SHERIFF APPEAL COURT

[2026] SAC (Crim) 4
SAC/2025/299/AP
SAC/2025/207/AP

Sheriff Principal A Y Anwar KC
Appeal Sheriff D A C Young KC
Appeal Sheriff S Reid

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL AISHA Y ANWAR KC

in

Bills of Suspension

by

(FIRST) MUHAMMAD ASLAM; and (SECOND) IAIN LAING

Complainers

against

PROCURATOR FISCAL, GLASGOW

Respondent

Complainers: Paterson KC, (sol adv); PDSO, Glasgow
Respondent: Keenan KC, (sol adv); the Crown agent

18 February 2026

Introduction

[1] The complainer in each of these conjoined Bills of Suspension was made subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 ("the 2003 Act") following a determination by the sentencing sheriff that there was a significant sexual aspect

to the offences for which they were convicted. They were placed on what is commonly referred to as "the Sex Offenders' Register".

[2] Guidance on this matter was provided by the Appeal Court in *Hay* v *HM Advocate* [2012] HCJAC 28; 2014 JC 19; however, appeals which challenge a determination made in terms of paragraph 60 of Schedule 3 of the Act 2003 have become increasingly common.

The sheriffs' reports

The first complainer – Muhammad Aslam

[3] The sheriff's note on the evidence is brief. The first complainer approached DK, then 11 years old, in a public park and sought his personal details. The first complainer believed DK to be of Indian heritage. He made disparaging comments about Indians. The nature of the comments are not set out in the sheriff's report. However, the advocate depute did not dispute the summary provided by the solicitor advocate for the first complainer, namely that the first complainer stated that Indians were "lower to every single faith and religion". He asked DK whether "he washed his bum". He asked to see if it was clean. DK walked towards his mother, BK. The first complainer followed. DK kicked the first complainer. The first complainer then directed racial and sexual language towards BK. In the course of the exchange with BK, the first complainer told her to "fuck off, Indian lady", asked whether her husband "fucked her at the back" and asked "do you want me to show you?".

[4] The first complainer was found guilty by the sheriff at Glasgow following trial on 23 May 2025 of the following offence:

> "(001) on 15th July 2023 at Govanhill Park and Cathcart Road, both Glasgow, you MUHAMMAD ASLAM did behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did approach

> DK, then aged 11 years old, care of Police Service of Scotland, request personal information from him, utter sexualised comments, repeatedly utter racial and derogatory remarks, follow [them], repeatedly utter sexualised comments towards BK, care of Police Service of Scotland, shout, swear, repeatedly utter racial and derogatory remarks, follow said DK and BK and family members in your motor vehicle…, exit your motor vehicle and approach them;
>
> CONTRARY to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010
>
> you MUHAMMAD ASLAM did commit this offence while on bail, having been granted on 23rd May 2023 at Paisley Sheriff Court and 26th May 2023 at Glasgow Sheriff Court
>
> and it will be proved in terms of Section 96 of the Crime and Disorder Act 1998 that the aforesaid offence was racially aggravated."

[5] Having heard from parties, the sheriff concluded that the first complainer's behaviour was indicative of an underlying sexual disorder or deviance and certified that there was a significant sexual aspect to the first complainer's offence.

[6] The sheriff imposed a community payback order with: (i) a supervision requirement for a period of 15 months; and (ii) an unpaid work requirement to undertake 150 hours of unpaid work. The first complainer was made subject to the notification requirements for a period of 15 months.

The second complainer – Iain Laing

[7] The second complainer had been asked by an acquaintance to house-sit a puppy for a short period and was provided with the keys to his home for that purpose. Unbeknown to the second complainer, the property contained a motion sensor CCTV camera. It had been installed by the owners of the house to allow them to monitor the puppy's behaviour. The camera caught the second complainer entering the bedroom of a 13 year old child, A, on three separate occasions. He was observed removing her underwear from a linen basket in

her bedroom and holding it to his face. It was accepted before the sheriff and for the purposes of the appeal that he used the child's underwear for the purposes of masturbation whilst in the property.

[8] The second complainer pled guilty on 28 January 2025 to the following charge:

> "(001) Between 20th January 2025 and 27th January 2025, both dates inclusive at [address], you IAIN LAING did behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did repeatedly attend without permission, repeatedly enter the bathroom, on one occasion enter the bathroom and thereafter exit the bathroom in possession of a tissue, repeatedly enter the bedroom of [A], then aged 13 years, care of Police Service of Scotland, take underwear from said bedroom and place underwear towards your face;
>
> CONTRARY to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010"

[9] The summary sheriff heard submissions as to whether the second complainer's offending contained a significant sexual aspect to it. On behalf of the second complainer, reliance was placed on a report by a psychologist who opined that the second complainer had a long-standing fetish for female underwear spanning over 40 years, that his behaviour could not be characterised as a "disorder" and that he did not pose a wider danger to the general public.

[10] Applying the dicta in *Hay* and *Buchanan* v *Brown* 2024 SAC (Crim) 2; 2025 SC (SAC) 29, the sheriff considered that the second complainer did pose a risk to the public. His actions had caused harm to the wider public, were not private acts, and involved a serious and sexually motivated invasion of someone else's privacy for his own sexual gratification. For those reasons, the sheriff determined that the second complainer's offence had a significant sexual aspect.

[11] The sheriff imposed a community payback order with: (i) a supervision requirement for a period of 3 years; (ii) a programme requirement; and (iii) a restricted movement

requirement for a period of 21 weeks, which was discounted by one-third to 14 weeks standing the timing of the second complainer's plea of guilty. The second complainer was made subject to the requirements of the sex offenders' register for 3 years.

Submissions for the complainers

The first complainer – Muhammad Aslam

[12] The aim of paragraph 60, Schedule 3 of the 2003 Act was to make provision for the protection of the public (*Hay*, para [53]). Motivation was an important factor when assessing the conduct of the offender (*Buchanan*, para [11]).

[13] While the comments of the first complainer were disgusting, they were not motivated by sexual deviancy, but by racism. The first complainer is Pakistani and the witnesses were Indian. His motivation was to insult and offend on a racial basis. He was not sexually threatening to either witness.

The second complainer – Iain Laing

[14] While there was a sexual aspect to the second complainer's behaviour, it was not significant. There had been a breach of trust and privacy, however, the second complainer had engaged in private acts with no other person present. An expert report had been provided to the court. The author explained that the second complainer's attraction was with the object (ie the child's underwear) and not the wearer; that was said to be an important distinction. The expert had concluded that the second complainer did not have an underlying disorder and did not pose a danger to the public.

[15] If the court were persuaded that there was no significant sexual aspect to the offending, it was submitted that there would no longer be a need for a programme requirement or a supervision requirement in the community payback order.

Submissions for the Crown

The first complainer – Muhammad Aslam

[16] The question of whether conduct is significantly sexual is best left to the sentencer (*Hay*, para [53]). Sentencers are encouraged to keep a sense of proportion and to use their common sense in determining whether the behaviour is significantly sexual. Whether the complainer's behaviour in committing an offence has a significant sexual aspect is a question which the sentencer requires to decide on the facts and circumstances of each case (*Sorrell* v *Procurator Fiscal, Greenock* [2022] SAC (Crim) 2). In considering that question, the sentencer should consider: (i) the sexual element; (ii) its significance; and (iii) whether the public requires protection.

[17] There was a significant sexual element to the offence for the following reasons: (i) the first complainer was a stranger to the witnesses; (ii) the first complainer repeatedly approached the child, asked him for personal details, including about his bodily autonomy, and pulled the child's hands back when the child tried to walk away, leading the child having to fend him off physically; (iii) the first complainer asked BK if he should carry out a sexual act on her; and (iv) the comments and actions were both racially motivated and had a clear significant sexual element to them.

The second complainer – Iain Laing

[18] Adopting the same test to the offending by the second complainer, his offending behaviour contained a significantly sexual aspect for the following reasons: (i) he abused a position of trust; (ii) he intentionally entered the bedroom of a child, rather than of the adults; (iii) he sought to obtain sexual gratification; and (iv) the offending was continuous until he was caught.

[19] The sheriff had been entitled to reject the opinion of the second complainer's expert. A victim does not require to be present at the time of the offence for the offence to have a significant sexual aspect (*AB* v *Brown* [2023] SAC (Crim) 5; 2024 SC (SAC) 35). The second complainer has acted upon his fetish, outwith his own home, to the distress of the witnesses.

Decision

[20] Section 80 of the 2003 Act provides that a person is subject to the notification requirements of Part 2 of the Act if he is convicted of an offence listed in Schedule 3 to the Act. Schedule 3 contains a list of specific offences in respect of which a conviction will result automatically in notification. In addition, paragraph 60 of Schedule 3 provides for notification on conviction:

> ". . . [I]f the court in imposing sentence or otherwise disposing of the case, determines for the purposes of this paragraph that there was a significant sexual aspect to the offender's behaviour in committing the offence."

[21] The question of whether there is a "significant sexual aspect" to an offender's behaviour has been the subject of judicial consideration on a number of occasions. The Appeal Court decision in *Hay,* remains the principal authority and has been frequently cited and followed (eg *McHugh* v *Harvie* [2015] HCJAC 86; *Rodgerson* v *Dunn* [2016] HCJAC 12; and *Sutherland* v *Harvie* [2017] HCJAC 22; 2017 JC 268).

[22] The Lord Justice Clerk (Gill) provided the following guidance in *Hay*:

(a) Registration as a sex offender is not a sentence. The purpose of registration is not punitive. It is protective. It enables the police to keep tabs on a sex offender who is, or who may be, a continuing danger to others, and particularly to women and young people. Registration is nonetheless a grave stigma which places onerous restrictions and requirements on the offender's life; the offender has the public status of sex offender (paras [34] and [35]);

(b) Since the purpose of registration is to protect the public against a perceived danger, the question whether a sexual aspect to the offender's behaviour was significant should be assessed in that light. One way to approach that is to consider whether the sexual aspect is important enough to merit attention as indicating an underlying sexual disorder or deviance from which society is entitled to be protected (para [52]; *Wylie* v *M* 2009 SLT (Sh Ct) 18, para [13]);

(c) A "significant sexual aspect" is not necessarily to be found exclusively in the acts that are libelled. It could be found from a consideration of the whole circumstances surrounding the offence but should be limited to the offender's "behaviour" at the time of the offence (paras [37] and [51]); and

(d) Sentencers should consider the offender's behaviour in the context of the purpose and effects of registration, keep a sense of proportion and use their common sense (para [52]).

[23] It is trite to observe that not all behaviour which has a sexual aspect to it will fall within the ambit of paragraph 60 of Schedule 3 to the Act. Parliament did not intend for all those convicted of an offence which involved a sexual aspect to the offender's behaviour to be subject to the notification requirements. The behaviour must be "significant". Minor

sexual aspects to an offender's behaviour, however repugnant, distressing or offensive to those subjected to the behaviour, are excluded by the use of the word "significant". Upon conviction, the offender will be sentenced for his criminal conduct. The notification requirements serve a different purpose, namely, to protect the public against a perceived danger. An evaluation of the significance of the sexual aspect, based on the facts and circumstances of the case, is required, having regard to the purpose and consequences of notification.

[24] Those consequences can be "drastic" (LJC (Gill), *Thompson* v *Dunn* [2012] HCJAC 27; 2014 JC 16, para [12]). A person convicted of a sexual offence listed in Schedule 3 to the 2003 Act (including paragraph 60) must provide certain information to the police, including his date of birth, national insurance number, address and passport details (section 83(5)). Changes to these details require to be notified within a period of 3 days (section 84(1)). When making a notification and if requested to do so, he must allow a police officer to take a photo of any part of him, provide relevant physical data, including fingerprints and allow samples to be taken including hair, finger or toenails, blood or other bodily fluids samples (section 87(5A)). He is also required to notify the police of any intended travel outside the UK including details of the destination and accommodation, within 7 days of the intended travel (section 86(2); Sexual Offences Act 2003 (Travel Notification Requirements) (Scotland) Regulations 2004 (SSI 2004/205)).

[25] The LJC considered that it would be futile to attempt to define the word "significant"; it is a question best left to the judgment of the sentencer (*Hay*, para [52]). We agree that defining the word "significant" is not without difficulty. Construing the words "significant sexual aspect" *ejusdem generis*, having regard to the nature and type of specific offences listed in Schedule 3 to the 2003 Act might assist sentencers in assessing the

appropriate sense of proportion and degree of common sense to be applied. That principle of statutory construction assisted Sheriff Pyle (as he then was) in *Wylie* and led him to the conclusion, approved by the Appeal Court in *Hay*, that one way to approach matters is to consider whether the sexual aspect is important enough to merit attention as indicating an underlying sexual disorder or deviance from which society is entitled to be protected.

[26] Motivation is also a factor of importance in determining whether there was a significant sexual aspect to the offender's behaviour (*McHugh*, LJC (Carloway), para [8]; and *Buchanan*, para [12]). Behaviour which is motivated by sexual urges (*Heatherall* v *McGowan* [2012] HCJAC 25; 2014 JC 8, LJC (Gill), para [13]; *Young* v *Brown* [2012] HCJAC 24; 2014 JC 4, LJC (Gill), para [13]), the desire for sexual gratification (*Halcrow* v *Shanks* [2012] HCJAC 23; 2014 JC 1), or which is predatory in nature (*Buchan* v *Aziz* [2022] HCJAC 46; 2023 JC 51) is more likely to be construed as having a significant sexual aspect than behaviour that is borne out of a desire to offend, embarrass or humiliate (*Sutherland;* and *Sorrell)*, or which is attributable to youthful misjudgement, or "sick jokes" (*Rodgerson*). Drunken or boorish criminal conduct which appears to have certain sexual connotations to it need not always trigger the notification requirements. So, in *Heatherall,* the offender who exposed his naked penis to a young lady outside a public house was held to have engaged in an incident which was caused by drink rather than sexual urges and any sexual element which might have been present was not "significant". In *Young*, the adult offender who kissed a teenage girl on a train late at night was held to have engaged in conduct which, though criminal, was caused by drink and not sexual urges. Again, the limited sexual aspect to his behaviour did not meet the test of "significant". However, there will be many circumstances in which it is obvious that the offender's conduct has a significant sexual

aspect to it, regardless of the issue of intoxication (*Sutherland,* paras [19] and [21]; and *McGuire* v *Dunn* [2012] HCJAC 86*).*

The first complainer – Muhammed Aslam

[27] We acknowledge that the sheriff heard the evidence, that a judgment as to whether an offender's behaviour has a significant sexual aspect is best left to the sentencer and his decision should be afforded considerable respect (*Hay*; and *McGuire*, Lord Carolway, para [5]).

[28] However, examining the complainer's conduct in light of the purpose and effect of registration, it cannot in our view be said that his behaviour had a significant sexual aspect. His conduct was deeply offensive, racist, disturbing, persistent, involved a child and caused MK and BK to suffer fear and alarm. It was designed to insult, humiliate and embarrass them. It was criminal conduct for which he has received a sentence which punishes him and addresses his offending behaviour. His behaviour was primarily motivated by a desire to offend those the complainer understood to be of Indian heritage. There was a sexual aspect to his behaviour in terms of the offensive language he used. However, that aspect was not "significant" in the sense that it did not appear to be motivated by any sexual urges, nor indicative of an underlying sexual deviance or disorder. In essence, this offence was racist, not sexual, in nature. It could not, in our view, be concluded that the complainer was a person who constituted a continuing sexual danger to others, such that registration was necessary to protect the public from that perceived risk.

[29] For these reasons, we shall pass the Bill, quash the finding made by the sheriff under paragraph 60 of the 2003 Act and recall the certification and notices issued by the sheriff.

The second complainer – Iain Laing

[30] We note that the second complainer sought to rely upon a report by a psychologist. In *Hay*, the Lord Justice Clerk warned against sentencers having regard to any expression of view contained in a social enquiry report and considered it illegitimate for the sentencer to base his judgment on the accused's previous or subsequent convictions; "the sentencer must make a judgment only on the accused's behaviour on the occasion libelled" (*Hay*, para [51], *cf McGuire*, para [7]). The sheriff was correct to attach limited weight to the references in the criminal justice social work report and the psychologist's report which referred to the second complainer as "having a long standing fetish", to the psychologist's assessment that the second complainer did not suffer from a "disorder", and to his opinion that the second complainer posed no danger to the broader public. These were matters upon which the sheriff was able to form a view having regard to the terms of the conviction and the Crown narrative.

[31] The second complainer had been entrusted with the keys to the home of an acquaintance. He breached that trust. He repeatedly entered the bedroom of a female child. His only purpose in doing so was to retrieve her underwear. Having done so, he engaged repeatedly in a sexual act within the property. His conduct was clearly motivated by his own sexual urges; he sought sexual gratification. We reject the submission made on behalf of the second complainer, namely, that because the conduct was a private act with no other person present and the object of the second complainer's desire was limited to the child's underwear, his behaviour did not disclose a significant sexual aspect. The clandestine misappropriation of a child's underwear is not materially different to the clandestine appropriation of images of children (*AB* v *Brown)* or to the offence of voyeurism in terms of section 9 of the Sexual Offences (Scotland) Act 2009, conviction for which leads to automatic

registration. The complainer took advantage of the opportunity presented by having access to a child's bedroom. His behaviour was thereafter planned and premeditated when he returned on two further occasions. Having regard to the clear sexual nature of his behaviour, the sheriff had been correct to conclude the second complainer was a person who constituted a continuing sexual danger to others, from which society was entitled to be protected.

[32] Accordingly, we shall refuse the Bill.