IN THE COURT OF APPEAL OF GUERNSEY

(CRIMINAL DIVISION APPEAL No. 483)

11th December 2017

James McNeill QC Presiding
David Perry QC
David Doyle, First Deemster and Clerk of the Rolls, Isle of Man

BETWEEN:

D **Appellant**

-v-

THE LAW OFFICERS OF THE CROWN **Respondent**

Decision handed down: 11 December 2017

Reasons handed down: 8 February 2018

Advocate for the Appellant: Advocate A Merrien
Advocate for the Respondent: Crown Advocate F Russell

JUDGMENT

PERRY, J A:

This is the judgment of the Court.

[Appeal against conviction on 19 June 2017, on 4 counts of indecent assault and application for leave to appeal against sentence imposed on 27 November 2017.]

Introduction

1. On 11 December 2017 we dismissed the Appellant's appeal against conviction and refused his application for leave to appeal against sentence. We indicated that we would give the reasons for our decisions at a later date. These are our reasons.

Background

2. On 19 June 2017, following a seven day trial before the Royal Court (Judge John Russell Finch and Jurats), the Appellant, D, was convicted of four counts of indecent assault committed against two females, Miss A and Miss B, who at the time of the offending were young girls. Counts 1 and 2 of the indictment concerned incidents involving Miss A. The offences were committed in the period between 1 April 2015 and 30 April 2016, at a time when she was between 4 or 5 years of age. Counts 3 and 4 of the indictment concerned incidents involving Miss B in the period between 11 July 2011 and 10 July 2012, at a time when she was 12 years of age. The indecent assaults in the case of each girl involved vaginal digital penetration (Count 1 (Miss A) and Count 3 (Miss B)) and anal digital penetration (Count 2 (Miss A) and Count 4 (Miss B)). In the case of both complainants, the Appellant was, for a short period of time, a father figure in that he was involved in a relationship with Miss A's mother from around 2005 until early 2013, and then with Miss B's mother from 2013 until March or April 2016.

3. The offences came to the attention of the police in May 2016. This was after Miss A had disclosed to her mother that the Appellant had done something to her when she was in the bath. On 13 May 2016, Miss A was interviewed on videotape and reported to her interviewers what she had told her mother. She described how the Appellant had poked her with his finger both inside her bottom and her vagina, and that this had occurred whilst she was in the bath with her younger sister and at a time when her mother was elsewhere.

4. The Appellant was arrested on 13 May 2016 and, after being cautioned, replied, *"This hasn't happened. It's not true."* Later, when interviewed in the presence of his legal representative, the Appellant denied that he had ever indecently assaulted Miss A and said that he had never bathed her at all. He said that it was her mother who had put the child up to making a complaint and that for some reason she was making his life difficult.

5. Following upon the complaint by Miss A, police officers spoke to Miss B. She confirmed that she too had been indecently assaulted by the Appellant. She was interviewed on videotape on 19 May 2016, and gave an account of a number of occasions when the Appellant had indecently assaulted her in her bedroom. She was unable to say exactly how many times or to recall the precise dates on which the assaults had taken place, although she thought that the vaginal penetration had happened more than five times but less than 20. Counts 3 and 4 of the indictment were sample counts, intended to reflect the entirety of the Appellant's conduct.

6. The Appellant was arrested in relation to Miss B's complaint on 1 June 2016 and when interviewed under caution made no comment to the questions put to him.

7. Miss A was medically examined on 18 May 2016. Dr Bryan Lean, who conducted the examination, found a minor defect of the hymen and an associated small tear. He concluded that the appearance of the hymen, together with the minor tear, was strongly suggestive of stretching force and consistent with digital penetration of the girl's vagina.

8. Miss B was not medically examined owing to the lapse of time since the offending, although her medical records were produced for the purposes of the trial proceedings by Dr Ruth Jones. These revealed that she had suffered from urinary tract infections for much of her childhood, including the period of time that the Appellant was living with her and her mother.

9. At the time they came to give evidence at the trial Miss A was 6 years of age and Miss B was aged 17.

10. The Appellant gave evidence in support of his defence, which involved a complete denial of any offending.

The Sentence

11. On 27 November 2017, the Appellant was sentenced to a total of 6½ years' imprisonment, with five years' extended supervision and with notification requirements, also of five years, under the Criminal Justice (Sexual Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2013.

The Grounds of Appeal

12. The Appellant challenged his conviction on the basis that the trial judge made a number of errors in relation to the admissibility of evidence given by Miss A, Dr Ruth Jones and Dr Bryan Lean and that he had incorrectly directed the Jurats on the need to treat the allegations in each count separately. The Appellant also argued that the evidence was unsatisfactory in a number of respects and that the decision of the Jurats to convict was obviously and palpably wrong.

13. There were seven grounds of appeal in all, which may be summarised as follows:

    (i) The Achieving Best Evidence ("ABE") interview of Miss A, conducted on 13 May 2016, was inadmissible because it contained leading questions and, accordingly, it should not have been admitted into evidence;

    (ii) The evidence of Dr Ruth Jones (to the effect that Miss B had suffered from urinary tract infections for much of her childhood) was inadmissible; on the basis that it had little probative value, was highly prejudicial, and should have been excluded from the proceedings;

    (iii) The evidence of Dr Bryan Lean in relation to Miss A's physical finding was inadmissible; on the basis that it had little probative value, was highly prejudicial, and should have been excluded from the proceedings;

    (iv) At the trial, Dr Lean wrongly gave evidence of certain *"psychological factors"*, which supported his opinion that the physical examination of Miss A was consistent with indecent assaults committed in the manner alleged. The judge did not thereafter properly direct the Jurats on the admissibility of this evidence, or on the requirements of advance disclosure by the prosecution of expert evidence;

    (v) The judge incorrectly directed the Jurats as to the similarities in the Appellant's offending against the two complainants and the allegations, not being substantially similar, should have been considered separately;

    (vi) The decision to convict was obviously and palpably wrong, or was one which no reasonable tribunal properly directed could have reached; on the basis that the evidence before the Royal Court was such that it was impossible to commit the offences in the manner alleged, and the Appellant had no opportunity to commit them;

    (vii) A diagram used by Miss A in the course of her ABE interview to show where she had been touched by the Appellant was not produced at the trial, having been lost, and in the absence of this diagram the conviction was in error.

The Powers of the Court of Appeal

14. The powers of the Guernsey Court of Appeal in relation to appeals against conviction are not in dispute. They are contained in sections 25 and 26 of the Court of Appeal (Guernsey) Law 1961. The effect of those sections, as explained in a number of cases, is that in relation to matters of law, the Court of Appeal must simply determine whether the decision of the Royal Court was right or wrong. In relation to issues of fact, the Court of Appeal will only interfere with a decision of the tribunal below if the decision is *"obviously and palpably wrong"*: see, for example, *Garven v Law Officers of the Crown* (Court of Appeal, 11 September 2013). It is also important to bear in mind that the Jurats, as the tribunal of fact, have the advantage of seeing and hearing the witnesses and hearing their evidence tested in cross-examination: *Her Majesty's Attorney General for Jersey v O'Brien* [2006] JLR 133.

The ABE Interview of Miss A

15. As noted above, Miss A was interviewed on videotape on 13 May 2016. In advance of the trial, the Prosecution applied for the video recording of the interview to be admitted in evidence as Miss A's testimony-in-chief. Such a course is permitted by reason of section 40 of the Criminal Justice (Sex Offenders and Miscellaneous Provision) (Bailiwick of Guernsey) Law 2013, and section 40(2) provides that there is a presumption in favour of admissibility unless the interests of justice dictate otherwise. The Appellant objected to the admission of the video recording on the basis that it contained leading questions. At a preliminary hearing, held on 25 May 2017, the judge ruled that the video recording should be admitted, but that defence counsel would be free to comment upon the weight to be attached to the answers given by Miss A in response to the leading questions of which complaint was made.

16. The Appellant argues that the decision of the judge was wrong and amounted to a wholly unreasonable exercise of his discretion, with the result that the Prosecution's reliance on the video recording rendered the trial proceedings unfair. In order to address this ground of appeal it is necessary to explain how it was that Miss A's complaint had come to light and what was said by way of question and answer in the course of the interview.

17. Miss A had first made a complaint about the Appellant to her mother. This was some time after the mother's relationship with the Appellant had come to an end in April 2016 and shortly before the interview on 13 May 2016. Miss A's mother gave evidence at the trial (based on an earlier witness statement) and explained how her daughter had made the initial disclosure of the Appellant's indecent conduct, and complained that *"It really hurt"*. This disclosure was reported to the police by Miss A's mother. Miss A was then interviewed by police officers in the presence of a social worker. At the time of the interview Miss A was 5 years of age.

18. In the course of the interview, Miss A described how the Appellant had touched the inside of her *"bum"* and *"the front"* on the inside while she was in the bath. Later she was asked by one of the interviewing officers:

> *"Okay so … the time when [the Appellant] hurt you, erm touched your bum … tell me who was in the bathroom then?"*

Miss A then explained that her younger sister was present and that her mother was in the house, downstairs, making tea. A little later the interview continued in the following way:

> *Q: Remember you said he hurt your bottom?*
> *A: Yeah*
> *Q: And you said before, what did you tell me before about how he hurt your bottom?*
> *A: Erm, he poked right inside it.*

…
Q: It hurt did it?
A: Yeah
Q: And what did you do?
A: Erm, tell mummy.

19. The Appellant's essential complaint is that it was the interviewing officer who first used the word *'hurt'* and that Miss A, a young child, then adopted it.

20. In our view there is no substance in this ground of appeal for the following reasons. First, the evidence before the Court was that Miss A had made an initial disclosure to her mother in which she had described the allegation and that *"It really hurt"*. Second, at the stage of the interview when the officer suggested that the Appellant had hurt Miss A, she had already described the nature of the Appellant's conduct and the questioning was not suggestive of any material fact, such as who had perpetrated the act of indecency or what the nature of the indecency was. Third, while as a general rule a witness may not be asked leading questions in examination-in-chief, evidence elicited by such questions is not thereby rendered inadmissible although the nature of the questioning is something that is to be taken into account when deciding on the weight to be attached to the evidence that results from the questioning. Fourth, we consider that the correct test for whether an ABE interview is admissible is whether the tribunal of fact, properly directed, could be sure that the witness had given a credible and accurate account on the videotape notwithstanding that it contains any questions of a leading nature. In our opinion, this test properly reflects the policy of the law which is to adopt the orthodox procedures of the adversarial trial to the needs of all child and other vulnerable witnesses. Given the nature of the questioning and the stage at which it occurred, we consider that the test was comfortably satisfied in this case.

21. We should also note that the attention of the Jurats was drawn to the issue of the leading questions in Miss A's ABE interview by both the Appellant's Counsel in his closing submissions and by the Judge in his summing-up. In particular, the Judge directed the Jurats to take the issue of leading questions *"fairly into account when assessing the evidence"*. In our view, this left the issue of the weight of the evidence to be considered fairly by the Jurats in the context of the evidence as a whole.

22. In summary, we consider that the Judge properly exercised his discretion to admit the ABE interview into evidence and he was correct to note that the use of ABE interviews should now be regarded as the norm, save only in those rare and exceptional cases where the interests of justice compel otherwise.

The Evidence of Dr Ruth Jones

23. Dr Ruth Jones had provided a statement to the investigating police officers on 28 June 2016. She was one of several practitioners who had on occasion seen Miss B in the period between 2004 and 2015. Having consulted Miss B's medical records, she was able to identify four instances between June 2004 and November 2014 when Miss B had sought medical treatment for genital or urinary tract infections. This evidence was obtained because in the course of her ABE interview, Miss B made reference to her frequent urinary infections, which, in retrospect, she considered could have been the result of the Appellant's activities.

24. At the preliminary hearing held on 25 May 2017, the Appellant sought to exclude the doctor's evidence on the basis that it was highly prejudicial and had no probative value in relation to the alleged offending. The Judge ruled that the evidence was relevant and not so prejudicial as to outweigh its probative value. In light of this ruling, Dr Jones was not called to give evidence and, in the course of the trial, her statement was read to the Jurats. In the course of giving her evidence, Miss B was cross-examined on the basis that some of the documented infections fell outside the time period of the offending. This was a point made by Counsel on behalf of the Appellant in his

closing submissions. In the course of his summing-up, the Judge also reminded the Jurats of Dr Jones' evidence, including the fact that some of the infections had occurred when the Appellant was *"not on the scene"*.

25. In our view the decision to admit the evidence of Dr Jones was a decision properly open to the Judge and we see no merit in the Appellant's argument to the contrary. The possibility of a causal link between the infections and the Appellant's activities had been raised by Miss B and it followed that the dates of her medical visits were of obvious significance. The fact that a number of infections occurred outside the time period when the Appellant was living with Miss B's mother was a point upon which the Appellant could and did rely in support of his case. It is also of significance that the admission of the evidence prevented any improper speculation on the part of the Jurats, which may have occurred if the evidence of Miss B (and her mother, who also gave evidence on the point) had stood alone.

26. In summary, we consider the Judge properly exercised his discretion to admit the statement of Dr Jones into evidence and it had no adverse impact on the fairness of the proceedings. In fact, having read the transcript of the trial, we consider that it was helpful to the Appellant's case and there is no substance in this ground of appeal.

The Evidence of Dr Bryan Lean

27. Dr Bryan Lean, a consultant paediatrician, had examined Miss A at the Princess Elizabeth Hospital on 18 May 2016. His report of the examination, dated 19 May 2016, noted that the appearance of Miss A's hymen, including a partial tear, was *"strongly suggestive"* of a stretching force *"compatible with digital penetration"*. His report also made reference to *"grooming"* behaviour on the part of the Appellant, although the basis for this assertion was unexplained.

28. At the preliminary hearing on 25 May 2017, the Appellant objected to the admission of Dr Lean's evidence in relation to his physical examination of Miss A. The objection was advanced on the basis that the evidence was highly prejudicial and had only limited probative value. The Prosecution argued in favour of the evidence being admitted, although it was accepted that the reference in Dr Lean's report to *"grooming"* behaviour was speculative and the Prosecution agreed that that would not be adduced as part of its case. So far as the remainder of Dr Lean's report was concerned, the Judge concluded that his evidence, as edited, was within the sphere of the doctor's expertise and, accordingly, admissible in support of the Prosecution case. Following the ruling, the Prosecution had sought to agree Dr Lean's written report as edited, but, in the event, the Appellant required him to give evidence in person.

29. In the course of giving evidence in response to questions asked during cross-examination, Dr Lean stated that at the time of the medical examination Miss A had *"expressed fear and had experienced pain and discomfort"* and that these *"psychological findings"* lent support to his overall conclusion that the physical findings were compatible with digital penetration.

30. The Appellant's argument in support of this aspect of his appeal is that the evidence of Dr Lean was wrongly admitted and that, having been called to give evidence in person, he expanded upon the contents of his written report (by referring to the so-called psychological findings) of which the defence had had no notice. He also complains that the direction given by the Judge to the Jurats did not adequately address the unfairness caused by the introduction of this previously unrecorded and undisclosed evidence.

31. In our opinion, there is no substance in the Appellant's complaints. Dr Lean's evidence of his findings at the time of physical examination of Miss A was highly relevant to the issue of whether she had been victim of sexual abuse and provided some support for her account of the relevant events. The so-called *"psychological findings"* emerged, by way of amplification of his findings, in the course of cross-examination when Dr Lean was explaining, in response to the Appellant's

questioning, why he had reached his overall conclusion: namely that what he observed was compatible with digital penetration. In fact, he did no more than state that at the time of the examination Miss A had expressed fear and experienced pain and discomfort and he then went on to explain why in his opinion this was significant. He was questioned on the absence of this evidence from his report and the Appellant's Counsel was able to comment on Dr Lean's evidence in the course of his closing submissions. In the course of his summing-up, the Judge gave a conventional direction on expert evidence (that it did not have to be accepted by the Jurats) and dealt in particular with the point raised by the Appellant's Counsel:

> *"Advocate Merrien was miffed that the psychological element had not been in the report, It would have been better so he knew what he had to deal with but the evidence is there and it is for you to assess. I have given a direction on expert evidence. As Dr Lean said, he deals with psychological effects on children all the time. Remember always it is your decision, not that of the expert, however well qualified and experienced. If you accept Dr Lean's evidence and conclusions, you must decide if it supports or confirms [Miss A's] allegations. I have stated and repeat that independent corroboration is not, as a matter of law, necessary, but you need to consider this and what value it may be to you."*

32. In our view, this was an entirely appropriate direction and there was no unfairness occasioned by the admission of Dr Lean's evidence. It was relevant expert opinion and properly before the Jurats for their consideration. At the hearing of the application for leave to appeal, the Appellant's Counsel suggested (albeit faintly) that had he been provided with notice of the *"psychological findings"* he would have considered calling an expert witness to address the additional points made by Dr Lean in the course of his oral testimony. In our view this was rightly not in the forefront of Counsel's submissions. Dr Lean's findings were based on what he had observed at the time of his examination of Miss A. The fact that she had expressed fear and experienced pain and discomfort is neither surprising nor unusual. It is unrealistic to suppose that another expert would have been in a position to contradict what Dr Lean had to say about his *"psychological findings"*, which were based on what Miss A had said to him at the time of the examination. We see no substance in this ground of appeal.

Cross-admissibility

33. The Appellant's argument in support of this ground of appeal is that the Judge's direction in relation to the similarities between the evidence given by Miss A and Miss B, and the approach to be adopted by the Jurats in relation to those similarities, went beyond what was permissible on the facts of this particular case.

34. The direction given by the Judge was in the following terms:

> *"Although each of the alleged incidents is separate and you must reach separate decisions about each of them, the evidence on one count is capable of supporting the prosecution's case on the others. Let me explain.*
>
> *As you know, the defendant denies any sexual impropriety towards either of the two complainants. He says his contract with each girl was entirely innocent. There are similarities in the defendant's behaviour described by both of them. The fact that these girls have made similar complaints, otherwise unconnected, about the defendant's behaviour makes it more likely that each of the complaints is true. In that sense, the evidence of both complainants may be capable of lending support to the other so that it is not a mere coincidence. You are perfectly entitled to view the evidence in this way but let me explain what should be your approach.*
>
> *The complaints must be truly independent of each other. On the evidence, the events are separated by several years, the complainants do not know each other, the allegations seem*

entirely separate. That evidence is before you and if you accept it, then there is no risk of weakening contamination, particularly looking at the age difference. Remember, their mothers, whom you heard, are hardly on the best of terms either. You need to assess the value of the evidence. If you find that each complainant is independent, it follows that the closer the similarities between the complaints, it is less likely that they can be explained away as coincidence. It is for you to decide the degree to which the evidence of one complainant assists you to assess the evidence of the other. It may lend powerful support or it may not. It is for you to make that judgment.

The similarities in this case boil down to the modus operandi alleged by each complainant, i.e. how the indecent assaults were perpetrated, so what form they took and that in each case the defendant was in the position more or less of a father figure to the two complainants. So it is a question of the circumstances and domestic locations of the alleged offences.

If you are sure that there has been no concoction, you should consider how likely it is that two young people, independently of each other, would make allegations that were similar but untrue. If you decide that is unlikely, then you could think it right to treat [Miss A's] evidence as supporting that of [Miss B's] and vice versa. When deciding how far, if at all, the evidence of each supports the other you should take into account how similar in your opinion their allegations are. This is because you could take the view that the more similar independent allegations are, the more likely they are to be true. It is for you to decide rationally and sensibly."

35. In our view this direction is unimpeachable; it accurately reflects the principles identified by the House of Lords in *Director of Public Prosecutions v P* [1991] 2 AC 447, and those principles form part of the law of Guernsey: *Dodd and Butler v Law Officers of the Crown* (Judgment 34/2015). In *P, supra,* Lord Mackay of Clashfern L.C. made clear that whether or not evidence from one complainant is capable of supporting the evidence given by another depends upon the degree of relevance. In that case the defendant was charged with rape and incest against his two daughters who were under the age of 13. The evidence of both girls described a prolonged course of conduct involving the use of force. It was held that the circumstances taken together gave strong probative force to the evidence of each girl in relation to the incidents involving the other and was sufficient to make it admissible notwithstanding its prejudicial effect. As in this case, it was the circumstances and the domestic locations of the offences which provided the necessary probative force.

36. In the present case, the evidence of Miss A was clearly capable of providing support to the evidence of Miss B, and vice versa. In his direction to the Jurats, the Judge emphasised that whether the evidence was supportive at all, and, if so, how much support the evidence of one complainant provided to the other's, was entirely a matter for their assessment. This was entirely appropriate and accordingly we see no merit in this ground of appeal.

Inadequacy of the Evidence

37. The Appellant contends that there were deficiencies in the evidence such that the decision of the Jurats to convict the Appellant was one that no reasonable tribunal properly directed could have reached, and that it was obviously and palpably wrong. In particular, the Appellant relies on the following:

    (i) inconsistencies in relation to the sleeping arrangements at Miss B's home address, including when and whether she shared a bedroom with her sister, whether the Appellant and Miss B's mother were sleeping together, and in relation to other people who may have been staying at the premises;

(ii) the failure on the part of the prosecution to produce a diagram used by Miss A in the course of her ABE interview;

(iii) the inability of the prosecution to establish a date upon which the assaults on Miss A occurred coincidental with a date when the Appellant could have committed the offences;

(iv) the lack of opportunity to commit the offences.

38. When considering the Appellant's arguments, it is relevant to note that a submission of no case to answer was made at the close of the prosecution case in relation only to Counts 1 and 2 of the indictment (Miss A). There was no submission in relation to the evidence given by Miss B (Counts 3 and 4). The Judge rejected the submission of no case in relation to Miss A on the basis that her evidence was not inherently weak or dubious. He went on to say:

> *"We are dealing with a 6 year old. As will be made clear in directions, you cannot expect the same consistency or concept of time as with an adult. A total or near consistency might indeed be cause to question its reliability. There is then, putting it at its lowest, some evidence which taken at its face value establishes each essential element of the accounts."*

39. In our view, the Judge was right to reject the submission of no case to answer and the case was properly and fairly left to the Jurats to decide. The position at the close of the evidence was that each of the complainants had given an account of being sexually assaulted by the Appellant. The Appellant's case was a simple outright denial, and he gave evidence in support of his defence. The discrepancies and weaknesses in the prosecution case were of a kind frequently encountered in criminal trials, particularly when the allegations arise from events several years distant and where the prosecution depends upon the recollections of young witnesses. In this connection we would wish to echo the observations made by this Court in *Law Officers of the Crown v Barnes* (2004) (Criminal Appeal 324) (at paragraph 38):

> *"If an appeal against conviction had to be allowed in every case where there were inconsistencies and discrepancies precious few offenders would remain convicted. Clearly there can be cases in which the prosecution evidence is so riddled with inconsistencies and discrepancies that the appellate court feels compelled to intervene. But that is not the situation here… It is apparent that neither individually nor cumulatively were they sufficient to raise a reasonable doubt. This was a conclusion that the Jurats were well entitled to reach and there is no basis on which this court could contemplate repudiating it."*

40. In this case the issue for the Jurats was whether or not they found the complainants' accounts credible, regardless of any inconsistencies and deficiencies in their evidence. The Jurats saw and heard the witnesses (including the Appellant) and they were in the best possible position to decide if Miss A and Miss B were worthy of belief. The decision to convict is clearly supported by the evidence and we reject the Appellant's arguments to the contrary as being without merit.

Appeal against Sentence

41. In the Appellant's Skeleton Argument dated 13 October 2017, the Appellant indicated his intention to appeal against his sentence *"in a limited respect."* No further details were provided. At the hearing of the appeal, we were informed by the Appellant's Counsel that the appeal against sentence was directed at one of the conditions attached to the extended sentence licence. In order to put the argument in context we should explain the overall sentence imposed on the Appellant. In respect of Counts 1 and 2 of the indictment (Miss A), he was sentenced to concurrent terms of three years and three months' imprisonment. In respect of Count 3 (Miss B), he was sentenced to three years and three months' imprisonment, consecutive to the sentence imposed on Counts 1 and 2. In respect of Count 4 (Miss B), he was sentenced to a concurrent term of three years and

three months' imprisonment. This made a total of six years and six months' imprisonment. In addition, following the recommendation contained in a probation report, dated 17 August 2017, the Royal Court imposed an extended period of imprisonment. This was for a period of five years. The effect of this sentence was that the custodial term was to be followed by an extended period of supervision on licence subject to conditions. The Appellant was also made subject to certain notification requirements under the Criminal Justice (Sexual Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2013. The Royal Court considered five years to be a proportionate period of notification.

42. The condition of the extended sentence licence with which the Appellant takes issue is in the following terms:

> *"…not to have any contact directly or indirectly with any child under the age of 17 years without the prior permission of your supervising officer, other than such contact that is inadvertent and not reasonably avoidable in the course of daily life."*

43. The Appellant submits that the condition amounted to a disproportionate response to his offending and would have the effect in the future of impeding access to his three children, who at the time he came to be sentenced were aged 8, 5 and 2 years of age. It was also suggested that this condition might lead to a conflict with any orders made in the future by a civil court dealing with family contact issues.

44. The powers of the Court of Appeal in relation to an appeal against sentence are contained in section 25(3) of the 1961 Law:

> *"On an appeal against sentence, the Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at trial, and pass such other sentenced warranted in law by the verdict (whether more or less severe) in substitution therefore as it thinks ought to have been passed, and in any other case shall dismiss the appeal."*

45. In our opinion, the condition attached to the extended licence period was entirely appropriate and we see no merit in the Appellant's arguments to the contrary. At the time he came to be sentenced the Appellant was 30 years of age. The author of the probation report expressed the view, on the basis of the conviction and the information obtained in the preparation of the report, that he *"should be considered as presenting a risk of harm to children"*. The risk was assessed to be in relation, but not necessarily limited to, pre-pubescent and pubescent females, most likely females known to him within a familial context. Given the potential impact of any further offending, it was proposed that the Appellant should be supervised under the auspices of Multi-Agency Protection Arrangements which would involve sharing relevant risk information across various agencies in order to reduce the likelihood of re-offending and the risk of future harm. The condition under challenge was clearly designed to form an important part of the supervision arrangements. Having regard to the nature of the risk posed by the Appellant, we consider that the condition was an obviously proportionate measure in the public interest.

46. Before concluding this aspect of the case, we should also add that the imposition of the extended licence period, subject to conditions, may explain why the notification requirements under the 2013 Act were for a period of only five years from the date of the Appellant's conviction. The Royal Court may well have taken the view that the future protection of the public was catered for by the licence conditions and reduced the period of the notification accordingly. As this was not the subject of comment by the Royal Court, or of argument before us, we say no more about it.

Conclusions

47. For these reasons we dismissed the appeal against conviction and refused the application for leave to appeal against sentence.

48. We wish to express our thanks to Advocate Alan Merrien and Crown Advocate Fiona M Russell for their extremely helpful submissions.