achieved, as the judge in this case sought to do, by adding together individual sentences each of which are for a term of less than four years but then make them consecutive in order to reach a total sentence of four years or more. That this is so is made clear in R v Pinnell and Joyce [2010] EWCA Crim 2848...(citing [22] and [36])" [27]

"The requirement that the minimum four-year custodial term must attach to a single specified offence was re-affirmed more recently in R v Camara [2022] EWCA Crim 542" [29].

However, the Court noted:

"...it is entirely permissible for a judge to aggregate the offending by passing a single sentence on one offence that, subject to the statutory maximum, exceeds the term that would be appropriate for that single offence when considered alone but which appropriately reflects the totality of the offending. Again, as was stated in Pinnell at paragraph 47...[31]

Camara confirmed this, concluding at paragraph 37:

"Pinnell/Joyce remains good law. The court when arriving at the appropriate custodial term can aggregate with a specified offence non-specified associated offences so as to reflect the defendant's overall offending, subject always to the custodial term imposed on the specified offence not exceeding the statutory maximum and not infringing the principle of totality." [32]

On considering the facts and merits the court concluded that the correct overall sentence was 5 years and that would be imposed on the false imprisonment as the lead offence and that this would be extended with a two-year licence period.

Effect of absconding as an aggravating feature of sentence

[R v Martin \[2025\] EWCA Crim 1760](#)

The Court, Lady Justice Andrews, noted that this issue had been before the CACD on previous occasions, but this was the first time that all the relevant (and apparently conflicting) authorities were brought together and reviewed.

The resolution was to go back to “first principles”: s.73 SA 2020 and

“The circumstances in which the indication was given [s.73(2)(b)] will include the fact that the defendant has previously absconded and the impact, if any, that this may have had on the trial timetable in his case or in the case of co-defendants. Moreover, as is made clear by section 59(1) of the Sentencing Code, which is also reproduced in the Guideline, the court must follow any relevant sentencing guidelines when sentencing an offender “unless the court is satisfied that it would be contrary to the interests of justice to do so.” [36]

The purpose of the reduction for a guilty plea is to yield the three benefits identified in the Guideline, namely, the reduction of the impact of crime on victims, the saving of victims and witnesses from having to testify, and the saving of public time and money on investigations and trials. In a case where a defendant fails to comply with the criminal justice process by absconding after he has been arrested and charged, his behaviour will have undermined those objectives to some extent by causing disruption and delay. His eventual guilty plea may save victims and witnesses from having to give evidence and it may also save some public time and money on a trial, but the delay he will have caused to the proceedings does not save time overall, it is unlikely to reduce the impact of crime on the victims, and it is likely to increase costs. As this Court observed in *Ward*, the Guideline is based on the normal procedural timetable. It necessarily assumes that the defendant has done nothing to disrupt that timetable to his own advantage. [37]

By contrast with the situation where the defendant takes steps in the immediate aftermath of the offending (or its discovery and the arrest of co-defendants) to evade apprehension and arrest, in a case where the absconding takes place in the context of extant criminal proceedings it may seem artificial to characterise the defendant’s behaviour as an aggravating factor which increases his culpability for the index offence or elevates the harm it caused. In a case of that nature, of which *Ward*, *Turner* and *Williamson* are examples, there is nothing wrong in principle with discounting the defendant’s credit for a guilty plea, provided that this does not result in any double counting for any Bail Act offence. We endorse the observations made in *Williamson* at [29], quoted above. [38]

However, in a case in which the defendant, once apprehended, causes no delay to the administration of justice, we agree with the approach suggested in

Lloyd, subject to this caveat. The observations made in that case about the exclusivity of the exceptions in section F of the Guideline should not be taken out of that specific context. The Guideline must be read as a whole and consistently with the Sentencing Code. *Ward*, *Turner* and *Williamson* correctly identify situations in which it is permissible for the sentencing judge to reduce the normal level of credit because it would not be in the interests of justice to follow the Guideline. In that type of case, the exceptions in section F are not a bar to following that course [39].

SHPO length

[R v Babloo Miah \[2026\] EWCA Crim 129](#)

Having pleaded guilty to sexual offences arising out of communicating with someone he thought to be a 14-year-old girl (but was a decoy), the appellant received a SSO with requirements and a SHPO was imposed for 10 years. The appellant became subject to a requirement to comply with the provisions of Part 2 SOA 2003 (Notification to the police) for 10 years. The appeal centred on the length of the SHPO which the judge had said "will run, as with the notification requirements, for a period of 10 years" and it was submitted that the length was "disproportionate to the risk posed by the appellant and, furthermore, that it was disproportionate also to the circumstances of the offending behaviour and the appellant himself" [10] – [11].

The Court went on to give a helpful summary of the legal framework and case law (noting that some caution needed to *R v Stevens* [2023] EWCA Crim 397 which did not, they felt, suggest a different principle) [12] – [22].

The Court concluded [23]:

"Moreover, were the position otherwise and the duration of a sexual harm prevention order is set automatically by reference to the notification period, then it is difficult to see how it would ever be necessary to reach a view as to what is necessary and proportionate in relation to the managing of a specific risk in relation to a specific defendant. The sentencing judge would simply have to follow the notification requirement when setting the length of the sexual harm prevention order, without any apparent ability to make his or her own assessment as to what is necessary and proportionate. That assessment, however, is precisely what the court is under an obligation to make, and nowhere in the statutory provisions is it stated that the sexual harm prevention order should always be for the same duration as the notification requirements applicable in a given case"

The Court went on to look at the specifics of the case and reduced the length to 5 years; it also noted that there was power to apply for an extension of the order if the appellant still posed a risk [24] – [29].

Suspension of sentence – new Imposition guideline – PSRs

[Jode \[2025\] EWCA Crim 1617](#)

This case deals with the guidelines that came into effect on 1 September 2025 (and before the sentence hearing) and the desirability of obtaining a PSR unless the Court has enough information available. In this case a report was considered necessary but was not available on the day.

“Delays are generally undesirable and it is important that cases are dealt with and brought to a conclusion reasonably expeditiously. We would not want to inhibit judges from dealing with sentences when they do have enough information and where delay would not be justified. Furthermore, multiple failures to attend probation appointments without good cause may well enable a court to draw the inference that an offender is unlikely to comply with a suspended sentence order, especially when it might well contain a number of requirements. But this case was not such a case. The judge did not have the relevant information. The probation officer on the day requested that the matter be adjourned because of the types of requirements for which the appellant had to be assessed”. [17]

[R v Cory Thompson \[2025\] EWCA Crim 1462](#)

This was an AG’s Reference. The offender had been sentenced to a determinate sentence for rape and sexual assault after a trial. The Court, Lord Justice Edis VPCACD, considered that offending on bail and whilst released under investigation amounted to the same thing and maybe relevant to an assessment of dangerousness [5]. There had been several proceedings, but the delay was not a substantial mitigating factor; he had been on remand, was going to be the subject of a lengthy sentence and the delay was not the fault of any party or the court [6].

The issues before the CACD concerned the categorisation, failure to deal with aggravating and mitigating factors appropriately and failure to order a PSR which resulted in a flawed finding that the offender was not dangerous and failed to impose a total sentence to reflect overall offending [11] – [14].

The prosecution did not submit that the judge had made an error in law in sentencing without a pre-sentence report. The judge was aware of the dangerousness provisions [19]. The CACD noted s.30 SA 2020 and

“The judge did not formally announce a decision that it was unnecessary in the circumstances of this case to have a pre-sentence report. Nor did he explain why he felt able to proceed without one” [26].

And

“ *Attorney General’s Reference (R v O’Rourke)* [\[2021\] EWCA Crim 1064](#); [2022] 1 Cr App R(S) 29. That decision also emphasised the critical significance of the

pre-sentence report in forming an opinion that an offender who has committed a serious qualifying offence (or offences) is not dangerous. It may be that in a lot of cases, as the court pointed out in *O'Rourke*, the facts will speak for themselves and will point directly to a justified conclusion that an offender is dangerous without the need for further investigation. However, the opposite conclusion, namely that an offender is not dangerous, should in the judgment of the court there and in our judgment today, only be reached following proper and careful investigation. The decision in *O'Rourke* also addresses the difficulty which a failure to secure a pre-sentence report at first instance creates for this court when dealing with a Reference which contends that an offender who has not been found dangerous should have been. This is a court of review which has to determine whether or not the sentence imposed by the judge was unduly lenient on the material which he had. The extent to which we can take into account fresh material on a Reference of this kind is circumscribed by law. That, in our judgment, emphasises further the importance of Crown Courts securing all of the material that they ought to have before embarking on a sentence of this kind" [28].

"In our judgment, it is clear that a pre-sentence report ought to have been ordered in this case. The judge's approach was simply to look at the facts of the offences and to say that they did not drive him to the conclusion that the offender was dangerous. That is a flawed approach. The court is required to have regard to all of the necessary information in arriving at that conclusion" [44].

The Court went onto say that the prosecution have a obligation to make a submission about the impact of s.30 SA 2020 and the need for a PSR [46].

Compensation orders

Readers will recall *ANZ* [2025] EWCA Crim 778 (Lord Justice Fraser/April 2025) (updater November 2025). An appeal against a compensation order made a week or so later by the same Recorder was heard in October 2025 although this second constitution (Lord Justice Edis) does not appear to have had the benefit of *ANZ*:

[Khan \[2025\] EWCA Crim 1477.](#)

But like *ANZ*, the Court adhered to the principles set out in [York \[2018\] EWCA Crim 2754](#) which unsurprisingly the Recorder had not followed and deals with the amount that may be awarded in civil proceedings.

Costs decisions

These are crucial to the practitioner and not within the remit of this updater. Given the observations of the bar and solicitors regarding remuneration, it is massively important

that practitioners keep abreast of decisions and the rules to ensure that they optimise and maximise remuneration for the hard work they do.

Top tips:

Follow/subscribe to CrimeLine – Andrew Keogh and his team regularly highlight the essential decisions

Search the National Archives – search via the advanced filter High Court Senior Courts Costs Officer; “Criminal” in the search box seems to do the trick although I would probably rely on top tip 1.

Miscellaneous

[Guide to Proceedings in the CACD – March 2026](#)

Changes

Introduction

A Review of the Year in the Court of Appeal, Criminal Division (October 2023 – September 2024) - Courts and Tribunals Judiciary link added

E.3 Retrials

Note added to reflect *R v Layden* [2025] UKSC 12 The procedure set out in section 8 is mandatory and should be followed. Where there has been no arraignment within two months of the order for retrial this should be brought to the attention of the Crown Court and the prosecution should make an application to the Court of Appeal for leave to arraign out of time. Once such an application is made the Court of Appeal has jurisdiction to deal with it pursuant to section 8 (overruling *R v Llewellyn* [2022] EWCA Crim 154).

H.1.2 Appeals by a prosecutor against a ruling adverse to the prosecution (CrimPR 38)

To reflect that the terminology “terminating” and “terminatory” ruling should not be used in applications to the CACD. Practitioners should use adverse ruling or words to that effect.

To reflect a change to the Criminal Procedural Rules (38.2 (1) (a)) in April 2025 which added the words “becoming aware of the ruling”.

H.1.3 other appeal types

Practitioners should be aware of the funding guidance in *Arion Kurtaj v R* [2025] EWCA Crim 1163 for s.15 Criminal Appeal Act 1968 appeals (unfitness).

Forms POCA1 and POCA3 have been amended. Please note the Criminal Procedure Rules 2025 (S.I. 2025/909) came into force on the 6th October 2025. A Part 42 appeal

must now be directly lodged with the Registrar and not the Crown Court. Rules 42.5, 42.11, 42.12, 42.13, 42.15, 42.16 and 42.20 are amended. Rule 42.21 reopening the determination of an appeal has been added.

CRIMINAL APPEAL OFFICE ANNOUNCEMENT

Please note that ALL Criminal Appeal Office emails have changed as of 9th March 2026. Over the coming weeks forms etc. will be amended. For a period, there will be an automatic forwarding of email traffic but please use new @justice.gov.uk email addresses as soon as possible.

The changes DO NOT affect the judicial office or the judiciary email addresses.

[Fourth Amendment to the Criminal Practice Directions 2023 – November 2025 - Courts and Tribunals Judiciary which unfortunately has a broken link to the guide](#)

[Sentencing Act 2026](#)

[The Sentencing Act 2026 \(Commencement No. 1\) Regulations 2026](#)

[There are revised versions of both volumes of the Crown Court Compendium.](#)

Youth Justice – Government initiatives

With thanks to Jonathan Solly, Secretariat Criminal Procedure Rules Committee, who does so much to keep a very wide-ranging audience up to date:

“Committee members will be interested to see the publication yesterday by the Ministry of Justice of a white paper and two associated announcements concerning youth justice and youth courts:

1. the Command Paper entitled “Cutting Youth Crime. Changing Young Lives.” is published at <https://www.gov.uk/government/publications/cutting-youth-crime-changing-young-lives>. The announcement reads, “Over the last 2 decades, the youth justice system in England and Wales has delivered significant progress, with fewer children entering the system and fewer in custody. However, the children who now come into contact with the system often present with more complex needs, and existing arrangements have not kept pace. Today (18 May 2026), the government has published the Youth Justice White Paper, setting out a comprehensive programme of reform to modernise the system. It establishes a clear direction toward earlier intervention, improving consistency and ensuring custody is used only where

necessary. Together, these changes mark a decisive shift towards a more preventative, joined-up and evidence-led system, better equipped to protect the public and improve outcomes for children, victims and communities.”

2. a written statement by the Deputy Prime Minister to the House of Commons, published at <https://questions-statements.parliament.uk/written-statements/detail/2026-05-18/hcws31>, which begins, “Today I am publishing the government’s Youth Justice White Paper, ‘Cutting Youth Crime, Changing Young Lives’, which sets out our plan to reform the youth justice system in England and Wales so that it intervenes earlier, responds more consistently, and does more to protect the public.”
3. an announcement at <https://www.gov.uk/government/publications/expert-adviser-on-the-future-of-criminal-courts-for-children/future-of-criminal-courts-for-children-terms-of-reference> that, “This Government is taking immediate steps to modernise the youth court, with plans to pilot new Intensive Supervision Courts for children and to introduce specialist training for lawyers representing children. However, it recognises that more radical change may be needed to deliver a system that supports children to turn their lives around and cuts crime. The Ministry of Justice has therefore appointed an Expert Adviser to examine how the criminal courts system deals with child defendants and to consider the merits of longer-term reform. The Expert Adviser will be supported by an independent panel of experts drawn from a range of backgrounds to provide further advice and expertise. ... This work will be led by David Ormerod. He will be supported by a panel of experts (to be confirmed) as well as a dedicated Secretariat drawn from Ministry of Justice staff. The Expert Adviser will commence the work in June 2026 and will report their findings in full by August 2027.”