

LADY CHIEF JUSTICE OF NORTHERN IRELAND

**GENDER RESPONSIVE SENIOR SPONSORS NETWORK CONFERENCE
“MOTHERS IN THE JUSTICE SYSTEM: EXAMINING THE IMPACT OF
MATERNAL SENTENCING”**

STORMONT HOTEL, BELFAST

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GENDER RESPONSIVITY & JUDICIAL SENTENCING

Good morning.

It is a pleasure to address you today on an issue that lies at the intersection of law, humanity and social responsibility: gender responsivity in judicial sentencing, particularly in cases involving mothers and their children.

This is not simply a legal issue. It is a societal one which requires us to look beyond the individual offender and consider the wider human consequences of sentencing decisions. It requires us to ensure that, while we remain faithful to principle, we do not become blind to lived reality.

My experience in this area derives from my practice as a family barrister and now as a judge. When in practice I saw how family law can shape criminal law outcomes. I practiced at a time when contact with incarcerated parents was hard fought. Now I think we have a greater appreciation of the need to retain relationships between children and imprisoned parents. I have seen the facilities in prison first hand which allow this to happen.

The subject matter of mothers in justice engages the best interests of children, which I will discuss later. It also allows me to commend the Department of Justice for the pilot projects in this area not least the bail support project for women. I see that as a very exciting initiative as I think women are

incentivised to rehabilitate and reform because of children so long as they have the supports to do so.

I firmly believe that the responsibility is cross departmental as supports are needed in terms of health, education, and housing who need to work alongside justice.

Today, I will outline the principles of sentencing within this jurisdiction, drawing on the address I gave last year at Ulster University¹. I will turn then to case law, focusing on *R v Francis Devlin*² and situating it within the broader jurisprudence, including *R v Petherick*³ and subsequent authorities. I will examine how those principles have been applied in the Crown Court and finally I will address the practical framework introduced through the Memorandum of Understanding on Child Impact Assessments, alongside relevant data on women and maternal imprisonment in Northern Ireland.

Principles of Sentencing in Northern Ireland

In my recent address at Ulster University, I emphasised that sentencing is central to legitimising the rule of law and maintaining public confidence. Sentencing must be effective, proportionate, and intelligible. It must also reflect the seriousness of the offending conduct and the culpability of the offender.

The principle of proportionality is fundamental. This requires that the sentence imposed be commensurate with the gravity of the offence, ensuring that punishment is justified and measured. This is not simply a technical exercise - it is the mechanism by which society expresses its condemnation of wrongdoing while maintaining fairness and restraint.

¹ [LCJ - Sentencing Practice in Northern Ireland: A View - A Public Lecture as part of the 'Ulster Talks' Series | Judiciary NI](#)

² [2023] NICA 71

³ [2012] EWCA Crim 2214

Alongside proportionality are the recognised purposes of sentencing: punishment, deterrence, protection of the public, rehabilitation, and reparation. These objectives often point in different directions, and so sentencing requires a careful balancing exercise between them. Sentencing is not a rigid or formulaic process therefore, but rather is one requiring the exercise of judgment informed by principle.

The individualised nature of sentencing is particularly important in the context we are considering today. Each offender appears before the court with their own circumstances, background, and responsibilities. Among these circumstances may be the care of dependent children. The question for the court is how, and to what extent, those responsibilities bear upon the appropriate sentence.

Transparency remains the final key principle. Sentencing decisions must be explained clearly so that the reasoning is understood not only by the parties involved, but by society at large. This is especially important in cases where the outcome may involve difficult balancing of competing considerations. This is one of the reasons why I am very keen that sentencing decisions in the most serious of cases can be broadcast in this jurisdiction.

The challenge is how we deal with the public discourse on sentencing which may be ill informed and in social media sound bites. It is also often directed against rehabilitation and in favour of greater punishment without appreciating the fact sensitive nature of cases and the reality that judges take great care to get things right.

Gender Responsivity and the Northern Ireland Context

When we turn to the position of women in the criminal justice system in Northern Ireland, several points are immediately apparent. Women form a relatively small proportion of the prison population. Recent data indicates that they account for approximately 5 to 6 per cent of prisoners, with around 108 women in custody out of an average daily population of approximately 1,900.⁴

At the same time, the number of women in custody has been increasing. Over recent years, the female prison population has risen significantly and, in comparative terms, has grown at a faster rate than the overall prison population.⁵

Probation data also illustrates the gender imbalance across the system, with around 464 women supervised by Probation compared to several thousand men, highlighting that women remain a minority, but important, cohort within the system.⁶

What is particularly significant, however, is not merely the number of women in custody, but their profile. Many women in the criminal justice system are primary carers for children. They are more likely to be single parents, more likely to have experienced trauma and domestic abuse, and more likely to face intersecting issues such as addiction, mental health difficulties, and poverty.⁷

The consequences of imprisonment for these women are therefore qualitatively different. It is estimated that a substantial proportion of women in custody lose their homes during imprisonment, and many leave prison

⁴ [nisra.gov.uk](https://www.nisra.gov.uk) Prison population 2024/25

⁵ [nisra.gov.uk](https://www.nisra.gov.uk) Prison population 2024/25

⁶ [Irish Probation Journal Volume 22 - Restoring Justice, PBNI Women Strategy 2024-2029 in Action: Practitioner Reflections on the Impact of Trauma and Using Restorative Justice Practices](#)

⁷ [Irish Probation Journal Volume 22 - Restoring Justice, PBNI Women Strategy 2024-2029 in Action: Practitioner Reflections on the Impact of Trauma and Using Restorative Justice Practices](#)

without stable accommodation. These realities have obvious implications for children, whose lives may be significantly disrupted as a result.⁸

In Northern Ireland, as in other jurisdictions, maternal imprisonment therefore raises questions not only about the punishment of the offender, but about the welfare of children and the broader social impact of sentencing decisions.

The Development of Case Law: From *Petherick* to *Devlin*

The modern legal framework for addressing these issues can be traced to *R v Petherick*, a decision of the Court of Appeal in England and Wales which has been influential in this jurisdiction also.

In *Petherick*, the court emphasised that the impact of a custodial sentence on dependent children is a relevant consideration in sentencing. It made clear that courts must have sufficient information about the circumstances of those children and the arrangements for their care before determining sentence. It recognised also that, particularly where a defendant is a primary carer, imprisonment will inevitably involve separation and potential harm to children.

The court also made clear, however, that such considerations do not automatically preclude custody. The existence of dependent children is a mitigating factor, but it must be weighed against the seriousness of the offence and the wider public interest.⁹

Subsequent case law has reinforced this structured approach. In cases such as *McGrory*¹⁰ and others, appellate courts have reiterated the need for careful

⁸ [Irish Probation Journal Volume 22 - Restoring Justice, PBNI Women Strategy 2024–2029 in Action: Practitioner Reflections on the Impact of Trauma and Using Restorative Justice Practices](#), page 73

⁹ [Committees.parliament.uk](#) Written Evidence 9/10/2018

¹⁰ [R v McGrory \[2022\] EWCA Crim 1361](#) – paras [10] and [18] to [21]

evidence-based assessment, while maintaining that the threshold for avoiding custody in serious cases remains high.

Within Northern Ireland, this jurisprudence has been reflected in cases such as *R v McKeown*¹¹ and *R v Kidd*¹², which emphasise that suspension of custodial sentences in serious cases is exceptional, and must be justified by circumstances of particular weight.

Against this background, the decision in *R v Francis Devlin* is of central importance in this jurisdiction.

This case concerned serious fraudulent offending, involving substantial losses to the public purse. The appellant argued that the custodial sentence imposed should have been suspended because of the severe impact his imprisonment would have on his son, who had autism spectrum disorder.

The Court of Appeal reaffirmed the structured balancing exercise derived from *Petherick*. It recognised that the interests of children must be considered carefully and with proper evidence and accepted that the impact on the child in that case would be significant. The court concluded, however, that the threshold for exceptionality had not been met. The seriousness of the offending and the need for deterrence were such that a custodial sentence was required. The appeal was dismissed.

The importance of *Devlin* lies in its reaffirmation of principle within this jurisdiction. It confirms that the interests of children are central but not determinative, and that sentencing remains a matter of balance, exercised through principled judicial discretion.

Since *Devlin*, there has been a noticeable development in practice within the Crown Court. Judges are increasingly attentive to the impact of sentencing on

¹¹ [2013] NICA 63

¹² [2022] NICA 75

dependent children, and there is a more structured engagement with these issues. Pre-sentence reports now more routinely address family circumstances, caregiving roles, and the likely consequences of imprisonment. This reflects both the influence of case law and the development of new procedural frameworks.

At the same time, the high threshold for avoiding custody in serious cases continues to be applied. In cases involving significant offending, immediate custody remains the norm, even where there are substantial family consequences. In cases closer to the custody threshold, however, the existence of dependent children can be a significant factor. Where the harm to children would be particularly acute, and where the objectives of sentencing can be met through other means, the courts have shown a willingness to impose suspended sentences or community-based disposals. This reflects a careful calibration of principle and pragmatism, ensuring that sentencing remains both just and responsive.

In order to understand how these principles operate in practice, it is helpful to look not only at the leading authorities, but at the wider body of case law that has shaped this area.

The decision in *Petherick* remains foundational in emphasising that, when sentencing, the court must balance the factors of punishment and deterrence with the circumstances of the individual offender including, where appropriate, the impact of the sentence on any infant child for whom the offender is the primary or sole carer.¹³ The court must be informed of the domestic circumstances of the offender and be cognisant of the article 8 rights which, as in *Petherick*, may extend to the offender, an infant child of the

¹³ *Petherick*, para [6]

offender and the victim of the offending or his/her family.¹⁴ An assessment of proportionate interference with article 8 rights will be required with the effect of custody on children being a relevant consideration. It follows therefore that the court must obtain sufficient information about dependent children before reaching a decision.

That principle has been reinforced in subsequent decisions, including *McGrory*, where appellate courts have repeatedly highlighted that sentencing should not proceed in ignorance of the realities faced by children. What emerges from these cases is not a shift away from custody in serious cases, but a shift towards more informed decision-making. The court must understand the consequences of its decision before determining whether those consequences are proportionate.

In Northern Ireland, decisions such as *R v Kidd* have echoed that approach, emphasising that while the presence of dependent children is always relevant, the threshold for displacing custody in serious cases remains high. These cases underline that the concept of “exceptionality” must not be diluted. It is, rather, a rigorous standard, intended to preserve the integrity of sentencing while allowing space for truly compelling circumstances.

It is also important to recognise that the issue does not arise only in cases involving long sentences or serious crime. In practice, some of the most acute effects on children arise from short custodial sentences. In Northern Ireland, as in other jurisdictions, a significant proportion of women receive sentences of less than twelve months. Research has shown that such short sentences may serve as punishment, but they can fall short in providing meaningful

¹⁴ *Petherick*, para [10], [17], [18], [21]

rehabilitation to offenders, have a limited deterrent effect and do not deliver the best results for female offenders.¹⁵

In those cases, the court is often dealing with what might be described as “threshold decisions”, where custody is available but not inevitable. It is precisely in those cases that the principles articulated in *Petherick* and *Deolin* carry particular weight. The question becomes whether the objectives of sentencing can be achieved without triggering the collateral damage that imprisonment may cause to children.

This approach has been reaffirmed by the recent Court of Appeal decision in *R v Kasak*¹⁶, which emphasises that where a short custodial sentence of 12 months or less is under consideration, sentencing judges must actively consider non-custodial alternatives and clearly explain why such options are rejected. The decision highlights that even where the custody threshold is technically met, the imposition of immediate imprisonment is not automatic; rather, it must be justified by reference to the specific facts and circumstances of the case.

The realities of the Northern Ireland prison population provide important context for this discussion. The number of women in custody, while relatively small in absolute terms, has been increasing, with recent figures indicating a notable rise in both sentenced and remand populations. At the same time, the proportion of women on remand remains high, which means that some mothers experience separation from their children even before conviction or sentence.¹⁷

¹⁵ [NI Assembly link](#) – para 4.1. Also relevant, [UK Parliament Joint Committee on Human Rights report 9.9.2019](#), para 35

¹⁶ [2026] NICA 2

¹⁷ [NI Assembly Official Report of 3 Feb 2025](#) - Mr McNulty (SDLP) - “there are now 120 women in prison here, more than half of whom are on remand.”

It is significant also that many women in custody are imprisoned for offences that are not characterised by violence but rather are rooted in vulnerability and social disadvantage. Evidence suggests that women are more likely to be imprisoned for acquisitive offences, including theft, often linked to financial hardship, addiction, or coercive relationships.¹⁸

These factors do not diminish responsibility for offending. They do, however, provide context. They help us to understand why a gender-responsive approach to sentencing is not about leniency, but about *accuracy*. It is about properly identifying the factors that bear upon both culpability and consequence.

What emerges, when these strands are drawn together, is a picture of sentencing that is becoming more nuanced. Courts are not abandoning the principles of deterrence or punishment. Rather, they are applying those principles with a more complete understanding of their effects.

A particularly important development in Northern Ireland has been the introduction in 2023 of the Memorandum of Understanding between the Department of Health and the Probation Board for Northern Ireland in relation to the completion of reports to advise the judiciary of the likely impact upon a child of the imposition of a custodial sentence in respect of a parent or carer.

This framework establishes a structured process for assessing the likely impact of a custodial sentence on dependent children. It requires that such assessments be included in pre-sentence reports and informed, where appropriate, by social services and other professionals.

¹⁸ See data from England and Wales as noted in the UK [Joint Committee on Human Rights Report 9.9.2019](#), chapter 4, box 6.

The MOU is grounded in the principles of the United Nations Convention on the Rights of the Child and the Children (Northern Ireland) Order 1995, emphasising that the welfare of the child is a primary consideration and that their views should be taken into account.

It focuses on practical matters also. It requires consideration of the likely impact of imprisonment, the viability of alternative care arrangements, and the means by which contact between parent and child can be maintained.

This represents a significant advance. It ensures that the court is provided with structured, evidence-based information, enabling it to apply the principles articulated in *Devlin* and *Petherick* in a consistent and informed manner. For cases involving mothers, the importance of this framework cannot be overstated. Given the higher likelihood that women in custody are primary carers, the information generated through this process is often critical to the sentencing decision.

Conclusion

It is worth remembering that the justice system does not operate in isolation. The decisions made in our courts reverberate outward into families and communities. When a mother is sentenced, the effects are rarely confined to the courtroom. They are felt in homes, in schools, and in the lives of children whose experiences may never be formally recorded, but whose futures may nonetheless be shaped by what has occurred. It is for that reason that the issues we are discussing today are not only legally important, but socially significant.

When a court sentences a parent, it does not sentence a child yet the effects of that decision may be profound and enduring for the child.

The challenge for the courts is to reconcile competing demands: to impose proportionate punishment, to deter offending, and to protect the public, while also recognising the impact of sentencing on innocent third parties. The evolution of case law, from *Petherick* through to *Devlin*, together with the practical framework established by the Memorandum of Understanding, demonstrates that the justice system in Northern Ireland is increasingly equipped to meet that challenge while remaining anchored in principle.

Our task is to continue that development, ensuring that sentencing reflects not only the requirements of law, but the realities of life including the circumstances of children as well as the offenders that come before us.

Thank you.