



APPEAL COURT, HIGH COURT OF JUSTICIARY

**[2026] HCJAC 35
HCA/2026/159/XC**

Lord Matthews
Lord Braid

OPINION OF THE COURT

delivered by LORD BRAID

in

Solemn Appeal against Sentence

by

VICTOR POPA

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

**Appellant: Neilson; Faculty Services Limited (for George Mathers & Co, Aberdeen)
Respondent: M McPherson, AD ad hoc; Crown Agent**

28 July 2026

[1] The appellant appeals against a sentence of 12 years' imprisonment imposed on him for the rape of a 14-year-old girl, in contravention of section 1 of the Sexual Offences (Scotland) Act 2009. At the time of the offence, the appellant was aged 32. He was found guilty after trial.

[2] The circumstances of the offence were, in brief, that the complainer had been out drinking, and was very drunk. She became separated from the friends she had been with.

Having unsuccessfully waited a long time for a taxi in the early hours of the morning, the appellant's car appeared. She thought it was a taxi. She told the appellant her age, that she was really drunk and did not have any money. He agreed to take her home. Instead of doing that, he performed a series of sexual acts upon her, during most of which she was either unconscious through alcohol, or so drunk that she could not move. In particular, he raped her both orally and vaginally.

[3] The offence involved a gross breach of trust, committed against an obviously vulnerable child by a man more than twice her age who did not disabuse her of her notion that he was a taxi driver. He deceived her by telling her that he would take her home and instead drove her to a different location where the rapes occurred. The complainer was sufficiently alarmed to text a friend during the journey, saying that she was scared and asking for help. In addition to causing the complainer severe psychological harm (as one would expect), the oral rape caused a significant injury to the inside of her mouth.

[4] The Scottish Sentencing Council rape guideline applied at the time the appellant was sentenced. It requires the seriousness of an offence of rape to be determined by reference to two things: the culpability of the offender, and the harm caused, or which might have been caused, by the offence. The appellant accepts that insofar as his culpability is concerned, he falls within level A, by reason of his abuse of a position of trust, the vulnerability of the complainer and, as the trial judge found, his use of deception to facilitate the offence. The point at issue in the appeal is whether the trial judge was also correct to assess the harm at level 1 or whether she ought to have assessed it at level 2. Where there is level A culpability (as here) the guideline range for the former is 10 - 13 years' custody; for the latter, 8 - 10 years.

[5] The guideline provides a non-exhaustive list of factors which would result in an assessment at level 2, including several which apply here: severe psychological or physical harm or trauma; additional degradation or humiliation; and a prolonged or sustained incident. A footnote to the guideline makes clear that the impact of psychological or physical harm can include, but is not limited to, an impact on lifestyle, or on social or economic functioning. The guideline further provides that the extreme nature of, or the impact caused by, one or more level 2 features or other features of harm may elevate an offence to level 1.

[6] In accordance with section 14 of the Criminal Justice (Scotland) Act 2003 (as amended by the Victims and Witnesses (Scotland) Act 2014) the complainer was given the opportunity to, and did, complete a victim statement. Section 14(4) requires a copy of any such victim statement to be provided by the prosecutor to the accused; and section 14(5) requires the court, in determining sentence, to have regard to so much of the statement as it considers to be relevant to the offence. In her victim statement, to which the trial judge did have regard as she was obliged to, the complainer vividly describes the effect which the offence has had on her life. The effects of the physical injuries, including that to her mouth, lasted for months. In July 2023, six months after the rape, she made an attempt on her own life, requiring admission to hospital where her stomach was pumped. Since then, she has attended CAMHS, as well as a rape crisis group. A pre-existing eating disorder was exacerbated, such that she again required hospital admission, around the date when the first trial diet called. She still suffers from the emotional and mental impact of the offence. She constantly thinks about it. She felt humiliated by the tests she had to undergo. Her education has suffered, and she has fallen behind her peers. She has been diagnosed as suffering from complex PTSD, anxiety and depression. She requires to take sleeping

medication. She had no longer been able to go out socially, although recently managed a shopping trip on the day after the appellant was remanded in custody. She no longer wants a child of her own, for fear she might have a girl who might one day suffer the same fate as her. She concludes by expressing the sentiment that her entire life stopped at 14.

[7] Counsel for the appellant submitted that any psychological or physical harm or trauma should not be categorised as of such an extreme nature or as having such an extreme impact as to fall within level 1 in the absence of evidence beyond the victim statement, such as a medical report. The complainer's subjective view should not elevate the harm level. In particular, in the absence of other evidence, including medical evidence, of any long-term effects of the incident, the offence could not conclusively be assessed as being of an extreme nature or extreme in its impact.

[8] We disagree. The assessment of harm was ultimately a matter for the sentencing judge on the basis of such material as she had, which included the victim impact statement, to which she was bound to have regard by virtue of section 14(5) of the 2003 Act. It was expressed in articulate, graphic and moving terms. Such a statement will necessarily include the complainer's subjective assessment of the impact the offence has had on her. In particular, we disagree with the submission that the judge ought to have had sight of, or requested, a medical report before being entitled to find the existence of level 1 harm. That is neither required by the legislation, nor a reasonable step for a sentencing judge to require to take. In any event, the assessment of harm must always be a matter of degree, and there is no "bright line" between level 1 and level 2. Although one hopes that the last sentiment expressed by the complainer (that her life ended at 14) will pass with time, it is hard to disagree with the assessment of the trial judge (who had the benefit of seeing the complainer give her evidence) that she fell within level 1. It is highly significant that the complainer was

only 14 years old at the time of the offence, when she was raped repeatedly when incapable of, and not, consenting, in the car of a stranger. None of the effects which she reported as having suffered is in any way surprising. Had the victim of this offence been an adult, it may well be that the harm suffered would have been level 2. The fact that she was but 14 entitled the judge to assess the harm at level 1. The sentence imposed sits within the range. While severe, it is not so excessive as to give rise to a miscarriage of justice. It is a sentence which achieves the judge's sentencing aims of punishment, protection of the public, society's disapproval of this type of offending, and rehabilitation in a custodial setting.

[9] The appeal is refused.