

TRANSCRIPT OF PROCEEDINGS

Ref. T20177306

IN THE CROWN COURT AT BRADFORD

Exchange Square
Drake Street
Bradford

**Before HIS HONOUR JUDGE DURHAM HALL QC
THE RECORDER OF BRADFORD**

R E G I N A

- v -

**BASHARAT IQBAL KHALIQ, SAEED AKHTAR, YASAR MAJID,
NAVEED AKHTAR, PARVAZE AFZAL AHMED, IZAR KHAN HUSSAIN,
KIERAN HARRIS, ZEESHAN ALI, FAHIM IQBAL, MOHAMMED USMAN**

**MS K MELLY QC and MS S BEATTIE (instructed by the Crown Prosecution Service)
appeared on behalf of the Prosecution**

**MR A IQBAL QC and MR F ARSHAD appeared on behalf of the Defendant Khaliq
MR P MOULSON QC and MR A SHAKOOR appeared on behalf of the Defendant
Saeed Akhtar**

MS G BATTS appeared on behalf of the Defendant Majid

MR R FRIEZE appeared on behalf of the Defendant Naveed Akhtar

MR A BELL appeared on behalf of the Defendant Ahmed

MS G KELLY appeared on behalf of the Defendant Hussain

MR G WILSON appeared on behalf of the Defendant Harris

MS F HERTZOG appeared on behalf of the Defendant Ali

MR A DALLAS appeared on behalf of the Defendant Iqbal

MR R FERM appeared on behalf of the Defendant Usman

BALANCE OF PROCEEDINGS

27 FEBRUARY 2019, 11.15-11.23 & 12.00-12.51

REPORTING RESTRICTIONS APPLY:
SECTION 4(2) OF THE CONTEMPT OF COURT ACT 1981
SEXUAL OFFENCES (AMENDMENT) ACT 1992

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JUDGE DURHAM HALL: Now, other defendants whom I remanded in custody yesterday will now be brought up, please. What is to happen now, you having done – I can't use words sufficient to praise your commitment to this case, you know that. But what you've done completes the task that the community gives to you. Not to me, nothing to do with me how you find. You tell me and then I act on the consequences.

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That's my job and that's what you've done together with the assistance – continuing assistance of the barristers in the presence of many people including the press and others very interested in this case, family, friends, and more important perhaps or equally, the wider community. I have to deal with the sentence. That's not your problem, nor should it be on your conscience or anything like that.

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Now, having said that, this is your case. Any of you who wish to leave us, have seen and heard enough of the detail, you do so with my thanks. But if you want to stay, I would welcome it and I'm sure you would wish to. Yes. But if anybody wants to go, now's the time. All right? Good. Because we're going to move on. [Person A3] is here as is her right and I've insisted that she be here. If she wanted to, obviously.

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Thank you. Thank you very much indeed. Miss Melly.

(Prosecution opening of facts – see separate transcript)

JUDGE DURHAM HALL: Thank you, Mr Arshad, for both and in every case where appropriate character references and your helpful sentencing note.

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MR ARSHAD: The whole purpose of the note was to obviate the need for me to make any direct submissions. I ask that the court take into account the note and I'm confident that it will.

JUDGE DURHAM HALL: Mmm.

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MR ARSHAD: There's not much more that I can say on his behalf save for what is set out and I'm sure that your Honour has read not only the character references, but the notice in some detail. Unless I can assist any further on any further aspect of this matter, those are the submissions on his behalf.

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JUDGE DURHAM HALL: In your case, Mr Arshad, you will be very anxious that the court does not fall into the trap of treating specimen counts in this case as in fact multiple offending. And although the evidence is that the "relationship with [Person B1]" indeed went on, I am dealing with him for five instances ---

MR ARSHAD: Indeed. Indeed.

JUDGE DURHAM HALL: --- of course, plus the assault by penetration.

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A MR ARSHAD: Indeed. As your Honour has rightly identified, that is on the very first paragraph of the document,

JUDGE DURHAM HALL: Grateful to you.

MR ARSHAD: Just if I can, just before Mr Moulson addresses – just on the totality aspect in

B case I have forgotten, it is I submit one momentary incident. I ask the court to take that into account. It was an incident that was for a very brief period of time and when you’re going to sentence Mr Basharat Khaliq, we ask that there be some modest reflection and that is as far as I can take the case on his behalf.

JUDGE DURHAM HALL: I agree with you. Thank you.

C MR ARSHAD: Thank you.

JUDGE DURHAM HALL: Very much indeed. Mr Moulson, thank you. Very helpful document.

MR MOULSON: I’m most grateful. Then very briefly may I place some matters in the other

D domain please as to the incitement as a fact. One incident of sexual behaviour as a result of that and of course Mr Akhtar faced with one count of rape. He was convicted of it. But about that rape, there was no violence or threat of violence, no physical injury.

We of course acknowledge the moving testimony given by the complainant [Person A3] about the effect of the overarching offences upon her. We do not, repeat do not,

E diminish that for one moment. But those are relevant factors.

Mr Akhtar has no relevant previous convictions for sexual offences. Your Honour, this will be his first custodial sentence. We know your Honour will bear fully in mind the principle of totality. Unless I can assist further, your Honour, those are my submissions.

JUDGE DURHAM HALL: Mr Moulson, there’s been a trial and the jury have spoken.

F MR MOULSON: Yes.

JUDGE DURHAM HALL: You can’t say any more.

MR MOULSON: Quite so.

JUDGE DURHAM HALL: I regret. There we are. Thank you.

MR MOULSON: Thank you, your Honour.

G MR FRIEZE: I appreciate of course that I can and need to say very little at this stage given this has been a trial as your Honour observed. You will have in mind, I know, the evidence against Naveed Akhtar who is to be sentenced for two offences of rape in circumstances where the jury must have found that he was aware of [Person A1]’s vulnerability and that he provided her with drugs and alcohol amongst other (inaudible).

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So far as the guideline is concerned, I know your Honour has the point, so I won't labour individual submissions. But so far as he is concerned, I concede that this is a high culpability offence because of the inevitable finding that he used drugs and alcohol. I do submit that on a reasonable view, looking at this in its overall context and having in mind the context of other similar cases that this is properly characterised as a category 2 offence. But I'm conscious that the ranges are wide and that your Honour can't divorce what he did from the context of what he knew in relation to [Person A1]'s overall situation.

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I do submit that the powers – sentencing powers within category 2 given the range are more than adequate to address the aggravating features in a case like this. As far as personal mitigation is concerned, he is a married man with three children, a teenager and two children under 10. He has no convictions for offences of this nature and he has never been to custody before. This will be his first sentence. I invite your Honour to have regard to the period of time which he was involved with [Person A1]. The evidence that she and [Person I1] both gave about the context of their contact.

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Miss Beattie has now provided me with a Sexual Harm Prevention Order, the terms of which I'm completely satisfied. So, in due course, I consent in his case to the making of that order and I agree entirely with Mr Moulson that it is appropriate to make it without further order, given the likely registration period apart from anything. Unless I can assist further, those are my submissions on his behalf.

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JUDGE DURHAM HALL: Thank you as ever, Mr Frieze. Yes, Mr Bell, please.

MR BELL: If it please your Honour, on behalf of Parvaze Ahmed, he understands and appreciates a very significant and substantial sentence awaits him. But notwithstanding that reality, may I if I can make some submissions in relation to the approach that your Honour ought to take in relation to the sentencing guidelines.

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There are really just two observations to make without, as it were, duly repeating that which has already been said. But the submission that I make in relation to category is that there is sufficient sentencing powers and range within that category such that your Honour does not need to elevate it to a category 1 starting point. But just perhaps encapsulating my submission really shortly in this way, I submit it's an upper category 2 or lower category 1 depending at which point your Honour inserts the aggravating features.

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Turning directly then to culpability, to make my second point on the sentencing guidelines, your Honour there's really just one point of issue which is not necessarily in the end a significant point, but I make it as a point of fact because of the evidence that was put forward at trial. In relation to the issue of ejaculation, my recollection of the ABE and indeed

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A the evidence is that because of the consumption of cocaine, ejaculation was difficult. I don't say impossible but difficult. In any event, I don't recollect that positive evidence of that was adduced and so accordingly I submit, it cannot then feature as part of the aggravating features. That's the short submission on that point.

B But in the generality of this case, the grooming, the drugs, the alcohol and so on, your Honour it's a calibration that could be made without heavy or undue reliance on that point. Turning then briefly if I may to the general nature of the conviction and without in any way seeking to travel either behind the jury's verdict or indeed the statement from the complainant, I simply as it were headline the following points.

C It is one complainant; it is at a time when this defendant was in I believe his mid-20s. There is a complete absence of any suggestion of violence or threat of violence and of course, the conceptual nature of grooming is in a sense about some form of psychological relationship. But I submit that the absence of or threat of violence is a significant feature for your Honour to take into account in terms of the ultimate calibration of sentence.

D Moving away from those matters and just dealing lastly really with the defendant's personal circumstances as they are now, he is as your Honour's already heard age 36. He is a married man. He has a young daughter. Outside of this allegation and this conviction or these convictions, there is no history of any suggestion of sexual offending. Pausing briefly if I may and just touching on the ---

E JUDGE DURHAM HALL: Sorry about that, it's technical issues.

MR BELL: I totally understand. We all trust Mr English.

JUDGE DURHAM HALL: It's just a crackling to the link in court 3. I'm sorry we can't – we'll keep our voices up and try harder. Thank you.

F MR BELL: Your Honour, I was just touching very briefly sort of gently as it were on the issue of the need to keep any Sexual Harm Prevention Order proportionate given the length of the sentence and the length of the registration period and so on. I'm grateful to the Crown for, as it were, making that provisionally for the exclusion of his own children, those that he might have cared for.

G But lastly, your Honour, I simply submit on this defendant's behalf that of course he's been convicted of an extremely serious and grave matter, but when one looks at specifically that which he did and specifically the interaction that he had with the complainant, there may just be a basis to temper a sentence that your Honour might ordinarily pass. Your Honour, unless I can assist any further, that really is the plea mitigation.

H JUDGE DURHAM HALL: Thank you. Miss Kelly.

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MISS KELLY: Your Honour has my sentencing note.

JUDGE DURHAM HALL: I do, thank you.

MISS KELLY: And also, I know your Honour has had sight of the four references attached to it.

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JUDGE DURHAM HALL: Very grateful in each case. Thank you.

MISS KELLY: Your Honour, in relation to the sentencing guidelines and the submissions made by the prosecution, without wishing to repeat that which has already been said in relation to count 17 and the harm category, I endorse those comments made already by my learned friends as to whether or not this should be such as to be elevated from category 2 to category 1 in the circumstances of this case.

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It is conceded of course on Mr Hussain's behalf that category 2 is the correct category because of the violence on the evidence used or threatened over and above that required to commit the offence. But whether or not that should then elevate it into category 1, (inaudible) behalf, the sentencing powers are easily met by that range that's already there present in category 2.

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As far as culpability is concerned for count 17, whilst the evidence is that she was at his home at [REDACTED], I would submit that there wasn't a significant degree of planning for him to have raped her in that particular count. It wasn't an offence committed with others; the evidence is that he was alone. No one else was around when that offence was committed.

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Whilst there is evidence that the victim [Person A] used drugs and alcohol at that home, I do submit that there isn't clear evidence that that was a purpose of his to use those drugs and alcohol to facilitate the offence rather than her just using them at the time the offence was committed.

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And of course, your Honour will have in mind that that particular count represents the first offence of that kind for which he has been convicted. There was no violence on the evidence used towards her before that. In relation to count 20, I know your Honour already had the point that that is an attempted rape and therefore, the fact that it was an attempt ought to be reflected in any assessment of harm caused in that particular incident.

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The evidence was that he only got as far as pulling down his lower garments as hers and there's no evidence relating to the exposure of any genitalia or touching of that in relation to that attempt. Of course, I have to concede on the evidence that was said to be a violent incident interrupted, but of course I know your Honour has the point in how that should be

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A reflected in any level of harm. Culpability, your Honour has my point that I have written in my written document.

Of course, the very last paragraph or word in my sentencing note is totality. I know that your Honour will reflect that when considering there are two offences and I think we've gone off. Shall I wait? I know your Honour will reflect that when considering the overall offending in relation to counts 17 and also 20.

B In respect of other observations and personal mitigation, these offences took place when he was in his mid-20s. He is now 32. He has no cautions or convictions recorded against him since these offences in counts 17 and 20, and no previous similar offending recorded against him before or since.

C The last conviction or caution recorded against him was the caution for cannabis possession in 2005. He has not had any experience of custody previously to any sentencing imposed upon him in the past. Prior to today, he had been in a relationship since 2011 with an adult female who he had intended to marry and your Honour having read those four references placed on the judicial case system and before your Honour on his behalf, they provide good examples of the positive side to his character. Different of course to that presented in relation to these incidents for which he now falls to be sentenced.

D Finally, in respect of the Sexual Harm Prevention Order that has been proposed, to be proposed ---

E JUDGE DURHAM HALL: Shall we deal with that sort of thing together later, thank you.

MISS KELLY: Thank you.

MISS HERTZOG: Well, I know your Honour has read my document and my submissions on sentence and has also had the opportunity of reading the psychological report ---

F JUDGE DURHAM HALL: Thank you.

MISS HERTZOG: --- of Mr [REDACTED] which was drafted in March of last year and I know your Honour has those. I apologise for any repetition of the submissions that are in my document. I think it's important that Mr Ali hears what is to be said on his behalf.

G As your Honour knows, of course, Mr Ali is in a different category to those that are in the dock with him. He falls to be sentenced in respect of one count of sexual assault. If I could please first of all deal with my submissions as regards the guideline. In my submission, this case could properly be regarded as a category 3B case with a starting point of a high level community order with a range of a medium level community order to 26 weeks' custody.

H Dealing first of all please, your Honour, with harm. In my submission as already said, this case falls into category 3. I would say that the factors outlined in categories 1 and two

A are not present in Mr Ali's case and therefore it would fall within category 3. Importantly, in his case, the touching was over clothing. There was no touching of the naked genitalia or naked breasts. It seems on the evidence that we've heard that the incident seemingly lasted a matter of seconds. It certainly could not be said to be prolonged or sustained in my submission.

B There was no additional degradation or humiliation of the complainant during the commission of this offence, over and above of course that which is contained within the offence itself. Whilst I have to accept on Mr Ali's behalf that [Person A3] was of course a vulnerable young lady, in my submission there is no evidence that the court has heard that the defendant would have been aware of her position at the time.

C On the face of it when he met her, and we know in relation to this offence it was October 2010; [Person A3] would have been a lady of 17 years and three months at the time. He himself would have been 23 years old, five years her senior. The evidence that we heard from [Person A3] was clear that she had met Zeeshan Ali certainly once or maybe twice before this incident, and in relation to those meetings, only ever said hello or goodbye to him. There was never any conversation between the parties.

D She gave clear evidence that he was not a regular attender at [REDACTED]. The court did not hear any evidence that he attended at that address with any of the other men who he sits with in the dock today who were aware of her personal circumstances and the fact that she was indeed a looked after child and still in care.

E For that reason, in my submission it would be unsafe in his case to draw the inference that he was aware of her personal circumstances of being a vulnerable young lady. And of course, in order to draw such an adverse inference against Mr Ali, your Honour must be sure that he was aware that she was vulnerable. In my submission, on the evidence your Honour could not (inaudible). For those reasons, in my submission this case would fall into category 3 for harm.

F Dealing then please with culpability. I do not accept on his behalf that this is a category A case that the Crown contend for in their document. In my submission, there is no evidence that the defendant himself used alcohol or drugs in order to facilitate the commission of this defence as the Crown contend.

G It is of course right to say that [Person A3] was in drink that night and was indeed on her words one of the most drunk she'd ever been. Of course, your Honour can take that into account and use it as an aggravating feature when sentencing in respect of Mr Ali's case. But

A in my submission, there is no evidence at all that Mr Ali himself used drink or drugs in order to commit an offence.

B Your Honour heard evidence from [Person A3] that she'd been drinking for a number of hours prior to her arrival at [REDACTED]. She helped herself to drink that was freely available on the table and indeed in relation to any drugs that were consumed, she asked Mr Akhtar for two lines of cocaine. It was not this defendant who provided her with those drugs, nor provided her specifically with alcohol. And so, in my submission, it cannot properly be said in his particular case that he did use alcohol or drugs to commit this offence.

C In terms of dealing with others that assisted him in the commission of the offence, whilst of course it's right to say that the evidence is that he was two others that night, there's certainly no suggestion in my submission that he acted together with those others in order to commit this offence.

D On the evidence that the court heard, in my submission it was deemed a spontaneous act, simply taking a chance whilst in the back of the taxi. There's no evidence or certainly no suggestion that the other people he was with there that night assisted him or did anything in order to enable him to take that opportunity to be spontaneous, I submit. And so, for those reasons, I (inaudible) that your Honour can draw back from those inferences in his case and properly assess this matter as falling into a category B case.

E Dealing please, your Honour, with his own personal circumstances, as your Honour is aware, he's 32 years of age. Only 23 at the time of the commission of this offence and five years [Person A3]'s senior when, as I say, she was a little over 17 years of age at the time. Whilst it's right to say that he was heavily convicted, it's perhaps important in his case to note that he's never been convicted of any sexual misconduct beforehand. And so, it can properly be said on his behalf that such offending is wholly out of character for him.

F Your Honour has had sight of the psychological report that was helpfully prepared by Mr [REDACTED] last year. Your Honour has seen the assessment as regards his level of intelligence. Those instructing me helpfully attempted to obtain his local authority education records over the course of last year but unfortunately, due to the lapse of time, those records have either been lost or destroyed.

G They were, however, able to make contact with a former teacher who was able to confirm that he had a learning mentor whilst at school because he suffered – well, was deemed to suffer from learning difficulties. It may be, your Honour, and I don't put it any higher than this, that those difficulties may have played their part in the commission of this offence. Your Honour, of course, will make of that what you will.

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In terms of dealing with the effect of these proceedings please on the defendant, in my submission these proceedings have themselves proven to provide a punitive element to him, over and above any sentence that your Honour can impose today. Through no fault of his own and I lay the blame at no one's door, but through no fault of his own, these proceedings have been delayed and protracted.

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As a result of unfortunate reporting in the press, importantly the juxtaposition of him and his image alongside inflammatory headlines, as your Honour knows he has been insulted in the street and called a rapist, an allegation that was never levelled against him.

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Bricks have been thrown at his home, at his windows, the home that he lived in and shares with his mother and father. That has caused them considerable distress and likewise to him. As your Honour knows already, his brother was approached at his place of work where he's a manager and holds a position of responsibility with people brandishing the newspaper and calling Mr Ali a rapist. This has caused him and his family considerable distress and would add of course as a punitive effect of his involvement in the commission of this offence.

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He has been engaged to a lady in the local area for some time and due to marry her this year. That marriage may have to be postponed or delayed dependent of course upon the outcome of today's proceedings. But in my submission, your Honour, given the nature of the offence in his particular case, given the guidelines, his personal circumstances and the distress caused by the proceedings thus far, your Honour could properly draw back from an imposition of an immediate custodial sentence in his case and explore constructive alternatives with the probation services, which I invite your Honour to do.

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If your Honour is against me, I simply ask your Honour to be as lenient as possible, commensurate of course with your Honour's public duty and the seriousness of the offence in this particular case. I will of course address your Honour later in relation to the order sought by the Crown.

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MR WILSON: Your Honour, there is apparently no real mitigation after a trial in a case like this, but there are maybe just a few points which your Honour may take into account in the case of Kieran Harris, and these are they. His age at the time of the offence. He was 20, [Person A3] was 17 and a half. Secondly, the dates of the offences, eight years ago and it involved four visits over a period of two to three weeks after which visits ceased. Thirdly, his circumstances have changed since these offences and he now has two children. One is three and one is eight.

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The fact that he has nothing relevant recorded against him. The references that your Honour has. The fact that he wasn't alleged to be a groomer or part of the grooming set and

A therefore wouldn't have been aware of [Person A3]'s background. And finally this, in terms of the guidelines, in my submission both offences, count 22 and 23, are characterised as 2A. I have nothing more to add.

JUDGE DURHAM HALL: Thank you, Mr Wilson.

B MR DALLAS: Your Honour, on behalf of Fahim Iqbal, it is in my submission an unusual set of circumstances. Whilst, of course, he's aiding and abetting in principle and the guidelines talk about offenders acting together with others to commit the offence, that of course must be so.

C But this is distinct from a case of gang rape which those guidelines would obviously include in the sense that he himself is not accused of rape as a principal and that the personal relationship he had with [Person A3] was accepted to be, as she maintained and the Crown accepted, consensual both before and after whatever it was he did by way of aiding and abetting.

D As to the degree of planning, if any, I am completely of course at the mercy of the court as to what findings if any may be made in that respect. There are, of course, a number of ways in which he may have aided and abetted this offence, which may range from having agreed beforehand to do this or simply the offence having taken place opportunistically, he then encouraged, aided and abetted in that form. There's been a trial. I can't address you beyond raising those points. At the end of the day, I accept the court has to sentence on the
E very basis that it considers appropriate to the evidence.

One thing however I respectfully submit is clear on the Crown's evidence, whatever he did of a criminal nature was clearly not for his own personal gratification and was instantly regretted, in the sense that on [Person A3]'s evidence, he did all he could to mitigate
F the obvious distress caused by what had gone on in the various ways which she described. Clearing everybody out of the flat, comforting her, apologising, avoiding Harris in the future, and so on and so forth. And of course, before – immediately before the incident, he had sought to protect her as well.

In terms of the guidelines and aggravating features, the rape itself was said by her to
G have been fortunately very brief in the sense that she realised very quickly something was wrong and Harris desisted as soon as she told him to. There was no ejaculation, there was no use or threat of violence by the defendant Fahim Iqbal or indeed by the principal at the time of the offence.

H In so far, I don't submit for a moment that he wasn't – she wasn't particularly vulnerable at the time. But echoing an earlier submission, I would ask the court to bear in

A mind that firstly, this defendant is not a groomer. He's not a (inaudible) a course of conduct and he had met her for the first time that night on the one night when he committed an offence. There is no evidence that he was or could have been aware of her particular vulnerability or detailed history at the time.

B Of course, [Person A3] said that both she and he had been drinking, but there is no evidence that he was involved in getting her drunk for the purpose of committing rape that was incidental to that. All this investigation happened whilst he was serving a sentence as he still is because of extensions caused by repeatedly being caught with telephones in prison. He now finds himself facing a sentence when his existing sentence is just about to end on the

C 8th of March. That will be particularly hard for him.

He's particularly – he has a four year old daughter who he cannot now see and he has, because of misunderstandings about what he was actually charged with, been having a very hard time in prison and has had to be moved to different wings because people have failed to realise he was or don't care whether he was or not a groomer or someone who has been

D sexually assaulting underage victims. In his case, the incident occurred when [Person A1] was 17 and a half and he was 19 and a half. He's the youngest defendant with the closest age difference.

His own offence was unusual and very distinct from the others. I would submit that this case is in his case category 2/three and that the – such elements of the culpability that

E your Honour finds as such has made this borderline A/B. I don't know if I can assist further other than on the ancillary order which we'll deal with later.

JUDGE DURHAM HALL: Thank you. Very helpful. As all of you have been. Yes, Mr Ferm.

F MR FERM: Overnight, Mohammed Usman's mother has had the difficult task of putting her thoughts together about the present situation and putting them down on paper. And so it was that just before the court sat this morning, I was handed the document she prepared. May I hand it in, please?

JUDGE DURHAM HALL: Certainly, Mr Ferm. I completely understand.

G MR FERM: Before your Honour reads that document, and I'll ask you to read it when I come to his personal circumstances, may I please mention a few observations to put his offending – he faces two counts of course – in common text. He was the last defendant to be involved. [Person A1] was around 18 years of age at the time. You'll recall that the indictment was amended as to date and the general principal, I ask you to give him the benefit

H of the doubt about that. There is no evidence at all that he knew anything about the way in

A which [Person A1]'s life had developed up to that point and therefore, he was likely treated in your directions to the jury as not someone who could be said to be involved in grooming.

I know what he faces is serious enough, but it's important that it should be put in context. He did not supply her with drugs, and she made that clear in her ABE interview. He was himself. Age 23 then, who had his own problems with cocaine and alcohol addiction. Chapters 43 to 53 inclusive in the sentencing guidelines do not apply in his case, I respectfully submit.

B But for the fact that there are two offences here which I have to face on his behalf, I would otherwise have submitted that this was in category 2B. It probably is still an **C** aggravation, however, because of the two offences. It was a short period of time after the 30th of July that their lives moved apart and he went on to try to make his own life better. It wasn't easy. In his teens, he became addicted to cocaine.

D His last offending was when he was 19. Apart from what he now stands to be sentenced for, which has come back into his life after so many years to confront him, he has never committed any further offence from the point when he got over his addiction with help. That was from about 2012 onwards. I now ask you please, your Honour, before I conclude with some further remarks, if you would cast your eye over and take on board what his mother has written.

E JUDGE DURHAM HALL: A moving testimonial from a mother who perhaps like the victims in this case is deeply affected and grieving.

MR FERM: It's a by-product to what has, as I say, resurfaced in his life, respecting as I do at this point the jury's verdict. He is otherwise a fully rehabilitated man. Not only did he get over his addiction and keep out of trouble, but he worked some years for Next before his mother's condition became such that she required a carer and he stood in and shouldered that obligation. From about 2017 onwards, early 2017.

F He gave up his work and he has a positive side to his character also in the years that have elapsed since then. You will see the reference in his mother's letter to the Human Relief Foundation. I was able to speak yesterday, I hope your Honour will take it from me, to **G** [REDACTED] who is a senior manager at that foundation. Presently unable to attend the office because of ill health, fortunately temporary, and he told me that for every year bar one since 2012, the defendant Usman has given 30 full days of his time every year and frequently more to engage in charitable fundraising, most latterly for the Rohingya refugees from persecution in Burma.

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A In the course of that, he's travelled up and down the country with [REDACTED] and been of invaluable assistance. One can only hope that when his sentence is done, the inevitably negative effects of imprisonment will not set him back to square 1, that he will retain the decency and the law abiding characteristics which he has striven over the last seven

B or eight years to obtain and maintain, and in the circumstances I put that forward as some mitigation. I know it won't weigh very heavily on the scales, but it has to play its part. I ask you therefore, again in common with the others, to make the sentence on him truly reflective of the context and such mitigating factors.

JUDGE DURHAM HALL: That's fine. I'm going to move on now.

C MISS MELLY: Yes. There's just a couple of points that I just – I will make it very brief. But the fundamental one that we think the Crown is obliged to make at this point is that when one looks at the guideline and the issue as regards the victim, in particular vulnerability, it may just be of assistance if we remind the court that that factor comes under the

D categorisation of harm. It does not come under the characterisation of culpability. So, this is not about a separate issue of the defendant's awareness. This is about an assessment of harm.

We therefore reiterate the points that we've made already, which is that the severe psychological and indeed physical harm in combination with the victim's particular vulnerability in the cases of both complainants are two category factors which we submit put this into category 1. Awareness of vulnerability would be an issue in respect of culpability and that's not where it's been placed in the guideline.

E JUDGE DURHAM HALL: I hadn't taken much note ---

MISS MELLY: No.

JUDGE DURHAM HALL: --- of those submissions.

F MISS MELLY: No. I'm sorry, I didn't think it needed ---

JUDGE DURHAM HALL: But I didn't want to interrupt counsel.

MISS MELLY: No.

JUDGE DURHAM HALL: Or start a debate with them.

MISS MELLY: No.

G JUDGE DURHAM HALL: That they were bound to lose.

MISS MELLY: I'm sorry for mentioning it in that way at that stage, but I just felt that it was necessary to put that on the record.

JUDGE DURHAM HALL: I think the Court of Appeal will much appreciate that.

H MISS MELLY: Thank you. If I can deal with any other points that have been raised, then of course I'm in a position to do so. I should just say, and I'm sorry for mentioning this also,

A but in respect of Zeeshan Ali, the report of Mr [REDACTED] that's been relied upon by the defence was subject to much debate in the first trial. A very senior well respected registered clinical psychologist made reference to the fact that Mr [REDACTED] hadn't adhered to the professional guideline and that Mr Ali's performance was such that he'd deliberately attempted to present himself as cognitively impaired.

B JUDGE DURHAM HALL: Well, I didn't want to make it any worse. Thank you. But I'm grateful for that. The point is I don't think Mr Ali's problems with intellect stopped him going to [REDACTED] ---

MISS MELLY: No.

C JUDGE DURHAM HALL: --- to -- carrying on as he did, getting into trouble on a regular basis. So, I think we'll leave that ---

MISS MELLY: Yes. I say no more about it. It may be that there was issues within the school system but it would be wrong I think, as we had that report prepared last time, to leave that going unsaid.

D JUDGE DURHAM HALL: Well, I didn't wish to divert Miss Hertzog in full flow.

MISS MELLY: No. No.

JUDGE DURHAM HALL: Thank you.

MISS MELLY: Are there any other aspects about how ---

E JUDGE DURHAM HALL: No. No. No.

MISS MELLY: No. Thank you.

JUDGE DURHAM HALL: No. I don't think any defence counsel will take my silence as acquiescence to their submissions. But you have been very helpful, fear not.

(Sentencing Remarks – see separate transcript)

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