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**Neutral Citation No. [2023] EWCA Crim 1546**

IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Case No: 2022/03763/B5, 2023/00440/B5



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Thursday 7<sup>th</sup> December 2023

**B e f o r e:**

**LORD JUSTICE DINGEMANS**

**MRS JUSTICE STACEY DBE**

**HIS HONOUR JUDGE DREW KC**

**(Sitting as a Judge of the Court of Appeal Criminal Division)**

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**R E X**

**- v -**

**KYI-RIECE SYLVESTER**

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**Mr J Higgs KC and Mr W Sneddon** appeared on behalf of the Appellant

**Mr J Hallam KC and Miss C Pattison** appeared on behalf of the Crown

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**J U D G M E N T**

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## **LORD JUSTICE DINGEMANS:**

### **Introduction**

1. The appellant appeals against conviction by leave of the single judge. He also applies for an extension of time (211 days) in which to renew his application for leave to appeal against sentence following refusal by the single judge.

2. The appellant is now aged 19 years, having been born on 15<sup>th</sup> September 2004. He was convicted of murder on 29<sup>th</sup> November 2022 (when he was aged 18 years) following a trial in the Central Criminal Court.

3. On 20<sup>th</sup> January 2023 he was sentenced to detention at His Majesty's Pleasure. The period of 19 years (less 443 days spent on remand) was specified as the minimum term under section 321(2) of the Sentencing Act 2020. He was also sentenced to various terms of detention, ranging from three years to 51 months on six counts of robbery to which he had already pleaded guilty. Those sentences were ordered to run concurrently.

4. The murder of Stelios Averkiou ("the deceased") took place on 1<sup>st</sup> August 2021. The deceased and the appellant were both aged 16 years at the time of the murder.

5. There is a single ground of appeal against conviction. It is that:

"The judge erred in refusing the defence application to adduce the statements of two anonymous witnesses, that they had seen the deceased acting crazy and waving a big knife before he was stabbed by the appellant, as anonymous hearsay."

6. In the proposed ground of appeal against sentence it is said that the judge should not have applied the provisions of paragraph 5A of Schedule 21 to the Sentencing Act 2020. This new

and more onerous regime did not exist at the time of the murder and therefore the common law protection against applying retrospectively a higher sentence, the appellant's rights under article 7 of the European Convention on Human Rights, and rights under article 15 of the United Nations Covenant on Civil and Political Rights were infringed.

### **Factual circumstances**

7. The prosecution case was that the appellant and his co-accused, whose name it is not necessary to give, intended to rob the deceased. The appellant was in possession of a knife which he used in the course of that robbery, which resulted in the death of the deceased.

8. The prosecution said that the appellant was associated with a gang called NPK, and the deceased with a gang called OFB. They had once been in the same gang from the Broadwater Farm estate in Tottenham, but had since become part of rival gangs.

9. The appellant had initially met with his co-accused and a man named Yasser Yusuf in Northumberland Park. At around 2 pm Yusuf had separated from the appellant and the co-accused. When the appellant and the co-accused were close to the Lordship Recreation Park, Yusuf had called the appellant and told him that there were some people sitting on the bench whom they could rob. The appellant told the co-accused and they agreed that they would rob them.

10. The deceased was sitting on a bench with Thomas Aduro and John Hayford. There were some telephone conversations between Aduro and Yusuf at the relevant time. Hayford had arrived at the park with Aduro and they had gone to sit with the deceased, who was sat in the middle of the bench. Hayford described two people wearing all black approach the bench; one was slim and one was big. The slim one was the appellant. He had a knife in his waistband. The appellant asked if they were in a gang, and they said no. The appellant asked

again, and again they said no. The appellant then said that he had seen the deceased in a video and had seen him in Bruce Grove. The deceased said nothing. The appellant then slapped the deceased in the face. The deceased stood up and punched the appellant with his right fist. It was at that stage, the prosecution say, that the appellant took out his knife and began to swing it at the deceased, who tried to defend himself by moving away. His leg hit the bench, he fell to the ground and was stabbed in the leg by the appellant.

11. A passer-by, Carole Brown ("Ms Brown") saw the appellant slashing towards the deceased's leg. She was concerned by what she had seen and she went over to the deceased. The appellant ran away. Ms Brown called an ambulance and paramedics attended along with the police.

12. The appellant and the co-accused took the deceased's mobile telephone (count 4) and also took Hayford's bicycle (Count 5).

13. The deceased was taken by helicopter to the Royal London Hospital. He never regained consciousness and he died on 10<sup>th</sup> August 2021. The cause of death was blood loss from the wounds to his left thigh.

14. At trial the prosecution adduced, as agreed facts, the evidence that the appellant had committed robberies since 2018 and that he would often carry a knife. The prosecution case was that this was evidence of a propensity on behalf of the appellant to commit robberies in that he would carry a knife, engage victims in conversation, and then use the knife to make threats. On 1<sup>st</sup> August 2021, the appellant did what he had previously threatened to other victims of robbery because he deliberately stabbed the deceased.

15. CCTV evidence, including stills and audio recordings of the 999 call were dealt with in

evidence by the officer in the case, Detective Constable Bugrum. This evidence was used to place the appellant at the scene and to show the routes of travel that he had taken. Mobile telephone evidence was used to show with whom the appellant had made contact on 1<sup>st</sup> August. There was also evidence from John Hayford, who was with the deceased when he was robbed and who also lost his bicycle. He said that he saw the appellant stab the deceased.

16. Ms Brown gave evidence. She saw the boys on the bench as well as the appellant and the co-accused. She saw the boy, who was dressed all in black, stand up, pull out a knife and begin to slash with it. She went over to the scene and called an ambulance.

17. Finally there was evidence from Dr Poole, who determined that the fatal wound was that to the deceased's left thigh. In his assessment the degree of force used was at least moderate.

18. The appellant's case was that the deceased had threatened him with a knife. The appellant pulled out his own knife and used it to defend himself. At all times he had acted in self-defence, and he had not intended to kill or to cause serious bodily harm to the deceased.

19. The appellant gave evidence. His evidence was that whilst initially they had intended to rob the boys on the bench, a decision was made to go and see some girls instead. Their route nevertheless took them past the bench. As the appellant and his co-accused walked past, the deceased said to the appellant that he knew him from primary school (which was common ground), and asked if he was part of the NPK. The appellant said that he was "cool" with them and asked the deceased if he was "Farm" (referring to another gang). The deceased did not have a chance to reply as the appellant thought that he was filming him and therefore went to grab his phone. The deceased hit him and then took out a knife and swung it at him. The appellant took out his knife. He knew that the deceased was faster than him and that if

he ran away he was likely to be stabbed. The appellant's knife made contact with the deceased in his left wrist area. On the third swing, the deceased had put his left leg forward and the knife made contact with the deceased's thigh, which was why he fell to the ground. The appellant was defending himself throughout. He thought that any injury he had caused was minor.

20. As is apparent, the main issue for the jury was whether the appellant had acted in self-defence (although there was also an issue of intention). One of the questions on the route to verdict for the jury was "whether they were sure that the deceased did not produce a knife" (question 1).

21. At trial the prosecution case was that the deceased did not have a knife with him on that day. They relied on the following: the two witnesses to the stabbing, John Hayford and Carole Brown, who did not see any knife; the fact that the appellant did not have any injuries, whilst the deceased had several stab wounds; the fact that no knife was found at the scene; the appellant's association with the "NPK" and the deceased's association with a rival gang, "OFB"; the fact that the appellant had committed a number of robberies; and that when he was interviewed, the appellant answered "No comment", which the prosecution relied on for relevant inferences to be drawn.

22. The appellant's case was that the deceased did have a knife. He relied on: his own evidence; information obtained by the police that the deceased would regularly carry a knife (Agreed Fact 7.2); the fact that the deceased was wearing a pair of football shorts and two pairs of jogging bottoms (pictures of the clothing were shown as exhibits) was consistent with him carrying a knife; the deceased was found with two black gloves and a balaclava; the deceased's friend and witness to the stabbing, John Hayford, did not give his details to police at the scene. Police attended Heathrow Airport on 29<sup>th</sup> August 2021 to speak to him after he

returned from Ghana, and he eventually provided an account to the police. The deceased's friend and witness to the stabbing, Thomas Otero, declined to assist in the police investigation; Carole Brown did not see the appellant take John Hayford's bike nor did she see the deceased punch the appellant, even though that was part of the Crown's case, which meant that she must have missed relevant matters; at the time of the incident, the deceased was on an electronically monitored tag prohibiting him from being in Harringay, which includes Lordship Recreational Park, where he died; the Home Office pathologist, Mr Simon Poole, gave evidence that he could not be sure that more than moderate force was used by the appellant; and the area surrounding the gateway into the park (where the deceased was stabbed) from the entrance at Adams Road was not searched. CCTV footage showed that the deceased's two friends had gone to that area before the police arrived.

23. The defence made an application to adduce the "anonymous hearsay" evidence (as it became termed). That application was refused by the judge. It is that refusal which forms the ground of appeal.

### **The anonymous hearsay evidence application**

24. The appellant relied on the note of Detective Constable Strachan, dated 16<sup>th</sup> August 2021, and at one time sought to adduce that before the jury, pursuant to section 114(1)(d) of the Criminal Justice Act 2003. The difficulty with that was that the police officer was reporting what he had been told by another person, which would have made it multiple hearsay evidence. It was made clear in submissions before us that the defence were willing to call the maker of the hearsay statement (Hussein Salih) as a witness, and therefore it would have simply been single hearsay evidence.

25. So far as is material, the message read:

"On 16<sup>th</sup> August I was tasked with various CCTV enquiries. At 16.05 I was entering the front path of road when a male in his early 40s came out of neighbouring number with an elderly male; they appeared to be father and son. The younger male asked if I was police and he then identified himself as Hussein Salih of the above address and his telephone number was [given]. He then related that at some point last week he was speaking with two males he knows who are local and spend their days sitting in the park 'near the café' smoking weed. One is white and the other Algerian. The white guy has a daughter that is in school nearby. On the day of the murder, they were sitting in the park near the scene. They saw the deceased acting crazy and waving around a big knife. Three black boys all dressed in black then came onto the scene and one of them pulled an even bigger knife out and got the first boy onto the ground and he stuck the knife right into him about 8 inches into his body and they fled. These two witnesses have not approached the police about this. Mr Salih was disgusted with them but would not tell me their names although it was clear that he knew. I would judge from his description that these men were probably of a similar age as Mr Salih. He also said that in Tesco the other day he was approached by some other guys he knows, and they told him that everyone knows the boys who have done it."

26. The hearsay part was that reported by the two males to Hussein Salih that they saw the deceased "acting crazy and waving around a big knife".

27. The police officer continued with inquiries and obtained some further information as follows:

"On 17<sup>th</sup> August I was tasked with various CCTV enquiries and while in the Lordship recreation ground by The Pond near The Hub I approached a pair of IC1 males drinking on a bench. I thought they may be the two males who were described to me by Hussein Salih yesterday ... who had seen the murder but not come forward to police. ... One male identified himself as Terry Hughes [his telephone number was given]. Hughes volunteered that on the day of the murder he had passed by the bench and seen three black boys chatting and walked on towards Harmony Gardens behind the basketball courts where he met his daughter. He thought the boys were probably up to no good. In the 20 minutes or so that he was in Harmony Gardens he heard police arrive and came back and saw that there had been a stabbing involving one of the boys he saw



earlier. He did not see the attackers, nor could he identify the three boys he first saw. He realised that the boy was in a poor way and walked off with his daughter. I asked him if he knew an Algerian male who hung around the park smoking, and he did not. I asked him if he knew Hussein ... and he said he did. He works ... for special needs kids. He is willing to talk to police on the above number, but first officers should text as he does not answer his phone to unknown numbers. ..."

28. It might be noted that the first conversation recorded by the police officer with Mr Salih was 15 days after the stabbing, and the second conversation was 16 days after the stabbing. The anonymous hearsay was treated as first hand hearsay because Mr Salih's name was known to the police. The judge noted that the second conversation might have been with the person identified by Mr Salih because he was white, around the park, knew Mr Salih, and had a daughter, but that conversation said nothing about the deceased having a knife.

### **The Application to adduce and the Judge's Ruling**

29. Counsel for the defence submitted that the anonymous hearsay had probative value as it supported the defence case that the deceased had a knife and that the evidence should be admitted in the interests of justice, under section 114(1)(d) of the Criminal Justice Act 2003. The application was resisted by counsel for the prosecution on the basis that it was not possible to assess the weight to be attached to the statement.

30. The judge ruled that a balance needed to be made, giving consideration to all matters set out in section 114(2) of the Criminal Justice Act 2003, other than only the probative value of the evidence. This included the circumstances in which the statement was made, whether evidence of the matters stated could be given, and the difficulty in challenging the statement. The protection afforded by section 124 of the Criminal Justice Act 2003 (matters of credibility) was not available as the identity of the witnesses was not known and that disadvantaged the prosecution. The judge determined that this was not a case where there

was no realistic scope for questioning the credibility of the maker of the statement. Taking everything into consideration, the issues surrounding credibility were decisive, and the court could not be satisfied that it was in the interests of justice for the evidence to be admitted.

### **Relevant legislative provisions and previous authorities**

31. Section 114 of the Criminal Justice 2003 provides:

"Admissibility of hearsay evidence

(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if —

- (a) any provision of this Chapter or any other statutory provision makes it admissible,
- (b) any rule of law preserved by section 118 makes it admissible,
- (c) all parties to the proceedings agree to it being admissible, or
- (d) the court is satisfied that it is in the interests of justice for it to be admissible

(2) In deciding whether a statement not made in oral evidence should be admitted under subsection (1)(d), the court must have regard to the following factors (and to any others it considers relevant) —

- (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
- (b) what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a);
- (c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole;
- (d) the circumstances in which the statement was made;

- (e) how reliable the maker of the statement appears to be;
- (f) how reliable the evidence of the making of the statement appears to be;
- (g) whether oral evidence of the matter stated can be given and, if not, why it cannot;
- (h) the amount of difficulty involved in challenging the statement;
- (i) the extent to which that difficulty would be likely to prejudice the party facing it.

(3) Nothing in this Chapter affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings."

32. As is well known, section 124 of the Criminal Justice Act 2003 deals with the credibility of the maker of the hearsay statement. It is obvious that if the maker of the hearsay statement is unknown it will not be possible to adduce evidence in relation to the credibility of the maker of that statement, unless any indications are given by the person to whom the hearsay statement is made.

33. The issue of anonymous hearsay has been considered by this court in other cases. In *R v Brown* [2019] EWCA Crim 1143; [2019] 1 WLR 6721, the main issue was whether anonymous hearsay could be adduced. The submission on behalf of the defence in that case was that it was inconsistent with the statutory provisions relating to anonymous witnesses set out in the Coroners and Justice Act 2009. The Court of Appeal rejected that submission because the Coroners and Justice Act 2009 provisions were aimed at known persons who wished to maintain their anonymity when giving evidence. In *Brown* the maker of the hearsay statement was unknown. In the case before us at least one of the makers of the hearsay statement (the Algerian) was unknown (and maybe two, if it is assumed that Mr Hughes was not the person who had made the other statement). In *Brown* a passenger on a

bus had reported, within seconds, the registration number of a car, which had been driven by an offender. That passenger had read the number from the mobile phone of an unknown female passenger sitting behind her who told her that it referred to the offender's car. The unknown female passenger could not be traced. The trial judge admitted the hearsay statement as *res gestae*, which is a common law rule preserved by sections 114(1)(b) and 118 of the Criminal Justice Act 2003, and as anonymous hearsay. The court was concerned with the second part of the ruling. At [21] in *Brown* the court identified that there was no reasonable basis for interfering with the judge's discretion to admit the hearsay under section 114(1)(d) before turning to consider the point of principle. Having resolved that anonymous hearsay was in principle admissible, at [34] the court said:

"Where the provision relied upon to admit hearsay evidence is the residual power under section 114(1)(d) to do so in the interests of justice, the fact that the protection afforded by section 124 of the Act would be ineffective because the maker of the statement cannot be identified may in many cases be a powerful or decisive reason why the court cannot be satisfied that it is in the interests of justice for the statement to be admissible."

34. In that case it was admissible because there was no realistic scope for concoction of the hearsay statement.

### **Was the Judge right to refuse to admit the Anonymous Hearsay?**

35. Mr Higgs KC and Mr Sneddon, who appear on behalf of the appellant, submit that the anonymous hearsay should have been admitted. It is possible to admit it, and taking account of the matters set out in section 114; it should have been admitted. The relevant matters were: (1) Probative value – DC Strachan's note was of extremely probative value; (2) Other evidence – there was other evidence on this issue; (3) Importance of the evidence – this evidence was in relation to the most determinative issue in these proceedings; (4) The

circumstances in which the statement was made – DC Strachan had come upon this evidence unexpectedly while conducting CCTV enquiries; (5) Reliability – It was accepted that reliability was in question because the witnesses were unknown. That said, there was nothing to suggest that the witnesses were unreliable; (6) The reliability of the evidence of the person making the statement – DC Strachan's recording of his note was not in issue; nor was there anything to suggest that Mr Salih was unreliable; (7) Oral evidence – Oral evidence could not be given because the witnesses are unknown; and (8) Difficulty in challenging the statement – The Crown had two live witnesses who supported the prosecution case.

36. It was submitted that the judge's approach to the process of his ruling was right, but that the result he reached was wrong. It was submitted this morning that, stepping back, this statement should have been placed before the jury, so that they, as the arbiters of fact, could determine the issues of weight and reliability.

37. Mr Hallam KC and Miss Pattison, who appear on behalf of the prosecution, submit that the judge correctly identified and considered the relevant factors when deciding whether a statement not made in oral evidence should be admitted, namely the factors set out in section 114(2). It was an informal statement made with no checks and there were no means by which the reliability of the maker of the statement could be tested. The judge was right as a gatekeeper to exclude the evidence. It is known that the statement came from regular users of cannabis, and some inferences might be drawn from that adverse to the makers of the statement, but the prosecution at the end of the day could not say whether this was someone exaggerating what they had seen to impress others or giving proper and reliable evidence.

38. In our judgment the answer to the appeal is that the judge carried out a proper evaluative exercise to determine whether to admit the anonymous hearsay and came to a judgment which cannot be shown to be wrong. As was noted at [21] in *Brown*, the exercise of deciding

whether to admit this type of evidence is evaluative, and we can see no principled basis for saying that the judge's approach was wrong on any of the relevant matters that he took into account.

39. We do accept that there were points about credibility that could be made about the makers of the hearsay statements even on the material known at trial. They had deliberately refused to come forward to the police; they had given an account which was not reflected by any other evidence, although it is well known that different people will see and report different things at different times; they were habitual users of cannabis; and they may have been the type of person who intended to impress others by exaggerating their stories. At the end of the day however it is speculative to say whether that was the position or whether the evidence was reliable. In our judgment, the judge was entitled to say that the prosecution could not fairly deal with the evidence, and most importantly the jury would have no real basis for weighing the reliability of the evidence when considering it along with all the other admissible evidence before them. As was said at [34] of *Brown*, the fact that the protection afforded by section 124 of the Criminal Justice Act 2003 would be ineffective because the maker of the statement cannot be identified may in many cases be a powerful or decisive reason why the court cannot be satisfied that it is in the interests of justice for the statement to be admissible.

40. We can see no basis for finding that the conviction was unsafe. We therefore dismiss the appeal against conviction.

#### **The Application for an Extension of time and for Leave to Appeal Against Sentence**

41. The delay in renewing the application for leave to appeal against sentence was an oversight by legal advisers. Given the particular circumstances which have been explained to us, and given the fact that none of that was the appellant's fault, we agree that if there are

arguable grounds to appeal against sentence, then we ought to grant an extension of time. We therefore turn to consider whether there are any arguable grounds to grant leave to appeal against sentence.

42. Having been convicted of murder at the age that he was, there was only one sentence available to the court for the appellant, namely a sentence of detention at His Majesty's pleasure. However, the court must determine the minimum term to be served by the appellant before he can be considered for release by the Parole Board. It should be noted that the Parole Board might determine that the appellant is never fit to be released. That was a point made by the judge in his sentencing remarks.

43. The complaint on behalf of the appellant is that the starting point under the old provisions for the minimum term of a person who was under 18 year old at the time of the commission of the offence would have been 12 years, which then might be aggravated and mitigated, but that the starting point under the new paragraph 5A of Schedule 21 of the Sentencing Act 2020 was 17 years.

44. Paragraph 5A was inserted into Schedule 21 to the Sentencing Act, in substitution for paragraph 6, by section 127 of the Police, Crime, Sentencing and Courts Act 2022. This provided for new starting points for the minimum term for those under 18 who are convicted of murder. As already noted, the previous starting point was 12 years, but the practice was always to have regard to the fact that for an adult the starting point for taking a knife to the scene was 25 years, and that the 12 year starting point would be substantially increased in circumstances where a knife had been taken to the scene. We record that, in refusing leave to appeal against sentence, the single judge identified that the sentence imposed was one that might well have been imposed before the change in the starting points.

45. As to the matters relied on by Mr Sneddon, who made the oral submissions on behalf of the appellant in this respect, Article 7 of the European Convention on Human Rights (ECHR) which was given domestic effect by the Human Rights Act 1998, provides:

"Article 7 of the Convention – No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

46. Reference was also made to article 15 of the United Nations International Covenant on Civil and Political Rights, which mirrors article 7 in broad terms, and the common law principle of *lex gravior*. In circumstances where the United Nations Covenant has not been incorporated into domestic law, and the common law principles must yield to statutory provisions, Mr Sneddon accepted that his argument stood or fell with article 7 of the ECHR and the Human Rights Act.

47. The prosecution relied on *R v SK* [2022] EWCA Crim 1421; [2023] 1 Cr App R(S) 26, where the provisions of the new paragraph 5A had been applied and principles established, without any comment on article 7 of the ECHR, although, as Mr Sneddon rightly pointed out, there had been no submissions on article 7 so far as can be determined in that case. The prosecution also relied on the principles examined in *R v Patel* [2021] EWCA Crim 231; [2021] 1 WLR 2997; and *R v Limon* [2022] EWCA Crim 39; [2022] 4 WLR 37, which themselves refer to a long line of authorities which establish that if the maximum sentence has not increased then there will have been no infringement of article 7.



48. Mr Sneddon sought to distinguish these authorities by showing that the judge set the minimum term to be served by the appellant in this case. This, however, is to ignore the circumstances in which article 7 will apply.

49. The first answer as to whether there are any arguable grounds of appeal is that the sentence imposed on the appellant has not changed. It has always been effectively a sentence of detention for life, which was the mandatory sentence imposed. Secondly, so far as paragraph 5A of Schedule 21 is concerned, its effect was only on starting points, which have been increased; and thirdly, as was pointed out in *R v Docherty* [2016] UKSC 62; [2017] 1 WLR 181 at [53]:

"53. The reality is that all changes in sentencing law or practice have to start somewhere. It is perfectly rational, indeed sensible, for a date to be fixed and for the sentencing of any offender which takes place after that date to be governed by the new rule/ practice, whenever the offence was committed, in accordance with the usual English approach and subject only to avoiding *lex gravior*. That is the practice now adopted by the Sentencing Council when promulgating new guidelines. Such guidelines are issued on the explicit basis that they are to become applicable from a stated date, as soon after publication as it is practicable for courts and practitioners to be equipped with and digest copies. The new guidelines are made applicable to any sentence passed after that date, whenever the offence was committed."

50. Here, the sentence was always detention for life. The judge was engaged in the exercise of setting the minimum term. That did not alter the maximum sentence and it did not engage article 7 of the ECHR and the Human Rights Act.

51. For all these reasons we refuse the renewed application for leave to appeal against sentence.

52. We should conclude this judgment by thanking all counsel for the excellence of their written submissions and their helpful oral submissions.

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**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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