



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2026] HCJAC 26
HCA/2025/504/XC

Lord Justice Clerk
Lord Armstrong
Lord Clark

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

APPEAL AGAINST CONVICTION

by

JAMES DONALDSON OR MURRAY

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Macara KC (sol-adv); Beltrami & Co Ltd, Glasgow
Respondent: Cross AD (sol-adv); the Crown Agent

8 July 2026

Introduction

[1] The appellant was convicted after trial, at the High Court in Glasgow, on 15 October 2024. On 9 September 2025, the presiding judge imposed an order for lifelong restriction. Leave to appeal against conviction is limited to his contention that the judge gave insufficient directions on mutual corroboration. On 3 June 2026, we refused the appeal

against conviction, and we now give our reasons. His appeal against sentence will be heard in due course.

The charges of which the appellant was convicted

[2] The appellant originally faced 8 charges, but the Advocate Depute withdrew charges 3, 4, 5 and 7 at the close of the Crown case and the judge acquitted the appellant of them.

Amendments were made to the remaining charges, and the appellant was convicted of them in their final terms:

“(001) on various occasions between 7 July 1991 and 6 July 1993, both dates inclusive, at [address 1], [address 2], and [address 3] and [address 4] all Dundee, [address 5] Invergowrie and in a motor vehicle at locations being meantime to the Prosecutor unknown and elsewhere you ... did use lewd, indecent and libidinous practices and behaviour towards [AA aged 12 and 13] and did induce him to kiss you on the face, embrace him, kiss him on the face and mouth, push your tongue into his mouth, induce him to sit on your lap, lead him into a bedroom and induce him to lie on a bed with you, touch his penis over his clothing, pull down his lower clothing, remove his clothing, touch and masturbate his penis, touch his buttocks, and attempt to penetrate his anus with your finger;

(002) on various occasions between 7 July 1993 and 23 June 1995, both dates inclusive, at [address 1], [address 2], [address 3] and [address 4] all Dundee, [address 5] Invergowrie, at a caravan at Faskally, Pitlochry the exact location being meantime to the Prosecutor unknown and in a motor vehicle at locations being to the Prosecutor unknown and elsewhere you ... did indecently assault [AA aged 14 and 15] and did induce him to kiss you on the face, embrace him, kiss him on the face and mouth, push your tongue into his mouth, induce him to sit on your lap, lead him into a bedroom and induce him to lie on a bed with you, touch his penis over his clothing, pull down his lower clothing, remove his clothing, touch and masturbate his penis, touch his buttocks, and attempt to penetrate his anus with your finger;

(006) on various occasions between 27 July 1992 and 23 June 1995, both dates inclusive, at [address 1], at a flat in Menzieshill, at a flat in Charleston, the exact locations being meantime to the Prosecutor unknown, within a motor vehicle at Mills Observatory, Dundee, within a motor vehicle at locations being to the Prosecutor unknown and elsewhere, you ... did indecently assault [BB aged 14 and 15] and did lie on top of him, restrain him, attempt to kiss him, kiss him and attempt to push your tongue into his mouth, touch his penis over his clothing, instruct him to undo and pull down his lower clothing, place your hands inside his lower clothing, touch and masturbate his penis, touch and squeeze his testicles, induce him to massage

your body, induce him to touch your buttocks, attempt to persuade him to allow you to penetrate his anus with your penis, massage his body, and touch his buttocks;

(008) on an occasion between 1 September 2018 and 31 October 2018, both dates inclusive, at [address 6] Monifieth you ... did sexually assault [CC] in that you did, whilst he was asleep and incapable of giving or withholding consent, take hold of his penis and penetrate your mouth with same: CONTRARY to Section 3 of the Sexual Offences (Scotland) Act 2009."

The verdict was unanimous on charges 1, 2 and 6, and by majority on charge 8.

[3] The indictment also gave notice in a docket that further evidence would be adduced from DD, EE and FF concerning other charges of which the appellant has previously been convicted:

"i. on various occasions between 30 April 1987 and 19 March 1989, both dates inclusive, at [addresses 7 and 8], St Salvador's Church, all Dundee and in a motor vehicle, the exact locations being meantime to the Prosecutor unknown, you ...did kiss [DD aged 12 and 13] ... on the mouth, utter sexual remarks towards him, touch his penis over his clothing, touch his penis and masturbate him, seize his hand and compel him to touch your body and penis and compel him to masturbate you, seize and push his head, instruct him to insert your penis into his mouth, penetrate his mouth with your penis, compel him to penetrate your anus with his fingers and penis and you did penetrate his anus with your penis, and all this you did without his consent;

ii. on various occasions between 21 March 1989 and 8 October 1989, both dates inclusive, at Donaldson Street, Dens Road and Alexander Street, all Dundee and elsewhere you ... did cause fear and alarm to [DD aged 13 and 14] ... and did approach him and instruct him to inform police officers that allegations of sexual offending he had made to them were false and ... loiter on various streets on his route to school;

and

iii. on various occasions between 1 October 2016 and 4 December 2017, both dates inclusive, at [address 9] and Coupar Angus Road, both Dundee you ...did cause fear and alarm to [EE aged 15 and 16] and [FF] ... in that you did shine a torch towards windows of their home, send a letter to [EE], approach him and attempt to engage him in conversation and follow him when he declined to engage in conversation with you, walk past and enter the grounds of their home and stand outside the bedroom window of [EE] and stare at same."

[4] The conduct referred to in para (i) of the docket led to the appellant being sentenced to imprisonment for four years for sodomy with a concurrent sentence of two years' imprisonment for lewd, indecent and libidinous practices at the High Court in Dundee in 1989. The conduct in para (iii) of the docket culminated in a conviction for stalking under the Criminal Justice and Licensing (Scotland) Act 2010, resulting in a community payback order that became a restriction of liberty order following breach. The appellant was released from prison in 1991.

The evidence in chronological order

Docket (i) and (ii)

[5] DD turned 12 in the spring of 1987. He attended a youth group associated with St Salvador's Church for boys aged 8-12. The appellant was the leader, holding organised meetings weekly, but there were also other trips locally by minibus. The appellant lived alone at address 7 in Dundee and would hold evening and weekend gatherings for boys there several times each week. Sometimes DD attended with other boys and sometimes on his own. He would discuss family and other difficulties with the appellant who gave him and other boys alcohol. The appellant would become drunk. Towards the end of 1987, on an occasion when only he and the appellant were there, and having drunk beer in the evening, DD woke up at about 5am with a fuzzy head and pain in his anus that he could not understand.

[6] DD said there were at least another 20 occasions of sexual abuse, sometimes when the appellant would drive him around in the minibus, park up and sexually touch his legs and penis over his clothing before taking DD home. On another occasion, DD was at home at address 8, ill and in bed wearing underwear. The appellant spoke to DD's mother before

coming to see him and touching his penis and bottom under his shorts. Similar assaults occurred at address 7, in the minibus and in a changing area in the church. After some initial sexual touching, the appellant penetrated DD's anus with his penis, more than once, using no condom or lubricant. The appellant performed oral sex on DD and forced DD to reciprocate, pushing his head down. It happened so often that it became normal and this continued until DD was 14. All of this occurred despite DD telling the appellant he was interested in girls.

[7] It ended when the police became involved, but the appellant continued to try to contact DD, approaching him on the way to school or outside the church. On several occasions outside the church, the appellant told DD to inform the police that his allegations were untrue.

Charges 1 and 2

[8] AA turned 12 in the summer of 1991, lived at address 5, Invergowrie, and was introduced to the appellant as a family friend that September. The appellant was easy to talk to, would visit daily and he became like a family member to AA. As time went on, the appellant began to take him out in a vehicle. The appellant began to cuddle him and then started to kiss him on the cheek and then the lips. On an occasion when they were alone at address 1, the appellant's mother's home where the appellant lived, the appellant called AA into a bedroom. He asked AA to lie down and moved his hand down over AA's penis, over and then under his clothing, despite AA resisting and telling him to stop. The appellant desisted and said he was checking that AA was all right. He said it would not happen again. Another time, the appellant stopped his van, lowered the passenger seat and masturbated AA. He said it would not happen again.

[9] AA was socially isolated, did not have a happy family life, and continued to associate with the appellant. The appellant turned members of AA's family against each other, recounting false tales of sexual infidelity, and AA's parents separated. When he was 13 years old, AA began to call the appellant "dad", at the appellant's suggestion. AA became increasingly isolated. When he was 13 or 14, and living with his grandfather at address 3, there was a family party nearby. The adults all left to go to another party, leaving several children at address 3, when the appellant returned on the pretext of having a headache. He persuaded AA to lie down with him and began to touch and masturbate AA. They were interrupted by adults returning and social workers became involved and spoke to AA about the appellant, but AA did not disclose the appellant's conduct. The appellant continued to sexually touch AA at various locations. He was with him most days from the age of 12 and a half to 16 and the appellant would touch AA's penis several times each week. He put his fingers near AA's anus.

[10] When he was almost 16 and living in a homeless hostel, AA told his stepfather and the police became involved. The appellant would park outside AA's home, drive by him and generally make himself noticeable. The appellant would write to him, but AA's stepfather retained the letters and handed them over to the police in 2020. The letters were as follows:

On 12 July 1999 a letter contained the following:

"Dear A, I promise that I won't bother you in any way, shape or form and wish you every success in whatever you do",

"A, I will always view you as my son, if you need anyone, I won't ever turn you away from my door. You will be proud to call me dad",

"God bless you son. Lots of love always, from your dad".

On 25 February 2001, "A, me again, sorry" and mentioned that he had belongings to return.

A third letter stated that it was "simply a short note to say that there won't be any more".

On 8 August 2005, "I know you don't want to hear from me... I won't ever attempt to contact you again". And a fifth was subsequently received, "Dear A you might be surprised to hear from me," and words to the effect that AA should not feel under any pressure to write back.

AA did not respond to any of them.

Charge 6

[11] In 1992, when BB was 13 or 14 years old, he lived with his mother in Dundee and the appellant was connected to the family. The appellant began to visit every day and took him out in the car, saying they were going to visit someone. Instead, the appellant drove to the Dundee Observatory and stopped. BB told him he had kidney problems and the appellant asked to take a look, told him to open his trousers, and fondled BB's penis. BB did not think it would happen again and continued to go out in the car with the appellant as his father was not around, and they would talk about him. It was then arranged for BB to stay a night at address 1. After speaking to the appellant's mother, BB was to stay on a mattress in the appellant's room. Once there, the appellant asked BB to massage him on his bottom and the back of his legs and then the appellant did this to BB. This would continue to happen on other occasions. By the time he was 14 or 15, the appellant was drinking and encouraging BB to drink alcohol. Massaging progressed to the appellant lying on top of BB and kissing him. The appellant said he loved BB and tried to persuade BB that he, BB, was gay. Several times the appellant said they should have sexual intercourse, but BB refused.

[12] BB did not report the appellant's conduct as the appellant threatened that he would harm BB's family, particularly his sisters, if BB told anyone. Eventually, BB reported him.

Charge 8

[13] In 2018, when he was 35 years old, CC got to know the appellant when he was drunk in a pub. They later met again by chance near Asda at a time when CC was homeless. CC recognised the appellant who was sitting in a car in which a sleeping bag was visible and asked if he could have the sleeping bag. The appellant offered him a bed for the night and drove him to address 6 in Monifieth. CC was to sleep in the living room and the appellant in his bedroom. This carried on for about three months. CC considered the appellant a friend and opened up to him about his drug addiction. The appellant then gave him £15.00 daily to buy heroin.

[14] The appellant liked to go out driving at night and suggested that CC should sleep in the bedroom and the appellant would sleep in the living room. One night, when they had both been drinking, CC awoke to find the appellant, who was completely naked and lying across CC, performing oral sex on him. CC had not wanted this and was scared. He explained that the appellant was masturbating himself. When CC asked him what he was doing, the appellant stopped. CC's anus felt sore and he did not understand why. He continued to live at the appellant's house for a month or so to fund his drug addiction. The appellant would come into his bed and sleep there at night. When he moved out, CC told a friend but was scared to report the appellant for fear of reprisal.

Docket (iii)

[15] When EE was 15 years old, he lived with his mother, FF, at address 9 in Dundee. EE slept upstairs overlooking the street. He got a letter through the door signed "Jimmy," saying he wanted to be friends. EE thought this was a friend playing a practical joke. The appellant lived two doors down. Shortly afterwards when EE was at a bus stop in school

uniform, the appellant said something to him which EE ignored. He next saw the appellant at 2.00am the following morning, walking down the drive towards EE's house. FF screamed and called the police. FF said she knew her neighbour, the appellant, as Jimmy. He started to take notice of her son and would stare into the boy's bedroom when he passed the house. The appellant offered to cut her grass. She would see him shining a torch into her son's bedroom at night when EE was going to bed. She saw the appellant prowling in the garden in the early hours of the morning on the occasion EE spoke of. The appellant told a police officer he had been taking his bin out (which both EE and FF refuted). He accepted that he had written to EE.

Submission on sufficiency of evidence

[16] At the close of the Crown case, the appellant submitted that there was no case to answer on charge 8. The interval in time between charge 8, involving an adult, and any other charge, where the remaining charges involved children, was at least 23 years.

Charge 8 did not involve grooming and was merely opportunistic. Accordingly, there could not be the necessary connection in time, character and circumstances to permit the jury to conclude that there was a single course of criminal conduct systematically pursued by the appellant, such that there was mutual corroboration for charge 8.

[17] The judge noted that a large gap in age between the appellant and his victims was a common feature in all the appellant's sexual offending. The evidence concerning EE, in 2016 and 2017, was available as a link between the earlier and later offences. Having reviewed the caselaw drawn to her attention in submissions, she concluded, correctly, that whether there was mutual corroboration was not a matter of law but a question of fact and degree for the jury.

Evidence of the appellant

[18] Whilst he knew the complainers and docket witnesses and accepted that he had the connections with them they described, none of the behaviour described by those who had been children at the times alleged occurred. He did develop a sexual relationship with CC, but it was entirely consensual. They had consensual oral sex together and CC was awake throughout. The appellant did not give him money to buy drugs, and he did not allow CC to drink alcohol in his house. He did write to EE, but he had no sexual interest in him and had been emptying the bins when he had been seen in their garden.

Jury speeches*Crown*

[19] The Advocate Depute summarised the evidence in detail and set out proposed similarities in time, character and circumstances. The complainers were all vulnerable in one way or another at the time, and some form of grooming was a feature in all the appellant's conduct. Although CC was an adult and there was a gap of 23 years from charge 6, the common feature on all incidents was incessant and unrelenting exploitation of males for the appellant's sexual satisfaction.

Defence

[20] In addition to challenging the quality of the Crown evidence generally, senior counsel stressed the 23-year gap between charges 6 and 8 and identified such differences in character and circumstances as there were between charge 8 and the other charges.

Note of Appeal

[21] Whilst the appellant challenged the judge's decision on sufficiency of evidence, leave to appeal was refused at first sift. His application to reinstate that ground of appeal under the Criminal Procedure (Scotland) Act 1995 section 107(8) was also refused. The ground for which the appellant has leave to appeal avers that the judge should have directed the jury to note that there was a very large time gap from charges 1, 2 and 6 to charge 8. She did not do so explicitly, despite the defence founding heavily on it. A direction to the effect that a long interval in time may require there to be stronger similarities, "would not have been undesirable". Given the extraordinary gap in time, and the absence of a specific direction on it, there has been a miscarriage of justice.

Submissions

Appellant

[22] The time gap from charges 1, 2 and 6 to charge 8 was approximately 23 years, an unusually long period for a jury to find mutual corroboration. Whilst leave to appeal was refused on ground of appeal 1, contending that there was insufficient evidence on charge 8 because that interval precluded a finding of mutual corroboration, when there was such a long interval, the judge ought to have drawn it specifically to the jury's attention.

[23] Senior counsel had addressed the jury to the effect that the time interval was so wide that mutual corroboration could not be found for charge 8. The judge should have directed the jury that, with such a wide interval, there would need to be some specific or compelling feature before the jury could find mutual corroboration (*CS v HM Advocate* [2018] HCJAC 54 [11] noted by the court in *Adam v HM Advocate* [2020] HCJAC 5, 2020 JC 141) or at least that any similarities in character and circumstances must be strong.

[24] Senior counsel acknowledged that the judge had directed the jury that one of the defence arguments was that a gap of 23 years between offences meant that they could not be closely connected in time. This was not sufficient, especially when the complainers on charges 1, 2 and 6 were children but on charge 8 an adult. A specific direction from the judge was required and its absence had occasioned a miscarriage of justice: *Adam; Duthie v HM Advocate* [2021] HCJAC 23, 2021 JC 207.

Crown

[25] The judge gave sound directions on mutual corroboration, there was no requirement on her to go further, the question of any further direction was a matter for her judgement and discretion, and there was no misdirection.

[26] There is ample authority vouching that a significant interval need not preclude a jury finding mutual corroboration; *DW v HM Advocate* [2023] HCJAC 28, 2023 SCCR 248, where the court found that it was open to the jury to find mutual corroboration despite a gap of 17 years. It was for the jury to evaluate questions of fact and degree, nuance and impression; *HM Advocate v BL* [2022] HCJAC 15, 2022 JC 176 at [11]. There was no requirement for a specific direction about the interval; *Duthie* at [28]. In *JH v HM Advocate* [2022] HCJAC 39, 2022 SLT 1295 at [11], where there was an interval of 19 years, the court confirmed that the appellant's desiderated direction was not required.

[27] The judge made it clear that the question of whether there was mutual corroboration on charge 8 was for the jury to resolve. She identified the interval and emphasised that the jury must apply caution before finding mutual corroboration. Charge 8 was not an opportunistic offence. It involved manipulation of a vulnerable homeless person in relation to whom the appellant was in something of a position of trust.

Decision

[28] The law on mutual corroboration has moved a long way since *Moorov v HM Advocate* 1930 JC 68. In addition to the examples of *Adam*, *DW* and *JH*, we note the decision and reasoning in *HM Advocate v CM* [2025] HCJAC 40, 2025 SLT 1170, a mid-trial appeal against a sheriff sustaining a submission of no case to answer. This court applied *Duthie* in finding that a gap of 34 years, which might reduce to 25 years if the jury found another charge to be a sexual offence and established, did not preclude a finding of mutual corroboration between sexual offences of substantially different gravity and rather different character, and where the complainer on the much later charge was not related to the others by family.

[29] In *Duthie*, in delivering the opinion of a strong full bench comprising also the Lord Justice Clerk (Dorrian), Lord Menzies, Lord Pentland, as he then was, and Lord Matthews, the Lord Justice General (Carloway) explained at paras [27]-[28]:

“[27] The court in *Adam v HM Advocate* (para 31, 32) examined the various dicta in which there had been reference to the necessity, in lengthy time-gap cases, of having special, compelling or extraordinary circumstances before a course of conduct persistently pursued could be inferred. The source of these references is the opinion of the Lord Justice Clerk (Gill) in *AK v HM Advocate* (para 14) which followed *Dodds v HM Advocate* and *Stewart v HM Advocate*. There have been subsequent cases which have adopted similar language (eg *CS v HM Advocate*, para 11...) ”

[28] It is important that what began as a cautious remark by a trial judge, which was intended to assist the jury in their assessment of the mutual corroboration issue (*AK v HM Advocate*, para 7), is not elevated into a principle of the law of evidence which is applicable in all cases in which there is a lengthy interval between the relevant incidents. It is not the case that, as a matter of law, in a lengthy time-gap case, there require to be special, compelling or extraordinary circumstances before the appropriate inference can be drawn. What is essential, in terms of the settled law, which was described in *Adam v HM Advocate* (para 28), are similarities in time, character and circumstances such as to demonstrate that the individual incidents are component parts of one course of conduct persistently pursued by the accused. The jury will have to be directed to that effect but, normally, that is all that is required. A judge or sheriff may elect to explain to the jury in a particular case that there is a long time-gap and that, because of that factor, the similarities would require to be strong ones when compared with those needed where the incidents are already closely linked in time. The giving of such a direction is not essential and in some cases it

may be undesirable. In so far as *CS v HM Advocate* is seen as being to the contrary effect, it is overruled.”

[30] In *JH*, Lord Matthews, a member of the full bench in *Duthie*, explained in delivering the opinion of the court:

“[11] The use of the word, ‘normally’ in para [28] must be seen in its context. All that is being said is that the conventional directions are usually all that is needed. It recognises that there may be occasions where something more might appropriately be said, for example where there are a large number of charges with different categories of offences or the evidence is complex, although whether to go further than the standard directions in any case will be a matter for the discretion of the presiding judge. It does not mean, and was not intended to mean, that there will still be some cases with a lengthy time gap where a direction on special features has to be given on account of that factor. It is made explicit in *Duthie* that judges or sheriffs may elect to give such a direction but the words ‘it is not essential’ could not themselves be clearer.

[12] The appellant’s submissions rely on a proposition of law which is the polar opposite to that which was decided in *Duthie*, where the intention was to put to bed once and for all the suggestion that a direction on special features had to be given.”

[31] It was open to the jury to find that the vulnerability of the various male complainers and grooming, in one form or another, were common features of all of the offending described. Whilst, given the way the law has developed, it was not a necessary ingredient for mutual corroboration to be available for charge 8, the jury were entitled to view the appellant’s conduct towards EE, in 2016 and 2017, as the start of a campaign of grooming of another young male for sexual purposes. That was very much for the jury to evaluate. Contrary to what is averred in the note of appeal, the judge did remind the jury in her charge that there was a 23-year gap from charge 6 to charge 8. Having reminded the jury of the defence contention that the rule on mutual corroboration could not apply to charge 8, partly because of the 23-year gap, she later directed the jury that they should consider all the points made in the defence speech. It was not necessary for her to go further and refer to a need for other similarities to show a strong or striking feature. In any event, it is difficult to

see how she could have done so in a balanced way without specifically identifying the potential of the evidence of EE and his mother to bridge the gap in time on which the defence founded so heavily. She did not do so. The judge simply reminded the jury of the Crown submission that all events could be seen as forming part of a single course of criminal conduct systematically pursued by the appellant and the defence contention that the evidence led under the docket was simply not relevant. We were entirely satisfied that the judge exercised her discretion appropriately and gave all necessary directions.

[32] Accordingly, it could not be maintained that the judge's directions on mutual corroboration were erroneous or insufficient. There was no merit in the ground of appeal, there was no miscarriage of justice, and the appeal against conviction is refused.