WARNING: The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. 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 that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

Neutral Citation Number: [2025] EWCA Crim 1042

Case Nos: 2023 02389B2 and
2024 00359B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT
SITTING AT ST ALBANS
HH JUDGE SHERIDAN
41 B21784421

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2025

Before :

LADY JUSTICE ANDREWS
MRS JUSTICE MCGOWAN
and
HIS HONOUR JUDGE CONRAD KC
sitting as a Judge of the Court of Appeal (Criminal Division)

- -

THE KING
- v-
STUART ALLEN GRAY

- -
- -

Rhys Rosser for the **Appellant**
Simon Gledhill for the **Respondent**

Hearing date: 23 July 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 30th July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Andrews:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. 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 that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 31 May 2023, following a trial before HH Judge Sheridan DL and a jury at St Albans Crown Court, the appellant was convicted of two counts of rape (Counts 14 and 15 on a multiple count indictment) and one count of controlling/coercive behaviour, contrary to section 76 of the Serious Crime Act 2015 (Count 16). He had pleaded guilty either shortly before trial or on the first day of trial to numerous other counts on the indictment, which mostly (but not solely) comprised sexual offences against the same victim, whom we shall call "C". These included sexual activity with a child (counts 8, 9, 24, 25, and 26) and causing or inciting a child to engage in sexual activity (counts 10, 11 and 12). He was acquitted of a further count of causing or inciting a child to engage in sexual activity (count 13) and the Crown offered no evidence against him on counts 1-7, which related to the period when C was aged under 13.

3. At a sentencing hearing on 21 December 2023, the appellant, by then aged 61, was found by the judge to be a dangerous offender. The judge took count 15, which related to five incidents of rape, as the lead offence, and passed an extended determinate sentence of 24 years (comprising a custodial element of 20 years plus an extended licence period of 4 years) on that count and on count 14 (a single rape), which he ordered to run concurrently, with shorter concurrent sentences on all other counts. Appropriate credit was given for his guilty pleas.

4. On 7 March 2025, a different constitution of this court gave the appellant leave to appeal against conviction and sentence, and granted a representation order for fresh counsel and solicitors. The court gave directions for the hearing of the appeal which have been fully complied with. Skeleton arguments were lodged in accordance with those directions by Mr Rosser on behalf of the appellant and by Mr Gledhill who appeared at trial, as he did before us, on behalf of the Crown. Further information was also obtained under the *McCook* procedure from counsel and solicitors who represented the appellant at trial.

FACTUAL BACKGROUND

5. C was born in 2000. Her parents, who were devoutly religious, moved the family to a remote rural area when she was very young, and schooled her at home. In consequence she had little contact with the outside world. When C was aged around 11 or 12, she was introduced to the Appellant by her much older sister, who worked with him. The appellant was then in his fifties. He began to contact C regularly by phone.

6. The prosecution case was that when C was aged between 13 and 16 the appellant engaged in the persistent and determined grooming of her to the point where she became completely dependent upon him. The appellant created a biblical fantasy world which C came to believe in wholeheartedly. He told her that he, she and her sister were angels and that he had been put on earth to protect her sister but had decided to protect

her too, in order to avoid her falling into a life of misery at the hands of the devil which would lead to her death aged 23 years and 3 days. He told her that he loved her and showered her with compliments, but he also told her that if she ever hurt him or failed to follow his teaching, she could lose his protection and his protective angels would exact revenge on her.

7. When C was 13, she expressed curiosity in kissing and, despite the age gap between them, the appellant offered to show her how. This was the start of sexual abuse over the course of the next three years that took place in the appellant's home or in hotels and incrementally increased in seriousness. The appellant told C that she needed to become sexually experienced at a young age before experiencing full sexual intercourse at the age of 16, so that she was not sexually vulnerable to men. When at times she expressed reluctance, he would encourage her to be braver or challenge whether she truly loved him.

8. When C turned 16 she moved in with the appellant. Although to the outside world she appeared to be his lodger, the truth was that they began a full penetrative sexual relationship. The prosecution case was that C had been so brainwashed by the appellant that she was convinced that because of her status as an angel she could never be with anyone else and that without his protection she would die, and therefore her apparent consent to the sexual relationship was not properly informed and free consent.

9. C was so utterly controlled by the appellant that when he got into financial difficulties he persuaded her to perform sex acts on the internet in return for payment. She would give him some of the money she was earning. On one occasion he persuaded her to have sex with him on camera whilst someone was watching over the internet.

10. Eventually when C was around 20 years old she managed to break free of the relationship. In 2021 she reported the appellant to the police, and he was arrested. Although he initially denied all the allegations in interview, the police seized his phone and found thousands of messages between him and C dating back to 2012, many of which were adduced in evidence at trial. They also seized computer equipment, on which they found thousands of sexual images including videos. Some were of C, taken without her knowledge, some were of other children. Others showed that the appellant had for many years engaged in what is colloquially known as "upskirting" in public places and whilst working as a paramedic.

11. Although the appellant eventually entered guilty pleas to the majority of the counts on the indictment, he denied that he had used coercive and controlling behaviour during his relationship with C after she moved in with him, and he maintained that all the sexual activity with C after she turned 16 was fully consensual. Consequently, the issues of whether C consented to full sexual intercourse, and if she did not consent, whether the appellant reasonably believed that she consented, were at the heart of the case.

12. On 19 May 2023, in response to concerns articulated by the trial judge about whether the prosecution could prove the offence of rape in the absence of evidence of the complainant explicitly saying "no", prosecuting counsel created a document entitled "Summary of the prosecution case and the evidence" which set out the prosecution case on grooming and the evidence which was relied on to support it (including numerous text messages from the appellant to C). Having read that document, the judge accepted that his initial concerns were misplaced, and the trial continued without any further

suggestion by the judge (or by defence counsel) that there was no case to answer on counts 14 and 15.

THE APPEAL AGAINST CONVICTION

13. Three grounds of appeal were advanced by Mr Rosser, namely:

    1) The judge erred in his direction in respect of reasonable belief in consent such that the conviction is unsafe;

    2) The judge erred in leaving the case to the jury in circumstances in which the evidence of lack of consent was overtly absent;

    3) The judge erred in respect of his direction as to consent.

14. Although Mr Rosser addressed the grounds in that order in both his written and oral submissions, they raise three issues which logically fall to be addressed in a different order, namely:

    First, was there sufficient evidence before the jury of a lack of consent? (Ground 2).

    Secondly, if there was, was the judge's direction to the jury in relation to consent sufficient and appropriate for the case? (Ground 3).

    Thirdly, if it was, were the judge's directions in respect of belief in consent sufficient and appropriate for the case, in particular having regard to the burden and standard of proof? (Ground 1).

15. So far as the first issue is concerned, in *R v Ali (Yasir Ifran)* [2015] EWCA Crim 1270; [2015] 2 Cr App R. 33, this court considered the principles that apply in circumstances where the prosecution case is that the victim of an alleged rape was groomed by a defendant. At [56], Fulford LJ, who delivered the judgment of the court, said this:

> "… There are many instances when the complainant's evidence as to whether she consented will determine if there is a case to go to the jury. In our judgment, however, in particular situations such as the present the prosecution is not obliged to call overt evidence from the alleged victim to the effect that he or she did not consent, given it is possible that the circumstances may have limited or distorted the individual's appreciation or understanding of his or her role in the sexual relations and the true nature of what occurred."

16. After referring to the examples given in *R v Malone* [1998] 2 Cr App R 447 (at 457) of the various types of evidence of lack of consent that might go before the jury, depending on the particular circumstances of the case that the jury is trying, Fulford LJ went on to explain at [57] and [58]:

> "One of the consequences when vulnerable people are groomed for sexual exploitation is that compliance can mask the lack of true consent on the part of the victim. As the judge directed the jury in the summing-up in this case, where there is evidence of exploitation of a young and immature person who may not understand the full significance of what

> he or she is doing, that is a factor the jury can take into account in deciding whether or not there was genuine consent….
>
> Although … grooming does not necessarily vitiate consent, it starkly raises the possibility that a vulnerable or immature individual may have been placed in a position in which he or she is led merely to acquiesce rather than to give proper or real consent. One of the consequences of grooming is that it has a tendency to limit or subvert the alleged victim's capacity to make free decisions, and it crease the risk that he or she simply submitted because of the environment of dependency created by those responsible for treating the alleged victim in this way. Indeed, the individual may have been manipulated to the extent that he or she is unaware of, or confused about, the distinction between acquiescence and genuine agreement at the time the incident occurred."

17. Fulford LJ reiterated what Hallett LJ had indicated in *R v H* [2007] EWCA Crim 2056, namely, that questions of consent should normally be left to the jury. It is therefore only in clear cases that a judge should conclude that there is no evidence on which the jury could properly convict in a case of this kind. He said at [61]:

> "In summary, in a case in these circumstances in which a vulnerable or immature individual has allegedly been groomed by the defendant, the question of whether real or proper consent was given will usually be for the jury unless the evidence clearly indicates that proper consent was given."

Similar observations were made in the more recent case of *R v Busharat* [2024] EWCA Crim 1496 at [40].

18. Mr Rosser contended that C's Achieving Best Evidence (ABE) interview contained clear evidence that proper consent was given. Although defence counsel did not submit to the judge that there was no case to answer, in hindsight the judge should have withdrawn the counts of rape from the jury at the close of the prosecution case.

19. In our judgment, there is no substance in this complaint. As Mr Gledhill pointed out, by reference to the "Summary of the prosecution case and the evidence", to which we have referred above, the evidence on the issue of consent was by no means limited to what C said in her ABE interview or when she was called to give evidence. There was plentiful evidence of grooming in the jury bundles, which contained a large number of messages exchanged between the appellant and C over many years, and the appellant's pleas of guilty to the charges of sexual activity with a child were also quite properly put before the jury and formed an important part of the overall picture.

20. Moreover, there *was* overt evidence of lack of consent. In cross-examination C disagreed with the suggestion that full intercourse was truly consensual when that was put to her directly:

> "Q. When you were staying with Mr Gray there is no dispute that there was sexual activity between the two of you, including full intercourse, but that was consensual. Do you agree?

A. No.

Q. Why do you say it wasn't consensual?

A. Because I wouldn't have been there if I didn't believe the things he had made me believe."

19. Tensions between that evidence and anything C said in her ABE interview were matters that could properly lead to a defence submission, in due course, that the jury could not be sure that she did not consent, or to the defendant going into the witness box and giving evidence that, whatever the complainant might now say about it, he believed at the time that she did consent. Either way, this was not a case in which the evidence, taken in the round, clearly indicated that consent was given. On the contrary, there was more than enough evidence for a jury, properly directed, to convict on Counts 14 and 15, and therefore trial counsel's decision not to make a half-time submission of no case to answer was fully justified.

20. Turning to the second issue, which concerns the judge's directions on the issue of consent, the written directions on Counts 14 and 15 occupied 5 pages. They began by setting out the ingredients of the offence of rape. The judge then, perfectly properly, directed the jury that:

> "a woman consents to sexual intercourse only if she agrees by choice and has the freedom and capacity to make that choice. This case is put on the grounds that the defendant has groomed the victim into being sexually compliant such that any apparent consent on [C]'s part was not a real consent."

21. The Judge then went on to explain (in terms mirroring what was said in *Ali*) that grooming, if it did occur, does not necessarily vitiate consent, but it does raise the possibility that a vulnerable or immature individual might have been placed in a position in which she was led merely to acquiesce rather than to give proper or real consent. He next addressed the possibility of manipulation and the effect that could have on consent. Although the judge then diverted to address the fact that a defendant's reasonable belief in consent would afford a defence, he went on to give directions about the meaning of consent. He directed the jury in terms that the prosecution must make them sure that C did not give her agreement by the exercise of free choice. He explained that the prosecution did not have to prove that any kind of force was used, nor that there was any resistance or protest, and that the fact she did not say "no" at the time does not mean that she was consenting. Finally, he drew the jury's attention to factors that might have a bearing on whether true consent was given. In doing so he made specific mention of aspects of the evidence on which the Crown relied.

22. Mr Rosser submitted that the level of detail which the judge provided to the jury on the issue of consent went well beyond the guidance given in *R v Oluboja* [1981] 73 Cr App R 344. In his oral submissions he was particularly critical of one passage in the written directions, in which the judge identified as one of the factors which he told the jury "you will need to take into account … if you find that they apply in respect of a particular allegation, as they may have a bearing on whether there was, in reality, a genuine consent", namely:

> "The history of the relationship between the parties at the time and the nature of the sexual encounter. This includes the age of the defendant. You will have to consider the extent to which there was any grooming as the prosecution allege. A person may achieve their objective of sex with the use of gifts, alcohol, insincere compliments, claims about being an Angel or other form of heavenly being, apparent security, a more exciting way of life and/or false promises. Such methods will not necessarily mean but [sic] there is a lack of consent where a seduction is successful.
>
> However, where there is evidence of exploitation of a young and immature girl who may not understand the full significance of what she is doing, this is conduct you can take into account in deciding whether there was no genuine consent."
>
> [In context the word "but" is an obvious typing error for "that".]

22. Mr Rosser contended that this approach overstepped the boundaries of an appropriate legal direction by incorporating the prosecution case within it and thereby giving it weight. The crux of the alleged manipulation was the angel claim, and the express reference to that was impermissible in this context. He submitted that the directions effectively mixed the legal directions with aspects of the factual summing up, whereas they should have been kept separate, and that this unsatisfactory mixture was exacerbated by the failure by the Judge to make it clear that the ultimate question for the jury was "have the prosecution made you sure that C was not capable of consenting"?

23. However, this was not a case about C's *capacity* to consent, and therefore the question as framed by Mr Rosser was not the ultimate question for the jury. The prosecution case was that as a consequence of the grooming, she submitted when she did not have the freedom to make a choice. Therefore, the ultimate question for the jury on this limb of the offence was whether the prosecution had made them sure that C did not genuinely consent to the sexual intercourse, as the judge made clear when he directed them that: "this is conduct you can take into account in deciding whether there was no genuine consent". The directions, taken as a whole, can have left the jury in no doubt that this was what they had to decide.

24. This was precisely the kind of case in which the jury required judicial assistance in a difficult area of the law. Therefore, the judge was entitled to descend into the level of detail that he did, though the directions that he gave were not structured as well as they might have been (in consequence of which they were at times repetitive). Although it would have been possible to use simpler and clearer language, the judge cannot be criticised for adopting the language used by this court in the key passages in *Ali*. All the factors that the judge suggested the jury might wish to take into account were legitimate considerations, and the judge made it sufficiently clear that it was up to the jury to decide whether to take them into account or not.

25. Overall, whilst they were far from perfect, the judge's directions were adequate; they followed the guidance in *Ali*, they were balanced and made it sufficiently clear that the issue as to whether the consent was genuine was a matter for the jury. On a fair reading

his directions do not suggest that the jury were obliged to make any particular fact-findings or give weight to any aspect of the prosecution case. It was perfectly proper for the judge to draw attention to aspects of the prosecution's case that, if the jury accepted them, might have a bearing on the issue of consent and help them to decide that issue. We consider that there is nothing in this ground to give rise to any concern about the safety of the conviction.

26. That leaves Ground 1, which focuses on the way in which the written route to verdict directed the jury in respect of the issue of reasonable belief in consent. The route to verdict in respect of the counts of rape, in its original form, posed four questions:

> "Q1 – Did the defendant intentionally penetrate [C]'s vagina with his penis?
>
> If yes go to Q2
>
> If No – verdict not guilty.
>
> Q2 – are we sure that at the time of the penetration [C] did not consent?
>
> If yes go to Q3
>
> If no – verdict not guilty.
>
> Q3 At the time of the penetration did the defendant genuinely believe or may have genuinely believed that [C] consented?
>
> If yes go to Q 4
>
> If no – verdict not guilty.
>
> Q4 – If the defendant did or may have believed that [C] consented, was the defendant's belief reasonable?
>
> If yes, verdict not guilty
>
> If no, verdict guilty."

27. The obvious error in Q3 was not spotted by prosecution and defence counsel when the judge went through the draft directions and route to verdict with them, although in fairness to counsel, that exercise appears to have been conducted at some speed in a period of around an hour just before the lunch adjournment on the day in question. It is also far from clear how much time they were given by the judge to look through the draft in advance. However, the jury sent a note to the judge after they retired which asked: "Route to verdict, can we have clarification on question 3 on count 14 of rape? If yes, go to question 4, if no verdict not guilty. Surely a no response would constitute rape?" The judge and both counsel agreed that the jury were right about that, which of course they were, and the route to verdict was withdrawn and replaced by a corrected version which indicated that on counts 14 and 15, if the answer to Q3 was "no" the verdict would be "guilty".

28. It was common ground that the directions that were given were not the same as the specimen directions in the Crown Court compendium. Whilst of course the specimen directions do not have to be followed verbatim, the directions should follow both the spirit and the substance of Section 1(1) of the Sexual Offences Act 2003 which sets out each of the ingredients of the offence which the prosecution must prove. Mr Rosser submitted that on both questions 3 and 4 in the route to verdict, the judge's directions had the unhappy consequence of reversing the burden of proof. The jury should have been directed to ask themselves "are we sure that the defendant did not believe that [C] consented"? If the answer was yes, the verdict would be guilty, if the answer was no, they should move to question 4. The correct formulation on that question should have been "are you sure that the defendant's belief in C's consent was unreasonable"? and they should have been directed that if they concluded that his belief was or may have been reasonable, they must acquit.

29. Mr Rosser submitted that the failure to reflect the burden of proof in the directions was all the more egregious because other written directions were couched in the language of "are we sure" – including the direction given in the route to verdict on Count 13, of which the appellant was acquitted. Consequently, there was a very real risk that the jury did not apply the correct legal test in respect of reasonable belief in consent.

30. As Mr Rosser pointed out, the issue of reasonable belief in consent was critical, because the appellant had given evidence that "[C] definitely consented; I would not have gone forward if I thought otherwise". There was other evidence, including in the text messages, which supported the defence case that the appellant had deliberately waited until after C turned 16 (and thus was capable in law of consenting) before they had full vaginal intercourse. Mr Rosser submitted that the failings in the route to verdict were not cured by the general directions given on the burden and standard of proof, nor by the judge's other written legal directions, which if anything enhanced the impression that it was for the defendant to prove that he had a reasonable belief in C's consent.

31. We accept that the formulation of Q3 and Q4 was sub-optimal. It is understandable why the previous constitution of this court was sufficiently concerned by it to give leave to appeal on this ground. However, despite the absence of any overt reference to the burden of proof, Q3 has built into it the possibility that the defendant *may* have believed that the complainant consented. It made it clear to the jury that if they decided that was the case, they should go on to consider Q4. It follows that it was only if they eliminated the possibility that the defendant may have had such a belief that they would convict. The note from the jury which corrected the original error indicates that they understood that perfectly well. Moreover, the first part of Q4 reiterates that the question of reasonableness of belief arises in the context of a situation where the defendant *may* have believed C was consenting to intercourse (i.e. a situation in which the prosecution has failed to prove that he did not believe it) and not just in a situation where he *did* believe it.

32. The remainder of Question 4 is put in terms of: "was the defendant's belief reasonable?" True it is that it does not refer to the possibility that his belief "may" have been reasonable in the way in which the specimen route to verdict in the Crown Court Compendium does. However, the question whether someone's belief in consent is reasonable or unreasonable is a binary one, answered by the application of an objective standard. Either it is reasonable, or it is not. Ultimately that is what the jury has to decide; if they are unsure, the defendant gets the benefit of the doubt. In this context,

Mr Gledhill drew attention in the Respondent's skeleton argument to the two questions for the jury to address when considering reasonable belief in consent that are posed in the sample direction in the Compendium:

a. 1. Did D genuinely believe, or may D have genuinely believed, that W consented? And

b. 2. If D did or may have believed that W consented, was D's belief reasonable?

The formulation of Q4 is in keeping with the second of those directions.

33. Mr Gledhill also pointed out that when the judge set out in his legal directions to the jury on Counts 14 and 15 the individual elements of the offence of rape which the prosecution must prove, he expressly directed them that that the next ingredient after lack of consent is that [the defendant] "knows that the woman does not consent to the penetration or does not reasonably believe that she was consenting." The judge then went on to say that "the defendant will have a defence if he genuinely and reasonably believed that there was consent by [C] and reasonable grounds existed for such a belief. In determining whether the defendant believed that there was consent you, the jury, are entitled to consider all the circumstances and any steps the defendant has taken to ascertain whether she did consent." Those directions were given in the course of a summing up which contained, at the outset, the usual directions on the burden and standard of proof and made it clear to the jury that the defendant was not required to prove anything.

34. Overall, we are satisfied that the jury was not led into error by the route to verdict. The combination of the references to "may have believed" in both Q3 and Q4, and the note from the jury suffices to reassure us that the verdicts on Counts 14 and 15 are safe. The note, in particular, demonstrates that the jury were working properly through the directions and were alive to the issues in the case and where the burden of proof lay. There is also some force in Mr Gledhill's point that before they even reached Q3 and Q4 the jury would have had to have been sure that C did not genuinely consent, which in turn means that they are bound to have accepted the prosecution case on prolonged and constant grooming and the impact that this had on her freedom to consent. Thus the jury would have had to have formed the view that the appellant's behaviour in bringing about C's utter dependency on him was deliberate and calculated, and in those circumstances, it would have been irrational to conclude that any belief by him that she consented was reasonable.

35. We have concluded that despite the deficiencies in the route to verdict, the convictions are safe. However, and whilst it may not be necessary to preface every question in a route to verdict with "are you sure that …", this case illustrates the importance of trial judges subjecting their routes to verdict to careful scrutiny, to ensure that there is no room for interpreting them as reversing the burden of proof. It is equally important to allow both prosecuting and defence counsel sufficient time to read and digest the draft directions to ensure that collectively every opportunity is afforded to leave no room for misunderstandings of that nature.

36. It follows that the appeal against conviction is dismissed on all three grounds.

THE APPEAL AGAINST SENTENCE

37. Two grounds of appeal against sentence were raised; first, that the 20 year custodial element of the sentence was manifestly excessive, and secondly that the judge was wrong to find the appellant a dangerous offender. Logically the issue of dangerousness arises first, as Mr Rosser accepted when we put this to him in the course of his oral submissions. That is because the judge could not have passed an extended sentence without such a finding.

38. The judge had the advantage, which this court does not have, of seeing and hearing all the evidence at trial, including the evidence given by the appellant himself. He had heard C read out her victim personal statement. He also had a pre-sentence report, which we have read, which was based on an hour's interview conducted with the appellant by video link. The author of the report assessed the risk of a further contact sexual offence as medium, but said that the appellant posed a high risk of causing serious harm to children and to intimate partners. Of the risk factors relevant to sexual offending behaviour, he considered there was evidence of callousness and hostility towards women. He indicated that there appeared to be a lack of insight, and said it had "proven challenging to identify evidence of notable protective factors against reconviction in the future."

39. Although the author of the report expressed the view that he did not consider that the appellant met the criteria for an assessment of dangerousness, the sole explanation he gave for that was that the risk of reoffending was medium. We agree with Mr Gledhill that, although he sets out the legal test correctly, the author does appear to have conflated the risk of reconviction with the risk of causing serious harm by the commission of further specified offences.

40. The judge clearly applied the correct legal test under what is now section 308 of the Sentencing Act 2022, namely, does the defendant pose a significant risk to members of the public of serious harm occasioned by the commission of further specified offences? He concluded that he did, based upon the reality of the life which the victim was living (with the appellant), which he had heard about in detail during the trial. That must have been a reference to the control which the appellant was exerting over every aspect of her day to day living for at least five years, in consequence of the lengthy grooming campaign. Looking to the future the judge said that: "then [i.e. on his release] he may be older but that doesn't mean he can't use the same technique again." He observed that words did not seem to trouble the appellant, they seemed to flow very easily and from on high, and that he knew and still knows how to spot an easy target.

41. The judge also expressed concern that the appellant had told the author of the pre-sentence report that he intended to engage in some kind of work as a paramedic or emergency medical carer on a self-employed basis on his release (the appellant presumably being aware that no agency would ever allow him to be employed in that kind of role, and that court orders would ensure that he would not be permitted to work with children). Whilst it may be wholly unrealistic to suppose that when he is released from custody, at the age of around 75, the appellant would succeed in that aspiration, it is a matter of concern that he might attempt to use self-employment as a means of getting round any court-imposed restrictions on the kind of work he might do.

42. In his oral submissions Mr Rosser concentrated on two matters in particular, namely the weight placed by the judge on the index offences, and the judge's treatment of the pre-sentence report. As to the latter, a judge is not bound by the views expressed by a probation officer on the question of dangerousness and is entitled to evaluate how much weight he or she can place upon a report of this nature. Without intending any disrespect to its author, the judge was entitled to find the report in this case less helpful than it might have been. The judge was troubled, in particular, by a sentence in which the author said "I have no evidence to indicate that Mr Gray's offending behaviour was driven by sexual pre-occupation". The judge said that he did not understand that, and he did not know how it found its way into the report.

43. In his written submissions Mr Rosser described those criticisms of the report as unfounded, and accused the judge of supplanting the role of probation. We reject those submissions; dangerousness is a matter for the court, the role of probation is to assist in that evaluation and if the report is found by the judge to be of little or no assistance he or she is entitled to say so. Indeed, a judge is always entitled to take a view that differs from that of the probation officer, especially if the judge has had much longer in which to form a view of the defendant over the course of a trial than the much briefer opportunity given to the probation officer, as was the case here.

44. The sentiments expressed by the judge, though perhaps articulated in unnecessarily robust terms, are quite understandable, given what the police found on the appellant's phone and his computer, quite apart from his calculated offending behaviour towards C over a period of many years. It is difficult to see how the author of the pre-sentence report could possibly have said he had no evidence that the appellant's behaviour was driven by sexual preoccupation if he had read even a small handful of the messages exchanged between the appellant and C (to which he does not refer). In any event she was not his only victim; there were both child and adult victims of his filming activities. The counts of voyeurism, particularly those relating to patients he was treating as a paramedic, as the judge observed, indicated that the appellant was interested in the sexual gratification of himself "in utter breach of trust." The judge made it clear that he was not finding the appellant dangerous because he might continue his secret filming activities, but rather because of the light that those offences shed on what was driving his offending behaviour.

45. Despite the appellant's lack of previous convictions, his previous good character, the absence of any violence as part of the offending and, perhaps most pertinently, his likely age upon release, there was sufficient material to justify a finding of dangerousness. The appellant is a manipulative predator, devoid of insight and empathy, and the judge was also aware of the disturbing views he had expressed to a former partner deprecating societal taboos on sexual intercourse with family members and children.

46. Mr Rosser submitted that a judge must safeguard against falling into the trap of finding an offender to be dangerous merely because the offences of which that offender has been convicted are serious and caused serious harm to the victim. That is of course true, but in this case the judge plainly did not make that error. It is both permissible and appropriate for a judge to form a view about the future risks that someone poses to the public based upon the evidence relating to the facts and circumstances of the offence or offences of which they have been convicted (including their nature) as well as other matters such as lack of insight and victim empathy, and factors triggering the offending behaviour. In the present case, the judge was fully entitled to reach the view that he did

for the reasons that he gave. He was also entitled to take the view that a determinate sentence alone would not suffice to meet the risk to the public that he had identified. Ground 2 of this appeal is therefore dismissed.

47. Turning to the length of the custodial aspect of the sentence, Mr Rosser's principal complaint was that the judge disagreed with both counsel as to the correct categorisation of the rape offences under the definitive guideline. Whilst there was no dispute that the offences fell within category A for culpability, the judge should have accepted that this was category 2 for harm because of the severe psychological harm inflicted on C. Therefore, the starting point for a single offence should have been 10 years, rather than 15 which was the starting point in category 1. Mr Rosser submitted that the degree of planning and brainwashing of C over many years were factors catered for in the assessment of culpability, and should not have been used to elevate the harm into category 1; if actual pregnancy is regarded as category 2 harm then the risk of pregnancy could not be justifiably treated as category 1 harm; and extreme vulnerability of the victim due to personal circumstances was already taken into account in category 2 and could not be a justification for moving into category 1 in this case.

48. If there had been just one count reflecting a single rape, there may have been considerable force in those submissions. However, this was a case of particular gravity, in which the judge was not only sentencing for multiple offences of rape committed over a five-year period against a particularly vulnerable victim, but for all the criminal offending that led up to those rapes, and for the sexual exploitation of C for money once she was completely under the appellant's control. The number of rapes alone would have justified treating this as category 1 offending. There was nothing wrong with the starting point of 15 years which the judge took.

49. The wider offending spanned a much longer period than the rapes, 11 years in all. There were aggravating features which the judge identified, including the presence of another child, (the appellant's son by a former partner) in the house at the time of the rapes. The guideline makes it clear that a case of particular gravity could merit an upward adjustment from the starting point even before adjusting for aggravating and mitigating factors. The judge took the orthodox approach to totality by selecting Count 15 as the lead offence and reflecting the whole of the criminality in the sentence passed on that count, with similar or shorter concurrent sentences on the remaining counts. He said he was going outside the top of the range in the guidelines, and he explained why.

50. Regardless of the precise route by which it was arrived at, the question that this court must ask itself is whether a sentence of 20 years is manifestly excessive. Some judges may have given a lower sentence, but other judges could well have gone higher for prolific and prolonged offending of this nature and seriousness. Standing back and looking at the case as a whole, we are not persuaded that 20 years was outside the range that was reasonably open to the trial judge. No complaint is or could be made about the extended licence period of 4 years.

51. For those reasons, we dismiss the appeal against sentence.