Neutral Citation Number: [2022] EWHC 2665 (Admin)

Case No: CO/3328/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 October 2022

Before :

LORD JUSTICE DINGEMANS
(Vice-President of the King's Bench Division)
and
MR JUSTICE JOHNSON

- -

Between :

TBG	**Appellant**
- and -	
A CHIEF CONSTABLE OF POLICE	**Respondent**

- -
- -

Patrick Duffy (instructed by Carringtons Solicitors) for the Appellant
Rachel Spearing (instructed by the relevant County Council) for the Respondent

Hearing date: 13 October 2022

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Approved Judgment

This judgment was handed down by release to The National Archives
on 21 October 2022 at 10.30am

Mr Justice Johnson:

1. The appellant was released on license after being sentenced to life imprisonment for murder. He appeals, by way of case stated, against a sexual harm protection order ("SHPO") imposed by the Ipswich Magistrates' Court on 5 July 2021. He says it is not necessary to impose a SHPO because the risk he poses can be managed by the conditions of his licence. The issues raised by the justices in the case stated are:

   (1) Was there sufficient evidence upon which we could reach a decision to impose a [SHPO]?

   (2) In view of the decisions in *R v GD* and *R v Smith* were we right to find that a SHPO was necessary?

The legal framework

Licence conditions

2. The mandatory sentence for murder is life imprisonment. The sentencing judge imposes either a whole life order or a minimum term order. The latter specifies the minimum term that the offender must serve in custody before release. Once the minimum term has been served, the offender may only be released if and when the Parole Board assess that continued incarceration is not necessary for the protection of the public. A prisoner released on life licence must be subject to licence conditions imposed by the Secretary of State: Criminal Justice Act 2003, s250(4). Those include standard conditions that must be applied in all cases (including, for example, not to commit any offence, and to keep in touch with the offender's supervising officer): s250(4)(a) of the 2003 Act, and art 3(2) of the Criminal Justice (Sentencing) (Licence Conditions) Order 2015. They may include other authorised types of condition: s250(4)(b)(ii) of the 2003 Act, and art 7(2) of the 2015 Order. Such conditions may, for example, concern residence at a specified place, making or maintaining contact with a person, participation in prescribed activities, disclosure of information or restriction of specified conduct or specified acts. The Secretary of State may only include conditions under s250(4)(b)(ii) of the 2003 Act at the direction of the Parole Board: s250(5A)(v). The offender is under a statutory duty to comply with the licence conditions: s252. A breach of a licence condition is not a criminal offence, but it may lead to recall to custody: s254.

Notification requirements under Sexual Offences Act 2003

3. Part 2 of the Sexual Offences Act 2003 imposes notification requirements on those convicted of certain sexual offences: s80(1)(a) and schedule 3. It also applies to those who are made subject to a SHPO: s103G(2)(a). The notification requirements include obligations to notify any change of name or address, any foreign travel, and whether there is a child under 18 living in the household: ss84-86. A justice of the peace may authorise police to enter and search the home of a person subject to the notification requirements for the purpose of assessing the risks posed by the offender: s96B.

SHPOs

4. The police may apply to a magistrates' court for a SHPO (and the court may grant a SHPO) in respect of a qualifying offender if they have, since the date of conviction, acted in such a way as to give reasonable cause to believe that it is "necessary" for such an order to be made "for the purpose of protecting the public or any particular members of the public from sexual harm from the defendant": s103A(4) and (3) of the 2003 Act. A person who has been convicted of murder is a qualifying offender: s103B(2)(a) and schedule 5 paragraph 1.

5. In *R v Smith* [2011] EWCA Crim 1772; [2012] 1 WLR 1316, at [2], Hughes LJ, giving the judgment of the Court of Appeal (Criminal Division), observed that a SHPO may be a valuable tool in the control of sexual offending and is to be regarded as part of the total protective sentencing package. At [13] he said that, ordinarily, it will not be necessary to impose a SHPO when sentencing a defendant to an indeterminate sentence unless there is some very unusual feature, and it would not risk "undesirably tying the hands of the offender managers later." The court was unable to envisage an instance where a SHPO would be appropriate in that type of case, but explicitly refrained from indicating that a SHPO would never be appropriate in the case of an indefinite sentence.

6. In *R v GD* [2021] EWCA Crim 465 the Court of Appeal (Criminal Division), applied *Smith* and quashed a SHPO that was imposed at the same time as a life sentence. HHJ Deborah Taylor, giving the judgment of the court, said that there was "no very unusual feature" which justified the imposition of a SHPO at the same time as a life sentence.

7. In assessing whether a SHPO is necessary to protect the public from risks of sexual harm, the court is not required to limit its assessment of risk to matters that relate to the offence for which the offender was convicted. If other conduct of the offender is relevant to the question of risk, then it may be taken into account. *R v Hammond* [2022] EWCA Crim 1313 is a recent example: the appellant had been convicted of downloading indecent imagery, not of any "contact" offence, but his internet search history justified a condition preventing him from using the internet to attempt to contact any child under the age of 16. Other conditions, which were not necessary, were set aside on appeal.

The background

8. The following summary is taken from the evidence that is set out in the case stated by the justices and which formed the basis for their findings.

9. The appellant was convicted and sentenced at the Crown Court at Northampton on 17 October 1986 for the offence of murder of a 6-year-old girl. He was sentenced to life imprisonment. He admitted raping the girl. The post-mortem report indicates that the rape involved the use of some force. A count alleging rape was left to lie on the court file.

10. A police report from 1986 makes reference to four instances when the appellant approached young women aged 14-19 with "sexual connotations". It also makes reference to three sexual offences committed by him in 1984/85. The appellant has also admitted committing 10 sexual offences between 1981 and 1986. All the victims were female. Four were adults. Six were children between the ages of 10 and 14. The offences

against the adults involved the appellant touching their legs over and under their clothing. The offences against the younger victims included acts of digital penetration, touching of breasts, oral rape and attempted vaginal rape. The police have not been able to link these admissions to recorded complaints.

11. There are three recorded allegations of sexual offences committed by the appellant prior to the murder. In 1984, a 14-year-old girl alleged that he had raped her but then amended the allegation to one of indecent assault. In 1985, an 18-year-old woman reported that she had been raped by the appellant. Her complaint was withdrawn. A further allegation was made that the appellant had tried to pull down the pants of an 11-year-old girl while she was sleeping, waking her in the process.

12. A psychological assessment carried out in 2014 indicates that the appellant has moderate psychopathic traits, including manipulation, callous lack of empathy and criminal versatility. It identifies a history of escalation in sexual violence from fantasy to action, and then an escalation in that action. It says that the appellant has engaged in sexual violence that is chronic and diverse in nature, that he uses physical coercion to secure compliance so as to enable him to commit sexual offences and avoid detection. The appellant did not demonstrate an awareness of his risk factors or appropriate risk-management strategies. The assessment concludes that the appellant was "to some degree" at risk of sexual recidivism.

13. The appellant was released from prison on life licence in March 2016. He was monitored by the National Offender Management Service and, on a voluntary basis, the Public Protection Unit (PPU). The PPU is the branch of the relevant police force that has responsibility for public protection by working with other agencies within the framework of Multi Agency Public Protection Arrangements ("MAPPA"). In March 2017, he was charged with driving when his alcohol level was above the prescribed limit. He was convicted and fined and disqualified for 12 months. In July 2017, the appellant was convicted of driving whilst disqualified and was sentenced to 12 weeks' imprisonment and disqualified for 24 months. He admitted to his probation officer that he had attended a barbeque where children were present. His laptop was seized and examined. The search history revealed searches for: "Bikini Teens rides Stepdad", "mature fucks teen", "stranded teens", "schoolgirl's feet in tights", "cute teens", "teen gallery", and "teens in tights". There were also images of female children in swimwear and other clothing. Thirty-six images were recovered all depicting unknown young females, but none were illegal.

14. The appellant was recalled to prison. Whilst in prison, he disclosed to his probation officer that he had had sexual relationships with two women during the period when he had been released from prison. One of the women was 19 years old. She was contacted. She said that she had felt groomed by the appellant, but that the sex was consensual.

15. In November 2018, police received a complaint from another 19-year-old woman alleging that she was the victim of a sexual assault by the appellant in June 2017. The appellant had ingratiated himself with a group of young people. He began texting the complainant. The messages became sexual. She accepted an invitation to his address for drinks, thinking others would be there. She was alone with the appellant. After having a single alcoholic drink, she felt unwell. The appellant began touching her sexually and, despite her saying "no", he continued and at one point tried to insert his penis into her vagina. The complainant was dissatisfied with the manner in which the

police dealt with her allegation and did not wish to pursue it. The appellant did not disclose this incident to his probation officer.

16. In January 2021, the Parole Board decided that the appellant should again be released on licence. This took effect on 8 March 2021. In addition to the standard conditions, the following licence conditions were imposed:

> "To permanently reside at [*redacted*] Approved Premises as directed and must not leave to reside elsewhere, even for one night, without obtaining the prior approval of your supervising officer; thereafter must reside as directed by your supervising officer.
>
> Confine yourself to an address approved by your supervising officer between the hours of 21:00 and 09:00 daily unless otherwise authorised by your supervising officer. This condition will be reviewed by your supervising officer on a weekly basis and may be amended or removed if it is felt that the level of risk that you present has reduced appropriately.
>
> Not to enter or remain in sight of any children's play area, school or swimming baths or other area primarily intended for the use of children without the prior approval of your supervising officer.
>
> Report to staff at Approved Premises or as directed at 13:00 and 17:00 daily, unless otherwise authorised by your supervising officer. This condition will be reviewed by your supervising officer on a weekly basis and may be amended or removed if it is felt that the level of risk you present has reduced appropriately.
>
> Notify your supervising officer of any developing or renewed intimate relationships with women.
>
> Notify your supervising officer of any developing personal relationships, whether intimate or not, with any person you know or believe to be resident in a household containing children under the age of 16. This includes persons known to you prior to your time in custody with whom you are renewing or developing a personal relationship with.
>
> Allow person(s) as designated by your supervising officer to install an electronic monitoring tag on you and access to install any associated equipment in your property, and for the purpose of ensuring that equipment is functioning correctly. You must not damage or tamper with these devices and ensure that the tag is charged, and report to your supervising officer immediately if the tag or the associated equipment are not working correctly.
>
> You will be subject to trail monitoring. Your whereabouts will be electronically monitored by GPS Satellite Tagging for a

> period of six months to commence when you leave the Approved Premises and you must cooperate with the monitoring as directed by your Supervising Officer.
>
> Not to delete the usage history on any internet enabled device or computer used and to allow such items to be inspected as required by the police or your supervising officer. Such inspection may include removal of the device for inspection and the installation of monitoring software.
>
> Not to undertake work or other organised activity which will involve a female child under the age of 16, either on a paid or unpaid basis without the prior approval of your supervising officer.
>
> Not to reside (not even to stay for one night) in the same household as any female child under the age of 16 without the prior approval of your supervising officer.
>
> Not to have unsupervised contact with any female children under the age of 16 without the prior approval of your supervising officer except where that contact is inadvertent and not reasonably avoidable in the course of lawful daily life. Not to knowingly seek to approach or communicate with any members of the family of [*redacted*] (being parents, siblings, aunts, uncles and their respective partners or children) without the prior approval of your supervising officer.
>
> Not to enter the area of [*redacted*], as defined by the attached map without the prior approval of your supervising officer.
>
> To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your offending behaviour problems as directed."

17. On 4 March 2021, so just 4 days before the appellant was due to be released, the chief constable, by complaint, sought a SHPO in respect of the appellant. The conditions sought were that:

> "The Defendant is prohibited from:
>
> 1. Developing any relationship with females unless their names and addresses have been given to [the relevant] Constabulary's Public Protection Unit.
>
> 2. Staying at any alternative address other than his home address, even for one night, unless the address has been provided to [the relevant] Constabulary's Public Protection Unit.

3. Having anyone to stay at his home address, even for one night, unless their details have been provided to [the relevant] Constabulary's Public Protection Unit prior.

4. Having any contact or communication with any female child under the age of 18, other than such as is inadvertent and not reasonably avoidable in the course of lawful daily life.

5. The defendant is prohibited from going within 50 metres of any primary school, or community play area likely to be used by children.

6. Using any computer or device capable of accessing the internet unless:-

i. He has notified the Police MOSOVO/Public Protection Unit within 3 days of the acquisition of any such device;

ii. It has the capacity to retain and display the history of internet use, and he does not delete such history;

iii. He makes the device immediately available on request for inspection by a police officer [or police monitoring officer], and he allows such person to install risk management monitoring software if they so choose.

This prohibition shall not apply to a computer at his place of work, Job Centre Plus, public library, educational establishment or other such place, provided that in relation to his place of work, within 3 days of him commencing use of such a computer, he notifies the police MOSOVO/Public Protection Unit] team of his use.

7. Interfering with or bypassing the normal running of any such computer monitoring software.

8. Using or activating any function of any software which prevents a computer or device from retaining and / or displaying the history of internet use, for example using 'incognito' mode or private browsing.

9. Using any 'cloud' or similar remote storage media capable of storing digital images (other than that which in intrinsic to the operation of the device) unless, within 3 days of the creation of the account for such storage, he notifies the police of that activity, and provides access to such storage on request for inspection by a police officer or police monitoring officer.

10. Possessing any device capable of storing digital images (moving or still) unless he provides access to such storage on

> request for inspection by a police officer or police monitoring officer.
>
> 11. Installing any encryption or wiping software on any device other than that which is intrinsic to the operation of the device.
>
> 12. Use or in any way access any Social Media Network or Application, including but not limited to Facebook, Facebook Messenger and WhatsApp, unless he provides log in and password details to a Police Monitoring Officer for the area in which he resides and consents to inspection of his accounts.
>
> 13. Being found drunk in a public place as evidenced by his words or conduct by a Police Officer.
>
> 14. Drinking alcohol or being found in possession of alcohol in an unsealed container in any public place save for any enclosed licensed premises."

18. An interim SHPO was granted by the Magistrates' Court on 16 March 2021.

19. At the hearing on 5 July 2021, the court received written evidence from the appellant's probation officer and from a Public Protection Unit ("PPU") officer. Neither witness was cross-examined.

20. The appellant's probation officer indicated that she considered that it was appropriate for the appellant to be on the sex offender register (that is, subject to the notification regime under Part 2 of the 2003 Act) so that the police could be formally involved in managing his risk factors and could contribute fully as part of the "MAPPA" process. She considered the proposed SHPO prohibitions targeted his risk factors and complimented his licence conditions. This was particularly important because the appellant had previously breached his licence conditions when he was first released from his life sentence. The appellant had expressed frustration at the level of restrictions in place and the fact that he was not allowed to pursue certain types of employment such as HGV driving.

21. A PPU officer gave evidence that the appellant had "a very poor attitude" to advice that was intended to reduce the level of risk that he posed. For example, he refused to take school opening and closing times into account when undertaking his activities. He was not happy with the SHPO which he considered was too restrictive. He said that he would not be honest about his whereabouts or behaviour. He had sought contact with a high-profile registered sex offender that he had met in prison, and he did not recognise that this was unsuitable. He joined a gym without consulting his probation officer or the PPU and he did not acknowledge the risks involved. The appellant sought employment through an agency but was dishonest about his offending. He was upset that probation would contact the employer.

22. The justices' factual findings, made to the criminal standard of proof (so that they were sure), included that:

(1) The appellant had committed the offence of murder and further sexual offences, a number of which involved children.

(2) He has a psychopathic disorder and a propensity for sexual violence that is chronic in nature and presents as a risk of causing serious physical harm.

(3) After release on life licence in 2016 he was convicted and sentenced for an alcohol related offence, alcohol being a trigger factor to his offending.

(4) Whilst on licence, he searched the internet for images of female children and teenagers and had sexual relations with teenage females. He attended a barbeque at which children were present which led to him being recalled to prison.

(5) The appellant did not make full disclosure of his relationships, alcohol use or internet searches to his probation officer or the PPU.

(6) Since his further release on licence and also since the making of the interim SHPO, the appellant had made inappropriate decisions relating to contact with a sex offender, employment opportunities and in joining a gym without prior consultation with his probation officer or the PPU.

(7) The appellant failed to demonstrate his awareness of his risk factors or appropriate risk-management strategies and continued to demonstrate a lack of understanding of risk in relation to possible unintentional contact with children.

(8) The appellant was dishonest when seeking employment by failing to disclose his offending history. He admitted that he would be dishonest with the PPU about his whereabouts and behaviours.

23. In the light of those findings, the justices concluded that it was necessary to protect the public, and in particular young women and children, from sexual harm, and to protect children and vulnerable adults generally. They considered whether the licence conditions were sufficient to mitigate the risk, or whether a SHPO was necessary notwithstanding the licence conditions. They observed that there were sufficient differences between the conditions sought under the SHPO and the conditions imposed on the Applicant's licence:

(1) It extended the protection of young women to include those from 16yrs to 18yrs of age.

(2) It was much more detailed in its control of use of the internet, computers and social media.

(3) It controlled the appellant's behaviour when using alcohol.

(4) Overall, it applied a broader and more restrictive approach in terms of relationships with women and access to triggers from pornography and social media.

(5) It would introduce the notification requirements under part 2 of the 2003 Act; although the appellant has not been convicted of any sexual offences, there were multiple admissions and reports of such offending.

24. The justices distinguished the decision in *GD* because that concerned the imposition of a SHPO at the same time as an indefinite sentence, when the offender's future conduct on release is unknown. They considered that a SHPO, running alongside the licence, would provide support to the agencies involved in the appellant's management and would assist in the prevention of further offences.

25. The appeal was initially listed before Stuart-Smith LJ and Sweeney J: [2022] EWHC 1395 (Admin). At that stage, the case stated did not identify or summarise the evidence found by the justices, contrary to the requirements of Criminal Procedure Rule 35.3(4)(d). The court adjourned the hearing with a direction that an amended case be stated. This took place, and the matter has been relisted before us.

26. We were told in the course of the hearing that the applicant has now been recalled to prison. Both parties sought to rely on the circumstances of the recall as supporting their respective cases. For the appellant, it was said that the recall demonstrates that the licence conditions are sufficient to protect the public. For the chief constable, it was said that the delay in securing the appellant's recall demonstrates the importance of the power of arrest that attaches to a reasonably suspected breach of a SHPO. I note, and record, the factual update. However, in determining the appeal we are confined by the question raised, and the facts stated, by the Magistrates' Court: section 28A(3) Senior Courts Act 1981, Civil Procedure Rules Practice Direction 52E paragraph 1.1. I do not therefore place any reliance on these matters.

Reporting restriction

27. The hearing before the Magistrates' Court took place in private. Reporting restrictions were made in respect of the appellant's name and the police area concerned. Before us, the parties sought equivalent reporting restrictions because of the risk to the appellant. The Press Association were put on notice of the application. There was no opposition to the application.

28. The starting point is the open justice principle. That principle requires the court to conduct hearings in public, and to hear all evidence and submissions on all issues in public, and to resolve all issues in a public judgment. Departure from that principle is only permissible where there is strong justification, which includes where that is necessary to ensure compliance with the rights guaranteed by the Human Rights Act 1998. Any infringement of the open justice principle must be the minimum that is necessary and can be justified in the particular circumstances.

29. We have been provided with evidence and assessments as to the risk of reprisals against the appellant if his identity and location becomes known. We are satisfied that the risk to the appellant, in that event, meets the threshold of "inhuman or degrading treatment" that is prescribed by article 3 of the European Convention on Human Rights. That threshold is met by serious offences against the person: *DSD and NBV v Commissioner of Police of the Metropolis* [2018] UKSC 11 [2019] AC 196 *per* Lord Hughes at [128].

30. The court, as a public authority, is required to act compatibly with the prohibition of inhuman and degrading treatment: s6 of the 1998 Act. That may include the imposition of reporting restrictions where that is necessary to avoid a real risk of conduct that amounts to inhuman and degrading treatment. We consider that it is necessary to impose a reporting restriction, so as not to reveal the appellant's current name, or the

police area, for that reason. We have given permission to media organisations to apply to vary or discharge the reporting restriction if there is any change in circumstances.

(1) Was there sufficient evidence upon which [the justices] could reach a decision to impose a [SHPO]?

31. The parties agree that there was sufficient evidence before the court to justify the imposition of a SHPO. I also agree.

32. The appellant is a qualifying offender. There is compelling evidence that, since his conviction for murder, he has engaged in conduct that demonstrates a risk of sexual harm to members of the public. In particular, against the background risks that are clearly identified in the evidence, he had been convicted of an alcohol related offence (alcohol being a risk factor for his offending), breached his licence conditions, conducted internet searches which show an interest in sexual images of children, failed to cooperate with the PPU, failed to show insight into the risks that he posed, and acted dishonestly so as to conceal risk indicators. The justices were entitled to conclude that, subject to the question of the impact of the licence conditions, a SHPO was necessary to protect the public from the risk of sexual harm posed by the appellant.

33. I would therefore answer the first question "yes".

(2) In view of the decisions in *R v GD* and *R v Smith* were [the justices] right to find that a SHPO was necessary?

Submissions

34. Mr Duffy, on behalf of the appellant, advances what he characterises as "two blunt submissions." First, the licence regime is the correct mechanism to manage the appellant's behaviour. The Parole Board, in the knowledge of the risks posed by the appellant, decided what licence conditions to impose. A SHPO is not necessary. Secondly, applying *Smith*, there is no unusual feature which means that a SHPO could add something useful to the licence conditions.

35. Further, there is a risk that the chief constable has been influenced by media pressure flowing from the high-profile nature of the case and the deceased's family. In addition, if a SHPO is imposed as a result of disclosures made by offenders to their offender manager that would disincentivise such disclosures, and that would itself prejudice public safety. A SHPO is not therefore proportionate.

36. As to the terms of the SHPO, Mr Duffy says that they introduce concepts which are too nebulous or vague (such as imposing a reporting obligation in respect of any "developing… relationship with females" or being found to be "drunk"), and unduly interfere with his right to privacy (such as by requiring the provision of login details for social media accounts).

37. Ms Spearing, on behalf of the chief constable, submits that the justices correctly distinguished the decision in *Smith* because, here, the SHPO was imposed after the offender was released rather than at the time of sentence. They carefully compared the licence conditions with the proposed SHPO and applied the correct statutory test when deciding that a SHPO is necessary. An SHPO introduces features that cannot be

replicated in licence conditions. It means that there is a power of arrest as soon as it is reasonably suspected that the offender is in breach of the SHPO (whereas a breach of licence conditions is not an offence, and can only result in recall once a decision to recall has been made). It also means that there is a power to issue a warrant to enable the police to enter and search the offender's home. It also means that the police, who may be better resourced, have a more direct role in supervising compliance. Ms Spearing submits that the justices were entitled to conclude that the SHPO was necessary.

Discussion

38. The decisions in *Smith* and *GD* show that it is rarely appropriate for a sentencing judge to impose a SHPO at the same time as imposing an indefinite custodial sentence. That is because it is not usually possible to know what licence conditions will be imposed and thus to assess whether a SHPO will be necessary, and also because the terms of a SHPO imposed at the time of sentencing may undesirably tie the hands of those responsible for setting the licence conditions. *Smith* recognises that there is no blanket rule against the imposition of a SHPO in such cases: Hughes LJ recognised that there may be cases where that is necessary.

39. There are stark differences between this case, and the circumstances of *Smith* and *GD*.

40. First, this case is not concerned with a SHPO imposed at the time of sentence. The sentencing judge in this case did not impose a SHPO. When the SHPO was imposed by the justices, there was no question of trying to predict what the licence conditions might be: they had already been set. Nor was there a risk of fettering the discretionary judgements of the Parole Board and the Secretary of State as to the imposition of license conditions. The rationale for the warning in *Smith* about imposing a SHPO on an offender who is subject to an indefinite sentence does not therefore apply. That is sufficient (as the justices correctly observed) to distinguish this case from *Smith* and *GD,* but it does not obviate the need to show that the conditions are necessary in addition to the licence conditions.

41. Second, as Hughes LJ observed in *Smith* (at [9]), it is important to remember that a defendant convicted of sexual offences is likely to be subject to other relevant regimes. One of these is the sex offender notification regime under part 2 of the Sexual Offences Act 2003. In both *Smith* and *GD*, the offender was subject to that notification regime (because in each case he had been convicted of qualifying sexual offences: *Smith* at [9] and *GD* at [3]). Despite everything set out above about the appellant's offending, including his admitted commission of serious sexual offences, he has never been convicted of a sexual offence. The appellant's probation officer gave cogent evidence as to why a SHPO was needed so as to apply the notification regime to the appellant. The justices were entitled to accept that evidence for the reasons they gave. If it is necessary to identify some unusual feature to take the case out of the norm, then that is one such feature. It is unusual that a conviction for murder results in a charge of rape being left to lie on the court file. There is force in Ms Spearing's submission that a different approach would now be taken. It means that the appellant has not been, and would not otherwise be, subject to the protective notification regime that operates under Part 2 of the 2003 Act.

42. Third, the offenders in *Smith* and in *GD* had committed offences connected with indecent photographs of children. By contrast, the appellant committed offences of the rape and murder of a child and many other sexual offences. This is a case of the utmost seriousness. It calls for a comprehensive package of measures for the protection of the public.

43. Fourth, the facts of the case show that the licence conditions have not been sufficient to protect the public. When he was released on licence, the findings made by the justices show that the appellant committed further sexual offences.

44. Fifth, the findings made by the justices show that the appellant is an exceptionally devious offender, who is capable of identifying young women who he can, within a short period of time, manipulate into a sexual relationship.

45. Sixth, the application for a SHPO was only made when it had been demonstrated that the licence conditions had been insufficient to meet the risks of the appellant's behaviour.

46. Accordingly, the justices were right to conclude that this case was different from the types of case that were considered in *Smith* and *GD* and that the decisions in those cases did not preclude the imposition of a SHPO in this case.

47. There is no evidence to support the appellant's concern that the police were influenced by the media, or the family of the victim, when deciding to pursue a complaint. On the contrary, the facts of the case show a need for strong public protection measures. It is hardly surprising that the respondent sought a SHPO. In any event, the decision as to whether to impose a SHPO rested with the court, not the police.

48. In assessing whether a SHPO is necessary, the justices considered, with care, the existing licence conditions. They analysed whether, in the light of those conditions, a SHPO was truly necessary for the statutory purpose of protecting the public from sexual harm. They gave compelling reasons for their conclusion that a SHPO was necessary. The reasoning of the justices shows that they regarded the SHPO to be consistent with and complimentary to, but not duplicative of, the licence conditions. They were right about that. Thus, for example, the SHPO extends the provisions in the licence conditions that were designed to affect girls under the age of 16, to those aged 16-18. This reflected evidence as to the appellant's conduct towards some individuals in that age bracket.

49. In taking this approach, the justices were entitled to (and were obliged to) take account of risks that were demonstrated by the appellant's own admissions and disclosures. The appellant's submission that offenders might be disincentivised to make disclosures gains no traction within the confines of the statutory framework. Anyway, an offender's honest disclosure of risk factors whilst serving a sentence is likely to assist them when the Parole Board comes to consider release. The fact that they might then find voice in the licence conditions is likely to be a secondary factor. There is no evidence, on the facts set out in the case, to support the appellant's policy argument that reliance on the appellant's disclosures is likely to mean that he will be less forthcoming.

50. For all these reasons the justices were entitled to conclude that the licence conditions did not sufficiently address the risks of sexual harm that were posed by the appellant to members of the public. They were therefore right to find that a SHPO was necessary.

51. This means that it is not necessary to address Ms Spearing's submission as to differences in approach between, on the one hand, police monitoring of a SHPO and probation monitoring of licence conditions. I accept, in principle, that if it is shown that police involvement in a MAPPA process is necessary, and that this is best achieved by the imposition of a SHPO, then that is a relevant factor when deciding if a SHPO is necessary. Here, however, the justices did not make any relevant finding on this issue. It is not, therefore, a matter that falls for consideration on this appeal.

52. I do not accept Mr Duffy's submission that any of the individual conditions is unnecessary, or that it disproportionately interferes with the appellant's right to privacy. Each condition is justified as being necessary by the justices' findings as to the appellant's conduct, and the consequential risk to the public. Thus, the conditions in relation to drink reflect the recognition that alcohol has been identified as a trigger for the appellant's offending. The conditions in relation to reporting developing relationships reflect the evidence of the appellant developing relationships which have rapidly resulted in sexual offending. The appellant's previous offending does not apparently involve the use of social media. The original offences pre-dated widespread public use of the internet, and his more recent offending was initiated as a result of physical meetings. The appellant is, however, likely to use all means at his disposal to pursue his sexual interest in girls and young women. He has also used internet searches to pursue his sexual interests. The justices were entitled to conclude that the conditions in respect of the internet and social media were necessary to protect girls and young women from him.

53. I would therefore answer the second question "yes".

Outcome

54. I would answer the questions as follows:

    (1) Was there sufficient evidence upon which we could reach a decision to impose a [SHPO]?

        Yes.

    (2) In view of the decisions in *R v GD* and *R v Smith* were we right to find that a SHPO was necessary?

        Yes.

55. It follows that I would dismiss the appeal.

Lord Justice Dingemans:

56. I agree.