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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

MICHAEL BEATTIE

Ms Rosemary Walsh KC (instructed by McCallion Jones Solicitors) for the Appellant
Mr Ian Tannahill (instructed by the Public Prosecution Service) for the Respondent

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Before: Keegan LCJ, Fowler J and Kinney J

KEEGAN LCJ (*delivering the judgment of the court*)

The complainant is entitled to automatic anonymity in respect of these matters by virtue of section 1 of the Sexual Offences (Amendment) Act 1992 as amended.

Introduction

[1] The appellant with leave of the single judge appeals against the imposition of a Sexual Offences Prevention Order ("SOPO") made by His Honour Judge Irvine KC ("the trial judge") at the Crown Court at Craigavon on 26 May 2023. The SOPO was made subsequent to the appellant pleading guilty to six counts of sexual activity with a child between the age of 13 and 16 years, contrary to Article 16(1) of the Sexual Offences (Northern Ireland) Order 2008 ("the 2008 Order") and two counts of an adult causing or inciting a child between the age of 13 and 16 to engage in sexual activity, contrary to Article 17(1) of the 2008 Order.

[2] The trial judge sentenced the appellant to a total sentence of four years' imprisonment in relation to counts 1-6 and a two-year custodial sentence in relation to counts 7 and 8, all terms to run concurrently resulting in a total sentence of four years split equally between custody and licence.

[3] In broad terms, the SOPO was made for five years and prohibited any contact with children under 16 of either gender or the victim who is now over 18. By

operation of law a disqualification order was also made which bars the appellant working with children for a period of five years.

[4] The single judge refused the application for leave to appeal against the length of sentence and that application has not been renewed. However, the appeal is brought with leave of the single judge in relation to the SOPO on two bases, firstly that it was wrong in principle to impose the SOPO and secondly, in the alternative, that three of the four terms were wrong in principle and disproportionate.

The facts of the offending

[5] In summary, the appellant was 38 years old at the point of the offending behaviour. He ran a farm which operated livery stables. The victim was aged 15 years old at the time of the offending and kept her horse at the farm. The appellant had known the victim and her family since she was eight years old. The offending commenced when the victim described the appellant approaching her and kissing her on the neck.

[6] Approximately two weeks after this first incident, sexual intercourse took place. This occurred on five further occasions and was at times preceded by sexual touching and digital penetration. The victim reported that the appellant had said he would leave his wife and that he would want people to know about them eventually but not at that stage as she was too young. The offending stopped four months after it began when a friend of the victim had seen them kissing.

[7] The appellant denied the offending during police interview and initially entered not guilty pleas. On the first day of trial, he indicated his intention to enter guilty pleas to all counts.

[8] As part of the sentencing exercise we note that it was accepted that there were aggravating features in this case, namely the disparity in age, the abuse of trust and the harm to the victim. Against that the appellant came before the court as an individual who had a clear record with simply one driving conviction dating back to 2000. He had worked hard and been employed all his adult life, was married for over two years at the point of sentence and had a son who was born in November 2022. A significant feature of this case was that the appellant's wife remained supportive of him.

The relevant legal framework

[9] The provisions governing the imposition and enforcement of a SOPO are contained within Part II of the Sexual Offences Act 2003 ("the 2003 Act") at sections 104-113.

[10] Section 104 of the 2003 Act makes it clear that statutory test must be satisfied in relation to both the imposition of such an order and the individual terms. The relevant parts of the section provide as follows:

> "**Sexual offences prevention orders: applications and grounds**
>
> (1) A court may make an order under this section in respect of a person ("the defendant") where any of subsections (2) to (4) applies to the defendant and—
>
> (a) where subsection (4) applies, it is satisfied that the defendant's behaviour since the appropriate date makes it necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
>
> (b) in any other case, it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
>
> (2) This subsection applies to the defendant where the court deals with him in respect of an offence listed in Schedule 3 or 5."

Both offences in this case are within Schedule 3.

[11] Section 103(6) of the 2003 Act defines the threshold of serious sexual harm as follows:

> "Protecting the public or any particular members of the public from sexual harm from the defendant, means protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3."

[12] In this jurisdiction SOPOs are regularly applied for and granted by the courts in cases involving serious sexual offences. There are several Court of Appeal authorities that have dealt with whether such an order was appropriate that we have been referred to which we summarise as follows.

[13] First *R v O'Hara* [2021] NICA 1, considered an appeal in relation to the imposition of a SOPO. Para 37 of this decision highlights the fact that any court must be satisfied that it is necessary to make a SOPO for the specified purpose. It is insufficient for the court to conclude that a SOPO is merely desirable or appropriate in the circumstances. Furthermore, *O'Hara* reiterates that the statutory purpose should be at the forefront of the court's deliberations and conclusions at all times.

[14] This case was preceded by *R v Shannon* reported at [2008] NICA 38. Some helpful guidance is found at paras [18] and [19] of that decision drawing upon and adopting principles from the regime which prevailed in England & Wales at the time as follows:

> "[18] As noted earlier the provisions of section 229 of the Criminal Justice Act 2003 do not apply in this jurisdiction however, these authorities assist in identifying the breadth of behaviour which can attract such an order and tend to suggest that the scope of the provision is relatively wide.
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> [19] The test to be applied, as identified by Hughes LJ in *The Queen on the Application of the Commissioner for the Metropolis v Croydon Crown Court* [2007] EWHC 1792, involves an assessment of the level of risk of recurrence, first, and of the level of risk of harm if recurrence there be, second. The second exercise involves assessing how much harm is likely to be done and whether it can properly be called serious or not, and if it were the case that only a small number of people would be likely to suffer such harm that would be a relevant factor in assessing the risk."

[15] A further case in Northern Ireland of *R v McCormick* [2015] NICA 14, also dealt with the question of the proportionality of any order. In particular, in that case Morgan LCJ referred to the effects upon family members as follows:

> "In cases where the offender has children of his own or within his extended family, where there is a risk that offences against them may be committed then those children may need protection. But if there is no sign of a risk that he may abuse his own family it is both unnecessary and an infringement of the children's entitlement to family life to impose restrictions which extend to them."

[16] The current edition of *Rook and Ward Sexual Offences Law and Practice 6th Edition* is helpful as to this area of law albeit in England & Wales this type of order has been

replaced by what is called Sexual Harm Prevention Orders ("SHPO") and Sexual Risk Orders ("SRO"). Notwithstanding the different statutory regime which now England & Wales there is helpful reference to the previous jurisprudence in this area which continues to inform the content of any orders made which we utilise as follows.

[17] Specifically, para 39.24 of *Rook & Ward* refers to the necessity and proportionality evaluation in the following way. First reference is made to a guide case of *R v Collard* [2004] EWCA Crim 1664 which is worthy of mention. In *Collard* the Court of Appeal set out the high test that had to be satisfied before a court could legitimately impose a SOPO. The authors state that "if applied appropriately, the test should result in prohibitions (where required at all) that are necessary, reasonable, proportionate and capable being both understood and sensibly enforced." Interestingly, the authors also opine that "it would appear incontrovertible by reference to the number of successful appeals against behaviour orders of this kind, imposed often without opposition at the point of sentence, that the *Collard* test is often not, in fact, applied with any, or sufficient rigour. In *R v NC* [2016] EWCA Crim 1448, the court also emphasised that prohibitions must not be oppressive."

[18] Para 39.25 of *Rook & Ward* also helpfully condenses the *Collard* test as follows :

> "(i) A prohibition may be imposed only if it is necessary for the purpose of protecting the public or any particular members of the public from (serious) sexual harm from the defendant. This is a high threshold. It is not sufficient that it may be considered desirable to impose such a prohibition. There must be material before the judge on the basis of which he can reasonably conclude that a prohibition is necessary for that purpose.
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> (ii) The court must consider the number of offences, their duration, the nature of the material, the extent of publication and the use to which the material was put.
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> (iii) The court must have regard to the offender's antecedents, his personal circumstances and the risk of his reoffending.
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> (iv) Where the court makes an order, its terms must be tailored to meet the danger that the offender presents.

(v) The order must be proportionate to the danger presented. In this respect, the judge must have regard, in particular, to the provision of the European Convention on Human Rights and the Human Rights Act and, in particular, to private life under Article 8 of the Convention. The above test is consistent with the statutory requirement that the only prohibitions that may be included in a SHBO are those that are necessary for the purpose of protecting the public or any particular members of the public from sexual harm."

To our mind these four principles hold good and should be applied by judges considering the imposition of a SOPO in this jurisdiction.

[19] In addition, the aforementioned section of *Rook and Ward* usefully reminds a court that the nature of the offending is relevant to the exercise making a distinction between browsing type offences over the internet or contact offences. In this regard para 39.46 of *Rook & Ward* refers:

> "The imposition of a non-contact prohibition is unlikely to be challenged in the context of an offender who engages in contact offending. The justification for such a clause in respect of browsers is more problematic and there are many examples of non-contact prohibitions being overturned in what might be termed pure browsing situations. Such a prohibition may, however, be justifiable if there are grounds upon which the court can conclude that there is a significant risk of the offender progressing from non-contact to contact offending."

[20] The authors also refer to the fact that the gender of the victim may be a reason for tailoring conditions. At para 39.45 the authors refer to "where what might be termed the offender's target gender is apparent, there will be no justification for prohibiting contact with persons of a different gender (R v *Morris* [2013] EWCA Crim 467)."

[21] Finally, we note that the case of *R v Smith* [2011] EWCA Crim 1772 emphasised the need to take account of the offender's family circumstances and the risk, if any, that the offender might pose to members of the family, balancing against that the entitlement of, for example the offender's own children to a family life. As the balance may change over time, the inclusion of a reference to the approval of the social services may be critical to cater for the unforeseeable.

Consideration

[22] As the above authorities provide, we must consider the circumstances of this case to determine this appeal. These are that this was serious offending against a child, but over a short period of time. The appellant is in an unusual position in that he maintains the support of his wife, he also has a son. He has a clear record, and he has pleaded guilty to the offending albeit at a late stage. The victim impact statement is testament to the profound effect this offending has had upon the victim.

[23] With this factual matrix in mind it is instructive to note the probation report in relation to the appellant. He has been assessed as presenting a low likelihood of general reoffending over the next two-year period, this is based on the following:

(i) Other than a driving related conviction in 2000, the appellant has never previously come to the attention of the criminal justice system.

(ii) Other than the index offences, there is no evidence of a pattern of this type of behaviour.

(iii) The appellant's experience with the criminal justice system in relation to these matters appears to have been a salutary one.

(iv) The appellant experiences considerable stability in his life, including absence of any substance abuse issues, support from his family and stable accommodation.

(v) The appellant presents as having good insight into the impact of his behaviour on the victim, her family and his own family.

[24] Given the nature of the appellant's convictions further assessments were completed. These are explained in the pre-sentence report. The appellant's composite assessment using the Stable 2007 and Risk Matrix 2000 places him in the low priority category for supervision and intervention at this juncture. That said the probation officer identified other factors directly relating to his sexual offending which we cannot ignore. These include:

(i) A clear lack of internal controls during the period of offending.

(ii) Evidence of lack of victim insight at the time of the offending.

(iii) Significant risk taking, and impulsivity related to this offending.

(iv) The appellant used his position of power and trust to engage in sexual activity with a 15-year-old.

It was probation's assessment that these factors, if left unaddressed, could contribute to further sexual offending.

[25] We also note the probation recommendation that certain conditions of any probation order or post custodial supervision would be necessary for any risk management in the community including:

(i) You must not form an intimate relationship with any male/female where in doing so, you have access to any children under 18 years of age unless verifiable disclosure has been made.

(ii) You must permanently reside at an approved address.

(iii) You must not have unsupervised contact with children under the age of 18.

(iv) You must actively participate in any programme of work recommended by your supervising probation officer designed to reduce any risk.

(v) You must undertake work, including voluntary work, as approved by the probation officer.

[26] Proposed terms for the SOPO are contained in the probation report and these were the terms that were put to the court and made an order. The terms are fourfold dealing firstly with the appellant not having any access with young persons under 16. Secondly, not undertaking any activity in a paid private voluntary or charitable capacity which affords access to young persons under 16. Thirdly, providing police access to the home and, fourthly from having any contact with the victim either in person, via third party or by any means whatsoever.

[27] We note that the earliest release date for the appellant is 26 May 2025. We also note that by virtue of the order made by way of SOPO that the appellant has not been able to avail of the full range of supervised contact with his son in the prison. We understand that while he has contact with his son when his wife attends, he cannot avail of monthly child/family focused visits and additional seasonal events in the prison.

[28] The SOPO was made to take effect on the date of sentencing 26 May 2023. It is in this context that we assess the arguments that have been made so eloquently by Ms Walsh KC.

[29] The appellant's principal appeal point was that a SOPO should not have been made at all. In deciding upon this we have carefully considered the circumstances of this case. In favour of the appellant, he did engage in serious activity but over a very short period with one victim and he now has the benefit of protective factors not least the support of his wife. Against that he did not meet the case against him until a very late stage and the probation report has indicated some potential triggers

which would lead to him posing an ongoing risk to post-pubescent children in terms of their assessment. We also note the very serious harm caused to the victim by these offences which are of a contact nature.

[30] Accordingly, whilst the analysis is finely balanced, we cannot say that that the trial judge was clearly wrong or failed to give adequate consideration to a significant factor in deciding to impose a SOPO. On an overall view of this case, given the predatory nature of the offending this was an order that was justified and necessary for the purpose of protecting members of the public from serious sexual harm.

[31] The nature of a SOPO (including the prospect of imprisonment if any breach occurs) makes it distinct and different from potential licence conditions. Hence, Ms Walsh's point that the mischief of the order could be achieved by licence conditions while superficially attractive does not win the day. Accordingly, we dismiss the first and primary ground of appeal and affirm the imposition of a SOPO in this case.

[32] As the prosecution recognised, the alternative ground of appeal as to the terms of the SOPO has more traction. This is for a number of reasons. First, the appellant cannot be said to pose a risk to his own son or, indeed, any male children. The risk he poses is directed towards female children between a certain age. Ms Walsh estimates the age bracket to be between the ages of 11 to 15.

[33] Furthermore, the breadth of the order as originally framed clearly infringes on the appellant's family life in a way that is disproportionate to the risk that he can be found to pose to children.

[34] We would also point out that the appellant is subject to disqualification in terms of working with children and so there is already a protection in that way. Finally, given the nature of this offending and the high victim impact we will allow the prohibition on contact with the victim.

[35] Therefore, applying the lens of necessity and proportionality to the terms of the SOPO that we have affirmed in principle, leads us to the following conclusion. We will substitute a SOPO of the same duration for five years with the following conditions which we consider are necessary and proportionate:

(i) That the appellant is prohibited from having any unsupervised access, association, contact or communication with female children between the age of 11 and 16 years, unless approved by his designated risk manager and social services save for every day inadvertent and unavoidable contact.

(ii) The appellant is prohibited from denying police access to his home at any reasonable time to ensure that he is complying with the terms of the SOPO.

(iii) The appellant may not contact the victim, direct or indirectly.

[36] We are not convinced that any other condition is required, necessary or proportionate in this case.

[37] Our final word is by way of guidance. We remind practitioners that SOPO's must be tailored to the circumstances of each case and cannot be presented in a formulaic way to avoid disproportionate orders being made. Also, practitioners and judges must be cognisant of the high threshold required when considering the imposition of a SOPO which involves asking whether the order and/or terms are necessary and proportionate to the risk in play. We hope that this judgment will assist with good practice in this area.

Conclusion

[38] Accordingly, we allow the appeal only on the limited basis we have highlighted. We ask counsel to redefine the SOPO accordingly and submit the revised draft to the court within 48 hours.