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

ICOS No:

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**IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE, BELFAST**

THE KING

v

BRENDAN O'CALLAGHAN

**Mr Berry KC with Mr Thompson (instructed by Madden & Finucane Solicitors) for the
Applicant**

Mr MacCreanor KC (instructed by Public Prosecution Service) for the Crown

SENTENCING REMARKS

HHJ NEIL RAFFERTY KC

Facts/background

[1] This is a sentencing exercise involving a prosecution arising out of the "Encrochat" series of cases. Mr Murphy BL in his opening succinctly quotes from *R v Patton* [2025] NICC 26, which sets out the background to this case:

"The Encrochat mobile network advertised itself as a highly encrypted and secure platform providing a secure means of communication between individuals using the telephones and network. The attraction for those involved in criminal activity is obvious. French police gained access to the network and thereby access to the communications between a very significant number of people worldwide. Thereafter, the information captured was geolocated and provided to law enforcement bodies. In the UK the National Crime Agency is the central agency which received the material. Each Encrochat user had a different username..."

The defendant, Brendan O'Callaghan, has the handles "securemail." "Oldwinter" and "BMAN" attributed to him.

[2] The defendant, Brendan O'Callaghan, has pleaded guilty following a "Rooney" indication. The defendant pleaded guilty to counts 1,2,3,4,5,6,9,10,11,12,15,17,19,20,21,22 and as has become my practice in these cases, I will set out each count and the relevant messages attributable to that count. The messages are often a very significant indicator of the level and role played by the defendants in these cases. Before doing so, the facts and circumstances of the defendant's arrest can be briefly set out as follows.

[3] The defendant's home was subject to three searches. On 16 July 2019, a black iPhone ("MC1") was located and seized. On 18 April 2020, police noticed a flashing light at the perimeter of the defendant's property. They uncovered a further mobile phone which was seized ("TM1"). On the last occasion, a search on 6 July 2020, recovered a further iPhone ("PE6") along with £2000 in cash.

[4] The mobile phones were interrogated and revealed messaging associated with Class B and C drug dealing. Of more relevance, PE6 contained photographs of an Encrochat telephone in the names of "oldwinter" and "securemail." TM1 itself was an Encrochat phone associated with those usernames and the name "BMAN." From the triage of the mobile phones and the Encrochat material the following counts and messages can be placed in context.

Counts

[5] For accuracy, I will set each count out as contained in the prosecution opening as this represents an agreed basis of plea/full facts:

Count 1

On MC1, on 9 November 2018, there is an offer to supply Xanax to a person called Stokes.

Counts 2 and 3

On TM1, there is a conversation between securemail and Fredrickson on 30 March 2020 in which they discuss securing '20 cabbage/green' (herbal cannabis) in exchange for cash.

Counts 4 and 5

On TM1 there is a conversation on 31 March 2020 which begins by securemail offering slightfrog 'white.' He goes on to state he has £28,750 for 'polly' (cannabis resin), which is sold between £1,000 and £1,350 per kilo.

Count 6

On TM1, on 31 March 2020, securemail discusses diazepam tablets and greycoat tells him which tablets to take. Securemail also tells greycoat to hide them.

Counts 9 and 10

On TM1, on 3 April 2020, securemail tells boxbaker he has dropped half the money with 'Man p' and states he will drop off the other half the next day.

Count 11

On TM1, there is a discussion on 2 April 2020 between securemail and greycoat about obtaining 'paint' (cocaine) from 'guff' and then from 'teddy,' the latter of whom was able to supply them. There is reference to £28,750 being paid for cannabis resin and £20,000 for cocaine.

On 9 April 2020, greycoat and securemail discuss the purchase of cocaine for '30 Euro' meaning they owe '120.'

On 16 April 2020, greycoat and securemail discuss getting £4,300 off 'guff', after which greycoat will ask him for a 'k of white' (1kg cocaine).

Between 1 and 2 May 2020, greycoat and oldwinter discuss a trailer in greycoat's yard which they plan to open at night due to cops floating about. Oldwinter says only paints (cocaine) this time, one pallet and two cylinders, and greycoat replies that there are three cylinders. They also discuss wiping the phone that was seized on 18 April.

On 5 May 2020, Greycoat undertakes to provide paint (cocaine) to Merv.

Counts 12 & 15

On TM1, between 12 and 16 April 2020, greycoat and securemail discuss payments for further shipments.

Count 17

On TM1, on 5 May 2020, securemail asks greycoat if 'Merv' is sorted and all money has been collected from 'Guff.' Greycoat undertakes to provide cash to Merv.

Count 19

On PE6, on 8 May 2019, there is a discussion with an unknown person about exchanging types of drugs which include 1,000 diazepam tablets.

Count 20

On TM1, on 15 May 2020, oldwinter and greycoat discuss that there is '1 paint for Merv, trying to get another.'

Counts 21 and 22

On PE6, there is a deal list keeping track of monies owed, which include figures as high as £100,000 and €35,000. Count 21 also reflects the sum of approximately £2,000 located during the July search.

Personal circumstances

[6] The defendant is a 37-year-old man who experienced poor mental health in his teens. He witnessed domestic violence at an early age and had something of a traumatic childhood. He has a long history of mental health issues, none of which have been helped by his drug addiction. He first used drugs around the age of 15 and that drug use continued and became a significant cocaine use at or about the time of the offending. He seems somewhat more stable at this juncture in time. As part of the preparation for sentence, I have been provided with a psychology report from Dr Kiera Groves. This report was shared with PBNi and notes that the defendant meets the criteria for a "learning disability" and has a "low verbal ability." In the defence submissions, the defendant's learning disability in contrast to his high level involvement are described as a "tension." Mr MacCreanor KC on behalf of the Public Prosecution Service broadly accepts this. It is augmented by the defendant in his pre-sentence report when he explains how he became involved at this level in drug dealing. He candidly accepts that from buying his own drugs he came to know people and made connections and that these people were happy to use him in buying and selling drugs. Whilst suffering from a learning disability he was "functional" enough to have followed learned routines and past procedures which meant that he could function in the drug world. High level drug dealing contrasting with a "learning disability" simply means that two things can be true at the same time and I factor both into my sentencing considerations.

[7] The defendant has two children. He has an adult daughter aged 21 and has a newborn daughter who has had some degree of illness. He describes his new relationship as a stabilising factor in his life. Nevertheless, he is assessed as a high likelihood of general reoffending within the next two years. It is clear that much of the assessment will be dependent upon whether or not the defendant maintains abstinence from drugs when released. Dr Groves' last comment is telling "Consequently, he remains quite isolated and medical reports confirm that he has had ongoing anxiety, depression and low mood for many years, *compounded by and associated with his addictions.*" [emphasis added]

Caselaw

[8] In *R v Patton* [2025] NICC 26, I reviewed the applicable authorities and set them out at paras [7] and [8]. I also referenced the leave judgment written by Scofield J in *R v O'Loughlin*. They provide a useful framework in these case:

“[7] In a number of recent cases and Rooney hearings, I have been referred to my sentencing decision in *R v O'Loughlin*. In that case, I was dealing with a number of offence types including drugs importation. I made it clear that I was basing my sentence upon totality and adopted a starting point of 18 years. A review of the Northern Irish authorities from the Northern Ireland Court of Appeal, demonstrates that there is a paucity of authority on large scale drugs supply/importation cases. In the leave judgment relating to *O'Loughlin*, Scofield J discussed the sentencing ranges applicable. He wrote:

‘[25] According to the relevant sentencing guideline published by the Sentencing Council in England and Wales, the starting point after contest with respect to the importation of Class A drugs, for a leading role, appears to range from 5 years (as opposed to 8 years and 6 months, as referred to by the applicant and the judge) to 14 years, depending on the category of harm. Where the harm is in category 1 because of the nature and amount of drugs involved, the starting point is 14 years (with a category range of 12-16 years’ custody). The Recorder referred to these guidelines with the usual ‘health warning.’

They can provide something of a cross-check and can be particularly helpful in identifying aggravating and mitigating factors but, as has been emphasised on many occasions, such guidelines from England and Wales are not binding in this jurisdiction.

[26] For my part, I consider the guideline cases from the Court of Appeal in this jurisdiction to be much more pertinent. The applicant’s case is compared to that of *Hughes* (a Court of Appeal case) and *Gallagher* (a Crown Court sentencing exercise), in which

significant quantities of drugs were ‘actually detected.’”

[8] Hughes involved consideration of the appropriate sentencing range for possession with intent to supply significant quantities of Class A drugs (see paras [31] and [32]). That case concerned three brothers involved in the supply of Class A drugs. The brother who received the highest sentence was Gerard Hughes. It was increased from five years to six and a half years by the Court of Appeal on foot of a DPP’s reference. A starting point of nine years was found to be appropriate in the context where 1.98kg of cocaine was recovered at between 4-8% purity and 15.95kg with 7% purity. The defendant had pleaded ‘guilty’ to two counts of possession of cocaine with intent to supply, one count of possession of cannabis with intent to supply, and one count of possession of amphetamine (class B).”

[9] I am satisfied that the following aggravating and mitigating factors are present:

Aggravating

- (a) This is clearly a case of high harm and high culpability given the defendants leading role and the quantity of Class A Cocaine involved.
- (b) The use of an Encrochat telephone to facilitate his role and prevent detection is, in this case, an aggravating factor.
- (c) The offending was a course of conduct between 9 November 2018 and 7 July 2020.
- (d) Despite searches and detections, the defendant persisted in his criminality.

Mitigating

- (a) The defendant pleaded guilty. This defendant had, for many months, indicated that he wished to resolve the matter. Various impediments were encountered such as illness and the Legal Aid withdrawal of services. I am satisfied that this defendant falls with my indication in *R v O’Loughlin* regarding the availability of a full reduction.
- (b) The defendant, notwithstanding the need for general deterrence in cases of this type and gravity, has some personal circumstances which I feel it proper to reflect in a limited way. It is clear, despite his offending, that he does have a learning disability which operates on the assessment of his culpability.

Conclusion

[10] Mr Berry KC submits in para 17 and 18 of his submission, that the defendant falls more into the “*Hughes*” category rather than the “*Patton*” category. Mr MacCreanor broadly accepts that there are distinctions with *Patton*, notably with regard to importation which is not present in this case.

[11] Frankly, I agree with their assessment and I am satisfied taking account of the aggravating and mitigating features of this case that the minimum starting point reflecting totality, had he been convicted by a jury would have been eight and a half years. I will headline on count 11 since it reflects the more significant offending. I make it clear that I have considered the financial offending which, in this case, is integral to the drugs offending. I have allowed for totality and, if I am wrong to sentence concurrently, I would have reached the total effective sentence by sentencing consecutively. Accordingly, the sentences are as follows:

Count 1

Offering to supply Class C (Xanax) – 12 months.

Counts 2 and 3

Offering to supply Class B (Cannabis) and Conspiracy to possess Class B (Cannabis) with intent to supply – four years on each count.

Count 4

Being Concerned in the Supply of Class B (Cannabis) – four years.

Count 5

Offering to supply Class A (Cocaine) – four years and six months.

Count 6

Being concerned in the supply of Class C (diazepam) – 12 months.

Counts 9 and 10

Transfer and Conspiracy to transfer criminal property – 18 months.

Count 11

Given the volume of messages on this count, I am satisfied that it should serve as the headline Count.

Being concerned in the supply of Class A (Cocaine) – Taking a Starting Point of eight and a half years, applying a one third reduction and rounding to avoid fractions of months, the sentence on this count is five and a half years.

Counts 12 and 15

Both counts are Conspiracy to transfer criminal property – 18 months.

Count 17

Conspiracy to transfer criminal property – 18 months

Count 19

Conspiracy to possess Class C (Diazepam) with intent – 12 months.

Count 20

Conspiracy to possess Class A (Cocaine) with intent – four years six months.

Counts 21 and 22

Possession of criminal property – 18 months on both counts.

Each sentence will be 50% custody followed by 50% statutory supervision. Breach of any condition will result in you being returned to prison for the remaining portion of your sentence.

Offender levy of £50-00.

Destruction order for the drugs, phones, paraphernalia and assorted items.

I reserve the issue of a Serious Offences Prevention Order and any forfeiture order.