Neutral Citation Number: [2024] EWCA Crim 944

Case No: 202302019 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT MANCHESTER
HHJ Mansell
T20127444

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/08/2024

Before :

LADY JUSTICE MACUR DBE
LORD JUSTICE DINGEMANS
and
MR JUSTICE HOLGATE

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Between :

REX	**Respondent**
- and -	
ABY	**Appellant**

- -
- -

Ms T Griffiths KC (instructed by **Chris Saltrese Solicitors**) for the **Appellant**
Ms L Blackwell KC (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates : 19 April and 26 June 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 6 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

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

In accordance with this protection and to prevent 'jigsaw identification' of the victim it is necessary to refer to the appellant by randomly assigned letters throughout.

Macur LJ :

Introduction

1. ABY ("the appellant") was convicted on the 22 and 23 May 2013 of six specimen counts of rape of a child under 13, three specimen counts of sexual assault of a child under 13, three specimen counts of cruelty to a person under 16. He was sentenced to a total of 18 years imprisonment.

2. He applied for leave to appeal against conviction and sentence. The Registrar of Criminal Appeals referred the applications to the full Court. On 22 July 2014 the Court granted leave to appeal but dismissed the appeals save in relation to sentence in respect of the offence of cruelty by neglect to a person under 16, which although reduced by two years made no difference to the overall sentence imposed. ([2014] EWCA Crim 1555).

3. The Court of Appeal identified in its judgment, as had the trial judge (HHJ Mansell QC) in summing up the case to the jury, that "… the fundamental thrust of the entire trial and, in particular, in the context of all the evidence, [was] the view the jury took of X. That, in truth, was what the trial was about."

4. Application was made to the Criminal Cases Review Commission ("the CCRC") in November 2018 on the basis that the safety of the convictions is undermined by two matters which came to light after the appellant's trial and appeal, namely : 1. allegations made in 2015 by the complainant ("X") against P, who had been a prosecution witness, although not called to give evidence in the case against the appellant; and, 2. an allegation made in 2016 by X in 2016 against an unidentified person said to have committed a series of violent sexual acts upon her.

5. The CCRC noted that the jury returned their guilty verdicts following an extended opportunity to assess X's evidence and that of the appellant, "in the carefully controlled framework of a Crown Court trial. It would take something new of clear significance to displace the verdicts produced by the process." (Emphasis added) In the CCRC's view, however, X's credibility is substantially undermined by the new material. "Given the centrality of her evidence to the prosecution case, the CCRC has concluded that there is a real possibility that the Court of Appeal will find that this is a difficult case [per *Dial and Dottin v State of Trinidad and Tobago* [2004] UKPC 4], in which the jury's decision to convict might reasonably have been affected by the new material.

6. Consequently, the CCRC has referred the appellant's conviction to the Court of Appeal in the exercise of its powers under section 14(4A) the Criminal Appeal Act 1995. Further, the CCRC notes that the Court of Appeal had, of its own volition, identified a misdirection in law in regards to the cruelty by neglect count, but concluded that the impact of the misdirection was not, in itself, sufficient to render the verdicts unsafe. In the circumstances, and subject to this Court's determination on the primary reference, the CCRC refers this previous finding for consideration by this Court in terms of its prospective impact.

7. The appellant also seeks leave to resurrect a ground of appeal considered and rejected by the Court of Appeal in 2014, that "the prosecution called disputed and inadmissible

expert opinion evidence namely the medical evidence of Dr Atkin. The appellant was not permitted to call a medical expert to deal with such evidence." The CCRC do not adopt this ground.

The allegations against the appellant

8. On 7 November 2011 X, then aged 15, alleged that the appellant, her father and a GP, had sexually abused her over a period of 2-2½ years from when she was 10 until aged 12/13 years. She was video interviewed on two occasions.

9. The abuse took place at the family home. Sometimes her mother and her sister would be in the house. There was often an element of strangulation during the intercourse, although it did not happen as often as the rapes. There would also be occasions when the complainant was having a shower or a bath, when he would come in and put his hand on her forehead and put her head back using the other to digitally penetrate her vagina. He told her that if she ever informed anyone, he would prove that she was mentally ill.

10. The abuse ended shortly before the appellant moved out in February 2009. Her parents divorced and decree nisi was granted in March 2009.

11. The complainant's mother and sister gave evidence. The former said that the appellant and the complainant had an odd relationship. The appellant would goad the complainant into fighting him. They would fight and this would continue upstairs. She heard a lot of banging from the complainant's bedroom and then silence. The latter said that the arguments would start with shouting and then become quite physical. The complainant had an eating disorder and would often be ill.

12. The appellant gave evidence and denied all the allegations. He said that at most he restrained the complainant when she was attacking him or 'trashing' her bedroom. The allegations were likely to be the product of her mental illness, pre-trial therapy and suggestion. Moreover, the possibility of malicious allegations could not be excluded especially given their emergence in the midst of matrimonial breakdown. His wife did not want to engage with the Child Adolescent Mental Health Service (CAMHS). Her unwillingness to engage was one of the main reasons why he gave X antidepressants. He said he started giving his daughter his wife's medication with his wife's knowledge in February/March 2008.

Mental disorder

13. It was inevitable that X's mental ill health should have pervaded both the appellant's trial and also that of P in 2015. The trial judge necessarily reviewed the issue when determining preliminary rulings, including that regarding X's competence to give evidence, and ultimately so did the respective juries by reason of the evidence necessarily led and otherwise subject of cross examination. It was inevitable that the appellant would, as did P, contend that X's mental health meant that her allegations were false and her evidence unreliable. In her oral submissions before us, Ms Griffiths KC, who was defence leading trial counsel for the appellant, maintains the bold assertion that X has "always been unreliable". X was a "plausible" witness, but an objective review of the continuum of her symptomology throughout the years before and extending beyond the appellant's trial, albeit interspersed with periods of

improved mental health, leads to the inference that X should have been ruled an incompetent witness.

14. An overview of X's unstable mental health before the appellant's trial is contained in paragraphs [5] to [14] of the trial judge's ruling on the defence applications to dismiss the charges and for a stay on grounds of abuse of process. It is worthy of reproduction here to provide context to this reference.

"5. [X] was in good physical health until 2007 when she was 10. She was also in good mental health and showing signs of being an outstanding academic, having been placed a year ahead of her chronological age in school. In the autumn of 2007, she developed persistent stomach pains and vomiting. It was thought that she may be developing an eating disorder. She was referred to a child psychiatrist who recommended a course of mental health treatment in the community. However, a decision was taken by her family, principally the defendant, not to take up this treatment.

6. An entry in X's medical records has recently come to light and was disclosed to the defence today. This record comes from a retired consultant child psychiatrist, Dr Dorothy Eminson, … She recalls that in January 2008, she received a request from a Consultant Paediatrician at Royal Bolton Hospital, Dr Sankar (statement p 62), to assess [X]. She relates how appointments were either missed or cancelled by the defendant.

7. Following this referral, the defendant began to administer medication to his daughter in the form of Citalopram, an SSRI anti-depressant not licensed for use in children, which he initially crushed into her food so as to conceal it, but which he later gave her openly. She developed a paranoia that her father was trying to poison her. The defendant was reported to the General Medical Council by another G.P. in respect of his conduct. I am not aware of the outcome of the report or any hearing. The administration of the medication ceased in July 2008.

8. A significant event happened on 16.12.2008. Dr Eminson, who had heard no more about [X] since early in the year, received a telephone call from the defendant who was upset. He informed her that [X's former] GP, had visited the home and referred X to the local South Manchester CAMHS service. He described how X's behaviour had become extreme in that she would hit him for hours. He also informed her that during the GP's visit, she informed the GP that her father had "interfered with her sexually". She telephone Dr Atkin, who specialised in eating disorders, the following day and informed her of the forthcoming referral and informed her of X's reported complaint to the GP.

9. Over the ensuing months, X began to hear voices and experience suicidal thoughts. In mid-2009, she was referred to a clinical psychologist, Dr Joy Harris, who in turn referred her to Dr Ruth Marshall at the Winnicott Centre. Although she saw her once in January 2010, she was plainly reluctant to engage and had no further contact with mental health services throughout 2010, although she continued to experience suicidal thoughts and self-harmed.

10. In late September 2010, following an incident at her school during a lesson where suicide was discussed, she was referred to another child psychiatrist, Dr Oppenheim, of The Priory Hospital in Hale. She thought that X may be experiencing "psychotic

symptoms, depressive symptoms and symptoms of PTSD (Post-Traumatic Stress Disorder)". She recommended that she would benefit from an inpatient assessment at the Carol Kendrick Centre in Wythenshawe.

11. It was there that she saw Dr Louise Atkin, Consultant Child and Adolescent Psychiatrist. Dr Atkin referred her to The Galaxy Unit at Manchester Royal Infirmary. However, she was in fact admitted on 14.10.10 to the Orchard Unit at Cheadle Royal Hospital. It was during this admission that [X] struggled with derogatory second person auditory hallucinations and was started on antipsychotic medication. She self-harmed by scratching her hands, pulling her hair, tying ligatures around her neck and placing a plastic bag over her head. Due to her expressing a wish to leave the Unit, she was detained under Section 3 MHA 1983 on 17.12.10.

12. She was subsequently transferred to the McGuinness Unit on 18.1.11 and made positive progress, with the result that her section 3 detention was rescinded. She was discharged home on 9.2.11, taking Citalopram and Haloperidol as prescribed. Her care was resumed within the community under Dr Atkin. She recommenced school. However, she reported having suicidal thoughts and experiencing auditory hallucinations, so she was re-admitted to Cheadle Royal under section 3 on 17.3.11. During this admission, she reported hearing voices commanding her to hurt herself and others. There were several incidents of her putting hands around peers' necks and also, on a period of home leave, she threatened her mother and sister with a kitchen knife. On 12.5.11, she absconded from the Unit and disclosed later that she had taken an overdose of Paracetamol. On 15.5.11, she was transferred to the Meadows Unit, a secure psychiatric intensive care unit for adolescents at Cheadle Royal Hospital. During this admission, X attempted to strangle two male members of staff and a peer, she self-harmed by banging her head and ripping material to make ligatures to tie around her neck and for the first time, she began to insert objects vaginally, particularly dressings removed from her wounds.

13. During subsequent months, there was a marked improvement in her mental state and a reduction in risk incidents. She was discharged from the unit in October 2011 on Citalopram and Olanzapine. She returned to school full-time. On 7.11.11, she made her first disclosure of sexual abuse to a friend who was also the victim of abuse. The school passed on the information to the police and she subsequently made her video statement on 25.11.11. Following these events, X self-harmed again. She disclosed going to a multi-storey car park and contemplating jumping from the top. She stuck a needle in her arm which required surgical removal. She was admitted to the Hope Unit in Fairfield Hospital, Bury, on 22.1.12. She made excellent progress during this admission. She was discharged on 21.5.12 to a supported residential placement with mental health support. Her mental state was described on discharge as "more stable now than it has been for many months" and "the voices are less intense and more manageable". She was diagnosed with a complex PTSD.

14. Since discharge, although there have been incidents of self-harm, these have been managed within the placement and since August 2012, there has been a marked decrease in such incidents. She has engaged in psychological therapy with Dr Rebecca Clifford-Ball, Clinical Psychologist. She is receiving long-distance learning support from her school and is preparing to take her GCSE's this summer in which she is predicted to achieve good grades."

15. The trial judge correctly identified that it was for the jury to determine the reliability and credibility of X. His sole focus was her competence. As to this Dr Kingsley, Consultant Child and Adolescent Psychiatrist, and lead clinician responsible for X since her arrival in her supported placement in May 2012, stated in a report dated 4 February 2013 that X "has the capacity to understand and to follow proceedings in her role as witness". Further, he considered that, having viewed the video recordings of the ABE interviews, it is "perfectly obvious that X understood all questions put to her by the interviewing officer and gave answers that were easy to follow, intelligible and demonstrated real intelligence and insight. At one stage, she corrected the officer on a point of detail… In her second interview, she was reluctant to go over the allegations a second time and instead, wrote down on paper a summary of her allegations which was perfectly clear and intelligible."

16. The trial judge also took into account her medical records. He was "persuaded beyond doubt" on the available evidence that the statutory criteria of competence were made out. (See section 53(1) and (3) of the Youth Justice and Criminal Evidence Act 1999).

17. Further, we note that Dr Atkin, Consultant Child and Adolescent Psychiatrist at Wythenshawe Hospital, who had treated X since September 2010, viewed the ABE video interviews made on 25 November 2011. Dr Atkin observed X to display appropriate anxiety and distress. However, "She did not express any clearly abnormal beliefs. There was no evidence of abnormal perceptions…. Overall there was nothing I could observe during the interview to suggest that X was acutely unwell whilst giving the evidence, and no evidence of responding to any other stimuli". From her clinical notes around the time of the interview X's "mental state was generally good. In particular she did not have any abnormalities of speech, her mood was appropriate to the situation and there was no increase in psychotic symptoms." The concerns of X's treating clinicians related to X's stress and "management of risk" in relation to her disclosures.

18. Dr Atkin similarly reported upon the second ABE interview conducted in May 2012 and to the same effect.

19. Following the allegations, the complainant was diagnosed with Complex Post Traumatic Stress Disorder (C-PTSD). At trial Dr Louise Atkin gave evidence in general about some of the complainant's symptoms but was not permitted to give evidence as to the diagnosis made. The evidence that she did give is the subject of the third ground, for which the appellant seeks leave to appeal on the basis that the 2014 Court of Appeal's judgment on this ground was reached per incuriam.

Allegations against P and his trial

20. On 22 November 2010 X told P, a nursing assistant on the Orchard Unit, that she remembered her father "physically harming her; hitting, beating and using other things, since the age of three." The relevant part of P's witness notes was read to the jury in the appellant's trial.

21. Subsequently, in 2015, X made allegations that P had been sexually abusing her during her hospitalisation in 2010-2011. It is necessary to describe her allegations, and the evidence of her mother at some length in view of the submissions made before us as will be indicated below.

22. In video interview on 16 November 2015 X said that she and P had become "close" when he was on duty at night. Boundaries had become "blurred" because he helped move her when she was unable to move her limbs. It had become "tactile". He told her she was special and would come in early "to spend time with me and stuff". He would talk to her inappropriately about sex and how he would like to have sex with her, but also that he wanted to be like a father to her. He sexually assaulted her by placing his hand between her legs in the area of her vagina. He did not digitally penetrate her, but did once remove ligatures that she had secreted in her vagina If giving her a hug he would reach under her clothes and touch her chest. He encouraged her to touch him. Other members of staff knew that she liked him. He would say that he had made sure to nurse her. He would always try to be put on her 'observations'. He visited her during her home leave in April 2011. She felt vulnerable and wanted to return to the hospital. She didn't feel protected. She attacked her mother and sister with a knife she had previously secreted in her bedroom.

23. She was video interviewed again on 7 December 2015 because she "realised last time that I didn't speak about when I'd go on grounds leave and things." Ground leave wasn't always with P but" he'd let me know when he didn't have anything else to do on the rota and that was the time that I knew to ask. And then he could volunteer and say, "Oh, I don't mind taking them out…and sometimes it would work like that, or sometimes, erm, it could be, like, if I was getting anxious on the ward he might suggest, "Don't you think we should," erm, "take her out and it might help her calm down?" It would not be for long periods – 5-10 minutes. One time he had cupped her breast under her top and he would press his body into hers so she "could feel his penis" and he would encourage her to put her hand towards his genital area over his jeans. It happened "like nine or ten times." They planned that when she left hospital "he'd be, like, my new dad. ... We'd try and think of a way that ...we'd be able to, to live together... Well, we thought that I'd be going to live back with my mum. ...So, we'd have to come up with some kind of way that that would work out. … he would suggest that if, erm, he and my mum got together then that would mean that we could live together." He thought that her mother "seemed to quite like him…. she knew that I liked [P] …that we got on well." The first person she told about what happened with P was Dr Atkin, her psychiatrist. She also told Helen, her support worker, who contacted social services.

24. In July 2017 P was tried by a jury at Manchester Crown Court and acquitted.

25. We have not been informed as to whether P's counsel challenged X's competence to give evidence in 2016. There is no reference to the outcome of the appellant's convictions in the "Agreed Facts" prepared for the purpose of P's trial , however they do include, amongst other matters to which we return below, two entries in the medical notes referring to: (i) X's auditory hallucinations which took the form of two male voices which directed her to harm herself or others, one of which X was later able to identify as that of her father, the appellant; and, (ii) that X had reported "anger and betrayal she felt towards mother for being unable to protect her from father".

26. In cross examination X gave evidence that "…. I formed a strong bond with [P] at the start…. I could make a bond with [P] because he took more time than others and took time to become close to me."

27. X's mother said that she had purchased a book for P at X's request to say thank you. She dropped it off at his mother's address at his suggestion. She went there with X. P had her contact details because he texted her. On one occasion when he visited them, he brought a takeaway. She had texted P for advice when she was "struggling "to cope with X at home. They'd met in a car park mid-way between their home addresses, P had leant over and tried to kiss her. She'd said: "Woah, what are you doing? And it was the furthest possible thing from my mind, and when, after that I think he texted me, … "I'm really sorry, I made a fool of myself", … he was being a bit weird because he said things like, "It would have been nice because we could have been a little family and we could have been a unit and....". She told X who was furious "because she wanted me to go out with him…. She wanted me to have a relationship with [P] because she thought it was wonderful and thought that it would be great and we - yes. I think she had a dream that we would be all happily ever after".

28. There was evidence from a nursing colleague, MC, that P had been advised by her and others not to go alone into patient's bedrooms, but it had "fallen on deaf ears". He had been "spoken to" by a senior practitioner when complaints had been made that he had been staring inappropriately at one young person when she was in a state of undress. She confirmed in cross examination on P's behalf that "observations were assigned" However, she said that They usually tried to marry up the member of staff with the rapport they had with that particular patient…. They married them up to make it easier."

29. We note that one of the agreed facts in the P trial record was that: "The notes from the 7 May 2011 record that: "[X] reported that she was friendly with some of the YPS on Orchard and she likes the staff there in particular NA PB [P]."

30. Disclosure made in P's trial revealed that X made separate sexual allegations against a third unidentified party. The agreed facts sufficiently summarise the circumstances in the following fashion:

"36. On the 21 February 2016 [X] presented at the Accident and Emergency Department at the Manchester Royal Infirmary. The notes from her attendance record that she told staff she had been "raised in the care system" and "had no family". During the course of a Domestic Abuse Assessment, she told Dr Harriet Edwards that she lived alone.

37. On the 22 February 2016 she told staff that she lived with an unknown man that she didn't know much about nor his name.

38. At 1809 on the 22 February 2016 she told "Gill Yeung, Psychiatry" that she was sharing a flat with another girl.

39. Later she told Dr Edwards that over the last 2-3 weeks prior to her attendance, a man known to her had been sexually assaulting her by inserting a 6-inch serrated craft knife into her vagina, causing vaginal bleeding.

40. An examination was carried out by Michael Cocker, and the notes record that the findings were normal: "no evidence of trauma to the labia majora/minora or perineum. … Not bleeding. …."

The CCRC referral

31. The CCRC reasons for referral, upon which Ms Griffiths relies, are that:

> 48. "The appellant's representatives acknowledge that the fact that P was acquitted of all counts does not necessarily signify that the jury disbelieved X' allegations against him. The jury may simply have concluded that they could not be sure of P's guilt.
>
> 49. Nevertheless, it appears to the CCRC that the defence at P's trial were able to establish that certain elements of X's account were contradicted by the records and / or were explicitly rejected by P's colleagues. The following two examples appear in a note of 18 August 2017 on the CPS file, in which prosecution counsel suggests possible reasons for P's acquittal:
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> • "The complainant alleged that some of the sexual abuse occurred when she was alone with the defendant on ground leave. The records contradicted this allegation. Although at times she was permitted ground leave with one member of staff, the records indicated that this was never exercised with the defendant or anyone else. Any such ground leave should have been noted in the records. It follows I had to suggest that the defendant manipulated the system. This suggestion was undermined by Maureen Conway who maintained, under cross-examination, that such requirements were strict."
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> • "The complainant said that the touching by the defendant started with the need for her limbs to be manipulated. The records did not support the existence of such a need."
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> 50. It appears to the CCRC that it is arguable that these matters afford a "proper evidential basis" for asserting that X's complaint against P was untrue.
>
> The CCRC considers that these are matters which, if the timeline had permitted, might have been admissible at [ABY's] trial as bad character evidence on the basis that they had substantial probative value in relation to X's credibility. (See *R-v-Clark* [2016] EWCA Crim 2030)

32. As regards the allegations made in 2016:

> "57. It appears to the CCRC that it is arguable that these matters afford a "proper evidential basis" for asserting that the knife allegation was untrue.
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> 58. Clearly, it does not necessarily follow from X's apparent unreliability in respect of the knife allegation and the allegation regarding P, that her allegations against [ABY] were not true. Her reliability could have deteriorated after [ABY's] conviction. Nevertheless, it appears to the CCRC that X's apparent unreliability surrounding both the allegation against P and the knife allegation is at least potentially relevant to the question of the reliability of the evidence that she gave at [ABY's] trial, and thus to the safety of his conviction.
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> 59. The CCRC agrees that if X had made disclosures about P at an early opportunity, the medics would have had a different understanding of the complexity of the overall picture, and the medical response at the time may have been different. (P would of course have been removed from any contact with X.)

> 60. Separately, it is arguable that exploration at [the appellant's] trial of the relationships between X's mother and X and P as they emerged at P's trial, might have brought out evidence that could have cast X's allegations against her father in a somewhat new light. For example, the defence could have explored the possibility that X was motivated to make allegations against [the appellant] by a desire to have P feature more in her life. (On the other hand, it appears to the CCRC that the defence would have had to think carefully before pursuing an argument based on X's purported desire to have a different father figure. Any such argument would have carried with it the risk of focussing the attention of the jury on the reasons for X's desire not to have her actual father as her father figure.)
>
> 61. It appears to the CCRC that the matters under this heading lend some weight to the argument that certain witnesses, the parties, and the court, had only a partial understanding of some potentially relevant features of the history, and that this could have an impact on the safety of the conviction."

Further disclosure

33. Subsequent to the referral decision, and recently, the prosecution have made further disclosure in accordance with the Attorney General's Guideline on Disclosure (2024) @ [140].

    In brief, Sussex Police Force logs record that on 24 May 2018 at 16:33 X using another name had entered a medical centre clearly distressed and asking for help. She said she had been trafficked into England at the age of 7 by a sex trafficking ring and had been sexually exploited and physically abused. She had only managed to escape in November 2017, was within the NRM process and previously housed in Greater Manchester Area by 'Migrant Watch'. She had recently moved to a flat in the Brighton Area and had, within the last few days, been located by her traffickers/abusers and again sexually and physically abused. She was in clear distress, poor mental health and so was not forthcoming with much information regarding what had happened to her.

34. Recent police enquiries as to the whereabouts of X have revealed her to have used a number of different names and addresses. It is believed that X has officially changed her name and travelled to Germany in 2020.

35. In a further disclosure note:

    X was an in-patient at Manchester Royal Infirmary from 29/30 December 2017 with note of a planned discharge date of 2 May 2018 following an intentional overdose of medication taken at the suggestion of unnamed individuals. ETJ had reported that they had been subject to repeat abuse by a complex network of individuals, over many years and was fearful of returning to the situation from which they had just escaped. Allegations were made of "very graphic sexual experiences and having been taken to various national and international locations for that purpose. ETJ said they could not recall a time when these practices were not happening. ETJ demonstrated scarring to their upper arms said to be caused by the group as a means of identifying them as part of that group." Manchester Mental Health wrote to an Assessment team in Brighton providing information that X frequently experienced flashbacks, sometimes lasting 4-6 hours and rendering them unable to move or speak, and distressing nightmares.

Both take a physical toll on ETJ. ETJ has self-harmed in the past and made attempts to take their life. ETJ tends to "cut off" in order to function… said the abusers and their network had been doing things to them since they were little. She tried to escape when she was 17 but would be punished when found. They were moved between houses and warehouses in Greater Manchester Area and further afield to other parts of England. The abusers cut the word "whore" into their chest and reopened it each day rubbing faeces, salt or semen into it to ensure scarring. ETJ's 'betrayals' were punished, she was tied up, deprived of food and clean water."

36. The disclosure note records: "The Respondent accepts that aspects of the allegation made to the Sussex Police Force in May 2018 are factually incorrect. The victim was, at that time, given what is known about the admission to hospital in late December 2017 (see below), suffering serious mental ill-health." Ms Blackwell KC, prosecution leading trial counsel makes the same concession before us.

Grounds of appeal:

Ground 1

37. The complainant's credibility, on which the prosecution depended, is substantially undermined by material that has emerged since the appellant's trial.

The allegations in the P trial are relevant in two ways-

i) The credibility and reliability of her complaints of sexual abuse; and

ii) The significance of what is said to be the "concealed or undisclosed social/romantic triangle between P, X and V."

38. Before turning to examine Ms Griffiths submissions regarding the materials which she maintains establishes that X 's evidence in the P trial was demonstrably untrue, it is convenient to deal with two points that she raises in introduction.

First, submits that the fact of two ABE interviews in the P case was "unusual" and the fact that it was necessary "also impacts on X's reliability and credibility". There is nothing in this criticism. It is neither unusual to conduct more than one interview in such cases, nor is the number of interviews determinative of the credibility and reliability of the witness, unless they are demonstrably and unaccountably inconsistent. That is not the situation here.

Second, she submits that since X was obviously aware of the matters leading to the allegations against P at the time of the appellant's trial and chose to keep them secret until 2015 "it is difficult to avoid the inference that X either deliberately chose to conceal the allegations against P, or later, made them up." Such a submission completely ignores the evidence of X to the effect that she did not appreciate for some time that she was being groomed by P and also that she had revealed these matters to Dr Atkins and her social worker in 2013. As Ms Blackwell responds, the reasons why sexual abuse allegations are not made immediately after the alleged offence are far ranging. We see nothing in the point.

39. Ms Griffiths puts forward five reasons in support of ground 1a

Reason 1: Ground leave

Ms Griffiths submits that X's allegations of P sexually abusing her whilst on ground leave "must be untrue because very detailed contemporaneous records made by staff prove that there was no occasion when X went on ground leave alone with any member of staff, let alone P. The records appear detailed and reliable … The prospects of P being able to manipulate those records, to conceal any wrongdoing, must be nil. … This seems to be conceded by Prosecution counsel in the P case in his Note dated 18 August 2017."

40. Ms Blackwell responds that "while there is no record that she ever exercised Ground Leave with a member of staff as opposed to with her mother, save perhaps on one occasion, such a record would be unnecessary and otiose. X being in the grounds, when permitted, with a member/s of staff is unremarkable, whereas her being in the grounds with someone from outside the hospital would properly be recorded. Similarly, when X was taken out of the hospital on trips. It is not credible that X never went into the grounds with staff at any time" Once Ground Leave was granted, it remained available on the same terms, until there was a recorded change.

41. Those representing the appellant have produced a "summary of references to Ground Leave/Access to outside areas in X's medical file." This summary is prepared from the electronic hospital notes ("notes") and is intended to indicate whether ground leave was exercised by X on a particular date, and if so whether with mother or staff, and if the latter, how many members of staff. We have no doubt that the summary was prepared in good faith, however, it appeared to us that, having regard to the respondent's submissions, the summary may well be lacking vital context. Consequently, we have ourselves scrutinised the entries in the notes in respect of the indictment period in P's case.

42. The notes cover the period 27 October 2010 to 17 November 2011 in 187 pages and included a plethora of daily entries identified as "Family meetings", "Teaching" "Therapy" "Medical" and "Nursing Notes". We find that the detail contained in the various nursing note entries is not consistent in form, length or content and is dependent upon author or date /time of entry. The author of the note does not always indicate whether the entry is based on personal interaction with X or hearsay reports. Some are said to be "retrospective" or to be "confirmed "retrospectively by the ward manager up 5 days later. They give indication of the staff to patient ratio and the frequency of observation but rarely name the staff member involved. Even in the most lengthy entry, there is no suggestion that the whole of the day's activities have been captured. However, we do note that the entry made in the notes for 11 October 2010 in relation to the 'first' allegation of physical abuse, said to have been made to P, appears to be written in the first person, and is headed "Key Worker" although confirmed by Staff Nurse Stephen Buckle . The notes reveal that X had similar conversations with others in days thereafter.

43. The focus of the nursing notes is, understandably, upon mood, behaviour, reported symptomology and corresponding medication – sometimes administered "under restraint". The fluctuations in X's mental health and psychosis are readily apparent throughout. The reports of her 'self-harm' and threat to others have obvious prominence. We also note that in December 2010 on occasions of anorexia it was necessary to introduce nasogastric feeding. In March 2011 there is indication of X's

attempts to harm others, and again in April 2011. On 18 April 2011 she was noted to be on level 2 restraint on her bed, thereafter level 3. On 21 April 2011 it was said she was given medication under level 3 restraint and on 13 May 2011 it was necessary to administer further restraint at A & E.

44. Consequently, we conclude that the records are not 'contemporaneous' nor, on all occasions "detailed". Further, we find the schedule to be incomplete, insufficiently nuanced in context, and in some instances inaccurate.

45. The first "Medical" entry in the notes on 28 October 2010 directs: "Garden access with staff as much as possible". There is an actual report of this plan in execution on 31October 2010: "Went on access to Orchard Gardens with staff. No concern". The plan for ground leave/access is confirmed on 2 November 2010 in terms: Access / and Leave: can go to grounds and gardens with staff and family as much as can be facilitated but no trip access. None of these entries is recorded in the summary.

46. We note that on 15 December 2010, she was "detained" under section 5(2) of the Mental Health Act 1983, then pursuant to section 3 on 17 December 2010 and anticipate that she may well have been restricted in access. However, on 21 December 2010 it was directed that X "can go into the Orchard Garden on the wheelchair with staff" and confirmed in similar terms on 30 December 2010. Not until 4 January 2011 is it prescribed that two members of staff shall accompany her on ground leave.

47. The "no" entries in the summary are made in regard to entries in the nursing notes which refer to the nature of access prescribed by treating doctors, and which, we agree with Ms Blackwell, may be taken to inform subsequent ground leave, the exercise of which may have been regarded on occasions as 'unremarkable' unless associated with a particular event or symptomology . We note that reference to ground leave is often found in entries with little other content relating to florid presentation, or else refers to interaction with family. There are also generic references to "her daily routine".

48. On 25 May 2011 the consultant noted "Given X's improvement in mental health… staff to decrease observations…". On 8 April 2011 plans were made for X's reintegration home and to school. On 11 April 2011: the notes indicate that X can have all access and increasing periods of leave.

49. X's home leave on 16 April 2011 coincided with the knife attack upon her mother and sister, which is a matter we address below. X returned to the unit and was secluded. Nevertheless, the summary indicates that on 29 April 2011, X's access to the grounds was "with <u>at least</u> two members of staff" (emphasis added), although we struggle to find reference to the level of supervision afforded in the nursing note itself. On 18 June 2011 the prescription was for X to have secure garden access with 2 staff. However, on 25 July 2011 the notes record that "A review on Wednesday will determine whether she has access to grounds with 2 staff." On 8 August 2011 "Her access is to be increased to local area and grounds access can now be with 1 staff only. "This was confirmed on 15 August 2011 and thereafter access to the community was increased leading to her eventual discharge on 17 October 2011.

50. Ms Griffiths, in answer to a question raised during the hearing, confirmed that there has been no attempt to cross reference P's shift patterns with the nursing notes. There

is some indication of actual shifts he did work in the "Agreed Facts" prepared for his trial, however these are selective and in relation to the 'removal of the ligature' allegations, or else on his mother's birthday. There is no prospect therefore to assess his availability to accompany X on ground leave.

51. Consequently, we are not persuaded that the nursing note entries do undermine X's reliability or credibility.

Reason 2: Manipulating the limbs.

52. This refers to X's evidence that when first admitted to Cheadle Royal Hospital that P manipulated her limbs and lifted her in and out of bed. Ms Griffiths asserts that "no reference is made to such need in very extensive medical records".

53. Ms Blackwell counters this by reference to the cross examination of X in P's trial, obviously reliant on the medical records, in which the first admission to a mental health unit in September 2020 followed a "crisis, not moving or opening your eyes… found in a toilet crouched in a foetal position with your eyes closed, saying that you could not move".

54. However, our own review of the notes reveals an entry on 5 November 2010 at 1950 that X was in a "catatonic state, not moving at all despite staff trying to move her and get her talking".

55. We note that the CCRC, and Ms Griffiths, place significant reliance on prosecution counsel's after trial note. (See [31] above). However, we consider it is not only speculative but, as for the reasons we indicate above in relation to reasons 1 and 2, also inaccurate.

Reason 3: Observations

56. This refers to X's evidence that P would manipulate the rotas to ensure he could spend time with X.

Ms Griffiths asserts there is "no support for such evidence and it is contradicted by an apparently reliable witness, Maureen Conway".

57. We find this an untenable submission. (See [28] and [29] above). Further, P agreed in evidence that he had "swopped" rotas. Ms Blackwell, in the Respondent's Notice also refers to a disciplinary meeting that concerned P's behaviours and his possible dismissal in which he said:

"I never went into [X's} bedroom alone. It is not true that I tried to manipulate the system at the hospital to spend time with a patient. Some people did change rotas at the hospital. I was by others manipulated to spend time perhaps with [X], but I didn't manipulate this".

Reason 4: X's knife attack upon her mother and sister on 16 April 2011

58. This incident was explored by defence counsel in the trials of both the appellant and P. We have therefore reviewed the evidence that X gave on each occasion with particular care to assess inconsistency going to credibility.

59. There is reference in the notes that, when indicating the circumstances prior to the knife incident, X's mother said that the family had watched a horror film. There is an entry on 17 April 2011 "Keyworker session 11:00 Key Worker 1·1 with X to discuss previous evenings events. X is currently in room 9. X said she started hearing two male voices yesterday (Saturday), she could not identify a trigger. The voices were Telling her to kill her mum and sister. X retrieved a knife from her bedroom which she had hidden there in October …X couldn't remember any other details X stated that she could still hear the voices and that they were telling her to hurt people and herself".

60. Asked by Ms Griffiths in the appellant's trial what happened in the incident, she said she was "not exactly sure what was going on in my head I was really upset and quite, I think angry in a way…". She thought she tried to use the knife on her mum or sister or both, everyone was upset. "I know it's a horrible thing that I did and I really regret it now, but I was poorly and yeah." Further, that X "was angry with her [mother] because she hadn't protected me." Ms Griffiths introduced the possibility that the upset had been caused by X watching a horror movie, but X responded" I honestly don't know. I know horror films can affect people and upset them, and maybe that made the voices worse because I was scared, because the voices get worse when I'm scared, so I don't know".

61. When asked about this incident in P's trial, X said that it occurred on the day that P had come to her home when she was on weekend leave and asked to have sex with her. It had felt like her mother was giving her to another man; the attack upon her sister was "indiscriminate" because she was also there. "I just wanted to feel safe and everything around me didn't feel safe. And it probably doesn't make sense and I feel really awful for doing that, but at this time, I was just really scared, and so I'm sorry." She felt as if she was really "struggling" with her mental health at the time. She was asked if it was the horror film she had been watching that made her feel unsafe and said "I don't think I was watching that film. I'm not really a big fan of horror".

62. X gave evidence that, after the incident, she had been put into seclusion in the unit and "a while after the incident, I was asked by staff to apologise to my mum, because of what I'd done and at this point, I didn't feel ready to or that I was able to because of feeling so scared. And I think I was trying to explain, but really struggled to explain what had happened". She said she did not tell staff that she felt her mother was giving her to another man because "I wasn't really able to talk to people about what was happening, because I was so overwhelmed by everything. And feeling so awful about myself and not knowing who I can trust or whoever is safe, so it's not kind of a straightforward conversation to have. Especially as well at this time, I haven't told anybody about what has happened with my dad, so if I was to say that, it wouldn't really make sense to anybody…".

63. This evidence is congruent with a nursing note on 19 April 2011 in which it was reported that X's mood appeared "brittle and was quite angry with mum".

64. Ms Griffiths argues that the evidence given by X regarding this incident in the P trial is "very different" to that in the appellant's trial and is demonstrable and determinative of her lack of credibility. We disagree. There is a clear addition to the evidence in P's trial to that given in the appellant's trial, however, in both trials X

made it clear that she was poorly at the time and that she was angry with her mother because she hadn't protected her. The evidence is clearly not irreconcilable.

Reason 5: Failure to disclose abuse by P in the appellant's trial.

65. Ms Griffiths submits that X's failure to disclose P's abuse of her at the time of the appellant's trial was "conscious and deliberate because there is no other plausible explanation for such failure".

66. However, if X did make a "conscious and deliberate" decision not to disclose P's abuse of her, it may have been for any number of reasons and is not determinative of false allegations against the applicant. As to this see what X said as recorded in [60] above. Further, we note, in passing , that some reference to these allegations may be implied by the entries in the notes for 18 August 2011 when X said "that she would like to be nursed in a different room from bedroom 9 on Orchard as that was where she had bad experiences in the past" and on 25 August 2011 X and another young person "voiced their concerns about a previous allegation they had made about a member of staff, [which] has been investigated which [X] and peer disagree with, and feel that they are being labelled as liars and misinterpreting events that happened, reassurance given and advised for them to re submit their complaints". In any event, as indicated below, we find that the appellant's case was not prejudiced by the appellant's lack of knowledge of P's romantic interest in X's mother.

67. There is nothing in this 'reason' as regards ground 1A. We examine the asserted consequences of the late disclosure for the purpose of ground 1B below.

Ground 1B: Impact of the later disclosure

68. Ms Griffiths contends that if the existence of X's allegations had been known before and during trial there would have been (a) a different approach taken by treating clinicians to X's allegations against the appellant; (b) the psychiatric evidence given at trial would have been different; (c) her approach to cross examination of X would have been different; (d) she would have required P to give evidence, and (e) the jury may have taken a different view of X's credibility, since it was implausible that she would disclose physical abuse by the appellant to a man who was himself abusing her.

69. We deal with these points in turn.

70. Approach of clinicians. We do not understand the logic of this contention. The approach of the clinicians to X's allegations against a member of nursing staff would be to safeguard against risk, not to determine credibility of either the extant allegations made against the member of staff or any other alleged perpetrator, as was made clear in Dr Atkin's evidence at the appellant's trial.

71. Evidence of Psychiatrist. There is no application to admit fresh evidence in support of this assertion. We agree with Ms Blackwell that the evidence that there was a relationship (sexual or otherwise) between P and X would have had no relevance to false memory syndrome or recovered memory syndrome and would not have provided a sound factual foundation for such expert opinion. Therefore, the ruling of the judge would not have been affected.

72. Ms Griffiths describes in her written and oral submissions a "concealed or undisclosed social/romantic triangle between P, X and her mother." We say immediately that there is no evidence to suggest that X's mother was 'romantically' involved with P. It is clear, however, that X sought to promote a relationship between P and her mother, or was desirous to do so, because she wanted P to be a 'father figure'. We accept that Ms Griffiths would have been entitled to cross examine X upon her motive in making allegations against the appellant to ensure this outcome. However, quite apart from the question of whether it would have been tactically wise to do so, as acknowledged in the CCRC's reasons, since it begs the question why X wanted to usurp her father, it was unnecessary for X to do so. Her mother and father were divorced. As Ms Griffiths explored in the cross examination of X her belief that she was responsible for the breakdown of the family unit. Further, it appears that her father was already 'displaced'. The notes recording a key worker session with X on 14 September 2011 referred to her spending time with her mother and mother's boyfriend of 4 months, who she appeared to like for he was "more understanding of her illness than her dad was." The issue of the disagreement between X and the appellant over the school she was to attend was fully ventilated at trial.

73. P giving evidence. In the advice and grounds of appeal Ms Griffiths describes P's evidence as "pivotal" because this was the "first base" latched on to by Dr McEwen "from which she sought to develop her "timeline" theory with which she began to educate X to conceive of the possibility that she may have been abused by the appellant, rather than X's then preferred theory that her mental health issues were medical. It was also the genesis of the highly controversial complex PTSD diagnosis."

74. We regard this to be a contention devoid of any evidential basis.

75. It is not remotely likely that P's evidence of being the first recipient of the allegation of physical abuse was "pivotal". X repeated this allegation to several others in the following days. Her allegations were consistent. It is unlikely that Ms Griffiths would have contemplated seeking to cross examine all such recipients on the basis that they had fabricated the making of the complaint.

76. There is no basis or legitimate support for the theory for Ms Griffiths posits that P put the idea of sexual abuse into X's mind, or that the asserted untoward influence of Dr McEwan 'educated' X to believe that she had been sexually abused, or that informed the basis of what Ms Griffiths refers to as the "highly controversial" 'PTSD' diagnosis. These issues were considered by the Court of Appeal previously and comprehensively dismissed. (See [48]-[51] of the Court of Appeal judgment.) The subsequent allegations of abuse against P are not inconsistent, or incongruent, with X making her initial disclosure of physical abuse to him.

77. Impact on the jury. We are not persuaded that the inappropriate social connection that P garnered with X and her mother would have any impact upon the jury for the reasons indicated above. The fact that X had made (different) allegations against P did not undermine her complaints against the appellant.

78. The evidence of X was already the subject of a "Makanjoula" direction in the appellant's trial in terms: "It is very important that you exercise considerable caution when assessing X's evidence, for the following reasons: firstly, the importance of her evidence to the case as a whole. Secondly, the nature and degree of her mental illness

and thirdly, the lack of any independent evidence to support what she alleges, such as evidence of internal injuries from an intimate medical examination supportive of penetrative sexual abuse, or any recorded evidence such as photographs or medical evidence of physical injuries occurring at the time of any alleged assault." It could not have been made "firmer" as to the considerable caution needed before convicting the Appellant. The fact of P's acquittal was not admissible. The issues regarding 'false' allegations are dealt with above.

79. There is nothing in any of these points that undermines the safety of the appellant's convictions.

Other allegations of sexual abuse and trafficking

80. As indicated above, Ms Blackwell concedes that since 2016 X has made allegations against unnamed perpetrators which appear incredible. However, she submits that X was quite clearly mentally ill at the relevant times, and that the nature of the allegations she made were extreme. However, this is in stark contrast to the position at the time when X made the allegations against the appellant in the video recorded ABE interview, and at trial. She prays in aid that X had been discharged from hospital and was successfully attending a main stream school at the time of her first known disclosure of sexual abuse in November 2011.

81. Also as indicated above, Ms Griffiths submits that X was "always unreliable because of her mental illness."

82. We cannot accept that submission. As indicated above, the judge made a ruling as to dismissal of the case and X's competence to give evidence on the basis of expert evidence. The allegations made 5 or more years later do not taint that decision. The sequence and presentation of X's mental ill health was laid bare before the jury. Ms Griffiths had ample opportunity to expose the fluctuations in her presentation and the hallucinations and delusions to which she was prone.

83. These later and most dubious allegations are suggestive of subsequent mental ill health, as appears confirmed in the chronology of corresponding hospital admission provided in the disclosure notes and do not establish lack of prior credibility or reliability in the appellant's trial.

Ground 2

84. As indicated in [6] above, this is not a stand alone ground and is dependent upon Ground 1 or the renewed application for leave to appeal in relation ground 3. As indicated above, and for reasons that appear below, we have no need to address the same.

Ground 3

85. Ms Griffiths invites this Court to grant leave to appeal upon a ground dismissed by this Court in 2014, namely that "the prosecution called disputed and inadmissible expert opinion evidence namely the medical evidence of Dr Atkin and yet the Appellant was not permitted to call a medical expert to deal with such evidence." She contends that we may reopen the matter since the previous decision was made per

incuriam for want of a transcript of the evidence of Dr Atkins, which establishes that she

i) Expressed expert opinions on highly controversial issues that struck right at the heart of the case, despite being permitted to give evidence only on factual matters or to express expert opinion on non-controversial issues.

ii) Without any notice whether in any report, witness statement or otherwise, gave evidence that tactile hallucinations were physical memories.

iii) Failed to comply with the important requirements of Part 19 Crim PR, for example, there was no "experts declaration", simply a statement of truth. As a treating doctor, such declaration of independence was an important safeguard, not just a "tick box exercise".

86. Further, Ms Griffiths asserts, absent any professional report upon which to base such a submission, that "medical advances in diagnosis since the trial show that the then novel and disputed diagnosis of Complex Post Traumatic Stress Disorder made by Dr Atkin was wrong". The contents of Ms Griffiths skeleton argument reveal her reluctance to abandon hope of relying upon the evidence of Dr Boakes, regardless that it clearly was not tethered to the factual evidence in the case. (See *Jacobs* [2024] 4 WLR at [85]) The Court of Appeal in 2014 dealt with the complaint that the trial judge was wrong to refuse to admit the evidence of Dr Boakes, in paragraphs [18] – [44] of its judgment. We have no need to revisit it here.

87. It is necessary to have regard to the trial judge's ruling on the admissibility of Dr Atkins evidence in order to address this application. The relevant parts of the ruling follow the trial judge's rejection of the defence application to call Dr Boakes , who suggested that [X], whom she had not interviewed, suffered from false memory syndrome.

"58. I now turn to the prosecution's application to introduce evidence from one or more of the treating doctors. These are Dr's Kingsley, Kuschlik and Atkin, all of whom are psychiatrists who have treated [X] at various times during her illness. Each one of them would have been called by the prosecution in rebuttal of Dr Boakes's evidence if I had allowed her evidence to be admitted. They disagree strongly with her opinion. They are of the joint view that [X] has demonstrated all the signs of Complex Post Traumatic Stress Disorder, which would support the prosecution case that she has experienced some form of traumatic experience in childhood that has led to her catastrophic decline in mental health. This could potentially support the prosecution case that she has been sexually abused. However, it might equally support the allegations of physical cruelty, emotional cruelty and/or Neglect and Administering a Noxious Substance.

59. I have not been asked to by the prosecution, nor would I permit them, to adduce this evidence as part of their case. The danger of introducing such evidence is that it "puts the chicken before the egg", by seeking to prove an illness likely to have been brought on by sexual abuse so as to prove that such abuse took place. Were the jury to hear evidence from both sets of experts, the central issues would be side-tracked by a "trial within the trial", to determine firstly what is the precise diagnosis of [X]'s mental illness and secondly what has caused it. I would have to permit the defence to

contradict the prosecution evidence on diagnosis. This they would do by calling Dr Boakes, who has not treated her or assessed her or seen her give evidence, and that would inevitably re-introduce the evidence that I have already ruled inadmissible. The jury would be presented with directly contradictory expert opinion in support of each case; the prosecution adducing the theory that one reason for [X] illness (PTSD) is a traumatic event in her past, i.e. the alleged sexual abuse; the defence questioning the diagnosis and reintroducing inadmissible opinion evidence as to recovered memory syndrome. Far from helping the jury in their task, it would be liable to cause confusion and detract them from their task.

60. The prosecution invites me to allow them to call one or more of the experts to give a potted history of [X]'s illness, the symptoms of her psychotic episodes and the treatment administered. They do not seek to go further and link the illness to the abuse by way of a diagnosis.

61. In my judgement, this is not only appropriate but it is only fair to the prosecution in light of the way in which the defence has been developed. I have reviewed the notes I have of the cross-examination of [X] and to a lesser extent, her mother [V], and a significant aspect of the defence case is that [X's] illness and her treatment may have brought about a false belief on her part that she suffered physical and sexual abuse at the hands of her father. It was put in terms that her allegations were "fantasy", and that she was "deluded" about her father. Reference has been made to the voices she has heard, her thoughts and beliefs surrounding episodes of acute illness, the extent to which outside influences, such as television, literature, exposure to patients and psychological counselling may have had on her.

62. In light of this, it is only right and proper that the prosecution is allowed to call at least one specialist who has treated [X] to deal with some of these issues. At present, I consider the most appropriate person to be Dr Atkin, who has had overall clinical supervision of [X]'s case since 2009 when she was first consulted. She may give evidence about some of the symptoms which [X] has experienced - visual and audio hallucinations, physical or somatic hallucinations, deluded thought processes, paranoid thoughts and the like - all of which require some expert opinion to assist the jury to understand the nature of her illness and also to properly evaluate the defence suggestions. These are unlikely to be remotely contentious and do not call for defence expert evidence in rebuttal. Equally, she should be allowed to provide a history of 's illness, treatment and recovery, so as to bring the chronological summary of the medical records - yet to be finalized - to life and easier to understand for the jury.

63. The prosecution does not invite me to allow her to go further and pass opinion on the diagnosis of PTSD, or to try and link her illness to the allegations of sexual abuse and I have made clear, I would not have allowed this to happen."

88. We have had regard to those parts of the transcript of evidence identified by Ms Griffiths which she says offended against the trial judge's ruling on the issue. Having done so, we unhesitatingly conclude that there is nothing in this complaint.

89. It appears to us that Ms Griffiths has alighted upon the word 'trauma', regardless of context. We find it is never used in the sense of offering a diagnosis.

90. The first time Dr Atkins uses the word trauma is in examination in chief and is to explain what she means by "disassociation". She said that "it covers a spectrum, so you can have mild disassociation would be akin to daydreaming…. In the more pathological sense, when people experience trauma, they can disassociate in order to manage and cope with that."

This does not offend against the trial judge's ruling.

91. Dr Atkin next uses the word when cross examined by Ms Griffiths about the sequence of X's illness. She responded: "How I would understand it now retrospectively, is that [X] has chronic symptoms of difficulties that I would associate with trauma, ..." however, thereafter confirming the " stress of being in hospital as traumatic."

This does not offend against the trial judge's ruling.

92. Later in cross examination, when being questioned regarding the sudden nature of the knife attack, Dr Atkins conceded that "it couldn't always be foreseen, but she did, you know, there were, her symptoms, her presented symptoms could change quite a lot but that, again, that would be more associated with a kind of traumatic type picture, rather than a schizophrenic or a schizoaffective type picture." Which Ms Griffiths 'clarified' by saying:

"Q. And at that time, she had been in, she had just come back, or she had been in hospital including on the Meadows Unit, which we know was an experience she found traumatic, for quite some time."

Subsequently, in re-examination, Dr Atkins agreed that physical restraints used upon X in hospital "was a very traumatic experience for her".

In our view, this does not offend against the trial judge's ruling. However, even if we accepted, for the purpose of Ms Griffiths argument that the comparison between a "traumatic type picture" and a "schizophrenic or a schizoaffective type picture" came close to indicating a diagnosis made by Dr Atkins, we observe that this arose from a loosely constructed proposition made by Ms Griffiths in cross examination, and was, in the midst of an extremely lengthy session of her giving oral evidence on many other topics. It could not realistically be described as "highly prejudicial".

93. We note that Ms Griffiths did ask, in the absence of the jury that Dr Atkins "please be reminded that she should not be talking about trauma?" The judge did so, without having agreed that the witness had gone beyond the bounds he had set, explaining to Dr Atkins, "we're concerned really more with the presentation of her symptoms than the actual diagnosis".

However, seen in context, we do not regard that Dr Atkins used the word trauma to "describe" the illness, rather than to indicate the presentation of the symptoms; she did not give her opinion of a diagnosis. As the trial judge indicated in his exchange with Ms Griffiths on the issue of her extensive cross examination: "The purpose of having this witness here was to assist in understanding the presentation and development of her illness and some of the terms, which I think she has done.

94. Ms Griffiths also criticises the witness's description of various hallucinations, although we note that she had previously indicated to the judge that she wished to question Dr Atkins on "The issue of delusions, this is the only witness…".

Subsequently Dr Atkins was asked by the judge to describe what she meant by different types of hallucinations and Ms Griffiths asked Dr Atkins to consider whether memories could be created by hallucinations. We do not understand why it is said that these answers contravened the judge's ruling.

95. The Court of Appeal in 2014 dealt with Dr Atkins evidence in paragraphs 45 to 47 of its judgment. Finding:

46. Suffice to say that there is no suggestion that the summing up provided any basis for concluding that the evidence had gone beyond the judge's ruling or made reference to a diagnosis which either expressly or implicitly did so: having read exchanges between Miss Griffiths and the judge in relation to other parts of the case, we have no doubt that had Dr Atkin given such evidence in such a way as offended the ruling, she would have objected and a ruling would have been forthcoming.

47. When summing up, the judge identified how Dr Atkin had given evidence explaining the symptoms from which X was suffering including auditory and tactile hallucinations, psychosis and delusions. She was taken through some of the medical notes and she gave evidence to the effect that she did not ask leading questions. The judge summarised the cross examination. There was no suggestion at the time of the trial that the summing up did not reflect the evidence."

96. We accept that, in principle and in exceptional circumstances, this Court may give leave in respect of additional grounds to those referred by the CCRC even if the same argument has already been presented on appeal. See *R v Knights (Secretary of State for Justice Intervening)* [2017] EWCA Crim 1052 @ [33]. However, this Court will require to be satisfied that there is cogent evidence, or else cogent argument not previously properly developed. Ms Griffiths submits that the transcript shows that she did object to Dr Atkins use of the word 'trauma' however, realistically we think, she made no further submission regarding the point for the reasons we give above.

97. We roundly reject the submission that the lack of the transcript resulted in the Court of Appeal making "a manifest slip or error" or misapprehending the issue in 2014. It is not arguable that the transcript now to hand would have affected the decision for the reasons we give above.

98. There is no merit in this renewed ground and the application is refused.

Conclusion

99. We dismiss the appeal. We refuse the application for leave to appeal ground 3.