Neutral Citation Number: [2022] EWCA Crim 1470

Case No: 202103951 B2 & 202200435 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM MANCHESTER MINSHULL STREET CROWN COURT
HER HONOUR JUDGE LANDALE
T20190791 & T20210703

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 November 2022

Before :

LADY JUSTICE CARR
MR JUSTICE CAVANAGH
and
HIS HONOUR JUDGE FLEWITT KC

- -

Between :

EMMANUEL RICHARDS **Appellant**

- and –

REX **Respondent**

- -
- -

Ms Clare Ashcroft (instructed by **Robert Lizar Solicitors**) for the **Appellant**
Mr Gareth Roberts for the **Respondent**

Hearing date: 2 November 2022

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Approved Judgment

This judgment was handed down at 10am on 8 November 2022 in Court 7 and released to the National Archives.

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Lady Justice Carr :

The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.

Introduction

1. We have before us an appeal against conviction and sentence by the appellant, who is now 43 years old. He was convicted on 17 November 2021 at Manchester Crown Court following trial before Her Honour Judge Landale ("the Judge") and a jury of three counts of rape contrary to s. 1(1) of the Sexual Offences Act 2003 (counts 1, 2 and 4), inflicting grievous bodily harm contrary to s. 20 of the Offences against the Person Act 1861 (count 5), assault occasioning actual bodily harm contrary to s. 47 of the Offences against the Person Act 1861 (count 6) and controlling or coercive behaviour in an intimate or family relationship, contrary to s. 76(1) and (11) of the Serious Crime Act 2015 (count 8).

2. The complainant on each count was the appellant's former partner, whom we shall call "C". The prosecution case was that the appellant, who was also known as "Tank", had engaged in controlling and coercive behaviour such as smashing up C's flat, making her hold drugs on his behalf, violence (threatened and actual), not allowing her to wear make-up, not allowing her to bathe or shower and preventing her from seeing her family. It also included not allowing her to have her own telephone or restricting the type of telephone that she had. Within the relationship he had assaulted her and raped her on several occasions.

3. On 13 January 2022, the Judge sentenced the appellant as follows: 5 years' imprisonment on count 1; 7 years' imprisonment on count 2; an extended sentence of 18 years' imprisonment on count 3, comprising a custodial term of 15 years and an extension period of 3 years; 3 years and 6 months' imprisonment on count 5; 2 years' imprisonment on each of counts 6 and 8. All sentences were ordered to run concurrently. Thus the overall sentence was one of 18 years' imprisonment, comprising a custodial term of 15 years and an extension period of 3 years.

4. A restraining order was imposed pursuant to s. 360 of the Sentencing Act 2020. Having been convicted of an offence listed in Schedule 3 of the Sexual Offences Act 2003, the appellant was required to comply with the provisions of Part 2 of the Act (Notification to the police) for indefinite period.

5. There are three grounds of appeal against conviction:

   i) The Judge was wrong to admit bad character evidence in the form of the appellant's past convictions for sexual offences dating back 24 years;

   ii) There was demonstrable non-disclosure on the part of the police/prosecution;

iii) There is fresh evidence, which we should admit under s. 23 of the Criminal Appeal Act 1968 ("s. 23"), which renders the convictions unsafe.

6. Alternatively, if his convictions are upheld, the appellant challenges his sentence on the basis that the Judge failed to have sufficient regard to the principle of totality, resulting in a sentence that was manifestly excessive. There is no challenge to the Judge's finding of dangerousness for the purpose of s. 280 of the Sentencing Act 2020.

The facts

7. The appellant, then aged 39, and C, then aged 19, met in February 2018. At some point they began a sexual relationship. In June 2019 C was admitted to hospital with a broken jaw. The appellant was arrested on 18 June 2019 and exercised his right to silence during interview. Initially, C did not support a prosecution. However, after disclosures relating to the appellant's past convictions for sexual offences had been made to her under "Clare's Law", C provided a written statement stating that the appellant had broken her jaw by punching her to the face in anger. In December 2019 C made further disclosures against the appellant, now of rapes. The appellant denied all allegations.

8. C gave evidence at trial through her ABE interview and in cross-examination. Her evidence was that she had started a relationship with the appellant after he had approached her on the street. Initially he told her he was 30 but she "googled" him and found his real age. She described the relationship from the start as "toxic" and that she was a bit scared but "he was lovely and seemed a nice guy". He stayed with her from time to time until there was an argument. He came and went when he pleased. He would make her feel that she had put him in a mood and she would say sorry and beg him to come back. In cross-examination she said that she had decided that she would give him the benefit of the doubt despite what she knew of him; she knew that he had been in prison and was living in a bail hostel having been released for drug offences. She could hold her own with other people, just not with him. She accepted that she had not told the police of the sexual offences until December 2019. She said that this was because she had not understood that you could be raped in a relationship. She agreed that she had been given information about the appellant's criminal history.

9. On count 1, C's evidence was that the appellant had demanded sex before he went out; she was on her period and she said that she didn't want to but *"he said, 'It doesn't fucking matter. We've done it before.' I said, 'I don't wanna,' but he wouldn't listen. He took my pants down. I didn't try to stop him, because I was scared. He is three times my size. I didn't want to confront him"*. On count 2, she was asleep when intercourse had begun, and she woke to find that the appellant had already penetrated her vagina with his penis. She tried to push him away and asked him to leave. On count 3, after having been thrown to the floor at the bottom of the stairs where she hit her head, sexual intercourse took place upstairs whilst she was crying.

10. On count 5, C said that after the incident in count 3, C's mother rang the appellant's phone which he threw at her. He accused her of cheating and he *"smacked me, punched me, broke my jaw in three places, chased me round the bedroom. Blood was everywhere. My face was a mess. He took me to hospital. We stood outside for half an hour, deciding what to say. We said he did a handstand and he booted me in the mouth. I had pins and it was wired shut. I found out I was pregnant, but lost the baby."* C's jaw required surgery which included the wiring up of her jaw.

11. As for count 6, the appellant said that she had been at the appellant's flat. He had dragged her out of the flat and left her by the front door where she had a fit. She had tried to ring her mother but he snatched the telephone, dragged her downstairs and strangled her. She told him she could not breathe and she had woken up with a black eye and went to hospital.

12. In relation to count 8, C said that:

> "One time, he chased me down the street with a brick and a bottle, asking for his drugs. He boiled the kettle and said if I wasn't quiet he'd pour it on me…He's smashed my flat up loads of times. He's threatened to kill me".

13. She said that he accused her of cheating on him and did not allow her to have a telephone:

> "I couldn't wear certain stuff or make-up. He isolated me from everyone… He'd chase me in the flat with a machete… He accused me of washing off his dirty smell and called me names like slag, slut. He wouldn't let me clean the house. He gave me chlamydia. He stuck a note on my door, saying I was a slag and I had a new boyfriend".

14. The prosecution called evidence from C's mother and sister. They said that C's behaviour changed, becoming more distanced, and she was always nervous. Her telephone number was always changing and the appellant smashed her flat up on more than one occasion and threatened her. C made them aware of injuries she had received.

15. The jury also heard evidence from a police officer to whom C had reported that the applicant had done "a handstand and he caught me with his foot. It was an accident." She wanted to be with the appellant and had been upset that the police had been called. There was evidence from a doctor to the effect the history given by C to the police did not meet the severity of the injury, being a displaced fracture to the jaw. The appellant's behaviour had been very aggressive.

16. The defence case was that the appellant's previous convictions had been committed when he was a teenager, the majority had not been assaults against women and/or a partner and that he was a different person now. It was only after C had been told of his past that she made the allegations. The appellant had consensual sexual intercourse with C. He had not had sexual intercourse when she had been on her period. C had broken her jaw whilst he was doing a handstand. He denied that he had strangled her or kicked her in the chest. He denied that he had sought to control her actions.

17. The appellant gave evidence that he had been 39 or 40 when he met the complainant whilst living in a bail hostel having been released from a prison sentence for drugs offences a few days earlier. He told her that he was 35/36 and was attracted to her but he was not looking to settle down, he just wanted a friend to "chill" with or a friend "with benefits" and had loads to do and people to see. The sexual relationship began after a week or so but he was unable to stay at her flat for more than a couple of weeks because of sex register conditions which he had not told her about as he had not been ready to commit but it all moved too fast. Both of them smoked cannabis and she owed

drug money to men who came to her door; he told them that he was her boyfriend to keep them away from her. He did not ask her to hold his cannabis. He denied that he had run at her with a brick and a bottle. When things got stupid he would just leave. He did not try to get into her flat by "booting the door" and had never threatened to pour boiling water over her. He did have an argument with her sister present but he left and did not threaten to kill her. He did not damage her property or see her mother. He had spoken to her about work but she wanted to stay and chill, smoke weed and have sex. He had not told her to wear no make-up. She had two telephones when they met; he did not tell her to get rid of it or give her a cheaper phone and he had not told her that she could only bathe when he was present. They had both accused the other of cheating. He said that *"[o]ne thing that was comfortable was actually the sex, the one thing we were good at"*. As to who initiated sex: *"Sometimes both of us, mostly I was on the Xbox until 4 a.m. and she would shout at me and ask, 'When are you coming to bed?' and then we'd have sex. I'd always ask, if it was me that initiated it. There wasn't any time she didn't want to. We didn't have sex every single day, but when we got on well we just smoked weed and had sex… She never said she didn't want sex. If she had, I would have stopped. She never appeared agitated when we were having sex. She never appeared on edge and she did not appear scared at all."*

18. The defence also relied on the evidence of a next door neighbour who said that he had overheard a woman screaming and shouting racial abuse late at night at the same time that he heard banging noises from the appellant's flat.

19. As set out above, the jury convicted the appellant on counts 1 to 3, 5, 6 and 8. They acquitted him on a multiple incident count of rape (count 4) and of assault relating to an incident when C said that he "booted" her in the chest (count 7).

The ruling on bad character

20. The appellant had 17 convictions for 32 offences spanning from 1993 to 2020. His relevant convictions included: 1993: robbery (youth); 1994: indecent assault of a female under 14 and assault occasioning actual bodily harm x 2 (youth); 1995: attempted rape (youth); 2001: robbery; 2010: failure to comply with notification requirements and possession of a handgun x 2; 2011: violent disorder; 2020: failure to comply with notification requirements.

21. There was an application by the prosecution to rely on some of these convictions as bad character evidence as follows:

    i) Convictions in 1994 and 1995 for sexual offences: indecent assault (digital penetration) on a 12 year old girl when the appellant was 14 years old and attempted rape of a female under the age of 16 years when the appellant was 15 years old ("the sexual convictions");

    ii) Offences of violence (non-domestic): assault occasioning actual bodily harm on the 12 year old girl the subject of the indecent assault (1994); another assault occasioning actual bodily harm (1994); common assault in 1996; robbery in 2001; violent disorder in 2011 ("the violence convictions").

22. The Judge addressed the application on the first day of trial, both parties having earlier submitted written arguments. The prosecution case was that the sexual convictions and

the violence convictions were relevant to an important matter in issue between the prosecution and defence, namely that he has a propensity for sexual violence and unlawful violence particularly towards women he knew or was in a relationship with. They meant that C was more likely to have told the truth. His previous behaviour had not been a one-off; they demonstrated that he had taken *"advantage of females by overpowering them and sexually assaulting them when he knows they are not consenting…that he is prepared to use or threaten violence to gain an advantage".*

23. Counsel for the defence objected on the basis of the age of the appellant at the time of the offending. He was aged only 14 and 16 at the time. Further, the offences of robbery and violent disorder had not been committed in the course of a relationship.

24. The Judge gave her reasons for admitting the bad character evidence as follows:

> "…I have considered the offences individually, as well as looking at the cumulative effect of the evidence in order to determine whether there is a pattern and whether the evidence is capable of demonstrating a propensity…
>
> The defence object to the admissibility of the sexual convictions on the basis of the age of the defendant and the time that has elapsed since then. They argue that would make it unjust to admit the evidence and point to the fact that he was 14 and 16 at the time and now is 42 years of age. So far as the violence offences, the robbery and the violent disorder, Miss Ashcroft observes that they were not offences in the course of a relationship.
>
> I have considered her arguments and reflected on the convictions and the details that have been provided. I am satisfied that the evidence of the convictions individually and together are capable of demonstrating the propensity the prosecution suggest. I have considered the gap in time. Because there were two incidents of sexual violence at a young age, I am satisfied that this behaviour was not a one-off, but was because of a propensity or is certainly capable of being judged as being so. If so, it is the type of propensity that endures and therefore, despite the gap between those convictions and these allegations, I am satisfied that the propensity is capable of being demonstrated."
>
> I have asked myself, "Does that propensity make it more likely that the defendant committed the offence charged?" and I answer that question positively. I carried out the same exercise so far as the violent offences were concerned. Whilst there are no particular features of similarity between the convictions and these offences, there are hallmarks of sexual violence in a relationship and of violence used towards others and, in addition, the robbery and violent disorder convictions demonstrate a willingness to use violence in a situation where the defendant seeks to gain an advantage. They are relevant to the allegations here. The jury will have to consider [C's] credibility and, when

> they do, they may be assisted by asking themselves, "Is it just a coincidence that she would make up false allegations against a man who has this propensity to be sexually violent and to use and threaten unlawful violence in situations to gain an advantage for himself?" or, on the other hand, "Is it that her allegations are true?"
>
> I am satisfied that it would not be unjust to admit them and that prejudice does not close the gateway. I take the view that the jury are well capable of taking a fair view of different incidents and will not be clouded by the previous convictions. Juries have routinely demonstrated an ability to follow directions and put aside emotion. It is important for them to know, in making a judgment on matters on the indictment, as to how [the appellant] has behaved in the past in considering his guilt in this case. It is not conclusive and there is no danger of them giving it more weight than it deserves…"

25. Thus, in summary, it would not be unjust to admit the bad character evidence and prejudice did not close the gateway. The two incidents of sexual assault were capable of demonstrating propensity. The violent offences demonstrated a willingness to use violence in a situation where the defendant seeks to gain an advantage. These matters would be relevant to the jury's consideration of C's credibility. The jury could be trusted to take a fair view overall.

26. Following the bad character ruling, the sexual and violence convictions were put before the jury as agreed facts, in the following terms:

> "He has the following criminal convictions • Indecent Assault on a Female under 14 (30/08/94) – the circumstances of the conviction are that the defendant then aged 14 years forced a 12 year old girl into an alleyway, knocked her to the ground, pulled down her knickers and digitally penetrated her. • ABH – resulting from the same incident • ABH (21/10/94) • Attempt Rape (29/11/95) – the circumstances of the conviction are that the defendant then aged 15 years knew the complainant who was under 16, went to her home, took her to a shed and attempted to rape her. • Common Assault (22/02/96) 6 • Robbery (12/12/01) • Violent Disorder (15/04/11) • Supply Class A drugs (05/06/15)."

(The evidence in relation to the appellant's previous drug offending came about as a result of the appellant asserting that C had used cocaine.)

27. The Judge then directed the jury in relation to the appellant's previous convictions as follows:

> "I now turn to a direction which I have called *Similar offences or pattern of conduct*. The prosecution say that the evidence from Mr. Richards's previous convictions show a pattern of conduct on his part, namely, taking advantage of females by

> overpowering them and sexually assaulting them when he knows they are not consenting. They also argue that his convictions show that he is prepared to use or threaten violence to gain an advantage. They say that his previous convictions show that his previous behaviour was not a one-off, but something that he has a tendency toward and from this the prosecution argue you can conclude that, if Mr. Richards wants to gain an advantage, he is prepared to use or threaten physical or sexual violence and that makes it more likely that [C] is telling the truth and that he has committed these offences against her. The defence counter that the sexual offences were committed whilst he was a teenager and he is a different person now. Mr. Richards points out that the majority of assaults are not offences against women nor were they committed against someone with whom he was having a relationship. The defence also make these points that it was only after [C] was told something about his previous convictions that she made her allegations and they ask you to consider whether she was influenced by that information into making false allegations against him, but of course you may hear further argument about this topic and of course other arguments when the barristers talk to you later on today. They may make further points: if they do, please take them into consideration. But to summarise, you may consider whether the evidence from the previous convictions shows that Mr. Richards had a tendency to use or threaten physical or sexual violence and, if he does, whether that makes it more likely that he has committed these offences against [C]. If you are not sure that his previous convictions show that he has that tendency, you must ignore them. Only if you are sure they do show a tendency, in the way that I have described, may they support the prosecution case. It is for you, the jury, to say whether they do and if so to what extent, but please remember the evidence of the convictions is a small part of the prosecution case and you must not convict Mr. Richards wholly or mainly because of them. The fact that someone has committed sexual or violent offences in the past does not prove that they did so on this occasion."

An overview of the parties' positions on the appeal against conviction

28. What follows here is an overview of the issues raised in order to set the scene. The parties' respective arguments are addressed in more detail later in this judgment when necessary.

29. Ms Ashcroft for the appellant submits first, that the Judge should not have admitted the extremely old sexual convictions ("Ground 1"). She accepts that the sexual convictions were capable of establishing continuing propensity and does not complain about the directions to the jury. However, she says that the Judge was wrong to admit the bad character evidence as a matter of discretion and that this had such an adverse effect on the fairness of the proceedings that it could not be cured by any jury directions. Whilst the appellant's credibility in relation to the assault charges may have been already

undermined, there were proper arguments with which to attack C's credibility in relation to the rape charges. There was delay in making the complaints of rape: such complaints were made after a great deal of earlier contact with the police and only after the disclosures under "Clare's Law".

30. Ms Ashcroft argues that the offending behind the sexual convictions took place far too long ago, when the appellant was in his mid-teens, to be fairly admitted. The features of the previous offending were not shared with the sexual offences charged in relation to C and ought not to have been sufficient to establish a continuing propensity. At one stage, the prosecution was also applying to rely upon a recent complaint of rape by a recent partner of the Appellant, but it withdrew this application. It is suggested that this material nevertheless may have influenced the Judge. All the convictions are thereby said to be rendered unsafe: a conclusion on the rape counts lent further support for C's credibility in relation to the offences of violence and controlling and coercive behaviour.

31. Secondly, it is said that there was demonstrable non-disclosure of material that casts doubt upon C's credibility ("Ground 2"). Information came to light after trial to the effect that C had received money via a Marcus Brogan ("Mr Brogan") to go to court against the appellant in revenge for a relationship that the appellant had begun with a Leanne Thompson (Aitcheson) ("Ms Thompson"). In the course of a separate enquiry, Ian Phillips ("Mr Phillips") had been interviewed by police and questioned in relation to messages with Ms Thompson and that *"he's give that girl £900 to stand and give evidence against him"*. Had the material been disclosed, then it is said that C could have been cross-examined on a sounder evidential basis. Alternatively, it could have led to further disclosure.

32. Thirdly, the appellant seeks leave to adduce fresh evidence of Robert Docherty ("Mr Docherty") that casts doubt upon C's credibility and her motivations for making the rape complaints against the appellant ("Ground 3").

33. Mr Roberts for the prosecution opposes the appeal. As for bad character, the Judge properly considered the application and gave a proper direction on propensity and the weight that should be attached to the bad character evidence. In circumstances where the issue on the rape charges was consent, it was right for the jury to be told of the sexual convictions, even if elderly.

34. It is not accepted that there has been non-disclosure. C was cross-examined about Mr Brogan and a visit to her by Mr Brogan and Mr Docherty. The evidence of Mr Phillips amounted to hearsay. The requirements of the Criminal Procedure and Investigations Act 1996 were complied with in respect of C's telephone.

35. As for Mr Docherty, he was known to the defence prior to trial and he had been reluctant prior to trial. This undermines the assertion that he would be a willing and important witness. There is no evidence that C considered or attempted to withdraw her complaint. She was cross-examined on her initial reluctance to make her complaint.

Ground 1: bad character evidence

36. The challenge on appeal is limited to a challenge to the Judge's decision to admit the sexual convictions under s. 101 of the Criminal Justice Act 2003 ("s. 101").

37. In this regard, the prosecution relied on the gateway in s. 101(1)(d). It was argued that the sexual convictions were relevant to an important matter in issue between the defendant and the prosecution, in that the sexual convictions demonstrated a propensity to commit sexual offences.

38. By s. 101(3) the court must not admit evidence under subsection (1)(d) if, on an application by the defendant to exclude it, it appears to the court that 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. The court may also exclude bad character evidence under s. 78 of the Police and Criminal Evidence Act 1984 ("s. 78").

39. Of particular relevance to the present case was s. 101(4) of the Criminal Justice Act 2003, which provides that:

> "On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged."

40. S. 108 of the Criminal Justice Act 2003 also provides that offences committed when a defendant was under 14 should not be admitted as bad character unless both of the offences are triable only on indictment and the court is satisfied that it is in the interests of justice to admit the evidence. This did not apply to the present case, as the earliest offence was committed when the appellant was 14, but it is an indication of Parliament's concern at reliance being placed on convictions when a defendant is very young.

41. The appellant was a boy when he committed the sexual offences; the age of the sexual convictions is a particular concern. In *R v Hanson* [2005] EWCA Crim 824; [2005] 2 Cr App R 21 ("*Hanson*") Rose LJ stated (at [11]):

> "In principle, if there is a substantial gap between the dates of commission of and conviction for the earlier offences, we would regard the date of commission as generally being of more significance than the date of conviction when assessing admissibility. Old convictions, with no special features shared with the offence charged, are likely seriously to affect the fairness of the proceedings adversely, unless, despite their age, it can properly be said that they show a continuing propensity."

42. However, this court should only interfere with the exercise by a judge of what was her broad discretionary power to admit evidence under s. 101(1)(d), and with the exercise of her discretion as to whether the admission of evidence would render the proceeding unfair by reference to s. 101(3) and s. 78, if the judge materially misdirected herself in law or acted in a manner that fell outwith the range of reasonable conclusions open to her. This is trite law, but it is worth repeating the comments of Rose LJ in *Hanson* at [15]:

> "If a judge has directed himself or herself correctly, this court will be very slow to interfere with a ruling either as to admissibility or as to the consequences of non-compliance with

> the regulations for the giving of notice of intention to rely on bad character evidence. It will not interfere unless the judge's judgment as to the capacity of prior events to establish propensity is plainly wrong, or discretion has been exercised unreasonably in the *Wednesbury* sense: *Associated Provincial Picture Houses v Wednesbury Corpn* [1948] 1 KB 223…"

43. The position was summarised neatly in *R v Gillings* [2019] EWCA Crim 1834 at [32]. In summary,:

    i) The age of convictions is not in itself a bar to their admissibility, but it is a factor which needs to be carefully considered, particularly in the case of very old convictions;

    ii) The age of the convictions is relevant for two purposes: the first is a question of law, namely whether convictions many years beforehand are capable of constituting evidence of propensity. If they are, the question is whether they do in fact demonstrate such a propensity, and if so, the extent to which that assists in determining guilt is a matter for the jury. The second is whether, the admission of old convictions is likely to cause greater prejudice to a defendant than is justified by the probative value of that evidence;

    iii) The answer to both questions is likely to depend on the particular facts of each case and the issues which the jury have to determine. If there is no relevant similarity, the mere fact of old convictions may be incapable of constituting evidence of propensity, and even if capable of doing so, any probative effective is likely to be outweighed. But if there are relevant similarities, it may be open to the judge to conclude that the convictions are capable of constituting evidence of propensity and that they ought to be admitted;

    iv) If it is open to the judge, as a matter of law, to conclude that the convictions are capable of constituting evidence of propensity and if he exercises his discretion taking due account of the age of the convictions, the Court of Appeal is unlikely to interfere. It will only do so if the exercise of discretion by the judge is outside the broad range open to him.

44. The exercise in each case will be acutely fact-sensitive. Other judges on the present facts may well have refused to admit the sexual convictions into evidence. But that is not the test. The question is whether there is a proper basis on which we should interfere with the Judge's decision to admit them, a decision reached after careful consideration by the Judge and with full reasons. For the avoidance of doubt, there is no substance in the suggestion that the Judge was swayed by the abandoned bad character application in relation to an alleged recent rape of another girlfriend, and Ms Ashcroft rightly did not press the point.

45. It is accepted that the Judge did not misdirect herself on the law. Further, as set out above, Ms Ashcroft accepted that it was open to the Judge to conclude that, as a matter of law, the sexual convictions were capable of establishing a continuing propensity for sexual offences. The challenge is to the exercise of her discretion. The Judge considered the issue of the antiquity of the offences and the "gap in time". We do not consider that her decision to admit the sexual convictions, despite the age of the

appellant at the time of committing the sexual offences and the passage of time, was *Wednesbury* unreasonable. The Judge acknowledged in terms the absence of any particular features of similarity, but considered that there were hallmarks of sexual violence in a relationship. The Judge also expressly considered the question of fairness, and her conclusion that admission of the sexual convictions would not render the trial unfair was within the range of assessments reasonably open to her. Indeed, the correctness of her assessment in this regard appears to have been borne out by the jury's acquittal of the appellant on count 4, the multiple incident count of rape.

46. The sexual convictions also went to a central argument mounted by the defence, namely that C had only alleged that the appellant had raped her after the disclosure to her of his past sexual offending history. Had the sexual convictions not been admitted, that line of argument would not have been open to the appellant. Alternatively, the appellant could have chosen to run that argument, but that would have necessitated disclosure of the sexual convictions to the jury. This was why the Judge had to rule on the admissibility of the sexual convictions at the outset of the trial.

47. Further, this was not a case in which bad character evidence was adduced to support a prosecution case that was particularly weak: there was strong evidence against the appellant, in the form of C's evidence, some corroboration from her mother and sister, and medical evidence of her injuries. The appellant's explanation for breaking her jaw - he tried to do a handstand and it went wrong - was (at best) far-fetched. There was also no risk of satellite litigation.

48. Having decided to admit the bad character evidence, the Judge gave conspicuously fair directions to the jury. She reminded the jury in terms of the appellant's case that the sexual offences were committed whilst he was a teenager and he was a different person now. They were told that it was for them to decide if the convictions demonstrated a propensity. If not, they were to ignore them. If so, then the bad character evidence was still only "a small part" of the prosecution case and the jury could not convict wholly or mainly because of it.

49. It is also relevant that there is no complaint about the admission of the violence convictions. This also illuminates the question of fairness, and the safety of the convictions, in context: the sexual convictions were not the sole source of bad character evidence against the appellant. The jury were always to going to learn of the violence convictions (and in due course also the appellant's conviction for drug offending). The violence convictions went directly to C's credibility. Thus, even if it was wrong to admit the sexual convictions into evidence, the error would not have rendered the appellant's convictions unsafe.

50. For these reasons, we do not consider that Ground 1 is made out.

Ground 2: alleged non-disclosure

51. Grounds 2 and 3 relate to the point that the appellant now seeks to advance, namely that C made false allegations against him because she was bribed to do so by Mr Brogan, who was the ex-boyfriend of the appellant's new girlfriend, and who had a grudge against the appellant as a result. The appellant seeks to assert that C was paid £900 by Mr Brogan and that the money was paid to her by a man called Mr Docherty on Mr Brogan's behalf.

52. At trial, the defence did not advance any allegation of bribery. Rather, the appellant contended that C had only made the allegations of rape i) several months after she had made the allegations of assault after her relationship with the appellant had come to an end, and ii) after she was told of the appellant's previous convictions of a sexual nature (under "Clare's Law"). C explained that the delay in making the rape allegations arose out of the fact that it was not until December 2019 that she appreciated that it was possible to be raped within a relationship. The appellant had also provided alternative explanations for C's injuries and denied that he had assaulted or raped her.

53. As foreshadowed above, on Ground 2, the appellant says that that there was material known to the police which could have supported an allegation of bribery but which was not disclosed by the prosecution. The material was a statement by Mr Phillips, who was interviewed on 11 May 2020 in relation to an unrelated matter, and telephone messages downloaded from Mr Phillips's mobile telephone which referred to Mr Brogan giving a girl £900 to stand trial against Tank. The matter for which Mr Phillips had been arrested was harassment and for breaching a restraining order which prevented him from having any contact with Mr Brogan and Mr Brogan's then girlfriend (later the appellant's girlfriend), Ms Thompson.

54. One of the alleged incidents was a text message from Mr Phillips to Ms Thompson on 28 and 29 January 2020 in which he said "he's give that girl £900 to stand and give evidence against him". The message was downloaded by the police in the course of the investigation against Mr Phillips. During his interview, Mr Phillips said that Mr Brogan was "a grass – he's dobbed you into the DVLA and given a girl money to give evidence against Tank for rape over Christmas last year". As set out above, "Tank" was the name by which the appellant was commonly known.

55. Ms Ashcroft submits that, by virtue of the lengthy history of proceedings and the officer in the case actioning specific disclosure requests which named both Ms Thompson and Mr Brogan, the prosecution was on notice that material pertaining to each of these individuals was of possible assistance to the appellant. The appellant was named in the interview with Mr Phillips, in addition to the suggestion that Mr Brogan had sought to make a payment to a female to give evidence against the appellant regarding rape. It is reasonable to assume that such information was investigated and not disclosed.

56. Ms Ashcroft submits that, had the defence been in possession of this material, it would have been able to cross-examine C on the point and that her credibility as a witness may potentially have been undermined. C was not cross-examined on the basis that she had been bribed by Mr Brogan to make the allegation.

57. Mr Roberts contends that there are two cumulative answers to Ground 2.

58. The first is that this material was not gathered as part of the investigation into the offences said to have been committed by the appellant. It was obtained in an unrelated investigation, in which there was no reference to C by name, or to the allegations made by her against the appellant. It is said to be unreasonable for the police during every investigation to consider other investigations into known associates of a defendant, which is the only way in which the police investigating the case against the appellant would have obtained this material.

59. Secondly, and in any event, it is said that none of this renders the convictions unsafe. C gave evidence in cross-examination about her contact with Mr Brogan. Her evidence was that she was visited by two men in early December 2019 after she had first made the allegations of violence (in June 2019) but before she made the allegations of rape. She had thought that they had come to speak to her about personal training, but then she suspected that they had been sent by the appellant to dissuade her from proceeding with the assault case against him. In cross-examination, she said that she believed that one of these men was, or was connected with, Mr Brogan. Thus, her evidence was not that Mr Brogan offered her money to proceed with the allegations against the appellant, but rather that he visited her with another man, acting on the appellant's behalf, to try to dissuade her from making an allegation against the appellant. It is said that, even in the face of hearsay evidence from Mr Phillips, either as a tool for cross-examination or as part of a formal admission, C's evidence would have remained unchanged.

60. Further, it is clear that the appellant was suspicious about Mr Brogan from an early stage. The appellant was tipped off that Mr Brogan (or a representative) had visited C and paid her money to make allegations of rape against him. The person who gave this information to the appellant did not want to give evidence. Others could only give hearsay evidence. However, a woman called Clare Haxton gave defence solicitors a statement and screen shots of her telephone to support the allegation that Mr Brogan asked her for information about C and indicated that he intended to offer her money to make allegations against the appellant. The appellant's first defence case statement dated 24 February 2020 (denying the s. 20 offence of violence) asked for a "full download of C's telephone" with particular attention being drawn to all communications between C and Mr Brogan, Ms Thompson, Mr Docherty and the appellant. That request was repeated in a second defence case statement (denying the rapes). It was no part of that defence case statement that C had been paid money to make false allegations.

61. On 21 July 2021, the officer in the case, DS Hussain, informed the defence that he had reviewed the downloads and prepared an exhibit which detailed some of the contents. These included messages from Mr Docherty to C on 20 December 2019, saying "I'm going to bring some money to ya", "I'm gonna post it in your flat ok" and "I want you to have the doe up to you what you do I'm helping ya". The record of the downloads did not refer to any communication between C and Mr Brogan.

62. We are not persuaded that there is a valid basis for criticism of the prosecution disclosure. There was compliance with prosecutorial disclosure obligations under s. 3 and a full response to the appellant's application under s. 8 of the Criminal Procedure and Investigations Act 1996. In particular:

    i) C's telephone was exhibited and a download prepared;

    ii) The download was trawled using relevant search terms triggered by the defence case statement, including by reference to Mr Brogan, Mr Docherty and Ms Thompson;

    iii) In the response to the s. 8 application, the contents of the downloads of C's telephone were summarised to the defence, including a Facebook Messenger conversation between C and Mr Docherty on 20 and 21 December 2019:

> "There's a mention of sending something out to her by post and Robert attending court to give evidence for her".

63. What was a lengthy police interview with Mr Phillips was not connected in any way with the offences for which the appellant was charged, and there is no suggestion that the interviewing officers were involved in the case against the appellant. The appellant never mentioned Mr Phillips in any of his defence case statements or requests for disclosure. Neither in the text message nor in Mr Phillips' interview was C ever named.

64. In any event, even if it is arguable that the police should have made the connection with the text message and comments of Mr Phillips, the convictions are not rendered unsafe:

    i) The defence was aware of the allegation that payment had been made to C but chose not to cross-examine her about it;

    ii) Mr Phillips's comments were hearsay, and were allegations made against Mr Brogan, whom he had been accused of harassing;

    iii) C was asked if she had ever spoken to a man called Mr Brogan and she said that he was one of the men who came to visit her in December 2019. She said, "He came with Robbie, because he wanted to tell me what Tank was planning. He wanted to get me done in and to stop me going to court." She denied that she had told Mr Brogan that she was going to make a complaint of rape; and

    iv) C was cross-examined at length and the jury was well-placed to assess her credibility.

65. Ms Ashcroft rightly accepted that the statements by Mr Phillips could not have been deployed directly in evidence. At most, they could have led to further enquiries. But there is no evidence as to i) what enquiries would have been made or ii) what those enquiries would (or even might) have revealed.

Ground 3: fresh evidence

66. By s. 23(1) we can admit evidence which was not produced below if we think it necessary or expedient in the interests of justice to do so. In considering that question, we must have regard in particular to:

    i) Whether the evidence appears to us to be capable of belief;

    ii) Whether it appears to us that the evidence may afford any ground for allowing an appeal;

    iii) Whether the evidence would have been admissible in the proceedings below;

    iv) Whether there is a reasonable explanation for the failure to adduce the evidence below.

    (See s. 23(2)).

67. The four elements identified in s. 23(2) are all separate. But each needs to be considered as part of a multi-factorial evaluation as to whether or not the fresh evidence should be received.

68. The fresh evidence here is the statement of Mr Docherty. In his written statement he stated that in around December 2019 he was asked by Mr Brogan to drop some money off to C on 19 December 2019, because Mr Brogan did not have a car. He says that, when the arrangements for delivery were being made, he overheard a telephone call between C and Mr Brogan. He heard Mr Brogan say that he was paying her to go to court and to move out of the house. He was at Mr Brogan's end of the call at the home address of one of Mr Brogan's friends. He could hear that C's mother was with C, because she was saying that they needed the money to go to court. They were pushing Mr Brogan for the money. Mr Brogan was clear he was paying C to go to court. Before he left to deliver the money he asked Mr Brogan what the problem was. Mr Brogan just said "he was in a mood with his ex and wanted revenge".

69. He was given an envelope with £800 written on the outside. He drove to the address in Royton for which C had given directions during the telephone call. He "buzzed a couple of flats" to get into the front door and then went up to the flat (5). No one answered so he posted the envelope through the flat door. He said that after he did so, he received two messages via Facebook from C, one saying that she had not received the money and another saying that the money was not enough. He also received a call from C's mother, asking him to come and meet her to give her the money from Mr Brogan. He told C's mother that he had dropped the money off.

70. Two days later he was arrested on an outstanding warrant for a different matter. He went to prison and did not come out until February 2021. He had been on the run at the time when he was doing this. He said that he had given his solicitors the telephone that he used, but at the moment it cannot be accessed. He is aware that he may be prosecuted for perverting the course of justice.

71. The factors that are in issue in the present case are (a) and (d). We are prepared to accept for present purposes that Mr Docherty's evidence, if credible, might potentially (though not definitely) afford a ground for allowing the appeal. It is fair to point out, however, its potential force is diminished substantially by the fact that C had made a statement to the police alleging that the appellant had raped her on 9th December 2019, over a week before 19th December 2019, the day when Mr Docherty said he delivered the money to C's flat. It is common ground that Mr Docherty's evidence would have been admissible at trial – being direct evidence of a motive for lying on the part of C.

72. We consider first whether there is a reasonable explanation for the failure to adduce evidence from Mr Docherty at trial.

73. It is for an appellant seeking to adduce fresh evidence to satisfy the court that, with reasonable diligence, the evidence could not have been obtained for the trial (*R v Beresford* [1971] 56 Cr App 143: *R v Nabarro* [1972] Crim LR 497). The appellant relies in this regard on the evidence of his solicitor, Ms Hall.

74. Ms Hall states that she was first told on 25 November 2021 by the appellant that Mr Docherty had come forward as a willing witness. This was, of course, just over a week after the appellant's convictions.

75. Ms Hall states that Mr Docherty had been "incidentally mentioned" previously, but "we had been unable to obtain a statement from him." The name "Rob Docherty" had come up in the context of the concern that C had been paid to give false evidence. She goes on to state that, prior to 25 November 2021, she had not had contact details for "Rob" "or been in a position to contact him".

76. We do not consider that any reasonable explanation for the failure to call Mr Docherty at trial whatsoever has been advanced. The defence was aware at an early stage of the existence of Mr Docherty and the possibility that he could give relevant evidence. So much is admitted. This is why the first defence case statement sought disclosure of any record on C's telephone of contact with, amongst others, Mr Docherty, a request which was pursued in correspondence (see for example a letter from the appellant's solicitors to the prosecution dated 24 April 2020) and in the second defence case statement.

77. Whatever Ms Hall's position in terms of knowledge of Mr Docherty's whereabouts and/or contact details, there is no explanation as to why the appellant was able to identify Mr Docherty to Ms Hall as a willing witness almost immediately after his convictions, but apparently unable (or unwilling) to do so before trial. There is no evidence as to what, if any, attempts before trial were made to contact Mr Docherty, even though he was known to be a potentially relevant witness, and with what result. Mr Docherty's position before us was that he was willing and able at all times following his release from prison in February 2021 to give evidence. Ms Thompson at least appears to have had his telephone number in mid-2021, and there appears to have been some chain of communication between Mr Docherty and the appellant, as evidenced by the call by the appellant to Ms Hall on 25 November 2021.

78. The absence of a reasonable explanation does not mean that the application must necessarily be rejected, although in the present case it is a very powerful factor. We consider also the credibility of the evidence. We ask ourselves whether the evidence, if given at trial, might reasonably have affected the decision of the trial jury to convict (see *R v Pendleton (Donald)* [2001] UKHL 66 at [19]).

79. To this end, we heard oral evidence from Mr Docherty *de bene esse*. He confirmed that he had a number of criminal convictions. Most recently, in December 2019, for an offence of burglary, committed in 2015, he received a sentence of 3 years' imprisonment from which he was released in February 2021.

80. He said that he had never seen or met the appellant but that he had heard his name mentioned by his friends, Mr Brogan and Marcus Brogan's ex-wife, Leanne Aitcheson (aka Thompson). In particular, after Mr Brogan and Ms Thompson separated, he was told that Ms Thompson had formed a new relationship with the appellant. In addition, he and the appellant had, at one time, been in the same prison, namely HMP Forest Bank.

81. Mr Docherty said that he recognised C's name. That was because, on 19 December 2019, he dropped off some money at her home address. He remembered the date because it was two days before he was arrested on warrant for the offence of burglary. He said that, at 7.30pm that evening, he received a phone call from Mr Brogan, asking him to drop off some money for him. When he drove to Failsworth, as requested by Mr Brogan, he saw Mr Brogan walking towards his car, on his telephone. Mr Brogan had the telephone on loudspeaker and was talking to C. Mr Brogan walked round and

opened the car door to sit in the front passenger seat. Mr Docherty was sitting in the driver's seat in his car, which was stationary. Mr Brogan passed the telephone to him so that C could give him the address in Royton where he was to drop off the money. He confirmed that C did not tell him her name but that he heard Mr Brogan speaking to someone by her name. He said that he heard another woman in the background who he believed to be C's mother. During the conversation, Mr Brogan handed him an envelope. It was sealed and had the number "800" written on it. He knew that the envelope contained money and he heard the other woman saying, "don't worry, I'll make sure she goes to court and the money is used for moving house".

82. Mr Docherty said that he drove to the address in Royton and buzzed the number of the flat that he had been given. When there was no answer, he buzzed a number of other flats until someone admitted him through the communal entrance. He went up to the top floor where he posted the envelope through the letterbox and then left. About half an hour later, he received a text on Facebook Messenger from C saying, "You haven't dropped the money off". He responded by Facebook Messenger to say that he had dropped off the money. He then got another text from C, saying, "there wasn't enough money there". He responded by saying, "you'll have to take it up with Marcus". Later, he received a telephone call on Facebook Messenger from C's mother asking him to "bring me the money". He responded by simply putting the telephone down. That was the last that he heard of the matter because two days later he was arrested on warrant and remained in custody until February 2021.

83. In June, July or August 2021, he received a phone call from Ms Thompson asking, "Did you go and pay some money from Marcus?". When he said that he had done so, he was asked to arrange for his solicitor to contact the appellant's solicitor so that he could make a statement about what had happened. He contacted his solicitor and then waited to be contacted by the appellant's solicitor. On 21 December 2021, he made a witness statement setting out the detail of his dealings with Mr Brogan, C and her mother.

84. The general background in terms of Mr Docherty's credibility is not a promising one. Mr Docherty is a convicted criminal, including for offences of dishonesty, although he was at pains to emphasise that he is now a reformed character, telling only the truth and not wanting to get himself or his family into any trouble. He was also, on his own account, using drugs at the time of the events in December 2019 about which he wished to give evidence. (Mr Docherty said in cross-examination that Mr Brogan had paid him £40 to deliver the envelope to C (to fund his class A drug habit). That is not something that he mentioned either in his witness statement or in his evidence-in-chief.) Further, the timing of his arrival on the scene as a witness, only days after the appellant's convictions, itself raises questions as to its credibility. There are other suspicious features, such as the fact that Mr Docherty says that he can no longer remember the telephone number (or username) for the telephone that he was using in December 2019.

85. There are multiple specific aspects of Mr Docherty's evidence which cause us concern. First, and perhaps most materially, Mr Docherty vigorously denied in his oral evidence that he had ever spoken to or even seen the appellant, only ever having heard his name mentioned. However, in his witness statement he had said that "Emmanuel Richards is someone I have known of for a long time … I would not describe him as being somebody who is a close friend … I have got to know Emmanuel again through Leanne and the relationship that she has had with him". Mr Docherty's attempts to distance himself from the appellant were both suspicious and uncompelling. In a similar vein,

Mr Docherty said that he had not seen Mr Brogan since being released from prison. Mr Docherty had said that Mr Brogan was someone he used to see two or three times a week. He was unable to give a reason for the sudden loss of contact.

86. Secondly, Mr Docherty told us that he had arrived and sat in his parked car when he saw Mr Brogan to collect the envelope of money in Failsworth. Mr Brogan had come out to him with his telephone. However, in his witness statement he stated that he had been "at the home address" of one of Mr Brogan's friends, and "left the house". Thus his evidence surrounding the crucial hand-over of money and the overheard telephone conversation involving C and her mother was inconsistent and unreliable.

87. Thirdly, Mr Docherty told us that, when he was later called by C's mother, he put the telephone down on her immediately. However, in his witness statement, he stated that he had then gone on to have a conversation with both C's mother and C. C had said "she did not want to go to court but her Mum was pressurising her".

88. Further, the police downloads of C's telephone, as disclosed to the defence, show that C and Mr Docherty exchanged a number of Facebook messages on 20 and 21 December 2019. These messages are not consistent in number, timing or content with Mr Docherty's evidence as regards his communications with C. None of these messages said anything about a payment being made to C in return for her going to court against the appellant.

89. We have considered, with care, the differences in the accounts given by Mr Docherty. We are troubled by those inconsistencies because they go to the heart of his relationship with the appellant and his dealings with both Mr Brogan and C. As set out above, we are also troubled by the fact that, notwithstanding the fact that Mr Docherty was contacted by Ms Thompson in June, July or August 2021, the appellant did not apparently bring the matter to the attention of his solicitors until after his convictions.

90. In the circumstances described above, we find ourselves unable to conclude that the evidence of Mr Docherty is capable of belief.

91. In conclusion, there is no reasonable explanation for the failure to call Mr Docherty at trial; his evidence, if credible, might (just) have afforded a ground of appeal, but we do not consider his evidence to be reliable. For these reasons, it is not in the interests of justice to admit the fresh evidence from Mr Docherty and we decline to do so. Ground 3 falls away.

92. In circumstances where we find that the appellant's convictions are not unsafe, it is necessary for us to address his appeal against sentence.

Appeal against sentence

93. The Judge had before her victim impact statements from C, her mother and sister and a pre-sentence report.

94. C spoke of the constant fear that she had experienced in the years running up to trial, accompanied by flashbacks and nightmares. She is left with facial disfigurement which she finds very noticeable and reduces her confidence. She becomes scared and intimidated around men, especially strangers. She still does not feel safe in public. She

describes herself as being "really scarred for life". Her mother describes C as going from a bubbly, happy teenager to a nervous wreck who had lost all of her confidence. Her sister said that the entire family had suffered with anxiety and fear.

95. The author of the pre-sentence report recorded the appellant's lack of co-operation. He presented as uninterested, at times aggressive and in low mood. He blamed C and the police for conspiring against him. He said that he could not explain something which he had not done. He was assessed as posing a high risk of serious harm to the general public, and to C.

96. When sentencing the appellant, the Judge commented that the offences were committed against C who was half his age. She went on:

> "You targeted her for a casual sexual relationship in which you exploited and manipulated her. You used appalling violence and intimidation to coerce her. You raped her on three occasions, one of which was when she was already particularly vulnerable and injured after an assault upon her when you threw her down the stairs to the floor and one was when she was especially vulnerable because she was asleep. The assault occasioning actual bodily harm is very serious because you strangled her until she lost consciousness. That must have involved the application of very significant pressure for a frightening amount of time. The grievous bodily harm is also very serious. You are a very powerful man and you used significant force to smash her jaw, resulting in serious injuries for her, requiring an operation and leaving her with a disfigurement and after that you attempted to cover it up over a significant period of time".

97. Having regard to the relevant Sentencing Council Guidelines, the Judge placed the offending in counts 1 and 2 within category 3B. Count 2 was at the top of that category as C had suffered "severe psychological harm". Because the rape followed and was connected to violence, the offending in count 3 was placed within category 2B and would, on its own, have attracted 9 years' imprisonment. Count 5 was placed within category 2A. On Count 8, C had been vulnerable and there had been psychological impact caused by the controlling behaviour. The offences had been aggravated by the previous convictions and the rapes and assaults were in the context of a "coercive and domestic relationship".

98. In mitigation the Judge acknowledged that the appellant had had a *"difficult upbringing and [was] an immature man with no proper role models".* But that was "a role in which [he] had flourished and refused to change, despite interventions".

99. With regard to the principle of totality, count 3 would be the lead offence. The Judge found the appellant to be dangerous; he had a long history of previous offending including violence and sexual violence. Significant psychological and physical harm had been done to C and he had no empathy, regret or insight into what he had done to her. He had failed to engage in rehabilitation and failed to comply with measures designed to protect the public, including notification requirements and licence conditions. He had done so to prevent monitoring. He had deliberately tried to keep his

relationship with C secret from probation services. The risk was unlikely to reduce unless he changed his lifestyle which he appeared to be unable or unwilling to do.

Ground of appeal

100. Ms Ashcroft submits that the determinate sentences on all but count 3 were not manifestly excessive. On count 3, it is accepted that there had to be an inevitable upward adjustment from the notional term of 9 years' imprisonment in order to reflect the previous incidents of rape; a broken jaw and a controlling and coercive relationship. Further, the offences were aggravated by the appellant's previous convictions. However, the Judge gave insufficient regard to totality was further compounded by the finding of dangerousness and the requirement to serve at least two thirds of his sentence.

Discussion

101. We can take this part of the appeal shortly. The Judge was well-placed to sentence the appellant following trial, and considered all of the relevant material before her carefully.

102. As set out above, there is no challenge to the sentences for the individual offences or to the finding of dangerousness. The simple point is that the upward adjustment on count 3 is too great, leading to a disproportionate and manifestly excessive sentence.

103. A sentence of 9 years' imprisonment, at the top of the range for category 2B offending, on count 3 could be justified, taking into account the appellant's previous convictions and the domestic context of the offence, but putting to one side the other offences. Those other offences then needed to be reflected in an appropriate upward adjustment. An uplift of 6 years' imprisonment to reflect the two other rapes, the assault which broke C's jaw in several places, leaving her with a permanent disfigurement, the assault in which C was strangled to the point of unconsciousness and coercive and controlling abuse is also not manifestly excessive. However the overall sentence was structured, a custodial term of 15 years (plus an extension period of 3 years) was justified.

104. The Judge paid express regard to the principle of totality. The overall sentence of 15 years' imprisonment was not disproportionate to the appellant's overall criminality. The appellant had committed an appalling catalogue of violent and sexual offences on a much younger woman in a domestic context causing long-term and serious harm.

Conclusion

105. For these reasons, we dismiss both the appeal against conviction and the appeal against sentence.