

NCN: [2019] EWCA (Crim) 1693
No. 2019/03123/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 4 October 2019

Before:

LORD JUSTICE SIMON

MRS JUSTICE CHEEMA-GRUBB DBE

and

HER HONOUR JUDGE DHIR QC

(Sitting as a Judge of the Court of Appeal Criminal Division)

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

REGINA

- v -

AMAN YUEL

(Also Known As SAMUEL BERHE)

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Miss C Pattison appeared on behalf of the Attorney General

Miss J Dykers appeared on behalf of the Offender

J U D G M E N T

LORD JUSTICE SIMON:

1. The provisions of the Sexual Offences (Amendment) Act 1992 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 that offence. The prohibition applies unless waived or lifted, in accordance with section 3 of the Act.

2. Her Majesty's Solicitor General applies, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court sentences which he considers to be unduly lenient. We grant leave.

3. The offender is Aman Yuel (also known as Samuel Berhe). He is 28 years old, having been born on 25 March 1991. On 20 June 2019, in the Crown Court at Inner London, he was convicted of five offences of vaginal rape, one offence of oral rape and one offence of breaching a Sexual Harm Prevention Order, contrary to section 1(1) and section 103(1) of the Sexual Offences Act 2003 respectively.

4. On 26 July 2019, he was sentenced by the trial judge, His Honour Judge Davies QC, to a term of eleven years' imprisonment on each count of rape (counts 1 to 6) and to three years' imprisonment for breach of the Sexual Harm Prevention Order (count 7), to be served concurrently. The judge was satisfied that the requirements of sections 37 and 41 of the Mental Health Act 1983 were met and accordingly made a hybrid order under section 45A and B of that Act. There was a hospital direction and a limitation direction, among other orders, and a Sexual Harm Prevention Order ("SHPO") was imposed until further order.

5. The victim was aged 22 at the time of the offences. She lived at an address in Knights Hill,

Brixton in London. On 15 September 2018, she was on her way home after being out with friends in Soho. She travelled to Brixton Underground Station and then to a bus stop on Brixton Road. It was here that the offender approached her and started to ask questions such as "Where have you been?" "Do you live alone?" She did not know the offender. She had the impression that he was under the influence of alcohol and drugs. He continued to ask questions and tried to persuade her to drink some of his beer. He asked whether he could go home with her for a drink, smoke and sex. She remained polite and declined his invitation. She said that she had a boyfriend. She did not in fact have a boyfriend. However, she did not want to aggravate the situation and felt the best way to handle it was to remain polite.

6. The N2 night bus arrived. The victim boarded it, as did the offender who said that it was his bus too. He sat next to her, uninvited. He continued to ask her to allow him to go home with her. He offered her money and asked for love and kisses. He then changed seats, so that he was facing her. He continued to ask for sex. He touched her legs. She asked him to stop, causing several passengers on the bus to turn around. The physical touching made her feel extremely uncomfortable.

7. After leaving the bus, she quickened her step to get away from the offender. At this point, she thought that he was just a "creep" and did not think that he would follow her home. However, he did so, saying, "Wait up", "What, are you going to refuse me entry?" She replied, "Yeah, you're not coming to mine. I've got a boyfriend". The offender caught up with her and slapped her on the bottom. He said, "Are you going home?" She replied, "Yes", hoping that the offender would leave her. He did not. He continued to say things to her, including that he would pay her whatever she wanted. Again, she told him to leave her alone and told him that her parents were at home.

8. As she approached her home, she contemplated walking around the area because she did not want the offender to know where she lived. However, she was afraid to do so, aware of the hour and that the area was dark. She felt that the best option was to go home as quickly as possible.

9. CCTV footage captured images of her walking quickly to her front door. The offender momentarily stood at the end of the driveway before he followed her. She unlocked and opened the door of the building that led to a communal area. The opening of the door triggered lighting to come on; it automatically switched off about a minute later. The offender quickly approached and barged his way inside the building. He spoke to the victim, tried to kiss her and then pushed her on to the stone stairs which led from the ground floor to the first floor of the building. He pinned her down and placed his hands on her. She was in pain from the stairs against her back.

10. The offender pulled her further down the stairs and started to pull down her trousers and underwear. He began to penetrate her, but his penis was not fully erect (count 1, rape).

11. The offender forced her to perform oral sex on him (count 2, oral rape). This caused her to bang her head on the stairs. She told him to stop and said that he was hurting her. The offender did not stop, but instead became more forceful. She suggested that they move because she was worried that she was going to fall down the stairs.

12. The offending continued on the landing. The offender penetrated her vagina with his penis (count 3, rape). This continued for approximately two minutes. She was petrified and cried throughout.

13. The victim said, "Can you go now you've done it?" The offender replied, "Yeah, like cool. Give me another kiss". He went to the front door, but then returned, pushed her back down on

the stairs and, for the third time, forced his penis into her vagina (count 4, rape). This lasted for a short time, before he made his way again to the front door. He gave the impression that he was going to leave.

14. He did not do so. Instead, he returned, and now, for the fourth time, he forced his penis into her vagina (count 5, rape). This lasted a short time before he stood up again. He yet again gave the impression that he was going to leave by opening the door.

15. The offender did not leave. Instead, he returned and now for a fifth time forced his penis into her vagina (count 6, rape). When doing so, he held her face and neck, causing her to choke. On this occasion, the offender ejaculated inside her. At no stage did he wear a condom.

16. After he had ejaculated, the victim said "Please go. Why are you doing this? Please go. You are in my house". She was crying. The offender replied, "Give me your number. When are we going to do this again? Let me give you some money." She keyed her mobile number into the offender's mobile phone, but purposely left out a digit. The offender tried to call the number, but it did not ring. She then keyed in the complete number, because she believed that he would not leave unless she did so. The offender successfully dialled her number. He kept asking for a kiss before he left. She did as she was asked and then the offender finally left.

17. She closed the door behind him. She could hear him talking outside. Several minutes later, her mobile phone rang. She did not recognise the number, but feared that it was the offender.

18. At 4.11am the victim sent a text message to a friend, telling her what had happened. The friend telephoned the police at 4.18am. Police officers attended seven minutes later and circulated information about the offender. This resulted in an N2 bus being stopped in Efrra

Road. The offender was on the bus. He had a bottle of beer in his hand. After being woken by the police, he was escorted on to the pavement.

19. By approaching the victim, the offender was in breach of an SHPO that had been imposed on 12 January 2017 (count 7, breach of a Sexual Harm Prevention Order). This prohibited him from communicating with any female who was not a family member or otherwise known to him through employment, education or medical care, in public.

20. The offender was detained and arrested on suspicion of rape. He was in possession of the mobile phone that had been used to contact the victim minutes after he had raped her.

21. He was taken to Brixton Police Station. There, he refused to provide intimate samples. He made an unsolicited comment; he said that he had laid on his back and she had "fucked me".

22. He was interviewed in the presence of a legal representative and an appropriate adult. In summary, he answered questions by saying "I don't remember". He kept changing his account as to how he had met the victim and what had happened between them. At one stage, he said that they had had consensual sexual intercourse. When it was suggested that he had raped her, he replied "That's not true". He agreed that he had made the unsolicited comment.

23. He was charged on 16 September 2018.

24. It is clear from the Victim Personal Statement made on 18 June 2019 that the crimes have had a significant impact on the victim, emotionally, physically, socially and at her work. She found the process that followed the incident very stressful. The physical examination left her feeling embarrassed and disgusted. She had had to take strong medication for a month to

prevent the transmission of HIV, rendering her nauseous and exhausted. She had been tested for sexually transmitted diseases and had received several prophylactic injections. She had started to suffer panic attacks again and an increased level of anxiety. She felt that she had no choice but to tell her parents. This had worsened matters for her mother who suffered from mental health issues. She has to walk through the building every day, which was a constant reminder of the crimes of which she had been the victim.

25. The offender has six previous convictions for nine offences, committed between 16 April 2008, when he was aged 17, and 12 January 2017, when he was aged 26. He has received a range of sentences, including non-custodial and custodial sentences. Some of these offences are of particular relevance. First, on 24 August 2016, when he was aged 25, he was convicted at Isleworth Crown Court of sexual assault by touching, contrary to section 3 of the Sexual Offences Act 2003. He was made the subject of a community order for twelve months, with a rehabilitation activity requirement and a notification requirement for a period of five years. The offence was committed between 7.30 and 8.00am on 29 November 2015. The victim was approaching a bus stop in Kensington High Street when the offender started to talk to her. He placed his hand on her chest and stroked his hand downwards. She stepped aside to get away and asked him to leave her alone. He moved towards the victim and grabbed hold of her bottom over her coat, and leant in to kiss her. She turned away, which resulted in him kissing her cheek by her lips. The victim stepped aside and started to cry. A member of the public intervened and told the offender to leave her alone. The offender said, "Fuck off. Mind your own business". The victim ran across the road towards the tube station. The offender chased after her and for a second time grabbed her on the bottom. She screamed and ran back towards the bus stop, where the member of the public was now on the phone to the police.

26. On 12 January 2017, he was sentenced for a second set of offences, when he was aged 25.

He has been convicted of two offences of sexual assault by touching, contrary to section 3 of the Sexual Offences Act 2003; and was sentenced to concurrent terms of 40 months' imprisonment for each offence, with a notification requirement for life and an SHPO for five years. It was this SHPO that prohibited the offender from communicating with a female who was not a family member or otherwise known to him through employment, education or medical care, in public. The first offence took place at about 3am on 19 December 2015. The offender approached the victim as she was making her way home. He offered her a cigarette and then said, "I'm going to fuck you hard. I'm the biggest thing you'll ever see. You won't know what's hit you". The victim ignored him, but, as they neared a skate park, he grabbed her around the neck and started to drag her behind some buildings. She screamed. The offender tightened his grip and told approaching members of the public that he wasn't doing anything wrong. The victim screamed to them to get the offender off her and said that she did not know him. He then ran away.

27. The second offence was committed 20 minutes later. The victim of this crime was walking along an alleyway. The offender followed her and shouted at her in an attempt to gain her attention. She ignored him. He caught up with her, grabbed hold of her and started to drag her towards a hedged area. During the struggle she tried to scream, which resulted in him putting his hand over her mouth. She bit his hand and grabbed hold of some railings, preventing him from dragging her further towards the hedged area. She then managed to get away.

28. The offender was on licence when he committed the offences on 15 September 2018.

29. On 17 September 2018, the offender was produced at the Camberwell Green Magistrates' Court, from where the case was sent to the Inner London Crown Court. He was remanded in custody. On 15 October the case was listed for a plea and trial preparation hearing. He was not arraigned due to ongoing enquiries about his fitness to plead. The case was adjourned until 14

January 2019 for trial. On 9 January, the case was listed for mention. By this stage, a forensic consultant psychiatrist, Dr Ian Cumming, had prepared a report, dated 4 December 2018. The report stated that the offender had an established history of paranoid schizophrenia and was unfit to plead or to stand trial. However, Dr Cumming wrote that he had been unable to complete a full assessment due to the offender's unwillingness to engage. He indicated a necessary period of assessment of up to four months. The trial date was vacated and re-fixed for 17 June 2019.

30. Dr Kalpana Dein prepared a report, dated 28 January 2019. This report concluded that the offender was unfit to plead or to stand trial. A report dated 5 April 2019, from Dr Jeremy Berman, concluded that the offender was currently fit to plead and to stand trial.

31. On 17 June 2019, the offender was arraigned on counts 1 to 6 of the indictment. On 18 June, he was arraigned on count 7. He pleaded not guilty to all counts. Trial by jury followed; and on 20 June he was convicted of all counts.

32. On 26 July, the case was listed for sentence. There were two further reports before the court. First, in an addendum report, dated 25 July, in which Dr Cumming considered the choice between a hospital order with restrictions (sections 37 and 41 of the Mental Health Act 1983) and a hybrid order (section 45A of the Mental Health Act). On balance, he favoured the hybrid order, mainly in view of the lack of clarity about the connection between the offender's mental illness and the offence. It could not be said with certainty that the offender's culpability was reduced by his illness.

33. Second, there was a report by Dr John McAnallen, a consultant forensic psychiatrist, who was the responsible clinician for the offender. In his view, the offender had a mental disorder comprising a relapsing and remitting psychotic illness, complicated by substance misuse

(alcohol and cannabis), and generally by poor compliance with treatment and supervision. The offender's mental illness had been diagnosed as schizophrenia and a schizoaffective disorder. Dr McAnallen considered the two options of disposal in his report and provided further detail when he gave evidence during the sentence hearing. His evidence was that, on balance, the offender was not particularly psychotic at the time of the offence, and the offending did not necessarily arise simply from his mental health problems.

34. The judge sentenced the offender on the following basis:

1. The rape offences were part of a prolonged and sustained sexual attack on a young woman in the home where she was entitled to feel safe.
2. The crimes caused the victim considerable psychological harm, as was clear from her Victim Personal Statement.
3. The offending fell within category 2B of the Definitive Guidelines for rape offences, as submitted by both counsel. Category 2B had a starting point of eight years' custody, and a range of seven to nine years.
4. There were a number of aggravating factors: the location of the offences; the offender's previous convictions, which showed that he follows young women in public and attacks them; in relation to at least one of the previous offences, he had been on licence and he had been on licence when he committed the present offences of rape.
5. The offender was extremely dangerous to women. The judge did not consider

that it was necessary for a pre-sentence report to be ordered on the issue of dangerousness, because that was obvious, as agreed by defence counsel. As the judge expressed it, "You are a woman's worst nightmare".

6. The offender had expressed no remorse and had continued to deny committing the offences of rape.

7. The commission of the offences of rape and the previous material offending had a component of mental illness because the offender's mental condition, which was remitting and recurring, and currently required treatment.

8. However, there were other aspects of offending that were not attributable to his mental illness. Although the court had to consider whether it was proper to impose a section 45A sentence, quite apart from any treatment for his mental disorder, the offences for which he was convicted required "condign, serious punishment".

9. The requirements of sections 37 and 41 of the Mental Health Act 1983 were satisfied and a hybrid order under section 45A and B of that Act was appropriate.

Thus it was that the judge imposed a hospital direction and a limitation direction, the effect of which was that the offender would be detained in hospital and treated for his mental illness, but when he was well enough he would be transferred to serve the rest of his sentence in prison.

35. Miss Pattison, who appears for the Solicitor General, made two broad submissions in support of the overall submission that the sentences on counts 1 to 6 were unduly lenient. First,

she accepted that a hybrid sentence under section 45A, in the form of a hospital direction and a limitation direction, was reasonable in the circumstances; but she submitted that the key issue was the one identified by the judge, namely: what was the necessary penal component of the sentence? Two issues arose in respect of the determinate sentence: first, whether the categorisation of the offending fell within category 1B or 2B of the definitive guidelines; and secondly, whether, in any event, the judge paid sufficient regard to the aggravating features and the totality of the offending when he arrived at the overall term of eleven years' imprisonment.

36. On the first of these issues, Miss Pattison submitted that the offences fell within category 1B of the rape guidelines, and not category 2B. It was culpability B, because there was none of the culpability characteristics identified in category A. However, it was category 1 harm, because of the multiple features of harm identified by the judge. The starting point for a category 1B offence was a term of twelve years' custody, and a range of ten to fifteen years; whereas a case falling within category 2B, as found by the judge, had a starting point of eight years' custody and a range of seven to nine years.

37. On the second issue, Miss Pattison submitted that insufficient regard was paid to the aggravating features and totality of the offending: first, ejaculation inside the victim's vagina, with the consequences for her physical and mental health; second, previous convictions for offences with a similar *modus operandi*; third, the fact that the offences were committed on licence; fourth, the fact that the offences were committed whilst under the influence of alcohol or drugs; and fifth, although charged and sentenced separately, the fact that the rape offences constituted a breach of the SHPO.

38. The Solicitor General accepts that the fact that the crimes were linked to the offender's mental disorder was a mitigating factor, at least to some extent.

39. The second broad submission that the offender was clearly dangerous – "extremely dangerous", as the judge had expressed it. The Sentencing Council guideline for rape indicates the various steps in the sentencing process, which include, at step 5, consideration of the dangerousness provisions of the Criminal Justice Act 2003, having regard to the criteria contained in Chapter 5 of Part 12 of that Act: a life sentence, under section 225, or an extended sentence under section 226A. Here, the judge failed to consider the implications of his findings of dangerousness. He should, at the very least, have passed an extended sentence in relation to counts 1 to 6.

40. For the offender, Miss Dykers responded to the Solicitor General's two primary arguments. First, so far as the penal element of the sentence was concerned, she submitted that the judge properly accepted that the offences fell within category 2B. As to culpability, it remained the Crown's position that this was category B offending. So far as harm was concerned, she accepted that there were three factors rightly identified by the judge as category 2 factors: it was a sustained attack; there was a forced entry into the victim's home; and considerable psychological harm was caused to her. In addition, Miss Dykers accepts that there were two further material factors: first, the choking of the victim, which constituted violence beyond that inherent in the offence; and second, the victim's vulnerability. She did not accept that there were what is referred to in the guidelines as "additional degradation".

41. However, more importantly than the number of harm factors was the question whether the "extreme nature" of any of them, or the "extreme impact" caused by a combination of them, was such as to justify elevating the harm category from 2 to 1. Without minimising the seriousness of the offending, Miss Dykers submitted that the nature and impact of the category 2 factors were not such as to justify elevating the categorisation from category 2 to category 1.

42. So far as the additional aggravating factors and the issue of totality are concerned, she accepted that the three aggravating factors identified by the Solicitor General justified an uplift, but submitted that by increasing the sentence from the appropriate starting point of eight years' custody to terms of eleven years, the judge had given proper effect to these factors.

43. Second, as to dangerousness and the imposition of an extended sentence, Miss Dykers realistically submitted that if the judge had imposed an extended sentence, it would have been difficult to submit that the criteria set out in section 226A of the Criminal Justice Act 2003 were not met, or that an extended sentence was inappropriate in the circumstances. She accepted that the balance of medical opinion was that the offending was not solely or clearly attributable to the offender's mental disorder. However, she submitted that the sentencing remarks clearly showed that the judge was aware of the need for public protection, and that it must be assumed that he had this in mind when he passed a determinate sentence. The decision not to impose an extended sentence was not outside the range of what was appropriate in the circumstances.

44. There is no issue that the offender's mental disorder at the date of sentence was such as to justify an order under section 45A of the Mental Health Act 1983 (as amended) – commonly referred to as a "hybrid order". This provides that, in addition to an order restricting release from a hospital treating a disorder under section 41, the court may impose a determinate sentence of imprisonment which results in offenders being remitted to prison at the point that they no longer require treatment in hospital.

45. In *R v Edwards and Others* [2018] EWCA Crim 595, this court explained the sentencing regime, of which a section 45 or 45A order is part. In a judgment given by the Vice-President of the Court of Appeal Criminal Division at [11], there is reference to the observations of the court in the earlier case of *R v Vowles and Others* [2015] 2 Cr App R(S) 6 at [51], and of the need to

consider not only the psychiatric opinion, but the extent to which the offender needs treatment for the mental disorder from which he or she suffers, the extent to which the offending is attributable to the mental disorder, the extent to which punishment is required, and the extent to which protection of the public is necessary. At [12] in *Edwards*, the court added this:

... the court must consider all the powers at its disposal including a section 45A order. Consideration of a section 45A order must come before the making a hospital order. This is because a disposal under section 45A includes a penal element and the court must have 'sound reasons' for departing from the usual course of imposing a sentence with a penal element. Sound reasons may include the nature of the offence and the limited nature of any penal element (if imposed) and the fact that the offending was very substantially (albeit not wholly) attributable to the offender's illness. However, the graver the offence and the greater the risk to the public on release of the offender, the greater the emphasis the judge must place upon the protection of the public and the release regime.

At [13] the court referred to section 142 of the Criminal Justice Act 2003 as underlying the importance of the penal element of the sentence. At [14] the court continued:

It follows that, as important as the offender's personal circumstances may be, rehabilitation of offenders is but one of the purposes of sentencing. The punishment of offenders and the protection of the public are also at the heart of the sentencing process. In assessing the seriousness of the offence, section 143 (1) of the Criminal Justice Act provides that the court must consider the offender's culpability in committing the offence and any harm caused, intended or foreseeable. Hence the structure adopted by the Sentencing Council in the production of its definitive guidelines and the two pillars of sentencing: culpability and harm. Assessing the culpability of an offender who has committed a serious offence but suffers from mental health problems may present a judge with a difficult task but to comply with section 142 and the judgment in *Vowles*, he or she must attempt it.

Finally, at [34], the court summarised the principles which apply when sentencing mentally

disordered offenders and the interaction of a possible hospital order, a finding of dangerousness, and/or a section 45A order. For present purposes, these can be summarised as follows: first, the sentencing court should consider whether a hospital order is appropriate; second, if so, the court should consider all the sentencing options, including a section 45A order; third, in deciding the most suitable disposal, the court should remind itself of the importance of the penal element in a sentence; fourth, in deciding the penal element that is necessary, the court should assess as best it can the offender's culpability and the harm caused to the victim by the offending; and fifth, the fact that an offender would not have offended but for their mental illness does not necessarily relieve them of all responsibility for their actions.

46. It is clear that in some cases where an order is made under section 45A, the dangerousness of an offender will be such that the additional level of protection for the public afforded by an extended sentence will be necessary. In *Attorney General's Reference No 91 of 2014* [2014] EWCA Crim 2891, an offender was convicted of attempted murder following a trial and was sentenced to fourteen years' imprisonment, combined with a hospital direction under section 45A and restrictions for an unlimited period under section 41. On an application by the Attorney General, this court held that the determinate term of fourteen years' imprisonment could not be faulted on a consideration of the circumstances of that particular case. However, the court considered that an extended sentence should have been passed because the dangerousness of the offender was such that the additional level of protection for the public afforded by an extended sentence was necessary. In giving the judgment of the court, Fulford LJ said this at [30]:

We are of the view that even allowing for the protection provided to the public by virtue of the section 41 order, the judge should have passed an extended sentence to guard against the possibility of serious harm to the public following the [offender's] discharge because the criteria under the Mental Health Act justifying his continued detention in hospital are no longer satisfied, and yet he may remain a serious risk of causing significant harm to the

public because his dangerousness is not limited to his mental illness...

The court granted the application for leave to refer the sentence and substituted a sentence of fourteen years' imprisonment, with an extended licence period of five years. The order pursuant to section 45A, with restrictions, remained undisturbed.

47. In the instant case, Dr McAnallen gave live evidence. At page 5G of the transcript he said this:

... the presence of an untreated mental illness at the material time may have been a factor in the offence, though there is not much evidence to positively say that this was the case. ...

At page 7F, he added:

I think the balance of the evidence seems to be that [the offender] was not particularly psychotic at the time of this offence. Although he was within a number of weeks afterwards ...

Dr McAnallen's evidence was reflected in the judge's observations when passing sentence (at page 22D) that there was "a component of mental illness because your condition is remitting and recurring". The evidence indicates that the component of mental illness at the time of the offences, such as to mitigate the sentence, was relatively limited. As we have already noted, the offender, having committed his crimes, took the trouble to demand, and persist in demanding, that the victim give him her phone number.

48. There is no issue that the rape offences were properly characterised as falling within culpability category B. The referral issue is whether they fall within category 2 harm, as the judge found, or category 1, as the Solicitor General argued. The offending may fall within

category 1 of the guidelines for rape, due to the extreme nature of one or more category 2 factors, or the extreme impact of those factors.

49. This was a case of particular gravity. There were multiple features of harm which impacted on the seriousness of the rape offences and which were such as to elevate the offending into category 1. First, the offender had targeted the victim, a lone woman. He followed her, repeatedly pestered and harried her and then forced, uninvited, entry into the communal area of the building where she lived. Second, once there, he raped her orally, and then repeatedly raped her vaginally, with ejaculation inside the vagina, during a prolonged and sustained course of extreme sexual violence. Third, the victim suffered considerable psychological harm, as shown by her Victim Personal Statement. Fourth, there was violence beyond that implicit in the offence: the holding of the victim's neck and the choking during the fifth occasion when the offender vaginally raped his victim.

50. Category 1B offending provides a starting point of twelve years' custody, and a range of ten to fifteen years.

51. There were also additional aggravating circumstances: first, the offender's previous convictions, which also involved targeting lone women, and in the most recent cases the commission of violent sexual offences against them; second, the fact that these offences were committed while the offender was on licence; he was also in breach of an SHPO, which specifically precluded him from approaching women in such circumstances; and third, the fact that the offences were committed while under the influence of alcohol or drugs.

52. There was no mitigation, other than, and to a limited extent, the offender's mental disorder.

53. Furthermore, the very serious nature of the crimes and the history of offending demonstrated clearly that the offender was dangerous. There was plainly a significant risk of the commission of further offences which could cause serious harm to members of the public. The judge made that finding in emphatic terms (at page 22E of the sentencing remarks):

... you are extremely dangerous to women ...

He drew a distinction between those who follow women and (in the words of the victim) are "creeps", and those like the offender, who are "extremely dangerous individuals".

54. Drawing these various conclusions together, it is the judgment of the court that, in addition to the orders under the Mental Health Act, an extended sentence should have been imposed on each of counts 1 to 6, consisting of a custodial term of fourteen years, with an extended period of licence of five years. This will be in place of the eleven year custodial period ordered by the judge on each count as the penal element. Time spent in custody on remand will continue to count towards the sentence.