

**WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.**

**This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.**

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202103545/B1



NCN: [2022] EWCA Crim 1584

Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 1 November 2022

Before:

LADY JUSTICE WHIPPLE DBE  
MRS JUSTICE McGOWAN DBE  
THE RECORDER OF SOUTHWARK  
HER HONOUR JUDGE KARU  
(Sitting as a Judge of the CACD)

REX

V

NIGEL PIPE (DECEASED)

---

Computer Aided Transcript of Epiq Europe Ltd,  
Lower Ground, 18-22 Furnival Street, London EC4A 1JS  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

---

MR M BARLOW appeared on behalf of the Applicant

---

**J U D G M E N T**

LADY JUSTICE WHIPPLE:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence.

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 a victim of that offence.

Background

2. On 12 October 2021 Nigel Pipe was convicted unanimously of six counts of inciting a child under 14 to commit an act of gross indecency, three counts of indecency with a child, 14 counts of indecent assault and four counts of buggery following a trial at Nottingham Crown Court before Her Honour Judge Warburton. The offences were historic, being charged under the Indecency with Children Act 1960 or the Sexual Offences Act 1956.
3. On 14 October 2021, Nigel Pipe was sentenced to a special custodial sentence of 28 years. He died on 5 January 2022. Leave has been granted to his widow, Margaret Jean Pipe to continue with this application in accordance with section 44A of the Criminal Appeals Act 1968. Mrs Pipe renews the application for leave to appeal against conviction and seeks a representation order after the single judge refused both applications.
4. The facts in brief summary are this. At different times in the 1960s Nigel Pipe worked at a Nottinghamshire children's home called Skegby Hall ("the school"). He was a relief

housemaster. The school was an approved school for boys who were vulnerable and from different backgrounds. Nigel Pipe began work as the relief housemaster at the school in February 1965. His wife joined the staff as a Housemother. They occupied a staff flat within the old building of the school where junior school residents were also accommodated. The period in question ran from his arrival in February 1965 to the date when he left the school on 31 March 1969. There was an absence of around a year between those dates.

5. It was the prosecution's case that Nigel Pipe abused his position of trust and repeatedly sexually abused a number of the young boys under his care and control. The indictment itself was drafted to cover five complainants to whom we shall refer as C1 to C5.

#### Previous Investigations

6. Nigel Pipe had been the subject of a number of investigations over a number of years and that past history is of some importance. In 1966 he first faced allegations of sexual misconduct by residents at the school. A police investigation commenced. These were contemporaneous complaints, the headmaster having notified the police of these complaints. The police did not bring charges at that time; indeed they did not think it necessary to interview Nigel Pipe as part of their investigation.
7. In 2002 there was a second investigation following comments posted on the school chat room that was set up by nowhere.com by an individual who was thought to be a man to whom we shall refer as MT. A strategy meeting concluded that it was not possible to obtain any additional details and the police took the decision at that stage not to pursue

further inquiries.

8. In February 2004, MT visited West Bridgford Police Station and repeated his allegations against Nigel Pipe and that led to a further investigation called Operation Aircrew. In March 2005 Nigel Pipe was arrested and in January 2006 he was interviewed in relation to allegations made by MT and others, including three other complainants who were former borders at the school who had been interviewed in the course of the first investigation in 1966 which had terminated without charges. Statements were also taken from other former residents. The third investigation then commenced in 2004. It was called Operation Aircrew and it led to proceedings being brought against Nigel Pipe in the Nottingham Crown Court. On 26 March 2008 the indictment on which those proceedings were based was stayed by His Honour Judge Burgess. The grounds for staying the indictment were that it was not possible for Nigel Pipe to have a fair trial in light of the delay and in light of the evidence not available both in terms of documentary evidence and witness evidence.
  
9. In January 2015 a fourth investigation was commenced. That was called Operation Xeres. That was in respect of a number of care establishments in the Nottingham area. MT contacted Nottingham Police repeating his allegations against Nigel Pipe. This operation later became known as Operation Equinox. It is not necessary to detail how C1 to C5 came to the attention of the police in the course of that operation. It is sufficient simply to note that the police's contact with C1 to C5 resulted in the present proceedings in relation to which C1 to C5 are the complainants.

10. The prosecution case has always been that C1 to C5 are not complainants associated with the 1966 allegations and so not associated with the earlier investigation or the aborted proceedings in 2008. It is Nigel Pipe's case, and was his case at trial, that one of those complainants, namely C2, was one of the complainants in the 1966 allegations and thus it is Nigel Pipe's case that a direct line can be drawn between the 1966 complaints, the earlier investigation and the aborted 2008 trial to this very trial. This is a point to which we shall return.

11. In relation to this prosecution, Nigel Pipe was interviewed on three occasions and he denied all the allegations. His defence case maintained that denial and the issue for the jury was essentially a factual one: did the offences take place as the complainants alleged?

#### Abuse Ruling

12. At the outset of the trial the defence applied to stay these proceedings as an abuse. The defence invited the judge to rule on that abuse allegation at the outset of the trial but the judge declined that application on 24 June 2021 stating that "any abuse of process hinges on the evidence" and said she would not make a decision at that stage. So it was that at the close of the Crown's case an abuse of process argument was advanced by the defence. That application was dismissed with the judge ruling that the trial could be fair. She gave lengthy written reasons for reaching that conclusion. She reviewed her decision at the end of the defence case and notified the parties that having reviewed her earlier decision she remained of the view that a fair trial was possible.

### Grounds of Appeal

13. In perfected grounds of appeal, Mr Barlow, who was trial counsel for Nigel Pipe, advanced three grounds of appeal. First, the judge erred in concluding that the abuse of process argument should be heard at the conclusion of the prosecution case. Second, the judge erred in concluding that a fair trial was possible. Third, Nigel Pipe did not and could not receive a fair trial.
  
14. Mr Barlow has filed a skeleton argument since the single judge refused permission concentrating on ground 3, namely that Nigel Pipe did not receive a fair trial and that remains the main focus of his submissions before us this morning. We are grateful to Mr Barlow for his careful submissions and the assistance he has given the Court.
  
15. We turn to the Respondent's Notice which was lodged late. We formally extend time for that in the circumstances that are explained to us.
  
16. We note that the Crown resists this appeal, submitting that the judge was correct to hear the abuse application when she did and that her doing so did not impose any undue prejudice on the defence because it was a matter for the defence to decide how to run their case and whether to make tactical decisions to introduce evidence about other allegations dating back to 1966 and leading to the 2008 aborted trial. The prosecution submit that the trial was fair. They say that any historic case involves an assessment of the impact of material that is now unavailable. The defence, they say, were not able to highlight particular missing documentation or potential witnesses who would have made a real impact on the course of the trial. They say that the judge gave appropriate and fair

legal directions to mitigate any residual prejudice which may have existed.

### Leave

17. We grant leave on all three grounds. We have warned Mrs Pipe that she should not take false encouragement from this grant. We grant leave because we recognise some elements of the grounds are arguable, although we note the Crown's response to them and that response has substance too. The background is complex, and the Court would benefit from having the time and the assistance of the Crown to determine the merits.
  
18. We suggest that there may be two issues in particular on which the court may wish to focus. The first of those is the defence submission that C2 was and had been a complainant in 1966. That was denied by C2 who accepted that he had been called in to see the headmaster at around that time but suggested that he had denied at that stage that he had been subject to any abuse. The question for the court may be this: was the absence of any documentation or witness evidence relating to the 1966 allegations seriously detrimental to the defence in addressing this area of evidence in the course of this trial?
  
19. The second area on which the court may wish to focus is the timing of the abuse argument. As we have noted, the judge decided that she should deal with that application for dismissal on grounds of abuse at the end of the prosecution case. The question for the appeal court is whether that created any particular and significant unfairness by then requiring the defence to consider the strategy of its defence case before it knew whether it would win or lose its abuse argument. Specifically, did that

mean that the defence was in practice required to adduce details of the 1996 allegations leading to the 2008 proceedings to test the prosecution witnesses with a view to having the abuse application determined in due course? We note of course that there is extensive authority to support the proposition that an abuse application is best determined at the end of the Crown's case. But on the facts of this case, what difference did the timing of the abuse argument make to the way the defence unfolded at trial?

20. The Court which determines this appeal substantively may not consider these to be the key questions; it will take whatever course it considers appropriate.

21. There are a number of other points on which we have been addressed by Mr Barlow this morning, specifically relating to documents which are missing. We are less persuaded of the merit of those arguments. It seems to us that the judge considered each of those carefully in her ruling and gave answers in relation to them which would appear to be compelling.

22. We grant leave on all grounds and Mr Barlow is at liberty to advance such points as he wishes to. We do not wish to receive any further documents from the defence. We are of the view that we have sufficient to understand the points that are made. The prosecution has leave to lodge a further skeleton argument, if it wishes to, to answer the more recent skeleton argument that Mr Barlow has submitted for our consideration today.

23. We propose a time estimate for the hearing of one day. Argument may not take that long but there are plainly matters of detail involved in the appeal and it would be sensible



to have a day set aside for the hearing. We grant a representation order for Mr Barlow to cover his time today and we grant a representation order for Mr Barlow for the appeal hearing.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk)