OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT IN THE CAUSE

Regina *v.* Longworth (Appellant) (On Appeal from the Court of Appeal (Criminal Division))

[2006] UKHL 1

LORD NICHOLLS OF BIRKENHEAD

My Lords,

1. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Mance. For the reasons he gives, with which I agree, I would allow this appeal.

LORD HOFFMANN

My Lords,

2. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Mance. For the reasons he gives, with which I agree, I would allow this appeal.

LORD HOPE OF CRAIGHEAD

My Lords,

3. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Mance. I agree with him that, although HHJ Hale made an order against which the appellant was entitled to appeal, he had no power to require the appellant to sign the sex offenders register.

4. I also agree with him that the duty to register under section 1 of the Sex Offenders Act 1997 was a consequence of the appellant's conviction, which took effect at once by force of the statute upon his conviction of sexual offences to which Part I of the Act applies. But it was not part of the proceedings in which the appellant was convicted, so his conviction was not saved by section 1(1) of the Powers of Criminal Courts (Sentencing) Act 2000 when on a later date the judge sentenced the appellant on each of these offences to a conditional discharge.

5. I too would allow the appeal and answer the certified question in the affirmative.

LORD RODGER OF EARLSFERRY

My Lords,

6. I have had the advantage of considering in draft the speech to be delivered by my noble and learned friend, Lord Mance. I agree with it and for the reasons he gives I too would allow the appeal to the extent that he proposes.

LORD MANCE

My Lords,

7. This is an appeal by leave of this House against the dismissal by the Court of Appeal (Criminal Division) (Potter LJ, Gibbs J and Sir Michael Wright) on 23rd July 2004 of an appeal which the Court of Appeal described as being against that part of a sentence imposed by the trial judge, HHJ Hale, sitting in the Warrington Crown Court on 12th January 2004, whereby the judge found that the appellant was subject to the notification requirements of the Sex Offenders Act 1997. The point of law of general public importance which the Court of Appeal certified on 12th November 2004 is:

> "Do the provisions of s.14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 have the effect of preventing an order for conditional discharge made on conviction for an offence other than under the Sex Offenders Act 1997 from being classed as a conviction for the purposes of the 1997 Act and thus avoiding [the] notification requirements under the 1997 Act?"

8. The appellant was charged on two counts, of making indecent photographs of children, contrary to s.1(1)(a) of the Protection of Children Act 1978, and of possessing indecent photographs of children, contrary to s.160(1) of the Criminal Justice Act 1988. He pleaded guilty to both counts on re-arraignment on 22nd December 2003, when the judge indicated that he proposed to impose a conditional discharge in relation to each offence. Discussion then took place as to whether or not this would result in the appellant being subject to the notification requirements of the 1997 Act. Sentencing was as a result postponed until 12th January 2004, when, after hearing submissions, the judge, in accordance with his previous indication, imposed conditional discharges under s.12 of the Powers of Criminal Courts (Sentencing) Act 2000, in the case of each offence for 12 months, and further ruled that there was a requirement to notify under the Sex Offenders Act 1997, for a period of five years from the date of conviction "subject to any views that the Court of Appeal may have". To enable those views to be obtained he certified that the case was fit for appeal. The certificate of conviction drawn up on 30th November 2004 recites the two offences of which the appellant was convicted and goes on to record that he was sentenced to, respectively:

> "1. CONDITIONAL DISCHARGE FOR 12 MONTHS
> THE DEFENDANT IS TO SIGN THE SEX-OFFENDERS REGISTER FOR 5 YEARS
> 2. AS ABOVE CONCURRENT"

9. The notification requirements of the Sex Offenders Act 1997 provide, so far as relevant:

> "1.-(1) A person becomes subject to the notification requirements of this Part if, after the commencement of this Part-

(a) he is convicted of a sexual offence to which this Part applies;

(b) he is found not guilty of such an offence by reason of insanity, or to be under a disability and to have done the act charged against him in respect of such an offence; or

(c) in England and Wales or Northern Ireland, he is cautioned by a constable in respect of such an offence which, at the time when the caution is given, he has admitted."

S.1(2) and (3) of the 1997 Act introduced notification requirements in respect of convictions and findings where the offender had "not been dealt with" at the commencement of Part I of the Act (viz. on 1st September 1997), or in respect of which he was still at such commencement subject to imprisonment, a community order, supervision, detention or a guardianship order. By s.1(9) read with Schedule 1 to the Act, any offence under s.1 of the Protection of Children Act 1978 or s.160 of the Criminal Justice Act 1988 is a sexual offence to which Part I of the 1997 Act applies.

10. S.1(4) of the 1997 Act provides that a person falling within subsection (1) shall continue subject to the notification requirements for a period set out opposite a person of his description in a Table. None of the specific descriptions in that Table refers to a person discharged either absolutely or conditionally, but the Table concludes with a sweep up category covering "a person of any other description" not otherwise specified in the Table, against which category the period stated is 5 years beginning with "the relevant date". HHJ Hale concluded that the appellant fell into this category. The relevant date is defined in s.1(7) as meaning, in the case of a person falling within subsection (1)(a), the date of the conviction, in the case of a person falling within subsection (1)(b), the date of the finding and, in the case of a person falling within subsection (1)(c), the date of the caution.

11. A person subject to notification requirements in respect of a conviction after the commencement of the Act is, under s.2(1) read with s.2(3), required within a period of 14 days commencing with the relevant date to notify the police of his name(s), address and date of birth. On request, he must under s.2(6A) also allow the police officer or other authorised person to whom he notified such information to take his fingerprints and photograph. Under s.3 of the 1997 Act, a person who fails without reasonable excuse to comply with s.2(1), or who notifies to

the police in purported compliance with s.2(1) any information which he knows to be false, is guilty of an offence, and liable on indictment to imprisonment for a term not exceeding 5 years or a fine or both or on summary conviction to imprisonment for a term not exceeding 6 months or a fine or both. Failure to comply with s.2(6A) is made an offence with similar liability by s.3(1B).

12. The power, in a case where the court considers that it is inexpedient to inflict punishment, to make an order discharging an offender absolutely or on the condition that he commits no offence during a stipulated period not exceeding three years is provided by s.12(1) of the Powers of Criminal Courts (Sentencing) Act 2000. S.12(7) of this Act provi des:

> "(7) Nothing in this section shall be construed as preventing a court, on discharging an offender absolutely or conditionally in respect of any offence, from making an order for costs against the offender or imposing any disqualification on him or from making in respect of the offence an order under section 130, 143 or 148 below (compensation orders, deprivation orders and restitution orders)."

S.14 provides:

> "(1) Subject to subsection (2) below, a conviction of an offence for which an order is made under section 12 above discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under section 13 above.
>
> (2) Where the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently sentenced (under section 13 above) for that offence, subsection (1) above shall cease to apply to the conviction.
>
> (3) Without prejudice to subsections (1) and (2) above, the conviction of an offender who is discharged absolutely or conditionally under section 12 above shall in any event

be disregarded for the purposes of any enactment or instrument which -

(a) imposes any disqualification or disability upon convicted persons; or

(b) authorises or requires the imposition of any such disqualification or disability.

(4) Subsections (1) to (3) above shall not affect-

(a) any right of an offender discharged absolutely or conditionally under section 12 above to rely on his conviction in bar of any subsequent proceedings for the same offence;

(b) the restoration of any property in consequence of the conviction of any such offender; or

(c) the operation, in relation to any such offender, of any enactment or instrument in force on 1st July 1974 which is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.

….

(6) Subsection (1) above has effect subject to section 50(1A) of the Criminal Appeal Act 1968 and section 108(1A) of the Magistrates' Courts Act 1980 (rights of appeal); and this subsection shall not be taken to prejudice any other enactment that excludes the effect of subsection (1) or (3) above for particular purposes."

13. The short point of law certified by the Court of Appeal requires the House to consider the ambit under s.14(1) of "the purposes of the proceedings" in which the appellant was made subject to orders discharging him conditionally for 12 months; and in particular whether the existence or use of a conviction "for the purposes of the 1997 Act" (as the point of law puts it) can, or can also, properly be described as being within the purposes of the criminal proceedings taken under s.1(1)(a) of the Protection of Children Act 1978 and s.160(1) of the Criminal Justice Act 1988.

14. The starting point is to consider the statutory scheme or schemes. It was accepted on all sides before us that, if there was any requirement to notify under s.1 of the Sex Offenders Act 1997 in consequence of the appellant's convictions in the proceedings under the 1978 and 1988

Acts, it arose independently of anything provided in those Acts and of any order which was or could be made by the court in the proceedings or on the convictions under those Acts; and further that the only statutory sanction for failure to register was to be found in s.3 of the 1997 Act. It follows that, if and so far as the judge in the present case heard submissions and purported to determine whether any and what notification requirements arose under the 1997 Act consequent upon the orders of conditional discharge which he made, he had no power to do so.

15. This led to a new point being raised before the House not identified before the judge or the Court of Appeal. If the judge had no power to determine the existence and nature of any notification requirements under the 1997 Act, it was submitted that he must have lacked jurisdiction to certify that the case was fit for appeal and the Court of Appeal must equally have lacked jurisdiction to hear and determine any appeal. It was further suggested that it would in such circumstances have been open to the appellant to ignore the judge's ruling and to defend any prosecution thereafter brought against him under s.3 of the 1997 Act on the ground that he was - in the light of s.14(1) of the 2000 Act and despite the judge's ruling - not subject to any notification requirements. Exercise of this suggested option would involve a boldness unlikely to attract many offenders, while the submission that there was no basis for any appeal to the Court of Appeal in this case rests in my view on a fallacy.

16. The right to appeal against sentence following conviction on indictment is provided by s.9(1) of the Criminal Appeal Act 1968:

> "(1) A person who has been convicted of an offence on indictment may appeal to the Court of Appeal against any sentence (not being a sentence fixed by law) passed on him for the offence, whether passed on his conviction or in subsequent proceedings."

By s.50(1) "sentence", in relation to an offence, "includes any order made by a court when dealing with an offender". S.50(1A) provides that s.14(1) of the 2000 Act shall not prevent an appeal under the 1968 Act, whether against conviction or otherwise. By way of belt and braces, s.14(6) of the 2000 Act provides that s.14(1) "has effect subject to s.50(1A) of the Criminal Appeal Act 1968". It is, rightly, not suggested that an appeal in the present case was precluded because any notification

requirement was "a sentence fixed by law", since the gravamen of the appeal is that the judge's ruling was not a proper part of any sentence, and that there was, moreover, no notification requirement at all (cf *R v. Cain* [1985] AC 46, cited below).

17. Although the judge had no power to determine the existence and nature of any notification requirements under the 1997 Act, he purported to do so as part of the sentencing exercise which he undertook. As he put it in paragraph of his ruling on 12th January 2004:

> "I adjourned this aspect of the sentencing hearing until today which was within the 28 day period allowed for further consideration and argument."

After considering in detail the statutory and other material put before him, he said:

> "… I act on what I consider to be the plain words of the statute and I take the view that the defendant is liable to be subject to the notification requirements under section 1(1) for a period of 5 years".

18. It is true that, after indicating that he was minded to grant a certificate of fitness for appeal (expressed as being against conviction and/or sentence), he added

> "In saying that, I am fully aware of the argument that the effect of section 1 of the Sex Offenders Act [1997] is that it is not part of the sentence of the court but a consequence of the sentence. Nevertheless, the matter must be capable of being tested elsewhere ..."

He concluded with the words:

> "So, Mr Longworth, the effect is I am afraid you must within 3 days of today go to the local police station and register under the provisions of the Sex Offenders Act.

> That obligation will last for a period of 5 years from the date of conviction subject to any views that the Court of Appeal may have."

Not surprisingly in these circumstances the later prepared certificate records the requirement to register for 5 years as part of the sentence passed.

19. In *R v. Cain*, an issue arose whether the trial judge had, under the provisions of s.39 of the Powers of Criminal Courts Act 1973, power to make a criminal bankruptcy order. However, s.40(1) of the same Act provided that "No appeal shall lie against the making of a criminal bankruptcy order". The House held, nonetheless, that the issue regarding the judge's power could be tested on appeal. In a speech with which the other members of this House all agreed, Lord Scarman said at p.55D:

> "An order of the Crown Court, once made, may be in excess of its statutory power or otherwise irregular. But it is not a nullity. And it would undermine the authority of the criminal law if orders made by the highest court of trial in criminal matters could be disregarded as nullities. The order of the Crown Court stands unless and until set aside by the court itself upon application or, if appeal lies, by the appellate tribunal to which the appeal is taken."

The House went on to construe s.40(1) as permitting an appeal where the issue was whether the court in making an order had exceeded the powers conferred upon it by Parliament. In the event, they also held that the judge had had power to make the bankruptcy order which he did.

20. In the present case, although the judge noted in passing the "argument" that notification under the Sex Offenders Act was "not part of the sentence of the court but a consequence of the sentence", the objective effect of the course he took, in adjourning and hearing submissions, and of the language he used, was a ruling determining the position subject to appeal. It is irrelevant to consider whether there could have been consequences, in terms of contempt or otherwise, if his ruling had not been complied with. The fact that he purported as part of the sentencing exercise to determine the issue entitled the appellant to appeal, as the judge contemplated. However, on the appeal, if the issue regarding the judge's power to rule had been identified, the judge's

ruling should have been set aside without more, as having been beyond his power. It follows that on the present further appeal to this House, the order that is appropriate is an order setting aside that part of the judge's sentencing remarks and ruling which purported to order the appellant to register for 5 years under the 1997 Act, without any determination whether or not the appellant was under any such obligation under that Act.

21. It would nonetheless be unhelpful if the House, having heard full argument, did not itself take this opportunity of indicating its own view on the point of law certified by the Court of Appeal. In my view the correct answer is in the affirmative: the effect of s.14(1) of the 2000 Act is to deem there to be no conviction for the purposes of s.1(1)(a) of the 1997 Act. I start by observing that the language of s.14(1) states a general principle - not limited by the specific provisions in s.14(3), which are expressly stated to be "without prejudice" to subsection (1) and to apply "in any event". S.14(3)(b) must itself be read bearing in mind the previous provision in s.12(7) that nothing in s.12 should be construed as preventing a court, on discharging an offender absolutely or conditionally, from inter alia imposing any disqualification on him. But it is unnecessary in this case to consider how far s.14(3)(b) qualifies, or has a separate subject-matter from, s.12(7).

22. The purposes of the proceedings in which the conditional discharges were ordered were, first, to establish the appellant's guilt or innocence in respect of the offences charged under the 1978 and 1988 Acts, and, secondly, in the event of his guilt, to determine whether any and if so what punishment should be inflicted. The focus of the phrase "the purposes of the proceedings" in s.14(1) of the 2000 Act is in my view narrow. It is on the legal proceedings actually before the court and the significance that may attach in them to any conviction. Even proceedings under s.13 of the same Act to have an offender re-sentenced, following conviction and sentence in respect of another offence committed during a period of conditional discharge, are in s.14(1) treated as separate proceedings. The proceedings under the 1978 and 1988 Acts were on no view "brought under the Sex Offenders Act", as the Court of Appeal at one point described them. Nor did such proceedings involve, or have as any part of their intrinsic purpose, the making by the court of any order to register, or the imposition of any sanction for failure to register. The duty to register and the statutory sanction for failure to register were both imposed independently by the 1997 Act itself; and the imposition of any such sanction would have involved further separate proceedings under s.3 of that Act. Further, as Mr Perry representing the Crown acknowledged in his objective and

helpful submissions, the purposes of proceedings under the 1978 or the 1988 Act cannot plausibly be said to embrace the bringing of subsequent proceedings under s.3 of the 1997 Act for failure to notify under s.1 of that Act, and so s.14(1) of the 2000 Act would on any view preclude reliance on any such conviction for the purposes of sanctioning such a failure. The existence should however be noted of s.5 of the 1997 Act, whereby, if a court by or before which a person is convicted of an offence to which Part I of that Act applies states in open court that he has on that date been convicted thereof and then or subsequently certifies accordingly, that certificate is, for the purposes of Part I, to be evidence of those facts. But the possibility that a court may under s.5 issue such a certificate does not mean that it is one of the purposes of the proceedings under the 1978 or 1988 Act to obtain such a certificate, let alone that the purposes of such proceedings are to be viewed so expansively as to embrace reference to or use of any resulting conviction under s.1 of the 1997 Act.

23. The statute book contains a number of enactments in which Parliament has been careful to exclude the effect of subsections (1) and/or (3) of s.14 as contemplated by s.14(6) of the 2000 Act. Yet there is no such exclusion in the 1997 Act. To take some examples, under s.46(1) of the Road Traffic Offenders Act 1988, a court on convicting a person of an offence involving obligatory or discretionary disqualification and making an order discharging him absolutely or conditionally may, notwithstanding s.14(3), also exercise any power conferred, and must discharge any duty imposed, on it by ss.34, 35, 36 or 44 of that Act, being provisions dealing with disqualification, while under s.46(2) a prior conviction involving disqualification or endorsement of licence is to be taken into account, notwithstanding s.14(1), in determining the same offender's liability to punishment or disqualification for any offence involving obligatory or discretionary disqualification committed subsequently. Under s.1 of the Licensed Premises (Exclusion of Certain Persons) Act 1980, where a person is convicted of "an offence committed on licensed premises" and the court is satisfied that in committing that offence he resorted to violence or offered or threatened to resort to violence, the court may make an exclusion order prohibiting him from entering those or other specified premises without certain consents, and s.1(2) is careful to provide that such an order may, notwithstanding s.14 of the 2000 Act, be made in addition to an order discharging him absolutely or conditionally. A similar exclusion appears in s.14A of the Football Spectators Act 1989, which provides that a court before which a person was convicted of certain specified offences must make a banning order, if satisfied that there are reasonable grounds to believe that this would help to prevent violence or disorder at or in connection with any regulated football

matches. S.14A(5) carefully provides that such an order may be made in spite of anything in s.14 of the 2000 Act. What is noticeable about the 1997 Act is the absence of any similar exclusion, although that Act introduces a notification requirement which does *not* depend on any order by the court by or before which the relevant sex offender was convicted.

24. Strong support for a conclusion that the absence of any such exclusion from the 1997 Act is because Parliament never envisaged that the notification requirements of the 1997 Act should apply to persons discharged absolutely or conditionally is, furthermore, provided by the subsequent legislative history. This is admissible as an aid to construction, at least if one were to take the view that the conclusion which I have reached was open to any doubt. The notification requirements of the 1997 Act were re-enacted with some changes in the Sexual Offences Act 2003. Part 2 of this Act (which came into force on 1st May 2004) provides in s.80(1) that a person is subject to the notification requirements for the relevant notification period set out in s.82, if he is, inter alia, convicted of a relevant sexual offence after the commencement of Part 2. S.81(1) covers persons convicted of such an offence before such commencement, providing that they shall be subject to the notification requirements from such commencement until the end of the notification period. Under s.82(1) the notification period for a person within s.80(1) or 81(1) is the period set out in a Table opposite the description applying to such person. None of the previous descriptions being apt to cover a person discharged either absolutely or conditionally, this Table contains a penultimate category, expressly covering persons conditionally discharged, which is without any parallel in the Table in the 1997 Act. The final category is once again "a person of any other description". The wording of these two categories in the 2003 Act Table is as follows:

"A person in whose case an order for conditional discharge ….. is made in respect of the offence	The period of conditional discharge …..
A person of any other description	5 years beginning with the relevant date"

Notification must now, under s.83(1), take place within the period of 3 days beginning with the relevant date or, if later, the commencement of Part 2 of the Act.

25. The relevant date under the 2003 Act is by s.82(6) defined (in the same way as under the 1997 Act) as the date of the conviction or finding or caution, as the case may be. The reference in the Table in s.82(1) of the 2003 Act to a person subject to a conditional discharge must be seen in the light of s.134(1) in Part 2 of the Act, which provides that s.14(1) of the 2000 Act does "not apply for the purposes of this Part to a conviction for an offence in respect of which an order for conditional discharge …. is made". But by s.134(2), s.134(1) itself "applies only to convictions after the commencement of this Part".

26. This last provision clearly indicates that it was Parliament's understanding that, in respect of any conviction prior to the commencement of this Part of the 2003 Act in respect of which the offender was discharged absolutely or conditionally, s.14(1) of the 2000 Act would have the effect of deeming such conviction not to have occurred for the purpose of the notification requirements under the Sexual Offences Act 2003, and, inferentially, under the predecessor 1997 Act.

27. If the position were otherwise, some remarkable anomalies would also follow. A person convicted and conditionally discharged would under the 1997 Act be subject, as HHJ Hale and the Court of Appeal considered, to a 5 year notification period. But once the 2003 Act came into force, that period would on the face of it be reduced to a period matching the length of the conditional discharge (a maximum of 3 years or, in the present case, a period of 12 months). However, a person subject to an absolute discharge would, paradoxically, be worse off. He or she would also be subject under the 1997 Act to a 5 year notification period as a person of any other description. But there would be nothing in the 2003 Act to reduce this period after the commencement date of Part 2 of that Act. Further, in respect of a conviction after that commencement date, such a person would not fall within any specific description in the Table, but would presumably continue to be subject as "a person of any other description" to a 5 year notification period, whereas a person convicted and conditionally discharged would be subject to a notification period equal only to the period of conditional discharge which cannot itself exceed three years. Why Parliament should have chosen expressly to disapply s.14(1) in relation to persons conditionally discharged, but not in relation to persons absolutely discharged, would on this analysis also be wholly inexplicable. The only sensible conclusion, as Mr Perry accepted, is that Parliament assumed that, apart from the express exclusion introduced by s.134(1), s.14(1) would have under the 2003 Act (and had had under the 1997 Act) the effect of deeming any otherwise material conviction leading to an

absolute or conditional discharge not to have occurred for the purposes of both Acts.

28. Mr Perry drew the House's attention to a possible problem that arises from this conclusion. Whatever the current day-to-day practice of courts by or before whom sex offenders are convicted and sentenced, the scheme of both the 1997 and the 2003 Acts is on its face that the requirement is to notify within a period beginning with the date of the conviction, rather than (if this is later) the date of the sentence. That appears to follow from the ordinary meaning of conviction, confirmed in the case of both statutes by provisions distinguishing the date of conviction from the date when an offender is "dealt with" (cf s.1(2)(a) of the 1997 Act and s.81(3) of the 2003 Act), as well as by the parallel requirements to notify within 14 or now 3 days beginning with the date of any finding (in a case of insanity or disability) or caution.

29. But this problem then arises. In many cases involving an absolute or conditional discharge, such sentence will be passed on the same date as conviction (or it will be made clear that such will be the sentence, as it was by the judge in this case). However, that will not always be so. Accordingly, if the trigger to any notification requirement is conviction rather than sentence, there will be cases where it is uncertain at conviction not merely how long the period of notification will be (a matter of irrelevance to the initial notification), but also whether or not the conviction gives rise to requirement to notify for any period at all. No such requirement can exist, or at all events survive, under the 1997 Act in the event of an absolute or conditional discharge, or under the 2003 Act in the event of an absolute discharge. If the sentence passed is such a discharge, there could be no problem. Indeed, as I have pointed out, s.14(1) would preclude the Crown from proceeding under s.3 of the 1997 Act or s.91 of the 2003 Act, even it would ever occur to anyone to think of doing so. The potential problem arises if there is a real likelihood of such a discharge, but in the event the judge imposes a heavier sentence. By this time, the period (of 14 or now 3 days) within which notification must be effected is likely to have expired. The practical answer to this anomaly under the current legislation is likely to be that an offender will never be prosecuted under s.92(1)(a) for failure to notify at a date when he has not yet been sentenced, if prior to sentence he had good reason to believe that he would be absolutely discharged. Though we did not hear argument on this point (and I mention it for completeness, without expressing any view), he might even be able to argue, if he was prosecuted, that he had a legal defence to any prosecution under that subsection, in that he had "reasonable

excuse" for not complying with a requirement to notify which had only become clear at a later date.

30. Mr Goldrein QC representing the appellant submitted that this whole problem could and should be circumvented by treating the date of conviction, for the purposes of the initial requirement to notify and the notification period, as the date of sentencing. The basis of this argument is that the Table in each Act describes offenders by reference to the nature of their sentence. But the applicable notification period specified in the Table is either indefinite or begins with "the relevant date", which is itself defined as the date of conviction, finding or caution; and the ordinary meaning of the word "conviction" - reinforced by other statutory language – appears, as I have said, clear. In rejecting Mr Goldrein's submission on this point, I am also influenced by the underlying rationale of the notification requirements, which is the protection of the public. This suggests that the notification requirement should arise at once on a conviction, finding or caution, rather than await a sentence which will in many cases do no more than determine whether the notification should continue indefinitely or for as long as 10, 7 or 5 years (or under the 2003 Act in the event of a conditional discharge 1 year). As a minor point, one may add that, if the notification requirement and period run from conviction rather than sentence, the period of notification will, where sentence is adjourned, expire correspondingly earlier than it would do if it ran only from sentence.

31. For these reasons, I have no doubt that HHJ Hale and the Court of Appeal were wrong in ruling that the present appellant was subject to any notification requirements in consequence of the convictions in respect of which he was conditionally discharged. However, the appeal should be allowed in respect of that part of the judge's sentence which purported to determine that the appellant was subject to notification requirements and to require him to register under the Sex Offenders Act 1997 on the simple ground that it was outside the judge's and the Court of Appeal's power so to determine and order.

32. Finally, nothing in this judgment should be taken as discouraging courts, by or before which an offender is convicted, from following the well-established practice of then informing the offender of any notification requirement which applies, under the Sexual Offences Act 2003, as a consequence of such conviction. If sentence follows immediately on conviction, this should not however be done in a way which appears to make such information part of the sentence or to clothe it with the authority of a further order by the sentencing court. Further,

nothing in this judgment detracts from the duties of legal advisers to advise an offender, for whom they are acting, about the consequences of any conviction, including consequences relating to notification under the Sexual Offences Act 2003.