



Neutral Citation Number: [2026] EWCA Crim 1002

Case No: 202501394 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT SITTING AT WOOLWICH
HHJ AUBREY KC
01MP1305723

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2026

Before :

PRESIDENT OF THE KING'S BENCH DIVISION
MRS JUSTICE CUTTS
and
HIS HONOUR JUDGE NIGEL LICKLEY KC

Between :

KEVIN KELEDA
- and -
REX

Applicant

Respondent

Mr Hossein Zahir KC and Mr Michael Goold (instructed by **Stuart Miller, Solicitors**) for
the **Applicant**
Mr Danny Robinson KC (instructed by **CPS Appeals and Review Unit**) for the **Respondent**

Hearing dates : 24 June 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 31 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Dame Victoria Sharp, P. :

Introduction

1. On 13 December 2024 in the Crown Court sitting at Wood Green the applicant pleaded guilty to one count of having an article with a blade or point (count 2).
2. On 27 March 2025 the applicant was convicted of murder (count 1) following a trial at the Crown Court sitting at Woolwich. On 19 May 2025 he was sentenced to Detention during His Majesty's Pleasure with a minimum term of 17 years less 526 days spent on remand. For the weapon offence he was sentenced to a Detention and Training Order of 18 months.
3. Applications for leave to appeal against conviction and sentence have been referred to the Full Court by the Registrar. For the reasons that follow, both applications for leave to appeal are refused.

Conviction

The factual background

4. The judge made an order pursuant to section 51 of the Criminal Justice Act 2003 (the 2003 Act) that the applicant, then aged 18, should attend his trial by live video link from HMP Belmarsh (the prison). This included when he gave evidence. The judge made the order because of the applicant's violent behaviour and the threat he posed to prison and other staff. Mr Zahir KC for the applicant accepts that security measures were necessary because of the security risk the applicant posed. The submission made however is that other options to a live video link were available and should have been adopted; that as a result of that order the applicant did not effectively participate in his trial and that his conviction for murder is therefore unsafe.
5. Given the issues raised, it is unnecessary to focus on the detail of the murder itself. However, in summary, the applicant committed an unprovoked attack with a knife on a lone member of the public, Tyrone Pinnock, in the early evening, having apparently targeted and followed Mr Pinnock as he made his way home.
6. Most of the relevant events were captured on CCTV. At the time of the offence the applicant was living in Harrow. On 19 October 2023 he left his address wearing a surgical mask. By 6.30 pm he was in the area of Kensal Road having travelled there by public transport. Five minutes before the stabbing occurred, the applicant could be seen following Mr Pinnock
7. Mr Pinnock crossed the Harrow Road, opposite the entrance to Halfpenny Steps. As he reached the exit to the bridge, Mr Pinnock briefly looked over his shoulder in the direction of the applicant, who by then was only a few steps behind him. Mr Pinnock stopped on reaching the bottom of the ramp that led from the bridge and turned to face the applicant. The applicant produced a knife and stabbed Mr Pinnock once in the chest. The knife pierced Mr Pinnock's heart. Mr Pinnock managed to run off. The applicant chased him. After Mr Pinnock collapsed on Kensal Road, members of the public came to his aid, and the applicant left the scene. The police attended. They were assisted by emergency paramedics, but despite their best efforts Mr Pinnock died from his injuries.

8. The Postmortem examination found one stab wound straight in from front to back, and slightly upwards, to the left side of his chest that penetrated a rib and went into the heart. The depth of the wound was between 4cm to 6cm.
9. The applicant was identified after a review of the CCTV footage. He was arrested at his home on 25 October 2023. A search of his room revealed some handwritten notes referring to '*swing my blade at your heart*' and '*Rambo*'. This revealed, so it was said, that the applicant had a fascination with knives and their use. The applicant later admitted the stabbing but said he had acted in lawful self-defence.

Events at and preceding the trial

10. The trial was due to be heard at Wood Green Crown Court on 17 March 2025. The applicant was, by then, detained at the prison and was a category A prisoner. A Case Management Hearing was listed to be heard on 12 March 2025 (before HHJ Dodd KC). It appears that this hearing was listed so that defence counsel could have a consultation with the applicant in the cells.
11. Emails between court staff and senior security staff at the prison (uploaded to the digital case system, the DCS) show that the prison asked that the applicant be produced by video link because of his level of risk and the safety measures that had already had to be implemented.
12. On 11 March for example, a member of prison staff responsible for dealing with category A prisoners said: 'The above prisoner is currently an SO + 6 in kit, could his hearing take place via video link please?' 'SO + 6 in kit' meant that the prison would only permit the applicant to leave his cell accompanied by a Senior Officer and six other staff all wearing protective equipment (PPE). Later the same day, the Listing Delivery Manager at Wood Green Crown Court asked the prison if they were able to produce the applicant. The prison said the defendant could not be produced at court due to his unlock level. A court officer then asked if a video link could be made available for the whole day for the conference with counsel 'as the risk to produce the defendant is quite high'.
13. The response from Mr Stevens, Head of Security and Intelligence at the prison was in these terms: 'I appreciate you allowing us to produce Mr Kelenda via video link tomorrow. However, where do we stand with regards to the trial next week? As I said I am happy to speak with the judge if required regarding his current unlock level, but I can confirm it is not going to change between now and next Monday'.
14. Judge Dodd KC made a note of the hearing on 12 March as it concerned trial venue and security. This said:

“In the light of concerns raised by HMP Belmarsh, I am waiting to hear if Woolwich may be able to take this case. I assured defence counsel, Mr Zahir KC, that time would be allowed by the trial judge, HHJ Aubrey KC, for the consultation that was supposed to take place today, and for the intermediary to speak with the defendant. Mr Kelenda attended remotely today, and in fairness to him, behaved perfectly well. He assured me that he would continue to do so. Fingers crossed...”

15. After the 12 March hearing, the prison were informed of the transfer of the case to Woolwich Crown Court. The prison were asked if any special arrangements were needed for the applicant. Mr Stevens replied: 'Can I ask that Woolwich CC and the judge is made aware of Mr Kelenda's current unlock level, he is will remain a Senior Officer and 6 prison officers in full Personal protection (Helmets, gloves, black overalls, stab vests and arm and leg protection) All 7 staff will have to go into the dock with him. This is non-negotiable, I cannot stress enough the risk this man poses to staff at this time'.
16. The courtroom selected for the trial had a secure dock. On 17 March 2025, no defendants could attend the court building because of an electrical issue. The applicant appeared by video link from the prison.
17. After the court rose, a risk assessment was sent from the prison to the court. Mr Stevens also sent an email to a number of recipients including court staff. Mr Stevens said:

“Lily from my Cat A team have supplied the court with the RA for Mr K, this lists a number of violent incidents he has been involved in towards staff whilst in custody. I did raise my concerns last week to the court regarding Mr K's unlock level and the number of staff required to manage him in court and exactly what that would involve so as not to delay proceedings. However, the judge said he would wait til day one of the trial to hear an application. I think there may have been a misunderstanding on the courts side as to what I was saying. I was not applying for handcuffs in court, I was explaining what his current unlock level is and what it has been since he arrived in HMP Belmarsh.”

He went on:

“Mr K poses a serious risk to staff safety, and this has been well documented throughout his time in custody. In addition to this evidence, whilst staff were returning Mr K from the video link room to his cell this morning he ran at the shield and tried to attack staff, he had to be restrained, handcuffed and physically put back into his cell. Mr K's unlock level is a Senior Officer and 6 Staff in Full PPE (Staff are wearing, Helmet, arm guards, leg guards, stab vest, black overalls and there are two shields in use also), this unlock level is **non-negotiable**. He poses an immediate risk to staff, and he also stated over the weekend that if found guilty in court he will attack the staff and smash the Dock up, this has been recorded on our intelligence system. I am happy to discuss his unlock level with the judge or anyone in the court to explain our processes and how Mr K is being managed whilst in the segregation unit'.”

18. Prosecution counsel Mr Robinson KC received this email. He disclosed it and the risk assessment to Mr Zahir.

19. The risk assessment was headed 'HMP Belmarsh Risk Assessment for Court / inter prison transfer' and was dated 10 March 2025. It had been prepared by the prison (on a form, with sections to be completed).
20. The destination was noted as 'Wood Green'. The risk assessment said that the applicant was a category A prisoner. It said: 'No intelligence specific to the escort. No history of escape or attempted escape. Weapon maker metal rod with the end wrapped in cling film found in cell 20/11/23. Prolific staff assaulter. Murder charge'.
21. Thereafter the risk assessment listed a series of incidents of threats of violence and of actual violence:
 - i) The first is dated 13 September 2024. The report was of threats being made. The assessment noted that the applicant was 'in love with violence' and 'drawn to violence' 'and feels excitement and enjoyment when he attacks staff doesn't need any other reason to do so'. The notes also referred to 'violent unpredictable behaviour, multiple attacks on staff, sexualised comments toward female members of staff, multiple threats to staff (uniform and non-uniform) no one to one until further notice.'
 - ii) From 27 February 2024 to 17 August 2024 there were nine reports of threats to staff including on 27 February 2024 a threat in relation to a male officer to 'smash his head and stomp on his head' and on 17 August 2024 a threat to 'strangle to death' a female officer.
 - iii) The risk assessment referred to seventeen assaults or attempted assaults on staff from 15 January 2024 to 19 January 2025. They included on 10 October 2024 punching the Governor several times to the head and throwing liquids into the face of members of staff. The report noted a recent assault on 6 February 2025 when the applicant was being searched following his transfer from HMP Weatherby.
 - iv) In consequence, the risk assessment said: 'Due to previous and current behaviour in custody Mr Kelenda is a (on) controlled unlock (SO + 6 in PPE). At times he has refused to engage with staff and has no engagement with regime or applications when offered, as made threats to staff the staff finding it difficult to build a rapport'.
22. Under the heading 'Behaviour in Prison' the risk assessment said 'Mr Kalenda Has 48 adjudications in his history of custody with two proven in the last three months for threatening words and behaviour and assault. Has spent most of his time on basic due to his custodial history although as of 10/3/25 has been put to standard IEP as a fresh start no ACCT history or previous escort/bed watch information'.
23. The risk assessment noted that there was no intelligence to suggest disorder in court although staff were to remain vigilant due to the history of violence and 'Due to an extensive history of violence in custody, staff are vulnerable to attack which may come unprovoked and unexpected'. In section 6 'Assessment of visiting arrangements' it said, 'approved legal visitors only, although due to being SO + 6 in PPE it is advisable if legal visits can be by video link'.

24. On 18 March 2025 HHJ Aubrey KC, the trial judge, had a meeting with Mr Stevens. The court then sat in chambers. The applicant was not present in person or via a video link. The judge informed the parties of his meeting with Mr Stevens. The judge said he had reminded himself of the guidance in respect of the management of prisoners that present a risk of escape or violence when attending court and Criminal Practice Direction paragraph 3. He said that he had been informed by Mr Stevens, having seen the risk assessment, that the applicant had said on a number of occasions that as soon as any member of staff removed any shield or item of clothing being worn for security reasons he will inflict violence upon them. The judge said that the applicant had threatened to commit acts of violence to members of staff on a number of occasions.
25. The judge said that it was important that he consider representations and noted that it was the responsibility of the prosecution to make an application for handcuffs during the course of the trial and incumbent upon him to hear representations from the defence. The judge said there were three potential scenarios: the first, was that the applicant participate in the proceedings in the dock with numerous prison officers wearing appropriate equipment. Second, fewer officers in the dock but if there were to be an application for handcuffs the applicant would be handcuffed although different considerations might apply if he chose to give evidence. Finally, the judge said the security measure that he would consider was the use of live links throughout the course of the trial. The judge said he would hear representations.
26. Mr. Robinson said there was no application at that stage for the applicant be brought into court in handcuffs and that he had spoken to Mr Stevens. Mr Stevens was present in court and available for questioning. Mr. Robinson submitted that the video link option was the least intrusive method of ensuring the applicant's participation in the trial.
27. Mr Zahir noted that the applicant was not present and that counsel had had no opportunity to discuss the security arrangements with him. Mr Zahir said he had only received the documentation (we assume the risk assessment) a short time before the court sat. Mr Zahir proposed an alternative security arrangement; that the applicant sit in the dock with a number of prison officers not in protective equipment. However in the room behind the dock there would be prison officers in full PPE. The officers would be there throughout the trial and available to come into court should there be a disturbance. Mr Zahir reminded the court of the applicant's difficulties and said he would be prejudiced by the jury seeing officers sitting in court wearing full PPE, seeing any restraints upon him or having to engage with him through the trial by live link. He said it would be impossible to take proper instructions. Mr Zahir said there would be concerns about whether a fair trial was possible given the measures proposed. He said the reports of incidents were not related to court appearances, there was no evidence of any such event and there was nothing to suggest that the applicant would behave violently or inappropriately in court. Finally, Mr Zahir said there had been insufficient time to explore other alternatives. The court adjourned for Mr Zahir to take instructions and for the intermediary to meet the applicant (The judge had granted the defence application for an intermediary for the duration of the trial).
28. The court reconvened. Mr Zahir made further representations about the measures being considered and the fairness of the trial. When Mr Zahir described a possible variation of the three proposed measures namely discreet restraint with handcuffs in the dock, Mr Stevens said: 'Apologies Sir, even with restraint, the recommendation would be to

reduce the number of officers, but we would not reduce the personal protection that they would be wearing.'

29. Mr Zahir then questioned Mr Stevens regarding the level of threat posed by the applicant. Mr Stevens said there had been two assaults since the applicant had been moved to the prison, the most recent being the day before. He said he did not make the application lightly but did so because of the risk the applicant posed to staff. Mr Stevens did not regard the proposal that officers wearing PPE wait in the room behind the dock as a viable option. He said it was not something he would consider any further. Mr Zahir had earlier conceded that if the application was granted, the only alternative was attendance via the live link.
30. The judge gave a detailed and careful ruling.
31. He noted that an application for additional security measures was before the court. He stated that at the forefront of his mind was the integrity of the trial process and the enshrined principle that the defendant received a fair trial. The judge said it was in the interests of justice that security measures were put in place and that he had considered the appropriate alternatives. The judge concluded that the only potential and realistic measure was either that there were more officers dressed in appropriate equipment in the dock or that the applicant participated in the proceedings via the live link. The judge reminded himself of the Criminal Practice Direction paragraph 3, guidance that provided for the management of prisoners that represent a risk of escape or violence when attending criminal trials ('The Management of Prisoners that present a risk of escape or violence when attending Criminal Courts' (the Guidance), and the statutory criteria set out in section 51 of the 2003 as amended by the Police Crime Sentencing and Courts Act 2022. He noted that subsection 5 enjoins the court to consider all the circumstances of the case. His decision was that the applicant would appear throughout his trial via the live video link. The order having been made, the jury would be given and directed in an appropriate way a direction about the applicant appearing by live video link.
32. On 21 March 2025, at the conclusion of the prosecution case the judge considered practical measures for the applicant to give evidence. The judge considered written submissions from the defence. Mr Zahir submitted that the applicant should give evidence in the normal way from the witness box without handcuffs; and if necessary, with an increased presence of ordinarily dressed security officers in the courtroom. He submitted that the evidential basis for giving evidence by a live link had not been made out; and that the option of having the applicant in court with officers wearing special equipment was not appropriate.
33. Mr Robinson reminded the court of the detailed risk assessment and the evidence that the court had heard from Mr Stevens. He said were the current security arrangements to be modified or reduced the applicant posed a risk to staff. He acknowledged that having officers in court dressed in additional security clothing would be prejudicial to the applicant's interests but there was no practical way around that issue. He concluded by saying the least worst option was for the applicant to give evidence over the live link.

34. The judge concluded that the applicant would continue to participate in the proceedings remotely via the live link including if he chose to do so when giving evidence. The judge said he would give a more detailed ruling at a future date.
35. The judge's detailed written reasons were provided on 26 March 2025. The judge said
- “the defendant has thus been appearing from HMP Belmarsh with the assistance of an intermediary. The jury are unaware of his location, and they have already received directions and been told that there are a number of ways that a defendant or indeed any witness can participate in the proceedings. I add that during the trial there has been no disruption and the defendant has not misbehaved in any way. The jury has also been informed of the defendant's cognitive issues and the manner in which he presents himself; they must make every allowance for all these matters including the fact he appears via the link and must not hold it against the defendant’.”
36. The judge considered the Guidance. He concluded that, in the interests of justice, the direction the court made at the commencement of the trial that the applicant attend the trial by live link, should not be modified. The judge said the applicant would be afforded a fair trial and there was no risk of any prejudice. He added that during the trial the applicant had the benefit of an intermediary and numerous conferences had been permitted to ensure that his counsel had the opportunity to take his instructions.
37. In the result, the applicant gave his evidence via the live video link.

The Guidance

38. The Guidance was issued on 16 April 2010 by Thomas LJ, as he then was, then Senior Presiding Judge for England and Wales. On its face, it appears to be relevant to handcuff or restraint applications rather than attendance via live video link.
39. The Guidance is, as it says underpinned by the following principles. The custody management directions, including the use of handcuffs or other restraints, must not prejudice a fair trial. Any application of force to a person is used only when it is necessary, for the minimum possible duration and only to the extent necessary. There must always be compelling reasons supported by a risk assessment and comprehensive information before applications are made for the use of any restraints. And in all but exceptional cases the risk posed by a defendant will be managed through the use of a secure dock where available and through the provision of the necessary number of dock officers.
40. The Guidance also makes clear that most cases involving the risk of violence or attempted escape will be managed by the deployment of the necessary number of dock officers. It also says that the prisoner escort contracted, and the prison service in the case of category A prisoners are entirely responsible for the custody and protection of defendants in the dock and must ensure that an appropriate number of dock officers is made available even if there is a late notification of the dangerous nature of the defendant.

41. Section 8 says that applications to the court are to be made using the application form at Annex A. That form is headed ‘Management of prisoners who present a risk of escape or violence when attending court’. The Guidance says that such applications should be made preferably at least one week in advance of the hearing; and that the form will specify the nature of the concern and provide an alternative method or methods of dealing with the risk to be considered by the judiciary. Handcuffing will only be permitted in the most exceptional circumstances. Section 8 ends ‘it is important in each case that the perceived risk and the evidence for it are fully and carefully specified’.
42. Section 12 says that an application for the use of handcuffs or other restraints will be refused unless there are good grounds for believing that the prisoner poses a risk of violence towards those in court (including escort staff) during the case or for believing that the prisoner may try and escape, and there are no other means of restraining the defendant other than the use of handcuffs or other restraints.

Criminal Practice Directions

43. The procedure for making an application for additional security measures is set out in Crim PD 3.1:

“3.1 High risk defendants at court”

3.1.1 Her Majesty’s Prison and Probation Service (HMPPS) must notify the listing officer of all:

a. Category A prisoners; b. Those on the Escape-List and Restricted Status prisoners; or c. Other prisoners who have otherwise been assessed as presenting a significant risk of violence or harm.

3.1.2 The listing officer shall ensure that high risk prisoners will:

a. as far as possible, have administrative and remand appearances listed by way of live link; and b. have priority for the use of live link equipment.

3.1.3 In all proceedings that require the appearance in person of a high-risk prisoner, the proceedings must be listed at an appropriately secure court building and in a court with a secure dock.

3.1.4 Where HMPPS consider that more extensive security measures than normal are required, they must submit a written application in support. The written application must be sent to the relevant court officer along with current, specific and credible evidence that the security measures sought are both necessary and proportionate to the identified risk and that the risk cannot be managed in any other way. The defence must be given the opportunity to make representations.

3.1.5 In determining the application, the court must consider whether the available security measures are sufficient taking account of the risk of prejudice to a fair trial.

3.1.6 Security measures the court should consider include:

a. the use of live link; b. transferring the case to a more secure courtroom; c. the deployment of additional escort staff and/or police in the courtroom or building; d. securing the courtroom for all or part of the proceedings; e. the accused giving evidence from the secure dock; f. the use of approved restraints; g. the deployment of armed police in the court building; h. in exceptional circumstances, moving the hearing to a prison.

Section 51 of the 2003 Act

44. No issue arises as to the power of the court to direct that a defendant can be required to attend his trial through live video link. That power is to be found in section 51 of the 2003 Act as amended by the Police, Crime, Sentencing and Courts Act 2022. The key provisions we are concerned with are: section 51(4) the interests of justice and the making of representations; section 51(5) the matters the judge must consider and section 51(6) in particular (e) effective participation.
45. Section 51 is headed Directions for live links in criminal proceedings and provides in part that:
- “(1) The court may, by a direction, require or permit a person to take part in eligible criminal proceedings through—
- (a) a live audio link, or
- (b) a live video link....
- (3) In this Part “eligible criminal proceedings” means— ...
- (d) a trial on indictment or any other trial in the Crown Court for an offence, ...
- (o) a sentencing hearing ...
- (4) The court may not give a direction under this section unless—
- (a) the court is satisfied that it is in the interests of justice for the person to whom the direction relates to take part in the proceedings in accordance with the direction through the live audio link or live video link,
- (b) the parties to the proceedings have been given the opportunity to make representations, ...

(5) In deciding whether to give a direction under this section, the court must consider—

(a) any guidance given by the Lord Chief Justice, and

(b) all the circumstances of the case.

(6) Those circumstances include in particular—

(a) the availability of the person to whom the direction would relate,

(b) any need for that person to attend in person,

(c) the views of that person,

(d) the suitability of the facilities at the place where that person would take part in the proceedings in accordance with the direction,

(e) whether that person would be able to take part in the proceedings effectively if the person took part in accordance with the direction,

(f) in the case of a direction relating to a witness—

(i) the importance of the witness's evidence to the proceedings, and

(ii) whether the direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence, and

(g) the arrangements that would or could be put in place for members of the public to see or hear the proceedings as conducted in accordance with the direction.

46. Section 51(5)(a) requires a court to take into account guidance issued by the Lord Chief Justice. Such guidance was issued in July 2022. Nothing was said specifically regarding a defendant attending their trial by live link.

The parties' submissions

47. Mr Zahir submits there were significant procedural failings which caused serious unfairness to the applicant. The limited range of options considered by the judge were dictated by the prison and the judge merely accepted Mr Stevens' view. The judge should have allowed the defence to make their own enquiries to find alternative measures. Only in truly exceptional circumstances can it be just and proportionate for a court to direct that a defendant attend his entire trial by live link if that is not his wish; and the applicant's level of risk was not sufficient to amount to the exceptional circumstances that a direction of this sort given should require, particularly for a young defendant with significant communication difficulties.

48. In that context, the medical evidence relied on to support the application for an intermediary, demonstrated, that when assessed in 2023 the applicant had an IQ within the lower extreme range; his verbal comprehension was at the level of a nine-year-old and his non-verbal comprehension was at the level of a seven-year-old. A speech and language assessment in June 2023 found that the applicant had significant communication difficulties and met the criteria for a language disorder diagnosis.
49. Mr Robinson submits that the applicant's conviction for murder is safe. The judge arrived at a decision within the range of available and reasonable decisions; and there was no error of law in the process. His decision was fully justified and right. The applicant was volatile and aggressive and could not be trusted to behave himself. The judge was right to conclude that it would be wrong to put officers in the dock at risk of assault. The judge had to deal with the practicalities. The trial had to go ahead and the applicant could participate in his trial. The intermediary, who was present throughout the trial, did not say at any stage that the applicant was unable to follow or understand the proceedings.

Discussion

50. We deal first with the procedural issue. There was no formal written application made as required by Crim PD3.1.4.
51. In our judgment however, nothing turns on whether a specific form was used. It was clear from the emails referred to that the issue of security measures was in play, and the parties proceeded as if an application had been made. The parties knew what the issue was and why the prison was concerned about security and the safety of their staff at court. An application was made to the judge and supported by 'current, specific and credible evidence that the security measures sought' were 'both necessary and proportionate to the identified risk and that the risk' could not 'be managed in any other way'. The evidence was the risk assessment and the oral evidence of Mr Stevens. Mr Stevens and his staff had day-to-day responsibility for managing the applicant. Mr Stevens made it clear that he had very significant concerns about the applicant attending at his trial in person. He was right to be so concerned. The application had to be considered by the trial judge. The first day that this was possible was the 17 March. The applicant's behaviour after the first day of the trial was relevant to the decision, and reinforced the urgency of the matter being resolved. The judge was faced with a pressing security situation; he had to make a decision and move on to start the trial.
52. Of course, the form we have referred to should normally be used. That said, a failure to follow the correct procedure cannot prevent an application for security measures being made where the evidence mandates it. Provided fairness is maintained, so that the defence for example has the opportunity to respond to the evidence relied on, procedure cannot take priority over issues of safety and security. Such applications must always be considered – with or without a formal written application - where necessary.
53. We turn next to the criticism of the judge's substantive decision. We do not accept that the applicant's level of risk was insufficient to justify the decision that a live link was necessary; nor do we accept that the judge relied on the view of others and failed to make an appropriate assessment himself.

54. Dealing first with the level of risk, the risk assessment was written by those who were responsible for the day-to-day care of the applicant. He was clearly a troubled and volatile young man. As his history demonstrated, he was prone to assault staff at any time and indeed he expressed an intention to do so.
55. There is no dispute that the applicant posed a security risk or that this had to be managed in the course of his trial. And there was ample evidence that he posed a risk of serious violence to those responsible for managing him.
56. The judge had to ensure a fair trial took place and, insofar as it was possible to do so, the safety of those in court. The judge had the risk assessment and the oral evidence of Mr Stevens. We see no reason why the judge should have disregarded the evidence of those who had experience of managing this applicant.
57. The applicant's previous convictions were also relevant to the risk that he posed.
58. The applicant was convicted of robbery in 2022 when he was 14. The victim was punched and kicked. In May 2022 the applicant was convicted of possession of an offensive weapon. He was seen at a railway station when reports were made of a male being chased by three males one of whom had a weapon. CCTV showed the applicant hiding then retrieving an axe. He was stopped by police, and the axe was found near to him. Later in 2022 two offences were recorded. The first involved him threatening a person in a public place with a blade when he lunged at them. The second involved the applicant and two others banging on a door and shouting they had a gun and a knife. They said they were going to shoot and kill a person inside the property. In early 2023 when aged 16 the applicant was stopped by police at a railway station. A knife was found in his waistband.
59. There was a stark choice. If the applicant was to be produced there had to be appropriate measures in place to safeguard those in the dock. Plainly, there had to be more than the usual number of dock officers with protective clothing or other arrangements had to be made.
60. Mr Zahir accepts the evidence demonstrated that the risk of serious violence posed by the applicant justified additional measures being taken. He did not however want the applicant to be in the dock with six officers in full PPE because of the impression that this would make. We understand that position. But the only other option Mr Zahir identified (of a smaller number of officers in court without protective clothing and others behind a door in full PPE) was frankly, not a realistic one, and the judge was entitled to reject it. Whilst Mr Zahir suggests that other options may have been available, he accepted before the judge that a live video link was the only other option to the one he advanced at the time, and no other options, other than the ones considered by the judge, were advanced to this court.
61. The legal framework when considering such applications is provided by section 51 of the 2003 Act. The section permits the course directed by the judge to be taken provided the court considers a number of factors. These include most importantly the wider consideration of 'the interests of justice' and the narrower defendant focussed factor of 'effective participation'. There is no requirement in the section that circumstances justifying exclusion need be exceptional. Nevertheless such a decision is an unusual one. It requires careful consideration of the evidence and other options are realistically

available. We are satisfied this was the approach taken by the very experienced judge in this case, and that he applied the statutory criteria correctly. The judge rulings were careful and considered. He was satisfied that it was in the interests of justice to make the order having considered the available guidance and all of the circumstances of the case.

62. It seems to us moreover, that the suggested unfairness and prejudice is largely speculative. The medical evidence available to the defence was not ultimately placed before the jury as it did not support any specific mental health defence. The jury were aware nonetheless that the applicant had cognitive difficulties. At no stage did the intermediary indicate that the applicant was experiencing any difficulty in following or understanding the evidence adduced or when giving evidence himself. The jury did not question why the applicant was not present in court, and the directions the judge gave to the jury about this are accepted to have been appropriate and correct.
63. Having considered the facts and the need for added security we conclude that the applicant did participate effectively in his trial albeit he was not physically present in the court room. He was represented by experienced leading and junior counsel. He was able to see the court and be seen by the jury. There were no technical or other issues that prevented him from hearing what was said in court or the court from hearing him when he gave evidence. He was assisted throughout by an intermediary who raised no issues during the trial to suggest the applicant was having any difficulty understanding or following the proceedings. The judge reviewed his order at the conclusion of the prosecution case.
64. The judge was required to make a decision that protected the security staff from attack by the applicant. He made a reasoned decision that was, on the facts, correct. The judge had to make a pragmatic choice faced with limited options. Mr Zahir conceded that (if the option he advanced was not accepted) the use of the live link was the best available option. He was right to do so. We are not persuaded that the applicant's conviction is arguably unsafe.

Sentence

65. Detention at His Majesty's Pleasure was the appropriate sentence given the applicant's age namely 16 years and eight months when he committed the offence of murder; see section 259 of the Sentencing Act 2020 (the 2020 Act). The judge was required to state the minimum term he considered appropriate taking into account the seriousness of the offence or the combination of the offence and any one or more offences associated with it; see section 322(2) of the 2020 Act. In considering the seriousness of the offence or combination of offences the judge had to have regard to the general principle set out in schedule 21 and any relevant sentencing guidelines; see section 322(3) of the 2020 Act.
66. Because of the applicant's age, and by reason of the operation of paragraphs 4 and 5A of schedule 21, the starting point for the minimum term was 17 years it being an offence where, as the judge found, the offender took a weapon, the knife, to the scene intending to use it or to have it available to use as a weapon and he used that knife or other weapon in committing the murder. In the case of a person over 18 when the offence was committed, the minimum term would have been 25 years. No issue is taken with the starting point.

67. In his sentencing remarks, the judge said:

“There may have been an argument, but I am satisfied that was because Mr Pinnock had become nervous and apprehensive in consequence of your movements, you having followed him, and that this was an unprovoked attack upon him. The knife went into his chest and heart. He was able to run away, travelled about 90 metres before collapsing on Kensal Road where he died. You ran after him after you had stabbed him; there was no element of self-defence or panic on your behalf, he had not produced a knife, and I am satisfied you never believed he was about so to do’.”

68. When considering the minimum term and aggravating and mitigating factors the judge said:

“The statutory aggravating factors are set out at paragraph 9 of Schedule 21, but it is not an exhaustive list. I will ensure against any element of double counting and whilst I am satisfied there was a degree of premeditation, in my judgment it is not significant especially in the context of leaving your home armed with a weapon. However, the real aggravating factor that justifies an increase in the starting point are your previous convictions for the possession of or threatening another with a knife. I also bear in mind that this was an offence committed upon a lone defenceless male walking along the pavement towards his home whom, I am satisfied you had followed. For the avoidance of doubt and whilst the risk assessment of you during your remand in custody may suggest you are a very dangerous individual (which of course is not relevant to the duration of the minimum term) I do not treat anything contained therein as an aggravating factor’.”

69. The judge said that he was not satisfied that the applicant intended to kill Mr Pinnock but that had, the judge said, to be set against the fact that although one blow was struck it was to his chest and with a knife. It thus afforded the applicant little mitigation.
70. The judge then considered culpability and the medical evidence. He had read the pre-sentence report. He noted that Dr Murphy, a neuro psychologist stated that the applicant may have presented with a possible atypical psychosis (characterised by disorganised thinking, unusual and irrational beliefs and behaviour, as well as social withdrawal), with the consequence that he appeared to find it difficult to distinguish between reality and illusion. Dr White had stated in his report that the applicant had clear symptoms of mental and personality disorder as a result of past trauma and adversity. The applicant, it was said, suffered from paranoia and hearing voices, although Dr White believed the applicant was feigning or exaggerating those psychotic symptoms. Dr White said that the applicant had stated to him that he had reacted in panic with the intention of defending himself and he was simply trying to scare Mr Pinnock away.
71. The judge said the jury rejected the applicant’s evidence. Dr White’s opinion was that the applicant’s actions were significantly influenced by his symptoms of mental and

personality disorders arising from his adverse childhood experiences. The judge said he was satisfied that was not so on the occasion when the applicant followed and murdered Tyrone Pinnock.

72. The judge correctly assessed whether any mental or developmental disorder reduced the applicant's culpability. He said that there must be a sufficient connection between any impairment and the offending behaviour. He said;

“I am satisfied that none of the conditions referred to in the reports reduced your culpability. I am satisfied you had followed Tyrone Pinnock, and this offence was not borne out of panic when you were challenged for so doing. You have more than aggressive tendencies and you chose to go out yet again with a knife and attack a pedestrian with that knife. In my judgment there is no connection between any mental health disorder you have and this murder. Why you did that which you did, only you know. It may have been that you intended to rob him, but I cannot be sure that was so. I do, however, take into account as mitigating factors that you suffered neglect from a young age, your immaturity, your cognitive issues, you were placed in care at a young age, and your mental disorder. I have also reminded myself of the principles enshrined in the Guideline on Sentencing Children and Young People. You were just 16 years 8 months at the time and you have not fully developed. During assessment for the purposes of this case you were very guarded; and I accept that at your tender age your brain remains developmentally immature, and you have limited cognitive functioning. I take all these factors into account including some remorse in hindsight as mitigating factors”

73. The judge then concluded, having balanced the aggravating and mitigating factors, that he arrived back at the starting point in schedule 21 namely 17 years less the days served in custody making a final minimum term of 15 years and 162 days. He passed a Detention and Training order for 18 months in respect of the weapon offence.
74. No issue is taken with the aggravating factors identified by the judge. In addition, it is accepted that the judge identified the following mitigating factors; a lack of intention to kill albeit that was a limited factor, the applicant's young age and immaturity, his cognitive issues and mental disorder, his neglectful upbringing and that he was placed into care at a young age.
75. Mr Zahir submits however that the judge erred in concluding that the aggravating and mitigating factors effectively cancelled each other out resulting in the original starting point of 17 years. He said the judge erred in not further reducing the applicant's sentence to reflect the instability and trauma characterised by his upbringing as is referred to in paragraph 4.7 of the Youth Sentencing guideline.
76. Mr Zahir relies upon *R v ZA [2023] EWCA Crim 596*, where the court at paragraph 52, acknowledged that adverse childhood experiences, educational difficulties and mental health issues negatively affect the development of adult thought processes and very particular considerations apply to sentencing children and young people who commit

offences. In addition, reliance is placed on the Youth Justice service practitioner who wrote the pre-sentence report and who had known the applicant since June 2022. It was stated in the report 'Kevin's experience of this violence at home is not fully understood, but it is assessed to be a significant factor in his development and how he perceives the world'.

77. It is said that the applicant's maturity and development were assessed to be well below that of an 18-year-old and were well below that of a 16-year-old when the offence occurred. The defence submit accordingly that it would have been appropriate to move down to at least the minimum term starting point for those age 14 which in paragraph 5A of schedule 21 is 13 years. In summary, it is said the judge erred in concluding that the applicant's mental disorder was not linked to the commission of the offence thus reducing the level of culpability for the offence. It is said that the minimum term before discount for time spent on remand is manifestly excessive.
78. Mr Robinson submits that the judge did make some allowance for the fact that Dr White had diagnosed the applicant as suffering from a mental disorder but was satisfied that any such disorder did not significantly influence his actions when he murdered Mr Pinnock.. Mr Robinson submits the judge, having sat through the trial, was best placed to consider the extent to which any mental disorder or other factor provided any mitigation. The judge had clearly considered all of the available material and was right to conclude that any mental and personality disorders had no significant connection to his offending. As he observed, the applicant when he stabbed Mr Pinnock was not acting out of panic given the facts. The judge allowed for some mitigation to be found in the fact that the offender suffered from various mental difficulties and allowed some credit for the neglect he had suffered from young age. The judge also made allowance for the offender's youth in the sense that he had not yet fully matured and that he had limited cognitive functioning.

Discussion

79. It is clear that the judge increased the minimum term to reflect the aggravating factors that he found which were significant. The applicant's previous convictions demonstrated that he had offended previously when in possession of weapons and he had attacked a lone male at night and stabbed him to death. It is also clear that having moved upwards from 17 years being the minimum term set out in paragraph 5A of schedule 21, the judge reduced that notional figure to arrive back at 17 years. He had therefore made allowance for the factors that he indicated to that extent.
80. The judge was best placed to make the assessment as to whether the applicants mental or developmental disorders reduced his culpability for this offence. He was entitled to conclude, as he did, that the applicant had followed Mr Pinnock, armed with a knife, for some distance before confronting and stabbing him. This was not a murder committed in panic as the judge said.
81. We find ourselves in agreement with the judge. It was appropriate to make upward adjustments for the aggravating factors and then make allowance for the mitigating factors the judge identified but the judge was correct not to make any further reduction to reflect reduced culpability. The judge was best placed to make the assessments he did. He carried out a careful analysis of the facts and the evidence to reach the conclusions he did.

82. Accordingly, the sentence passed in relation to the offence of murder was not arguably manifestly excessive. The application for leave to appeal against sentence is refused.