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Case No: 202600364 B5
202502766 A5
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202600365 B4
202600360 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT PORTSMOUTH
His Honour Judge Hetherington
T20067152
ON APPEAL FROM THE CROWN COURT AT NOTTINGHAM
Mr Recorder Mainds
T20070694
ON APPEAL FROM THE CROWN COURT AT NOTTINGHAM
His Honour Judge Bennett
T20087266, T20087241 & T20087143
ON APPEAL FROM THE CROWN COURT AT LEEDS
His Honour Judge MacGill
T20080720
ON APPEAL FROM THE CROWN COURT AT MANCHESTER
His Honour Judge Blake
T20097272
ON APPEAL FROM THE CROWN COURT AT PRESTON
His Honour Judge Anthony Russell KC
T20091650-1

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/06/2026

Before :

THE VICE-PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Edis)
LADY JUSTICE MAY
and
MR JUSTICE LAVENDER

- -

Between :

1.	**JAY JERMAINE DAVIS**	**Appellant**
	- and -	
	THE KING	**Respondent**

2.	**JERRY TOLBERT**	**Appellant**
	- and -	
	THE KING	**Respondent**
3.	**DAWAYNE ANTHONY McLAREN**	**Appellant**
	- and -	
	THE KING	**Respondent**
4.	**JORDAN WEBSTER**	**Appellant**
	- and -	
	THE KING	**Respondent**
5.	**STUART O'NEILL**	**Appellant**
	- and -	
	THE KING	**Respondent**
6.	**BENJAMIN HIBBERT**	**Appellant**
	- and -	
	THE KING	**Respondent**

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Farrhat Arshad KC (assigned by **the Registrar**) for **all appellants on common issues**
Matthew Stanbury (assigned by **the Registrar**) for **Jay Davis**
Farrhat Arshad KC (assigned by **the Registrar**) for **Jerry Tolbert**
Hayley Douglas (assigned by **the Registrar**) for **Dawayne Maclaren**
Hayley Douglas (assigned by **the Registrar**) for **Jordan Webster**
Nick Beechey (assigned by **the Registrar**) for **Stuart O'Neill**
Carl Buckley (assigned by **the Registrar**) for **Benjamin Hibbert**

Louis Mably KC and **Lyndon Harris** (instructed by **The CPS Appeals Unit**) for the **Crown**

Hearing dates : 22 and 23 April 2026

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Approved Judgment

This judgment was handed down remotely at 12.30pm on Friday 12 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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The provisions of the Sexual Offences (Amendment) Act 1992 apply to the cases of **Hibbert**, **O'Neill** and **Webster** [See para.2.1 of the Practical Guide to Reporting Restrictions in CACD]. Under those provisions, where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person

as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

The Vice-President:-

INTRODUCTION

1. The six cases before the court are unconnected but have been listed together for the court to consider issues raised by the now-repealed scheme of indeterminate sentences for dangerous offenders under Chapter 5, Part 12 of the Criminal Justice Act 2003 ('CJA 2003'). Each appellant received a sentence under these provisions. This was a new sentencing regime which introduced sentences for dangerous offenders of either Detention or Imprisonment for Public Protection ("DPP" and "IPP"). DPP was the sentence for those under 18 at the date of conviction and IPP for others (for those over 18 but under 21, the same provisions as for IPP applied but the sentence was one of Detention in a Young Offender Institution for Public Protection ("DYPP")). The criteria for imposition of an indeterminate sentence on those under 18 at the time of sentence differed in very important respects from those which applied to offenders over 18 prior to changes to the regime made in July 2008. We shall have to explain below the different versions of the scheme which were in force at two stages before their abolition by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO'). We will call the version in force between 2005 and 2008 "the first iteration" and that in force between 2008 and 2012 "the second iteration".

2. At the conclusion of the hearing on 23 April 2026 we announced our decisions and said that we would give our reasons in writing in due course. This we now do. It is important that we start by explaining clearly the scope of this decision. The oldest of these six appellants was 21 at the date of sentence. Others were under 18. We are required to consider the proper approach to the age of the offender when sentencing a person in that age range under the repealed provisions which either required or permitted a court to impose a DPP or IPP sentence if satisfied that the offender was dangerous for the purposes of those provisions. We are also required to consider in one case what the relevance of age is to the making of a finding of dangerousness for the purposes of those repealed provisions. What we say the about sentencing of children and young people relates only to that context. We are concerned with how a court ought to have approached the task of deciding whether sentences of IPP or DPP should be imposed. Those were, in their effect, life sentences and they only arose for consideration once the court had decided that the seriousness of the offences did not justify a life sentence properly so called. That particular context is no longer part of our law and what we say in this judgment therefore only affects those who were sentenced under the first and second iteration. The sentences we have imposed in their place are of academic interest only, because they have long since been served. They should not be regarded as having any significance in considering other cases.

3. The order we made was:-

   i) The appeal of Jay Davis is allowed. The sentence of DPP is quashed and a sentence of 18 months' imprisonment imposed in its place.

   ii) The court grants leave and the necessary extension of time, and allows the appeal of Jerry Tolbert. The sentence of DPP is quashed and a determinate sentence of 5

years detention under section 91 of the Powers of Criminal Courts Sentencing Act 2000 imposed in its place.

iii) The appeal of Dawayne McLaren is allowed. The sentence of IPP is quashed and an extended sentence of imprisonment for public protection imposed in its place with a custodial term of 7 years and an extended licence period of 5 years.

iv) The court grants leave and the necessary extension of time, and allows the appeal of Jordan Webster. The sentence of DPP is quashed and an extended sentence of detention for public protection imposed in its place with a custodial term of 5 years and an extended licence period of 8 years.

v) The appeal of Stuart O'Neill is allowed. The sentence of DPP is quashed and an extended sentence of detention for public protection imposed in its place with a custodial term of 8 years and an extended licence period of 8 years.

vi) The appeal of Benjamin Hibbert is adjourned to a date to be fixed in not less than 8 weeks' time. Both parties have liberty to serve psychiatric evidence dealing with whether a disposal under the Mental Health Act 1983 ought to be substituted for the indeterminate sentence imposed by the Crown Court in 2010. If either party seeks to argue that it should, that party should arrange the necessary evidence and make an application under section 23 of the Criminal Appeal Act 1968.

vii) In each case where an extended sentence is imposed the order will provide that the time spent on remand will count against the custodial term. Whether or not that was strictly necessary under the relevant regime, this will avoid any confusion.

4. The question of whether the court should make any Sexual Offences Prevention Order or Sexual Harm Prevention Order or Antisocial Behaviour Order or any other type of order with the same objective was adjourned. We gave directions for the management of that part of the proceedings but they have since become irrelevant because the prosecution has informed the court that it does not seek to contend that any such ancillary orders should now be made.

5. The cases of Tolbert and Webster came before the court as applications for leave to appeal against sentence and extensions of time which were referred to the Full Court by the Registrar of Criminal Appeals and the Single Judge respectively. McLaren has leave from the Full Court. Hibbert, Davis and O'Neill have been referred to this court by the Criminal Cases Review Commission under section 9 of the Criminal Appeal Act 1995 ('the CCRC').

6. The effect of the indeterminate sentences imposed on the appellants is that, having served the minimum term of the sentence imposed by the judge, the question of release is a matter for the Parole Board, and upon release they remain subject to a life licence. Hibbert has never been released. Webster has been released. The other four appellants are in custody having been recalled for different reasons at different times.

7. Their respective status is as follows:

i) Davis: First applied for leave to appeal in 2007. Tugendhat J. refused leave on 19 January 2007. Renewed to the Full Court which refused application for leave on the 6 June 2007, see *Considine and Davis* [2007] EWCA Crim 1166. Referred by the CCRC.

ii) Tolbert: Out of time application by fresh counsel in Grounds dated 3 July 2025. Registrar referred applications for leave and extension of time to the Full Court on 13 January 2026.

iii) McLaren: Out of time application by Mr McLaren himself on "Easy Read NG form" on 2 July 2024. The Full Court (Andrew LJ, Soole J. and HHJ Lucraft KC) granted an extension of time and gave leave to appeal on 21 November 2025 and directed that junior counsel be instructed.

iv) Webster: Out of time application by Mr Webster himself on "Easy Read NG form" on 25 June 2024. The Single Judge referred applications for leave and extension to the Full Court on 10 February 2025.

v) O'Neil: First applied for leave to appeal in 2009. The Full Court dismissed an appeal on 3 March 2010, see [2010] EWCA Crim 513. Referred by the CCRC.

vi) Hibbert: First applied for leave to appeal in 2022. Saini J. refused leave on 24 May 2022. Referred by the CCRC.

8. The table below sets out the date of sentence, minimum terms and age of each appellant at the date of sentence (which determined whether the case was a first or second iteration case) in each case. Davis, McLaren and O'Neill were over 18 at that date and subject to the adult regime. Tolbert, Webster and Hibbert were under 18:-

Case	**Age at Sentence**	**Date of Sentence**	**Minimum term**
Davis (dob 6.8.87)	19 years	20 October 2006	9 months, less 25 days
Tolbert (dob 12.9.92), 14 at date of offence.	15 years	18 December 2007	30 months, less 174 days
McLaren (dob 27.8.86)	21 years	21 August 2008	42 months, less 167 days
Webster (dob 14.6.93), 14 at date of offence.	15 years	17 October 2008	5 years, less 152 days

O'Neill (dob 21.4.89)	20 years	30 November 2009	4 years, less 210 days
Hibbert (dob 24.7.93), 16 at date of offence.	16 years	30 April 2010	2 years

Parole Position

9. All but Hibbert have been released by the Parole Board at least once. The position for the others was, at the date of the hearing of these appeals, believed to be as follows:-

   i) Davis – Was first released in 2021. More recently he was released on 3 June 2025 but then recalled on 28 August 2025;

   ii) Tolbert – Was first released in 2012. Recalled. Currently in custody.

   iii) McLaren – Has been released three times. Currently recalled since June 2024.

   iv) Webster – Was released in 2025. Remains on licence.

   v) O'Neill – Was released on 8 November 2024. Was recalled on 25 February 2025;

THE APPLICABLE STATUTORY REGIME

10. The six cases span both iterations of the Dangerous Offender provisions set out in Chapter 5 of the CJA 2003. The first iteration was in force between 4 April 2005 and 13 July 2008 and the second iteration, as amended by the Criminal Justice and Immigration Act 2008 ("CJIA 2008"), was in force between 14 July 2008 and 2 December 2012. IPP and DPP sentences were repealed by the Legal Aid, Sentencing and Punishment of Offenders Act ("LASPO") 2012, effective from 3 December 2012 but with no effect on those sentenced prior to that date. Davis and Tolbert were sentenced under the first iteration and McLaren, Webster, O'Neill and Hibbert were sentenced under the second iteration.

11. The CJA 2003 introduced a new sentencing regime for dangerous offenders. Two types of sentence were applicable once an offender had been found to be dangerous for the purposes of this regime, and the court had decided that the seriousness of the offences did not justify a life sentence where that sentence was available. An indeterminate sentence, either DPP or IPP, was in substance the same as a life sentence and could be imposed for offences which did not carry life as the maximum sentence. An extended sentence, at this time, was a sentence of custody with an extended period of licence following release. Release occurred as of right at the halfway stage of the custodial term, and the balance of that term was held, in effect, in suspense. Licence conditions applied during that term and continued during the extended licence period. This is to be contrasted with the modern extended sentence where release during the custodial term is subject to the Parole Board, and no right to release arises until the end of the custodial term. The Parole Board may direct release after the offender has served two thirds of the custodial term.

12. For an offender who was over 18 an IPP (or DYPP For those aged 18-20) was mandatory once a determination of dangerousness was made if the maximum sentence for the offence was life or 10 years or above. Davis was sentenced when he was 19 and under this regime. For offenders under 18, sentencers could avoid imposing DPP if they decided that a determinate or extended sentence would sufficiently protect the public. Tolbert was sentenced under this regime when he was 15 years old.

13. The effect of the change in 2008 was that IPP (or DYPP) ceased to be mandatory for those over 18, and sentencers could approach offenders over the age of 18 in much the same way as they did those under 18 under the first iteration. The new provisions also removed a rebuttable assumption of dangerousness where an offender had certain qualifying previous convictions, see [17] below. A new condition was enacted so that indeterminate sentences could not be imposed unless the minimum term was at least 2 years. Hibbert and Webster were sentenced under this regime when they were under 18, and McLaren and O'Neill when they were over 18.

14. The provisions of sections 224-229 in the first iteration are set out as Appendix A, and those of the second iteration as Appendix B. We have attempted to set out the legislation as it was at the point when it was repealed.

The regime in its first iteration: 2005-2008

15. Chapter 5 of the CJA 2003 provided that where a person (of any age) was before the sentencing court convicted of a specified offence, the court had to assess whether the person, "posed a significant risk of causing serious harm from specified offending in the future" (section 229 CJA 2003). This was the dangerousness assessment. Specified offences were set out in Schedule 15 to the 2003 Act (section 224) and in the Schedule's first iteration, amounted to some 153 offences and spanned a range of violent and sexual offences from assault occasioning actual bodily harm to manslaughter. "Serious Harm" meant "death or serious personal injury, whether physical or psychological" (section 224).

First iteration: over 18

16. If an offender was aged over 18 at the time the index offence was committed, and had previously been convicted in any part of the UK of a specified offence, the court had to assume that he posed a significant risk of causing serious harm occasioned by the commission by him of further such offences unless, considering the matters set out at section 229(3) (a) to (c) it was unreasonable to so conclude (section 229(3)). If he had not been convicted of any specified offences, the court, in making the assessment of whether he posed a significant risk of causing serious harm from future specified offending, had to take the matters at section 229(2)(a) into account and could take the matters at section 229(2)(b) and (c) into account when making that assessment of dangerousness.

17. If the index offence was a serious offence, i.e. it carried either a life sentence or a determinate term of ten years or more (section 224(2)), and the offender was found to be dangerous, it was mandatory for the sentencing judge to impose either a life sentence or DPP (if aged 18-21) or IPP (section 225). There was no discretion.

First iteration: under 18

18. For those aged under 18 when the index offence was committed, no assumption of dangerousness applied and the judge had to make an assessment of whether the offender posed a significant risk of causing serious harm from future specified offending (section 229(2)). The judge had to take the matters at section 229(2)(a) into account and could take the matters at section 229(2)(b) and (c) into account when making that assessment of dangerousness.

19. Under the first iteration of the regime, if an offender was aged under 18 at the time he was convicted of the index offence, and it was a serious offence and he was dangerous, DPP was not mandatory. The order in which sentences were to be considered was: discretionary life sentence; extended sentence; DPP. If the offence was one for which he would be liable to a sentence of detention for life and the court considered that the seriousness of the offence, or of the offence and one or more offences associated with it, justified the imposition of a sentence of detention for life, that had to be imposed (section 226(2)) but if it did not, the court then had to consider whether an extended sentence would be adequate for the purpose of protecting the public from serious harm (section 226 (3)). Only if it concluded that it would not, would the court have to impose DPP (section 226 (3)).

The second iteration: 2008-2012

Second iteration: over 18

20. The original provisions, brought into force on 4 April 2005 by the CJA 2003, were substantially amended by the CJIA 2008. The changes came into force on 14 July 2008. IPP (or DYPP) ceased to be mandatory in any case, and it was reserved for more serious offences than had been the case previously. The main changes brought in by the CJIA were as follows:

    i) There were no longer any assumptions of dangerousness based on previous offending.

    ii) The sentence of IPP/DPP was no longer mandatory for an adult offender convicted of a serious specified offence following the finding of dangerousness. It was now open to a judge to impose a determinate sentence or an extended sentence rather than the IPP upon a finding of dangerousness – section 225(3);

    iii) An IPP/DPP could not be imposed unless the defendant either had a previous conviction for an offence specified in schedule 15A (section 225(3A)), or the minimum term of at least two years was imposed for the specified offence – section 225(3B)).

Second iteration: under 18

21. In respect of those under 18, the main changes to the regime that applied were that none of the dangerous offender sentences (save a discretionary life sentence where the provisions justified it) were mandatory upon a finding of dangerousness, and DPP could only be imposed if the minimum term to be imposed was at least two years - s 226(3).

THE APPROACH TO THE TESTS IN THE DANGEROUS OFFENDER PROVISIONS - PRINCIPLES FROM THE CASE-LAW

22. A flurry of appeals followed the repeal of the indeterminate sentence part of the regime in December 2012. In *R v Roberts* [2016] 2 Cr App R (S) 14, the Court of Appeal Criminal Division ("CACD") set out the approach that should be taken to out of time appeals. Following *Roberts*, appeals against indeterminate sentences would not be entertained on some grounds, but where an error of law in the original sentencing process could be shown they may succeed and extensions of time may be granted.

23. The first guideline case on the application and meaning of the dangerous offender provisions was *R v Lang* [2005] EWCA Crim 2864; [2006] 2 Cr App R (S) 3. *Lang* was handed down on the 3 November 2005. This was the first opportunity the court had to consider some of the principles applicable to the new sentences and the factors which judges should take into account when deciding whether one of the new sentences must be imposed. *Lang* was available to all the sentencers in the present cases. It is the critical decision in the disposal of these appeals, and we will cite it quite fully.

24. In respect of those aged under 18, the effect of *Lang* was that before DPP could be imposed there was an additional criterion by reference to the adequacy of an extended sentence (section 226(2) and (3), at [7] of the judgment):-

> "In considering sections 226 and 228 in conjunction, the fundamental question to be addressed by sentencers will be whether an extended sentence is adequate to protect the public." ([14])
>
> "The provisions for assessment of dangerousness in section 229 distinguish between offenders aged 18 or over with a previous conviction for a specified offence and those under 18 or with no such previous conviction. In both cases, information is identified which the court must or may take into account in assessing dangerousness but there is a rebuttable assumption of dangerousness in relation to adults with a previous specified offence conviction." ([15]).

25. The Court in *Lang* went on at [16] and [17] of the judgment to set out guidance as to the approach to the assessment of dangerousness:-

> "[16] It seems to us that the part of these labyrinthine proposals which is most critical, in relation both to the sentencing process and to the impact of that process on prison occupancy, is section 225(1) and its echo, in relation to those under 18, in section 226(1). We

have already referred to the fact that significant risk of two matters must be shown before life imprisonment or imprisonment for public protection becomes obligatory, that is the commission of a further specified offence and the causing of serious harm thereby.

"[17] In our judgment, the following factors should be borne in mind when a sentencer is assessing significant risk:

(i) The risk identified must be significant. This is a higher threshold than mere possibility of occurrence and in our view can be taken to mean (as in the Oxford Dictionary) 'noteworthy, of considerable amount or importance'.

(ii) In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, details of which the prosecution must have available, and, whether the offending demonstrates any pattern; social and economic factors in relation to the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional state. Information in relation to these matters will most readily, though not exclusively, come from antecedents and pre-sentence probation and medical reports. The Guide for sentence for public protection issued in June 2005 for the National Probation Service affords valuable guidance for probation officers. The guidance in relation to assessment of dangerousness in paragraph 5 is compatible with the terms of this judgment. The sentencer will be guided, but not bound by, the assessment of risk in such reports. A sentencer who contemplates differing from the assessment in such a report should give both counsel the opportunity of addressing the point.

(iii) If the foreseen specified offence is serious, there will clearly be some cases, though not by any means all, in which there may be a significant risk of serious harm. For example, robbery is a serious offence. But it can be committed in a wide variety of ways many of which do not give rise to a significant risk of serious harm. Sentencers must therefore guard against assuming there is a significant risk of serious harm merely because the foreseen specified offence is serious. A pre-sentence report should usually be obtained before any sentence is passed which is based on significant risk of serious harm. In a small number of cases, where the circumstances of the current offence or the history of the offender suggest mental abnormality on his part, a medical report may be necessary before risk can properly be assessed.

(iv) If the foreseen specified offence is not serious, there will be comparatively few cases in which a risk of serious harm will properly be regarded as significant. The huge variety of offences in Schedule 15 includes many which, in themselves, are not suggestive of serious harm. Repetitive violent or sexual offending at a relatively low level without serious harm does not of itself give rise to a significant risk of serious harm in the future. There may, in such cases, be some risk of future victims being more adversely affected than past victims but this, of itself, does not give rise to significant risk of serious harm.

(v) In relation to the rebuttable assumption to which section 229(3) gives rise, the court is accorded a discretion if, in the light of information about the current offence, the offender and his previous offences, it would be unreasonable to conclude that there is a significant risk. The exercise of such a discretion is, historically, at the very heart of judicial sentencing and the language of the statute indicates that judges are expected, albeit starting from the assumption, to exercise their ability to reach a reasonable conclusion in the light of the information before them. It is to be noted that the assumption will be rebutted, if at all, as an exercise of judgment: the statute includes no reference to the burden or standard of proof. As we have indicated above, it will usually be unreasonable to conclude that the assumption applies unless information about the offences, pattern of behaviour and offender show a significant risk of serious harm from further offences.

(vi) In relation to offenders under 18 and adults with no relevant previous convictions at the time the specified offence was committed, the court's discretion under s.229(2) is not constrained by any initial assumption such as, under s.229(3), applies to adults with previous convictions. It is still necessary, when sentencing young offenders, to bear in mind that, within a shorter time than adults, they may change and develop. This and their level of maturity may be highly pertinent when assessing what their future conduct may be and whether it may give rise to significant risk of serious harm.

(vii) In relation to a particularly young offender, an indeterminate sentence may be inappropriate even where a serious offence has been committed and there is a significant risk of serious harm from further offences, see for example, *R v D* [2005] EWCA Crim 2292; (2005) 169 JP 262.

(viii) It cannot have been Parliament's intention, in a statute dealing with the liberty of the subject, to require the imposition of indeterminate sentences for the commission of relatively minor

> offences. On the contrary, Parliament's repeatedly expressed intention is to protect the public from serious harm (compare the reasoning of the court in relation to automatic life sentences in *R v Offen* [2001] 2 Cr.App.R.(S.) 44, para.[96] to [99]).
>
> (ix) Sentencers should usually, and in accordance with section 174(1)(a) of the Criminal Justice Act 2003 give reasons for all their conclusions: in particular, that there is or is not a significant risk of further offences or serious harm; where the assumption under section 229 (3) arises for making or not making the assumption which the statute requires unless this would be unreasonable; and for not imposing an extended sentence under sections 227 and 228. Sentencers should, in giving reasons, briefly identify the information which they have taken into account."

26. *Lang* was followed by *R v Johnson* [2006] EWCA Crim 2486; [2007] 1 WLR 585, where the court decided to "address some of the areas of potential misunderstanding arising from *Lang*, in order to explain and amplify its guidance"**.** Key principles to emerge from *Johnson* were that:-

    i) The sentence is concerned with *future* risk and public protection. The decision is directed not to the past, but to the future, and the future protection of the public, [3];

    ii) The absence of harm in the index or previous offences may be advantageous to an offender but on the other hand, the absence of harm may be entirely fortuitous. The sentencer considering dangerousness may wish to reflect on the likely response of the offender if his victim defended himself rather than surrendering, [10];

    iii) To the extent that a judge is minded to rely upon a disputed fact in reaching a finding of dangerousness, he should not rely on that fact unless the dispute can fairly be resolved adversely to the defendant, [10];

    iv) The court would not normally interfere with the conclusions reached by a sentencer who has accurately identified the relevant principles, and applied his mind to the relevant facts. The question to be addressed by the CACD was whether the sentence was manifestly excessive or wrong in principle, [11].

The approach to children and young people: the indeterminate sentence is one of last resort

27. The statutory purposes of sentencing set out in section 142 of the CJA 2003 did not apply to those aged under 18 by virtue of section 142(2). Section 37 of the Crime and Disorder Act 1998 provides that the principal aim of the youth justice system is to prevent offending by children and young persons. Section 44 of the Children and Young Persons Act 1933 requires every court in dealing with a child or young person who is brought before it to have regard to their welfare

28. The principles that applied to determining whether a child was dangerous were considered in more detail in *R v JW* [2009] 2 Cr. App. R. (S.) 94**.** This was a first

iteration case, decided after Tolbert and Webster were sentenced, but available at the sentencing of Hibbert. At [26] the court said:-

> "(i) Youth has a significant impact on culpability, both in relation to type and length of sentence;
>
> (ii) Guidance also makes it clear that it is also necessary to bear in mind that, within a significantly shorter time than adults, young offenders may change and develop. This is highly pertinent when considering risk in relation to future conduct;
>
> (iii) With regard to indeterminate sentences, the Youth Justice Board has recommended that in the case of youths, save in certain limited circumstances, a finding of dangerousness should not be made if the assessment is only a high risk, as opposed to a very high risk, of causing serious harm."

29. The Court in *JW* further explained the importance of the offender's youth, at [30]:-

> "The rationale underlying the guidance from the Youth Justice Board, is that an indeterminate sentence, such as detention for public protection, is unnecessary save in cases of very grave risk, since the likelihood of change is inherent in youth."

30. The court quashed the finding of dangerousness and therefore the sentence of DPP where the offender, aged 14, had been convicted of attempted murder by shooting twice at the victim. They replaced the sentence with a determinate term. The court explained that what amounts to significant risk both of future offending and of future serious harm ("death or serious personal injury") necessarily involves a need to have regard to the increased ability of children to be rehabilitated as well as to their reduced culpability due to their maturity and developmental stage.

31. In *R v W* [2009] EWCA Crim 2858, the offender was 17 at the time of conviction, but 18 at the time of sentence. He had been sentenced for an offence of robbery. The court described him as having, "a quite appalling record for robberies" ([2]) and the index offence was an exacerbation of the series of robberies. Whilst the progress he had shown on detention was mixed, nevertheless the court quashed the sentence of DPP, upheld the finding of dangerousness and replaced the DPP with an extended sentence. In doing so, the court stated the progress that had been shown, "demonstrates a very important principle about the sentencing of young people. Whilst their records may show a total inability to keep out of serious crime, nevertheless their age must be taken into account, because young offenders may in a much shorter time than adults change and develop."

The 2008 changes: the second iteration in the case law

32. The CJIA 2008 amendments to the CJA 2003 removed the assumption of dangerousness and removed the mandatory nature of the IPP/DPP for those over 18. In *Attorney-General's Reference No. 55 of 2008) (R v C)* [2008] EWCA Crim 2790; [2009] 2 Cr App

R (S) 22**, t**he Court considered how a sentencer should now approach the indeterminate sentence, given that it was no longer mandatory and given that even after a finding of dangerousness, a determinate or extended sentence could be imposed. At [14] the then Lord Judge LCJ said:-

> "Returning to the exercise of the court's discretion, or more accurately, its judgment, whether a sentence of imprisonment for public protection should be passed when the necessary criteria are established, the court is entitled to and should have in mind all the alternative and cumulative methods of providing the necessary public protection against the risk posed by the individual offender. For example, structured around a determinate sentence, or indeed an extended sentence under section 227 of the Act, which we shall shortly address, a sexual offences prevention order, with appropriate conditions attached could form part of what we may colloquially describe as the total protective sentencing package. Apart from the discretionary sentence of life imprisonment, imprisonment for public protection when the necessary conditions are fulfilled, is the most draconian sentence available to the court. If they are, we re-emphasise that the primary question is the nature and extent of the risk posed by the individual offender, and the most appropriate method of addressing that risk and providing public protection. If what we have described as the overall sentencing package provides appropriate protection, imprisonment for public protection should not be imposed."

33. The judgment considered the circumstances in which a sentencing judge should impose an indeterminate sentence on a dangerous offender now that an extended sentence and a determinate sentence were available. At [20] the Lord Chief Justice said:

> "Dr Thomas identified two particular features of potential importance. The first is the difficult problem of identifying the dividing line between imprisonment for public protection and an extended sentence for a violent or sexual offence. The short and deceptively simple answer is provided by our earlier reasoning. As we have emphasised, imprisonment for public protection is the last but one resort when dealing with a dangerous offender and, subject to the discretionary life sentence, is the most onerous of the protective provisions. In short, therefore, if an extended sentence, with if required the additional support of other orders, can achieve appropriate public protection against the risk posed by the individual offender, the extended sentence rather than imprisonment for public protection should be ordered. That is a fact specific decision. The second feature identified by Dr Thomas, effectively at the opposite end of the spectrum, is to recognise that there will be some offenders whose persistent repetitive offending might have been dealt with by way of an extended sentence who will fall outside the new

> provisions. That seems logical. Such an offender, whatever the nuisance he represents, would not present a significant risk of serious harm to the public. The individual who does not pose such risk should be dealt with by an appropriate determinate sentence or community order to which additional protective conditions may be attached."

34. In *R v AL* [2014] EWCA Crim 2511, Hamblen J (as he then was) explained why the "cautionary approach" at [14] of *R v C* was of "all the more importance" to children and young people (at [18]):-

> "This cautionary approach is of all the more importance where a young person is being sentenced. In the case of *Venables* [2014] EWCA Crim. 659, this court stated that there were two principal reasons for the need for caution in such cases at [12] (Jackson LJ):
>
> > 'First, younger people have the potential to develop and mature over a shorter period than adults; indeed, we have seen some evidence of this in the appellant's case when one looks at the various prison reports. Secondly, a sentence of detention for public protection on a young offender may cause feelings of hopelessness. This will adversely impact upon his behaviour in custody. Indeed, we have seen evidence of this too in the early years of the appellant's custodial sentence.'"

35. Whilst the sentencing judge in *AL* had made reference to the applicant's youth, in the Court's view, "he does not appear to have recognised the special need for caution in such cases where considering whether an indeterminate sentence should be imposed", see [20].

36. In *R v SS* [2012] EWCA Crim 1706 [11] Lady Justice Rafferty summarised *C and others* and *R v JW*, saying "The effect of both is that when youth is sentenced, before indeterminate loss of liberty is imposed the court must be satisfied that it is the only way."

37. In *R v RL and TR* **[**2011] EWCA Crim 1862, the CACD had to consider the choice between DPP and an extended sentence in respect of two 17 year olds. The attack on the victim essentially amounted to torture. Both defendants had a number of offences for violence. The CACD agreed with the sentencing judge that both were dangerous. The sentencing judge had reminded himself of the alternative extended sentence under section 228 but had concluded that the case was too serious and the risk far too great for that to be appropriate, see [17]. Nevertheless, the CACD quashed the sentences of DPP and replaced both with extended sentences. The court's reasoning was that DPP was a last resort, "to be used only when no lesser alternative will suffice", see [20].

38. The expression "a cliff-edge" to describe the effect of passing the age of 18 on sentencing, gained currency in *R v Clarke* [2018] EWCA Crim 185; [2018] 1 Cr. App. R. (S.) 52, but the principle was recognised before that. *R v Jamie Dalton* [2013] EWCA Crim 177, was a second iteration case. The appellant was aged 20 at the time of the offence and 21 when

convicted and sentenced. There the sentencing judge had considered but had rejected the determinate sentence and extended sentence as providing insufficient protection for the public. The court held that:-

> "….with respect to the learned judge, he did not spell out his specific reasons for concluding that a long period of incarceration and supervision would not be sufficient to protect the public. We note that there was no evidence affirmatively indicating a period of time as to which the risk to the public could be expected to abate. That was no doubt a matter of concern to the learned judge, as it is to this court. However, the young age of the appellant carries with it the prospect of his maturing significantly in the next several years. There were before the court below and in the material provided to this court at least some signs of a developing maturity. Those considerations have led this court to conclude by a narrow margin that there was an alternative open to the judge which would have provided the necessary protection of the public. An extended sentence with a custodial term of 14 years followed by an extended period of licence of five years would have the effect that the appellant will either be in custody or be subject to supervision on licence until he is about 40 years of age. In all the circumstances of case, this court has reached the conclusion that such a sentence would be sufficient to protect the public and that accordingly the draconian sentence of imprisonment for public protection was not necessary."

39. In *R v Leighton Williams* [2024] EWCA Crim 686, the appellant had been sentenced to DPP aged 20 in June 2008, under the first iteration of the regime, for an offence of section 18 grievous bodily harm with intent. The court applied the assumption of dangerousness, the appellant having previously been convicted of another section 18 offence. As it was the first iteration, the indeterminate sentence followed the finding of dangerousness. Mr Williams applied for leave to appeal in 2023, 15 years after sentence. The full court allowed the appeal, finding that it had been unreasonable to apply the assumption, quashing the finding of dangerousness and therefore the sentence of DPP. The court held that the judge erred on the specific facts of the case in relation to pattern of offending but also, more pertinently for the present appeals, erred in not attaching, "the necessary importance to the applicant's young age at the time of the two offences committed when he was aged 17 and 19 respectively." At [18] and [19] the court said:

> "As is now recognised in paragraph 1.5 of the Sentencing Council Guideline on Sentencing Children and Young People,
>
> > '1.5 It is important to bear in mind any factors that may diminish the culpability of a child or young person. Children and young people are not fully developed and they have not attained full maturity. As such, this can impact on their decision making and risk taking behaviour. It is important to consider the extent to

> which the child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or negative influences. They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes …'
>
> This consideration must be judged by reference to the offender's developmental and emotional age, that is to say, maturity rather than simply looking at biological age: see paragraph 4.10."

40. And at [22]:-

> "Turning 18 does not represent a bright line divide between the immaturity of childhood and the maturity of adulthood. Young offenders who have turned 18 may still exhibit immaturity in the form of poor thinking skills which will often be subject to their continual emotional development. What was said in *Lang* at [17 (vi)], reflected now in paragraph 2.6 of the Guideline, may be equally appropriate for young offenders who have turned 18 but still suffer from immaturity in the form of poor thinking skills or in other aspects."

CACD's approach where failure to consider alternatives/failure to give reasons

41. In indeterminate sentence cases, where the sentencing judge has not identified the factors leading to a finding of dangerousness, has failed to take into account relevant matters or taken into account irrelevant matters, has not mentioned having given consideration to alternative sentences or has not given adequate reasons for rejecting such a sentence, the CACD will revisit the sentence and undertake the sentencing exercise for themselves. This has been the Court's approach in a number of cases for many years, see as examples: *R v Hanson* [2023] EWCA Crim 203; *R v Fellowes* [2023] EWCA Crim 819; *R v Williams* [2024].

42. In *R v Haroon Ahmed* [2025] EWCA Crim 1572, at [45], the court said:-

> "In the absence of any reference in the sentencing remarks to the option of an extended determinate sentence, and having regard to the judge's indication which he had given at the earlier hearing on 11 July, we draw the inference that this option was not considered. We consider that this option should have been expressly considered; and therefore conclude that (subject to satisfaction on the reasons for delay) the Court should revisit the sentence: see *Roberts* at [42]."

43. Even where the sentencing judge has mentioned why an alternative sentence would not suffice, the CACD scrutinises the reasons given for the rejection of an alternative to the IPP. In R *v Al-Khamis* [2019] EWCA Crim 1291, tthe CACDwas concerned with the second iteration of the regime. The court upheld the finding of dangerousness but quashed the indeterminate sentence finding that a "glancing reference" to an extended sentence being inadequate was not sufficient reasoning and the judge had fallen into error in his analysis, see [17] and [18]. The Court took into account the age of the offender in concluding that an extended sentence would adequately meet the risk posed, see [18].

44. Whilst the assessment of dangerousness takes place at the time of sentencing, see *Johnson*, it is the future risk posed which must be evaluated when deciding which sentence will adequately protect the public. The sentencing judge must consider what the risk will be upon the offender's release. In *R v Sillitto* [2025] EWCA Crim 868, at [58] the court said:-

> "Whilst we can understand why a sentencer might be tempted to take the view that, despite the appellant's young age and lack of relevant past offending, it would be preferable for the Parole Board to consider and assess the risks at the appropriate time, particularly if the minimum period of sentence to be served was relatively short, as it was, we do not consider that in this case the Recorder sufficiently assessed the risk that the appellant would present upon release which was a matter he should have grappled with, and assessed when deciding upon the appropriate sentence, and how the public could be protected from the risk he presented."

45. Automatic release under an extended sentence cannot be a bar to it being an appropriate sentence to manage risk, despite an offender having been found dangerous, as dangerousness is a requirement for the imposition of such a sentence. The passage of time and the age of the offender are both matters that have been held to be significant factors when assessing risk. In *R v Fellowes* [2023] EWCA Crim 819, where the sentencing judge's reasoning for imposing an IPP was that under an extended sentence the time would come when he would be automatically released, the CACD held at [23] that in this approach the judge "fell into error" and that it was relevant that having committed the offences at age 27 the defendant would be in his mid-40s when released <u>and unsupervised</u>, (emphasis added).

46. *R v Rogers* [2016] EWCA Crim 801; [2016] 2 Cr App R (S) 36 summarises the CACD's approach to post-sentence material in sentence appeals. In certain circumstances the CACD will consider updates to information placed before the sentencing judge without an application having been made pursuant to section 23 of the Criminal Appeal Act 1968, but otherwise section 23 applies. *Rogers* at [8] quoted and applied Sir Igor Judge P in *In re Caines (Practice Note)* [2007] 1 WLR 1109, para 44:-

> "From time to time, the court will be provided with updated information about the offender. This sometimes takes the form of prison reports, sometimes confidential information from the police. The sources vary. The information may serve to show, for example,

> that the prisoner has provided considerable assistance to the police; sometimes aspects of the mitigation are significantly underlined in a way which may not have been as clear or emphatic in the Crown Court; sometimes the information may indicate that the offender has made significant progress since the sentence began, a feature particularly relevant in cases involving young offenders. The formal procedures for the admission of fresh evidence are not followed. This court simply considers the evidence before it. So, for example, if a young offender has responded positively to his custodial sentence, and his progress is such that it may be counter-productive for him to serve the sentence actually imposed, it may be reduced on appeal, or changed to a non-custodial disposal, without any implied criticism of the decision of the Crown Court. In short, post-sentence information may impact on and produce a reduction in sentence (for a recent example of post-sentence evidence bearing on and explaining aspects of mitigation, with a consequent reduction in the minimum term following conviction for murder, see *R v Sampson* [2006] EWCA Crim 2669)."

47. The Court went on, at [9], to consider the limits of that exception:-

> "As was explained in *R v Beesley and Coyle* [2011] EWCA Crim 1021; [2012] 1 Cr App R (S) 15 (p.71) at [33]–[36], the exception is strictly limited. It will include updated pre-sentence and prison reports on conduct in prison after sentence, but not fresh psychiatric or psychological evidence in support of an argument that a finding of dangerousness ought not to have been made or a hospital order should have been made. In such a case, the court will apply the provisions of s. 23."

48. In indeterminate sentence cases the Court has used post-sentence material, not the subject of a section 23 application, to conclude in the appellant's favour and quash the sentence, see *R v RL* at [24]. In that case it was explicitly stated that the Court was influenced on appeal by information not before the sentencing judge. Nevertheless, the principal focus is on whether the judge was wrong to impose the sentence on the material then before the court.

49. Where the offender's behaviour has given rise to concerns during the indeterminate sentence, the CACD must exercise caution. The very fact of being given an indeterminate sentence when a child or a young adult "may cause feelings of hopelessness. This will adversely impact upon his behaviour in custody", Hamblen J at [18] of *R v AL* [2014] EWCA Crim 2511. This was also recognised in *Roberts***,** where at [44] Lord Thomas CJ stated:-

> "We are mindful of the substantial criticism that many years after the expiry of minimum terms, sometimes of a very short period, many sentenced to IPP remain in custody or have been recalled to

> custody for breach of their licence conditions. It is clear to us from the applications before us that:
>
> i) the effect of a long term of imprisonment with no certain date of release is that in some cases it may increase the likelihood that an offender will offend again on release; and
>
> ii) the effect of the license provisions will mean that offenders are subject to long periods of licence and, if they offend, are recalled—see for example *Roberts* (see [50]) and *Diveney* (see [147]).”

THE FACTS OF THE SIX CASES

Davis: First Iteration: 19 at date of conviction and sentence: CCRC referral

50. On 2 October 2006, in the Crown Court at Portsmouth (His Honour Judge Hetherington), Davis pleaded guilty to one count of possession of a firearm with intent to cause fear of violence contrary to s16A of the Firearms Act 1968. On 20 October 2006 he was sentenced to DPP with a minimum term of 9 months and 25 days spent on remand were ordered to counts against that term.

51. In 2006, Davis discovered that one of his friends (BC) had formed a relationship with a young woman (LP), with whom he had previously been in a relationship, and with whom he had a child. On 22 September 2006, he visited the home of LP, where he spoke to her sister. When he was told that LP was not there, he left with a parting message for BC that he was “dead.” He then crossed the road to BC’s home address. When BC’s mother answered the door Davis asked to see him. BC’s mother asked him why he wanted to see her son, and he replied, “don’t matter, he is going to get this.” Davis then removed a black handgun from his clothing before leaving the scene. Fearing for her own and her son’s safety, BC’s mother reported the incident to the police, who arrested Davis later that day. When his home address was searched, a ball bearing rifle and a black handgun, which the appellant said was a pellet gun, together with ammunition for both weapons, were found. In interview, he asserted that he had been carrying only his mobile telephone with him. He confirmed that he was annoyed and “pissed off” because his ex-girlfriend was seeing BC.

52. Davis’s previous convictions included one offence each of possessing an offensive weapon, threatening behaviour, assaulting a police constable, criminal damage and harassment.

53. The pre-sentence report noted admissions by Davis that after he left BC's mother, he fired two shots into the air. He acknowledged that she “went white and was probably scared”, and he “showed a minimum understanding of the effect” upon her. It also stated that he had had trouble with his mental health and been prescribed Ritalin to treat his ADHD. He admitted that he was intoxicated at the time of the offence and the judge was concerned about the effect of cocaine, cannabis and Ritalin on his behaviour. He had shown no remorse. He had an interest in guns since the age of eleven and his older brother had

weapons. He said that all his friends were criminals. Davis was described as having a temper, lacking maturity and holding pro- criminal views.

54. There was an issue raised before the judge about Davis's enthusiasm for firearms and the "gangster lifestyle". It was suggested that this was "bravado" and that he was exaggerating. The pre-sentence report described a high risk of re-offending and said that this would result in violence or threats of violence. It said this:-

> "This is the defendant's second experience of being remanded in custody. Based upon his descriptions he appears to cope with the regime well. He has referred himself to the carats team to address his substance misuse. Nonetheless, the culture of prison life will have an influence upon this young man. He is, in my view, lacking in maturity. He struggles to handle the volatile relationship with his ex-partner and child contact issues. Mr Davis already presents as holding pro-criminal views and a lengthy prison sentence will only serve to cement these views and they will be reinforced by others. There is no doubt a serious offence has been committed by this defendant and the court will need to impose a sentence which protects the public."

55. When passing sentence, the judge said that Davis had sought to make a point and back it up with an element of fear of violence by taking a handgun to the house of BC which was capable of firing ball bearing pellets. The judge said that he was to be sentenced on the basis that he pulled the handgun from his clothing but did not specifically point it at anyone or use it. However, anyone who took a firearm or imitation firearm onto the street and used it in this way, against someone who thought it was a genuine firearm, was bound to be sentenced to a period of "imprisonment" [sic] of some length.

56. The judge noted that Davis had not, either on this occasion or on previous occasions, actually used the firearm or weapon or caused any injury. However, he did have two previous convictions for possessing a weapon; one involved chasing someone with a knife and threatening to stab them, the other involved taking a sword out of its sheath and showing it to someone whilst making a threat. The key part of the judge's reasons is this passage which follows immediately after the judge had referred to Davis's lack of maturity:-

> "It seems to me plain from the medical records that I have seen that you are someone who acts impulsively. You are at present in a highly unstable situation in a drug taking background. You have an interest in guns and you resort early to weapons. The attitude that you have disclosed to the Probation Officer coupled with the facts of this case and your previous convictions makes me conclude that you do indeed represent a significant risk of causing serious harm to members of the public. The fact that mercifully you have not yet caused serious harm does not mean that there is no risk in the future.

> "Having carefully considered all the information before me, and particularly in view of your unstable current position, I have concluded that you do represent a significant risk of causing serious harm to members of the public. It follows that I must impose a sentence of imprisonment for public protection [sic] and the only remaining question is at what level I set the tariff and therefore the minimum term."

57. Taking into account the fact that the gun was not used and the plea of guilty, the judge fixed the notional determinate term at 18 months. Half of this, 9 months, was to be served before Davis could be released.

58. In this case, as we have explained, the challenge is to the judge's finding that Davis was dangerous for the purposes of the CJA 2003. If that finding is upheld, the sentence of DPP followed automatically because the offence was a serious offence, carrying a maximum sentence of 10 years.

59. Davis appealed, and his appeal was heard along with the unrelated case of *Considine* [2007] EWCA Crim 1166; [2008] 1 Cr. App. R. (S.) 41. The issue which is dealt with in the judgment of the court was what kind of material could properly be considered by a court when deciding whether a defendant was dangerous. After resolving that, the court said:-

> "41. The issue of principle arising from *Farrar* having been resolved as it has in Considine , no issue of principle arises. It was strongly argued before us that much of the content of the pre-sentence report amounted to little more than vainglorious boasting, perhaps to be expected of a young man with this applicant's background and intelligence. The judge took a different view. We can see no reason for interfering with his conclusion. Again, we shall repeat the observations of the single judge, Tugendhat J. refusing permission to appeal:
>
> > "It is certainly striking that as a nineteen year old you have been sentenced to which is for practical purposes the same as a life sentence for an offence for which the determinate sentence has been fixed at eighteen months imprisonment. But the judge found the statutory criteria to be fulfilled, and he gave his reasons in detail. There can be no question but that, on the facts he sets out, he was correctly applying the statute in accordance with the guidance in *Lang* and *Johnson* … the administrative problems that may follow from such a sentence are referred in *Johnson* in para 12. But, as stated at para 11, 'this court will not normally interfere with the conclusion reached by the sentencer who has accurately identified the relevant principles, and applied his mind to the relevant facts'."
>
> 42. Again, we agree."

60. As we have said, Davis was first released in 2021 and has been recalled at least twice since then. He is currently subject to a short sentence in addition to the DPP. He served 15 years before that first release, and his minimum term was 9 months.

Tolbert: First iteration: 14 at date of convictions, 15 at date of sentence. First appeal

61. This is not a referral by the CCRC. Tolbert has never before appealed against the DPP sentence imposed on him when he was 15 years old. He was first released in 2012 and is now in custody again, having been recalled.

62. On 22 August 2007, in the Crown Court at Nottingham, Tolbert pleaded guilty to robbery. On 21 September 2007 he was convicted of possessing a firearm or an imitation firearm at the time of committing an offence arising out of the same incident. On 18 December 2007, he was sentenced to concurrent terms of DPP with a minimum term of 30 months and a direction that 174 days should count against that minimum term. The recorder who sentenced had also presided over the trial.

63. On 19 June 2007 at around 9pm, Tolbert and another male (male two) approached the victim, Jamie Hind, then aged 19. They asked him for the bottle of drink which he was holding and he gave this to them. He started to walk away but they approached him again and asked for his phone, credit cards and money. He ignored them and continued to walk away. Tolbert pushed the victim towards a jetty and told him to walk inside. Tolbert started to search the victim whilst male two stood nearby. Tolbert threatened the victim with an imitation firearm and physical harm if he failed to hand over his belongings. As a result, the victim handed over his mobile telephone, a silver Nokia 6280 which was worth £190. Tolbert and male two walked away. The whole incident lasted for around 5 minutes.

64. Tolbert had previous convictions. His first was in November 2005 and in 2006 he committed a long spate of offences of various kinds, including violence and carrying a knife. He had received a detention and training order ("DTO") and various other disposals.

65. The pre-sentence report contains this passage:-

> "……there is no evidence to suggest that the he *(sic)* would not commit a similar offence in the future. Jerry's previous offending has been aggressive in nature but to date no serious harm has been caused. However it is my opinion that Jerry does not put any limitations on himself by which to manage his behaviour. I therefore am unable to say that he would not go on to commit further serious offences. Although no physical harm or violence was caused to the victim, it is evident that there was some intention to instil fear in the victim in order for him to commit the theft. I am in agreement with the comments made in the psychiatric report that Jerry is not an individual who would callously attack others but if cornered or frustrated he could use any way open to win the situation.
>
> Given this assessment I find I am unable categorically to state if he should be considered dangerous under the 2003 Act. Based on the

> information available to me, the current and previous offences I would assess Jerry as posing a high risk of harm to the public."

66. There was a psychiatric report before the judge, which reported that Tolbert was out of control on the street and said that there were features of personality disorder:

> "The point that is important however is that the compilers of diagnostic categories distinguish between juvenile conduct type problems and those in adults on the basis that in adult problems are long-term while in juveniles before the personality has settled one cannot be sure which elements will dominate and this is the case with Jerry.
>
> What can be said in the meantime is that a lot will depend on who Jerry is with. If he returns to the previous position of street life with his "friends" in the local gang life I have no doubt that problems will return and he will become more entrenched in patterns of delinquency and behaving with little feelings for others.
>
> The judge would like some idea of the risk to the public and I have to say that I do not see him as one of those callous individuals who would -wantonly attack others with a gun but if cornered or frustrated he could use any way open to win the situation. Also if his current pattern of behaviour and his current gang life is not thwarted he could easily be lead into greater violence in pursuit of the objectives of the gang."

67. Presented with this difficult problem, the recorder outlined the offences and stated that he did not consider the offences to be sufficiently serious to justify a life sentence. He did however consider that Tolbert was a dangerous offender, in that he posed a significant risk of serious harm as a result of the commission of further specified offences in the future. He noted convictions for offences of robbery and attempted robbery, and said that as a result he was required by law to assume that the appellant was a dangerous offender. The recorder indicated that he had taken into account the nature of the current offending and the appellant's previous antecedent history. He was required by law to impose a sentence of detention in a young offender institution for public protection. He considered that the appropriate determinate sentence would have been 5 years detention, 3 years for robbery and 2 years for possession of an imitation firearm, to run consecutively. This sentence took into account the serious nature of the offending as well as the mitigating facts in the case. The minimum term would therefore be 2 years and 6 months imprisonment less the time spent on remand, 174 days.

68. The recorder had first said that he was not minded to order that the time spent on remand should count against the minimum term, and was encouraged to take that course by prosecuting counsel. A further hearing occurred after a short break while the recorder consulted the Resident Judge. This led to the recorder deciding to direct that the 174 days

should count against the minimum term. During this post-sentence hearing, the following exchange took place:-

> RECORDER: I notice that his antecedents put him as his date of birth in September 1991.
>
> DEFENCE COUNSEL: We discussed this on the last occasion.
>
> RECORDER: Did we?
>
> DEFENCE COUNSEL: He affirmed that his date of birth was 1992.
>
> RECORDER: 1992. So he is 15.
>
> DEFENCE COUNSEL: That is right.
>
> RECORDER: Section 225 does apply to 15 year olds does it? It just occurs to me. We need to check that as well.

69. It would appear that Tolbert was sentenced to, in effect, a life sentence by a judge who did not appreciate that he was dealing with a 15 year old defendant. His failure to appreciate this must be why he thought that a sentence of DPP followed necessarily from his finding of dangerousness and why he thought that the assumption of dangerousness applied. These things had never been relevant for offenders under 18. This appears to have been unnoticed by anyone involved in this case.

70. Events have proved that the recorder may have been right to anticipate the commission of further offences. Tolbert was convicted of an offence of robbery on 30 June 2014 and sentenced, after variation by the Court of Appeal, to 6 years and 6 months imprisonment, see [2015] EWCA Crim 127. However, this is not relevant to our consideration of the case for the reasons given at [49] above.

McLaren: Second iteration: 21 at dates of offences, convictions and sentence. First appeal

71. On 6 June 2008 in the Crown Court at Nottingham McLaren pleaded guilty to one offence of attempted robbery and three offences of robbery. On 26 June 2008 in the Crown Court at Nottingham, he pleaded guilty to one offence of attempted robbery.

72. On 21 August 2008 His Honour Judge Bennett imposed concurrent sentences of IPP for each of the 5 offences with a minimum term of 42 months less 167 days spent on remand. By now, the IPP was no longer mandatory following a finding of dangerousness. The law changed in this respect between convictions and sentence.

73. The offences were committed on two occasions.

    i) On the evening 17 December 2007 Dawayne and Liam McLaren, his somewhat younger brother, attempted to rob Andrew Blackstone. During the offence Dawayne McLaren attacked Blackstone with a bottle. Liam McLaren pulled a knife from his

jacket and swung it around aggressively. Dawayne McLaren pushed the sharp broken bottle into Blackstone's ear and twisted it, causing significant physical and psychological injury.

ii) In the early hours of 2 March 2008, Dawayne McLaren and Tony Bicker, committed three robberies and one attempted robbery. During one of them Dawayne McLaren used a broken bottle to threaten the victim into handing over money. They attempted to rob Reza Deshi of cash or personal property. They robbed David Forman of a mobile telephone and £75 cash, Robert Flack of a wallet, driver's licence, debit card, student union card and £4 cash, and Dominic Taylor of a mobile telephone and a 2GB memory card.

74. The judge's sentencing remarks were succinct and clear. He was dealing with all of the offenders who had been involved with McLaren on the two occasions when he had offended. He said:-

> "So far as you are concerned, first of all, Dawayne McLaren, I bear in mind you are twenty-one, so you are still fairly young; you are not as heavily convicted as the others by a long chalk although you have got convictions; you have pleaded guilty; you have never been to custody; and all that has been said and written on your behalf. But you have pleaded guilty to being involved in two sets of very serious offending within three months of one another. The first, the attempted robbery with Liam, night-time, two of you, both equally jointly involved as far as I can see. You actually had a bottle of some sort and you attacked your victim with that bottle. He was then punched repeatedly. Liam pulls a blade, a knife, from his jacket and swings it round in an aggressive way. It is a prolonged attack. After all that, he is again hit is the complainant with the bottle and eventually the bottle is pushed into his ear and twisted with the terrible effects psychologically that we have heard about. If that stood alone, it would be serious enough to consider an indefinite sentence for public protection in your case. But what seals it for you is that three months later you are involved in a series of four other robberies, some more serious than others, I totally accept that. But the feature which troubles me most about it so far as you are concerned is the fact that once again in one of the counts, Count 4, I think it was, a bottle is produced, a bottle is broken and a bottle is used to threaten your complainant to hand over money. I accept it was not actually used on him on this occasion, but that is the pattern with you: Attack with a bottle or a broken bottle. Why? Because you are stuffed full of drink and/or drugs. You are dangerous. The result is that you will serve an indefinite sentence for public protection. The minimum term that I feel I can properly order in your case is one of three and a half years. That means that you will have to serve at least three-and-a-half years before you are even eligible to ask to be released and you will not be released at all until someone is

> satisfied that you no longer represent a danger to the public. You can go down.
>
> "You, Liam, are a very close call to getting an indefinite sentence at my hands as well. I am not going to repeat the facts of that attempted robbery which are really, really serious in my judgment and your-position is made worse by the fact that you have got numerous convictions for violence and you have been convicted more than once before for carrying a knife. I bear in mind you have pleaded guilty; I bear in mind you are only nineteen, that is a very relevant factor why you do not get an indefinite sentence; I bear in mind that although you have got these offences of violence it is fair to say that the last commission of an offence of violence was a number of year~ ago. I take account of totality and all that has been said and written. But for that attempted robbery, you will go to a Young Offenders' Institution for four years."

75. Liam McLaren also fell to be sentenced for an affray and escape. The affray involved kicking the licensee of a pub on the ground. He received a determinate sentence of 5 years in a young offender institution.

76. In this case it is worth quoting extensively from the pre-sentence report. It says this:-

> "18. Because he is the older brother the inference is that in their joint robbery this defendant, if not the actual leader, was in a position to influence the other. However there is some evidence to suggest that Liam McLaren, who although two years younger and having a much longer record than has he for dishonesty, is a more damaged, volatile character and capable of not only acting in a criminal way on his own but of dragging the older brother in to his offending by a mixture of association and sibling loyalty. It is of note that Liam has been to prison twice before whist this remand has been the first time Dawayne McLaren has experienced custody.
>
> "19. In the case of the other robberies he was the younger of the pair. The Court might not feel able to regard him as having played anything less than a full role since according to the accounts of both co-defendants - if believed - these would appear to place Dwayne McLaren to the fore in assaulting and robbing other people.
>
> "20. On the basis of this evidence and these convictions this defendant is now at a high risk of re-offending. Robbery is a specified offence as contained in Schedule 15 of the CJA 2003 and he committed not just one such personalised assault but then went on to commit three more, all of them whilst on bail. This supposes that the high risk pertains to robbery but personal knowledge does not wholly support this contention. He has never been convicted of

> a violent act before, he has a significant drink problem and in all his offending he was in the company of others who might have chosen to influence him not to offend in this way but instead joined in so that today all are equally charged.
>
> "21. The impression gained from talking to Mr Mclaren is that if the elements of criminal association and large amounts of alcohol had not been present he would not have committed an act or acts of robbery on his own. It follows that if he chooses not to drink to excess again this will help him to avoid the sort of associations and circumstances that led to these offences. Given the effects of his background and that these issues have damaged him and remain unresolved the risk of reconviction of all types might still be high but not so, it is felt, the risk of very serious harm to members of the general public. It still remains, of course, for the Court to decide if risk of harm occasioned by this defendant in the commission of further offences by him is a significant one.
>
> "22. He has never received counselling for the abuse he suffered as a child nor has he sought treatment for his depressed state. He says this has never been so bad as to cause him to have thoughts of suicide or self-harm. For this reason I feel the risk **of** either of these is still a moderate one.

77. In March 2004 for offences on one occasion involving the taking of a motor vehicle without consent and burglary and theft otherwise than of a dwelling a referral order was made. In 2006 Dawayne McLaren was convicted of possession of cannabis and a conditional discharge was imposed. He had been cautioned on a number of occasions, including for common assault in 2007. He was 21 years old and had no convictions for violence.

Webster: Second iteration: 14 at date of offending; 15 at date of conviction and sentence. First appeal.

78. On 21 July 2008, in the Crown Court at Leeds, the appellant pleaded guilty to rape**,** contrary to section 1 of the Sexual Offences Act 2003 and aggravated burglary, contrary to section 10(1) of the Theft Act 1968. On 17 October 2008, His Honour Judge MacGill sentenced Webster to DPP, and specified a period of 5 years, less 152 days, as the minimum term, on each count concurrent.

79. We comment that the offence of rape was extremely serious and, being committed by a child of 14, particularly troubling.

80. The victim was a 58 year old woman who lived alone. She was classed as a vulnerable person and had an alarm fitted at her home. On 17 May 2008, at around 4.25am, she was woken by Webster standing over her bed. He was holding a knife with a 3-inch blade. He said, "Be quiet or I will slit your throat" and "Don't say anything or I will knife you." She offered him money but he said he wanted sex. She said she was too old but he was not

deterred. She feared for her life. He raped her. He had the knife in his hand and, at one point, held it to her throat. On a couple of occasions, she tried to take the knife from him but he knocked her hands to the side. He asked her where he "could come" and she directed him to the bathroom or the bed sheet. After the incident, he took the pink bed sheet from the bed, saying that this meant the police would be unable to get any evidence. In an effort to get him to leave, the victim gave him £5. He demanded the keys to her car, a Vauxhall Tigra, and left the premises in the car.

81. The alarm was raised and the matter reported to the police. Police officers later saw the Tigra being driven in an erratic fashion. Following a brief pursuit, the Tigra collided with a road sign. Webster left the moving vehicle and was caught and arrested by a police dog handler and dog. Police found the pink bed sheet from the victim's house in the car and he had £5 on his person.

82. Swabs taken from the victim's vagina were found to contain semen with Webster's DNA. His fingerprints were present both inside and outside of her kitchen window. There was CCTV footage depicting him making his way to the rear of the property and there was a positive identification by a neighbour who saw him driving away from the property.

83. Two weeks prior to the incident, Webster had climbed into the victim's garden where she had challenged him by asking what he was doing.

84. Webster was first convicted when he was 12 years old. Thereafter he offended repeatedly in a variety of ways, and was subject to a wide range of disposals including, on 18 April 2007, a 4 month DTO for a very large number of offences. This order was imposed for new offences and also when being re-sentenced for multiple crimes which had previously been disposed by community and other orders of which he was in breach. He breached that order on a number of occasions and continued to offend and was made subject to another such order, this time for 6 months, in January 2008. The offences on his record included, offences against the person such as battery and assault, offences against property including theft and criminal damage, public disorder offences, multiple breaches of every kind of order then available, and a great many offences involving motor vehicles. The most serious offence of violence on the record is battery, and there was one offence of carrying an offensive weapon in a public place. There was no previous sexual offence. On 10 July 2008 he had been made subject to a further DTO for 8 months. As at the date of sentencing, the Youth Offending Team reported that the last 18 months of his life had been spent in custody, except for a few weeks. He had done well in those custodial environments and the reports on him were described as "glowing".

85. That team assessed Webster's risk of causing serious harm to the public as high. After being remanded to a Young Offender Institution in the proceedings for the rape offence, his behaviour had deteriorated sharply and he was frequently involved in incidents with other inmates involving frustration, anger and violence. He was described as one of "the most worrying of young people". The report contained this in its conclusions:-

> "The main issue for the Court today is whether Jordan is assessed as fulfilling 'the criteria to be deemed 'dangerous'. Should this be the

> case, the Court would be looking to impose a sentence of detention for public protection unless an alternative sentence is adequate in terms of public protection in this case. Given the issues of risk highlighted throughout this report, the Court will feel that Jordan's is a case whereby a period of Extended Licence following a substantial sentence is the very minimum that can be considered. We understand that the maximum length of extended licence that can be imposed in this case would be for eight years, and any such period of community supervision will require considerable support from statutory agencies in a structured plan that addresses all his multiple issues."

86. The report goes on to consider how the case might be addressed if a sentence of DPP were imposed.

87. There was a psychiatric report by Dr Delmage. This diagnosed a conduct disorder and expressed the view that the risk Webster posed was significant but difficult to quantify in terms of serious sexual offending. That was to be contrasted with the risk of violent and acquisitive offending of the kind which he had frequently been guilty of in the past, which was very high.

88. The judge referred to Webster's "absolutely dreadful record" and considered him to be "a lawless young man". He knew the locality, the nature of the housing and the identity of the vulnerable victim as she had remonstrated with him two weeks prior for being in her garden. He had planned the crime, carried it out and the fact he had taken the pink bedsheet with him showed he thought about the consequences of detection. The judge found that the appellant's contention to the Youth Offending Team and the psychiatrist Dr Delmage that he could not recall the detail of the offending was a "total sham".

89. The judge afforded the appellant some credit for his guilty plea. He was satisfied Webster was a dangerous offender and fulfilled the criteria for an indeterminate sentence. There was a significant risk of serious harm to the public and for that reason the judge passed a sentence of DPP. When calculating the notional determinate term, the judge took into account the appellant's age at the time of the offence, and the difficulties he faced in his childhood but also considered his criminal history, and the diagnosis of Dr Delmage. The judge reasoned that a sentence of at least 15 years would have been imposed after trial, reduced to 10 years following a guilty plea. The minimum term was therefore 5 years' detention, less time spent on remand.

O'Neill: Second Iteration: 19 and 20 at date of offending; 20 at conviction and sentence. CCRC Referral.

90. O'Neill was sentenced on 30 November 2009. He had been convicted after a trial of rape. He had also pleaded guilty to 5 other offences of dishonesty for which he received short concurrent sentences. The sentence for the rape offence was an IPP with a minimum term of 4 years less 210 days spent on remand.

91. The rape was a very serious offence. On 18 April 2009 O'Neill, aged 19, took his mother's partner's car and bank card without permission. He used the bank card to purchase over £1,000 worth of alcohol, cigarettes, petrol and phone credit. These were the offences of dishonesty referred to above. By committing them, he effectively made himself homeless and he would spend the late nights and early hours cycling around the streets. On 26 April 2009 O'Neill, aged 20, came across the complainant, aged 17, at around 2:00 a.m. The complainant was intoxicated and had become separated from her friend when walking home from a party. She met three individuals and two of them offered to share a taxi with her, but she declined and walked off with O'Neill. He took her to a secluded area where he pushed her to the ground and held her down. He then removed one of her boots and her trousers and her underwear from one leg and raped her. She sustained abrasions to her right ear and neck, abrasions and bruising to her right shoulder and upper arm and multiple abrasions to her back, right elbow and buttocks, consistent with blunt force injury sustained from a rough surface. O'Neill's semen was found on swabs taken from the complainant. His account at trial was that upon his release from a Young Offender Institution on 6 April 2009 he had been staying with friends. On 26 April he had been cycling when he saw the complainant crouching down at a bus stop. He approached her to ask her if she was "alright" and they walked off together. They started to kiss. The complainant initiated sexual contact and they had consensual sexual intercourse.

92. O'Neill had a significant record when he was sentenced. The CCRC summarised it in this way:_

> "8. …Mr O'Neill's PNC report confirms that, prior to the index offence of rape, he had 12 previous convictions for 36 offences. He was first convicted in 2004, aged 15, for multiple driving and vehicle-related acquisitive offences, receiving a 6-month referral order.
>
> 9. During 2005 Mr O'Neill was convicted of being drunk and disorderly, taking a vehicle without consent, aggravated vehicle taking and multiple offences of driving without insurance and a licence, breaching various supervision orders in committing these further offences. He ultimately received a detention and training order.
>
> 10. During 2006 Mr O'Neill breached this order by committing further offences including damaging property, obstructing and assaulting a police officer and further driving offences, leading to a period in a Youth Offender Institution (YOI).
>
> 11. Upon release, Mr O'Neill committed further offences in 2008, including breaching supervision requirements, driving and acquisitive offences.
>
> 12. In early 2009 Mr O'Neill was convicted of multiple offences, including two counts of battery, harassment, driving offences, and

> breaches of community orders leading to a further period in a YOI. He committed the index offence of rape shortly after being released.
>
> 13. In relation to the convictions for battery, the PNC states that on 14 November 2008 Mr O'Neill "approached 45-year-old white male after male had given evidence against him and punched him in the face causing redness, numbness and soreness to his lip". On the same occasion Mr O'Neill "approached 19-year-old white male after male had given evidence against him, assaulted male by punching him in the neck causing redness and numbness". On 6 January 2009 he pleaded guilty to the above offences.
>
> 14. Mr O'Neill subsequently told a psychiatrist that these witnesses "baited him" when he attended the court and that he had "lost his head and started a fight". It was documented in the pre-sentence Report (PSR) that "Mr O'Neill was reluctant to discuss the background to the offences in much detail, saying that they stemmed from a long-standing dispute with a kid from school".2 Records indicate that the harassment offence was committed against the same family at their home."

93. The pre-sentence report showed that O'Neill presented a high risk of causing serious sexual harm by the commission of further serious sexual offences.

94. The judge found that O'Neill was a danger to the public and, in particular, to women. He said this:-

> "In the first week of April this year you were released from a sentence in a Young Offender Institute. Within three weeks of that release you had committed all of these offences. By the age of 20 you have accumulated a formidable number of convictions, mostly for driving offences and dishonesty offences but including violence. And apart from the usual orders from a juvenile court you have served already three separate custodial sentences. Never before have you appeared before the court charged with and convicted of such a serious offence as rape."

95. The judge then imposed the IPP (it should have been expressed as DPP) sentence, saying:-

> "….thus you shall be sentenced as a dangerous offender as contemplated by the Criminal Justice Act and I have to first consider whether this offence of rape justifies a life sentence. In the circumstances of the case, I do not think so and I therefore impose Imprisonment for Public Protection for that offence of rape."
>
> "The minimum term however will be 8 years imprisonment, I halve that to 4 years, the actual time that you will serve and I do declare that you have already served 210 days towards the sentence, the

> custodial element of the sentence. But you will not necessarily be released even after you have been inside for 4 years. That will be up to the Parole Board to assess whether you remain a danger to the public. I also say that you must remain on the sex offenders register for life."

96. This sentence was subject to an unsuccessful appeal, see [2010] EWCA Crim 513. The court dismissed a challenge to the judge's finding that O'Neill was dangerous and then said:-

> "The offence had very nasty features to it and is significant. The appellant's attitude towards this offence and his victim was contemptuous. He was quite unable to see that it was an offence, and he is poorly motivated to deal with the behaviour and attitudes which underlay it. It comes as an escalation of ceaseless offending of increasing gravity and in defiance of the laws which are designed to help and to discipline him."

97. It will be seen that neither the judge not the Court of Appeal specifically considered whether an extended sentence would sufficiently protect the public. The sentencing judge's use of the word "therefore" immediately before pronouncing the IPP sentence suggests that in 2009 he may not have had the 2008 change of law at the forefront of his mind. This was a second iteration case, and O'Neill was over 18. That change of law was, for him, highly significant.

98. Mr Beechey on O'Neill's behalf challenges the finding of dangerousness, and also submits that the judge's sentence was flawed in that he failed to explain why an extended sentence would not have adequately protected the public against this young man. That option was not mentioned and neither was the age of the offender. The same can be said about the judgment of the Court of Appeal, but these points were not then the subject of a ground of appeal and Mr Beechey's second point was not argued.

Hibbert: Second iteration: 16 at date of offending; 16 at date of sentence: CCRC referral

99. Hibbert was sentenced on 30 April 2010 to concurrent sentences of DPP with a minimum term of 2 years for three offences. Two were offences of sexual assault of a child under 13, contrary to section 7(1) of the Sexual Offences Act 2003 against C1, aged 12. The third was an offence of sexual assault, contrary to section 3 of the Sexual Offences Act 2003, against C2, an adult. He had pleaded guilty. His application for leave to appeal was refused by the single judge in 2022 and not renewed.

100. When Hibbert was 15 or 16 years old he attended a residential special school where he had been placed on 7 August 2008, aged 15, following the breakdown of a number of previous educational placements. C1 also attended the school. On 29 September 2009 Hibbert removed her trousers, and his own. He placed his penis against the outside of her vagina and simulated intercourse, Count 1. Between 1 July and 29 September 2009, the appellant sexually touched C1 over her clothing, Count 2. C2 was a teaching assistant at the school.

On 8 September 2009 Hibbert was working alone with her in the library. He grabbed her and thrust his erect penis into her leg. He attempted to kiss her and told her to take her trousers off. He touched her breasts and between her legs and tried to prevent her from reaching the door, Count 6. He was consequently excluded from the school.

101. The judge said that it was very sad to see someone so young appearing before the court for such serious offences. He had had many serious problems in his life and did not always understand what was right and wrong, but the offences were so serious that, having regard to the very many efforts that had been made to help him in the past, only a sentence of detention was appropriate. The judge concluded that Hibbert represented a danger to the public, particularly regarding sexual offending, for the following reasons: -

    i) In the case of Count 1 the circumstances approached attempted rape. He had done something similar, but not so serious, on another occasion.

    ii) Count 6 represented a completely sexual inappropriate form of behaviour against an adult, and he had a previous conviction for something similar. The appellant was unable to control his sexual urges and had committed serious offences as a result.

    iii) The appellant had other worrying previous convictions, several for minor violence and some with racial motives which was a very worrying factor. The assessment of Mr Timmins, a very experienced member of the Youth Offending Team, and well known to the court, was that there was a high likelihood of further offending and a high risk of causing serious harm to the public.

    iv) The offences merited a significant period of detention, in excess of 4 years, given their number and the appellant's history of offending.

102. Accordingly, the judge passed a sentence of DPP with a minimum term of 2 years, the minimum appropriate under the law as it was then. In setting the minimum term the judge had regard to the fact that the appellant had been remanded into various institutions over the previous few months.

103. There is no challenge to the finding that the appellant Hibbert was dangerous. The judge did not mention the possibility that an extended sentence might be sufficient to protect the public or explain why he had decided that it would not. So far as the reasoning process is reflected in the sentencing remarks, it appears that he moved straight from his finding that Hibbert was dangerous to the imposition of a DPP sentence.

104. Mr Buckley on Hibbert's behalf applied for an adjournment of the appeal in this case, because he wishes to investigate Hibbert's mental state to determine whether to make an application to adduce psychiatric evidence to show that a disposal under the Mental Health Act 1983 should have been investigated in 2010 and that, if it had been, such an order would have been made. We acceded to this submission and adjourned this appeal, giving directions for the management of any new expert evidence.

DISCUSSION

Common Points

105. We have set out the development of the statutory regime and the way it was addressed by the courts at some length because it is important that these appeals are dealt with on the basis identified in *Roberts*. If they are to be allowed there must be an error of law which means that the sentences ought not to have been imposed at the time when they were imposed. In the first five cases, we have found that this is the case. We have adjourned the case of Hibbert for further evidence. In three of the cases previous appeals or applications have failed, in the other three, no appeal has ever been attempted until now.

106. We have been greatly assisted in our task by the excellent and comprehensive written and oral submissions we have received from all counsel involved in these appeals, and by the work done by the CCRC. This is a long judgment because we need to set out the history of this regime since the proper approach to it at the time when these sentences were passed is important. Much of the necessary work to bring the materials together has been done by others and we acknowledge their help and thank them for it.

107. The case of Davis involves a sentence of an offender over 18 years old under the first iteration. He was 19. The single question in that case is whether the judge's finding that Davis was dangerous for the purposes of the CJA 2003 was sustainable. If it was, then the sentence of DYPP was unavoidable. His age was a critical factor, given the relative lack of seriousness of the offence for which he was sentenced. His remarks recorded in the pre-sentence report were accorded great importance, when they may have been immature boasts. In making such judgments it was and is essential for sentencers to keep the age and developing personality of the offender at the forefront of their reasoning.

108. The case of Tolbert involves an offender who was sentenced under the first iteration, but who was 15 at the time of sentence. The fact that he was under 18 meant that the indeterminate sentence was not mandatory and the judge was required to consider whether an extended sentence would address the risk which he found the appellant posed.

109. The case of McLaren involves a sentence of an offender who was 21 years old and who was found to be dangerous under the second iteration. At that time, the indeterminate sentence was not mandatory and the judge was required to consider whether a determinate sentence or an extended sentence would address the risk which he found the appellant posed.

110. The cases of Hibbert and Webster involved offenders who were 16 and 15 years old when sentenced under the second iteration. This meant that the indeterminate sentence was not mandatory and the judge was required to consider whether a determinate sentence or an extended sentence would address the risk which he found the appellants posed.

111. The case of O'Neill involves a sentence of an offender who was 20 when sentenced under the second iteration. He was found to be dangerous but, again, the indeterminate sentence was not mandatory and the judge was required to consider whether a determinate sentence or an extended sentence would address the risk which he found the appellant posed.

112. In all of these cases it is clear that the age of the offender at the time when they committed the offences for which they were being sentenced was a critical factor. There is an element of hindsight, perhaps, in viewing these sentences (the most recent of which was passed in 2010) from the perspective of 2026. Now, we trust, any court sentencing these cases would have the decisions in *Clarke*, and *R v ZA* [2023] EWCA Crim 596; [2023] 2 Cr App R (S) 45 at the forefront of their minds. They would be required to follow the current guideline "Sentencing children and young people" issued by the Sentencing Council with effect from 1 June 2017 and, where appropriate, the guideline "Sexual offences: sentencing children and young people". These materials set out the proper approach to sentencing children. Decisions of the CACD also require courts dealing with those between 18 and 25 to have regard to the developing understanding of the maturation of the human brain and its influence on behaviour.

113. For the purposes of these appeals it is necessary to make good the proposition that the modern materials just mentioned were at least foreshadowed in earlier decisions of the court, and in the statutory regime itself. That is the case. The statutory regime distinguished at all times between those under 18 and those over 18. That was a statutory recognition of the need to deal differently between young offenders and adults. That need was also reflected in section 142 of the CJA 2003 which set out the purposes of sentencing for adults, and which did not apply to those under 18. Section 142A which might have identified the purposes of sentencing those under 18 was never brought into force. However, section 37 of the Crime and Disorder Act 1998 and section 44 of the Children and Young Persons Act 1993 provided a clear statutory warrant for the difference that youth makes, and were in force throughout the relevant period. The contribution which the decision in *Clarke* makes is to extend the relevance of this difference to those who are somewhat over the age of 18. The passage quoted at [38] above from *Jamie Dalton* shows that this concept was recognised in the present context before *Clarke*. In modern times, the fact that an offence was committed by a young person has always been regarded as a highly significant factor.

114. Our review of the decisions of this court since 2005 starting with *Lang* shows that the potential for young people to develop and mature is, and always has been, highly relevant to a court considering whether an offender is dangerous under the CJA 2003 and whether, if so, an indeterminate sentence should be imposed where that was not mandatory. We have quoted at length from *Lang* at [23]-[25] above and repeat here for ease of reference paragraph 17(vi):-

> "It is still necessary, when sentencing young offenders, to bear in mind that, within a shorter time than adults, they may change and develop. This and their level of maturity may be highly pertinent when assessing what their future conduct may be and whether it may give rise to significant risk of serious harm."

115. That guidance was available to all the sentencers in this case and binding on them. It relates to the point in the process where the finding of dangerousness may be made. The court should be less pessimistic in assessing future risk when dealing with a young person with

a capacity for rehabilitation and reform which may not exist for an older offender. This is emphasised by consideration of the decisions summarised at [27]-[40].

116. For those under 18 in both iterations and for those over 18 in the second iteration the cases summarised above are also highly material in deciding whether an indeterminate sentence is appropriate because it was not mandatory following a finding of dangerousness. Here the critical passages are those from *Attorney-General's Reference No. 55 of 2008) (R v C)* at [32]-[33] above. Having made a finding of dangerousness, and decided that the seriousness of the offence(s) did not justify a sentence of life imprisonment, the court was required to consider the effect of the "total protective sentencing package" available alongside determinate or extended sentences and must find them inadequate before moving to the indeterminate sentence of DPP or IPP. The total protective sentencing package will often include detention or imprisonment during the years when the child or young person is reaching full maturity. Having rejected the most severe sentence, the life sentence, the sentencer was required to start at the bottom and work up to identify the least sentence which could be passed which properly achieved punishment and the necessary protection of the public.

117. This court does not allow appeals simply because sentencers may have omitted some form of words from their sentencing remarks. *Lang* 17(ix) at [25] above set out the duty in this way:-

> "Sentencers should usually, and in accordance with section 174(1)(a) of the Criminal Justice Act 2003 give reasons for all their conclusions: in particular, that there is or is not a significant risk of further offences or serious harm; where the assumption under section 229 (3) arises for making or not making the assumption which the statute requires unless this would be unreasonable; and for not imposing an extended sentence under sections 227 and 228. Sentencers should, in giving reasons, briefly identify the information which they have taken into account."

118. *Johnson* at [11] clarified this by saying:-

> "The court would not normally interfere with the conclusions reached by a sentencer who has accurately identified the relevant principles, and applied his mind to the relevant facts. The question to be addressed by the CACD was whether the sentence was manifestly excessive or wrong in principle."

119. In accordance with that approach, in dealing with these appeals we have considered the transcripts of all six hearings and read the sentencing remarks with particular care. We are concerned to see that each sentencer truly took into account the age and level of maturity of the offender both when making a finding of dangerousness and, if appropriate, when deciding whether to impose an indeterminate sentence in consequence of that finding. No particular form of words is required, but there should be evidence that this important factor was taken properly into account. If it was, then this court will be slow to find that the

sentencer gave it insufficient weight. If it was not, then given the severity of the indeterminate sentence, the court will replace that sentence with a sentence from lower down the available options, if that is appropriate. The "total protective sentencing package" which would have been imposed cannot, in most cases, now be replicated but that is not a reason for preserving an indeterminate sentence which should not have been passed.

120. In some of these cases there is no evidence at all that the sentencer appreciated, when sentencing a second iteration case, that the law had changed in 2008. In Tolbert the sentencer does not seem to have appreciated that he was sentencing a child and appears to have thought that the mandatory first iteration rules relating to adults applied when they did not, because they had never applied to children. These are serious failures. They particularly affect McLaren as well as Tolbert. These are two cases which were never appealed.

121. In accordance with the approach set out above, this court will be slow to take into account events which have occurred after sentence. In some of these cases offenders have committed offences and other misconduct which has led them to be recalled. This may be a product of the indeterminate sentence itself which creates a very deeply demoralising situation which is precisely why it should be a sentence of last resort. It may also, of course, be a product of an ingrained propensity to commit crime. We can never know how things would have turned out had some or all of these appellants been sentenced differently.

DISCUSSION AND DECISION IN INDIVIDUAL CASES

Davis

122. We have set out the facts in this case at [50]-[60] above. This finding of dangerousness was made at a time when its consequence was an indeterminate sentence for an offence for which the judge had assessed the appropriate determinate sentence as just 18 months. In those circumstances we would expect the sentencing judge to have considered the question with great care and explained to Davis and the wider public exactly why it was appropriate to make such a finding when the offence for which he was being dealt with was not, in the scale of things, quite as serious as most firearms offences. It looked like a firearm, and was, but actually fired pellets or ball bearings. It was not in fact pointed at anyone and the offence charged was possession of a firearm with intent to cause fear of violence contrary to s16A of the Firearms Act 1968. Although there were previous convictions involving bladed weapons, again, these had involved causing fear by threats and not any use of the weapons. Davis was found to pose a risk of serious harm to the public when he had not caused any physical harm during either the previous offending or that for which he was being sentenced. This should have prompted careful thought and a reasoned justification for the sentence which was imposed which was, in effect, a life sentence.

123. We treat the views of the judge who refused leave to appeal, and of the Court of Appeal which agreed with him, with appropriate respect. We are not, however, bound by them because of the CCRC referral. We note that *Lang* and *Johnson* were cited in the grounds of appeal and referred to in the Court of Appeal Summary. However, neither the Single

Judge nor the Full Court addressed the principles we have identified above about making proper allowance for the capacity of young people to rehabilitate and mature when making a determination of dangerousness. In our judgment that is a significant error. The judge referred to the appellant's lack of maturity, and his medical conditions, but appeared to regard them only as reasons for making a determination that he was dangerous. He ought properly to have regarded them as reasons for not making such a determination for the reasons explained above.

124. Davis was a young man who, according to his antecedents, had never caused anyone any physical harm although he was clearly behaving in a very concerning way. A term of detention was certainly required to punish him, and to attempt to break his association with criminals of greater significance than he was. However, in our judgment there was no proper basis for finding that the process of maturity would not address the risk he posed to the public in conjunction with the necessary determinate sentence. That risk was assessed by the probation officer in these terms:-

> "16. ……This risk is likely to come from the threat of violence or actual violence. Mr Davis is known to own and take firearms into the street. Although in this offence a replica was used, a victim would not know this. Therefore the threat, in my view, is not less than if a real weapon were used.
>
> 17.Abstinence from compliance with prescribed medication, abstinence from street drugs use and an improvement in the management of relationships could reduce the risk this defendant poses to other. Additionally a cognitive programme could equip him with the skills to make changes in his life."

125. If there was any proper basis for finding that the risk would not probably reduce as Davis grew older the judge did not identify it. Moreover, the risk was overstated. One measure of it was that the proportionate determinate sentence, which was commensurate with the seriousness of the offence, was 18 months' detention. That was the most serious offence Davis had ever committed. For these reasons, we decided that the judge's finding that Davis was dangerous for the purposes of the first iteration could not be sustained. We therefore allowed this appeal and made the order set out at the start of this judgment.

Tolbert

126. This is the most striking of this set of six cases. We have described the sentencing process at some length at [61]-[70] above. This appellant was 14 years old when he committed the offences and 15 when sentenced. The offences were unremarkable but serious. The child offender used an imitation firearm to rob someone of their mobile phone.

127. This was a first iteration case and in view of the age of the appellant the court was not required (or entitled) to apply any assumption of dangerousness from previous offending, and the indeterminate sentence did not inevitably follow from the finding of dangerousness. The recorder did not know this. It also appears that he did not realise that he was dealing

with a 15 year old until after he had sentenced him. Neither counsel corrected him: both had a duty to do so. There was no appeal. It is very unfortunate that this extremely difficult case was dealt with by a recorder and it is a pity that he appears only to have consulted the Resident Judge about his plan to make the still further (and wholly unexplained) error of directing that time spent in custody should not count against the minimum term in detention.

128. It was obviously wrong to find that a 14 year old was dangerous in the circumstances of this case. The pre-sentence and psychiatric reports contained plenty of clues to the difficulties in dealing with the case. The psychiatrist said in terms that diagnosis of children of this age is complicated by the fact that their personality is not yet "settled". A brief consideration of *Lang* would have produced the proper result. We will assume that the recorder had read the reports, and had been aware of *Lang*. On that assumption, he fell into error by allowing them to recede from his process of reasoning.

129. We will exercise restraint in our choice of language. This sentencing process was unacceptable and the result has been unjust. The recorder's sentence is quashed and replaced as we have explained at the start of this judgment.

McLaren

130. McLaren received what was, in effect, a life sentence for a total of five offences of street robbery committed on two occasions when he was 20 or 21 years old. One of the offences was aggravated by the infliction of serious violence on one of the victims, using a sharp broken bottle. The relevant facts are set out above at [71]-[77].

131. This is another case where there has been no appeal.

132. Sentence was imposed a few weeks after the change in the law. This was a second iteration case involving an offender over 18, but still young. The approach set out at [119] above applies. There is no indication that the sentencing judge was aware that the law had changed and that DPP was no longer mandatory following the finding of dangerousness. He may not have appreciated that he had a discretion, and it is certainly not apparent how he exercised it if he did.

133. We have considered the judge's finding of dangerousness and decided that it was properly open to him. The appellant was 21 years old when he committed the offences and on one occasion used serious violence to cause serious harm. He threatened a victim with a broken bottle in one of the other offences. The judge found, as he was entitled to do, that the behaviour of the appellant was uncontrolled particularly when he was affected by drink and drugs. It would also have been open to the judge to decide that he was not dangerous for the purposes of the CJA 2003 sentencing regime. The evaluation of risk was a matter for him, and he had a genuine choice to make. Although we consider that this was something of a borderline case, we uphold the judge's finding on this issue.

134. Liam McLaren was younger than Dawayne McLaren and had relevant convictions. It is impossible to reconcile the judge's treatment of Liam McLaren with the sentence imposed on Dawayne McLaren, who was older, but not so much older as to make a great deal of

difference. Dawayne's age was mentioned, in that the judge said he was bearing in mind that fact that he was still fairly young, but there is no reference to that fact when the judge moved from his finding that the appellant was dangerous to the imposition of IPP. A few weeks earlier that sentence would simply have followed as a matter of law, but by the date when this sentence was imposed there was a choice between a determinate sentence, an extended sentence or IPP. There is nothing in the judge's sentencing remarks which shows that he was aware that he had a choice, and certainly nothing which explains how he decided which of the available options to take. He does not mention the possibility of an extended sentence at all.

135. For these reasons, and applying the approach at [116]-[119] above, we quashed the sentences imposed by the judge and replaced them with the sentences set out at the start of this judgment.

Webster

136. We have set out the facts of this serious case at [78]-[89] above. Again, this is a case where there has never been an appeal and here too that is surprising. However, in this case the judge was clearly right to make a finding of dangerousness and to decide that a substantial custodial sentence was required.

137. The judge did not refer to the then current sentencing guidelines. The Sentencing Guidelines Council Guideline on the Sexual Offences Act 2003 was in force at the material time ("the SOA 2003 Guideline"). The guideline "Overarching Principles: Sentencing Youths" did not come into force until 30 November 2009 and did not apply. By virtue of section 172 of the CJA, every court was required to "have regard to" a relevant guideline. The SOA 2003 Guideline contained this:-

> "1.17 The youth and immaturity of an offender must always be potential mitigating factors for the courts to take into account when passing sentence. However, where the facts of a case are particularly serious, the youth of the offender will not necessarily mitigate the appropriate sentence"

138. This paragraph relies on two cases cited in a footnote. One, *R v Paiwand Asi-Akram* [2005] EWCA Crim 1543, was an exceptionally grave case of a series of 3 rapes with violence committed by a 17 year old. 14 years was upheld. The other, *R v Patrick M* [2004] EWCA Crim 1679, involved a single very serious offence of rape by a 16 year old and a sentence of 6 years was upheld. Both decisions comment on the guidance then available from *R v Millberry* [2003] 2 Cr App R (S) 31 (p.142). Both of these offenders had pleaded guilty. Paragraph 1.17 of the Guideline attempted to summarise these decisions on which it was based, rather than providing any free-standing guidance of its own. Webster was 14 at the time of his offence, and it is clear that the judge's minimum term based on a notional determinate sentence of 15 years had no regard at all to this guidance or the two decisions on which it was based. The SOA 2003 Guideline suggested a starting point of 8 years and a range of 6-11 years for an adult after a trial.

139. Paragraph 1.17 of the SOA 2003 Guideline is surprising to a modern reader. It cites two individual fact specific decisions and perhaps elevates them to a statement of principle which they do not justify. It is now of only historical importance because of the more modern materials referred to above. It does not appear to have influenced the sentencing judge, and it is not necessary to say anything more about it. The age of this appellant, 14, clearly was a highly relevant factor in deciding how he should be dealt with.

140. As we explain above, the pre-sentence report clearly pointed out for the judge the decision he had to make, between DPP and an extended sentence. However he did not explain how he approached that, and did not refer to the option of imposing an extended sentence at all. We would expect sentencers, when dealing with a serious case in which a decision is to be made which might result in the imposition of what was, in effect, a life sentence on a 15 old child, to explain why they have decided that an extended sentence did not provide adequate protection for the public. If they do not do so, there is a risk that they have not addressed that question at all, which is an error of law. Where this discretion exists, as we have explained above, this part of the reasoning is critical to the lawfulness of the sentence.

141. The judge's minimum term was based on a sentence after a trial of 15 years, from which a discount of one third was allowed for the guilty plea. This resulted in a minimum term of 5 years (half of 10 years). That, as we have said, paid little regard to the SOA 2003 Guideline and none at all to the fact that the appellant was 14 at the time when he committed this offence.

142. We consider that the sentence imposed by the judge was flawed because of his approach to Webster's age. An extended sentence should have been imposed with a much shorter minimum term. We therefore quash the judge's sentence and impose in its place the sentence set out at the start of this judgment. In selecting our custodial period of 5 years we do not intend to suggest that this would be the proper sentence for an offence of this kind committed by a 14 year old offender under modern guidance. We hope that the whole process would be entirely different now.

O'Neill

143. The offending in this case was extremely serious, and the offender was 20 years old when sentenced.

144. As will appear from our summary of the facts of this case at [90]-[98] above, the finding of dangerousness was quite clearly appropriate. We reject the challenge to that finding for the reasons given by the first Court of Appeal, and do not add anything of our own on that subject.

145. However, the judge's approach to deciding what the right sentence was in view of that finding was flawed. The first Court of Appeal did not identify this flaw, but it is nevertheless clearly present. The judge decided, rightly, that this case was not so serious that a life sentence was justified and "therefore" imposed a sentence of IPP. This was, in effect, a life sentence. The fact that he imposed IPP rather than DYPP on an offender who was under 21 may suggest that he did not have the appellant's age in mind, when he should

have done. This is confirmed by the fact that he did not refer to that critical factor in this sentencing decision.

146. In second iteration cases involving young offenders over 18 and dating from the period 2008 to about 2010 this court should, in our judgment, be particularly careful to ensure that the sentencers had fully absorbed the significance of the change in the law from the first to the second iteration. A case such as this, where the sentencer did not refer to the existence of the discretion to impose a sentence other than an indeterminate sentence, still less explain how he had decided to exercise it, is worrying. That worry is compounded by the failure to apply, or even mention, the guidance from decisions of this court, which we have set out at length above, when approaching the fact that this offender was 20 years old.

147. This appellant was quite close to an indeterminate sentence even if the case had been approached properly. His risk level was high and he was capable of violent and dishonest as well as sexual offending. He committed this offence of rape soon after release from an earlier sentence. We have carefully considered whether we should uphold the sentence even though we have found that it was not arrived by a correct application of the law.

148. In the end we have concluded that O'Neill's age narrowly saves him from the indeterminate sentence which was imposed. We consider that the sentencing judge ought to have imposed a substantial extended sentence. We cannot know whether that would have achieved its objectives of punishment, rehabilitation and public protection but we do find that the sentencing judge should have taken the risk. The alternative, a life sentence in all but name, on a 20 year old should only have been imposed as a last resort and after careful reflection.

149. We would have imposed a longer custodial term than that selected by the judge, but that is now academic since it would long since have expired. In those circumstances, we decided to make the order set out at the start of this judgment.

Hibbert

150. We have granted an adjournment in this case so that investigations can be carried out into whether there should have been a disposal under the Mental Health Act 1983.

151. In these circumstances, we shall say no more about this case in this judgment.

4 April 2005 – 13 July 2008

224 Meaning of *"specified offence"* etc.

(1) An offence is a "specified offence" for the purposes of this Chapter if it is a specified violent offence or a specified sexual offence.

(2) An offence is a "serious offence" for the purposes of this Chapter if and only if—

(a) it is a specified offence, and

(b) it is, apart from section 225, punishable in the case of a person aged 18 or over by—

(i) imprisonment for life or, in the case of a person aged at least 18 but under 21, custody for life, or

(ii) imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a determinate period of ten years or more.

(3) In this Chapter—

"relevant offence" has the meaning given by section 229(4);

"serious harm" means death or serious personal injury, whether physical or psychological;

"specified violent offence" means an offence specified in Part 1 of Schedule 15;

"specified sexual offence" means an offence specified in Part 2 of that Schedule.

225 Life sentence or imprisonment for public protection for serious offences

(1) This section applies where—

(a) a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and

(b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

(2) If—

(a) the offence is one in respect of which the offender would apart from this section be liable to imprisonment for life, and

(b) the court considers that the seriousness of the offence, or of the offence and one

or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life,

the court must impose a sentence of imprisonment for life.

(3) In a case not falling within subsection (2), the court must impose a sentence of imprisonment for public protection.

(4) A sentence of imprisonment for public protection is a sentence of imprisonment for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) as to the release of prisoners and duration of licences.

(5) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

226 Detention for life or detention for public protection for serious offences committed by those under 18

(1) This section applies where—

(a) a person aged under 18 is convicted of a serious offence committed after the commencement of this section, and

(b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

(2) If—

(a) the offence is one in respect of which the offender would apart from this section be liable to a sentence of detention for life under section 91 of the Sentencing Act, and

(b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of detention for life,

the court must impose a sentence of detention for life under that section.

(3) If, in a case not falling within subsection (2), the court considers that an extended sentence under section 228 would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court must impose a sentence of detention for public protection.

(4) A sentence of detention for public protection is a sentence of detention for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) as to the release of prisoners and duration of licences.

(5) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

227 Extended sentence for certain violent or sexual offences: persons 18 or over

(1) This section applies where—

(a) a person aged 18 or over is convicted of a specified offence, other than a serious offence, committed after the commencement of this section, and

(b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

(2) The court must impose on the offender an extended sentence of imprisonment, that is to say, a sentence of imprisonment the term of which is equal to the aggregate of—

(a) the appropriate custodial term, and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.

(3) In subsection (2) "the appropriate custodial term" means a term of imprisonment (not exceeding the maximum term permitted for the offence) which—

(a) is the term that would (apart from this section) be imposed in compliance with section 153(2), or

(b) where the term that would be so imposed is a term of less than 12 months, is a term of 12 months.

(4) The extension period must not exceed—

(a) five years in the case of a specified violent offence, and

(b) eight years in the case of a specified sexual offence.

(5) The term of an extended sentence of imprisonment passed under this section in respect of an offence must not exceed the maximum term permitted for the offence.

228 Extended sentence for certain violent or sexual offences: persons under 18

(1) This section applies where—

(a) a person aged under 18 is convicted of a specified offence committed after the

commencement of this section, and

(b) the court considers—

(i) that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, and

(ii) where the specified offence is a serious offence, that the case is not one in which the court is required by section 226(2) to impose a sentence of detention for life under section 91 of the Sentencing Act or by section 226(3) to impose a sentence of detention for public protection.

(2) The court must impose on the offender an extended sentence of detention, that is to say, a sentence of detention the term of which is equal to the aggregate of—

(a) the appropriate custodial term, and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.

(3) In subsection (2) "the appropriate custodial term" means such term as the court considers appropriate, which—

(a) must be at least 12 months, and

(b) must not exceed the maximum term of imprisonment permitted for the offence.

(4) The extension period must not exceed—

(a) five years in the case of a specified violent offence, and

(b) eight years in the case of a specified sexual offence.

(5) The term of an extended sentence of detention passed under this section in respect of an offence must not exceed the maximum term of imprisonment permitted for the offence.

(6) Any reference in this section to the maximum term of imprisonment permitted for an offence is a reference to the maximum term of imprisonment that is, apart from section 225, permitted for the offence in the case of a person aged 18 or over.

229 The assessment of dangerousness

(1) This section applies where—

(a) a person has been convicted of a specified offence, and

(b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences.

(2) If at the time when that offence was committed the offender had not been convicted in any part of the United Kingdom of any relevant offence or was aged under 18, the court in making the assessment referred to in subsection (1)(b)—

(a) must take into account all such information as is available to it about the nature and circumstances of the offence,

(b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part, and

(c) may take into account any information about the offender which is before it.

(3) If at the time when that offence was committed the offender was aged 18 or over and had been convicted in any part of the United Kingdom of one or more relevant offences, the court must assume that there is such a risk as is mentioned in subsection (1)(b) unless, after taking into account—

(a) all such information as is available to it about the nature and circumstances of each of the offences,

(b) where appropriate, any information which is before it about any pattern of behaviour of which any of the offences forms part, and

(c) any information about the offender which is before it,

the court considers that it would be unreasonable to conclude that there is such a risk.

(4) In this Chapter “relevant offence” means—

(a) a specified offence,

(b) an offence specified in Schedule 16 (offences under the law of Scotland), or

(c) an offence specified in Schedule 17 (offences under the law of Northern Ireland).

14 July 2008 – 2 December 2012

224 Meaning of *"specified offence"* etc.

(1) An offence is a "specified offence" for the purposes of this Chapter if it is a specified violent offence or a specified sexual offence.

(2) An offence is a "serious offence" for the purposes of this Chapter if and only if—

(a) it is a specified offence, and

(b) it is, apart from section 225, punishable in the case of a person aged 18 or over by—

(i) imprisonment for life or, in the case of a person aged at least 18 but under 21, custody for life, or

(ii) imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a determinate period of ten years or more.

(3) In this Chapter—

"serious harm" means death or serious personal injury, whether physical or psychological;

"specified violent offence" means an offence specified in Part 1 of Schedule 15;

"specified sexual offence" means an offence specified in Part 2 of that Schedule.

225 Life sentence or imprisonment for public protection for serious offences

(1) This section applies where—

(a)a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and

(b)the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

(2) If—

(a) the offence is one in respect of which the offender would apart from this section be liable to imprisonment for life, and

(b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life,

the court must impose a sentence of imprisonment for life.

[(3) In a case not falling within subsection (2), the court may impose a sentence of imprisonment for public protection if the condition in subsection (3A) or the condition in subsection (3B) is met.

(3A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.

(3B) The condition in this subsection is that the notional minimum term is at least two years.

(3C) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of imprisonment for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand).**]**

(4) A sentence of imprisonment for public protection is a sentence of imprisonment for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) as to the release of prisoners and duration of licences.

(5) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

226 Detention for life or detention for public protection for serious offences committed by those under 18

(1) This section applies where—

(a) a person aged under 18 is convicted of a serious offence committed after the commencement of this section, and

(b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

(2) If—

(a) the offence is one in respect of which the offender would apart from this section be liable to a sentence of detention for life under section 91 of the Sentencing Act, and

(b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of detention for life,

the court must impose a sentence of detention for life under that section.

[(3) In a case not falling within subsection (2), the court may impose a sentence of detention for public protection if the notional minimum term is at least two years.

(3A) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of detention for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand).**]**

(4) A sentence of detention for public protection is a sentence of detention for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) as to the release of prisoners and duration of licences.

(5) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law

227 Extended sentence for certain violent or sexual offences: persons 18 or over

(1) This section applies where—

(a) a person aged 18 or over is convicted of a specified offence . . . committed after the commencement of this section, and

(b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.**[**, but

(c) the court is not required by section 225(2) to impose a sentence of imprisonment for life.**]**

(2) **[** The court may**]** impose on the offender an extended sentence of imprisonment, **[**if the condition in subsection (2A) or the condition in subsection (2B) is met.**]**

[(2A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.

(2B) The condition in this subsection is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term would be at least 4 years.

(2C) An extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of—

(a) the appropriate custodial term, and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.**]**

(3) In **[**subsections (2B) and (2C)**]**"the appropriate custodial term" means a term of imprisonment (not exceeding the maximum term permitted for the offence) which—

(a) is the term that would (apart from this section) be imposed in compliance with section 153(2), or

(b) where the term that would be so imposed is a term of less than 12 months, is a term of 12 months.

(4) The extension period must not exceed—

(a) five years in the case of a specified violent offence, and

(b) eight years in the case of a specified sexual offence.

(5) The term of an extended sentence of imprisonment passed under this section in respect of an offence must not exceed the maximum term permitted for the offence.

[(6) The Secretary of State may by order amend subsection (2B) so as to substitute a different period for the period for the time being specified in that subsection.**]**

228 Extended sentence for certain violent or sexual offences: persons under 18

(1) This section applies where—

(a) a person aged under 18 is convicted of a specified offence committed after the commencement of this section, and

(b) the court considers—

(i) that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, and

(ii) where the specified offence is a serious offence, that the case is not one in which the court is required by section 226(2) to impose a sentence of detention for life under section 91 of the Sentencing Act . . . .

(2) **[** The court may**]** impose on the offender an extended sentence of detention, **[**if the condition in subsection (2A) is met.**]**

[(2A) The condition in this subsection is that, if the court were to impose an extended sentence of detention, the term that it would specify as the appropriate custodial term would be at least 4 years.

(2B) An extended sentence of detention is a sentence of detention the term of which is equal to the aggregate of—

(a) the appropriate custodial term, and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.**]**

(3) In **[**subsections (2A) and (2B)**]**"the appropriate custodial term" means such term as the court considers appropriate, which—

(a). . . . . .

(b) must not exceed the maximum term of imprisonment permitted for the offence.

(4) The extension period must not exceed—

(a) five years in the case of a specified violent offence, and

(b) eight years in the case of a specified sexual offence.

(5) The term of an extended sentence of detention passed under this section in respect of an offence must not exceed the maximum term of imprisonment permitted for the offence.

(6) Any reference in this section to the maximum term of imprisonment permitted for an offence is a reference to the maximum term of imprisonment that is, apart from section 225, permitted for the offence in the case of a person aged 18 or over.

[(7) The Secretary of State may by order amend subsection (2A) so as to substitute a different period for the period for the time being specified in that subsection.**]**

229 The assessment of dangerousness

(1) This section applies where—

(a) a person has been convicted of a specified offence, and

(b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences.

(2). . . , the court in making the assessment referred to in subsection (1)(b)—

(a) must take into account all such information as is available to it about the nature and circumstances of the offence,

[(aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world,**]**

(b) may take into account any information which is before it about any pattern of behaviour of which **[**any of the offences mentioned in paragraph (a) or (aa)**]** forms part, and

(c) may take into account any information about the offender which is before it.

[(2A) The reference in subsection (2)(aa) to a conviction by a court includes a reference to—

(a) a finding of guilt in service disciplinary proceedings, and

(b) a conviction of a service offence within the meaning of the Armed Forces Act 2006 ("conviction" here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction).**]**

(3). . . . . .

(4) . . . . . .