APPEAL COURT, HIGH COURT OF JUSTICIARY

[2026] HCJAC 27
HCA/2025/411/XC

Lord Justice Clerk
Lord Matthews
Lord Armstrong

OPINION OF THE COURT

delivered by LORD MATTHEWS

in

APPEAL AGAINST CONVICTION AND SENTENCE

by

XY

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: M Moir KC; Brodies LLP, Edinburgh
Respondent: P Harvey AD; the Crown Agent

10 July 2026

[1] The appellant was convicted after trial of charges in the following terms:

"(001) on various occasions between 1 January 2006 and 31 December 2009… at (the appellant's home) you… did indecently assault A… and did seize hold of her, kiss her on the lips, force your tongue into her mouth and strike her on the buttocks;

(002) between 1 April 2006 and 31 August 2006… at (the same address) you…did assault A… and did pull down her lower clothing, push her onto a bed, attempt to penetrate her vagina with your penis and did attempt to rape her;

(003) on various occasions between 1 August 2006 and 31 December 2007… at (the same address) you… did indecently assault B… and did kiss her on the lips and cheek, press your body against her, place your hand inside her clothing and touch her breasts; and

(006) on various occasions between 1 January 2011 and 31 July 2012… at (a hotel and the appellant's then home) you… did sexually assault A… in that you did stroke her on the lips and ears with your fingers, enter her bedroom uninvited, seize hold of her, kiss her on the lips, force your tongue into her mouth, seize hold of her hand and place it on your clothed, erect penis: CONTRARY to Section 3 of the Sexual Offences (Scotland) Act 2009."

[2] There had been seven charges on the indictment at the beginning of the trial but charges 4, 5 and 7 were withdrawn at the close of the Crown case.

[3] The appellant was the founder and leader of a church in the Pentecostal tradition and it was clear, on the evidence which the jury must have accepted, that he had taken advantage of his position to facilitate the commission of the offences. This represented, therefore, a gross breach of trust.

[4] In due course the trial judge imposed a prison sentence of 6 years in respect of charge 2 and, consecutively, a *cumulo* extended sentence of 8 years, with a custodial term of 4 years in respect of the other charges. The appeal is against both conviction and sentence.

[5] The indictment contained a docket with two paragraphs as follows:

"i. on various occasions between 1 January 2009 and 31 May 2011… at (various addresses including the home referred to in charge 6), you… did hug C… touch and rub her breasts over her clothing, kiss her on the lips, press your erect penis against her body and utter indecent comments to her;

and

ii. on various occasions between 1 January 2012 and 30 November 2013… at (the home as in charge 6) you… did repeatedly hug D… and touch her on the back, place your hand on her leg and stroke her leg, repeatedly kiss her on the lips, stare at her, repeatedly send her text messages, place your hand on her buttocks and nip her on the buttocks, repeatedly pull at her underwear, send her text messages of an inappropriate nature and utter indecent comments to her."

[6] The docket was not expressly said to be in terms of section 288BA of the Criminal Procedure (Scotland) Act 1995, although it plainly is, but nothing turns on that. We understand that the appellant had been convicted of the offences referred to but the convictions had been quashed.

[7] Paragraph (ii) had been paragraph (iii) but the original paragraph (ii), which referred to conduct towards E, was withdrawn on the ballot day, the witness E having apparently disengaged.

The appeal against conviction

[8] This relates to the decision of the trial judge, correctly conceded to be competent, to review on Crown motion, and thereafter refuse, certain parts of an application under section 275 of the 1995 Act which had been granted, without objection by the Crown, at a preliminary hearing on 16 September 2024. The only part (part (i) of the application) which had not been granted had been unnecessary. Part of the impetus for the motion was the disengagement of E, whom it had been intended to call as a witness.

[9] The evidence which was sought to be elicited, so far as relevant to this appeal, was as follows:

> "ii) That in 2013 E attempted to have a sexual relationship with the appellant. He rebuffed these advances. E was bitter and upset by his refusal to have a sexual relationship with her and she stated that she would 'destroy' him;
>
> iii) That in July 2013 E was producing and writing a proposed magazine for the church. The magazine was to be published prior to the church's annual conference. The appellant, in his capacity as editor of the magazine, refused to allow the magazine to be published as he did not consider it to be ready for publication. E reacted with disproportionate anger and stated to him that he would 'regret' not publishing the magazine and she would 'punish, fix' and 'destroy' him;

iv) That between 2013 to 2024 E was actively attempting to persuade people to make false allegations against the appellant. In 2013 onwards and in particular in March 2016, E, assisted by C and F, persuaded B to make a false report to the police alleging indecent assault (charge 3) and committing breach of the peace (charge 4);

v) That in 2016 or 2017 E made a false allegation (to A's husband) that the appellant had had an affair with A. Said allegation was untrue. That (A's husband) was very angry and told A that if she did not report the allegations to the police he would divorce her;

vi) That A has always had a strained relationship with the appellant (this part was allowed). That in 2018 (A's husband) supported by F, D, G, H and E persuaded A to make the false allegations referred to in charges 1, 2, 5, 6 and 7;

vii) That between 2013 and 2024 E, C, D, G, F, H and others have all been involved in a conspiracy to discredit and remove the appellant from the church he formed by either making false allegations against him, as disclosed in the three dockets or encouraging the complainers in charges 1 to 7 to make false allegations against the appellant."

Thus, the broad thrust of the application was that E and the others had conspired against the appellant and fabricated the complaints to discredit him and remove him from the church.

The discussion before the trial judge

[10] The Crown submitted that the docket had originally contained a paragraph relating to E but she had disappeared. That paragraph was allowed to be withdrawn. Parts (ii) and (iii) of the section 275 application, which related to her, were no longer required since she would not be a witness. Other than the first sentence of paragraph (vi), there was no evidential basis for the application. Nothing contained in it could have been within the appellant's knowledge and the witnesses concerned had all denied any interaction with E. The matters could not be put to E and they were "irrelevant and collateral, inviting speculation by the jury". The appellant was perfectly entitled to give evidence that the allegations were false.

[11] For the appellant, it was argued that the evidence was required to give the jury context. His position was that, over the years, a number of false allegations had been made about him. This went further than a mere suspicion on his part and, on any view, E had mounted a campaign against him. She had published blogs making allegations against him and inviting others to come forward. The blogs had been deleted. The appellant would tell the jury that E was at the root of the allegations. As it happens, before us senior counsel pointed out that there was another witness who could speak to the existence of blogs which she said complained about the appellant's controlling manner and financial abuse. Various people had added comments. There is, however, nothing in her statement to the effect that the blogs contained untrue material or encouraged anyone else to make false allegations.

[12] The trial judge granted the Crown's motion. The matters in the application, other than in paragraphs (ii) and (iii) were purely speculation, with no evidential basis: *RN* v *HM Advocate* [2020] HCJAC 3 and *JW* v *HM Advocate* [2021] HCJAC 41. The trial judge made it clear that the appellant could ask the witnesses whether there had been any relevant interaction between them and anyone else. She reports that that happened during the trial and the witnesses denied it.

[13] We observe at this point that for the defence to ask witnesses if they had interacted with each other can only be for the purpose of establishing that they had colluded, an attack both on character and the credibility of their evidence, or to suggest there was some influence on the content of a complainer's evidence impugning its reliability. The former is struck at by both section 274(1)(a) and section 274(1)(c) and the latter by section 274(1)(c). Both purposes would require an application under section 275 and, in view of what we have to say later, would have had to be based on evidence.

The evidence

[14] Complainer A gave evidence that in or around 2006 the appellant's partner was unwell and the appellant told her that he needed "TLC" and she was to replace his partner. She considered these comments inappropriate and was confused by them. As the leader of the church, the appellant gave support and encouragement to the congregation as well as preaching. He would use a bedroom if he needed privacy with a parishioner. She spoke of an occasion when the appellant took her face and put his tongue in her mouth, which made her feel very uncomfortable. On another occasion, she was going up the stairs and he slapped her on the buttocks. He would tell her that she was his and that God had given him "special love" for her. On another occasion, between April and August 2006, the appellant called her into his bedroom. He made her stand in front of him and he pushed her, so that she was leaning forward on the bed. He pulled down her trousers and underwear, unbuckled his own trousers and attempted to rape her from behind. He was very close to her vagina but could not penetrate. She managed to pull up her trousers and pants and stormed out of the room. She felt horrible and as if she had failed herself. When she next saw the appellant, a couple of hours later, he pretended that nothing had happened. She did not challenge him.

[15] She moved away to study but she still received the same sort of message from the appellant from time to time. She was now married to a man she had known in Africa and whom she had met again in the UK in 2005. When she was studying, she had spent some time with him. The appellant had moved to another address around 2010 or 2011. On one occasion the appellant again grabbed her face and stuck his tongue in her mouth but she pulled away. On another occasion in the house, he took her hand and slapped it on his dressing gown, right in front of his erect penis. He made her stroke it with the back of her

hand. Thereafter she would tuck herself in so that the blankets would not easily open. She spoke of one occasion when the appellant stood around at her bedside for a couple of minutes before walking back out. On another occasion she was in a bathroom putting her bra on. She had not properly closed the door. The appellant, she thought, accidentally opened it but he just stood there rather than moving away.

[16] Because she was insecure about the nighttime visits, she would ask her now husband to call her and speak to her on the phone until she fell asleep.

[17] On one occasion, when she was still a student, she visited the appellant at a hotel. She wanted to speak to him about some university work and in fact he gave her some helpful advice. Then he started stroking her lips and her ear with his thumb. She managed to extricate herself.

[18] Later he asked her to give him massages, and during one of these he grabbed her thigh. After that she declined to be involved with him. All of this had an effect on her mental health. Her mother found her in tears and suggested that she speak to the appellant. He knew why she was crying and asked her to pray for him. Eventually she spoke to her uncle and her mother. The appellant asked her what she had told her mother and said that she needed to be careful about the things she said and to whom she said them.

[19] She eventually explained to her husband what had happened and he encouraged her to go to the police.

[20] She knew complainer B. She used to go to the same church but she was not someone with whom she had an ongoing friendship or connection. She had never spoken to her about what the appellant had done. She did not know C, but did know D. She used to go to the same church but she had no ongoing friendship or connection with her. She never spoke to her about what the appellant had done.

[21] In cross-examination, she agreed that her relationship with the appellant was strained. There was some tension after the incidents. He was strict and quite protective of her in respect of any boyfriends that she might have. It was suggested that she had lied about the appellant's conduct but she denied that.

[22] A's husband gave evidence. He was aware of messages from the appellant which the complainer was receiving. He thought they were unusual. He confirmed that he would speak to the complainer on the phone while she fell asleep. At one time she mentioned to him that if he heard anything he should call the police. He was concerned about the appellant's possessiveness towards her. That was reflected in his messages. Eventually she told him that she had been abused by the appellant and he encouraged her to go to the police. That was something she wanted to do. The witness spoke to the appellant's cousin and passed on the details of what the complainer had told him. He thought that would have been conveyed to the appellant. At one point, when the witness was living in Carlisle, the appellant drove to his house, knelt down before him and told him to pray for him and forgive him. On another occasion, the appellant telephoned A, who put the phone on speaker, and he could hear him "asking her to forgive him and perhaps let bygones be bygones". What he said was "I'm sorry if I loved you too much." The complainer told him that it was not love but abuse and the appellant said, amongst other things, "you should be able to speak to me and I will withdraw my love."

[23] In cross-examination he was asked if the complainer volunteered things to him or if he pressed her to tell him about them, having been told by someone else. He said there had been numerous rumours going on but he denied putting the complainer on the spot. She volunteered her information. He encouraged her by telling her to look at the bigger picture and be honest with the police.

[24] Complainer B messaged the appellant when her marriage had broken down. She thought that the appellant was a powerful prophet who could pray for her so that her husband would come back. She met him at his house and would be alone with him. When she went in he would hug her. As time went by, he started to be intimate and at one point kissed her on the lips. She asked him why and he told her that she was given to him by God. Around 2006 or 2007, things got worse. While she thought that hugging was normal, he would touch her inappropriately and say that he was "removing demons". When he kissed her, he told her that she was "blessed to be kissed by holy lips". When he hugged her, she could feel his erect penis being squeezed against her. He touched her breasts and put his hands in her pants. He would say that demons were causing her marriage breakdown so the only way for them to be removed was for him to touch her there. At first, she thought that perhaps that was true. Around 2006, she became aware of allegations made by other people. At that time, the appellant told her not to say anything about what they did in private because it was confidential and she was not to say anything bad about him. After a while she decided to go to the police. She had not done so at the time. She was scared and was not sure whether she would be believed. Eventually she spoke to her sister and decided to report the matter.

[25] She knew complainer A but had not spoken to her for a very long time. She had never spoken to her about the things the appellant had done. She did not know C and did not think she knew D. She had not spoken to her about what the appellant had done.

[26] In cross-examination, she was asked, amongst other things, if anyone had told her to make up her allegations and she denied that. She had decided herself to go to the police.

[27] D spoke to the second paragraph of the docket. For a time, she went to the church. The appellant was held in high esteem. He spoke to her about whether she had a boyfriend.

She was in a room alone with him and he told her she was not allowed to have boyfriends until she was 18. Until then she was his. The first occasion he did anything inappropriate was when he kissed her on the lips at his house. This was just a "peck". The next occasion something happened was again in his house. He rubbed his hands down her back, "pinging" her underwear, in other words pulling at the waist band at the top. That made her feel very uncomfortable. She was about 14 years old when that happened. On another occasion he sat next to her and rubbed her upper thigh. Again, she was around 13 or 14 years of age.

[28] One day, he called her into his office at his house and said he wanted to pray for her. He told her that they should make a pact that she would be his until she was 18 years old. He put his hand on her chest.

[29] The kissing on the lips happened twice.

[30] On the occasion he "pinged" her underwear, he told her that there were ants in her underwear, like demons, that he was trying to move. He used to stare at her and make her feel uncomfortable. That happened multiple times. He would text her telling her that he loved her and that she was to delete the messages because if people saw them they would get jealous.

[31] She knew complainer A. However, she had not spoken to her lately and did not have an ongoing friendship or relationship with her. They were not friends when she was younger because of the big age gap, but they knew each other through the church. They had not spoken for a long time and she had never spoken to her about what the appellant had done. She did not know complainer B or C.

[32] In cross-examination, she was asked if she went to the police herself or if someone asked her or told her to go. She said that her mother had seen some messages on her phone

and she encouraged her to go to the police. A friend of her mother also told her. She was asked if anyone had put her up to lie and she denied that.

[33] C then gave evidence in connection with paragraph (i) of the docket. She went to the church. She would work as a cleaner and a driver, taking the appellant and another to the airport. If she was driving, he would say that she was looking lovely or sexy or that she was his daughter. He did not want men to "mess around" with her. He would say that she had a lovely body. She would brush these things off because he was a man of God. On occasions, when she picked him up from the airport, he would walk from the terminal holding her, with his hand rubbing the side of her breast. He touched her legs if she was wearing a skirt when she was driving.

[34] On one occasion, she went upstairs carrying one of his bags and he rubbed her back, before kissing her on the lips. He gave her a hug and she could feel his hard penis. After that she left the church.

[35] She said that the hugging happened many times, as did the touching of the side of her breast. On one occasion her aunt saw this and said it was inappropriate, but his response was to say that she was not a nice person and was possessed by a demon. He would tell people that she was not mentally stable.

[36] She knew complainer A but had never spoken to her. She did not know complainer B. She remembered D as a child in a nappy but had not had any conversation with her in recent years. In particular, she had never spoken to her about what the appellant had done.

[37] In cross-examination, she indicated that she knew who A was but, while they would meet as she was cleaning the house or cooking in the kitchen, she never met her on a

personal basis. If she spoke to her at all it was just in passing and nothing of relevance was said.

[38] In his evidence, the appellant denied behaving in the manner alleged. He would touch people on the head when he laid hands on them but would not touch them anywhere else. The witnesses were not telling the truth.

Submissions

The appellant

[39] The revocation of the application had prevented the appellant from properly presenting his defence to the jury. It was not disputed that there had to be an evidential basis underpinning an application under section 275. The case of *Daly* and *Keir* [2025] UKSC 38, 2026 SC (UKSC) 1 was not authority for a contrary proposition. However, the defence had a right meaningfully to challenge the complainer. The revocation of the application prevented that. There was an evidential basis for it. If there was no such basis then the trial judge had correctly reviewed the application, and the appeal must fail.

[40] The evidential basis was, firstly, the appellant's own account. He was able to speak to what was said by E and what she threatened. He could speak to the content of her blogs, as indeed could the witness to whom reference has already been made. E had published blogs and encouraged others to come forward. These had been deleted and the appellant could speak to this. Thus, he could speak of a campaign to persuade witnesses to give evidence. The appellant could give evidence that he was innocent and that there were blogs encouraging people to come forward. There was a reasonable inference that people who had been encouraged to come forward were giving false allegations, given the appellant's position that he was innocent. It was not being suggested that the blogs had invited people

to come forward and make false allegations, but the existence of the blogs could be spoken to. The appellant was presumed to be innocent. He asserted his innocence and if people made allegations that he knew to be false on his account, then they must have come together and conspired to tell lies. There was a reasonable inference that there was likely to have been, or may have been, interactions between the various parties. Counsel was prevented from putting to witnesses whether they had been contacted and whether they had discussions with the former witness.

[41] The appellant had a right to put his defence: *Daly* and *Keir* at [180] and [181]. He was left simply making bald denials and that was not sufficient. He did not receive a fair trial.

[42] The mere fact that the various witnesses did not know each other did not mean that they did not contact E.

The Crown

[43] There was no evidential basis for the suggestion that the complainers had colluded with others to make false allegations. That lack of evidential basis meant that the section 275 application was correctly reviewed and refused.

[44] The reason why the advocate depute moved to delete the part of the docket relating to E was not that she could not be traced but rather that there was no evidential basis to assert the existence of a conspiracy or that the complainers had been party to it. While paragraphs (ii) and (iii) could be spoken to by the appellant, the remaining paragraphs, with the exception of the first sentence of paragraph (vi), were unlikely to be based on his evidence. It would be different if the appellant himself were able to speak to seeing or hearing the parties conspiring. The mere fact that E had purportedly made allegations and had posted blogs encouraging other potential complainers to come forward was not an

evidential basis to assert a conspiracy. The circumstances in which the complainers came to report the offences were explored in evidence and there was no evidential basis to go further. In any event section 274 did not apply to E because she was not a complainer. The matters outlined in those paragraphs were irrelevant at common law because her credibility would not be a live issue for the jury.

[45] There was nothing in the evidence to suggest that the complainers and witnesses had any significant contact or interaction with each other.

[46] The absence of any evidential basis for collusion brought the matter within *RN*. At [21] of *RN*, the court observed that there appeared to be no evidential basis for the propositions in the section 275 application "save the supposition of the appellant." The court went on as follows:

> "It is important to understand the context in which the propositions in these paragraphs are asserted. In cases where the defence is simply that the allegations are complete lies, or, where an adult is involved the defence is one of consent, these matters can regularly be put to a complainer because the accused is in a position to know what happened and to give evidence about it. In the present case the appellant may be in a position to give evidence that these things did not happen, but he is not in a position to go further and give evidence that the child was put up to it by B. Nor is he in a position to lead any evidence from which such an inference may legitimately be drawn. It was quite clear that he seeks to do so only by reference to evidence which is, in itself, wholly inadmissible. That is not to say that an accused may never be in a position to make such an allegation, but in order to do so he must be in a position to place before the court material evidence from which that inference may legitimately be drawn by the jury. Otherwise what is involved is a mere exercise in supposition, speculation and character assassination."

At [26], the court made the point that section 275(3)(b) is "designed to enable the court to understand not only what is to be put but the evidential basis for doing so".

[47] This was not new law. See *Falconer* v *Brown* (1893) 21 R (J) 1; *Leverage* v *HM Advocate* [2009] HCJAC 20; 2009 JC 137 at [16] and *Cook* v *HM Advocate* [2019] HCJAC 24 at [11]. The position was the same in England: *R* v *Hurley* [2025] EWCA Crim 642 and *R* v *Miller* [2010]

EWCA Crim 1153, [2010] 2 Cr App R 19. Even if the evidence were somehow relevant, it could have no probative value. Nothing in *Daly* and *Keir* assisted the appellant.

Analysis

[48] As is conceded, the trial judge was perfectly entitled to review the application: *JW*.

[49] If an accused person is able to give evidence about something then there is no need for "independent" evidence about it as well. It would seem that the appellant was able to speak to his interactions with E and evidence about that would normally have been admissible if she had still figured on the indictment. If there was evidence of a link between her threats and the complaints made by the others, from wherever that evidence came, then the grant of the application should not have been rescinded. That would be true even if the evidence only came from the appellant and even if E was not herself a witness. It would not matter that she was not there to contradict the appellant's evidence.

[50] The simple point in this appeal is whether or not there is any evidential basis for the application. Unfortunately for the appellant, all that is available is his own supposition. *RN* is directly in point. The same might be said of *MP* v *HM Advocate* [2021] HCJAC 48, 2022 SLT 194. In *KB* v *HM Advocate* [2026] HCJAC 18, the desiderated evidence was in fact before the jury but the court's remarks at [58] to [64] are pertinent.

[51] The appellant was obviously in a position to speak to his interactions with E and her threats and it appears that he could speak to her blogs. There may have been some support for the existence of the blogs in the evidence of the witness to whom we have referred. Innocent men, such as the appellant says he was, will know that people who wrongly accuse them of crimes are lying or mistaken and can put that to them. Unless, however, they were party to discussions between accusers and others, they simply cannot know whether there

were any discussions and if so, what their content was. The appellant was in no position to say that any discussions involved agreements to give false evidence. It is a line of defence which was completely speculative and the trial judge was quite correct to review and thereafter refuse those parts of the application which she did. As it happens, the question of collusion was explored as fully as it could have been at trial, possibly even further than it should have been in the absence of a focussed application under section 275.

[52] As to the application which was lodged, paragraph (iv) suggested that E had been actively attempting to persuade people to make false allegations against the appellant and that, assisted by C and F, she persuaded B to make a false report. In her evidence B, although she was not asked about E, F and C, denied in cross-examination that anyone had told her to make up the allegations.

[53] As to paragraph (v), the suggestion contained in it (that E made a false allegation to A's husband that A had had an affair with the appellant, that A's husband was very angry and that he told A that if she did not report the allegations to the police he would divorce her) is simply unsupported by A's husband's evidence and indeed her own.

[54] The contents of paragraph (vi), suggesting that A's husband, supported by various others, persuaded A to make the false allegations, are also inconsistent with his evidence.

[55] Even if the application had not been revisited, the appellant, in challenging the witnesses, would not have been in a position to lead any evidence other than his own speculations.

[56] In all these circumstances the appeal against conviction is refused.

The appeal against sentence

[57] As already indicated, the trial judge imposed a sentence of imprisonment for 6 years on charge 2. She reports that, had she been considering the other three charges separately, she would have imposed a sentence of imprisonment for 2 years on charge 1, 3 years on charge 3 and 3 years on charge 6. She adjusted these sentences to reflect the totality principle and to ensure that the sentences should be no more severe than necessary. That resulted in a consecutive custodial term of 4 years and she also imposed an extension period of the same length given the risks identified in the Justice Social Work Report.

[58] It is said that the sentence was excessive. The appellant is now 62 years of age and has no previous convictions. It is accepted that there was a serious breach of trust in respect of both complainers, as we have already indicated. The trial judge took into consideration a number of factors which were irrelevant. In her sentencing statement, she referred to the evidence of the witnesses who appeared in respect of the dockets and made reference to the fact that a previous jury had convicted the appellant of these offences and that it was only as a result of a misdirection that the convictions had been overturned. She went on to say that the Crown relied on their evidence to prove the charges and that it was clear from the verdict that the appellant was involved in a course of criminal sexual abuse of multiple parishioners over several years.

[59] It is submitted that the judge erred in concluding that the jury must have accepted that the appellant behaved in the manner alleged in the docket.

[60] The judge referred to the appellant's denial of the offences, his claim that he blamed others, alleging there was a conspiracy against him, and his suggestion that the witnesses were coerced. She pointed out that there was no support for that anywhere in the evidence.

She ought not to have taken that into account in sentencing. The appellant had been prevented from leading evidence of a conspiracy.

[61] The judge gave insufficient weight to the mitigation presented on behalf of the appellant. He has been shunned by the members of the church he founded. This was a significant additional punishment given his once high standing in the community. He had been on bail since 13 December 2022.

[62] It was submitted that, while all the offences were in breach of trust, 2 years' imprisonment was excessive for charge 1, which consisted of one occasion when the appellant seized hold of the complainer and forced his tongue into her mouth and another occasion when he slapped her on the buttocks.

[63] As far as charge 2 is concerned, the incident lasted a relatively short period of time (3 minutes or so) and there were no physical injuries. 6 years was excessive.

[64] In relation to charges 3 and 6, the notional sentences of 3 years' imprisonment were excessive.

[65] Other than the offences for which he was convicted, the appellant had led a prosocial lifestyle and had carried out a significant amount of commendable work within the community. The JSWR assessed him as requiring a medium level of intervention to promote reduction in further general offending behaviour. He posed a moderate risk of sexual reoffending and had expressed a willingness to engage fully with suitable programmes within prison and after his release.

[66] The sentence imposed did not properly reflect the totality principle.

[67] We do not think that anything turns on the remarks made by the judge in passing sentence. Having heard the evidence, she was entitled to form her own view of the appellant's conduct. Saying that it was a course of criminal sexual abuse of multiple

parishioners over several years did not overstate the position. She made it plain that she only sentenced the appellant on the basis of the charges on the indictment, as we would expect. Her reference to the conspiracy was merely a reflection of what the appellant said to the author of the JSWR.

[68] She points out, and we agree, that the appellant's loss of standing in the community cannot be regarded as any form of additional punishment. He selected his victims from that community and manipulated his position to enable him to do so.

[69] In any event, the question for us is whether the sentence which was in fact imposed amounts to a miscarriage of justice, not whether in any particular respects the trial judge erred. Furthermore, while the notional sentences for individual charges have been challenged, the same issue arises. Was the sentence imposed in fact excessive?

[70] That cannot be said in relation to the sentence imposed on charge 2 given the egregious breaches of trust involved.

[71] As far as the remaining charges are concerned, however, we consider that when the sentence is added to the sentence imposed on charge 2, the result is excessive.

[72] We are not satisfied, given the nature of the offending and the contents of the JSWR, that the trial judge was in error in imposing an extended sentence, nor is the length of the extension period excessive.

[73] Had we been passing sentence on each of the charges individually, the custodial terms would have been 18 months on charge 1, 6 years on charge 2, and 2 years on each of charges 3 and 6. Making these consecutive would result in an excessive sentence.

[74] We propose therefore to quash the sentences imposed by the trial judge and in their place substitute a *cumulo* sentence covering all of the charges. It is an extended sentence

with a custodial term of 8 years and an extension period of 4 years, to run from 2 July 2025.

The ancillary orders made by the trial judge are undisturbed.