



APPEAL COURT, HIGH COURT OF JUSTICIARY

**[2026] HCJAC 36
HCA/2025/504/XC**

Lord Justice Clerk
Lord Matthews
Lord Clark

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

APPEAL AGAINST SENTENCE

by

JAMES DONALDSON OR MURRAY

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

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

11 August 2026

Introduction

[1] The appellant challenges the imposition, cumulatively, of an order for lifelong restriction (with a punishment part of 2 years and 6 months) on all charges on 9 September 2025 after he was convicted after trial at the High Court in Glasgow on 15 October 2024. He also contends that it was incompetent to make an OLR on certain charges and that there was

insufficient justification for imposing an OLR at all. His appeal against conviction was refused on 3 June 2026 for reasons set out in our opinion of 8 July 2026.

The charges of which the appellant was convicted

[2] The appellant originally faced 8 charges, but the Advocate Depute withdrew charges 3, 4, 5 and 7 at the close of the Crown case and the judge acquitted the appellant of them. Amendments were made to the remaining charges, and the appellant was convicted of them in their final terms:

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

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

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

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

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

[3] The indictment also gave notice in a docket that further evidence would be adduced from DD, EE and FF concerning other charges of which the appellant has previously been convicted and other behaviour as set out in para (ii) below:

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

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

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

[4] The conduct referred to in para (i) of the docket led to the appellant being sentenced to imprisonment for four years for sodomy with a concurrent sentence of two years' imprisonment for lewd, indecent and libidinous practices at the High Court in Dundee

in 1989. The appellant was released from prison in 1991. The conduct in para (iii) of the docket culminated in a conviction under the Criminal Justice and Licensing (Scotland) Act 2010, resulting in a community payback order that became a restriction of liberty order following breach.

Procedure

[5] The appellant appeared on petition on seven of the charges on 16 April 2022 and was allowed bail, indicted and in due course tried from 1 October 2024. On 8 October, the appellant sacked his King's Counsel, and the case was continued to 9 October for him to instruct new representation. He failed to appear and Mr Macara appeared in his absence. The judge granted a warrant for his apprehension, ordered that the indictment should not fall and continued to 10 October when the appellant appeared and was remanded in custody. The warrant was recalled and the trial adjourned to 11 October when the trial resumed, with Mr Macara appearing, and concluded with the verdict on 15 October 2024.

[6] The judge adjourned for the preparation of a justice social work report with a social work risk assessment to address the possibility of an extended sentence, ultimately until 19 December 2024, when the appellant sought more time to instruct a psychological assessment from Professor Lorraine Johnstone, which became available shortly before an adjourned diet on 25 April 2025. The judge resolved to make a risk assessment order and invited Professor Johnstone to prepare a risk assessment report which was available for a diet on 6 June 2025, when the appellant sought more time to lodge a note of objections and to instruct a critique report from Professor Gary Macpherson. No such report was lodged before Professor Johnstone gave evidence on 18 August 2025. The judge heard submissions then adjourned to 9 September 2025. Having heard further mitigation, she made an OLR,

backdating the punishment part to 10 October 2024. At no time was any issue raised about the competence of imposing an OLR on charges 1, 2, 6 and 8.

Circumstances of the appellant's offending

[7] We set out the evidence adduced under the docket and charges in our opinion of 8 July 2026 at paras [5] to [15], which we adopt. We summarise its import for sentencing below.

Charges 1 and 2

[8] The appellant inveigled his way into the family of the 12-year-old AA and began to take the child out in a vehicle. The appellant groomed AA with a gradual progression through affectionate touching and kissing, more intimate touching and the appellant masturbating AA. The appellant manipulated members of AA's family, making the child ever more dependent on him, inducing AA to call him "dad," and isolating him. The sexual conduct libelled continued throughout the period of charges 1 and 2, usually several times each week.

[9] It came to an end when AA was almost 16 and reported the appellant to the police. The appellant would park outside AA's home, drive by him and generally make himself noticeable. The appellant would write to AA seeking to ingratiate himself with expressions of good will, for example saying he would always be there for AA and would always view him as his son. He was still writing such letters in 1999, six years after the offending ended.

Charge 6

[10] The appellant took advantage of a family connection and the absence of a father to take BB out in his car, and the appellant began sexually touching him on his penis under the guise of concern about BB's medical condition. The appellant would stay at BB's family home overnight. He induced BB to massage him, which progressed to the appellant lying on top of BB and kissing him, trying to persuade BB that he was gay and that they should have sexual intercourse. The appellant threatened to harm BB's sisters if he reported the appellant, but BB eventually did so after this conduct had gone on for almost three years.

Charge 8

[11] When CC, aged 35, was homeless, the appellant offered him a bed for the night following a chance encounter. CC stayed for about three months, and the appellant would give him money to buy heroin every day. One night CC awoke to find the naked appellant performing oral sex on him. The appellant was masturbating himself as he did so. CC noticed that his anus felt sore and did not understand why (the associated averment of digital penetration of CC's anus was deleted from the indictment). CC stayed for another month to fund his drug addiction, and the appellant would come into his bed and sleep there at night. He was scared to report the appellant, fearing reprisal.

Docket (i) and (ii)

[12] In 1989, the appellant was convicted of the conduct signalled in para (i). DD turned 12 in the spring of 1987. He attended a church youth group where the appellant was a leader, holding meetings weekly but also taking youths out for trips by minibus. He would bring boys to his home several times each week and sometimes it was just DD. The

appellant gave them all alcohol and took a particular interest in DD, plying him with alcohol and talking about personal issues in DD's life. When they were alone and had been drinking, DD woke up at about 5am with a fuzzy head and pain in his anus that he could not understand.

[13] DD said there were at least another 20 occasions of sexual abuse at various locations including when out in the minibus, at DD's home and on church premises. The appellant penetrated DD's anus with his penis more than once, using no condom or lubricant. The appellant performed oral sex on DD and forced DD to reciprocate, pushing his head down. It happened so often that it became normal and continued until DD was 14 despite DD telling the appellant he was interested in girls.

[14] It ended when the police became involved, but the appellant continued to try to contact DD, approaching him on the way to school or outside the church. On several occasions outside the church, the appellant told DD to inform the police that his allegations were untrue. The appellant wrote to him on five occasions over the ensuing years including in 2001 and 2005, but DD did not respond.

Docket (iii)

[15] In 2018, the appellant was convicted of the conduct signalled in para (iii). When EE was 15 years old and lived with his mother FF in Dundee, he slept upstairs overlooking the street. EE got a letter through the door signed "Jimmy," saying he wanted to be friends. EE thought this was a friend playing a practical joke. The appellant lived two doors down. Shortly afterwards when EE was at a bus stop in school uniform, the appellant said something to him which EE ignored. He next saw the appellant at 2.00am the following morning, walking down the drive towards EE's house. FF screamed and called the police.

She knew her neighbour, the appellant, as Jimmy. He started to take notice of her son and would stare into the boy's bedroom when he passed the house. The appellant offered to cut her grass. She would see him shining a torch into her son's bedroom at night when EE was going to bed. She saw the appellant prowling in the garden in the early hours of the morning on the occasion EE spoke of.

[16] This was not libelled as a sexual offence but could readily be construed as the beginnings of an attempt to groom a male adolescent. It is also significant that in her first report, dated 15 April 2025, Professor Johnstone explained that she had access to a Tay Project Report, not before the judge, recording that the appellant "admitted sexual attraction to the victim" of this conduct (EE, report para 7.5 at page 13).

Previous convictions

[17] As noted at para [4] above, the appellant was convicted of a charge of lewd, indecent and libidinous practices and secondly, sodomy, and sentenced to imprisonment for 2 years on the former and 4 years on the latter, concurrently in 1989 at the High Court in Dundee. Thereafter, he has convictions extending from 2007, mostly for motoring offences and theft, including three crimes of theft by housebreaking, met with 16 months' imprisonment, on sheriff court indictment in 2017. In 2018 he was convicted of the conduct noted in paras [15] and [16] above, on sheriff court indictment.

[18] On 9 October 2020 he was convicted on a summary complaint of an offence under the Police and Fire Reform (Scotland) Act 2012 section 90(1)(a) and assault. He was fined and required to pay compensation. The charge of assault, of an on-duty paramedic, averred that the appellant seized him by the genitals.

JSWR, Tay Project assessment report, psychology report and risk assessment report

[19] The reporting social worker concluded that the appellant presented a high risk of further conviction of sexual offences. He was “skilled in impression management”. He denied the charges he was convicted of, maintaining they were fabricated. He showed no victim empathy, no insight and no remorse. He has an established and entrenched pattern of behaviour with planning, targeting and grooming. He was required under a CPO to attend a sex offender programme in 2021 but attended “under the influence”, had to be removed from the group and treatment was delivered individually. He would require supervision and monitoring for an extended period following release.

[20] The author of the Tay Project report assessed him as presenting a medium risk of sexual reconviction using the RM2000 risk assessment tool and as having a moderate level of treatment needs using the SA07 tool.

[21] Professor Johnstone, who is a highly experienced Risk Management Authority risk assessor, prepared an informal risk report dated 15 April 2025. She found that the appellant had a chronic and diverse history of sexual violence exhibiting psychological coercion, grooming behaviours and a history of stalking behaviours, unwanted communications, intimidation and threats. He met the criteria for antisocial personality disorder with associated borderline and obsessive-compulsive traits. He met the threshold for psychopathic personality disorder and certainly has such traits. He has displayed sexual deviance. There were many other risk factors. Whilst incarceration provides protection of the public for as long as it lasts, he lacks internal protective factors such as empathy, self-control or meaningful engagement with treatment. He posed a high risk of sexual reoffending. His entrenched denial, lack of insight and history of manipulative behaviours necessitates long-term and intensive risk management to ensure public safety. He would

require multi-agency management. In short, he presents both a high likelihood of sexual reoffending and a history of poor manageability.

[22] Professor Johnstone completed a formal risk assessment report under section 210C of the Criminal Procedure (Scotland) Act 1995 dated 6 June 2025 and concluded that he met the criteria for high risk on the Risk Management Authority scale. It states of a high-risk rating:

“The nature, seriousness and pattern of this individual's behaviour indicate an enduring propensity to seriously endanger the lives, physical or psychological well-being of the public at large.

The individual has problematic, persistent, and pervasive characteristics that are relevant to risk and which are not likely to be amenable to change, or the potential for change with time and/or intervention is significantly limited. Without changes in these characteristics the individual will continue to pose a risk of serious harm:

- There are few protective factors to counterbalance these characteristics.
- Concerted long-term measures are indicated to manage the risk, including restriction, monitoring, supervision, and where the individual has the capacity to respond, intervention.
- The nature of the difficulties with which the individual presents are such that intervention is unlikely to mitigate the need for long-term monitoring and supervision.

In the absence of identified measures, the individual is likely to continue to seriously endanger the lives, or physical or psychological well-being of the public at large.”

The judge accepted this assessment. Accordingly, this was a strong indicator that she should make an OLR if it was competent to do so: *Ferguson v HM Advocate* [2014] HCJAC 19, 2014 SCCR 244 [106].

The judge's reasons

[23] In addition to the risk reports, the judge heard evidence from Professor Johnstone and set it out in some detail. The appellant's psychopathy and sexual deviancy meant that recidivism was both more likely and harder to detect. He was versatile in his range of tactics. A conviction of 9 October 2020 involved the appellant being drunk and making a

“grab or grope of some sort” towards a paramedic. Professor Johnstone noted he had attained positions as a scout leader, interested step uncle and St John’s ambulance worker and that his doing so was driven by his sexual deviancy. The clear inference is that he sought these positions to access vulnerable people. His sexual offending was accomplished by diverse manipulative practices including both grooming and opportunism. He would not participate in any programme designed to stop him offending. There was no endpoint to the risk he presents, and he would always need robust management. The challenges that he presents are such that his level of risk will remain high for the foreseeable future. These considerations led the judge to conclude that an extended sentence would not be sufficient to protect the public.

[24] Professor Johnstone did not consider that the gaps between the appellant’s convictions demonstrated a lower risk. He had not led a pro-social life since 1995.

[25] The judge accepted the reasoning and conclusions in both Professor Johnstone’s reports and her evidence. The appellant’s intelligence and ability to manipulate mean that treatment could increase the risk he presents. He had had many opportunities to engage in programmes including Moving Forward Making Changes and the Tay Project, and substantial psychiatric input. There was no response to treatment. There were no protective factors other than incarceration. His age was not a protective factor as his sex drive was above average for his age (Professor Johnstone’s first report, para 7.5 at page 14). The judge concluded that the risk criteria were met.

Note of Appeal

[26] Grounds 1 and 2 concerned the unsuccessful appeal against conviction. In ground 3, the appellant contended that should his appeal against conviction succeed on charge 8 then

it would not have been appropriate to impose an OLR for crimes committed before the provisions creating the sentence of OLR came into force on 19 June 2006. In the course of appeal proceedings, the appellant came to focus on the competency of imposing an OLR on charges 1, 2 and 6.

[27] Ground 4 was a more general attack on the imposition of an OLR based on the gap between the earlier offences and charge 8. The appellant proposed that an OLR should only be imposed where there is a clear and continuous pattern of offending. Accordingly, it was an excessive sentence.

Submissions

Appellant

[28] Founding particularly on the content of a letter sent to the appellant's agents by the police on 6 January 1997, Mr Macara proposed that:

"There are indications in the documents ... that suggest that such a report or reports were created and sent to the Procurator Fiscal as referred to by DCS Thomas Ross in the letter of 6 January 1997... This might point to the creation of a final police report setting out these allegations."

[Emphasis added]

[29] Since charge 8 should stand alone, it not being competent to impose an OLR on the earlier charges, and since the complainer on charge 8 was an adult, the charge must be less serious than the earlier charges. Charge 8 did not, of itself, or alongside the other charges merit an OLR. To impose an OLR with a punishment part of approximately 7 months, as could be inferred from the judge's method in calculating the punishment part on all charges, and particularly her notional sentence of 18 months on charge 8, would be disproportionate.

[30] In 2018, the sheriff did not make the appellant subject to notification requirements under the Sexual Offences Act 2003 for the 2018 conviction and did not do so for the subsequent conviction in 2020 for assaulting a paramedic. The appellant's criminal record did not constitute a pattern of offending demonstrating endangerment to the public at large. The risk assessor was wrong to consider the 2018 conviction a sexual offence. There was a very substantial gap in the appellant's sexual offending. There was no clear pattern of relevant offending after 1995 that could meet the risk criteria. Motoring offences and crimes of dishonesty could not do so. Given the deletions from the charges, what remained on the indictment simply did not merit an OLR.

[31] The risk assessor reported allegation information of sexual offending against two further persons in the 1980s and the judge did not explain what account she took of them.

[32] On that point we note that the judge reported that Professor Johnstone's evidence was that it was very difficult to assess untested allegations and she would assess the risk both with and without such material. In her formal risk assessment report of 6 June 2025, at 12.1-12.3, Professor Johnstone explained that allegation information concerning stalking, physical violence and cruelty to animals made no material difference to her opinion. She explained, more generally, at para 15 ("evidence base" on page 11) that:

"...for the purposes of this opinion, i[f] the allegation information was not [i]ncluded, there would be no material difference to the risk analysis or opinion."

Professor Johnstone's evidence was that she proceeded on the account of the evidence adduced at trial on the matters of which the appellant was convicted as set out in the judge's report under section 210H of the 1995 Act. She did not include those averments that were deleted.

Crown

[33] The Advocate Depute confined her submissions to the point raised about the competence of making an OLR that included charges 1, 2 and 6. Whilst the apex of the appellant's argument was a letter written in response to a police complaint, the precise nature of which is not known, nothing had been produced that constituted a report to the Procurator Fiscal of the sexual allegations in charges 1, 2 and 6, in terms of the Criminal Justice (Scotland) Act 2003 (Commencement No. 9) Order 2006 (SSI 2006/332). The court should not, and could not, reasonably infer that such a report had been submitted in 1995 or at any time prior to 2020.

Statutory provisions

[34] The provisions governing OLRs are found in sections 210B-210H of the 1995 Act, introduced by the Criminal Justice (Scotland) Act 2003. Section 210B, read short, and so far as relevant in this case, provides that for certain offences, including sexual offences, the court shall make a risk assessment order if it considers that the risk criteria may be met so that a risk assessment report, evaluating the risk the accused person's being at liberty presents to the safety of the public at large, is prepared.

[35] Section 210E provides:

"...the risk criteria are that the nature of, or the circumstances of the commission of, the offence of which the convicted person has been found guilty either in themselves or as part of a pattern of behaviour are such as to demonstrate that there is a likelihood that he, if at liberty, will seriously endanger the lives, or physical or psychological well-being, of members of the public at large."

[36] Section 210F provides that the High Court, if it is satisfied that:

"...on a balance of probabilities, the risk criteria are met, shall [if not making a compulsion order] make an order for lifelong restriction ..."

[37] The OLR provisions were brought into force on 19 June 2006: Criminal Justice (Scotland) Act 2003 (Commencement No. 9) Order 2006 (SSI 2006/332).

[38] Article 2(1) of the Order provides that an OLR can be imposed for offences committed on or after 20 June 2006. The article continues:

“(2) In respect of sentences imposed for offences for which life imprisonment was the maximum sentence which could be imposed at the time the offence was committed, the provisions of section 1 of, and schedule 1 to, the Act shall come into force only for the purposes of sentences imposed in cases which are commenced on or after 20th June 2006.

(3) For the purposes of paragraph (2) above, cases are taken to have commenced when a report of the case has been received by the procurator fiscal.”

Analysis and decision

[39] In this case, it is known that a Standard Prosecution Report for the offences on the indictment was received by the Procurator Fiscal on 10 December 2020 and there is no record that a report was received by the Procurator Fiscal on charges 1, 2 and 6 in 1995. Accordingly, the Crown maintains that proceedings were commenced under Article 2 of the 2006 Order in 2020.

[40] In advance of his trial, the appellant raised a preliminary plea to the effect that he had tholed his assize on those charges but did not insist on it. He did not raise any issue of competency before the sentencing judge. Nevertheless, the appellant invited us to conclude that we should infer that a police report of charges 1, 2 and 6 was received by the Procurator Fiscal in 1995. No such report has been found. Ordinarily, it is the Police Service of Scotland who will report a case to the procurator fiscal.

[41] The 1995 Act, section 12, provides:

“12. Instructions by Lord Advocate as to reporting of offences.

The Lord Advocate may, from time to time, issue instructions to the chief constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed.”

This fits in with the long-established procedure of the police submitting prosecution reports to the Crown Office and Procurator Fiscal Service inviting the Procurator Fiscal to determine if criminal proceedings are to be instituted on a charge or charges. That, we consider, is what the 2006 Order is referring to in Article 2(3).

[42] The appellant lodged 12 documents in support of ground of appeal 3. They reveal that he was remanded in custody on a petition charging him with the murder of his father on 3 April 1995, the assault having occurred on 1 April 1995. He was arrested on 23 June 1995 on suspicion of the murder.

[43] On 26 June 1995, Tayside Police submitted a report to the Procurator Fiscal in Dundee (Defence Production 7). It contained one draft charge, murder. The report reveals that, as the murder investigation progressed, allegations of a sexual nature involving BB and AA came to light. It listed potential witnesses including the complainers BB and AA. The complainers are listed in the context of the evidence they might offer to support the charge of murder. In the case of AA, he was said to be an associate of the appellant and able to speak to the appellant’s movements on 31 March 1995. BB was said to be able to speak to the appellant’s demeanour at the hospital where his father was taken and able to identify the appellant. Reference to the sexual allegations was brief, extending to 3 lines, and unspecific.

[44] Certain observations were made under a heading, “Further enquiries/remarks” including:

“...During the course of the enquiry it has emerged that accused has been sexually abusing witnesses [AA], [BB] and others. There is some evidence to suggest he was attempting to extort other males in an effort to gain sexual favours from them.

There will also be at least one charge of Theft to be preferred....”

[45] In a memo of 5 July 1995, Detective Inspector Hirst sent the Procurator Fiscal at Dundee a list of incriminating and exculpatory circumstances. These included that the appellant had told his mother he was indecently assaulted at the age of 9 by his father. The report concluded that there was circumstantial evidence pointing to the appellant’s guilt of murder but no direct evidence, and:

“It is anticipated that, in addition to theft charges there will be charges relating to indecencies with young males. The circumstances of these will reinforce the manipulative character of the accused.”

[46] Defence Productions 2-6 comprised statements AA gave to the police on 14 October 1995, 17 October 1995 and BB’s statements on 6 April 1995 and 23 June 1995 (two statements). A police detail record relating to 23 June 1995 completed by a social worker recorded that AA was also to be interviewed about the murder. These statements do contain much of the material spoken to under charges 1, 2 and 6. There was a discussion between police and social work about AA’s frequent contact with the appellant, who had a conviction for sexual offences. In the appeal hearing, Mr Macara produced the transcript of a recorded police interview of AA on 23 June 1995 in which he denied that the appellant was sexually molesting him and maintained that any physical contact between them was either appropriate or accidental. This suggests that there was insufficient evidence, at that point, for what became charges 1, 2 and 6. The position changed in October 1995 when AA began to divulge rather more. By then, the proceedings against the appellant for murder had been discontinued. There is no record of these statements being received by the Procurator Fiscal in 1995 or at any time before 2020.

[47] Had the police sent a prosecution report to the Procurator Fiscal in 1995 or 1996, there would have been sufficient evidence, and it would surely have been in the public interest to prosecute. Not only was there no prosecution, despite extensive searches in response to a specification of documents issued by the court in the proceedings at first instance on 7 February 2024, no prosecution report has been recovered.

[48] The high point of the appellant's argument is a letter dated 6 January 1997 from Detective Chief Superintendent Thomas Ross to solicitors acting for the appellant who appear to have articulated the appellant's complaints about the conduct of the police towards him, and more generally, in investigating the murder. In response to what appears to have been a third specific complaint DCS Ross wrote:

"Mr Donaldson was himself the first person to bring his previous conviction into open discussion. He did so during his initial interview prior to the death of his father. He was at pains to point out the fact all his family and friends were aware of his conviction and further state he had convinced them he was innocent of the charge.

As the inquiry developed it became necessary to more fully interview various persons in relation to other aspects of Mr Donaldson's conduct, these enquiries resulted in a number of additional charges which were included in the final report to the Procurator Fiscal. I would however refute the suggestion that his previous conviction was openly discussed as a matter of course."

There is no record of any such report ever having been submitted or received.

[49] Detective Constable Rachel Clark found no Standard Prosecution Report on the police reporting system relating to AA and BB prior to 2020. AA and BB told DC Clark in 2020 that they gave statements to the police on being questioned about the murder of the appellant's father but never heard anything further. Neither the Procurator Fiscal nor National Records for Scotland had any record of crimes relating to the accused and or AA and BB in 1995. The murder case police files contained the original statements of AA and BB but nothing else relating to an enquiry into child sexual abuse. In response to the

appellant's specification of documents, DC Clark searched police archives for crime sheets that would have an SPR reference number if these matters had been reported to the Procurator Fiscal, but nothing could be found for 1995 and 1996.

[50] Despite the short passage in a letter written by a senior police officer in 1997 founded on by the appellant, we are not persuaded there is a basis on which we could conclude that there was an unrecovered police report concerning the offences in charges 1, 2 and 6 in 1995 or 1996 or at any time before 2020. Our impression is that only a charge of murder was formally reported, and the appellant accepts that it was discontinued and he was released from his remand in custody in September 1995 and that no indictment was served on him in 1995 or 1996.

[51] Whilst the police took statements from AA and BB, in which they disclosed the appellant's sexual offending against them, the police were focussed on the murder charge, what evidence there was for it and what means there might be (as they saw it) to challenge the credibility of the appellant's denial of murder. Ground of appeal 3 is not made out and is refused.

[52] Turning to ground of appeal 4, taking account of the content of the various reports, and particularly the risk assessment report and amply vouched assessment of high risk on the RMA scale by the highly experienced and respected Professor Johnstone, and the judge's assessment of both her reports and evidence, we too would find, on a balance of probability, that the risk criteria were met in this case.

[53] Given the mandatory terms of section 210F, we would have been bound to impose an OLR and would have done so. For these reasons, we are not persuaded that there has been a miscarriage of justice or that the sentence imposed was excessive.

[54] Even if we had found in favour of ground 3 and concluded that the sentence as a whole was inept, we would have imposed an OLR on charge 8 in its place. If charges 1, 2 and 6 could not form charges on which an OLR could be imposed, they would nevertheless form part of a pattern of behaviour, section 210E, alongside charge 8 on which an OLR is indisputably competent.

[55] For all of these reasons, the appeal against sentence is refused.