



APPEAL COURT, HIGH COURT OF JUSTICIARY

**[2026] HCJAC 44
HCA/2026/188/XC**

Lord Justice Clerk
Lord Matthews
Lord Clark

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

APPEAL AGAINST SENTENCE

by

HENRY LAVERTY

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

**Appellant: Lenehan KC; Collins and Co (for Dalling and Co, Stirling)
Respondent: Cameron KC (Sol Adv); Crown Agent**

9 October 2026

Introduction

[1] In this appeal against sentence, the appellant challenges the imposition of an order for lifelong restriction on 7 April 2026.

[2] The appellant pled guilty at an early diet (Criminal Procedure (Scotland) Act 1995 section 76) to the following charge:

“On 21 September 2024 at North Street, Clackmannan you did assault [his partner], and did repeatedly kick her on the body and punch her on the head causing her to fall to the ground, repeatedly kick her on the head and body, stamp on her body, spit on her face, seize and drag her along the ground and punch her on the head, all to her severe injury.”

[3] The charge carried a domestic aggravation and a bail aggravation on an order granted three weeks earlier on a charge of assault said to have resulted in a male victim sustaining a fractured jaw.

The circumstances of the offence

[4] The parties had been in a relationship for about a year and were out drinking in the evening when an incident was captured on CCTV from 22:43 hours. The complainer walked away as they were arguing when the appellant attacked her. He repeatedly punched and kicked her, knocking her to the ground. He then forcefully kicked her on the head and body, stamped on her body and spat in her face. He grabbed her by the arms, dragged her along the ground and punched her on the head, stopping only when an onlooker shouted at him.

[5] They walked together towards a car nearby before the appellant ran off on seeing the police. The following day, the complainer was found to have sustained the following injuries:

- fractures to the right front 4th, 6th, 7th and 8th ribs;
- fractures to the left front 6th and 7th ribs;
- bruising and grazing to her head and face; and
- cuts, bruises and grazes to both arms.

Previous convictions

[6] The judge noted 49 previous convictions extending from 2004, mostly for crimes of violence and disorder. The appellant has 23 convictions for offending whilst on bail and has breached probation orders.

[7] The appellant has 13 previous convictions for assault from 2005 onwards:

- in 2010, on sheriff court indictment he was made subject to restriction of liberty and community service orders for breach of the peace involving a knife and assault to severe injury;
- in 2011, on summary procedure, he received 28 days' imprisonment for assault to injury, and an offence under the Police (Scotland) Act 1967 section 41(1)(a) when on bail. That offence is committed by a person who assaults, resists, obstructs, molests or hinders a constable. He has three other convictions under section 41(1)(a) and another for assaulting a police officer under the Police and Fire Reform (Scotland) Act 2012 section 90(1)(a);
- in 2012, for assault and two other crimes of disorder, he was sentenced to 18 months' imprisonment;
- 2013, 12 months' imprisonment for assault to injury;
- in 2016 he was made subject to an extended sentence of 7 years with a 5-year custodial term for assault to severe injury, permanent disfigurement and permanent impairment in Glasgow High Court;
- in 2020, on sheriff court indictment, imprisonment for 9 months for assault.

Justice social work report

[8] The reporting social worker consulted two social work colleagues who had extensive knowledge of supervising the appellant, obtained information from the Police Scotland Domestic Abuse Unit and consulted with the Caledonian Women's Service about his partner. Initial suggestions of accountability subsided into victim blaming and indications of holding attitudes and values supportive of intimate partner violence. He minimised what he had done by saying he had lost control for a minute, when CCTV confirmed a 14-minute duration for the incident.

[9] The appellant had a stable childhood, supportive parents and no adverse childhood experiences and his parents continue to be supportive of him. He joined the army soon after

leaving school at 16 but was discharged during his basic training for a fight that led to 3 months' military detention in Court Martial proceedings. Since then, he has worked intermittently on account of alcohol and illicit substance misuse, mostly labouring. He has a history of depression with occasional suicidal ideation. He has used cocaine, amphetamines and cannabis throughout his adult life and is prone to binge drinking.

[10] The appellant has been the subject of allegations of domestic violence from four other partners over a period of 10 years. One of these led to his extended sentence in 2016, when the judge referred to his conduct as "effectively torture" of a partner over a sustained period. He had punched, slapped and spat on the complainer, and cut her on the hand and leg with a knife. He had threatened to put boiling water on her, to murder her and slit her wrists. He put on a pair of gloves and explained that he would "get away with it" as she was a self-harmer. His victim was only able to escape when the appellant fell asleep.

[11] The appellant has shown a propensity to cause serious harm and has caused significant harm to several people.

[12] Only a prison sentence would be suitable. The appellant presents a high risk of recidivism and a high risk of causing significant harm to others in multiple contexts towards people both known and unknown to him. He has shown impulsive rage and perpetrated planned and instrumental sadistic acts. Previous sanctions have had very little deterrent effect. At least an extended sentence would be prudent and there was merit in making a risk assessment order.

Risk assessment report

[13] The report is detailed and in conventional form. Dr John Marshall, the assessor, found that the appellant presented High Risk on the Risk Management Authority scale.

[14] Having met with and interviewed the three social workers, he reported of the appellant that:

“Three criminal justice social workers, Police Scotland officers involved, and the management at Clackmannanshire Criminal Justice Services were unusually assertive in their view in being fully supportive of an OLR sentence, in his case.”

[15] The appellant has a chronic and entrenched pattern of serious violence both in intimate relationships and in the community. He has a history of chronic offending since adolescence and his violence is escalating. He was recalled to prison following release from his extended sentence, for cutting off an electronic tag and committing violent offences. His long-standing pattern of diverse violence is highly consistent with a severe antisocial personality disorder reinforced by psychopathic traits. He holds misogynistic beliefs that women provoke violence. He has a history of misconduct in prison with aggression, threats, property destruction and substance misuse, albeit it had abated in March 2026 since when he had had no reports. He explained that he was trying to stay out of trouble during the assessment process.

[16] Whilst the appellant maintained he had been doing well from 2022 to 2024, records showed that his compliance was fragile and undermined by cocaine misuse and volatile relationships and punctuated by escalating violence. A potential brain injury and trauma related factors in young adulthood do not account for his deliberate and sadistic assaults and may interact with his impulsivity, substance use and personality traits to increase volatility. The CCTV recording of his present crime suggested aspects of punishment linked to jealous rage. There are insufficient protective factors. They have not restrained him in the community.

“Mr Laverty poses a high risk of serious physical and or psychological harm to women in intimate relationships, but also to men in public disputes and to authority

figures. His risk is enduring, not situational, and is exacerbated by substance misuse, jealousy, rejection and grievance....

Treatment will be extremely challenging for Mr Lavery due to his minimisation, grievance thinking, misogynistic beliefs, and psychopathy traits. Progress must be judged on observed behaviour, not his insistent self-report. A sequence of interventions is required and a road map to help Mr Lavery move forward in prison is laid out for him to consider. In summary, Mr Lavery is a high-risk individual whose violence has been severe, deliberate, and is escalating. His risk is chronic, pervasive across contexts, and he is currently unmanageable in the community."

Report of 28 January 2026 by Dr Peter Pratt, psychologist for the appellant

[17] Dr Pratt, now deemed unfit to practise following disciplinary proceedings, is a psychologist with long experience of forensic matters in England. He is not, and never has been, accredited by the RMA as a risk assessor. He described himself as an almost full-time professional witness.

[18] He reviewed Dr Marshall's report and found much to commend in it. He had one technical disagreement in that he did not approve of the use of the risk assessment tool Psychopathy Checklist-Revised (PCL-R), which he considered to be highly controversial. If using it, he would attach weight to the appellant's situation when on remand and subject to the risk assessment order, describing it as "seemingly reliable good behaviour over about an eleven-month period, and this will augur well, if it continues". He viewed this as potentially persistent and convincing evidence of change. He noted that the appellant's misuse of steroids may have contributed to his behaviour generally. It was worrying that the appellant denied part of what he had pled guilty to. There was no doubt that the appellant has antisocial personality traits that may be heightened by use of alcohol and steroids.

[19] In his conclusions, he expressed his adverse view of the Scottish Parliament's introduction of the OLR, founded mainly on the relatively small numbers of prisoners released after their punishment part.

[20] Returning to the issue he was asked to address, in his final conclusions he stated:

“2. I am satisfied that Henry Lavery realises that if ever he is found guilty of a further violent offence, an actual OLR is highly likely, and may not, meaningfully perhaps, be disputed.

3. I am relieved that he has obviously developed some self-control which needs to be permanent, but it is perhaps premature to be confident of that prediction at this point in time.

4. I cannot but conclude that, if Henry Lavery’s behaviour and insight continue to improve within whatever prison sentence he is given, and most certainly if he is speedily offered SCP [Self Change Programme], then in that context his risk, of further violence, is properly described as either “medium” or “low”. In my respectful opinion, it is abundantly clear that being sentenced to an OLR sentence has had a substantial effect on his understanding of his own vulnerability, and it remains to be seen how he progresses within the prison estate. I am hopeful that on completion of SCP he can transfer to either National Top End or Open Conditions, and thereby indicate that he is properly compliant with licence conditions, which he has obviously ignored on numerous previous releases.”

[Emphasis added]

Note of Appeal and leave

[21] The original ground of appeal is devoid of specification in asserting only that the judge erred in determining “that the risk criteria had been met in the whole circumstances of the case.” The appellant’s only attempt at specification is an exclusion – he did not challenge the length of the punishment part.

[22] Leave to appeal was initially refused but granted by two judges based on information in an opinion of 12 June 2026 by senior counsel about the court appointed risk assessor, Dr Marshall. In short, certain complaints had been upheld against him by the Risk Management Authority in respect of an earlier risk assessment report he had provided in entirely different proceedings involving a different accused in 2025. Agents had obtained information to suggest that the RMA had “formulated their decision” on the complaints in that case on 1 April 2026 and advised Dr Marshall on that date, shortly before Dr Marshall

gave evidence in the hearing concerning the appellant that preceded the imposition of his OLR.

[23] The appellant proposes that it can and should be inferred that:

“Dr Marshall knew of the adverse findings against him and his pending removal from the list of accredited risk assessors by 1st April 2026 at latest (the date of the letter from the RMA to [a firm of solicitors] confirming the outcome of their investigation).”

[24] He states that Dr Marshall did not advise the judge of this when he gave evidence in a hearing on the appellant’s case on 7 April 2026. The judge ultimately preferred the evidence of Dr Marshall to that of Dr Pratt on the level of risk presented by the appellant, giving weight to Dr Marshall’s status as an RMA accredited risk assessor. The appellant complains that the judge:

“...was allowed by Dr Marshall's choices to take a decision without access to the full information on Dr Marshall's professional standing. The decision on the risk criteria was plainly taken in reliance of Dr Marshall's evidence, including his apparent standing within the RMA.”

[25] Had this information been known, Dr Marshall would have been cross-examined on it. The judge was led into error in the process by which he determined that the risk criteria were met.

Written submissions for the appellant

[26] The information before the judge was tainted by Dr Marshall’s omission, allowing the judge to find him an impressive witness appointed by the RMA as a risk assessor in contrast to Dr Pratt whom the judge had considered unqualified to the extent that he was not an RMA appointed risk assessor. In the absence of knowledge about Dr Marshall’s “apparent RMA accredited status” the decision based on his evidence should be set aside.

The court should find an analogy with *Preece v HM Advocate* 2013 SCL 523 where a

conviction was quashed where it had been based on evidence from a skilled witness “later discredited”.

[27] Cross-examination of Dr Marshall informed by knowledge of his “true accreditation status” would have undermined the judge’s faith in his evidence, particularly insofar as the judge had relied on it in rejecting Dr Pratt’s assessment of medium or low risk. The judge had rejected Dr Pratt’s proposition that progress in prison bore on the appellant’s amenability to change and therefore the level of risk he presents. The OLR should be quashed and risk assessed afresh.

Further information

[28] The RMA has confirmed certain facts following inquiry prompted by the averments in the note of appeal and written submissions.

[29] Dr Marshall was not subject to disciplinary proceedings between 2 October 2025 and 7 April 2026. Once a complaint had been made on 20 October 2025, he was aware of the ongoing investigation. His accreditation remained active.

“The accreditation committee’s conclusion regarding the complaint was communicated to Dr Marshall on 01 April 2026. This letter also stated that the outcome of the complaint and all associated materials would inform the committee’s deliberations when it met to consider Dr Marshall’s application for a further period of accreditation on 15 April 2026.

However, at the time of his giving evidence on 07 April 2026, Dr Marshall was not in receipt of information which would have given any indication as to the likely outcome of his application. No decision had yet been made in this regard.

In light of the information you have provided regarding the nature of the appeal currently in progress, we suggest that paragraph 6 (3) of the Risk Assessment and Minimisation (Accreditation Scheme) (Scotland) Order 2006 may also be relevant:

‘(3) Except where the accreditation committee decides otherwise, the termination of an accreditation shall not affect the validity of any work

carried out by an accredited person in consequence of that accreditation nor of any work conducted in an accredited manner.’’

Whilst we now know that Dr Marsall’s accreditation as a risk assessor was not renewed when it expired, we note that it does not, according to the RMA, affect the validity of work carried out by an accredited person when accredited.

The judge’s response to this information

[30] In responding to the new articulation of the grounds of appeal, the judge provided a supplementary report analysing the information from the RMA. He assessed the significance of the heads of complaint that were upheld in the other case in detail.

[31] The judge did not accept that the findings reached in the other case demonstrated that the evidence he heard from Dr Marshall was not “good evidence”. In the other case, the failings to comply with Standards and Guidelines were patent in the RAR. No such failings had been suggested in the report on the appellant. He noted that the complaint in the earlier case had been supported by two other RMA risk assessors. Dr Pratt had taken issue only with one risk assessment tool, and it was one approved by the RMA. Dr Pratt said that Dr Marshall’s methodology could not be faulted. The judge had no concerns about his methodology and agreed with his conclusions, supported as they were by information from other sources. Accordingly, had the Accreditation Committee’s conclusions been known to him, they would have made no difference. He would still have concluded, on a balance of probabilities, that the risk criteria were met.

Submissions in the appeal hearing

[32] Senior counsel very properly confirmed the current position on the status of Dr Pratt whom he had come across as someone who was advertising his services in prison such that prisoners were encouraging their lawyers to instruct him. We note that having been suspended since May 2026, Dr Pratt was struck off from the register of practitioner psychologists on 3 September 2026 as, by reason of misconduct, his fitness to practise was impaired. We note that he was found to have worked beyond the scope of his practice by advising “a service user” on legal strategy, to have billed solicitors for work as an expert witness that he did not undertake and for not adequately completing parts of the Historical Clinical Risk Management 20 (HCR-20) tool. On the latter ground, he was found not to have adequately completed a psychological formulation and did not reach and/or record adequate risk-based conclusions.

[33] Whilst senior counsel and many others had held Dr Marshall in high esteem over many years, he had been found to have fallen short in his RAR in another case. It had to be accepted that the position of Dr Pratt was very much worse. In the result, a man had been sentenced to an OLR based on Dr Marshall’s report when Dr Marshall, who must have known of the findings against him on 1 April, did not volunteer this in his evidence. Subsequently his accreditation was not renewed. This must impugn the court’s confidence in his findings that underlay the judge’s decision. The judge’s decision should be set aside and the matter examined afresh. Whilst social workers had suggested that an OLR should be considered, it was not for them to offer a view on the issue before the court.

[34] The important point was the appellant’s apparent progress and improved behaviour in prison and that was the only real issue in the hearing when Drs Marshall and Pratt gave evidence before the judge.

Decision

[35] The Criminal Procedure (Scotland) Act 1995 section 210E provides:

"...the risk criteria are that the nature of, or the circumstances of the commission of, the offence of which the convicted person has been found guilty either in themselves or as part of a pattern of behaviour are such as to demonstrate that there is a likelihood that he, if at liberty, will seriously endanger the lives, or physical or psychological well-being, of members of the public at large."

Section 210F provides that the High Court, if it is satisfied that:

"...on a balance of probabilities, the risk criteria are met, shall [if not making a compulsion order] make an order for lifelong restriction ..."

[36] In *Ferguson v HM Advocate* [2014] HCJAC 19, 2014 SLT 431, in delivering the Opinion of the court, the Lord Justice Clerk (Carloway), explained at [105] to [108] that it is for the judge to determine the level of risk, taking careful account of the expert assessment of risk in the RAR. A judge was not bound by the risk assessor's rating but should not make an OLR if risk was assessed as low and the judge agreed. Where risk was assessed as medium, it was for the judge to determine if the risk criteria were met. If the judge accepted an RAR assessment of high risk, then an OLR ought to follow.

[37] We note the RMA's definition of high risk in this context:

"Risk Rating – High Risk

The nature, seriousness and pattern of this individual's behaviour indicate a propensity to seriously endanger the lives, physical or psychological well-being of the public at large. The individual has problematic, persistent, and pervasive characteristics that are relevant to risk and which are not likely to be amenable to change, or the potential for change with time and/or intervention is significantly limited. Without changes in these characteristics the individual will continue to pose a risk of serious harm:

- There are few protective factors to counterbalance these characteristics
- Concerted long-term measures are indicated to manage the risk, including restriction, monitoring, supervision, and where the individual has the capacity to respond, intervention

- The nature of the difficulties with which the individual presents are such that intervention is unlikely to mitigate the need for long-term monitoring and supervision.”

[38] Medium risk is defined:

“Risk Rating – Medium Risk

The nature, seriousness and pattern of this individual’s behaviour indicate a propensity to seriously endanger the lives, physical or psychological well-being of the public at large. The individual may have characteristics that are problematic, persistent and/or pervasive but:

- There is reason to believe that they may be amenable to change or are manageable with appropriate measures
- There is some evidence of protective factors
- The individual has the capacity and willingness to engage in appropriate intervention
- They may be sufficiently amenable to supervision
- There are other characteristics that indicate that measures short of lifelong restriction may be sufficient to minimise the risk of serious harm to others.”

[39] Both of the psychologists who reported considered that the appellant has traits of anti-social personality disorder and that was not disputed before us. He has a long history of failing to comply with court orders and prison-release licence conditions and a track record of violence, escalating in its gravity. Dr Pratt’s reason for thinking that the appellant may present a low or medium risk on the RMA scale (which he is not and has never been accredited to apply) rests on a series of hypotheses, as seen in the emphasised passages quoted at para [20] above, and hopes.

[40] Dr Pratt appears to have evaluated risk whilst the appellant is in prison whilst the judge required to look ahead to the point when the appellant would be released: *Ferguson* at [99] to [104]. This court has not found improved behaviour by a prisoner, who is remanded subject to an RAO and who has an obvious incentive to behave in the controlled environment of prison or detention, to be a compelling consideration against the risk criteria being met: *Hamilton v HM Advocate* [2026] HCJAC 10, 2026 JC 208 at [53]; *Nyiam v*

HM Advocate [2026] HCJAC 5, 2026 JC 183 at [44]; *NS v HM Advocate* [2025] HCJAC 24, 2025 JC 342 at [37].

[41] We note that few, if any, materially protective factors are identified other than external controls: RAR at pages 3, 6, 65, 69 and appendix 2. The appellant's good relationship with his parents has not inhibited him from repeatedly causing serious harm through serious acts of violence.

[42] In *Preece v HM Advocate*, the crucial evidence in a murder case tried in 1973, came from an English biologist who proceeded on his own untested theory and omitted to report that the deceased appeared to share the appellant's blood group when testifying that it was beyond reasonable doubt that the appellant had been intimately involved with the deceased in his lorry. This evidence was unchallenged in the trial. Mr Preece's appeal was refused. Following investigations, the case was referred to the court by the Secretary of State for Scotland. In 1981, the court heard unchallenged evidence from distinguished experts demonstrating that the scientific opinion offered at trial was worthless. The court deplored the original biologist's omission and, in light of the new evidence, quashed the appellant's conviction. What happened in *Preece* bears no resemblance to the situation before us.

[43] The only substantive criticism before us of Dr Marshall's RAR is based on the views of Dr Pratt who is sceptical of the PCL-R risk assessment tool. In the RMA's "Standards and Guidelines" Standard 1 provides:

"Gathering, reviewing and identifying relevant information
A Risk Assessment Report will be based upon credible information that is gathered from a range of sources and thoroughly evaluated to identify its relevance. This will be supported by the application of appropriate assessment tools and professional judgement."

Whatever Dr Pratt may think of it, PCL-R, is specified as a validated tool for assessing responsivity issues in the RMA publication, the Risk Assessment Tools Evaluation Directory

(RATED), updated 2019, “a directory intended to assist practitioners in selecting and applying risk assessment tools”. In any event, it formed but one, limited, component of Dr Marshall’s reasoning.

[44] The RMA drew the court’s attention to paragraph 6(3) of the 2006 order as we have noted at para [29] above. That is an important consideration in this appeal.

[45] We have been considerably assisted by the experienced judge’s careful analysis of the material before him in light of the revised ground of appeal. Had he known of the findings against Dr Marshall, and the subsequent non-renewal of his accreditation, it would have made no material difference to the judge’s assessment that, on the balance of probabilities, the risk criteria were met. That is an assessment with which we can find no fault.

[46] No attempt was made to produce an assessment of Dr Marshall’s RAR from an accredited RMA risk assessor either at first instance or in the appeal proceedings. We were not invited to continue the appeal to allow such an assessment. In the absence of such material we note the support, from three social workers with considerable knowledge of the appellant between them, for the imposition of an OLR. It implies that they consider that the appellant presents a material risk of violent offending from which ordinary restraints are unlikely to prove effective, such that long-term measures would be necessary.

[47] In all the circumstances, we have no basis to conclude that there has been a miscarriage of justice and the appeal is refused.