



[2026] EWCA Crim 845

Case Nos: 202601875 A1

202601873 A1

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IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SOUTHAMPTON
His Honour Judge Rowland
44SC0053025

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/07/2026

Before:

THE LADY CARR OF WALTON-ON-THE-HILL,
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
and
LORD JUSTICE EDIS,
VICE PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
and
MS JUSTICE NORTON

Between:

THE KING	<u>Appellant</u>
- and -	
X	
Y	
Z	
(References under section 36 of the Criminal Justice Act 1988)	<u>Respondents</u>

T Little KC for HM Attorney General
C Wade KC and T Evans (assigned by the Registrar) for X
E Henry KC and B Sheffi (assigned by the Registrar) for Y
TJ Ayling KC and V Fowler-Rouault (assigned by the Registrar) for Z

Hearing date: 1 July 2026

APPROVED JUDGMENT

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The complainants

The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. 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 s.3 of the Act. The complainants are referred to in this judgment as C1 and C2 for this reason.

The offenders

The provisions of s.45 Youth Justice and Criminal Evidence Act 1999 are engaged in this case because the offenders are aged under 18 years.

An order under s.45 was made in relation to proceedings in the Crown Court. That order extends to these proceedings. As a result, the first offender is referred to as "X", the second offender as "Y" and the third offender as "Z".

The child witnesses

A further order under s.45 was made in relation to certain named child witnesses. This order also applies to these proceedings.

Details of the Crown Court orders are available from the Crown Court.

The Lady Chief Justice:

A. Introduction

1. The Attorney General seeks leave to refer sentences imposed on three offenders to this court under section 36 of the Criminal Justice Act 1988 on the ground that the sentences were unduly lenient and should be increased. We grant leave. The three offenders are referred to in this judgment as X, Y and Z. The sentences were imposed in respect of two separate incidents. On 5 March 2026 all offenders were convicted of offences after a lengthy 29-day trial. Each had pleaded guilty shortly before trial to offences of taking indecent photographs of a child, contrary to section 1(1)(a) of the Protection of Children

Act 1978. Y pleaded guilty to four such offences on 19 December 2025 and X pleaded guilty to one such offence on 26 January 2026. Z also pleaded guilty on 19 December 2025 to one such offence. Sentencing for all offences on all offenders took place on 21 May 2026.

2. The first incident occurred on 26 November 2024. The second incident occurred on 17 January 2025. The first incident involved X and Y only. The second incident involved all three offenders. X was born on 12 August 2010. He was 14 at the date of the first and second incidents, and 15 at the date of conviction and sentence. Y was born on 2 November 2010. He was 14 at the date of the first and second incidents, and 15 at the date of conviction and sentence. Z was born on 9 July 2011. He was 13 at the date of the second incident, and 14 at the date of conviction and sentence.
3. Each incident involved offences of rape and other sexual offending. The complainants were also young. C1, the complainant in the first incident, was just past her 15th birthday at the time of the offending against her. C2, the complainant in the second incident, was 14 years old at the time of the offending against her.
4. References under section 36 of the Criminal Justice Act 1988 are made for the purpose of the avoidance of gross error, the allaying of widespread public concern at what may appear to be an unduly lenient sentence, and the preservation of public confidence in cases where a judge appears to have departed to a substantial extent from the norms of sentencing generally applied by the courts in cases of a particular type: see *Attorney General's Reference (No. 132 of 2001) (R. v. Johnson)* [2002] EWCA Crim 1418; [2003] 1 Cr App R (S) 41 at [25]. As was emphasised in *R v Mohammed Arfan* [2022] EWCA Crim 1416 at [34], sentencing is an art and not a science, and leniency itself is not a vice. For appellate interference to be justified, the sentence in question must be not only lenient but unduly so. We remind ourselves at the outset that the hurdle is a high one.
5. We gratefully acknowledge the assistance that we have received in this difficult and sensitive case from all counsel who have appeared before us.

B. Overview

6. We have decided that the non-custodial sentences which were imposed by the judge on X and Y were unduly lenient. X was convicted of an offence of rape committed against C1 in the first incident and a further offence of rape against C2 in the second incident. Y was convicted of three offences of rape against each complainant in each incident, six rapes in all. Both X and Y were also to be sentenced for their part in filming these offences. Each incident, involving rape by more than one offender, was extremely serious, but the fact that they repeated their behaviour after the first incident, and did it again to a different person in the second incident, is the crucial feature of their cases. In our judgment, this renders significant sentences of detention unavoidable. The sentences imposed by the judge will be quashed and replaced by sentences of 4 years' detention under section 250 of the Sentencing Act 2020, concurrently

on each count of rape, with no separate penalty in respect of the production of indecent images of children.

7. Z was involved only in the second incident and was convicted of two offences of rape by encouraging Y to commit the offence against C2. He is younger than X and Y. We decided that in his case the judge's sentence was not unduly lenient and dismissed the Attorney General's application.

C. The convictions and sentences

8. X was convicted of two offences of rape, and one offence of taking indecent photographs. He pleaded guilty to a second offence of taking indecent photographs on the first day of the trial. The individual offences were as follows:
 - Jointly with Y, taking 6 x Category A images of C1. Guilty plea entered on the first day of trial
 - Oral rape of C1, in which X was the principal and Y the secondary party
 - Vaginal rape of C2, in which X was the principal and Y the secondary party
 - Jointly with Y, taking 3 x Category A images of C2.
9. Y was convicted of six offences of rape. He pleaded guilty to 4 offences of taking indecent photographs at a pre-trial hearing on 19 December 2025. The individual offences were as follows:
 - Oral rape of C1, in which X was the principal, and Y the secondary party
 - Oral rape of C1; acting alone
 - Vaginal rape of C1; acting alone
 - Jointly with X, taking 6 x Category A images of C1. Guilty plea entered on 19 December 2025
 - Vaginal rape of C2, in which X was the principal and Y the secondary party
 - Oral rape of C2; acting alone
 - Vaginal rape of C2; acting alone
 - Jointly with X, taking 3 x Category A images of C2. Guilty plea entered on 19 December 2025
 - Jointly with Z, taking 1 x Category A image of C2. Guilty plea entered on 19 December 2025.

10. Z was convicted of two offences of rape. He pleaded guilty to one offence of taking indecent photographs at a pre-trial hearing on 19 December 2025. The individual offences were as follows:
- Oral rape of C2, in which Y was the principal and Z the secondary party
 - Vaginal rape of C2, in which Y was the principal, and Z the secondary party
 - Jointly with Y, Taking 1 x Category A image. Guilty plea entered on 19 December 2025.
11. X and Y were each acquitted of two other offences of rape: of C1 by direction, and of C2 by verdict of the jury.
12. On 21st May 2026, HHJ Nicholas Rowland sentenced the offenders as follows:

X – 3 year Youth Rehabilitation Order with ISS for 180 days concurrent on each offence, with the following components:

- Supervision
- 3 months electronically monitored curfew at home address
- Specialist Harmful Sexual Behaviour Intervention
- Prohibited Activity Requirement – no contact with either complainant
- Supervised Contact between him and Y and Z as approved by the supervising manager.
- Activity Requirement 30 days

Y – 3 year Youth Rehabilitation Order with ISS for 180 days, concurrent on each offence, with the following components:

- Supervision
- 3 months electronically monitored curfew at home address
- Specialist Harmful Sexual Behaviour Intervention
- Prohibited Activity Requirement – no contact with either complainant
- Supervised Contact between him and X and Z as approved by the supervising manager
- Activity Requirement 30 days

Z – 18 months Youth Rehabilitation Order concurrent on each offence with the following components:

- Supervision

- Curfew at home address with a doorstep condition for 3 months between 19:00 and 07:00.
 - Specialist Harmful Sexual Behaviour Intervention
 - Prohibited Activity Requirement – no contact with either complainant
 - Supervised Contact between him and X and Y as approved by the supervising manager
 - Activity Requirement 15 days:
 - supporting education
 - Activity Requirement restorative justice engagement.
13. Each child was made subject to a restraining order prohibiting contact with either complainant for a period of 10 years, and was made subject to the notification requirements as set out in the Sexual Offences Act 2003. Ancillary orders were also made.

D. The Attorney General's challenge in summary

14. Mr Tom Little KC, on behalf of the Attorney General, submits that the extent and nature of the offending was so serious that the only appropriate sentence for each offender was detention. There were multiple rape offences, many committed as part of a group. Two of the child offenders, X and Y, were to be sentenced for raping two victims. It is submitted that both victims were particularly vulnerable and that both suffered severe psychological harm as a result. Z was to be sentenced for being a secondary party to two rape offences of C2. It is therefore submitted that the judge was wrong to conclude that a community sentence could be justified for any of them. Had the judge properly assessed the seriousness of the offences he could only reasonably have concluded that lengthy sentences of detention were required for both X and Y and that a sentence of detention was also required for Z. It is also submitted that the judge failed to have proper regard to the applicable Sentencing Council Guideline for rape offences committed by adults and, to the limited extent that he did, he further wrongly categorised the rape offences within that guideline.
15. It is important to record at the start that the Attorney General does not submit that any of the relevant guidelines published by the Sentencing Council was in any way defective. Rather, the challenge by the Attorney General is to the judge's application of the guidelines, and not the guidelines themselves.
16. The court is required to follow these guidelines by section 59 of the Sentencing Act 2020, unless it is contrary to the interests of justice to do so. The guidelines which were relevant, and which the judge considered, were:
- i) The overarching guideline, "Sentencing children and young people", in force from 1 June 2017. We call this "the Principal guideline".

- ii) The guideline, “Sexual offences, Sentencing children and young people”, in force from 1 June 2017. We call this “the Child sexual offences guideline”.
 - iii) The guideline “Totality”, in force from 1 July 2023. Like the judge, we have this well in mind, but it will not be necessary to refer to it again.
 - iv) The guideline “Reduction in sentence for a guilty plea - first hearing on or after 1 June 2017”, in force from that date. This does not apply to children and we do not need to refer to this guideline again. We do mention a passage in the Child sexual offences guideline below, which deals with the relevance of guilty pleas.
 - v) The guideline “Rape”, in force from 1 April 2014. This applies to offenders over the age of 18. We call this the “Adult rape guideline”.
 - vi) The guideline “Possession of indecent photograph of child/indecent photographs of children”, in force from 1 April 2014. This applies to offenders over the age of 18. Despite its name, this guideline applies to production of such images as well, which is what happened in this case. The images concerned resulted from filming of the rapes. We call this the “Adult indecent image guideline”.
17. The judge referred to one further guideline, “Sentencing offenders with mental disorders, developmental disorders, or neurological impairments”. This does not apply to children. This appears from a drop-down section accessed by clicking on “Applicability” when viewing this guideline. It says:
- “In accordance with s.120 of the Coroners and Justice Act 2009 (CJA 2009), the Sentencing Council issues this definitive guideline. It applies **only** to offenders **aged 18 and older**, who are sentenced on or after 1 October 2020, regardless of the date of the offence. This guideline must not be used for offenders under the age of 18, as mental health and related issues can be substantially different in both diagnosis and impact for children and young people. Courts should instead refer to the Sentencing children and young people guideline, particularly sections 1.11 to 1.14.”
18. This is pointed out twice in the Bench Book “Child Defendants in The Crown Court”, although it does not seem to be mentioned in the “Youth Court Bench Book”. Sections 1.11 to 1.14 of the Principal guideline are set out below at [111]. In these circumstances it is not necessary to refer to this guideline again.
19. The factual content of the References is agreed for the purposes of this application. We are aware that the offenders are pursuing appeals against their convictions. We approach this application on the basis that their convictions are valid unless and until they are quashed on appeal. That question will be decided separately, and no member of this constitution has considered any of the proposed grounds of appeal against conviction. For present purposes,

therefore, it is appropriate to refer to them as “offenders” but this in no way prejudices their appeals. Given the ages of all involved in this case, it is obviously desirable that those appeals should be dealt with as soon as possible.

E. The facts of the offences

20. The offending in this case took place on two separate days in Fordingbridge. On each occasion, following earlier consensual sexual activity, the complainant was raped outdoors, in the dark on more than one occasion and by more than one offender. Some of the offences were committed by two offenders acting together and were carried out in close proximity to one or more others. On one occasion, whilst one offender was committing rape, another was attempting masturbation or had exposed his penis in close proximity to the victim. On both of the occasions, some of the offending was recorded on at least one mobile device.
21. C1 was raped by X and Y below an underpass in Fordingbridge on 26 November 2024. She had never been to Fordingbridge before that day. She had previously been the victim of serious sexual offending, although it is accepted that none of the child offenders in this case knew about that.
22. C2 was raped by X and Y at the Fordingbridge Recreation Ground on 17 January 2025 in the presence of Z who assisted or encouraged the commission of the rapes perpetrated by Y with the necessary intention.
23. It was common ground that the complainants did not know each other.

The First Incident

24. X and C1 met via Snapchat. They exchanged messages and photographs before speaking to each other on the telephone. X asked whether she wanted to be his girlfriend. She thought it was a bit early, but agreed to meet him in Fordingbridge on 26 November 2024. There was no discussion in advance about anything sexual taking place between them.
25. C1 arrived in Fordingbridge at about 1.30pm. X bought her a soft drink then said that there was a possibility that Y would come because he wanted to see her. C1 had only expected to meet X. She said that X seemed scared of Y and appeared dismayed when Y attended later.
26. X and C1 went to the Fordingbridge Recreation Ground. After a short while, X told her that he was “*feeling a bit horny*” and said to her “*come give me head, I know a place.*” He took her to an underpass. He told her to pull down his trousers and to “*wank him off*” which she did. He then told her to get on her knees which she did, and she sucked his penis. In oral evidence she said that when this took place she felt nervous and scared, but that it “*wasn’t something I’d class as unconsensual*”. This activity stopped when some people came nearby and they walked back to and around the Recreation Ground.

27. A little while later, Y and another boy arrived at the Recreation Ground and joined X and C1. She was asked by Y if she wanted a threesome. C1 initially said “no” on a couple of occasions but then said “yes”. The four of them went back to the same underpass where they remained for about 90 minutes.
28. C1 said in her ABE interview that the only reason she had said “yes” was that she “*didn’t know what they would have done if I didn’t say ‘yeah’*”. She said that she felt “*petrified*” and “*cornered*”. In her ABE interview she stated that they asked her to take her clothes off and that she pulled down her trousers when told to by X and Y. In evidence C1 said that she did not know how to say ‘no’.

Count 1 – Oral rape – X principal; Y secondary

29. C1 was told to get on to her knees, and she began to suck X’s penis. This occurred whilst Y and the third boy were close by. C1 said in her ABE interview that she felt “*numb*” and “*disgusted*” whilst she was doing this to X and that she was “*shaking*”. She was asked in her ABE interview whether she wanted to “*suck [X’s] dick*” and she said “no”. She also stated that she felt trapped by three boys near to the river. In evidence, when cross-examined on behalf of X she agreed that her love for X was fading when the others were present; but when asked whether she was still consenting to give a blow job she said “yes”. Notwithstanding that answer, X and Y were each convicted of oral rape: X as Principal and Y as the secondary party.
30. Clips of this offending were recorded by Y. In one, Y has his penis exposed close to the victim’s head and is attempting to masturbate himself; X is laughing. A third boy is standing close by with the torch illuminated on his mobile phone. In a second clip, X gives instructions to Y about what to film. He is heard saying “*cor she’s got a mouth on her*” and “*that feels nice*”.
31. Both X and Y pleaded guilty to offences of taking Category A images.

Count 2 – Oral rape – Y

32. The first oral rape stopped when Y pushed X out of the way and Y said, “*Do mine next, do me next*”; he then orally raped C1. C1 said in her ABE interview about the second oral rape “*I felt gross*” and “*I was thinking how do I stop it*”. She was trying her best not to cry and she thought she was about to pass out. She said that Y never asked her for a “*blow job*” and that she was never asked if she agreed to this sexual activity.

Count 3 – Vaginal rape – Y

33. C1 was then told by Y to bend over. She did so and was on her hands and knees. He put his hands on her back. Y then penetrated her vagina from behind. In her ABE C1 stated that she felt “*really upset*”, “*disgusted*” and “*really scared*”. Y then told C1 to turn around; she then lay down on her back and vaginal rape continued. In cross-examination on behalf of Y, C1 agreed that

she was asked by Y if he could have vaginal sex and she did not say no. In her ABE interview C1 said that after the vaginal rape by Y, X had made comments about her vagina saying, *"I'm not touching that, it's gross look at it, it's disgusting."*

34. The series of rapes in counts 1-3 occurred over a period of about an hour and whilst it was dark. After the events, C1 received messages calling her a slag, and became aware that other people had seen footage of the offending, which she said the boys had told her to keep secret.

The Second Incident

35. On 17 January 2025, C2 went to the Recreation Ground in Fordingbridge with some female friends. Y and Z, who are cousins, arrived at 6.41pm. X arrived after them. C2 was later to tell police that she had been made to leave her phone and Airtag in the Co-op on Fordingbridge High Street, and that three boys had then forced her at knifepoint to walk to the Recreation Ground through back alleys. Her account was however disproven when CCTV was recovered showing her leaving her phone and Airtag in the Co-Op, in company with a female friend. Further, she was recorded on Ring Doorbell footage saying: *"I can't be anywhere near my Airtag or my Mum will find me"* and *"We need to get away from the Co-Op now"*. At the Recreation Ground, friends of C2 gave evidence to the effect that others were encouraging C2 and X to have sex; that C2 seemed interested, but that X was reluctant. In any event, over the course of the next 2 hours, CCTV captured C2 and X together at various points in Fordingbridge, hugging and kissing, before they returned to the Recreation Ground at around 9.15pm where they had oral sex, which was recorded by Y. Both X and Y were charged with but acquitted of rape in relation to this.

Count 6 – Vaginal rape – X principal; Y secondary party

36. Following the oral penetration, X then vaginally raped C2. This took place over a period of several minutes and was recorded by Y on his mobile telephone at 9.32pm. The footage shows C2 lying on the ground. She is not wearing any clothing on the lower part of her body, she does not move and has her hands clasped over her eye. Whilst she is being penetrated by X, Y can be heard to say *"Give it to her [X]"* and *"Go on [X]"*. X turns towards the camera and laughs. Y can be heard to say, *"Get in there [X] boy"*. At 9.43pm Y and Z and another girl are seen to leave the Recreation Ground. They are followed by C2 and X. They are not holding hands. X can then be seen on CCTV walking in the direction of his home.

Count 7 – Oral rape – Y principal; Z secondary party

37. Shortly afterwards, Y, Z and C2 return to the Recreation Ground. Although C2 stated that she could not remember having sex with Y, recordings filmed by Z that were subsequently recovered from Y's phone, showed Y orally raping C2. Whilst filming, Z exposed his own erect penis. A second clip of the

same offence was filmed by Y. Throughout, C2 has her eyes shut and her left leg is shaking. Afterwards, she drops her head down.

Count 8 – Vaginal rape – Y principal; Z secondary party

38. Y was also filmed vaginally raping C2 from behind whilst she is bent over a bench. Comments from one or other of the boys can be heard of, '*I'm going to lay her down*', '*get on*' and '*delete that, delete that*'. At one point C2 is told to bend over further. In the recording, Z is holding a mobile phone and his erect penis can be seen.
39. C2 was in due course found by her sister and a friend who had come to look for her. CCTV shows that her trousers are damaged. Upon finding her, C2's sister made a 999 call telling the operator that she had found her sister who was crying her eyes out and that she had just been raped at the Recreation Ground. When asked by the operator whether there was penetration the sister asks C2 that question and then relays the answer "*yes he did*"; when asked whether there was consent the sister replied "*no*".
40. C2's trousers were subsequently examined and found to have been recently damaged. That damage included 2 small apparent stab cuts which, in the opinion of the expert, were most likely to have been caused by a sharp bladed implement. C2 told the police and repeated in evidence that X had been in possession of a knife. In her ABE interview, she said that X had pushed her to the ground and had then used the knife to make a hole in her trousers; he had then used his hands to make the hole bigger. She said that X then passed the knife to a friend. No knife was seen on the CCTV and, as previously noted, CCTV did not support her account that she had been forced at knifepoint by three boys to go to the Recreation Ground.
41. X and Y were arrested on 18 January 2025; their mobile phones were seized. Z was arrested on 19 January 2025.

F. The materials before the judge

Victim Personal Statements

42. A Victim Personal Statement (VPS) and a Harmed Person Report was produced by and on behalf of each complainant.

C1

43. C1, who was 16 by the date of sentence, provided her own VPS dated 15 May 2026. In it she said that she was worried about her surroundings and wary of where she goes and who she might see. She felt that she had had to become mature far more quickly than she would have done; she was caught off guard and would never get her innocence back. She said, '*I miss being myself*'. She had become closed off to her peers, didn't trust people and found it difficult to connect to others. She was very lonely. Whilst she had lost motivation for a lot of things, and her mental health had deteriorated, she would keep pushing for herself and those around her. She said that part of her had died.

44. The Harmed Person Report for C1 provided by the Hampshire Youth Justice Service (YJS) dated 7 May 2026 relating discussions held with C1's mother and partner described how C1 was struggling to attend school, was fearful of her peers and rarely left home due to fear and concern for her safety. The situation was affecting not only C1 but her family. C1 was said to be 'rapidly spiralling into emotional and physical distress'.

C2

45. In her undated VPS, C2 stated that every part of her life had changed. Her education had been heavily affected, and her attendance at school had become extremely poor. Her motivation towards school and her own future had dropped significantly. She often felt overwhelmed, anxious and emotionally exhausted. She no longer felt safe or comfortable in public and was constantly on edge. She had withdrawn from friendships which left her feeling isolated and alone. Her mental health had deteriorated badly, she felt drained, low, overwhelmed, ashamed, insecure and uncomfortable in her own body. She regularly experienced flashbacks or nightmares. Her daily life had changed, and she no longer looked to the future with excitement or hope. The incident had not just affected her, but everyone who loved and cared for her.
46. The Harmed Person Report dated 15 May 2026 reported concerns from C2's mother that C2 was, at that date, experiencing significant sleep difficulties, reduced school attendance and ongoing distress. She was receiving support from CAMHS relating to the incident, her ADHD and general mental health. There had been an instance of verbal abuse which had increased concerns around intimidation and her sense of safety and wellbeing. There had been a significant decline in her school attendance since the offences affecting her GCSE prospects.

G. The individual circumstances of the offenders

47. The judge was provided with a wealth of information about each child. Some of this information was provided in advance of the trial and dealt primarily with an assessment of the child's fitness to plead and measures necessary to facilitate participation in a criminal trial, including through an intermediary. Other material was specifically produced for the purpose of sentence. X and Y had no previous convictions, cautions or reprimands recorded against them, but they had together come to the attention of authorities in respect of allegations of anti-social behaviour. Neither child was spoken to about these matters and no charges had resulted
48. The judge had the following sources of material available to him about X:
- i) Psychological report from Dr Chloe Ward dated 16 October 2025;
 - ii) Intermediary report from Emma Delamere, Communicourt, dated 13 November 2025;
 - iii) Pre-Sentence Report dated 24 April 2026.

49. X had been out of full time education since the age of 10. His parents described X as easily influenced, sociable, family orientated, inquisitive, and respectful of boundaries. He had no history of mental health difficulties, learning difficulties, disabilities, or neurodiverse conditions.
50. On psychological assessment it was noted that he presented as mature for his age. He did not present with emotional dysregulation, attempted to manage his emotions and stated that he would think about decisions and consequences. He had no reported difficulties with thought processes, there was no indication of autism, personality disorder or intellectual disability. He self-reported anxiety, which had not previously been significant but had been made worse since his arrest.
51. His working and long term memory were said to be poor. He had difficulties with processing information and concentration. He had slight cognitive deficits which the assessing psychologist felt could be impacted by the presence of ADHD as well as anxiety and stress.
52. The intermediary report noted moderate difficulties with language.
53. The author of the pre-sentence report noted that whilst remanded to local authority accommodation, X was reported to be mature, calm, polite and compliant. He had complied with police bail conditions, youth justice sessions, and the expectations of the court throughout. It was felt that X had shown respect and a mature approach. He was and is supported by family who are keen for him to do well and have a strong and positive influence over his behaviour.
54. Personal mitigating factors were identified including disrupted experiences in education, age, lack of emotional maturity because of his age, and a potential neurodevelopmental condition (ADHD) that affects thinking, impulse control and understanding.
55. The judge had the following sources of information available to him about Y:
 - i) Intermediary report from Ikra Hussain, Communicourt, dated 19 May 2025;
 - ii) Psychological report from Dr Karen Hathaway dated 28 March 2025;
 - iii) Speech and Language therapy report from Anna Markus, Dorset Healthcare University NHS Foundation Trust, dated 15 October 2025;
 - iv) Preliminary autism screening report dated 2 April 2026, in which it was considered that there were self-reported traits that could be indicative of autism;
 - v) Private ADHD assessment from Kamraan Ahmed dated 14 April 2026, in which ADHD was diagnosed;
 - vi) Pre-Sentence Report dated 8 May 2026.

56. Y had an Educational Health and Care Plan until he was aged 8 or 9; however he stopped attending full time education in year 4, whereafter he was home tutored.
57. The psychology assessment found that his IQ fell in the extremely low range; he had very low verbal and processing speed abilities. He was noted to have some traits of ADHD, which was subsequently diagnosed on further assessment by Kamraan Ahmed. Y was said to be highly suggestible and compliant, but there was no indication that he was vulnerable to being easily led or to coercion. He was able to understand consent, and there was no indication of problems reading body language.
58. The speech and language therapy report found that his overall language ability fell within the significantly below average range for his age, with difficulties in listening to, remembering and understanding spoken information, and in explaining thoughts, ideas and events.
59. The Pre-Sentence Report emphasised Y's low cognitive skills, ADHD diagnosis and autistic traits. Although the psychologist had concluded that he was able to understand consent, and that there were no problems reading body language, the author of the Pre-Sentence Report suggested that Y had a poor ability to read and assess social situations, and that he had either failed to recognize the resistance and anxiety of the victims or possibly chosen to ignore it. It was felt that he displayed naivety, impulsivity, disregard for victims, and had misread obvious signs that his behaviour was unacceptable.
60. Y had spent a short period in youth detention before being made the subject of strict bail conditions. During this time there had been no new offending or reports of anti-social behaviour which suggested a positive response to boundaries.
61. Since his conviction he had become withdrawn and depressed at the prospect of a sentence of detention. Given his young age and significant difficulties, as well as his vocational aspirations at a critical developmental stage, 'too long' may discourage him and suppress any motivation. Rehabilitation can be difficult to achieve in the longer term. Given his immaturity and dependency, the impact of being separated from his family and community will have a detrimental impact on his emotional wellbeing.
62. Z had no previous convictions, cautions or reprimands recorded against him. Records showed that he had previously come to the attention of the police in respect of a number of dissimilar incidents, however none resulted in charges. He had one Community Resolution issued in April 2024.
63. The judge had the following sources of information available to him about Z:
 - i) Pre-Sentence Report dated 23 April 2026;
 - ii) Psychiatric report from Dr Imtiaz Syed dated 2 December 2025;
 - iii) Psychological report from Dr Jessica Velentine dated 15 December 2025;

- iv) Intermediary report from Mua Eid dated 22 January 2026;
 - v) Neuropsychologist report from Dr Pentaraki dated 13 May 2026.
64. Z had a confirmed diagnosis of ADHD and dyslexia as well as wider longstanding neurodevelopmental needs. He was home educated due to his learning and behavioural difficulties. He had notable difficulties with communication, had difficulties processing information, and lacked insight and judgment. The author of the psychiatric report, Dr Syed, described Z as highly vulnerable with neurodevelopmental, cognitive and emotional difficulties. He considered that Z's communication difficulties, anxiety in unfamiliar environments, and tendency to defer to adults placed him at heightened risk of misunderstanding instructions, coercion or exploitation by peers or older individuals. GP records referenced behavioural problems, depressed mood and safeguarding vulnerabilities.
 65. The author of the Pre-Sentence Report noted that Z did not carry out the primary offending, but assisted and facilitated another; that he had followed actions of others rather than initiating or leading the behaviour. In the opinion of the author his participation was driven by confusion, immaturity and susceptibility to peer influence. He had limited understanding of consent, boundaries and consequences, consistent with ADHD, processing difficulties and delayed social and emotional development. Peer influence had played a role, intensified by his familial relationship to Y, increased susceptibility to influence and reduced capacity to disengage or question actions of others. His understanding of sexual boundaries and behaviour was assessed as significantly limited for his age.
 66. Mitigating factors were stated to be his age and lack of emotional maturity; neurodevelopmental conditions affecting thinking, impulse control and understanding; limited grasp of consent, boundaries and impact of his behaviour; positive engagement with YJS; strong parental support; and limited history with the criminal justice system. His risk of re-offending was assessed as low.

H. Bail and Remand

67. There was significant confusion about the nature of the remand of X and Y before they were admitted to bail. A remand to local authority accommodation is a remand to accommodation provided by or on behalf of a local authority (see section 92(1) of the Legal Aid Sentencing and Punishment of Offenders Act 2012).
68. A remand to youth detention accommodation is a remand to a secure children's home, secure college, secure training centre, young offender institution or accommodation of a description used for the purposes of a Detention and Training Order (DTO).
69. Both are custodial remands within the meaning of Chapter 3 LASPOA 2012 and therefore attract custody time limits; however, only a remand to youth detention accommodation is a "remand in custody". Accordingly, a remand to

local authority accommodation is not a “remand in custody” for the purposes of s.240ZA CJA 2003, which means that such a remand does not count as time served by the offender as part of their sentence: s.242(2) CJA 2003. Conversely, a remand to youth detention accommodation does count as time served.

70. At times, ‘youth detention remand’ and ‘local authority remand’ were referred to interchangeably by both the judge and parties.
71. Both X and Y were remanded in youth detention by the Southampton Magistrates’ Court on 21 January 2025. As noted above, this is a “remand into custody” and therefore does count towards time served as part of a sentence. On 14 February 2025 X and Y were each granted bail with conditions, including a qualifying curfew.

I. Sentencing notes

72. The prosecution and each of the defence teams prepared sentencing notes for the judge prior to the sentencing hearing.
73. The prosecution sentencing note was of less assistance to the judge than it should have been and did not follow the guidance given in *R v ZA* [2023] EWCA Crim 596; 23 2 Cr App R(S) 45 (*ZA*). The first iteration dated 21 April 2026 contained a number of errors of law, as did the second dated 18 May 2026. Each version went straight to the adult rape guideline and the suggested categorisation of the offences in accordance with that guideline before making scant reference to the Principal guideline, and then only to highlight those paragraphs dealing with custodial sentences.
74. There was no reference to the Child sexual offences guideline at all. No assistance was given to the judge as to the stepped approach required for sentence, and there was over-reliance on a comparison with the facts of one particular decision of this court (*R v RDP* [2025] EWCA Crim 1829). This approach ignored the requirement when sentencing for an individualistic approach, tailored not only to the facts of the index case, but importantly, to the individual child offender. Nor was the judge referred to the “Child Defendants in the Crown Court” Benchbook, described in *ZA* (at [87]) as an “essential guide”.

J. The judge’s findings of fact

75. The judge made the following findings of fact:
 - i) C1 had had consensual sexual activity with X prior to any offending behaviour;
 - ii) C2 had placed her phone and Airtag in the Fordingbridge Co-Op by choice, and not as a result of pressure from any of the offenders;

- iii) He was sure that C2 was not forced at knife point to go with the offenders in order to participate in nonconsensual activity;
 - iv) C2 was interested in having sexual activity with X and made that clear to him and others;
 - v) C2 had consensual sexual activity with X prior to any offending behaviour.
76. In addition, the judge made the following comments, short of findings of fact, but which were relevant to the factual basis for sentence:
- i) An implement might have been used to cut C2's leggings;
 - ii) The acquittal of X and Y of oral rape of C2 at the outset of the second incident (Count 5 on the Indictment) meant that the jury could not be sure that initial sexual activity between C2 and X and Y was non-consensual;
 - iii) Initial consent to sexual activity provided no mitigation in itself, but depending upon an interpretation of the verdicts, may reduce culpability;
 - iv) An interpretation of the verdicts that C1 and C2 each withdrew consent due to filming was 'cogent';
 - v) None of the child offenders were aware of the background history and vulnerabilities of either complainant.

K. The judge's reasons for sentence

77. Having made findings of fact as set out above, the judge referred to the guidelines as we have done at [16] above.
78. The judge said that neither the Adult rape guideline nor the Adult indecent images guideline applied because of the ages of the three offenders. He said:

“... it is legitimate to consider the length of the sentence under the adult guideline, adjusted for the offender's youth as of some relevance in assessing the seriousness of the offending when seeking to determine whether only a custodial sentence can be justified.”

79. The judge began with the Principal guideline. He reminded himself of the principal aim of the youth justice system to prevent re-offending, and the statutory duty to have regard to the welfare of the child, the need to avoid criminalising children unnecessarily, and to pass a sentence that, where possible, focused on rehabilitation. He referred to those sections of the Principal guideline that deal with the imposition of custodial sentences, in particular:

“6.42 A custodial sentence must only be imposed as a measure of last resort; statute provides that such a

sentence may be imposed only when an offence is so serious that neither a fine alone nor a community sentence can be justified.”

and

“6.45 Only if the court is satisfied that the offences cross the custody threshold, and that no other sentence is appropriate, the court may as a preliminary consideration, consult the equivalent adult guideline in order to decide upon the appropriate sentence length.”

80. The judge then turned to the Child sexual offences guideline and the 5 step process it sets out.
81. At Step 1, assessing the seriousness of the offence, he found that the offences “fall more obviously” into the second category of offending behaviour, that is, offending for which a custodial sentence may be justified, although he found that there was no violence or exploitation, and determined that the impact of the offending on the complainants did not amount to severe psychological harm.
82. Step 2 required the judge to consider the aggravating and general mitigating factors. He found that the aggravating factors were that the children were acting together, and the offences were filmed. Mitigating factors were the absence of previous findings of guilt, and the impact of peer pressure which, he reached the “firm conclusion” had played a large part in both incidents.
83. At Step 3, the judge analysed the personal mitigation available for each child. In each case he specifically referenced the Overarching Guideline for Sentencing Offenders with Mental Disorders, Developmental Disorders and Neurological Impairments. As noted above and below, this Guideline did not apply.
84. For X, the judge did not consider that any neurodevelopmental conditions identified (anxiety, ADHD traits, and slight cognitive difficulties) reduced his levels of culpability but agreed with a defence submission that an interpretation of the jury’s verdict could be that each complainant engaged in consensual sexual activity with him, which consent was only withdrawn when others became involved and filming started. He found that X’s involvement thereafter was as a result of peer pressure, which served to reduce his culpability “to some extent”.
85. Turning to Y he accepted the conclusions of the various expert reports before him that he had “*extreme neurodevelopmental impairment*”, stating that he was:

“...quite sure that [Y’s] culpability was reduced as a result of his profound impairments. His understanding of what went on must have been far more limited than a 14 year old operating at a level without his deficits, and

I make my own decision on this aspect... [Y's] impairment affected his ability to exercise appropriate judgment and make rational choices. His ability to understand the nature and consequences of his actions is clearly not that of an unimpaired child. The filming and his behaviour in it clearly reflects this."

86. The judge commented upon positive aspects relating to Y in particular his response to bail which had been described as "*exemplary*".
87. Finally, dealing with Z, the judge again accepted the opinions of the experts concerning Z's very low intellectual capacity, his mild cognitive impairments, emotional immaturity, limited understanding of consent, or appreciation of risk. His understanding of sexual behaviour was significantly limited for his age. He found that Z's culpability was significantly reduced by reason of his impairments. Custody would have a detrimental effect upon him. His risk of re-offending was low.
88. The judge then moved to Step 5 to review the sentence (Step 4, which would require consideration of the effect of guilty pleas did not apply given convictions for the lead offences).
89. The judge concluded that the offences of which X and Y were convicted passed the custody threshold.
90. Having reached these conclusions, he considered whether section 255 Sentencing Act (which deals with dangerous offenders) applied, but considered that it did not because the statutory criteria were not met, and because this was not a case in which in his judgment custodial sentences of 4 years or more would be imposed, given:
 - i) The ages of X and Y;
 - ii) The absence of previous offending;
 - iii) The spontaneous nature of offending;
 - iv) The offenders' response to custody and bail restrictions;
 - v) The contents of the Pre-Sentence Reports and prospects of rehabilitation;
 - vi) Family support;
 - vii) In respect of Y, his "profound limitations".
91. The judge said that although X and Y crossed the custody threshold, he was not bound to impose immediate custody, indeed he stated that "*the parts of the guideline I have highlighted state the opposite*" in particular, that custody must be a last resort.
92. The judge then referred to para 6.45 of the Principal guideline and that it was:

“Only if the court is satisfied that the offences cross the custody threshold and that no other sentence is appropriate, the court may as a preliminary consideration consult the equivalent adult guideline to decide upon the appropriate length of sentence.”

Having done so, the judge said:

“Given my conclusion, I do not need to consider the adult rape guideline”.

93. The judge set out the mitigating factors that he took into account in deciding that any custodial sentence would not be of a length that could potentially engage consideration of section 255 of the Sentencing Act 2020 (four years custody), but he did not explain why he had reached the conclusion that no custodial sentence was necessary. Neither did the judge make any specific reference to, or set out his assessment of, the seriousness of the offences.

94. The judge did deal with the Adult rape guideline, and explained that he was doing so only to enable the sentences he had passed to be understood. He considered that for X and Y the appropriate categorisation was 3A with an uplift for the fact of two victims, and a potential uplift for the two culpability factors he had identified, namely that the offences were (i) committed with others and (ii) recorded. For an adult that would result in a starting point of 7 years (for one offence) and a range of 6-9 years. Although the judge had said, see [78], that the Adult rape guideline could be legitimately used to assess the seriousness of the offending, he did not explain how he treated the result of his categorisation. He made no reference to the Adult indecent images guideline.

95. Explaining why the offending by X and Y fell within category 3A, the judge said:

“As to harm, the only category 2 factor which is obviously apparent in either part is that of additional degradation by way of filming. However, filming features as a category 2 culpability factor, hence the fact that the offences were committed with others means two such culpability factors are present. Hence category 3A will be the appropriate categorisation with an uplift for the fact of two victims for [X and Y], and a potential uplift for the two factors.”

96. Given the reduced culpability for both X and Y as found by him, he noted that mitigation:

“...would significantly reduce any figure identified in the adult guideline before a very marked allowance of well over 66% as per the Sexual Offences Sentencing Children and Young People guideline, and likely more for Y.”

97. We observe that this is a mis-reading of the guidance given at para 6.45 of the Principal guideline, and repeated at Step 5 of the Child sexual offences guideline:

“When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15.”

The guideline does not state that the *reduction* of sentence should be half to two thirds of the adult sentence, although of course there will be cases where such a reduction is appropriate.

98. The judge concluded, “I make clear the analysis of the adult guideline is not necessary and does not determine the sentences. I simply make reference to it”.

99. The judge concluded that:

“Given any likely custodial sentence, which would not be in the form of a grave crime or dangerousness disposal, I am quite satisfied that a YRO is required in the case of each child, particularly where an effectively significant sentence has already been served. Such sentences would meet the strict requirements of the Children and Young People Guidelines I have referred to. The length of them will also provide the best prospect of rehabilitation and therefore the reduction of risk of further offending.”

100. In so far as Z was concerned, the judge concluded that his offences did not cross the custody threshold.

101. The judge then imposed the sentences that we have set out above.

L. The new materials before this court

102. There is an updated report by Dr Jake Harvey, Consultant Forensic Psychiatrist about Y. This confirms the severe developmental disabilities from which he suffers. It also diagnoses an adjustment disorder and post-traumatic stress disorder caused by the trial and exacerbated by the extensive publicity which this case has received since sentencing.

103. The court received an application to intervene in these proceedings by Just for Kids Law, a charity with specialist expertise in representing children and young people within the criminal justice system. The court received it on 26 June and considered it on 29 June. It was supported by a witness statement from Dr. Oliver Eastman which contains evidence describing the current state of evidence about the effectiveness of custody in preventing re-offending by children convicted of offences which he describes as “harmful sexual

behaviour”. We refused the application to intervene, but indicated that the parties were free to make such use as they chose of the evidence given by Dr. Eastman.

104. At our requests we received reports from the Hampshire Youth Offending Team about how the offenders have progressed in their sentences since they were imposed. X and Z have done very well. Y has caused some minor problems, which are probably attributable, at least in part, to his cognitive and learning difficulties. This material supports the conclusion that the sentences imposed by the judge serve a useful purpose in addressing the offending. That aim is hampered by the fact that none of the offenders has accepted that the complainants were subjected to sexual activity to which they did not consent. Each of them has a limited understanding of what consent is, and how it might be communicated.

105. The court has received updated reports dated 26 June 2026 from Zoe Thomas, the Restorative Justice Officer Hampshire YJS about both C1 and C2. C2 has not engaged with her and so this update contains no information at all. The report about C1 is a deeply disturbing document. It concludes:

“Overall, [C1] is a highly vulnerable young person who has experienced significant trauma and continues to present with complex mental health needs. The escalation in self-harm, presence of suicidal ideation, social isolation and emotional distress indicate a high level of ongoing risk. Combined with her limited ability to process her experiences and engage consistently with support, there remains a clear and pressing need for intensive, coordinated, multi-agency intervention to safeguard her wellbeing and support her recovery.”

106. We shall take the new material about the offenders into account, in accordance with the approach identified in *R v Rogers* [2016] EWCA Crim 801; [2016] 2 Crim App R (S) 36, and will describe below how we approach the judge’s finding that C1 and C2 did not suffer severe psychological harm.

M. The relevant statutory and guideline materials

Statute

107. The Sentencing Act 2020 is the statutory framework for almost all sentencing decisions. The primary duty of the court is to apply the framework enacted by Parliament. Sections 57 and 58 concern the purposes of sentencing:

57 Purposes of sentencing: adults

(1) This section applies where—

- (a) a court is dealing with an offender for an offence, and
- (b) the offender is aged 18 or over when convicted.

(2) The court must have regard to the following purposes of sentencing—

- (a) the punishment of offenders,
- (b) the reduction of crime (including its reduction by deterrence),
- (c) the reform and rehabilitation of offenders,
- (d) the protection of the public (including victims of crime), and
- (e) the making of reparation by offenders to persons affected by their offences.

58 Offenders aged under 18: considerations of court not affected by Code

Nothing in this Code affects the duties of the court—

- (a) to have regard to the Principal aim of the youth justice system (which is to prevent offending (or re-offending) by persons aged under 18: see section 37 of the Crime and Disorder Act 1998);
- (b) under section 44 of the Children and Young Persons Act 1933 (to have regard to welfare and in certain cases to take steps in relation to surroundings and provision of education etc).

108. Parliament therefore decided not to codify the purposes of sentencing children, but to preserve earlier provisions which are relevant to that issue:

Crime and Disorder Act 1998

37.— Aim of the youth justice system.

- (1) It shall be the Principal aim of the youth justice system to prevent offending by children and young persons.
- (2) In addition to any other duty to which they are subject, it shall be the duty of all persons and bodies carrying out functions in relation to the youth justice system to have regard to that aim.

Children and Young Persons Act 1933

44.— General considerations.

- (1) Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

109. As we have explained, the main challenge by the Attorney General is to the way in which the judge approached the seriousness of the offending. That exercise is governed by other provisions of the 2020 Act. These provisions

dictate how the assessment of seriousness is made. That assessment then operates as a threshold which must be crossed before any custodial sentence can be passed, and finally as a factor controlling the length of any such sentence. These provisions apply to all custodial sentences, including those which may be imposed on children. By statute, the assessment of seriousness is at the heart of the decision of whether to impose a custodial sentence and, if so, for how long:

63 Assessing seriousness

Where a court is considering the seriousness of any offence, it must consider—

- (a) the offender's culpability in committing the offence, and
- (b) any harm which the offence—
 - (i) caused,
 - (ii) was intended to cause, or
 - (iii) might foreseeably have caused.

230 Threshold for imposing discretionary custodial sentence

(1) Subsection (2) applies where a person is convicted of an offence which is punishable with a custodial sentence. This is subject to subsection (3).

(2) The court must not pass a custodial sentence unless it is of the opinion that—

- (a) the offence, or
- (b) the combination of the offence and one or more offences associated with it,

was so serious that neither a fine alone nor a community sentence can be justified for the offence.

.....

Procedure for forming opinion

(6) In forming its opinion for the purposes of subsection (2), the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated offence or offences, including any aggravating or mitigating factors.

(7) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.

231 Length of discretionary custodial sentences: general provision

(1) Subsection (2) applies where a court passes a custodial sentence in respect of an offence. This is subject to subsections (3) to (6).

(2) The custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of—

(a) the offence, or

(b) the combination of the offence and one or more offences associated with it.

Guidelines

110. Given the centrality of the relevant guidelines to the task before us, it is necessary to set out their contents in detail.

The Principal guideline

111. The Principal guideline summarises the effect of these statutory provisions, and provides important guidance for courts sentencing children. It is designed to cover all criminal offences. In the section “Sentencing Principles” it paraphrases their effect as meaning that when sentencing children the seriousness of the offence will be “the starting point” and that a custodial sentence for children will be a sentence of “last resort”. These are helpful illustrative phrases which do not displace the statutory tests. Paragraph 1.6, in particular, identifies an approach which should be taken “if possible”, which is a key phrase. The text reads, so far as material:

“Sentencing Principles

1.2 While the seriousness of the offence will be the starting point, the approach to sentencing should be individualistic and focused on the child or young person, as opposed to offence focused. For a child or young person the sentence should focus on rehabilitation where possible. A court should also consider the effect the sentence is likely to have on the child or young person (both positive and negative) as well as any underlying factors contributing to the offending behaviour.

1.3 Domestic and international laws dictate that a custodial sentence should always be a measure of last resort for children and young people and statute provides that a custodial sentence may only be imposed when the offence is so serious that no other sanction is

appropriate (see section six for more information on custodial sentences).

1.4 It is important to avoid “criminalising” children and young people unnecessarily; the primary purpose of the youth justice system is to encourage children and young people to take responsibility for their own actions and promote re-integration into society rather than to punish. Restorative justice disposals may be of particular value for children and young people as they can encourage them to take responsibility for their actions and understand the impact their offence may have had on others.

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. Children and young people are also likely to be susceptible to peer pressure and other external influences and changes taking place during adolescence can lead to experimentation, resulting in criminal behaviour. When considering a child or young person’s age their emotional and developmental age is of at least equal importance to their chronological age (if not greater).

1.6 For these reasons, children and young people are likely to benefit from being given an opportunity to address their behaviour and may be receptive to changing their conduct. They should, if possible, be given the opportunity to learn from their mistakes without undue penalisation or stigma, especially as a court sanction might have a significant effect on the prospects and opportunities of the child or young person and hinder their re-integration into society.

1.7 Offending by a child or young person is often a phase which passes fairly rapidly and so the sentence should not result in the alienation of the child or young person from society if that can be avoided.

1.8 The impact of punishment is likely to be felt more heavily by a child or young person in comparison to an adult as any sentence will seem longer due to their young age. In addition penal interventions may interfere with a child or young person's education and this should be considered by a court at sentencing.

1.9 Any restriction on liberty must be commensurate with the seriousness of the offence. In considering the seriousness of any offence, the court must consider the child or young person's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.

.....

1.11 The statutory obligation to have regard to the welfare of a child or young person includes the obligation to secure proper provision for education and training, to remove the child or young person from undesirable surroundings where appropriate and the need to choose the best option for the child or young person taking account of the circumstances of the offence.

1.12 In having regard to the welfare of the child or young person, a court should ensure that it is alert to:

- any mental health problems or learning difficulties/disabilities;
- any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;
- any speech and language difficulties and the effect this may have on the ability of the child or young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
- the vulnerability of children and young people to self-harm, particularly within a custodial environment; and
- the effect on children and young people of experiences of loss and neglect and/or abuse.

1.13 Factors regularly present in the background of children and young people that come before the court include deprived homes, poor parental employment records, low educational attainment, early experience of offending by other family members, experience of abuse and/or neglect, negative influences from peer associates and the misuse of drugs and/or alcohol.

1.14 The court should always seek to ensure that it has access to information about how best to identify and respond to these factors and, where necessary, that a proper assessment has taken place in order to enable the most appropriate sentence to be imposed.”

Paragraphs 1.15-1.21 explain some further aspects of the duty to have regard to the welfare of the child and this section concludes:

“These principles do not undermine the fact that the sentence should reflect the seriousness of the offence. See Determining the sentence for further guidance on assessing the seriousness of an offence.”

112. Thus, the “sentencing principles” section signposts the reader to the section on assessing seriousness, which is “Section four: Determining the sentence”. This is in these terms:

“4.1 In determining the sentence, the key elements to consider are:

- the Principal aim of the youth justice system (to prevent re-offending by children and young people);
- the welfare of the child or young person;
- the age of the child or young person (chronological, developmental and emotional);
- the seriousness of the offence;
- the likelihood of further offences being committed; and
- the extent of harm likely to result from those further offences.

The seriousness of the offence

(This applies to all offences; when offence specific guidance for children and young people is available this should be referred to.)

4.2 The seriousness of the offence is the starting point for determining the appropriate sentence; the sentence imposed and any restriction on liberty must be commensurate with the seriousness of the offence.

4.3 The approach to sentencing children and young people should always be individualistic and the court

should always have in mind the Principal aims of the youth justice system.

4.4 In order to determine the seriousness of the offence the court should assess the culpability of the child or young person and the harm that was caused, intended to be caused or could foreseeably have been caused.

4.5 In assessing **culpability** the court will wish to consider the extent to which the offence was planned, the role of the child or young person (if the offence was committed as part of a group), the level of force that was used in the commission of the offence and the awareness that the child or young person had of their actions and its possible consequences. There is an expectation that in general a child or young person will be dealt with less severely than an adult offender. In part, this is because children and young people are unlikely to have the same experience and capacity as an adult to understand the effect of their actions on other people or to appreciate the pain and distress caused and because a child or young person may be less able to resist temptation, especially where peer pressure is exerted. Children and young people are inherently more vulnerable than adults due to their age and the court will need to consider any mental health problems and/or learning disabilities they may have, as well as their emotional and developmental age. Any external factors that may have affected the child or young person's behaviour should be taken into account.

4.6 In assessing **harm** the court should consider the level of physical and psychological harm caused to the victim, the degree of any loss caused to the victim and the extent of any damage caused to property. (This assessment should also include a consideration of any harm that was intended to be caused or could foreseeably have been caused in the commission of the offence.)

4.7 The court should also consider any aggravating or mitigating factors that may increase or reduce the overall seriousness of the offence. If any of these factors are included in the definition of the committed offence they should not be taken into account when considering the relative seriousness of the offence before the court.

113. At this point in the guideline the Sentencing Council sets out a table of aggravating and mitigating factors. The aggravating factors in that table which may be relevant to the present cases are:

- Steps taken to prevent the victim from assisting or supporting the prosecution

- Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability
- Prolonged nature of offence
- Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intention of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups.

114. The relevant mitigating factors, as identified in the guideline, appear to be:

- No previous findings of guilt **or** no relevant/recent findings of guilt
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Participated in offence due to bullying, peer pressure, coercion or manipulation
- Limited understanding of effect on victim
- Communication or learning disabilities or mental health concerns
- Particularly young or immature child or young person (where it affects their responsibility).

115. A passage then follows which deals with the age and maturity of the child or young person:

4.9 With a child or young person, the consideration of age requires a different approach to that which would be adopted in relation to the age of an adult. Even within the category of child or young person the response of a court to an offence is likely to be very different depending on whether the child or young person is at the lower end of the age bracket, in the middle or towards the top end.

4.10 Although chronological age dictates in some instances what sentence can be imposed (see section six for more information) the developmental and emotional age of the child or young person should always be considered and it is of at least equal importance as their chronological age. It is important to consider whether the child or young person has the necessary maturity to appreciate fully the consequences of their conduct, the extent to which the child or young person has been acting on an impulsive basis and whether their conduct has been affected by inexperience, emotional volatility or negative influences.

116. Section Six of the Principal guideline deals with available sentences, setting out the options for a sentencing court in ascending order of seriousness. The section ends with a treatment of the role of custodial sentences in dealing with children and young people. That part begins with this:

“Custodial sentences

A custodial sentence should always be used as a last resort. If offence specific guidelines for children and young people are available then the court should consult them in the first instance to assess whether custody is the most appropriate disposal.”

117. The guideline then contains a Table which shows what the available custodial sentences for children and young people are:

Youth Court	Crown Court
	Detention and training order (the same periods are available as in the youth court)
Detention and training order for at least 4 months but not more than 24 months	Long-term detention (under section 250 Sentencing Code)
Required special sentence of detention for certain offenders of particular concern (under section 252A of the Sentencing Code)	Extended sentence of detention or detention for life (if dangerousness criteria are met) Detention at His Majesty’s pleasure (for offences of murder)
	Required special sentence of detention for certain offenders of particular concern (under section 252A of the Sentencing Code)

118. There then follows text to explain the proper approach in more detail:

“6.42 Under both domestic and international law, a custodial sentence must only be imposed as a **‘measure of last resort;’** statute provides that such a sentence may be imposed only where an offence is “so serious that neither a fine alone nor a community sentence can be justified.” If a custodial sentence is imposed, a court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with intensive supervision and surveillance or fostering could not be justified.

6.43 The term of a custodial sentence must be the shortest commensurate with the seriousness of the

offence; any case that warrants a DTO of less than four months must result in a non-custodial sentence. The court should take account of the circumstances, age and maturity of the child or young person.

6.44 In determining whether an offence has crossed the custody threshold the court will need to assess the seriousness of the offence, in particular the level of harm that was caused, or was likely to have been caused, by the offence. The risk of serious harm in the future must also be assessed. The pre-sentence report will assess this criterion and must be considered before a custodial sentence is imposed. A custodial sentence is most likely to be unavoidable where it is necessary to protect the public from serious harm.

6.45 Only if the court is satisfied that the offence crosses the custody threshold, and that no other sentence is appropriate, the court may, as a preliminary consideration, consult the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

6.46 When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence **the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.** This reduction should be applied before any reduction for a plea of guilty.

6.47 The individual factors relating to the offence and the child or young person are of the greatest importance and may present good reason to impose a sentence outside of this range. The court should bear in mind the negative effects a short custodial sentence can have; short sentences disrupt education and/or training and family relationships and support which are crucial stabilising factors to prevent re-offending.

6.48 There is an expectation that custodial sentences will be particularly rare for a child or young person aged 14 or under. If custody is imposed, it should be for a shorter length of time than that which a young person aged 15 – 17 would receive if found guilty of the same offence. For a child or young person aged 14 or under

the sentence should normally be imposed in a youth court (except in cases of homicide or when the dangerous offender criteria are met).

6.49 The welfare of the child or young person must be considered when imposing any sentence but is especially important when a custodial sentence is being considered. A custodial sentence could have a significant effect on the prospects and opportunities of the child or young person and a child or young person is likely to be more susceptible than an adult to the contaminating influences that can be expected within a custodial setting. There is a high reconviction rate for children and young people that have had custodial sentences and there have been many studies profiling the effect on vulnerable children and young people, particularly the risk of self-harm and suicide and so it is of utmost importance that custody is a last resort.”

The Child sexual offences guideline

119. This guideline is to be read “alongside” the Principal guideline from which we have quoted extensively. There is a degree of repetition between the two documents. The same subjects are covered, but the language is not always identical. This guideline suggests or requires a two stage process in assessing seriousness, steps 1-2. Step 2 involves the balance of aggravating and mitigating factors relating to the particular offence. These repeat much of what is found in the Principal guideline. The importance of this part of the document lies in the stepped approach it requires. Step 1, however, is not the same as the Principal guideline. It says:

Step 1 - Offence seriousness: nature of the offence

The boxes below give examples of the type of culpability and harm factors that may indicate that a particular threshold of sentence has been crossed.

A non-custodial sentence may be the most suitable disposal where one or more of the following factors apply

- Any form of non-penetrative sexual activity
- Any form of sexual activity (including penetration) without coercion, exploitation or pressure except where there is a significant disparity in age or maturity
- Minimal psychological or physical harm caused to the victim

A custodial sentence or youth rehabilitation order with intensive supervision and surveillance or fostering may be justified where one or more of the following factors apply

- Any penetrative activity involving coercion, exploitation or pressure
- Use or threats of violence against the victim or someone known to the victim
- Prolonged detention/sustained incident
- Severe psychological or physical harm caused to the victim

120. At the end of steps 1-4, the guideline at step 5 requires the sentencer to review the sentence and to consider the full range of sentencing options. In relation to custodial sentences, this section of the guideline says:

“Custodial Sentences

If a custodial sentence is imposed, the court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with ISS or fostering could not be justified.

Where a custodial sentence is **unavoidable** the length of custody imposed must be the shortest commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. The individual factors relating to the offence and the child or young person are of the greatest importance and may present good reason to impose a sentence outside of this range.”

121. This guideline does not offer a structured approach to assessing seriousness by reference to culpability and harm, in the way that offence specific guidelines invariably do, in order to enable sentencers to comply with their statutory duty as explained in section 60 of the Sentencing Act 2020:

60 Sentencing guidelines: determination of sentence

(1) This section applies where—

(a) a court is deciding what sentence to impose on an offender for an offence, and

(b) offence-specific guidelines have been issued in relation to the offence.

(2) The principal guidelines duty includes a duty to impose on the offender, in accordance with the offence-specific guidelines, a sentence which is within the offence range.

(3) Subsection (2) is subject to—

(a) section 73 (reduction in sentences for guilty pleas),

(b) sections 74, 387 and 388 (assistance by offenders: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence, and

(c) any rule of law as to the totality of sentences.

(4) If the offence-specific guidelines describe different seriousness categories—

(a) the principal guidelines duty also includes a duty to decide which of the categories most resembles the offender's case in order to identify the sentencing starting point in the offence range, but

(b) nothing in this section imposes on the court a separate duty to impose a sentence which is within the category range.

(5) Subsection (4) does not apply if the court is of the opinion that, for the purpose of identifying the sentence within the offence range which is the appropriate starting point, none of the categories sufficiently resembles the offender's case.

122. Instead, as we have shown, this guideline offers two boxes without assisting the sentencer about what to do when a case fits squarely into neither box. This kind of guidance, by its nature, does not predispose to any particular outcome and can only be applied by a sentencer to the extent that it assists in dealing with the particular case before the court. This is in part because this guideline covers a very wide range of offending, from cases where the offender and the victim never encountered each other all the way up to multiple rape offences committed against multiple victims.

The Adult rape guideline and Adult indecent image guideline

123. Before turning to the relevance of the proper categorisation of the rape offences for the purposes of the Adult rape guideline, we should record our disagreement with the judge's conclusion about categorisation. In our

judgment each of the rape offences was a category 2A offence. As the judge found, there were two culpability A factors: the offenders were acting together and the offences were recorded. These factors together contributed to degradation and humiliation, which is a harm category 2 factor. In each incident, the complainant was subjected to multiple rapes, in the presence of others who were, at various times, calling out comments, filming, exposing themselves and masturbating close to the girl in question. The fact that there is an overlap between factors that increase both harm and culpability does not mean that there is double counting, and should not have resulted in a decision to place the offence into a lower category. Moreover, in each case this was a sustained incident with additional humiliation. There were therefore two harm factors, “Additional degradation/humiliation” and “sustained incident”. Any incident in which the victim is raped more than once by more than one person is likely to be categorised as “sustained”, and these ought to have been. There were two further harm factors, which are connected with each other, namely that the victims were particularly vulnerable and sustained severe psychological harm. The judge treated the vulnerability of the victims as irrelevant, because the offenders did not know of it. We, however, accept the submission of the Attorney General that knowledge of the vulnerability of a victim is a factor which is relevant to culpability, but not to harm. If an offender rapes a victim who suffers severe psychological harm because of a vulnerability of which the offender was not aware this does not reduce the harm caused by the offence. The judge was wrong, therefore in his treatment of this factor. We also consider, as we explain in more detail below, that the judge was wrong to find that the victims did not suffer severe psychological harm. Each rape was, therefore, quite clearly a category 2A case, and one which would justify an increase within the category range to reflect the multiple culpability and harm factors. The sentencing then needed to take account of the fact that there were two separate incidents, and two separate victims. Although the judge found that there was no planning in these cases, the fact that X and Y repeated their behaviour during the second incident suggests that it would be wrong to describe the offending as “spontaneous”.

124. A category 2A rape has a starting point for an adult of 10 years with a range of between 9 and 13 years imprisonment.
125. The other potential aggravating factors have been fully reflected in the categorisation as 2A. We reach this conclusion on the basis that we should not interfere with the way in which the judge treated the allegation that there was a knife present at the second incident. The judge had heard the trial and carefully reviewed all the CCTV footage which was plainly material to the assessment of the reliability of C2’s account about the knife.
126. In so far as the indecent images are concerned, these were category A images, as they recorded penetrative sexual activity. They were video clips, with sound, and showed what the jury decided were crimes of rape. They were produced by the offenders, which is the most serious offence of this kind. A category A production offence has a starting point of 6 years and a sentencing range of 4 to 9 years imprisonment.

127. These assessments relate to each incident separately. The key fact in assessing seriousness in this case is that X and Y committed offences of rape against two victims in separate incidents each accompanied by the serious features that we have described. Significant uplifts would be required due to the fact that there were two separate complainants in two separate incidents, and the multiple offending, in particular, by Y. For an adult, prior to any reduction for mitigation, a sentence well into double figures could have been expected.
128. For each of these children there was, as identified by the judge, and as set out in detail above, substantial mitigation. Each of them was very young, and had substantial limitations that markedly affected their levels of culpability. This is particularly the case for Y and Z. We have no doubt that all of these children were and are vulnerable, and a significant reduction of sentence was and is appropriate to reflect this.
129. Paragraph 6.46 of the Principal guideline, states:
- “When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.”
130. This has been misunderstood in some of the submissions made to the judge, and to us. It does not mean that the adult sentence is reduced by “half to two thirds” for an offender between the ages of 15-17. It means that the sentence will be between half and two thirds of the adult sentence.
131. The court should take as its starting point the sentence likely to have been imposed on the date on which the offence was committed: *R v Ghafoor* [2002] EWCA Crim 1857. This is reflected in the Principal guideline, at paragraphs 6.1 – 6.3.

N. Previous decisions of this court

132. We do not consider it necessary to analyse or cite any decisions of this court in other cases at any length. We make only two observations.
133. First, we agree that the Court of Appeal in *ZA* gave valuable practical and principled guidance on sentencing cases involving child defendants and only wish to make one comment. In the majority of cases involving young children the assessment of seriousness required by Step 1 of the guidelines for children in cases of possession of a bladed article and robbery will not result in a decision that the offence is so serious that only a custodial sentence is possible. That will also be true in many cases of sexual offending. The court may ultimately impose such a sentence, as a last resort, but in most cases will not

simply be driven to that conclusion by the result of the assessment of seriousness.

134. In cases of rape where the court is considering that question, it will be appropriate, as the judge said in this case, to consider the Adult rape guideline. This will assist the court in identifying factors which affect the assessment of culpability and harm. The sentence ranges and starting points will operate, at this stage, only as an indicator of seriousness in a very general way. Paragraph [70] of *ZA*, a very different case on the facts, should be read, in appropriate cases, with that observation in mind:

“70. We have set out relevant passages from the two guidelines in some detail in order to emphasise the necessity for an approach to sentence which takes in all the guidance which a court sentencing a child or young person is required to consider before turning for reference to the equivalent adult guideline. It is critical to note that the suggested resort to the adult guideline comes at the end of the process, not the beginning.”

135. Secondly, the approach to determining whether a child is a dangerous offender under section 308 of the Sentencing Act 2020 is still that identified in *R v Lang* [2005] EWCA Crim 2864; [2006] 2 Cr App R (S) 3 (*Lang*). At [17(vi) and (vii)] Rose LJ, giving the judgment of the court, said:

“(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. “

136. This was recently affirmed in *R v Davis and other cases* [2026] EWCA Crim 743 (*Davis*) at [115] where the court said, of those passages:

“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.”

137. We have not found it helpful to consider other cases in which this court has considered sentences imposed on offenders under the age of 18 for offences of rape. These show widely divergent results, as would be expected in an individualistic approach to sentencing, and add nothing to the principled analysis.

O. Discussion

138. Sentencing children who have been convicted of extremely serious offences is a difficult task. This is because it is widely accepted that the culpability of children is not as great as would be that of an adult in otherwise similar circumstances. A child’s brain and personality are still developing and, when they have grown up and become mature adults, they may be unlikely to offend again. That development will be interrupted and adversely affected by many measures, especially custodial measures, which the criminal justice system unhesitatingly imposes on adults. The inability to fulfil their potential during what may be a critical stage in their education may reduce their life opportunities permanently which may be counterproductive, predisposing to further offending rather than preventing it. These considerations are reinforced where the child offender is vulnerable and in need of support. These are the reasons why, in recent years, many fewer children have been incarcerated than was formerly the case. The Principal guideline, accompanied by the Child sexual offences guideline, reflects this approach. It has been confirmed in a large number of decisions of this court, including *ZA*. Custody for all offenders should be regarded as a “last resort” and that is particularly the case with children.
139. There is currently a debate about the stage at which the criminal justice system should begin to stop making allowances for youth and to treat offenders as adults. Scientific evidence suggests that the brain continues to mature until at least the age of 25. Maturity brings a strong chance that an offender will stop offending. Those who continue to do so after that point are treated more severely for this reason. There is less hope of redemption. Whatever may be the outcome of that debate, we would suggest that no-one could sensibly contend that children of 13 or 14 years of age should be treated in the same way as adults. These cases concern children of that age.
140. The cases now before the court also concern offending at the very highest level of offending likely to be encountered where no fatality has occurred. Murder is sometimes committed by children of this age, and is obviously still more serious. Rape is an offence which varies in seriousness as the adult rape guideline makes clear, but it is always a very serious criminal offence. What we have to decide in this case concerns offending at that level, and should not be read across into other, less serious forms of offending. What makes this case, for *X* and *Y*, so very serious is the fact that there were two incidents, each involving multiple offending against a different victim.

141. It appears to us that the Principal guideline and the Child sexual offences guideline are to be read together, and mandate a stepped approach to sentencing. Those steps are found in the Child sexual offences guideline and are set out in a similar form to the steps in the other two child specific guidelines, which deal with bladed articles and robbery. It may be doubted whether an offender who is under 15 at the date of an offence of robbery or possession of a bladed article, and who has no previous convictions of relevance, would ever be assessed as having committed an offence which was so serious that a sentence of detention of two years or more would be unavoidable.
142. The question in this case is whether there are some sexual offences which are so serious that such a sentence is required, notwithstanding the many good reasons, identified in the Principal and the Child sexual offences guidelines, why such sentences should be avoided wherever “possible”. The answer to that question is found in reading these two guidelines together, and closely, and by reference to the facts of the case.
143. We have set out above the facts, and the judge’s findings of fact. The Attorney General has challenged a number of those. We have already indicated that the judge was wrong to conclude that these were not cases involving severe psychological harm, for reasons we will expand on below. This was connected with their particular vulnerability, especially that of C1. We have also said that these were “sustained” incidents. These were important features.
144. Beyond that, the Attorney General questions some other factual conclusions reached by the judge. We consider that there is some force in the submission that the judge placed too much importance on “peer pressure” in the cases of X and Y. Each of these was convicted of an offence of rape as a secondary party, by encouraging the other. There is no evidence that anyone else was applying any pressure to them. We agree with the judge that the timing and location of the offences did not add materially to their seriousness. The finding that the second incident, involving C2, did not involve a knife as a weapon was clearly open to the judge on the evidence and he explained why he reached that conclusion having regard to the evidence of two other child witnesses, and the CCTV footage.

The Stepped Process: the Child sexual offences guideline

145. We will attempt to explain why these offences, in the cases of X and Y, are so serious that sentences of detention are required by going through the 5 (or perhaps 6) steps in the Child sexual offences guideline, amplifying and explaining their meaning as appropriate.
146. Step 1 - *Offence seriousness: nature of the offence*. Steps 1 and 2 together require an assessment of seriousness which will inform the answers to all subsequent steps. This is in accordance with the sections of the Sentencing Act 2020 set out above, which put “seriousness” at the heart of decisions about custodial sentences. The court in approaching Step 1 and 2 is required to consider culpability and harm by section 63 of the Sentencing Act 2020. Harm is not affected by the age of the offender, but the age of the victim may be

relevant (among other factors). Culpability is certainly affected by the age of the offender, and guideline factors need to be adjusted with that in mind.

147. The Table at Step 1 identifies some factors which have to be considered when making that adjustment, but this is not an exhaustive or “hard edged” list. It cannot be, because the bullet points in each of the two lists of factors do not distinguish between those which go to harm and those which go to culpability. One factor relates to the assessment of the seriousness of penetrative sexual activity. This depends on whether there was coercion, exploitation or pressure. Those terms are not defined, and the importance of lack of consent is not addressed. The judge was right to say that an offence of rape should be in box 2, because it involves lack of consent, but the guideline does not actually say that. As we have said, harm is not affected by the age of the offender, although culpability certainly is. Our analysis of the case indicates that the judge ought also to have dealt with it on the basis that other Box 2 factors were present, namely “Prolonged detention/sustained incident” and “Severe psychological or physical harm caused to the victim”.
148. We consider that the judge’s consideration of whether either or both of C1 and C2 suffered “severe psychological harm” as a result of being publicly raped while still a young child was wrong on the material before him. Each of them made victim personal statements, and there was also a Harmed Person PSR Contact Report by Hampshire YJS on each of them. These documents were made long after the incidents, in May 2026. The Harmed Person Report on C1, in May 2026, recorded this report of her condition by her family:

“They said that C1 is rapidly spiralling into emotional and physical distress, which is negatively affecting her self-esteem and sense of safety, and at times has led to her expressing that she does not want to be here. C1 experiences significant fear of her peers and of attending school, particularly being around children of her own age following the incident. C1 now maintains contact with only a very small number of friends, rarely leaves the house, and has more online friendships than in-person relationships due to her fear of social interactions. They explained that the accused are now permitted to access Salisbury and the surrounding areas. As C1’s school is located between their home and Fordingbridge, she would not feel able to travel independently, particularly by bus, due to the risk of encountering them. They also highlighted that C1 has upcoming exams, which she is required to sit in an exam hall alongside her peers. This is causing significant distress. They stated that they feel C1 has returned to square one and no one is able to help her.”

149. The Harmed Person Report on C2, also dated May 2026, contained this report from her school:

“C2 currently has 34% attendance in school. We have seen a significant decline in C2’s attendance and engagement in school since October / November 2025. During the Autumn term C2 was supported by Children Services and the school had in place an Alternative Provision

package. The plan was always to support C1 with a full reintegration back to school. C2 did well with the AP package but needed to be back in school to ensure she was receiving the academic and pastoral support she required. C2 has shared with me and other school staff that she does not feel safe in school, although she knows she is safe in school. As a school we have worked with you and C2 to ensure she has all the wellbeing support she can manage and process, but C2 has found this increasingly difficult. To support C2, we have reduced her GCSE package to English Language, Maths, Double Science, Business and History. The aim of this package is to ensure C2 has facilitating GCSE to ensure she is able access college in September 2026. Up to January 2025, C2 had good attendance to school, she was punctual and had good engagement. C2 was an animated character in her tutor group and enjoyed positive friendships. C2 had a respectful sense of fun. Her attendance and engagement in school declined to 74% in year 10. C2 worked hard to hold onto her close friends but the trauma she suffered became a difficult burden for her and her peers to manage.

We have seen a decline in the spark that C2 has had in school and now we see a child who is masking and when she is feeling brave enough, she will come into school, engage with the adult support that is in place for. Sadly, due to the trauma and the fact that C2 has struggled to attend and engage with school, we have not seen the academic progress we would expect to see. She is on target to achieve a basic, rather than a strong pass at GCSE.”

150. These reports confirmed the contents of the victim personal statements, which spoke of enduring distress and despair. The judge did not explain why he found that this material did not prove severe psychological harm. It appears that he may have placed substantial weight on his own impressions formed during the trial. He was entitled to take that into account, but great care is required before allowing that impression to lead to the rejection of evidence of the kind we have described. Being raped in the way that C1 and C2 both described during the critical developmental phase of their adolescence is very likely to have long term and profound consequences, not all of which are immediately apparent. In both these cases, the harm included very significant disruption to their educational progress at a crucial time which is, itself, likely to cause long term damage. It is now clear, from the material about C1 supplied in the latest Hampshire YJS report referred to above that in her case the judge’s assessment was in fact wrong. This confirms our assessment formed from the material which the judge had. We consider that there was material, as we have described above, on which he should properly have found that these two children did suffer severe psychological harm and are likely to continue to do so. This was an error which undermined his assessment at Step 1. An even more significant error is the judge’s failure, at any point when going through the stepped process to explain how, if at all, he was reflecting the fact that both X and Y had been involved in two incidents involving different victims, each of whom was raped more than once by different people.

151. Step 2 - *Offence Seriousness: aggravating and mitigating factors*. These are factors relevant to the offence itself. Personal mitigation is addressed at the next step. There are two very significant aggravating features in both of these incidents: X and Y acted with others (including each other) to commit the offences and there was “deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intention of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups”. In other offence-specific guidelines these factors would be described in terms as being relevant to the assessment of seriousness, and going to culpability. The fact that they are described somewhat differently in this child-specific guideline should not deprive them of their force. That force is to be adjusted to reflect the fact that children, particularly vulnerable children such as these offenders, especially Y and Z, have less insight into the consequences of their actions than adults and also act more impulsively. These factors therefore require careful consideration, but cannot be ignored.
152. The mitigating factors listed in Step 2 include lack of previous convictions and involvement through peer pressure. The judge held that he was sure that peer pressure was involved in this case, although he did not identify any substantial evidence to support that view. This was, on both occasions, group activity in which the group was “egging each other on”. The principal offenders, X and Y, do not appear to have required much encouragement and, anyway, simply repeated their behaviour after the first incident rather than learning from it or gaining any insight. For them, an overall assessment of their reasons for involvement in not one but two offences comes down as a significant aggravating factor and the mitigation to be derived from anything which might be called “peer pressure” is very slight.
153. The assessment at Steps 1 and 2 will result in a decision about:
 - i) Whether the custody threshold is crossed, see section 230 of the Sentencing Act 2020 quoted at [109] above.
 - ii) Whether the offence is so serious that a custodial sentence is “unavoidable”, which is the word used in the Principal guideline at 6.44 (see [118]) and in the Child sexual offences guideline at Step 5 under “Custodial Sentences (see [120]). The statute uses the word “justified” at section 230(2), see [109]. In relation to the imposition of sentences of detention under section 250 of the Act, section 251(2) says that this can only be done where the court “is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable”. The Principal guideline also uses the word “where possible” at 1.2 in the sentence: “For a child or young person the sentence should focus on rehabilitation where possible”. These four words “unavoidable”, “justified”, “possible” and “suitable” all imply that there is a level of seriousness above which the non-custodial sentence, however desirable in other ways, cannot be imposed because it is not “justified” “possible” or “suitable” and so is “unavoidable”. It may be possible and helpful for this concept to be more simply expressed without quite so many near synonyms being deployed. We consider that the position may be more

simply expressed by saying that a custodial sentence must not be imposed unless it is unavoidable. This depends on the seriousness of the offence or offences. A decision on this issue should be reached after Steps 1 and 2, although it must be kept under review during Steps 3, 4 and 5. The judge in this case erred in not making that decision, or explaining (as he must have done) why he decided that a non-custodial sentence was “justified” “possible” or “suitable” notwithstanding his assessment at Steps 1 and 2 of the seriousness of the offences, in particular for X and Y who were guilty of offences of rape at both incidents.

154. Step 3 - *Personal mitigation*

“Having assessed the offence seriousness, the court should then consider the mitigation personal to the child or young person to determine whether a custodial sentence or a community sentence is necessary. The effect of personal mitigation may reduce what would otherwise be a custodial sentence to a non-custodial one, or a community sentence to a different means of disposal.”

This wording implies that the court has by now reached a provisional conclusion about what type of sentence is required and is testing that conclusion against the personal mitigation. Lack of convictions has already been taken into account at Step 2. Each of these offenders is a vulnerable child suffering from communication or learning disabilities or mental health concerns. They are in education. Their age means that they have strong prospects of rehabilitation because they will continue to develop and mature.

155. Step 4 – *Reduction for guilty plea*. This is not relevant in this case. It is, however, worthy of note that the guideline contemplates that the provisional Step 1 and 2 decision about seriousness could be revised at this stage, even if the personal mitigation at Step 3 has not altered it. It says: “the reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example, by reducing a custodial sentence to a community sentence.” None of these offenders had pleaded guilty to any of the rape offences and therefore had deprived themselves of the chance that a custodial sentence might be reduced to a community sentence on that ground.
156. Step 5 – *Review the sentence*. The title of this step implies that the court must have arrived at a provisional sentence by now, because otherwise it cannot “review” it. The factors at Steps 3 and 4 have not been enough to dislodge the initial decision that this is a case where a non-custodial sentence is not “possible”, but that is not the end of the exercise. The court must review that, going through the other options in ascending order of seriousness, and must reject them as not “possible” before it can properly come to the conclusion that a custodial sentence is the only “possible” outcome (or “unavoidable”) and move on to the question of length.

P. The Result: Z

157. Although the judge did not reason his sentencing process exactly in line with our explanation of the stepped process and actually concluded, in the case of Z, that his offence of rape did not reach the custody threshold, in our judgment his sentence of Z was properly justified. It should have been expressed as a result of the Step 5 Review following a determination at Steps 1 and 2 that his offending passed the custody threshold. This decision does not make a custodial sentence unavoidable. Z was involved only in the second incident, did not himself commit any offence of rape as principal, and was 13 at the time. He is a particularly vulnerable child. In his case it was reasonable to approach the case on the basis that he had joined a group which had committed the offences on the first occasion and was seeking to repeat that behaviour. Whether his involvement was due to “peer pressure”, or merely encouragement from others, it was reasonable to sentence on the basis that he did not originate this pattern of behaviour but joined it. His offending obviously did pass the custody threshold, but it was reasonable to decide that an alternative to custody in his case was “possible”, “suitable” or “justified”. This decision, in itself, embodies the real importance of sentencing children in a materially different way from adults. In his case, we decline to review the sentence imposed by the judge which was not unduly lenient. On the contrary, it was a perfectly proper sentence, including the imposition of a 10 year restraining order.

Q. The Result: X and Y

158. Our decision in the case of Z reflects the Attorney General’s proper acceptance that his case is in a different category from the cases of X and Y. We now turn to the outcome of those cases, which will turn on the Step 5 review, because up to that point in the assessment we are confident that the judge ought to have decided that the seriousness of these two incidents, taken together, was such that an immediate sentence of detention of not less than 2 years was required. The judge was clearly influenced by the time spent in custody and on bail subject to conditions, but in our judgment those were not substantial considerations when set against the factors which drove the sentencing through Steps 1-4. The guidelines do not suggest that they ought to be so regarded. In a marginal case, such considerations may be influential, but not here. The sentence should be imposed and such reductions as are allowed by law for time spent on remand should be made. The restrictions resulting from bail conditions may properly be taken into account, but should not be given excessive weight.
159. We will repeat here, for ease of reference, the words of the Child sexual offences guideline at Step 5, dealing with custodial sentences as part of the final review. It is clear from those words that the seriousness of the offences remained a critical consideration. It says (with original emphasis on “unavoidable”):

Custodial Sentences

If a custodial sentence is imposed, the court must state its reasons for being satisfied that the offence is so serious that

no other sanction would be appropriate and, in particular, why a YRO with ISS or fostering could not be justified.

Where a custodial sentence is **unavoidable** the length of custody imposed must be the shortest commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. The individual factors relating to the offence and the child or young person are of the greatest importance and may present good reason to impose a sentence outside of this range.

160. What the court is here required to state is “its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate”. That requires a review of the decision on seriousness at Steps 1 and 2. If that review does not change the opinion of the court, then it must say why. Here, in our judgment, the answer in the cases of X and Y was very clear. For all the reasons we have given, these offences, taken together, were so serious that, even for very young offenders such as these, a substantial sentence of detention was inevitable. The judge’s sentence was, in our judgment, not only lenient but unduly lenient.
161. We have no doubt that we should then exercise our discretion to interfere with the sentences imposed, allowing the Attorney General’s Reference in respect of X and Y. The sentences imposed on them by the judge will be quashed. The fact that we have determined that each separate incident of multiple rapes in public against a child should have been categorised as a 2A offence, and that taken together would have resulted, for an adult, in sentences “well into double figures” (see [127] above) illustrates the very grave seriousness of these crimes.
162. Parliament has determined by section 231 of the Sentencing Act (see [109]) that these sentences must be “for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of— (a) the offence, or (b) the combination of the offence and one or more offences associated with it”.
163. We have also been invited to review the judge’s determination that these offenders should not be treated as dangerous offenders for the purposes of that particular sentencing regime. In this respect, the judge’s decision was entirely conventional and in line with authority as our citation from *Lang* and *Davis* at [135] and [136] above makes clear. The age of the offenders is critical here, because their youth carries with it the real prospect of development, maturity and rehabilitation. This does not mean that there is no risk that they will ever

offend again, only that the risk is not so high that they should now be dealt with by means of an extended sentence. Of course, any future offending will be dealt with by a court which is fully aware of this case.

164. In our judgment, the shortest sentences which can be imposed on X and Y are sentences which total 4 years' detention under section 250 of the Sentencing Act 2020. These sentences are less than half of the sentences which would have been imposed on adult offenders in the same situation. This is in accordance with the Principal guideline and the Child sexual offences guideline, set out above at [118] and [120]. Parliament has provided, by section 193(3)(b) of the Police, Crime, Sentencing and Courts Act 2022, that sentences of this length are never spent.
165. These sentences take into account the time spent subject to bail conditions and other restrictions to date, other than qualifying curfew and time already spent in youth detention. We have also made some modest allowance for the so-called principle of "double jeopardy".
166. In *Attorney General's References Nos 14 and 15 Of 2006 (Tanya French and Alan Robert Webster)* [2006] EWCA Crim 1335; [2007] 1 Cr App R (S) 40 (*French and Webster*) at [60] and [61], Lord Judge CJ, giving the judgment of the court, said:

"60.....this Court should have some regard to the distress and anxiety experienced by the defendant as a consequence of having his sentence re-opened and increased. The degree of distress and anxiety and thus the size of the discount will depend on the facts of the particular case.

61. The distress and anxiety is likely to be particularly great where the decision of this Court results in a defendant being placed in prison where originally no custodial sentence was imposed, where a custodial sentence has been completed, where the defendant is young and immature or where the defendant was about to be discharged from prison. In all of these cases the distress and anxiety caused by the double jeopardy is likely to be significant when weighed against the original offending. The authorities show that in such circumstances discounts for double jeopardy tend to be granted that are near the upper end of the range."

167. In *Attorney General's Reference No, 45 of 2014 (R v Afzal and Malik)* [2014] EWCA Crim 1566 (*Afzal and Malik*), the court, presided over by Lord Thomas CJ, returned to the subject and said:

"18.....It is evident that the more recent practice of the court has been that it does not refer to the absence of any reduction for "double jeopardy" where there has been no reason to make any reduction. As both counsel have submitted, it is pointless for this court to deal with the principle if it does not arise; the practice is therefore entirely proper.

19. That practice also reflects the more recent practice of this court in applying the guidance given in *Attorney General's Reference Nos 14*

and 15. It reflects changes that have occurred in our sentencing regime, including:

(1) As a result of the work of the Sentencing Guidelines Council and of the Sentencing Council, there is much greater clarity and uniformity in relation to sentencing for most offences. The starting points and ranges are set out in clear, comprehensive guidelines.

(2) Where a judge has departed from those guidelines without explanation or good reason, it should be readily apparent to the advocate advising an offender that the sentence might be referred to this court. Advocates no doubt advise of that risk.

(3) Rapid consideration is given to any sentence by the Attorney General so that it is quickly referred to this court.

(4) This court is more conscious of the position of victims than it was in 2006.”

20. For those reasons, therefore, although the principle of “double jeopardy” remains for consideration in the kind of case identified in Attorney General’s Reference Nos 14 and 15, subject to the observations we have made, the practice has evolved that no reference is made to it, save in the category of case in which it is likely to arise. For the reasons we have endeavoured to state, those cases have become, and are likely to remain, rare. In the instant case no submission has been made on the principle of “double jeopardy”. It does not arise. We have dealt with the issue only to explain why we would not have referred to “double jeopardy” and why this court will not do so in cases in the future where there is no question of the consideration of “double jeopardy”.”

168. It is apparent, as might be expected, that sentencing practice in dealing with the jurisdiction to review unduly lenient sentences has developed over time, and in response to changes in sentencing practice more generally and in response to the need to ensure that the criminal justice system retains the confidence of the public. Although approving *French and Webster* in part, *Afzal and Malik* represented a significant change. It is now time to say that “discounts for double jeopardy” are no longer made in the mechanistic way suggested by the expression “the upper end of the range” in *French and Webster*. In cases of the kind mentioned in that case, where a young person is sent into custody having wrongly been given a non-custodial sentence in the Crown Court, this will clearly cause additional distress. It will also usually involve a period of time before the reference is determined, during which the offender has been subject to some obligations as a result of a community disposal. Where they arise, these are factors which this court will take into account in fixing the length of the custodial sentence but the court will not do that by deducting some specific period of time from what would otherwise have been the sentence.

169. In this case, those factors do arise and the court has taken them into account. Balanced against them is the fact that X and Y were represented at trial by extremely experienced legal teams who will, we are sure, have ensured that they were aware at once of the risk that these sentences might be referred. Further, the Attorney General took his decision to refer them very quickly and the offenders were aware of it then. Finally, because of the ages of the offenders, the hearing of the Reference was expedited. The whole process has taken about 5 weeks. This tends to reduce the importance of the factor which is called “double jeopardy” in this case. We would suggest that the phrase “double jeopardy” is unhelpful; it is better simply to describe this factor as additional mitigation where it applies (which will be rarely).
170. We add in this context that the Victims and Courts Act 2026 has relaxed the strict 28 day time limit for applications by the Law Officers to refer sentences as unduly lenient sentences. The importance of the time limit was emphasised in *R. v Ahmed (Syed Minhaz)* [2024] EWCA Crim 306. We would simply note that the rapidity of the process in this case has been a material factor, and that in cases where there has been substantial delay at any stage, even if permitted under new time limits, the “double jeopardy” factor is likely to be more potent.
171. For the reasons given, we consider that neither a youth rehabilitation order nor a detention and training order is suitable, see section 251(2). The sentence of detention under section 250 is not available for the offences contrary to section 1(1)(a) of the Protection of Children Act 1978, because the maximum sentence for those offences is 10 years, and the offences are not listed in the Table in section 249 of the Act which identifies the offences for which section 250 sentences are available. By virtue of section 249, an offence may result in a sentence under section 250 if the offence (i) is not an offence for which the sentence is fixed by law, and (ii) is punishable in the case of a person aged 21 or over with imprisonment for 14 years or more. For those reasons, the sentences imposed by the judge for the offences contrary to the Protection of Children Act 1978 are quashed, and we impose no separate penalty for them. As we have made clear, the conduct of X and Y in filming, or causing to be filmed, the rapes during both incidents has been fully taken into account in assessing the seriousness of the rapes.
172. The sentences of 4 years’ detention imposed on X and Y are the same in each case. This is to reflect the fact that Y was convicted of more offences than X, and took a very prominent role in both incidents after any consent to activity with X had clearly not extended to any activity with Y or any further activity with X. It also reflects the fact that Y is a more vulnerable child than X and suffers from more serious conditions which affect his level of insight and culpability. These two factors, one increasing sentence and the other mitigating it, cancel each other out which is why the sentences on Y are the same as those on X.
173. We also consider that the restraining orders (preventing any contact with C1 and C2) for 10 years imposed on each of X and Y were unduly lenient, bearing in mind the vulnerability of and degree of harm caused to C1 and C2 and the limited nature of the restraint (which only prevents contact with C1 and C2). Indefinite restraining orders (until further order) are both necessary and

proportionate. We recognise that the restraining orders will therefore be disclosed on both basic and enhanced Disclosure and Barring Service checks on X and Y. However, as explained above, the sentences of detention that we have imposed on them will never be spent in any event.

R. Conclusion

174. In the case of Z, the Attorney General's Reference is dismissed. The sentences imposed by the judge on Z were appropriate and not unduly lenient.
175. In the cases of X and Y, the Attorney General's References are allowed. We respectfully disagree with the judge's conclusion that a sentence of detention under section 250 of the Sentencing Act 2020 was avoidable. The judge carried out with care a difficult and complex sentencing exercise. In the event, however, he materially undervalued the seriousness of the offending by X and Y, including that the offending involved multiple rapes involving two victims on separate occasions and the serious harm caused to the victims. We quash the sentences on X and Y as being unduly lenient and impose in their place on each offender concurrent sentences of 4 years' detention under section 250 of the Sentencing Act 2020 on each of the counts of rape. There will be no separate penalty in respect of the production of indecent images for the reasons given above.
176. The restraining orders on X and Y are quashed and replaced with restraining orders for an indefinite period. Given the sentences that we have imposed on them, X and Y will also now be subject to notification requirements in accordance with section 80 of the Sexual Offences Act 2003 for an indefinite period. All other orders made by the judge remain in place unaltered.
177. As noted at [71] above, both X and Y spent a period of time on bail subject to a qualifying curfew. In respect of X, we certify that he has spent 461 days subject to a qualifying curfew and therefore direct that 231 days will count towards his sentence. In respect of Y, we certify that he has also spent 461 days subject to a qualifying curfew, and therefore direct that 231 days will count towards his sentence. The time during which both boys were remanded into youth detention will count automatically towards time to be served.

S. Publicity and comment on the sentences

178. Separately, we need to address an important and discrete matter relating to the administration of justice more generally.
179. It is a matter of significant concern to us that these events have become a matter of intense public debate before the legal process has concluded. Ms Wade KC and Mr Evans, on behalf of X, put the matter this way:

“...Regrettably, inaccurate reporting has encouraged inappropriate commentary within the media with inevitable consequences. [X] has felt unable to leave his home for fear of being the victim of discrimination and/or violence. The trial Judge has been wrongly vilified by the public. It is submitted that if any of the persons involved

in this process (however great or small) had spent even a day in Court during the trial and witnessed firsthand the impeccable conduct of [the judge] throughout these proceedings they would almost certainly be embarrassed.”

180. The dangers of public comment by members of Parliament, the media and others on matters still proceeding through the courts and tribunals are self-evident, the most obvious being the risk of proceeding on the basis of an inaccurate or incomplete understanding of the facts (and the law).
181. The executive, through the Attorney General, has a power under the Criminal Justice Act 1988 to bring a case to this court where he considers that an unduly lenient sentence has been imposed. In these cases, he exercised his power and did so properly. We doubt whether any part of that decision-making process is assisted by it becoming a matter of political debate in and beyond the House of Commons. It is not suggested that judges’ decisions are immune from wider criticism and scrutiny. But the independence of the judiciary, and the security of individual judges, requires that Parliament refrains from criticising individual judges.
182. The judge was unable to publish his sentencing remarks in full at the time when he passed sentence, although his sentencing notes were available to the parties. During the period before his full sentencing remarks were made available, there was a good deal of inaccurate reporting, which fuelled misinformed political and other public commentary.
183. The single most egregious example of this was perpetrated by a press release by the Crown Prosecution Service (CPS), which the Attorney General superintends. The CPS was responsible for the prosecution of this case and instructed prosecution counsel who were present at the sentencing hearing, and heard the judge’s sentencing remarks. Not all media outlets now rely on their own skilled and specialised court reporters who can provide accurate and well-informed reports of legal proceedings. It is, therefore, of particular importance that the CPS, and others present at court proceedings, should ensure that what they say about what has happened is, to quote section 4(1) of the Contempt of Court Act 1981, “a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith”.
184. On the day of sentencing, 21 May 2026, the CPS published a press release. This was not a spontaneous, or unplanned, comment, but rather a formal press release. It opened with the statement that the three offenders had been sentenced “after they were convicted of a knife point rape and other serious sexual offences....” It went on later to say that C2 had been “threatened with a knife and forced to leave her mobile phone and Airtag in a shop so that her movements could not be tracked...”
185. Both statements were inaccurate. On the judge’s findings, there was no knife-point rape and, as captured on CCTV footage, C2 had left her mobile phone and Airtag in a shop of her own accord. The statements portrayed the offending as even more serious than it already was.

186. These very significant errors were not corrected until 10 June 2026. On that day the press release was re-published, beginning with this lowkey correction (not otherwise publicised, to the best of our knowledge):

“NB: A previous version of this press release made reference to a knife-point rape to represent the evidence put to trial. However, the Judge’s finding of fact in this case after verdicts stated that, after carefully listening to all the evidence in this case, that he is sure that this did not happen. He also made a finding of fact that the boys did not force one of their victims to leave her phone and Airtag in a shop so that her movements could not be tracked.”

187. It is difficult to understand how these errors were committed in the first place, and then difficult to understand how they were not corrected as soon as inaccurate reports in the press and elsewhere (referring, amongst other things, to a “knife-point rape”) emerged. This is all the more so when, so we learned for the first time during the hearing, Mr Evans for X (on 27 May 2026) contacted prosecuting counsel and Mr Henry KC for Y (on 28 May 2026) contacted the Attorney General’s office, expressing their concerns about the inaccurate reporting (though not referring expressly to the CPS press release) and its consequences. The prosecution and the Attorney General were invited to correct publicly the inaccuracies and to prevent widespread repetition of the inaccuracies.
188. Prosecution counsel raised these and her own concerns with the CPS on 28 May 2026. The CPS acknowledged her communication but we do not presently know what, if any, action was taken. The Attorney General, through Mr Little, has informed the court that he was not personally aware of the inaccurate press release until yesterday, and that the CPS will be asked to provide the court and him with a full written letter of explanation. We await that.
189. Upon receipt, we will consider what further steps, if any, may be necessary. Our concern is not confined to the press release, its inaccuracy and the delay in correction, but is also about the failure on the part of those with statutory responsibility for the prosecution of these cases and for these References to correct the immediate widespread misreporting of important factual aspects. Without a fuller picture, we are unable to express any further views or reach any conclusions at this stage.
190. The judge’s finding on whether a knife was used to coerce or threaten C2 was made by comparing her evidence (to the effect that a knife was used) with CCTV footage which did not show a knife at all. This applied to stages when, if C2’s evidence was right, a knife should have been visible. This was a live issue during the trial and not some incidental matter. We have summarised the evidence about what she did with her Airtag at [35] above. This summary is taken from the Reference in this case, in which the Attorney General sets out the facts of the case as agreed by all parties. Any neutral and informed observer of the trial knew that the statement that the rape of C2 happened at “knife-point” was disputed on strong grounds. Any neutral and informed observer of the sentencing hearing knew that the judge had made a rational

and well-supported finding on this issue, in favour of the offenders. No fair and accurate report of the sentencing proceedings could describe the rape of C2 as having happened “at knife-point”.

191. There was no risk of a substantial risk of prejudice to the administration of justice in these proceedings by the false report that one of these rapes was carried out “at knife-point”, because this court would not be influenced by any such mis-information. Those affected by it are the offenders, against whom public feeling has been further inflamed, and C2, whose evidence on this issue has been examined under the full glare of publicity. This may tend to obscure the fact that, on the main issue, namely whether or not she was raped, the jury believed her.