Lady Chief Justice of Northern Ireland

Sentencing Address:

'Sentencing Practice in Northern Ireland: A View'

A Public Lecture as part of the 'Ulster Talks' Series

Tuesday 20th May 2025

At Ulster University, York Street, Belfast

Introduction

[1] 'Sentencing is critical to legitimising the rule of law and maintaining society's confidence in its justice system. It has to be effective to meet society's expectations and should be commensurate with the offence. Everyone has a perception of what sentences should be and should do, but views vary widely.' These words form the preamble to the Department of Justice's 2019 Review of Sentencing. There is obviously more that can be said but this is a commendably concise statement with which I take no issue and, in particular, I cannot fail to be aware that we are dealing with a subject on which 'views vary widely'. I also readily acknowledge that in a healthy society the free and informed expression of such views on matters related to the penal process is a necessary and valuable thing.

[2] In one sense this address might be sub-titled 'Sentencing – A guide for the perplexed' because the sentencing of offenders can indisputably be a perplexing business in at least two respects. First there is, admittedly, a high degree of complexity involved in this outwardly arcane and inscrutable process involving, as

it does, detailed consideration of multiple important and interlocking factors as well as the full range options within a court's armoury. Secondly – and perhaps related to the first sense – the sentences which courts hand down can sometimes engender perplexity in the minds of those reading or hearing about them in media reports. It is axiomatic that you cannot please all of the people all of the time, of course, and in any event sentencing can never be a mere populist undertaking; but it *is* the case that sentencing should be, to use the words from the DoJ review both 'effective' and 'commensurate'. In what follows I hope to explore with you some of the ways in which the sentencing process in this jurisdiction is operated with those objects in mind. I should, for completeness, acknowledge that this jurisdiction, in common with neighbouring jurisdictions, operates a discrete youth justice system for dealing with offending by children and young people which functions on somewhat different principles from the adult criminal justice system and involves a greater emphasis on restorative justice. While the comments which I wish to make today are largely focused on sentencing within the adult criminal process, I will have something further to say about the Youth Court's system of disposals.

An independent and self-reliant Northern Ireland sentencing regime

[3] When it comes to any consideration of sentencing here it is an important truism which bears reiterating that Northern Ireland is a separate and distinct jurisdiction from England & Wales. Indeed, all three UK legal jurisdictions take their own distinctive approaches to sentencing and accordingly both the levels and the methodology of sentencing can and do differ. Even from a purely legislative perspective, this was a state of affairs which obtained before the devolution of justice

to the Northern Ireland Assembly since all through direct rule a separate 'Northern Ireland Statute Book' was consciously preserved; and now, by virtue of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010, it applies all the more so in a context where the Assembly enjoys legislative competence to create criminal offences, to adjust the statutory sentencing framework and matters ancillary to sentencing, and to set maximum and minimum penalties for offences in ways which may differ from those in England & Wales. One of the practical effects of jurisdictional differences is that whatever sentence an offender might receive for a given offence in, say, Woolwich Crown Court in Greater London won't necessarily equate to what a like offender might receive for a factually equivalent offending scenario in the Crown Court sitting in Craigavon, nor is there any legal or moral obligation on the sentencer in Craigavon to sentence in a manner consistent with a notional sentencer in Woolwich - or *vice versa*, for that matter - and comparisons of this sort are therefore unhelpful.

[4] It is, however, desirable that there should be a reasonable level of sentencing consistency *within* the jurisdiction of Northern Ireland – by which I don't mean that there will be a clear and obvious sentencing disposal for a given set of facts which should be imposed each time those facts are presented to the court. To begin with, there is no single obvious right answer to the question of what sentence an offender should receive (about which I will say a little more later when looking at appellate court consideration of sentences). Additionally, it cannot be stressed enough that each case which comes before the court will be highly fact-sensitive; it will depend on a whole range of facts and circumstances specific to the offending, the victim, and

the offender and simply because certain headline similarities may appear as between the commission of a particular offence by two different offenders in separate incidents doesn't mean that there won't be a wide range of other markedly different factors to be taken into account in the sentencing exercise leading to potentially different sentencing outcomes. What I do mean by consistency is that in a more general sense particular types of offending will be approached in a broadly consistent manner by sentencing courts based on established sentencing conventions and taking account of the range of variables which may apply in each unique case.

[5] But that can really only be seen in its proper context when we try to examine how sentencers go about their task in this jurisdiction. This, as I have observed, is a complex matter which requires, among other things, adherence to the legislation which both created the offence and set the maximum penalty (unless it is one of the few remaining common law offences) and to the current statutory sentencing framework which the legislature has created and within which sentencers must operate. That framework is largely now found in the Criminal Justice (Northern Ireland) Order 2008, but also to a residual but significant degree in an earlier Order of the same name from 1996. Most of the powers in the 2008 Order – which gave the courts a range of new custodial sentence options to replace the existing custodial interventions and introduced the important risk-management based concept of 'dangerousness' for specified serious violent and sexual offences – are based on similar provisions obtaining in England & Wales at the time of enactment. The legislation was, of course, a creature of the Westminster Parliament – and not that of local elected representatives – made by the Order in Council affirmative resolution

procedure. However, a proposal for the draft Order was referred to the Northern Ireland Assembly under section 85(4) of the Northern Ireland Act 1998; and put out to public consultation on 8 November 2007. The Assembly produced a formal report on the draft Order on 28 January 2008, which contained a number of recommendations but was broadly supportive of the proposals. One subsequent development of significance for understanding how sentencing is governed in each jurisdiction is that the provisions in England & Wales on which our 2008 Order was based – found in part 12 of the Criminal Justice Act 2003 – have been largely superseded by a subsequent piece of legislation in that jurisdiction known as the Sentencing Act 2020 which created what is known as 'the Sentencing Code' and departs in important respects from what went before.

Principles and Purposes of Sentencing

[6] I don't propose to dwell in any great detail on what happens in our larger neighbouring jurisdiction, but it is worth noting one aspect of the 2003 and 2020 statutes for England & Wales which has remained absent from our legislation, and that is a clear statement of the principles and purposes of sentencing. It is expressly spelt out in those statutes that the five purposes of sentencing are as follows:

1. the punishment of offenders,
2. the reduction of crime (including its reduction by deterrence),
3. the reform and rehabilitation of offenders,
4. the protection of the public, and
5. the making of reparation by offenders to persons affected by their offences.

[7] Why the 2008 Order remained silent on that important underpinning aspect of sentencing philosophy I cannot say, but it is notable that in the 2019 Review of Sentencing which the Department of Justice here undertook and published for consultation, officials expressly acknowledged this lacuna in the following terms:

> "In Northern Ireland there is no comprehensive statement of the principles and purposes of sentencing. Instead, these are extrapolated from guideline cases; the Court of Appeal's sentencing guideline judgments; and the concept of proportionality in the use of custodial sentences which runs through the Criminal Justice (Northern Ireland) Order 2008."

[8] The Review went on to identify four relevant principles as follows: 1. Proportionality; 2. Fairness; 3. Punishment to be used sparingly; and 4. Transparency. As regards the purposes of sentencing, the Review set out five such which, broadly speaking, map onto the statutory language employed for England and Wales, namely: 1. Punishment; 2. Protection of the Public; 3. Deterrence; 4. Rehabilitation; and 5. Reparation. These principles and purposes were not, of course, simply dreamt up in an office in Stormont but can be seen, in considerable measure, as a distillation of the sentencing approach of the courts developed over time. The idea that any of these purposes should be given more weight than others was one expressly rejected as inappropriate by the DoJ as it considered that this could 'unduly constrain the judiciary, possibly distorting the balance and fairness sought by the principles of sentencing.' In common with the views expressed by the Department in the Review I can see obvious merit in a clear articulation of such

principles and purposes. These can serve as a useful set of criteria by which to examine how – and indeed whether – sentencing is doing its job. The question of whether these principles and purposes should be codified in statute – and I note that the DoJ has plans to introduce a Sentencing Bill in the coming autumn – will of course be a matter for the Minster and the Assembly.

Sentencing Guidelines

[9] The various legislative parameters within which sentencers operate are supplemented by a body of judicial guidance known as Sentencing Guidelines. Such guidelines have existed in a formal sense for roughly thirty years in this jurisdiction and have established themselves as a very useful resource for, among other things, informing meaningful and properly directed submissions to the court from both defence and prosecution during the sentencing hearing; and assisting sentencers in arriving at an appropriate disposal which, it is hoped, will be both effective and commensurate. They also help to promote a level of consistency in sentencing across the jurisdiction which we have already noted is a key part of maintaining society's confidence in the process. Each UK jurisdiction has developed – and, since it is never a finished process, continues to develop – its own body of guidelines unique to its own context and England & Wales, in particular, has quite a high-powered Sentencing Council which promulgates definitive sentencing guidelines for that jurisdiction. The Council has been in the headlines very recently as the result of the Justice Secretary's criticism of a set of its new guidelines focussing on the background of offenders which she said would amount to a 'two-tier justice system'. The disagreement raised the unappealing prospect of the body advising judges on

how to sentence considering going to court for a ruling on whether the minister overseeing justice has any power to tell judges what to do. With the prospect of emergency legislation being tabled by the government, the Council has since abandoned that set of guidelines. Be that as it may, the form which guidelines take in England & Wales is quite different from what happens here. There they set out in detailed tables, with accompanying narrative, different levels or ranges of sentence for given offences based on the harm caused to the victim and the culpability of the offender. I encourage you to go to the Sentencing Council's dedicated website to see for yourself how these definitive guidelines are set out for various offences in that jurisdiction. Furthermore, it is a part of the Sentencing Code's requirements found within the provisions of the Sentencing Act 2020 for England & Wales that judges and magistrates *must* sentence according to those guidelines, unless it would be unjust to do so. This jurisdiction has thus far eschewed that specific approach. It is designed in the hope of achieving consistency in sentencing – often performed by deputy judges known as recorders – across such geographically disparate locations as, say, Truro and Durham in that much larger jurisdiction. Northern Ireland is a much smaller jurisdiction and has a different practice.

[10] In passing, I would observe that in England & Wales sentencing has been made the subject of a further comprehensive review – *The Independent Sentencing Review 2024 to 2025*[1] – carried out by an expert panel chaired by former Lord Chancellor and Justice Secretary, Rt. Hon. David Gauke. Some consultees in that process have pointed to aspects of Northern Ireland sentencing practices which

[1] The final report has since been published and may be accessed here.

could provide a useful model. The aim of the review was to reform the sentencing framework, particularly addressing the challenges of chronic prison overcrowding and high reoffending rates. Whilst we may have our difficulties here, we can at least be thankful we are not at the same level of crisis.

[11] For a more compact and much less populous jurisdiction such as ours which operates on a different footing my view is that a similar approach to England & Wales would be overly rigid and constricting. As the Court of Appeal observed in *R v McCaughey & Smith* [2014] NICA 61 at paragraph [22]:

> "In Northern Ireland we have a small Crown Court judiciary who have the benefit of regular meetings with colleagues where sentencing issues can be discussed both formally and informally. Sentencing is carried out exclusively by full-time judges most of whom have had considerable experience of criminal law before going on the Bench. We recognise the assistance to be derived from the aggravating and mitigating features identified by the Sentencing Council in its guidance but we have discouraged judges and practitioners from being constrained by the brackets of sentencing set out within the guidance."

[12] In Northern Ireland guidelines for sentencing in the Crown Court take the form, rather, of considered sentencing appeal judgments from the Court of Appeal, such as the judgment from which I have just quoted, covering the wide range of offences coming before the court as well as general sentencing issues, such as the correct approach to guilty pleas, the application of the totality principle in multiple offending and the appropriate use of orders ancillary to sentence. The identification

of guideline judgments here is carried out by a multi-disciplinary body known as the Lady Chief Justice's Sentencing Group, always chaired by a judge of the Court of Appeal and comprising representatives from each tier of the judiciary with sentencing powers as well as legal academics from this university and Queen's University, the Victims' Commissioner Designate and a number of officials from my office. The Sentencing Group's role in relation to the Crown Court guidance is principally that of a gatekeeper, the primary driver and author of sentencing guidance being the Court of Appeal itself. All judgments identified as guideline cases are published online by the Judicial Studies Board for Northern Ireland in its *Sentencing Guidelines Compendium* and again, I would encourage the curious to access that readily available publication within the Judiciary NI website. The LCJ's Sentencing Group also produces a separate body of guidelines, likewise publicly available online, for the magistrates' court where the vast majority of criminal prosecutions are dealt with and where the court has much more limited sentencing powers, in almost all cases being unable to pass a custodial sentence in excess of 12 months. Among the other functions carried out by the Sentencing Group is that of advising me on my ongoing sentencing programme of action. My office has recently, for example, been in liaison with the Sentencing Group concerning guidelines for road traffic offences in the magistrates' court. I also consider it timely for new sentencing guidance to be developed in relation to environmental offences which is an area of increasing concern. An additional function of the Sentencing Group is the preparation of periodic reports on its activities which are again available for

digestion within the JudiciaryNI website. That all leads on helpfully to a further topic of relevance to my subject today: appellate court consideration of sentences.

Appellate Court consideration of sentences

[13] No system involving human agency – even that of experienced and well-trained judges – is so perfect that it will necessarily achieve appropriate or satisfactory outcomes on every occasion and the mechanisms which the legislature has created for reviewing decisions involving the deprivation of someone's liberty are a sensible acknowledgement of that fact. It is when matters reach the, usually three-member, Court of Appeal that that court has the scope for correcting perceived flaws in Crown Court sentencing disposals (always ultimately a subjective assessment) and, regardless of the outcome of the appeal or reference, the court may take the opportunity of providing useful sentencing guidance in that area. Sentencing decisions come before the Court of Appeal in one of two ways. On the one hand the offender may lodge an appeal against the sentence handed down in the court below seeking to have it reduced; and on the other, the Director of Public Prosecutions may refer certain sentences from the court below for offences specified in legislation in order to seek an increase in the penalty. The prior leave, or permission, of the court is required to invoke each of these processes. Broadly speaking – and leaving aside errors of law and principle – an offender appealing his sentence normally needs to persuade the court that his/her term is not merely excessive but '*manifestly* excessive' and on a DPP reference the court must be persuaded that the sentence was not merely lenient but '*unduly* lenient'. Those qualifiers indicate that the court will not interfere with sentencing decisions unless

they are significantly wide of the mark and this is an acknowledgement that any set of facts can give rise to different custodial terms falling within a potential range of what is acceptable. There is and can be no algorithm which will generate the 'right' sentencing disposal in what is a necessarily discretionary area of human judgment rather than some mechanistic process. That is why statutes generally do no more than lay down maximum and occasionally minimum penalties.

[14] The kinds of factors which sentencing judges must carefully weigh when they look at all the ingredients which make up the offending will include the seriousness of the offence, the harm caused to the victim, the offender's level of blame or culpability, their criminal record, their personal circumstances - evidenced primarily by a pre-sentence report provided by the Probation Board - and whether they have pleaded guilty or contested the charge. These factors may be relevant in determining the type of sentence as well as its length and the type and number of additional requirements that might be imposed. The correct approach in a typical sentencing case – as reiterated in the guideline judgments, such as *R v Nelson* [2020] NICA 7 – is to identify in the first instance the impact of all of those factors which aggravate the offending, or make it worse, as well as those which constitute mitigation, or appear to reduce in some way the seriousness of the offending. That allows the sentencer to arrive at what is known as 'the starting point' before considering the application of a possible reduction to that starting point figure for any guilty plea. Again, the guidelines, while avoiding being overly prescriptive, provide assistance to sentencers on how much to reduce the starting point by for a guilty plea - depending upon its timing and circumstances. The earlier the plea the more significant the

reduction; though it remains the case in this jurisdiction, unlike England & Wales, that the reduction in cases where the offender has been caught red-handed should not generally be as great as in those cases where a workable defence is possible. In this jurisdiction guilty pleas assist in reducing delays, vindicating victims and avoiding contested trials which may or may not result in conviction. We have guidance on the various levels of credit whilst affording sentencers discretion to reflect particular facts. This area is now the subject of consultation following a paper issued by the Minister of Justice. *The Sentence Reduction for Guilty Pleas Consultation* was launched by the Department of Justice in the past week (16 May 2025) and remains open until 11 July. It will be helpful for as many people as possible to contribute views to that consultation process.

[15] A typical illustration of how the Court of Appeal provides sentencing guidance may be seen in the recent guideline judgment in *R v Haughey* [2025] NICA 10 where the court issued guidance on the likely starting point for the new criminal offence of non-fatal strangulation both for cases of medium seriousness and high seriousness and also set out the methodology by which the specific domestic abuse aggravator provided for by section 15 of the Domestic Abuse & Civil Proceedings Act 2021 should be applied – *i.e.* after the identification of the starting point and after any reduction for a guilty plea. The court stated at paragraph [81]:

> "This methodology reflects the fact that this aggravator is a creature of statute introduced by the Assembly as part of a multi-pronged attack on the 'scourge of domestic violence in Northern Ireland.' It is intended to be used to specifically identify, penalise and deter violent behaviour in a

domestic context where its effects and consequences may be materially different from violence and abuse in other contexts. We consider that these objectives are best achieved by imposing one clearly identified period of time within the sentence and labelling it as the 'extra' time the offender must serve because he was abusive in a domestic setting triggering the statutory aggravator."

[16] When it reviews Crown Court sentencing disposals, there is a wide variety of considerations to be borne in mind by the Court of Appeal which is perhaps better placed to have a more overarching, panoptic perspective on currents and concerns within society here and to give an appropriate lead to sentencers across the jurisdiction; and in this light I might single out the clear and unambiguous stance of the court which I have been at pains to spell out in response to the prevalence and abhorrent nature of domestic abuse, including coercive and controlling behaviour, in a number of recent guideline judgments such as *R v Hughes* [2022] NICA 12 (which dealt with behaviours pre-dating the Assembly's creation of the new domestic abuse offence), *R v Hutchison* [2023] NICA 3 and *R v McKinney* [2024] NICA 35. In *Hughes*, rejecting appellant's appeal against sentence, I stated at [55]:

"It will be apparent from what we have said that in future perpetrators of sustained domestic violence such as this can expect to obtain higher sentences for this type of offending. Such sentences are a reflection of the growing appreciation of the seriousness of this type of offending, the frequency of it within our society, the repetitive nature of it and the effects on victims. Higher sentencing reflects society's need to deter this type of

behaviour and mark an abhorrence of it. There is also a need for the education of society in general, to understand that this behaviour is not normal, it should not be tolerated, and if it does occur it will result in significant sentences."

In *Hutchison*, I observed as follows at [52]:

"In this jurisdiction we are now more alert to the scourge of domestic violence which has become all too prevalent in our society. It is particularly striking in this case that there is a repeat pattern of domestic violence which escalated to murder. This sentence reflects and recognises society's utter condemnation of such behaviour and should be taken as a signal that offending of this nature will attract commensurate sentences."

A further development which I have been able to bring about, through the guideline judgment in *R v Whitla* [2024] NICA 65, is an upward recalibration of the starting points for setting minimum tariffs in life sentences for murder (originally adopted in a much earlier guideline judgment called *McCandless*) so that the higher starting point of 15/16 years has now become the normal starting point. In the slightly earlier case of *R v Ali* [2023] NICA 20 I expressly set out a sentencing approach intended to serve as a guideline for any future cases involving the murder of a young child.

[17] One key convention of our system which bears underlining is that when a judge has completed his/her sentencing task at the conclusion of a case it is simply inappropriate for me or indeed any other member of the judiciary to pass comment upon that disposal. I will never be drawn on what I think of an individual

sentencing outcome unless and until the matter comes before me by one of the established mechanisms in the Court of Appeal requiring me to make a judicial determination. It is of course part of my remit to ensure that judges are trained and equipped to approach the task of sentencing in a way that is appropriate and effective, but my role does not and cannot extend to examining every sentencing decision made in the Crown Court or expressing my views on them. That would be to undermine the integrity of the process – both at the first instance stage and on appeal.

The Magistrates' Court

[18] Since Court of Appeal guidelines have a relatively limited application in the magistrates' court, designed as they primarily are for Crown Court guidance, that lower court tier required its own dedicated suite of sentencing guidelines. As I noted earlier, the sentencing powers are also significantly lower in that court. Thus, *e.g.*, under the relevant legislation the maximum penalty which the Crown Court may impose for the offence of sexual assault is 10 years while in the magistrates' court it is six months, the latter representing a mere 5% of the value of the former. That kind of wide difference in the upper limit of punishment for each court is one that obtains for practically all offences – apart from those offences only triable in the Crown Court – and it is a decision of the Public Prosecution Service whether to prosecute in one court or the other. A prosecution in the magistrates' court generally involves a speedier, simpler and less costly process. No mechanism exists in law for a review of what might appear to be an unduly lenient sentence in the magistrates' court – unlike the position in the Crown Court, where it applies for many, but by no means

all, offences. It is clear from certain comments made in the past on sentencing decisions that that is a position which some of the commentators have not fully grasped. There is a right of appeal from the magistrates' court against sentence for the offender, which lies to the county court, and as with appeals from the Crown Court to the Court of Appeal the county court in the exercise of that appellate jurisdiction enjoys the power to augment as well as reduce a sentence on an offender's appeal. It will be a matter for the politicians, but I have been making the case to the Minister of Justice for increasing the sentencing range of the magistrates' court above the current ceiling – along with a corresponding increase in the maximum statutory penalties – in order to ensure future sentencing outcomes which are effective and commensurate at that criminal tier.

[19] A final point worth noting in this connection is that successful challenges to sentencing in appellate courts are the exception rather than the rule and that may rightly be taken as a vindication of the professionalism and conscientiousness exercised by sentencers in first instance courts.

Victims

[20] A fundamentally important concern in any sentencing process is, of course, that of the victim. It is of primary importance formally and publicly to acknowledge what the victim has suffered, to the extent to which the victim feels comfortable, and to ensure that the victim's place in the process is properly affirmed. Part 4 of the Justice Act (Northern Ireland) 2015, a statute of the Northern Ireland Assembly, provided for a Victim Charter and in relation to the sentencing exercise makes express provision for giving an opportunity to the victim – or, where appropriate, a

relative of the victim – to prepare a written statement as to the way in which, and degree to which, the offence has affected and continues to affect the victim and members of the victim's family. The provision at section 33 of the 2015 Act on victim statements (formerly known as 'victim impact statements') placed on a statutory footing what had already been established practice in our courts in relation both to such statements and to victim impact reports prepared by medical and psychiatric experts. Indeed, I am gratified to record that the criminal courts of this jurisdiction had been well ahead of those of the other UK jurisdictions in this regard where these developments happened only after the turn of the millennium. As was observed in the Crown Court decision in *R v Valliday* [2010] NICC 14 at [19]:

> "Victim impact reports, and most, but not all, victim impact statements, are prepared at the request of the prosecution, and their use in Northern Ireland came about at the request of Crown Court judges in the late 1980s because the judges were anxious to have as much information as possible from and about victims in serious crimes, so that when passing sentence the court would have a comprehensive picture of the effect on the victim based upon evidence from the victim and suitably qualified professionals."

[21] These effective vehicles for giving a voice to the victim have been, for some 35 years and more, fundamentally important in ensuring that the harm done to the victim remains highly relevant to the sentence – subject only to the requirement that any facts concerning harm to a victim need to be established to the criminal standard of proof in order to influence the sentencing outcome. But I and my judges are far

from complacent, and we continue to explore how to be alert to – and to eliminate or at least minimise – the ways in which the process might revisit trauma and pain on the victim. Judges participate regularly in sentencing training facilitated by the Judicial Studies Board for Northern Ireland and, in addition to sentencing workshops aimed at promoting sentencing consistency across the jurisdiction, training sessions have also been delivered by recognised experts aimed at better informing judges of the impact on victims of actions such as sexual assault, domestic abuse and coercive control. Through judicial contacts with Foyle Women's Aid our judges received key training and insights courtesy of experts from the USA on the impact of non-fatal strangulation as early as June 2019 and by 2020 the Court of Appeal here had issued a guideline judgment in *R v Allen* [2020] NICA 25 on the very appreciable extent to which strangulation aggravates crimes of assault. The Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 subsequently introduced a stand-alone offence of non-fatal strangulation in relation to which the guideline judgment in *Haughey,* mentioned earlier, has given assistance to sentencers.

[22] A further aspect of judicial training has been focused on ensuring that the language employed in sentencing remarks is framed in a manner that shows sensitivity to the victim. This underlines the importance of awareness of the language we use and the ways in which it might be received by others. A small but significant illustration of this relates to the discretion given to judges by Article 33 of the Criminal Justice (Northern Ireland) Order 1996 to take account of guilty pleas when determining sentence, applying a correspondingly lesser penalty, as

mentioned earlier. The practice may not commend itself at first blush – especially when it comes to serious crimes of a violent or sexual nature – but it does incentivise offenders to acknowledge their wrongdoing, which can be important, and it can ensure that the victim doesn't have to go through the distress of cross-examination in court as well as promoting a speedier justice process thereby helping to reduce the delay in the system which the Victims' Commissioner Designate, Geraldine Hanna, has publicly noted can be so harmful to victims. The language which developed in court around the use of Article 33 unfortunately came to be framed by practitioners and judges by the use of words such as 'discount' or 'credit' for the guilty plea which, to victims, could well seem like a pat on the back for the offender. I have personally sought to ensure that those non-statutory colloquialisms are no longer used from the bench in this context and that a more neutral term such as 'reduction' in sentence is employed. It is also important that whatever has been said in the course of handing down the sentencing decision, at least in the Crown Court, is readily available in an appropriate format both to victims and to the public at large. That transparency is a desirable end in itself and it can also, in particular, be one means of dispelling misconceptions about the sentencing process. On the question of guilty pleas, it is also worth mentioning that the judicial sentencing policy in this jurisdiction of giving a lesser reduction for a guilty plea where a defendant has been caught red-handed compared to those cases where a viable defence is possible, was challenged by Mr Maughan, a sentenced prisoner, in the United Kingdom Supreme Court in *R v Maughan* [2022] UKSC 13 and was found to be perfectly lawful

notwithstanding that a different approach to those scenarios may now be taken elsewhere in the UK.

Open Justice & Transparency

[23] Since July 2022 the viewing public has been able to watch live broadcasts of judges in England & Wales explaining the reasoning behind sentences in certain high-profile Crown Court hearings, following a change in the law there. A recent example of this was the live broadcast of Mr Justice Bennathan's sentencing remarks at Cambridge Crown Court when he handed down a whole life tariff to Kyle Clifford for the triple murder of the mother and two daughters of BBC racing commentator John Hunt following the rape of one of his victims. I consider this a very healthy development. Sentencing remarks need to be made more widely available – always subject to sensitivities about victims and the need for anonymity where that applies. The courts are public and, unless there are exceptional circumstances, conduct their business in public in order to maintain transparency and promote confidence in their processes in the mind of the general public. This is what open justice is fundamentally about. On my initiative, the Court of Appeal recently took part in a pilot involving televised court proceedings with the participation of the main UK broadcasters. Alas, that was necessarily for internal consumption only and any broadcast of proceedings to the public would require a change in the law, but the pilot confirmed my view that this is a development well worth considering. It is important for confidence in our criminal justice system to look for suitable ways to better educate both stakeholders and the general public in the processes and rationale which lie behind any sentencing disposal, and I would

conjecture that the potential to be derived from televising such decisions has yet to be exploited to its full extent. In this regard, I am very pleased to note that the Department of Justice has today launched a Broadcasting of Courts Consultation which will remain open for input from stakeholders and members of the general and I hope that that exercise will prove beneficial to the Department in its consideration of this important topic.

Probation Board input

[24] Sentencing courts do not, of course, deliberate without assistance; and in addition to the submissions on sentencing made by prosecution and defence counsel within our adversarial system, together with the evidential insights provided by medical and other expert witnesses for both sides, the independent, province-wide Probation Board for Northern Ireland plays an indispensable role in the process. Practically every case where custody may be in contemplation will involve the preparation of an interview-based pre-sentence report by an assigned probation officer which provides invaluable insights into the background circumstances, offending history and attitude of the offender. These reports form part of the complex matrix of facts taken into account by the sentencer and will remain very much in the picture on appeal. Probation officers will also, where applicable, carry out an assessment of an offender's 'dangerousness' based on the statutory definitions aimed at managing risk and protecting the public within the Criminal Justice (Northern Ireland) Order 2008 and while their conclusions are not strictly binding on the court, they will very frequently inform the court's decision as to what type of sentence under the 2008 Order should be imposed.

[25] Aside from services delivered within the prison system, the Probation Board offers a range of rigorous, empirically based programmes and resources in the context of community-based sentences aimed at the effective rehabilitation of offenders, which I have already noted is offered as one of the five main purposes of sentencing. Effective rehabilitation also promotes safer communities thereby fulfilling the sentencing purpose of helping to protect the public. Judicial training comes in here once more because the Judicial Studies Board periodically hosts Probation Board personnel at sessions designed to inform judges about the rationale and methodology of new programmes of rehabilitation aimed at specific types of offending, thereby affording sentencers a fuller understanding of what these interventions might achieve. Community based sentences under the supervision of probation will obviously not be appropriate in many of the more serious cases but where it is properly in contemplation it can be an important and effective option for the sentencing court. We have looked at the need for sentencing to be commensurate with, *i.e.* proportionate to, the seriousness of the crime; but there will be occasions where the proportionate response to a level of offending may take the form of a well thought through, robust, process of probation supervision over an extended period. Commensurability and effectiveness may be achieved in a variety of ways and the legislature has recognised that fact in the range of non-custodial options which it has made available in statute. Sentencers are right to consider, in appropriate cases, the full range of disposals which the law has made available to them. Restoration and rehabilitation can be central and very proper considerations in the sentencing process. The youth justice system, in particular, places a heavy emphasis on

restorative justice through the process of youth conferencing. This is designed to steer young people away from a life of further offending by confronting them with the consequences of their offending behaviour and, where appropriate, bringing them into the same room as the victim which can lead to quite powerful and effective outcomes. However, this applies to adult offenders as well, particularly first-time offenders and where the risk to the public is low. The Court of Appeal, in sentencing appeal judgments such as *R v Dunlop* [2019] NICA 72 and *R v Ferris* [2020] NICA 60, has also given a lead in emphasising the appropriateness of disposals which incorporate a larger element of rehabilitation. In *Dunlop*, a drugs related guideline Judgment where the offender was someone whose addiction was since being effectively addressed, the court noted the multi-layered nature of the public interest in the rehabilitation of offenders, observing that the beneficiaries of the rehabilitation of an offender are the public at large, the offender and the offender's social, community and family circles. A related approach may also be seen at the magistrates' court tier where a dedicated problem-solving court of recent provenance sits regularly to help manage offenders on drugs-related charges and assist them step by step on the path away from addiction and back to being 'clean', responsible members of society, adopting a coordinated multi-agency approach for that purpose.

[26] A further feature which can often be relevant to the sentencing exercise is what is called the personal mitigating circumstances of the offender. This may take a variety of forms, but one frequent factor has to do with the poor mental health of the offender where the most immediate – and effective – requirement is to try to put in

place a disposal which will successfully address those mental health needs. I have mentioned the youth court methodology already and where an offender in the Crown Court is particularly young, a somewhat different approach may be taken to how that offender is dealt with for reasons which chime with the youth court's philosophy. The court will also often temper its attitude to custody where the offender is the primary care giver for one or more children. A considerable amount of scholarly research in this area has identified the damaging societal effects which flow from the loss to a child of his/her primary care giver. Adverse childhood experiences such as these are precisely the sorts of episodes which can generate extremely unhelpful pathologies in the affected child and perpetuate cycles of negative behaviour across the generations, and it is appropriate for sentencers to have regard to such matters and to explore ways of ending the cycle.

[27] It is vitally important that we get youth justice right – and even before that, family justice right – in order to avoid a self-perpetuating spiral of offending where juveniles can become habituated to an offending lifestyle and move inexorably into the criminal justice system on a long-term basis. That is why community-based programmes and rehabilitative efforts are so important in appropriate cases.

Conclusion

[28] Let me conclude by reverting to an observation noted at the outset; views on sentencing vary widely and, further, let me be candid enough to acknowledge that views on sentences passed by the courts can, at times, be critical. There can be a perception that judges are soft on crime. I do not believe that that is the case, but I and my colleagues accept that in a democratic society such as ours those views and

indeed a whole range of other views should be freely expressed and form part of the public debate which informs how our political leaders might wish to develop the law in this area. Part of my object in this address has been to allow my audience to become a little better informed about the sentencing process. But in truth, beyond the confines of this sequestered academic setting, the justice system relies heavily on the media. The courts and the legislature have given particular rights to the press to give effect to the open justice principle, so that it can report court proceedings to the wider public. It is important for informed debate that such reports are *fair and accurate*. That places an important and weighty responsibility upon the shoulders of the press, 'the fourth estate' as it has sometimes been called, to ensure that reports, including headlines, do not mislead or offer half-truths since that would ultimately be to defeat open justice and skew the terms of the public conversation, an outcome which is in no one's interest. Thus – and here I hypothesise – an offender who has been made the subject of an eighteen-month probation order has not 'walked free' – even if that phrase might make better copy – but, on the contrary, remains subject to a significant curtailment of liberty and is indeed liable to be placed in custody for a breach of the terms of his/her order.

[29] Sentencing, as with the wider administration of justice, is a publicly owned process operated for the good of society in which many participants have their roles and with those roles come responsibilities. I am confident that the judiciary of Northern Ireland will, for its part, continue to perform its role diligently and with the utmost professionalism and rigour in accordance with well-established principles to ensure a system of sentencing which achieves outcomes which are both

effective and commensurate. I believe that our system of guideline judgments under the steer of the Court of Appeal has served us well. There is a need for flexibility in sentencing to reflect the infinitely variable circumstances that can arise. There is also a need for regular training and healthy, respectful debate. I hope this evening's talk has contributed to that.

Thank you for your attention.