Neutral Citation Number: [2022] EWCA Crim 926

Case No: 202100699 B1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT HARROW
HIS HONOUR JUDGE COLE
T20197436

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 July 2022

Before:

LORD JUSTICE STUART-SMITH
MR JUSTICE JEREMY BAKER
and
HIS HONOUR JUDGE ANDREW LEES

- -

Between:

REGINA	**Respondent**
- and –	
MANOJ BHATT	**Appellant**

- -

REPORTING RESTRICTIONS APPLY:
SEXUAL OFFENCES (AMENDMENT) ACT 1992

- -

James Scobie QC for the **Appellant**
Gareth Munday for the **Crown**

Hearing date: 9 June 2022

- -

Remote hand down: This judgment was handed down remotely at 10.30am on 7 July 2022 by circulation to the parties or their representatives by email and by release to the National Archives.

Approved Judgment

Stuart-Smith LJ:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to the offences that are the subject of this appeal. 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. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.

Introduction

2. After a trial in the Crown Court at Harrow lasting 10 days the Appellant was convicted on 12 February 2021 of 12 serious sexual offences including 3 counts of attempted rape and one count of rape. The seriousness of the offending was marked in due course by sentences that in total amounted to a special custodial sentence of 19 years comprising a custodial term of 18 years and an extended licence period of one year.

3. At trial and before us the prosecution was represented by Mr Munday. At trial the Appellant was represented by Mr Burton; before us he has been represented by Mr Scobie QC.

4. He now appeals against his conviction with the leave of the Full Court (Stuart-Smith LJ, Hilliard J and the Recorder of Manchester) on two grounds which we will set out in detail below. In briefest outline the Appellant submits that the Judge unfairly undermined the Defence by his imposition and enforcement of an arbitrary time limit on cross-examination (Ground 1); and that passages in the written directions to the jury and summing up under the headings "Avoiding myths and stereotypes" and "Children and Young people" were unfairly unbalanced adversely to the Appellant's case (Ground 2).

5. Because of the nature of the submissions in support of the appeal, it is not necessary to outline the allegations that underpinned the convictions in detail. It will, however, be necessary to refer extensively to passages from the transcript of the trial and the summing up because they are the basis of the appeal. We therefore set out much more of the transcript than would be usual so that a complete picture of the relevant material may be seen.

The Factual Background

6. About the underlying facts it is sufficient to say that the complainant, who we shall call D, had an older sister who we shall call SB. The Appellant was for a long time in a relationship with SB and had two children with her. Between 2001 and 2005 it was the prosecution case that the Appellant groomed, abused, assaulted and ultimately raped D who was then aged between 10 and 15 years. D said that she had reported the abuse, at least in general terms but not in full detail, to a number of people including her mother and her sister SB but that she had not been believed by her family. She said that she had been reluctant to go to the authorities and that at least one of the reasons for her reluctance was the Appellant's relationship with her sister, SB. Much of the abuse was said to have occurred in the Appellant's shop between the end of D's school-day and when the shop would be closed by the Appellant some two

hours later. The case finally came to the attention of the police in 2018. D had recently made disclosure to social services in the context of an application for a guardianship order in relation to her brother's children. After the disclosure to the social services there was a family meeting. It was the prosecution case that at that meeting D's partner had confronted the appellant who had admitted the abuse and apologised to D.

The Trial

7. As the length of the trial indicates, a number of witnesses were called in addition to D and the Appellant. In particular, SB was called by the Defence and did not support D's account. Specifically, she denied that D had made disclosure to her before 2018. D's version of events was supported by evidence that she had made disclosure to others including work colleagues, a social worker, D's counsellor and the ex-wife of D's brother. The Defence case was that the offences never happened and could not have happened in the way alleged, for various reasons which are not material to this appeal.

8. All of the additional evidence went to the central issue in the case: was the jury sure that D was telling the truth? As the Judge put it in summing up, the fine detail of the nature of the offences did not matter:

> "It is very stark. If you are sure [D] is telling the truth, that is the overarching issue. The defence say she is telling a pack of lies."

9. Counsel for the Appellant started his cross-examination of D in the afternoon of Day 2, 2 February 2021, and continued for 48 minutes. Shortly before he started, D had become upset on being shown by Prosecution Counsel a photograph of the room in the shop where the abuse was said to have occurred. The Judge told D she was now to be cross-examined and said that she should let him know if she needed a break. He then continued by saying: "… but on the other hand, I know you are going to want to finish as soon as you can. I will be governed by you, and feel free to sit down whenever you want as well."

10. A little later, the Judge made a further enquiry of D about her availability should her evidence go into the next day, as follows:

> "JUDGE: … Can I just ask you if we needed to break off your evidence this afternoon, I just want to gauge from you how much inconvenience that would cause, are you able to come back in the morning if we need to break off this afternoon.
>
> A: Yes.
>
> JUDGE: You are. Obviously, I know you do not want to, but I am trying to see what our options are.
>
> A. Yes.
>
> JUDGE: All right, thank you. Yes, Mr Burton. The witness has said, I do not know if you have heard, while you were looking at the note that she is able to come back in the morning.

> COUNSEL. I did hear that, thank you very much, yes, Your Honour.
>
> JUDGE: I am not suggesting we break as of now.
>
> COUNSEL: No, I understand, Your Honour. [To the witness] We had hoped to conclude your evidence this afternoon but the fact that there has been so many delays, no one's fault, …".

11. Towards the end of the afternoon's session, Counsel for the Appellant started asking D about her relationship with a man who she had married but who had stayed in India and to whom D would send money. After a while, the Judge intervened as follows:

> "JUDGE: Now, Mr Burton, I have been listening to a few questions about this to see how it developed, I am struggling to see the relevance of that marriage to this indictment that is before the jury.
>
> COUNSEL: It led, did that marriage and the circumstances [of] that relationship, did that lead to you seeking counselling?".

The witness then answered the question and the cross-examination continued.

12. Shortly after that intervention, Counsel for the appellant was looking for some documents and the following exchange occurred:

> "JUDGE: While you are tracking them down, can I just get a feel for, I am trying to see whether to keep you in the witness box a bit longer in the hope of finishing your evidence, as opposed to adjourning for the morning. How much longer do you think you have got roughly?
>
> COUNSEL: I am going to ask for a short break anyway because there's a matter I wanted to deal with with my client in respect of the photographs produced in evidence in court anyway before I can finish.
>
> JUDGE: Right, I think –
>
> COUNSEL: I was going to ask for a break, in any event.
>
> JUDGE: I think in any view, D, giving evidence is quite an intense process, and if you do not mind, I am going to break off now with the jury and you, and ask you to return fresh tomorrow at 10am.
>
> A: Yes.
>
> JUDGE: Is that all right?
>
> A: That's fine.
>
> JUDGE: I think we will do it that way rather than getting a break now and having the witness come back.
>
> COUNSEL: I will need more than just a few minutes.

> JUDGE: Okay.
>
> COUNSEL: Hopefully, as usual, if I can see this is the benefit of a short break will [inaudible].
>
> JUDGE: All right, well, I do not imagine you will be very much longer tomorrow morning, but I am going to break off now.”.

After discussing other administrative matters, the Judge returned to the question of timing:

> “JUDGE: … I am not going to put too much pressure about timing. It is impossible to be very precise, but roughly how much more cross-examination do you think you have?
>
> COUNSEL: How long have I been so far?
>
> JUDGE: You have been about an hour and a half.
>
> COUNSEL: I do have at least half an hour.
>
> JUDGE: All right, I will expect you to come to a conclusion within say 45-minutes tomorrow morning.
>
> COUNSEL: That helps me.”.

We note in passing that the Judge’s estimation was incorrect and that Defence Counsel had in fact only been cross-examining for 48 minutes by this point.

13. The following morning, on receiving a note from the Jury, the judge gave directions on how it would be answered. There was then a brief exchange about timing with Defence Counsel:

> “JUDGE: …Right, but in the meantime we are going to continue with your questioning, Mr Burton. You have said you will be 30, 40 minutes, something like that –
>
> COUNSEL: I will certainly be at least that, that period of time. I am going to try to keep it short –
>
> JUDGE: Well, I would like it to finish within 40 minutes.”.

The cross examination then continued, largely without intervention. At one point the Judge pointed out that Defence Counsel was repeating matters that had been covered the day before. After clarifying her previous answer with D, the judge said that he “would like [Defence Counsel] to move to fresh ground rather than to recycle.” When Counsel demurred, the Judge repeated that he had asked the question the previous day and said “Let us move on to new questioning.” We are not able to detect anything exceptional about this exchange at all. Specifically, there is no hint of animus or conflict between Judge and Counsel; it is an entirely routine occasion of a Judge asking counsel to move on.

14. After a while, D became distressed on it being suggested to her by counsel that she had made it all up. The Judge intervened:

> "JUDGE: Just pause for a moment. Can I just explain to you, D? It is not what Mr Burton believes. It is not personal. He is putting the instructions of his client, the defendant, and it will be for the jury to decide. All right. Just take a moment. Would you like to –
>
> A: Sorry.
>
> JUDGE: No, do not apologise. Would you like to take a short break?
>
> A: Yes please.
>
> JUDGE: All right. We will take a short break. Thank you ladies and gentlemen. Fifteen-minute break.".

Immediately after the court had risen and, it appears, in the absence of the Jury, the Judge spoke to Defence Counsel again:

> "JUDGE: … This is exactly why I have sought to keep to a shorter timeframe for cross-examination. So, I am now going to impose a time limit to protect the defendant because it can be seen as diminishing returns if a witness becomes increasingly distressed, and to protect the witness. If and when the witness is able to resume because I was told that behind the scenes yesterday there was considerable distress, perhaps not portrayed in court, and if and when the witness is fit to resume, Mr Burton, you will have 20 minutes. So, take your best points, okay? You have got 15 minutes now to further whittle and I will tell the jury when we resume, that I have imposed a time limit of 20 minutes.
>
> COUNSEL: Yes, Your Honour.".

When the Court resumed about 15 minutes later, the Judge returned to the question of time limits and the following exchange took place:

> "JUDGE: Right, so Mr Burton, I am going to impose a time limit. Now, it maybe that 20 minutes is too short. What would you suggest?
>
> COUNSEL: Your Honour, could I ask for 40 minutes, [which I think?] [inaudible] 35 minutes. I think I've been on [my feet?] for about 15 minutes but I appreciate your [inaudible] said 45 minutes outside, but because –
>
> JUDGE: Right, I think that is at the very outside, but I am going to say a time limit, and it will be imposed. I have not got a bell, but it will be imposed. I am going to say 35 minutes.
>
> COUNSEL: Thank you.

> JUDGE: I will tell the jury that I have imposed it, so if they think it is wrong, they can blame me. All right, and I will tell the witness too …".

15. When D came back into court the Judge told her what had happened:

> "JUDGE: … Now, just so you know, just before we bring the jury back, let us just wait for the defendant. Just so you know, I have imposed a final cut-off period of 35 minutes from now.
>
> A: Okay.
>
> JUDGE: So, that is the maximum that you will be in the witness box.
>
> A: Okay.
>
> JUDGE. All right I am going to try and finish your evidence in this final session.
>
> A: Okay, thank you.
>
> JUDGE: Okay, thank you very much …".

Before the Jury returned, Defence Counsel asked for further clarification and the following exchange took place:

> "COUNSEL: … Just before the jury comes in, just so that we're clear, I mean, I am conversant with Your Honour's concerns, could we just shut the door for a moment? Conversant of Your Honour's concerns as to length. There are obviously key parts or some parts of the witness' evidence that are challenged. Specifically matters raised, for example, something was raised by the witness yesterday when she was shown a photograph of the cellar, which I am not going to come back to this. I know it's understood that –
>
> JUDGE: Well, look, we are wasting time now. You have got until 12 o'clock. If you will be saying to me 'Well, I did not formally challenge that because of the time limit', I will hear the submissions on that later on.
>
> COUNSEL: Yes.
>
> JUDGE: You have until 12 o'clock. Thank you very much. Jury please.".

And when the jury returned he told them of his decision:

> "JUDGE: Right, thank you ladies and gentlemen. Just so you know, I have imposed a time limit for all further questionings which must finish by 12 of this witness. So, if you think that is too short, do not blame it on Mr Burton, blame me. I have imposed that as a time limit on him. So, 12 o'clock. Right, Mr Burton?".

16. Cross examination proceeded appropriately and concisely with Defence Counsel putting relevant points to the witness. After some minutes, there was a short exchange between counsel and the judge where Counsel asked if the judge had said 12 o'clock and the Judge replied "Yes I did. You have got six, seven minutes."

17. Just as Defence Counsel was coming to the family meeting the following exchange occurred, which is a passage that forms the centre-piece for the Appellant's submissions to us. Defence Counsel had established who was present at the meeting when the Judge intervened as follows:

> "JUDGE: Pause. Twelve o'clock, so this is your last question.
>
> COUNSEL: Well, this is really, very important to get –
>
> JUDGE: Yes, well, I gave you notice. Twelve o'clock, this is your last question. Do you want to ask another question or not?
>
> COUNSEL: With respect, Your Honour, I'd rather not –
>
> JUDGE: Okay, thank you very much.
>
> COUNSEL: I'd rather not be harangued in that way.
>
> JUDGE: I'm not haranguing, I'm setting a time limit. Ask your last question or sit down.".

18. Defence Counsel then attempted to roll everything up into one question. Since it is central to the Appellant's case on appeal, we record what was said after the judge had said "Ask your last question or sit down.":

> "COUNSEL: By the stage that meeting took place, it was made plain by yourself that unless Mr Bhatt said sorry for what had happened –
>
> A: I didn't suggest him to say to sorry. My sister did.
>
> COUNSEL: You would report – I hadn't finished my question – you would report the matter to Social Services, you would disclose to the family the fact that the relationship between Mr Bhatt and your sister, and that in the circumstances of being shouted at by both yourself and J, Mr Bhatt was persuaded to kneel down to your feet and apologise for any offence he may have caused, but at no stage made any admission to what was being alleged by yourself and J. Do you understand the question?
>
> A: I understand the question but that's not what happened. What happened was the fact, they – my sister was constantly calling me at work. They then phoned J, who is J, my partner, and they said that they – we needed to meet up, we needed to find out what was going on and what the solution to this would be. They, in fact, came to find a solution and see if I could lie, if it – and say, actually it wasn't about Manoj, it was about some past boyfriend of my sister's and J said 'No, she's not going to lie, but did you do this'? and he asked the question. I

> don't remember the exact words but he asked the question and he accepted it and then my sister said, 'Just apologise to her and my mum', and that's when he folded his hands and he went like this and said 'Sorry' and then he put his hand on my head and said 'I'm like a father to you'. Father's don't do things like that.
>
> COUNSEL: I can't ask any further questions?
>
> JUDGE: No, you cannot.
>
> COUNSEL: I can't [inaudible].
>
> JUDGE: Thank you very much. Right, is there any re-examination, Mr Munday?".

19. A very brief re-examination then followed and D's evidence finished at 12.04 pm. Cross examination had lasted 1 hour and 28 minutes: 48 minutes the previous afternoon and 40 minutes that morning.

20. Later that day there was a brief exchange when Defence Counsel took the point that Prosecution Counsel was leading a witness. There was a lack of clarity about whether the matters that were being led were in dispute. The judge resolved the objection by saying:

> "JUDGE: Right, if it might be in dispute, I will ask the witness myself. Sit down, Mr Burton. Thank you. You are meeting D, when you met her, you have told us that you got on well with her. Did you feel that you had anything in common with her or not?
>
> A: Not in the beginning
>
> JUDGE: Not in the beginning?
>
> A: Not in the beginning, no.".

The judge continued to ask questions in similar non-leading vein for a short while and then handed conduct back to Prosecution Counsel.

21. The family meeting was the subject of evidence from three other witnesses. D's partner gave evidence on behalf of the prosecution, including evidence of a clear admission by the Appellant, his attempting to touch D's feet as a gesture asking for forgiveness or a blessing, D's reaction and SB's suggestion that they should say it was a former boyfriend and not the Appellant who had abused her. He was cross-examined by Defence Counsel who put the Appellant's case in detail. Specifically, Defence Counsel challenged the suggestion that the Appellant had admitted committing the sexual abuse and suggested that his gesture in attempting to touch D's feet was in accordance with a custom whereby, if offence or upset has been caused, the older person will make the gesture whether or not they are at fault. He also put that there was a parallel conversation or discussions in Gujarati involving SB and D's mother. The witness said that he could remember no such discussions and that the mother had said nothing. There were no material interventions from the Judge other than to clarify briefly and courteously. No complaint is made of those interventions:

nor could there be any. In a very brief re-examination, the witness said that he had not made up his evidence in order to support D.

22. SB was called by the Defence. She contradicted the prosecution account of the family meeting, maintaining that D's partner had been verbally aggressive trying to force the Appellant to admit the abuse by threatening that SB's children would be taken by Social Services but that the Appellant "told him very nicely that, "I haven't done anything like this so stop accusing me."" SB's evidence was that D said she did not want to take matters any further and that their mother had then said that they should end it immediately and that the Appellant should apologise, with the result that both SB and the Appellant apologised as they had been told to do so by the elder of the family. She said that the Appellant had touched D's head and said "You are like my daughter" but that, so far as she was concerned, he was not admitting what he had been accused of doing.

23. It is apparent from the transcript that SB, who was giving evidence by video-link from India, was affected by a covid curfew, which added an extra time-consideration. This led the Judge to repeat the need to make progress so that she could be released in good time to comply with the curfew. At one point Prosecution Counsel questioned the relevance of a particular line of questioning, which led to the following exchange, upon which Mr Scobie relies as showing a degree of conflict between Defence Counsel and the Judge:

> JUDGE: Pause. Pause. Now, Mr Burton, time is extremely precious, but you must ask everything that you need to. You have already established with the witness herself, D, her problems with fertility and this sounds like an incredibly long answer. Do we really need to go through this?
>
> COUNSEL: I can't control the length of the answers.
>
> JUDGE: Right, well why do we not move on to, for example-
>
> COUNSEL: I would like to know-
>
> JUDGE: No, do not interrupt me. Why do we not, for example, move on to the complaint through Social Services, because that is quite a big topic, is it not?
>
> COUNSEL: Well, I do think the answer that's just being given- if that could be dealt with that quickly, the answer that's just been given should be translated.
>
> JUDGE: Well, let us see. I will be the arbiter of relevance, … .

24. During cross-examination by Prosecution Counsel, the Judge adverted to the need to keep making progress and, a little later, said to Prosecution Counsel:

> JUDGE: … As I did with Mr Burton, I am going to impose a time limit. I give you fair warning. You have got about half an hour: 3.30.

And, a little later, he gave Prosecution Counsel "another 15 minute warning." There was then a short break. When the jury came back, Prosecution Counsel turned to the family meeting and put the prosecution case, which the witness denied in terms consistent with her evidence in chief. Her evidence was that the Appellant's behaviour had been clear and that D and her partner must have realised that he was not admitting anything. Rather, he was merely trying to protect his children from being taken away.

25. As Prosecution Counsel appeared to be moving on from the meeting, the Judge intervened as follows:

> "JUDGE: Okay Mr Munday, have you finished with the meeting because I have not heard you put the Crown's case on it yet about evidence we have heard, and you have to put it to the witness if you are relying on it? Anything said by this witness in the meeting.".

26. Prosecution Counsel then put to SB that she had said to D that D should say it was someone else who had abused her, not the Appellant, which she denied. Defence Counsel's short re-examination did not touch on what happened at the meeting. After the conclusion of SB's evidence, the Judge took Prosecution Counsel to task for not having put all aspects of the Crown's case to the witness. The Appellant submits that this exchange demonstrates, if demonstration were needed, both the importance of a party putting their case and the Judge's appreciation of that importance.

27. The Appellant gave evidence on his own behalf the following day. Defence Counsel was given a 15-minute break in the middle of examination in chief to gather his thoughts about how to conclude the evidence. During that break the Judge said:

> "In my mind's eye, and I was probably being unrealistic, we would have finished this evidence this afternoon, but it sounds like we are just going to finish examination-in-chief and have cross-examination tomorrow.".

Both counsel agreed that this was a realistic assessment.

28. When it came to the family meeting, Defence Counsel took the Appellant through his evidence carefully and thoroughly. The Appellant's evidence was similar to that of SB. He said that D's partner had shouted at him (in English) telling him to admit it and that he had responded that he would not admit something he had not done. Then, he said, D and her partner threatened him that Social Services would take his children away. The transcript records him as saying that his (i.e. the Appellant's) mother had intervened, though this appears to be a slip and the reference should be to SB's mother. On his account she said "For any reason if you've been offended for anything else and you're accusing him, do not talk about taking the kids away and putting them in Social Services, and for that they will apologise to you." On his account he then bowed down at D's feet and said "Please don't do this and spare my children. Don't take them. Don't make Social Services take them away."

29. At this point the Judge intervened briefly to ensure that he had got his note right "because this is potentially important." When the Appellant went on, he said that he had put his hand on D's head, blessing her and saying that "You are like my daughter. If I said anything which has offended you, then forgive us." His evidence in chief

about the meeting concluded with him again denying that he had abused D. There had been no impediment to Defence Counsel adducing the evidence he wanted to lead before the jury. During the course of the rest of his evidence, there were a number of interventions from the Judge but none of which complaint is made. In our judgment the interventions were appropriate: most appear to have been generated by the involvement of the interpreter, which led on occasions to a need to clarify.

30. At one point during the Appellant's evidence in chief the Judge queried the relevance of a line of questioning, which concerned the professional qualifications of a nephew of the Appellant. After Defence Counsel indicated that he would leave the point, the Judge explained to the Jury why he had intervened, which was to do with relevance of the nephew's qualifications. The examination-in-chief of the Appellant was then concluded. However, the Judge returned to his intervention in the absence of the jury the following morning, expressing the concern that he may have been "rather short" with Defence Counsel. It was agreed that the matter should be left to rest for the time being; and the Appellant was then cross-examined.

31. At about mid-morning, the Judge gave the Court a short break, primarily for the benefit of the interpreter. In the absence of the Jury the judge returned to the question of timing with Prosecution Counsel:

> JUDGE: Well … I am mindful of the fact, and it is incredibly important, we are already two days over the time estimate you gave for this trial.
>
> COUNSEL: Yes.
>
> JUDGE: This jury are expecting to end on Friday, no one wants corners to be cut, but we have to be concise and use our time well. I am already asked for a break this afternoon with the jury to go through legal directions, we cannot go at a snail's pace, so what I would like you to do is to start putting the Crown's case. I am not criticising, a lot of potentially valuable background has been covered, but we need to move into another gear now.
>
> COUNSEL: Yes, I'll speed up.

32. A little later there was a further exchange with Prosecution Counsel on the need to make progress:

> JUDGE: Okay, pause for a moment, now we have been back and forth on the question of cover many, many times, I think the jury know the battle lines; just so you know, I think by 10 past one I expect you to have finished cross-examination.

33. When it came to the family meeting, Prosecution Counsel put to the Appellant that most of the conversation took place in English, and that D's partner had asked the Appellant directly whether or not he had assaulted D. The Appellant's evidence was that he had said repeatedly that he had not abused D and that D's partner had shouted at him saying "You did, you did, you did" and "You better admit it." He admitted to having scolded D in the past and said that he had asked for forgiveness and had

bowed down at her feet so that the Social Services would not take his children away. He flatly denied that he was lying and said that it was D and her partner who were the ones who were lying.

34. It is apparent that the Judge gave prosecution counsel a few more minutes than he had indicated because the time came when the following exchange occurred:

> JUDGE: Okay, pause, I gave you five minutes extra because of the interlude with the interpreter, but that is the end –
>
> COUNSEL: Yes, [inaudible] in due course in order to direct the jury, the questions of counsel and the repetition of the allegations is not evidence in the case.
>
> JUDGE: Well, that applies to both counsel, that is true.
>
> COUNSEL: It does, indeed.

35. At the start of the afternoon session, and before the Appellant was re-examined, the Jury sent a note to the Judge to which he responded as follows:

> JUDGE: What a polite note, ladies and gentlemen, I will read it out to counsel, I was going to do this, but you pre-empt me, 'Please may the judge assist the jury in understanding the process remaining for the current case? We recognise the right to a fair trial regardless of how long it may take, but a brief overview would be helpful to us if that would be allowable'. Right, I will return to this a little bit later, but the short answer to your question is we anticipate finishing all the evidence in the case today. I will then need to ask you to leave us, so you are going to have a fairly early day today, I suspect, while I discuss some legal directions with counsel and then tomorrow, Thursday, the plan is for me to begin my summing-up to you, the legal summing-up, for counsel to make their closing speeches to you and for me to remind you of some of the evidence that you have heard and that is expected to take all of tomorrow. Our current plan is it is expected that you may go out to begin your deliberations on Friday morning.
>
> Now, I appreciate that you were probably expecting to finish on Friday, which may well be the case, but it is important that you do not feel any extra anxiety were your deliberations to continue into Monday. So, if any of you have, as I say, it may not be a problem, but if we are in that position, would you think about that and would you pass me a note to let me know what, if any, difficulty there would be were deliberations have to continue on Monday, pass me note if there are any anxieties about that and I will consider it.

36. The Appellant was then briefly re-examined by Defence Counsel. The re-examination did not elicit any further evidence about the family meeting.

37. We can now turn to the summing up, which was a split summing up with the legal directions being given in writing and orally before counsel's speeches and the Judge's summary of the evidence being given orally after them.

38. One particular aspect of the legal directions forms the basis of Ground 2. In what were otherwise uncontroversial directions, the Judge included two sections, entitled in the written version "Avoiding myths and stereotypes" and "Children and young people". We set them out in full as given orally by the Judge:

> Now the next section I have headed 'avoiding myths and stereotypes'. Before I turn to the document, rape, historical sexual allegation, sexual abuse, all of these allegations come with a lot of baggage and talk in the media and opinions that you may have held. So what I have put here is, it is for you and you alone to assess whether or not you believe … the complainant. …
>
> However, it is important that you do not bring to that assessment any pre-conceived views as to how a witness, in a trial such as this, should react to the experience. Any person who has been sexually assaulted will have undergone trauma. It is impossible to predict how an individual will react in the days following, in the months since, and in the years since, and in speaking about it in public.
>
> The experience of the courts is that victims of sexual abuse react in different ways. Everyone is different. Some will display obvious signs of distress, others will not. It does not automatically follow that signs of distress by the witness confirm the truth and accuracy of the evidence, any more than lack of signs of distress indicate that they are being untruthful. How a witness gave their evidence and what you made of them is very much part of your job, as long as you remember not to bring stereotypes, or preconceptions, as to how people are supposed to react, into play
>
> …
>
> The next topic, children and young people. I am going to make some further comments, based on the experience of the courts, but they are not a direction of law and you are not obliged to adopt or follow them. Whether you agree with them and whether any of them apply to this case is entirely a matter for you.
>
> The defence say that if these things had really happened to her, you would have expected her to have complained, or protested, to someone sooner than she did. They say the fact that she did not complain, at the time that they were happening, makes her subsequent complaints less likely to be true.

When you are considering her reliability, you are entitled to consider why she did not make a complaint sooner, and you are entitled to consider whether the delay undermines the reliability of what she has told you. As with all decisions concerning quality and reliability of evidence, those are matters for you, not me, to decide, but I am going to make a few remarks about delayed complaints, in cases involving people who were then children or young persons.

When you are considering the reasons why a child, or young person, has not made a complaint, you must remember first and foremost that you are considering the behaviour of a child, or young person. Experience shows that they do not behave in the same way as adults. They do not have the same experience of life and the same levels of maturity and this is reflected in the way they react to events, and that includes the way they react to sexual attention. When children and young people are sexually assaulted, or abused, they may not be aware that what has happened to them is wrong. They may be confused about what has happened and they may even blame themselves for what has happened.

If they do appreciate that what has happened is wrong, they may be inhibited from speaking out for a variety of reasons. They may have been told not to tell anyone. They may be afraid that if they do tell someone, they will not be believed. They may be scared of the consequences of speaking out. They may be scared for themselves and they may be scared for other people and the effect it will have on relationships which they value and this difficulty may be compounded, where it would involve speaking out against a family member.

As a result, they may have very confused and mixed feelings about whether to speak out as they get older and as they mature into adults. They may simply blank out what has happened to them and get on with their lives, until the point comes when they feel ready to speak out, or someone, or something prompts them to speak out. It would be wrong to assume that every person who has been the victim of sexual assault will report it as soon as possible.

The experience of the courts is that victims of sexual offences react to the trauma in different ways. Some in distress, or anger, may complain to the first person they see. Others who react with shame, or fear, or shock, or confusion, do not complain, or go to authority for some time. It takes a while for self-confidence to reassert itself. There is, in other words, no classic or typical response. Do not stereotype. A late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint. It is a matter for you to determine whether, in the

> case of this complainant, the lateness of the complaint, such as it is, assists you at all and, if so, what weight to attach to it. You need to consider what she herself said about her experience and her reaction to it.
>
> Now she told you that she had tried to tell her sister and mother about it, but they disbelieved her and she ended up thinking that no one would believe her. The defence, on the other hand, say she is lying about ever telling [SB], or her mother about it, until 2018 and this is a conflict in the evidence, which ultimately depends on your assessment of the credibility of [D] and whether you are sure about her account.

39. The Judge had, in accordance with best practice, provided a draft of his proposed written directions to Counsel on Day 8, 10 February 2021, with a view to his summing up starting the following day. It is apparent from the transcript that both Counsel communicated with the Judge overnight by email making suggested amendments. There was then a discussion between the Judge and Counsel on the draft in the light of those suggestions from which it is clear that Mr Burton had suggested that the section on Children and Young Persons should be omitted from the written directions. Sensing that the Judge was against him, Defence Counsel questioned whether its inclusion might lead the Jury to think that it reflected the Judge's view of what had been made of the lack of complaints. Prosecution Counsel submitted that the Judge had prefaced the whole section by reminding the Jury that it was a matter for them whether or not they accepted and that the direction was merely telling them about the Court's experience. Defence Counsel responded that, although he agreed that the section on Children and Young Persons contained "highly relevant considerations", the Judge might also include that it may be the experience of the Jury that children are capable of lying. In his ruling, the Judge referred to Defence Counsel having "politely raised" the point, but he concluded that it was appropriate for the Jury to have the passages in writing as it concerned their approach to the evidence and that it was more helpful for them to have it "crystallised" before they heard the speeches of counsel. He rejected the submission that the passages gave "any portrayal of an opinion" by him.

40. Turning to the Judge's summary of the evidence, he took the evidence of the witnesses in turn rather than providing a single narrative approach and incorporating relevant evidence into that narrative. Adopting this approach is not the subject of any criticism by the Appellant. We have reviewed the summing up as a whole, giving particular attention to the Judge's treatment of the family meeting.

41. The Judge summed up D's evidence fully. His summary included her evidence in chief about the family meeting and a similarly thorough review of Defence Counsel's cross-examination save that review of the cross-examination did not include reference to the family meeting. His review of the evidence of D's partner covered both examination in chief and the putting of the defence case fairly and even-handedly, including the witness' account of the family meeting. When he dealt with the Appellant's evidence about the meeting he captured the essential points that the Appellant had made fairly and even-handedly; and he referred to the "stark contrast" between the Appellant's evidence and that of D's partner. Similarly, when dealing with SB's evidence about the meeting, he provided a fair summary of the essential

elements of her account. Viewed overall, his treatment of the witnesses' accounts of the meeting was fair and even-handed despite the omission of any mention of Defence Counsel's attempt to roll up his case and to put it as his compendious last question or of D's response to it. The Jury could have been in no doubt about the nature of the evidence the witnesses had given, the stark contrast between the opposing versions of events, the importance of the prosecution's assertion that the Appellant had admitted that he had abused D, and the strength of the Appellant's denial, supported by SB, that he had done so.

42. At the conclusion of his summing up, the Judge returned to the question of timing, saying to the jury:

> There is no pressure of time. To the juror who sent me a very polite note, expressing some anxieties about his workplace, I have already told you that your role, as keyworkers in this trial in progress, could not be more important and there is a legal duty for all employers to give way to jury service, until you finish. I will not be deaf to problems, so if that gentleman, or if anybody else has an anxiety, do not suffer in silence, pass me a note and let me know, but otherwise you will deliberate today, until 6 o'clock if necessary. If you have not finished, no pressure of time, you will come back on Monday morning at 10 and work through the day. No pressure of time, time is unlimited, and no one must feel hurried.

43. The Jury retired at 11.26 am. In their absence Defence Counsel voiced concern at the Judge's suggestion that the Jury might deliberate until 6pm if required to do so. The Judge's reaction was that everyone knew they would go into the following week if necessary but that he would keep them late as indicated. In the event, the Jury returned their verdicts at 12.41, 1 hour and 15 minutes after retiring.

The Appeal

44. Mr Scobie QC ran the two grounds of appeal that we have outlined above in tandem. He submits that the grounds should be seen in the context of persistent time pressure being placed upon Counsel; and in that context he contrasts the treatment of Defence Counsel with that afforded to the Prosecution. It was agreed on all sides that either D or the Appellant had come to Court with the deliberate intention of lying. The great majority of what was alleged by the Crown took place (if it occurred at all) out of sight of others. Mr Scobie submits that the family meeting therefore has added importance because it is the one area where the evidence of D and the Appellant respectively can be seen and tested in a context where direct evidence is also given by others, namely D's partner and SB.

45. Mr Scobie submits that the passages we have set out at [14]-[18] above show a confrontational refusal to allow Defence Counsel to put an important part of his case, which may have left the Jury with the impression either that the family meeting itself was unimportant or that the Defence case in relation to it was unimportant and could be disregarded or that Defence Counsel's cross-examination was being criticised. The effect of the passages, he submits, was to undermine Defence Counsel at a critical stage of his cross-examination. He submits that, although there were evident

pressures of time, doubtless exacerbated by the logistical difficulties imposed by the pandemic, they did not justify so peremptory an approach: it would have been possible and appropriate to let Defence Counsel finish his cross-examination, which would have taken only a few minutes and could readily have been explained both to the witness and to the Jury.

46. Mr Scobie submits that the combined effect of the written and oral directions on "Avoiding myths and stereotypes" and "Children and young people" was to bolster the evidence of D to the disadvantage of the Appellant. Taking that together with the peremptory curtailment of Defence Counsel's cross-examination he submits that the trial was unfairly tilted against the Appellant such that his conviction is unsafe. As he put it in reply, it is not possible to repair in a summing up what has not been properly tested with the principal witness for the Crown, namely D. In a passage of advocacy of consummate skill he attempted to plant in our minds the doubt that he says a Jury may have felt about the case that the Defence was attempting to run. And he submits that the Judge's reference to sitting to 6pm on the Friday, if need be, may have suggested to the Jury that this was a black and white case where the Jury could and should return their verdicts in even time.

47. We note in passing that there is no ground of appeal to the effect that the 6pm indication itself or in combination with other time restraints renders the convictions unsafe. It is, as Mr Scobie made plain, relied upon as providing context for the two grounds of appeal that are pursued.

48. Responding on behalf of the Crown, Mr Munday frankly (and rightly) concedes that the termination of Defence Counsel's cross-examination of D does not read happily. But he submits that Mr Burton's rolled-up final question effectively put the defence case on the family meeting to D. In any event, he submits that any adverse inference that the Jury might otherwise have drawn was forestalled by the Judge's clear direction to the Jury that the curtailment of time was his, the Judge's, responsibility and that, if they thought the time limit was short, they should blame him and not Defence Counsel. He submits that the Jury could not have been under the impression that the family meeting was unimportant or under any misapprehension about the contrasting cases being advanced by the Crown and the Defence.

49. Turning to Ground 2, he points out (correctly) that the text for the directions closely followed drafts in the Compendium which are routinely followed; and he submits that there was suitable tailoring to meet the facts of the present case. The giving of the direction was justified by the repeated putting to D of the Appellant's case that she had not complained to others; and he relies upon the fact that Defence Counsel expressly accepted that the Children and Young Persons direction should be given – his only reservation being that it should have been given orally and not in writing. He repeats the submission that he made at trial that it is helpful for the Jury to have as much as possible crystallised in writing so as to provide the legal framework for the speeches of counsel. He rejects the suggestion that there was an antagonistic atmosphere and submits that the Judge's interventions, viewed overall, were even-handed and appropriate.

50. Mr Munday informed us that Friday 12 February 2021 was scheduled to be the jurors' last day of service; but he submits that the Judge made it clear that the importance of their task meant that they could and would go over into the following Monday if

necessary with no pressure to reach a conclusion on the Friday. He submits that the pressures of time were at least in part a reflection of the additional difficulties imposed by the pandemic. As an example of the practical effects of the pandemic he points to the fact, which appears more than once on the transcript, that disinfection and cleaning of the witness box had to be carried out between each witness and, as was commonplace during the pandemic, the Jury were not able to retire to a convenient enclosed space for "just for a few minutes" but had to be led to a place of safety, ensuring that they did not come into contact with others. The need for SB to comply with the curfew in India is another practical example of the logistical difficulties typical of those facing trial judges throughout the land during the dark days of the pandemic. He submits that the Judge's references to time pressure were appropriate and do not cause or contribute to any lack of safety in the Appellant's convictions. And, despite the time pressures, he points to accommodation provided by the Judge to the Defence, including allowing Defence Counsel time to take instructions during the trial, interposing SB before the Appellant gave his evidence, and permitting the Appellant to start his evidence in the morning rather than at 2.40 in the previous afternoon.

Resolution

51. As a preliminary observation, it is plain that the pandemic was imposing additional demands on the conduct of this trial, as the Court ensured that the safety of Court users was protected as far as reasonably possible. We accept without hesitation that this would have made some routine steps, such as asking the Jury to retire for a few minutes, more complicated and time consuming. Though there is no mention of this in the transcript, our collective experience leaves us in no doubt that the difficulties of maintaining social distancing and other measures for the safety of all concerned would be increased if one jury panel over-ran so that there were additional people to be protected when the following week began. While these complications affected the speed and efficiency of the trial process, it was always essential to ensure that they did not compromise the fairness of the trial process.

52. Second, it is plain that the Judge had hoped to complete the trial before the end of Friday 12 February 2021 and that, from time to time, he felt it necessary to intervene with both Prosecution and Defence Counsel to urge greater speed. The great majority of these were conventional examples of a Judge perfectly properly encouraging counsel to leave a point that had been sufficiently covered (or covered on a previous occasion) or where a Judge seeks clarification either from a witness or from counsel: see, for example, [23], [29] and [32] above. Having scoured the transcripts, it seems to us that there are four occasions which bear further examination.

53. The first is the manner of the imposition and enforcement of the guillotine on Defence Counsel's cross-examination of D. We have set out the relevant exchanges at [14]-[18] above. We accept (as did Mr Scobie) that the imposition of time-limits and their enforcement are commonplace in Crown Court Trials, particularly those involving allegations of sexual offending, and that the discretion of the trial judge in relation to the setting and enforcement of time-limits is broad, the touchstone being that the fairness of the trial must not be compromised: see *R v Butt* [2005] EWCA Crim 805 at [16]. In the present case, the Judge was confronted by a witness who was finding matters distressing. He took the view that prolonged cross-examination would lead to diminishing returns and increased episodes of distress and that it was not in the

interests of the Appellant for that to happen: see [14] above. In addition he took the view that imposing a time limit was appropriate to protect D. Those were views that he was fully entitled to take and we do not criticise his conclusion that cross-examination should be curtailed. It appears that the Judge may have been under a misapprehension about how long the cross-examination had lasted when he came to formulate his view about how much longer Defence Counsel should have; and it also seems to us that just under 90 minutes in total is quite tight given the amount of material that Defence Counsel had to cover in order to put the main features of his client's case. However, it was undoubtedly within the range of durations that the Judge was entitled to impose; and the time limit, though tight, cannot reasonably be described as arbitrary. Rather it can and should be seen as the Judge's assessment of what further period of cross-examination best protected both the Appellant and D when the time limit was first set. Nor would we criticise the manner in which the time limit came to be set, which we have set out at [12]-[15] above. The gradual movement towards imposing the time limit were characterised by proper and courteous discussion with counsel leading to the Judge's decision.

54. In some cases there may be compelling reason why a time-limit, once set, should be enforced to the minute, either to protect a witness or because counsel is making poor use of the time allowed to them. It is not clear that this was such a case. There is no sign that D was distressed in the minutes approaching 12 noon, and her reply to Defence Counsel's rolled-up question, when it came, shows that she was still fully able to maintain her evidence. Defence Counsel had been using his time competently and had covered considerable ground in the time he had been given. In our assessment, he needed only a very few minutes – five at the outside – to put his case on the family meeting properly to the main prosecution witness. It would have been relatively easy for the Judge, who was clearly fully in control of his Court, to explain both to D and to the Jury why her cross-examination was to be prolonged for that short while.

55. As the clock ran down, the guiding principle should as always have been fairness or, more particularly, the risk of unfairness to either the prosecution or the defence. We do not criticise the Judge for his instinctive wish to maintain the time limit that he had recently set. Furthermore, it would have been possible for the Judge to impose the guillotine at 12 noon while making plain to the Jury, as he had done before, that the responsibility for curtailing the cross-examination lay with him and not with Defence Counsel. Adopting this approach in circumstances where it could not be said that Defence Counsel had squandered the time available to him would have provided added comfort for the Appellant while maintaining the time limit of which all parties had been made fully aware. However he did it, enforcing the guillotine in the present case was going to mean that Defence Counsel would be stopped before putting his case on the family meeting as he would wish and as normal competence would dictate. It was therefore a significant step to take, though one that was within the range of decisions that the Judge was entitled to take.

56. Where we part company with the Judge is in his handling of the enforcement of the guillotine. As Mr Munday rightly accepted, it does not make for happy reading. It is, in our view, a marker of the unsatisfactory manner in which the termination was handled that experienced and competent Defence Counsel felt compelled to suggest in front of the jury that he was being "harangued". The Judge did not agree. We have

not heard the voices and so cannot gauge the tone of voice that was being employed; but it is sufficient to say that, on the basis of the transcript, we can understand why Defence Counsel responded as he did. It may not be necessary to try to analyse precisely what went wrong when, in our judgment, the overall effect was clear, but some points may be identified, dealing first with the passage we have set out at [17] above. First, to start by saying “Twelve o’clock, so this is your last question” can only be described as peremptory since it would be obvious that Defence Counsel was unprepared for the directive that he had only one question. Whether Defence Counsel should have been prepared is of secondary importance since the Judge had to deal with how things stood at 12 noon. Second, it was really no answer to say, when Defence Counsel pointed out the importance of the family meeting, that he had been given notice, that it was now 12 o’clock and that it was now time for a last question. That response smacks of an unexplained and unnecessary adherence to form rather than the result of a reappraisal of the balance of fairness to D and the Appellant. Third, the question “Do you want to ask another question or not?” seems to us in context to be confrontational rather than judicially firm, an impression that is heightened by the Judge saying a moment later “Ask your last question or sit down.”

57. To this extent we accept Mr Scobie’s submission that the manner of the termination of Defence Counsel’s cross-examination of D gives rise to two legitimate concerns: first, that it could have affected the Jury’s view of Defence Counsel in relation to his failure to complete his cross-examination of D in time; and, second, that it could have left a member of the Jury with the perception that the family meeting was less important than it actually was. To that extent, and viewed in isolation, we accept that the manner of termination raises a question about the fairness of the trial process. We emphasise immediately, however, that such a question requires this episode, which lasted a matter of seconds, to be seen and assessed in the context of the trial as a whole. That is an exercise to which we will return later in the judgment.

58. The episode was concluded by Defence Counsel’s attempt to roll up the case that he would have wished to put into his one last question. In normal circumstances, had counsel rolled up what amount to at least five questions into one, any Judge would intervene to require the composite question to be broken down into its constituent parts. That said, Defence Counsel’s rolled up question was a manful effort; and, more importantly, it was clearly understood by D who gave a reply that showed she was still well able to contend with the cross-examination to which she had been subject. To that extent, the composite question and answer blunt the point of the submission that Defence Counsel was not able to put his case. It does not demolish the point altogether because putting the case by proper (single) questions is preferable to having to rely upon a composite one. But it reduces any danger that might otherwise have existed that the Jury would undervalue the importance of the family meeting or not understand the Appellant’s case in relation to it.

59. Before leaving the episode for the time being, we consider that the exchange between Defence Counsel and the Judge that we have set out at the end of [18] above continues the unhappy manner in which the guillotine was enforced, though we repeat the reservation that we have not heard the tone of voice in which it was conducted.

60. The second feature upon which Mr Scobie relies contrasts the manner of enforcing the termination of Defence Counsel’s cross-examination of D with the manner of the imposition and enforcement of the time limit for Prosecution Counsel’s cross-

examination of SB and the Appellant: see [24], and [32] and [34] above respectively. We see no distinction in relation to the initial imposition of the time limits, which were courteous and appropriate as they had been with the initial imposition of the time limit for Defence Counsel's cross-examination of D. It does not appear from the transcript that the Judge had to enforce the time limit he had set for Prosecution Counsel's cross-examination of SB. When it came to time to enforce the time limit on the cross-examination of the Appellant, the Judge allowed Prosecution Counsel five extra minutes "because of the interlude with the interpreter." What if anything is to be made of this fleeting episode? We would not criticise the decision to give Prosecution Counsel five extra minutes, for the reason given by the Judge. What it does suggest, however, is that the pressures of time were not so extreme as to exclude the possibility of a few minutes' flexibility. To that extent it supports the suggestion that the Judge could have given Defence Counsel the additional few minutes he needed to conclude his cross-examination of D, even in the absence of any interlude with the interpreter or similar justification. Overall, however, the distinction between the two approaches is, to our minds, of no real significance. We cannot conceive of the possibility that a juror, or the Jury as a whole, would have been influenced in a way that was adverse to the Appellant's interests because the Judge reasonably gave Prosecution Counsel a few extra minutes after an interlude with the interpreter.

61. The third feature upon which Mr Scobie relies is the exchange that we have set out at [20] above. We are not satisfied that this adds anything material. On the contrary, it seems to us to have been a reasonable resolution by the Judge of the point that had arisen about whether a witness was being led improperly by Prosecution Counsel. The lack of clarity led the Judge, reasonably in our view, to conclude that the quickest way through was for him to take over questioning with unimpeachable open questions for a brief period before handing back to Prosecution Counsel. It was a good example of a judicial intervention that got things going again rather than getting bogged down in a dispute between counsel in the presence of the Jury. In the course of so doing he indicated that Defence Counsel's objection was being dealt with by his questions and that Defence Counsel should sit down. We are unable to detect any hint of animus or inappropriate direction in what the Judge said.

62. Last comes the episode that we have outlined at [23] above. We have already referred to an occasion during the cross-examination of D when the Judge intervened to direct Defence Counsel to move on rather than recycling matters with which he had already dealt: see [13] above. We are not able to discern anything untoward in the exchange that we have set out at [23] above, with the possible exception of the Judge's remarks in the last line that we have set out. Much more important is that the Judge set out clearly at the outset why he was intervening. Most importantly, and not forgetting the last line of the citation, we are unable to detect any sign of animus or conflict in the dealings between the Judge and Counsel on this occasion.

63. We have referred at [30] above to a similar intervention, again relating to relevance, during the Appellant's evidence in chief. This subsequently gave the Judge cause for concern on the basis that he had been "rather short" with Defence Counsel. We have scrutinised the transcript and find no basis for significant criticism. The Judge explained to the Jury why he had intervened and his intervention appears to us to have been justified. We can find no evidence of animus, confrontation or undermining of Defence Counsel in the passage which gave the Judge his concerns. We are confident

that the correct course was followed, namely to let it lie. Neither on its own nor in its immediate or wider context do we find any reason to suggest that the intervention could have acted unfairly or to the Appellant's material disadvantage.

64. We have identified the passages upon which Mr Scobie has relied. In relation to the termination of Defence Counsel's cross-examination of D we have accepted that the manner of termination, viewed on its own, gives cause for concern. We have also identified the limited significance of the Judge not enforcing to the minute the time limit he had imposed upon Prosecution Counsel in respect of his cross-examination of the Appellant. However, despite the very great skill with which the appeal has been advanced, we are not persuaded that any of the other passages upon which Mr Scobie relies give any cause for concern. Specifically, they do not substantiate the presence of any degree of unacceptable animus or conflict passing between the Judge and Defence Counsel. To the contrary, extensive study of the transcripts shows that, with the one exception we have identified, the Judge was unfailingly courteous, reasonable and even-handed in his dealings with both Counsel.

65. The conclusion that the trial was conducted overwhelmingly courteously, reasonably and even-handedly provides the wider context for the termination of the cross-examination of D. As we have indicated, that happened during Day 3 of a 10 day trial. Extensive review of the transcripts shows that the brief episode was out of line with the general conduct of the trial to such an extent that, even if a manner of termination had raised a question in the mind of a juror or jurors at the time as Mr Scobie suggests, the conduct of the rest of the trial would have provided a significant part of the answer to any such question. Thus, even accepting for the purposes of argument that the manner of the termination had the potential to raise questions in the mind of the Jury which could have given rise to a risk of an inference being drawn that was unfair and adverse to the Appellant, that potential and risk were substantially dissipated by the conduct of the rest of the trial.

66. We have reached the clear conclusion that the failings in relation to the termination did not, in the end, give rise to any actual risk of unfairness or that the Appellant's conviction may be unsafe. We have reached that conclusion taking into account both Ground 1 and Ground 2.

67. The first element of the appeal is to suggest that Defence Counsel was undermined by the termination in such a way as may have made the Jury liable to discount his contribution. As we have said, the wider context of the Judge's dealings with both counsel, which were reasonable, appropriate and lacked any sign of animus, supports the conclusion that there is no risk that Defence Counsel was undermined in the eyes of the Jury. We also take into account that the Judge had forewarned the Jury about the time limit and taken responsibility upon himself if (as happened) his time estimate proved to be too short: see [15] above. Though not a full or complete answer, it weighs in the balance when considering whether there is a risk that Counsel was undermined materially and unfairly.

68. The second element of the appeal is that the termination of the cross-examination may have suggested to the Jury that the family meeting was not important. We reject this submission, again by reference to the wider context provided by the trial as a whole. As we have identified, the family meeting was covered in depth by three other witnesses (D's partner, SB and the Appellant himself) and summed up appropriately

by the Judge. In our judgment, the Jury cannot conceivably have been in any doubt that the meeting was important, as was the clash of evidence about it.

69. Nor can we accept that the termination of the cross-examination as it happened could have led to any lasting confusion about the nature of the Appellant's case. The Jury cannot have been in any doubt about the respective cases of the Prosecution and the Defence about the family meeting, as these were clearly laid out for them in the evidence – including that of the Appellant - and the summing up. We have referred already to the effect of Defence Counsel's rolled up question and D's answer to it, which set out with reasonable clarity both the Appellant's case and D's response to it even if a sequence of single questions and answers would have been preferable. We have also noted that the Judge did not include the last question and answer in his summing up of D's evidence. We are not persuaded that this gives rise to any risk of unfairness. To the contrary, it may reasonably be thought that the Appellant was fortunate that they were not included since their inclusion is likely only to have reminded the Jury that D firmly stood her ground. In any event, there is no suggestion that Defence Counsel asked the Judge to cover it.

70. Although we have dealt with the Grounds sequentially and with Ground 1 first, we have not lost sight of the fact that Mr Scobie ran Grounds 1 and 2 in tandem. We have set out the passages to which the Appellant takes exception at [38]. Simply in terms of word count, they amounted to a significant proportion of the legal section of the summing up – contributing something over two pages to the 14 pages of written directions. That, however, is largely attributable to the relative simplicity of the other legal directions that the Judge was required to give as well as to the relative complexity of what needed to be said on Avoiding Myths and Stereotypes and Children and Young People.

71. Both of these sections of the legal summing up were in relatively standard form. At trial there was no objection to both sections being given, the only issue raised being whether the section on Children and Young People should be included in the written directions or merely given orally. This is not a promising starting point for an appeal. The Judge did not accept Defence Counsel's invitation to add an express statement that children are capable of lying; but that is implicit in each of the sections under review and, in our judgment, did not need to be said to enable the Jury to understand the obvious.

72. The substance of the appeal as pursued before us on Ground 2 is that the length, complexity and combined effect of the two sections was to bolster D's evidence to the unfair disadvantage of the Appellant to such an extent as to render the Appellant's convictions unsafe either on their own or in conjunction with Ground 1. We are unable to agree. In our judgment it is necessary to look at why such directions are given. As their terms make clear, they are to address the risk of stereotypical thinking that would be unfair to the complainant. Each section deals with a different problem. The section on avoiding myths and stereotypes is a necessary protection against stereotypical reactions to a witness' demeanour when giving evidence alleging that they have been sexually assaulted; and it encourages the Jury to make their own assessment of witnesses rather than bringing stereotypes or preconceptions into play. The section on Children and Young People is again a necessary protection, this time against the canard that an alleged victim's evidence of sexual abuse is unreliable because they have not disclosed it sooner or more fully. This was precisely the case

that the Appellant was running, most importantly by challenging D on her alleged failure to make disclosure to her family.

73. We accept that the effect of each direction may be to bolster the evidence of a victim; but it only bolsters their evidence to the extent necessary to prevent unfairness to the victim caused by the stereotypical thinking against which it warns. We see nothing unfair to the Appellant in the giving of both directions in this case. To the contrary, the giving of both directions was even-handed and fair: the giving of the direction on Avoiding Myths and Stereotypes had the potential to work in the Appellant's favour, given that D had repeatedly become distressed while giving her evidence. The warning that "it does not automatically follow that signs of distress by the witness confirm the truth and accuracy of the evidence" was appropriate protection for the Appellant just as the section on Children and Young People provided appropriate protection for D.

74. We reject the submission that the Jury may have taken the two directions as reflecting the Judge's personal view so that they may have been wrongly influenced against the Defendant in reliance on the Judge's supposed view. The Judge had given the conventional and appropriate warnings earlier in the legal directions about the respective functions of Judge and Jury and that, if the Jury thought the Judge was appearing to express any views concerning the facts, they should not adopt those views unless they agreed with them. In addition, at the beginning of each section now under review, the Judge re-emphasised that it was for the Jury alone to assess whether they believed D and that his comments on Children and Young People were not a direction of law which they were obliged to adopt or follow and that whether they agreed with them was entirely a matter for them. He returned to them later, re-emphasising that the assessment of witnesses and evidence was a matter for them and them alone.

75. We have also taken into account Mr Scobie's submission that the Grounds of Appeal should be seen in the context of a trial that was conducted under significant time pressure. This is not advanced as a separate ground of appeal. There can be no doubt that, as the trial progressed, the Judge became concerned about slippage and delays. That said, and with one startling exception, the Judge was astute to emphasise to the Jury that they were under no pressure of time and that their deliberations would go into the following week if required: see [35] and [42] above. The startling exception is the Judge's suggestion at the conclusion of his summing up that the Jury would deliberate that day, Friday, "until 6 o'clock if necessary". The giving of such an indication is beyond the combined experience of the present Court and, in our judgment, would require very cogent justification if it is ever to be appropriate.

76. Returning to Mr Scobie's submission, we are not persuaded that the time pressure to which he refers alters the overall perception of a trial that was conducted fairly and, in the event, at no risk of rendering the Appellant's conviction unsafe.

77. For these reasons, the appeal is dismissed.