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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **19/12/2025**

IN THE CROWN COURT IN NORTHERN IRELAND
SITTING IN BELFAST

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THE KING

v

SHEA REYNOLDS
and
DAMIAN DUFFY

_____

Mr Sam Magee KC and Mr Robin Steer KC (instructed by the Public Prosecution Service) for the Crown
Mr Dessie Hutton KC and Ms Lauren Cheshire (instructed by Phoenix Law) for Shea Reynolds
Mr Brendan Kelly KC and Mr Stephen Toal KC (instructed by KRW Law) for Mr Duffy

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SENTENCING REMARKS

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SMYTH J

Introduction

[1] Shea Reynolds and Damian Duffy were convicted after trial by me, a judge sitting alone, in respect of all six counts on the indictment:

Count 1 - Preparation of terrorist acts at Annaghone Road

Between 3 September 2016 and 9 September 2016, with the intention of committing acts of terrorism or assisting another to commit such acts, engaged in conduct in preparation for giving effect to their intention, namely the deployment of a camera device at Annaghone Road, Coalisland.

Count 2 - Possession of articles for use in terrorism regarding the deployment at Annaghone Road

Between 3 September 2016 and 9 September 2016, possessed an article, namely a camera device, in circumstances which gave rise to a reasonable suspicion that their possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism.

Count 3 - Making a record of information likely to be useful to a terrorist regarding the deployment at Annaghone Road

Between 3 September 2016 and 9 September 2016, collected or made a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely information relating to the movements of vehicles along Annaghone Road, Coalisland.

Count 4 - Preparation of terrorist acts at Drumnabreeze Road

Between 13 September 2016 and 21 September 2016, with the intention of committing acts of terrorism or assisting another to commit such acts, engaged in conduct in preparation for giving effect to their intention, namely the deployment of a Swann wildlife camera device at Drumnabreeze Road, Magheralin.

Count 5 - Possession of articles for use in terrorism regarding the deployment at Drumnabreeze Road

Between 13 September 2016 and 21 September 2016, possessed an article, namely a Swann wildlife camera, in circumstances which gave rise to a reasonable suspicion that their possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism.

Count 6 - Attempting to make a record of information likely to be useful to a terrorist regarding the deployment at Drumnabreeze Road

Between 13 September 2016 and 21 September 2016, attempted to collect or make a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely information relating to the movements of a former member of the Police Service of Northern Ireland.

[2] The charges arise from the deployment of a Swann wildlife camera on two occasions in September 2016. Counts 1-3 relate to the deployment of the camera at Annaghone Road, Coalisland and counts 4-6 relate to its deployment at Drumnabreeze Road, Magheralin, the home of Mr X, a retired police officer.

[3] In short, the prosecution case was that that the camera was deployed with a view to gathering information which could be used by terrorists to carry out acts of

terrorism. Whether the initial deployment at Annaghone Road was to check the camera's capacity to record car registration numbers or a dummy run for the subsequent deployment at Mr X's home, the offences charged were connected.

[4] At para [191] of my judgment, I accepted that the only reasonable inference to be drawn from the deployment of a Swann wildlife camera in the driveway of a retired police officer's home is that it was intended to be preparatory to acts of terrorism. Whatever the precise purpose of deploying it initially at Annaghone Road, I inferred that the events were connected and related to terrorism. The fact that the camera was positioned on the Annaghone Road so as to record registration numbers, supported that inference as did its position at Mr X's home.

[5] The camera was retrieved by police from Mr X's home and replaced with a dummy replica which was monitored in real time, until its retrieval by the defendants, on 20 September 2016. DV clips from the camera seized had recorded events at Annaghone Road and in the kitchens of both defendants on relevant dates.

[6] On behalf of both defendants, it is submitted that I "explicitly declined to make a finding as to the precise purpose of the deployment of the camera" and therefore that the prosecution submission that I should sentence on the basis that there was an intention to assassinate Mr X was unjustified.

[7] It was further submitted that the crux of this case is the act of collecting footage on a wildlife camera and that the possession and deployment of the camera (counts 1,2, 4 and 5) are ancillary to that purpose. Consequently, I am urged to consider the "collecting information" offences as the headline counts. These offences currently carry a maximum sentence of 15 years in prison, but at the time of commission of these offences carried a 10 year maximum. The "preparation" offences carry a sentence of life imprisonment.

[8] It is incorrect to conclude that I "explicitly declined to make a finding as to the precise purpose of the deployment of the camera." I was not required to do so in order to reach my verdicts nor was I asked to expressly state the nature of the harm intended. However, for the avoidance of doubt, the placing and positioning of the camera in the driveway of a retired police officer's home can have had only one purpose: to monitor his movements with a view to targeting him in a future attack upon his life.

[9] On the specific facts of this case, I reject, as reasonable possibilities, less sinister motives with lower levels of intended harm, suggested by the defence such as:

- Propaganda - publishing surveillance footage online to demonstrate the group's reach, capability and ideological commitment. This is a common tactic of dissident groups seeking relevance.

- Intimidation - that it could be used to psychologically threaten or unsettle targeted individuals – especially former or serving police officers – as part of a broader campaign of coercion or fear.

- Operational vetting - surveillance may be conducted as part of internal evaluation of potential targets or practice runs to test equipment and methods without final operational decision being made.

- Recruitment - such materials can serve as training or promotional content within clandestinely networks.

[10] There is no evidence that the deployment of the camera was or may have been for any of the purposes suggested by defence counsel. In any event, the deployment at Annaghone Road would have been sufficient for any of those purposes. The camera had already demonstrated its capacity to accurately record car registration numbers from moving vehicles when placed within foliage in a rural area. That information alone could have been successfully used in recruitment, vetting, intimidation or propaganda. Having ascertained that capability, in a general way it was then used specifically, in the targeting of a retired police officer.

[11] However, it is important to note that neither defendant is charged with conspiracy to murder nor attempted murder and there is no evidence to prove either of these offences. In determining culpability, one of the key issues that I must take into account is how close the defendants were to the completion of the intended act(s). Whilst it could be inferred from the targeting of a specific victim that the offences were reasonably proximate to an attack, I accept that a number of other actions would have been necessary to complete it and there is no other evidence against either defendant.

[12] However, I reject the defence submission that the "collecting information" offences should be considered the headline or most serious offences. Viewed holistically, the offending went beyond simply collecting information and I have found the specific intent required for the preparation of terrorist offence counts to have been proved beyond reasonable doubt. Clearly Mr X's address was already known, along with his status as a retired police officer. The Swann wildlife camera offered a means of monitoring his movements and whilst the point is made that this was a simple device, easily available for purchase, it had proved from its deployment in Annaghone, to be effective. The period of time (approximately three weeks) during which its capability to record registration numbers was ascertained before deploying it at Drumnabreeze, demonstrates the degree of planning and research involved.

The aggravating factors

[13] The aggravating factors are:

(i) The ultimate target was a retired police officer.

(ii) In respect of Duffy, he has relevant terrorist convictions involving an attempt to elicit information from a member of the security forces.

(iii) This was a persistent course of conduct carried out over a number of weeks.

[14] The prosecution has also submitted that "the defendants were acting as principal participants of an organised and professional terrorist cell. It cannot be suggested that these were the acts of lone wolves." It relies on the defence cross-examination of the officer in charge DS Lyttle, where the fact that other named family members were involved in dissident Republican terrorist activity was introduced. There is evidence that a Swann wildlife camera and a manual were found in the homes of other suspects, and no doubt others were involved. To that extent, I accept that they were not acting as lone wolves although neither are charged with membership of a proscribed organisation.

[15] It is also submitted that the defendants engaged in counter-surveillance tactics intended to thwart efforts of the police to detect such terrorist activity. Whilst that may be so, there is insufficient evidence to treat this as an aggravating factor.

The mitigating factors

[16] Neither defendant availed of the opportunity to have a pre-sentence report. In respect of Mr Reynolds, I have been provided with numerous certificates to show that he has used his time productively during his long period on remand including his engagement with the Open University in undertaking modules in law, Personal and Professional Development Courses at the Ulster University and he has obtained qualifications in Health and Safety, Food Safety and Hygiene and Nutrition in Health from The Royal Society for Public Health. He has been on remand for nearly seven years and as the father of two sons with whom he has endeavoured to maintain a close bond, his incarceration has been difficult, not least during Covid when visits were stopped and confinement to cell for long periods was necessary.

[17] In respect of Mr Duffy, I have been provided with medical reports confirming health issues relating to his children and the impact that his incarceration has had upon them. I have also been provided with a number of character witnesses from individuals who know him as a father and as a member of the local community. They speak highly of him and school reports indicate the important role Mr Duffy plays in supporting his children.

[18] I have also been provided with a psychiatric report from Dr Muzaffar Husain, Consultant Forensic Psychiatrist and Psychoanalyst. Mr Duffy has been diagnosed with Post-traumatic Personality Disorder characterised by acute depressive symptoms – without psychosis. The root cause appears to be trauma related and he has a tendency to "downplay" the psychological impact of traumatic childhood and other events.

[19] He presented with a psychological 'breakdown' in 2014 – in the aftermath of his prolonged imprisonment on remand. He was seen by psychiatrists, followed up by regular psychiatric consultations and prescription of oral psychiatric medication for two years – over 2014 and 2015. He was diagnosed with an Acute Depressive Episode and treated for outbursts of anger and generalised agitation and hyper-vigilance. A subsequent period of relative stability was short-lived.

[20] Additionally, he suffers from a number of physical health conditions: Type 2 Diabetes, Hypertension, Hypercholesterolemia, TIA's and Congestive heart failure. Whilst as a psychiatrist Dr Husain is an expert in mental health, he has offered the opinion that Mr Duffy's life prospects and life longevity are likely to be adversely affected and that stress would in all likelihood worsen his heart conditions and render him more amenable to further mini-strokes. It is unclear the basis on which this assessment is made.

[21] Whilst the court has taken careful note, the authorities are clear that personal mitigation can carry little weight when dealing with such serious offences. In this case, a deterrent sentence is required both because of the nature of the offence and because this is the second time Mr Duffy has been convicted of terrorist offences. In *R v Wong* [2012] NICA 54 the Court of Appeal stated at para [22]:

> "As this court has made clear on a number of occasions those who facilitate the commission of terrorist crimes must expect deterrent sentences when apprehended."

The sentencing principles

[22] Whilst the Court of Appeal in *R v Lehd* [2022] NICA 51 considered that it was unnecessary to provide guidance for sentencers in section 5 of the Terrorism Act 2006 ("the 2006 Act") (preparation of terrorist acts) cases, it is the leading authority on the correct approach. The factual matrix in *Lehd* was significantly different to this case and it is important to note that since each case is fact specific, it is unhelpful to compare cases.

[23] The court referred to *R v Kahar* [2016] EWCA Crim 568 and the broad sentencing principles underpinning sentencing for offences under section 5:

"(i) Conduct threatening democratic government and the security of the state has a seriousness all of its own.

(ii) The purpose of sentence in section 5 cases is to punish, deter and incapacitate (albeit that care must be taken to ensure that the sentence is not disproportionate to the facts of the particular offence) and, save possibly at the very bottom end of the scale, rehabilitation is unlikely to play a part.

(iii) In accordance with section 143(1) of the CJA 2003, the sentencer must consider the offender's culpability (which, in most cases, will be extremely high), and any harm which the offence caused, was intended to cause, or might foreseeably have caused.

(iv) The starting point is the sentence that would have been imposed if the intended act(s) had been carried out—with the offence generally being more serious the closer the offender was to the completion of the intended act(s).

(v) When relevant, it is necessary to distinguish between a primary intention to endanger life and a primary intention to cause serious damage to property—with the most serious offences generally being those involving an intended threat to human life."

[24] The court also referred to para [19] of *Kahar* where the court appears to suggest that the "number, nature and gravity of the intended terrorist act(s)" will count as aggravating factors, in tandem with any "aggravating factors of general application." Having done so, it suggests that, subject to the fact sensitive matrix of every case, the following factors are likely to require consideration:

(i) The degree of planning, research, complexity and sophistication involved, together with the extent of the offender's commitment to carry out the act(s) of terrorism.

(ii) The period of time involved—including the duration of the involvement of the particular offender.

(iii) The depth and extent of the radicalisation of the offender (which will, in any event, be a significant feature when considering dangerousness—see below) as demonstrated, for example, by way of the possession of extremist material, and/or the communication of such views to others.

(iv) The extent to which the offender has been responsible, by whatever means, for indoctrinating, or attempting to indoctrinate others, and the vulnerability or otherwise of the target(s) of the indoctrination (actual or intended)."

[25] At para [25], the court in *Kahar* emphasised the breadth of the notional scale: ranging from offending which may merit a life sentence with a very long minimum term to offending which may properly attract a relatively short determinate sentence. It then identified a number of levels of offending. It prefaced their definition with the explanation that the levels are differentiated by two principal factors, namely:

(i) The culpability of the offender principally by reference to proximity to carrying out the intended act(s) measured by reference to a wide range of circumstances including commitment to carry out the intended act(s); and

(ii) The harm which might have been caused measured in terms of the impact of the intended act (or series of acts) or the intended number of acts including not only the direct impact intended on the immediate victims, but also the wider intended impact on the public in general if the act had been successful.

[26] The levels of offending formulated by the court are set out at paras [30]–[35]. It suggested that the first step which the sentencing judge should take is to determine:

- whether the offender is "dangerous" so that either a life sentence or an extended sentence may be imposed.

- having done so, the next step is to identify where on the scale the offending falls, taking into account the six levels which we set out below.

[27] The court explained at para [29] that the ranges identified relate to sentence after trial and are illustrations only of the type of conduct that might come within each level.

[28] In *Lehd,* at para [21], the NICA summarised the information relating to each level:

> "(i) Level 1 is engaged where the offender has taken steps which amount to attempted multiple murder or something proximate thereto or a conspiracy to

commit multiple murder where this is likely to lead to an attempt, with probable success, but no physical harm has actually been caused. Cases belonging to this level will attract a sentence of life imprisonment with a minimum term of 30 - 40 years or more.

(ii) Next in the scale are "those who might not get quite so near in preparation or where the harm which might have been caused was not quite as serious": see para [31]. In these cases, a life sentence will generally be appropriate, with a minimum term in the range of 21-30 years, or a very long determinate sentence and an extension period of five years.

(iii) The third level, described by the court as "a little further down the scale", comprises cases examples whereof include the reported cases identified in para [32] of the judgment. In these cases, the offender will invariably be dangerous, and the appropriate sentence will be a life sentence with a minimum term of 15 to 20 years or a long determinate sentence of 20 to 30 years or more with an extension period of 5 years.

(iv) This level (the fourth) involves cases with overseas characteristics, involving more peripheral terrorist conduct or training, illustrated by the reported cases noted in para [33]. Offenders belonging to this category are likely to be dangerous and the suggested sentence is a determinate period in the range of 10 to 20 years or more with an extension period of five years.

(v) The typical case belonging to the level 5 category involves an offender who sets out to join a terrorist organisation engaged in a conflict overseas but does not complete his journey or an offender who makes extensive preparations with a real commitment, but does not get very far, or who does not get very far in his preparation for an intended act, which will usually be in the lower realms of seriousness, in the UK. As regards non-dangerous offenders, the suggested punishment is a determinate sentence of between 5 and 10 years.

(vi) Offences belonging to level 6 essentially mirror those belonging to level 5, with the difference that the gravity of the conduct belongs to a lower scale. For such offenders sentences in the range of 21 months to five years are likely to be appropriate."

[29] The court noted that the guidance in *Kahar* was designed to prevail until publication of the Sentencing Council Guideline on Terrorist Offences.

[30] In *Lehd,* the principal argument was whether the trial judge was entitled to follow the guidance in *Kahar* or whether he ought to have applied the sentencing guidelines subsequently published. Under the latter, the sentence would have been 15 years before reduction for a plea rather than either a life sentence with a minimum term thus qualifying for either (a) a life sentence with a minimum term in the range of 21-30 years or (b) a very long determinate sentence augmented by an extension period of five years.

[31] The court held that the judge was entitled to consider the guideline with a view to determining whether it provided any assistance. It was a matter of choice and not obligation. The approach taken had not resulted in a manifestly excessive sentence and a mechanistic approach was likely to distract rather than assist the judge in making the required evaluative assessment of the relevant factors.

[32] The court emphasised that section 5 offences potentially encompassed a very broad spectrum of criminal conduct. A correspondingly broad judicial discretion in the selection of the appropriate sentence was desirable. For the avoidance of doubt, sentencing judges were at liberty in section 5 cases to apply *Kahar* and the guideline with a view to determining whether those sources would assist them. They might find this to be a useful exercise in identifying aggravating and mitigating factors. They might also find that the suggested sentencing ranges were an aid to orientation. However, it would not be appropriate to give effect to the mechanistic sentencing exercise within the guideline, *Kahar* applied (paras 88-89).

The submissions of the parties

The prosecution submissions

[33] The prosecution submits that looking at the facts holistically, the preparation of terrorist offence counts are the lead offences. The intent necessary for these offences is not required for the less serious charges of collecting information. It is submitted that the appropriate range is 17-20 years in prison, both defendants are dangerous offenders and should be sentenced accordingly.

The defence submissions

[34] Both defendants submit that the crux of the case is the collecting of information and these should be considered the lead offences. On behalf of Mr Duffy, it is submitted that the offences are less serious than those he committed in 1993 when he was sentenced to five years in prison for actual assault and attempting to obtain information relating to serving members of the UDR and RUC.

[35] On behalf of Mr Reynolds it is submitted that *Kahar* is of no assistance to the court and that it should focus on how far removed the alleged acts of preparation were from the intended act itself. The Crown's submissions that the alleged acts were preparatory to a murder, and reasonably proximate to the same, amount to an attempt to prosecute an attempted murder or conspiracy to murder by the backdoor at the sentencing stage when no such charge was levied at the defendant on the indictment.

[36] Furthermore, it is submitted that the range of sentences discussed in the 'levels' set out in *Kahar* cannot be taken to be mechanistically applicable to offending in Northern Ireland as they were informed directly and indirectly by sentencing policy and legislation in England and Wales that has no counterpart here. In that regard it is indicated in *Kahar* (para [14]) that the foundation for the sentencing ranges set out therein was the increased gravity of the threat posed by extremist terrorism in England and Wales and the enactment of Schedule 21 to the Criminal Justice Act 2003.

[37] Furthermore, Schedule 21 imposed 'starting points' for tariffs for life sentences of (i) a whole life order (ii) 30 year tariff and (iii) a 15 year tariff or 12 if the offender was under 18 years of age when the offence was committed. It is submitted that in contrast in *R v McCandless* [2004] NI 269 the starting points are 12 years and 16 years.

[38] In fact, in *R v Whitla* [2024] NICA 65, the starting points for murder in Northern Ireland were reassessed and the normal starting point is now 16. Even under *McCandless,* applying the English Practice Statement at [2002] 3 All ER 412 upon which the guidance was based, it was recognised that some cases may be very serious and justify a substantial upward variation:

> "**Very serious cases**
>
> 18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 16 years) which would offer little or no hope of the offender's eventual

> release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case."

Among those cases which are very serious, there are some which may be especially grave:

> "19. … These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."

[39] On behalf of Mr Duffy, the point is also made that *Kahar* makes it clear that other offences, which could have been charged on the same facts and their appropriate levels of sentence are to be borne in mind even when following the *Kahar* guidelines. Put another way, on the facts of this case, those authorities relied upon by the defendant ought not be overlooked simply because in those cases they were not prosecuted as section 5 offenders.

[40] I have considered a number of authorities. Some involve the compilation of car registration details and detail entry and exit times to and from police stations by police officers. Some are charged only as collecting information offences, others are also charged with preparation of terrorist acts. In *Perry* [2023] NICC 12, where the appellant was convicted of collecting or making a record of information likely to be useful to a terrorist, the starting point was said to be five years after trial, reduced to four on grounds of ill-health. She had a previous relevant conviction although it was of some vintage. On behalf of the defendants this is said to be the correct starting point in this case.

[41] The facts of this case do not fall neatly into any of the specific categories in *Kahar,* which demonstrates the importance of approaching sentencing in a non-mechanistic way. Nor are any of the authorities relied on by the defence factually comparable. The specific targeting of a retired police officer is a very grave matter. This involved a well–researched plan to obtain information to enable an attack upon his life. The attempt to obtain that information was only foiled by the police.

The question of dangerousness

[42] *Kahar* suggests that the first step which the sentencing judge should take is to determine whether the offender is "dangerous" so that either a life sentence or an extended sentence may be imposed.

[43] The offence of preparation of terrorist acts pursuant to section 5(1) of the 2006 Act is both a serious and specified offence under the Criminal Justice (NI) Order 2008 ("the 2008 Order") with a maximum sentence of imprisonment for life.

[44] In *R v EB* [2010] NICA 40, this court approved the approach of the English Court of Appeal in *R v Lang* [2005] EWCA Crim 2864 on how the assessment of the risk of serious harm should be made under these provisions:

> "(i) The risk identified must be significant. This was a higher threshold than mere possibility of occurrence and could be taken to mean 'noteworthy, of considerable amount or importance.'
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> (ii) In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, details of which the prosecution must have available, and, whether the offending demonstrated any pattern; social and economic factors in relation to the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional state. Information in relation to these matters would most readily, though not exclusively, come from antecedents and pre-sentence probation and medical reports. The sentencer would be guided, but not bound by, the assessment of risk in such reports. A sentencer who contemplated differing from the assessment in such a report should give both counsel the opportunity of addressing the point.
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> (iii) If the foreseen specified offence was serious, there would clearly be some cases, though not by any means all, in which there might be a significant risk of serious harm. For example, robbery was a serious offence. But it could be committed in a wide variety of ways, many of which did not give rise to a significant risk of serious harm. Sentencers must therefore guard against assuming there was a significant risk of serious harm merely

because the foreseen specified offence was serious. A pre-sentence report should usually be obtained before any sentence was passed which was based on significant risk of serious harm. In a small number of cases, where the circumstances of the current offence or the history of the offender suggested mental abnormality on his part, a medical report might be necessary before risk can properly be assessed.

(iv) If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant. Repetitive violent or sexual offending at a relatively low level without serious harm did not of itself give rise to a significant risk of serious harm in the future. There might, in such cases, be some risk of future victims being more adversely affected than past victims but this, of itself, did not give rise to significant risk of serious harm."

[45] In *Wong* [2012] NICA 12, where the defendant pleaded guilty to possession or control of a pipe bomb with intention to endanger life or cause serious injury to property, a number of principles are set out as to the correct approach in terrorist cases. At para [15] the court said:

> "[15] What all of these cases demonstrate is that the assessment of whether an offender presents a significant risk of serious harm requires a careful analysis of all of the relevant facts in the particular case. This is required just as much in a case involving convictions for terrorist offences as in other cases. In such cases the matters likely to require consideration will usually include:
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> (i) the nature of the harm to which the offence was directed;
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> (ii) the intention or foresight of the offender in relation to that offence;
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> (iii) the stage at which the offending was detected;
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> (iv) the sophistication and planning involved in the commission of the offence;

(v) the extent to which the conduct of the offender demonstrates a significant role in the carrying out of the offence;

(vi) the previous conduct of the offender;

(vii) the danger posed by the terrorist organisation in question;

(viii) an assessment of the extent to which the appellant is committed to or influenced by the objectives of that terrorist organisation; and

(ix) where there is a dispute about these matters, a Newton hearing may be appropriate.

…

In terrorist cases the risk is unlikely to depend upon loss of control or the vulnerability of the victim but rather the evidence of the offender's commitment to participation in the activities of the organisation."

[46] The court emphasised that in cases involving firearms and explosives, even with a terrorist background, the court should be careful not to make the assumption that the offender is dangerous. The risks posed by those involved in such offences can vary enormously and each case will be heavily fact sensitive.

[47] The nature of the harm to which the offending was directed was to endanger life and the offences were committed in pursuit of violent Republicanism. The deployment of the camera at Annaghone to obtain information in a general way before targeting Mr X shows considerable planning was involved.

[48] The wildlife camera was a simple yet effective means of monitoring his movements. Both defendants have been convicted of being principal participants and there is no doubt of the danger posed by those involved in dissident Republican activity who consider serving and retired police officers to be legitimate targets of attack.

[49] Neither defendant has accepted responsibility for these offences and no remorse has been shown. Although Mr Reynolds has a clear criminal record, the fact that his long period on remand has not resulted in an admission of guilt, despite the overwhelming evidence, is a matter of considerable concern. That can only demonstrate a continued commitment to the commission of such offences and, in all the circumstances, I consider that he meets the test for dangerousness.

[50] In respect of Mr Duffy, his previous highly relevant offending shows that whilst more than 30 years has elapsed, he remains committed to terrorist activities.

Notwithstanding the fact that the offences are of vintage, the nature of offending renders the conclusion that he is dangerous inescapable.

[51] Having found the defendant dangerous the court is required to consider the following sentences: a life sentence, indeterminate sentence or extended sentence pursuant to Articles 13-15 of the 2008 Order.

[52] Life sentences are reserved for a small category of cases that are so exceptional that they require the defendant to be imprisoned for the rest of his life, see *Kehoe* [2008] CLR 728. I do not consider this case falls within the ambit of Article 13(2) requiring the imposition of a life sentence.

[53] Turning now to Article 13(3), I must consider whether an extended custodial sentence would not be adequate to protect the public from serious harm occasioned by the commission by the offender of further specified offences in this instance. In the event that it would not be adequate I must impose an indeterminate custodial sentence.

[54] Of particular importance when considering the imposition of an indeterminate custodial sentence is the case of *R v Pollins* [2014] NICA 62. Morgan LCJ in this case at paras [26] and [27] observed that:

> "[26] … Apart from a discretionary life sentence an indeterminate custodial sentence is the most draconian sentence the court can impose. A discretionary life sentence is reserved for those cases where the seriousness of the offending is so exceptionally high that just punishment requires that the offender should be kept in prison for the rest of his life. It is not a borderline decision. … An indeterminate custodial sentence is primarily concerned with future risk and public protection. …
>
> [27] However, in a case in which a life sentence is not appropriate an indeterminate custodial sentence should not be imposed without full consideration of whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the individual offender. In that sense it is a sentence of last resort. The issue of whether the necessary public protection can be achieved is clearly fact specific. That requires, therefore, a careful evaluation of the methods by which such protection can be achieved under the extended sentence regime."

[55] The question therefore is whether an indeterminate custodial sentence is the only way of dealing with the future risk presented by the accused or whether an extended custodial sentence would be adequate for the purpose of protecting the public.

[56] In *Lehd*, the trial Judge, Fowler J explained that in determining whether the court should impose an indeterminate custodial sentence or an extended custodial sentence it is necessary to consider the nature of an extended custodial sentence. An extended custodial sentence will be the aggregate of a custodial term and an extension period. The custodial term will be a commensurate sentence and will not make any reduction for a notional remission. This will be built into the release provisions.

[57] The extension period will be for such period as is considered necessary to protect the public from serious harm and in the circumstances of this case the protective element cannot exceed five years. The two aspects of sentence serve different purposes. The first is to punish and the second is to protect. The provisions of section 30 of the Counter-Terrorism and Sentencing Act 2021 inserts a new Article 20A into the 2008 Order. The new Article 20A provisions apply to the offending of which the defendants have been convicted. The provision does not engage the sentence which the court imposes but the release provisions only. It provides that an offender subject to an extended custodial sentence will have to serve two thirds of the custodial sentence before his case can be referred to the Parole Commissioners, whereas in the past that offender would have served half of the custodial element before his case was able to be referred.

[58] While I have no doubt that these were very grave offences, involving high culpability together with intended high harm, this is not a case of attempted murder because a number of additional acts were needed before the intended harm could be completed. Shea Reynolds, in view of your previous clear record and relatively young age I consider that an extended custodial sentence is adequate to protect the public. Damian Duffy, in view of your age, health and family life I also consider that such a sentence would be adequate.

[59] Taking into account the aggravating and mitigating factors already identified, I am of the view that the appropriate sentence for you Shea Reynolds is an extended custodial sentence comprising 12 years in custody with a five year extension period.

[60] In respect of you Damian Duffy, taking into account your previous relevant convictions, albeit that they are of some vintage I consider that the sentence should be an extended custodial sentence comprising 13 years with a five year extension period.

The question of delay

[61] In *R v McGinley* [2025] NICA 11, the Court of Appeal clarified that culpable delay on the part of the prosecuting authorities such as to establish a breach of the article 6 ECHR rights to a fair trial within a reasonable time, should as a matter of principle be reflected by way of reduction in penalty. The court disagreed with obiter remarks in the case of *R v Jack,* that an article 6 breach should be considered in picking the starting point before applying the reduction for the plea.

[63] These offences were committed in September 2016 and the defendants were arrested shortly thereafter. It is now 2025, and therefore the question of delay has to be considered in this case. The prosecution denies any culpable delay. I have considered a detailed chronology which sets out a catalogue of reasons for delay some of which can clearly be laid at the door of the authorities, court unavailability and others which relate to the pandemic, contested committal proceedings, disputes between defendants regarding the necessity for disclosure and lengthy court proceedings interspersed by numerous hearings before the disclosure judge.

[64] The authorities are clear that caution must be exercised before penalising a defendant for contesting the charges or putting the prosecution on proof of each aspect of its case. Having considered *R v Coyle* [2024] NICA 22 paras [42]–[51], I am satisfied that there should be some reduction notwithstanding the complex history that has led to a delay of nine years. The question is what reduction is appropriate in all the circumstances bearing in mind the importance of ensuring realistic punishment. I consider that the sentences should be reduced by six months.

[65] The sentence for Shea Reynolds shall be an extended custodial sentence of 11½ years and for Damian Duffy 12½ years each with a licence period of five years.

[66] In respect of the additional charges, the maximum sentence for making a record of information was 10 years at the relevant time. I impose concurrent sentences of eight years in respect of Damian Duffy and seven years in respect of Shea Reynolds. Whilst count six is an attempt to make a record of information I am imposing the same sentence as count 3 in all the circumstances, particularly given the fact that the substantive offence was prevented only by the involvement of the police. In respect of the offences of possessing articles for use in terrorism, I also impose concurrent sentences of eight years and seven years.

Notification requirements

[66] In circumstances where the defendant is sentenced to a period of imprisonment of 12 months or more (section 45(3)(ii) of the Counter-Terrorism Act 2008 – "the 2008 Act"), the defendant automatically becomes subject to notification requirements, obliging him to notify the police of specified information for a specified period. The information must be provided to police within three days of being dealt with (time in custody is disregarded for this computation) (section 47 of

the 2008 Act). On the occurrence of certain events, the defendant must within three days of the event occurring notify the police of such events (section 48 of the 2008 Act) and must re-notify the information required pursuant to section 47 within a year.

[67] In this case, notification will be for the period of 30 years (section 53 of the 2008 Act).

[68] In determining whether the notification period has expired, any time the individual has spent in custody by order of a court, serving a sentence of imprisonment or detention, or detained in hospital or under the Immigration Acts shall be discounted.

[69] Under section 54 of the 2008 Act, failure without reasonable excuse to comply with any of the notification requirements or providing false information in relation to any of the requirements, constitutes an offence.