Application of D R Blampied
Royal Court
Date

JUDGMENT
52/2017

Application for a Sexual Offences Prevention Order under Sections 18 and 19 of the Criminal Justice (Sex Offenders and Miscellaneous Provision) (Bailiwick of Guernsey) Law, 2013

IN THE ROYAL COURT OF GUERNSEY

Application for a Sexual Offences Prevention Order under Sections 18 and 19 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 ("the Law")

In relation to: DALE RICHARD BLAMPIED ("D")

Application made on behalf of

THE LAW OFFICERS OF THE CROWN ("P")

Application heard on: 15th September, 2017
Decision handed down on: 27th November, 2017

Before: John Russell Finch, Esq., O.B.E., Judge of the Royal Court

Counsel for the Prosecution ("P"): Crown Advocate G Perry
Counsel for the Defendant ("D"): Advocate S L Mallett

Cases and Other Materials referred to:

The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013;
The Sexual Offences Act 2003.

R v Collard [2004] EWCA Crim 1664;
R v Smith [2011] EWCA Crim 1772.

Sexual Offences Law and Practice (Rook and Ward) 5th edition, chapter 36.

D E C I S I O N

Background

1. This is an application under Sections 18 and 19 of the Law for a Sexual Offences Prevention Order ("SOPO"). D opposed the application, although interim orders leading up to the hearing have been made unopposed and continued, to maintain the status quo, after the hearing. Both D and P were legally represented. A bundle was produced on behalf of P ("the bundle") containing the application, various reports and other material; D produced a bundle containing references. Two half days were needed for the evidence to be heard. The oral evidence on behalf of P was from the Probation Officer, Mr B Le Poidevin and the Consultant Clinical and Forensic Psychologist, Dr D Briggs. In the bundle there were reports from these witnesses, as well as from Drs Oyebode and Sen, consultant Psychiatrists. D had prepared a full hand-written statement in support of his case, which was introduced in evidence and he gave oral evidence in support. D's Advocate cross-examined the two "live" witnesses for P, but P's Advocate did not cross-examine D, although he indicated that was not to be taken as acceptance of D's case. It is appropriate to point out that both Advocates conducted this demanding case with tact and sensitivity and that both of P's witnesses were caring and responsible. D's oral evidence was delivered clearly and respectfully. At the end of the hearing it was indicated that a written judgment would be produced, and circulated in the usual way, which this now is.

Legislation

2. The Law mirrors the provisions of the English Sexual Offences Act, 2003. However, SOPO's in England have been replaced since 2015 by Sexual Harm Prevention Orders ("SHPO") and Sexual Risk Orders ("SROs"). There are no Guernsey Cases on the SOPO provisions; therefore respectful attention has to be given to English cases, which will be of high persuasive authority, although not binding. The relevant Guernsey legislation is as follows:

PROJET DE LOI
ENTITLED

The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013

Extracts

PART I
RELEVANT OFFENCES

Relevant offences to which this Law applies.

1. (1) The offences to which this Law applies ("**relevant offences**") are –

(a) the customary law offences of rape, indecent assault, and indecent exposure,

(b) an offence under article 1 *(inceste* committed by a man), article 3 *(*an attempt to commit *inceste*) or article 5 *(inceste* committed by a woman) of the *Loi pour la punition d'inceste* 1909,

(c) an offence under article 1 (being involved in the corruption of a girl or woman), 1(2)(i) (menacing or intimidating a girl or woman to have unlawful sexual intercourse), article 1(2)(ii) (using false pretences or false representations to cause a girl or woman to have unlawful sexual

intercourse), article 1(2)(iii) (applying, administering or making a girl or woman take drugs for the purpose of having unlawful sexual intercourse), article 2 (having or attempting to have sexual intercourse with a girl aged under 13 years), article 3(a) (having or attempting to have sexual intercourse with a girl aged over 13 years but under 16 years), article 3(b) (having or attempting to have sexual intercourse with a girl or woman of unsound mind), article 4 (permitting girls aged under 16 years to frequent premises for the purpose of unlawful sexual intercourse), article 5 (abducting a girl aged under 18 years for an immoral purpose), article 6 (detaining a girl or woman against her wishes), article 9(a) (living on the earnings of prostitution), article 9(b) (persistently soliciting or importuning in a public place for an immoral purpose), article 12 (controlling etc. the movements of a prostitute), or article 13 (kidnapping by impersonating the husband of a married woman) of the *Loi relative à la Protection des Femmes et des Filles mineures* 1914,

(d) except as provided by subsection (2), an offence under article 1 (*sodomie*), article 2 (assault with intent to commit *sodomie* or indecent assault on a male) or article 3 (gross indecency with a male) of the *Loi relative à la Sodomie* 1929,

(e) an offence under section 4 (procuring a man to commit buggery), section 5 (living on the earnings of male prostitution) or article 6 (permitting the use of premises for lewd homosexual practices) contrary to the Sexual Offences (Bailiwick of Guernsey) Law, 1983,

(f) an offence under section 1 (gross indecency with a child) or section 3(1) (taking, distributing or possessing etc., indecent photographs of children) of the Protection of Children (Bailiwick of Guernsey) Law, 1985,

(g) an offence under article 3 of the Import and Export (Control) (Guernsey) Law, 1946 in so far as the offence relates to goods prohibited to be imported under article 4 of the Import and Export of Goods (Guernsey) Order, 1990 that are indecent photographs of persons who are or appear to be aged under 16 years,

(h) an offence under section 9(1)(a) (burglary with intent to rape a woman) or section 10 (aggravated burglary where the burglary is with intent to rape a woman) of the Theft (Bailiwick of Guernsey) Law, 1983,

(i) an offence under section 23 (breach of risk of sexual harm order, interim risk of sexual harm order or prescribed order) of this Law, and

(j) an offence under section 25 (conviction in the Bailiwick for an act committed outside the Bailiwick by a person ordinarily resident in the Bailiwick) of this Law.

(2) The States may by Ordinance amend subsection (1) by adding, amending or deleting any offence.

PART IV
COURT ORDERS

Interpretation of this Part.

17. (1) For the purposes of this Part -

(a) a "**child**" means a person who has not attained the age of 16,

(b) an "**offender**" means a person who -

(i) has been convicted, before or after the commencement of this section, of a relevant offence,

(ii) outside the Bailiwick, has been convicted, before or after the commencement of this section, of an offence that would, if the offence had been committed in the Bailiwick, have constituted a sexual offence to which this Law applies,

(iii) has been convicted of an offence that a court has certified, under section 2(3), was sexually aggravated, or

(iv) outside the Bailiwick, has been convicted of an offence, before or after the commencement of this section, that a court has certified under subsection (2) was sexually aggravated.

(2) A court may for the purpose of subsection (1)(b)(iv), on the application of Her Majesty's Procureur, certify that the offence was sexually aggravated if the court is satisfied -

(a) that the offence was sexually motivated, or

(b) that at, before or after the time of committing the offence the offender's actions included a sexual element directly connected with the commission of the offence.

Sexual offences prevention orders.

18. (1) Where a court is satisfied on the balance of probabilities, on the application of Her Majesty's Procureur, that an offender poses a threat of -

(a) sexual harm to children in general or to a particular child or children, or

(b) serious sexual harm to the public or any particular person or persons,

the court may make a sexual offences prevention order in respect of the offender as it is satisfied is necessary to protect -

(i) children in general or any particular child or children from sexual harm from the offender, or

(ii) the public or any particular person or class of person from serious sexual harm from the offender.

(2) An application under this section may be made -

(a) where an order may be made by the Magistrate's Court upon conviction or sentencing for an offence pursuant to section 17(1)(b)(i) or (iii), that court, or

(b) in any other case, the Royal Court.

(3) A sexual offences prevention order may -

(a) prohibit the offender from doing anything described in the order, and

(b) require the offender to do anything described in the order.

(4) Notwithstanding the generality of subsection (3)(a), a sexual offences prevention order may, in particular, prohibit the offender from undertaking any work or other activity that may require or be likely to allow the offender to come into contact or be associated with -

(a) a specific child or children, or children in general, or

(b) a specific person who may be vulnerable to sexual exploitation or any description of persons the court considers may be vulnerable to sexual exploitation by the offender.

(5) If an application for a sexual offences prevention order has not been determined, Her Majesty's Procureur may apply to the court for an interim sexual offences prevention order.

(6) The court may, if it considers it just to do so, make an interim sexual offences prevention order in respect of the offender, as it is satisfied is necessary to protect -

(a) children in general or any particular child or children from sexual harm from the offender, or

(b) the public or any particular person or class of person from serious sexual harm from the offender.

(7) An interim sexual offences order -

(a) may prohibit the offender from doing anything described in the order,

(b) may require the offender to do anything described in the order,

(c) has effect only for a fixed period, specified in the order, and

(d) ceases to have effect, if it has not already done so, on the determination of the main application.

Sexual offences prevention orders: further provisions.

19. (1) A sexual offences prevention order or an interim sexual offences prevention order ("**a section 18 order**") shall have effect during the period specified in it or, if that period is subsequently amended, during the amended period.

(2) Unless the court is satisfied that there is a particular reason why a shorter period would be appropriate, the first period mentioned in subsection (1) in respect of a sexual offences prevention order must be a period of at least 5 years.

(3) A court may amend a section 18 order on the application of Her Majesty's Procureur or the offender, and any amendment of an order may, in particular, extend or shorten the period specified in the order.

(4) If the offender, without reasonable excuse -

(a) does anything that the offender is prohibited from doing by a section 18 order, or

(b) fails to do anything that the offender is required to do by a section 18 order,

the offender is guilty of an offence and is liable -

(i) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(5) If, in the Bailiwick, a person, without reasonable excuse -

(a) does anything that the person is prohibited from doing in a prescribed jurisdiction by a prescribed order made by a court in that jurisdiction, or

(b) fails to do anything the person is required to do in a prescribed jurisdiction by a prescribed order made by a court in that jurisdiction,

the person is guilty of an offence and is liable -

(i) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(6) In subsection (5), "**prescribed order**" means an order of a type prescribed by the Department -

(a) that can be made by a court in a prescribed jurisdiction in the same or substantially the same circumstances, and

(b) that has the same or substantially the same effect, as a sexual offences prevention order.

Miscellaneous.

24. (1) The States may by Ordinance amend this Part.

(2) For the avoidance of doubt, any proceedings in relation to the application, variation, renewal or discharge of an order made under this Part shall be deemed to be "criminal proceedings" for the purposes of section 9(1)(a) of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002.

PART VI
APPEALS

Appeals – sexual offences prevention orders.

30. (1) Where a court -

(a) has made a section 18 order in respect of a person, or

(b) has refused to amend such an order,

the offender in respect of whom the order is made may appeal, against -

(i) the making of the order,

(ii) the terms of the order, or

(iii) the refusal to amend the order.

(2) Where a court -

(a) has refused to make a section 18 order in respect of an offender, Her Majesty's Procureur may appeal against the refusal to make the order, or

(b) has -

(i) made such an order, Her Majesty's Procureur may appeal against the terms of the order, or

(ii) has refused to amend such an order, Her Majesty's Procureur may appeal against the refusal.

PART IX
MISCELLANEOUS PROVISIONS

Interpretation.

54.

"**child**", except for the purposes of Part IV, means a person who has not attained the age of 18 years,

"**section 18 order**" has the meaning given in section 19(1),

"**sexual activity**" means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual,

"**sexual harm**" means physical harm, psychological harm or both caused by sexual activity,

"**sexual offence to which this Law applies**" means an offence to which this Law applies by virtue of section 1,

It will be seen that D's convictions in 1975, and 2007, are qualifying offences, i.e. "relevant offences" under Section 1 of the Law. The offences in 1989 and 2012 were likely, had the legislation been in force at the time, to have been certified as "sexually aggravated" within the meaning of Section 1(2) of the Law.

Case Law

3. The leading cases in England are R v Collard [2004] EWCA Crim 1664 and R v Smith [2011] EWCA Crim 1772. The latter is more concerned with computer misuse, but also was aimed at addressing the issues which occasioned a multiplicity of appeals in England. The helpful formulation in Collard (which is taken from paragraph 36.22 of *Sexual Offences Law and Practice, 5th edition*) is as follows:

> "The *Collard* test can be stated thus:
>
> 1. A prohibition may be imposed only if it is necessary for the purpose of protection the public or any particular members of the public from serious sexual harm from the defendant. This is a high threshold. It is not sufficient that it may be considered desirable to impose such a prohibition. There must be material before the judge on the basis of which he can reasonably conclude that a prohibition is necessary for that purpose.
> 2. The court must consider the number of offences, their duration, the nature of the material, the extent of publication and the use to which the material was put.
> 3. The court must have regard to the offender's antecedents, his personal circumstances and the risk of his re-offending.
> 4. Where the court makes an order, its terms must be tailored to meet the danger that this offender presents.
> 5. The order must be proportionate to the danger presented. In this respect the judge must have regard in particular to the provisions of the European Convention on Human Rights and the Human Rights Act and in particular the right to private life under art.8 of the Convention."

As the cited textbook points out:

> "If applied appropriately, the test should result in prohibitions (where required at all) that are necessary, reasonable, proportionate and capable of being both understood and sensibly enforced."

Previous Convictions

4. Leaving aside the 1975 Juvenile Court appearance, D's significant convictions are as follows:

(i) attempted murder 11.07.1989 – 15 years' imprisonment;

(ii) inciting a child to commit an act of gross indecency – 21.05.2007 - 8½ months' imprisonment, plus 5 years' Extended Sentence;

(iii) behaving in an indecent manner 18.10.2012; Probation Order for 3 years.

5. The relevant Police reports are appended at divider 7 of the bundle.

    (i) Was a horrific offence, involving an attack with a hammer on a 17 year old female in a quiet part of the Island. It required delicate cranial surgery to remove bone fragments and, quite easily, could have resulted in paralysis or death. The unfortunate victim was lucky to have survived without permanent disability. The victim, it should be noted, was a stranger to D. Whilst it is right to emphasize this was 28 years ago, the facts need to be taken into account. It is also right, as D submitted, that he has not been violent to anyone since. His subsequent offences certainly have a sexual element, but, very fortunately were not accompanied by physical assaults.

    (ii) This was a bizarre offence, where a 14 year old girl was approached by D, who wished to buy her shoes for £30, paid a deposit of £10 and when the girl returned paid her the remaining £20. D then asked her to sleep with him for £140. The Police were informed and seized six photographs of girls in school uniform, two posed, four of a subject apparently unaware of the photography.

    (iii) Was also a bizarre offence. D cut out an obscene image from a catalogue, wrote a note saying "show me your cunt school girl!" and placed it on a path regularly used by pedestrians, including school-children, as it was term-time. It was picked up by a female pedestrian, who was shocked and the Police were informed. When spoken to, D produced a note stating, "I was hoping to get a kick out of seeing some person reading it whilst working in my garden".

    Aspects of these matters will be referred to later.

Evidence

6. Mr Le Poidevin and Dr Briggs gave evidence in accordance with their written reports. Mr Le Poidevin emphasized that the application was in compliance with a full meeting of the Multi-Agency Public Protection group ("MAPPA"), which considered that a SOPO application was necessary as D continues to pose a risk of sexual harm to adolescents and young females. Indeed, the case is unique as MAPPA dictated the application. The witness has dealt with D since 2014, and referred to previous records. D has withdrawn from voluntary supervision. Regular managing and monitoring of his risk factors is necessary. Voluntary engagement has been tried, but is not feasible as D has chosen not to enter into such an arrangement. D views the Probation Service in a punitive light, but the witness considers it a positive force. Dr Briggs is based off-Island and employed by the mental health services, he sees D every six weeks in Guernsey. He would not be able to monitor D's risks on a voluntary basis. D views, said Mr Le Poidevin, any statutory intervention as punitive and does not think that he presents a risk, and there is no evidence that compulsion would increase the risk.

    D has given up on the question of gender reassignment due to the disapproval of his parents and his personality disorder. There is a risk of sexual harm to children and D's last two offences were against children. Dr Briggs, the witness stated, considers there is a risk of sexual harm. An adapted Sexual Offender Treatment Programme ("SOTP") was not deemed appropriate or suitable for D. The risk is not reduced and remains. It is correct that D's medication has ceased for around 16 months. He has always maintained that he is not and never has been a risk. He is doing well now (on an interim SOPO) due to the support given by the various agencies. He has expressed the view that he would not comply with a full order and rather go to Prison. We did try to work with him on a voluntary basis, risk management is needed. A 5-year period on the SOPO is necessary, due to the enduring aspects of risk.

Dr Briggs in his oral evidence explained that he knows D well, over some 8 years. He sees D monthly and contacts are by telephone when necessary. There is weekly correspondence. In producing his report Dr Briggs referred to the static and dynamic risk factors in Ds case. He specified the effect on D if one of his elderly and infirm parents passed away, which could topple him very swiftly into a significant period of emotional collapse. He would require careful monitoring and support. There is a raft of potential risk factors. Dr Briggs is not available 24 hours a day. Although a list of helpful telephone numbers is a component in D's case, could he be relied upon to make a call in times of high challenge? Seeing Dr Briggs would not adequately address the risk, it is a complex case with a need for psychiatric input.

7. D's objections largely lie with the involvement of the Probation Service. He sees them as insensitive and intrusive. In the past, D has had sentences, i.e., punishment involving the Probation Service and views their involvement as punishment now. He lacks insight on how risk is evaluated and managed, with the attitude being that he has not misbehaved, "so stop punishing me". That goes hand-in-hand with his personality disorder. D will go to Prison rather than engage with the Probation Service. He uses their services at present, with a warm relationship with Mr Le Poidevin – he needs somebody to kick against. D is not sophisticated intellectually, having a default anti-social perspective, but he behaves. Voluntary work, which D undertakes creditably, provides structure and a sense of achievement is important to him. Although D ceased taking his medication this has not led to re-offending, but his libido and sexual activity have increased. We must look at the total landscape, according to Dr Briggs. The most likely risk scenario is paraphilic behaviour; D's 2007 offence was approaching a girl for sexual contact for money. He does not present a picture of risk escalation, but we have to be aware of the potential for risk to escalate. There were significant periods of non-offending, then re-offending. D still has the capacity and paraphilic interest. There are distortions in personality and sexuality. Dr Briggs intends to continue to support D and reward him as he does now. He will point out the benefits offered and act as his advocate at all times.

   If during the last incident the victim had chosen to meet with D, we would have had a contact offence. A paraphilic offence is most likely. Recently D is behaving well, a function of the very great support he is receiving at present.

8. D gave evidence in accordance with a written document he referred to. He dealt with the very serious 1989 offence. "I have never touched or harmed a young child, I never would. I hurt a young lady then. I exploded that night. I gave myself up and appealed the 15 year sentence. She suffered no permanent brain damage." He has avoided females since 2007, as he is frightened. Stopping his drugs for 18 months has not produced any problems. His sex drive has diminished. He has worked for the Reverend Bellinger for 5½ years and at the Farmers' Markets with no problems presented. He detailed his social life and interest in football. He spent four days in England in April, watching motor-racing. I have a pocket-full of "outlets" if any problem arises and have the insight to know when my mind is troubled. I have no intention of ever offending again. I have changed a lot and do not pester anyone. I am normally angry when encroached upon by the Probation Service. People do change. I am not that person any more. Everything I do is socially acceptable.

   There were written reports on the files from Drs Oyebode and Sen and four references in D's papers for him, which were all considered.

Observations

9. D is no longer subject to statutory supervision and there are, of course, no notification requirements. There is, in all the circumstances, P submitted, some form of compulsion required. His re-offending in 2007 would be a qualifying offence nowadays if dealt with.

The 2012 matter does not qualify. The definition of "sexual harm" under the Law is that this "means physical harm, psychological harm or both caused by sexual activity", and a "child" is someone not yet 16. The Court is required by virtue of Section 18 of the Law to be satisfied on the balance of probabilities that D poses a threat of:

> "(a) Sexual harm to children in general or to a particular child or children; or
>
> (b) serious sexual harm to the public or any particular person or persons."

10. Various parts of the reports and oral evidence were emphasized in the course of the hearing. It is not necessary to pick them all out as they are summarized in the account of the oral evidence. However, the following aspects are especially worthy of consideration: paragraph 13 of the Probation Report shows that when D ceased taking his libido-supressing medication in December 2011 he ended up committing an offence of behaving in an indecent or disorderly manner and was put on Probation. The Probation Service conclude: "He presents a high risk of sexual harm to adolescent and young females". He requires compulsion to comply with the MAPPA group supervision and conditions. This Agency supports the application.

    At page 26 of Dr Briggs's report he states (at item (g)):

    > "D describes the authorities as "*impertinent"* to assume he presents a risk to adolescents and says he has no interest in teens whatsoever."

11. At page 28, there is both, as was submitted, a lack of victim empathy and minimisation of the facts in the 1989 attempted murder case. This came over to an extent (although D did not present these thoughts nearly as starkly) in his oral evidence. He denies the number of blows on the victim's skull and suggests, contrary to the facts, only 2-3 blows with the hammer were involved. At page 31 disturbing details are given of fetishism, particularly in relation to female feet and legs, and redheaded women. At page 33, the "opinion" commences with the phrase, "I am mindful not to be overly reliant on D's self-report of his current functioning". At page 34, Dr Briggs, in harmony with his oral evidence indicates that:

    > "The best sense I make of this profile is that D remains at risk of committing a further sexual offence. <u>This risk is not imminent as long as he engages with Professional support and whilst he sustains a pro-social lifestyle free of substance misuse or deterioration in his mental health</u> ….. of relevance to the SOPO application however is consideration that his behaviour may be directed towards youthful females below the age of consent." (emphasis supplied)

    He adds that "I believe risk management in this case is best served by continuing multiagency inputs".

12. The minimisation of the attempted murder case is plainly shown in Dr Oyebode's report at paragraph 60 where he reports D as saying he had "hit the victim three times and in her statement she confirmed it. She got up and walked away". In reality, life-threatening injuries were occasioned that necessitated brain surgery. At paragraph 238, the conclusion is:

    > "I am in agreement with Dr Briggs that whilst the risk of re-offending remains, this is not imminent, <u>as long as he engages with professional support and is closely monitored</u>." (emphasis supplied)

    And also:

> "I support the view espoused by Dr Sen, that his case is best secured by continuing multi-agency support."

A SOPO is recommended if D fails to work with Dr Briggs and the other providers of help.

13. In his report, Dr Sen (paragraph 5.1) draws attention to D's "pervasive and persistent pattern of lack of concern for the feelings of others, particularly his victims, a close and persistent attitude of irresponsibility, low tolerance of frustration and the proneness to blame others." And in paragraph 5.3:

> "His thinking is more along the lines of perceiving himself to be the victim of the whole MAPPA supervision process. With regards to emotional state, he continues to suffer from significant mood fluctuations, and this is an area of significant vulnerability, particularly when considering triggers for re-offending."

14. Finally, a pertinent observation in paragraph 5.8, which is on all fours with the question presently before the Court:

> "Looking ahead, a potential time of crisis when his risk of re-offending would increase would be if anything happened to either of his elderly parents, or if he perceived some sort of rejection from a woman. Part of Dr Briggs' ongoing work with him would be recognition and management of potential high-risk situations."

Conclusions

15. As is plain from the English cases of Collard and Smith (supra), the application of the test in legislation should, if applied appropriately, result in prohibitions (where necessary) that are required, reasonable, proportionate and capable of being both understood and sensibly enforced as already stated. As in the English legislation, the word "necessary" is used (Section 18(1) of the Law), not "desirable". The fact an Order may be socially beneficial does not mean it is either necessary or proportionate (Sexual Offences law and Practice (supra), paragraph 36-24). The proposed draft order is at folio 1 of P's bundle and, it is to be noted it is for the minimum (subject to Section 19(5) of the Law) 5 year period. It does not need and does not set out any of the troublesome requirements relating to computers and social media that have been so fertile a ground for appeals in the English courts.

16. P's observation that any risk does not have to be "imminent" is correct when considering the wording of Section 18 of the Law. On the facts there is a preponderance of expert evidence, which is largely in agreement, that D represents a "threat" if not under structured supervision and treatment. Not only that, but the future poses plainly-defined risks. In addition, and has been stated, there is on the facts a notable and worrying lack of victim empathy. The meaning of "sexual harm" in the legislation has already been referred to. Although D's interests and perceptions are a relevant consideration and noting he may not be wholly responsible for his ongoing problems, it is in the public interest, as set out in the legislation, which has to be considered. D's re-offending in 2007 remains a factor and the conviction in 2012, though not specifically within the terms of the Law, is also relevant. This included an Order that he did not have unsupervised contact with children in the 3 year period of his Probation Order. This ended in October 2015 and D is therefore no longer under any compulsory requirements. Because of this, D is able, as indeed he did in April 2016, to terminate any contact with the Probation Service and threaten to do so with all the agencies.

17. Dr Briggs and Mr Le Poidevin, despite their concerns, showed appropriate consideration for D and his circumstances and due appreciation of the efforts he has made and to which he referred in evidence. These people, and others, are not working against D, but for him and in his interests.

18. On the facts and the evidential standard set out, the requirements of Sections 18(1)(a) and (b) are met in relation to "children in general" and "the public". Whilst this is minimised under supervision and monitoring this cannot just be voluntary so that D can, as he has, resiled from it. The word "serious" in Section 18(1)(b) means what it says and is borne out by the facts of the previous offences, which remain of real concern. D should recognise that working with MAPPA is his best chance of avoiding future problems. The terms of the proposed Order are proportionate and easily understood, they do not interfere too widely with D's life in the circumstances and provide that element of control which is in the public interest. By way of tidying-up, the following amendments are made:

    (i) In condition 3) insert "the" before "Health and Social Services Department" and add after those words "or its approved representative";
    (ii) in condition 7) after "approved" add "in advance"; and
    (iii) in condition 9) after "medical practitioner" insert "approved by your Supervising Officer or Mental Health Services".

J R Finch, O.B.E.
Judge of the Royal Court