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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 14/124589
	Delivered: 06/06/2025

**IN THE CROWN COURT IN NORTHERN IRELAND
FOR THE DIVISION OF LONDONDERRY**

THE KING

v

**PAUL DOHERTY
GERARD MARTIN FARMER
and
CITY INDUSTRIAL WASTE LIMITED**

SENTENCING REMARKS

HHJ NEIL RAFFERTY KC

[1] I am required to sentence the defendants on Bill of Indictment number 14/124589, wherein they have pleaded guilty to a number of illegal depositing of controlled waste offences. I am sentencing them under the provisions of the Criminal Justice (Northern Ireland) Order 2008.

Facts/Background

[2] The prosecution opening asserts that this case concerns an estimated 635,507.9 tonnes of controlled waste being deposited and disposed of on lands located on the Mobuoy Road, Londonderry. (This tonnage is disputed by the defendants and I will deal with this issue later).

[3] The Mobuoy Road site is located behind Drumahoe/Altnagelvin near the main Belfast Road leaving the City. City Industrial Waste Ltd ("CIW"), of which Mr Farmer was a Director, owned a large site on the north-eastern side of the road. Historically, this site was a landfill site and was authorised to accept inert material up until 30 March 2007. Thereafter, no further material could be deposited. CIW was, however, permitted to deposit inert clay and soil on the landfill site as capping material. No waste was authorised to be deposited at the site during the time period of the offending identified.

[4] Ostensibly, CIW was operating as a re-cycling and waste management facility where household waste was brought for the purpose of sorting, separation, identification of recycling material and onward transportation for landfill for that portion of the waste that could not be recycled. In reality, CIW disposed of large quantities of household waste material within their own site. In addition, CIW also deposited large quantities of household waste on Paul Doherty's adjacent land with his knowledge and consent. For this, he received financial reward largely in the form of cash payments.

[5] Household waste is highly polluting and modern licensing of landfill requires that landfill sites are engineered to contain the waste and prevent contamination of the environment through, notably, leachate escape and landfill gas build up. Neither of these sites had been engineered for the purpose of household landfill. In fact, both had operated originally as sand and gravel quarries which, if anything, rendered them more porous and susceptible to leachate escape. In addition, inspection revealed that the cover/capping of the waste areas was insufficient to prevent landfill gas escape and water ingress which is significant in the leachate cycle.

[6] Both sites are adjacent to the River Faughan. The River Faughan and its tributaries are protected by both European and Northern Ireland environmental designations as a Special Area of Conservation (SAC) and as an Area of Special Scientific Interest (ASSI). Leachate has contaminated ground water which ultimately enters the Faughan river. Due to the volume of water in the river no significant pollution has, as yet, been detected. However, Mr Chambers KC at paras 67 and 68 sets out remedial costs to date. Whilst the defendants submit that there is no supporting proof for these costs, it is quite clear that significant public expenditure has been incurred and will continue to be incurred.

[7] Northern Ireland Environment Agency ("NIEA") investigations indicated that the unauthorised disposal of this waste had been carried out by two companies, Campsie Sand & Gravel Limited, 75 Mobuoy Road, Londonderry and City Industrial Waste Limited, 60/70 Mobuoy Road, Londonderry and that this activity was conducted with the knowledge and at the direction of Gerry Farmer (CIW) and with the knowledge and agreement of Paul Doherty (Campsie Sand and Gravel Ltd). Campsie Sand and Gravel is no longer in existence and Mr Doherty has agreed that the remaining assets, approximately £38,000 are to be transferred to the NIEA. Accordingly, I so order.

The defendants

Paul Doherty

[8] Between June 2012 and August 2012, NIEA officers conducted investigations into Folios 9537 and LY73647 which were owned by Campsie Sand and Gravel Ltd. As I have noted, the Company is now no longer in existence. The Directors were the

defendant, Paul Doherty, and his wife. Based upon test pits the NIEA estimates that 102,167 tonnes of controlled waste were deposited on the site. Again, it is estimated that 50% was inert waste with 50% being non-inert. This estimate is accepted by the defendants. The presence of “trommel fines”, *ie* small particles, was noted. Trommels are used as part of the separation of mixed waste and ultimately produce small pieces of plastic and other material which cannot be separated further. The prosecution note that such waste is consistent with the operation conducted on the neighbouring site by CIW. Visual inspection of these folios noted that they were in areas submerged by water with landfill gas noted to be bubbling through the water.

[9] A search of the Campsie Sand and Gravel Office was conducted on 20 November 2012. Weighbridge dockets were uncovered showing the transfer of approximately 77,000 tonnes of clay to CIW during the suspected infilling period relating to these folios. Mr Doherty was subsequently interviewed and accepted responsibility for the site as Director of the Company. He asserted that his wife was simply a nominal Director. This is accepted. In essence, he could not explain the presence of the waste and asserted that it must have happened when the site was under the control of “Mr Piecki” who was a potential purchaser of the sites.

[10] In April 2013, the NIEA conducted a further investigation by way of intrusive survey on Folios LY25661, LY60970, LY75409, 19919. In total, 58 pits and four trenches were dug. The survey uncovered the large-scale unauthorised disposal of a further 330,461 tonnes of controlled waste consisting mainly of alternate layers of household and commercial waste and clay and soil. Again, Trommel fines were located. Again, Paul Doherty was interviewed and could not account for the controlled waste on the site.

[11] The prosecution in its opening statement set out a cost/benefit analysis. Whilst this is disputed by each of the defendants, it illustrates the potential economic gains in waste disposal type cases. Apportioning the estimated total tonnage of 473,393 tonnes between non-inert waste (212,309 tonnes) and inert waste (261,084 tonnes), and applying the relevant landfill charges and taxes, a combined estimated benefit of £30,318,671.10 is arrived at (£22,969,342.80 for non-inert waste and £7,349,346.30 for inert waste).

[12] In his opening, Mr Chambers KC referred me to a number of emails retrieved from seized computers. I will deal with these emails later in this judgment. However, they are relevant at this stage because they inform the prosecution assessment of the role and culpability of Mr Doherty. The prosecution has been unable to document the total monies accrued by Mr Doherty but asserts that the scale, estimated benefit, and emails showing financial payments permit the inference that the sums were “substantial” and that Mr Doherty’s role within this criminal endeavour was that he permitted significant waste disposal upon his lands for financial reward.

[13] On 22/23 May 2013, an intrusive survey was conducted on Folios LY70675 and 20989. These were lands operated by CIW and were adjacent to the lands owned by Campsie Sand & Gravel. These lands had previously been licensed for the receipt of inert waste such as building materials. Household waste was not permitted. In 2007, NIEA terminated the licence and designated the site as a closed landfill. Thereafter, the site was not permitted to receive any other controlled waste but was permitted to receive materials such as soil and clay. Soil and clay were to be used as a capping material to seal the landfill and reduce the ingress of water. During the intrusive survey, a total of 14 test pits and 1 trench were dug. The test pits uncovered items with dates which showed that unauthorised waste had been deposited on the site between 2009 and 2012. Calculations based upon the site and test pits allow an estimate of 133,000 tonnes of unauthorised waste. The waste was mainly household and commercial.

[14] Further investigations took place at the Southern and Northern end of the CIW site. In the Southern area inspections revealed approximately 14,000 tonnes of waste had been disposed of. This was largely controlled waste and feature Trommel fines; household; and commercial waste types. In addition to the deposits, some of the waste had been incorporated into embankments which had been constructed around that area of the site. The prosecution asserts that these "Bunds" were not only used to conceal the site but were also used actively to dispose of controlled waste. At the Northern area of the site, 3262 tonnes of baled and wrapped waste was located. The area beneath the bales was surveyed and approximately 18,000 tonnes of controlled waste were detected. This was mainly plastics and packaging.

[15] The NIEA again conducted an economic benefit analysis. Based upon an estimate of 162,114.9 tonnes of waste with an estimated non-inert component of 108,375.5 tonnes, the NIEA applied the applicable gate fees, landfill and associated taxes. The estimated financial benefit figure of £13,415,619 is based upon non-inert waste totalling £11,964,655.20 and inert waste totalling £1,450,963.80.

[16] Mr Farmer was interviewed between 5 August 2013 and 3 October 2013. He accepted being the Director of CIW and denied any knowledge of the controlled waste on the site. He asserted that neither he, nor the company, had permitted waste disposal other than to receive capping materials. He could not account for the presence of controlled waste on the site other than to suggest that gates and the like were not locked.

[17] The prosecution asserts that as the Director of CIW, Mr Farmer directed his staff to dispose of the waste on CIW's land. Again, the prosecution refers to emails which, they say, show that this defendant had full knowledge of what he was doing and was actively engaged in covering up the criminality at the site. Again, the prosecution assert that all of this was done for commercial advantage and financial gain.

Emails

[18] Before moving on to discuss the other aspect of this case, I have referenced the emails recovered by NIEA with respect to both defendants. I consider that it is appropriate to set out some of those emails in detail as they may assist in assessing culpability.

[19] An employee of Mr Farmer sends an assessment of the site to Mr Farmer dated 10 March 2011. The relevant portions are:

“Lads,

I had a walk around the site and landfill and I have a few concerns. I am not being critical, but I just want to point out some potential problems...

...Both the wood and green waste are in excess of our permitted quantities. I think the NIEA will plan to visit us every week over the next month because of the increased tonnage in our reception area. I appreciate where we are in relation to plant installation, but it would help if we don't have multiple piles of waste in different locations as this has nothing to do with plant installation and it is hard to argue with.

...There is a strong smell of leachate coming from the landfill, and when you look up you can see the rust coloured discharge. We should put soil over this and plant grass seed.

...The new drain henry craig [sic] put in is starting to pool leachate also. I suggest we put rubber chip in this drain as the discharge is black and it would hide it.

...It is paramount that we address the surface of our landfill and try to eliminate the pools of water. The water is bubbling like mad, showing high gas levels and a real trigger point for the NIEA.

...There are areas on the landfill with exposed waste that needs to have some soil from the inert area placed over it.

...We should collapse the bore hole on Paul Doherty's side as it will act as an indicator of what level the landfill used to be at.

...I understand that we do not have resources in some instances, and it would seem that loads to landfill and dump trucks would solve many of the issues. My concern is that we won't get the main problems dealt with in the time that we need to and end up in a pile of shite with the authorities."

[20] An email from Mr Farmer dated 8 September 2009 gives instructions to the employees on site. Within the body of that email the following instruction is given:

"-30mm fines to be screened on a 1 to 1 mix with incoming inert. This process to take place between 5-9 pm every evening. This material to be transported to landfill and deposited in the agree [sic] zone. This must be done and complete by 9pm. No material to be left!!!".

[21] An employee sends an email to Mr Farmer dated 9 October 2009. The relevant contents are:

"Water

We are currently discharging directly into the stream at the back of the site. No run off is going into the settlement lagoon.

The water in the stream is cloudy with a film of oil on top.

If Simon Gummer comes out today, we would be prosecuted...

Waste

...The amount of fines in the INERT processing area is too much. The stockpile will draw attention and questions will be asked as to what we are doing with the fines. This needs to be resolved asap."

Similar email exchanges are present in the papers but there is little need to set them out as they follow in a similar vein to what has already been reproduced.

[22] With respect to Mr Doherty, the emails retrieved contain references to him which speak of the financial dealings between CIW and Mr Doherty. At page 81 of the statement of Simon Mark McConnell there are Bank reconciliation details with four figure cash withdrawals and the notes "Cash to PD." In addition, there are a number of emails setting out the transfer of cash to "PD." By way of example, email dated 6 October 2010, "I got cash for PD." Email dated 18 January 2011, "I get the

10K into the bank today. I left 5 in the middle draw. PD will take the cheque for 15 but cash for the 125.” The emails and records leave little doubt about the nature of the financial arrangement between CIW and Paul Doherty.

Quantity of Waste

[23] There has been something of an issue between the prosecution and defence regarding the calculations used to estimate the tonnage of waste involved. Whilst the defendants pleaded guilty in front of me some time ago, there has been a significant period of time taken up by experts on both sides. At one stage a “*Newton Hearing*” was listed. It was ultimately not required as I was told an “agreed way forward” had been reached. At the plea and sentence hearing, some element of this issue still appears to be live. Mr Duffy KC, on behalf of Mr Farmer, includes the following written submission:

“(a) The prosecution say that the overall cubic metres of non-hazardous and inert waste is up to 162,000 cubic metres and that, applying a conversion rate of 1:1, it gives rise to a tonnage of up to 162,000 tonnes. The defendant’s expert is of the opinion that the total cubic metres for both non-hazardous and inert waste deposited is 105,402 metres cubed. In terms of working out the tonnage, inert waste has a conversion rate of 1:1. In terms of mixed municipal waste, which is non-hazardous waste, the United Kingdom Environmental Agency in 1998 published a conversion rate of (0.26) and this is applied by all four Environmental Agencies in the United Kingdom. The same publication has identified the conversion rate for trommel fines is 0.37. The defendant’s expert is prepared to concede that allowing for some compaction in the shallow landfill, the conversion rate for in situ non-hazardous waste and trommel fines could be considered to be of the order of 0.50. The ratio asserted by the prosecution varies between 64.5% and 66.8% non-hazardous to inert being in situ. The defendant’s expert believes that it is 30% non-hazardous and 70% inert. This gives a total tonnage of non-hazardous waste of approximately 15.5 tonnes and 73402 tonnes of inert waste. The prosecution does not accept these figures nor the methodology used to calculate them.”

It is, perhaps, noteworthy that in the “Offending Behaviour Analysis” portion of this defendant’s pre-sentence report that this formulation of “harm” is replicated almost verbatim.

[24] Given the scale involved across both sites, I can freely understand a legitimate disagreement between experts as to how best to calculate the overall quantity of waste involved in this case. What is, however, abundantly clear is that the quantity of waste across both sites is very significant. On either prosecution or defence figures, the tonnage of waste involved can only be viewed as significant industrial level waste disposal. I am content that I have sufficient clarity on the evidence to make this assessment and make it clear that I am sentencing based upon the assessment that the amount of controlled waste is very significant.

[25] The question of environmental harm is always a factor in cases of this type. The sites are situated near the Faughan River in the City. The Faughan River is protected as a Special Area of Conservation and also an Area of Special Scientific Interest. The Faughan River is also a source for the drinking water for the City and surrounding area. Leachate is contaminating the ground water which ultimately enters the Faughan River and its tributaries. Thankfully, currently due to the quantity of water in the Faughan River leachate contamination is so diluted that it is currently causing no quantifiable ill effects. That, however, is a situation which requires ongoing monitoring and ultimately, as with all waste cases, is a legacy that is bequeathed, potentially, to future generations.

The defendants' personal circumstances

Paul Doherty

[26] The defendant is a 66-year-old man who has been married for 46 years. They have three children who are all grown up and two are due to be married within the next year. Having left school he went on to obtain qualifications in Business and Engineering at the North-West Regional College. He has had a strong work ethic throughout his life. Ultimately, his father brought him into the family business and he became a Director of City Industrial Waste (a different entity from the defendant company in these proceedings). He ran Campsie Sand and Gravel as well as City Industrial Waste. He disposed of City Industrial Waste in 2004 and remained in charge of Campsie Sand and Gravel until 2012 when it ceased trading due to the events underlying these proceedings. He suffers from arthritis in his hands, ankle and spine. He has carpal tunnel syndrome. He has struggled with anxiety surrounding these proceedings and the duration of them. His family have prevailed upon him to engage with counselling which he has agreed to do. In the "Offending Behaviour Analysis" section of the pre-sentence report he "accepts" responsibility as the Director of Campsie Sand and Gravel that he should "have had more oversight of the works going on." The author notes that the defendant is remorseful and notes that the defendant states that "he was too trusting." It is noteworthy that "He explained there was never any financial gain from this operation." Quite simply, it is difficult to reconcile this with the emails referring to significant cash sums for "PD" and I reject the defendant's assertion.

[27] The defendant has the benefit of a report from Dr O'Donnell. The report sets out that the defendant has struggled with anxiety due to these proceedings and has required medication for a moderate to severe depression. Dr O'Donnell notes "the continuous strain over 12 years, coupled with the uncertainty, social stigma, financial challenges and disruption of daily life has contributed to the development of depression and panic attacks for Mr Doherty." In addition, Dr O'Donnell notes that the defendant is a primary carer for his wife. She has a number of conditions and Dr O'Donnell opines "This (the proceedings) has had a detrimental impact upon her medical and mental health, which would very likely be further negatively impacted by a custodial sentence." Tragically, that is often the case in criminal law.

Gerard Farmer

[28] Mr Farmer is a 56 year old single man. He has a caring role for his 95 year old mother. He was academically gifted and after successful A Levels went to University. However, he decided to leave University and joined the Civil Service. He returned to University later in life and he obtained a degree in 1991. Thereafter, he worked at various locations including Sellafield and America. Largely, he was self-employed specialising in the waste disposal area. The author of his pre-sentence report notes that the defendant and his family are "well known and respected" within their local area. In the Offence Analysis portion of the report, as already noted, the author replicates the "tonnage" calculations from the defence expert. It, perhaps, illustrates his anxiety that this version be considered. When asked about the offending the author notes, "Mr Farmer tells me that he should have been paying more attention to the business to ensure the proper procedures were followed in relation to appropriate waste disposal and adhering to the law." It is difficult to reconcile this with the emails, particularly Mr Farmer directing the proportion of fines to be mixed with inert material and transported after working hours. The author notes that during the interview Mr Farmer was visibly upset and clearly distressed "at the situation which has brought him before today's court." He has the benefit of a report from Dr Bunn which attests to the strains and anxiety that he has experienced due to these proceedings. Dr Bunn concludes "...the charges have resulted in psychologically distressing symptoms...Symptoms have not been so severe that he has required anti-depressant or anxiety relieving medication".

Guidelines

[29] All counsel have referred me to *R v Braniff* [2016] NICA 9 as a "guideline" judgment. *Braniff* is more properly seen as a judgment providing guidance as it sets no ranges nor starting points. What *Braniff* helpfully does is refer to the issues a court will come across in dealing with cases of this type. I now turn to the issues raised in *R v Braniff*.

[30] The starting point for consideration is the approach taken by the Court of Appeal in *Braniff*. The court referenced the applicable Sentencing Council guidelines in England and Wales. The court stated:

“[12] The Sentencing Council issued Definitive Guidance on environmental offences with effect from 1 July 2014. Culpability was assessed in particular by reference to the state of mind of the offender with deliberate conduct at the top followed by recklessness and negligence. In respect of harm, dangerous or hazardous materials having a major adverse effect on air or water quality, amenity value or property were at the top and there was a recognition that the risk of harm should be taken into account although that was generally not as serious as a demonstration that harm had in fact occurred. The custody threshold was crossed where there was deliberate conduct causing significant adverse effects or damage to air or water quality, amenity value or property, significant adverse effects on human health and quality of life, animal health or flora or a risk of more serious harm.”

The court then goes on to analyse the *Braniff* case and it is quite clear from that analysis that all cases are fact specific.

[31] One of the submissions by counsel is that whilst *Braniff* involved less material it had asbestos which is very hazardous. Such submissions are of limited value because all sentences are fact specific and submissions suggesting that one case is not as bad as another are rarely helpful in assessing the factors individually. Mr Duffy, quoting from the Sentencing Council Guidelines on behalf of Mr Doherty, highlighted that “The custody threshold was crossed where there had been deliberate conduct causing significant damage” implying that anything less than deliberate conduct AND significant damage resulted in a non-custodial disposal. On a reading of the Sentencing Council Guidelines I do not think that submission is correct and that formulation of words may well have been the courts chosen words relating to the *Braniff* facts rather than any attempt to specify a hard edge between custody and non-custody.

[32] With the “health warning” provided by the Court of Appeal in *R v McCaughey and Smith* [2014] NICA 61, regarding the applicability of the Sentencing Council’s Guidelines in England and Wales, I have, nevertheless, referred to the Definitive Guidelines on Environmental Crime. The focus on Culpability defines the various types as Deliberate/Reckless/Negligent/Low. It then seeks to categorise the various “Harms” that follow. I need not lay those out here. The starting point of deliberate category 1 harm is 18 months, with a range of 1-3 years depending upon aggravating or mitigating features. Reckless category 1 harm has a starting point of 26 weeks and a range of 26 weeks to 18 months.

Analysis

[33] I am satisfied that there is a distinction to be drawn between the defendants in this case. Mr Farmer was engaged in waste processing activities on his site and I am satisfied that Mr Doherty was willingly and knowingly receiving waste onto his lands for financial gain. With that proviso, I now turn to identify the aggravating and mitigating features of this case.

Aggravating

[34] I am satisfied that Mr Farmer acted in a deliberate and premeditated manner. This was economically motivated environmental crime on an industrial scale. Whilst Mr Doherty's role was to receive waste from CIW, his actions in agreeing to do so were deliberate, and there is no doubt in my mind that he knew what was being deposited and why he was being paid for his services.

[35] With respect to both defendants, it is clear that the offending persisted over a significant period of time. It was a systemic pattern of established behaviour to facilitate industrial level environmental crime.

[36] With respect to Mr Farmer, I am satisfied that there were efforts made to conceal the ongoing criminality on his site. The emails to this effect are quite clear. The operations carried out were with the full knowledge that they were illegal and the cynical determination to conceal what was going on.

[37] Both defendants have a previous conviction. However, given the scale of this case I have disregarded this factor.

[38] Whether the profits were actually received or not is irrelevant. It is quite clear that both defendants stood to benefit significantly from the criminality.

[39] The surrounding area is an area of Special Scientific Interest/Special Area of Conservation.

[40] The prosecution asserts that in the region of £6.5million has already been incurred and that future monitoring and remedial measures may involve a significant amount of public funding. I accept, given the location and size of the sites, they will require significant future monitoring and maintenance.

Mitigation

[41] Both defendants pleaded guilty in advance of trial. Mr Doherty pleaded guilty first and this is described as a plea of value. Mr Farmer, thereafter, also pleaded guilty. Both defendants made some concessions at interview.

[42] Both defendants have personal mitigation. Whilst there is a clear need for general deterrence in this offence type, I make it clear that I have allowed as much personal mitigation as possible commensurate with the need for deterrence.

Delay

[43] The prosecution acknowledge that there has been significant delay in this case. However, they do make a number of submissions. They refer to the size and complexity of the investigation; the defendants denials at interview; the significant exercise surrounding the obtaining of expert evidence for both prosecution and defence; the complexity and delay occasioned by the granting of a stay and the subsequent over-turning of that stay and remittal for trial. This case was then transferred to Belfast during the pandemic. It was assigned to me and the defendants pleaded guilty nearly three years ago. Since then, there were issues raised about the quantities and calculation which have required significant disclosure by NIEA and work by the defence experts. Whilst some of this delay was to facilitate the defence in obtaining experts and, therefore, is part of the vicissitudes of being involved in criminal proceedings, I am, on balance, satisfied that there is Article 6 delay. Applying the guidance in *R v McGinley* [2025] NICA 11, I will apply what I regard as the appropriate reduction after calculation of the starting point and application of reduction for a plea.

Conclusion

[44] As set out above, this was purely economically motivated environmental crime on an industrial scale. I am clear that both defendants, within their separate roles, acted deliberately motivated entirely by financial gain. The scale of what they have created is, and will remain, a significant issue going forward. I am satisfied that it easily meets the definition of category 1 harm within the English Guidelines. Taking into account the aggravating and mitigating factors I am satisfied that in relation to Mr Doherty the minimum sentence that I would have imposed is one of two years had he been convicted by a jury. He is entitled to a reduction for his plea of guilty. In this case, given the timing of the plea, that will be 25%. Allowing for that, I reduce the sentence to 18 months and deduct a further six months for delay making a total of 12 months on each count. With respect to Mr Farmer, I am satisfied that his role was much more significant than Mr Doherty. He was in charge of the operation and directed it. I am satisfied that the minimum sentence that I would have imposed had he been convicted by a jury is one of 3 years. Again, he is entitled to a reduction for his plea which will be 25%. Allowing for that and again deducting six months for delay, there will be a sentence of 21 months.

[45] I have considered whether these sentences can be suspended. In my view, they cannot. In 2016, the court in *Braniff* noted “the public interest in the maintenance of the environment has intensified.” There is little doubt that since 2016, the public concern for, and interest in, the environment has increased even further. The time has long since passed where those who commit environmental

crime motivated by greed can expect to walk free from the consequences of their actions. Both sentences are immediate.

[46] The sentencing of CIW is deferred to a later date as part of the Proceeds of Crime/Forfeiture process.

[47] Offender Levies will be applied as appropriate.