



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2026] HCJAC 10
HCA/2025/581/XC

Lord Justice Clerk
Lord Matthews
Lord Armstrong

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

APPEAL AGAINST SENTENCE

by

CAHLUM HAMILTON

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Loosemore; Paterson Bell (for Ian C McCarthy Ltd Solicitors, Glasgow)
Respondent: Cross (Sol Adv) AD; the Crown Agent

20 March 2026

Introduction

[1] In this appeal against sentence, the appellant, now aged 18, challenges the imposition of an order for lifelong restriction with a punishment part of two years by the High Court in Glasgow on 23 October 2025.

[2] He had pled guilty to two charges:

“(1) on 18 June 2024 at Greenhill Square, East Kilbride you ... did whilst acting with others assault [the 15-year-old male complainer] ...and did repeatedly attempt to strike him with a machete and thereafter strike him on the neck with said machete to his severe injury, permanent disfigurement and to the danger of his life; you ... did commit this offence while on bail, having been granted bail on 2 May 2023 and 25 April 2024 at Glasgow Sheriff Court;

(2) on 18 June 2024 at Greenhill Square, East Kilbride and elsewhere, being a public place, you ... did, without reasonable excuse or lawful authority, have with you an article which had a blade or was sharply pointed, namely a machete; CONTRARY to the Criminal Law (Consolidation) (Scotland) Act 1995, Section 49(1) as amended; you ... did commit this offence while on bail, having been granted bail on 2 May 2023 and 25 April 2024 at Glasgow Sheriff Court.”

The date of these crimes, 18 June 2024, was the appellant’s seventeenth birthday.

Procedure

[3] The appellant first appeared on 20 June 2024 and was allowed bail. In due course, he offered to plead guilty to the charges under the Criminal Procedure (Scotland) Act 1995 section 76 and appeared on indictment for that purpose at Hamilton Sheriff Court on 21 May 2025. The sheriff adjourned for the preparation of a Justice Social Work Report until 9 July 2025 and then remitted the appellant to the High Court of Justiciary under the 1995 Act section 195 as it appeared to him that the risk criteria mentioned in section 210E of that Act may be met.

[4] The risk criteria relate to the implication from the nature of, or the circumstances of the commission of, an accused person’s offence/s either in themselves or as part of a pattern of behaviour demonstrating a likelihood that if at liberty he will seriously endanger members of the public at large. If the risk criteria are met, the court must impose an order for lifelong restriction. A sheriff has no power to do so when presiding in the sheriff court.

[5] The case called before Judge Watson on 29 July 2025 who, having heard from the appellant’s solicitor-advocate, made a risk assessment order under the 1995 Act section 210B.

He instructed a risk assessment report and adjourned until 23 October 2025. He then imposed an OLR with a punishment part of 2 years, backdated to 9 October 2025.

The circumstances of the offences

[6] The agreed narrative as reported by the sentencers did not suggest that the appellant had consumed intoxicants. Information in reports is to the effect that the appellant, equipped with a machete, travelled from Paisley to East Kilbride with associates, having received a threatening message from the complainer.

[7] The gist of what then happened according to the narrative is that on 18 June 2024 at approximately 21.30, the complainer, aged 15 (given the date of birth in his victim statement), was standing at a bus stop with his female friend, also 15, when they were approached by the appellant and two of his friends. Without any provocation, one of this group, SB, approached the complainer and made a comment towards him, alleging that he had been cheeky to his aunt. SB then punched the complainer in the face, prompting the appellant and the third person to attack him. A struggle developed as the complainer sought to defend himself against a vicious attack by three older males. The appellant was seen to pull out a large machete style knife, approximately three feet in length, from his trousers, and began swinging it wildly at the complainer, attempting to strike him with it. While the complainer was standing, but being restrained by one of the other males, the appellant struck him on the back of his neck with the machete, resulting in profuse amounts of blood gushing from the back of his neck.

[8] A passer-by took the complainer to hospital. He had sustained a 4cm deep wound to the fascia and muscle on the rear of his neck. He required intravenous fluid and, following a CT scan of head and neck, his wound was sutured just above his collar line. The wound had

reached within 3mm of his spinal column and vertebral bones. Contact with either would have been extremely serious. It was only medical intervention that prevented these injuries from being even more serious and potentially fatal. The wound will leave a scar above the collar line.

Victim information

[9] The complainer explains in a victim impact statement prepared in May 2025 that he continued to suffer pain and difficulty with movement in his neck, bending over and lifting heavy objects. He anticipates these will be permanent consequences. He has become seriously depressed, suffers nightmares and cannot stop thinking about how he could have died. He is constantly in fear of his life. He is too afraid to use public transport and cannot go out alone. He explains that he has autism spectrum disorder and that his mental health has suffered “a massive impact” including acute social anxiety. His ability to work has been inhibited. All of this has had an impact on members of his family who support him. His mother and sister now suffer anxiety and depression, and he feels that his family will never be the same again.

Other convictions and behaviours

[10] The RAR provides some detail. The appellant was convicted on sheriff court indictment at Glasgow of assault to severe injury on 13 January 2025, the offence having occurred on 1 December 2022 when the appellant was 15. CCTV cameras recorded him with a group of friends chasing another youth out of a shopping centre. The appellant pulled an item out of his jacket, and he and another youth appeared to punch a young male who sustained an injury to his leg, requiring stitching. The appellant explained that he was

carrying a lock-back knife for his own safety when he chanced across the victim and sought an apology from the victim for making threats to the appellant. When the victim would not apologise, he stabbed him below the waist, calculating that this would cause less injury. In due course, a sentence of detention for 270 days was imposed.

[11] For an offence of malicious mischief committed when the appellant was still 15, in May 2023, the sheriff remitted to the children's reporter, leading to his being accommodated in a secure facility in October 2023. CCTV cameras recorded him pulling out a red hammer and smashing cameras and windows at Bridgeton library causing £30,000 of damage. The appellant explained he had been drinking alcohol.

[12] There is much information in the JSWR and RAR about the appellant's acts of violence from early childhood and we will identify some of them in examining those reports. We note here certain references in the RAR to incidents met with formal interventions or which are said to have occurred recently. The risk assessor notes a children's hearing referral in November 2022 when the appellant stole from a shop and threatened the shopkeeper with a knife. Incidents of assaulting members of staff at the Good Shepherd Centre on 1 April 2025 and 23 May 2025 remain outstanding. He frequently became physically aggressive and would punch or strike staff. In November 2024 he was noted to have been verbally abusive to his solicitor and in January 2025 he assaulted a peer. Following his move to Polmont YOI on 18 June 2025, he was subject to four misconduct reports in July 2025, including one for fighting. He did not instigate it but would not stop when instructed to by staff (RAR at 14.5).

JSWR and the circumstances of the appellant

[13] The appellant, who had been living in supported accommodation in Paisley at the time of the index offence, told the reporting social worker that, following receipt of threatening messages from the complainer and others, he had gone by bus to East Kilbride with friends. He said that he was going to sell a machete to a friend and had it with him. When they saw the complainer at a bus stop, they alighted but the appellant maintained this was not prompted by the messages. He accepted that once a fight broke out, he swung the machete towards the complainer but maintained that he did so to defend his friend, intending perhaps to strike his leg or back but not to strike his neck with it. When the machete made contact, he and his friends ran away. His account of the offence and his feelings about it suggested that he had a lot of work to do to gain insight into his offending.

[14] The reporter had been the appellant's allocated social worker since March 2024, knew the appellant and his family and had access to extensive materials including Scottish Children's Reporter Administration review reports and a forensic psychology report of September 2024. Its author, Dr Mark Penman, had used the Structured Assessment of Violence Risk in Youth tool (SAVRY) to assess the risk the appellant presents. The social worker applied the START: AV risk assessment instrument for adolescents and consulted widely with other professionals who had worked with the appellant.

[15] When he reported on 30 June 2025, the appellant was in Polmont serving his 270-day detention for assault to severe injury. Following early release on 30 April 2025, he breached his conditions, was recalled to custody and was to be held in Polmont to the end of that sentence (9 October 2025).

[16] The appellant grew up in the East Kilbride area with his mother who suffered from mental health issues (the risk assessor explains that his mother has a diagnosis of borderline

personality disorder) and two older sisters with all of whom he has a strong and positive relationship. He was placed on the child protection register in 2010 when he was 2 or 3 years old, there being concerns about his witnessing domestic violence, parental neglect and there being substance misuse in the home. (The RAR discloses that social work records indicate that during this period the appellant:

“started to become aggressive, was punching himself and others, and was engaging in some sexualised behaviour such as touching his private parts and wanting other children to pull down their trousers. His mother also noted that he was becoming defiant and was not taking direction.”)

His mother struggled to cope with him and he and his sisters were often looked after by a family friend. In 2013 he was excluded from primary school for violence towards staff. In 2014, he was placed in a children’s home for hurting another child, threatening violence and using sexualised language. From 2014 he was in multiple placements with family friends, residential care, returning to his mother and secure care. The reporter summarises that:

“He has been a victim of physical, emotional and sexual abuse from a very young age which has shaped very difficult and challenging emotions and behaviours displayed by him.”

[17] In 2019 he attended Kibble as a day school pupil and over his first three months staff reported impulsive behaviour, aggression, violence, absconding, refusing to take direction from staff and sexualised behaviour. He gained some national 3 and 4 qualifications in Kibble Secure Centre and the Good Shepherd Centre.

[18] In May 2021 he was placed on a compulsory supervision order, there being “ongoing concerns regarding absconding, fire raising, violence and aggression, and aggressive sexualised language to female peers.” He is said to have “picked up numerous charges.” He was placed on the care and risk management register and his risk managed with a multi-agency approach. Given heightened concerns for his own safety and that of the public, he

was securely accommodated from October 2023 in Kibble Safe Centre and moved to Kibble Residential Care in March 2024. Whilst intensely supported in the community in a supported living placement with round the clock support from staff available to him, he became difficult towards staff and had access to weapons. These were his circumstances when he committed the crimes featuring in this appeal.

[19] Despite being subject thereafter to electronically monitored bail, concerns about his behaviour continued, including absconding and threatening staff, leading to his being placed in secure care from July 2024 where:

“...despite being highly monitored and supported, supported to adhere to ADHD medication and having no access to substances, he has continued to be violent towards staff and disruptive in the house resulting in him being restrained on multiple occasions...[and] also went on to accrue further charges as he assaulted staff members on two separate occasions as recently as 1 April 2025.

...[he] shows a lack of remorse or empathy for violent behaviours and that he can often blame external factors rather than working towards developing his resilience and self-regulation. There have been serious concerns around Mr Hamilton engaging in violent behaviour including the index offence as well as having access to weapons which has meant that he has not been able to live in the community safely and he has been accommodated in secure care for a significant period of time.”

This placement ended on 18 June 2025 when the appellant turned 18 and was moved to Polmont.

[20] The appellant received a formal diagnosis of ADHD in March 2019 and was given a trial of medication before getting a full prescription of appropriate medication in December 2023. He has received support from the forensic CAMHS team in custody and his medication and treatment plan have been regularly reviewed. His compliance with the medical regime is better in Polmont than it was in Kibble. The adult CAMHS team have referred his case to the Community Mental Health Team, anticipating a time when he is at liberty. CMHT refused to accept the referral because of the level of risk and violence the

appellant presents. We note that at para 6 of the report (page 3) the social worker records the appellant saying he had taken alcohol and acid on the day before the offence, 17 June 2024, and that his detailed account of the offence there did not refer to intoxication on the day of the offence (18 June 2024). We note that, whilst there is a subsequent and cursory reference in the report (para 7 at page 7) to the appellant stating that he was under the influence at the time of his offence, it was not part of the narrative reported by the sentencers.

[21] The report records that Dr Penman concluded, following his psychological assessment of the appellant on 9 September 2024 using the SAVRY tool, that:

“...the main contributing factors to [his] violence appear to be the interaction of disinhibition through substance use, poor consequential thinking (linked to his unmedicated ADHD), negative peer influence, poor emotional regulation, low levels of empathy and remorse and attitudes and beliefs that condone violence. These factors are reflected in the current assessment of there being a high likelihood of violence...”

The appellant told his social worker that substances are not a problem for him, he will not need support for them and will be able to resume taking them when at liberty “in a healthy way.” The level of risk he presents would make it difficult for social work to accommodate him in the community. The appellant has not demonstrated any pro-social use of time and, despite his protestations to the contrary, will seek out his peer-group when at liberty.

[22] In assessing risk, it should be noted that the appellant’s behaviours have included theft by housebreaking, road traffic offending and abusive and threatening behaviour through his adolescence. There is a pattern of less offending when in a secure environment and escalation when in the community, albeit he has continued to be violent and has assaulted staff members on multiple occasions in secure settings. It was known that he kept a machete under his bed in his placement in Paisley and had been threatening to stab staff

with it. In secure care, he sharpened a toothbrush and twice threatened to stab staff a significant time after his offences in June 2024. His history shows that his offending behaviour has been targeted towards other young people, family members and people in authority including staff, teachers and other professionals.

[23] The appellant's assault with a machete caused serious harm and had potential to cause even more serious harm. He poses a serious risk to the protection of the public. He was assessed as presenting with a high risk of further offending, particularly when his whole history was considered. He generally failed to respond to high levels of support and intervention in secure care. The social worker had significant concerns about the appellant's willingness to work with social work, limiting the prospects of safely managing him in the community. The view of social work was that the appellant being detained is the most appropriate means of protecting the public and his own safety. Further supervision will be necessary when he is released. He would refuse to cooperate with a community payback order. He has a very difficult relationship with social work. He continued to be violent and disruptive, repeatedly requiring restraint, in secure care even with no access to substances and when taking his medication. Despite some apparent progress, there had been no effective change. When in the community, there will need to be a multi-agency approach to managing risk given the concerns the appellant raises regarding protection of the public.

Risk assessment report

[24] Sophie Higginson, a Chartered and Registered Psychologist, who was appointed as an RMA risk assessor in 2025, met with the appellant on four occasions over a four-week period in August/September 2025 for a total of three hours to prepare her report of 6 October 2025. In addition, she had access to information from his mother, professionals who have

worked with him and social work, NHS, secure care educational records and prison information. In her report she covered much of the same ground as the JSWR, sometimes providing more detail.

[25] The appellant told Ms Higginson that he had spent time in East Kilbride in the afternoon of 18 June 2025 and was drinking alcohol with friends there. He confirmed that, having got off the bus on seeing the victim, he had intended to “chop” the victim on the neck. He thought he was angry, trying to impress his friends and was coming down from having taken acid tablets the night before and affected by alcohol. We note, again, that the appellant being intoxicated on the day of the offence was not part of the narrative before the court.

[26] Ms Higginson identified instances in social work records of the appellant being sexually abused by older girls and by December 2014 there were increasing concerns in a children’s home about his engaging in sexualised behaviour. In late 2013, aged 6, he was excluded from primary school following incidents of aggression towards teachers. After a period of improvement in 2015, social work became involved with the family again in 2018 because of the appellant’s aggression towards his mother and an incident of fire-raising. In February 2017, he threatened a teacher with a screwdriver. From October 2019, staff at Kibble day school reported incidents of aggression and violence, including punching staff and slapping a teacher’s bottom. In December 2019, he held a knife to his mother’s throat and applied pressure, leading to police involvement. Between October 2023 and March 2024, he was accommodated in Kibble Safe Centre for his own and public safety. He engaged with intervention work and complied with his ADHD medication regime. He seemed to do better being away from his peer group, with some of whom he was re-united

when he was moved to Kibble residential care. His behaviour then deteriorated with increased freedom and several offences were reported to the children's reporter.

[27] The appellant began abusing alcohol from 11 or 12 and shortly afterwards was self-medicating by using cannabis to make him feel calm. He used cocaine, ketamine, ecstasy, LSD and amphetamines alongside peers.

[28] The appellant has generally had good reports from staff in Polmont. He is polite and relatively quiet. He enjoys the structure of the prison environment and feels that staff respect him and treat him like an adult. He enjoys attending the joinery working party.

[29] Taking account of the appellant's age and developmental stage, she applied the SAVRY tool to assess risk of future violence and the Structured Assessment of Protective Factors-Youth Version (SAPROF-YV) to consider current protective factors. It is very challenging to assess the risk presented by a person of 18 whose characteristics and behaviour are more amenable to change than those of a mature adult. Considerable caution is required in predicting risk any more than 12 months ahead. Ongoing risk assessment will be particularly pertinent in his case.

[30] SAVRY assessment revealed that all 10 historical risk factors were present with 7 identified as high – history of violence; non-violent offending; early initiation of violence; past supervision/intervention failure; childhood history of maltreatment; early caregiver disruption; and poor school achievement given his troubles at school - and 3 as moderate. Of 6 social/contextual risk factors, 3 are high in the last 12 months – peer delinquency; stress and poor coping; community disorganisation - and 3 are moderate. Of 8 individual/clinical risk factors, 6 are high – negative attitudes including violence supportive attitudes; risk taking/impulsivity; substance use difficulties; anger management problems; poor compliance; and ADHD difficulties - and 2 are moderate. Ms Higginson reports that:

“Five of these factors appear particularly critical to his risk. His difficulty managing anger and his impulsive tendencies appear to have perpetuated his pattern of aggression. His negative (violent) attitudes appear to have been key particularly to his violence against peers. His difficulty with ADHD traits (particularly when unmedicated) contributed to his general emotion management difficulties as well as his impulsivity and ability to respond to relevant risk management measures. In turn, his poor compliance has impacted on the ability of professional services to support him in managing his risk. Whilst it is difficult to identify factors as enduring given his young age, his ADHD traits by their nature will be enduring, though medication and self-management strategies can help mediate their impact.”

[31] None of six protective factors were fully present on SAVRY. On SAPROF-YV, of 4 resilience items, 3 were partially present; of 6 motivational items, 5 were partially present; of 3 relational items, 2 were partially present; of 3 external items all are present because the appellant is remanded in custody in Polmont, which has a pedagogical climate and offers professional care. Environmental factors associated with being removed from the community and distanced from external stressors can aid his risk management, even if that was not the position in the Good Shepherd Centre.

[32] Ms Higginson noted that the appellant has outstanding charges for assaults committed against staff when he was in the Good Shepherd Centre. A high sense of threat associated with his adverse early life experiences and distress and overwhelm, aggravated by the symptoms of his ADHD, have caused him to experience challenging emotions which he has been unable to manage other than by acts of aggression. In adolescence, he gained esteem in an anti-social peer group by using violence. He carried and used weapons to feel safe and felt distress, anger and hopelessness at his circumstances. He self-medicated with intoxicants and perceived the world as a dangerous place. Violence became normalised for him. She explained that:

“[The appellant] reports all his violent offending has acted as a means of emotional release (even if the specific triggers and nature of the violence have varied). Indeed, collateral information indicates that [his] violent offending typically appears to be

precipitated by general difficulty coping, with the frequency escalating as he becomes subject to increasing stressors.”

He has used violence for retribution, to express anger either with a particular victim or general anger at his own circumstances and reactively/impulsively. He has planned violence and equipped himself for violence by carrying weapons, often occurring with peers and motivated by promoting his self-esteem and status. Intoxicants are not an essential pre-requisite to his violence.

[33] Engaging the appellant in meaningful activity providing a sense of hope and purpose may help manage his risk. Removing him from his peer group appears crucial. His ADHD makes him more amenable to influence than an adult would be. His positive relationships with his mother and his sisters and, particularly, his protective and positive feelings towards his young niece are protective factors. He can be likeable and personable and has a level of social competence. He is less likely to offend whilst in custody.

[34] In the appellant’s case, it is important to note that his aggressive behaviour started at a young age and persisted into young adulthood. His problems have been pervasive across a range of settings, but he may yet mature. He will need to maintain compliance with ADHD medication, develop strategies for managing challenging emotions and work on his ability to express his feelings and seek support. He has a propensity to seriously endanger the physical safety of the public at large. Given his age, it is not possible to conclude that his problematic characteristics have persisted and been pervasive into adulthood although his pattern of behaviour has been concerning to date. His

“...young age creates complexity when seeking to reach conclusions on his amenability to change. There is clear evidence that he has demonstrated problematic characteristics relevant to risk including ongoing difficulty with emotion management; attitudes supportive of violence (in specific risk relevant circumstances); and difficulty complying consistently and effectively with supervision measures. He has also continued to associate closely with peers involved

in anti-social behaviour and group violence. However, the difficulty with assessing a young adult is that they have yet to reach full maturity and their personality traits and behaviour can still be highly changeable. They are also particularly susceptible to external factors. Mr Hamilton's ADHD diagnosis also means that his developmental stage, at least in terms of emotional maturity, may not match his biological age indicating that he may take longer to achieve developmental maturity. Ultimately, there are indicators that raise concern that Mr Hamilton's difficulties may persist further into adulthood, this includes the early commissioning of his problematic and aggressive behaviours. However, research shows that even for adults with such longstanding difficulties many still desist as they move out of young adulthood. This does not mean that Mr Hamilton will necessarily desist but rather means that it is difficult to definitively and defensively (*sic*) conclude that he does not yet have the capacity to change."

She also stated that:

"If he was to return to the community at the current time (given he has yet to develop skills for managing high-risk situations) it is likely his risk would be high, and further seriously harmful violence could be imminent."

[35] Whilst on the evidence to date there is clear concern regarding how effective future intervention may be, and therefore how manageable his risk may be following any future risk-relevant work, definitive conclusions cannot be reached on whether he will necessarily fail to respond in the future. His personality is still developing and so it cannot be concluded that his traits will present insurmountable barriers to treatment. Nevertheless, expectations must be realistic, it may be that his risk will remain high following intervention (18.7).

[36] Ms Higginson reached the following conclusions:

"18.9 With much deliberation, I am of the opinion that Mr Hamilton presents a Medium risk of *enduring* harm. I have arrived at this conclusion based on the information presented in the sections above and through having regard to the Risk Management Authority definitions of high, medium, or low. This is not a conclusion on his current risk of harm serious harm which remains High (given he has not yet demonstrated a prolonged period of stability/desistance).

18.10 The nature, seriousness and pattern of Mr Hamilton's behaviour indicate a propensity to seriously endanger the lives, physical and psychological well-being of the public at large. Using structured risk assessment tools, it is clear he possesses problematic characteristics relevant to risk. Despite his relatively young age, many of these characteristics have been present across his lifespan and across a range of contexts. As is typical for his young age, there appears to be some evidence that

external/situational factors have some influence on how these characteristics have manifested at specific time periods.

18.11 In reaching my conclusion, in line with best practice, I have placed emphasis on Mr Hamilton's age and developmental stage (including his ADHD diagnosis). An individual displaying the same behaviours as Mr Hamilton past young adulthood could feasibly be judged as likely unamenable to change. However, in Mr Hamilton's case there remains some potential for his emerging protective factors to develop as he continues to mature, particularly if he can access appropriate support and intervention within the secure environment of custody. However, this does not take away from the significant concerns regarding his current risk and the level of management this requires. It simply means that I do not feel at this stage I could defensively (*sic*) [definitively?] conclude he poses a High risk of *enduring* harm.

[37] It is instructive to note what Ms Higginson then said about treatment and management, and we focus here on what is said about the time when the appellant returns to the community. The appellant's peer associations and any evidence of alcohol/substance abuse, weapon possession and general emotional instability should be monitored. At minimum, there should be unannounced home visits focussed on monitoring such developments, compliance with supervision measures, appointment attendance and his compliance with ADHD medication. Against the background of his reported sexual behaviours, professionals should monitor for concerning sexual behaviour and, if necessary, undertake further risk assessment to determine appropriate risk management measures. There should be regular supervision meetings with his allocated community based social worker. There should be licence conditions regarding his peer associations and use of substances and work will be required. Further risk assessments may be required yearly and whenever there is a significant change in his circumstances. He will need treatment to address his ADHD and his trauma history. He will need to take steps to address his peer associations, and it may be difficult for him to completely remove himself from negative peer associations. If it happens, it will take time. It may prove necessary to refer him for personality disorder assessment when he is 21. Staff who work with him will need to be

aware of the potential risk he poses for them. Appropriate risk management and multi-agency liaison will need to be in place following his release from custody.

Reasons for the sentence imposed

[38] The judge carefully considered all the material before him including the contents of the RAR. He considered the risk criteria in section 210E and the obligation on the court under section 210F. He noted the appellant's sustained pattern of violence from early childhood across a range of settings. He was troubled by the appellant's extreme and unprovoked violence in assaulting the complainer to the danger of his life by striking him on the neck with a large machete. He noted how cautious the risk assessor was in her conclusions about future risk. The terms of the RAR did not give him confidence that the appellant is someone who will moderate his risk.

[39] His conclusion on the whole circumstances was that the risk criteria were met and, as such, he was obliged to impose an OLR as he states he would have done if the matter were one of discretion given the danger the appellant presents. The terms of his report make it clear that in evaluating risk the judge recognised that the important point in time to consider was when the appellant would be released if he were not subject to an OLR. He took account of the appellant's youth in selecting a modest punishment part for such a serious crime. He noted that if the appellant does rehabilitate, then he could be released relatively soon give the short punishment part ultimately imposed.

A letter of 5 February 2026

[40] Chloe Crawford, designated as "Residential office/PO," has had regular contact with the appellant and observed him within the hall since he arrived at Polmont on 18 June 2025.

He has presented as pleasant, respectful and cooperative. He is trusted sufficiently to be a “pass man” and has fulfilled that trust, and justified the confidence staff had in him, by conducting himself appropriately. He engages positively with staff, is respectful, helpful, and is receptive to guidance and direction. He has demonstrated self-control and maturity.

[41] The appellant has shown interest in making positive changes and has shown openness to self-improvement and progression. He is motivated to develop his skills and knowledge via education and the joiners’ work party. He has been attending a dog-training work party and has shown willingness to engage constructively. His conduct since arriving has been positive and consistent. He has shown a mature and respectful attitude to staff and a genuine desire to improve himself and work towards a more constructive future.

Ms Crawford observes that his positive behaviour has been sustained over time. We note that in making this observation, there is no reference to the disciplinary incidents described above at paragraph [12] referring to the RAR at 14.5. Nevertheless, we recognise that those incidents came near the start of the appellant’s time in Polmont and the implication is that his conduct and attitude have improved.

Note of appeal and submissions for the appellant

[42] The sentence was excessive given the appellant’s youth and where the risk assessor found that he presented a medium level of risk on the Risk Management Authority scale. Had the judge adopted the approach desiderated by this court in *Ferguson v HM Advocate* [2014] HCJAC 19, 2014 SCCR 244 and looked ahead to the time when the appellant may be released after potential rehabilitation, he would not have been able to find that the risk criteria were met on the balance of probability.

[43] At paragraph [107] of the opinion of the court delivered by the Lord Justice Clerk (Carloway), his Lordship proposed that in the case of a young man, a judge would be unlikely to impose an OLR on a medium level assessment of risk on the RMA scale. Given the established legal principles encapsulated in the Scottish Sentencing Council's "Sentencing young people" guideline, an OLR ought not to have been imposed on the 18-year-old appellant, particularly where the risk assessor found no insurmountable barriers to treatment. She considered that he has potential to develop skills to deal with the stresses that have prompted his violence and could not say that he poses an enduring risk of causing serious harm. An extended sentence was a more appropriate disposal.

[44] Whilst the terms of the JSWR justified the making of a risk assessment order, once that was done and an RAR presented, the JSWR was somewhat superseded by the more detailed RAR, albeit the judge was entitled to have regard to the JSWR and its contents along with all the information before him. Whilst it appears that the risk assessor spent less time with the appellant than the reporting social worker, the assessor had access to that report, the material on which it was based and further material ingathered in her detailed examination of the appellant and his circumstances. The RAR conclusions did not support the view that it is more likely than not that the appellant will seriously endanger the public on his release.

[45] Where any risk assessment can only be relied on for the next 12 months, the court should consider itself disabled from concluding in the manner prescribed in *Ferguson* that the risk criteria are met, even in this case where the appellant has had a very difficult life and has displayed significant violence across a range of settings. This is not to say that an OLR can never be imposed on a young person as relatively recent decisions in *Moreno v HM Advocate* [2024] HCJAC 27 and *NS v HM Advocate* [2025] HCJAC 24, 2025 JC 342

demonstrate. *Moreno* and *NS* can be distinguished as both appellants were older than the appellant and, unlike the appellant, both had planned the serious sexual offences they committed. Further points of distinction were that *NS* denied the offence he was convicted of and had “developing personality pathology which includes narcissistic and unstable traits.”

Decision

[46] Section 210E of the Criminal Procedure (Scotland) Act 1995 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.”

The judge had before him a risk assessment report and his task was to evaluate if, in light of 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. If so, a judge must make an order for lifelong restriction: section 210F.

[47] The RMA provides criteria for the assessment of risk as high, medium or low

defining high and medium risk as follows:

“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.

In the absence of identified measures, the individual is likely to continue to seriously endanger the lives, or physical or psychological well-being of the public at large.

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."

[48] As this court explained in *Ferguson*, 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 is not bound by the rating of risk in the RAR but would not make an OLR if risk was assessed as low and agreed. Where risk is assessed as high or medium, and the judge accepts it, it is for the judge to determine if the risk criteria are met. We note the Lord Justice Clerk's observation at [107]:

"...Where the offender is a young man or one whose actions on the particular occasion did not appear to be prompted by his underlying personality traits but by the ingestion of drink or drugs, the prospect of change over time as a result of maturity or rehabilitation measures would render it unlikely that a judge could reasonably consider that the statutory criteria were met."

We recognise that the appellant's personality is not fully formed and he may mature in a way that reduces the risk he currently presents. Whilst they were not drawn to our attention, we note also the observations of Lord Drummond Young at [137]:

"...Such orders are not to be imposed simply because of an offender's recidivist history. It has, in particular, to be borne in mind that, in this jurisdiction, the bulk of criminal offending, both minor and serious, is committed by young male persons. Experience also shows that, with, or without, assistance, many of them, in time, as they mature, grow away from their criminal behaviour. That is not, of course, to understate the damage that they do to society in the meantime. The imposition, however, of an OLR, in relation to such persons may have the effect of inhibiting, if not preventing, such a development. That is not, of course, to say that the imposition of an OLR would be inappropriate in relation to a male person of a young age, but it may well be a factor which, in a particular case, the sentencing judge would require to have careful regard to."

[49] As we have noted at paragraph [36] above, the risk assessor considered (RAR at 18.9) that had the appellant been released from custody at the end of the assessment process, he would have posed a high risk: and she meant a high risk of causing serious harm to the physical wellbeing of members of the public at large. She observed that it was with much deliberation that she proposed "a medium risk of enduring harm." Accordingly, it appears that she had some hesitation in reaching the conclusion that his was not a high level of risk on the RMA scale.

[50] This is understandable when the risk assessor envisaged monitoring, licence conditions and supervision being necessary when the appellant is released into the community. It is true that she did not specify how long this will be necessary, but she did not suggest it will only be necessary in the short term. A need for long-term monitoring would be an indicator of high risk on the RMA scale. She was reluctant to make judgements about the level of risk the appellant presents more than 12 months ahead because, at 18, his personality is not fully formed, and he may mature and his personality characteristics may change for the better. We understand that, but also note that he has a condition, ADHD, that

will endure and which will require long-term management with a medication regime with which his compliance has been very inconsistent. The risk assessor identified it (at 15.7) as an individual/clinical risk factor and proposed that his associated traits:

“...contributed to his general emotion management difficulties as well as his impulsivity and ability to respond to relevant risk management measures. In turn, his poor compliance has impacted on the ability of professional services to support him in managing his risk.” (15.8)

[51] We also note a repeating pattern of diverse forms of violence commencing at a very young age. The incidents of assault leading to the interventions referred to in paragraph [16] above occurred when the appellant was between 5 and 7. The reports demonstrate acts of violence recurring repeatedly thereafter before culminating in the appellant being convicted on indictment, twice, for aggravated assaults using a knife and causing injury. The circumstances of the current charges are very concerning indeed. The appellant took a large machete with him from Paisley to East Kilbride. Charge 1 was a very serious example of an assault to the danger of life, coming within 3 mm of causing irreparable damage or death when hacking at the neck of his victim with the machete. Despite earlier attempts to suggest otherwise to the reporting social worker, that is what he confirmed to the risk assessor that he did. As he put it, he chopped at the back of the complainer’s neck. On the agreed narrative and given what the appellant told the risk assessor generally, we do not consider this to have occurred in a chance and spontaneous encounter. The explanation that the appellant took a machete to sell it in East Kilbride is not credible against a background of his having earlier received what he considered an offensive and threatening message from the complainer before arming himself with his machete, travelling from Paisley and, plainly, seeking out the complainer with his associates before attacking him with it.

[52] Accordingly, it is not straightforward to read across from the Lord Justice Clerk's example in *Ferguson* of a young person being assessed as presenting medium risk on the RMA scale being an unlikely candidate for the imposition of an OLR. In any event, we note that the word "unlikely" does not mean inconceivable and nor does it signal that an OLR cannot, or should never, be imposed in the case of a young offender where the risk assessment is medium. It should be noted that Lord Carloway, as Lord Justice General, chaired the court in *Moreno* which refused that young offender's appeal against the imposition of an OLR despite an RMA assessment falling short of high risk.

[53] We have taken account of the favourable information in the prison officer's letter of 5 February 2026. It does offer some encouragement, but these favourable observations are made about the appellant's conduct and attitude in the confines of Polmont where access to intoxicants and his usual peer group are limited, if not removed entirely, and he has clear incentives to cooperate in a restricted custodial setting. As the appellant is keen to stress, the issue for the sentencing judge related to the future when he would not be in custody.

[54] In his report, the sentencing judge makes it clear that he was aware of the appellant's youth and its implications. He also noted that there was a diagnosis of ADHD, a neurodevelopmental disorder that will be a lifelong condition. He noted the sustained pattern of violence from early childhood across a range of settings and that the appellant has a propensity to cause serious endangerment to the public at large in the risk assessor's view (para 18.10). He understood that she considered him to present a high risk and an imminent risk of causing serious harm if released at the point of sentencing. She envisaged that he may make gains through interventions in custody but cautioned that "expectations must be realistic and he may well continue to struggle to make progress... and it may be that his risk remains high following intervention" (18.7).

[55] The sentencing judge, noting both the appellant's present level of risk but looking also to the future when he is released, concluded on a balance of probabilities that the risk criteria were met. He was entitled to reach that conclusion on the material before him and did not err in doing so. That being so, section 210F instructed him that he "...shall... make... an order for lifelong restriction...". The appeal is accordingly refused.

Observations

[56] The report by Lord MacLean's Committee on Serious Violent & Sexual Offenders led to the introduction of the order for lifelong restriction in the Management of Offenders etc (Scotland) Act 2005 and was examined by the court in *Ferguson*. We have considered the MacLean Committee's Report and find little or no distinct consideration of the position of young offenders. For what it may be worth, observations at para 5.14 of the report tend to suggest that the committee thought that a young offender could come within the category of offender envisaged by the committee. There is nothing to suggest that the members of the committee envisaged that an order for lifelong restriction would not be used in the case of young offenders.

[57] Nevertheless, the position of a young offender will always require careful consideration in this context, as was made clear in *Ferguson*. The approach taken to young offenders has continued to be refined and is now addressed in the Scottish Sentencing Council's guideline, "Sentencing young people." In short, a young person will generally be less culpable than an older person, more vulnerable to influence, more capable of rehabilitation, which should be considered as a primary consideration, and their best interests should be considered. Some sentences could have more of an adverse effect on a

young person than an older person. These considerations were before the court in *Moreno* and *NS* which nevertheless sustained the imposition of an OLR in each case.

[58] Whilst great care must be taken before imposing an OLR on a young offender, this court has been satisfied in several instances since the decision in *Ferguson* that it was appropriate and necessary. It is possible that this appellant will respond to incarceration and the associated regime and resources. This may mean that he could be allowed parole relatively soon after the expiry of his short punishment part. If he should continue to behave lawfully thereafter, and avoid serious offending, then sentencing objectives would have been achieved but he would remain subject to lifelong restrictions for what may be many decades when a point may come when they are no longer necessary for the protection of the public.

[59] At present there appears to be no provision that would allow for the removal of such restrictions, even if it may be decades later, in the case of a young offender made subject to an OLR and then released who may in due course demonstrably cease to present a risk of causing serious harm. It may be that this aspect of the OLR regime would benefit from further review by the Scottish Parliament.