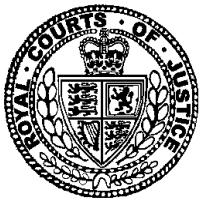

Neutral Citation Number: [2020] EWCA Crim 1363

Case No: 201704550 B1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT AYLESBURY
HER HONOUR JUDGE TULK

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/10/2020

Before :

LORD JUSTICE SINGH
MRS JUSTICE WHIPPLE DBE
and
MR JUSTICE FRASER

- -

Between :

HOLLINGS	**Appellant**
- and -	
REGINA	**Respondent**

- -
- -

Mr D Emanuel QC (instructed by **Draycott Browne Solicitors**) for the **Appellant**
Ms A Husbands (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing date : 17/9/2020

- -

Approved Judgment

Reserved Judgment Protocol: This judgment will be handed down by the Judge remotely, by circulation to the parties' representatives by email and, if appropriate, by publishing on www.judiciary.uk and/or release to Bailii. The date and time for hand down will be deemed to be 10:00 on 23 October 2020. The Court Order will be provided to Aylesbury Crown Court for entry onto the record.

Lord Justice Singh :

Introduction

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case and reporting restrictions are therefore in force. Accordingly, we will use initials where necessary.

2. This is an appeal against conviction brought with the leave of the Full Court on 22 November 2019.

3. On 11 September 2017, in the Crown Court at Aylesbury the Appellant was convicted of five counts on the indictment, which were numbered counts 17-21. The first two offences were of indecent assault, contrary to section 14(1) of the Sexual Offences Act 1956 ("the 1956 Act") (counts 17 and 18). On 13 October 2017 the appellant was sentenced by HHJ Catherine Tulk to a sentence of one year imprisonment on count 17 and two years imprisonment, made consecutive, on count 18. Count 19 was an offence of sexual intercourse with a girl under 13 years, contrary to section 5 of the 1956 Act. For that offence the appellant was sentenced under section 236A of the Criminal Justice Act 2003 ("the 2003 Act") to 11 years, comprising a custodial term of 10 years and an extended licence period of one year. Count 20 was a similar count, for which a sentence was imposed under section 236A of the 2003 Act of 13 years, comprising a custodial term of 12 years and an extended licence period of one year. Those two sentences were made concurrent to each other. Finally, on count 21, there was another offence of indecent assault for which the appellant was sentenced to four years imprisonment, made concurrent. The appellant was acquitted on one count of indecent assault (count 22). Relevant orders were made as to notification and under the Safeguarding of Vulnerable Groups Act 2006.

4. There was a co-defendant, David Worrell, who was convicted of five counts of indecent assault on a male person; seven counts of indecency with a child (he was acquitted of one count alleging that offence); and three counts of indecent assault on a female child under 13 years.

The facts

5. The appellant was jointly tried with David Worrell. The prosecution alleged that Worrell sexually abused a number of his own young children (two sons and one daughter) in the 1970s and 1980s (counts 1 to 16). He was accused of sexually abusing his daughter, VH, between 1979 and 1982, when she was aged between 5 and 8 years (counts 12 to 16).

6. The appellant was a work colleague of Worrell's. The prosecution alleged that, after Worrell's wife left him in 1979, the appellant spent more and more time at their home. He married another of Worrell's children (Tracey) in October 1982 (when she was 16 years old and he was 22) and they had three children together. The Crown alleged that between 18 March 1983 and 17 August 1987 (whilst he was married to Tracey) the appellant sexually abused VH when she was between 10 or 11 and 15 years old (counts 17 to 22).

7. Count 17 related to the first time that the appellant touched VH sexually, by cuddling her in bed, getting her to touch him and telling her he loved her. Count 18 alleged multiple further occasions when the appellant touched her and told her how much he loved her. Count 19 alleged the first occasion when the appellant had sexual intercourse with VH when she was aged 12. Count 20 alleged multiple occasions when the appellant had sexual intercourse with her before she was 13. Count 21 alleged multiple occasions of penetrative sexual touching by the appellant upon VH when she was aged between 13 and 15.

8. In 1988 the appellant and Tracey separated. In December 1989, when VH was 16 years and 7 months old (and five months pregnant with their daughter), the appellant married her. They split up in 2008, approximately 20 years later.

9. VH first complained to the police in 2015, 31 years after the prosecution alleged the abuse began.

Key prosecution evidence

10. To prove its case the prosecution relied (among other things) upon the following evidence: -

    (1) Evidence from VH, including evidence of information she had disclosed to a counsellor in 1996 to 1997 when she was still living with the appellant.

    (2) Evidence from Sarah H, who described a complaint made to her by VH when VH was aged 13 or 14;

    (3) Evidence from Jacqueline W who gave evidence that at the time of going to the police (in 2015), VH told her she had been abused and mentioned her father and the appellant.

    (4) Evidence from Yvonne M who described a complaint to her by VH in 2012 (after VH had separated from the appellant).

11. VH gave evidence about counselling she had in 1996 to 1997. She said that she told the counsellor about the sexual abuse from her father, but did not go into much detail because if she said too much it would implicate the appellant.

12. In cross-examination on behalf of the appellant she said that the appellant knew about the counselling sessions and told her that, if she disclosed how young she had been when they started to have sex, the counsellor would have to notify the authorities. He said that Social Services would get involved and there would be a danger the children would be taken away from them. That was the reason why the appellant was not mentioned by name anywhere in the counselling notes. When she told the counsellor about abuse from her father's friend, she was referring to the appellant.

13. Sarah H said that she and VH were best friends and that VH confided in her. One night, when VH was aged 13 or 14, VH told her she had been sleeping with the appellant. Ms H asked her if she meant they had been having sex and VH said "Yes."

14. Sarah H described two particular incidents that she remembered. On the first occasion she was with the appellant and VH, and the appellant said he was going to have a bath. He and VH went upstairs to the bathroom together and the appellant turned and asked Sarah if she wanted to join them. She said "no." The appellant and VH went up and she heard the water running. On the second occasion VH tried on a pair of her sister's stockings and suspenders and waited for the appellant to get home from work to show him. VH and the appellant laughed and giggled and ran upstairs. The next day VH told her that they had then had sex.

15. Jacqueline W was married to VH's cousin. She gave evidence that in 2015 VH said that things happened to her when she was younger and she (VH) felt that she had to go to the police. She did not go into any detail, but she did refer to having been abused and mentioned both Worrell and the appellant. VH also told her that she had been abused by her father and that the appellant was present and took photographs.

16. Yvonne M said that she was a close friend of VH until she was about 14 years old. She recalled an occasion when they went on holiday to Malta and she saw the appellant lying on a bed with VH kissing her face. Her friendship with VH subsequently fizzled out but she recalled an occasion in 2012 when she saw her and asked her how she was. VH broke down a bit. She said the appellant had moved her out to a village, got her pregnant and made her sleep with other people.

The defence case at trial

17. At the trial the appellant gave evidence and denied the allegations. He insisted that he had had no sexual relationship with VH before she was 16 years of age.

18. The appellant himself gave evidence that he had one previous conviction for an offence of theft from 6 April 1983. On the date of sentence three further offences of theft were taken into consideration. He was sentenced to a Community Sentence Order of 50 hours.

Discussions about the appellant's character

19. Towards the end of the prosecution case (on 30 August 2017), trial counsel discussed the appellant's previous conviction with the Judge. Counsel for the prosecution decided not to apply to adduce it, despite the fact that Worrell would receive a good character direction (the Judge having indicated that she would direct the jury not to speculate as to the lack of such a direction in respect of the appellant).

20. Defence counsel subsequently adduced the theft matters through the appellant in his evidence-in-chief.

21. Before closing speeches, prosecution counsel referred to the issue of whether any sort of bad character evidence direction would be appropriate. She stated that everybody considered it was not appropriate and that she did not push for one.

22. The Judge's directions to the jury on character are in her summing up at 12G – 13D. She treated the appellant as a man of effective good character and directed the jury as to the relevance of the previous conviction in that regard (12G – 13B). She then directed the jury that they were entitled to take the conviction into account when assessing the appellant's credibility (13B).

Grounds of appeal

23. Ground 1: The Judge erred in directing the jury that the applicant's irrelevant conviction for theft from 34 years before he gave evidence could be held against him in the consideration of his credibility.

24. Ground 2: The complaint evidence was wrongly admitted into evidence and should have been excluded.

25. Ground 3: The Judge failed to give the jury directions on how to approach the evidence of complaint evidence witnesses.

26. The original grounds of appeal, which were settled by trial counsel and on which leave was refused by the Single Judge, were abandoned by Mr Emanuel QC, who did not appear below, when the application was renewed before the Full Court. Leave was granted by the Full Court to pursue what are Grounds 1 and 3 above. Mr Emanuel now applies to vary the grounds of appeal (to include Ground 2 above) in accordance with the guidance in the case of *R v James* [2018] EWCA Crim 285; [2018] 1 Cr App R 33.

27. He submits that Ground 2 is connected to the current ground of appeal about the complaint evidence direction (Ground 3). Upon reflection and further consideration of the case, particularly since discussion of the complaint evidence before the Full Court, he identified the question of admissibility of the complaint evidence as an arguable ground of appeal and considered it his duty to bring it to the Court's attention so it could be considered at the appeal hearing.

Trial counsel's response to Grounds

28. We have considered trial counsel's responses to the Grounds of Appeal, dated 11 December 2018 and 25 March 2020.

Grounds of Opposition

29. The prosecution lodged a Respondent's Notice and Grounds of Opposition dated 30 November 2017 in response to trial counsel's perfected grounds of appeal. Those grounds are, however, no longer pursued by Mr Emanuel.

30. The prosecution lodged an Addendum Respondent's Notice and Grounds of Opposition dated 20 March 2019 (in response to new counsel's grounds of appeal dated 26 October 2018), in which it was submitted that:

    (1) The Judge was not bound to give a full good character direction on the facts of the case. Nevertheless, the Judge gave a modified good character direction and properly directed the jury on how to deal both with the credibility limb and evidence of the applicant's previous conviction. The jury were properly and fairly directed in relation to character.

    (2) The overall effect of the summing up in relation to complaint evidence and the importance of it when considering the consistency of the complainant's evidence was clear.

31. The Prosecution lodged a further document headed "Respondent's Submissions in response to Grounds of Appeal against Conviction" dated 4 June 2020 (in response to new counsel's grounds of appeal dated 7 February 2020, as perfected on 14 May 2020).

32. On behalf of the respondent Ms Husbands, who appeared for the prosecution at the trial, submits that: -

    (1) The evidence against the appellant was strong.

    (2) The convictions are safe.

    (3) Character Evidence
    When considering the wealth of evidence undermining the appellant's credibility, the safeguards that the Judge put in place when directing the jury, and the modified good character direction, it cannot be said, even if there were any misdirection, that it had an impact on the safety of the convictions.

    (4) Complaint evidence
    No complaint can be made as to the admissibility of the complaint evidence and no objection to it was taken at trial.

    (5) Experienced trial counsel had the benefit of hearing the entirety of the evidence and had sight of the written directions prior to summing up.

Ground 1

33. Ground 1 is that the Judge erred in directing the jury that the appellant's conviction for theft some 34 years earlier was evidence which could be used against him in the consideration of his credibility.

34. The appellant had a conviction for theft, in respect of which he was sentenced on 6 April 1983. He had also admitted three other offences of theft, which were recorded as matters to be taken into consideration. He received a sentence of 50 hours community service. At the time he was aged 22.

35. On behalf of the appellant Mr Emanuel submit, first, that it was a misdirection to direct the jury that the old conviction was relevant to the jury's consideration of the credibility of the Appellant's evidence. Secondly, he submits that the reasoning of the trial Judge was illogical, because the Judge mentioned in her directions to the jury that a reason (perhaps the reason) why they were being informed of this conviction for theft was that 1983 fell within the period when the offences alleged in the indictment were said to have taken place. Mr Emanuel submits that that connection was quite simply illogical.

36. In the summing up the Judge dealt with this matter in the following way, at 12G – 13D. She said that the appellant himself had told the jury about his conviction and the other offences in 1983. She continued that that was the only conviction that he had. In particular, he had no convictions for offences similar to those with which he was now charged. She said that the fact that he had not committed any offences similar to those with which he was now charged may mean that he was less likely to have committed the offences with which he was now charged. That was the first limb of the good character direction and no issue was or is taken about that.

37. The Judge continued that, as in the case of his co-defendant Worrell, the fact that no similar allegations had been made in the 29 years since 1988, the last date on any of the counts against this appellant, meant that he was entitled to ask the jury to give "significant weight" to his good character when deciding whether the prosecution had satisfied them of his guilt. On behalf of the respondent it is pointed out by Ms Husbands that in doing so the Judge went further than she was strictly required to go because she used the word "significant". We agree.

38. The Judge continued that the jury had heard from a large number of people with daughters with whom the appellant had had contact over the past 29 years, none of whom had raised any concerns, and they had heard some statements from young women who themselves knew the appellant as children and who made no complaint about him. No complaint is made on the appellant's behalf about the way in which the Judge directed the jury up to this point.

39. Complaint is, however, made about how the Judge then followed this in the summing up:

> "However, theft is an offence of dishonesty, and although it was committed many years ago, it was committed around the time of the offences with which you're concerned. Therefore, you are entitled to take that conviction into account when you're assessing Keith Hollings' credibility; in other words, whether you believe the evidence that he gave."

40. Finally, it is important to note that the Judge added the following caveat by way of safeguard for the appellant:

> "You must bear in mind, though, that just because someone has been dishonest in the past doesn't mean that he must be telling lies now. You must decide whether this conviction helps you

> when deciding whether Keith Hollings' evidence is or may be true, or whether you are sure that it is untrue, but you must not convict Mr Hollings, wholly or mainly, because of that criminal conviction."

41. It is important to appreciate that evidence of the conviction and other offences in 1983 became known to the jury not because the prosecution applied to adduce this evidence, nor that it relied upon it. It came before the jury because the appellant himself gave evidence about it when giving evidence-in-chief. The defence chose to place it before the jury. That left the trial judge in the position where she had to deal with it in some way. In the terminology used by this Court in *R v Hunter and Ors* [2015] EWCA Crim 631; [2015] 2 Cr App R 9, the appellant was not a person of "absolute good character". He was therefore not entitled to the full good character direction and no-one has suggested at any time that he was.

42. What was being submitted was that he was a person of "effective good character", so that a modified good character direction should be given. But, as this Court made clear in *Hunter*, in particular at paras. 79-82, the trial Judge has a discretion in that situation, and it is a discretion which is broad. As Hallett LJ (the then Vice-President of the Criminal Division) said at para. 79, it is for the trial Judge to make a judgment, by assessing all the circumstances of the offences and the offender, to the extent known, to decide what fairness to all dictates. Furthermore, as she said at para. 82, this Court should have proper regard to the exercise of discretion by the Judge who has presided over the trial. As she then said at para. 98, if defence advocates do not take a point on the character direction at trial and/or if they agree with the Judge's proposed directions which are then given, these are "good indications that nothing was amiss." That indeed was the position at the trial of this appellant. Although that point is not decisive, we have reached the conclusion that, in all the circumstances of this case, the trial Judge was entitled to exercise her discretion as she did.

43. We turn to the other submission made by Mr Emanuel under Ground 1. We do not accept his submission that the timing of the offences in 1983 was irrelevant to the issues at the trial. As Ms Husbands has submitted on behalf of the respondent, the jury heard evidence about what had taken place between 1983 and 1987, including evidence from this appellant. For example, he gave evidence that, although he had seen abuse by VH's father, he would be there to assist the children. Evidence was therefore adduced in relation to how the appellant came to spend time at the house. Furthermore, it was the prosecution case at the trial that the appellant had manipulated the situation in the period 1983-1987, enabling him to commit these offences against VH. As Ms Husbands submits, his conviction of an offence of dishonesty at that time cannot be said to be irrelevant since his credibility *at that time* was one of the issues before the jury at the trial.

44. We have come to the conclusion that there was no error of approach, nor was there an improper exercise of the discretion which was vested in the trial Judge, as to how she should direct the jury in relation to a potentially complicated situation relating to this appellant's character. Accordingly, we reject Ground 1.

Grounds 2 and 3

45. Although leave to advance Ground 2 has not yet been granted, it will be convenient to address both Grounds 2 and 3 together.

46. On behalf of the appellant it is accepted that, in accordance with the guidance given by this Court in *R v James*, at para. 38(ii), (v) and (vi), fresh grounds advanced by new counsel must be "particularly cogent" and "the hurdle for the applicant is a high one". In the circumstances of this case, we have reached the conclusion that it would be in the interests of justice for us to address Ground 2 together with Ground 3. The Full Court has already granted leave to advance Ground 3 and the merits of Ground 2 are closely related to it. We did not understand Ms Husbands to take any strenuous objection to leave being granted to argue Ground 2, although she did submit that the ground should be rejected on its merits. In the circumstances, we grant leave to advance Ground 2 and consider it on its merits as part of this appeal.

47. Ground 2 is that complaint evidence was wrongly admitted into evidence and should have been excluded. It is submitted by Mr Emanuel on behalf of the appellant that the conditions for admissibility in section 120(4) and (7) of the 2003 Act were not satisfied in this case.

48. Ground 3 is that, having admitted that complaint evidence, the Judge failed to give the jury directions on how to approach the evidence of complaint given by the witnesses.

49. Section 120 of the 2003 Act, so far as material, provides:

> "(1) This section applies where a person (the witness) is called to give evidence in criminal proceedings.
>
> (2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.
>
> …
>
> (4) A previous statement made by the witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible, if –
>
> > (a) any of the following three conditions is satisfied, and
> >
> > (b) while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth.
>
> …
>
> (7) The third condition is that –

> (a) the witness claims to be a person against whom an offence has been committed,
>
> (b) the offence is one to which the proceedings relate,
>
> (c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence,
>
> …
>
> (e) the complaint was not made as a result of a threat or a promise, and
>
> (f) before the statement is adduced the witness gives oral evidence in connection with its subject matter."

50. On behalf of the appellant Mr Emanuel submits that section 120(4)(b) lays down a pre-condition for evidence of an earlier complaint to be admissible under one of the three conditions then set out in subsections (5) – (7). He submits that it is not sufficient that the evidence falls within the terms of subsection (7). It must also fall within subsection (4)(b). He cites the editors of Rook and Ward on Sexual Offences: Law and Practice (5th ed.), who observe, at para. 19.80, that section 120(4) is frequently overlooked by prosecutors. He cites decisions of this Court in which it has been said that the evidence of a complainant must comply with the requirements of section 120(4): see e.g. *R v AA* [2007] EWCA Crim 1779, at para. 14.

51. Applying those principles to the facts of the present case, Mr Emanuel submits that the evidence of each of the three witnesses (Sarah H, Yvonne M and Jacqueline W) did not comply with section 120(4). He submits that at no time in her evidence did VH say that she had made the various statements by way of complaint to those witnesses or that to the best of her belief those statements were true.

52. In our view, it is important to keep in mind a distinction between the evidence of Sarah H on the one hand and the evidence of the other two witness on the other. This is because, in our view, the respondent is correct to submit that the evidence of Yvonne M and Jacqueline W was not, on analysis, complaint evidence at all.

53. We accept the respondent's submission that Yvonne M was primarily an eye witness. It is common ground that the evidence of eye witnesses was admissible and is not governed by the conditions laid out in section 120.

54. It was the defence at trial who wanted to adduce evidence about complaints which VH had made to Yvonne M in 2012, regarding the appellant "making her sleep with other people". The reason why the defence wished to adduce this evidence was in order to point out an inconsistency, as they submitted, because the complainant had not at that time said that the appellant himself had slept with her before she was aged 16.

55. It is also important to appreciate how this evidence came to be presented to the jury. We have seen an extract from the transcript of the hearing, in which the issue was discussed between the Judge and counsel. It was defence counsel then appearing for the appellant who gave the example of the phrase "he got me to sleep with other people" as a "perfect example" of the dangers of categorising that as complaint evidence. The defence specifically asked that the jury should not be addressed on this evidence amounting to a complaint of matters because they wished to address the jury on the basis that this was a previous inconsistent statement which tended to undermine the credibility of VH.

56. The evidence of Jacqueline W was similar in this respect. Her evidence at the trial was that in 2015 VH had said to her that things happened to her. She told Mrs W that she had been abused by her father and that the appellant was there and took photographs. Mrs W accepted that her statement had made no reference to any form of abuse of VH by this appellant. It was that apparent inconsistency which the defence again wished to draw to the attention of the jury. They wanted to submit that it was a previous inconsistent statement by the complainant because she had not then alleged that the appellant had abused her, as she might have been expected to do if the allegations against him were true.

57. In similar vein must be treated the evidence which was before the jury, not from a witness, but from counselling notes. The defence deployed these notes in order to prove that no complaint had been made about the appellant in counselling sessions which VH attended between 27 September 1996 and 5 November 1997. These notes were disclosed to the defence as, on the face of it, they assisted the defence. The appellant had not been named in terms within those notes as someone who had abused VH, although she had mentioned her father, an uncle and her father's friend/second father. During the trial her evidence was that that was, in fact, a reference to this appellant but this was disputed by the defence. The position therefore was that the defence did not wish the Judge to refer to this as complaint evidence because that would have suggested that the Judge agreed with the prosecution that VH had indeed complained about the appellant in 1996-1997. The defence wished to argue before the jury that she had not done so, and that she had fabricated these allegations against the appellant after the acrimonious separation between the appellant and herself in 2008.

58. For those reasons, we have come to the conclusion that the evidence of Yvonne M, Jacqueline W and the counselling notes was not on proper analysis complaint evidence at all. It therefore did not require the conditions set out in section 120(4) and (7) to be satisfied before that evidence could be admitted.

59. The one witness whose evidence was (as is common ground) complaint evidence was that of Sarah H. She was in part an eye witness and gave evidence about two incidents which she had observed for herself. It is common ground that that evidence did not require the conditions in section 120(4) to be met. Complaint is, however, made on behalf of the appellant about one aspect of her evidence, which it is common ground *was* complaint evidence. That evidence was that she had been VH's best friend and said that one night when they were babysitting and sitting up late talking, VH just came out and told her that she had been sleeping with the appellant. When asked if she meant they were having sex, VH said "yes" but said that she wanted it to

be kept a secret and so Sarah H did not ask too many details. At that time VH was about 13 years old.

60. The evidence was adduced by the prosecution at trial without objection. It was challenged by the defence, who submitted to the jury that Sarah H was simply trying to assist her friend in the evidence that she gave. No complaint was made during the trial as to the admissibility of this evidence.

61. We accept the submission made by Ms Husbands on behalf of the respondent that this evidence was admissible under section 120(2) of the 2003 Act. The admission of this evidence was in order to rebut the allegation of recent fabrication. It therefore did not need to meet the requirements of section 120(4).

62. Strictly speaking section 120(2) is not about the admissibility of a previous statement. Such a statement was admissible at common law in order to rebut the suggestion of recent fabrication. However, the rule before the 2003 Act was that it was not admissible in order to prove the truth of its contents. The change which section 120(2) made was to render the statement admissible both for the purpose of rebutting the allegation of recent fabrication and for the purpose of proving the truth of its content.

63. In our judgement, Parliament has created more than one gateway in section 120. We do not accept Mr Emanuel's submission that section 120(4) and (7) would be rendered otiose if a statement could be admitted in any event through section 120(2). The two are alternatives. They cover different circumstances, although they may on certain facts overlap.

64. Finally, our interpretation of the relevant legislation derives some support from the judgment of the Court of Appeal of Northern Ireland in *R v RH* [2018] NICA 28 on equivalent legislation in Article 24 of the Criminal Justice (Evidence) (NI) Order 2004: see para. 29 in the judgment of Deeny LJ, giving the judgment of the Court; see also para. 31, where Deeny LJ said:

> "… In any event the evidence of complaint was admissible by virtue of Article 24(2) to rebut the suggestion that C's oral evidence had been fabricated. … Once introduced by virtue of Article 24(2) the evidence was admissible as evidence of the matter stated. This ground is not sustainable."

65. We turn to address Ground 3 in the appeal before us.

66. In her summing up in the present case, the Judge, at 9A-D directed the jury about how they should treat the evidence of Sarah H in this respect. She said first that VH herself had given no evidence about this matter, so the jury first needed to decide whether they were sure that this had actually happened. If they were sure that it had happened, there were two ways in which they could use that evidence. First, they were entitled to treat what VH told Sarah H as being part of her account of what happened. Secondly, they were entitled to take it into account when considering whether VH had been consistent in what she had said. Consistency is something that

they could take into account when considering the reliability of witnesses. It was for them to decide how far this evidence assisted them. However, continued the Judge, they must remember that although Sarah H could tell them what she was told by VH, she could not provide independent confirmation that what she was told was either accurate or true, for the obvious reason that she was not present when the events said to have occurred.

67. Before us Mr Emanuel submitted that the conventional direction which must be given to juries about the fact that complaint evidence does not emanate from a source independent of the complainant must be given: see e.g. *R v Pritchard* [2011] EWCA Crim 2749, at paras. 28-34 (Gross LJ). However, in our judgment, the trial Judge in the present case did give the appropriate direction in the case of the only witness who had, on proper analysis, given complaint evidence. That was Sarah H. For the reasons we have given earlier, when considering Ground 2, the other three pieces of evidence referred to by Mr Emanuel (Yvonne M, Jacqueline W and the counselling notes) did not on proper analysis amount to complaint evidence at all. For that reason it was not necessary for the Judge to give the conventional direction because it was simply not relevant.

68. Furthermore, we again bear in mind that experienced trial counsel (not Mr Emanuel) made tactical decisions during the trial not to require such a direction to be given. We note also that he had the opportunity to make submissions to the trial Judge had he wished to do so because she circulated her written directions in draft in the usual way. He did not do so.

69. Accordingly, we reject Grounds 2 and 3.

Conclusion

70. For the reasons we have given this appeal is dismissed.