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| <i>Judgment: approved by the court for handing down<br/>(subject to editorial corrections)*</i> | <b>ICOS No: 24/110042</b>    |
|                                                                                                 | <b>Delivered: 01/10/2026</b> |

**IN HIS MAJESTY’S CROWN COURT OF NORTHERN IRELAND**

**SITTING AT DOWNPATRICK CROWN COURT**

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**THE KING**

**v**

**LUIS MARTINS DOS MARIANO and ALCINO SOARES**

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**BEFORE HIS HONOUR JUDGE GREENE KC**

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[1] The victim in this case is entitled to lifelong in respect of these matters by virtue of section 1 of the Sexual Offences (Amendment) Act 1992.

[2] Mariano pleaded guilty on arraignment on 5 March 2025 to two counts of rape. Soares pleaded not guilty on 6 March 2025 to three counts: sexual assault by penetration, rape and theft. On 6 October 2025 he pleaded guilty to sexual assault by penetration and rape - the theft count was left on the books.

[3] The victim was 19 years old and had been out on 9 September 2023 with a friend in Hagans Bar in Dungannon. Later in the evening she was outside a fast-food shop waiting for her friend when she was approached by the two defendants.

[4] She was quite drunk and her memory of what happened is very patchy. I intend to briefly summarise her own memories before setting out what the objective evidence establishes. She recalls being taken to an alleyway which led to a car park. She remembers having difficulty standing or talking. She remembers being raped at a time when she couldn’t really stand properly and one of the males forced her to give him oral sex before pulling her to her feet again.

[5] She remembers being taken to a corner of the car park and being raped - such was her state that she could not recall if both of the males raped her or just one of them. She recalls one of the males pulling her pants and trousers back up, sliding to

the floor and the males then left her. She is uncertain but thinks she eventually got up and walked out of the car park.

### *CCTV evidence*

[6] The full extent of her ordeal was captured on CCTV which I have viewed. It makes for disturbing viewing. It shows the underground car park of a block of flats at 10 Sloan Street, Dungannon which is a short distance away from Hagans Bar. The defendant Mariano can be seen carrying the victim in the car park followed by Soares. Mariano takes the victim to a pillar, and whilst a complete view is obscured by the pillar, what you can see is consistent with rape and oral rape taking place. Soares can be seen in close proximity in the background. After Mariano finished raping her, Soares approaches and both defendants walk off leaving the victim alone before Soares returns to her. He carries her over to a corner, her trousers are around her knees. He pulls her underwear down and rapes her.

[7] Afterwards the victim starts to dress herself. What is evident during all of this is that she is extremely drunk, at one point collapsing to the ground. Finally, Mariano leads her back to the pillar. What he is doing is partially obscured but seems to involve a further interaction with the victim of some sort. He then leads the female off.

### *Police interviews*

[8] In police interview Mariano said that he had been drinking that day in his words "a lot", from about 5.00pm. He describes himself as drunk. He recalled that he was in the company of another male outside Hagans Bar and this male met a female who he spoke to. He says that he then approached them and he then says, "I say I like you, you want to come with me". He says that this female agreed to come with him and then they went to a place and had intercourse. He said that they were kissing each other. He said the female agreed to undress herself and he helped her undress herself. He said that the other male was there and was laughing at them and he told him to go away. He did not think he ejaculated.

[9] He recalled then that the other male then approached the female, they spoke to each other and then had intercourse. He said he then went back to them and the female who was naked he helped dress her and he asked her if she was fine and then he took her back out of the place.

[10] In his police interview Soares described her as 50/50 drunk and she knew what she was doing. He said he watched his friend and the victim have sex and she sucked his friend's penis claiming she took his penis out of his trousers in order to do so. He saw them talking. Later he said he kissed her and fingered her and she squeezed his balls. He claimed she was also kissing his neck and that she was loving it telling him to keep doing that. He claimed he did not have sex with her.

[11] In his second interview he continued to deny any vaginal sex. When the CCTV was put to him he confirmed she was very drunk but maintained that what happened was consensual. He denied he had sex with her and stated his friend had already had sex with her so he would not.

[12] He was shown the two persons on CCTV and identified himself and claimed he didn't know the name of the other person. He had referred to his friend by a fictitious name. He claimed that at one point he told his friend, "You can fuck her like but don't do anything bad to her".

[13] He accepted that while his friend was having sex with her, he was keeping a look out. He was shown a portion of the CCTV and asked what he and his friend were talking about, he claimed his friend told him that she was wanting him. He was shown another scene and claimed he was trying to help her. When asked if his penis entered her vagina, he said it went close. He claimed he had not taken any alcohol or drugs that night.

[14] Luis Martins Dos Mariano was 17 years and five months old at the time of his offending and is now just over 20 years four months.

[15] Alcino Soares was 17 years 11 months and 25 days old at the time of his offence. He is now 21 years old.

### ***Rape***

[16] In this jurisdiction the sentencing levels for rape have been addressed in a number of cases, most recently in *R v Kubic* which endorsed the approach previously taken in *R v O'Connell* [2004] NICA 15 where it was stated that sentencers in this jurisdiction should apply the starting points recommended by the Sentencing Advisory Panel in England and Wales ("the Panel") in its 2002 guidelines.

[17] The court went on to emphasise that sentencers should not view starting points as fixed tariffs for rape cases. It is important to stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Each must be determined on its own facts.

[18] The guidelines recommend a starting point ("SP") of five years on a contest for a single offence of rape of an adult victim with no aggravating or mitigating factors. Two factors relevant to this case as justifying a SP of eight years as appropriate are where (i) the rape is committed by two or more offenders acting together; or (ii) there is a repeated rape in the course of one attack.

[19] One of these features would be sufficient to place this case in the eight-year starting bracket. The other would become an aggravating factor to consider in any upward adjustment from that starting point. I have identified the commission of this offence by two offenders as the factor justifying the higher SP.

[20] *Kubic* went on to set out a number of possible additional aggravating features which would result in a sentence above either SP and at para [18] emphasised “that neither the factors indicating an increased starting point nor those setting out aggravating circumstances should be applied mechanistically. Secondly, they are not comprehensive. Where other aggravating or mitigating factors are in play they need to be taken into account.”

[21] The approach advocated in the England and Wales Guidance is to arrive at the appropriate sentence for an adult offender and make the adjustment for youth from that to arrive at the appropriate SP. Both counsel have endorsed that approach and I intend to adopt that approach.

### *Main issues for sentencing*

[22] At para [20] of *R v ML*, dealing with historic sexual offending, the court said:

“When assessing the appropriate sentence in an historic sex case for an offender who was a child at the time of the commission of the offence, we suggest that the following factors should be taken into account:

(i) The statutory framework applicable at the time of the commission of the offence governs the scope of the sentence which may be imposed;

(ii) The sentence should reflect the sentencing guidelines and principles applicable at the time at which the sentence is imposed;

(iii) The primary considerations are the culpability of the offender, the harm to the victim and the risk of harm from the offender in the future;

(iv) Where the offender was young and/or immature at the time of the commission of the offences that will be material to the issue of culpability. It is appropriate in considering that issue to consider what sentence would be imposed today on a child who was slightly older than the offender was at the time that he committed the offences.”

- **Harm** - Victim Statement - this sets out in an elegant, measured and moving way the impact this offending has had on her. Significant harm will undoubtedly arise as a result of offending such as this and this statement certainly speaks to that. The bravery of the victim in coming forward is to be commended – it must have taken great courage for her to speak out. She will

take some comfort from the fact that when she did so many people were there to listen to her.

- **Risks** - the court was provided with pre-sentence reports for each defendant in which risk was discussed.

### *Culpability*

[23] Both defendants were 17 at the time of the offending and Soares a matter of a few days from his 18<sup>th</sup> birthday. Age has been a significant factor in the submissions of both counsel as has the learning disabilities of both defendants as set out in various reports – both are suggested as important factors affecting their culpability. Their respective cases and these separate issues call for individual consideration in mitigation.

[24] In *R v Coyle* [2010], a DPP reference, the defendant had been 16 at the time of the manslaughter for which he was sentenced when he had just turned 18. It stated at paras [12] – [15]:

“[12] ... this offender was 16 at the time of the offence and by virtue of s53(6) of the Justice Act 2002 (the 2002 Act) is to be treated as a child. The principal aim of the youth justice system is the protection of the public by the prevention of offending. There is a specific requirement, however, in relation to the welfare of children in s53(3) of the 2002 Act:

‘(3) But all such persons and bodies must also have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.’

[13] The application of this requirement was addressed by this court in *R v CK* [2009] NICA 17 where the international principles on the treatment of children by the criminal justice system were reviewed. The court noted the influence which the United Nations Convention on the Rights of the Child had exercised on the jurisprudence of the ECHR. Essentially the UNCRC suggested that a sentence of detention should be a last resort and for the minimum period necessary. That ought not, however,

prevent a court imposing an appropriately severe sentence where necessary.

[14] The difference in approach to the sentencing of children is also reflected in our local jurisprudence. Section 1(1) of the Treatment of Offenders Act (Northern Ireland) 1968 (the 1968 Act) states that, subject to subsection (2), a court shall not pass a sentence of imprisonment on a person who has not attained the age of 21. Section 5(1) of the 1968 Act provides that in respect of persons between 16 and 21 a court may pass a sentence of detention for a period of up to 4 years. Section 1(2), however, retains the right for a court to pass a sentence of imprisonment for a period in excess of 4 years.

[15] The purpose of these provisions is clearly to ensure that young people who must be detained are generally placed in detention in circumstances where there can be a focus on rehabilitation away from the influences of recidivist offenders. Consistently with the principles we have referred to earlier a court will, therefore, conscientiously seek to establish whether in accordance with sentencing principles such an outcome can be achieved.”

[25] In *DPP’s Reference (No 18 of 2013) R v Finnegan* [2014] NICA 20:

“The domestic and international provisions in relation to the sentencing of children are designed to ensure that where detention of young people is necessary it should be for the shortest appropriate time and the focus should be on rehabilitation away from recidivist offenders. It is for the court, however, to establish whether in accordance with sentencing principles such an outcome can be achieved in a particular case. In assessing the culpability of a young offender his age and emotional development are likely to be significant. The closer he is to the threshold of adulthood the more likely it is that the mitigation of youth will be diminished. That is consistent with the Sentencing Guidelines Council Definitive Guideline entitled “Overarching Principles – Sentencing Youths” at paragraph 5.2.”

[26] For completeness, the Sentencing Children and Young People Guideline 2017 at paragraph 1.1 states:

“When sentencing children or young people (those under 18 at the date of the finding of guilt) a court must have regard to:

- The principal aim of the youth justice system (to prevent offending by children and young people);
- the welfare of the child or young person;
- the age of the child or young person (chronological, developmental and emotional);
- the seriousness of the offence;
- the likelihood of further offences being committed; and
- the extent of harm likely to result from those further offences.

[27] In *R v Allen*, the defendant was 18 when he committed a rape against his half-sister (who waived her right to anonymity). The Court of Appeal in considering the SP for that offence did not make any allowance for the youth of the defendant although it would appear the issue was not fully argued before the court.

### *Mental development*

[28] In *R v Newman* [2024] EWCA Crim 415, a defendant’s extremely low intellectual functioning was discussed:

“16. ... Amongst the mitigating factors which should be taken into account is mental disorder or learning disability, **particularly where linked to the commission of the offence**. In this regard, reference should be made to the definitive guideline on sentencing offenders with mental disorders, developmental disorders or neurological impairments, which has had effect from 1st October 2020. At paragraph 9, that guideline observes that culpability may be reduced if an offender was, at the time of the offence, suffering from an impairment or disorder. **It will only be reduced if there is sufficient connection between the impairment and the offending behaviour (see paragraph 11)**. In some cases, the impairment may mean that culpability is significantly reduced. In others it may have no relevance to culpability. **A careful analysis of all the circumstances of the case and all relevant**

**materials is therefore required (see paragraph 12).** Where relevant expert evidence is put forward, it must always be considered. The sentencer must state clearly their assessment of whether the offender's culpability was reduced and the reasons for that, and the extent of that reduction. The sentencer must also state, where appropriate, their reasons for not following an expert opinion (see paragraphs 13 and 14).

17. Paragraph 22 of the guideline states that where custody is unavoidable, consideration of the impact on the offender of the impairment may be relevant to the length of sentence. This is because an offender's impairment may mean that a custodial sentence weighs more heavily on them and/or because custody can exacerbate the effects of impairment."

### *Mariano - medical*

[29] I have read and considered Dr O'Driscoll's report on Mr Marianos. Summarising the main findings, he opines that the defendant displays significant learning needs. He presents with an extremely low level of cognitive ability at a level associated with a Moderate Learning Difficulty. Professor Davidson instructed by the prosecution commented that other factors such as the language difficulty could produce test scores artificially low, and it is misleading to conclude they have a learning disability just from those scores.

[30] In an addendum report Dr O'Driscoll acknowledged limitations within his earlier report and confirms his opinion that the original assessment was suggestive of significant cognition and learning needs. To supplement his original findings, further tests were conducted including a Full-Scale Score on the WNV which fell within the Extremely Low range, at the 2nd percentile relative to the relevant normative population. Dr O'Driscoll concluded:

"There is convergence across multiple sources of evidence. Of particular relevance, Luis' cognitive performance remained within the Extremely Low range on subsequent assessment using the WNV, notwithstanding its reduced verbal demands and an observable improvement in his functional use of English. Considering the updated assessment findings alongside the broader pattern of available information, and on the balance of the available psychological evidence, I remain of the opinion that Luis is likely to present with significant cognition and learning needs. Within a psychological formulation, I consider Luis' presentation to be suggestive of a level commonly

described within educational contexts as a Moderate Learning Difficulty.”

[31] His social skill impairments are likely to affect his social understanding, social reasoning and ability to interpret or respond appropriately to social cues. His presentation is consistent with a higher level of social immaturity in comparison to peers of a similar chronological age.

[32] He presents with difficulties in comprehending complex or abstract social and sexual concepts, particularly his understanding and ability to socially navigate the issue of consent.

### *Soares - medical*

[33] Mr Dwyer prepared a report on Mr Soares. He concluded that it was reasonable to suggest he has a Moderate Learning Difficulty (IQ 55-70).

[34] In his report, Dr Hussain (Psychiatrist) agreed with Mr Dwyer’s finding but stated it was a Mild to Moderate Learning Disability. His difficulties impact on everyday understanding of simple issues “... he has a problem both with understanding others and expressing himself so that he can be understood. He has a limited understanding of societal norms which is likely to have impacted on his understanding of right and wrong and his capacity to make informed decisions.”

### *Mitigation*

#### *Mariano*

[35] In addition to the matters in relation to the defendant’s age and mental development, the defendant pleaded guilty on arraignment. He will therefore receive a significant reduction in his sentence.

[36] The defendant moved to Northern Ireland in 2022, along with his family, from East Timor. He had a happy childhood and has qualifications in languages and mathematics. Prior to arrest he worked four days per week and contributed to the household running. In custody he has had no adjudications and has completed inductions with Barnardo’s, Food Hygiene, Health Centre, Housing Rights, Library and Men’s Health Day.

[37] Mr Kearney in oral submissions invited the court to conclude there was evidence of remorse. He did so no doubt because in his PSR while he expressed regret and remorse, he presented as more concerned about the impact on himself. It is said he lacks insight into the seriousness of his sexual violence towards the victim and lacks any victim awareness or empathy (cf P3/6).

This is the opinion of an experienced probation officer reporting what was said and aware of the circumstances of the defendant. PBNI are tasked with appraising the courts independently on these matters and would not easily or lightly make such a finding.

Pleas of guilty show remorse but the full acknowledgment of wrongdoing and insight is absent. I do not consider the defendant's mental development at the time of offending or now has any impact on what probation advise on this issue. Absence of insight and empathy is not an aggravating feature, the issue is whether it has been properly established as mitigation. It has not.

He has no previous convictions in Northern Ireland and is assessed as a medium likelihood of re-offending and does not present as a significant risk of serious harm. I endorse those findings.

### *Soares*

[38] In addition to the matters in relation to the defendant's age and mental development the defendant pleaded guilty on arraignment. He will therefore receive a significant reduction in his sentence. He moved to Northern Ireland with his mother and sister when he was nine years old from East Timor.

[39] The PSR deals with all that is said on his behalf. It was said he was placed on the Child Protection Register by Social Services between 2021 and 2023, having been identified as being at risk of emotional and physical abuse, as well as neglect. This was unconfirmed by PBNI. He was in full-time employment, supplemented by farm work picking fruit at the time of his arrest.

[40] The court is invited to find that the defendant is remorseful and ashamed of his actions. The contents of his psychiatric and psychological reports on this point are referenced by counsel. However, the PSR notes a lack of victim empathy and that he appeared to limit his culpability due to being under the influence of alcohol (see p3&4/6). As before I prefer the expert view of PBNI on this discrete issue. Pleas of guilty show remorse but the full acknowledgment of wrongdoing and insight is absent. As with Mariano, this is not an aggravating feature; as mitigation it has not been established. His plea is the most important aspect of remorse as that always carries an element of that.

[41] He has no previous convictions and has been in custody since his pleas of guilty.

### *Culpability*

[42] Assessing culpability takes account of the nature of the offending, the role played by each defendant, the extent to which the offence was planned, the level of force that was used in the commission of the offence, and the awareness that the

defendant had of their actions and its possible consequences. Age and the presence of learning difficulties are also important and these have to be looked at as part of a balancing exercise to arrive at a just sentence.

### *Seriousness of offending*

[43] This offending was very serious. The victim was subjected to a prolonged and humiliating ordeal by two perpetrators who took it in turn to rape her. Additional aggravating features are that both defendants acted together in taking advantage of the victim who was obviously very drunk, they removed her from the company of her friend thereby deliberately rendering her vulnerable. It should have been obvious to both defendants that she was significantly intoxicated. Her condition rendered her practically unconscious for most of the time she was in their company. Because of her condition she was less able to recognise or understand the danger she was in, less able to extricate herself from it, or shout for help, she was incapable of not only consenting but resisting this cowardly attack on her.

[44] Her condition also had an impact on her ability to account for what had happened to her later to police, something which I have no doubt featured heavily in why they quickly formed the intention to rape her; they thought they could do so and she would not be able to give an account so as to bring them to justice. She immediately knew and understood she had been raped and made her complaint soon thereafter.

[45] From the time shortly after they met her, and acting together, they took her to a car park which, given the hour they would have been confident it would be deserted. This showed a significant degree of planning and foresight, and time for each defendant to reflect on their actions. In taking her to that location there was a clear determination to sexually assault her.

[46] At the carpark the victim was subjected her to an ordeal that went on for a significant period of time. This showed a persistence.

[47] Whilst it was secluded, the car park was, however, still a public place. It turned out to have CCTV cameras which were significant in bringing both defendants to justice. The victim therefore knows there is footage of the attack upon her which is bound to cause her additional distress.

[48] The victim statement clearly shows there has been a significant impact on the victim. It is obvious she will have significant difficulties getting over what was done to her - the reality is she will have great difficulty getting her life back together.

[49] Both of the defendants were intoxicated and Mariano had taken cannabis. Their intoxication has contributed to the offending as both make clear in their probation interviews.

### *Available sentences*

[50] The age of a defendant at the time of offending together with their age at the time of sentencing are the defining factors in determining the range of sentences available to the court.

The sentencing options available to the court are:

- A non-custodial sentence which is not specific to a child defendant (eg youth conference); a probation order or a community service order would be two such orders.
- In respect of Mariano, a sentence of “detention” in a Young Offenders Centre under of section 5 of the Treatment of Offenders Act (Northern Ireland) 1968 which in this case would be for a maximum of four years.
- In respect of Mariano, under section 1 of the Treatment of Offenders Act 1968, a sentence of imprisonment for a term of more than four years.
- In respect of Soares, a sentence of imprisonment.

[51] As *ML* states “The statutory framework applicable at the time of the commission of the offence governs the scope of the sentence which may be imposed”. That may mean in some cases that it will determine whether custody can be imposed. In this case the Criminal Justice (Children) (Northern Ireland) Order 1998 (“the 1998 Order”) is the main statutory framework from which the scope of this sentence must be determined.

[52] The approach to sentencing contained therein reflects the generally recognised understanding that culpability of child defendants is reduced, there are greater opportunities for intervention and rehabilitation for children, and there is a need for a sentencing regime catering for the foregoing while remaining capable of addressing serious offending.

[53] I have considered the provisions of section 53(1) of the 2002 Act which reflects article 3.1 of the United Nations Convention on the Rights of the Child which states that in all actions concerning children the best interests of the child shall be a primary consideration and para 5 of the Beijing Rules which states that the imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

[54] The principles relating to sentencing child offenders are applicable whether at sentence the defendant remains a child, is an adult under 21, or over 21 at the time of sentencing. An adult defendant ought not be subject to a sentence which is harsher than that available to the child defendant at the time of the offending. In reality, some disposals are simply not available now to either or both defendants because they can

only be passed upon a child; but given the gravamen of the offending involved here, such disposals would be unlikely candidates even if they were available. The object of this sentencing exercise is to accommodate the particular circumstances of the defendant at the time of offending (and now if appropriate) with the facts of the case and the sentencing regime that is now available consistent with the aims of sentencing adults who were children at the time of the offending.

### *Sentence*

[55] I have considered all of the sentencing options short of a custodial disposal as well as the various custodial sentences set out in Article 4 of the Criminal Justice (Northern Ireland) Order 2008. This offending is so serious that a non-custodial option is not appropriate. I also conclude that a custodial sentence of more than four years' detention is warranted and that each defendant therefore falls to be sentenced to a term of imprisonment.

[56] While both defendants were almost adults, they were still children; the impact of age or immaturity on sentence does not fall off a cliff as a defendant approaches adulthood although it must sensibly be somewhat diminished. Their ages and immaturity impact culpability because it is generally acknowledged age and immaturity are important factors to be given appropriate weight.

[57] I accept on the balance of the materials before me that both defendants have a learning disability; Mariano has a moderate learning disability and Soares' disability is of at least a mild nature but more likely than not of moderate severity.

[58] Both defendants' accounts in police interview are wholly at variance with the CCTV footage. I have no doubt they had a clear understanding of their wrongdoing at the time and their attempts to distance themselves from their actions in interviews with police and probation undermines any assertion they did not.

[59] Considering all of the material before me which includes those police interviews, their accounts to probation and the nature of the offending, the various experts' reports and the submissions of counsel I do not consider that either defendant's learning disability had any direct connection to their culpability for the offending before the court.

[60] Their learning disabilities are, however, still relevant as a factor in the overall mitigation of sentence in particular the impact of a custodial sentence upon a defendant with such a disability.

[61] In both your cases and applying the guidelines set out in the *Kubic* case the initial starting point is one of eight years because this was offending where both of you acted together in the commission of these offences against the victim. From that initial starting point the additional aggravating features previously highlighted in paras [43]–[49] above have to be considered.

[62] In both your cases the initial SP is 12 years' imprisonment. This is for an adult offender. The significant mitigation in both your cases relates to your age and learning difficulties as set out in the various reports to which I have already briefly referred. You were both children although at the very upper end of that age group. I recognise that youth and immaturity, together with your mental deficiencies have reduced your culpability in the way I have set out. This adjustment also recognises the principle that a custodial sentence for a child should be as short as possible.

[63] To take account of these factors I have reduced that SP to nine years' imprisonment before the adjustment for your pleas of guilty. I do not intend to differentiate between you because of Mr Soares' delayed plea. There were sound legal reasons why your pleas could not be entered in the timely manner of your co-accused.

[64] Delay – delays of three years are not uncommon in this jurisdiction. The trial process inevitably will consume some of that time but there is a delay of about a year brought about by factors that were not of your making. The impact on both of you is perhaps more acute because of your age.

### *Detention*

Mariano - Determinate Custodial Sentence of six years – three years in custody and three years on licence.

Soares - Determinate Custodial Sentence of six years – three years in custody and three years on licence.

### *Ancillary Orders*

SOPO - 10 years

1. Sexual Offenders Register for life.
2. A SOPO – terms as per the Pre-Sentence Report. Necessary and Proportionate.
3. A disqualification order under the Protection of Children and Vulnerable Adults (NI) Order 2003.
4. Inclusion on the “Barred list” under the Safeguarding Vulnerable Groups (NI) Order 2007 is automatic for these offences although the court should inform the defendant that he will be included on the barred list (paragraph 25(1)).