Neutral Citation Number: [2025] EWCA Crim 657

Case No: 202404081 A4

IN THE COURT OF APPEAL, CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT BIRMINGHAM
The Recorder of Birmingham, HH Judge Inman KC
34NA0759424

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/05/2025

Before:

LORD JUSTICE HOLROYDE, VICE-PRESIDENT
OF THE COURT OF APPEAL, CRIMINAL DIVISION
MR JUSTICE GOSS
and
MR JUSTICE SHELDON

- -

Between:

LUCY CONNOLLY	**Applicant**
- and -	
THE KING	**Respondent**

- -
- -

Adam King (instructed by **Cobleys Solicitors Ltd**) for the **Applicant**
Naeem Valli (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 15 May 2025

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Approved Judgment

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Lord Justice Holroyde:

1. This applicant, Lucy Connolly, was charged on indictment with an offence of inciting racial hatred contrary to section 19(1) of the Public Order Act 1986, the particulars of the offence being that "on 29 July 2024 she published and distributed written material on the social media platform X (formerly Twitter) which was threatening, abusive or insulting with the intent thereby to stir up racial hatred or whereby, having regard to all the circumstances, racial hatred was likely to be stirred up thereby". On 2 September 2024 she pleaded guilty to that offence. On 31 October 2024 she was sentenced by the Recorder of Birmingham, HH Judge Inman KC, to 31 months' imprisonment. Her application for leave to appeal against that sentence has been referred to the full court by the Registrar. The appeal was heard on 15 May 2025, when judgment was reserved.

Summary of the facts:

2. For present purposes, a brief summary of the relevant facts is sufficient.

3. On 29 July 2024, three children were murdered and others were injured in a shocking attack on a dance class in Southport. News of these dreadful crimes quickly spread, and a false rumour that the murderer was an illegal immigrant was widely disseminated via social media messages.

4. The applicant, then aged 41 and employed as a childminder, had an account on the X platform with some 9,000 followers. At 8.30 that evening she published the following message:

> "Mass deportation now. Set fire to all the fucking hotels full of the bastards for all I care. While you're at it, take the treacherous government and politicians with them. I feel physically sick knowing what these families will now have to endure. If that makes me racist, so be it."

5. Just over three and a half hours later, the applicant removed that message. By then, however, it had been viewed many times and reposted for others to read. In all, the message was viewed 310,000 times and reposted 940 times.

6. The applicant was arrested on 6 August 2024. Her X account had by then been deleted. However, investigations showed that whilst the account was active she had published other messages indicating her views about illegal immigrants. A number of these were cited to the judge at the sentencing hearing. They included the following two.

7. On 25 July, four days before the Southport murders, the applicant posted on X the following response to a video which had been shared online by Tommy Robinson, showing a black male being tackled to the ground for allegedly masturbating in public:

> "Somalian, I guess. Loads of them"

That message was followed by a vomiting emoji.

8. On 3 August 2024, five days after the Southport murders, the applicant posted the following message in response to an anti-racism protest in Manchester:

> "Oh good. I take it they will all be in line to sign up to house an illegal boat invader then. Oh sorry, refugee. Maybe sign a waiver to say they don't mind if it's one of their family that gets attacked, butchered, raped etc, by unvetted criminals. Not all heroes wear capes."

9. Investigations further showed that on 5 August 2024 the applicant had sent a WhatsApp message to a friend saying:

> "The raging tweet about burning down hotels has bit me on the arse lol."

10. Another message, sent later that same day, confirmed that the applicant had become aware of a public backlash against her tweet of 29 July. She knew that the police and Ofsted had been tagged in some of the posts. She said that if Ofsted were to get involved, she would tell them it was not her and that she had been the victim of doxing (which we understand to mean the act of publishing private or identifying information about a particular individual, typically with malicious intent). She went on to say that if she got arrested she would "play the mental health card".

11. On 6 August 2024, at the suggestion of a third party and her husband, the applicant published on X an apology in the terms drafted by the third party. She later told a number of persons that she had done so for her husband's sake.

12. When interviewed under caution following her arrest, the applicant admitted that she had posted the tweet on 29 July 2024. She said that her own child had died in horrendous circumstances and that the stabbings of the children in Southport had put her into a rage. She said she felt hatred about the incident and the circumstances, not about race. She said she had taken the post down because she realised it was wrong. Later in the interview she said her tweets were not racial and she had no intention to cause hate or racial issues.

The criminal proceedings:

13. The applicant was further arrested and interviewed on Friday 9 August 2024. She was then charged. She was held in custody and appeared before a magistrates' court, via a video link, on the following morning. Her case was sent to the Crown Court, to appear in person at a plea and trial preparation hearing ("PTPH") before that court on Monday 12 August 2024.

14. It is convenient to note at this stage the statutory provision which creates the offence with which the applicant was charged. Part III of the Public Order Act 1986 contains provisions relating to racial hatred. Omitting some words which are irrelevant for present purposes, section 19 provides:

> "**19 Publishing or distributing written material**
>
> (1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if –
>
> (a) he intends thereby to stir up racial hatred, or

> (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.
>
> …
>
> (3) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public."

15. By section 27(3), the maximum penalty for such an offence is 7 years' imprisonment.

16. As is clear from section 19(1), the offence may be committed either by publishing the offending material with intent to stir up racial hatred, or by publishing it without such an intent but in circumstances where it is likely to stir up racial hatred. In the present case, the prosecution made it entirely clear, from the outset of proceedings, that the allegation against the applicant was that she had acted with intent to stir up racial hatred.

17. The applicant was not arraigned at her first appearance before the Crown Court on 12 August 2024. The PTPH was adjourned until 2 September 2024, when the applicant appeared (as is often the case) via a video link. She pleaded guilty to the offence charged, and did not seek to put forward any specific basis of her plea. Sentencing was then adjourned so that reports could be obtained.

18. We shall return shortly to the meetings which the applicant had had with her legal representative Mr Liam Muir, and the advice which she had received, before she entered her guilty plea.

The sentencing hearing:

19. In preparation for the sentencing hearing, both prosecution and defence had helpfully provided sentencing notes for the assistance of the court. As is usual, these referred (amongst other things) to the Sentencing Council's relevant definitive guideline for offences contrary to section 19 of the 1986 Act. The guideline, like all others published by the Sentencing Council, is publicly available on the Sentencing Council's website. By section 59 of the Sentencing Act 2020, every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case unless the court is satisfied that it would be contrary to the interests of justice to do so.

20. The prosecution submitted that the applicant's culpability fell into category A ("high culpability") of that guideline, because the case involved "intention to incite serious violence"; and fell into category 1 harm, because the applicant had published a message which "directly encourages activity which threatens or endangers life". Those submissions were consistent with the approach which the prosecution had indicated from the outset of the criminal proceedings.

21. The guideline indicates, for a category A1 offence, a starting point of 3 years' custody and a category range from 2 to 6 years. The prosecution note further submitted that the offence was aggravated by one of the factors specifically mentioned in the guideline, namely "timing of incident – particularly sensitive social climate".

22. The defence note, prepared by Mr Muir, did not disagree with the categorisation of the offence, but submitted (amongst other things) that the suggested aggravating feature

should be tempered by the fact that the offending tweet had been posted before any violence had started and that the applicant had subsequently attempted to stop the violence after it had erupted.

23. At the hearing, Mr Naeem Valli (then, as now, appearing for the prosecution) made submissions in accordance with his sentencing note. He submitted that the offence should be viewed in the context of the widespread and extensively reported scenes of disorder, violence and criminal damage around the country which followed the murders of the children, beginning in Southport and spreading to other locations. He stated:

> "There is no doubt that false information shared on the social media platform on 29 July led to the widespread disorder and stirred up racial hatred. The relevant chronology of the disorder is as follows. On 30 July, there was disorder in Southport. On 31 July, there was disorder in Manchester, Hartlepool, Aldershot and London. On 2 August, there was disorder in Sunderland and Liverpool. On 3 August, there was disorder in multiple locations, including Belfast, Nottingham and Hull. On 4 August, a hotel housing asylum seekers was attacked in Rotherham during the day. There was also on that date disorder in Middlesbrough and other cities. On 5 August, there was disorder in Birmingham, Belfast, Plymouth and Darlington. On 6 August, there was disorder in Belfast."

24. The judge was assisted by a pre-sentence report ("PSR"). This referred to the very sad fact that in 2011 the applicant's son, then aged just 19 months, had died in circumstances which had given rise to complaints of negligence against the medical practitioners who had treated the child. The death of the child had affected the applicant's mental health, with a diagnosis of post-traumatic stress disorder. The author of the PSR recorded that the applicant had explained that the events in Southport had brought back memories and emotions relating to her own loss, and had said that she acted out of a desire to protect her own and others' children. The PSR also noted that the applicant, when questioned by the author, had denied that her tweet had any racist undertones or could incite hatred or violence, and had downplayed her behaviour. The author assessed the applicant as having failed sufficiently to consider the consequences of her actions, particularly in the context of the influence of social media and her underlying racist attitudes.

25. The applicant put before the judge a number of character references which spoke very highly of her. The judge was also assisted by a psychiatric report prepared in 2012, which referred to the circumstances in which the applicant's son had died and her continuing distress and anger with the medical professionals who had treated her son, and whose advice she had accepted despite her instinctive feeling that her son was more seriously ill than they said. The consultant psychiatrist who wrote the report diagnosed the applicant as having developed a severe bereavement reaction, classified as a form of adjustment disorder, with persisting symptoms.

26. In his submissions on the applicant's behalf, Mr Muir made clear that, notwithstanding what she had said to the author of the PSR, the applicant stood by her guilty plea and did not put forward any basis for that plea. He submitted that the applicant had been devastated by what had happened in Southport, especially given her own loss of a child,

and that her tweet had been an expression of her true feelings rather than an attempt to exploit the Southport tragedy. He pointed to private messages which the applicant had sent on 30 July 2024, in which she had said that she could not stop crying and thinking "it could so easily be our kids", and said that she had become "incandescent with rage". Mr Muir also referred to a tweet on 30 June 2024 in which the applicant had condemned those who were teaching their children hate and racism. He emphasised that the offending tweet had been posted before the outbreak of any violence. Mr Muir then referred to tweets which the applicant had posted after the outbreak of disorder in various places, in which she had spoken against violence and said that she didn't want civil unrest on the streets. He submitted that those attempts to stop the violence should be treated as a mitigating factor, or as tempering the aggravating feature mentioned by the prosecution.

27. Mr Muir went on to say this:

> "We also submit that the messages on 31 July also show that whatever Ms Connolly's intent -- and again I hasten to add, we have not submitted a basis of plea -- was on posting the offending post, that intention was short lived and she did not expect or intend the significant violence to follow in that she very quickly tried to quell it."

28. Mr Muir did not dispute that the offence fell into category A1 of the guideline. He submitted that there were a number of important mitigating factors: the absence of previous convictions; the applicant's previous positive good character, as described in the references; the display by the applicant of some remorse; the fact that the applicant was the primary carer for her 12 year old daughter, who was being cared for by her father but would suffer if her mother was imprisoned; the personal mitigation relating to the death of the applicant's son; and the fact that she was facing a first custodial sentence at a time of particularly difficult conditions in prisons.

29. At the start of his sentencing remarks, the judge observed that sentences for those who incite racial hatred and disharmony in our society are intended both to punish and to deter. He said that when the applicant posted the offending tweet she was well aware of how volatile the situation was. That volatility had led to serious disorder in a number of parts of the country. He referred to the racist remarks in other tweets posted at different times by the applicant.

30. Addressing the sentencing guideline, the judge said that culpability was clearly in category A, as both counsel agreed, because the applicant intended to incite serious violence, and harm in category 1 because she encouraged activity which threatened or endangered life. The judge said that in relation to harm it was relevant to note the presence of a further factor: the applicant had sought and achieved widespread dissemination of her message. The guideline starting point was therefore 3 years' imprisonment; but, said the judge, there was a further significant aggravating factor:

> "… namely, the timing of the publication, when there was obviously a particularly sensitive social climate. It would be difficult to think of a more sensitive such time than during the evening 29 July this year."

A significant increase above the starting point was therefore required.

31. The judge accepted that there were mitigating factors, which he listed. He took into account the absence of any previous convictions, the character references, the effect on the applicant's daughter and the fact that the applicant would be serving a first custodial sentence in the present prison conditions. He accepted that, although the tweet had been widely read, the applicant had not repeated any such statement, had in due course taken it down, and had sent some messages to the effect that violence was not the answer. In relation to the death of the applicant's son in 2011, the judge said this:

> "You have had tragedy in your own life with the loss of your very young child some years ago. I have read the psychiatric report from some 12 years ago as to the psychiatric difficulties you then suffered. I accept that you still very keenly feel that loss. There is no recent psychiatric evidence, and, whilst you may well have understood the grief of those who suffered their own tragic losses in Southwark, you did not send a message of understanding and comfort, but rather an incitement to hatred. There is no evidence of any mental disorder having any material effect on you committing this offence. Similarly, while I accept you regret your actions and their effect upon you, and I have been referred to messages in which you say that you disagreed with racism and violence, it is clear from the evidence of your own words in the days following your actions, what you said to the police, and what you said to the probation officer that you have little insight into, or acceptance of, your actions."

32. Balancing all those factors, the judge concluded that the appropriate sentence before any reduction for a guilty plea would have been 3 years 6 months' imprisonment. Reducing that by 25%, to reflect the guilty plea which had not been indicated at the first opportunity, he imposed the sentence of 31 months.

The grounds of appeal:

33. Mr Adam King, now representing the applicant, submits that the sentence was manifestly excessive, in particular for two reasons. First, because the judge miscategorised the offence under the guideline: he should have assessed culpability as falling into category B ("Medium culpability – factors in categories A and C not present"). And secondly, because the judge should have found that the mitigating factors significantly outweighed the aggravating factors, so that a reduction below the guideline starting point was necessary. He submits that the judge should have taken the category B1 starting point of 2 years' custody, reduced it because of the strong mitigation and further reduced it because of the guilty plea, and should then have considered imposing a suspended sentence.

34. As an essential part of his argument in support of the first of those two grounds of appeal, Mr King submits that the applicant was prepared to accept (without actually admitting) that when she posted her tweet on 29 July 2024 she intended to stir up racial hatred, and was therefore guilty of an offence under section 19(1)(a) of the 1986 Act; but she had always denied that she intended to incite serious violence, and was therefore not guilty of an offence falling within category A culpability. Mr King makes a number

of criticisms of the advice (or lack of advice) given by Mr Muir, a matter to which we shall return shortly. He submits that it is clear from the words of the offending tweet that it was "angry hyperbole", an expression of misdirected anguish and rage, and could not be regarded as an incitement to serious violence.

35. As to his second point, Mr King accuses the judge of unfairness in his sentencing remarks. He does not suggest that the judge failed to identify any relevant factor, but submits that the judge overstated the aggravating feature and dealt only briefly and unenthusiastically with factors which collectively amounted to very significant mitigation.

36. In his written submissions, Mr King contended that the submission made by Mr Muir to the judge, which we have quoted at paragraph 27 above, was inconsistent with his concession that the offence fell within category A culpability. In his oral submissions, however, Mr King moved away from that argument, recognising that a distinction could be drawn between an intention to incite serious violence and an intention to incite violence of the national scale and duration which in fact occurred in the days after the Southport murders. His core argument was that the applicant had never understood that it was being conceded on her behalf that she had intended to incite serious violence, and would never have admitted to having such an intention.

37. This first, and principal, ground of appeal obviously raises an issue as to the advice which the applicant received, or did not receive, from her legal representative. That is a matter which is covered by legal professional privilege; but the applicant waived her privilege in respect of it, and Mr Muir was therefore able to respond to the criticisms made of him.

The oral evidence to this court:

38. This court does not usually hear oral evidence; but it was plainly necessary to do so in this case, and both the applicant and Mr Muir gave evidence on affirmation. We shall summarise that evidence in chronological order.

39. The applicant gave evidence that when she heard the news from Southport, during the afternoon of 29 July 2024, she felt really angry, upset and distraught because children were dead. She knew how the parents felt. She could not understand "how it had been allowed to happen". Before she posted her tweet, the information on social media (later shown to be false) that the murderer was an illegal immigrant had had an impact on her. But, she said, she did not intend anyone to set fire to migrant hotels or murder politicians. She said she later calmed down and deleted the tweet because she knew it was not an acceptable thing to say. In cross-examination by Mr Valli, she said she was "just angry" when she posted the tweet, and she described the reference to burning hotels as "just a flippant remark".

40. The applicant told the court that she was shaking and experiencing a high level of anxiety when arrested and held at the police station. She had had no previous contact with the police.

41. At the police station, and at the time of her brief appearance before a magistrates' court, the applicant was legally represented by solicitors other than Mr Muir; but it is not

suggested that any advice given by those representatives is material to the issue before the court.

42. Mr Muir first met the applicant at the Crown Court on 12 August 2024, having spoken to her husband on the day before. The applicant's evidence about this was that she was aware of the terms of the charge against her. She knew that she had posted the tweet and that it was wrong, but she told Mr Muir that she never intended to stir up racial hatred. Her evidence was that there was no discussion of whether she intended to incite serious violence, and she denied that Mr Muir had ever shown her the sentencing guideline or explained it to her. She told this court that she understood that she would plead guilty to the charge. She also understood that Mr Muir thought it would be appropriate to obtain further psychiatric evidence; that he explained to her that if there was a disputed basis of a guilty plea the judge would require a Newton hearing (that is, a hearing at which the judge could hear evidence and decide relevant facts as to the basis for sentencing); and said that he advised against that course because she would risk losing credit for her guilty plea. The applicant's evidence was that her main concern was for her daughter, and that she wanted to find the easiest way of getting back home to her daughter.

43. The applicant accepted that in the course of their conference before the hearing she had signed a document (referred to, for convenience, as "the endorsement") which Mr Muir had written in the following terms:

> "I Lucy Connolly [date of birth given] confirm that I do not wish to enter a basis of plea and I understand that this means I am conceding that at the point I published the tweet I intended to incite as per the category 1 feature. I do this as I do not believe I will be successful at a Newton hearing and I do not want to risk my credit. This is my decision under no pressure from anyone else. I know therefore that this would be a category 1A offence with a starting point of 3 years' imprisonment."

44. Mr Muir's evidence was that he spoke to the applicant for about 30-40 minutes before the hearing that day, and spoke to her again after the hearing. His evidence was that he told the applicant that he would put forward a number of reasons (including the need to apply for legal aid) why he would ask the judge for an adjournment, but that the judge may nonetheless require the applicant to enter a plea. He therefore discussed with the applicant the options open to her, including pleading not guilty or pleading guilty and putting forward a basis of her plea. His evidence was that he explained to her that the prosecution alleged culpability A and that there would therefore be a Newton hearing if she pleaded guilty but denied having the alleged intent. He further explained that, if she was admitting that she intended to stir up racial hatred, she might have difficulty explaining how it was that, despite using the words she did in her tweet, she did not intend to incite serious violence. He also told her that an unsuccessful Newton hearing could result in a reduction in the credit she would otherwise receive for her guilty plea, the reduction normally being 50% but with the judge having discretion to make a different reduction.

45. Mr Muir further told this court that he had shown the sentencing guideline to the applicant on his laptop screen, and told her that it would be possible to argue that the intent referred to in culpability A was short-lived, so that the judge may be persuaded

to move down from the starting point of 3 years. His evidence was that he wanted to be sure she understood the ramifications of the guideline, because she would be making a concession about its application.

46. Mr Muir's evidence was that, after explaining all the options, he invited the applicant to sign the endorsement and she did so. He said that it was necessary for the applicant to decide what plea she would enter because an adjournment might be refused. He added that, if the adjournment was granted, the applicant would have further time to reflect on her plea: she had not made any specific admission to him, and he would not therefore become professionally embarrassed if she later decided to take a different course.

47. During the period of adjournment which was granted, Mr Muir arranged for the preparation of a further psychiatric report. It was not in the event used at the sentencing hearing, because it did not assist the applicant.

48. Mr Muir subsequently arranged for the applicant to be produced at the Crown Court so that he could have a further conference with her. He also had a further conference with her, via a video link, immediately before the hearing on 2 September 2024 at which she entered her guilty plea. The applicant's evidence was that there was no discussion of the sentencing guideline at either of those conferences: indeed, her evidence was that she did not know about the guideline or the starting point until the judge mentioned it in his sentencing remarks. She said that she didn't know what category A1 meant, and it was not explained to her: it was "just a number and a letter". She accepted that on both occasions Mr Muir made it clear that the decision as to plea was for her, and she said she was happy to go with the guilty plea. She also accepted that Mr Muir had always made clear that there would be a custodial sentence and that he was engaged in damage limitation. The applicant in her evidence also accepted that he had gone through his sentencing note with her, and she told this court that she was content with it: "it covered everything". She nonetheless maintained that she did not know the prosecution were alleging that she intended to incite serious violence and did not understand that she was accepting such an intent.

49. Mr Muir, however, gave evidence that on each occasion he discussed the guideline with her and confirmed that she still wished to plead guilty and not to advance any basis of plea. He said that she had had time to consider her position and it would have been wrong for him not to check whether she had changed her mind. It was also his evidence that he showed her the sentencing notes, saying that he always did so with his clients, for two reasons: first, because it was the right thing to do; and secondly, because the client would hear about those notes in court, and he needed to know whether there would be any dispute about any of the contents.

50. It was put to Mr Muir in cross-examination that he should have explained to the applicant that he could refrain from submitting any written basis of plea and instead present her case, that she denied any intent to incite serious violence, as part of his submissions. Mr Muir replied that it would have been improper to do so because the rules require a proposed basis of plea to be put into writing (we observe that that was a reference to paragraph 9.3.3 of the Criminal Practice Directions). He also said that, in the circumstances of this case, it was clear that the prosecution would not agree to any basis of plea which denied an intention to incite serious violence and a Newton hearing would therefore be inevitable.

51. At the conclusion of his cross-examination, Mr King put to Mr Muir that he had never shown the sentencing guideline to the applicant. Mr Muir denied that allegation: he repeated that he had shown the guideline to the applicant on each occasion. He added that the applicant is an intelligent woman who did not trust the prosecution, and that she would not have signed the endorsement if she did not know what was meant by the reference to category 1A.

The submissions to this court:

52. In his submissions made after the oral evidence, Mr King made a number of points about the records kept by Mr Muir (such as, the use of abbreviations and shorthand references to the guideline rather than explicit reference to an intention to incite serious violence; and the error in the endorsement of referring to "the category 1 feature" when he meant "category A"). He contended that the words of the tweet could not be read as a serious incitement to burn buildings with people inside, or to kill politicians. He submitted that, on the evidence, it never was made clear to the applicant precisely what concession was being made on her behalf. He further argued that the judge should have questioned whether culpability truly fell into category A.

53. As to ground 2, Mr King submitted that the judge attached too much weight to the one aggravating feature which he identified, and too little weight to a powerful combination of mitigating factors. He submitted that the very sad circumstances of the death of the applicant's son had left her with an abiding mistrust of what she was told by persons in authority, and that it was therefore more understandable, and more forgiveable, that she had reacted as she did to the Southport murders. She was, he submitted, expressing her emotions and not thinking rationally, or indeed at all, when she posted the tweet.

54. Mr Valli made submissions supporting the judge's categorisation of the offence. In relation to ground 2, he submitted that it was apparent from the sentencing remarks that the judge had considered all relevant matters, and that the sentence imposed was one which was properly open to the judge.

Analysis:

55. We have reflected on the evidence and the submissions. The issue which we have to decide is whether the sentence imposed by the judge was manifestly excessive.

56. We are unable to accept Mr King's argument that a close textual analysis of the offending tweet (quoted in paragraph 4 above) leads to the conclusion that it was no more than an expression of emotion, which could not be taken seriously. The words of the tweet are on their face an incitement to serious violence. It is therefore unsurprising that the prosecution made clear throughout that they viewed the offence as involving category A culpability. It is equally unsurprising that Mr Muir advised the applicant about the strength of the prosecution case on that issue, and warned her that she would likely find it difficult to admit an intention to stir up racial hatred, but to deny that the words which she had chosen to use were intended to incite serious violence. That difficulty may be thought to have been illustrated by the applicant's evidence to this court that she felt her interview with the author of the PSR had not gone well.

57. It is important not to lose sight of the facts that the applicant had willingly pleaded guilty (some four weeks after she was first arrested, and therefore no longer at a time

when she was experiencing the shock of a first encounter with criminal proceedings), had not put forward any basis of her plea, and had expressly refrained from any challenge to the categorisation suggested by the prosecution. A judge is not, of course, bound to accept the submissions of counsel as to the categorisation of an offence under the sentencing guidelines, even if the parties are agreed. But in this case the plain meaning of the words, and the clarity with which the parties had prepared their sentencing notes and made their oral submissions, makes it impossible to argue that the judge should have placed the offence into a lower category of culpability.

58. By section 60(4) of the Sentencing Act 2020, it was the judge's duty to decide which of the categories in the guideline most resembled the applicant's case in order to identify the sentencing starting point. It follows from what we have said that the judge was entitled, and indeed obviously correct, to categorise the case as he did. We must nonetheless consider whether we should approach ground 1 on the basis that the applicant never intended to admit an intention to incite serious violence, was never told exactly what she was admitting and was never advised about the sentencing guideline. In this regard, we have considered with care the oral evidence which we heard.

59. We accept the evidence of Mr Muir and have no doubt that he advised the applicant, and explained matters to her, in the way which he said. He struck us as a conscientious defence lawyer with a clear grasp of the relevant law, practice and procedure and a realistic appraisal of the issues in the case. His response to Mr King's surprising suggestion, that he might in some way have bypassed the obligation to give written notice of an intended basis of plea, was telling. His evidence made it clear that he had followed his usual practice when representing persons charged with criminal offences, and we reject the suggestion that he gave this client no advice at all on matters of central importance. No reason was suggested why he might have adopted such an approach. The contemporaneous records which he made of his conferences with the applicant support his evidence, and the semantic criticisms made of the attendance notes carry no weight.

60. We regret to have to say that we found the evidence of the applicant about these important matters incredible. Her evidence to this court showed her to be intelligent and articulate, with strong views and – because of the circumstances in which her son died – a deep mistrust of anyone who might be regarded as a person in authority telling her what to do or what to believe. Given her personal circumstances at the time of her arrest, and her understandable concern for her daughter, any reference to a prison sentence, let alone a sentence based on a starting point of 3 years, must have caused her great anxiety. In those circumstances, we are quite unable to accept that she signed the endorsement without any understanding of its references to the culpability factor or the starting point. We are also unable to accept that her state of ignorance in that regard continued throughout further conferences with Mr Muir, or that she entered her guilty plea with no understanding of what it entailed. Her acceptance that she read and was content with Mr Muir's sentencing note, which includes references to the sentencing guideline and to the aggravating feature specifically mentioned in the guideline, clearly shows that she was well aware of what she was admitting.

61. It follows that we reject the applicant's evidence, on which ground 1 depends, and that ground 1 is unarguable.

62. As to ground 2, it is not suggested that the judge failed to identify any relevant mitigating factor. It is primarily for a sentencing judge to weigh the various aggravating and mitigating factors and to reach a conclusion as to what, if any, upwards or downwards adjustment should be made to the appropriate guideline starting point. This court will not interfere merely because it feels that some judges might have reached a slightly different conclusion in that regard: an applicant must show that the judge imposed a sentence which was outside the range properly open to him or her.

63. Here, we of course have every sympathy with the applicant over the death of her son, and we can understand why she remains angry about the circumstances of his death. We can therefore accept that the shocking events in Southport had an impact on her which went beyond that felt by many others. But as the judge rightly said, she did not post a message of support and sympathy to the victims of the Southport attack and the bereaved. Nor, we would add, did she post a message of hostility confined to the perpetrator of the Southport attack. She chose instead to incite serious violence against large numbers of persons. The applicant's personal history cannot significantly reduce her culpability for that serious offence.

64. We do not accept that the judge gave insufficient weight to the mitigating factors which he rightly identified. Mr King argued that with the exception of the offending tweet of 29 July 2024, and the tweets relied on in mitigation, the other social media messages to which the court was referred could not add to the case against the applicant and should therefore be treated as irrelevant. We disagree. The significance of those other communications, in our view, is that they provide important context when considering the weight to be given to the mitigation – in particular, the submissions as to remorse and as to the applicant speaking against violence and hatred. They are also relevant when considering the assessment made in the PSR, accepted by the judge, that the applicant has little insight into, or acceptance of, her actions.

65. In those circumstances, the judge was entitled to conclude that the serious aggravating factor outweighed the mitigating factors, and that an upwards adjustment of the starting point was necessary. It follows that ground 2 cannot succeed.

Conclusion:

66. For the reasons which we have explained, there is no arguable basis on which it could be said that the sentence imposed by the judge was manifestly excessive. The application for leave to appeal against sentence therefore fails and is refused.

67. The principal ground of appeal, ground 1, was substantially based on a version of events put forward by the applicant which we have rejected. We have, however, decided that in all the circumstances of this case, it would not be appropriate to make a loss of time order.

68. The sentence of 31 months' imprisonment imposed by the judge therefore remains as before.