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*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

HENRY MARTIN JOSEPH CREANEY

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Before: Morgan LCJ, Coghlin LJ and Gillen LJ

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MORGAN LCJ (giving the judgment of the court)

[1] This is an appeal against conviction following verdicts of guilty on all 19 counts returned by a jury on 7 March 2014 at Craigavon Crown Court sitting at Armagh in respect of 7 counts of indecent assault on a female contrary to section 52 of the Offences against the Person Act 1861 and 12 counts of gross indecency with or towards a child contrary to section 22 of the Children and Young Persons Act (Northern Ireland) 1968. The complainants were three female children who lived in the same neighbourhood as the appellant. The offending is alleged to have taken place during the period 2002 to 2004. Mr Irvine QC and Mr Lindsay appeared for the appellant and Mr Mooney QC and Ms Auret appeared for the PPS. We are grateful to all counsel for their helpful oral and written submissions.

[2] It was submitted on behalf of the appellant that the learned trial judge's charge was unbalanced and favoured the prosecution and that in any event for the reasons offered the court should have a sense of unease at least about the safety of the convictions. This case, therefore, gives us an opportunity to review the extent to which a trial judge is required to review the elements of the evidence in a case of this kind.

Factual background

[3] The prosecution case alleged offending against 3 children who lived in the same neighbourhood as the appellant. Counts 1-10 alleged offending against A during the period from 23 June 2002 to 1 October 2004. Counts 11 and 12 alleged offending against B during the period from 11 August 2002 to 13 June 2003. Counts 13-19 alleged offending against C during the period from 31 May 2004 to 1 October 2004.

[4] During the period of the alleged offending the appellant was in his late 40s and A, B and C were aged 9-11, 7, and 8-9 respectively. A and B were best friends and A and C were sisters. A alleged that the offences detailed in counts 1-2 were committed while she was alone with the appellant and counts 3-10 were committed while B was also present. B's allegations involved the presence of A during the incidents of abuse, though it is not entirely clear from the papers whether she was alleging whether A witnessed count 12 or not. C said that a friend was present during the offending against her. At first she said that she could not remember who the friend or friends were but later she said she could remember but did not want to reveal their identity. In cross-examination, she conceded that there was a possibility that it may have been B who was present during the committal of count 19.

[5] It was accepted that during the period in question children in the area played across from a community centre close to where the appellant lived. There was a grassy layby with railings near the appellant's home where on sunny days he used to sit. It was also accepted that the children were in the appellant's home on a number of occasions although there was some difference in the regularity of those visits. While they were there, he gave them sweets, juice and coke and allowed them to play on his daughter's computer and watch TV. The allegation that he gave them cigarettes was denied. His daughter had a bedroom in the house but spent time away from home studying. Another daughter, who lived away from home, had small children and gave evidence that the appellant would at the relevant time have been looking after one of these children, his grandson. He was born in 2000 and so would have been a young child at the time of the alleged offending.

A's evidence

[6] A said she used to speak with the appellant when he was sitting at the layby and that, on occasions, she went to the shop for him and he gave her £1 or 50 pence or a chocolate bar for doing this. The first thing that she remembered of a sexual nature was not the subject of any of the charges. She said that on a sunny day in the summer of 2002 she was talking to the appellant at the lay-by and he said he wanted to go in to the house to change. He told her she could come upstairs and into his bedroom. She described standing facing a mirror and being able to see in the mirror the appellant changing his underpants and trousers. She could see his exposed penis, and when they went outside again the appellant asked her had she seen anything. A said yes but did not say what she had seen and the appellant said "OK".

When making a statement to police she described and made a sketch of the appellant's bedroom, including the position of the furniture.

[7] A said that maybe a few weeks later, still in the summer of 2002, she was in the toilet at the top of the stairs in the appellant's house. The door was shut, the light was off, there was no window in the toilet and it was dark. She was aware of the appellant sitting on the toilet and could hear a slapping noise which she later realised was the appellant masturbating. She said in her evidence that her pants were down and that the appellant touched her on the vagina (count 1). She also described in evidence an occasion in the summer of 2002 when she was in the appellant's bedroom, lying across the bed on her back. Her head was in the middle of the bed and her legs were over the edge of the bed and the appellant got down between her legs, kneeling on the floor, and licked her vagina (count 2).

[8] A described a game that the appellant used to play with her and B. She described an occasion that she believed was still in summer 2002 when they were in the appellant's daughter's bedroom and the appellant was on the bed with a pillow over his face. He got A and B to take turns at masturbating him and he would guess who was doing it and who was best at it (count 3). A was of the view that the game she described took place over a period from 2002 to 2004 on somewhere between four and five occasions (specimen count 7). She said that after this particular occasion the appellant told B to go to the toilet to get dressed, that A would get dressed in his bedroom, and he would get dressed in his daughter's room. However, when B went to the toilet the appellant returned to his bedroom and began to lick A on the vagina. B shouted that she was ready but A said she wasn't ready yet and to wait (count 4).

[9] A described another incident when she and B were upstairs in the appellant's bedroom. She was again lying across the bed and he was kneeling on the floor at the side of the bed and was licking her vagina while B was on the floor beside the appellant, she believed, masturbating him (count 5).

[10] Both A and B gave evidence of an incident which was not the subject of any count. A's account was that she and B were in the appellant's daughter's bedroom playing on the computer. A file 'Rebel Music' was opened but instead of music, there was pornography in the file. A said that the girls watched this and that it showed a black woman having sex with a black horse. Another scene showed a man having sex with a girl on stairs in a house. A said that the appellant stood behind the girls and was masturbating himself.

[11] A also described an incident when she was lying on the appellant's bed. He was licking her vagina and she felt a sharp pain and said words to the effect of "Oh, that's sore". She believed that he had inserted his finger into her vagina (count 6). She said the appellant stopped and never did that again to her. A said that B was present when this happened and that she was masturbating the appellant.

[12] A described a different game the appellant would get the girls to play in which he would get a bottle of aftershave, pour some into the lid of the aftershave bottle and, again with a pillow over his face, get the girls to pour aftershave on his penis and guess which one of the girls had done this (count 8). A told police that she did not know the name of the aftershave but that she would recognise its smell. She thought there was a bottle of 'Old Spice' aftershave on the top of the dresser in the room but she didn't think that it was 'Old Spice' that was used. She said that because she knew that she would recognise the smell she went around smelling different aftershaves and that she recognised 'Joop' as having the smell of the aftershave that the appellant had used. She disclosed this for the first time in her evidence.

[13] A gave evidence of an occasion in the bedroom when the appellant was masturbating himself. He got A to hold his penis and he began to ejaculate. As he did so it shocked her and she withdrew her hand when it happened (count 9). Finally, A recounted an incident in the living room when she and B were present. She said the appellant masturbated into his hand and put the ejaculate into his hand and swallowed it (count 10).

[14] A described the appellant's varicose veins at the inner aspect of his thighs, and said that he had a gunshot wound to his left lower leg. She said that she never saw his bare legs, other than in the flat, because he did not wear shorts outside at the grassy lay-by. She also gave evidence about the type of underwear that the appellant wore, namely boxer shorts. She said that she stopped going to the appellant's house when B told her that B and C had been there masturbating the appellant. She gave evidence that it then hit her that this was wrong and that what he was doing to her sister was wrong. She said she went round and asked him whether he had got B and C to touch him, and he admitted that he had. A told him that she would never be back again and she said that she never did go back again.

[15] A said that at the time she did not tell her parents what had happened. When she was around 11 she told her younger cousin, N, who was around 9. During the trial N gave evidence that she had no recollection of being told about this at the age of 9, though she did recall being told about the abuse later. N gave evidence that in 2011 A told her that she and B were thinking of telling their mothers. A's medical notes showed two entries referring to the abuse. First, in May 2011 the doctor noted that A alleged abuse by a neighbour and secondly, in November 2011 it was noted that A was going to speak to her mother and was thinking of going to the police.

[16] C told her mother on 25 May 2013 about the abuse. A said the fact that C told their mother about this was the only reason that she came forward. When C told their mother, their mother questioned A and it was only on being questioned that A disclosed she had been abused, first to her mother and then, in July 2013, to police. A said during the trial that she never discussed her evidence with anyone and that she

and the other complainants had not discussed the specific details of the abuse with each other, though they had discussed the fact that abuse had happened.

B's evidence

[17] B said that she and A used to speak to the appellant and go to his house, and that he used to give them sweets and roll up cigarettes which they smoked in his house in the upstairs bathroom or toilet. The first incident she recalled happened when she was in the house with A and the appellant invited the girls to his daughter's room. He turned on the computer, went to a file labelled 'Rebel Music', but when it was opened it contained pornography. B described A as sitting on the stool while she was sitting on the end of the bed. She said that she saw a white woman performing oral sex on a black horse. She did not mention the other scene described by A. B said the appellant was present but thought he left the room at some stage.

[18] B next described being outside playing when she and A saw the appellant through the kitchen window and that he waved them over. They went inside to his kitchen, then the living room to watch TV. B recalled going upstairs. They were in the landing at the door of the appellant's bedroom. The appellant tried to rub A's vagina. She pushed his hand away but he persisted and rubbed A's vagina for a few minutes with his finger under her clothing. B said she was standing beside them and that the appellant then turned his attentions towards her. Because she was smaller than A, the appellant had to kneel down beside her. She said he told her to spread her legs a bit wider and he tried to rub her vagina by putting his hand up the leg of her green shorts with the two pockets on them. She said that he did not get as far as her vagina when he was putting his hand up her shorts. She brushed his hand away, and he then rubbed her vagina over the top of her shorts (count 11). She said that after this incident she accompanied A and the appellant into his bedroom. In her cross examination she said that she saw a bottle of Joop aftershave on the dressing table. This was the first occasion on which she mentioned it and came the day after A had given evidence identifying Joop for the first time.

[19] B described an incident in which she and A went into the appellant's bedroom. B was looking in the mirror and was able to see the appellant changing. It appeared that the appellant asked A to masturbate him which she eventually did. B described the appellant as wearing boxer shorts with buttons on the fly. B also described a recollection of A lying on the bed and the appellant having his head between her legs.

[20] B also described an occasion when they were playing hide and seek when she discovered the appellant on the toilet masturbating. The appellant asked her to perform oral sex on him. She did not know what it was and he said he would show her. She described that the appellant got her to put his penis in her mouth, but she

only did this for a second or two (count 12). She also described the varicose veins in the appellant's legs.

[21] B told no one of this abuse. Her evidence was that C, immediately before telling her own mother, told B that she was going to tell her mother, that she could not keep it in any longer. When C told her mother, C's mother spoke with B's mother who then spoke to B. B's mother made a statement in December 2013. She said A and C's mother called to her house to tell her what she had been told. B's mother said she was in shock. She composed herself and spoke to B. She said on 29 May 2013 she again spoke to B and there was a further meeting with the two mothers and three girls before they all decided to go to the police.

C's evidence

[22] C alleged sexual abuse by the appellant during the summer of 2004. She said that she went to the appellant's house a number of times that summer, and she was always accompanied by someone, either B or some other friend. She described being in the appellant's house when he called her upstairs. She heard his voice from the toilet. She saw he was sitting on the toilet masturbating. Initially she said that she did not recall who was with her, but that a friend was there with her and they were sitting on the landing floor giggling. The appellant then got up and went into his daughter's bedroom where the girls followed him. Her friend got onto an exercise bike while the appellant lay on the bed and began to masturbate himself (count 13). He got C to sit between his legs. She described his legs making a diamond shape, and that he took her hand and guided her hand to masturbate him and that he ejaculated (count 14). She did not know what it was and he said to her, well, it happens. She gave evidence that she thought it was funny. This behaviour occurred on a number of occasions (count 15).

[23] C also described an incident when she was in the appellant's daughter's bedroom and the appellant was lying on the bed masturbating himself. He got her to pull down her trousers and pants and asked her to sit on top of him astride his penis, and to bounce on it. She was facing the same way as he was facing, she had her back to him, and his penis was touching her vagina. When she felt that she rolled off him and off the bed (count 16). After that he asked her to masturbate him, which she did (count 17). C said this type of incident, the masturbation, happened on a second occasion (count 18). C also described the appellant getting her and a friend to run round a small coffee table in the living room and slap his penis each time they passed. She said that she did this and she slapped his penis five or six times, but that she got bored and then sat down and watched TV, and that this was the last time anything sexual happened (count 19).

[24] C said she had no recollection of varicose veins in the appellant's legs. She said that she disclosed this abuse to her mother on 25 May 2013 and her mother then confronted A. They reported the matter to police in July 2013.

The appellant's evidence

[25] The appellant was arrested on 5 July 2013 and interviewed. He denied all the allegations both in police interview and while giving evidence during the trial. In interview he acknowledged that A might have sat for a minute or two in his house, and said that he would have given her a can of coke and she might have gone to the toilet. She would only have been in and out. He acknowledged that later B might have been in with her once or twice and said that C was hardly ever with them.

[26] In cross-examination he said that during his police interview his head was fried and he could not think straight. He accepted that his initial account did appear to minimise his contact with the girls. In their closing speech the prosecution said that the final position was that A and B may have been in his house, and C less frequently, for about 10 to 15 minutes at a time. The appellant had no particular recollection of what they did for these periods of time except for repeating that they might have gone to the toilet. It was accepted that the girls were upstairs in his room. He said he might have been on the computer once or twice when A and B came in and that they would have known his daughter's bedroom better than his.

[27] One of the main issues raised by the prosecution in cross-examination was the appellant's evidence about new furniture he had bought for the bedrooms. In interview the police said to the appellant that the complainants were able to describe in detail his bedrooms including the colours in the bedrooms and where the furniture was positioned. The appellant replied:

> "Hold on a minute – you said they described my furniture – I didn't get that furniture when I moved into the house, I bought that furniture a way way long after – I only had an aul bed and a thing. I bought that furniture a long time after 2002."

The police asked whether this would have been 2004 or more recently and the appellant said it was around 2004/2005 but that the newer furniture was not there previously because he could not have afforded it.

[28] The prosecution argued that at this point the appellant was working on the assumption that the complainants were describing the furniture currently in the rooms. However it was clear from A and B's sketches and evidence that they were saying the current furniture was not there at the relevant time. In evidence during the trial the appellant then said that the new furniture was not bought a long time after he moved in but rather within months of moving into the flat, over the period from September to December 2002. He said that after the police interview he went home and discussed the matter with his daughters and remembered that he did have the money for new furniture because he had got a £1500 grant from the Housing Executive enabling him to replace the furniture. His daughter gave evidence in

support of this account. The prosecution suggested that the appellant said at any given time whatever he thought might help his case.

[29] Another issue on which the appellant was cross-examined related to his evidence that during the relevant period he had looked after his grandson, born in 2000, from 9am to 5pm from Monday to Friday, while his other daughter was working. He was supported in this by evidence given by his other daughter who said her father had looked after her son since her son was about 18 months old. The appellant had not mentioned this in his police interview and the prosecution made the case that had it been true it would have been an obvious fact for him to mention because it would have been difficult for him to mind a toddler while abusing the girls. They also drew attention to the fact that in giving evidence the daughter referred mistakenly a couple of times to her other child and gave evidence that her younger child was taken care of by his grandmother, quickly pointing out that this did not cause her any inconvenience because his uncle used to pick him up.

[30] When A was asked about this she said she did recall certain occasions when she saw the grandchild in the house but that he was not there when the abuse happened. Neither B nor C had any recollection of ever seeing him there. While the complainants could not say if the incidents happened on a weekday or a weekend, except C who said the bouncing incident must have happened on a weekday as she was in her school uniform, the prosecution case was not that the abuse must have happened at the weekend but rather that the babysitting of his grandson was a made-up addition to the appellant's case.

[31] Various details of the allegations were put to the appellant. He said that at one stage he had worn 'Old Spice'. He said the underwear that he normally wore was boxers or trunks and that he had worn boxers with a button fly in the past. He also gave evidence in cross-examination that there had been no falling out with the girls and that A was a decent honest girl he could trust. In police interview he said in the past he watched porn and that the only place he watched it was on his computer. He also said that there was a file on the computer labelled 'Rebel Music' but that it did not contain porn. A said that the computer in the daughter's bedroom had been more bulky than the one shown in current photos and the appellant accepted that would have been the case in 2002.

[32] When questioned about the description of veins in his legs, the appellant said that he wore football shorts that exposed his thighs when he sat down and anyone could have seen this. He also had varicose veins in his calves which people could have seen. The gunshot wound was to his right lower leg and not left as A had said.

The charge to the jury

[33] Lord Hailsham gave a general description of the content of a judge's direction to the jury in R. v. Lawrence [1982] A.C. 510 at 519, HL:

> "…. A direction to a jury should be custom-built to make the jury understand their task in relation to a particular case. Of course it must include references to the burden of proof and the respective roles of jury and judge. But it should also include a succinct but accurate summary of the issues of fact as to which a decision is required, a correct but concise summary of the evidence and arguments on both sides and a correct statement of the inferences which the jury are entitled to draw from their particular conclusions about the primary facts."

[34] Further helpful discussion of the content of the judge's charge can be found in Archbold 2015 beginning at paragraph 4-438 and Blackstone 2015 beginning at paragraph D18.21. From those sources the following general points can be drawn:

(i) The judge must identify the defence case. Where the accused has given evidence it is desirable to summarise that evidence and where he has given evidence and answered questions at interview it may be appropriate to draw attention to consistencies and inconsistencies between the two. It is also desirable for the judge to give an overview of the defence case in addition to weaving the defence case into the chronology of the prosecution evidence (see Curtin [1996] Crim LR 831 and Pomfrett [2010] 2 AER 481).

(ii) The longer the trial the greater the likelihood that the jury will need assistance in relation to the evidence. In a trial lasting several days it will generally be of assistance if the judge summarises those matters not in dispute and succinctly identifies those pieces of evidence in conflict. Brevity is a virtue. The jury will invariably have the assistance of speeches from counsel dealing with the issues of controversy in the case as a result of which the Court of Appeal is unlikely to be persuaded by appeals based merely on the failure of the judge to refer to a particular piece of evidence or a particular argument (see Farr 163 JP CA)

(iii) The judge must, however, strike a fair balance between the prosecution case and the defence case. Particularly where the defence case is weak the trial judge must be scrupulous to ensure that the defence case is presented to the jury in an even-handed and impartial manner. It follows that the judge must not engage in inappropriate sarcasm or extravagant comment (see Bentley (deceased) [2001] 1 Cr App R 21 CA, Marr (1989) 90 Cr App R 154 and Berrada (1989) 91 Cr App R 131).

(iv) Provided that the judge emphasises to the jury that they are entitled to ignore his views he may comment on the evidence. The judge may do so robustly where for example the defence case is riddled with implausibilities, inconsistencies and illogicalities but the judge must not be so critical as effectively to withdraw the issue of guilt or innocence from the jury (see Nelson [1997] Crim LR 234 CA, Canny (1945) 30 Cr App R 143).

(v) The judge is not confined to the arguments advanced by the prosecution or defence. He is entitled to make uncontroversial comments as to the way the evidence is to be approached particularly where there is a danger of the jury coming to an unjustified conclusion without an appropriate warning. Such remarks may be particularly appropriate in complaints of sexual abuse where feelings of shame, embarrassment or vulnerability may need to be taken into account in considering the explanation for any delay in reporting the matter (see R v Evans (DJ) 91 Cr App R 173 CA, R v D [2009] Crim LR 591 CA and R v Miller [2011] Crim LR 79 CA).

[35] This was a case where essentially the issue for the jury was one of credibility. The learned trial judge approached that by setting out the evidence of the complainants in relation to each of the counts together with any corroborating evidence. He then examined the defence case by relying first on the cross-examination of each complainant to identify inconsistencies between the evidence of each of them and their accounts to police and inconsistencies between themselves in terms of the failure to recollect incidents when they were allegedly present. As a result of his review of the evidence he warned the jury that they should exercise caution before relying on the evidence of the complainants. He then went on to deal with the evidence of the appellant.

[36] That structure was not criticised by Mr Irvine. He submitted, however, that there were additional points in favour of the appellant which the judge did not make as a result of which it was contended that the charge was unbalanced. The first point related to the furniture in the bedrooms of the appellant and his daughter. In the course of interview A had drawn a sketch identifying the layout of the furniture in each of the bedrooms. Her description corresponded exactly with photographs of the appellant's bedroom taken in July 2013 and the only variance in relation to the appellant's daughter's bedroom was the absence of a chest of drawers with a mirror on top.

[37] The defence requisitioned the learned trial judge on this point complaining that he had not alerted the jury to the fact that the complainants said that the furniture in the room was not the furniture that was there at the time of the offences. A believed that the desk was metal whereas in fact in place in the photograph in 2013 was wood. None of the complainants recognised the decoration in either of the

rooms. There had been an issue at the trial about when the furniture was purchased. In his police interviews the appellant said that the furniture had not been purchased until the end of 2004 or beginning of 2005 because he could not afford it. In his evidence he said that it had been purchased in 2002 because he now remembered that he had obtained a grant from the Northern Ireland Housing Executive to furnish the property. He explained that his head was fried and he could not think straight during the police interviews. The issue about the date on which the furniture was purchased had been dealt with by the learned trial judge in his charge and as a result of the requisition he drew to the jury's attention the inconsistency in the recollection of the complainants about the recognition of the furniture pieces albeit that the sketch had identified correctly the position of the pieces.

[38] One of the points made by the appellant at the trial was that during the material time between the summer of 2002 and 2004 he was looking after his grandson who was born in 2000. Although the learned trial judge referred to this in the course of his charge he did so principally in the context that no mention had been made of this arrangement by the appellant when he was being interviewed by police. He also referred to the fact that the jury might consider the appellant had been prejudiced by delay since he might have been able to establish a particular day on which he was looking after his grandson. He was requisitioned on this matter and as a result of the requisition reminded the jury that the grandson's mother had given evidence that the boy was looked after by his grandfather between 9am and 5pm during the week when she was at work. The judge did, however, point out that on at least two occasions during her evidence she referred to another child and advised the jury that it was for them to take into account what importance they gave to the fact that there was no mention of the grandson during the police interviews.

[39] It was part of the defence case that there was strong evidence of collusion between the complainants. The principal issue giving rise to the complaint was the evidence of A and B in relation to Joop. The learned trial judge advised the jury that the fact that B had identified this aftershave for the first time the day after A had given evidence about it was relied upon by the defence as a very strong indicator of collusion between the girls. In his direction he also referred to the evidence of a friend of A who stated that she had a mobile phone conversation with A in 2011 when A told her that the girls were talking about telling their mothers. The judge did not, however, specifically refer to the evidence that the two mothers and the three girls had held a conversation before reporting the matter to police. We accept that the judge could have mentioned this particular piece of evidence but failure to do so does not in our view give rise to any issue affecting the safety of the conviction. The issue of collusion was plainly put before the jury in the course of the charge.

[40] The last point that was raised in relation to the charge was the failure by the learned trial judge to recount the full circumstances of the innocent explanation for contact between the appellant and the girls on his account. He said that contact first occurred because he was sitting out in front of the house while the girls were playing

in the vicinity. He would have asked them from time to time to do messages for him and given them small amounts of money by way of reward. In introducing the evidence the judge set the scene by identifying the area in which the children played and the fact that the appellant was sitting on the grassy area at the layby near his home on sunny days. We do not consider that anything further was required. Having examined all of the complaints about the charge we consider that they do not affect the safety of the conviction.

[41] We accept that the learned trial judge also invited the jury to critically examine the evidence both of the complainants and the appellant. We do not accept that there was anything inappropriate about that nor that there was any lack of balance. The learned trial judge carefully identified a range of criticisms of the evidence of the complainants which in our view properly balanced such issues as he raised in relation to the evidence of the appellant.

The Pollock point

[42] In R v Pollock [2004] NICA 34 the court set out in general terms the approach the Court Of Appeal should take when dealing with appeals against conviction:

> "1. The Court of Appeal should concentrate on the single and simple question 'does it think that the verdict is unsafe'.
>
> 2. This exercise does not involve trying the case again. Rather it requires the court, where conviction has followed trial and no fresh evidence has been introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against that background.
>
> 3. The court should eschew speculation as to what may have influenced the jury to its verdict.
>
> 4. The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasoned analysis of the evidence, it should allow the appeal."

It was submitted on behalf of the appellant that this was a case in which having regard to all the evidence the court should entertain a significant sense of unease about the correctness of the verdict.

[43] In support of that submission Mr Irvine maintained that there were a number of worrying features about the case. First, this was a case in which there was substantial evidence of collusion. That was particularly evident in relation to the evidence of A and B about the appellant's use of Joop. This proprietary brand had not been referred to in any of the preparatory materials and was first mentioned by A towards the end of her direct evidence. It was then mentioned by B for the first time in her cross examination a day or two later. The witnesses denied that they had engaged in any discussion about their evidence but the appellant submitted that this was significant evidence of collusion and the matter was put to the jury on that basis. The learned trial judge also warned the jury to be cautious about relying on the evidence of the complainants.

[44] Secondly, although A alleged that B was present and sometimes participating in each of counts 3 to 10, B gave no corroborating evidence in relation to those counts. The learned trial judge exposed this issue to the jury and invited them to consider the extent to which they could accept that these things might have happened but that B failed to remember them. Thirdly, it was contended that some of the allegations were themselves incredible. A and B said that the appellant had given these young girls roll up cigarettes which they smoked. C made no mention of cigarettes. A alleged in count 8 that the appellant got A and B to pour aftershave onto his penis. It was contended first that such an activity was highly unlikely and secondly that B gave no evidence in support of it.

[45] There were a number of other inconsistencies perhaps of less importance which were also highlighted by the learned trial judge. Subject to the submissions made above it was accepted that the learned trial judge directed the jury properly in relation to each of the inconsistencies. It was also accepted that this was a prosecution case which was properly before the jury in relation to each of the counts and that no application had been made for a direction nor was there any submission that the case should be withdrawn from the jury.

[46] Mr Mooney referred us to the extensive authority set out by Lowry LCJ in Northern Ireland Railways Company Limited v Tweed (1982) NIJB 15 as to the advantage that the trial judge has in the assessment of witnesses and submitted that the same advantage was available to the jury in this case. Although we accept that the jury had the opportunity to see and hear the witnesses and had the consequent imperceptible advantage referred to by Lord Hoffman in Biogen Inc. v. Medeva Plc. [1997] R.P.C. 1 we remind ourselves that the issue for us is whether we entertain a sense of unease about the safety of this conviction. It is not, therefore, sufficient to establish that the jury had every opportunity to assess the case.

[47] We accept that this was a case in which the issue was the credibility of the complainants and that in light of the evidence adduced by the prosecution this was a case which properly went to the jury for assessment. There were undoubtedly aspects of the complainants' credibility which were tested but the differences in the

recollection of events by each of the complainants belied any suggestion that they had colluded. Inconsistency is often a feature of historic cases where adults are relating what occurred to them when they were children and it is important, as here, for the trial judge to highlight the inconsistencies and direct the jury properly as to how those inconsistencies might be important. We are not left with any sense of unease about this conviction.

Conclusion

[48] For the reasons given we consider that the convictions are safe and the appeal is dismissed.