

Neutral Citation No: [2024] NICC 11

Ref: [2024]NICC11

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 20/88335

Delivered: 08/03/2024

IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT BELFAST

THE KING

v

MICHAEL LENAGHAN

Mr S Magee KC with Ms S Gallagher (instructed by the Public Prosecution Service) for
the Crown

Mr J Kearney KC with Mr C Fegan (instructed by McIvor Farrell Solicitors) for the
Defendant

HER HONOUR JUDGE SMYTH
Recorder of Belfast

Introduction

[1] The defendant pleaded not guilty at arraignment to the murder of Inayat Shah, wounding Robert Okroy with intent to do him grievous bodily harm and making threats to kill Conor Floyd on 21 March 2020.

[2] On the 8 November 2023, he asked to be rearraigned and entered guilty pleas to all counts.

[3] I informed him on that date that, by law, there was only one sentence available to me in respect of his conviction for murder and that, accordingly, his sentence would be one of life imprisonment. However, it now falls to me to set the tariff period that is, the minimum period he must serve in prison before being eligible for release on life licence under Article 6 of the Life Sentences (Northern Ireland) Order 2001 ("the 2001 Order") and to sentence him in respect of his conviction for wounding Mr Okroy with intent to do him grievous bodily harm and threats to kill.

[4] I have been greatly assisted by the comprehensive and helpful written and oral submissions, from counsel for the defence and for the prosecution. A summary of the background information is taken from the prosecution opening statement.

The background

[5] Mr Shah was 67 years old and the manager of the Travellers Rest in Ballymena, a hostel facility used by the Northern Ireland Probation Service, the Housing Executive, Social Services and others to house persons unable to obtain other accommodation. Many of those who used the services of Mr Shah were vulnerable and suffered addiction and other behavioural problems.

[6] The Travellers Rest comprised a number of self-contained flats and Mr Lenahan was provided with accommodation in Flat 7. Another resident, Conor Floyd recalled the defendant calling at his door around 1pm on 21 March and asking if he had any drugs. When he was told that he hadn't, Mr Lenahan called him a liar and left. Mr Floyd followed, and a verbal altercation ensued. Mr Floyd told police that in the course of that dispute, Mr Lenahan had referred to Mr Shah not liking him and accusing Mr Floyd of "touting on" him to Mr Shah, which was untrue.

[7] Mr Lenahan went into his own flat and closed the door but emerged shortly afterwards, carrying a silver kitchen knife in his hand and raising it in a threatening manner towards Mr Floyd.

[8] Both men were screaming at each other with the defendant telling Mr Floyd he would kill him or slit his throat (count 3). Eventually Mr Floyd returned to his own flat with another resident, hurling abuse at Mr Lenahan. Sometime later the defendant came to his door and again banged on it, while muttering something before leaving again.

[9] Robert Okroy was another resident who had been housed by the Northern Ireland Probation Board. He had woken up on 20 March to the sound of an altercation and the defendant shouting "I will fucking kill you." He went to the defendant's flat to borrow some cigarette papers and initially Mr Lenahan would not open the door but pushed cigarette papers below the door. This prompted Mr Okroy to tell the defendant to stop being so paranoid. At that point, the defendant opened the door armed with a knife. He stabbed Mr Okroy in the right side of his chest just above his breastbone. He required three stitches to the one inch wound (count 2).

[10] Mr Okroy made his way to Mr Shah's living quarters to seek help for his injuries. He met Mr Shah's 16 year old granddaughter. She told him to come in and sit down, whereupon her grandfather came into the room and called the emergency services. Mr Okroy left the premises and Mr Shah followed him, still connected to the emergency services.

[11] The recording of the 999 call and the transcript reveal in harrowing detail what happened next. Mr Shah can be heard, apparently catching up with Mr Okroy, before saying "I think that's the one, his name is Michael isn't it. He's mad alright." There is a disturbance in the background and then Mr Shah's repeated screams along with entreaties offering money in return for his life can be heard. After two and a half minutes, there is silence.

[12] Mr Okroy told police that he and Mr Shah had been making their way towards the defendant's flat when they met him coming towards them, still armed with the knife. Passers-by witnessed Mr Shah and Mr Okroy confronting the defendant who was then seen to duck down as if to retrieve something. He was described as aggressive, gesturing and shouting. The defendant threw a bottle at the two men before they ran towards the alleyway at the side of the houses. The defendant began to run after Mr Shah who fell onto the ground where he was then stabbed repeatedly.

[13] Mr Okroy ran back to Mr Shah's living quarters where his granddaughter heard him shout "the old man has been stabbed...he has been stabbed multiple times." He then ran into the road to get assistance from passers-by and an ambulance arrived. Mr Shah was unresponsive to CPR administered by paramedics and was pronounced dead at the scene at 3.57pm.

The defendant's behaviour after the murder

[14] A passerby described the defendant as appearing "calm, but out of it... possessed or broken, like he'd snapped." After the murder, he returned to the Traveller's Rest and went to Mr Floyd's flat where he banged on the door saying, "I know you're in there." Mr Floyd waited until he had gone before leaving. A short time later he encountered the defendant and confronted him, saying "see if you come to my fucking door again..." at which point the defendant gestured towards his waistband which Mr Floyd assumed was a reminder that he was carrying a knife. The defendant said something along the lines of "You fuckin what? You'll end up like Shah there, fucking dead in the street" before saying something about having stabbed or killed him.

[15] The defendant was identified and arrested at the scene. He approached police with blood on his face, hands and clothing and said, "that thing is in the alley, I did it, it's me you're looking for." The bloodstained knife used in the murder was found in the alleyway. Police asked him what he had done to Mr Shah, and he replied "he was a tout. He was trying to get me back into prison." When he was arrested for murder he replied, "is he dead?" When he was told that Mr Shah was dead, he replied "fucking good." He was then cautioned and replied "Yeoo, that's what I wanted you to do, thank you." Mr Shah's daughter heard him shouting "happy days, happy days." When he was taken into custody, he was aggressive and overheard to say, "I murdered someone and if I had my way it would have been

two.” In the course of police interviews he was aggressive and abusive to police and made no admissions, with his solicitor querying his mental health.

The Post-Mortem

[16] A post-mortem examination conducted on Mr Shah’s body confirmed that he had died from multiple stab wounds. Fifty-five wounds were noted including:

- Four stab wounds to the head and a deep incision extending from the left side of the forehead onto the left cheek. One wound had nicked his cheek bone, another had penetrated into the mouth and cut the side of Mr Shah’s tongue.
- Twenty-five stab wounds to the trunk; fourteen to the front and eleven to the back. Two (one in the trunk, one in the back) had entered the chest cavity and punctured Mr Shah’s lung. Two wounds had caused incisions to his liver. Only one of the wounds was described as superficial with the remainder penetrating but without damaging internal organs but some causing damage to his scapula and ribs.
- Four stab wounds to his right upper limbs and a further deep incised wound to the front of his right hand consistent with defensive type injuries.
- One stab wound and other incised wounds to his left hand consistent with defensive type injuries.
- Five stab wounds to the left leg.

The impact on the Mr Shah’s family

[17] I have received victim impact statements from Mr Shah’s daughter Shabina, his son, Mohammad Farooq and his partner, Jeanette Norris. Another son has died tragically in recent weeks, which has added to the burden endured by this family. Before I turn to the contents of those statements, I acknowledge that the delay in concluding the legal proceedings has caused additional anxiety and stress. The medical evidence is complex and required a number of experts to opine on the defendant’s mental health, although it is correct to say that there were difficulties engaging the defendant in assessments and further delays were occasioned by the defendant dispensing or attempting to dispense with his legal teams.

[18] Whilst Dr Ferguson, a Consultant Clinical Psychologist considered that the difficulties were more likely to be occasioned by the defendant’s psychological issues rather than deliberate delaying tactics, it remains a matter of sincere regret that the process has caused this family such distress. Whilst it is often said that the conclusion of the court process brings closure to loved ones, in truth, it simply marks the end of one stage of grief and the beginning of another.

[19] Shabina talks of the grief and the accompanying depression she has experienced since her father's death. Memories of shared laughter and love are forever intertwined with the searing pain of her father's absence. She describes the darkness that has enveloped her life and the efforts that she has made to find ways to cope. It is a beautiful and poetic statement of the profound impact her father's death has had on her life. She concludes with words of hope that she might again experience light and healing.

[20] Mohammad Farooq talks about the impact that the court process has had on him and how difficult it has been to watch the defendant's behaviour during the course of the proceedings, with no apparent remorse or desire to bring the proceedings to a conclusion. In particular, he talks about the pain of hearing the details of his father's injuries relayed in public and information about the murder that was previously unknown. There are many aspects of his father's murder which haunt his family.

[21] He describes his father as a private, kind, loving and charitable person who would help anyone in the community, regardless of who they were. He worked hard even though he was a pensioner and loved his work and felt that it was important enough to carry on and support those who needed it. It is clear that the Travellers Rest was not merely a commercial enterprise. Far from it. This was a refuge for those unfortunate people who were not wanted and who could not get a roof over their heads anywhere else. There were risks associated with housing people with addiction issues and violence in their backgrounds as this case demonstrates. Inayat Shah had built up a business over 45 years and as a consequence of his murder it has been wound down which has had a significant financial impact on the family.

[22] Mohammad Farooq describes the huge void that his father's death has left, and he is grateful to the people, including his mother, who have supported the family throughout this terrible ordeal. The shock of the murder, coupled with the inability to have a proper funeral due to the Covid pandemic has caused enormous grief and the healing has not yet begun. He asks the question, why was the defendant free to commit this terrible crime? Mohammad Farooq is right to ask this question in light of the litany of violent offences this defendant has left in his wake over many years. He has harmed many victims and repeatedly been convicted of being in possession of offensive weapons, including knives. It is easy to see things in hindsight, but there were obvious signs that this man was dangerous.

[23] Jeanette Norris was Inayat Shah's partner. She called him "*Shah*." She described him as the kindest and most generous of men, almost to fault. She has suffered health complications since his murder and struggles to deal with daily life. Her life has been ruined and people close to Shah have lost someone who made a difference to their lives. She also speaks of his work at the Travelers Rest, and the number of people that he helped with accommodation, employment and money. She puts it best when she says, "the people of Ballymena have been robbed of a great man."

[24] I have received, what can only be described as an outpouring of tributes from people who knew Mr Shah's work in the Traveller's Rest. Those who have written to me include social workers who placed vulnerable teenagers emerging from the Care system, those working with disadvantaged people such as the Inter-Ethnic Forum and St Vincent de Paul. Confirmation of Mr Shah's willingness to provide a home for those with complex needs comes from letters from the Northern Ireland Housing Executive and the many condolence cards sent to the family. One letter in particular encapsulates the unique public service Mr Shah gave to those who had nothing:

"Patrick Dallat from Ballymena Meats describes asking Mr Shah if he could help two Polish employees who had no accommodation. He explained that the men had no money. Mr Shah's response was that this was unimportant - what was important was that they were housed. The men were then able to accept employment. Mr Dallat has told me that Mr Shah took the men grocery shopping and paid the bill and later kept an eye to make sure they were alright. He did the same for men coming from Romania and Bulgaria seeking employment. They were able to accept employment because they had a home."

The defendant's record

[25] The defendant has more than 130 convictions in Northern Ireland and England. A substantial number involve violent offending, including possession of knives and threats to kill. The prosecution has summarised the factual backgrounds of the most relevant offences and the record demonstrates serious attacks on partners and simply people who appear to have been in the wrong place at the wrong time. In one attack, his partner, sustained GBH when he broke her nose, cheekbone and possibly her eye socket as well as inflicting a substantial bite mark to her arm and redness to her neck, caused by him putting both hands around her neck and squeezing it. He was apprehended with a knife in Derry City Centre, in a London Underground Station and on a public road in London. He threatened to kill a resident at premises in Derry with a knife and made threats to kill or physically assaulted innocent passers-by, perceived as deliberately bumping into him.

The medical evidence

[26] Dr Muzaffar Hussain and Dr Ronan Brennan, Consultant Forensic Psychiatrists provided reports on behalf of the defence and prosecution respectively. Dr John Ferguson and Dr Hannah Darrell-Berry, Consultant Clinical Psychologists also provided reports. The experts agreed that the defendant suffers from Dissocial Personality Disorder and Emotionally Unstable Personality Disorder (Impulsive and Borderline types). Dr Hussain opined that he also suffered from Paranoid

Personality Disorder but the other experts concluded that he demonstrated only traits of the disorder.

[27] The experts considered whether the partial defence of Diminished Responsibility was open to the defendant. In order to avail of the defence, the defendant must prove on a balance of probabilities that –

- (a) he was suffering from an abnormality of mental functioning which –
- (b) arose from a recognised medical condition,
- (c) substantially impaired his ability to either:
 - understand the nature of his conduct; or
 - form a rational judgment; or
 - exercise self-control
- (d) provides an explanation for his acts in doing the killing

[28] The experts agreed that the defendant was suffering from an abnormality of mental functioning, which arose from a recognised medical condition (Personality Disorders). Whilst they agreed that the defendant understood the nature of his conduct, because he was in possession of a knife, had already stabbed Mr Okroy and it was clear from the 999 call that he knew he was killing Mr Shah, they disagreed as to whether the abnormality substantially impaired his ability to form a rational judgment or exercise self-control.

[29] Dr Hussain concluded that his ability to do both was substantially impaired. Dr Brennan disagreed in relation to his ability to form a rational judgement and considered that it was open to debate whether his ability to exercise self-control was substantially impaired, that this was a matter for the jury, but in his opinion, it was not so impaired.

[30] Dr Hussain did not expressly address the issue of self-induced intoxication in relation to an explanation for the killing. Dr Brennan did address the issue and concluded that the defendant's own account of taking alcohol and diazepam before the killing "is highly relevant... in view of the potential for both of these to precipitate impulsive, disinhibited and aggressive behaviour, particularly after a significant period of abstinence from both substances where his tolerance to the effects of both could have diminished leading to an exaggerated effect when compared with past usage of similar quantities....I would argue that had he not consumed these substances he would have been better able to manage his anger at the material time without resorting to violence, it being noteworthy that he managed to avoid threats/acts of aggression in the weeks prior to this despite experiencing anger towards Mr Shah and feeling threatened/angered by Mr Floyd, whilst apparently abstinent from both of these substances.

[31] Dr Hussain provided an addendum report in relation to self-induced intoxication. He remained of the view that the killing of Mr Shah was determined primarily by his Personality Disorders and that whilst being intoxicated might have disinhibited him further, he did not think that the defendant would have killed Mr Shah if he were just intoxicated and not personality disordered at the same time. He confirmed his opinion that the Personality Disorders did substantially impair his ability to both form a rational judgment and to exercise self-control and that the defence of Diminished Responsibility was open to him.

[32] In reaching his conclusions, Dr Brennan had noted Dr Darryl-Berry's opinion that it was the defendant's decision to use substances that morning and that these "most substantially contributed to his perception of Mr Shah's actions and his own subsequent action." Dr Hussain had expressed the opinion that "[The defendant] appears to have attacked him as he believed Mr Shah was a "tout" and part of a conspiracy to have him returned to prison after his stabbing of Mr Okroy."

[33] Dr Brennan had also referred to Dr Darryl-Berry's opinion that a personality disorder is "unlikely to substantially impair a person's cognition. Whilst Personality Disorders can contribute to heightened emotionality, they are unlikely to result in gross impairments in a person's thought processes... people with Personality Disorders rarely are considered non-culpable for their acts... whereas mental illness generally is considered a mitigating factor in forensic decision making, Personality Disorder generally is considered to be an aggravating factor."

[34] Dr Darryl-Berry had noted the defendant's account that after stabbing Mr Okroy he calmed down to the extent that he was able to consider the potential consequences of the assault in terms of the length of prison sentence he may receive. He was planning to hand himself in and reacted angrily when he perceived that Mr Shah was telephoning the police to come and arrest him. Dr Brennan stated his view that this behaviour was consistent with his opinion that "although, as a consequence of Personality Disorder, he may in general have a lower threshold for perceiving threat or acting aggressively when compared with a "normal person", this does not mean that he will always perceive his environment as threatening or react aggressively in all situations without any ability to modify or control his response. His perceptions and behaviour are context specific and subject to potential stabilisation/destabilisation by a variety of factors eg abstinence from alcohol/drugs, intoxication with alcohol/drugs, presence/absence of supportive relationships, stable/unstable living environments."

[35] In advance of the trial the court directed an experts' meeting and a joint statement to be prepared setting out areas of agreement and disagreement. Consequently, all of the experts agreed that the defendant suffers from Dissocial Personality Disorder and Emotionally Unstable Personality Disorder (Impulsive and Borderline types). It appears, but is unclear, that Dr Hussain agreed with the other experts that the defendant demonstrated Paranoid Personality Disorder traits only.

[36] All the experts agreed that it was not possible to diagnose whether the Personality Disorders were mild, moderate or severe at the material time. However, the Personality Disorders would have generally affected his functioning to varying degrees and these may have predisposed him to becoming angry in certain situations.

[37] There is no evidence that the defendant was suffering from Dependence Syndrome Due to Multiple Drug Use and Use of other Psychoactive Substances (F19.2 ICD-10 Classification). Dr Brennan opined that the defendant had demonstrated that he was capable of abstaining from both alcohol and diazepam for a number of weeks prior to the offences and so it could not be said that taking substances on this occasion was the result of an irresistible craving arising from an abnormality of mental functioning.

[38] The experts noted that in the course of their discussions, "Dr Hussain stated that he had changed his opinion having considered points made during the discussions in relation to paranoia and substance use. Dr Hussain stated he now accepted that the defendant voluntarily used alcohol and drugs on the morning of the offences, that these would have likely had a disinhibiting effect and that Personality Disorders alone would not have explained the killing. Dr Hussain stated the killing is better explained by the disinhibitory effects of voluntary intoxication. He summarised that he was no longer of the opinion that the defence of Diminished Responsibility was open to the defendant."

The relevant legal principles

[39] Article 5(2) of the 2001 Order provides that the minimum term:

"... shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it."

[40] The legal principles which the court will apply in fixing the minimum term are contained in *R v McCandless & Others* [2004] NICA 1 where the Court of Appeal held that the Practice Statement issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who are required to fix tariffs under the 2001 Order.

[41] The Practice Statement identifies a number of starting points which may be varied upwards or downwards to reflect aggravating or mitigating circumstances which may relate to the offence or the offender:

“The normal starting point of 12 years

10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the starting point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a

terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.”

The approach to the Practice Statement

[42] In *R v Mark Ward (No 2: Tariff)* [2019] NICA 18, McCloskey J, explained at para [7] that the choice of starting point should not be approached in a mechanistic way: “Rather, it involves an evaluative judgment on the part of the judge who has become progressively immersed in the dense details and nuances of the trial from its inception to its conclusion.”

The starting point

[43] The prosecution submits that the defendant’s culpability is exceptionally high and that the case falls into the higher category of 15/16 years before making a substantial upwards variation to reflect the aggravating circumstances. The following factors in para 12 of the Practice Statement are identified:

- (d) The killing was intended to defeat the ends of justice – the motivation for the attack appears to be that Mr Shah was attempting to raise the alarm with police in respect of Mr Lenaghan’s attack on Mr Okroy.
- (e) The victim was providing a public service by housing the homeless and those unable to obtain alternative housing due to their recent incarceration in prison.
- (i) The victim was subjected to gratuitous violence and degradation in the course of the assault. The prosecution relies on the audio tape of the 999 call which recorded Mr Shah’s final moments in this regard and the extensive and multiple injuries he suffered.

[44] The prosecution submits that the multiplicity of factors in paragraph 12 justifies a substantial upwards variation from the 15/16 starting point. Additionally, it submits that the aggravating factors relating to the offence are :

- (1) The use of a weapon to cause Mr Shah’s death.
- (2) The fact that the defendant had deliberately armed himself with a knife. He did not happen upon it by chance.
- (3) Mr Shah was 67 and vulnerable due to his age and the fact that he had fallen unto the ground as he tried to escape the defendant where he was knifed to death.

In relation to the offender, the aggravating factor is:

(1) The defendant's relevant criminal record for violent offences involving weapons.

[45] The defence submit that the normal starting point should apply because of the impact of the defendant's Personality Disorders on his behaviour and because only one of the three factors identified by the prosecution as bringing the case into the 15/16 year bracket (gratuitous violence/multiple injuries) is accepted. Therefore, it is submitted that the court should not automatically start at the higher point.

[46] The defence dispute the submission that the Traveller's Rest provided a public service although it accepts that it was a business enterprise that genuinely sought to help (and did, for many years, help) the homeless.

[47] The defence submits that there is insufficient evidence to prove that the murder was intended to defeat the ends of justice and that it is better explained as a *fatal loss of control arising from the paranoid perception that Mr Shah 'touted' on him.*

[48] Whilst the defence accepts that the gratuitous violence and extensive injuries is a relevant factor, it submits that this should be considered in the context of the defendant's "clearly florid mental health problems." The defence disputes that there is sufficient evidence of "degradation" and in particular that anything recorded on the 999 call amounts to such.

[49] The defence submits that para 11 of the Practice Statement is relevant and that the normal starting point should be reduced because "(b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress."

[50] The defence does not accept the aggravating factor in relation to the offence, that Mr Shah was especially vulnerable at the time of the killing, "in the *McCandless* sense" and submits that the prosecution has double counted by treating the "use of a knife" and "arming himself in advance with a knife" as two distinct factors. Whilst it is accepted that the defendant has a relevant record, the defence notes that only six of the convictions relied on occurred within the preceding 10 years.

Conclusions on the starting point

[51] It is important to emphasise that the Practice Statement contains guidance only, not rules and the identification of a starting point is not a mathematical exercise. The process is evaluative and nuanced and the facts of an individual case may not precisely mirror those outlined in the Statement.

[52] I reject the defence submission that culpability is significantly reduced because of the defendant's Personality Disorders. Whilst the Disorders generally

affected the defendant's functioning to varying degrees and may have predisposed him to becoming angry in certain situations, the agreed expert evidence is that the disinhibiting effects of alcohol and drugs best explains the murder of Mr Shah. Had he not deliberately taken them, it is unlikely that he would have reacted with this ferocious level of violence. The defendant's lengthy history of violent offending can have left him in no doubt of the disinhibiting effects of substances upon him. The deliberate decision to steal and keep a knife in his flat, should he feel the need to use it, as he had done in the past, cannot be left out of account.

[53] There has never been any doubt that the defendant understood that he was killing Mr Shah, and his behaviour afterwards demonstrates that he intended to do so. By his own account he was capable of rationally weighing up his actions after stabbing Mr Okroy and deciding on a course of action in his best interests.

[54] There is simply no medical or other evidence to support the contention that the defendant was experiencing "clearly florid mental health problems" or that the murder is "better explained by a fatal loss of control arising from the paranoid perception that Mr Shah "touted on him." The defendant correctly inferred that Mr Shah had made contact with the police following the stabbing of Mr Okroy and was angered by the prospect of his imminent return to custody, depriving him of the more favourable course of handing himself in.

[55] The brutal nature of the sustained attack in itself would be sufficient to bring this case into the 15/16 year bracket. The violence was gratuitous, and 55 knife wounds were inflicted. Additionally, Mr Shah was an older man who had fallen on the ground when pursued by the defendant. He was vulnerable because he had no chance of defending himself. Whilst the Traveller's Rest was a private enterprise, it is clear from the letters that have been received that many of the people Mr Shah accepted presented with complex and challenging needs, which made it difficult to house them elsewhere. He did not just provide accommodation, he offered care and support. The defence has not sought to challenge in evidence the information provided. Whilst not in the traditional sense, I am satisfied that Mr Shah did provide a valuable public service and it cost him his life. It is unlikely that anyone will be prepared to do so in the future.

[56] It is clear that it was Mr Shah's contact with the emergency services that caused the outburst of anger. Whether the killing should be considered as an act to defeat the ends of justice or simply revenge, the motive aggravates the offence. Deliberately arming himself with a knife, an act which follows a familiar pattern, aggravates the offence further and the nature and extent of his criminal record is a very significant aggravating factor.

[57] The wounding of Mr Okroy with intent to cause him really serious harm is a serious aggravating factor as are the threats to kill Mr Floyd, which in the circumstances were credible. While Mr Okroy did not sustain really serious harm that was fortuitous. In *R v Brian Mongan* [2015] NICA 65, the Court of Appeal

clarified that in cases of high culpability, if the degree of harm is materially below the threshold of really serious harm a marginally reduced starting point may be considered, 7-15 years after a contested trial being the range. Had I been dealing with this offence alone, a starting point of six years would have been appropriate before a reduction for a plea. Since I am treating counts 2 and 3 as aggravating factors of the murder, I will impose concurrent sentences in respect of them.

[58] Although the defendant made no admissions in the course of police interviews, he has throughout the proceedings accepted responsibility for the killing. The issue that has protracted this trial has been an assessment of his mental health. The guilty pleas were entered once Dr Hussain changed his opinion regarding the availability of a Diminished Responsibility defence.

[59] The defendant is 55 years old and was 51 at the relevant time. He has struggled in the past to live with other residents in approved accommodation, perceiving himself to be at risk of attack. As a consequence of this offending, he has limited family support. He had a difficult upbringing and in his early 20's his father was murdered in a sectarian attack.

[60] The defendant was, apparently, unable to discuss his responsibility for killing Mr Shah, attaching blame to Mr Okroy and Mr Floyd. Although he expressed regret to the probation officer and wanted to convey remorse to the Shah family, I do not consider that the defendant has shown any evidence of remorse. He recognises his capacity for violence.

[61] The pre-sentence report records that he has no recent history of employment, and his earlier experiences were sporadic and interrupted by drug misuse. Prior to his arrest, he was in receipt of incapacity benefits due to mental ill-health and continued to take non-prescribed medication, often funded by a criminal lifestyle along with prescribed medication.

[62] He presents with multiple risk factors which, if unmanaged will result in ongoing risks to the public. He is assessed as a high likelihood of re-offending and a dangerous offender in view of the significant risk factors. The defence accepts that the defendant does pose a significant risk of serious harm in the future within the meaning of the Criminal Justice (NI) Order 2008, and there is no doubt that this assessment is correct.

The Appropriate Sentence

[63] Whilst I take into account his background and the fact that he suffers from an abnormality of mental functioning, the aggravating circumstances significantly outweigh the mitigating circumstances and seeking to avoid double-counting of aggravating factors I consider that the starting point before reduction of the plea to be 24 years.

Reduction to reflect the Guilty Plea

[64] The defendant did not make admissions in police interview and whilst he was justified in entering a not guilty plea to murder whilst medical investigations were completed, there was no justification for the late plea in respect of count 2 and count 3. The circumstances in which Dr Hussain changed his opinion regarding the defence of Diminished Responsibility in the mouth of the trial were unexpected and no doubt a source of confusion, leading to difficulties in his professional relationship with his legal team. It is to the credit of his team that they regained his confidence, and he accepted advices, leading to guilty pleas. In all of those circumstances, I consider that in or about 1/6 reduction is appropriate. (See *R v Turner and Turner* [2017] NICA 17)

[65] I therefore impose on the defendant a tariff of 20 years. That is the minimum sentence, which the defendant must serve in prison before the Parole Commissioners consider whether he should be released. They will consider all of the information which is available to them in order to determine whether it is still necessary for the protection of the public from serious harm that he should be confined in prison.

[66] In respect of count 2, the maximum sentence is life imprisonment. I do not consider that an extended custodial sentence is adequate to protect the public and that a discretionary life sentence with a tariff of four and a half years is appropriate to run concurrent to count 1. In respect of count 3, the maximum sentence is ten years. I impose an extended custodial sentence of three years with an extended licence period of five years to run concurrent to count 1. I recognise that the sentences in respect of these counts are academic.