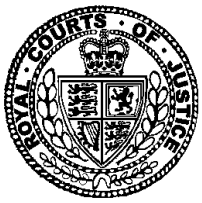

Neutral Citation Number: [2023] EWHC 617 (Admin)

Case No: CO/3260/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2023

Before:

LADY JUSTICE THIRLWALL
MR JUSTICE JAY

- -

Between:

ZOE PHILLIPS **Appellant**

- and –

(1) ISLEWORTH CROWN COURT
(2) CROWN PROSECUTION SERVICE **Respondents**

- -
- -

The Appellant in Person
The First Respondent was neither present nor represented
Simon Sandford (instructed by **CPS**) for the **Second Respondent**

Hearing date: 8th March 2023

- -

Approved Judgment

This judgment was handed down remotely at 2pm on 21 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LADY JUSTICE THIRLWALL

MR JUSTICE JAY:

INTRODUCTION

1. This is an appeal by way of case stated from the decision of the Crown Court sitting at Isleworth (HHJ Wood sitting with justices) given on 27th May 2022, in essence refusing the application by Ms Zoe Phillips ("the Appellant") to vacate her pleas of guilty entered at the Westminster Magistrates Court on 2nd July 2020.

2. This case has a lengthy and complex background which is covered in much detail in the voluminous papers before us, all of which I have read. However, the case stated procedure does not permit the type of wide-ranging inquiry sought by the Appellant. The role of this Court is limited to an examination of the terms of the case stated and the full judgment of the Crown Court, and then to answer the question of law that has been posed. To the extent that the Appellant's case amounts to an assertion that the Crown Court's conclusions of fact were irrational, this Court will need to examine the key features of the evidence that was adduced, but by no means all of it, in order to determine whether her appeal is made out.

THE CASE STATED

3. I begin by setting out the terms of the case stated dated 30th August 2022:

> "1. On or before 25th July 2020 a complaint was preferred by the Second Respondent ("the CPS") against the Appellant that she had harassed her former partner Neil Cross and his new partner, Serena Williams.
>
> 2. On 2nd July 2020 the Appellant pleaded guilty to the offences before justices sitting at the Westminster Magistrates Court and on 30th July 2020 was sentenced by District Judge Rimmer to a Community Order together with restraining orders.
>
> 3. An appeal against the decision of the Justices was made by the Appellant to the Crown Court at Isleworth, which appeal was concluded on 27th May 2022.
>
> 4. We found the following facts: see paragraphs 9-17 of the full Judgment dated 27th July 2022 below.
>
> 5. It was contended by the Appellant that she had been unfairly pressurised into pleading guilty at the last minute by her then solicitor and barrister and that her pleas were equivocal.
>
> 6. It was contended by the Respondent that there was no unfair pressure by her lawyers and that her pleas were not equivocal.
>
> 7. We were referred to the following cases: *P. Foster Haulage Ltd v Roberts* [1978] 2 All ER 751.

> 8. We were of the opinion that she had not been unfairly forced into pleading guilty and that her pleas were not equivocal, and accordingly refused the appeal.
>
> QUESTION
>
> 9. The question for the opinion of the High Court is: were we correct in law to refuse the application by the Appellant to vacate her pleas of guilty entered at Westminster Magistrates' Court on 2nd July 2020?"

It was unnecessary for the case stated to record that the Appellant was sentenced to a community order in relation to the two harassment offences. Two restraining orders of unlimited duration were imposed. The sentence is not the subject of any appeal before this Court.

4. I do need to correct or clarify the case stated in four respects. First of all, the hearing on 2nd July 2020 was not before Justices but District Judge Nicholas Rimmer, now HHJ Rimmer. That mistake is not material. Secondly, the date of the full judgment was not 27th July but 7th July. Thirdly, the Appellant was sentenced not by District Judge Rimmer on 30th June but by a lay bench. Again, that mistake is immaterial. Fourthly, the procedural history is not entirely clear, but it appears that after District Judge Rimmer refused to re-open the Appellant's case under s. 142 of the MCA 1980 on 14th May 2021, she filed an appeal against conviction and sentence; and that the primary ground of her conviction appeal was that her guilty pleas should be set aside. Her case came before the Crown Court for the hearing of the conviction appeal on 28th April 2022. The case continued into a second day, 29th April and there was a further hearing on 6th May, at the conclusion of which the Crown Court reserved its judgment. What was described as a short judgment was handed down on 20th May. On 27th May the Crown Court heard the appeal against sentence. One way or another the main issue for the Crown Court on the hearing of the appeal was whether the Appellant should be permitted to vacate her guilty pleas on the grounds that I have summarised. The Crown Court examined that issue for itself rather than conducted a review of District Judge Rimmer's decision.

THE JUDGMENT OF THE CROWN COURT

5. Following the provision of the short judgment and at the Appellant's request, on 7th July HHJ Wood provided what he called a full judgment on the application to revoke pleas.

6. In the full judgment the Crown Court explained that it had heard evidence from Stephen Bennett and Aneurin Brewer, the solicitor and the barrister who represented the Appellant below, and from the Appellant and a witness called on her behalf, Colonel Dr Godbold who had attended the hearing below. There was also evidence from DC Ali although we were told that she remembered very little of what happened in Court on 2nd July 2020. There was a mass of documentary material some of which the Crown Court summarised. The full judgment noted that the governing law was not in dispute. There were two situations where a plea might be vacated. The first was where it was equivocal, "where a defendant pleads guilty but it is clear that he/she should not be doing so because, for example, there is an available defence. It can be described as a

"guilty but … plea"." The judgment further explained, with reference to a passage in *Blackstone* at D12.99-102 and a further passage in *Archbold* at 2-146, that the equivocality or ambiguity derives from the words used by the defendant in court. The second is where there is improper pressure from the defendant's legal representative. Here, the judgment explained that counsel has a duty to advise, if necessary in forceful terms, on the strength of the evidence and advantages of guilty pleas as regards sentence. However, and by way of paraphrase, there is a distinction between a reluctant plea on the one hand and an involuntary plea on the other, where the advice "was so very forceful as to take away the defendant's free choice" (this was a direct citation from para D12.102 of Blackstone, summarising *Peace*, noted in [1976] Crim LR 119). Again, the judgment referred to the relevant passage in *Archbold*.

7. As I have said, the trial of the harassment allegations was fixed for 2nd July 2020 after an earlier hearing was vacated. Mr Bennett was instructed on 29th June and the papers were sent to counsel. There was a lengthy conference which took place remotely on 30th June. I will be examining the documentary materials in due course, but it seems clear that whereas at the start of the conference the Appellant was intending to continue to plead not guilty, by the end she appears to have come round to the view that, subject to the outcome of an application to adjourn the hearing, she should plead guilty.

8. The Crown Court's interpretation of the documentary evidence, mostly in the form of emails, was that in the undoubtedly pressurised period leading up to the hearing the Appellant was reluctantly agreeing to plead guilty, at least subject to a satisfactory basis of plea being agreed with the prosecution. It was only on the morning of the hearing that the basis of plea was agreed. The Appellant was aware of its terms.

9. After the basis of plea had been resolved and the case was called on, there was a conflict of evidence before the Crown Court as to what occurred. The Appellant's evidence was that when the charges were put again, she said: "Sorry, apparently guilty". Colonel Dr Godbold's recollection was that she said to one charge only, "Presumably guilty". Counsel's evidence was that he could not recall what was said although he heard nothing untoward. His oral evidence before the Crown Court was that if the experienced district judge had heard anything which might undermine or qualify the guilty pleas, he would have intervened. The Crown Court had been sent notes of the proceedings below (in the circumstances I will be coming to explain) but these did not assist. The Crown Court's conclusion was:

> "Nobody in Court appears to have reacted when she was re-arraigned. Even if something of the sort was said in addition to "guilty" we find that it could not amount to an equivocal plea. In our view, the answers to the three questions posed in Foster Haulage (supra) are in the negative."

10. The Crown Court observed that after the hearing it was clear that the Appellant was bitterly disappointed at what had happened in Court and wanted to revoke her pleas. The full judgment indicates that the Appellant may not have understood the difference between a basis of plea and a plea in mitigation.

11. The Crown Court's overall conclusion was that the evidence of the lawyers was to be preferred over the Appellant's. In short:

> "We found Stephen Bennett and Aneurin Brewer to be honest, competent lawyers who had tried their best for the Appellant without time on their side. There was undoubtedly pressure of time throughout those few days. We find no professional criticism of either of them. Lawyers are required to give clear, robust, unfavourable, realistic advice as a matter of professional duty, whilst leaving the ultimate decision as to plea for their client. She clearly did not like their advice but that is a different matter."

As for the Appellant, the Crown Court concluded that:

> "She came across to us as an intelligent, articulate, independent and strong-minded person, and a demanding client. We found her at times to be an unconvincing and unsatisfactory witness in that we did not accept her evidence as to any improper pressure put on her by Mr Bennett and Mr Brewer to plead guilty. The fact that matters did not work out as she hoped coloured her evidence against her lawyers."

12. At the conclusion of its judgment, the Crown Court expressed its sympathy for the Appellant, noting that these events have taken a heavy toll on her.

THE APPEAL TO THIS COURT

13. The Appellant has filed two lengthy skeleton arguments in support of her appeal. I have read these carefully and will be summarising some of her oral arguments in due course. The written arguments may be summarised as follows:

    (1) The Crown Court erred in not receiving affidavit evidence as to what had happened in the Magistrates' Court in relation to the issue of the equivocality of the pleas.

    (2) The Crown Court erred in not accepting the Appellant's account as to what she had said in the Magistrates' Court, namely "Sorry, apparently guilty".

    (3) The Crown Court erred in not accepting the Appellant's evidence that she was coerced by her legal representatives and/or received incorrect legal advice from them, such that her pleas were involuntary.

    (4) The Crown Court's findings of fact were wrong and/or contrary to the evidence.

14. As the Respondent's skeleton argument points out, the Appellant also seeks to persuade this Court that she had a good defence to the underlying harassment charges. The relevance of this point will need careful consideration at the appropriate time.

15. At the start of the hearing the Appellant provided us with a document entitled "Opening Statement to the Court". She then read it out, elaborating her points orally as she went along. The Appellant also reminded us of some of the documentation, and sought to draw our attention to further documents which were not before the Crown Court. Overall, the Appellant's oral presentation was accomplished, poised and extremely courteous. The Appellant is obviously a highly-educated woman but she has no legal

training. Inevitably perhaps, some of her submissions were not well-directed, but in my view her oral argument, read in conjunction with her lengthy written submissions, took all the points that could and should have been taken in support of her case.

16. By way of summary of the Appellant's oral argument, she submitted that she was placed under intense pressure, "due to the urgency, also financially and emotionally; subject to manifest mistakes made and discrimination by the MET Charing Cross Police". The Appellant added that she never seen a signed copy of the basis of plea. She reminded us of the two emails she had sent under great pressure of time at 17:38 and 18:41 on 30th June 2020 in which she set out her position in relation to the basis of plea which had not yet been drafted. She told us that she made it clear to her lawyers that the basis of plea would have to include reference to the complainants' lies. In fact, these emails do not say that although I do not doubt that this was her perception. The procedure was, after all, entirely new to her.

17. The Appellant submitted that it had been her wish that a personal letter she had written should be shown to the judge. In fact, there are two versions of this letter, only one of which was considered by the Crown Court. The first version was an attachment to an email sent to Mr Brewer at 11:51 on 30th June. The second, slightly longer version (which was not before the Crown Court), was handed to Mr Brewer on the day of the hearing. Mr Brewer did not wish to deploy either version. My reading of these letters is that the Appellant was not indicating that she was not guilty; rather, she was seeking in her own words to explain her actions. Put in these terms, it is clear that these letters weaken rather than strengthen the Appellant's case before this Court.

18. The Appellant submitted that the hearing fixed for 2nd July should have been adjourned. It appears that the Court's decision to refuse her late application for an adjournment, advanced on the basis that she had dispensed with the services of her legal team and was in the process of instructing another, was given at a hearing which the Appellant did not attend. It took place when she was in conference with counsel. However, the Appellant's written arguments were considered by the District Judge, and in my view his decision cannot be challenged, either in the context of these proceedings or at all. The District Judge was entitled to conclude that the Appellant had had a sufficient opportunity to prepare her defence.

19. The Appellant criticised the CPS for seeking to press on with a hearing originally fixed for 21st May 2020 in the knowledge that she was unable to prepare for it: the police did not return her digital devices to her until 15th May. These contained highly material evidence. The picture in relation to what happened between 4th and 21st May is unclear, but I have concluded that this is water under the bridge. Although the Appellant had evident difficulties in both instructing and paying for lawyers, the CPS was entitled to take the view that she had sufficient time between 15th May and 2nd July to prepare her case.

ANALYSIS AND CONCLUSIONS

20. I have carefully considered the Appellant's submissions in the light of all the material placed before this Court. I have not interpreted her oral submissions as in any way seeking to detract from the detailed written submissions which remain at the forefront of the Appellant's case.

21. In my view, although this does not appear to be a point specifically raised by the Appellant, it is appropriate to examine whether the Crown Court correctly applied the governing law to this case. That, after all, is the question the Crown Court posed of this Court.

22. The Respondent's bundle of authorities contains five cases: *R v Rochdale Justices, ex parte Allwork* [1981] 73 Cr. App. R. 319; *R v Plymouth Justices, ex parte Hart* [1986] 2 WLR 976; *R v Tottenham Justices, ex parte Rubens* [1970] 1 WLR 800, *P Foster (Haulage) Ltd v Roberts* [1978] 67 Cr. App. R. 305 and *R v North West Suffolk (Mildenhall) Mags Court, ex parte Forest Heath* [1998] Env. L. R. 9. In addition, the Appellant has referred to *R v Huntingdon Magistrates Court, ex parte Jordan* [1981] QB 857, and the Respondent to *R v Hall* [1968] 2 QB 788 and *R v Turner* [1970] 2 QB 321. There are no doubt others.

23. The following propositions of law may be distilled from these authorities. These fall under two headings.

24. Under the first heading is the procedure to be followed in the Crown Court where an appellant, on an application or appeal of this sort, wishes to change her plea to one of not guilty, asserting that her plea was equivocal.

25. The starting point is that the Crown Court must conduct a proper inquiry into the issue of the plea and there must be sufficient evidence before the court on which it could find that the plea was equivocal (*Hart*).

26. First, the appellant must produce prima facie and credible evidence that her plea was equivocal (see *Allwork*). Secondly, the Crown Court must receive an account of what happened at the hearing before the justices (*Allwork*; *Hart*). Accordingly, the Crown Court should request an affidavit from the Magistrates' court (the Chair of the bench and/or the clerk) as to what happened (*Allwork*). But if the justices or clerk refuse to provide an affidavit, the Crown Court can look at other evidence (*Hart*).

27. Next, an equivocal plea is one what amounts to "I am guilty … but" (*Allwork*). It is not sufficient that the defendant has simply changed her mind (*Allwork*) or that new facts have come to light (*Rubens*) after an unequivocal plea. The fact that a defendant was represented is not a bar on the justices' discretionary power to permit a change of plea (*P Foster (Haulage) Ltd*).

28. Finally, on this topic, if the Crown Court determines that the plea was equivocal, it has the power to remit the case to the justices for rehearing and the justices are under a duty to rehear the case (*Allwork; Hart; Rubens*).

29. Under the second heading are the legal principles concerning an alleged failure by the Magistrates' Court to consider all the evidence and/or reaching findings which are said to be contrary to the evidence. It is perverse and an error of law to make a finding of fact for which there is no evidential foundation. But it is not perverse, even if mistaken, to prefer the evidence of A to that of B where they are in conflict. That gives rise to no error of law challengeable by case stated in the High Court. It gives rise to an error of fact properly to be pursued by way of appeal from the Magistrates' Court to the Crown Court. All of these principles are vouched by the *North West Suffolk (Mildenhall) Magistrates' Court* case.

30. The Crown Court in the present case referred only to *P Foster (Haulage) Ltd*. The report of that authority in the Criminal Appeal Reports contains only a headnote: the judgment of Lord Widgery, CJ is not available. However, as has already been pointed out, HHJ Wood considered the relevant passages in *Blackstone* and *Archbold*, and in my view his full judgment contains an accurate statement of the germane legal principles. In particular, he correctly identified and described the two questions that had to be addressed: first, whether the Appellant's plea was inherently equivocal; and, secondly, whether the advice given by her lawyers was so forceful that her free choice was, in effect removed. Additionally, in answering those questions the full judgment correctly stated that the Court's inquiry should extend beyond what happened at the hearing itself but should examine what had been said both before and after it.

31. The authorities I have cited also make it clear that when addressing arguments along the lines that the decision below was wrong in fact or against the weight of the evidence, the role of the High Court on an appeal by way of case stated is limited. Broadly speaking, the High Court applies administrative law principles to this exercise, and the burden on an appellant is a high one. The High Court should intervene only if satisfied that the decision at issue was either based on no evidence or was perverse. Nothing less than that will do. In addition, the case stated procedure requires the High Court to confine itself to an examination of the evidence that was before the court below.

32. Continuing this theme, in addressing the Appellant's submissions in support of her appeal it is important to recognise that much, but not all, of what she says amounts to a challenge to the factual findings made by the Crown Court. It is very difficult for such arguments to succeed in a situation where the court below saw and heard the witnesses. It is also to be noted that whilst we have the transcript of the examination in chief and then lengthy cross-examination of Mr Brewer there is no transcript of the appellant's evidence. It follows that no assessment may begin to be made of the quality of that evidence. That said, even if a transcript were available, the difficulty would remain that it is not perverse for a court to prefer the evidence of one witness over another.

33. The next question to be resolved is whether the Crown Court perpetrated a procedural error, amounting to an error of law, in not receiving affidavit evidence from the court below in relation to what had happened after the case was finally called on, the basis of plea having been agreed.

34. According to Mr Sandford's skeleton argument, and this is not contradicted by the Appellant, HHJ Wood stated in open court that he had written to the Westminster Magistrates' Court requesting that an affidavit be prepared setting out what had taken place on 2nd July. No affidavit was provided. Instead, the Court furnished its typed notes, which we have seen, setting out what had occurred on both 2nd July and 30th July. These are very much in shorthand form, but are none the worse for that. The notes do not in fact record that the Appellant pleaded guilty at all, still less that she said anything in addition to that word. At one point before us the Appellant submitted that this was an omission on which she could somehow rely. With respect, that was not a good point. It is quite clear from the notes read as a whole, and indeed from the Appellant's whole case both here and below, that she was pleading guilty to these charges rather than seeking a trial. Whether her pleas were qualified in some way raises a separate and different point.

35. According to Mr Sandford's skeleton argument, the Appellant was asked whether she wanted an adjournment and she said no. The hearing therefore proceeded on the basis of the typed notes alone. These were not referred to by the Crown Court in support of its conclusions that the words "Sorry, apparently guilty" were not said, alternatively – even if they were said – they did not evidence an equivocal plea.

36. In my view, there is nothing in this point. The typed notes neither supported nor contradicted the Appellant's case. As I have said, the Crown Court did not rely on them either way. Had the Crown Court persisted in requiring an affidavit, the inference must be – considering this from the Appellant's best perspective - that any affidavit from the Court below would have confirmed the notes and left the matter there. Had District Judge Rimmer remembered anything more, he would have said so. Furthermore, the Appellant was given the opportunity to apply for an adjournment and did not take it. Whilst the Crown Court did not obtain the affidavit referred to in *ex parte Allwork*, but that made no difference to the outcome. Overall, in my judgment the procedure adopted by the Crown Court in this case did not prejudice the Appellant and was reasonable in all the circumstances.

37. The Appellant's next argument is that the Crown Court should have accepted her evidence that she said on re-arraignment, "Sorry, apparently guilty". This was not a matter to which the Appellant referred in detail in her oral argument, but it remained part of her case.

38. In my judgment, this was a question of fact for the Crown Court to resolve on the available evidence. This Court could only interfere if there were no evidence to justify the conclusion reached, alternatively that conclusion was perverse. Given that this Court does not rehear the evidence that was called below, it cannot make its own assessment of the witnesses.

39. The reasons why the Crown Court rejected the Appellant's evidence were that it accepted Mr Brewer's evidence that he heard nothing to qualify the pleas entered, and nobody in court appears to have reacted upon her re-arraignment. In my opinion, these were straightforward conclusions that the Crown Court was entitled to reach. Mr Brewer's evidence was not to the effect that the Appellant did not say what she alleges. Rather, his evidence – and I have read the transcript in full – was that he has no recollection of her saying anything to qualify the pleas entered. The obvious inference is that had he heard something he would have reacted at the time and have remembered it when he gave evidence. The Crown Court therefore had to make a stark choice: whether to accept Mr Brewer's evidence or not.

40. There is also force in the observation that had the Appellant qualified her pleas in the manner she alleges, then – whether or not her words of qualification amounted to an expression of equivocation – the District Judge or his clerk would have intervened in some way. This was a consideration which clearly weighed with the Crown Court, and in my view, it was reasonable to take account of it.

41. As against these considerations, which were cogent in themselves, the Appellant's case was far from satisfactory. Colonel Dr Godbold's recollection was somewhat different from hers. Furthermore, it was not until 10th June 2021 that the Appellant stated for the first time that her pleas were inherently equivocal in the light of the words she used. It is true that the Crown Court did not make that point even in the full judgment, but in

my judgment when assessing a perversity submission, it is relevant. It bears directly on the Appellant's credibility.

42. In these circumstances, it is unnecessary to reach a definitive conclusion as to whether "Sorry, apparently guilty" amounts to the expression of an equivocal plea even if this was uttered.

43. It is convenient to take the Appellant's third and fourth arguments (on the Respondent's numbering) together. These are the arguments that the Crown Court should have concluded in the light of all the evidence that the Appellant's pleas were involuntary and/or that she was given incorrect legal advice.

44. In my view, this is the strongest aspect of the Appellant's case before this court. It gives rise to a measure of concern because this case has an obvious and painful human dimension. Although it will not be necessary to examine all of the evidence, a review of the main features of the documentary evidence covering in particular the period 30th June to 2nd July 2020 inclusive is required.

45. In a case such as this, the contemporaneous documentary evidence should be given more weight than oral evidence likely to be coloured by subsequent events. That was the approach correctly adopted by the Crown Court. In any event, the communications between the Appellant and her lawyers over this three day period were either by email or have been well documented.

46. As the solicitor Mr Stephen Bennett explains, a video conference took place between 15:00 and 16:49 on 30th June. The Appellant had provided a mass of material including a 39 page witness statement and the Crown's disclosure. The Appellant had given a full comment interview to the police.

47. It is a consistent theme of the Appellant's case before the Crown Court and in this Court that her lawyers did not have sufficient time to read, understand and analyse the papers. I do not consider that this argument has any real force. It was a complex case with a lengthy background, but it was not so complicated that counsel and his instructing solicitor could not get sufficiently on top of it to give accurate and focused advice in the time available.

48. According to the solicitor's attendance note, although the Appellant was given every opportunity at the conference to get her point of view across, Counsel's initial opinion was that this case would be difficult to defend. He stated at the start of the conference that he wanted to go through matters in detail. He explained that he was concerned by admissions at police interview which in his view crossed the line "as to what would be termed harassment". Counsel further explained that there were disadvantages in having a trial: the fact that it would be emotionally demanding, and – according to the attendance note at least – "the Court will find that forcing the victims to give evidence is an unattractive state of affairs and is a continuing of the harassing behaviour". He said that the Appellant had a very slim chance of succeeding. That assessment was also attributed to Mr Bennett.

49. Counsel advised that a conditional discharge was "an extremely long shot".

50. According to the attendance note, the Appellant stated that she had pleaded not guilty because she did not want to have a criminal record. She did not want to be seen as giving in, and wanted to get her point of view across. The Appellant then is reported as saying, "she feels like she is giving up but she accepts that it is the only option she has". Slightly later on, the Appellant is recorded as accepting that she had to go down the route of pleading guilty.

51. The conference closed on the following basis. A final decision would await the application to take the case out of the list in the light of the Appellant's recent instruction of a new legal team (an email from the court timed at 16:46 that afternoon confirmed that it had been refused). The Appellant was asked to confirm her instructions in writing, following which Mr Bennett would write to the CPS and the Court. Counsel would then prepare a draft basis of plea.

52. The Appellant was informed at the end of the conference:

> "We stress that it is the client's decision, we can only advise on the case and we give clear advice that this is a case that she will lose if she fights but there is always a chance that we are wrong and if she wishes despite the advice to pursue a not guilty plea, we will do our best to support that and to defend her case as best we can."

53. It is opportune at this stage to deal with two important issues, both of which relate to the nature and quality of the legal advice given. The Appellant maintains she had in fact a good defence to these charges. Either she should not have been advised to plead guilty at all, or her belief that she had a good defence is important contextual background to her overarching contention that her guilty pleas were involuntary. Additionally, the Appellant argues that she should not have been advised that cross-examining the victims would be a continuation of the harassing behaviour.

54. I have considered both these arguments very carefully. The Crown Court was not asked to evaluate whether the Appellant had a good defence to these charges, and it made no relevant finding. Strictly speaking, therefore, this is not an issue which this Court is required to resolve. The attention of the Crown Court was not drawn to the case of *R v Kakaei* [2021] EWCA Crim 503 which holds that a conviction may be quashed following legal advice which deprived the accused of a defence which would probably have succeeded.

55. In fairness to the Appellant, and to set her mind at rest, it is appropriate that this issue be addressed. In my judgment, it is impossible to say that the advice given to the Appellant as to the merits of her defence was clearly wrong. Counsel correctly advised her that "the definition [of harassment] is a grey area". There will, of course, be entirely clear-cut cases, but in a case of this type it seems to me that the strength of the charges must be a matter of professional opinion. Different barristers and solicitors might express the strength of the Crown's case in slightly different ways. Having examined some of the underlying material, in particular the transcript of the Appellant's interview, I have concluded that the advice given to the Appellant as to the merits of her defence was reasonable in all the circumstances. It is unnecessary to say more than that.

56. The Appellant did not tell her lawyers at the time that she believed that the advice she was being given was incorrect. Even if, at an emotional level, the Appellant found it difficult to accept that advice, this without more would not demonstrate that her pleas were involuntary. It would show that she was reluctantly accepting what she was being told, which is of course one of the main points made by the Crown Court in its full judgment.

57. Mr Brewer was cross-examined at the Crown Court about the suggestion in the attendance note that questioning the victims would be a continuation of the harassing behaviour. Mr Brewer did not recall having said this, although in his email to the Appellant timed at 08:46 on 1st July he suggested that a trial even on a partial basis "would also very likely to almost amount to harassment". The Crown Court noted the terms of the attendance note but did not resolve the issue. The premise on which the Crown Court proceeded is therefore unclear. However, even if Mr Brewer gave that advice and went too far in giving it, I do not consider that it serves to undermine the voluntary nature of the pleas. Cross-examining the complainants in a case whose prospects were thought to be "very slim" could not be considered to be an expression of remorse, and would weaken any subsequent plea in mitigation.

58. Returning to the chronology, at 17:38 on 30th June the Appellant emailed Mr Bennett and Mr Brewer with her instructions. She said that she had, albeit with deep sadness, decided to plead guilty, but on a basis. She asked Mr Bennett to contact the Court accordingly, and looked forward to receiving the draft basis of plea. At 18:46 that evening Mr Bennett did contact the Court.

59. Overnight, the Appellant sent two emails to Mr Brewer and one to Mr Bennett. In the email to Mr Bennett, she suggested that she plead not guilty to one of the charges. At the start of the working day, Mr Bennett advised the Appellant by email that witnesses had now been de-warned and that the court would need to be told immediately if the position had changed. She was also advised that to contest either charge would be unsuccessful and would give rise to a more severe sentence. In his email timed at 08:46 on 1st July Mr Brewer endorsed Mr Bennett's firm advice although he pointed out, "obviously this remains your decision".

60. Mr Brewer was cross-examined on 28th April 2022 about the lengthy email the Appellant sent to him at 02:35 on 1st July. It was suggested to him that the email, read as a whole, indicated that the Appellant had in fact changed her mind and no longer wanted to plead guilty at all. The Crown Court made no express finding about this email. Although the Appellant was undoubtedly angry and upset, I do not read the email as indicating that she had changed her mind. In my view, she was vacillating. She was seeking further advice and reassurance, in particular that her side of the story would be put before the court.

61. There was a telephone conversation between Mr Bennett and the Appellant on the morning of 1st July. He explained that this remained her decision to take, but the Court would need to be told straight away "if the decision is different from the one we have advised the court of". The Appellant then said that she would think about it. At 10:11 that morning the Appellant, having reflected on the matter, confirmed that she was accepting her lawyers' advice.

62. Later that day, there was email correspondence about counsel's draft basis of plea. The Appellant took issue with it but not in terms which indicated a further change of mind. At the Westminster Magistrates' Court on 2nd July the basis of plea was amended at the request of the prosecution, and then agreed. As the Crown Court found, the Appellant was aware of its contents.

63. At this stage I should address the Appellant's further submission that the basis of plea was not signed by her, and she never agreed it. Initially, I had some concern about this – not on the footing that the basis of plea was not signed (there would have been difficulty in printing it off), but on the ground that it was amended very late in the day in the Court building itself and maybe in a rush.

64. However, this was an issue which was directly covered by evidence. It was put to Mr Brewer in cross-examination that he had proceeded without his client's instructions, but he denied that in forthright terms. It is true that the Crown Court did not deal with this issue specifically, but in my judgment, there is no basis for the submission that the basis of plea was not agreed. This submission is flatly inconsistent with the finding of fact that the Crown Court did make: that the Appellant was aware of the contents of the final version. This is tantamount to a finding that the Appellant agreed the terms of the document.

65. The evening after the hearing, the Appellant was regretting her decision to plead guilty. She said that she wanted to revoke her pleas, and repeated this wish on various occasions before the sentencing hearing which took place on 30th July. It was made clear to the Appellant that an application to vacate the pleas would necessitate a change of legal representation. The Appellant did not seek to do this. Her main concern was that her side of the story might not be considered. There was no application to vacate the pleas before 30th July, and it is noteworthy that in all her communications with her legal team the Appellant did not criticise their conduct. Indeed, counsel's plea in mitigation was praised. The criticisms came later.

66. As I have already said, Mr Brewer was cross-examined at length before the Crown Court. It was put to him that he had underestimated the Appellant's prospects of success, had failed to appreciate that after the video-conference on 30th June and before the basis of plea was provided in draft the Appellant had indicated that she no longer wished to plead guilty, and that the Appellant's interests were subordinated to his desire to return as soon as possible to his murder trial at the Old Bailey. Mr Brewer denied all of these propositions.

67. The Appellant's fundamental point before this court is that it is clear from all the available evidence that she evinced more than reluctant acceptance of an unpalatable state of affairs, and that it ought to have been clear to her lawyers that she did not wish to plead guilty at all. Further or alternatively, she contends that she was placed under intolerable pressure by all the surrounding circumstances, which included the number of hearings that had taken place, the large sums of money she had already spent on lawyers previously instructed (who had failed to prepare bundles or to advance her case), as well as by her current lawyers' oppression, such that her guilty pleas were involuntary, and that the Crown Court ought to have come to that conclusion.

68. I do have a certain amount of sympathy for aspects of what the Appellant says. This was undoubtedly an extremely fraught and pressurised situation where decisions had to

be made quickly and without an ideal opportunity for reflection. The advice given at conference was unwelcome and it is reasonable to infer that it was unexpected. The Appellant's troubled state of mind is borne out by the timing and tone of the various emails she sent during the early hours of the morning of 1st July 2020.

69. However, Mr Bennett and Mr Brewer were not responsible for the pressure the Appellant was under, at least to the extent that it was generated by the surrounding circumstances. The lawyers were instructed late in the day. Decisions had to be made quickly if the Appellant was to benefit in any way from her late pleas. Once the Appellant had confirmed her intention to plead guilty shortly after the conference, it was entirely reasonable for Mr Bennett to communicate that information both to the Court and to the CPS; and, once communicated, there were obvious downsides in then changing course and fighting the case. The firm advice given by Mr Bennett and Mr Brewer is indicative of the concerns they felt rather than the exertion of any improper pressure.

70. I have considered very carefully the advice given by both lawyers after the early morning emails. The Appellant was firmly advised and warned as to the difficulties, but it was made clear that the final decision was hers. The lawyers did not cross the line between forcefulness and being overbearing.

71. I have also read the Appellant's bundle, "Additional Evidence from white folder and prosecution bundle". Much of this evidence was not before the Crown Court, and is strictly speaking inadmissible. In any event, it does not alter my overall conclusions.

72. The Crown Court was fully entitled to conclude that Mr Brewer's advice was neither actuated by an unprofessional wish to return to the murder trial in which he was junior counsel or underlying concerns about the financial arrangements between the Appellant and Mr Bennett. These serious allegations, amongst others, were probed during cross-examination and denied. I have already said, but I repeat, that this Court is not in any position to assess how well or badly witnesses may have come across when testifying.

73. I have little doubt that the Appellant felt under financial pressure. She made that point very clearly at para 3 of her 39 page witness statement which she drafted. This was before the advent of this legal team.

74. The Appellant was clearly reluctant to plead guilty, perhaps very reluctant. However, after she confirmed her guilty pleas on 1st July, she did not express any further change of mind. She saw the draft basis of plea, indicated her concerns about it, and then was aware of the terms of the final draft agreed by the Crown and her barrister.

75. In my view, the documentary evidence speaks for itself, and the Crown Court came to a reasonable conclusion as to what it contained and, more importantly, the inferences to be drawn from it. Beyond the dispute about what was said by the Appellant when she was re-arraigned, this was not an issue which primarily turned on oral evidence and conflicting recollections as to what happened. To the extent to which it did, this Court must defer to the Crown Court who saw and heard the evidence given.

DISPOSAL

76. If my Lady agrees, this appeal by case stated must be dismissed.

LADY JUSTICE THIRLWALL

77. I agree.