

## Criminal Litigation 18e update

LPC manual

This is an online update to the last published edition of Criminal Litigation Handbook 18<sup>th</sup> Edition. The law is stated on 8<sup>th</sup> August 2023. It deals with significant revisions/changes to the law and the cases of interest. Most of the changes to the law were anticipated in the 18<sup>th</sup> edition of the work. Only those chapters where there have been significant or notable developments are singled out. It is recommended that you check this update as you work through the chapters in the e-book version of the work. The chapters singled out in this update are:

Chapter 1: Introduction-revised Criminal Practice Direction (2023)

Chapter 4: Detention and Interrogation -Pre-charge bail (important changes)

Chapter 8: The Decision to Charge- out of court disposals.

Chapter 11: Allocation-reversion of magistrates' extended power of sentence

Chapter 12: Summary Trial-New PET form

Chapter 21: Sentencing-New guidelines and a couple of Court of Appeal cases

Chapters 24: Youth Justice-YOT is now YJS

Chapter 25: Prosecuting youth offenders-changes to remand

Chapter 26: Youth sentencing-some changes to community orders

## Chapter 1

**1.9:** The Criminal Practice Directions 2015 are revoked and replaced by the 2023 CPD. Whilst there are no substantive changes the opportunity has been taken to significantly revise and restructure the directions. They come into effect in October 2023 and can be accessed here: [Criminal Practice Directions 2023 \(judiciary.uk\)](https://www.judiciary.uk/criminal-practice-directions-2023/)

## Chapter 3

Although outside the scope of the main work you will be aware that the Public Order Act 2023 has swiftly been enacted and its provisions brought into force. The effect of this legislation is to curb disruption caused by protestors. Associated powers of stop and search, which can be exercised with or without suspicion, make amendments to S 1 PACE 1984.

## Chapter 4

### Pre-charge bail

**4.14.1 is unchanged.**

**4.14.2** The opportunity is taken to substantially amend this paragraph in the light of changes to pre-charge bail (including street bail see Chapter 3), which were anticipated in the 18<sup>th</sup> edition. The provisions of the **Police, Crime, Sentencing and Courts Act 2022 (PCSCA)** which have made significant changes to pre-charge bail are now in force.

A very helpful and detailed statutory guidance (which includes flow charts!) published in March 2023 is accessible at: [Pre-charge bail - Statutory guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1141447/pre-charge-bail-statutory-guidance.pdf).

In a case where the pre-charge continued detention grounds have ceased to exist (s) 37 (2) PACE 1994, but the case is still under investigation and has not yet been referred to the CPS for a charging decision there are three options open to the custody officer when releasing the suspect. They are:

- to bail without conditions
- to bail with conditions
- to simply release under investigation (RUI)

The PCSC 2022 removes the presumption against pre-charge bail (which has previously resulted in the extensive use of RUI), replacing it with a neutral position.

**A suspect released pre-charge may be released on bail (with or without conditions) if necessary and proportionate in all the circumstances of the case.** Suspects who are RUI have no conditions or controls applied to them in relation to the investigation. It is the decision of the custody officer as to whether the suspect is released RUI or on pre-charge bail. Where the suspect is released on police bail, the initial APB (Applicable Bail Period) is 3 months.

The guidance stresses that pre-charge bail is part of the investigative process and that investigating officers must appraise the custody officer of all relevant risk assessment factors.

The investigating officer should seek the views of the victim where practicable on whether conditions should be imposed, and if so what conditions. They must also ensure vulnerable suspects understand the pre-charge bail process **and invite representations from the suspect or their legal representative.** The guidance stipulates that it is vital that vulnerable suspects understand the consequences of breaching their bail or committing further offences while on bail, as well as the process they may be subject to if this occurs.

In determining whether the release of a suspect on bail is necessary and proportionate in all the circumstances (having regard to any conditions of bail that would be imposed), the custody officer must consider any representations made by the suspect or their legal representative and have regard to the need to: -

- secure their surrender to custody
- prevent offending
- safeguard victims and witnesses, taking into account any vulnerabilities where these have been identified by the custody officer
- safeguard the suspect where vulnerabilities have been identified by the custody officer
- manage risk to the public

**An extension to the ABP beyond 3 months** can be made by an inspector for a further three months. Several conditions apply to this extension which are covered in the guidance. After this, a superintendent can grant a further 3 months, again several conditions must be satisfied. Thereafter a magistrates' court can grant further extensions up to a total maximum of 18 months.

The difference between unconditional bail and RUI is that unconditional bail provides a specific date and time on which the suspect must surrender to custody at the police station, as well as a power of arrest should the suspect fail to do so. Unconditional bail also gives specific timescales, as the investigation must adhere to the intervals set by the ABP. Any conditions should be kept under review as they are a restriction on liberty.

Conditions on the grant of pre-charge bail can only be imposed where it is necessary:

- to prevent the suspect from failing to surrender to custody.
- to prevent the suspect from committing an offence while on bail.
- to prevent the suspect from interfering with witnesses or otherwise obstructing the course of justice.
- for that suspect's own protection – or, if a child or young person, for their own welfare (s 3A(5), Bail Act 1976).

All conditions should be specific, achievable and enforceable by police. The police cannot impose conditions on pre-charge bail: to reside at a bail hostel, attend an interview with a legal representative, to make the suspect available for enquiries and reports or that contain electronic monitoring requirements.

### **Breach of police bail**

Section 46A of PACE gives a constable the power to arrest, without warrant, any person who, having been released on bail, fails to attend the police station at the time appointed to do so or where a constable has reasonable grounds to suspect, that the suspect has broken their bail conditions (s 46A(1A)). It is an offence under section 6 of the Bail Act 1976 for a person who has been released on pre-charge bail to fail.

Sections 46A(1) and 46A(1A) carry a power of entry under section 17 of PACE. If arrested under section 46A of PACE, the custody officer shall decide whether they should be charged (*for the offence for which they are on police bail*) or released without charge, either on bail or without bail (s 37C and 37CA).

Note-a postal requisition (which is the alternative way of commencing a prosecution rather than being charged at the police station) can only be used where a suspect has been RUI or released on unconditional bail.

A suspect's bail conditions can be varied when requested by the suspect or their legal representative.

### **Varying pre-charge bail under Part 4 PCSC 2022**

When a suspect answers bail, the custody officer must reach a fresh decision under section 37 PACE as to whether to bail (or re-bail) the suspect and whether to impose bail conditions. Thus, every time a suspect return to custody, there is an opportunity to release the suspect on bail and impose conditions, which may be the same or different to any conditions previously imposed. This may be done at the behest of the police, with or without a request of a victim or the suspect, provided the requirements for imposing bail with conditions are met. Any bail conditions imposed on the suspect when they are re-bailed are not constrained by any earlier conditions.

### **Comment:**

The changes highlighted above now mean considerably fewer individuals are released under investigation, often for months on end. Bail is a way of keeping an eye on an individual under suspicion of having committed a criminal offence. The key consideration for all concerned is whether a release on police bail (with or without conditions) is necessary and proportionate. **Breaching conditions of police bail**

**does not result in the suspect committing a criminal offence for which they can be punished.** However, the power of arrest, gives the police the means to enforce and control, which may well be in the interests of victims of alleged offences. Where there is an arrest for breach of police bail, the police are given **an additional three hours of custody time, (the detention clock is paused)** which further assists the investigative process. Each instance of breach of bail attracts a separate three-hour pause.

It also makes the decision to refuse bail in future cases much easier where conditions are not complied with. It strengthens the prosecution's hand in any contested bail application. It can accelerate a decision to charge.

Note paragraph 13.8 states: If a suspect has been arrested in connection with an offence involving vulnerable people or domestic abuse, serious consideration must be given to the imposition of bail with conditions to safeguard the victim. A detective inspector should be consulted and review the case before a domestic abuse or high harm offence suspect is RUI.

## Chapter 8

Changes to the range of out of court disposals (**OOCs**) under the **PCSC 2022** are highlighted in Chapter 8. Ahead of these changes coming into force, the government has issued a **draft Code of Practice for Diversionary and Community Cautions** upon which it is consulting. The draft states: *"We introduced a simplified, strengthened two-tier OOC framework of two new cautions to apply to offenders aged 18 and over. The Diversionary Cautions (upper tier) and Community Cautions (lower tier) will replace the existing mix of OOCs with a tougher, more consistent framework of out of court sanctions across England and Wales."*

[Diversions and Community Cautions – Code of Practice \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Given the consultation period ends in October 2023 it is not anticipated that these new schemes will come into effect until Spring 2024.

## Chapter 11

- 11.1.1
- 11.3.3
- The Patryck example

The somewhat controversial increase in the sentencing powers given to the Magistrates' Court (*12 months for conviction upon a single either-way offence*) was abruptly ('temporarily') suspended with effect from 30<sup>th</sup> March 2023. The Sentencing Act 2020 is accordingly amended. **Any reference in Chapter 11 to a maximum of a**

## **12-month sentence for a single-either-way offence should therefore now be read as 6 months.**

This swift reversal underscores how quickly government can make changes in this practice area. The reversal will result in more either-way cases being sent to the Crown Court for trial and sentence. For the avoidance of any doubt the position from the 30<sup>th</sup> March 2023 is as follows:

X is charged with a single-either way offence. If the case is dealt with in the magistrate's court, the maximum custodial sentence will be six months. The either-way offence could be committed for sentence to the Crown Court upon conviction if the magistrates' court considers 6 months to be insufficient.

X is charged with two either-way offences. If the case stays in the magistrates' court, the maximum custodial sentence will be 12 months (this has never changed). The either-way offences could be committed for sentence to the Crown Court upon conviction, if the magistrates' court considers a sentence of 12 months (6 months concurrent on each) to be insufficient.

X is charged with a single either-way offence plus a summary-only offence arising out of the same set of facts. If the either-way case is dealt with in the magistrate's court, the maximum sentence will be six months. The either-way offence could be committed for sentence to the Crown Court upon conviction, with the related summary-only matter also being sent for sentence, although the Crown Court's powers in relation to the summary-only would be limited to those available to the magistrates' court.

With reference to the worked example involving Patryck at page .....the reduction in sentence to 6 months means the magistrates' court will undoubtedly decline summary jurisdiction and will send this case to be tried before the Crown Court.

## **Chapter 12**

The PET form included at the end of this chapter has been revised. The current version is accessible from- [Preparation for trial in a magistrates' court - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114422/Preparation_for_trial_in_a_magistrates_court_-_GOV.UK.pdf).

## **Chapter 21**

### **21.8**

Sentencing guidelines continue to be revised and new ones issued. Since April 2022, the following guidelines have been revised. Indeed, it has been a very busy year for the Sentencing Council of England and Wales.

- **Revised child sex offences** guidelines where no child was exists or is harmed - 31<sup>st</sup> May 2022 [Revised child sexual offences sentencing guidelines published – Sentencing \(sentencingcouncil.org.uk\)](#). The council has also published a new guideline for the offence of sexual communication with a child (s15A of the Sexual Offences Act). Offenders face a maximum penalty of two years in prison for sharing images, causing psychological harm, abuse of trust or the use of threats. This guideline will come into effect on 1 July 2022.
- **Revised guidelines for burglary**-1<sup>st</sup> July 2022-[Burglary offences: new sentencing guidelines published – Sentencing \(sentencingcouncil.org.uk\)](#)
- **Terrorism** -1<sup>st</sup> October 2022-[Terrorism offences sentencing guidelines published – Sentencing \(sentencingcouncil.org.uk\)](#)
- **Retailers selling knives** - 1<sup>st</sup> April 2023 - [Sentencing guidelines for underage sale of knives published – Sentencing \(sentencingcouncil.org.uk\)](#)
- **Motoring offences** - 1st July 2023 - six existing guidelines to consider new maximum sentences introduced for some of the offences by the Police, Crime, Sentencing and Courts Act 2022 (PCSC Act). [Motoring offences: sentencing guidelines published – Sentencing \(sentencingcouncil.org.uk\)](#)

### Revised guidelines

- [causing death by dangerous driving](#),
- [causing death by careless driving when under the influence of drink or drugs](#),
- [causing death by careless driving](#),
- [causing death by driving whilst disqualified](#),
- [causing death by driving whilst unlicensed or uninsured](#), and
- [dangerous driving](#).

### New guidelines

- [causing serious injury by dangerous driving](#),
  - [causing serious injury by driving whilst disqualified](#),
  - [causing serious injury by careless driving](#) (a new offence created by the Police, Crime, Sentencing and Courts Act 2022),
  - [causing injury by wanton or furious driving](#),
  - [driving or attempting to drive with a specified drug above the specified limit](#),
  - [being in charge of a motor vehicle with a specified drug above the specified limit](#).
- **Perverting the course of justice and witness intimidation**- 1<sup>st</sup> October 2023 [Sentencing guidelines for perverting the course of justice and witness intimidation offences published – Sentencing \(sentencingcouncil.org.uk\)](#)

- **Revised Totality Guideline** - 1st July 2023 - [Totality – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

## 21.9

In *R. v Cook* [2023] EWCA Crim 452. The Court of Appeal has issued guidelines in relation to sentencing for the offence of intentional strangulation contrary to section 75A of the Serious Crime Act 2015

Short prison sentences and prison overcrowding-*R v Ali* [2023] EWCA Crim 232. Although the short sentence of imprisonment was upheld in this case (it involved deliberately throwing the boiling contents of a mug into the face of a prison officer resulting in a burn injury), the Court of Appeal issued guidance on short sentences at a time of high prison population. (A) had a single previous conviction for an immigration offence which had led to a 3-year prison term. The assault on the emergency worker was committed in September 2019. A was postally requisitioned for the offence in February 2021 and pleaded not guilty. His trial before the Crown Court was severely delayed due to the strike action by the Bar. 'A' had been released from custody in July 2020 and completed his licence in January 2022. When A's trial for assault on a worker was eventually re-listed, A pleaded guilty and was sentenced to an immediate 6-month term. An offence of violence had been out of character for A. There was no pre-sentence report but there was a letter from a probation officer which stated A had complied fully with all aspects of his licence, had engaged well with all rehabilitative work. 'A' appealed against his sentence maintaining it was manifestly excessive. The Court of Appeal rejected the contention that a sentence of six months was manifestly excessive given it was a Category A assault with aggravating factors.

Should the sentence however have been suspended? Yes. The Court of Appeal referred to the Sentencing Council's *Imposition of Community and Custodial Sentences* guideline. There were exceptional factors in A's case. There had been a significant delay and there was the potential for rehabilitation. A further exceptional factor was that A was sentenced at a time of very high prison population. Resulting in Operation Safeguard where the Government requested the use of 400 police cells to hold people who were remanded in custody or serving prison sentences in the adult male prisons. No reference had been made in this case to the CA's earlier guidance in *Manning* [2020]. A sentence of 6 months suspended for 18 months was substituted.

For a recent, short analysis on the effectiveness of short sentences drawing on recent research and analysis undertaken by the Sentencing Council of England and Wales in 2022, produced by researchers to assist members of parliament see

[The use of short prison sentences in England and Wales.pdf \(mcusercontent.com\)](https://www.mcusercontent.com)

### 21.14.1

The increased sentencing powers for magistrates' courts upon conviction for a single either-way offence highlighted in the 18<sup>th</sup> edition did not last long. As explained in the Chapter 11 update, the increase has been suspended and no one knows for how long. At the point of writing the maximum sentence of imprisonment for conviction on a **single** either-way offence is 6 months.

## Chapter 22

22.21.5. Revisions to the very impactful Equal Treatment Bench Book have been made. The April 2023 revision can be accessed here: [Equal Treatment Bench Book - Courts and Tribunals Judiciary](#)

## Chapter 24

24. 2 Any reference to YOT throughout Chapters 24-26 should now read **YJS**, standing for **Youth Justice Services**.

## Chapter 25

### Chapter 25.2.1

The Youth Court Bench Book has been updated. [Youth Court Bench Book \(May 2023\) \(mcusercontent.com\)](#). The update reflects the following changes:

- Changes to the surcharge amounts payable
- Case Management
- Changes to the youth remand provisions introduced by the Police, Crime, Sentencing and Courts Act 2022
- Changes to Detention and Training Orders introduced by the Police, Crime, Sentencing and Courts Act 2022.
- Changes to Youth Rehabilitation Orders introduced by the Police, Crime, Sentencing and Courts Act 2022.
- Changes to youth sentencing introduced by the Police, Crime, Sentencing and Courts Act 2022.
- The renaming of the Youth Offending Team (YOT)/Youth Offending Services (YOS) to Youth Justice Services (YJS).

### 25.2.2 Remand provisions in relation to youths

It has become more difficult to justify remaining a youth into local authority accommodation with s 157 Police, Crime, Sentencing and Courts Act 2022, amending provisions under LASPO 2012.

There is now a statutory requirement for the court to consider the interests and welfare of a child before remand to youth detention accommodation. The court is required to state in open court that it has done this.

When assessing whether the likelihood that the alleged offence would result in a custodial sentence, the court must be of the opinion that the prospect of custody is 'very likely'. This will ensure that the mere possibility of a custodial sentence is not enough to warrant secure remand.

The necessity condition is strengthened in that the court must be of the opinion that no alternative is available to manage the risk posed by the child safely in the community.

The "history condition" is tightened so that only a recent and significant history of breaching bail, or offending while on bail, should justify custodial remand.

[Youth Court Bench Book \(May 2023\) \(mcusercontent.com\)](https://www.mcusercontent.com)

## Chapter 26

26.10: The fixed lengths for DTOs are removed. It is now up to the court to determine the appropriate length of a DTO (the minimum being 4 months and the maximum being 24 months). The length must be the shortest term commensurate with the seriousness of the offence.

26.9.18: The changes to some requirements under a YRO highlighted at 26.9.18- Looking Ahead- are now in force with the electronic monitoring requirement becoming an 'electronic compliance monitoring requirement.' Electronic tagging can now monitor compliance and whereabouts. A tag fitted with GPS which, provided it is as part of a requirement, can be used for monitoring attendance at a particular activity e.g., attending an education programme or attending an appointment, monitoring the child or young person's location, provided it is as part of a requirement eg. exclusion zones can be tailored to a place, building or area and can also be active for specific days and times or a combination

## Case law

ZA v Rex [2023] EWCA Crim 596.

This is an important youth court sentencing case. You are advised to consider it in full. Extracted below are selected paragraphs from a judgment which contains 88 paragraphs.

Para 1: This appeal raises important learning points concerning the correct approach to sentencing children and young people.

49. Sentencing children and young people is a difficult and time-consuming endeavour, if it is to be done properly in accordance with Sentencing Council guidance. All too often judges' lists allow too little time to prepare for a sentencing hearing, for the hearing itself and then for the judge to take time to reflect and to weigh up all relevant, often conflicting, considerations in arriving at the appropriate sentence. Full and accurate sentencing notes from prosecution and the defence [Note-this is a requirement of sentencing before the Crown Court in many cases] are critical in ensuring that the judge's deliberations are directed correctly by reference to

material considerations set out in the relevant Sentencing Council guidelines, together with reference to important assistance with sentencing and the sentencing process located in the Criminal Practice Directions and a youth-specific Judicial College publication to which we refer further below.

52. It has been recognised for some time that the brains of young people are still developing up to the age of 25, particularly in the areas of the frontal cortex and hippocampus. These areas are the seat of emotional control, restraint, awareness of risk and the ability to appreciate the consequences of one's own and others' actions; in short, the processes of thought engaged in by, and the hallmark of, mature and responsible adults. It is also known that adverse childhood experiences, educational difficulties and mental health issues negatively affect the development of those adult thought processes. Accordingly, very particular considerations apply to sentencing children and young people who commit offences. It is categorically wrong to set about the sentencing of children and young people as if they are "mini-adults". An entirely different approach is required.

### **Summary – sentencing children and young people**

82. This appeal has generated a number of lessons to be learned when sentencing children and young people, especially when they have been tried together with older co-accused, as the appellant was here. An entirely different approach to sentence is required than that which courts routinely apply to adult offenders. We suggest the following as a checklist for counsel and courts undertaking what are invariably complex and difficult sentencing exercises:

- (1) Court listing should ensure that there is sufficient time for the judge, even if that judge heard the trial and knows the case well, to read and consider all reports and to prepare sentencing remarks in age-appropriate language.
- (2) Consideration should be given to listing separately, and as a priority, the sentence of any child(ren) or young person(s) jointly convicted with adult co-defendants.
- (3) The courtroom should be set up and arranged to ensure that the child or young person to be sentenced is treated appropriately, namely as a vulnerable defendant entitled to proper support. So far as possible the judge should be seated on a level with the child or young person, and the latter should be able to sit near to counsel, with parental or other support seated next to them (see further below).
- (4) Counsel must expect to submit full sentencing notes identifying all relevant Sentencing Council Guidelines, in particular any youth-specific guideline(s), addressing material considerations in an individualistic way for each defendant separately (if more than one young defendant is to be sentenced). Where an individualistic approach is mandated, as it is for a child or young person, a note which addresses all defendants compendiously risks missing important distinctions. These notes should be uploaded well in advance of the sentencing hearing.
- (5) The contents of the Youth Justice Service pre-sentence report and any medical/psychiatric/psychological reports will be key. Courts should consider these reports bearing in mind the general principles at section 1 of the overarching youth guideline, together with any youth-specific offence guideline, carefully working through each.

- (6) In general it will not be helpful to go straight to paragraph 6.46 of the overarching youth guideline without having first directed the court to general principles canvassed earlier in that guideline, as well as to any youth-specific guideline. The stepped approach in the overarching youth guideline and any youth-specific offence guideline should be followed. Working through the guideline(s) in this way will enable the court to arrive at the most appropriate sentence for the particular child or young person, bearing in mind their individual circumstances together with the dual aims of youth sentencing.
- (7) If the court considers that the offence(s) is(are) so serious as to pass the custody threshold, the court must consider whether a YRO with ISS can be imposed instead. If it cannot, then the court must explain why.

## Chapter 23 Appeals

The Courts and Tribunals Judiciary (CTJ) has published guidance with the purpose of bringing together the relevant Criminal Procedure Rules, Criminal Practice Directions 2023, legislation and authorities to provide guidance to practitioners on commencing proceedings in the Court of Appeal (CoA) Criminal Division.

[Guide to proceedings in the Court of Appeal Criminal Division \(judiciary.uk\)](https://www.judiciary.uk/guidance-to-proceedings-in-the-court-of-appeal-criminal-division/)

## Rules of Evidence

**Chapter 19: Bad Character:** a reminder that bad character is not confined to previous convictions and can stem from a previous acquittal. The case of *R v Shinn* is a contemporary reminder of principles long established by the House of Lords in *R v Z* [2003] 1 WLR1489. Similar fact evidence has long since gone but occasionally the relevance of similarity in the commission of an offence, a modus operandi or signature way of committing an offence enables a single previous incident (even one which resulted in an acquittal) to assume sufficient relevance as to overcome its prejudicial effect.

### ***R. v Shinn [2023] EWCA Crim 493***

S was convicted in 2022 of, inter alia, counts of sexual activity with a child under 13 and sexual activity with a child in relation to events that took place in the United Arab Emirates between 2012 and 2015 in respect of the first complainant, who was aged nine to 13 at the time, and 2017 and 2019 in respect of the second complainant, who was aged 12 to 14 at the time. S, a teacher, had been the private tutor of both complainants. He had touched the first complainant all over including on his penis when they had shared a bed together. He had massaged the second complainant and stroked his legs up to his groin. He had also shown both boys pornographic videos.

The trial judge had admitted evidence of an incident in 2003 involving another child (M), who alleged that the S had got into his bed on a school trip, when S was a

teacher in the UK and the child was aged nine and touched his penis. **S had been acquitted of charges relating to that incident after a trial in 2004.** The transcript of the 2004 trial was not available, nor was the court file or the skeleton arguments. However, there was the child's contemporaneous ABE interview, contemporaneous ABE interviews with other young witnesses, the witness statements of the M's mother and other teachers on the trip, and S's full police interview, and M was cross-examined about his evidence at the 2021 trial.

The judge had not fallen into error in admitting the evidence relating to the 2004 allegation. That evidence was relevant to the matters for which S was on trial in 2021. A primary issue in the case was whether the allegations made by the first and second complainants had or might have been fabricated. Neither of the boys knew M and M's complaint was strong evidence that there had been no fabrication; it would be a notable coincidence for the first complainant to invent allegations that closely mirrored the allegation made in 2004. It was open to the jury to conclude that, were they to accept M's evidence, it showed a propensity on the part of the appellant to sexually assault young boys. Although it was only a single incident that had occurred some years earlier, the nature of the behaviour was unusual. Admitting the evidence of M had not had an adverse effect on the fairness of the proceedings. In his directions to the jury, the judge provided every possible safeguard to the appellant. The surrounding material adduced by way of agreed facts, which was not wholly supportive of M's account, was significant. It assisted S in putting his case in relation to M. It was relevant to the overall fairness of the proceedings (for all parties) for the judge to have in mind the similarity of the allegations made by the first complainant to the allegation made by M.