



[2026] EWCA Crim 913

Case Nos: 202601875 A1

202601873 A1

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IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SOUTHAMPTON
His Honour Judge Rowland
44SC0053025

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/07/2026

Before:

THE LADY CARR OF WALTON-ON-THE-HILL,
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
and
LORD JUSTICE EDIS,
VICE PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
and
MS JUSTICE NORTON

Between:

THE KING **Appellant**
- and -
X
Y
Z
(References under section 36 of the Criminal Justice Act
1988) **Respondents**

Tom Little KC for HM Attorney General
E Henry KC and B Sheffi (assigned by the Registrar) for X
TJ Ayling KC and V Fowler-Rouault (assigned by the Registrar) for Y
C Wade KC and T Evans (assigned by the Registrar) for Z

Hearing date: 14 July 2026

FOLLOW ON JUDGMENT

(approved subject to editorial corrections)

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The complainants

The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with s.3 of the Act. The complainants are referred to in this judgment as C1 and C2 for this reason.

The offenders

The provisions of s.45 Youth Justice and Criminal Evidence Act 1999 are engaged in this case because the offenders are aged under 18 years.

An order under s.45 was made in relation to proceedings in the Crown Court. That order extends to these proceedings. As a result, the first offender is referred to as "X", the second offender as "Y" and the third offender as "Z".

The child witnesses

A further order under s.45 was made in relation to certain named child witnesses. This order also applies to these proceedings.

Details of the Crown Court orders are available from the Crown Court.

The Lady Chief Justice:

A. Introduction

1. This short judgment follows on from the three References by the Attorney General in the cases of X, Y and Z ([2026] EWCA Crim 845). It is quite separate from, and has nothing to do with, the merits or outcome of our decisions in those References. Rather, it has to do with the administration of justice more generally.

B. The basis of sentencing

2. The judge passed sentences in the early afternoon of Thursday 21 May 2026. Members of the local and national press were present, at least for the short oral remarks delivered by the judge at the outset to X, Y and Z. After the three boys had left court, the judge went on to deliver detailed oral remarks. In those remarks, the judge made the factual basis of his sentencing clear. Amongst other things he found:

i) that C2 put her phone with a tagging device in a Co-Op store by choice, not as a result of pressure from a boy;

ii) that C2 was not forced at knife point to go with the boys at the outset and then participate in nonconsensual sexual activity, “[t]here was no kidnap”, and there was no planning involved in either of the two incidents.

We refer to these as “the Factual Findings”.

3. Whilst the parties had access to the judge’s sentencing notes on the Digital Case System, which included the Factual Findings, it is unfortunate that full sentencing remarks were not made available to the press at the time of sentencing.

C. Chronology of events following sentencing

4. Immediately after sentencing, the Crown Prosecution Service (CPS) issued a formal written press release. It contained two material factual inaccuracies:

i) that the three boys had been convicted of “a knife-point rape”;

ii) that C2 was “threatened with a knife and forced to leave her mobile phone and AirTag in a shop so that her movements could not be tracked, before being taken to a secluded area”.

We refer to these as “the Factual Inaccuracies”.

5. Immediately following the sentencing, sensationalist reporting in the media commenced, with heavy reliance on the Factual Inaccuracies, in particular on the involvement of a knife. Unsurprisingly, the source of that reporting appears to have been the press release. There was public outcry in response. The judge was the subject of widespread personal condemnation and vilification, as were the young boys.

6. On Tuesday 26 May the Attorney General submitted three applications for permission to refer the sentences imposed on X, Y and Z. Very soon after that, he announced, via a recorded video message, that he had made the References in relation to the sentences. His message included the following statement:

“...Noone should doubt the determination of this government to tackle the scourge of violence against women and girls.”

The video message accompanied a full written press release which included the following statement by the Attorney General:

“There has understandably been a huge amount of public interest, and concern, at this horrific case.”

This sentence was picked up by the press, for example being quoted in The Guardian newspaper that same day. The Attorney General’s statement continued:

“...There is an epidemic of violence against women and girls in this country, and this government will not hesitate in taking action to ensure all women and girls feel safe and have confidence in the justice system.”

7. The Attorney General, through Mr Little KC, was keen to emphasise at the hearing on 1 July that the Attorney General had considered the judge’s sentencing notes before making his decision to refer. The grounds of challenge set out in the three applications indicate that this was so. He was therefore fully aware (referred to below) of the Factual Findings at the time when the applications were made, accompanied by the video and press release. This process was also confirmed by the Attorney General himself in a podcast interview recorded on 29 May and broadcast on 6 June.
8. On the same day that the Attorney General announced his decision to refer (26 May), the Prime Minister made several statements on X, describing the case as “distressing” and stating that it was “clearly the right outcome that the Court of Appeal will review the sentences”.
9. On Wednesday 27 May 2026 Mr Evans, junior counsel for X, emailed prosecution counsel as follows:

“The situation has got out of hand:

1. There is a Charge.Org petition calling for [the judge] to be investigated. It already has over 100,000 signatures.

2. C2 has given an interview to the Times.

3. The press (even reputable publications) are routinely misstating the factual basis for the sentence.

The CPS are in a unique situation to bring this to a stop. Please do all you can to encourage them to release a statement.

[The judge] conducted this trial with utmost diligence and care, the personal criticism of him is disgraceful. The failure of the national press (none of whom attended the actual trial) to accurately report the basis of the sentence is causing a significant reaction from politicians and the public at large...

10. On Thursday 28 May, prosecution counsel forwarded Mr Evans' email to the District Crown Prosecutor, recording her own concerns about the Factual Inaccuracies being reported, and her concerns for the judge. She recorded the request for a statement to be made, and asked if Mr Evans' concerns could be reported to the appropriate CPS department. The District Crown Prosecutor responded the next day (29 May), stating that she had raised the matter further internally.
11. Separately, Mr Henry KC, leading counsel for Y, emailed the Attorney General's Office on 28 May as follows:

"Attorney-General's (Unduly Lenient Sentence) office at 1029 hours on 28 May 2026 in the following terms:

"Subject: Re: URGENT – FOR LORD HERMER KC – IN CONFIDENCE

...For the urgent attention of Lord Hermer KC, His Majesty's Attorney General – please forward or bring to the attention of his PPS

Dear Lord Hermer,

I wish to draw your attention to the following, which, I submit, should be met by corrective statements by your office, or by the Moj:

1. There is a Charge.Org petition calling for [the judge] to be investigated. It already has over 100,000 signatures. The Lord Chancellor is conspicuously silent upon this concerning development, notwithstanding his constitutional duty to protect the independence of the judiciary;

2. The press (even reputable publications) are routinely misstating the factual basis for the sentence.

As HM's Attorney General, you are in a unique position to correct misleading press reporting.

The trial judge, whatever criticisms may be levelled against him in due course, conducted this trial with the utmost diligence and care. The personal vilification of the judge is disturbing. The failure of the national press (none of whom attended the trial) to report accurately the basis of the sentence is driving ill informed statements from politicians and the public at large. There is a substantial risk of serious prejudice in that the fairness of these proceedings may be undermined if the Reference is conducted against a backdrop of hostile and misleading media reporting, of a degree that is without precedent."

12. Mr Henry received no response to his email. The Attorney General has confirmed that he was made aware of the contents of the email on 3 June. He states that he

did not reply to the email on advice with which he agreed. He intended no discourtesy.

13. The next day (29 May) the Attorney General gave a podcast interview with the journalist Nick Robinson of *Political Thinking*, which was released on 6 June (“the podcast interview”):

“Robinson: Now, the other big issue you’ve had to deal with where you can speak publicly about it is the power you have to refer to the Court of Appeal if there is a feeling that a sentence has been too lenient. Yeah, and you’ve done that recently, haven’t you?”

“In the case of three boys found guilty of raping two girls, laughing, filming it, sharing it and yet getting no custodial sentence. What was your reaction when you first heard about that case?”

Attorney General:

“Well, I wanted to know the details. I wanted to know the details as quickly as possible so I could make a decision as quickly as possible so the uncertainty was not hanging over those victims.”

Robinson:

“But that’s a process. But at a human level, did you have the reaction that so many people had, which is what on earth has been going on here?”

Attorney General:

“Yeah. Well, I wanted to, I wanted to fully understand it because I had, I think frankly, I did have that reaction. Now, sometimes, if you’re making a decision and you’re making what is effectively a judgement decision, whether it’s to refer something, you can’t just go on first instincts. But my first instincts were the same as you, Nick. You’ve got to go and look at the actual evidence and the details and make a decision. As it happens, when I looked at the evidence and the details in this case, they confirmed my initial reaction.”

Robinson:

“And a reaction of what? Horror? Shock? Surprise?”

Attorney General:

Well, I want to be a little careful because the matter is now going to the Court of Appeal and independent judges will exercise their own view on it. But I was in no doubt that it was a sentence that I felt had to be referred to the Court of Appeal. I should also say, Nick, I mean as part of my consideration of the case, I read the victim statements, the bravery of those girls, both putting themselves through the ordeal of a trial, but what is more, when they got those sentences to carry on campaigning to secure justice.

Nick Robinson:

“The question I think they were asking themselves and many other young women, girls are asking themselves is what’s the point of putting yourself through the trauma of going through the criminal justice system if your attacker doesn’t get a custodial sentence?”

Attorney General:

“Look, every day in courts up and down this country, people are sentenced to very long periods in prison for sexual offences and we are determined to make sure that the criminal justice system works for victims. It’s been a priority for this government since day one as part of our wider commitment to tackling violence against women and girls, which is a real scourge at the moment in society.”

Nick Robinson:

“Are you worried more broadly though that rape still isn’t taken seriously enough by some in the criminal justice system? It’s almost occasionally a sort of ‘boys will be boys’ view of it.”

Attorney General:

Well, I don’t think that is typical of a day-to-day experience. I have to say in the work that I’ve been doing over the last two years with the Crown Prosecution Service and their units that are really kind of focus in, specialise in rape and serious sexual violence. That is not the experience that I’ve got that I’ve taken away from it. Is there room for us doing much better in certain areas, in the criminal justice system? Absolutely. Are we determined to do that? Absolutely.”
(emphases added)

14. On 4 June the judge’s sentencing remarks were published. The podcast interview was released two days later.
15. On 9 June Mr Henry emailed prosecution counsel referring to an article written by a respected journalist, which indicated the press “took their lead from a CPS press release”, which was still available, and asking her to use her influence to rectify the matter. Prosecution counsel forwarded the email to the CPS and Mr Little KC (acting for the Attorney General).
16. On 10 June the CPS amended the press release by removing the Factual Inaccuracies, with a “NB” note indicating that the original release had contained the Factual Inaccuracies. The date of the amended press release remained 21 May 2026.

D. The position of the CPS

Our concerns

17. We have the following concerns relating to the CPS:

- i) the Factual Inaccuracies in the original press release;

- ii) the failure to check the press release (as an obvious potential source of the Factual Inaccuracies immediately upon their appearance in the press and in any event following Mr Evans' email of 27 May);
- iii) the manner of correction of the Factual Inaccuracies in the press release.

The DPP's response

- 18. The Director of Public Prosecutions (DPP) has written to the Attorney General and the court with an explanation of events in a letter dated 9 July 2026.
- 19. In short:
 - i) he states that the draft press release was prepared ahead of the sentencing hearing and was based on aspects of the prosecution case as advanced at trial. It was updated following sentencing to reflect the sentences but without amending the summary of facts. These failures were due to human error. Normal practices (including legal checks and clearance procedures, and consulting prosecution counsel) were not followed;
 - ii) he also accepts that the correction of the press release took too long. Mr Evans' email of 27 May should have prompted a more active internal review.

Discussion

- 20. The DPP apologises for these serious failures and we of course accept those apologies. The errors in the original release were, in the words of Mr Little KC quoting from our main judgment at [183], "egregious". The delay in correction referred to above was also unacceptable.
- 21. Arguably, the CPS ought to have checked its press release as soon as the inaccurate press reporting started - independently of and before Mr Evans' email. The press release was an obvious potential source of the widespread misreporting. Mr Little has informed us that in the immediate aftermath of the sentencing, the CPS was very busy dealing with enquiries, and he cautions us not to judge matters only with the benefit of hindsight. Nevertheless, we find it difficult to understand why the volume of enquiries and extent of misreporting did not trigger a review of the press release.
- 22. There was, however, a further significant shortcoming, which Mr Little fairly accepted, namely the manner in which the corrections were eventually made. Given the high profile of this matter, the corrections should have been made in a far more public way than a simple re-release of the same document (albeit corrected) bearing the same original date (of 21 May). As Mr Little put it, there should have been a standalone fresh document with, for example, a link to the judge's sentencing remarks.
- 23. The DPP recognises the importance of accurate reporting to public confidence in justice and to ensuring that the judiciary can carry out its role safely and independently, free from threats or intimidation. He assures us that the CPS takes its responsibility very seriously to ensure that information placed in the public

domain is accurate, balanced and properly contextualised. We are grateful for this assurance.

24. Further, the DPP indicates that existing clearance arrangements are now being strengthened in targeted ways, in order to ensure that errors such as these do not recur.
25. With these assurances, and with the acknowledgements and apologies rightly made by the DPP, we simply mark our concerns and trust that errors such as these will not be repeated.

E. The position of the Attorney General

Our approach

26. In the performance of many of his functions the Attorney General is answerable to Parliament, rather than to the courts. It is important therefore that we explain clearly why we take the view that it is appropriate for the court to address what he chose to say about this case, and what he did not say.
27. We are concerned only with his involvement as from the moment when the three applications were emailed to the court at 1140am on 26 May. This was followed 10 minutes later by the press release and, an hour or so after that, by the video clip. These announcements informed the public that he, the Attorney General, had taken the decision to refer these sentences to this court under section 36 of the Criminal Justice Act 1988. That decision can only be taken if, in the words of section 36(1), “it appears to the Attorney General that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient”. If he holds that opinion, he “may, with the leave of the Court of Appeal, refer” the case. The Criminal Procedure Rules, by CrimPR 41.3, then require that the Attorney General serves an application for permission to refer the sentence which, among other things, must “explain why that sentencing appears to the Attorney General unduly lenient, concisely outlining each argument in support”. This document may be, and usually is, followed by a separate document called a notice of reference which in the present case, was called “the final Reference”.
28. In these documents the Attorney General set out the case which he advanced before the court. In neither of them was it suggested that the judge should have found that the second incident against C2 involved a rape “at knifepoint”. In neither of them did the Attorney General challenge the judge’s finding that C2 had voluntarily left her phone and Airtag at the Co-Op before going to the Recreation Ground. By the time those applications were lodged, at the very start of the present proceedings, the Attorney General had decided to proceed on the basis that these widely publicised aspects of the case could not be supported. These applications preceded the press release and video clip.
29. Once legal proceedings to seek permission to refer a sentence as unduly lenient have been started, then the Attorney General becomes a party to those legal proceedings and is answerable to the court for the conduct of those proceedings like any other party. Neither he, nor any other party to legal proceedings, is required to make any public statement about what they are doing. It is, no doubt,

usually wise not to make any comment about pending legal proceedings. But the Attorney General chose to do so. Where, as here, the court has some concerns about public statements made by the Attorney General about the proceedings which he had issued, it is proper for the court to record and explain those concerns.

30. Our observations, therefore, are limited to the way in which the misinformation about the facts of the case, and the attacks on the judge, were dealt with at and after the point at which the application for permission to refer these sentences to the Court of Appeal were issued, 1140am on 26 May 2026. The sentencing and the subsequent commentary on it had by then created a febrile atmosphere which was highly unusual.
31. The announcements made immediately after the applications were issued were the first opportunity to correct the Factual Inaccuracies and also to explain to the public that the system of justice has a mechanism for dealing with unduly lenient sentences which should be allowed to take its course without further attacks on the sentencing judge. The public utterances of the Attorney General did not achieve either of these objectives and the court is entitled to ask why not. The announcement did expressly associate the Attorney General's decision with government policy addressing violence against women and girls.
32. The Attorney General then had a second opportunity in the podcast interview. Separately, he could have provided a self-standing statement of clarification and explanation at any stage.

Our concerns

33. We have the following concerns in relation to the position of the Attorney General:
 - i) the lack of correction to the Factual Inaccuracies being reported, whilst at the same time speaking publicly about the gravity of the offending (and emphasising that he had read the full details) on 26 May and 29 May;
 - ii) the lack of condemnation of the personal vilification of the judge at any stage, but in particular given the email from Mr Henry on 28 May.

The Attorney General's response

34. The Attorney General has written to the court in a letter dated 13 July 2026. He refers to his repeated public statements expressing grave concern about the rise in threats to the judiciary and the consequential risk to the rule of law. In particular, he refers to his evidence to this effect to the Justice Select Committee on 23 June 2026.
35. As for the CPS press release, he states that he was personally unaware of the CPS press release until 1 July, and his department was not aware of it until after the correction had been made. He states that it is not his constitutional role, nor that of his department, to oversee the contents of CPS press releases - although, had Mr Henry's email of 28 May specifically referenced the Factual Inaccuracies in

the press release, he, or more likely officials on his behalf, would have taken steps to make the necessary corrections.

36. As for the media more generally, the Attorney General states that his role in regulation of the media is very limited, essentially to the issuance of Media Advisory Notices and contempt proceedings. He did not consider that Mr Henry's email of 28 May required him to issue a Media Advisory Notice, for which the threshold is high, or to consider contempt proceedings. More generally, he does not consider that it could be said that he was charged with, or failed to comply with, a duty to identify and thereafter correct misinformation in the media in this case.
37. As for public condemnation of attacks on the judge, he states that he was not aware even of the generalised concerns raised by Mr Henry at the time of his interview on 29 May, which had originally been scheduled for 20 May. Had he known that the judge had been personally threatened and had to leave his home, he is "confident that he would have used the media opportunity to express his concerns." As it was, he gave "carefully calibrated answers" to specific questions in the podcast interview.
38. He concludes by indicating that he would very much welcome a more detailed discussion about how the judiciary and the government work together, within our appropriate constitutional lanes, to meet our shared and grave concerns about increasing attacks on judges. This is a positive suggestion which the judiciary would likewise welcome.

Discussion

39. We have considered the Attorney General's comments carefully. We accept of course his commitment to the protection of the independent judiciary and the rule of law in general terms, about which he has often spoken.
40. Generally speaking, Ministers and others within government who are involved in ongoing legal proceedings do not comment publicly upon them at all. Here, however, the Attorney General chose to comment publicly on these legal proceedings whilst they were ongoing: on 26 May 2026 in a press release and in a video clip announcing that he had made the References, and again in the podcast interview broadcast on 6 June.
41. We do not suggest that the Attorney General is under a general duty to patrol the accuracy of press reporting. However, the Attorney General was in a particular position, with responsibility for the bringing of, and as a party to, the References. He was exercising a statutory power in the public interest.
42. Centrally, the Attorney General chose to volunteer public comments on the gravity of the offending. In the podcast interview he professed detailed knowledge of the facts. If a member of government, and in particular the Attorney General, chooses to make public statements about the gravity of offending, and to refer to "understandabl[e]" "huge public concern", then they should ensure that what is communicated is fair and accurate, correcting any widespread mis-

reporting of which they are aware. Otherwise, they lend currency and endorsement to the mis-reporting.

43. It therefore seems to us that in these circumstances it did fall to the Attorney General publicly to correct the Factual Inaccuracies – to protect the administration of justice, the safety of all involved (victims and offenders), and to underscore the cardinal importance of the public being given accurate information about what is happening in their justice system (good or bad). As we stated in our main judgment at [191], it is important to remember that those affected adversely by the mis-reporting were not only the boys, but also C2 in particular. As a result of the mis-reporting, the fact that her testimony (to the effect that she was forced at knife-point and forced to give up her telephone and Air-tag) was not accepted, has been the subject of wide publicity.
44. We turn to the personal attacks on the judge. The Attorney General states that he was unaware of any security threats to the judge and would have acted differently, had he been so aware. But even if he did not know about specific threats, we consider that he must have known from the widespread commentary, including publicised comments from other prominent public figures, that the judge was under personal attack. He did come to know, not least from the contents of Mr Henry's email of 28 May (which he saw on 3 June 2026), of the personal vilification of the judge. No one within government has said publicly, even now, that the attacks on the judge were improper and a threat to the independence of the judiciary.
45. Standing back, these events demonstrate the importance of separating the exercise of powers under section 36 of the Criminal Justice Act 1988 from politics. As we stated at [181] of our main judgment, the Attorney General exercised that power properly. But, as set out above, it is difficult to escape the conclusion that he associated the making of the References with government policy from the outset (see [6] above). The power to refer under section 36 is not vested in the government, but in the Attorney General who is to exercise it independently and not in pursuit of government agenda, however worthwhile.

The independent Bar

46. Finally, we commend the independent Bar, and in particular Mr Evans for X, Mr Henry for Y and junior counsel for the prosecution, Ms Francisca Da Costa, for their attempts to procure corrections of the Factual Inaccuracies through the CPS and the Attorney General and to defend the independent judiciary and the rule of law.