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IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT OXFORD
HIS HONOUR JUDGE ROSS

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/10/2019

Before :

LORD JUSTICE DAVIS
MR JUSTICE LAVENDER
and
MR JUSTICE FANCOURT

- -

Between :

R	**Respondent**
- and -	
KK	
RA	
KI	
AY	
HK	
AH	
KH	
MI	**Appellants/ Applicants**

- -
- -

Mr S Stein QC for **KK**
Mr D Emanuel QC for **RA**
Ms N Harford-Bell and Mr M Goold for **KI**
Ms L Sweet QC and Ms O Daly for **AY**
Mr L Thompson for **HK**
Mr M M George QC for **AH**
Ms C Wade QC and Mr J Bindman for **KH**
Ms T J Ayling QC for **MI**

Mr O Saxby QC and Mr A Gardner for the **Crown**

Hearing dates: 12th and 13th September 2019

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Approved Judgment

Lord Justice Davis:

Introduction

1. On the 78th day of a highly complex trial at the Crown Court in Oxford involving serious allegations of sexual abuse on the part of the various defendants, and when the jury had been in retirement for some days, a juror reported a potentially serious irregularity. This was to the effect that on the preceding day another juror (juror No. 9) had informed the remaining jurors that he had discovered by internet research that one of the eleven defendants (NK) had a previous conviction resulting in a lengthy custodial sentence. That previous conviction (designedly) had not been the subject of any evidence adduced at the trial: and the research by that juror was wholly contrary to firm and specific instructions which had been given to the jury at the outset of the trial prohibiting any independent research, on the internet or otherwise, on the part of any juror.

2. Following investigation, the judge discharged the juror who had undertaken the research from the jury. He also discharged the jury from reaching any verdicts against NK (the charges which he faced being thereafter left to a retrial). The judge permitted the remaining 11 jurors to carry on with their deliberations with regard to all the other defendants. In due course the jury convicted a number of the defendants on some, though not all, of the charges which they faced.

3. It is now said by a ground of appeal for which this court granted leave that the judge was not justified in taking the course which he did. It is said that, in the circumstances which had happened, the only proper course was to discharge the jury altogether. In the alternative, it is said that the judge's investigations into what had occurred and his subsequent instructions to the remaining jurors were insufficient and inadequate. It is overall said that the convictions are unsafe and should not be permitted to stand.

4. A number of the convicted defendants (in contrast to others) had not at trial sought the discharge of the entire jury and thus did not themselves formally make this point a ground of appeal. However, they associate themselves with this ground of appeal; and it is acknowledged on behalf of the prosecution that the point, if well founded, stands to impact on the safety of all the convictions.

5. In addition, one of the appellants (HK) by leave of the single judge appeals against conviction on entirely discrete grounds, to the effect that a submission of no case to answer should have been accepted, that identification parade evidence should have been excluded, that certain other evidence which HK wished to adduce was wrongly precluded and that an incorrect cross-admissibility direction was given by the judge.

6. Further, various of the appellants also seek to renew various grounds of appeal against conviction, leave having been refused by the single judge. Two seek, furthermore, to adduce fresh evidence. In addition, a number appeal, with leave of the single judge, or renew applications for leave to appeal with regard to sentence.

7. We have found it convenient to refer to the appellants and applicants by their initials.

Background facts

8. In view of the nature of the ground of appeal common to the appellants – the jury irregularity point – it is not necessary to set out the background facts in extensive detail.

9. The case arose from a police investigation in the Oxford area styled "Operation Silk". One consequence of that operation was that 11 men were charged at the trial in question with historic offences, almost all of which involved alleged sexual abuse of young females. The indicted offences spanned the period 15 February 1998 to 1 April 2005. The majority of the offences, which antedated the coming into force of the Sexual Offences Act 2003, were charged under the Sexual Offences Act 1956; although certain other offences, such as conspiracy to rape, false imprisonment and drugs supply were also included.

10. Operation Silk was in fact the third such investigation in Oxford. The first, Operation Bullfinch, had resulted in a trial at the Central Criminal Court in 2013, at which a number of defendants had been convicted. The second, Operation Sabaton, had resulted in a trial in the Oxford Crown Court in 2016, where again a number of defendants were convicted. Some of the defendants in the instant trial, also held in the Oxford Crown Court, had featured in the first two trials. For reasons of sensible trial management, the proceedings consequent upon Operation Silk itself had been split into two: the instant trial being the first of such trials.

11. The trial involved six complainants. The Crown was in a position to assert that all were to be regarded as independent of each other. Their complaints in fact emerged as a result of contact by the police. It was a common feature that almost all had been young and very vulnerable girls at the time, of school age or thereabouts, and almost all came from exceptionally troubled backgrounds, lacking all normal forms of self-discipline and control, often wandering the streets of Oxford and highly vulnerable to outside influences. Otherwise, the common feature between the actual cases was that some of the defendants faced charges relating to more than one complainant. The defendants themselves were all from the Asian community in Oxford, many with particular connections with the Cowley Road area of the city.

12. The Crown's case as presented to the jury was that each complainant had been subject to cynical and predatory sexual exploitation. These young girls, all highly vulnerable, were all too prone to offers of excitement and entertainment and to being made to feel that they "belonged". They aspired to a sense of adulthood which they did not in truth have. They were led into sexual activity by flattery, by attention, by parties and sometimes by the provision of drink or drugs and, on occasion, by force. To the extent that any of them gave purported consent it was the case of the Crown that such was not true consent, involving no real choice but being the product of deliberate exploitation and grooming.

13. Matters came to light after an initial complaint to a social worker in 2015 by a woman who may be styled KC. Subsequent enquiries by police caused contact to be made with other women, who in due course were to be complainants at the trial. Although there were a number of common features (and common defendants) as to various of their complaints, there otherwise was, as we have said, seemingly little other connection between the complainants themselves.

14. The first 17 counts on the indictment, albeit also including some alternative counts such as indecent assault instead of rape, all related to a complainant who may be styled AC.

She was aged between 13 and 15 at the relevant times of the incidents charged (between February 1998 and February 2001), having been born on 16 February 1985. She had had an utterly unstructured home life and had a very bad relationship with her mother (who she said would sometimes beat her). One of the defendants, KH, worked at a clothes shop at the Cowley Centre with her mother. AC, still at school, met him. They started to associate; and she then met his brother, the first defendant on the indictment, AH. AH, then aged around 18, was a taxi-driver. He drove a people-carrier, whose registration ended in the letters SHG. It came to be known by her as the "Shagwagon".

15. AC was attracted to AH. He was attentive to her, giving her sweets, cigarettes and alcohol and, in due course, drugs. He often gave her lifts in his people-carrier. Through him and KH she then met others in his "group", including the defendants KI, AY and HK. She was to say that the group, including, with others, the first five defendants named on the indictment, were "all out for sex." She described AH as the main one; and the Shagwagon itself was regularly used for sexual activity, involving vaginal and oral sex, with her and other young girls.

16. In due course, the indictment was, so far as the complainant AC was concerned, to charge AH with five counts of rape; KI with 3 counts of rape; KH with 2 counts of rape; and HK with one count of rape. Another defendant SA (who in the event was acquitted) was also charged with rape of AC. There were also counts of indecent assault, either substantive or alternative: these for the most part involving alleged oral sex which under the Sexual Offences Act 2003 would be chargeable as oral rape but under the then applicable provisions of the Sexual Offences Act 1956 fell to be charged as indecent assault. In this regard, Count 7 was the sole charge which the defendant AY faced: that (as with a number of the counts against others) being charged as a multiple-incident count. Some of the counts also involved allegations of coercion on the part of AH, either on his own or with others, with a view to requiring AC to have sex with other men, including, for instance, one called "the dopey man" and others collectively styled the "uncles".

17. AC's involvement with the group ended when she became 16 and left Oxford.

18. The second complainant was CC. She was the complainant with regard to counts 18 to 25 on the indictment (which also included some alternative counts) involving allegations of indecent assault and rape. Again some of the counts were charged as multiple-incident counts.

19. CC was born on 8 March 1986. The alleged abuse occurred at a time when she was between 13 and 16 years old. She had a very troubled home life. By the time she was 13 she was drinking alcohol and truanting from school. She was presented by the prosecution as a demonstrably vulnerable girl in need of care but all too amenable to sexual exploitation.

20. Count 18 involved an allegation of indecent assault on the part of NK (the defendant in respect of whom the jury was subsequently discharged from reaching any verdicts). Count 19 involved an allegation of indecent assault, in the form of oral sex, on the part of KK. So far as Counts 20 to 24 were concerned (including alternatives) these all related to the defendant MI. CC had come to consider herself, by the age of 14, as his girlfriend. She was to allege a controlling, violent and abusive relationship. He would sexually assault her. He would supply her with drink and drugs and on one occasion

locked her in a room in a guesthouse all day (MI was in fact acquitted on a count of false imprisonment). The counts relating to MI so far as CC was concerned included a multiple-incident count of rape.

21. The third complainant at trial was SL. She was born on 27 December 1985. The allegation – ultimately Count 26 – was that when she was 14 she was the subject of an indecent assault by the defendant RA. She had at that time absconded from the children's home where she was in care. The following day, on her return to the home, she was to allege to staff there that she had been persuaded to get into a car with three Asian men in it; and one, who she described as having a gold front tooth (RA had such a tooth), forced her to have oral sex with him. That complaint was not pursued at the time, albeit SL said that she had herself wished to pursue it. However, it later re-emerged when the police contacted her in 2016. She identified RA as the man in question, first by an informal identification procedure and then at a subsequent formal identification procedure. When arrested, RA was alleged to have made incriminating remarks in the police van (which was covertly bugged). He made no comment in interview to questions asked.

22. Count 27 related to a girl who may be styled CH. She was born on 11 November 1986. She was to say that when she was around 13 or 14 and still at school she and some of her friends would meet up with a group of Asian young men. She named some of them and also identified a van with the registration ending with the letters SHG as being involved. One of the men had a gold front tooth and she identified him as RA. There was a lot of sexualised conversation. She said that there was one occasion, when she was walking home in the morning after a night out, when RA stopped her as she walked past his house. He then sexually assaulted her in an alley, taking his penis out of his trousers and ejaculating. He subsequently threatened her if she told the police.

23. The fifth complainant at trial may be styled RC. She was born on 13 August 1984. Her complaints were the subject of Counts 28 – 31. Counts 28 and 29 involved allegations of kidnapping and false imprisonment, directed at the defendant NK (the one in respect of whom the jury were later discharged from giving verdicts).

24. As to the Counts 30 and 31, RC was to say that she had gone to a particular flat in Oxford in around November 2001. Shortly thereafter the defendant KK and a man with a gold front tooth whom she knew as "Radio" (the nickname of RA) arrived. She said that while there, after KK had accosted her, she tried to leave but found the door locked. She was taken back up to a bedroom and there forcibly vaginally raped by KK and RA in turn. She said, among other things, that a belt and a wooden plank were used to inflict violence. She was threatened not to tell the police. When she left she went to the local hospital (the medical notes, since produced, have no record of any complaint of rape or of any signs of any serious violence). A complaint was also made to the police but was not thereafter pursued.

25. The final complainant was KC, her complaints being the subject of Counts 32 – 36. She was born on 5 July 1988. Her allegations first emerged in 2015 when she told a social worker that she had been abused when she was between 15 and 17 years old.

26. KC was to say that she had a lonely and neglected childhood, being mainly left to her own devices and often absenting herself from home for long periods. She came into contact with a group of Asian men. They would encourage her, for example, to drink

alcohol, even though she was still at school. She was to say that she felt flattered to be part of their group.

27. She said that there was an occasion when MI invited her to a party at a flat at Riverside Court. Cannabis was smoked and then, as she alleged, MI supplied her with some cocaine. That was to constitute Count 32. As to Count 33, this was a count of conspiracy to rape. It was alleged that MI, AH and another defendant at trial, CJ (who was acquitted), had been at a party at the flat of CJ. She passed out. When she came to the following day, she was naked (save for one sock) and had bite marks on her. Her vagina was swollen and sore. There was blood when she went to the lavatory and she had difficulty walking. She had a shower and left. She did not go to hospital and said that she had been too embarrassed to tell her family. As to Count 34, this related to an incident when she said that MI had supplied her with cannabis at his flat, when others also were present.

28. Counts 35 and 36 were counts of conspiracy to rape. As to Count 35, KC recalled a people-carrier stopping by her as she was walking home at night. A number of Asian men were in it. One, ANJ (not a defendant at this trial) whom she recognised, offered her a lift home and she got in. She saw other men in the vehicle, one of whom was AH. One of the men was wearing a traffic warden's uniform (the prosecution were to say that this was HK, who is a cousin of AH). The men became aggressive. She was driven to a location, Cutteslowe Park, where some (not all) of the men orally or vaginally raped her in the vehicle. They for some reason then desisted and drove back. It was indicated that one of the men was to have oral sex with her on the journey back (though in fact he did not). She was then dropped off. As to Count 36, it was alleged that, at a time when she had been accused of stealing a necklace, she had been forced into a car by AH, who was with other Asian men. She was questioned about the necklace. She was again driven to Cutteslowe Park. She anticipated a repeat of what had happened before; but she said that she managed to run away and hide.

29. That, then, is an outline – and we stress it is only an outline – of the counts the subject of the trial. It gives the flavour of the proceedings. We will, however, have to give rather more detail of some of the counts in dealing with some of the renewed applications and with the appeal of HK.

The course of the trial

30. The trial commenced on 9 October 2017 in the Oxford Crown Court. The trial judge was HH Judge Ross.

31. At the outset of the trial, the judge had made quite extensive reporting restrictions: not least because of the nature of the case and the background involving publicity concerning Operation Bullfinch and Operation Sabaton. In particular, for present purposes, the appellant AY and the co-accused NK had been linked to Operation Sabaton (AY being acquitted and NK being convicted at the 2016 trial) and the judge was particularly concerned, so far as possible, that there be no publicity on these aspects with regard to those two defendants at this trial.

32. Before the trial started the jurors, as is modern practice, had been supplied with a leaflet summarising the legal responsibilities of jurors. The need to read and follow the legal rules there set out was stressed. Warnings as to contempt of court or potential

prosecution were given. Amongst other things this was said in the leaflet, under the heading "Looking for information about your case":

> "It is ILLEGAL for you to look for any information at all about your case on the INTERNET or ANYWHERE ELSE during the trial. The means that you CANNOT look for any information about:
>
> Any PERSON involved in the case. This means any DEFENDANT, WITNESS or anyone associated with the case…."

This was supported by accompanying diagrams. At a later stage in the leaflet this among other things was said:

> "If you think that any of these rules have not been followed during the trial it is extremely important that you TELL THE COURT about this IMMEDIATELY, but do not discuss it with your fellow jurors or anyone else…
>
> It is your DUTY to REPORT any BREACHES of these rules by anyone, including any juror. This is necessary to ensure the trial is FAIR."

33. We were told that the judge at the outset of the trial specifically drew the empanelled jurors' attention to the leaflet and himself specifically stressed, among other things, the need to avoid internet research and the requirement to report any irregularity to the judge.

34. The trial proceeded. It is a tribute to the trial judge and counsel that, in what was a very complex and potentially highly-charged case, matters seem to have proceeded without undue difficulty or friction. The indications are that the court had built up a good rapport with the jury; and we were told by counsel that, notwithstanding the length and complexity of the trial, the jury had appeared to be a conscientious and attentive jury, giving rise to no concerns.

35. The prosecution case closed on 6 December 2017. Of the appellants before us, only the appellant KH then gave oral evidence, as did another co-accused SA (who in the result was acquitted).

36. At the conclusion of all the evidence, and following discussions with counsel, the judge gave very detailed directions of law to the jury as the first stage of his summing-up. The judge had reduced his directions of law to writing, which he provided to the jury. He also prepared a most detailed and helpful route to verdict document, dealing with each count. The written directions (among other things) gave full directions as to the legal constituents of the counts; explained the working of multiple incident counts; explained the consequences of not giving evidence; gave full identification evidence directions and warnings: and so on.

37. The judge also had to deal with character. KI, for example, had no previous convictions, as the jury had been told. Others – KH, HK, MI, AY and RA – had, as the jury had been

told by agreement, previous convictions but none of a sexual nature and some also had positive character references.

38. As for AH and KK, the judge had on the application of the prosecution permitted their previous convictions of a relevant kind to be adduced under s.101(1)(d) of the Criminal Justice Act 2003. He gave appropriate instruction in the legal directions to the jury accordingly.

39. So far as NK was concerned, he had the relevant previous conviction for a serious sexual offence for which had been sentenced to 9 years imprisonment in 2016 (as well as other convictions). However, that fact had *not* been adduced before the jury. As to NK the judge in terms had said in the written legal directions: "character plays no part in your deliberations as they concern him."

40. The judge also gave detailed cross-admissibility directions, both in respect of what is sometimes known as "mutual support" and in respect of what is sometimes known as "linear support". However, with regard to cross-admissibility the judge made absolutely clear that such directions did *not* apply to NK. Of the counts which NK faced (Count 18 relating to an alleged indecent assault of CC and Counts 28 and 29 relating to alleged kidnap and false imprisonment of RC) there was no real factual nexus between him and any of the other co-accused.

41. Counsel then made their closing speeches; and the judge thereafter summed up on the evidence. No criticism is, or reasonably could be, made of the thoroughness and balance of that summing-up. He concluded with a reminder of the need for unanimous verdicts at that stage.

42. The jury retired to consider their verdicts at 12:09 on Tuesday 13 February 2018. Thereafter some jury notes on various matters (not relevant for present purposes but indicative of a jury conscientiously engaging with the evidence and legal directions) were put in to the judge and dealt with by him in open court.

43. On the morning of Wednesday 21 February 2018, and before the jury bailiffs were resworn, the judge received, via his clerk, a written and signed letter from one of the jurors, juror No. 6. It understandably caused him great concern. The note was dated "Tues 20/2/2018 Evening." It read as follows:

> "Dear Judge Ross,
>
> RE: LONG RUNNING CASE SINCE OCT 2017
>
> Today (20/2/18) one of my fellow jurors (Malcolm) stated he had looked on the internet, the previous night (19/2/18), for details of a defendant [NK, whom he named] and indicated that the defendant has a conviction.
>
> I was in shock as I am sure most of my fellow jurors were. We stated this broke the rules and Malcolm ceased discussing the matter.

> I am informing you because it is my duty to do so. I must say that at no other time I have felt that this juror has done anything other than carry out his duties appropriately."

44. The judge, without reading out the letter at that stage, informed counsel in court of its receipt, stating that the contents "are extremely serious". He said that he had caused steps to have the identified juror Malcolm (juror No. 9) isolated from the rest of the jury. He then invited juror No. 6 into court. The judge reassured him that he had done the correct thing: "and indeed if what is said in your letter is correct the other jurors should have been writing to me as well." The judge then asked juror No. 6 some questions. When asked whether Malcolm had mentioned the nature of NK's conviction, juror No. 6 said: "No, I don't think so." He also indicated that Malcolm had said that the sentence on NK was for a number of years. When asked by the judge whether any other jurors had said that they had done the same or something similar to that juror, he answered unequivocally: "No." The judge followed: "And you didn't get the impression that anybody had done any research?"; to which the answer was: "No, not at all." Juror No. 6 confirmed that what had been said by juror No. 9 had been said in the presence of all the jurors in the deliberation room. The juror then withdrew in the company of a jury bailiff.

45. The judge then read out the letter to counsel. He indicated his preliminary thinking, which did not extend to the entire jury being discharged in all respects; but he invited counsel to reflect. The judge's preliminary thought, as he indicated, was to discharge juror No. 9 and to discharge the remainder of the jury with regard to the NK counts (he pointing out that there were no cross-admissibility issues at all with regard to NK) but to permit the remaining jurors to carry on with their deliberations on all the other counts. There were then some further discussions with counsel in court. The judge adjourned for some 2 ½ hours so that everyone could take stock.

46. In that time, counsel between them formulated a series of detailed directions and questions, seven in number, proposed to be put to the jury. It is not necessary to set them out in full here. Question 2, for instance, asked what information, if any, were they given by juror No. 9 about NK and when they received it. Question 3 was designed to ask the jury what impact the information would have on their ability to try the case fairly in relation to NK and any other defendant. Other proposed questions were directed at whether any other juror had conducted research; and as to whether the note written by juror No. 6 was written on behalf of the jury as a whole.

47. The judge did not agree with their suggested approach. One point that he at the outset said concerned him was the rule against self-incrimination. He also clearly viewed the suggested questions as unduly prolix. He said that he currently viewed the only really relevant question as being: "what information, if any, were you given about any defendant by juror number 9?" (it may be noted that this in fact goes considerably further than Question 2 as formulated by counsel). There were then further discussions with counsel. They were pressing for "proper enquiry" as to potential jury irregularities in relation to possible research by other jurors and as to the extent that juror No. 9 had participated in the deliberations thus far.

48. The judge gave a preliminary ruling. He said that the letter was clearly from an individual juror, not the jury as a whole. He reiterated that "it is a matter of very real concern" that the other jurors had not followed their duty to report to him the breach by

juror No. 9. There was further discussion. This included discussion of the contents of the relevant Practice Direction CPD VI: 26M.

49. The judge then had the jury (apart from juror No. 9) brought into court at 13:14. He understandably conveyed his concerns to them, saying "I may appear very serious and grave." He referred to the contents of the letter and then added: "Of equal concern to me is the fact that, on the face of it, it came from only one of you and not the remaining 11." He then posed one question for them which he required them to answer collectively in writing. The question, as put, was this:

> "As a result of the information given to me this morning, what information, if any, were you given by juror number 9 about any defendant in this case? So you will need to name any defendant whose name features in that information and I want to know what that information was."

The jury then left court at 13:16.

50. There was some further discussion with counsel. The judge then had juror No. 9 brought into court. He did not question him but discharged him in short order.

51. The court reconvened at 14:27. By this time the jury had prepared a written response, signed by each juror, to the question posed. That response was as follows:

"Name of defendant: [NK][giving full name]. What the information was: convicted in this court for nine years."

52. An application to discharge the entire jury was then made on behalf of AY. It was observed by counsel that an internet hit for NK directly led, on the front page of the results, to comments relating to AY. Other counsel sought more time to reflect. The judge had the jury back into court at 14:41. He wisely sent them all home for the day, instructing them to have no contact with the now discharged juror No. 9. He concluded as follows:

> "I remind you of this. It is your individual and collective responsibilities to comply with the directions that I have given, including and most significantly for our purposes today research on the internet. And to draw to my attention any breach of that direction by any one of you. That is your individual and collective responsibilities. So if something else has happened in the jury room has revealed that someone has breached by directions as to the use of the internet [sic]".

The jury then left court for the day.

53. The judge had further discussions with counsel the following morning, in the absence of the jury. The judge indicated in the course of those discussions that all the indications were that it was on the Monday night -19 February 2018 – that juror No. 9 had done his research and that that juror's deliberations were "uncontaminated" by any irregularity before then. He also explained that he had in the meantime sought to contact the Attorney General's office. Objection was maintained by some counsel to the judge's

proposal only to discharge the jury with regard to NK. The upshot was that four of the defendants (aside from NK) sought discharge of the jury in relation to the entire indictment: KH, AY, KK and RA. It was among other things asserted that there could now be no trust in the process that had already taken place and that "contamination" may have pervaded the whole of the jury's decision making. It was not suggested that there was actual bias: but, objectively, there was now a perception of bias. It was further observed that no one knew just what juror No. 9 had actually been up to.

54. The judge, following an adjournment, gave his decision at 12:00, saying that his reasons would follow in due course. He said that he first was going to ask the jury to let him have a note of any other matters which they felt they needed to tell him about and whether they had (prior to the information divulged by juror No. 9) reached any verdicts on NK. Subject to that, he would discharge the jury with regard to NK but not with regard to any other defendant.

55. The jury returned to court at 12:06. The (female) foreman, in answer to the judge's question, stated when asked whether there was any other matter or information that should be drawn to his attention: "No." When further asked if they had thus far reached any verdict with regard to NK, she also replied in the negative. The judge then discharged the jury with regard to NK. Having done so, he said this:

> "Ladies and gentlemen, one of the things that has been clear to all of us in this case is that you have been working hard as a jury. And also, and one gains the sense of this, that you were a jury that had gelled and were working well together.
>
> I know from your faces today, as I did from your faces yesterday that the events of Tuesday and the consequences associated with them, with the discharge of one of your colleagues, had caused considerable shock to you all. I just need to look at your faces this morning, and it is writ large. You know the importance of the decisions that you have to make. You know that you can only reach your decisions based upon the evidence that you have heard in this courtroom and, in accordance with the written directions that you have been given. If there is anything further of concern in relation to any breach of my directions, you need to draw that to my attention as soon as possible.
>
> It was absolutely right that one of your number drew these matters to my attention yesterday morning. It is a matter of real concern to me that the remainder of you did not do so. The gravity of the position I know, has not been lost on you. You need to work together as a team. It is the collective responsibility of the jury to return your verdicts, conduct your analysis of the evidence and your discussions likewise. A collegiate and open atmosphere please, in relation to your discussions on the issues you have to deal with. It is the responsibility of whoever you have appointed to chair those discussions to ensure that that atmosphere is recreated in your jury room."

56. Later that afternoon the judge gave detailed reasons for his prior ruling. They were in line with his previous observations. He concluded that there was no real possibility, viewing matters objectively, that the jury was biased. He asked himself whether the integrity of the trial progress could be protected, such that adverse verdicts could not be unsafe, and concluded that it could be. He found that the jury appreciated that what juror No. 9 had done was wrong and were now under no illusions as to what they should have done; the judge said that he was satisfied that they took the issue very seriously and that there had been nothing else to report. He further found that the jury were "alive as to what was and was not impermissible and clearly regarded what had happened as impermissible." He accepted as correct what juror No. 6, and the jury collectively, had said. He also – and importantly – reiterated that there were no issues of cross-admissibility with regard to the counts which NK faced and that NK was not accused of any offending with any other defendant on the indictment. He concluded that there was no reason to discharge the jury in their entirety.

57. The jury, now of course 11 in number, then continued their deliberations with regard to all defendants (apart from NK) at 12:12 on 22 February 2018.

58. On the morning of 23 February 2018 the judge informed counsel in open court that, following his ruling, he had been in contact with Professor Cheryl Thomas QC: who, as is well known, has over the years engaged in significant and illuminating research on the workings of juries. The judge informed counsel that Professor Thomas had advised him that her prior research had indicated that jurors were the more reluctant to report a fellow juror, through concerns that that might get the fellow juror into trouble: especially where a bond had developed between jurors over a long trial. The judge indicated that he thought it important that that appear on the court record. It is a plain enough inference from all this that the judge considered that that was precisely the scenario in the case before him.

59. The jury reached no verdicts on 22 or 23 February 2018. They put in some notes on evidential matters. The trial was then adjourned over the weekend until Monday 26 February 2018. No verdicts were returned on that day either.

60. Further jury notes were put in on Tuesday 27 February. At 15:38 that day the judge, through his clerk, asked the jury in open court, with the concurrence of counsel, whether they had reached verdicts on which they were all agreed. In some respects they had. The verdicts were mixed. They convicted AH on Counts 1 and 16; KI on Counts 2 and 17; RA on Counts 26, 27 and 31; and KK on Count 37. They acquitted RA and KK on Count 30. On the remaining counts they indicated that they were not agreed. The trial was then adjourned, because of various commitments, to Tuesday 6 March 2018.

61. The jury then deliberated for a further significant number of days. Various notes were put in. The judge also had from time to time discussions with counsel as to the timing of a majority verdict direction.

62. Eventually at 14:45 on 15 March 2018 the jury were asked if they had reached unanimous verdicts on the outstanding counts. Again there were some mixed verdicts and on other counts they indicated that they were not all agreed. A majority verdict direction was then given. Further verdicts were then given, again some of guilty and some of not guilty, on 22 March 2018; with further verdicts given, some of guilty and some of not guilty, on the remaining counts on 23 March 2018. On any view, the

deliberations of this jury had been extremely lengthy. Further, it is to be noted that a number of the accused were convicted on some counts but acquitted on other counts which they faced.

Subsequent prosecution of juror number 9

63. The issue of juror No. 9's seemingly serious misconduct was rightly referred by the trial judge for further investigation. The juror – a Mr Malcolm Baughan – was in due course interviewed by the police.

64. Regrettably, Mr Baughan was not frank in his initial police interview on 21 February 2018, at which he declined legal representation. Overall, in that interview, of which this court has seen a transcript, he seemed to be trying to paint a picture of being a "stupid, old fool" (in his own words) who had made a "mistake".

65. He did not in this interview in fact unequivocally accept that he knew of the prohibition on doing his own research. He further said that he only researched into NK when on 19 February 2018 an initial vote amongst the jury indicated that a number (not all) of the jurors were at that stage in favour of acquitting NK on at least one count which he faced. He said that he then researched against NK's name that evening because he was aware that, in contrast with other co-accused, the jury had been provided with no evidence about NK's antecedent history. In response to specific questions by the interviewing police officer he said that he had searched against NK only once and that was on the evening of 19 February 2018, when he then discovered that NK had previously been sentenced to nine years imprisonment for a sexual offence and that he had other convictions also. He said that he was told by the foreman, when he raised the matter the next morning in the jury room, that no use could be made of that information and that she "closed me down … and I accepted that." He specifically reiterated that he had only searched against NK once and, further, that he had not researched any other defendant. Thus what he was saying in interview was (broadly) at least in line with what juror No.6 had told the trial judge in his letter and then in court.

66. But this, as it transpired, was by no means the whole truth. A number of Mr Baughan's devices were subsequently examined. These showed that he in fact had made significantly more extensive internet researches than the one instance which he had admitted in interview (and of which the judge had been told). There were revealed to be 75 relevant instances in his web history. Six involved more detailed Google searches. The remaining 69 entries would have shown on screen the potential results produced by the searches. On the six occasions he had then clicked onto such a result in order to access the website there referred to. The first search, for example, was conducted on 12 December 2017, using the names of AH and KH. These led to accessing a page on the Oxford Mail website and a page on the Daily Mail website (which referred to the publicity consequent on the earlier police operations). On 13 December 2017 he conducted a search against the names of HK and NK. On 15 February 2018 he conducted a search against the names of KK and NK. On 19 February 2018, in the evening, he had searched against the name of NK for in excess of 12 minutes. On the early morning of 20 February 2018, for over 10 minutes, he again searched against the name of NK, accessing two websites. In the evening of 20 February 2018 he searched against the names of AH and KH, although seemingly without accessing any of the websites there referred to. The total duration of his six search sessions was calculated

at just over one hour and 12 minutes. Thus he had undertaken more extensive researches than had been made known to the judge.

67. When all this emerged and was put to him, Mr Baughan then made further admissions. He in due course pleaded guilty to an indictment containing five counts of carrying out research contrary to s.20A of the Juries Act 1974 (relating to NK, AH, KH, HK and KK) and one count of sharing research with other jurors contrary to s.20B of the Juries Act 1974 (relating to the divulging to the jury of information concerning NK on 20 February 2018).

68. On 5 April 2019 Mr Baughan was sentenced by Nicol J in the Reading Crown Court to concurrent terms of 8 months immediate imprisonment on each count.

The law relating to jury irregularity

69. We turn to the legal principles.

70. Where a jury irregularity is identified, the overarching consideration is one of fairness.

71. Furthermore, where (as in the present case) questions of apparent bias are raised with regard to whether a jury can properly and fairly be allowed to continue to act and to return verdicts the required approach is objective. Counsel before us were agreed that the test enunciated in cases such as *Porter v Magill* [2002] 2 AC 357 applies: which put shortly is, in determining an issue of apparent bias, whether the fair-minded and independent observer, having considered the relevant facts, would conclude that there was a real possibility, or risk, that the tribunal in question was biased.

72. The forms in which jury irregularities may manifest themselves are, of course, many and varied. Regrettably, in modern times unauthorised research by jurors, particularly on the internet, has featured quite prominently, notwithstanding the specific instruction prohibiting such a practice which is routinely given to jurors. Thus in *Karakaya* [2005] 2 Cr. App. R 5 documents were downloaded by a juror which were later found in the jury room after the jury had given their verdicts and left court. It was pointed out by Judge LJ (giving the judgment of the court) that the obtaining and using of material privately by a jury infringed two core principles: that of open justice and that of both prosecution and defence having a fair opportunity to address all material being considered by a jury when reaching their verdict. In the particular circumstances of that case, the convictions were set aside.

73. In *Thompson* [2010] 2 Cr. App. R(s) 27, cited by counsel in the written arguments presented to us, one of the issues again was unauthorised research and introduction of extraneous materials into jury deliberations. At paragraph 5 of the judgment of the court (delivered by Lord Judge LCJ) the court said this:

> "The second exception arises in cases where extraneous material has been introduced into the jury deliberations. The verdict must be reached, according to the jury oath, in accordance with the evidence. For this purpose each juror brings to the decision-making process, his or her own experience of life and general knowledge of the way things work in the real world; that is part of the stock in trade of the jury process, and the combination of

> the experience of a randomly selected group of twelve individuals, exercising their civic responsibility as a collective body, provides an essential strength of the system. However, the introduction of extraneous material, that is non-evidential material, constitutes an irregularity. Examples are provided by earlier decisions of this court. They include telephone calls into or out of the jury room, papers mistakenly included in the jury bundle, discussions between jurors and relatives or friends about the case, and, in recent years, information derived by one or more jurors from the internet. All this is familiar territory, and no citation of authority is needed. Where the complaint is made that the jury has considered non-evidential material, the court is entitled to examine the evidence (possibly after investigation by the Criminal Cases Review Commission) to ascertain the facts. If extraneous material has been introduced into the decision making process, the conviction may be quashed."

The court also stressed, at paragraph 6, that the collective responsibility of the jury for their own conduct must be regarded as an integral part of the trial itself. Sentiments to like effect have been expressed in a number of subsequent cases, such as *HM Attorney General v Fraill* [2011] 2 Cr. App. R 21 and *HM Solicitor General v Stoddart* [2017] EWHC 1361 (QB).

74. In *McDonnell* [2011] 1 Cr. App. R 28, the issue again was unauthorised internet research by a juror. This was identified to the trial judge during the course of the jury's deliberations. The judge, after investigation, refused to discharge the jury; and his decision was upheld on appeal. One of the points specifically addressed was that the jury had disobeyed the previous direction not to obtain extraneous material and, further, that, having obtained such material, no one on the jury had disclosed the fact: see paragraph 13 of the judgment of the court delivered by Moore-Bick LJ.

75. After considering the facts and the recent decision in *Thompson*, Moore-Bick LJ said this at paragraphs 19 and 20:

> "19. In our view, trial judges faced with a situation of this kind should take the same approach, that is, investigate the position and consider whether there is reason to think that the jury might be influenced to reach a decision otherwise than on the evidence in the case.
>
> 20. There are five related aspects of the matter which, in our view, need to be considered in this case. The first, and obviously the most important, is the material itself; the second, the fact that private researches were carried out contrary to the judge's directions; third, consideration of what, if any, other material may have been viewed that potentially affected the jury's decision; fourth, whether there was a risk that the conduct would be repeated; and fifth, what, if any, steps were taken by the judge to remedy the position. We think it necessary to have regard not simply to the logical relevance of the material but also to the possibility that the jury might have been adversely influenced by

> information that is not logically probative but nonetheless prejudicial."

And at paragraphs 27 and 28 this was said:

> "27. It might be said that, where there is any uncertainty about what the jury may have investigated, they should be discharged because there is a risk that they may have discovered something that might redound to the disadvantage of the accused. However, if that were correct, and if the mere use of the internet to obtain information relating to the case were for that reason sufficient ground for discharging the jury, it would follow that whenever there was evidence that one member had made enquiries of the internet it would be necessary to discharge the whole jury, even if those researches had not been communicated to others and even if there was no reason to think the jury as a whole had relied on what had been discovered. Yet that was not the approach take in *Thompson*, since the court in not dissimilar circumstances held that no further investigation of the use of the internet was required and that the conviction was not unsafe.
>
> 28. Apart from a firm direction to decide the case by reference to the evidence alone, we do not think that any further steps were called for. The fact that some members of the jury had carried out private researches, contrary to the judge's express directions, is undoubtedly troubling, but it is not by itself a reason to discharge the jury, unless either there are grounds for thinking that they have acquired information that might have led them to reach a verdict otherwise than on the evidence in the case, or there are grounds for thinking that one or more of them might disregard a clear warning from the judge not to repeat the process. We do not think that either was the case here."

The court also emphasised, at paragraph 29, the need for a trial judge not to act on the basis of speculation and to have a "firm basis" for drawing the relevant conclusion.

76. Last, but by no means least, we refer to the provisions of Practice Direction CPD VI: 26M, relating to jury irregularities: to which the trial judge himself, of course, had had regard. That Practice Direction had not been promulgated at the time of decisions such as *Thompson*.

77. It is not, in our opinion, helpful to gloss the provisions of that Practice Direction. It is clearly worded. The seven sequential steps set out at paragraph 26M.7 should (unless circumstances wholly preclude) normally be followed. The key overarching principle is articulated at paragraph 26M.5: "The primary concern of the judge should be the impact on the trial."

78. No issue was raised before us on this appeal with regard to the judge's approach to Steps 1, 2 and 3. Issue was most certainly taken as to his approach to Step 4 ("seek to

establish basic facts of jury irregularity") and thereafter. In this regard paragraph 26M.20 of the Practice Direction reads as follows with regard to Step 4:

> "The judge should seek to establish the basic facts of the jury irregularity for the purpose of determining how to proceed in relation to the conduct of the trial. The judge's enquiries may involve having the juror(s) concerned write a note of explanation and / or questioning the juror(s). The judge may enquire whether the juror(s) feel able to continue and remain faithful to their oath or affirmation. If there is questioning, each juror should be questioned separately, in the absence of the rest of the jury, unless there is a good reason not to do so."

79. Paragraph 26M.25, with regard to Step 6, states that considerations may include the stage the trial has reached. In cases of potential bias, the test set out in *Porter v Magill* (cited above) is confirmed as applicable. Further, in relation to the three identified possibilities (that is, of (1) taking no action and continuing with the trial (2) discharging the juror(s) concerned and continuing with the trial and (3) discharging the whole jury), the guidance at paragraph 26M.26 is geared to what the judge is to "consider" saying to the jury. As to ancillary matters, moreover, it is made clear in the Practice Direction that in the light of a potential offence under s.20D(1) of the Juries Act 1974 "great care is required if a jury irregularity relates to the jury's deliberations."

80. It is at all events to be noted that, whilst the Practice Direction specifies the seven steps which are to be followed when a jury irregularity is revealed, the Practice Direction is relatively open-ended as to the *way* in which the judge goes through those steps. Thus the language frequently is directed at what the judge should "consider" or what the judge "may" do. The language thus is – consistently with previously decided authorities – geared towards discretion rather than prescription.

81. This is as it should be. The Practice Direction is aimed at jury irregularities in general terms. But, whilst the seven steps are ordinarily to be followed in each case, how best to follow them must necessarily depend on the facts and circumstances of each case. Moreover, the very nature of the irregularity in each case, and the stage at which it occurs, will necessarily impact on the judge's consideration of what to do by reference to each step and on his decision at each step and on his ultimate conclusion. Thus, a different appraisal may follow depending on whether, for instance, there is a suggestion of jury intimidation or tampering or whether there is a suggestion of internal friction or bullying or whether more than one juror is involved in the irregularity: and so on. In short, therefore, the judge, whilst required to have regard to the Practice Direction, has a discretion as to what best to do, a discretion which is to be exercised by reference to the facts and circumstances of the individual case: provided always that prime regard throughout is had as to the impact of the irregularity on the fairness of the trial.

The submissions of counsel on the jury irregularity issue

82. The submissions of counsel on this issue have to be assessed by reference to the course of events, which we necessarily have had to set out at considerable length.

83. The proposed appeal was listed for directions before a constitution of this court, presided over by the President, on 9 July 2019. Since the appellants were making

common cause on the issue of whether the jury should have been discharged in its entirety, the President directed that the oral arguments for the appellants be presented to the Full Court by one counsel: Ms Sweet QC for AY being nominated for this purpose. We would pay tribute to the excellent oral submissions which she advanced to us, which we received in conjunction with her, and the co-accused's, written arguments on this point. In addition, the President had directed the Crown to disclose all relevant materials relating to the prosecution of juror No. 9 (Malcolm Baughan), with any necessary direction under s.20F(5) of the Juries Act 1974 being given. The President also recorded that it was common ground that no application should be made to the Criminal Cases Review Commission on the issue of jury irregularity arising.

84. It was at the heart of Ms Sweet's submissions that fairness mandated the discharge of the entire jury, regrettable though that would have been for all concerned at so late a stage of such a lengthy trial.

85. She made a number of points in this regard. She noted that, for example, the reporting restrictions which had been imposed at the outset of the trial by the judge with regard to the names of NK and AY had been designed to avoid reference to the preceding Operation Sabaton and to the risk of prejudice arising: yet the unauthorised researches of juror No. 9 had undermined that. This illustrated, she said, the paramount need for jurors not to engage in unauthorised research on the defendants in this particular case. Further, so far as AY himself was concerned, he had received an effective good character direction: but this was, she said, undermined by the reports which juror No. 9 had accessed, which had linked AY to NK and a paedophile ring; even if it was also reported that AY had been acquitted.

86. Moving on from that, she submitted that the judge went wrong – wholly wrong – at Step 4 and thereafter. She complained that the judge, over-influenced by his misplaced concerns as to the risk of self-incrimination, failed sufficiently to ascertain the basic facts. For example, it was not established precisely what information juror No. 9 had given to the rest of the jury about NK and his previous convictions (his answers in interview, for example, went further than what juror No. 6 had said in his letter to the judge). Nor was it established at the time what other researches juror No. 9 may have made or whether other jurors, either before 20 February 2018 or after juror No. 9's disclosure, had themselves conducted their own researches. Nor was the information given to the judge by juror No. 6 sufficiently corroborated (or otherwise) or supplemented by questions asked of the other jurors.

87. Her principal criticism, however, was directed at the jury collectively failing immediately to draw the unlawful researches of juror No. 9 to the judge's attention, as the leaflet and the judge's instructions at the outset of the trial had required. She accepted before us that the judge's approach and conclusion may well have been sufficient had they done so. But they did not. Instead, they continued to deliberate for that day, with juror No.9 still present. She said that was a "gross" failure. She accepted that it is a general presumption that jurors can be trusted to follow the legal directions of a trial judge. But she said that that presumption was here rebutted, given the jury's collective failure to report this matter immediately: and at all events that would be a real risk, viewed objectively. This jury, objectively, could not be trusted.

88. She further complained that matters were compounded by the judge failing to question jurors individually (the preferred general recommendation in paragraph 26M.20 of the

Practice Direction) about what had happened. She submitted that there was no good reason for doing so, especially where the judge had expressed his dismay and displeasure to the jury and thus there was, she suggested, a risk that they might "herd" together in their collective response.

89. Yet further, she complained that – it now being known that juror No. 9 had also accessed the internet with regard to some of the defendants at a stage well before the jury retired to deliberate – juror No. 9 may have had an undue and prejudicial impact on the jury deliberations prior to his discharge.

90. In this regard, the court referred Ms Sweet in argument to the case of *Carter* [2010] 1 Cr. App. R 33. In that case, it is to be emphasised (as the court there did at paragraph 19 of its judgment), there was no question of any jury irregularity: two jurors had to be discharged for personal reasons. The complaint on appeal nevertheless was that the remaining jurors should have been directed that they were not to allow their verdicts to be influenced by any comments of the discharged jurors. The Court of Appeal dismissed the appeal. It was said that the views of the discharged jurors "became part of the fabric of opinions under discussion, impossible to isolate and compartmentalise" (paragraph 19). Ms Sweet adopted that. On the other hand, it is right also to observe that the court went on to say in *Carter* that discussion would have ebbed and flowed thereafter between the remaining jurors; and the views expressed by the departed jurors would only be relevant where adopted or assimilated as their own by the remaining jurors.

Disposal on jury irregularity issue

91. A jury irregularity issue of this sort in a trial of this kind is a particularly anxious matter; and we have carefully considered all the points advanced on behalf of the appellants. Having done so, we have come to the conclusion – and, ultimately, we should say, the clear conclusion - that this ground of appeal fails. The judge adopted, in our judgment, a proper procedure and reached a proper conclusion: and, viewed objectively, no real risk of unfairness arises.

92. One point can be dismissed immediately. On no view can it be said (nor did Ms Sweet seek to say) that there was here a wholesale repudiation of the jurors' oaths. Plainly this was not such a case.

93. We can accept that, to the extent the judge thought that his enquiries were circumscribed by the risk of self-incrimination, his concerns were overstated. In circumstances such as these, it is the obligation of the judge to establish the "basic facts" of the jury irregularity: as Step 4 of the Practice Direction enjoins. That, in an appropriate case, may involve some direct and blunt questioning. Any concerns as to the risk of self-incrimination necessarily, therefore, are subordinated to the need to establish the basic facts. Besides, if it be said that potential unfairness for the future could arise by reason of the risk of self-incrimination then that can be accommodated, in an appropriate case, by a subsequent court's powers of exclusion.

94. But, that said, any questioning in the present case (where the jury had for some considerable time been in retirement) had the obvious potential for giving rise to an enquiry into the jury's deliberations. As the Practice Direction says, "great caution" is needed in this regard. There at all events can and should be, in our opinion, no

generalised proposition that in such circumstances a judge's enquiries into a jury irregularity should be the maximum possible. To the contrary, if anything the inclination ordinarily in such circumstances should be to keep such enquiries to the minimum necessary (although we would of course give appropriate emphasis to the word "necessary").

95. As it seems to us, the judge identified the core, crucial question: what information, if any, had juror No. 9 given the jury about any defendant? He was entitled, in our opinion, to say that the various questions posed by counsel went further than were needed, given the circumstances of this case.

96. Where we in particular part company with Ms Sweet is with her suggestion that this was a "gross breach" not just on the part of juror No. 9 but also on the part of the other jurors, in failing to inform the judge immediately and thereby collectively indicating a preparedness, as she would say, to flout the judge's prior legal directions. We cannot accept that, on the evidence. So far from ignoring the judge's directions, the foreman and others had immediately closed juror No. 9 down when he sought illegitimately in the jury room to refer to his researches on NK's antecedent history; and they had in terms told him that no regard could be had to it. That shows an appreciation of their responsibilities in this respect. Ms Sweet said that they did not discharge their responsibilities because they did not tell the judge immediately. That is true. But this is not, in our judgment, to be categorised as a wilful flouting of the judge's directions. It is not indicative of a jury who could not be trusted. It is at all events plain that the judge (who had had the advantage of conducting the entire trial thus far) did not see it that way. The clear inference is that the judge had viewed this as essentially a conscientious and attentive jury who had let him down on this one occasion. Moreover his subsequent references (which he in terms desired to be on the record) to his discussions with Professor Cheryl Thomas QC clearly connote that that was his appraisal of the position here: the jury, having decided to "close down" juror No. 9, did not, doubtless having established a jury bond over this long trial, wish to create further trouble for him. In human terms, that is at least understandable.

97. Further, it may be noted that in *McDonnell* (cited above) there was no suggestion by the court that failure by a jury immediately to inform a judge of such an irregularity of itself requires discharge of the entire jury. Indeed its overall approach was to the contrary. And in fact in *McDonnell,* as in the case of *Thompson,* the convictions were, in the circumstances of those cases, upheld.

98. The suggestion to us by counsel that other jurors may themselves have accessed the internet is entirely speculative, indeed contrary to the immediate reaction (as reported by juror No. 6) of at least a number of them when juror No. 9 first made his disclosure in the jury room about NK. As emphasised in *McDonnell*, the court must act on evidence, not speculation. Moreover, the judge had in terms reminded the jury of their responsibilities and had asked the jury collectively to identify whether there were any other irregularities which should be drawn to his attention; and the foreman, on their behalf, had unequivocally said that there were not. The judge clearly accepted that. Thereafter, the judge reiterated firm instructions to try the case in accordance only with the evidence. Given the circumstances, there is no reason not to accept that approach adopted by the judge. Consequently, the suggestion that the jury may both have known of and then taken into account previous publicity on the internet relating to AY or others with regard to Operation Sabaton or otherwise falls away.

99. In this regard, we also reject Ms Sweet's submission that the judge was required to question each juror individually. He clearly was of the view that his strict admonition to the jury had reminded them of their responsibilities and had had the desired effect. Given all the circumstances before him, he was entitled to take the view that there was good reason to deal with the remaining jurors collectively.

100. As to the suggestion that juror No. 9 may improperly have influenced the jury in their preceding discussions that seems to us to be wholly speculative. Indeed, juror No. 6 had made clear in his letter to the judge that he had had no reason to think that juror No. 9 had behaved inappropriately prior to 19 February 2018. True it is that it is now known that juror No.9 had behaved inappropriately before then (by conducting prior researches on the internet): but it is clear enough from what juror No. 6 said that that had not fed directly into the jury discussions. There is nothing by way of evidence, or inference, to suggest that juror No. 9 had passed on any potentially damaging information other than with regard to NK or had utilised any such information in deliberations.

101. The conclusion which we would in any event be minded to reach is also strongly reinforced by what happened thereafter. Such researches of juror No. 9 would not have related at all to a great number of the defendants; and, in so far as they did, they were not shown in such cases to have thrown up any damaging information. Further, a number of defendants had their good character in evidence or, if not good character, their (non-sexual) previous convictions were in evidence at their own behest (as in the case of AY himself): and as for a defendant such as AH his (relevant) bad character was already in evidence. Moreover, and significantly, the jury did not deliver any verdicts at all until a significant number of days after juror No. 9 was discharged. There were then some mixed verdicts; and succeeding verdicts, also mixed, followed over a very protracted period. A number of defendants (including AH, KH, KK and HK) were in fact acquitted on at least one count which they faced; and AY himself was convicted, by way of special verdict, only of at least one incident of indecent assault as opposed to at least four incidents as originally charged. The jury's very lengthy deliberations and the jury's ultimate verdicts thus have all the hall-marks, viewed objectively, of a conscientious and unbiased jury making their decisions on a careful assessment of the evidence adduced in court.

102. The judge was plainly right to discharge juror No. 9 and was plainly right to discharge the jury from reaching any verdicts with regard to NK. As to whether he should discharge the entire jury altogether, in our opinion the judge made sufficient enquiries and adopted a proper procedure. His decision not to discharge the jury with regard to the other defendants was a proper one and was justified. It has not, viewed objectively, given rise to unfairness or a perception of unfairness.

103. We therefore dismiss the appeal on the jury irregularity ground.

The appeal of HK

104. HK appeals by leave of the single judge on a number of grounds. HK, it will be recalled, was convicted on Count 35 (conspiracy to rape the complainant KC). He was acquitted on Counts 6 and 11 (indecent assault and rape of the complainant AC).

105. We have already briefly summarised the facts. In a little more detail, the evidence of KC was that she was walking alone in Oxford one night when a silver people-carrier

vehicle stopped by her. She was invited into it by an Asian man whom she knew (who may be styled ANJ). When the door was opened other men were inside, one of whom was AH. One of the men, whom she did not know, was wearing a traffic warden's uniform. She thought this odd and asked (as she accepted, in a jokey way) if he too had been kidnapped and he answered, again, as she said, seemingly flippantly: "No – you're on your own with that."

106. She got into the people-carrier when it was said by ANJ that they would take her home. However, once she was inside the vehicle ANJ became aggressive to her, whether because of her loss of association with "the group" or (as she speculated in her oral evidence) about suspicions of her being involved in the theft of a necklace. She became scared but the vehicle was then moving. She asked to be let out but was told "No, you're coming with us."

107. The vehicle eventually stopped at Cutteslowe Park and a number of the men got out. ANJ had remained inside and had verbally abused her. He told her that she would have to give oral sex to all of them. He then forced her to have oral sex. A second man then got in and exposed his penis but put it away when she made comments about its small size. As he got out of the vehicle, she heard discussion about who was next. Another man then got in and had sex with her. There was then a bang on the outside and someone asked if they were finished. Then all the men got back in, ANJ saying that she would have to have oral sex with one of them (J) "on the road". She was subsequently told to get out. ANJ said, according to her, that she had got off lightly.

108. It was accepted that the man who was the traffic warden had said nothing to her after the initial, seemingly flippant, remark "No, you're on your own with that". It was accepted that he was not one of the men to have sex with her. It was the prosecution case that the traffic warden was HK. It was also said – although KC's evidence was not always consistent on this – that this incident occurred around a few weeks after 27 September 2004 when she had been taken to hospital with a broken nose after an incident. The dates particularised on the indictment were "between 27 September 2004 and 31 December 2004".

109. It was an agreed fact that HK had for a time been a traffic warden in Oxford and his uniform was issued on 24 October 2004. It was the Crown's case that he was the man in the traffic warden's clothing in the vehicle. It followed that, on the Crown's case, the alleged incident occurred after that date.

110. KC identified HK as that man who was the traffic warden at an identification procedure held in 2016 (she had not seen him in the interim). A photograph of him as at 2015 was used in such procedure.

111. Mr Thompson, in his able submissions on behalf of HK, said that the primary issue was one of identification. In this regard, there were undoubted weaknesses: for example, she had only seen the traffic warden's face briefly and in poor light and so on. Further, for example, she had not seen him in the interim period and her firm identification (by reference to a 2005 image) had to be put in the context of firm, but wrong, identifications by KC of others in other such procedures. However, it was accepted before us that, notwithstanding the various identification weaknesses, the case was not such as to be required to be withdrawn from the jury solely on that identification ground.

112. Mr Thompson advanced his overall argument that the conviction was unsafe on four grounds:

(1) The judge should have acceded to a submission of no case to answer at the close of the prosecution case;

(2) The trial was rendered unfair by the judge excluding evidence designed to suggest that another man (a brother of RA) was the traffic warden in the vehicle;

(3) The identification evidence by KC at the initial procedure should have been excluded as being obtained contrary to the relevant Code of Practice;

(4) The judge erred in directing, on cross-admissibility, that mutual support could be applied in this respect to the evidence of KC and AC.

We will deal with those in turn.

113. The submission was that there was no sufficient case to answer was founded on the proposition that there was no sufficient evidence that the traffic warden was party to any agreement to rape. In particular, not only did the traffic warden do nothing to KC but his comment "No, you're on your own with that" was, as KC accepted, said in a jokey way and could not, it was submitted, be said to be indicative of prior knowledge of and intended participation in ensuing sexual abuse.

114. The trial judge rejected that submission. On the assumed footing that, as was conceded for this purpose, a properly directed jury could be sure that the identification was correct, knowing participation could, he considered, be inferred from (a) presence of the traffic warden in the vehicle along with the other men when KC's reluctance to travel was overcome (b) his initial statement ("No, you're on your own with that") in response to her remark about kidnap was suggestive of planned kidnap (c) ANJ's insistence, in the presence of the other men in the vehicle, that she had to come with them and (d) the statement of ANJ to KC, in the presence of the other men in the vehicle, that she had to give all of them oral sex. The judge considered that, overall, there was "ample evidence" to conclude that the traffic warden was party to the alleged conspiracy.

115. We see no justification in departing from the conclusion of the trial judge on this issue, especially where he had had the benefit of seeing and hearing the evidence unfold. In any event, even if the matter were to be said to be close to the line – and the judge clearly thought that it was not even that – then the decision in *Galbraith* (1971) 73 Cr. App. R 124 makes clear that such matters are ordinarily to be left to the discretion of the trial judge.

116. The very fact of the presence of the traffic warden in the car when it stopped to pick KC up, with the other men, is at least consistent with knowing involvement in a plan. ANJ was then to say in the vehicle, in the presence of the others, that KC was in effect to be taken against her will. Further, whilst the traffic warden's response "No, you're on your own with that" to her jokey comment about kidnap itself may have been said in a jokey way, it was open to a jury to conclude from it that it was not a true joke and that he was knowingly party to what was happening and was to happen. Mr Thompson at one stage also said that the remark by ANJ that she had to give all the men oral sex

was said by ANJ in the vehicle after the others had got out and so was not said in the traffic warden's presence: and the judge had erred in that regard. However, whilst the evidence of KC on this was by no means altogether consistent or clear, study of the transcripts indicates that she had said that this was said by ANJ both in the vehicle when the others were there before they got out and in the vehicle after they had got out. That was evidence, warts and all, for the jury to assess.

117. As to the second ground, Mr Thompson submitted that, given the other weaknesses in KC's identification evidence, the need for supporting evidence was critical. The defence itself wished to adduce evidence that a (named) brother of RA was also a traffic warden in Oxford at that time and to advance a case that that brother may have been a "viable candidate" as the traffic warden in the vehicle. But the judge refused to allow the defence to do so, ruling such evidence as speculative and irrelevant.

118. In our view the judge was fully justified in excluding this proposed evidence. No count relating to KC included RA; and he was not said to be in the vehicle on that night. The brother himself had no identified involvement in any other count on the indictment. It was one thing to seek to say, if that is what the defence had sought to do, that there were a number of traffic wardens of Asian origin at Oxford at that time; it was quite another to seek positively to suggest that it was a particular named individual, without any other evidential basis for so asserting, who was in the vehicle on that night. We reject this ground. The judge's ruling is not open to successful challenge.

119. As to the third ground, relating to the identification procedures adopted in 2016, Mr Thompson did not elaborate on it in oral argument. What was said was that there was a breach of the then version of Code D in that the police had used, in the identification procedure, a still – not moving – image of HK (a known suspect) taken in 2005. The judge, however, held that any breach was in good faith and wholly technical, resulting in "not a jot of prejudice". Any criticisms of what occurred could, he said, in any event be left to the trial process.

120. We have no proper basis for interfering with that exercise of discretion.

121. The final ground relates to cross-admissibility. Whilst there were potential issues of cross-admissibility relating to Counts 6 and 11 concerning AC (of which HK was acquitted) it is said that there was no "mutual support" capable of being derived with regard to Count 35, particularly where the main issue was identification and where KC had not suggested knowing the traffic warden as part of the "group" or previously having had contact with him. We can accept that the judge's direction on this was perhaps not quite as clear as it might have been and was perhaps not readily consistent with another of his directions on cross-admissibility where an issue of identification also had arisen. But overall we do not think that this was a material error: as is further borne out by the fact that in due course the jury acquitted HK on Counts 6 and 11.

122. Finally, Mr Thompson made an application to adduce fresh evidence (post-dating the decision of the single judge) in the form of certain answers given by KC at the subsequent trial of the second stage of Operation Silk against certain other defendants (one of whom was ANJ).

123. What is said is that, in the course of that further trial, KC on 28 November 2018 gave answers to questions about the date of events at Cutteslowe Park which indicated that

they occurred *before* she was taken to hospital with a broken nose in September 2004. What is said is that, if that is so, then the incident must have occurred before the date particularised in Count 35 of the indictment in the instant trial and before HK had become a traffic warden. (The indictment at the subsequent trial was in fact in due course amended to particularise the period as being between 1 May 2004 and 31 December 2004.) It is said that in the light of that evidence "the submission of no case to answer would have been stronger still."

124. We have carefully considered this. We do not, however, accept that this proposed fresh evidence affords a ground for allowing the appeal. KC had been cross-examined at considerable length at the first trial as to the date of the Cutteslowe Park incident. Her answers had not then been consistent on date; indeed, on occasion they had seemed to suggest that the incident may have taken place before her 16th birthday on 5 July 2004. This was a matter the jury would have had to consider carefully. The point remains that this issue of dates was very much live at the first trial. The fact that at the further trial KC gave further evidence that her recollection was that the incident pre-dated September 2004 cannot, in our view, displace what was already a jury point at the instant trial or demonstrate that the judge's rejection of the submission of no case to answer must have been wrong. Considering and applying the provisions of s.23 of the Criminal Appeal Act 1968, we refuse this application.

125. In the overall result, we dismiss the appeal of HK against conviction.

Renewed applications on conviction

126. We turn next to the renewed applications with regard to conviction made on behalf of some of the defendants. We will do so relatively shortly, in circumstances where we have carefully considered the submissions advanced, since we have come to the conclusion that the single judge was correct in each instance.

(1) AH

127. The argument of Mr George QC, on behalf of AH, was confined to one point. The judge, on the application of the prosecution, had permitted to be adduced the bad character of AH in the form of his previous convictions for the sexual abuse of young girls, following the investigations undertaken in Operation Bullfinch and Operation Sabaton. The convictions on 27 June 2013 related to two young girls; the convictions on 1 July 2016 involved seven offences of rape and indecent assault, and one of making threats to kill, related to one female complainant. There was an undoubted overall factual similarity between that offending and the instant alleged offending.

128. There could in the circumstances be no dispute but that such offences were relevant and admissible under s.101(1)(d) of the Criminal Justice Act 2003. The sole point taken before the judge was that such evidence should be excluded under s.101(3) on the basis that the admission of such evidence would have such an adverse effect on the fairness of the proceedings that the court should not admit it. The judge declined to exclude the evidence, in careful rulings. In his initial ruling, on 8 June 2017, he had indicated that he would first wait and see how the evidence unfolded at trial before ruling definitively. In his subsequent detailed ruling on 1 December 2017, he said that he was satisfied that the case, even without the propensity evidence, was a sufficiently strong case. He refused to exclude the bad character evidence. He imposed certain restrictions,

however, on what should be put before the jury; in effect confining such matters to those having sufficient similarities to the instant case.

129. Mr George pointed out (correctly) that a decision under s.101(3) is mandatory, not discretionary, where the court forms the specified view. He also pointed out that the amount of detail put in on the previous convictions, as sanctioned by the judge and as reduced to Agreed Facts, remained very extensive. He asserted that the adverse impact on AH's case would have been overwhelming. He acknowledged that his argument might seem to connote that the more serious and the more relevant previous convictions are the more they should be excluded. But he said that, in the circumstances here, the tipping-point was indeed reached and this was a paradigm case for exclusion under s.101(3).

130. We cannot agree. The judge restricted the propensity evidence to similar fact evidence. Its relevance was plain. As to unfairness, the judge was entitled to reject the argument based on s.101(3). There was no such unfairness, in circumstances moreover where, as the judge observed, the jury could be, and in due course were, directed in conventional terms as to the limitations on the use of such evidence (we also note that in fact AH was acquitted on one count which he faced).

131. We refuse this renewed application.

(2) AY

132. The point sought to be pursued is based on the fact that on the original indictment, Count 7 – the only count which AY faced – was a multiple incident count, alleging indecent assault of the complainant AC on at least four occasions.

133. However, after all the evidence was concluded and before speeches, the prosecution applied to amend so as to allege not just indecent assault on at least four occasions but, alternatively, indecent assault on at least one (and the same) occasion. The judge acceded to this. This was not then done by formal amendment to Count 7 of the indictment – for example, a count alleging indecent assault on at least one occasion and a further count alleging indecent assault or at least three other occasions. Instead, it was done by the Route to Verdict document provided in relation to each count on the indictment. This, as to Count 7, among other things required the jury to ask if they were sure that AC gave AY oral sex on at least four occasions and, if not, if they were sure that AC gave AY oral sex on at least one (the same) occasion. When the jury eventually on 22 March 2018 returned their verdict with regard to AY on Count 7 that verdict was: "Guilty, on at least one occasion". So the jury had in effect been asked to give, and had given, a special verdict.

134. The position adopted was to a degree unorthodox (see, for example, the discussion in *A* [2015] 2 Cr. App. R(S) 13. But it had the merit of indicating the basis on which sentence was to be passed in the event (as occurred) of conviction. In permitting this procedure to be adopted the judge, in a short ruling given on 4 January 2018, indicated that his concern in fact was that the defendant's position should not be prejudiced. He concluded that the evidence of the complainant AC gave rise to "real uncertainty" as to the number of incidents and that there was a worry that the jury would be reluctant to acquit on Count 7 if satisfied that there was at least one, but not at least four, occasions.

The judge said in terms that there was no prejudice to the defence by seeking a special verdict; rather, it was protection.

135. A point to be noted is that AC had given no evidence of any one single specifically identifiable incident (for example by reference to date or location). Her evidence had been generalised on this, as the judge had noted.

136. Ms Sweet said that the course which the judge took was wrong and unfair. She acknowledged that he had a discretion. But she complained that it was unreasonably exercised in what (she asserted) was in any event a weak case; and that this late change may have resulted in an unfair compromise verdict.

137. In her oral argument, Ms Sweet to some extent shifted the emphasis of her argument. She said further that the prosecution should have applied to amend if not at the end of AC's evidence then at least at the end of prosecution case. Had there been one specific alleged incident, she would have "drilled down" into it in her questions. She also said that, had the prosecution's application been made earlier, the defence would have "given thought" as to seeking to recall AC or as to the conduct of the defence (including whether or not to call AY to give evidence).

138. The difficulty with these points, as Mr Saxby QC observed, is that there was nothing specific to "drill down" into. AC - who was extensively cross-examined, not least on whether AY had been correctly identified as one who had sexually assaulted her - had not been specific as to any particular incident (a point, indeed, available for the defence to stress to the jury). The trial judge, who had had the benefit of conducting the trial, had not been able to see any specific prejudice arising from the course which he took; nor was Ms Sweet, apart from broad generalisation, able to identify any. No doubt the prosecution could have made its application earlier. But ultimately this was a matter for the judge's discretion; and we are not able to conclude that he exercised it unreasonably.

139. This renewed application is refused.

(3) RA

140. One point sought to be taken here is that, with regard to the complainant RC, the acquittal of RA on Count 30 (rape) but conviction on Count 31 (false imprisonment) were perverse and illogical and resulted in inconsistent verdicts. It is accepted that the law has set the bar high for this purpose (see *Fanning* [2016] 2 Cr. App. R 19). But here it is said the matters alleged were all part and parcel of one incident: and, given RC's evidence, either the jury could believe her on both matters or they could believe her on neither. No other course, in the circumstances, was possible, it was said.

141. One difficulty with this present argument is that the judge gave a separate treatment direction which was not challenged at the time. Another difficulty is that it is elementary that a jury are not required to believe a witness in all respects nor are they required to disbelieve a witness in all respects: and this can remain so when one overall, albeit sustained, incident is alleged which gives rise to more than one count.

142. There is, in our opinion, no logical inconsistency here. The jury were entitled to accept that RC had been falsely imprisoned, even if they were not sure that she was raped (and no alternative to rape had been put forward on this count). Moreover, the

contemporaneous hospital records made no note of any complaint of rape but did record RC saying that she had not been allowed to leave. The judge himself was to give an explanation as to the differences when he came to pass sentence. There is, as the single judge concluded, nothing in this ground.

143. A further point, however, raised by Mr Emanuel QC on behalf of RA was as to the conviction on Count 26 (indecent assault of the complainant SL). He complained about the identification procedure adopted. He said that that identification evidence should have been excluded.

144. SL was first interviewed in October 2015 and gave a description of RA in November 2015. One of the police officers involved, DC Josey, in due course considered that RA should be a suspect. At an informal meeting in a café in January 2016 police officers showed SL a photograph album, using a current image of RA, when she picked out RA. At a subsequent formal VIPER procedure held in October 2016 she again picked out RA (a current image again being used).

145. Mr Emanuel submitted, as had been submitted to the judge, that by January 2016 RA was a known suspect and that the informal identification procedure adopted was wrong and in breach of Code D. Further, it was complained, the subsequent formal VIPER procedure would then simply operate to confirm the previous identification of the same man. A voire dire was held. The supervising officer, DCI Glover, gave evidence that he had concluded that RA was not to be considered a suspect at that time. The judge accepted that. He found that there was no breach of the Code and that RA could properly (objectively) be regarded as not a suspect at that time. But even if there was a breach, the judge held that the evidence should not be excluded: "the trial process is more than capable of dealing with the issues which are thrown up". Mr Emanuel accepted that the defence did indeed seek thereafter to highlight such issues before the jury.

146. Here too we have no proper basis for interfering with the judge's evaluation and exercise of discretion. Mr Emanuel did seek to say that (objectively) RA was to be considered a suspect, because by that time another complainant, CH, had also made her allegations against RA. But that was not adduced before the judge at the time or put to DCI Glover: and this court cannot now proceed for itself as though it had been. In any event, that particular matter does not overcome the point that the judge in his discretion, as he said, would not have excluded the evidence even had there been a breach: as he held, the ordinary trial process could accommodate the points sought to be made.

(4) MI

147. MI has lodged a late application seeking leave to adduce fresh evidence. It relates to Count 32 (supplying cocaine to the complainant KC at Riverside Court). As in the case of HK, reliance is sought to be placed on what KC subsequently said at the second Operation Silk trial. We were shown extracts from the transcript of her evidence at that subsequent trial indicating that she said that she had been supplied with cannabis: she did not say that she had been supplied with cocaine.

148. However, this had been an issue at the first trial. KC had not always been consistent in that trial as to whether she was supplied with cocaine as well as cannabis. This proposed further evidence could hardly be said to establish the position one way or the other, especially when that issue did not need to be explored at the second trial. It affords, in

our judgment, no ground for allowing an appeal. This application to adduce fresh evidence is refused.

Sentence

149. A number of the defendants either appeal against sentence by leave of the single judge or renew their applications for leave to appeal against sentence where leave was refused by the single judge.

(1) AH

150. The judge sentenced AH to a discretionary life sentence, with a specified minimum term of 12 years imprisonment. AH renews his application with regard to the judge's decision to impose a life sentence. It is submitted on his behalf by Mr George that a life sentence was unnecessary and unwarranted. It is not disputed that a finding of dangerousness was justified. But what is said is that an extended sentence – with a suggested custodial element of in the order of 18 years – would have been the proper sentence.

151. In agreement with the single judge, we reject this argument. AH had been convicted on a number of counts of rape and indecent assault (some being multiple incident counts) involving AC – the judge had described him as treating her as an "object" – and, on some other counts, KC. At the previous trial in 2013 resulting from Operation Bullfinch he had been sentenced to 7 years imprisonment for sexual activity with a female child under 16 (there being two victims); and at the previous trial in 2016 resulting from Operation Sabaton he had been sentenced to a total sentence of 12 years imprisonment for a further series of sexual offences (including rape and indecent assault and also an offence of threatening to kill of a female under the age of 16). His offending was over a lengthy period. He engaged in such sexual activity both for himself and by way of procuring young females for others. Grooming and exploitation, often with alcohol and drugs, were frequently involved. The impact on the victims had, in the words of the judge, been "shattering".

152. The judge had regard to the methodology laid down in cases such as *Burinskas* [2016] 2 Cr. App. R(S) 45. He appreciated that a life sentence was a sentence of last resort. He expressly considered an extended sentence. He decided that it would not suffice: in this respect he also said that he could not see a point where AH's risk to females would be reduced.

153. Mr George submitted that the judge was wrong to make that assessment. He also drew attention, among other things, to AH's exemplary good conduct in prison and engagement with relevant courses. He said that the judge was not justified in concluding, in his assessment, that there was no point in time at which the risk would be reduced; and he submitted that this was not a sufficiently exceptional case to justify a life sentence.

154. In our view, given the sustained, exploitative and appalling nature of AH's conduct relating to vulnerable young girls and given the overall circumstances, the judge was entitled to take the view of the matter which he took. As to AH's very good conduct in prison and attempts to reform (for which he is to be commended) those no doubt will,

if maintained, stand him in good stead with the Parole Board in due course. But they are not a reason, in our judgment, for departing from the judge's assessment.

(2) AY

155. AY was convicted on Count 7, on the footing of there being at least one occasion of indecent assault. He therefore fell to be sentenced only for one incident of indecent assault under s.14 of the Sexual Offences Act 1956 (the indecent assault being in the form of what would now be styled as oral rape). He was sentenced to 7 ½ years imprisonment. He appeals by leave of the single judge.

156. The judge, as required by decisions such as *Forbes* [2016] 2 Cr. App. R(S) 44, had regard to the modern Sexual Offences Guideline issued by the Sentencing Council. In so doing, he categorised this offence as Category 2A for the purposes of offences under s.1 of the Sexual Offences Act 2003. That gave a starting point of 10 years custody, with a range of 9 to 13 years. The judge said that it was Category 2, in terms of harm, because the victim (AC) was particularly vulnerable due to personal circumstances. It was culpability A because of the grooming involved.

157. The judge found that the activity involved the provision of alcohol and cannabis, in which AY played a part, and that he knew that AC, a vulnerable child, had been groomed. The judge said that AY treated oral sex with AC as in effect "your right". The judge acknowledged the presence of personal mitigation and that there were no relevant previous convictions (whether before or since). Further, the incident happened many years ago. But he had been older than some of the others and "in many ways you led a double life".

158. Ms Sweet challenged the judge's approach. She said that whilst the complainant AC certainly was vulnerable she was around 15 at the time and was not to be styled as "particularly" vulnerable for the purposes of the Guideline. Moreover, whilst AY may have known of the exploitation by others, he personally had not directly groomed AC or provided alcohol or drugs to her. This case, she said, was more appropriately categorised as Category 3B: which provides a starting point of 5 years and a range of 4 – 7 years. Moreover, there was powerful personal mitigation, not least in the lack of relevant convictions and aspects of his character evidenced by references and in the profoundly difficult medical condition of one of his children (on which we need not here elaborate) whereby the great difficulties within the family inevitably occasioned by his being in custody would only be exacerbated.

159. We think, overall, that there is a degree of force in these points. We consider that this case is, on the evidence, perhaps nearer to the cusp between Categories 2 and 3 and A and B. The personal mitigation was also very strong. We are further influenced by the fact that the guidelines are geared to offences under s.1 of the 2003 Act which gives a maximum of a life sentence; whereas this offending under the 1956 Act had a maximum of 10 years imprisonment. That is a point, as *Forbes* makes clear, which must be borne in mind.

160. In all the circumstances, we consider that a sentence of 7 ½ years imprisonment was too long. We quash it and substitute a sentence of 5 ½ years imprisonment.

(3) KH

161. KH was convicted on Counts 5 (indecent assault) and 12 (rape). Both counts related to the complainant AC. The indecent assaults would, under modern legislation, be classified as oral rape: further, Count 5 was charged as a multiple incident count involving at least two occasions.

162. The judge, in sentencing, accepted that KH had not instigated the grooming process of AC. But so far as the single incident of rape was concerned (in a flat in London) that had involved some element of force, as the judge found, when AC was "completely out of it" at the time by reason of her consumption of drink and drugs. The judge imposed a sentence of twelve years imprisonment on Count 12 and a concurrent sentence of nine years imprisonment on Count 5. Obviously the lead sentence had to reflect the totality of the offending.

163. It is not argued before us that this sentence was, of itself, excessive or that the judge had miscategorised the offending as Category 2A offending as he did. The sole ground, on which the single judge granted leave, is based on what is asserted to be disparity with the sentence imposed on the co-accused KI. KI had been convicted on Count 2 (a specific count of rape); on Count 3 (a multiple-incident count of rape, involving at least six occasions); and on Count 17 (a specific count of rape). Yet notwithstanding the significantly more extensive nature of his offending, and without any significant difference in available mitigation, KI had also been sentenced to twelve years imprisonment; the same sentence as this appellant received. Ms Wade QC submitted that this was not justified.

164. We have hesitated here. Parity arguments do not often prosper in this court. On the face of it, however, the lack of differentiation between the total sentence imposed on KI and the total sentence imposed on this appellant seems hard to explain: certainly the judge stated no reason for the lack of differentiation between the two. But that said, it is (rightly) accepted that the total sentence on the appellant KH was not of itself excessive. In our view, the better way of looking at things, in the circumstances of this particular case, is as Mr Gardner put it: the sentence on the co-accused KI could well have been significantly longer. That the judge chose to be lenient in his case does not require that the same leniency should extend to this appellant. In all the circumstances, we do not consider that the argument, based as it is solely on disparity, should prevail.

165. This sentence was not excessive and the appeal is dismissed.

(4) HK

166. HK was convicted on Count 35 (conspiracy to rape KC), the facts of which we have previously summarised. He was sentenced to 10 years imprisonment. He appeals by leave of the single judge.

167. The trial judge indicated that the planned rapes involved "forced oral sex, as a weapon of punishment". The appellant knew why KC was in the vehicle and what was to happen to her in terms of oral sex: he was, as the judge found, outside the vehicle waiting his turn, although something unidentified then brought events to an end. All that, and the elements of group activity and abduction and detention, meant that this was a Category 2A case.

168. Mr Thompson on behalf of HK did not dispute the categorisation. But what he said was that HK had not been at the forefront of the plan: and there was in any event no evidence of any significant pre-planning. HK, moreover, had not been part of prior grooming or sexual activities with regard to AC and indeed was not previously known to her. He had not, in the event, had oral sex with her: his presence, Mr Thompson said, had added little or nothing; and it was also to be noted that he was not the person whom ANJ said AC had to have sex with as the vehicle returned from Cutteslowe Park. Further, whilst not of entire previous good character he had no previous convictions for sexual matters. In the circumstances, whilst a sentence of 10 years may well have been appropriate for the principal conspirators, it was not, Mr Thompson said, appropriate for this appellant.

169. This was a severe sentence. But, on reflection, we do not consider it excessive. This was, on the jury's verdict, a plan to rape. Abduction of a vulnerable girl walking home at night was involved. The sheer menace, and indication of what KC must have thought was to come, was reinforced by the number of men in the vehicle: a number to which HK contributed by his presence. As the judge found, by his remark to her HK showed that he had known what was to happen. It may be that, as it turned out, his actual participation was more limited than others. But, overall, we see no sufficient basis for interfering.

170. This appeal against sentence is dismissed.

(5) MI

171. MI was convicted on Counts 20 to 24 (relating to the complainant CC) and Counts 32 and 34 (relating to supply of cocaine and cannabis to the complainant KC). Count 20 was a specific count of indecent assault (involving insertion of an object). Count 22 involved supply of cannabis, Count 23 was a multiple-incident count of vaginal rape involving at least six occasions and Count 24 was a multiple-incident count of indecent assault (in the form of oral penetration) on at least two occasions. The judge sentenced MI to 15 years imprisonment on Count 23, with concurrent sentences of 9 years and 3 years imprisonment on Counts 24 and 20 and no separate penalty on Count 22. A consecutive sentence of 9 months imprisonment was imposed on Count 32, with a concurrent sentence of 3 months on Count 34, the judge making clear that he had totality well in mind. MI appeals against his sentence by leave of the single judge.

172. The judge noted that CC had been 14 or 15 at the time, whilst MI was in his twenties. Much of the sexual activity occurred when she had returned wearing her school uniform. He had been part of "the group" and had been involved in the grooming process of her, drink and drugs also featuring. What occurred had happened in the course of what CC considered to be a relationship; but it was, as the judge found, "a relationship which had violence running through it."

173. Although Ms Ayling QC did not dispute the categorisation of 2A taken by the judge on the lead counts, she challenged the basis for some of the judge's findings. She said, for instance, that there was no evidence of grooming on his part: CC herself, for example, had stated in evidence that she fancied MI and had chosen to live with him. The relationship, moreover, had nothing whatever to do with the "group". There was overall, it was submitted, no proper basis for MI to receive, of the convicted defendants, the longest sentence apart from AH: the more so when MI's sexual offending related to only one victim.

174. We do not accept that the sentence, even if perhaps on the severe side, was excessive. There were here numerous incidents of vaginal rape and also of what now would be styled oral rape. CC may have fancied MI but she had been the product of exploitation and grooming of which MI took advantage: "if ever one needed an example of how people's brains can be turned it is [CC] and you," as the judge put it. MI's relationship with her was abusive and violent. Moreover the judge had not actually related his treatment of CC to his participation in "the group". Given the number of offences, occurring over a period of time, a total sentence of 15 years imprisonment on those counts was not, in our judgment, beyond the range reasonably open to the judge; and the further consecutive sentence of 9 months imprisonment for the further drugs offences was unexceptionable.

175. Accordingly, the appeal of MI against sentence is dismissed.

(6) RA

176. We finally turn to the renewed application for leave to appeal against sentence made on behalf of RA.

177. RA had been convicted on Count 26 (a specific count of indecent assault of the complainant SL), Count 27 (a specific count of indecent assault of the complainant CH) and Count 31 (a specific count of false imprisonment of the complainant RC). He received a total sentence of 12 years imprisonment, comprising 5 years on Count 26, 2 years on Count 27 and 5 years on Count 31, to all run consecutively.

178. Mr Emanuel's ground related solely to Count 31. It was said that the judge sentenced RA on a factual basis not open to him; and in consequence the judge imposed an unjustified and excessive sentence on that count.

179. In sentencing RA (who was sentenced at the same time as KK but separately from the other accused), the judge stated that the count of false imprisonment of RC was the count on the indictment "which has given me the greatest concern". The judge recorded that the jury had acquitted on the count of rape of RC. He considered that, on the false imprisonment count, the jury had in effect accepted what RC had said at the hospital and to the police immediately after the event. The judge decided that there had been "sexual humiliation" and sexual assault (he noting that the count had been charged as rape with no alternative count). He considered that the false imprisonment was terrifying and protracted, involving actual violence and threats of violence; and that RA and KK were equally culpable.

180. It is clear enough that there were significant inconsistencies in, and problems with, RC's evidence. Those were matters for the jury. The jury did not conclude that she had been raped. Further the judge made clear that he himself did not sentence on the basis that a belt or piece of wood had been used as part of the violence (which is what RC had claimed).

181. Mr Emanuel, to some extent reflecting his arguments on inconsistent verdicts between Counts 30 and 31 discussed above, said that this view of the evidence was not open to the judge. But for the purposes of sentencing the judge was obliged, applying the criminal standard, to form a view of the evidence. Just as with the jury, the judge was not obliged either to accept or reject RC's evidence in its entirety. That the prosecution

had not included an alternative count of assault (sexual or otherwise) did not preclude him from making relevant findings. It therefore is simply wrong to say, as Mr Emanuel did, that RA was being sentenced for offences which had not been charged or proved. To the contrary, he was being sentenced for the (proved) charge of false imprisonment: and the judge was making his findings as to the circumstances of that false imprisonment. We reject the further argument that the judge's findings were unsupported by evidence: an argument in reality based on the (wrong) proposition that RC's evidence had to be treated as a whole as unreliable and thus could not be accepted in part.

182. Mr Emanuel did not seek to say that, if the judge's findings of fact were open to him, still the sentence was excessive. He was right not to do so. Accordingly we refuse this renewed application.

Post-script

183. As we have said, this was a very complex, lengthy and potentially highly charged trial. The conduct of the trial judge, and of counsel, seems to have procured a trial which (at least until the jury irregularity) appears to have passed without untoward incident and friction and to have created harmonious relations with the jury. So far as the judge's various rulings are concerned, he gave careful and clear reasons for his decisions, enabling this court to know precisely why he did what he did. His Route to Verdict document, dealing separately with each of the many counts on the indictment, was a model of its kind; and his lengthy written legal directions were carefully crafted and have withstood such limited challenge as has been made to them. No one, moreover, has criticised his summing-up on the evidence. We would pay tribute to the judge. We would also like to acknowledge the careful, skilful and measured arguments which all counsel presented to us, whether in writing or orally.

Note: Reporting Restrictions were lifted on 15 January 2020.