IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO: 2023 01443 A4

NCN: [2023] EWCA Crim 784

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 27 June 2023

Before:

LORD JUSTICE STUART-SMITH

MR JUSTICE JACOBS

RECORDER OF SHEFFIELD
His Honour Judge Jeremy Richardson KC

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REX
v
KEVIN KOMBI

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MR RONAN McCANN appeared on behalf of the Applicant
MR JONATHAN WRIGHT appeared on behalf of the Crown

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J U D G M E N T

MR JUSTICE JACOBS:

1. On 18 November 2022 in the Crown Court at Snaresbrook before His Honour Judge Falk, the applicant changed his plea to guilty to an offence of breach of a sexual risk order (the "Sexual Risk Order"). The Sexual Risk Order (described in more detail below) had been imposed in July 2019 by the Essex Magistrates' Court. The offence which was the subject of the guilty plea related to events when the applicant had arranged to meet and did meet a complainant whom I will call 'V'. The meeting was the culmination of communications between the applicant and V starting in January 2021. It took place in London in July 2021.
2. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence and therefore no matter relating to V shall, during the period of that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence.
3. Separately, on 11 January 2023, having pleaded guilty before East London Magistrates' Court, the applicant was committed for sentence pursuant to s.18 Sentencing Act 2020 in respect of two further offences of breaching the Sexual Risk Order. These offences concerned the applicant's possession of a mobile phone and his failure to make the device immediately available on request or inspection. These offences came to light or were committed in November 2022 when police officers attended the applicant's home address.
4. On 31 March 2023 in the Crown Court at Snaresbrook HHJ Falk sentenced the applicant as follows. For the offence relating to V, the applicant was sentenced to 33 months' imprisonment. For the later offences, which were the subject of the committal from the magistrates, the applicant was sentenced to a consecutive term of 20 months.
5. In addition, at the time these sentences were imposed, the judge made a Sexual Harm Prevention Order. It was subsequently realised by counsel that there was no power to make the order, as it could only be made following conviction of certain offences, and the offence of breaching a sexual risk order is not one of those offences. There was then a 'slip rule' hearing on 25 May 2023 under s.385 Sentencing Code 2020. The Sexual Harm Prevention Order was rescinded and the judge was invited to vary the Sexual Risk Order. He did so by extending it for 20 years.
6. The Registrar of Criminal Appeals has referred the applicant's application for leave to appeal to the full court, because it appears that the judge did not have power to vary the Sexual Risk Order in the manner in which he did, although he did so with the agreement of both prosecution and defence. There has therefore been no decision of the single judge on the application for leave to appeal against sentence which had been submitted by the applicant in April 2023.

The facts

7. On 25 July 2019 at Essex Magistrates' Court the applicant was made the subject of a sexual risk order for 5 years, subject to certain prohibitions, including:

> "(a) Contacting any female, using communication applications, text messaging, or other electronic or written means, to falsely inform them that they have been previously engaged in sexual activity with him and/or or his friends and/or or relatives;
>
> (b) Using false allegations of previous sexual encounters with a female or references to sexual encounters with that female that the female cannot recall, in order to encourage that female to meet with him.

(c) Being alone with any female he knows to be vulnerable due to her being addicted to and/or under the influence of alcohol or drugs, subject of mental health condition(s) or homeless, save as is inadvertent and not reasonably avoidable in the course of daily life;

(d) Using any computer or device capable of accessing the internet unless:

(a) He has notified the police within 3 days of the acquisition and model number of any such device and any telephone number he is using;
(b) It has the capacity to retain and display the history of internet use and he does not delete such history;
(c) He makes the device immediately available on request for inspection by a police officer or police staff employee and he allows such person to install risk management monitoring software if they so choose."

8. In January 2021 the applicant began following V on Instagram. Various messages were exchanged and in July 2021 the applicant began suggesting that he walked in on her when she was having sex with another man. V had no recollection of such incident, and the applicant refused to give her any further details unless she went for a drink with him. They then met in a bar in London and a significant amount of alcohol was drunk. The applicant told her that he was drunk. V said that she was concerned for his safety and she accompanied him back to his hotel room having booked an Uber to take her home. She said that whilst waiting for her car the applicant sexually assaulted her, penetrating her vagina with his fingers. At a trial for this incident, the applicant said that all activity was consensual.
9. The applicant was charged on an indictment containing two counts: Assault by Penetration and breach of the Sexual Risk Order. He pleaded not guilty to both offences at a plea and trial preparation hearing held in November 2021. At the beginning of the trial in January 2022 the applicant successfully applied to sever the indictment so that only the sexual assault charge was to be heard at the first trial. That trial could not be concluded and the trial was refixed for 3 May 2022.
10. At the outset of the refixed trial the prosecution unsuccessfully applied to rejoin the severed offence. The applicant was therefore tried on the sexual assault charge and he was acquitted. He confirmed a not guilty plea in respect of the Sexual Risk Order charge. An issue arose as to whether the applicant should be granted bail. The judge concluded, by a fine margin, that bail could be granted. Although the applicant presented a high risk, the judge considered that the risk could be managed with comprehensive bail conditions. The judge imposed eight conditions which included:

"(5) not to access or create any social media platform.
...
(7) not to possess more than one phone, of which the IMEI and phone number must be provided to Essex Police within 24 hours of acquisition and to allow police inspection during working hours."

11. On 14 November 2022 the police attended at the applicant's home address, acting on information that: a Snapchat account attributed to this phone number made multiple log-ins; the applicant had posted a story to Snapchat within the last 24 hours; call data suggested that he was using a different IMEI (international mobile equipment identity) number to that which he had advised to police. The police searched the applicant's bedroom and found the phone that was being used in breach of court bail conditions and the Sexual Risk Order. It was located on a mattress under a duvet where it was apparent that the applicant had been sleeping. When asked, he denied that the phone was his and he

said he did not know who it belonged to. He refused to provide the PIN number for the phone.

12. Having been remanded in custody for breach of his bail conditions, the applicant applied to be rearraigned in the Crown Court for the offence of breaching the Sexual Risk Order which had been severed from the original Crown Court indictment. A guilty plea was entered on 18 November 2022 and sentence was adjourned.
13. On 28 December 2022 the applicant was charged with three offences of breach of the Sexual Risk Order relating to the events in November 2022. He indicated guilty pleas to two of the three matters, namely: (1) failing to notify police within 3 days of acquiring a mobile phone; and (2) failing without reasonable excuse to make his mobile phone immediately available to officers. That indication was given at the first opportunity.
14. As described above, he came before the court for sentence on 31 March 2023. The sentencing judge (HHJ Falk) had presided over the trial when the applicant had been acquitted of assault by penetration. He had also been the judge who granted bail following that acquittal. He had before him an application for a Sexual Harm Prevention Order, the complainant being described as "DC Emma Price on behalf of the Commissioner of the Police of the Metropolis".

The sentence

15. The judge had clearly prepared his sentencing remarks with considerable care. He began by saying that the proposed Sexual Harm Prevention Order was entirely necessary for the protection of young females and that both parties agreed that the proposed order was necessary and proportionate. At the end of his sentencing remarks he said that a 20-year term was appropriate.
16. The judge then described the applicant's background. He had been cautioned for an assault offence when he was aged 15, when he had pushed a girl into a toilet at school and demanded oral sex. As an adult, women would raise concerns that the applicant would contact them on social media and falsely suggest that either he or others had been involved with them sexually at parties. This led to another conviction and a caution and subsequently to the Sexual Risk Order which was the foundation of the various offences charged. The judge said that this had failed to curtail his behaviour, and that he had started following V on Instagram and exchanged messages with her. The judge described their communications and what he described as the applicant's "exploitative, manipulative, and predatory behaviour". He said that the Sexual Risk Order had been meant to protect her from ever having to meet the applicant or spend any time in his company at all. The judge emphasised that he was putting out of his mind any allegation of assault by penetration. He referred to the fact that the applicant, following his acquittal, had ignored both the Sexual Risk Order and the bail conditions which were "designed to prevent further offence and protect women from your predatory behaviour". The judge said that he was entitled to assume from the applicant's refusal to provide the PIN number that there was material on the phone relating to the Sexual Risk Order that he did not want the police to see because it would divulge further criminality. In any event the PSR ("PSR") contained an admission by the applicant to the author that he had been using Snapchat. Having regard to the PSR, the judge said that the applicant was still minimising his behaviour and that the admissions made to the author were guarded and not genuine. He said that if the offence had qualified, he would have made a finding of dangerousness.
17. On mitigation, the judge referred to various references from friends and family. He said that the applicant put on a different face to them than he put on before other young women. His friendly persona pulled people in. The judge was, however, prepared to give a modest discount for personal mitigation.
18. In relation to sentence, the judge said that there was no specific guideline for the present offences but he considered it appropriate to follow the Sentencing Council's guideline on breach of a sexual harm prevention order ("SHPO") and to weigh up culpability and harm by considering the factors in

that guideline. In relation to the offence involving V and ignoring any matter that took place in the hotel room, the breach was a very serious one (culpability A) and it risked very serious harm (category 1). This was because the applicant had succeeded in engineering a meeting in a bar with a young female, whom he did not know, under false pretences. The starting point under the SHPO Guideline was 3 years with a range of 2 to 4-and-a-half years. The judge said the offence was aggravated by the previous malicious communication conviction and caution.

19. In relation to the second set of breaches, the judge considered the breach could now be categorised as persistent. The harm was not quite as serious as the matter on the indictment involving V, but it was category 2 harm with a starting point of 2 years and a range of 36 weeks to 3 years. However, the judge said that he had to take into account the fact that there were two breaches. These were aggravated by the previous convictions and the fact that these offences were committed when on bail and in deliberate breach of bail. There was therefore a history of disobedience to court orders.
20. The judge recognised that he should have in mind totality and that he should adjust the sentences to arrive at a just and proportionate sentence to reflect the offending as a whole. In relation to the offence against V, he said the sentence after trial would have been 3 ½ years (or 42 months). He reduced that to 3 years 3 months (39 months) for totality and gave 15% credit for plea. The sentence was therefore 33 months. In relation to the two other offences and taking them both together, the appropriate sentence would be 2 years 9 months after trial (33 months). He reduced that to 30 months for totality and further reduced it to 20 months to allow full credit for plea. This was consecutive to the sentence for the offence involving V. The total was therefore 53-months (4 years and 5 months).
21. As previously described, there was then a slip rule hearing on 25 May 2023. The judge had been advised by counsel that there was no power to make an SHPO in respect of the offences of breach of the Sexual Risk Order. He said that both counsel were asking him just to vary the Sexual Risk Order to match the terms of his previous unlawful SHPO. Accordingly, the judge rescinded the SHPO and extended the Sexual Risk Order to 20 years. He thanked both counsel for the efforts made to find the point and to bring it to his attention. During the course of that hearing, the judge was told by prosecuting counsel that the applicant was not subject to the notification requirements of the Sexual Offences Act 2003.

The application for leave to appeal against the length of sentence

22. On behalf of the applicant, Mr McCann, who appeared in the Crown Court both at the trial of the sexual assault charge and on sentence, submitted in his written grounds of appeal that the sentence did not pay sufficient regard to distinctions between breach of a SHPO and breach of a sexual risk order. He accepted that the SHPO Guideline was relevant and noted that both offences carried the same maximum penalty. However, an SHPO could only be made if there was a previous conviction for a relevant offence. This was apparent from the SHPO Guideline, which provides that in assessing "any risk of harm posed by the breach, consideration should be given to the original offence(s) for which the order was imposed and the circumstances in which the breach arose". Mr McCann submitted this was not possible with the Sexual Risk Order, which could be made without any underlying offence having been committed. In addition, it was inherent in the existence of a SHPO being put in place after an offence had been committed that rehabilitative work will have been conducted irrespective of whether this took place within the community or whilst in custody. A downward adjustment from the starting point in the SHPO Guideline was therefore appropriate.
23. Mr McCann accepted that the offence involving V was category 1A under the relevant guideline and therefore this aspect of the judge's sentence could not be criticised. However, this offence was more serious than the later offences which did not involve a physical meeting. The judge had, he submitted, applied a starting point which was effectively parity between the two sets of offending; this was wrong. More than this, the judge gave insufficient reduction for totality, in particular on

the second set of offences. The cumulative starting point in relation to the second set of offences was too high and the principle of totality was not adequately reflected in the total sentence passed.

24. In his oral submissions this morning, Mr McCann put forward arguments in an engaging and realistic manner, and made all the points that possibly could be made in support of the arguments which he had put initially in writing.
25. On behalf of the Crown, Mr Wright, who was prosecuting counsel at trial and at sentence, submitted in writing that the sentence was not manifestly excessive and that there is no material difference when a judge assesses harm or culpability in respect of a breach of SHPO or, as here, breach of a sexual risk order.
26. We agree with Mr Wright's submission and accordingly we decline to grant permission to appeal against this aspect of the sentence.
27. We consider that a judge who is sentencing for breach of a sexual risk order should have regard to the guidelines for breach of a SHPO, but bearing in mind that it will be a fact-sensitive exercise in every case. It is correct that there are introductory words in the context of harm which refer to the original offence or offences for which the SHPO was imposed and the need to assess harm in that context. Whilst these words do not apply directly to a sexual risk order, the underlying concept is that the judge should look at the circumstances which gave rise to the order that was made. This can be done for both a SHPO and a sexual risk order, and the judge in the present case did have regard to those circumstances. Where a person is prosecuted for breach of a SHPO, a judge is not resentencing for the original offence which resulted in the imposition of the SHPO. Rather, the judge is considering the circumstances of the breach against the relevant background. Thus the specific factors which are identified under both culpability and harm in the SHPO Guideline can readily be applied to breach of a sexual risk order, as can the factors which increase or reduce seriousness or reflect personal mitigation.
28. We also do not accept that there is a distinction between a SHPO and a sexual risk order because the former presupposes that there will have been some rehabilitative intervention. This may or may not have happened depending on how quickly the SHPO has breached. But in any event the nature of rehabilitation is not referred to in the guideline. We accept that it may in some cases be a mitigating factor that a person has not received rehabilitative intervention, and possibly that it may be an aggravating factor if a person has had the benefit of such intervention and has nevertheless breached the order. But the possible existence of rehabilitative interventions is not, in our view, a reason for suggesting that the starting points under the SHPO Guidelines should be reduced in the case of a sexual risk order.
29. This means that the issue in the present case is whether or not it is arguable that the judge's overall sentence was manifestly excessive. We do not think that it is. The judge had the benefit of seeing the applicant at his trial for the assault by penetration charge. He was fully aware of the way in which the case had progressed, including the applicant flouting the bail conditions which the judge had imposed when he had only just been persuaded to grant bail following the acquittal.
30. In relation to the offence against V, it is accepted on behalf of the applicant that this would come within A1 of the SHPO Guideline. The judge's starting point of 3 years and 6 months, bearing in mind the aggravating circumstances, cannot in our view be criticised. His decision to allow the applicant 15% credit for plea seems in our view to be generous to the applicant. The applicant had not pleaded to the offence of breaching the Sexual Risk Order at or before the start of the trial in January 2022, but rather had successfully applied for severance. The plea of guilty came much later and only after the second set of offences had come to light. The timing can reasonably be seen as another example of the applicant's manipulative approach to the difficulties which he faced as a result of his offending. We think that a reduction should have been no more than 10% and that in fact a judge would have been justified in giving virtually no credit for plea at all.
31. In relation to the second set of offences, the judge in fact treated this as a category A2 offence rather than A1, with a starting point of 2 years and of a range of up to 3. We consider that the judge’s categorisation was correct. The judge's sentence started at 2 years and 9 months. A sentence towards the top end of the range was entirely appropriate given the aggravating factors to which the judge referred, in particular that the offences were not only a breach of the Sexual Risk

Order but also a breach of bail conditions. The judge then allowed a reduction for totality, as well as full credit for plea.

32. Overall we consider the judge's sentence was both in accordance with the relevant SHPO Guidelines and well within the scope of the judge's sentencing discretion. We do not consider that the sentence can be criticised as manifestly excessive on the basis that it was too high bearing in mind totality. It is possible that some judges might have given a lower sentence, but there is no basis for saying that the judge's sentence in the present case was manifestly excessive, even arguably.

The variation of the Sexual Risk Order

33. In its Respondent's Notice which was ordered by the Registrar, Mr Wright has fairly stated that he did not adequately address the judge as to the appropriate court to which an application to vary the Sexual Risk Order should be made. This was a reference to problems with the variation which had been identified by the Criminal Appeals Office and which led to the case being referred to the full court. In the course of the hearing this morning, Mr McCann opened his submissions by conveying his apologies to the court and the judge for the way in which the matter was researched and dealt with in the court below and Mr Wright added the same thoughts when he addressed the court as well.
34. The underlying problem is that pursuant to s.122D(1) and (7) Sexual Offences Act 2003, a sexual risk order may only be varied on a complaint to a magistrates' court. Under s.122D(2) the persons who can apply for such variation are the defendant or a relevant chief officer of police. In the present case, the applicant for the SHPO was a Detective Constable on behalf of the Commissioner of the Metropolitan Police. That, in our view, was an appropriate way in which to make an application if an SHPO was an order which it was permissible for the judge to make.
35. However, there was no application for the Sexual Risk Order made by a Detective Constable on behalf of the Commissioner. That application was made at the slip rule hearing by the prosecution. In **R v Ashford** [2020] EWCA Crim 673 the court held, when considering equivalent provisions relating to SHPOs, that a court only had jurisdiction to vary such an order on application made by one of the people listed in the statutory provision. In the present case the application to vary the Sexual Risk Order was not made by one of the individuals who is identified in s.122D(2).
36. Had an application been made in accordance with the statutory provisions then the judge could have been invited to sit as a District Judge (Magistrates' Court) pursuant to the Courts Act 2003 s.66. However, this is not what happened in the present case and the guidance contained in the decision in **R v Gould** [2021] EWCA Crim 447 at [93] was not followed. Paragraph [93] states as follows:

> "When the section 66 power is used, it must be used properly and the judge must proceed in the way which would be required of the magistrates' court. It is not necessary for a judge to 'reconstitute' himself or herself as anything. It is, however, necessary to explain, with reasons, exactly what powers are being exercised and why. This is so that all concerned are aware of the extent of any powers which are being employed, and so that the lawfulness or otherwise of what is being done can be considered expressly at the hearing and subsequently if necessary, on appeal or judicial review. The Crown Court judge, in cases where the appeal route is important, should consider whether the proposed use of the power will create difficulties in that part of the result might be appealed to the Crown Court and part to the Court of Appeal (Criminal Division). If exercising the power (and the original Explanatory Notes to section 66 of the 2003 Act suggest that this is not a bar to its exercise) the judge must be explicit and clear about which sentences are imposed as a DJ(MC) and which as a judge of the Crown Court. That must appear in the Order

> and, as we have said, must also appear in the records of the magistrates' court. We suggest that rigorous thought about these questions will reveal at least some of the cases where it would actually be better to leave the magistrates' court to deal with its own work."

Accordingly, it would have been possible to follow this route, if a permissible application had been made by one of the relevant individuals. It is not, however, necessary to discuss this point further, since, for reasons which we have already explained, a magistrates' court would not have had jurisdiction to vary the order simply on the application of prosecuting counsel.

37. In its Respondent's Notice the prosecution referred to an indication by the defence in the court below that no jurisdiction point was being taken. Mr McCann in his written submissions made a similar point. However, where there is non-compliance with the terms of s.122, jurisdiction cannot be conferred by agreement.
38. The upshot is that the judge should not have varied the Sexual Risk Order himself but should have required a proper application in accordance with s.122D to be made. This could have been made to the magistrates, or if properly constituted and the guidance in **Gould** had been followed, it could have been dealt with by the judge sitting as a District Judge (Magistrates' Court).
39. We therefore grant permission to appeal against this aspect of the judge's sentence and quash the order which he made whereby the Sexual Risk Order was varied. An appropriate application of a variation should be made to the magistrates' court.

Notification

40. Finally we deal with the question of notification. Although not part of the sentence, the Criminal Appeals Office noted that the judge was told at the slip rule hearing that the applicant was not subject to the notification requirements in the Sexual Offences Act section 80. This was not correct. The breach of the Sexual Risk Order was an offence under the Sexual Offences Act s.122H. Section 122I applies to a person convicted of an offence under s.122H. The effect of s.122I(4) is to make the applicant subject to the notification requirements in s.80. Accordingly, we clarify that the notification requirements are applicable to the applicant in the light of the offences for which he was convicted.

THE CLERK: For how long?

LORD JUSTICE STUART-SMITH: It will be in accordance with the provisions of s.80.

THE CLERK: Is it indefinitely?

MR McCANN: I believe, in fact, it is regulated by the length of the order that is in place.

LORD JUSTICE STUART-SMITH: Yes.

MR McCANN: So currently it would be until 2024, pending a fresh application.

RECORDER OF SHEFFIELD: (To the clerk): Do you mean the notification requirements as a sex offender?

THE CLERK: Yes.

RECORDER OF SHEFFIELD: Yes, that is dependent upon the length of the prison sentence.

THE CLERK: Exactly.

RECORDER OF SHEFFIELD: We have not altered that.

THE CLERK: So that would be indefinitely?

RECORDER OF SHEFFIELD: I think it is. That is what the order was below.

THE CLERK: Yes. That would be indefinitely.

LORD JUSTICE STUART-SMITH: That is in consequence of s.80 and not an order that we make.

RECORDER OF SHEFFIELD: It is by operation of law; it is nothing to do with the court.

LORD JUSTICE STUART-SMITH: Yes.

THE CLERK: So indefinitely?

RECORDER OF SHEFFIELD: Yes.

THE CLERK: Thank you.

(To the applicant): Mr Kombi, can you hear me?

THE APPLICANT: Yes, I can.

THE CLERK: Okay. This concludes the hearing of your application for leave. Your application in relation to your sentence was refused, which means that your total sentence remains one of 53 months' imprisonment less the 93 days that you spent on electronic curfew. The court has also clarified now that you are subject to the reporting notifications restriction for an indefinite period.

What I am going to do is I am going to ask your barrister to have a short post-conference with you as he did a pre-conference, so he can complete the outcome of today to you. Thank you very much.

THE APPLICANT: Okay. Thank you very much.

LORD JUSTICE STUART-SMITH: Mr McCann, you are looking troubled.

MR McCANN: Forgive me, it is more than likely my error, but when I was considering specifically 122I, specifically subsection (4), which reads:

> "Where the defendant was not a relevant offender immediately before this section applied to the defendant [ie, no underlying conviction]—
>
> (a) this section causes the defendant to become subject to the notification requirements of this Part from the time the section first applies to the defendant until the relevant order (as renewed from time to time) ceases to have effect ..."

LORD JUSTICE STUART-SMITH: (Pause) So he is not a *relevant offender* until convicted of the breach of the SROs.

MR McCANN: Yes, my Lord.

LORD JUSTICE STUART-SMITH: The SROs at the moment go to 2024.

MR McCANN: They do, my Lord.

LORD JUSTICE STUART-SMITH: So notification at the moment would go to the end of July 2024.

MR McCANN: That was my reading, subject to the court's better view.

RECORDER OF SHEFFIELD: So in other words, the normal rule that the length of sentence determines how long you go on the Register in this sort of case does not obtain and therefore it is covered by that provision, which means basically if there is an SRO in force to whatever period of time, the notification period must coincide with that and no more?

MR McCANN: That was my reading of the text, my Lord.

RECORDER OF SHEFFIELD: Because ordinarily a sentence of this length would warrant an indefinite order, but because of that provision, the one you have just mentioned, it is only until the end of SRO, which for the moment is 2024, subject to the prosecution making an application. What happens then?

MR McCANN: I believe it will be automatically extended –

RECORDER OF SHEFFIELD: Extended.

LORD JUSTICE STUART-SMITH: It would roll over for the 20 years.

MR McCANN: -- such as to live with the terms of the order.

RECORDER OF SHEFFIELD: So if the magistrates' court come to the conclusion 'we are going to make it indefinite', which they may well be invited to, automatically the --

MR McCANN: The notification requirements will extend.

RECORDER OF SHEFFIELD: -- notification period will, by virtue of that, extend as well.

MR McCANN: That is my reading.

LORD JUSTICE STUART-SMITH: Mr Wright, do you want to say anything about it?

MR WRIGHT: No, I do not, save and except to confirm that it will be dealt with administratively, which is the indication I have had. But I see (4)(a) and it does seem to read the way that my learned friend says.

LORD JUSTICE STUART-SMITH: I cannot hear, I am sorry.

MR WRIGHT: I am looking at (4)(a) of I.

LORD JUSTICE STUART-SMITH: Yes.

MR WRIGHT: It does seem to bear that ordinary meaning, although I have to say, it perhaps could be expressed more clearly, but it does seem to bear that meaning.

LORD JUSTICE STUART-SMITH: Right. What I think we will do is, as things stand the effect of the order we have made is … we do not order it, but the effect appears to be that the Notification Requirements will be co-extensive with the SRO, which at present expires in July 2024. That is as far as we will go. If either of you wish to make further submissions in relation to this going beyond what I have just said then could you please make short submissions in writing to reach us by 4 pm tomorrow. Can that be done?

MR McCANN: Gladly, my Lord.

LORD JUSTICE STUART-SMITH: Then, if necessary, if there is anything else that we have to say, the same constitution of the court is sitting on Thursday. It will not require further attendance from counsel unless we ask for it; but assume you will not. If we have to say anything else, we will do so on Thursday. So to that extent we prospectively adjourn this until Friday so that we are not functus, but I think it will just remain as I have indicated. Okay?

MR McCANN: Thank you, my Lord.

LORD JUSTICE STUART-SMITH: And if you are not going to make any further submissions could you please send an email saying, 'no further submissions'?

MR McCANN: Yes.

LORD JUSTICE STUART-SMITH: Thank you both.

THE CLERK: (To the applicant): Mr Kombi, that concludes this hearing now. As I said, I will close this platform, but your barrister is going to link with you to have a short post conference with you. Thank you very much.

THE APPELLANT: Thank you.

LORD JUSTICE STUART-SMITH: Thank you both.

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