



## SHERIFF APPEAL COURT

[2025] SAC (Crim) 6  
SAC/2025/141/AP

Sheriff Principal A Y Anwar KC  
Sheriff Principal S F Murphy KC

### STATEMENT OF REASONS

delivered by SHERIFF PRINCIPAL SEAN F MURPHY KC

in

Appeal against Sentence

by

MD

Appellant

against

PROCURATOR FISCAL, EDINBURGH

Respondent

**Appellant: A. Ogg (sol adv); Paterson Bell Ltd, Edinburgh**  
**Respondent: Farrell, AD; the Crown Agent**

17 June 2025

### **Background**

[1] The appellant pled guilty at an accelerated diet in Edinburgh Sheriff Court on

11 April 2025 to a single charge in the following terms:

“(001) on 1<sup>st</sup> January 2025 at Garibaldi’s, 97A Hanover Street, Edinburgh you MD did sexually assault [female complainer EK], care of Police Service of Scotland, in that you did place your hands down her trousers and did seize her buttocks, prevent her leaving the dance floor, push your body towards her and you did sexually

assault [female complainer FB], care of Police Service of Scotland, in that you did seize her on the buttocks;  
 CONTRARY to Section 3 of the Sexual Offences (Scotland) Act 2009”

[2] The offence attracts a compulsory period of notification as a sexual offender in terms of section 82(1) and paragraph 59F of Schedule 3 to the Sexual Offences Act 2003 as amended. The summary sheriff imposed a fine of £400 (reduced from £600 to reflect the early plea) with a victim surcharge of £20, all to be paid at £50 per week. This sentence resulted in the appellant becoming subject to the notification requirements for a period of five years and appeal has been taken against the sentence.

[3] In mitigation it had been submitted that the appellant was 18 years old and a first offender. He was in employment. He had intended to take a gap year in Australia to work as a junior housemaster in a school and to travel. He was said to have been drunk at the time of the incidents and to be ashamed and mortified at his own conduct. Since the date of the offence, he had avoided going out or socialising with the rugby team for whom he played and he had been unable to continue his involvement with youth training.

### **The sheriff's decision**

[4] The summary sheriff was invited to adjourn for the purposes of obtaining a justice social work report with a view to considering the imposition of a community payback order with a period of supervision. He declined to do so, noting that the imposition of such an order would limit the notification period to the same period as that of the supervision. He expressed the view that it was most unlikely that there would be a basis for supervision in the circumstances of the case as the offence had been the result of foolish, drunken conduct for which the appellant was duly remorseful and ashamed. He indicated that he would be reluctant to accept such a recommendation without being satisfied that there was a proper

basis for it and that it was not merely being used as a device to minimise the notification period which would otherwise be imposed in terms of the 2003 Act. He noted that for a fine, and some other non-custodial disposals, the notification period was five years, whereas where a community payback order with supervision was imposed, the notification period was that of the period of supervision.

### **Decision**

[5] In selecting the appropriate sentence in relation to an offence which gives rise to a notification requirement in terms of the 2003 Act, the court is bound to take account of the fact that the sentence selected will give rise to a period of notification and to have regard to the length of that period. The length of the notification period which will apply depends upon the sentence selected (per Lord Justice Clerk (Carloway) in *HM Advocate v KH* [2014] HCJAC 36; 2014 JC 195), notwithstanding that the notification requirement is not part of the sentence itself. The summary sheriff has indicated that he did have regard to that matter.

[6] In *Cooper v Shanks* [2017] SAC (Crim) 19; 2018 SC (SAC) 16 this court stated that sentencing for sexual offences is a holistic exercise in which the period and consequences of the notification requirements are relevant considerations in the sentencing exercise and should be taken into account when selecting the appropriate sentence. The court must weigh the effect of both the sentence and the registration requirement upon the offender and must also take account of the level of protection which is required for the public. In the present case, the appellant is a first offender who was aged 18 at the time of the offence. He had repeatedly committed a sexual offence while significantly under the influence of alcohol. In these circumstances, the level of risk which he presented to the public could not properly be assessed without obtaining a justice social work report, nor could the factors

referred to in *Cooper* be weighed without the further information which such a report would be likely to provide. The summary sheriff ought to have ordered a report.

[7] We were provided with a report at the time of the appeal hearing. The appellant was assessed as presenting a low risk of sexual reoffending using one measure of assessment, but a high risk according to another. He was identified as a hazardous drinker who would benefit from alcohol education. It was considered that he may benefit from a programme of work focussing on healthy intimate relationships and alcohol education. Such work could be undertaken with him in the course of a supervision requirement within a CPO. The author described the appellant as remorseful and as having an awareness of the impact of his actions; the author attributed the appellant's offending to a lack of maturity and drunkenness and noted he was willing to engage in a period of supervision to address his offending.

[8] In our view, there was a clear focus for supervision which would address both the appellant's alcohol use and the risk of him committing further sexual offences. The notification period would reflect the period of supervision. The imposition of a fine would automatically lead to the requirement to register as a sex offender for a five-year period which is neither fair nor proportionate and is also unnecessary for the purposes of public protection. A fine would not address the risk of sexual recidivism nor the appellant's alcohol misuse.

[9] Accordingly we shall quash the fine imposed by the summary sheriff and having regard to the terms of the criminal justice social work report, impose a community payback order with an offender supervision requirement for a period of six months.