

Neutral Citation Number: [2026] EWCR 10

Case Number: A2026/0021/22/23

**IN THE CROWN COURT AT WOLVERHAMPTON
ON REFERENCE BY THE CRIMINAL CASES REVIEW COMMISSION**

Wolverhampton Crown Court
Wolverhampton, WV1 2LQ

Date: 7 October 2026

Before:

**THE HONOURABLE MR JUSTICE CHOUDHURY
and
MS NORMA GRANT JP**

Between

**1) LIAM BENNETT
2) LUKE INGS
3) JAMES WARD
- and -
THE KING**

Appellants

Respondent

Muin Boase (instructed on behalf of) for the **1st Appellant**
Annie Fendrich (instructed on behalf of) for the **2nd Appellant**
Stephen Grattage (instructed on behalf of) for the **3rd Appellant**
Louis Mabley & Lyndon Harris (instructed on behalf of CPS) for the **Respondent**

Hearing date: 6 & 7 October 2026

Sentencing Remarks

MR JUSTICE CHOUDHURY :

1. **Mr Bennett, Mr Ward, Mr Ings: Please stand.** The Criminal Cases Review Commission (“CCRC”) has referred your sentences to this Court for reconsideration. I am going to tell you straightaway what your sentences are before going on to explain how we reached them.
2. In your case Mr Bennett, you were originally sentenced to Detention in Young Offenders Institute for Public Protection (“DYPP”). We have decided to cancel that indeterminate sentence. We will impose instead a determinate sentence of detention for 4 years and 264 days.
3. In your case Mr Ward, you were originally sentenced to Imprisonment for Public Protection (“IPP”). We have decided to cancel that indeterminate sentence. We will impose instead a determinate sentence of 2 years’ imprisonment.
4. In your case Mr Ings, you were originally sentenced to Detention for Public Protection (“DPP”). We have decided to cancel that indeterminate sentence. We will impose instead an extended sentence of detention of 6 years comprising a custodial term of 42 months and an extended licence period of 30 months.
5. You have all already spent considerably longer than those sentences in custody. The effect of our sentences is that you Mr Bennet and Mr Ings will be entitled to be released without further supervision and you Mr Ward, will no longer be subject to supervision.
6. It is going to take me some time to explain why we have reached those sentences. You may sit down for now.

CCRC Referral

7. The sentences of Liam Bennett, James Ward and Luke Ings (together the appellants) have been referred by the CCRC to the Crown Court under s.11(1)(b) of the *Criminal Appeal Act 1995*. Initially, each case was referred to the Crown Court centre at which the sentence was imposed, those centres being respectively, Wolverhampton, Leicester and Reading. At the direction of the Senior Presiding Judge in consultation with the Presiding Judges of the Midland and Southeast circuits, these cases were directed to be heard together before a judge of the High Court.
8. These cases involve challenges to sentences imposed as long ago as 2006, under the *Criminal Justice Act 2003* regime for dangerous offenders as it existed at that time. The regime in its original form operated from 4th of April 2005 to 13th July 2008. I shall refer to the relevant legislation during that period as the “first iteration” consistently with the approach taken by the Court of Appeal (Criminal Division) in *R v Davis* [2026] EWCA Crim 743. All three sentences that are the subject of this referral were passed under the first iteration.
9. The effect of a referral of a sentence pursuant to s.11(1)(b) of the 1995 Act is that the matter is to be treated for all purposes as an appeal to the Crown Court against sentence under s.108(1) of the *Magistrates Court Act 1980*. An appeal to the Crown Court against sentence is a rehearing of the matter. As to the question to be asked by the Court, as stated in **Dyson v Ellison** [1975] 1 WLR 150 at 154:

Appeal to the Crown Court against sentence is a re-hearing just like any other appeal from the justices to the Crown Court, ...

I think that the Crown Court on an appeal against sentence again is asking itself: " Should this man be sentenced differently? " The only way in which one can decide that is to decide how he ought to be sentenced and then to see to what extent, if at all, that differs from the order made in the court below. If it differs to a significant degree, then the appeal should be allowed to that extent."

10. As will be apparent from the discussion below, a key question in this appeal will be whether, on the basis of the material before the Court, "*there is a significant risk to members of the public of serious harm occasioned by the commission by [the Appellant] of further specified offences*": see s.229 of the 2003 Act (first iteration) In other words, was the Appellant "dangerous"? I shall return to the Law in more detail below.

Constitution

11. In the usual way, an appeal against sentence should be heard by a Judge of the Crown Court sitting with two lay magistrates. Two magistrates were allocated for yesterday's hearing. However, one of them was taken ill and has been unable to attend. It was decided after discussion with Counsel that the Court should, pursuant to its powers under CPR 34.11(2), proceed to sit with just one Magistrate in order to avoid unreasonable delay. Accordingly, I sit in this matter with Magistrate Norma Grant.

Counsel

12. I have been greatly assisted in this matter by oral and written submissions from Counsel: Mr. Louis Mably KC and Mr Lyndon Harris for the Crown, Mr Muin Boase for Bennett, Ms Annie Fendrich for Ings and Mr Stephen Grattage for Ward. I am most grateful to them for their assistance yesterday which has enabled this referral to be dealt with in the time allocated.

Facts

13. I deal briefly with the facts in each case beginning with Bennett. I shall be referring to each defendant by their surname for ease. I should make it clear that I mean no disrespect by that.

Bennett

14. On the 8th of August 2006, Bennett then aged 18 was convicted of the following offences:
- i) Arson being reckless as to whether property would be destroyed or damaged contrary to section 11 and three of the criminal damage act 1971 - Convicted after trial;
 - ii) Criminal damage X2 (Section 1 one of the criminal damage act 1971) - guilty pleas;
 - iii) Burglary of a dwelling X2 (s.9(1)(b) of the Theft Act 1968) - guilty pleas
 - iv) attempted dwelling burglary X2 Section 1 of the criminal attempts act 1981 and section 91-A of the Theft Act 1968 - guilty pleas;
15. Bennett was also dealt with for breach of a conditional discharge imposed for an earlier offence of arson.
16. On 24th May 2007, Bennett was sentenced to detention in a young offender institution for public protection with a minimum term of two years and 82 days. He has in fact remained in custody since the date of his sentence. He is now aged 37 (DOB 21 July 1988).

17. The CCRC has referred the sentence imposed upon Bennett to the Crown Court on the basis that the CCRC considers that there is a real possibility that the sentence imposed would not be an indeterminate sentence. The CCRC's written Statement of Reasons contends:
- i) that the principles underpinning the dangerousness regime as they are now understood would, if applied at the time, have resulted in a different sentence being imposed;
 - ii) the sentence has had a negative impact upon Bennett's health;
 - iii) the sentence served is disproportionate to the offending;
 - iv) the learned judge omitted to apply principles of sentencing youths;
 - v) if released Bennett would be subject to licence and thus the injustice is current and ongoing; and
 - vi) the learned judge erred in his assessment of dangerousness.

Arson

18. The arson offence occurred on 14 July 2006. Bennett was aged 17 years. He set alight various items of property in the loft space of an unoccupied dwelling which belonged to Dudley Council; there was damage to the windows and pipework. The adjoining property was occupied by a family with young children who were unharmed. The offence resulted in £3,000 of damage being caused to the property.

Criminal damage

19. The criminal damage offences were committed between July 2006 and January 2007. Bennett was then aged 18 years. On the first occasion, he attended his stepsister's property and upon finding that she wasn't there, damaged a door panel. On the second occasion, in December 2006, he argued with his stepfather. Thereafter, he damaged nine motor vehicles parked outside the house by kicking and punching them.

Burglary

20. The various burglary offences were committed in February 2007, involving Bennett spraying detergent over the walls and furnishings of the property. Additionally, small low value items and alcohol were stolen from the properties.

Antecedent record

21. Bennett was convicted of arson on 6 March 2001, when he had set fire to a bin in an empty room at a derelict clinic when aged 12. For this, and three further offences of criminal damage when aged between 12 and 14 he received reparation orders and compensation orders.
22. When aged 15, in May 2004, Bennett was convicted of battery, criminal damage and four offences of assault occasioning actual bodily harm. He received an 8-month Detention and Training Order. It is understood that this related to a time when he was in custody.
23. In February 2005 (when aged 16), he was convicted of two offences of robbery and three offences of attempted robbery, for which he received a 24-month Detention and Training Order.

24. In February 2006 (when aged 17), Bennett set fire to his cell. He was given a conditional discharge of 12 months. A psychological report suggested that the motivation for the offence was a desire to engineer a move to another location. In April 2006, he was convicted of abusive and disorderly behaviour.

Pre-sentence report

25. The CCRC's statement of reasons summarises the conclusions of the pre-sentence report writer. Particularly relevant are the following passages:
- i) Bennett was considered to have a high risk of conviction, pose a high risk of harm to the public and that the harm risked was of serious harm – he therefore met the 'dangerousness' test;
 - ii) he minimised behaviour or failed to take responsibility for it, and also attributed his conduct to heavy consumption of alcohol; and
 - iii) he had been diagnosed with Asperger's Syndrome and Attention Deficit Hyperactivity Disorder.
26. A psychiatrist, Dr Hourani, noted that although he could not detect any sign of mental illness, Bennett had been "very disadvantaged by his background and by psychiatric problems" which had started from an early age, and sometimes his behaviour would fit the diagnoses of Conduct Disorder, ADHD or Aspergers Syndrome. Dr Hourani stated that it was difficult to assess his risk to others but that there was "*probably a risk to others*". Notwithstanding that, Dr Hourani recommended that he be made the subject of a Probation Order to address his community rehabilitation and it was felt that he would benefit from such a programme, to which he would be "amenable".

Sentencing remarks

27. Bennett was sentenced by HHJ Webb at Wolverhampton Crown Court. In relation to the offences and his background, the judge noted:

- i) Bennett had a dreadful criminal record despite his young age, specifically noting that he was aged 17 when the arson offence was committed (SR, page 2B);
- ii) He committed a further offence a few days later while on bail (SR, page 2C);
- iii) There was an absence of remorse and a refusal to take responsibility for his actions (SR, page 2E-G);
- iv) He drank alcohol excessively and used drugs (SR, page 2F);
- v) He was “disturbed” but there was nothing psychiatrically wrong with him (SR, page 2F-G);
- vi) He had Asperger’s Syndrome and ADHD but nothing that was medically wrong with him that was susceptible to treatment (SR, page 2G-H);
- vii) Bennett’s previous convictions included three offences of arson in five years (SR, page 3A-D);
- viii) The risk assessment scores in the PSR made for “bleak reading”, including that there was no motivation to desist from further offending (SR, page 3D-F);

- ix) The author of that report assessed Bennett as having a high likelihood of reconviction and a high risk of causing serious harm (SR, page 3F-G);
- x) The learned judge correctly identified that the presumption of dangerousness did not apply to Bennett, but noted that the persistent commission of serious, specified offences (i.e. those listed in Sch.15 to the CJA 2003 with a maximum sentence of 10 years or more, or life) showed no sign of ceasing (SR, page 3G-H).
- xi) The judge concluded that Bennett met the statutory dangerousness test for that reason, stating that there was an “obvious danger” that Bennett would go on to commit further offences of arson, had a “total disregard” for his and other people’s safety, and that he was prepared to commit serious damage by any means (SR, page 3H-4B).
- xii) The judge then applied section 225 of the 2003 Act, first considering but rejecting a life sentence on the basis it was not serious enough to merit such a sentence. The judge then concluded that he was required to impose a sentence of detention in a young offender institution for public protection (‘DYPP’) (SR, page 3C).
- xiii) The judge stated that the sentence would have been 5 years’ detention in a young offender institution, however, taking account of the guilty pleas and mitigation, and the early release provisions, and 100 days spent on remand, the minimum term would be 2 years and 82 days (SR, page 3C-F).

Appeal to the Court of Appeal

28. On 12 February 2018, Bennett applied for leave to appeal against his sentence. He was represented. Bennett had a psychological report which, at §9.1, concluded that he represented a high risk of future violence and a high risk “to the extent of causing serious harm to others if he were released on licence at the current time” (the report being dated in 2015).
29. In granting leave, the single judge determined that it was arguable that the sentencing judge did not take account as he should have the possibility that an extended sentence under section 227 of the 2003 Act would sufficiently meet the public protection need.
30. On appeal, the Court of Appeal (Criminal Division) (“CACD”) ([2019] EWCA Crim 629) held that as Bennett was aged 18 at the date of conviction, the terms of s. 225 (as they were at the time) gave the sentencing judge no discretion – the sentence of DYPP was mandatory. The appeal was dismissed, save that the record (which stated that the sentence was imposed under section 226 rather than section 225 as it should have done) was corrected.
31. The grounds of appeal did not seek to argue that the judge erred in finding Bennett to be dangerous. The Court did not therefore consider that aspect of the sentencing exercise.
32. The Court of Appeal did, however, express concern that “a situation had arisen whereby an individual aged 17 at the date of the commission of the offence of arson and 18 at the date of his conviction remains in secure conditions some 12 years later despite his tariff having expired many years ago.” The CACD commented that that the prolonged period of incarceration had itself become

counterproductive to Bennet's rehabilitation but recognised that any decisions that may facilitate his ultimate release were not for the Court.

Post-sentence information

33. The CCRC statement of reasons contains a description of Bennett's conduct in prison, including his movement to less secure and then open conditions, and then a transfer back to closed conditions following concerns about his drug use, possession of a mobile phone and a USB stick, as well as indications that he struggled to manage his anger and emotions.
34. Additionally, there is a 2021 psychological report which was prepared for the purposes of the Parole Board consideration of his release. It found that there was a moderate risk of violence including arson (see §7.1.6).

Ward: First iteration, over 18

Facts

35. On 27 February 2006, Ward was convicted by his guilty plea of an offence of arson. He was committed to the Crown Court for sentencing, and on 14 August 2006, he was sentenced to an IPP with a minimum term of 12 months, less 63 days on remand.
36. On 18 November 2005, when aged 20, Ward was serving a 22-month sentence for an offence of assault occasioning actual bodily harm committed against his father. At around 11pm, the alarm in Ward's cell alarm was activated. When an officer attended the cell door, he saw water spilling out from underneath the door and could smell burning. Upon looking through the viewing glass, he saw flames and smoke.

37. Other officers assisted and entrance to the cell was gained. A torn-up mattress had been placed against the door and there were other items over the floor impeding entrance. There was a significant quantity of smoke inside the cell. Ward obeyed instructions to lie down on the floor, but as officers removed him from the cell he began to struggle. He continued to struggle once removed from the cell and had to be restrained. There was fire damage to the mattress, rubbish bin and the floor. In addition, the sink had been pulled away from the wall causing the water to escape.
38. He was released from custody and then arrested and interviewed. He made admissions, including that he had ripped the blanket up and tried to hang himself but could not go through with it. He then set fire to his trousers and tried to set fire to the mattress and quilt cover near the door. He kicked the sink to use the water to put the fire out, but the smoke became thick. He thought that he was going to die and was very scared. He was suffering from stress at the time and could not cope; he wanted attention.
39. He pleaded guilty at the magistrates' court and was committed to the Crown Court for sentencing.

Antecedent record

40. He had numerous previous convictions:
- i) Theft offences x 7 (2002-2004)
 - ii) Common assault (2003)
 - iii) Offences relating to courts x 10 (2003-2004)

- iv) Assault occasioning actual bodily harm (2004)
- v) Possession of cannabis (2004)

Pre-sentence report and medical reports

- 41. The pre-sentence report noted that Ward's motivation to address his offending behaviour was low and there was a lack of prior engagement with probation. There was a history of domestic abuse at the hands of his father and evidence of sexual abuse when he was a child. The author assessed Ward to be of high or very high risk of reoffending, and that the risk posed to the public was high. The author concluded that he met the test for dangerousness.
- 42. The sentencing court had the benefit of three psychiatric reports (albeit one appears to be unlocated). One report noted that there had been increasing concerns in March 2006 regarding his mental health, namely paranoia and passive suicidal ideation.
- 43. As a result, he was prescribed anti-psychotic medication and responded well. Ward was diagnosed with emotionally unstable personality disorder and dissocial personality disorder. There was no evidence that he was psychotic at the time of the offence. The report considered that the imposition of a custodial sentence would likely lead to a deterioration in his mental state and behaviour. It was noted that while in custody he had engaged in self-harm, whereas there was no evidence of this in the community.

Sentencing remarks

44. On 14 August 2006, Ward was sentenced in the Crown Court at Leicester by HHJ Head. The minimum term imposed was 12 months, less 63 days spent on remand.
45. The pertinent passages of the remarks are as follows:
- i) Ward was now aged 21 years (page 1B);
 - ii) He had pleaded guilty at the first opportunity (page 1B-C);
 - iii) The judge accepted that Ward was shocked and scared by the flames/smoke as a result of setting fire to the mattress (page 1D);
 - iv) Prison officers had to come to his aid, and after complying initially, then began to resist (page 1D-E);
 - v) He had told a psychiatrist that the motivation was to get out of the cell because he felt he could not cope in there (page 1F-G);
 - vi) The judge accepted that he had not begun to think about the danger that his actions may cause (page 1F-G);
 - vii) The offence was not deliberate or reckless endangerment of life but nonetheless was an impulsive action without regard to the danger to himself (page 2A);
 - viii) Due to his previous convictions, the law required the judge to assume that he was 'dangerous' within the meaning of the Act unless it was unreasonable to do so (page 2C-F);

- ix) In reaching the conclusion that it was not unreasonable to do so, the judge had regard to the escalating seriousness of his convictions (page 2E-F);
- x) He had a personality disorder and a history of precarious mental health, but no medical disposal was suitable (page 3A);
- xi) Medical reports found that he had a tendency to act impulsively and violently (page 3B-C);
- xii) The fact that the capacity to act impulsively without thinking through the consequences was sufficient to satisfy the statutory test (page 3F);
- xiii) The risk factors were such that it would not be unreasonable to apply presumption (page 3F-G)
- xiv) The sentence would have been 2 years after a trial, to account for the early guilty plea, the mitigation and his young age (page 4C-D);
- xv) Time on remand would be deducted (page 4D).

Appeal to the Court of Appeal

- 46. Ward sought leave to appeal against the sentence in 2021, requiring a significant extension of time in which to do so. The single judge refused the application.
- 47. Ward renewed the application before the Full Court (see [2012] EWCA Crim 2308). Leave was refused, the Court finding that there was “abundant material” before the Judge to justify the conclusion of dangerousness.

Post-sentence information

48. Ward had been released in 2017 and spent about one year in the community before being recalled. He was the subject of allegations of domestic violence; ultimately, he was not charged with any domestic violence offence but was convicted in respect of possession of an offensive weapon (2018, 4 months' imprisonment). He was then re-released and subsequently re-convicted of an offence of assault by beating of an emergency worker (2020, 4 months).

Ings: First iteration, under 18

Facts

49. On 22 March 2006, when aged 17, at East Berkshire Youth Court, Ings pleaded guilty to offences of robbery (x2) and battery (x2). He was committed to the Crown Court for sentence where offences of robbery (x2 substantive, x3 attempts) and assault occasioning actual bodily harm were taken into consideration. He was sentenced to DPP, with a minimum term of 21 months (less 81 days spent on remand) in respect of all offences.

Assault by beating (x2)

50. At around 2100 on 2 December 2005, a group of four 15-year-olds (two girls and two boys) were sitting near the window of a McDonald's restaurant. Ings was outside the McDonald's. He banged on the window and shouted and swore at the four children. One of the girls made a rude gesture towards Ings. He lost his temper, entered the restaurant and, despite the girl apologising several times, he punched the two boys hard in the face.

Robbery (x2)

51. At around 1845 on 31 January 2006, two 16-year-old males were confronted by Ings in an underpass. He asked them the time, and when V1 took out his phone,

Ings demanded it from him. V1 refused and so Ings grabbed him, threatened to headbutt him and twisted his hand. V1 escaped and the two tried to walk away. Ings pursued the two boys and then grabbed V2 and demanded his phone, which he duly handed over. Ings then turned to V1, again demanding his phone and threatening to headbutt him. V1 refused and so Ings headbutted him, held him up against the wall and demanded his phone. V1 offered to give Ings £20. Ings took it before punching him in the face. Two other males then entered the underpass, and Ings told them that one of the victims had a wallet. One of those males punched V1 and tried to take his wallet but V1 and V2 managed to run away.

Offences taken into consideration

52. Six offences were taken into consideration:

- i) Three street robberies committed on 27, 28 and 29 January 2006. These targeted teenagers with mobile phones and involved some limited force (grabbing) and threats of further violence.
- ii) Two attempted street robberies on 29 and 31 January 2006. These involved grabbing and threats. The latter incident was shortly before the other robberies (and took place in the same location).
- iii) An assault occasioning actual bodily harm on 30 January 2006 where Ings and another male assaulted the 18-year-old male victim following a couple of confrontations (instigated by Ings and his accomplice) and the male refusing to “go for a walk” with them. The victim suffered bruising, swelling and bleeding. Ings commented in interview that: “He

should have died. We bashed him up”. Ings also suggested that this was related to a previous incident where the victim had been the aggressor.

Antecedent record

53. Ings had relevant previous convictions:

- i) Three common assaults (2002, supervision order (young offenders))
- ii) Burglary (2002, referral order subsequently varied to a supervision (young offenders) order)
- iii) Criminal damage (2004, conditional discharge)
- iv) Racially aggravated threatening behaviour which involved threats of violence towards a security guard (2004, 8-month DTO).

54. He had also received a final warning in relation to two common assaults in 2001.

Pre-sentence report and psychological report

55. The pre-sentence report prepared for sentencing identified the following factors:

- i) A lack of remorse and a total disregard for victims
- ii) Ings was impulsive and aggressive
- iii) Ings had a pattern of aggressive behaviour
- iv) He was unpredictable and posed a high risk of reconviction
- v) He was unwilling to undertake work in the community to address his offending behaviour

56. A psychological report identified that Ings had a conduct disorder of the “unsocialised aggressive type”, low frustration tolerance and poor impulse control.

Sentencing remarks

57. When sentencing, the judge (HHJ Smith) in unduly brief sentencing remarks, referred to the facts of the assaults in McDonald’s and, very briefly, the facts of the underpass robberies. She went on to set out the offences (but not the facts) to be taken into consideration.

58. The judge stated (page 2E-G):

Robbery is a serious offence, and it is the court’s opinion that you pose a significant risk to the public of serious harm caused by you committing specified offences in the future. In reaching this conclusion I have taken into account what I have read in the reports, the pattern of your current behaviour and the escalation in the amount of violence you have used towards younger people.

59. The judge stated that he was required by law to impose a sentence of DPP. The judge then said (page 2G-H):

Had it not been appropriate to do so the sentence I would otherwise have passed, having regard to the matters to be taken into consideration and taking into account your pleas of guilty and your young age, the sentences would have been for each of the robberies three and a half years concurrent and then four months on each of the assaults concurrent but consecutive to the three and a half years. That makes a total of 46 months.

60. The judge then reduced that by half (to reflect the early release provisions then in force). There followed a discussion around some technical issues with the sentence in respect of the other offences, and the sentence was reduced following a slip rule hearing to 21 months (less 81 days).

Appeal to the Court of Appeal

61. Ings appealed against sentence (see [2006] EWCA Crim 2811). The Court dismissed the appeal, noting:

- i) *“The sentencing judge was therefore faced, unhappily, with a 17-year-old (a few weeks short of his 18th birthday), whose violent behaviour had escalated alarmingly in the recent past. He was a young man with a dangerous unpredictability, absence of victim empathy, and no apparent remorse.”* (at [13])
- ii) Ings had made some progress in custody after a “diabolical start” (at [14])
- iii) A report prepared for the appeal (November 2006) concluded that there had not been a reduction in risk (at [15])
- iv) *“It seems to us that this young man still has a long way to go before he can be regarded as an acceptable risk to the public. It is unfortunately not possible to repose confidence in Miss Hughes' argument that, within the finite period of a determinate custodial sentence, there will be for the appellant a changing maturity and a sufficient change to present a manageable risk on licence. We consider that an extended sentence of detention would not provide adequate protection to the public and that in the result a sentence of detention for public protection was appropriate.”* (at [18]).

Post-sentence information

62. Ings remains in custody. There is a psychological report (2022) prepared for the Parole Board. The Court further notes that he received a diagnosis of autism spectrum disorder in 2014 and that this was upheld and supported in 2020.

The Law: CCRC referral to the Crown Court

63. In each of the three cases, guilty pleas were entered in the magistrates' courts/youth court, and the appellants were committed to the Crown Court for sentence. As a result of the conviction being other than on indictment, the Crown Court, rather than the Court of Appeal has jurisdiction to hear an appeal upon a referral by the CCRC.
64. This is different to the scenario where a defendant seeks to appeal against sentence imposed in the Crown Court upon a committal for sentence, which by virtue of section 10 of the 1968 Act lies to the Court of Appeal.
65. Under section 9 of the Criminal Appeal Act 1995, the CCRC may refer a sentence to the Court of Appeal only following conviction on indictment. Section 11 provides the CCRC with the power to refer a sentence to the Crown Court where the sentence was imposed on, or in subsequent proceedings relating to, a conviction in the magistrates' courts. That is what has occurred in the present case.
66. Such a reference is treated as an appeal under section 108 of the *Magistrates' Courts Act 1980*.
67. Section 11(6) of the 1995 Act provides:

(6) On a reference under this section the Crown Court may not award any punishment more severe than that awarded by the court whose decision is referred.

68. The Crown Court, in such circumstances, is not bound by an earlier decision of the Court of Appeal, albeit it may wish to consider that decision.

The Law: The dangerousness regime

General

69. The Criminal Justice Act 2003 created a regime for ‘dangerous’ offenders: section s.224 to 236. It still subsists today, albeit in a different form. There have been various iterations. However, the first iteration, applicable from 2005 to 2008, is the only one that is pertinent.
70. The scheme applied when an offender was convicted of a “specified offence”, that being defined by section 224 as an offence listed within Schedule 15 to the Act. Where an offender was convicted of such an offence, the sentencing judge was required to determine whether the offender was “dangerous”. An offender was “dangerous” if the court was of the opinion that there was “...*a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences*”.
71. “Serious harm” was defined by section 224 as death or serious personal injury whether physical or psychological.
72. The sentences available under the scheme were as follows:
- i) Life sentences: section 225 in the case of an offender aged 18 or over; section 226 in the case of an offender aged under 18.
 - ii) Imprisonment for Public Protection (‘IPP’), in the case of an offender aged 21 or over: section 225.

- iii) Detention in a Young Offender Institution for Public Protection ('DYPP'), in the case of an offender aged 18-20: section 225.
 - iv) Detention for Public Protection, in the case of an offender aged under 18 ('DPP'): section 226.
 - v) Extended sentence of imprisonment/detention: section 227 in the case of an offender aged 18 or over, section 228 in the case of an offender aged under 18.
73. The sentences identified above remained available under both the first and the amended iterations of the scheme. The principal differences between the two iterations related to whether the imposition of the sentences was mandatory or discretionary, and whether an offender aged 18 or over was to be assumed to be “dangerous”.

First iteration – aged under 18 at conviction (Ings)

74. Where a person aged under 18 was convicted of a “serious offence”, that being a “specified offence” with a maximum sentence of 10 years’ imprisonment or more, or a sentence of custody for life under section 91 of the PCC(S)A 2000, the court was required to proceed under section 226, a section which made provision for life sentences and DPPs.
75. The court was first required to determine whether the offender was “dangerous”.
76. If the offender was “dangerous”, the court was required to consider whether a life sentence was justified and if it was, the court was required to impose that sentence.

77. If the court did not impose a life sentence and considered that an extended sentence under section 228 would not be adequate for the purposes of protecting the public from serious harm occasioned by the offender committing further specified offences, the court was required to impose a DPP. It follows that before imposing a DPP, the court was required to consider the imposition of an extended sentence. If the court imposed a life sentence or DPP under this section, it was required to fix a minimum term.

First iteration – applicable to those aged 18 or over at conviction (Bennett; Ward)

78. Where a person aged 18 or over was convicted of a “serious offence”, that being a “specified offence” with a maximum sentence of 10 years’ imprisonment or more, or life imprisonment in the case of a person aged 21 or over, the court was required to proceed under section 225, a section which made provision for life sentences, IPPs and DYPPs.
79. The court was first required to determine whether the offender was “dangerous”.
80. If the offender was “dangerous”, the court was required to consider whether a life sentence was available and justified and if it was, the court was required to impose that sentence.
81. If the court did not impose a life sentence, the court was required to impose an IPP in the case of an offender aged 21 or over, or a DYPP in the case of an offender aged 18-20.
82. If the court imposed a life sentence or an IPP/DYPP under this section, it was required to fix a minimum term.

83. If the offence for which the offender was convicted was a “specified offence” but not a “serious offence”, the court was required to proceed under section 227 which made provision for the imposition of extended sentences. Again, the court was first required to determine whether the offender was “dangerous”. If the court concluded that the offender was “dangerous”, it was required to impose an extended sentence. As Bennett and Ward had been convicted of a “serious” offence, this section did not apply in their cases.

The ‘dangerousness’ test: s.229

84. The ‘dangerousness’ test remained unaltered throughout those two periods (albeit its application was the subject of amendment). The test, at all material times, was whether “...*there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences*”.
85. Between 4 April 2005 and 13 July 2008, section 229 provided that where the offender was aged 18 or over at conviction, and had a previous conviction for a specified offence, the Court must assume that the dangerousness test was satisfied, unless upon considering information before the Court, it would be unreasonable to make such an assumption. In the case of an offender aged under 18 at conviction, or where the offender did not have a previous conviction for a “specified offence”, the Court had to consider all information before it and determine whether the test was met.
86. "Serious harm" for the purpose of the regime was defined as death or serious personal injury whether physical or psychological. This was supplemented by s.229 of the Act which made further provision as to the assessment of

dangerousness, such as factors which must be taken into account when performing that exercise of judgment.

87. The test was to be applied at the date of sentence (as opposed to at some hypothetical point in the future when the offender may be released from custody): *R. v Smith* [2011] UKSC 37; [2012] 1 Cr. App. R. (S.) 83 at [14] to [16], as applied in *R. v MJ* [2012] 2 Cr. App. R. (S.) 73.

Case law on the application of the scheme

88. The Court in *R. v Lang* [2005] EWCA Crim 2864; [2006] 1 W.L.R. 2509 and *R. v Roberts* [2016] EWCA Crim 71; [2016] 1 W.L.R. 3249 provided clear and concise summaries of the operation of the dangerousness regimes as they applied between 2005 and 2008 (*Lang* and *Roberts*)
89. In *Lang*, the Court considered 13 otherwise unconnected cases raising issues pertaining to the 2005-2008 dangerousness regime.
90. At [15], in relation to the assumption of dangerousness that applied during the currency of the 2005-2008 regime, the Court said: “...*when sections 229 and 224 of the Act are read together, unless the information about offences, pattern of behaviour and the offender (to which regard must be paid under section 229(3) of the Act) show a significant risk of serious harm (defined by section 224 of the Act as death or serious injury) from further offences, it will usually be unreasonable to conclude that the assumption applies.*”
91. At [17], the Court said:

“In our judgment, the following factors should be borne in mind when a sentencer is assessing significant risk.

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

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

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

(iv) If the foreseen specified offence is not serious, there will be comparatively few cases in which a risk of serious harm will properly be regarded as significant. The huge variety of offences

in Schedule 15 of the Act of 2003, includes many which, in themselves, are not suggestive of serious harm. Repetitive violent or sexual offending at a relatively low level without serious harm does not of itself give rise to a significant risk of serious harm in the future. There may, in such cases, be some risk of future victims being more adversely affected than past victims but this, of itself, does not give rise to significant risk of serious harm.

(v) In relation to the rebuttable assumption to which section 229(3) of the 2003 Act gives rise, the court is accorded a discretion if, in the light of information about the current offence, the offender and his previous offences, it would be unreasonable to conclude that there is a significant risk. The exercise of such a discretion is, historically, at the very heart of judicial sentencing and the language of the statute indicates that judges are expected, albeit starting from the assumption, to exercise their ability to reach a reasonable conclusion in the light of the information before them. It is to be noted that the assumption will be rebutted, if at all, as an exercise of judgment, the statute includes no reference to the burden or standard of proof. As we have indicated above, it will usually be unreasonable to conclude that the assumption applies unless information about the offences, pattern of behaviour and offender show a significant risk of serious harm from further offences.

(vi) In relation to offenders under 18 and adults with no relevant previous convictions at the time the specified offence was committed, the court's discretion under section 229(2) of the 2003 Act is not constrained by any initial assumption such as, under section 229(3) of the Act, 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) 169 JP 662 .

(viii) It cannot have been Parliament's intention, in a statute dealing with the liberty of the subject, to require the imposition of indeterminate sentences for the commission of relatively minor offences. On the contrary, Parliament's repeatedly expressed intention is to protect the public from serious harm (compare the reasoning of the court in relation to automatic life sentences in *R v Offen* [2001] 1 WLR 25, paras 96–99).

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

Choosing between an IPP/DPP and an extended sentence

92. At [14] in *Lang*, in relation to the offenders aged under 18, the Court said, "*In considering sections 226 and 228 of the Act in conjunction, the fundamental question to be addressed by sentencers will be whether an extended sentence is adequate to protect the public.*"

93. In *Attorney General's Reference (No.55 of 2008)* [2008] EWCA Crim 2790; [2009] 2 Cr. App. R. (S.) 22; [2009] Crim. L.R. 221 at [14], the Court held that when exercising its judgment as to whether a sentence of imprisonment for public protection was necessary, or whether a determinate sentence or extended sentence was appropriate:

"...that the primary question is the nature and extent of the risk posed by the individual offender, and the most appropriate method of addressing that risk and providing public protection. If what we have described as the overall sentencing package provides appropriate protection, imprisonment for public protection should not be imposed."

94. The Court has, in a variety of cases, identified other factors which may at the date of sentence be relevant to the choice between a life sentence, an IPP/DPP and an extended sentence:
- i) the offender has begun to show limited remorse, insight, and a potential for change while on remand: *R. v Bryant* [2017] EWCA Crim 1662 at [8];
 - ii) an offender's suitability for, and willingness to participate in, treatment programmes: *Attorney General's Reference (No.134 of 2006) (R. v Bennett)* [2007] EWCA Crim 309; [2007] 2 Cr. App. R. (S.) 54 at [47];
 - iii) that young offenders are "*more likely to be responsive to any sentence imposed, and more likely to effect change*": *R. v Lang* [2005] EWCA Crim 2864; [2006] 1 W.L.R. 2509; [2006] Crim. L.R. 174 at [17].
95. In relation to young offenders and the capacity for maturation and change, it is relevant to consider the Sentencing Council's *Children and Young Offenders Definitive Guideline* and the comprehensive guidance in *R. v Peters* [2005] EWCA Crim 605; [2005] 2 Cr. App. R. (S.) 101, *R. v Clarke* [2018] EWCA Crim 185; [2018] 1 Cr. App. R. (S.) 52 and *R. v ZA* [2023] EWCA Crim 596; [2023] 2 Cr. App. R. (S.) 45. This provides that children and young person's continue to develop and mature up to, and beyond, the age of 18.

The recent decision in *R. v Davis and Others* [2026] EWCA Crim 743

96. In *Davis*, the Court of Appeal considered the application of the dangerousness regime, in its first and second iterations in the context of appeals and CCRC

referrals in respect of defendants who had been convicted of serious offences, some of whom were aged under 18 at the time.

97. The Court quashed all IPP/DPP sentences before the court (save in one case which was adjourned pending further information). Although they were decisions on their facts, the Court noted that the sentencing judges had variously made errors in the computation of their sentences:

- i) Misapplying the regime (incorrectly applying the presumption of dangerousness / finding that the sentence was mandatory instead of discretionary)
- ii) Failing to properly apply the principles set out in cases such as *Lang* and *Johnson*
- iii) Failing to consider lesser alternative sentences such as the extended sentence
- iv) Failing to afford appropriate weight/relevance to the age of the defendant
- v) Failing to set out in detail (or in some cases, at all) the basis for the findings leading to the imposition of the IPP//DPP sentence.

98. The CACD in *R v Davis* also said this in relation to relevance of post-sentence developments:

“49. Where the offender’s behaviour has given rise to concerns during the indeterminate sentence, the CACD must exercise caution. The very fact of being given an indeterminate sentence when a child or a young adult “may cause feelings of hopelessness. This will adversely impact upon his behaviour in custody”, Hamblen J at [18] of *R v AL* [2014] EWCA Crim

2511. This was also recognised in *Roberts*, where at [44] Lord Thomas CJ stated:-

“We are mindful of the substantial criticism that many years after the expiry of minimum terms, sometimes of a very short period, many sentenced to IPP remain in custody or have been recalled to custody for breach of their licence conditions. It is clear to us from the applications before us that:

i) the effect of a long term of imprisonment with no certain date of release is that in some cases it may increase the likelihood that an offender will offend again on release; and

ii) the effect of the license provisions will mean that offenders are subject to long periods of licence and, if they offend, are recalled—see for example *Roberts* (see [50]) and *Diveney* (see [147]).”

99. We have had regard to post-sentence developments in each of the cases before us today. However, for the reasons set out in *R v Davis*, we exercise caution and consider such developments to be of limited assistance in assessing what sentence ought to have been imposed in each case.

Submissions

Bennett

100. Mr Mably submits that just as HHJ Webb was entitled to conclude that Bennett met the statutory test for dangerousness, so too is that conclusion open to this court.
101. A finding of dangerousness means that the imposition of a sentence of DYPP was mandatory, and the Court should uphold that sentence
102. Mr Boase submits that, in assessing dangerousness, it is wrong to assume that the further specified offences would cause serious harm to members of the public, and that proper weight should be afforded to Bennett’s youth, lack of maturity and capacity to change. Account should also be taken of Bennett’s difficult childhood. Taking all of these matters into account leads to the

conclusion that Bennett was not dangerous, and a determinate sentence was more than adequate to address the risk in his case.

Bennett - Decision.

103. We refer to the facts of Bennett set out above. As in the cases considered by the CACD in *R v Davis*, Lang was available to the sentencing judge in Bennett. Several of the principles stated therein are of particular relevance here, in particular the need to ensure that the risk identified is “significant”; that in assessing the risk of further offences being committed, the sentencing Judge should take into account the nature and circumstances not only of the index offence but also previous offending; that even if the foreseen specified offence is serious it may be committed in a way that does not give rise to a significant risk of serious harm, the latter being defined as serious physical or psychological injury or death (s.224(3), 2003 Act); the need to bear in mind that Bennet was, both at the time of the offending and at sentence, still young and that he would change and develop within a shorter time than would an adult.
104. In our judgment, it is not evident from the Sentencing Remarks that these principles were borne in mind. A finding of dangerousness in the case of an 18-year-old under the first iteration gives rise to a mandatory indeterminate sentence (a discretionary life sentence being clearly inappropriate). As in *R v Davis*, that ought to have led the Judge to approach the question of dangerousness with great care, particularly in circumstances where neither the index offence nor the previous offending had resulted in serious harm.
105. The index offence was one of simple arson, a nasty offence, of which there is no doubt, but certainly far from the more serious end of the spectrum of arson

offences. The fires were set in the loft space of an unoccupied dwelling. There was no intention to harm anyone. We note that Bennet was not charged with reckless endangerment of life. The financial damage to the property was limited. Whilst it may be said that it was fortuitous that no harm befell those in neighbouring properties, it is relevant to note the absence of serious harm being caused by this offending.

106. It is evident from the Sentencing remarks that the Judge was somewhat struck by the fact of there being three arson offences within the space of 5 years. However, a careful analysis of the circumstances of each of those offences does not point to any concerning pattern of behaviour. The first arson offence was committed when Bennett was just 12 years of age. The extreme youth of Bennett at the time of this offence could be said to be sufficient in and of itself to disregard it as providing any sort of reliable guide to an assessment of future risk conducted 6 years subsequently. Moreover, the fire-setting in that instance was in a bin a derelict building. There is little to indicate any risk of serious harm to others let alone a significant risk.
107. There is then a 5-year gap before Bennett's next arson offence, committed whilst in detention. In the context of someone who is still a youth, that is a very significant gap, long enough, one might postulate, to displace any notion of a pattern of behaviour. There was no evidence of any preoccupation with fire or regular or any attempts between the ages of 12 and 17 to commit arson. Once again, the circumstances are highly relevant to the question of dangerousness. Bennett set fire to his belongings in his cell, not it seems in order to cause harm to anyone, but out of a desire to engineer a move to another location. There have

been, we are told, no further offences of arson during his 20 years of incarceration.

108. We remind ourselves of what was said in *R v Lang* at 17(iii): “Sentencers must therefore guard against assuming there is significant risk of serious harm merely because the foreseen specified offence is serious”. Arson is undoubtedly a serious offence, but as the facts of this case demonstrate, such offending can occur without necessarily giving rise to a significant risk of serious harm to others. Any assumption to the contrary would be to base dangerousness on the mere fact that the foreseen offence is serious, which is something that *Lang* expressly cautions against.
109. In our judgment, on a proper, detailed analysis of the precise circumstances of the index offence and the previous arson incidents, including Bennett’s extreme youth at the time of the first and the absence of any serious harm caused, we can see no justification for a finding that there was a significant risk of further specified offences occasioning serious harm.
110. Age and maturity were also highly relevant factors to be taken into account in assessing dangerousness, for the reasons already set out. Whilst the Judge in this case did acknowledge Bennett’s age and referred to him as a “disturbed young man”, there is no indication of any attempt to grapple with the effects of age and maturation on the assessment of risk. The Judge appeared to place considerable emphasis on Bennett’s failure to take responsibility for his actions, show any concern for the consequences for others of his actions or indicate any desire to mend his ways. However, that is often the sort of behaviour that is the hallmark of immaturity and inappropriate bravado. No allowance appears to have been

made for the possibility that Bennett could, within a shorter time than an older adult, mature and develop. Such maturation and development could well have the result that the risk of offending behaviour is substantially diminished within a few years; that would be a highly relevant consideration in any assessment of dangerousness and yet that was not the approach taken by the Judge.

111. In our judgment, far from his belligerent outward demeanour being seen as a reason for a finding of dangerousness, it ought in fact to have been regarded as a reason for not making such a finding. Bennett's youth and immaturity at the time were such that the conclusion he is dangerous is not sustainable.
112. We also accept Mr Boase's submission that insufficient account was taken of Bennett's troubled background. There was no attempt in this case to adopt a child-focused approach (as described in the Sentencing Guidelines for children and young people at 1.2). Instead, there was an offence-focused approach which failed to recognise the role that Bennett's background may have played in his pattern of offending.
113. The Judge dismissed the report of Dr Hourani on the basis that it did not address risk at all. In fact, that is not correct as Dr Hourani did say that there was probably a risk to others, a conclusion that falls notably short of there being a significant risk of serious harm. More significantly perhaps, Dr Hourani's report indicates that there are various rehabilitative steps which could be taken and in respect of which Bennet would be "amenable". In our judgment, this material ought to have been taken into account as being relevant to a determination of whether Bennett really was dangerous or was likely to "grow out of" his

criminal behaviour in a much shorter time frame than an indeterminate sentence would allow.

114. In our judgment, Bennett was an immature young man who had not caused serious harm, notwithstanding the commission of serious offences, and there was no proper basis for concluding that developing maturity, in conjunction with an appropriately severe determinate sentence, would not adequately address the risk he posed to the public.
115. For these reasons, we find that the Judge's conclusion that Bennett was dangerous cannot be sustained and we make the finding that he was not dangerous. Accordingly, we quash the DYPP imposed in his case and impose in its place a determinate sentence of detention with a term of 4 years and 264 days. That sentence has of course been served in its entirety.

Ward

Submissions

116. The sentencing judge concluded that Ward was dangerous on the basis that it was not unreasonable in this case for the operative assumption of dangerousness to apply; Mr Mably submits that that was a finding that was open to the judge to make and invites this Court to make the same finding.
117. Mr Mably submits that Ward had committed an arson offence – itself inherently dangerous – with no regard for the safety of others. The judge found that Ward did so having not appreciated the danger to himself or others. That is a justifiable basis on which to make a finding of dangerousness, submits Mr Mably, as it reveals a lack of consequential thinking. When coupled with the act of arson

which Ward was plainly willing to engage in, there was plainly a significant risk of serious harm to others.

118. The finding of dangerousness meant that the imposition of a sentence of IPP was mandatory. The judge correctly applied the statute and imposed the only available sentence.
119. Mr Grattage submits that Ward's offending did not disclose a pattern of offending reliably predictive of further specified offending giving rise to significant risk of serious harm to others. In the particular circumstances of this case, it was unreasonable for the presumption of dangerousness to apply. That is because:
- i) Ward's youth, and developmental maturity, which were considered adverse predictors should instead have been seen as factors weighing against dangerousness.
 - ii) The particular circumstances of the offending were not such as to give rise to a significant future risk of serious harm to others.

Ward - Decision

120. In this case, the presence of a previous qualifying offence (the ABH) meant that the then statutory assumption of dangerousness would apply unless the Court considered it unreasonable for it to do so. In deciding whether it would be unreasonable, it was incumbent on the court to give careful consideration to the precise circumstances of the offences concerned given that the consequence of a finding that it was not unreasonable for the assumption to apply would be what was in effect a life sentence.

121. It was also necessary, given Ward’s relatively young age (albeit already over 18) and the information the Court had as to his background to take such matters into account in a manner consistent with the principles applicable to the sentencing of young persons. As has often been stated, maturity and development do not reach a “cliff edge” once the age of 18 is reached; and the Court should strive for an individualistic and person-centred approach to the questions which it had to consider including, in particular, the question of whether it would be unreasonable for the assumption of dangerousness to apply.

122. We remind ourselves of the guidance in *Lang*:

“As we have indicated above, it will usually be unreasonable to conclude that the assumption applies unless information about the offences, pattern of behaviour and offender show a significant risk of serious harm from further offences”.

123. Viewing matters afresh with those principles in mind, we have no hesitation in concluding that it was unreasonable for the assumption to apply:

- i) The arson offence, which did not result in serious harm to any person, was at the less serious end of the spectrum of arson offences. The notional determinate term of sentence of 2 years reflects the fact that this was not a grave offence.
- ii) The fire was not set with intention to harm but was, as Dr Bickle described it “highly contextualised”, the risk of arson in the community being lower. There were in other words certain factors leading to the commission of the offence which were somewhat situational. That is a relevant consideration in determining whether this offending offers any reliable guide to future behaviour.

- iii) The fire itself, although the outcome of some limited planning, was such as to frighten Ward and caused him rapidly to attempt to put it out using the plumbing in the cell. There was no suicidal or harmful intent.
- iv) There were no other arson offences which could be relied on as giving rise to any indication of a pattern of behaviour: the previous offending was of a different character entirely. The most serious of those offences – the ABH – resulted in some but not serious harm as would be expected for an offence not charged under s.18.
- v) The remaining antecedents can fairly be described as either acquisitive and/or relatively minor. Once again, these offences, even when taken together with those committed subsequently do little to inform the Court of the risk of further specified offences being committed such as to result in serious harm to others.
- vi) Ward's relative youth and immaturity were factors that ought to have been borne in mind when assessing impulsivity and acting without thinking through the consequences. These are once again hallmarks of a mind that has not fully developed. Far from being matters indicative of dangerousness, they in fact point the other way as being characteristics likely to change as maturity is attained.
- vii) He had shown himself to be capable of change as recent reports at the time indicated.

124. We proceed, therefore, on the basis that Ward was not dangerous and sentence him accordingly. The notional determinate sentence in Ward's case was 2 years'

imprisonment. In our judgment that is the appropriate sentence to impose in this case. Thus, we quash the indeterminate IPP and impose a sentence of two years' imprisonment.

Ings

Submissions

125. The sentencing judge found that Ings met the statutory test for dangerousness. This was supported by the Court of Appeal in the appeal against sentence (see [4]). The Court noted that in that appeal, Ings did not challenge the finding of dangerousness, concluding that that was an “appropriate concession”. Mr Mably submits that following the determination of dangerousness, the sentencing court had to consider whether an extended sentence would provide adequate public protection. The Judge did not do that, instead proceeding, it would appear, on the basis that the sentence of DPP was mandatory upon a finding of dangerousness. Mr Mably acknowledges that was an error, but submits that there was material on which the sentencing judge could correctly conclude that a DPP sentence was the appropriate disposal. He submits that, on the basis of that material, this Court should take the same course and not interfere with the sentence.
126. Ms Fendich, sensibly, does not seek to challenge the finding of dangerousness. Instead, she submits that the public would have been adequately protected by the imposition of an extended sentence.

Ings – Decision.

127. Ings was 17 at the time of committing the offences of robbery and assault by beating. He was still 17 when sentenced. His age was a critical factor to be taken into account in the sentencing exercise. We bear in mind all that we have said above about sentencing children and young persons, including the principles set out in cases such as *R v ZA* and *R v Clarke*. We also note that an indeterminate sentence is a sentence of “last resort” in the case of children and young persons: see *R v Davis* at [121].
128. The Judge, in extremely terse sentencing remarks, did not even consider whether an extended sentence would have been adequate. That was a very serious error, particularly having regard to the devastating effect of an indeterminate sentence. In our judgment, the failure to carry out the proper assessment fundamentally undermined the Court’s assessment, and there can be no real confidence that the Judge properly had in mind all the relevant principles when passing sentence.
129. Viewing this sentence afresh with those matters in mind, we are once again left in no doubt that an indeterminate sentence was not the appropriate disposal in this case.
- i) The offences for which Ings received a DPP sentence consisted of a series of robberies and attempted robberies over a five-day period. The most serious method of attack used – the headbutt – occurred on a single occasion within a single offence. The force used in the remaining offence was limited and did not involve the use of any weapons. Serious though

that offending was, it cannot in our judgment, justify the imposition of what was in effect a life sentence.

- ii) Ms Fendrich has helpfully drawn our attention to a number of recent decisions where the CACD has held that extended sentence could provide adequate public protection in cases involving far more serious violence and resulting injury. These include: *R v W* [2009] EWCA Crim 2858 (robbery) ; *R v RL & TL* [2011] EWCA Crim 1862 (GBH, false imprisonment and kidnapping); *R v AL* [2014] EWCA Crim 2511(robbery involving threats with a screwdriver and knife as well as participation in a group attack on a defenceless person on the ground); *R v Hanson* [2023] EWCA Crim 203 (robbery after having been convicted of 25 previous offences mostly of theft and violence.); and *R v Hilling* [2024] EWCA Crim 1279 (wounding with intent to cause GBH, committed at the age of 21, described as a “vicious and unprovoked attack involving torture”). Whilst each of these cases was decided on its own facts and cannot be seen as setting any sort of threshold for the imposition of a DPP as opposed to an extended sentence, they are indicative of the broad range of serious offending that can properly be addressed by an extended sentence;
- iii) The short duration of the offending period in Ings’ case and its nature, do not establish any entrenched pattern of conduct that can provide any reliable guide as to future behaviour. There may have been an “escalation” in the criminal behaviour but there was nothing to suggest

that such escalation would continue or that this short burst of criminality was anything more than a rapidly passing phase in a young man's life.

- iv) A highly relevant consideration in all of this is of course Ings' youth and immaturity. There was no evidence to indicate that Ings would not, in the usual course of events, mature and develop considerably in subsequent years such that rehabilitation might be achieved over a far shorter time frame than for an adult. The evidence in fact demonstrated that Ings had the capacity to improve. Thus, the PSR report refers to Ings improving in the past, being committed to a job that he enjoyed and responding well to drugs and alcohol rehabilitation work.
- v) An extended sentence of 6 years, comprising a custodial element of 42 months and an extended licence period of 30 months would have meant that Ings remained under supervision until the age of 23. By that stage he would have matured considerably. There would have been every prospect that the risk of further offending would by then be substantially reduced. We consider that to be the appropriate sentence.

130. Accordingly, we quash the sentence of DPP and impose instead an extended sentence of detention pursuant to s.228(2) (first iteration) of 6 years, comprising a custodial term of 42 months and an extension period of 30 months.

Concluding remarks

131. The result of our sentence in each case is that each Appellant will be entitled to immediate release, if not released already.