



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2025] HCJAC 41  
HCA/2025/000185/XC

Lord Justice Clerk  
Lord Matthews  
Lord Armstrong

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

CROWN APPEAL AGAINST SENTENCE

by

HIS MAJESTY'S ADVOCATE

Appellant

against

CHARLES FLETCHER

Respondent

**Appellant: Keenan KC, (Sol Adv); the Crown Agent**  
**Respondent: Ogg, (Sol Adv); Chapman Solicitors**

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26 August 2025

**Introduction**

[1] The respondent was convicted, after trial on sheriff court indictment, of three charges alleging various forms of domestic abuse. On 13 March 2025, the sheriff imposed, *in cumulo*, a community payback order as a direct alternative to a prison sentence. It comprised a three-year supervision order and a requirement to perform 300 hours (the maximum) of

unpaid work. The sheriff also made a non-harassment order in favour of the complainer for 10 years. The Crown appeals on the ground of undue leniency, contending that a more severe sentence ought to have been imposed.

### **The offences**

[2] We set out the charges as they stood after trial. It should be noted that charges 1 and 2 had an incompetent domestic aggravation as the provision was not in force when the crimes were committed. When the court pointed this out in the hearing, the Advocate depute moved to delete the aggravations from charges 1 and 2. There was no objection and we acceded.

“(1) between 1st January 2013 and 31st December 2014, both dates inclusive, at 6 Strathmore Place, Thurso, Caithness you CHARLES MATTHEW FLETCHER 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 shout and act in an aggressive manner towards your partner [the complainer], care of the Police Service of Scotland, and did cause damage to an interior door with a racquet; CONTRARY to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010;

*[and it will be proved in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 that the aforesaid offence was aggravated by involving abuse of your partner or ex-partner;]*

(2) between 1st January 2015 and 31st August 2015, both dates inclusive, at an address meantime unknown to the prosecutor at King Street, Nairn you CHARLES MATTHEW FLETCHER 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 shout and act in an aggressive manner towards your partner [the complainer], care of the Police Service of Scotland, and did damage items within the property; CONTRARY to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010;

*[and it will be proved in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 that the aforesaid offence was aggravated by involving abuse of your partner or ex-partner;]*

(3) between 1st April 2019 and 9th March 2023, both dates inclusive, at 1 Hill Street, Lossiemouth, Moray and Croftlea, A99 Stemster Road Junction

- A836 Junction, John O 'Groats, and elsewhere you CHARLES MATTHEW FLETCHER did engage in a course of behaviour which was abusive of your partner or ex-partner [the complainer], care of the Police Service of Scotland, in that you did

- (a) repeatedly shout, swear and act in an aggressive manner towards her;
- (b) on one occasion kick her on the body and attempt to damage the wing mirrors on her motor vehicle and attempt to push said motor vehicle from the road into a burn;
- (c) remove funds from a shared joint banking account without her permission;
- (d) paint a derogatory name on a wall;
- (e) repeatedly cause damage to her property;
- (f) on one occasion hold a vacuum cleaner above her head, threaten to strike her with same and did strike her on the body with the handle of said vacuum cleaner to her injury;
- (g) on one occasion hold a crowbar above your head in a threatening manner;
- (h) repeatedly threaten to set fire to her home;
- (i) control her access to use her mobile telephone;
- (j) on one occasion get close to her face and shout at her, damage items within the house, pour beans and cereal over her head, pursue her through the house, attempt to bind her arms and body using a vacuum cleaner hose, drag her to the ground causing damage to her clothing and repeatedly prevent her from leaving the house;
- (k) on one occasion pin her to a wall using a bar stool to her injury and take possession of a knife and a rope and state that you were going to commit suicide;

[there was no averment (l) in the charge]

- (m) on 29 January 2023 shout at her, seize and forcefully shake the headboard of a bed whilst she was on same, repeatedly punch a wall and kick a set of drawers, smash a bowl, attempt to set fire to an item of clothing, set fire to a dream catcher requiring her to extinguish same, pursue her through the house, repeatedly prevent her from leaving the property and remove telephones from her to prevent her from contacting Police Scotland;
- (n) on 30 January 2023 run at her, punch her on the head causing her to fall to the ground, stand over her and repeatedly punch her whilst she was on the ground, all to her injury;
- (o) place intimate photographs of her and a sexual object on open display within her car to humiliate her;
- (p) take control of her social media and e-mail accounts and her website;
- (q) repeatedly send her unwanted communications;
- (r) trace her to a new address and repeatedly attend uninvited at said address;
- (s) rehome her pet cats without her consent;

CONTRARY to the Domestic Abuse (Scotland) Act 2018, Section 1.”

### **The circumstances of the offences**

[3] The respondent’s conduct is summarised in the wording of the charges and particularly charge 3. We have a report from the sheriff and a transcript of the complainer’s evidence. It was a feature of their relationship that when the respondent got angry he would smash things in the houses they shared. Charge 1 involved him smashing a glass door with a racquet and screaming in the complainer’s face in the early hours of the morning. He could be very loud. If she did not react to such conduct, he would throw things around. Amongst the conduct in charge 2, was an incident when the complainer asked the respondent to hang his washing, prompting him to throw it down the stairs and throw other things on the floor. On another occasion, he used an axe to chop up his engagement ring, told her she had cursed it and handed it back to her. He would accuse her of having affairs. He would throw ornaments around, breaking them. His body would stiffen and he showed pure rage. It was very frightening for the complainer.

[4] These behaviours continued and escalated, as set out in charge 3, when they lived in Lossiemouth. The respondent became more physically abusive. On one occasion, he held a Hoover over the complainer’s head as if to smash it down on her. Instead, he threw it down, causing it to strike her leg with resultant bruising. When he got angry with her whilst she was driving, she had to stop and he kicked her in the stomach before trying (unsuccessfully) to pull mirrors off the car and push it into a river. She drove off and left him behind to get away from the situation. This prompted him to empty their joint bank account in revenge, at a time when the funds there were needed for insurance and road tax renewal. It appears that he did return the money. She would leave him and then go back, sometimes to care for

her cats, other times because she felt sorry for him. He continued to damage items in the house, including smashing a dining table and kitchen chair in her presence. When the complainer repainted a wall in the living room, he spray painted the words "Vampire bitch."

[5] When the complainer had been due to go on a trip away, the respondent attacked her, threw baked beans and cereal over her, shouted and screamed at her, tried to tie her up with the Hoover hose, ripped up her clothes and would not let her leave the house before he calmed down. On other occasions he would throw things at her. He got increasingly angry toward the end of their time living together. He threatened her with a crowbar. He threatened to kill someone she knew and to destroy her. He attacked her with a bar stool in the house. He used it to push her against a wall, bruising her arms, and threatened her with it. When she pushed him off, he took a rope and a knife and drove off, saying he would kill himself.

[6] The respondent knew that the complainer had an extreme fear of fire. He would threaten to burn the house down. He did burn some of her clothing. During a particularly angry and frightening incident, when he was smashing things in the house and she was begging to be allowed to leave the house, he set fire to a dreamcatcher. He tried to set fire to one of her tops hanging on a door, removed smoke alarms and set other fires. He pulled the telephone off the wall when she said she would call the police. He blocked her from leaving the house. When she managed to leave, she stayed with neighbours. As she ran towards their house, he punched her on the head from behind, causing her to fall to the ground. Her head was sore and her ears were ringing. She sustained cuts to her face and hands together with bruising, and her GP considered she had a whiplash injury. She was prescribed diazepam for anxiety. Whilst she was staying with her neighbours, she saw that he had

parked her car outside their window, packed full of her things. He had placed an intimate photograph of her on the dashboard alongside a sex toy.

[7] The respondent had sophisticated IT skills. The complainer did not. He exploited this to cause serious difficulties for her. When they moved to John O'Groats, he activated a divert on her mobile telephone, preventing her receiving calls. She did not know how to reset it. At times he would not allow her to make calls, by forbidding her from putting credit on her phone account and withholding the password that she would need to add credit herself. In theory she could make calls on Wi-Fi but a lack of signal prevented her doing so. All of this increased her isolation.

[8] Finally, the complainer left the respondent and moved into a refuge many miles away. She got a new phone and SIM card and did not tell him the number. He was able to trace the number and he contacted her. This prompted her to report everything to the police. He emailed her with links she was afraid to open as she feared he would hack her phone, which he knew how to do. He must have accessed her personal accounts to find out the address of her refuge. He sent postal packages there. She discovered that he had attempted to sign in on an application on which all of her passwords were stored. He had accessed her main email account and changed the password. He had provided his own email address on her Government Gateway account. He took over some of her Instagram accounts. He had posted online to say that he had attended at her refuge to look for her. She started to receive emails to tell her she had been locked out of online access to various accounts including bank cards, DVLA and car insurance. Direct debits were amended. His last email informed her that he had taken her cats to a refuge without her permission. He later left a voice message of cats crying.

**Victim information**

[9] At 10.00am on 29 January 2025, the last day of the trial, the complainer emailed the Procurator Fiscal requesting, in the event of conviction, the imposition of a non-harassment order of indefinite duration, to include a restriction apt to prevent further digital harassment. It was sent on to the Sheriff Court at 11.00am. The complainer explained that there was no reason for the respondent ever to be in touch with her again. She knew that bail conditions would expire, as would a 3-year interdict she had obtained in the sheriff court. To renew it would be expensive and the prospect of such protective orders expiring was a source of considerable distress and anxiety. Further court procedure would also be distressing for her. She wrote that having such orders in place entitled her to a higher level of security on digital accounts. His actions in taking over her digital identity took her more than a year to resolve. She considered "a lifelong order" was necessary for her continued safety and protection.

[10] In a victim impact statement, the complainer explained the effect of her injuries from the conduct in charge 3 (n) and the treatment required for them. As a result of the respondent's actions as a whole, she suffered psychological consequences, including exhaustion and difficulty in maintaining focus. This has had an adverse effect on her employment and income. Fear has inhibited her social life. She suffers from anxiety and flashbacks and struggles to maintain and form relationships of all kinds.

[11] The complainer has suffered considerable financial loss in dealing with the consequences of the respondent's behaviour. The costs of moving home, replacing household items destroyed, renewing IT equipment and data recovery costs exceed £3000. By March 2024, when she prepared her statement, she had paid hundreds of pounds for therapies that were continuing.

**Circumstances of the respondent and justice social work report**

[12] The respondent is 42. He grew up in what he describes as a dysfunctional family in the United States, witnessing domestic abuse before his parents divorced when he was 10. His mother suffered poor mental health and would chastise him physically. He was sexually abused by one of her partners before he left home. He has been married twice before and has two children but has no contact with them. He met the complainer in the USA and they moved to Scotland together. He is now a British citizen.

[13] His circumstances have transformed radically since he was convicted. He has moved to work in Lewis and no longer drinks alcohol or takes drugs. He gained employment in the fishing industry and then a responsible position in the public sector. He has formed a new relationship and intends to get married. An unannounced social work visit found nothing concerning in this new household, where he plays an important role in the life of his partner's son, aged 6.

[14] He took some responsibility for aspects of his offending but denies many other material parts of the offending for which he was convicted. He has diagnoses of Asperger's syndrome and ADHD and maintains that his autism played a part in his offending. He showed some victim empathy, but it is accompanied by extensive minimisation.

[15] The social worker considered that whilst his offending is likely to have caused significant harm to the complainer, there is no longer a risk of serious harm to her given the termination of their relationship and his move across the country. His general risk of reoffending is low. The Caledonian Programme for domestically abusive men is not available where he now lives but his domestic offending could be addressed through supervision. A prison sentence would not have any rehabilitative value in his case.

**Reasons for the sentence imposed**

[16] The transcript of the sheriff's sentencing remarks reveals that, given the behaviour she had heard about, she was doubtful of the risk assessment being low but was prepared to accept it. She noted and deplored the respondent's minimisation. She signalled that she did not consider a compensation order appropriate. She noted that his behaviour had been manipulative, controlling, violent, abusive and, sometimes very bizarre and frightening. It had endured over several years. She considered he posed a danger to any woman with whom he formed a relationship. The gravity of his offending merited a prison sentence, but rehabilitation was also an important consideration in this case. There was a suitable alternative to imprisonment in the form of a community payback order. Without any apparent reference to the complainer's communications about an indefinite non-harassment order, the sheriff imposed an order prohibiting contact with the complainer, for 10 years.

**Note of appeal**

[17] The sentence imposed was unduly lenient. The sheriff erred in failing to recognise how high the respondent's culpability was and how severe the harm he caused. The variety of forms of offending, and particularly the exploitation of the complainer's fear of fire, her financial loss, the disruption caused by his account hacking, his tracing the complainer to a refuge, and his minimisation and victim blaming bore on his culpability. The physical and psychological consequences, associated treatment needs, financial loss and general disruption to the complainer's life were indicative of severe harm. A community payback order did not meet proper sentencing objectives in this case and was unduly lenient.

[18] We observe that there is a concerning inaccuracy in the note of appeal where it is suggested that there was 10 years of offending. There was, in fact, a gap of 4 years between

charges 2 and 3. The error appears again in the Crown's written submission where it was said that the respondent was offending for 10 years.

### **The sheriff's report**

[19] The sheriff summarised the offending, noting its termination in March 2023. She offers her views on culpability and harm. She took account of the respondent's neurodiversity in assessing culpability. She noted that some of his offending was spontaneous. The extent of his violence was limited. Whatever the effects of the respondent's digital interferences, they did not necessarily need to be sophisticated and such "financial abuse" as there was could not be said to be sustained.

[20] The respondent was, in effect, a first offender. He had effected real change in his life with abstention from substances. He had engaged well with services to address his mental health and substance problems. He appeared to have moved on with his life and was willing to engage in offence focussed work providing an opportunity for successful rehabilitation. Whilst his conduct could justify a prison sentence, it was not the only possible disposal. A prison sentence would do little or nothing to rehabilitate the respondent and he would be released with no meaningful supervision, support, guidance or monitoring. Punishment could take the form of a maximum duration unpaid work requirement and it should also have deterrent effect. A 10-year NHO would offer protection to the complainer. A 3-year supervision requirement would support rehabilitation for which there was a real prospect of success.

## **Submissions**

### ***Appellant***

[21] The introduction of the offence in section 1 of the 2018 Act signalled a societal recognition of the insidious and serious nature of domestic abuse which, whilst sometimes obvious, can also be less overt. The combination of physical attacks, destruction of property, threats concerning fire, and the respondent's hacking were very serious features. The respondent's behaviour was controlling, threatening and manipulative. Some of his actions were plainly premeditated. The victim impact statement demonstrated the high level of harm caused. The sheriff had failed to recognise the real gravity of the respondent's offending as a whole.

[22] The court should find these offences to be more serious offences than those in *HM Advocate v CJB* [2019] HCJAC 45 where the court did not interfere with the non-custodial sentence imposed. It preceded the introduction of the 2018 Act. The sentencing objectives in this case were protection of the public, punishment, rehabilitation and expression of disapproval of such offending. Unpaid work was insufficient punishment and supervision did not meet the purpose of rehabilitation. Only a prison sentence was appropriate.

[23] We are surprised that, far from recognising the incompetence of the domestic aggravation on charges 1 and 2, the Crown founded on it in written submissions.

### ***Respondent***

[24] The decision in *HM Advocate v CJB* did not support the Crown's appeal. The conduct in that unsuccessful Crown appeal was more serious and involved not just an adult complainer but also two children. All were subjected to serious acts of violence over several years. The sheriff imposed a community payback order. Whilst the court considered such

conduct could have merited a significant prison sentence, the alternative imposed met proper sentencing objectives and was not unduly lenient. The level of violence exhibited by the respondent was substantially less than in *CJB*. His other behaviours did not require a prison sentence given his current circumstances. He is in employment. There is no offending in his current relationship, and he has a strong bond with his new wife and her children. There would be a significant impact on them if the respondent was to be imprisoned. He would lose his job.

[25] The relevant sentencing principles in this case were punishment, public protection, rehabilitation, disapproval of such conduct and the opportunity to make amends. The respondent had been able to pay compensation as part of his CPO and still could. It was not known why the sheriff did not order the NHO to have an indefinite duration. There is no reason for the respondent to be in contact with the complainer. The respondent has completed 50 hours of unpaid work and has excellent reports from his supervisor. He has cooperated well on supervision and there has been no substance misuse.

### **Decision**

[26] It is important to consider the effect of domestic offending by examining it as a whole. Whilst the violence in this case is less serious than that in *CJB*, that is not the whole picture. Violence may be the most obvious and visible form of domestic abuse but it is not necessarily the most serious. There is growing awareness of the harm domestic abuse causes and it is well understood that it extends beyond physical injuries. There is some force in the Crown's submission that the introduction of DASA section 1 signals a recognition of the insidious, varied, sometimes subtle, but often very damaging, forms domestic abuse can take.

[27] There is a striking example in this case. For the sheriff to observe that the respondent's digital manipulation did not require sophistication was rather to miss the point. It was spiteful, calculated, pernicious and extremely damaging. It caused considerable practical difficulties, disruption to the complainer's activities, isolation and no doubt enormous frustration and anxiety for her. In her email to the Procurator Fiscal she explained its effects, how long it took to address it and that there were financial costs involved. Viewed in combination with everything else, how long the offending continued and the harm it caused, this was serious offending that merited a prison sentence.

[28] However, matters do not stop there because Parliament provided, in section 204 of the Criminal Procedure (Scotland) Act 1995, a significant restriction on sentencing that has been in place since its introduction in the Criminal Justice (Scotland) Act 1980, that:

(2) A court shall not pass a sentence of imprisonment on a person of or over twenty-one years of age who has not been previously sentenced to imprisonment or detention by a court in any part of the United Kingdom... unless the court considers that no other method of dealing with him is appropriate.

The Parliamentary intention is clear. Imprisonment for a person who has not previously served a prison sentence is a sentence of last resort: *CJB* at para [17].

[29] As, we have indicated, this offending could readily have attracted a prison sentence. That said, for the most part we find the sheriff's reasoning to be sound. She identified appropriate sentencing purposes. She knew of the statutory restriction and also considered that a prison sentence would do little to support rehabilitation and could only offer public protection for a limited period, in practice a matter of months.

[30] A requirement to perform 300 hours of unpaid work is not an insignificant punishment for a person in full-time employment with family responsibilities. It has some

deterrent effect as it can only be imposed as a direct alternative to imprisonment. If breached, it would be likely to result in imprisonment.

[31] In the interval between March 2023 when the offending ceased, and March 2025 when the respondent faced sentencing, his life had transformed quite radically. He had stopped taking alcohol and drugs, had moved to an island on the other side of Scotland and sustained employment. He was working at the time he was sentenced. He had formed a new relationship, had some joint caring responsibilities and was open to addressing his mental health difficulties. The sheriff recognised these profound changes.

[32] The reporting social worker found no concerns in that relationship and that is now supported also by the respondent's new wife. She addressed a letter to the court on 22 July 2025, confirming their marriage, her own family situation and the role the respondent now plays in supporting her, her mother and, notably, her children. She has a professional understanding of the challenges facing people with mental health difficulties. She understands the gravity of domestic abuse. She confirms that the respondent is addressing his difficulties through the NHS. He has presented as kind, measured and thoughtful.

[33] We also have a letter, dated 29 July 2025, from the respondent's supervising social worker, confirming the respondent's faultless, reliable and diligent performance of unpaid work before it was suspended on the Crown's application in connection with this appeal. He has engaged well in supervision, taking it seriously and showing willingness to discuss his offending and personal circumstances. There has been no indication of substance misuse or problems in his new household. Both the respondent and his wife have accepted ongoing social work monitoring as part of the supervision order.

[34] What appears to have been the beginning of substantial rehabilitation was already apparent by March 2025. The sheriff recognised that but also understood that, given

everything disclosed in the evidence, there must be some risk in the respondent's new relationship. She considered that supervision for the maximum period of 3 years would offer greater protection to the public, and specifically to the respondent's new family, than a prison sentence of the length that would otherwise be imposed. That was, in the particular circumstances, a reasonable judgement to make and, so far, it appears that it is proving to be a sound one.

[35] Should this progress continue, there should be effective protection of the public, including the respondent's wife, but the complainer is also entitled to feel safe and protected. She explained, in an email to the authorities prior to sentencing, why she hoped that the court would impose an NHO of indefinite duration. The sheriff makes no reference to that communication and offers no explanation for choosing a period of 10 years. There is no reason for the respondent to need to contact the complainer again. In all the circumstances, we do not understand why there was not an order of indefinite duration. The order ought also to have addressed the issue of digital interference that caused so much difficulty for the complainer. To that extent the sentence imposed is unduly lenient and we shall revisit the whole sentence again.

[36] In terms of making amends (restitution), there was a suggestion in the report that the respondent could pay compensation. We know from the transcript that the sheriff cut the respondent's solicitor off when he sought to raise that issue. Given the information in the victim impact statement, we fail to understand why the sheriff did not at least consider making a compensation requirement. The respondent's solicitor-advocate confirmed that he had been willing to pay compensation at first instance and remained willing now. He could afford to pay in instalments of £200 per month.

[37] In the result we quash the sentence and order made and pass sentence of new. We make a non-harassment order, for an indefinite duration, that the respondent shall refrain from:

“Abusing the complainer verbally, by threatening her, assaulting her, by putting her into a state of fear or alarm or distress, by using or threatening violence towards her, by sending her deliveries and letters, contacting and communicating with her by any means including telephoning her, text messaging her, emailing her, by posing as her online, or by using or accessing any online domain belonging to her, or by using or accessing any online account belonging to her, and from approaching her; and from attempting to do any of these things.”

[38] We shall impose a community payback order with requirements of supervision, unpaid work and compensation. Allowing for the 50 hours of unpaid work and period of supervision already completed, we impose a community payback order with a supervision requirement for a period of 2 years and 7 months and an unpaid work requirement of 250 hours, as a direct alternative to imprisonment, to be completed within 1 year. Taking account of the respondent’s means, we make a compensation requirement of £3,600 in favour of the complainer, to be paid to the sheriff clerk at Stornoway in instalments of £200 per month.