Neutral Citation Number: [2026] EWCA Crim 22

Case No: 202401154 B1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT WOOLWICH
HER HONOUR JUDGE ROBINSON
T20147286

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 January 2026

Before:

LORD JUSTICE JEREMY BAKER
MR JUSTICE MORRIS
and
HER HONOUR JUDGE ANGELA RAFFERTY KC

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Between:

Kieron Joseph	**Applicant**
- and -	
REX	**Respondent**

- -
- -

Mr Michael Magarian KC (instructed by **Wells Burcombe Solicitors)**) for the **Applicant**
Mr Gary Pons (instructed by **Crown Prosecution Service Appeals Unit**) for the **Respondent**

Hearing date 12 December 2025

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Approved Judgment

This judgment was handed down remotely at 12.00 midday on Friday 23 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

The provisions of the Sexual Offences (Amendment) Act 1992 apply to the offences with which we are concerned in this application and no matter relating to any 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 any of the offences.

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Lord Justice Jeremy Baker:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to the offences with which we are concerned in this application and no matter relating to any 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 any of the offences.

2. On 15 December 2014, following a trial in the Crown Court at Woolwich, Kieron Joseph ("the applicant") was convicted of the following offences on indictment:

> Count 2 – sexual assault (of complainant B), contrary to section 3 of the Sexual Offences Act 2003.
>
> Count 3 – assault by penetration (of complainant C), contrary to section 2 of the Sexual Offences Act 2003.
>
> Count 4 – rape (of complainant C), contrary to section 1(1) of the Sexual Offences Act 2003.

3. The trial judge had acceded to a submission of no case to answer in relation to count 1, an offence of rape (of complainant A), and thereafter, having allowed an amendment to the indictment to add count 5, an offence of sexual assault (of complainant A), the applicant was acquitted by the jury.

4. On 23 January 2015, the applicant was sentenced by the trial judge to a total sentence of 6 years' detention in a young offenders' institution, comprised of the following concurrent periods of detention: count 2 – 6 months' detention; count 3 – 3 years' detention; count 4 – 6 years' detention.

5. The applicant's application for an extension of time (approximately 9 years and 3 months) in which to apply for leave to appeal against conviction and to admit fresh evidence, pursuant to section 23 of the Criminal Appeal Act 1968, has been referred to the Full Court by the Single Judge.

Prosecution case at trial

6. The prosecution case at trial was that the applicant, who was aged 17, had committed sexual offences against three different complainants, who were aged between 14 – 16.

7. On the evening of 28 January 2014, complainants A and B were staying with the applicant at his hostel room. He had placed a mattress on the floor and the three of them were lying on it watching a film.

8. It was alleged that the applicant sexually assaulted complainant B, who was aged 14, by intentionally touching her leg in a sexual manner without her consent (count 2).

9. Later, the applicant left the room with complainant A, who was aged 16, and it was alleged that whilst they were in the bathroom together, the applicant had pulled his trousers down and penetrated complainant A's vagina with his penis without her consent (count 1) or placed his penis near her vagina without her consent (count 5).

10. On 21 May 2014, complainant C, who knew the applicant as a family friend, met up with the applicant and went with him to his mother's house. The two of them went upstairs to the applicant's bedroom to watch a film. It was alleged that whilst doing so, the applicant penetrated the complainant's vagina with his fingers without her consent, (count 3), before proceeding to penetrate her vagina with his penis without her consent (count 4).

Complainants' evidence

11. The evidence from the three complainants was provided to the jury by the playing of their ABE interviews, following which they were cross-examined on behalf of the applicant.

12. Complainant A had been interviewed by the police on two occasions, on 4 March 2014 and again on 5 June 2014. In the first of these ABE interviews, complainant A had stated that whilst they were in the bathroom together on 28 January 2014, the applicant had pulled his trousers down, pushed her against the wall and rubbed his penis between her legs, whilst she was telling him to stop and pushed him away. In the second ABE interview, complainant A provided a similar account, but went on to state that the applicant had penetrated her vagina with his penis.

13. There was evidence of recent complaint by complainant A which was initially made to her schoolteachers on 30 January 2014, who stated that complainant A had told them that she had been indecently assaulted by the applicant, but had not told them that she had been raped. This was reiterated to PC Coutts on 30 January 2014, when the matter was reported to the police by the school.

14. When complainant A was cross-examined at trial, she agreed that the applicant had not penetrated her vagina with his penis, and had only placed his penis between her legs.

15. Complainant B had been interviewed by the police on 5 June 2014, in the course of which she stated that on 28 January 2014, whilst the applicant was lying on the mattress between herself and complainant A, the applicant had run his fingers up and down her legs, getting higher and higher up towards her bottom, causing her to move away from him.

16. Complainant B's account of what had happened between the applicant and complainant A, was that although she could not see what was going on between them, as they were out of the room, she had heard a lot of kissing and complainant A was laughing. Moreover, when the two of them got back onto the mattress, there came a time when the applicant and complainant A were kissing, and that complainant A told the applicant that he could put his penis inside her for a few minutes if complainant B turned around.

17. Complainant B stated that on 28 January 2014, she had told complainant A that the applicant had touched her leg, which was also what complainant C stated that complainant B had told her the following day, on 29 January 2014.

18. In so far as complainant C is concerned, she was interviewed by the police on 4 June 2014. She stated that she knew the applicant, as he was a family friend, and that on 21 May 2014, she visited the applicant's mother's home where she went upstairs with him in order to watch a film.

19. She stated that the applicant started to stroke her leg and she kept removing his hand, saying "*no*". Complainant C stated that this went on for some time, before he placed his hand onto her stomach, whereupon she told him that she did not want to do anything. She stated that the applicant tried pulling up her dress a bit, and she kept on pushing it down. She stated that the only other person in the house was the applicant's brother, who is not a very nice person and she just froze because the applicant was much bigger than her.

20. Complainant C stated that she just lay there with her legs straight, whilst he moved her underwear to one side and put his fingers inside her vagina. She stated that she kept telling the applicant that she did not want to do it. However, the more she kept saying "*no*", the more aggressive became his voice and she thought he was going to hit her, because "…*he's very aggressive. He's a fighter – like, he, he fights a lot. He's strong – his*

hands are, like, massive, so me compared to him – like, I'm just – I'm tiny compared to him, so when, when you've got someone that big on top of you, there's not much I could do".

21. She stated that the applicant kept telling her *"…it'll be over, it'll be over, and then basically got on top of me – erm, I shut my eyes for about a minute – and then it was starting to hurt – I kept going – a….asking him to stop, I pushed up, I thought I was bleeding…."*.

22. She said that,

> *"I just lay straight….he was on top of me….supporting himself…Um, he got on top of me, and then he, he was, like, trying to, obviously, position himself and trying to move me, but – I, I was trying to, like, keep my legs flat, but he was trying to, like, kind of, like, move them…like, pulling my thighs up a bit, and I was trying to, like – I, I wasn't, like, letting him pull them up to the position obviously he wanted….I wasn't moving, and he just, like, had to, like….insert any way he could"*.

23. Complainant C stated that before getting on top of her, the applicant had taken his boxer shorts off and so he was naked. She stated that the applicant was not wearing a condom and that although there may have been some pre-ejaculate, the applicant did not ejaculate. She said that after the applicant had finished, he "*just pulled up*" and went downstairs, and she went to the bathroom and discovered that she was bleeding a bit.

24. Complainant C stated that after she left the applicant's mother's house, she phoned a friend and told him what had happened.

25. In cross-examination at trial, complainant C agreed that on 27 May 2014, she had gone to visit the applicant at the hostel where he was staying, and that she was there for an hour or two. She said that she was confused, and had not got a reason for doing so, but she denied that she had had sexual intercourse with the applicant on that occasion.

Other prosecution evidence

26. The witness statement of complainant C's friend was read to the jury, which was to the effect that during the phone call they had arranged to meet outside his house, and that when they met complainant C looked withdrawn as though she had been crying and that after a short while, complainant C told her what the applicant had done to her.

27. The account which complainant C provided to her friend was consistent with the account which she later gave the police during the course of her ABE interview, including the fact that,

> *"At first she said she was trying to push him off of her and get him to stop. She said she must have told him at least 30 times to stop. But each time he would say 'Just give me a minute' and each time his voice got a little more aggressive and deeper. She said she was so scared he wasn't stopping she just froze and lay there. She said that once he got off she was bleeding and she ran to the toilet and was crying".*

28. On the following day, 22 May 2014, complainant C told one of her teachers that she had been raped, and the school authorities informed the police and social services.

29. The applicant was arrested on 7 June 2014 and provided a no comment interview. However, he provided a written statement in which he agreed that as a favour to them he had allowed complainants A and B to spend the night at his place but denied that anything had happened between them. He also denied that he had taken complainant C back to his mother's house and that nothing had happened between them.

Defence evidence

30. The applicant gave evidence at trial in which he accepted that both complainants A and B had been present in his hostel room on 28 January 2014. He denied having touched complainant B, and he told the jury that whilst they were on the mattress together, he and complainant A had been kissing for a while when she said that he could stick it in her for five minutes. He said that complainant A then pulled down her shorts and he tried to penetrate her with his penis but was unable to do so.

31. In respect of complainant C, the applicant said that she had accompanied him to his mother's house on 21 May 2014, where they went upstairs to watch a film together. He said that there came a time when complainant C was sat on top of him and asked him where he got turned on before stroking his chest. He then started to stroke her stomach, whereupon complainant C removed her dress and they started kissing each other, during the course of which he penetrated her vagina with his fingers, and she gave him oral sex. He said that this was consensual and that after this complainant C had gone home.

32. The applicant told the jury that on the following day, complainant C appeared to be annoyed that he had spent the night with his girlfriend, but they exchanged phone calls with each other. The applicant said that he and complainant C had met up again on 27 May 2014 and that complainant C had told him that he had to choose between his girlfriend and her, before complainant C had consensual vaginal sex with him. He told the jury that, sometime later, complainant C had contacted him again saying that he had to choose between her rather than his girlfriend, and that if he didn't she would have him done for rape.

Agreed evidence

33. The jury was provided with written "*Agreed Facts*" which included a schedule of phone contact which had been made between complainant C and others, including the applicant, in 2014, together with cell-site evidence of the complainant's phone on 27 May 2014.

34. It was also agreed that on 3 June 2014, complainant C had handed in a pair of her knickers to the police, which she told them she had been wearing on 21 May 2014. When these were forensically examined, there was no visible bloodstaining on them. However, semen from the gusset region was tested and found to match the applicant's DNA profile. Moreover, the quantity and distribution of the semen in the gusset region is what would be expected if semen had drained from the vagina onto the knickers following an act of vaginal intercourse with ejaculation into the vagina.

Summing-up

35. In the course of the summing-up and reflecting the manner in which both the prosecution and defence counsel had addressed the jury in their closing speeches, the judge pointed out the consistency with which complainant B had provided her account of what the applicant had done to her, which contrasted with the inconsistent account which had been provided by complainant A.

36. In relation to complainant C, the judge reminded the jury that during the incident in which the rape was alleged to have taken place, she had consistently stated that the applicant was positioned on top of her and that whilst he was trying to pull her thighs up, she was trying to push her thighs down. The judge invited the jury to consider these matters in particular in relation to the issue of whether complainant C had consented to having sexual intercourse with the applicant, and as to whether the applicant reasonably believed that she was doing so.

37. In doing so, the judge said to the jury,

> *"....you may consider that the main issue here is whether or not [complainant C] was telling the truth about what happened, not whether if it did happen the offence is made out or not".*

Fresh evidence

38. On 7 December 2020, complainant C contacted the police, as a result of which a police officer attended complainant C's home wearing a body-worn camera and spoke to her in the presence of her fiancée who stated that complainant C was having issues with her mental health. Complainant C said that she was a "*bad person*" because "*I lied in court*" about "*Being raped*". She said that she had not told the whole story, and when she was asked what she had left out, complainant C replied, "*That I got on top of him....so, it's my fault*". She went on to say that, "*I made it sound much worse than what it was. And it wasn't even that bad*". She said, "*I just didn't want it to happen in the first place. But then I did it, so I'm the wrong one*". She went on to say that she had lied about the applicant getting on top of her and that he was aggressive, as he wasn't.

39. As a result of what complainant C had told the police, an investigation took place in relation to a possible prosecution for perjury, in the course of which, on 10 March 2021, complainant C was interviewed by the police under caution.

40. Complainant C said that when she had spoken with the police in December 2020, she had been paranoid due to having smoked cannabis, and believed that she should be punished for having told a lie in court, "*…that he got on top of me, when really I got on top of him*".

41. Complainant C was reminded that in December 2020, she had phoned the police stating that she had exaggerated the violence involved in the previous incident, and was asked "*And how did you exaggerate that*?", to which complainant C replied, "*Well, by saying he got on top of me would have meant that he was holding me down, when really…he wasn't holding me down, because I got on top of him. But not because I wanted to, because I felt like I had to….'cause I said no plenty of times and he still kept asking and asking"*.

42. Complainant C stated that at the time she knew the applicant quite well, as a family friend, and that "*I might have fancied him a little bit*", but it wasn't anything like that as it was just a friendship. She stated that at the time she had been suffering with her mental health, and that as a result of

what happened she didn't really like the applicant. She was asked why she had not told the "*whole truth at court during the trial*?" to which complainant C replied, "*I just felt like it wouldn't be believed…It doesn't sound ….the, the concept at the….at my age the concept of me getting on top, it doesn't sound right*". She agreed that as a result of this she had decided not to tell the truth about what had happened before she went to see the police. She was asked what had actually happened, to which she replied, "….*what actually happened was I said no a couple of times, he got it out anyway, carried on asking me and then he guided me on top. He stuck it in, 'cause obviously I, I didn't know what I was doing. It happened three to four minutes and I said no and I got off*".

43. Prior to the hearing of this application, we were invited by the parties to consider the evidence of complainant C's further accounts *de bene esse* and for her to provide evidence in person. We agreed to this course of action and complainant C gave evidence in court.

44. In the course of her evidence, complainant C stated that when she had contacted the police in 2020 she was really unwell, as she was experiencing psychosis and that in 2021 she still wasn't feeling a hundred per cent.

45. She stated that when she was originally questioned by the police in 2014, she was very young. She said that,

> *"I wanted to be heard, and I didn't think I would be heard if I said that…..I wanted them to do what I thought should be done".*

46. Complainant C was asked what she was now saying had happened on 21 May 2014, to which she replied that she had kept pushing the applicant's hand away and said "*No*". She explained that she was in a place she didn't know and was scared, so she ended up "*letting him*".

47. In cross-examination, complainant C stated that she could not recall the account she had provided to her friend following the incident.

48. However, complainant C agreed that she had lied to the police in 2014 in the course of her ABE interview when she said that the applicant had got on top of her, that she pushed up, that she was lying straight with her legs flat, and that the applicant was trying to move her.

Submissions

49. In relation to the application for an extension of time, Mr Magarian KC, who did not appear on behalf of the applicant in the original trial, points out that it was not until May 2022 that the applicant was informed in a written prosecution disclosure note that complainant C had provided a different account of the incident which took place on 21 May 2014. Moreover, that at that time the applicant was being prosecuted for other serious criminality. Once those proceedings had concluded in 2023, the applicant had taken steps to advance the present application, which involved him seeking information from his original solicitors who had ceased operating. Therefore, he had to instruct his present legal team who had to obtain transcripts from the trial before they could advise the applicant to apply for permission to appeal against his conviction which was instigated in March 2024.

50. In relation to the application to admit fresh evidence, it is pointed out that it was only in 2020-2021 that complainant C admitted that she had provided a false account of what had taken place on 21 May 2014. That had she made this fact known prior to the original trial, it would have been admissible in those proceedings. It is submitted that the fresh evidence is capable of belief, and that it would afford a ground for allowing the appeal because it renders the applicant's convictions unsafe.

51. In relation to the safety of the convictions it is pointed out that complainant C has admitted that she lied to the jury in the original trial, and that she did so deliberately as she did not consider that she would be believed if she had provided a truthful account of what had taken place during the course of the incident. It is pointed out that this false account was not only provided to the police, but also to her friend on the same day as the incident itself. Moreover, that as the judge invited the jury to consider, it went to an essential element of the prosecution case, namely the issue of consent.

52. In relation to the applicant's conviction relating to the earlier incident involving complainant B, although Mr Magarian acknowledged in the course of his oral submissions that he is on weaker ground, he points out that collusion was an issue in the trial and that the judge had directed the jury that the evidence of one complainant was capable of mutually supporting another complainant.

53. On behalf of the respondent, Mr Pons, who was original trial counsel, acknowledges that the fresh evidence would have been admissible in the applicant's trial and that there is a reasonable explanation for the failure

to adduce the evidence in those proceedings due to complainant C only having provided this further account post-trial. Although, Mr Pons had originally submitted that the fresh evidence was not capable of belief due, *inter alia*, to ongoing issues surrounding complainant C's mental health, this was not actively pursued before us, rather the focus of his submission was that the fresh evidence did not render the applicant's convictions unsafe, in that although complainant C had admitted that she was in a different physical position during the incident on 21 May 2014, she continued to make it clear that she had not consented to having sexual intercourse with the applicant.

54. Furthermore, in relation to count 2, it is pointed out that this related to a different complainant, who had been entirely consistent in her account of what she alleged the applicant had done to her on 28 January 2014. Moreover, although it is acknowledged that the judge had provided a direction to the jury relating to the mutual support which one complainant's account could provide to another's account, the jury had clearly been able to distinguish between complainant A and B, as they acquitted the applicant on count 5. Therefore, it is submitted that there is no reason to consider that the fresh evidence renders unsafe the applicant's conviction on count 2.

Discussion

55. Section 23(1) of the Criminal Appeal Act 1968 enables this court to receive evidence which was not adduced in the proceedings from which the appeal lies, if it thinks that it is necessary or expedient in the interests of justice.

56. In considering whether to receive such evidence, section 23(2) provides that the court should have regard in particular to the following factors,

> "*(a) whether the evidence appears to the Court to be capable of belief;*
>
> *(b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;*
>
> *(c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and*
>
> *(d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings*."

57. In the present case there is no issue that the evidence relating to complainant C's recent accounts of the incident which took place on 21 May 2014 would have been admissible in the original trial, as it would have been relevant to the witness's credibility which, as the judge pointed out, was the main issue in relation to the charges relating to complainant C, nor is there any issue that there is a reasonable explanation for the failure to adduce that evidence, as it only emerged in 2020/2021.

58. Moreover, as Mr Pons appropriately reflected in the course of his oral submissions before us, the evidence relating to those recent accounts is capable of belief, in that although the witness may have been suffering from issues relating to her mental health in 2020, this does not appear to have been the situation when she was interviewed by the police in 2021. Moreover, having heard complainant C in evidence in the course of the hearing, we are satisfied that she fully understood the questions being asked of her and provided a rational basis for her answers, which were capable of belief.

59. Therefore, beyond the issue of delay, the real issues which have been for us to consider is not only whether the evidence may afford a ground for allowing the appeal but whether it has the effect of rendering unsafe any of the applicant's convictions arising from the original trial.

60. The correct approach to these issues, as suggested in an obiter passage in *R v Ahmed* [2010] EWCA Crim 2899, has been more recently confirmed as representing the law in *R v Barker* [2021] EWCA Crim 603, where Edis LJ stated at [24] – [25] that,

> "*24. In an avowedly obiter passage in paragraph 24 of R. v. Ahmed [2010] EWCA Crim 2899, Hughes LJ, as he then was, explained the approach of this court in appeals based on fresh evidence:-*
>
> *"The responsibility for deciding whether fresh material renders a conviction unsafe is laid inescapably on this court, which must make up its own mind. Of course it must consider the nature of the issue before the jury and such information as it can gather as to the reasoning process through which the jury will have been passing. It is likely to ask itself by way of check what impact the fresh material might have had on the jury. But in most cases of arguably*

> *relevant fresh evidence it will be impossible to be 100% sure that it might not possibly have had some impact on the jury's deliberations, since ex hypothesi the jury has not seen the fresh material. The question which matters is whether the fresh material causes this court to doubt the safety of the verdict of guilty. We have had the advantage of seeing the analysis of Pendleton [2001] UKHL 66; [2002] 1 Cr. App. R. 34 and Dial [2005] UKPC 4; [2005] 1 WLR 1660 made recently by this court in Burridge [2010] EWCA Crim 2847 (see paragraphs 99 — 101) and we entirely agree with it.*
>
> *Where fresh evidence is under consideration the primary question "is for the court itself and is not what effect the fresh evidence would have had on the mind of the jury." (Dial). Both in Stafford v DPP [1974] AC 878 at 906 and in Pendleton the House of Lords rejected the proposition that the jury impact test was determinative, explaining that it was only a mechanism in a difficult case for the Court of Appeal to "test its view" as to the safety of a conviction. Lord Bingham, who gave the leading speech in Pendleton , was a party to Dial."*
>
> *25. That passage has been frequently followed, see most recently R v. Park [2020] EWCA Crim 589 at [178]. It may once have been obiter. It now represents the law. The question is whether, having regard to the fresh evidence, we think that the conviction is unsafe. This is the ultimate question in all appeals against conviction, and is mandated by the terms of section 2 of the 1968 Act. In answering that question, we are required to have regard to the factors listed in section 23(2) of the 1968 Act "in particular", but that is not an exhaustive list of relevant matters and none of them on its own answers that question*."

61. Although there can be no question but that an individual who, in the course of an incident, has assumed one physical position, as opposed to another, may be just as likely to be the victim of a rape, as complainant C recognised from the outset it may, in an appropriate case, have some relevance to the issue of consent.

62. Moreover, in the present case, not only did the prosecution quite understandably make the consistency of complainant C's account a central feature of its closing address to the jury, but the judge, again quite properly, adopted this approach in relation to the issue of her credibility, and had focused the jury's attention upon the physical positions which complainant C alleged had been adopted by both her and the applicant during the incident, as being of particular relevance to the issue of whether complainant C had consented to having sexual intercourse with the applicant, and as to whether the applicant reasonably believed that she was doing so.

63. Therefore, the relative positions being adopted by the applicant and complainant C during the course of the incident on 21 May 2014, were not of marginal significance to the issues which the jury were required to consider in the course of their deliberations, but were of central importance. Moreover, as Mr Magarian pointed out in the course of his submissions, the details which complainant C provided in her original account of what took place during the incident went beyond the mere assertion as to the relative physical positioning of herself and the applicant, but included details of the physical efforts which she sought to deploy in order to prevent the applicant having sexual intercourse with her, including keeping her legs straight and pushing her thighs down, whilst the applicant was seeking to push her thighs up in order to facilitate intercourse.

64. We have of course taken into account both the complainant's relatively young age at the date of the incident in 2014, and the difficulties which she has experienced, since then, with her mental health. Moreover, that not only had the applicant denied that he had sexual intercourse on 21 May 2021, but that throughout the course of all her accounts of the incident, complainant C has consistently asserted that she did not consent to having sexual intercourse with the applicant, and that she was scared of the applicant.

65. However, as complainant C acknowledged in her evidence in the course of the hearing, not only did she deliberately provide a false narrative to the police in 2014, but this was one which she chose to provide to her friend on the same day as the incident and which she continued to provide during her evidence at trial. Indeed, as she admitted to Mr Magarian in cross-examination, part of her reasoning for providing a false account of what took place was that she wanted the police to do what she thought should be done.

66. Furthermore, complainant C also admitted during the course of her more recent account of the incident which she provided to the police in 2021, that she had previously exaggerated the level of aggression which the applicant had shown to her during the course of the incident.

67. In these circumstances, we have reached the conclusion that the applicant's conviction of rape is unsafe, and that bearing in mind the centrality of the issue of complainant's credibility to the issue of consent, we are also of the view that his conviction on count 3 is also unsafe.

68. However, as Mr Magarian tacitly anticipated we have reached a different view in relation to the issue of the applicant's conviction on count 2. Not only was this based upon the evidence of a separate complainant, but her account of what had taken place on 28 January 2014 had been consistent throughout. Moreover, as Mr Pons has pointed out, the jury were not overborne by the judge's directions as to mutual corroboration, but were sufficiently alive to the limitations on the use of the other complainants' evidence, so as to be able to distinguish between complainant B, whose evidence they accepted, whilst rejecting the inconsistent accounts which had been provided by complainant A. Therefore, we do not consider that the recent account provided by complainant C renders unsafe the applicant's conviction upon count 2.

Conclusion

69. For the reasons we have endeavoured to explain we are satisfied that it is in the interests of justice for the fresh evidence relating to complainant C's more recent account to be received by this court and for the applicant's appeal against conviction to be allowed in part. In those circumstances, although we have some misgivings in relation to the issue of delay, we grant the required extension of time.

70. Therefore, the appeal against conviction is allowed to the extent that we quash the applicant's convictions on counts 3 and 4 but dismiss his appeal in relation to count 2.

71. We understand that the prosecution does not seek a re-trial in relation to counts 3 and 4, and so no further reporting restrictions pursuant to section 4(2) of the Contempt of Court Act 1981 are required.