WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT LEEDS
HIS HONOUR JUDGE SIMON PHILLIPS T20207770

CASE NO: 202403111/03112 A1
Neutral Citation: [2024] EWCA Crim 1392

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 5 November 2024

Before:
LORD JUSTICE WILLIAM DAVIS
MRS JUSTICE STACEY
HIS HONOUR JUDGE SHAUN SMITH KC

Reference by the Attorney General under s.36 Criminal Justice Act 1988
REX
v
AMJAD HUSSAIN
EBRAHIM PANDOR
(1992 Sexual Offences Act applies)

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR PAUL JARVIS appeared on behalf of the Solicitor General
MR MATTHEW HARDING appeared on behalf of the Offender Hussain
MS CLODAGHMUIRE CALLINAN appeared on behalf of the Offender Pandor

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

1. The provisions of the Sexual Offences (Amendment) Act apply to this offence. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of the offence.
2. On 31 July 2024, Ebrahim Pandor (the first Respondent), having been convicted after a trial before His Honour Judge Phillips KC and a jury in the Crown Court at Leeds, was sentenced by the trial judge to 6 years' imprisonment. That was for one offence of trafficking within the UK for sexual exploitation contrary to section 58 of the Sexual Offences Act 2003.
3. On the same day before the same judge, Amjad Hussain (the second Respondent) was sentenced to 10 years' imprisonment for an offence of rape contrary to section 1 of the Sexual Offences Act 2003. He also had been convicted after a trial. He was not present at his sentencing hearing. He had absconded before the trial. He was tried in his absence.
4. His Majesty's Solicitor General now applies to refer both sentences to this court as unduly lenient pursuant to section 36 of the Criminal Justice Act 1988.
5. The victim of both offences was a vulnerable girl to whom we shall refer as LD. She was groomed and exploited by much older men during two periods of her life. The first was between August 2004 and June 2005, when she was aged 13 and 14.
6. Up until August 2004 she had lived with her family in Wakefield. Her mother had become increasingly concerned about her. LD regularly went missing from home. She told her mother that she was taking drugs and having sex with men. As a result she was taken into foster care. In the following nine months she was taken on one occasion by the first offender (then aged 25) from Wakefield to an hotel in Manchester. On another occasion the first offender took her to a factory in Bradford. In both instances the first offender knew that the purpose of the trip was for LD to be plied with alcohol and drugs before she was to

be subjected to a variety of penetrative sexual activity.

7. In the spring of 2005 LD's foster carers took her to a medical clinic. She was then aged 14. She was found to be suffering from a number of sexually transmitted diseases.

8. In June 2005 pursuant to a family court order LD was moved into secure accommodation. In her own words she was in a "disastrous mess". The sexual exploitation of LD ceased when she was in secure accommodation. After a year she moved to the home in West Yorkshire of new foster carers. She lived with them for two years. Her life became relatively settled. She found a Saturday job working at a hairdressers. She had a relationship with a boy of a similar age to her.

9. In 2008 that relationship came to an end. At the same time she moved to a flat in Lupsett in Wakefield. By now she was aged 18. She resumed her contact with some of the men who had abused her when she was younger. They would come from time to time to her flat. Further exploitative sexual activity occurred when they did so.

10. At some point between 2008 and 2010 when LD was aged between 18 and 20 the second offender (then aged around 30) went to the flat. He gave LD alcohol and drugs. He was aggressive and brutal to her. He was drunk and under the influence of drugs. He raped her orally. He ejaculated into her mouth.

11. LD first reported in 2015 that she had been sexually exploited by older men. The investigation into the offending which had taken place led to the arrest in due course of at least 30 men for offences involving LD and other vulnerable young women. These offenders were interviewed in November 2018.

12. The first offender told the police that he had had a sexual relationship with a friend of LD but only after the friend had turned 16. He said that he had first met LD when she was 16 or 17. At that point she was not in secure accommodation. He knew her only as the friend of the girl with whom he was having a sexual relationship. He said that he had never trafficked LD.

13. The second offender initially said that he did not know who LD was. When he was shown a

photograph of her, he said he recognised her as someone whom he had seen hanging around Dewsbury bus station in around 2003. He had also seen her on occasion in the same year at a snooker club. He denied raping her. He said that he had never had any kind of sexual contact with her.

14. In December 2020 the offenders together with many others were sent to the Crown Court. The court was required to try a total of at least 33 defendants in four separate trials. The trial judge (if not throughout, at least in very large proportion of the cases) was His Honour Judge Phillips KC. The offenders were first tried in 2023. The jury then failed to agree in their cases. They were convicted at a retrial in June 2024.
15. The first offender had no previous convictions. By the time of sentence he was 44. The judge had character references from various sources which established that he was of positive good character. He had worked in asbestos removal between 2011 and 2019, his employer at that time holding him in high regard. Members of his family and a local priest spoke in glowing terms about his qualities as a father and a family man.
16. The second offender was also aged 44 at the date of sentence. He had absconded before the first trial. There was no apparent personal mitigation in his case save for the fact he had no relevant convictions. Such convictions as he had were not for sexual offending.
17. In January 2023 LD had made a victim personal statement. She explained that she had been subjected to sexual abuse from a young age. The cumulative effect of the sexual abuse which she had suffered at the hands of many men who had abused her over the years was severe. As an adult she suffered from complex post-traumatic stress disorder and borderline personality disorder caused by the abuse. At the time of the statement she was, as she put it, in a constant state of grief. She struggled to sleep. She experienced flashbacks. She had a fear and mistrust of others which would be permanent. The court process had been traumatic. It had scared and overwhelmed her.
18. In relation to the first offender the judge applied the guideline for trafficking people for sexual exploitation at pages 99 to 102 of the Sexual Offences Definitive Guideline which

was effective from 1 April 2014. The prosecution had submitted that the offence committed by the first offender fell into Category 1B within that guideline. The judge adopted that submission save that he concluded there were elements of Category A culpability. The starting point for a Category 1B offence was 6 years with a category range of 4 to 8 years. The judge took into account the severe harm suffered by LD who was a vulnerable child. The judge concluded that the mitigating factors were sufficient to balance the aggravating factors such that the proper sentence was 6 years' imprisonment.

19. In sentencing the second offender, the judge applied the rape guideline within the Sexual Offences Definitive Guideline. All parties submitted that the offence fell into Category 2A in the guideline. That gave a starting point of 10 years with a category range of 9 to 13 years. The judge identified aggravating factors as follows: ejaculation; offence committed when under the influence of drink and drugs; offence committed in the victim's own home at night. He noted that the second offender had been convicted of a single count of rape. This was to be contrasted with other defendants tried in the overall proceedings, those defendants having been convicted of multiple offences of rape. The judge said that he had to keep in mind parity with other defendants within the proceedings. He also had regard to the passage of time since the commission of the offence. It was with all of those matters in mind that the judge imposed a sentence of 10 years' imprisonment.

20. On behalf of the Solicitor General it is argued that the judge applied the incorrect guideline in relation to the first offender. Although he was convicted of an offence contrary to section 58 of the Sexual Offences Act 2003, this offence had been abolished by the time sentence was imposed. Section 58 had been repealed. It eventually had been replaced by section 2 of the Modern Slavery Act 2015. The Sentencing Council guideline applicable to the offence committed by the offender was no longer in force when he was sentenced. As from 1 October 2021 offences contrary to the Modern Slavery Act 2015 were governed by a specific guideline. That is the guideline, says the Solicitor, which ought to have been applied by the judge as the current guideline for equivalent offending. Applying that

guideline the first offender's offence fell into Category 2B. An offence in that category has a starting point in the guideline of 8 years with a category range of 6 to 10 years.

21. There were aggravating factors: the age of LD; the first offender's knowledge that she was vulnerable; the fact that she had been groomed and abused by other men. Those factors ought to have driven a sentence to the top of the range if not beyond.

22. In relation to the second offender it is argued that, whilst the judge identified the correct category in the guideline, he failed to reflect the multiplicity of Category 2 harm factors. That feature should have elevated the appropriate sentence within the range. There were then significant aggravating factors. The final sentence should have been significantly greater than 10 years.

23. On behalf of the first offender, it is said that the judge properly used the guideline in relation to section 58 of the 2003 Act. The guideline in relation to the Modern Slavery Act offences makes no reference to offences in the Sexual Offences Act which were abolished by subsequent legislation. Thus, that guideline, it is argued, was irrelevant to the sentencing exercise which the judge had to undertake.

24. On the substance of the sentence, it is submitted that the judge had heard the trial.; He was in the best position to assess the offender's culpability and the harm he had caused and to place proper weight on the aggravating and mitigating factors.

25. On behalf of the second offender, similar submissions are made in relation to the substantive sentence, namely that this was a judge who had heard the trial and was able properly to weigh all the relevant factors.

26. The correct formulation of what an unduly lenient sentence is is still that provided by the Lord Chief Justice in *Attorney-General's Reference No 4 of 1989* [1990] 1 WLR 41:

> "A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate."

The then Lord Chief Justice went on to say that in any given case the trial judge is

particularly well placed to assess the weight to be given to various competing considerations.

27. In relation to the first offender we have to ask whether a reasonable judge could have used the guideline within the Sexual Offences guideline as referred to above when sentencing him. If not, was the appropriate sentence substantially in excess of 6 years' imprisonment so as to render the sentence imposed unduly lenient. In relation to the second offender, could a reasonable judge have concluded that 10 years' imprisonment was an appropriate sentence.

28. The Solicitor General is entirely correct in her submission that the judge used the wrong guideline when sentencing the first offender. When sentencing an offender a judge must use the guideline which is current at the time of sentencing: see *Ahmed* [2023] EWCA Crim 1537. In every case the current guideline will be as it appears digitally on the Sentencing Council website. Various publications provide printed copies of Council guidelines. They are doubtless helpful to practitioners and judges. However, it is essential that, whenever a guideline is being considered, the digital version should be consulted. In this instance the correct guideline was the one relating to the offence of human trafficking contrary to section 2 of the Modern Slavery Act 2015.

29. The history is not uncomplicated. The Sentencing Council's Sexual Offences guideline came into effect on 1 April 2014. By that date section 58 of the Sexual Offences Act 2003, which was the section in respect of which the first offender was prosecuted, had been replaced by section 59A of the same Act. Thus, there was in fact never any Sentencing Council guideline produced in respect of section 58. The Council did produce a guideline in relation to section 59A. This is the guideline to which the prosecution had referred at the Crown Court.

30. This guideline no longer appears on the active pages of the Council website. We have been told by Mr Jarvis on behalf of the Solicitor General that it does appear in the relevant supplement of Archbold. It does not appear on the area of the Council website which is current. Rather, it is in the archived section of the website. Across each page of that guideline the words "ARCHIVED: NOT IN USE - FOR REFERENCE ONLY" appear

capitalised and in red. In the guideline relating to section 59A an introductory paragraph appeared which read:

> "Interim explanatory guidance pending the production of a full guideline for Modern Slavery.
>
> Section 59A of the Sexual Offences Act 2003 (SOA) has now been repealed by Schedule 5, paragraph 5 of the Modern Slavery Act 2015 (MSA). However, section 59A SOA remains in force for those offences committed wholly or partly before 31 July 2015.
>
> Sentencers may consider that this is an appropriate guideline to follow when sentencing cases of sexual exploitation prosecuted under section 2 of the MSA. However, it is important to note that although the either way offence in section 2 of the MSA is in some ways similar to the SOA offence, the maximum penalty for the MSA offence is life imprisonment ...
>
> Sentencers seeking to rely on this guideline when sentencing offenders under the MSA may, therefore, need to adjust the starting point and ranges bearing in mind the increased statutory maximum."

31. This guidance was intended to provide assistance to those sentencing offences contrary to section 2 of the 2015 Act when there was no guideline in force. It reflected the principle which appears at Step 1(a) of the General Guideline: overarching principles. Where there is no definitive guideline for an offence, the court should take account of definitive sentencing guidelines for analogous offences. The guidance given (to which we have referred) remained valid until 1 October 2021, ie the date on which the Modern Slavery guideline came into force. The guidance was not intended to lead sentencers to use a guideline applicable at the time the offence was committed when the offence had been repealed.

32. It follows that the judge fell into error when he used the guideline for the offence contrary to section 59A of the 2003 Act. He can hardly be held responsible for that error since he was misled by the prosecution in the Crown Court. He should have been referred to the guideline for the successor offence to that committed by the first offender, namely human trafficking contrary to section 2 of the 2015 Act. The Solicitor General is correct in her submission that the first offender's offence fell into Category 2B within that guideline. She is also correct to argue that there were aggravating factors that ought to have led to an uplift from the starting point of 8 years' custody.

33. However, that does not mean that we are driven to conclude that the sentence imposed on the first offender was unduly lenient. First, there were mitigating factors as found by the judge. The fact that he used the incorrect guideline did not affect the balance that he drew between the aggravating and mitigating factors. His conclusion was that they balanced each other out. That is a judgment he was particularly well placed to make. Not only had he tried the first and second offenders, but he had also conducted a series of trials involving the abuse of LD by many individuals. We would have to be satisfied that the judge fell into clear error in his balancing exercise before we could interfere with his conclusion. There is no basis upon which we could be so satisfied. Even if the judge had applied the appropriate guideline, the outcome of the balancing exercise would have been the same. A sentence of 8 years' imprisonment would have been the outcome.

34. Further, the maximum sentence for the offence contrary to section 58 of the 2003 Act was 14 years' imprisonment. The same applied to the successor offence under section 59A of the 2003 Act. On the other hand, the maximum sentence for the offence contrary to section 2 of the 2015 Act is life imprisonment. As a matter of principle a judge sentencing for an historical offence for which there is no current guideline must make measured reference to the guideline for equivalent offending: *Forbes* [2016] EWCA Crim 1388.

35. This principle allows for the effect of a significantly greater maximum penalty for the equivalent offence. When a guideline is created, one matter taken into account by the Sentencing Council will be the intention of Parliament in relation to the seriousness of the relevant offending. Where an offence is introduced which replaces an existing offence and where the new offence involves an increase in sentencing powers, the Council will start from the proposition that Parliament intended the new offence to be sentenced more severely than its predecessor. That was the starting point when the Council consulted on the 2015 Act guideline. In the consultation process in relation to proposed sentence levels the Council made that explicit when it said this:

> "We have therefore also considered the sentence levels in guidelines for similar offences, in particular the section 59A offence ... We have also considered Parliament's intention in raising the statutory

maximum penalty for these offences to life imprisonment."

36. We acknowledge the principle that "the offender must be sentenced in accordance with the regime applicable at the date of sentence": see *Forbes* at [5]. However, as was made clear in *Forbes* when a sentencing judge must make measured reference to current guidelines, that must not be a mechanistic or arithmetical exercise. In this case if the judge had been referred to the correct guideline, he would have reflected the increase in the maximum sentence by some adjustment to the sentence of 8 years' imprisonment. As Mr Jarvis correctly observed in the course of argument, precisely how much adjustment should be made when engaging in a measured reference to the current guideline for an historical offence is difficult to say. It may be in this case he would not have reduced the sentence to 6 years' imprisonment. Equally, we are satisfied that *some* adjustment would have been appropriate.
37. We shall, because there is a point of principle involved in the Solicitor General's application in the first offender's case, grant leave to refer the sentence. However, for the reasons we have given, we are not satisfied that the sentence imposed on the first offender was unduly lenient. It may have been lenient but not unduly so. It follows that, notwithstanding the fact we have granted leave, we shall not interfere with the sentence.
38. The position in relation to the second offender is more straightforward. The offence of rape fell into Category 2A in the guideline. The judge applied that guideline. The issue is whether there ought to have been an upward adjustment for the starting point to take account of the multiple harm factors. If there ought to have been such an adjustment, should there have been a further adjustment for the aggravating factors? In broad terms, should the overall increase have been so substantial as to render a sentence of 10 years' imprisonment unduly lenient?
39. The judge referred in terms both to the different harm factors which applied and to the aggravating factors which were apparent on the facts of the case. We agree that looking at the second offender in isolation that had the overall sentence been 12 years' imprisonment, that would have been an appropriate sentence. Because the judge had been involved in the

wider proceedings relating to LD, he was able to consider the second offender's case in the light of the entirety of the case and the sentence he had imposed on other offenders who committed offences against LD. When he gave express effect to what he referred to as "considerations of parity ... between defendants", that was not wrong in principle. The judge, having heard the trial in the second offender's case along with the other trials where LD was a victim, was "particularly well placed" to determine the level of sentence appropriate in his case. Sitting here we cannot put ourselves in the position of the judge. Paying due respect to his understanding and appreciation of the overall circumstances of the offending against LD, we cannot be satisfied that the sentence imposed on the second offender was unduly lenient. No point of principle is involved in his case; therefore we shall simply refuse leave to refer that sentence.

40. Our conclusions must not be regarded as any indication that the ordeal suffered by LD over many years at the hands of a number of men was anything other than appalling. She has suffered grave consequences from the abuse to which she was subjected, consequences to which both of these offenders contributed. We are, however, solely concerned with the sentences imposed on these two men, who did not play a significant a role as others who have been prosecuted and sentenced.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk