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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

JAMES McKEEVER

Mr Neil Connor KC with Mr Neil Moore (instructed by Hamson Harvey Solicitors) for the Appellant
Mr Charles MacCreanor KC with Mr D McNeill (instructed by the PPS) for the Prosecution

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APPEAL AGAINST CONVICTION

Before: Treacy LJ, Horner LJ and McFarland J

TREACY LJ (*delivering the judgment of the court*)

Introduction

[1] The appellant was granted leave by the Single Judge to appeal against his convictions for historic sex offences on the grounds that (i) a previous statement of the complainant to a witness whom we will refer to as AB, ought not to have been admitted as evidence rebutting recent fabrication; and (ii) this court ought to receive fresh evidence in the form of the BBC interview given by the complainant shortly after the trial.

Background

[2] The offences occurred in the time frame of 1 August 1981-31 December 1988. The complainant was born in 1974 and was therefore aged between 7-14 during this time period. The appellant was aged 23-30 at the time of the offending.

Reporting Restrictions

[3] The complainant is entitled to automatic lifetime anonymity in respect of this matter by virtue of section 1 of the Sexual Offences (Amendment) Act 1992.

[4] The trial began on 16 May 2022. On the first day a jury was sworn, and the case opened. On 17 May 2022 the complainant, gave evidence. A witness who we shall call AB gave evidence on 18 May 2022 and the appellant gave evidence on 19 May 2022.

[5] The more detailed factual background, set out below, is agreed.

[6] The appellant is now in his mid-sixties. He resided at various addresses in Derry throughout the 1980's.

[7] The complainant alleged that she had been subjected to sexual abuse by the appellant between 1981 and 1988 when she was aged between 8 and 14 years and the appellant was aged between 24 and 30 years. She alleged that she had been abused on a number of occasions when the appellant would touch the complainant's private parts. This behaviour grounded count 1 (specific) and count 3 (specimen) on the indictment. Count 2, an allegation of gross indecency, was grounded on the complainant's allegation that the appellant had exposed himself to her whilst both were sitting in his car. The complainant further alleged that she was the subject of an indecent assault at another address in the city. She described sitting on the appellant's knee in the sitting room and him rubbing his groin against her vaginal area. She was aware that he was erect. This allegation gave rise to count 4 on the indictment. Count 5 and 6 on the indictment reflect incidents when the appellant removed her nightwear and rubbed his penis against her backside. He also got her to masturbate him to ejaculation. Count 8 was a specific count of gross indecency which related to the allegation that the appellant took the complainant to his office. He went upstairs and reappeared wearing only underwear. The final count was a specific count of indecent assault. The complainant described an incident when he sent her upstairs and followed close behind her. He then lay on a bed and moved the complainant on top of him, rubbing her private parts against his groin. Both were fully clothed at the time.

[8] The appellant was interviewed by police on 3 March 2020 and denied the offences. He maintained this position during his evidence in chief and cross-examination.

[9] The complainant gave evidence in chief by way of two ABE video interviews and was then cross-examined.

[10] At the outset of the trial defence counsel indicated that there would be opposition to the evidence of witness AB but did not specify the basis for that opposition. The evidence of complaint made to other witnesses was not objected to.

[11] At the conclusion of the complainant's evidence on 17 May 2022 defence counsel informed the court that the evidence of AB would be opposed on the basis that the complainant never said that she had told AB about the abuse. The trial judge agreed to hear the application the following morning.

[12] The defence position on the hearsay complaint evidence was that no issue had been taken with the admission of the evidence of complaint by witness we shall call CD, EF (mother), GH(aunt) or the complainant's husband IJ (who in fact refused to attend Court and, accordingly, did not feature in the evidence). The opposition to AB was initially predicated on the fact that the complainant failed to mention in her evidence that she had made the statement which the Crown sought to adduce. In advancing this submission the defence relied upon of article 24(4)(b) of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 ("the 2004 Order") which provides:

> "A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence would be admissible, if –
>
> (a) any of the following three conditions is satisfied, and
>
> (b) while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth"

[13] On the evening of 17 May 2022 prosecution counsel emailed the trial judge and defence counsel attaching the case of *R v Cousins* [2021] EWCA Crim 1664 and directing the judge to *Blackstones 2022* at F7.67 (the same reference applies to the 2024 edition.). It is clear that the same argument was advanced in *Cousins* and firmly rejected by the Court of Appeal (Singh LJ, Garnham J, Judge John Potter) applying *R v Trewin (David)* 2008 EWCA Crim 484 and *R v KH* [2020] WLR (D), CA. The argument in those cases was based on the materially identical provisions of the Criminal Justice Act 2003. The court in *Cousins* held that the various admissibility requirements in section 120(4)-(7) (our article 24(4)-(7)) were of no application to a statement that met the requirements of section 120(2) (our art 24(2)). Unsurprisingly, in light of this clear authority the defence argument in court focused on article 24(2), not article 24(4), the former provision being the principal basis upon which the prosecution relied.

Ground of Appeal 1

[14] AB made a statement to police on 3 February 2021 which states:

> "[the complainant] told me about the sexual abuse the year the Child Line advertisements were on television. I don't remember what age we were, but it was definitely the year those adverts were on television… I remember when [the

> complainant] told me that Jim McKeever was abusing her sexually however she didn't use those exact words but words to that effect and I knew exactly what she meant …I told her she should ring child line."

Rebutting an allegation of fabrication

[15] The prosecution applied under art 24(2) of the 2004 Order which provides:

> "If a previous statement by the witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter of which oral evidence by the witness would be admissible"

The equivalent provision in England & Wales is Section 120(2) of the Criminal Justice Act 2003.

[16] Art 24(2) speaks to the consequences of admission of a previous consistent statement rather than the grounds upon which it may be admitted. The 2004 Order puts into statutory form the common law rule that the previous consistent statement of a witness can be adduced as evidence to rebut the suggestion that her evidence was a fabrication, concocted after the event. At common law such a statement was confined to supporting the credibility of the impeached witness and was not independent evidence. By art 24(2) such a statement "is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible." [see paragraph 12.26 of "Hearsay Evidence in Criminal Proceedings, 2nd ed.]

[17] The defence argued that their cross-examination was directed to impeaching her evidence solely to suggest that she was not telling the truth *ab initio* and that to thus impeach a witness about the veracity of their account is insufficient to justify admitting the evidence of the previous complaint to AB. Art 24(2), they contended, was only admissible to rebut a suggestion of recent fabrication which, they argued, was not what they had sought to do.

[18] Prosecution counsel responded by emphasising the contemporaneity of the complaint to AB with the abuse itself, as opposed to the other complaints made years or decades later. There were two factors attaching it to a particular time: that it was at the time when AB and the complainant, who were in the same class, moved to secondary school in 1985, and that AB remembered it in the context of the Childline advertisements on TV, in 1986. Prosecution counsel submitted that:

> "…**the significance on the facts of this case is that [the complaint to AB] comes before the rift in the family and it also comes before what the complainant admits was an unhappy marriage** and it seems to me that there's a

> common sense difference between an allegation which is reported to CD in the late 1990s, when she's an adult, when she's suffered difficulties in her life and a report made on AB's evidence, contemporaneously to the abuse when she was a child."

[19] The judge gave a ruling admitting the hearsay, referred to the legislation which she had considered, and to the case of *R v Junior Cousins* [2022] 4 WLR 18 which she considered was on all fours with this case. The judge referenced two points of general application, the alternative basis upon which the evidence could be admitted namely the interests of justice test contained in article 18(1)(d) of the 2004 Order; and she repeated the observation of the Court of Appeal that as a matter of principle "it would be surprising if such evidence were inadmissible merely because a complainant had omitted to mention that she'd made the statement to the witness in the first place." [see para 43 of *Cousins*]

[20] **Blackstone** at para F7.67 summarises the test for admissibility of evidence to rebut recent fabrication as follows:

> "Although s. 120(2) [Art 24(2)] refers to 'fabrication' without the qualification 'recent', the clear intention was to leave the common-law principle intact. However, **the principle is not to be confined to a temporal straitjacket. 'Recent' is an elastic description designed to assist in the identification of circumstances in which a previous consistent statement should be admitted where there is a rational basis for its use as a tool for deciding where the truth lies. The touchstone is whether the evidence may fairly assist in that way**, and not the length of time (*Athwal* [2009] 1 WLR 2430)." [our emphasis]

And further at F7.68:

> "However, if in cross-examination it is suggested to a witness that [their] evidence is a recent fabrication, evidence of a previous consistent statement will be admissible in re-examination to negative the suggestion and confirm the witness's credibility (*Y* [1995] Crim LR 155). The principle has no application where a witness is cross-examined on the basis that the account was fabricated from the outset, unless the effect of the cross-examination is in fact to create the impression that the witness invented the story at a later stage (*Athwal* [2009] EWCA Crim 789, [2009] 1 WLR 2430). In a trial in which the previous statement amounts to a complaint, it may be admissible to rebut the allegation of recent

> fabrication notwithstanding that it is inadmissible as a recent complaint (see *Tyndale* [1999] Crim LR 320 and F6.32). Evidence of a complaint that is admitted for its truth under s. 120(2) does not need to meet the requirements of s. 120(4) and (7) (see F6.32 *et seq.*). Section 120(2) and s. 120(4) and (7) may on certain facts overlap, but are alternatives. Thus, s. 120(2) can apply where the defence case is that the complainant has fabricated oral evidence and the evidence in rebuttal is given by a person to whom a complaint was made, but the complainant has not given oral evidence of having made that complaint. Under s. 120(4)(b), a complainant must give evidence of having made the complaint (see F6.33), but there is no such requirement under s. 120(2) (see *KH* [2020] EWCA Crim 1363 and *Cousins* [2021] EWCA Crim 1664, [2022] 1 Cr App R 11 (165)).

[21] In *Athwal* [2009] EWCA Crim 789, [2009] 1 WLR 2430 (Maurice Kay LJ, Mackay, Stradlen JJ) the hearsay ground of appeal was considered at paras [26]-[59] of the judgment.

[22] Dismissing the appeals against conviction the Court held that section 120(2) of the Criminal Justice Act 2003 [our article 24(2) of the 2004 Order] did not itself make a witness's previous statement admissible in evidence to rebut a suggestion that his oral evidence had been fabricated but rendered such a statement which had been admitted for that purpose admissible as evidence of any matter stated; that such a statement therefore fell within the scope of section 114 of the 2003 Act [Article 18 of the 2004 Order] and so could only be admitted pursuant to that section; that had the judge considered the matter not on a purely common law basis but by reference to section 114 the 2003 Act, as he ought to have done, he would still have concluded that the evidence should be admitted but would have directed the jury that the witness's previous statement was admissible as *evidence* of its truth, not merely of consistency; that his summing up on the basis of the common law, although erroneous, had therefore been advantageous to the defence; and that, accordingly, the convictions were safe.

[23] The court also observed at para [58] that section 120(2) of the 2003 Act refers to fabrication without the temporal qualification "recent." That does not denote a wholesale departure from the previous approach. The common law label of recent fabrication is not to be confined within a "temporal straitjacket."

> "… 'Recent' is an elastic description, the purpose of which is to assist in the identification of circumstances in which the traditional rule against self-corroboration… should not extend to the exclusion of a previous consistent statement where there is a rational and potentially cogent basis for its

> use as a tool for deciding where the truth lies. The mere fact that a witness has said substantially the same thing on a previous occasion will not generally be a sufficient basis to adduce the previous statement when the truthfulness of his evidence was put in issue. There must be something more – for example, the absence on the earlier occasion of a factor, say personal dislike, which is being advanced which is being advanced as a possible explanation for the falsity of his evidence in court. However, when circumstances have changed in such a way, it might not matter that they changed last week, last month or last year, provided that there is a qualitative difference in circumstances, but substantial similarity between the two accounts. There is no margin in the length of time. The touchstone is whether the evidence might fairly assist the jury in ascertaining where the truth lies"

[24] In *Athwal* defence counsel put their express case not on the basis that a witness had fabricated her account recently, but rather had been false from the outset. As here, it was a "pure fabrication" case. The court accepted that counsel intended to conduct cross-examination in a way which deliberately avoided the allegation of recent fabrication, but the Court of Appeal concluded that:

> "The question we have to consider is whether, notwithstanding [defence counsel's] best intentions, the cross-examination as a whole gave the jury the impression (as the judge found) that recent fabrication or late invention was being asserted."

[25] On the facts of that case the Court of Appeal found that the effect of the cross-examinations was to leave the jury with the impression that it was being suggested that the witness had fabricated her account sometime before, by inference not very long before, she went to police in 2005, (see para [39]) and had created that impression (see para [40]).

[26] In *Athwal* and *Cousins* neither judge directed the jury that the evidence of complaint was admitted as evidence of the truth and confined it as going to consistency and not being independent evidence. The judge in the present case gave a similar direction notwithstanding that evidence whether admitted under 24(2) *or* 18(1)(d) of the 2004 Order makes it "admissible of any matter stated of which oral evidence by the witness would be admissible." As in *Athwal* the judge in the present case did not charge the jury that the earlier statement was evidence of the truth of its contents. As was observed at para [55] "…the approach of the judge was advantageous to the defence in that …he did not give the evidence the status conferred upon it by section 120(2)" [Art 24(2)].

[27] In *Athwal*, it was also held that applications to admit hearsay to rebut recent fabrication should be considered by reference to section 114 [article 18 of the 2004 Order]. At para [59] of that decision the court concluded that the judge should have approached the matter by way of section 114, but had he done so he would have reached the same decision and rightly so. The trial judge here did refer to article 18 and, in our view, would have been entitled to consider whether to admit the evidence under the alternative gateway in article 18(1)(d). We are satisfied had she taken that course she would also rightly and inevitably on the facts of this case have come to the same conclusion. Whether the evidence was admitted under article 24(2) or article 18(1)(d) the evidence is "admissible as evidence of any matter stated." To the advantage of the appellant as already pointed out the judge confined herself to the relevance of the complaint to consistency and it not being independent evidence.

[28] Article 18 provides as follows:

> "**Admissibility of hearsay evidence**
>
> 18.—(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 Part or any other statutory provision makes it admissible,
>
> (b) any rule of law preserved by article 22 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 paragraph (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 sub-paragraph (a);

(c) how important the matter or evidence mentioned in sub-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 Part 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."

[29] Article 18(2) directs the court to have regard to certain factors. The judge is not bound to reach a conclusion on all of them. Proper investigation of all nine factors would be a lengthy process which the legislation does not require. All that is required is the exercise of judgment in light of the legislatively identified factors, together with any others considered by the judge to be relevant. They are not a questionnaire to be answered. The exercise of judgment will only be interfered with on appeal if it involved the application of incorrect principles or is outside the band of legitimate decision [see Blackstone para F17.35].

[30] Bearing the foregoing in mind, we note the following:

(i) Assuming it to be true, the complainant's statement to AB had a powerful probative value. It was contemporaneous to the abuse happening and it came before the family rift. It would have been valuable to the jury in understanding other evidence in the case, namely why the complainant did not report the abuse to anyone else at the time.

(ii) The statement concerned the entire subject matter of the case, about which the complainant gave direct evidence and was cross-examined at length.

(iii) The statement was important in the case as a whole because of its contemporaneity and timing.

(iv) The circumstances in which the statement was made were compelling. AB and the complainant were best friends. On both of their accounts they would have had an intense and trusting relationship. An allegation of this nature would be unlikely to have been made flippantly.

(v) There was nothing to impugn AB's reliability. She recalled the disclosure independently, after the appellant's interview, having not spoken to the complainant for decades, and the complainant herself not recalling having made it. Her reliability is more robust than that of a complaint witness such as CD with whom the complainant had remained in constant contact.

(vi) The evidence of how the statement was made also appeared reliable. Notably AB could not recall the exact words the complainant had used, but had gained a clear impression of what she meant, in part by reference to the Childline campaign on TV at the time.

(vii) Oral evidence of the matter stated was given by the complainant, albeit that evidence of the making of the statement was only available from AB.

(viii) The defence were able to cross-examine and test AB about the making of the statement. They were able to make the point to the jury that the complainant did not say she told AB. They could also have applied for the complainant to be recalled to be cross-examined on the point.

[31] We agree that the article 18(1)(d) gateway should be applied with a degree of caution, so that it is not used to circumvent the requirements of other gateways to admissibility, for example, the gateway under article 20. At the same time, it should not be applied so narrowly that it has no effect. It follows that there will be cases in which hearsay may be admitted in circumstances in which it could not be admitted under the common law. Where the evidence is inadmissible under another hearsay gateway for reasons related to the interests of justice, it will be inappropriate to admit it under article 18(1)(d). However, as contemplated in *Cousins* at paras [18] and [43], it may be utilised to fill a gap where it is in the interests of justice to do so. See the helpful summary of the general principles established in *Blackstone* at F17.38-9.

[32] It is notable that had the complainant remembered speaking to AB then the evidence would have been admitted, and the defence would have taken the same approach as with the other complaint witnesses of not taking issue with the admission. It would be surprising if the complainant's evidence was inadmissible

merely because the complainant had omitted to mention that she had made the statement in the first place [see *Cousins* paras 18 and 43].

[33] We are satisfied the hearsay was properly admitted. What the complainant said to AB was the first complaint that the complainant had made. The complaint was the closest in time to the allegations. The complaint had been made when the complainant was a child, and it was made to another child, who was her best friend at the time. The evidence of the friendship between the complainant and AB was that they "…were best friends throughout primary school and into the early years of secondary school. We kind of drifted apart at that stage, but still remained in the same group of friends." The evidence as to the timing of the complaint was that "we were possibly at our later years in primary school, transitioning into secondary school or could possibly have been in the first few years of secondary school, the first years there. I clearly remember in my head that Childline advertisements were on TV at that time or just prior to that time…"

[34] The evidence was that there had been a long period of time when the complainant and AB had not been in contact as AB was living in abroad for a long time. It was only as a result of being contacted by the police that she made a statement and agreed to give evidence. Her evidence was that the only time they had discussed any sexual impropriety by the appellant was when the complainant and her were very young children.

[35] The complainant was extensively cross-examined and robustly challenged by the defence. The appellant's defence relied on a theme of claiming years of normal, good contact between the appellant and complainant spanning a period long after the date of the allegations, this being in stark contradiction to what was now alleged by her. This is a common approach by many defendants in trials seeking to cast doubt on a complainant's evidence. The extensive cross-examination on the family rift was designed to create the impression that the complainant had been aligned with other family members against the appellant, held a negative view of him and that she was motivated by bias or ill-will against the appellant.

[36] On the factual matrix of this case the evidence of AB was plainly relevant. Importantly, the complaint to AB was before the major family rift and there could be no suggestion that at the time of making it the complainant would have had any ill-will, malicious motivation or false motivation when she spoke to her best friend AB. Without this evidence the jury could have looked at this period of time as one of an overwhelming and bitter rift in the wider family

[37] The judge did mention motive to the jury in her charge on 23 May 2022 when she said:

> "And I asked him (the appellant) directly if he'd ever had a fall out with the complainant herself, and he said that other than the family breakdown……, no, not really, …But

> then you - you just need to look at all of the evidence as it is presented to you, and you will have to determine wherein the truth lies. Remember the appellant does not have to prove motive, but it is an issue that you will undoubtedly consider in the course of your deliberations."

[38] The complaint to AB could not be explained by the suggested motivations and was a balanced counterweight to the cross-examination that her complaints developed from the much later family rift, her own bad marriage and the actions of a husband that compelled her to go to the police. Evidence of this complaint fairly ensured that the jury had a complete picture to set against the defence theme of close, friendly contact between the complainant and appellant in the later years.

[39] We are satisfied that notwithstanding the best intentions of counsel the cross-examination by counsel as a whole would have given the jury the impression that late invention was being asserted. Such an impression arose because she was extensively cross-examined by defence counsel to suggest in effect that the later development of the family rift and the complications within her marriage motivated her through ill-will to make false accusations against the appellant.

[40] The complaint to AB and its timing, came long before the development of the family rift which was being asserted in cross-examination to support a motive on behalf of the complainant to fabricate her evidence. The interests of justice pointed unmistakably to the need to put in evidence the nature of the first complaint, the surrounding circumstances and, importantly, the timing of this complaint. Without it the jury would have been left with a hopelessly incomplete account. This previous consistent statement, in the circumstances of this case, constituted a rational and potentially cogent basis for its use as a tool for deciding where the truth lay.

[41] The case law makes plain the mere fact that that the complainant had said substantially the same thing on a previous occasion will not generally be a sufficient basis to adduce the previous statement when the truthfulness of her evidence is put in issue. As the court said in *Athwal* there must be "something more." There is in this case a "qualitative difference" in the circumstances between the first account to AB and the later accounts to relatives, which potentially serve to illuminate the truth. There is a qualitative difference between the circumstances in which that first complaint was made and the later complaints. The later complaints were contextualised by the twin developments of the family rift resulting from the appellant's cheating and the specific complications of her difficult marriage. It is noteworthy that the evidence of the later complaints were not objected to. Those later complaints were attended with a complicating context which gave scope for raising the issue of wilful motive to fabricate. Her first complaint to her childhood friend gave rise to no such scope. In *Athwal* it was said the touchstone is whether the evidence might fairly assist the jury in ascertaining where the truth lies. In our judgment, using that touchstone, we are firmly convinced that the adduction of the evidence of AB about the first complaint would assist the jury in ascertaining the truth.

[42] As in *Athwal* we consider that even if defence counsel had simply intended to challenge the complainant's evidence on the basis of being untruthful *ab initio* we consider that the cross-examination as whole would have given the jury the impression that late invention was being asserted, motivated by ill-will/dislike/hatred generated by the family rift and other later complications. Importantly, the complaint by AB took place long before that context had developed.

Ground of Appeal 2

[43] This ground asks for consideration of fresh evidence. After the conviction of the appellant, the complainant gave an interview to the BBC in which it is said she stated facts that were contrary to her oral evidence at trial

[44] We have considered the contents of this interview.

[45] The defence submit that the totality of the comments in this interview renders the appellant's convictions unsafe as it undermines the complainant's veracity. The absence of any kind of motive for the complainant in making the allegations and/or the absence of any animus held by the complainant towards the applicant were matters that the trial judge emphasised to the jury in the course of her charge.

[46] This ground relates to a video interview the complainant (anonymously) gave to the BBC after conviction. The appellant focuses on the complainant saying, "I hate him, I always hated him, but I really hate him, he's just a nasty piece of work" and seeks leave for the admission of the contents of the interview.

[47] Section 25 of the Criminal Appeal Act (Northern Ireland) 1980 permits the appellate court to admit fresh evidence and provides that:

> "(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to-
>
> (a) Whether the evidence appears to be capable of belief;
>
> (b) Whether it appears to the court that the evidence may afford any ground for allowing the appeal;
>
> (c) Whether the evidence would have been admissible at the trial on an issue which is the subject of the appeal; and
>
> (d) Whether there is a reasonable explanation for the failure to adduce the evidence at the trial"

[48] The overarching test is the interests of justice, and that section 25(2) only prescribes some of the factors to be taken into account.

[49] The defence submission centres on her use of "always."

[50] We agree that the word used should be seen in the context of the complainant's life. On her evidence, the jury found that the appellant began to abuse her sexually in or around the age of seven. When he was convicted and she gave the interview to the BBC, she was 47.

[51] The complainant in her evidence in chief did describe feelings of dislike or hatred towards the appellant caused by the abuse. The prosecution drew particular attention to the following passage of the second ABE interview:

> "…**I always says to Mammy I hated him**.
>
> A Yeah.
>
> Q And I would only speak to him if I had to. If he offered me a cup of tea it's no. I wouldn't have a conversation with him.
>
> Q Would any members of your family before all this came out, would any members of your family you as an adult have picked up on any.
>
> A They knew I didn't like him but they thought I didn't like him because of what he did to,…
>
> Q ……. right.
>
> A That was my reason.
>
> Q Okay.
>
> A And they all they all fell for it.
>
> Q Okay.
>
> A So I didn't put them do you know what I mean. **That was now Mammy realises why I hated him.** But I would never have sat down and had a conversation with him. I would never have been left sitting in a room. Know if you were sitting in the living-room drinking tea and chatting and...

Q Yeah.

A ...whenever like my mammy smoked …… so if they had of went out for a smoke I'd have went out after them. I wouldn't have been sitting in the same room as him.

Q Right okay.

A And I wouldn't let my wee'uns be sitting in the same on their own."

[52] The defence complaint is that this statement discloses a possible motive for making false allegations upon which the complainant would have been cross-examined. However, the defence did raise with the complainant her position on the family rift, being against the appellant, and she had spoken in her ABE of her hatred for him. There is, in fact, little if any material difference between the positions. Such a potential line of questioning would have brought about the admission of the AB evidence as this was before the complainant had any basis to hate him other than for what he had done to her.

[53] The BBC interview has been edited and the unedited version has not been made available. We accept that it is plain from the context that the complainant is describing a feeling of hatred towards the appellant because of what he did to her, consistent with what she had said in her ABE evidence. There is nothing in the BBC interview to suggest that she had some sort of pre-existing animosity towards him which had developed before she was seven years old.

[54] We do not consider that this material constitutes fresh evidence affording any ground for allowing the appeal.

Conclusion

[55] For all the above reasons, we entertain no doubt about the safety of the convictions and dismiss the appeal.