

[2025]GRC036

Evidence – admission/exclusion of bad character evidence, similar fact evidence and identification evidence and cross-admissibility.

Section 11 of The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 applies to this case so there must be no publication of any report containing the name, address or school or any particulars likely to lead to the identification of the defendant, complainant or any witness who is a child (under 18) and there must be no publication of any picture of any such child. Any publication in any medium whether that is in writing or by broadcast or by means of the internet including social media is an offence.

Section 45 of The Criminal Justice Sex Offenders and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2013 also applies to this case so there must be no publication of any matter including (but not limited to) the name, address of work or school or any photograph likely to lead to the identification of the complainant, in this matter, in the complainant’s lifetime. Any publication in any medium whether that is in writing or by broadcast or by means of the internet including social is an offence.

**IN THE ROYAL COURT OF GUERNSEY
(CRIMINAL DIVISION)**

Between:

THE LAW OFFICERS OF THE CROWN

Prosecution

-v-

BEN FRANK SPRUCE

Defendant

**Applications heard: 31st January 2025
Decisions announced: 14th February 2025
Oral Judgment delivered: 26th February 2025**

Admission and Exclusion of Evidence including similar fact evidence, bad character and identification evidence and cross-admissibility

Before: Catherine Maureen Fooks, Judge of the Royal Court

Counsel for the Prosecution: Advocate P F Cobb

Counsel for the Defendant: Advocate C Green

Cases, legislation and texts referred to in Decision:

Human Rights (Bailiwick of Guernsey) Law, 2000

The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003

The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 The Codes of Practice

Loi Relative aux Preuves du Criminel 1923

Dodd and Butler v Law Officers of the Crown 2015 Unreported Court of Appeal 23 July, Guernsey Judgment No.34/2015

Le Page v Law Officers of the Crown 18th May 2017 28/2017

U v Attorney General, 2012 (1) JLR 349

DPP v P [1991] 2 AC 447

DPP v Boardman [1975] AC 421

R v Johnson [1995] 2 Cr.App R 41

R v West [1996] 2 Cr App R 374

R v Ryder (1994) 98 Cr.App. R 242

R v Musquera [1999] Crim LR 857

Harris v DPP 36 Cr. App. R at 52 – 54

R v John W [1998] 2 Cr App R289

R v Walsh (1990) 91 Cr.App.R.161

R v Phillips & Phillips [2020] EWCA Crim 126

R v Alexander [2013] 1 Cr App R 26

R v LT [2019] 4 WLR 51

R v Crampton [2020] EWCA Crim 1334

Professor Zander on PACE (6th Edition) paragraphs 8-46

Blackstone's Criminal Practice 2002

Introduction

1. This was an oral judgment to record the decisions made on the applications below. I said that if it was required in written form, I reserved the right to perfect it. I have decided to publish it so I have, with Counsel's help, anonymised it and I have tidied it up a little. At the time of the applications, the Defendant ("D"), who is represented by Advocate Green, was facing 2 Indictments (Indictment 1 and Indictment 2) to be tried at 2 trials (Trial 1 and Trial 2). Indictment 1 consisted of 13 sexual offences (contact offences) against 4 complainants and Indictment 2 consisted of 17 offences including indecent messages and making indecent images of children. The Complainants have been allocated numbers, C1, C2 etc based on the two Indictments as they were after my joinder/severance decision.
2. This judgment is concerned with the following applications, all of which are opposed by the other party:
 - a. the first application dated 9th January 2025 by the Law Officers ("P"), represented by Advocate Cobb, to adduce bad character evidence in the form of guilty pleas entered by D to certain counts on one Indictment as evidence in certain of the other counts yet to be tried (P describes as "outstanding") on that Indictment and on the other Indictment.
 - b. the second application also dated 9th January 2025 by P for a preliminary ruling that certain evidence relating to counts on each Indictment is cross-admissible in relation to other counts on that Indictment (the two Applications by P being referred to as "The P Applications"); and
 - c. the third application dated 10th January 2025 by the D to exclude certain evidence primarily the Promat evidence of 2 Complainants and other evidence ("the D Application"). At the hearing only the exclusion of the Promat evidence was argued, counsel being hopeful of resolving the other issues by agreement which I wholeheartedly encourage.

3. I heard the Applications on 31st January 2025 and reserved my judgment. On 7th February 2025, counsel contacted the Court to advise that D was going to enter guilty pleas to certain counts on the second Indictment which would be acceptable to P and Trial 2 could be vacated. That happened on 10th February 2025. This removed the need to consider the P applications in relation to Trial 2. I asked counsel to confirm the impact of the change on the P applications in relation to Trial 1. Advocate Cobb has asked that I treat her applications to admit three of the new guilty pleas as evidence in respect of certain counts in Indictment 1 and Advocate Green asked me to treat his submissions as equally applicable to those pleas. In those circumstances, I confine this judgment to the applications relating to admission and exclusion of evidence relating to Trial 1 only.
4. On 11th February 2025, D filed a revised Defence Case Statement and two expert reports one dealing with phone analysis and one dealing with cell site analysis all of which I have taken into account in reaching my decisions in this judgment. I issued my decisions on 14th February 2025 with reasons to follow. I make the point that all decisions about evidence at this stage are preliminary and may be re-visited before or at trial. It is in the nature of such decisions that they are dynamic.

Materials

5. Advocate Cobb has helpfully provided a consolidated bundle containing the necessary papers including her skeleton arguments dated 9th January 2025, D's dated 10th January 2025 and the responses to each, both dated 24th January 2025 together with copies of the authorities to which counsel have referred. I confirm that, despite the relative brevity of this judgment, I have read and considered carefully all the written materials and oral submissions. I will deal with the P applications first.

The P Applications

6. The matters now for trial are 2 counts of rape against C1, 1 count of sexual assault against C2 and 2 counts of sexual touching against C14. D has pleaded guilty to 3 counts of sexual touching of C3 (counts 7, 9 and 11 which I have called A in my table below) which were alternative to counts of raping her, which pleas are acceptable to P. The remaining counts of rape or alternatively sexual touching of C3 will not be pursued. P is applying to admit as evidence at trial the fact of D's guilty pleas to counts 7, 9 and 11 as evidence on all the counts to be tried.
7. D has pleaded guilty to 6 counts (counts 10, 12 and 14 on Indictment 2, pleas entered on 22.11.2024 and counts 8, 9 and 16 on Indictment 2, pleas entered on 10.2.2025) of sending indecent messages to 6 different Complainants. P is applying to admit the facts of those pleas as evidence at trial on counts 1, 2, 12 and 13 but not count 3 as the circumstances of that count are different – as P put it at the hearing, it appears to be opportunistic and not predicated on the same modus operandi of messaging and then meeting. D has also pleaded guilty to some of the indecent images of children offences but they do not form part of the P Applications.
8. P also applies to admit the evidence from counts 1 and 2 and in respect of counts 12 and 13 of Indictment 1 on the basis of cross-admissibility.
9. The basis of P's applications is that the evidence is admissible as similar fact evidence. Particularly when the P Applications included Indictment 2 and were more complex, I found it helpful to create a table of the counts on both Indictments and the requested evidence to be admitted in respect of each of them. That table was helpfully amended by P and has been updated by me and reduced to covering Indictment 1 only following the change of pleas. The counts highlighted in yellow are for trial. I have included information as to dates of the

offending as well as the complainant number, dates or date ranges of alleged offences or offending and ages of the Complainants from both Indictments in the table following.

Count	Offence	Date range	Complainant no. and age	G Plea NEO	GPs P wants to use	Cross-admissibility
Ind 1	Vaginal rape					
1/1		26.12.23	C1 Aged 13		1/7) 1/9) A 1/11) 2/8] C5 (11.5.23 -31.12.23) Aged 11 2/9] B C6 (14.4.23 -31.12.23) Aged 12/13 2/10] C7 (23.4.23 -29.5.23) Aged 14/15 2/12] C9 (1.8.20 -15.11.23) Aged 15 2/14] C10 (1.9.20 -28.4.23) Aged 15 2/16] C12 (1.4.23 -31.12.23) Aged 12/13	1/12 1/13 C14
1/2	Rape (oral)	26.12.23	C1		A + B	1/12 1/13 (C14)
1/3	Sex assault	Jan 2023	C2 Aged 15		A	
1/4	Rape (vaginal)	29.3.23- 1.4.23	C3 Aged 14	NEO		
1/5 alt	Sex touch	29.3.23- 1.4.23	C3	NEO		
1/6	Rape (oral)	7-9.5.23	C3	No plea		
1/7 alt	Sex touch	7-9.5.23	C3	Yes		
1/8	Rape (anal)	7-9.5.23	C3	No plea		
1/9 alt	Sex touch	7-9.5.23	C3	Yes		
1/10	Rape (vaginal)	7-9.5.23	C3	No plea		
1/11 alt	Sex touch	7-9.5.23	C3	Yes		
1/12	Sex touch	1.10.23- 31.1.24	C14 Aged 14		A + B	1/1 1/2 (C1)
1/13	Sex touch	1.10.23- 31.1.24	C14		A + B	1/1 1/2 (C1)

Summary of the evidence on the matters for trial and the GP Counts from Trial 1 and 2

10. I refer to the helpful case summaries provided by Advocate Cobb.
11. Regarding C1, the allegation is that, in December 2023, when she was 13 and D was 18, D was in contact with her over Snapchat sending messages of a sexual nature, and 2 pictures of his erect penis and she then met him in a field on Boxing Day where she says that he raped her vaginally and orally before ejaculating into a condom which was later allegedly found at the scene and therefore P's case is that is forensic evidence against him in this matter. There is also phone evidence and evidence which P says places D in the area. D denies any contact with C1 by phone or in real life and has filed expert reports on the subject of phone analysis and cell site information. He also disputes the Promat identification evidence.
12. C2 alleges that in January 2023 when she was 15 and D was 17, in the dark at Saumarez Park she was grabbed from behind by a man, whom she later identified as D who grabbed her breasts. D says that this was a mistake on his part – D thought that she was someone else.
13. C3 (guilty pleas to sexual touching) alleges that, in February 2023, she was chatting on Snapchat with D when she was 14 and D was 17 – the talk was of a sexual nature and there were pictures sent as well as videos of D's erect penis and there were arrangements made to meet at least twice. There was sexual touching (including penetrative intercourse (vaginally, anally and orally) at Beau Sejour. The defence has sought to distinguish these admitted offences from those in the Indictment to be tried on the basis that there was an element of consent.
14. C14 alleges that, in October/November 2023, when she was 14 and D was 18, they exchanged Snapchat messages and D sent her pictures of his penis and also requested pictures of her, then met up at Waitrose and near Beau Sejour/Candie Gardens and D touched her breast underneath her clothing and touched her vagina and bottom over clothing.
15. Turning to guilty plea messages, C5 (8/2) there were Snapchat messages in May 2023 when she was 11 and D was nearly 18. C5 is from Jersey. D sent her pictures of his penis, there was talk of a sexual nature and D asked to meet up with her.
16. C6 (9/2) there were Snapchat messages in April 2023 when she was 12 and D was nearly 18. C6 is from Jersey. D sent pictures of his penis, there was talk of a sexual nature – some of which was via a friend plus a request for a photograph from C6 and a request to meet up.
17. C7 (10/2) there were messages on Snapchat and other platforms in April 2023 when she was 14 and D was nearly 18. C7 is from the UK, D sent her photographs, there was talk of a sexual nature and videos – there was no talk of meeting up.
18. C9 (12/2) there were Snapchat communications between 2020 and 2023. D sent pictures of himself and demanded pictures back and there were threats of violence towards C9.
19. C10 (14/2) there were Instagram communications when he was 14 in 2019 related to his dancing, there were unsolicited videos sent by D of D having sex with someone – it is said that D told others that the other person was C10 and there was an allegation that D appeared to be following C10.
20. C12 (16/2) there were Snapchat communications when she was 12 or 13 in September 2023. C12 is from the Isle of Man, she received a picture of D and she sent photographs in response which he sent to others and made threats to hurt her and there was no talk of meeting up.

The Defences

21. One of the considerations for me in dealing with the applications is the nature of the defences as disclosed and as reasonably predicted by P. The revised Defence Case Statement (“DCS”) sets out D’s position as it is now, factoring in the changes of plea and also the receipt of two reports, one being a forensic analysis of D’s phone and the other a cell site report relating to D’s location at the time of the alleged offences against C1. The Defences are as follows:

Counts 1 and 2 (rape of C1):

- (1) that D was elsewhere and has an alibi and he also relies on the cell site report which places his phone outside the relevant area;
- (2) that the condom which contains his DNA was not found at the scene but in his bedroom and may have been moved to the scene by police;
- (3) that he was not picked up near the scene by a man as alleged;
- (4) that the Promat evidence of C1 is inadmissible;
- (5) that there is no evidence on his phone of any communications with C1; and
- (6) that C1 has given inconsistent accounts to a witness.

Count 3 (sexual touching of C2):

- (1) mistaken identity on his part in that he thought he was grabbing a friend;
- (2) a denial of any sexual touching or intent; and
- (3) inadmissible Promat evidence.

I omit reference to counts 4, 5, 6, 8 and 10 involving C4 as I believe that these will not be pursued.

Counts 12 and 13 sexual touching of C14:

- (1) D does not know who she is;
- (2) did not communicate with her;
- (3) the messages were not sent to or from him; and
- (4) have been tampered with (as referenced in the expert report); and
- (5) he did not meet her. He was grounded at home by his parents or working with his father.

In addition there is a general allegation of collusion made from time to time between “*the Complainants in Indictment 1*” and that the collusion started with two named females who made complaints against D which were dropped. Previously the collusion allegation was between C1 and C2. There has been a general lack of clarity as to the collusion defence. It is said that D has been the victim of criminal damage, a smear campaign on social media in which he was named and identified in photographs as a sex offender (I have seen some of this material) and was the (unnamed) subject of a letter sent out by Guernsey Police circulated to all parents/guardians during the investigation.

Applicable Legal Principles to the P Applications

22. By the end of the oral submissions, there was little dispute between counsel as to the relevant legal principles so there is no need for me to set them out in detail. The issue is the application of those principles to the facts of this case. P accepts that the evidence sought to be admitted is bad character evidence which is rendered inadmissible by virtue of Article 1 of the Loi Relative aux Preuves du Criminel of 1923, particularly Article 1(g) (the “1923 Law”) as this would tend (especially the guilty pleas) to show that D has committed a crime other than the one charged such that she must persuade me that it can be admitted as an exception to that rule. The exception on which she relies primarily is similar fact evidence.

23. The 1923 Law is based on the wording of Section 1 of The English Criminal Evidence Act 1898. In England there is now The Criminal Justice Act 2003 (“CJA”) which has developed the law beyond that which still subsists in Guernsey and it is therefore necessary to look at the English caselaw and commentaries which predate the CJA for any guidance required. The 2002 copy of Blackstone’s Criminal Practice provided by Advocate Green (section F12) is a good summary of the position in England immediately before the law changed as is The Law Commission of England and Wales concerning Evidence of Bad Character in Criminal Proceedings Report, 2001 which led to the CJA 2003. One particular comment from that report resonates with me and that is that the exceptions to the bad character evidence rule such as similar fact evidence should not be used as a means to “*smuggle in otherwise inadmissible bad character evidence*”. It is also said in the caselaw that such evidence should not be admitted just because it makes the P’s task easier. The evidence must have real relevance and probative force.
24. Counsel referred to a number of English cases mostly prior to the CJA and some materials notably the current Crown Court Compendium. I remain of the view that there is inherent danger in looking at anything based on CJA and I reject the P suggestion made that there might be some development of the law in Guernsey to “*meet modern jurisprudence*” by reference to developments in England. In England evidence as to propensity is admissible. In Guernsey it is not and something more is required.
25. In terms of the test to be applied, the starting point is the Guernsey Court of Appeal case of Dodd and Butler v Law Officers of the Crown 2015 Unreported Court of Appeal 23 July, Guernsey Judgment No.34/2015. Whilst at one stage, Advocate Green tried to argue that the true test is more exacting than as set out in this case, he readily and properly conceded that it is a Guernsey Court of Appeal decision which is binding on me. The learned Judges of Appeal set out the test for admitting similar fact evidence by reference to a passage from the decision of the Jersey Court of Appeal of U v Attorney General, 2012 (1) JLR 349 as follows:

“The test for admitting similar fact evidence

12. *It is common ground that the relevant legal test for the introduction of similar fact evidence involves a two-stage analysis. The first is a hard-edged question of relevance, at which stage the question is whether the material has any probative value. The second stage involves a discretionary exercise to determine whether the evidence should, in all the circumstances of the case, be admitted.*

13. *None of this is controversial or new. It is well established that similar fact evidence is admissible if it is relevant to an issue before the court, e.g. because it tends to prove one of the elements in the alleged offence, or to rebut a defence which would otherwise be open to the accused (Styles v Attorney General 2006 JLR 210, following O’Brien v Chief Constable (S Wales) [2005] 2 AC 534 at paragraph 67 (et seq) and ultimately Makin v Att-Gen for New South Wales [1894] AC 57. The question of coincidence lies at the heart of the analysis. Evidence is likely to be admissible if an attempt to explain it away by coincidence would be an affront to common sense, or would be against all probabilities, or would only be accepted as an explanation by “an ultra-cautious jury” (referred to in DPP v P [1991] 2 AC 447).*

14. *It is worth emphasising that, in order to admit similar fact evidence, it is not necessary for the prosecution to wait until a specific defence has been set up. It is sufficient if the defence is reasonably available (Harris v DPP 36 Cr. App. R at 52 – 54). Nevertheless, the prosecution must not be allowed to adduce prejudicial evidence by imputing to the accused an intention to set up some improbable or fanciful defence (Thompson v R [1918] AC at 232). This qualification is illustrative of the more general principle mentioned above, which requires the court to balance the probative value of any admissible similar fact evidence against its prejudicial effect, and to exercise a discretion in deciding whether to allow it to be adduced – a discretion which is*

exercised by reference to the interests of justice (Noor Mohamed v R [1949] AC at 192)."

That case drew considerably from the leading English case of DPP v P [1991] 2 AC 447 in which all notion that there had to be striking similarity (as was the case in earlier English caselaw such as DPP v Boardman [1975] AC 421) was rejected.

26. Advocate Green helpfully drew our attention to Le Page v Law Officers of the Crown 18th May 2017 28/2017 in which the Court of Appeal reiterated the test for cross-admissibility as being that set out in Dodd above. The point is made that when the Judge is assessing the evidence to be admitted, it should be assumed that it is true. It is of interest that the issue of collusion arose in that case. All cases turn on their own facts.
27. I raised with counsel the relevance of section 80 of The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 ("PPACE") (equivalent to section 74 (3) of PACE now revoked. Advocate Cobb submitted that the bar on propensity evidence was already in place prior to PPACE. Section 80 is just complimentary to the common law. Advocate Green made the point that section 80 adds nothing to the substance of admissibility or exclusion. It is concerned with mode of proof of convictions – as is explained in Blackstone's F11.2. P is not seeking to adduce any evidence on the basis of propensity.
28. The issue of collusion arises and again Blackstone's F12.13 provides a useful summary and the case of R v Ryder (1994) 98 Cr.App.R.242 is referenced. A risk of collusion is a factor to be considered when determining if evidence should be cross-admissible. What should happen depends on the strength of the evidence of collusion. If it is very strong, the evidence may be ruled not cross-admissible or there might be a voir dire but in other cases the issue is left to the Judge to resolve by directions to the Jury at the close of the case once the evidence is clear.
29. Blackstone's F12.12 provides commentary on cases involving multiple charges. It is not sufficient to establish that all the charges are sexual - there must be a real relationship between them which gives one allegation probative force in relation to another and see the case of R v Musquera [1999] Crim LR 857.
30. In terms of the second stage of the test, the issue is prejudice. I remind myself that nearly all probative evidence is prejudicial. The issue is not whether there is any prejudice but whether the prejudicial effect outweighs the probative or, put another way, the admission of the evidence would have such an adverse effect (my emphasis) on the fairness of the proceedings that the court ought not to admit it which is the familiar test from section 78 of PPACE. Fairness of course is key and I am the gatekeeper of fairness and I must and do keep in mind D's Article 6 right to a fair trial incorporated into Domestic Law by virtue of the Human Rights (Bailiwick of Guernsey) Law, 2000.

My ruling on cross-admissibility in the joinder application

31. There was reference in submissions to my judgment dated 30th December 2024 on the issues of joinder and severance. It is important to set out what I actually said:

"42. The test for cross-admissibility is set out clearly in paragraphs 24ff in Dodd, drawing on the English case law of D v P and also U v Attorney General (2012) (1) JLR 349 whereby there is a two-stage process. The first stage is consideration of whether the evidence on one allegation is relevant to another and probative, and the second stage is consideration of the effect of the admission of the evidence and specifically whether the prejudicial effect outweighs the probative. This second limb

of the test dovetails in with the consideration of prejudice which is required when a Judge is considering exercising the discretion under section 4 to sever the indictment.

43. *We are at a very early stage in these proceedings and I can do no more than form a preliminary view as to the cross-admissibility but, in my judgment, bearing in mind the clear similarity between the offences and the series which I have already found to be established, the evidence should be, in general terms, cross-admissible. Specifically the evidence in the different contact offences is relevant and probative in the other contact offences. In so saying, I do not close down in any way further arguments as to cross-admissibility and indeed, there may well be further argument to be heard on both sides later in the proceedings as to the evidence to be adduced. Cross-admissible evidence brings with it an inevitable prejudice, as is the case with all probative evidence. Based on a broad view, at this stage, I do not consider that probative value is outweighed by the prejudicial effect such that cross-admissibility should not be permitted. Nor do I consider that the concerns raised by Advocate Green about impermissible propensity reasoning or artificial boosting of the complainants' credibility point away from joining the offences. When it comes to the evidence, the Jurats can be given appropriate directions which they can be trusted to follow."*

It should be borne in mind that, having made that ruling, which formed part of my wider ruling that there could be joinder on all counts on all indictments, I then went on to order severance into two indictments for the reasons contained in my judgment which are summarised at paragraph 54 thus:

"53. On balance, I am satisfied that I should exercise my discretion to sever the Indictment. I am persuaded that there is a risk of prejudice to the Defendant arising from the sheer number of offences, participants and material added to which there are the practical issues and the Defendant's own special needs. Many of these issues cannot be addressed by directions to the Jurats."

32. I make a few points, first, that my ruling above on cross-admissibility in December was a preliminary one and is not binding. It was made at an earlier stage since when more evidence has come in and the defence case has evolved particularly after receipt of the two expert reports. For this application, there has been much more focus on the detail of the evidence. The case has changed considerably.
33. Advocate Green sought to rely on my ruling in terms of his client's issues to support his argument against admission. Advocate Cobb urged me to treat this with caution both in terms of referencing back to what I actually said and in terms of D's issues, though she did accept Advocate Green's point that explaining cross-admissibility to the D with his IQ and issues would be a challenge. Advocate Green relied in this regard on the need for fairness in the case of Harris v Director of Public Prosecutions [1952] AC 694. It should be noted from my ruling that the primary reason for severance were the "*sheer number of offences, participants and material*". The case has moved on since then and there will only be one trial. I am nonetheless still alert to the issue of multiple complainants as having the potential to cause prejudice hence my question to Advocate Cobb on 10th February 2025 when she added the new guilty plea counts to her list as to whether she really needed all of them.

Submissions on the P Applications

34. Advocate Cobb submitted that the guilty pleas from Indictment 2 (now including the new ones) i.e. the message offences (B in my table) are admissible under Article 1(g)(i) of the 1923 Law because they constitute similar fact evidence which is an exception to the bar on bad character evidence. There are identifiable common features which go beyond mere propensity or coincidence and which have a strong degree of probative force arising from the modus operandi of multiple messages across multiple platforms to young and vulnerable children, similarity in

language, sending of photographs of his penis, requests to meet up in public places including to engage in sexual activity and requesting photographs of the recipient. Advocate Cobb helpfully set out the similarities in a table onto which she put the references to the evidence supporting her assertion which can be found in the consolidated evidence bundle. Advocate Green did not take issue with the table in terms of its content - the issue is interpretation. Advocate Cobb further submitted that the guilty pleas negate any suggestion of coincidence as they represent multiple allegations by separate complainants across several jurisdictions. They also negate any defence based on hacking. There is an apparent and clear escalation of behaviour from messaging starting in 2020 to contact offences in 2023 with C4 by D's own admission. It was suggested that D shows an increasing forensic awareness requesting deletion and increasing the use of Snapchat to avoid detection due to the automatic deletion feature. The Jurats can be adequately directed to minimise any prejudice to D.

35. Turning now to the guilty pleas from Indictment 1 i.e. re C4 and sexual touching - Advocate Cobb's submission was that this is clearly similar fact evidence as it is sexual contact offending. It rebuts any suggestion of coincidental allegations which is what she described as a "*separate gateway*" to admissibility from similar fact evidence. There are multiple common evidential features between the admitted offending against C4 and the counts for trial which she listed to include the features listed above but in addition, the consistent use of Snapchat, meeting up in public to engage in sexual activity and the similar ages of the Complainants. There were also "*sharply related similarities*" between the locations of the alleged offences being public outdoor spaces with C4 and C14 being taken to Beau Sejour and D searching Beau Sejour opening times in respect of C1 although in the end she was taken to a field. Advocate Cobb made the same submission as to coincidence, hacking and the adequacy of directions as above.
36. In terms of the cross-admissibility of evidence between counts 1 and 2 and counts 12 and 13 Advocate Cobb relied on the above similarities, especially the modus operandi and location. The evidence is cross-admissible as similar fact and to negate coincidence. In her submission the evidence of collusion raised by D was clear enough such that I could admit the evidence without concern but alternatively, this could be deferred until after the Complainants' evidence at trial (in accordance with Ryder above). Again, directions would be sufficient to minimise prejudice such that I should feel it unnecessary to refuse to admit the evidence.
37. In relation to count 3, Advocate Cobb said she would consider this count in view of the D's position which is that it was him but mistaken identity and not sexually motivated.
38. Advocate Cobb properly submitted that I must be clear as to why any evidence which I admit is admitted, whether as similar fact, to rebut coincidence or to negate a defence or more than one of those three "*gateways*" as this will affect the directions to the Jurats.
39. Advocate Green urged me to scrutinise carefully the probative value of the evidence sought to be admitted and to exercise my discretion to refuse to admit all of it on the basis of prejudice to D. Advocate Green submitted that there was a need for evidence to have an enhanced probative value to be admissible as an exception to the bad character evidence rule and that the similar fact evidence did not have that value or that its prejudicial effect would outweigh its probative value. The evidence lacks the required "*underlying unity*".
40. Advocate Green raised the issue of identity and the suggestion that a signature or other special feature is required based on what Lord Mackay said in DPP v P. Later Advocate Green conceded that this was not a sustainable submission in view of case of R v John W [1998] 2 Cr App R289 in which it is said is no need for striking similarity. So, whether it is a case where identity is in issue or not, there is no enhanced requirement. Advocate Cobb argued that the case is not really an identity case in the sense that the wrong perpetrator had been identified.

Advocate Cobb raised the fact that identity was not raised on the DCS. The DCS has since been updated and this is not raised so it is assumed that it is not an issue for trial.

41. Advocate Green made the important point that I must consider dissimilarities as much as similarities as dissimilarities detract from the probative value and undermine the admissibility of what is bad character evidence. The cases of R v Johnson [1995] 2 Cr.App R 41 and R v West [1996] 2 Cr.App R 374 are relevant. I have taken the liberty of adding into Advocate Green's submissions in square brackets below the points I believe that he would have made about counts 8, 9 and 16.
42. In relation to the admissibility of the guilty pleas to counts on Indictment 2 as evidence in relation to the contact offences regarding C1 and C14, he submitted that counts 10 [8, 9 and 16] relate to females whereas counts 12 and 14 relate to young males and that it is mere speculation that the messages would have led to contact offending. There is no conversation in the messages in counts 10, 12, 14 [and 16] about meeting up (there is in 8 and 9). There is no conversation about masturbation in any of those counts. Meeting up and masturbation are features alleged in the Indictment 1 contact offences. Condoms are not mentioned in all the Indictment 2 guilty plea counts. These differences undermine the modus operandi argument advanced by P to justify the admission of the message pleas. He submitted that it is difficult to compare when things are at a different stage, and are not truly analogous. The "*similarities*" are no more than commonplace communications between young people who are "*so called digital natives*" and should not be elevated into evidentially significant similarities. Advocate Cobb objected to this on the basis that it is not commonplace for an adult to message a child (her emphasis) in such language and send indecent images, to which Advocate Green responded that it was not a key point.
43. In his written submissions Advocate Green urged me not to speculate about hacking. The reports were then awaited but I can now see the extent of that evidence which seems to me to be limited to the allegation that messages which P asserts passed between him and C14 were not sent by D and have been altered. Advocate Green made the point that D can argue that he was hacked on some occasions and not others which seems to me to be his position in view of his guilty pleas but the findings of his expert regarding issues with his communications with C1 and C14.
44. In terms of the guilty pleas to counts 7, 9 and 11, (C4), Advocate Green submitted that there are important differences between the offences admitted – sexual touching - as opposed to rape where consent is an issue and P has accepted that, based on the evidence, lack of consent could not be proved. This is a striking and fundamental difference leading to a real risk of prejudice if the evidence is admitted. Advocate Cobb responded that, whilst consent may be an issue, the guilty pleas are to the sexual touching of a child (her emphasis). Advocate Green highlighted differences as there is a conversation about condoms, anal sex and D lying about his age which are not features of the counts to be tried. Advocate Green distinguished the meeting up arrangements. D met up several times with C4. The conversations with C4 about sex differ from the alleged conversations with C1. The alleged locations are not the same. D is said to have met C1 in a field – which Advocate Green did accept was a public place.
45. In terms of cross-admissibility of evidence between counts 1 and 2 and 12 and 13 of Indictment 1, Advocate Green submitted that there were appreciable differences between the 2 sets of offences, only one alleged meeting with C1 as opposed to several with C14, no evidence of communications between D and C1, field as opposed to Beau Sejour, more serious offence as opposed to C1. He accepted that there were similar features in the table absent discussion of masturbation. There is no signature unusual matter. C1's inconsistent accounts should point away from cross-admissibility. Collusion remains "*feasible*" so I should reserve the position on cross-admissibility until after the evidence. Advocate Green later conceded that there is a

lack of evidence to support the assertion of collusion and that remains the position in the DCS. Advocate Cobb's response was that this concession strengthens the P case for admission. He also submitted that there might be a "jumping on the bandwagon" short of collusion because of the noise on social media. Again, Advocate Cobb submitted that this is why the evidence must be admitted to rebut that assertion. Insofar as Advocate Green suggested that collusion might be excluded for practical purposes, it must be understood that a decision to admit on the basis that there is no evidence of collusion strong enough to negate admission does not close the door on collusion being raised.

46. Advocate Green drew attention to the different nature of the contact and messaging offences and questioned how the latter could be relevant to the former. The connections between different offences varied in strength and some were weak. Advocate Cobb urged me to look not only at the individual counts but also the wider picture and at the sheer number of children who have come forward. It is accepted by P that the alleged offending in count 3 was opportunistic and therefore different.
47. Advocate Green's submitted that the way in which the indictments had been severed with several contact complaints together still gave P the chance to argue that there was no coincidence and rebut collusion without the need to adduce bad character evidence or rely on cross-admissibility.
48. Advocate Green then turned to the second stage of the test and urged me not to allow any evidence to be adduced on the grounds of prejudice and an adverse effect on the fairness of the proceedings. He referred to Harris above quoting para 49 of his skeleton. The admission of the evidence here would have a disproportionate effect on the fairness of the trial and Advocate Green urged me to make a decision in line with my joinder/severance decision where I recognised an element of prejudice to D arising from the multiple allegations. He submitted that to do otherwise would "drive a coach and horses" through the joinder/severance decision. He revived his submission from that matter that the admission of the evidence would make the trial unwieldy. He repeated his previous point about the nature of the allegations and the strong emotions that could be aroused were the evidence admitted and the Jurats faced with so many complainants. Cross-admissibility from counts 1 and 2 to 12 and 13 ought to be viewed as weaker than admitting guilty pleas which are at least proven in terms of evidence. He distinguished Le Page on its facts emphasising the relationship of trust and the ample evidence of a similar approach absent in the case against D. The considerable prejudice of admission cannot be fully contained by directions in such a serious case. Advocate Cobb disagreed with all of this, relying on the experience and professional nature of the Jurats to receive and comply with directions in particular.
49. I did ask Advocate Cobb whether the admission of the evidence would cause issues with the trial slot. She hoped that it would be admitted by way of admissions and agreed facts which would reduce the scale of it and have little impact on the proposed trial timetable. Advocate Green did not demur on this practical approach.

Discussion regarding P Applications – stage 1

50. I have taken into account all the submissions and materials. The starting point is stage one of the test as set out in Dodd "... the first is a hard-edged question of relevance, at which stage the question is whether the material has any probative value." There is no requirement for the evidence to be exceptional, have enhanced probative value or have striking similarity. I have kept in mind at all times Advocate Green's point that I must look not only for similarities but also dissimilarities. I remain alert to admitting evidence which does no more than establish propensity.

Guilty pleas of D to sexual touching of C3 (counts 7, 9 and 11) as evidence on all counts to be tried

51. The gateways sought by Advocate Cobb are similar fact evidence, rebuttal of coincidence and negating a defence.
52. In relation to similar fact evidence, I accept Advocate Cobb's submission that there are sufficient common features in terms of the message themes - meeting up, conversations about sex, photograph of D's penis and request for photographs, use of Snapchat together with the meeting up in public places with Beau Sejour being a common theme, if not the actual location, the close proximity in time of the offending or alleged offending (C1, C3 and C14 all within more or less 12 month period (C14)) and the young ages compared with D. Those common features have probative value beyond mere propensity. I acknowledge that the offending against C3 may be viewed as consensual and has some features not common to the other counts but I do not consider that this detracts from it being similar fact evidence and also evidence negating any suggestion of coincidental false allegation of contact offending by more than one person. At this stage I am not persuaded that the evidence is admissible to rebut any specific defence but this can be re-visited.

Guilty pleas of D to counts 8-10 12 14 and 16 of Indictment 2 re messages on all counts bar count 3

53. I agree with Advocate Cobb that, at first blush, there are identifiable common features going beyond the fact of multiple sexual allegations. There is sufficient evidence of a modus operandi here as set out in Advocate Cobb's tables and the statements such that the evidence is relevant. It is not necessary for all the features to be present in relation to each Complainant, it is sufficient that there is a core set of features present in the messages D admits sending and which he is alleged to have sent which he denies and which I identify as:
- a. talk of meeting up;
 - b. conversations about sex;
 - c. photographs of D's penis;
 - d. request for photographs;
 - e. young ages of the complainants compared with D and
 - f. all messages (with exception of some of the messages in relation to count 12) are in 2023

but it is necessary to look at the evidence in more detail. Having done so I do not consider that the messages 2/12 C9 and 2/14 C10 relevant or probative. I accept Advocate Green's point that these Complainants are male and the Complainants in the matters for trial are female. There is no talk of meeting up in the messages to C9. I also consider the threats allegedly made to C9 and early date of 2020 of some of these messages render these messages dissimilar. The threats, if revealed to the Jurats, would cause undue prejudice to D. The interactions with C10 are also dissimilar as D appears to be following him and there is the additional and dissimilar factor of D sending the sex video and telling others that it is C10.

54. Apart from those examples, the modus operandi has probative value in my judgment beyond mere propensity. The evidence of the messages is admissible as similar fact evidence and to negate any allegation that there is a coincidence of two independent people saying there were such messages. They can also potentially negative any defence relied upon in relation to hacking. This seems to be less of an issue following the reports but there are remaining the issues that the Defendant says that there are no messages between him and C1 and that the messages with C14 have been tampered with. I find therefore that that evidence is potentially admissible in relation to all three of the gateways that Advocate Cobb had identified. The messages which D admits having sent are relevant to the issue of whether he did message C1 and C14 as alleged and denied. What the messages do not prove is that he went on to commit

the contact offences and that distinction will have to be carefully drawn to the attention of the Jurats. They are well able to understand such directions.

Cross-admissibility Evidence on counts 1 and 2 and 12 and 13

55. These are contact offences - I did say in my December judgment that my preliminary view is that they are cross-admissible and I remain of that view based on similar fact evidence and rebutting coincidence of more than one allegation. I could not see that there is any particular defence being negated. Advocate Green acknowledged the similarities in these allegations.
56. One specific issue I need to consider is collusion. I remind myself that collusion is more than complainants knowing each other. Given its ordinary meaning, collusion involves secret or illegal cooperation or conspiracy in order to deceive others. D's position is not entirely clear on this issue and Advocate Cobb would say that he conceded that there was a lack of evidence but I predict that it will be raised in one form or another so I must consider whether it has an impact on the issue of cross-admissibility. It is not said that the collusion evidence is so strong that there is a real possibility of collusion such that I should rule against cross-admissibility. Neither counsel seeks a *voir dire*. It appears to be accepted that the appropriate course is to postpone any final ruling until the end of the trial when the evidence has come out and can be evaluated and consideration given to appropriate directions to the Jurats.
57. Advocate Green also raised the issue of inconsistent accounts and submitted that this should point away from cross-admissibility. If evidence is to be cross-admissible the first task for the Jurats is to decide if they accept the evidence. If they do not accept evidence, then the process ends there and this would be part of any direction and can be re-visited. This can be re-visited at the end of the trial. The Jurats will hear all the evidence and will then be directed regarding the Indictment 1 offences and can be directed then as to how it is/not cross-admissible.

Stage 2 of the Test

58. Having concluded that the evidence as stated above is relevant and has probative force, it is time to turn to the second stage of the test in Dodd ... "*The second stage involves a discretionary exercise to determine whether the evidence should, in all the circumstances of the case, be admitted.*" At this stage the issue of prejudice is at the fore and I should exclude evidence, even though admissible, if its prejudicial effect outweighs its probative value. On a general note, I have given anxious consideration to the issue of prejudice and reminded myself repeatedly of the requirements of fairness and D's Article 6 rights.
59. I have taken on board Advocate Green's point that the fact that Indictment 1 has 3 Complainants already gives P the wherewithal to negate coincidence and that there is no need to admit similar fact evidence or cross-admissibility evidence.
60. I need to consider, and have considered, prejudice in terms of each category of evidence as well as the cumulative effect of its admission. The Jurats can, of course, be directed but this is not a panacea to the issue of prejudice. If the prejudice outweighs the probative value then the evidence should be excluded and directions will not achieve anything.
61. The overall effect of admission takes me back to my concern about the sheer number of allegations and this is particularly relevant when considering the prejudicial effect of allowing guilty pleas to the messaging offences on Indictment 2 to be admitted and this has caused me some concern. Whilst the messages are relevant as they show the *modus operandi* and go to the issue of whether the D did send similar messages to C1 and C14, I consider that their admission, at least in any number, has the potential to cause such prejudice to D that they should not all be included. I exclude 2/10 C7 and 2/16 C12 as there is no discussion about meeting up and so their relevance to contact offences is not sufficiently strong to overcome the prejudice of repeated reference to other criminal conduct. Also regarding 2/16 C12, there is again

reference to threats of violence and I am concerned that the prejudicial effect outweighs any probative value and this leaves 2/8 C5 and 2/9 C6 as admissible.

62. I have considered whether D's issues in understanding are relevant to my decisions on these applications and have concluded that they are not. Issues of admissibility of evidence are complex and will require simplification as with many defendants. There is no reason to exclude evidence on that basis.
63. I was struck by Advocate Green's submissions that granting the applications would run a coach and horses through my decision to sever the indictment and would lead to the very sort of unwieldy trial I was trying to avoid. I cannot agree that that is the case. My preliminary decision as to cross-admissibility was an integral part of that December decision. The trial landscape has changed immeasurably since I made that decision. I have though maintained and addressed my concern about overloading the trial with evidence from different complainants. Care will need to be taken in the opening speech of P and there will be a need to discuss directions before the trial.

Decision on the P Applications

64. The guilty pleas to the offences in Indictment 1 re C3 (counts 7, 9 and 11) are admissible in relation to counts 1, 2 and 12 and 13 all counts except count 3 on which I invite further submissions (see addendum to the Judgment below).
65. The guilty pleas to counts 8 and 9 of Indictment 2 are admissible in relation to counts 1, 2, 12 and 13 of Indictment 1.
66. The evidence on counts 1 and 2 and 12 and 13 is, in principle, cross-admissible but I postpone final determination until after the evidence of the Complainants.

The D Application

67. I turn now to the D Application to exclude the identification evidence in respect of C1 and C2 both of whom identified D as the person who had committed sexual offences against them at Promat identification procedures. The Application is made on the basis that the evidence should be excluded as it is unreliable and inadmissible on the basis that both Complainants had seen the D's image on social media, (and in C2's case, having seen him in person at a distance) prior to the Promat procedure. In both cases the Complainants have filed statements explaining how they came to see those images but copies of the images are not available. The application is opposed.

Applicable Legal Principles

68. The applicable legal principles are not in dispute. Application is made under section 78 of PPACE:

“(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.”

and it is common ground that I must be satisfied not only that the admission of the evidence would have an adverse effect on fairness of trial but that it would be so adverse that I should exclude it which is another way of stating that prejudice outweighs probative R v Walsh (1990) 91 Cr.App.R.161). The exercise for me is one of discretion.

69. There can be no doubt that identification evidence is probative. Reference was made to para 3F Code D of The Codes of Practice 2003 made under PPACE which sets out guidance in respect of identification procedures and states:

*“The admissibility and value of identification evidence obtained when carrying out the procedure under paragraph 3.2 **may** (my emphasis) be compromised if:*

- (a) before a person is identified, the witness’ attention is specifically drawn to that person; or*
- (b) the suspect’s identity becomes known before the procedure.”*

Advocate Green relies on that passage heavily.

70. Advocate Green has helpfully filed commentary from Professor Zander on PPACE on exclusion of such evidence where, as here, the argument is that there has been a breach of PPACE. In summary the Court generally will uphold the defence position under section 78 only when it is persuaded:

- a. that there was a breach of the rules or other impropriety;
- b. that it was significant and substantial;
- c. that it affects the proceedings unfairly from the defence standpoint and
- d. that the unfairness is so great as to require that the evidence be excluded.

71. Advocate Green also helpfully filed a number of English authorities on the exclusion of identification evidence in circumstances where there had been prior sighting of D on social media. In the case of R v Phillips & Phillips [2020] EWCA Crim 126, the obvious problem is identified that such prior sighting risks a Promat identification of the person seen on social media rather than the person who committed the offence. It is clear from the caselaw that such prior identification does not invalidate the Promat process. There is a recognised procedure for the police which involves taking statements from witnesses in which the prior sighting is explained in as much detail as possible and it is said in the cases of R v Alexander and McGill [2013] 1 CR App R 26 and R v LT [2019] 4 WLR 51 that it would be **prudent** (my emphasis) to obtain any image seen. That case law also demonstrates that even a breach of the codes does not lead to automatic exclusion. Cases are fact specific. It is said that the Judge must consider how the issue could be presented to the Jury and what directions might be given to enable the Jury to consider the circumstances of the identification and to determine whether the evidence is reliable or not. No local caselaw was filed. PPACE and the Codes are drawn from English PACE and the Codes so the English procedure and caselaw is highly persuasive.

Submissions on the D Application

72. The thrust of Advocate Green’s submission is that there has been a breach of the Code. Advocate Green’s case is that the statements taken were insufficient in terms of details of the previous sightings, especially timings, no copies of the images and he says that the evidence is unreliable and should be excluded. He acknowledges that the decision in Phillips where the evidence stayed in does not assist him but made the point that the cases are not binding. He sought to distinguish them and described the English Court’s approach as “*relatively liberal*”.
73. Advocate Cobb’s submission is that the threshold for exclusion under section 78 is a high one and is not met here. There is no breach of the Code. At most the Guidance highlights the possibility of compromise if there has been previous sighting. The Police followed a well-trodden path in identification procedures where they ask whether there has been any sighting on social media and then take a statement. Getting copies of the photographs could, in her submission, compromise the procedure further. Advocate Cobb’s case is that the statements are adequate. In C1’s case there is information as to the circumstances and timing of viewing of

social media image. Even a breach would not lead to exclusion automatically. The Court, in the case of R v Crampton [2020] EWCA Crim 1334, allowed in a Facebook identification in itself so the area is developing. Regarding C2, there is now acceptance that D was there so there is no substantial issue with the Promat but she wanted to retain it as evidence in case the defence position changes.

74. In relation to C1, Advocate Cobb submitted that the identification evidence can be fully explored at trial and the matter should be left to the Jurats with appropriate directions so they can evaluate it and attach what weight they consider appropriate to it. There is no adverse effect on the fairness of the proceedings. Even if the issue is considered more broadly in the context of the defences raised (including collusion) all matters can be properly addressed within the trial process.

Discussion re D Application

75. I have looked very carefully at what was submitted. I have kept in mind the terms of section 78, that I am the gate keeper of fairness and D's right to a fair trial.

76. Putting it simply, I accept all of Advocate Cobb's submissions and reject Advocate Green's submissions. The approach of the English Court to this common issue under our common framework is highly persuasive though, of course, each case turns on its facts. There is no identified breach and the issues regarding the Promat evidence, which really only concern C1, can be explored at trial and properly managed by the trial process. I make the observation that getting photographs before the Promat viewing might compromise it but consideration should be given to obtaining them afterwards.

Decision on the D Application

77. The D application to exclude Promat evidence of C1 and C2 is refused.

Catherine Maureen Fooks
Judge of the Royal Court
26.02.25

Addendum to Judgment

As can be seen from the above, I had not made any final decision in relation to P's Application to admit as evidence at trial the fact of D's guilty pleas to counts 7, 9 and 11 of Indictment 1 as evidence on count 3. I had wanted to hear further from Advocate Cobb following the clarification of D's position in relation to this count. I heard from her and Advocate Green yesterday. It is acknowledged by Advocate Cobb that count 3 (concerning C2) is different from the other contact offence counts both re C3 and those to be tried in respect of C1 and C14. The offence against C3 is opportunistic in nature. There was no messaging. Nonetheless Advocate Cobb applies to admit the evidence of the contact offences against C3 as evidence in relation to count 3 on the basis that it is similar fact evidence – she submitted that they are both contact sexual offences – and to rebut coincidence but not in relation to any specific defence. Advocate Green opposed this application pointing to the dissimilar nature of the offences and the defence which is, in terms, innocent touching of a person he thought was someone else. I agree with him about the dissimilarity. The offence in count 3 has none of the factors of the modus operandi which I set out above as establishing similar fact evidence. The fact that it is a sexual offence is not sufficient to make it admissible as similar fact evidence (see the English caselaw above). I am also not convinced that the case for admission to rebut coincidence is that strong in circumstances where there is admitted contact and the issue is the interpretation of what happened. In so saying, I am mindful that refusing the application will make the directions a bit more complex but even then the Jurats are well able to cope with such directions. The need for a direction here is that the evidence on counts 7, 9 and 11 is not admissible in respect of count 3 and the complexity of directions are not reasons to admit

evidence which is otherwise irrelevant. If there is an argument that the evidence could be relevant to coincidence viewed broadly, I exercise my discretion to exclude it on the grounds of undue prejudice to D.

Catherine Maureen Fooks
Judge of the Royal Court
27.02.25

Further addendum to Judgment

The trial of D is ongoing. We have heard all the evidence and are now focussing on the directions to be given to the Jurats. Advocate Cobb has asked that I make a final decision on cross-admissibility of the evidence between the counts concerning C1 and those concerning C14.

As my decision above was a preliminary one I have reminded myself of the applicable principles and am considering the matter afresh taking into account counsel's submissions above which they said were still pertinent and the oral submissions of counsel which I have heard this morning. In brief summary Advocate Cobb submitted that no evidence of collusion, including what I identified as the "background noise" of other allegations, had emerged which would meet the threshold for a viable argument or defence based on collusion. Advocate Green acknowledged that the position after the evidence was not much different from that prevailing when I made my decision. He urged me to conclude that the door was not closed to collusion in view of the background noise of other allegations, the Facebook posts and Police letter. He also re-iterated the differences between the counts concerning C1 and those concerning C14 including the difference in seriousness and type of offence, the lack of evidence of messaging C1, no reference to masturbation and the location of the alleged offences. He was concerned about the timing of any direction about cross-admissibility but I believe that his concerns were allayed by my indication that I would be warning the Jurats specifically in relation to C1 and C14 that they must first determine what evidence they accept before they could consider cross-admissibility and in making that determination they should take account of all the evidence of inconsistencies and challenges to credibility/reliability, including in the case of C1, the evidence of a specific D witness.

Having considered the matter afresh and applied the relevant principles with particular attention to any prejudice to the D and taking into account all the submissions made, I am satisfied that the evidence of C1 and C14 is cross-admissible as to similar fact and to rebut coincidence of two false allegations. I am satisfied that there is no evidence as to collusion which would preclude such a ruling. Advocate Green can invite the Jurats to consider the points which did arise and especially the background noise, Facebook and police letter and the Jurats are well-placed to assess such evidence and make a decision as to what they accept and then whether it assists on the other count.

I will send counsel a draft direction based on section 20C of the 2004 Bench book helpfully supplied by Advocate Cobb which I consider would be best delivered with the direction on the elements of the offences pre-closing but we can discuss further. Counsel were to revert on the issue of whether a direction similar to that in section 21 of that Bench Book is required.

Catherine Maureen Fooks
Judge of the Royal Court
13.03.25