



APPEAL COURT, HIGH COURT OF JUSTICIARY

**[2026] HCJAC 29
HCA/2026/161/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

CURTIS LEE ROSS

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

**Appellant: Gillespie KC; McKenzies Solicitors, Kirkcaldy
Respondent: Dickson KC, sol adv; the Crown Agent**

31 July 2026

Introduction

[1] The appellant challenges the imposition of an order for lifelong restriction with a punishment part of 12 months' imprisonment in the High Court of Justiciary at Glasgow on 13 March 2026 on the following charge:

“(001) between 25 June 2024 and 31 July 2024 at an area of ground on the north bank of the River Leven known locally as ‘The Dam’, Methil, 10 Stewart Court, Methil, both Fife and elsewhere in Fife, you ... did behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did send various messages and voice notes over the Snapchat and Facebook Messenger platforms, cause an explosion using gas cannisters(*sic*), record same and post said recording on Facebook and Snapchat platforms; CONTRARY to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010.”

The maximum sentence for this crime is 5 years’ imprisonment, but this did not preclude the imposition of an OLR so long as the punishment part was no more than 5 years’ imprisonment. Nevertheless, this is an unusual and difficult case and it is necessary to examine in some detail the nature of his offence, certain things the appellant said and wrote subsequently, and the professional assessments prepared.

Procedure

[2] The appellant appeared on petition on 2 August 2024 and was remanded in custody until sentence was passed. He was indicted to a preliminary hearing on 23 May 2025 which was adjourned administratively until 25 July 2025 when he pled guilty at the continued PH to charge 1. His plea of not guilty was accepted on charge 2:

“(002) between 1 June 2023 and 1 August 2024, both dates inclusive, at 10 Stewart Court, Methil, Fife, you ...did possess an article, namely gas canisters, pieces of wire, wire snips, mobile telephones, watch, nails, screws, batteries, soldering iron, ruler, craft knife, annotated notepad, and electronic devices, in circumstances giving rise to reasonable suspicion that your possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism within the meaning of the aftermentioned Act: CONTRARY to the Terrorism Act 2000, Section 57(1) as amended.”

[3] The judge adjourned for a justice social work report until 22 August 2025, then made a risk assessment order and continued proceedings until sentence was passed.

The circumstances of the offence

[4] The explosion came to light at 1130 hours on 30 July 2024 when a man and a woman, who were social media contacts of the appellant, saw his Facebook story, including a video clip of an explosion in some grass in front of a wooded area. They recognised it as being near to the River Leven in Methil. The woman was alarmed. She knew that the appellant was active on social media, posting several times daily, and that he was interested in the Unabomber, Ted Kaczynski. We understand that the Unabomber was a “lone wolf” terrorist who murdered three people and injured many more in a mail-bombing campaign in the 1980s and 1990s in the United States. His motivation was to fight industrialisation and protect nature.

[5] A few hours later she called the police, who attended. By this time the appellant had deleted the video clip and it was not accessible. Police officers, including explosives experts, initially struggled to find the locus and obtained a warrant to search the appellant’s home. When they chanced upon him, they arrested him and seized his mobile phone. Counter terrorism police and regular officers then searched the appellant’s home at 1540 hours. They recovered a drawing entitled "Draft: Project Payback" (dated 07/12/23) of what appeared to be a homemade explosive device with the various components annotated. These included “shrapnel”, “gas cannisters”, “nails”, “screws”, “fuse / detonators”, and “petrol”. On a desk was a roll of wire, wire snips, mobile phones with their batteries removed, mobile phone batteries, a battery power pack with the backing removed, a soldering iron, packets of nails and screws, and a watch. A suspicious box prompted the police to evacuate several neighbouring properties, but no explosives were found in the house. Residents were able to return home about five hours later.

[6] During police interview, the appellant confirmed that he was responsible for the items found in his house, the explosion and recording it. He initially lied and sought to play down the significance of the explosion, saying he had put a deodorant can in a fire, suggesting it was an attempt at satire comedy. He then acknowledged he had used butane gas canisters in the explosion, falsely claiming he had them for camping, that they failed so he put them in the fire and recorded the explosions. He explained that the name he used on Facebook was taken from a fictional character considered an outcast from society. He suggested that use of social media was corrupting his decision-making and that of others.

[7] He said that he partially agreed with the Unabomber's ideologies and messages but not completely, as the Unabomber killed people and there were other ways to express political views. He understood how someone could suffer a lot, get angry and retaliate. He claimed not to be fully aware that the Unabomber killed people. He had gone down a rabbit hole and wanted to learn, educate himself and understand the Unabomber's perspective. It had made the appellant think that there is always "a machine burring" and things going on. He had wanted to get an unbiased perspective of such a person and empathise, which other people might find difficult. The appellant wanted to know why he did what he did.

[8] The appellant said the "Project Payback" drawing was just a thought experiment, an idea, he did not actually make it. He had realised it would be expensive to make something like that just to blow it up and he would not do that as it was stupid. His explanation for the use of the title on the sketch was that it linked to a game called Payday. He could not think of a good name for the sketch, it was "just a stupid name". Whilst it looked like the design for a bomb, it was just a "stupid wee doodle" and he would not go out of his way to make something with malicious intent. Looking back, he realised how bad his mental health must

have been. He was not a terrorist, was not out to cause harm, had made peace with everything in his life and realised there was no point in being violent.

[9] He gave what we consider were contrived and false explanations for the items found on his desk, suggesting the nails were for camping and the wire was just speaker wire.

[10] The police recovered a video recording of the explosion from the appellant's phone and further analysis revealed certain additional relevant and concerning social media communications that were analysed, some of which we note below.

[11] In a message to 15 individual users on Facebook sent on 25 June 2024, the appellant stated:

"Here guys I'm just here to inform you that the only thing stopping you from murdering all of the people who wronged you is just a box, and that's only if you can't do it correctly and make sure enough evidence is gone so that the charges don't stick. You can abuse, belittle, torture, harm and kill at literally no cost other than the law. You will not face the death penalty in this country and, if caught, you can acclimate to the prison system and be released within 20 years. You can get back at them. You can get the revenge you desire. You can give them what they deserve. I believe in you. Have a nice day."

This message is then followed up at 1734 with another message to the same 15 individuals:

"I can't post the "just kidding star" because it keeps getting cropped. However it should be noted this isn't a joke, and these are actually the instructions on how to make a pipe bomb. Hope this comes in handy for one of you some day x."

[12] The following exchange took place on 17 July 2024, the appellant sending the first message:

"Appellant: - Bro would you ever join the taliban",

[Contact 1] - I'd join a secret society

Appellant – #letsmurderbabiesformoloch."

[13] On 30 July 2024 at 1342, the appellant exchanged messages with a second contact.

The messages began with the contact asking how the appellant got a bomb and continued:

"Appellant - A bomb? Huh? That's not a bomb my friend, If I made a bomb it would be far better.

[Contact 2] - Tf [what] was it

Appellant - That's just some chemicals I mixed to pass time, Boredom got me being bad with the Grinch.

[Contact 2]- Your a v dangerous human you know that

Appellant - Imma take that as a very high compliment, Ty ..."

[14] The appellant had a long voice note Snapchat conversation with a third contact on 30 July 2024 between 1133 and 1306 hours. It started with contact 3 apparently expressing his admiration for the appellant's explosion and included the following:

"Appellant - ... At the end of the day its just a wee fuckin aboot like you think about it right, I don't ken if you've got scales or no. You get 25 grams of sugar, you put it on a scale right, and see how much that is, it's fuckin tiny mate right. Imagine a kilo of that n ye put it on a plane or something, ye know what a mean. Just fuckin, I'm no askin ye tae dae much, just imagine it lit (laughing)...

Appellant - Nah fuck fuckin Saints Row man, I'm gonnae make 9/11 look like an episode of the Teletubbies fuck sake (laughing)

Appellant - For legal purposes that was eh satire comedy, I wisnae actual being serious ehhehhh I was only jokin (laughing).

[Contact 3] - Lad, as long as ye dinnae blow up any planes I'm on, I'm sound.

[Contact 3] - Fuck Islam, fuck them all.

[Contact 3] - Nah, I'm only jokin but fuckin, how ye keepin anyway, ye awryt?

...

Appellant - Nah wan hing ye have to consider, racial disputes aside, you've got to consider the fact that they could be good allies, because they're so intuitive with their explosives as well. Like you could cast them aside and say 'aw well theyre the enemy' right but the only real true enemy that I've got the noo is the establishment that's failed me

...

Appellant - End of the day it's fuckin bullshit, the system's failed me. People that gave me life have failed me...

Appellant - Nah it's fuckin horseshit son cos it seems to be that everybody's got somethin to say about the system and how fucked it is but nobody's actually dain nothin about it...

Appellant - But it's specifically broken because it idealises the situations and circumstances that are convenient to the people that want to break those rules, you know wit a mean? It's fucked, it's genuinely fucked and it's about time somebody stood up to it and I'm no standing up for it anymore, I'm no, I've had enough, know what I mean brother?"

[15] On 30 July at 1215 the appellant messaged a fourth contact:

"I miss being happy, past 24 hours have destroyed me and made me such a different man it's unreal xx", "I've come to a very real realisation, one that's profoundly slapped my soul and spat on my heart, and Ive realised I simply cannot allow what is happening to humanity and our world to continue xx", "I can and will have an impact on preventing the worst from happening xxx".

[16] Findings on the appellant's tablet and mobile phone were described as follows:

"Stock images of pipe bomb type IEDs and images of guns (assault rifles, handguns and shotguns).

...

Thumbnail images of the appellant's video of the explosion recorded at The Dam.

A further thumbnail of the explosion site at The Dam with the caption "25 grams of compound C remote detonation success! Makes me wonder what 100 grams, or perhaps even 1 kilogram of mixture can do. Unlimited potential lies ahead for our nation."

There were also 55 Unabomber related images including sketches drawn by the appellant.

One was captioned, "Is the cure to male loneliness Domestic Terrorism?". There were videos featuring the Unabomber and his concerns at the negative impact of humanity on the environment.

Previous convictions

[17] The appellant has a number of convictions from 2017 when, on sheriff court indictment, he was made subject to a community payback order for 2 years with a supervision requirement, a requirement to participate in "CAMHS" (Child and Adolescent

Mental Health Service) and a restriction of liberty requirement of 4 months for four charges involving a knife: culpable and reckless conduct to injury; having a knife in a public place; having a knife on school premises when on bail; and another charge of having a knife on school premises when on bail.

[18] In 2019 the appellant was made subject to a restriction of liberty order for 11 weeks for a section 38 offence. In 2020, for an offence under the Domestic Abuse (Scotland) Act 2018, section 1, he was made subject to a CPO with a 2-year supervision requirement, and a requirement to attend with the forensic mental health team as directed by his supervising social worker for 2 years.

[19] In 2020, for domestically aggravated assault he was made subject to a further CPO for 18 months with supervision and compensation requirements alongside a non-harassment order for 12 months. In 2021 he was admonished for another section 38 offence, as he was again in 2023, alongside two charges of malicious mischief attracting compensation orders.

Circumstances of the appellant and JSWR

[20] The appellant was 23 years old when he committed the crime, 24 when sentenced and is now 25. Prior to his remand in custody, he was unemployed and living alone in Fife. His only work since he left school at 16 was working as an event steward, which he did not enjoy (the author of the risk assessment report states that his only history of employment was a few weeks of window cleaning). The appellant has a daughter aged 4 by a former partner. His relationship with the child's mother was characterised by his domestic abuse, which has impeded contact with his daughter.

[21] The appellant's mother suffered post-natal depression and had separated from the appellant's father before he was born. She formed a relationship with a serviceman, and they lived for several years in Germany, where the appellant was bullied. When they returned to Fife, the appellant, now aged 8, went to live with his paternal grandparents. Whilst he feels he was unfairly rejected by his mother, she told social workers that she was concerned about his violence towards his younger half-brother. In the past, the appellant has expressed thoughts of harming his mother, but there may have been a degree of reconciliation recently. The appellant lived briefly with his natural father and new family in 2018 but was remanded in custody for threatening behaviour and was not allowed to return. He returned to his grandparents before getting his own accommodation, where he lived for 4 years before being remanded in this case. He is said to remain close to them.

[22] The appellant says he was severely bullied at primary school and regularly assaulted. Initially secondary school was better, but he again began to be bullied.

[23] He began drinking at 13, consuming up to a bottle of whisky per day until he was remanded. He has used cannabis since he was 16, ecstasy at 18 and cocaine at 20. He described DMT (the class A controlled drug dimethyltryptamine) as "the most beautiful thing on the planet".

[24] Whilst his physical health is good, the appellant has been involved with psychology services since he was 3 on account of his violent behaviour. He reports feeling compelled to hurt people. He suggested this was because he was bullied. At 7, he was referred to CAMHS for self-harm, low self-esteem and low mood. He tried to strangle and drown a peer when he was 10 and shows no remorse, suggesting that bullying justified his actions. He remained involved with CAMHS, was referred as an adult to the Forensic Mental Health Team and had regular appointments with a psychiatrist and community psychiatric nurse.

[25] He did not display symptoms of psychosis or mental illness whilst involved with CAMHS. It was noted that psychological disorders might explain some of his symptoms including a fascination with violence, coupled with an evident lack of empathy and poor attachments. A previous assessment for Autistic Spectrum Disorder was not completed due to lack of information from family regarding his early years and resistance from Mr Ross himself. CAMHS personnel found diagnosis difficult due to his admitted tendency to be untruthful, and to embellish. This was also reported by his previous CPO supervising officer who noted that he admitted saying things to shock and manipulate professionals. He was inconsistent in what he told the social worker about his state of mind.

[26] The reporting social worker noted that the appellant, alongside observing that “explosions are cool,” sought to minimise and justify his actions. He then sought to excuse them, suggesting he was “really unwell”, and was in pain and drunk. He then, unconvincingly, sought to suggest that his experience of being remanded had changed him radically, notably once he had read a leaflet about cognitive behavioural therapy. He presented as dishonest and unfeeling.

[27] The reporting social worker concluded that the appellant presents a high risk of reoffending that appears to be escalating and has shown a propensity to cause significant harm. A prison sentence would be appropriate with post-release supervision.

Risk assessment report

[28] Lorna Gray, chartered psychologist, reported on 25 February 2025. At paras 2.4 and 2.5 of her executive summary, she reported that the appellant:

“... had two inpatient stays at Whyteman’s Brae Hospital between the ages of 17-18 years old due to what was then described as violent thoughts, perceptual disturbances and suicidal ideation. He was in an intimate relationship that was

described as volatile and he incurred two convictions for violence against this partner. During this time and following the end of his relationship, he had increasingly become immersed in an 'online world'. He associated this with a sense of validation and connection. His account of the index offence was that it was a means by which he maintained the attention and engagement of his social media following.

2.5 Mr Ross has acknowledged his interest in the American domestic terrorist Ted Kaczynski (known as the Unabomber) and how he can relate to his ideals around the impact of industrialisation, technology and the importance of nature. He described relating to the Unabomber because he too was socially isolated. There have been some further concerns raised from within custody relating to letters he has written to several family members and drawings/ material being found in his cell which included a Wikipedia article about the American terrorist Timothy McVeigh. The letters reflect some urgency in his thinking around something needing to be 'done' about industrialisation although in most of his letters he states he does not want to hurt others.

(At 3.3.2 Ms Gray notes that also found in his cell was:

'...what appears to be the start of a memoir Mr Ross was writing which was entitled "The Positive Mindset: Surviving any Scenario".')

At 2.6 and 2.7 she summarised her findings on certain risk assessments and her assessment of his personality which we examine at [45] – [53] below. She continued:

2.8 Mr Ross' case presents with some complexities in terms of the determination of his risk. There are naturally concerns around his ideologies, which coupled with the index offence, the materials found in his home and the letters he has written from prison all reflect intent. There is less evidence for capability given the crudeness of his pictures/ activities and he does not present as someone that could orchestrate a sophisticated planned attack that could cause serious harm. The more likely future scenario is that he engages in an act of reckless public disorder and posts it/ livestreams to social media. It is important to note however, that his capability could increase if he were to be interacting with people who had the means and were able to negatively influence him. There is some evidence that he can respond to treatment (e.g. medication compliance) and he has notably engaged reasonably well with social work and other services in the past. He is someone that appears to like the input from care providers. He has never served a substantive sentence and this, coupled with his age, makes it difficult to argue that he is not amenable to change. As such, against the RMA definitions of risk as set out in the Standards and Guidelines (2018), I have concluded that Mr Ross most closely fits with the definition of MEDIUM RISK. I have set out my reasons for arriving at this conclusion in full in section four – Opinion on Risk.

2.9 I have discussed suggestions for the future risk management of Mr Ross in terms of monitoring, supervision, intervention and future victim safety. This includes measure that can monitor his internet use, associations and what might be possible to action under PREVENT measures if he is assessed as meeting criteria to be managed under such a provision. A lengthy period of supervision in the community would be useful in his case (e.g. an extended sentence if possible) to ensure that supervision and monitoring is in place for a good period of time post release. He will likely also have a level of mental health support in place for his foreseeable future which will be a useful additional means of monitoring any warning signs."

[29] At 3.5.1-2, she noted that his expressions that he never wanted to hurt anyone, no longer had feelings of anger or rage and would take any support he needed did not fit with a replica bomb he had made in his flat, a letter he had written to his ex-partner in August 2025 and some of the messages he sent at the time of the offence. At 3.5.3 she recorded that she observed him:

"...exhibiting a level of suspiciousness towards others during our interviews in that he appeared convinced that some people are all 'out to get him' and that government agencies have been monitoring him for much of his life..."

[30] He said he considered himself a revolutionist and not a terrorist (at 3.5.4). She narrated an extract from his memoirs found in a cell stating that he remembered two things about his early life, that he loved his grandparents and always had a thirst for violence (3.6.4). She continued to quote:

"I don't know why...what makes a psychopath....? To me personally I was just born in love with the concept of death. It was apparent I was different... I was referred to my first psychologist at only three years old. I always acted aggressively for no real reason. A true 'little shit' so to speak".

There is an entry in his medical records that described Mr Ross being referred to a psychologist at aged three which Mr Ross had latterly told a psychiatrist this was because 'something compelled me to hurt others'."

Records vouched that when the appellant was 6 years old, he pushed his infant brother downstairs, resulting in injury requiring stitches. He explained that he felt "relieved and better" when he hit and kicked his brother.

[31] By 2008, when he was 7 and back in Scotland, medical notes recorded that he had aggressive outbursts towards his brother and to himself. He talked of self-harm and had drawings of tombstones with the names of family members on them. In his memoir he wrote of how good the “dull thud of my fist crash into the head of some dickhead” felt. He would fight at school. His violence towards his younger brother increased, enticing him onto a top bunkbed and pushing him off and stabbing him with a fork such that the brother was put on the Child Protection Register. Medicine for ADHD appeared to have some ameliorating effect. By the time he was 9, it was no longer working. The appellant tried to strangle and suffocate his brother (then aged 4 or 5) when the appellant was 10, prompting his removal to live with his grandparents (3.6.11-15).

[32] She noted his memoir description of another event when he was 10 when a child insulted his family and the appellant punched him down, got on top of him, gripped him around his throat and held him under water as long as he could.

“At ten years old I made my first attempt to kill somebody... I felt great. The rush I got was intense...at such a young age I realised I had the capability and capacity to snuff out the soul of a living, breathing human being. No longer did I feel powerless or hopeless. Nah, I found a new high and my true strength, and from that day.... boy I was hooked” (3.6.16).

[33] After a settled period, adolescence and secondary school were difficult and by 14 he thought everyone hated him. He became stressed about technology and its impact. He began hearing voices and by the time he was 16 told a psychiatrist that he had a lot of dark thoughts of harming himself or others. In September 2017 he was reported as saying that he wanted to shoot people at school. At 17, his first convictions followed his stabbing another boy at school. The appellant said it happened accidentally. We note that his conviction for culpable and reckless conduct causing injury supports his contention.

[34] In August 2018 he told a psychiatrist that he wanted to kill his mother and eat her and had been cruel to animals in the past. He said he was having violent thoughts and feeling the urge to carry knives again. In 2019, having been thrown out of his grandparents' home, he lived with his father, who reported that he had been wandering around with a knife. He had two short stays under the Mental Health Act in 2019 for:

“having increased violent thoughts, beliefs he was being monitored by the government and increased perceptual disturbances. On the latter occasion he also had thoughts of suicide. On both admissions he was described as stabilising fairly quickly and was able to be discharged. It was noted that both admissions related to a psychotic episode, although a formal diagnosis was proving difficult to make. The latter admission appeared connected to particularly heavy drug use in the preceding days. He had been prescribed anti-psychotic medication following his first admission. It is noteworthy that a psychiatrist felt in October 2019 that Mr Ross appeared to want to try and shock her by the statements he made, and she noted that his hallucinations appeared to be more pseudo hallucinations than genuine hallucinations. She queried personality disorder as opposed to a psychotic illness.” (3.6.28)

[35] Reports at school that he was saying he would shoot other pupils prompted teachers to alert the police. The appellant denied to Ms Gray that he had done so. By 17 he was drinking heavily and had used drugs from 15 including ecstasy, cocaine, amphetamine MDMA, LSD and other hallucinogenic drugs. He said that he was not afraid to die as he had met God when taking the drug DMT (3.8.3) but she noted that “...his index offence did not appear to directly correlate with being under the influence.” (3.8.4).

[36] In 2018, the appellant was recorded by a psychiatrist as saying that he “wondered if it might be his purpose to kill people.” In January 2019 he presented at hospital expressing thoughts of hurting or killing someone. He later said that a negative energy had built up inside him that he felt would dissipate if he hurt someone.

[37] In April 2019, his grandfather told a psychiatrist that the appellant would collect random objects that he might use to make weapons or explosives and had said he had an

“explosive cookbook” on his phone (3.9.9). He told psychiatrists he was buying rats and hurting them and that he wanted to cut people and was excited by blood (3.9.10). In July 2019 he was reporting thoughts about hurting himself and others and had specific thoughts of going into McDonalds and stabbing random people (3.9.11).

[38] We note also that in October 2019 a psychiatrist noted that the appellant appeared to enjoy talking about his behaviours and was trying to shock (3.9.12).

[39] In early 2020 he had hospital admissions for taking overdoses in apparent suicide attempts. He also messaged his partner when she did not answer the door to say: “I should have chopped you up and eaten you when I had the chance” (3.9.13). In July 2020 he was alleged to have posted on Facebook about a desire to kill, dismember and eat people. It was not felt he had a mental illness, but it was suspected he had a personality disorder (3.9.14).

[40] Ms Gray found a Facebook post from February 2024 where the appellant posted pictures of the Unabomber and in April 2024 he had posted a comment: “terrorism is ok as long as its against the government. Signed: A Terrorist” (3.11.4).

[41] She referred to material in the appellant’s cell in August 2025, including the print of a Wikipedia article on Timothy McVeigh (responsible for the Oklahoma City bombing in 1995). When she asked why he wanted this, the appellant replied that he wanted to educate himself and understand why he was being compared to people such as McVeigh and the religious cult involved in the Waco siege (in which 75 people died), which had been of interest to McVeigh (3.17.2).

[42] She quoted extracts from letters the appellant wrote to various relatives in August 2025. His general theme was about the adverse impacts of technology and industrialisation, notably destroying nature, and that it was his purpose to stop it at all costs. The world would thank him. At some points he commented that he would not harm people. He wrote

tenderly to his daughter, aged 4, offering guidance such as the importance of eating well and that she should spend as much time as possible in nature (3.18.2).

[43] In a letter to his former partner, he wrote:

“...let’s just say, hypothetically, I did kill dozens or perhaps hundreds of people. Does it not make sense to sacrifice a good few to save trillions and trillions of others? It’s a more than fair price. A small price to pay for the saving of our planet and our future”...“I truly believe it’s my purpose to do something good... I can’t shake my higher calling. I have a purpose on this planet and that is to change it for the better”.

He ended the letter stating he was of sound mind, he knew what he was doing and that he understood his actions would have repercussions. He told her not to blame herself and that everything would make sense soon.

[44] When Ms Gray confronted the appellant, he was taken aback and could not explain why he had written this. When she asked him what he meant he was going to do, he eventually replied that he had planned to write to the media about the impact of technology and then commit suicide. When she pointed out that did not explain what he had written, he said he had only been musing and did not intend to cause harm. He had lost hope after meeting the social worker and wanted to say his piece.

[45] Ms Gray found that he met the criteria for borderline personality disorder (which is also known as emotionally unstable personality disorder.) He had traits falling short of meeting the diagnostic criteria of antisocial personality disorder, paranoid personality disorder and obsessive compulsive personality disorder. His personality problems included impulsivity/recklessness with a moderate-severe level of impairment.

[46] Ms Gray used HCR-20v3 (the Historical Clinical Risk Management structured professional judgment instrument) and found that the appellant met all ten factors under “historical factors and nature of general violence.” We note that she found that despite past and intense engagement from services, with which he has complied, it has not always had a

positive impact on his behaviour. These factors are empirically associated with an increase in future violence risk. He showed four out of five clinical factors. There was evidence of all five factors under the risk management domain.

[47] He met all ten perpetrator risk factors on SARAv3 (Spousal Assault Risk Assessment) but some community protection was put in place by social work prohibiting him from contacting his ex-partner and their child.

[48] Ms Gray also applied TRAP-18 (Terrorist Radicalisation Assessment Protocol). It involves assessment of distal characteristics, meaning predisposing factors, that are present before warning behaviours become apparent. The appellant had seven out of ten distal characteristics: personal grievance and moral outrage; he was framed by ideology; dependent on a virtual community; experienced changes in his thinking and emotion; his occupational goals were thwarted; had mental disorder; and had previously been criminally violent. He did not have the other three distal characteristics: he had not been ostracised by a group he wanted to join; he had not failed to make sexually intimate bonds; and there was nothing particularly creative or innovative in his plans.

[49] The appellant's denial that he intended to commit an act of violence or terrorism made it difficult to assess proximal warning signs, but certain inferences could be drawn. There was evidence suggesting that he exhibited four of eight warning signs: pathway, in that he could be seen as researching or planning for a potential attack; fixation; identification with previous attackers and self-perception of an agent advancing a cause; and leakage, where the person communicates to a third party any intent to do harm through an attack. He did not exhibit the other four: he showed no novel aggression in this period; he did not directly communicate a threat to a specific target or building; there was no evidence of an

energy burst suggesting imminence; and there did not appear to be “last resort thinking”, an urgency that a terrorist act must happen now.

[50] It is not entirely clear to us where causing an explosion would fit in as it might, on one view, be considered as an analogue to novel aggression. We note also that Ms Gray considered that novel aggression ideation was present in the appellant’s past.

[51] At the time of the risk assessment process, the only distal characteristic no longer present was accounted for by the appellant’s inability to access social media in prison. So far as proximal warning signs are concerned there was some evidence of last resort thinking. The risk he presents in this respect essentially remained the same over the 18 months in custody between his arrest for this offence and the time of risk assessment. Last resort thinking was an important development.

[52] There does not appear to be a process of disengagement from his ideology and cause. His letters suggest that he was becoming more focussed on the problems he associates with industrialisation and social control. He does not have changing priorities, and he has not developed any positive friendships.

[53] In assessing protective factors, Ms Gray noted that the key factor in the appellant’s case is the presence of external controls, professional support alongside monitoring and supervision and medication compliance.

[54] Ms Gray considered three risks of further violence: lone terrorist action; intimate partner violence; and general violence. His difficult start in life and fractured relationships with members of his family were significant. His finding that acts of violence as a child made him feel better were significant as were his punishments of being confined to his room or prevented from speaking at the dinner table, triggering a desire to be heard and noticed. The breakdown of his relationship with his partner and daughter, and its consequences,

increased his anger, alienation and sense of injustice towards the world. He very much related to the circumstances of the Unabomber. He formed something of a community online and felt noticed and sought increasingly “risky” means of retaining his audience. The content of his letters cannot be ignored and may reflect an increase in intent to perpetrate an act of terrorism, but it may be questioned whether he has the capacity to do so. He does not have the means to build a viable bomb, but this could change if he starts to associate with people who have access to materials or weapons and who influence him in a more radicalised direction.

[55] His most likely future risk is for some kind of significant public disorder aimed at communicating his ideals, such as setting fire to a building he associates with industrialisation or using gas canisters to create an explosion and posting it online. The presence or absence of people in such a building at the time would bear on the extent of danger to people. He may cause harm unintentionally. Whilst he has not acted on them as an adult, given his history of intensely violent thoughts, he might have a desire to stab a stranger, especially if his mental health deteriorated.

[56] In assessing risk, Ms Gray considered the enduring risk of serious harm to the public (inferred from his pattern of behaviour) and the nature of his characteristics underpinning this risk; the degree of amenability of these characteristics to change with intervention and across time; the manageability of risk now and following interventions and when subject to statutory supervision in the community and in the longer term.

[57] Some aspects of his treatment seem to be helping, e.g. the use of Quetiapine (an antipsychotic medication) appears to have reduced the intensity of previous violent thoughts. He has not been violent in custody. He will likely require intensive support in the community for the foreseeable future for both his well-being and risk management. A long

period of supervision under an extended sentence could have a positive impact on risk since he would have service providers who could provide support when he required it.

[58] If at liberty, his risk level would most closely fit with the medium category on the RMA Standards and Guidelines 2018. As Ms Gray put it at 4.6.2:

“...the nature, seriousness and pattern of his behaviour indicate a propensity to seriously endanger the lives, physical or psychological well-being of the public at large; and that he has characteristics that are persistent and 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;
- he has the capacity and willingness to engage in appropriate intervention;
- he is sufficiently amenable to supervision;
- there are other characteristics that indicate that measures short of lifelong restriction may be sufficient.”

[59] His case is concerning and some particularly concerning aspects will require stringent monitoring in the future. Nevertheless, there is insufficient evidence that he meets the RMA’s high-risk criteria. Accordingly, it is arguable that measures short of lifelong restriction are proportionate. He will require monitoring under licence conditions (notably of peer associations and online activity), treatment (including close monitoring of medication compliance and any increased perceptual disturbances), supervision (particularly of his online activity, Ms Gray being unclear if the PREVENT scheme would apply to him) and victim safety planning.

[60] Ms Gray addressed supervision:

“5.1.9 Whilst I do not consider Mr Ross to meet threshold for ‘high’ risk under the RMA standards and guidelines I do feel that some kind of long-term supervision would be of benefit to both Mr Ross and public safety. I would advocate, if possible, for a lengthy extended service (sic) in order that there can be good levels of monitoring and supervision in place for a protracted period on release. This would ensure he is supported but also would provide immediate mechanisms for the possibility of recall if warning signs were starting to arise.” [Emphasis added]

Reasons for the sentence imposed

[61] The judge noted the maximum penalty under section 38 of imprisonment for 5 years. On the assumption that the offence might theoretically qualify as a violent offence under section 201A of the Criminal Procedure (Scotland) Act 1995, the judge observed that it would be appropriate to reduce the sentence for the early plea of guilty. Noting the maximum prison term of 5 years, he envisaged a sentence below the 4-year threshold at which an extended sentence becomes available for a violent offence. It followed that the kind of long-term supervision envisaged as necessary, both by the risk assessor and by him, was not available. Supervision under a CPO was insufficient to protect the public.

[62] He noted the assessments of risk in the JSWR and RAR and their implications as well as the key factors in the RAR. He examined the whole circumstances of the case and found that the risk criteria were met on a balance of probabilities.

Note of appeal

[63] The appellant concedes that the judge was correct in making a risk assessment order and obtaining a risk assessment report but maintains that the judge gave insufficient weight to considerations identified as supporting a determinate sentence of imprisonment with appropriate post-release supervision. The risk assessor considered that the appellant presented a medium level of risk and there were protective factors such that the appellant could be managed by measures short of an OLR. She did not consider him capable of making a viable explosive device and there were no indications he might engage in effective terrorist conduct. He was relatively young and some aspects of his treatment appeared to have been effective. He had managed to complete previous community payback orders,

suggesting he could engage with social workers. He had not been violent in custody.

Accordingly, the sentence imposed was excessive.

Submissions for the appellant

[64] The appellant's crime did not actually endanger anyone and was not directed at any person or organisation. He did not present as someone who could orchestrate a sophisticated planned attack that could cause serious harm. Since he was 23 at the time of his offending and 24 when sentenced, he is a young offender within the scope of the Sentencing Council for Scotland's "*Sentencing young people*" guideline. He is expected to be less mature and so less culpable than an older person and to have greater potential for rehabilitation.

[65] The appellant has a limited criminal record with no previous custodial sentence. There were some protective factors in his case: notably his low intelligence, his close relationship with his grandparents and the benefits of his prescription of Quetiapine.

[66] Whilst a different senior counsel had invited the judge to impose an extended sentence, and it appeared that the risk assessor had erroneously considered that an extended sentence was an available option, senior counsel acknowledged that it was not competent. The offence does not fall within the scope of section 210A(10) because it is not a sexual or terrorism offence and is not one inferring personal violence as defined. This will limit what programmes the appellant can engage with in prison. Whilst time released on licence will be limited, it could at least be 12 months under a supervised release order. In all the circumstances, and where the risk had been assessed as medium, the judge had erred in finding that the risk criteria were met.

[67] At the hearing, senior counsel conceded that the appeal could only succeed if the court found that the judge was not entitled to find that the risk criteria were probably met. The court should do so. This case is less serious than other reported cases where this court has refused appeals against orders for lifelong restriction on young offenders. She did not examine the cases she had referred to in her written submissions in any detail: *Moreno v HM Advocate* [2024] HCJAC 27; *NS v HM Advocate* [2025] HCJAC 24, 2025 JC 342; *Hamilton v HM Advocate* [2026] HCJAC 10, 2026 SLT 549.

[68] Whilst he was towards the upper range of the *Sentencing young people* guideline, and the RAR did not disclose any particular vulnerability, it should be noted that the appellant's only previous appearance on indictment was when he was 16. Whilst the risk assessor was concerned about the content of letters written by him in August 2025, since the risk assessor said they were sent on the same day it appears they were written at much the same time. The appellant says it was two days after he had seen the reporting social worker, had lost hope and felt suicidal. The risk assessor had posited that his real motive in writing them to people who were not particularly close may have been to elicit attention from people he associated with neglecting him in the past. He had written that he did not intend to harm anyone.

[69] Ultimately, the imposition of an OLR was not a fair and proportionate response to what the appellant did, which caused no physical injury or damage. If the appeal succeeded, the court should note that the appellant had spent most of the last two years in prison.

Decision

[70] Section 210B provides:

“...Risk assessment order

- (1) This subsection applies where it falls to the High Court to impose sentence on a person convicted of an offence other than murder and that offence—
 - (a) is (any or all)—
 - (i) a sexual offence (as defined in section 210A(10) of this Act);
 - (ii) a violent offence (as so defined);
 - (iii) an offence which endangers life; or
 - (b) is an offence the nature of which, or circumstances of the commission of which, are such that it appears to the court that the person has a propensity to commit any such offence as is mentioned in sub-paragraphs (i) to (iii) of paragraph (a) above...”

There is no challenge to the competence of imposing an OLR for this offence, correctly, as the appellant comes within the scope of subsection (b) as the judge determined. Section 210E defines the risk criteria. They 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.”

[71] Whilst the senior counsel then acting encouraged the judge to impose an extended sentence, and it featured significantly in the risk assessor’s reasoning in concluding that the appellant presented a medium level of risk on the RMA scale, it was not a competent disposal as the appellant was not convicted of a sexual offence, a violent offence or a terrorism offence as they are defined in section 210A(10) of the 1995 Act. A supervised release order could have been imposed, under section 209, but the post-release supervision period cannot exceed 12 months: subsections (1), (3) and (7).

[72] The judge had before him a risk assessment report and his task was to evaluate if, considering that report and all the information before him, including the agreed narrative and detailed social work report, on a balance of probabilities, the risk criteria were met. In cases where an OLR is in contemplation a judge may consider the option of an extended sentence, where that is competent, but there is no formal requirement to do so before

imposing an OLR: *Ferguson v HM Advocate* [2014] HCJAC 19, 2014 SCCR 244 at [103] and [104]; *Nyiam v HM Advocate* [2026] HCJAC 5, 2026 SCCR 144 at [37] and [38].

[73] The risk assessor was clear that the appellant had exhibited serious intent over a significant period but felt that his capability to make an effective bomb was limited.

Nevertheless, in her consideration of risk formulation and risk scenarios, she recognised that he could acquire such capability from others, could be influenced or used by them to commit an act of terrorism (3.26.14) or could commit his own unsophisticated terrorist action, such as setting fire to a building with potential to endanger life. She noted that using gas canisters in such a fire could cause an explosion and would not require sophistication.

[74] Whilst there may be some value in considering other reported appeals concerning the imposition of orders for lifelong restriction, unless there is an issue of competence, it will be very limited. The task for the judge is to evaluate all the circumstances of the case before the court, and the terms of the RAR, and determine if, on a balance of probabilities, the risk criteria are met. If so, Parliament has required, in section 210F, that the judge shall make an OLR or compulsion order. The latter was not an issue in this case.

[75] It was for the judge to determine the level of risk, taking careful account of the expert assessment of risk in the RAR, in this case medium level on the RMA scale. He was not bound by the risk assessor's rating but should not make an OLR if risk was assessed as low and he agreed. Where risk was assessed as medium, it was for the judge to determine if the risk criteria were met: *Ferguson* at [105] to [108].

[76] The judge recognised that an extended sentence was not competent and did not consider that the short period of supervision that was available, even if he made a supervised release order, would offer sufficient protection for the public.

[77] As senior counsel acknowledged, the appellant is not a particularly young offender within the scope of the *Sentencing young people* guideline, and the risk assessor did not consider him to be particularly immature. Senior counsel acknowledged, correctly, that to succeed she must persuade us that the judge was not entitled to find that the risk criteria were met on a balance of probabilities.

[78] As we have noted above, an assessment of medium risk did not disentitle the judge from finding that the risk criteria were met. The kind of long-term supervision that the risk-assessor considered would be necessary to protect the public was not available under an extended sentence as she had erroneously contemplated. The judge recognised this. It would not be available under a supervised release order.

[79] When all the circumstances before the judge are examined together, it can be seen that the appellant, who has a personality disorder and other problematic traits, has been exhibiting violent ideation and behaviours since his early years. Even taking account of youthful bravado and that the intent behind some of his behaviours may have been to do no more than shock or impress certain people, he had the misfortune to have a deeply troubled childhood in which he exhibited profoundly troubling behaviours. He has been violent in varied contexts: at home; at school where he was convicted of knife offences; and he has been domestically abusive to the extent that he was not allowed to contact his former partner or their daughter.

[80] His professed concerns about the environment and industrialisation are hardly unique amongst young people but his contemplated responses, influenced by his identification with lone-wolf terrorists who have caused serious harm and death, are unusual and concerning. At a young age he found pleasure and reward in hurting people. He has asserted his willingness to kill. Despite his apparent feel for nature, he took pleasure

in hurting animals. He has collected and assembled materials that might be used to assemble a bomb, something in which he plainly had considerable interest. He told his grandfather that he had an explosive cookbook on his phone. He caused an explosion and broadcast it over the internet. In prison, his interest in certain terrorists appears to have developed and intensified.

[81] In all the circumstances, we are satisfied that the judge was both entitled and correct to conclude that the risk criteria were probably met. Accordingly, he did not err in imposing an order for lifelong restriction that he was required by Parliament to make in the circumstances before him. The circumstances of the very different cases referred to by senior counsel where this court refused appeals against orders for lifelong restriction on younger offenders, and with which we are familiar, do not persuade us otherwise.

[82] The appeal is refused.