Neutral Citation No: [2026] NICC 14 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **FOW13139** *ICOS No:* **22/1088/A01** *Delivered:* **15/09/2026**

IN THE CROWN COURT IN NORTHERN IRELAND SITTING IN BELFAST

THE KING

v

ZX

Mr Magee KC with Ms Herdman (instructed by Public Prosecution Service) for the Crown
Mr MacCreanor KC with Mr Mullan (instructed by McCallion Jones Solicitors) for the Defendant

---

SENTENCING REMARKS

FOWLER J

A reporting restriction was made on 17 September 2026 in relation to this case until further order of the court. Pursuant to that order, the defendant, the victims and certain witnesses are identified in this judgment by randomly generated ciphers. Certain personal information has also been omitted or generalised to ensure anonymity.

Introduction

[1] The defendant appears before the court to be sentenced in respect of one count of infanticide arising from the killing of her eight-week-old son, and one count of attempted murder in respect of her two-year-old daughter. Pleas of guilty to those offences were entered on 13 August 2026.

[2] The procedural history of this matter is of some significance. The defendant was originally indicted for the offences of murder and attempted murder and, having pleaded not guilty to both counts, was convicted following trial. Those convictions were subsequently quashed by the Court of Appeal (*R v ZX* [2025] NICA 76) and a retrial was directed.

[3] The defendant was re-arraigned on 1 May 2026 in anticipation of that retrial and again entered pleas of not guilty to both counts. Thereafter, a report commissioned by the prosecution from Dr Christine Kennedy, consultant psychiatrist, was received on 17 July 2026 and quickly disclosed to the defence. Following receipt of that report, the prosecution properly undertook a review of the decision to prosecute and thereafter engaged in constructive and expeditious discussions with senior counsel appearing on behalf of the defendant.

[4] As a result of that review and subsequent discussions, the defendant entered pleas of guilty to one count of infanticide in respect of the death of her baby son, RV and one count of attempted murder in respect of her two-year-old daughter, TA. The plea to infanticide was entered at the first reasonable opportunity following disclosure of the expert evidence upon which that plea was predicated. The position in relation to the offence of attempted murder is different. The defendant had consistently denied that offence, both at the original trial and upon re-arraignment following the order for retrial. No sustainable or viable defence to that charge was ever proffered. The plea of guilty to attempted murder was therefore not entered at the first available opportunity and the court must take that into account when assessing the appropriate level of reduction to be afforded for the plea.

Factual background

[5] For the purposes of sentence, it is necessary to set out the circumstances in which these offences occurred. The defendant is a foreign national, who has no previous convictions and had worked in two separate countries. In 2018, when aged 26 she entered into a relationship with QM, he was 48 years old and had a significant criminal record. He was in the defendant's home country on holiday. Thereafter, the defendant moved to Northern Ireland and lived with him for three years up to July 2021. The couple had two children together: their daughter, TA, and their son, RV, who was only a matter of weeks old at the time of his death.

[6] The evidence establishes that, in the period before the index offences, the relationship between the defendant and QM had been characterised by domestic violence, sexual abuse, threats and coercive control. Of significant context, on 24 July 2021, three days before the offences, the defendant contacted police following an altercation at the family home, reporting that she had been pushed by QM and expressing fears for her safety. She told police that she wished to obtain the children's passports and return to her home country. QM was subsequently arrested and released on bail subject to a condition prohibiting his return to the family home.

[7] In the days that followed, the defendant continued to express a desire to leave Northern Ireland and return to her home country with her children. On the afternoon of 27 July 2021, she sought assistance in obtaining the necessary documentation to facilitate such a move. Her mother-in-law and sister-in-law, who spent time with her that day described her as upset, frustrated and preoccupied by

her circumstances, particularly her relationship with QM, but claimed to have observed nothing which foreshadowed the appalling events that later unfolded. She appeared concerned that QM would not return to the family home and expressed feelings of isolation, commenting that her family in her home country did not want her and that QM and the children were her family.

[8] A significant feature of the case is a series of diary entries written by the defendant throughout the course of 27 July 2021. Those entries, addressed to QM, were discovered by police shortly after the offences. They reveal an individual overwhelmed by feelings of rejection, abandonment and emotional despair. The defendant repeatedly accused QM of leaving her and the children for another woman, expressed profound distress at the possibility of losing him, and referred on numerous occasions to taking the lives of herself and the children. The entries contained references to death, reunion in the afterlife and a belief that the family could be together again only beyond death. They also contained requests that QM remember them, visit their graves and care for himself after they were gone.

[9] Later that evening the defendant armed herself with kitchen knives and attacked both children. RV sustained two stab wounds to the chest, one penetrating the heart. Despite determined efforts by police officers and medical personnel to save him, he died as a result of those injuries. TA sustained serious and potentially fatal stab wounds to her abdomen and liver. She was in pain and bleeding heavily when emergency services arrived and survived only through prompt and skilled medical intervention.

[10] Immediately following the attacks, the defendant telephoned QM, who was in England, and informed him that she loved him, had killed RV, that TA was bleeding and that she intended to kill herself. She subsequently telephoned the emergency services and stated that she had killed her children and wished to end her own life.

[11] When police arrived at the family home at approximately 20:15hrs they found the defendant holding TA, who was screaming in distress, while RV lay unresponsive. The defendant herself had sustained self-inflicted wounds to her neck and chest. During the attempts to resuscitate RV, she stated words to the effect that there was no point in assisting him because she had stabbed him and he was dead.

[12] Police recovered two blood-stained knives from the scene. One knife, with a blade of approximately three inches, was identified by the defendant as having been used to inflict injuries upon herself. The second knife, which had a blade of approximately five inches, was used in the attacks on the children.

[13] Despite prompt and determined efforts by police officers and medical personnel, RV could not be saved and was pronounced dead at approximately

21:00hrs. The post-mortem examination established that he had sustained two stab wounds to the chest, one of which penetrated his heart and proved fatal.

[14] TA survived but suffered grave and potentially life-threatening injuries. She sustained penetrating stab wounds to her abdomen and liver and was found bleeding and in obvious distress when police arrived at the family home. The medical evidence demonstrates that she was exceptionally fortunate to survive the attack. Her survival was entirely due to the prompt intervention of the emergency services and subsequent medical treatment.

[15] The defendant was taken to hospital for treatment. Thereafter, and on a number of occasions, she made clear admissions of responsibility for her actions. She informed medical staff that she had killed her infant son, attacked her daughter and then attempted to take her own life.

[16] Following her discharge from hospital she was arrested and taken to Musgrave Police Station where she was assessed as fit for interview. She again acknowledged to custody staff her responsibility, stating that she had killed her children and expressing remorse for what she had done. In the custody suite she asked if she could be transferred to a prison in her home country. When asked about her mental health, she indicated that she believed she was suffering from depression. Specifically, police asked her if she had any mental health problems and she replied, "considering what I have done, probably I do." When asked whether she suffered from depression, she replied, "depression 100%. I cry too much." When asked whether she had ever tried to harm herself or had any intention of harming herself presently, she replied "no." She also remarked that if she could only turn back time.

[17] These events resulted in the death of RV, the catastrophic and life-threatening injury of TA, and devastating and enduring consequences for all those affected by this tragedy. As observed by the Court of Appeal, the facts as summarised above, on any reading make for a highly unusual and tragic case.

Victim Impact – TA

[18] In relation to TA, I have considered the report of Dr Clodagh O'Connell, clinical psychologist and the most recent update on TA from Ms Emma Magee, social worker, dated 25 August 2026. The report of Dr O'Connell records that following the stabbing incident, TA was removed from the family home in circumstances which were both sudden and deeply distressing. She was unable to take any familiar possessions with her and initially found the hospital environment alien and bewildering. During this period she repeatedly asked for her mother. Contact with family members was necessarily limited and an initial placement with a paternal relative regrettably proved unsuccessful, resulting in her placement in foster care. Professionals observed that she presented as tense and rigid, requiring a high degree of structure and routine to achieve any measure of stability. She was

highly sensitive to stress, at times exhibiting nosebleeds and episodes of high-pitched screaming when distressed. Although she gradually settled and formed attachments to her carers, demonstrated affection towards younger children, and showed improvements in her sleeping and eating routines, she remained hypervigilant and acutely sensitive to changes in her environment.

[19] Dr O'Connell concludes that TA experienced significant terror as a result of the incident, evidenced by her distress during the emergency call and the consequent activation of her physiological stress response system. At a crucial stage of her development, the person who should have provided safety and security became the source of profound fear and trauma. As a consequence, TA has been left feeling unsafe, frightened and anxious, and faces the difficult task of rebuilding trust in adult caregivers. She will require enduring levels of predictability, security and nurturing if she is to recover from the effects of these events.

[20] Dr O'Connell further identifies the loss of TA's relationship with her mother as a significant and continuing source of emotional harm, creating feelings of abandonment, rejection and loss. The death of her brother, to whom she was strongly attached, is described as a catastrophic loss occurring at a critical stage of her development. TA continues to display symptoms consistent with complex trauma, including emotional rigidity, episodes of uncontrollable crying and periods of dissociation. Although aspects of her presentation are consistent with post-traumatic stress disorder, Dr O'Connell considers the concept of developmental trauma to provide a more accurate understanding of the breadth of the harm caused. In her opinion, the impact of the incident and its aftermath is likely to be lifelong.

[21] Ms Magee in her report confirms that TA is happy and settled within her long-term foster placement. She continues to thrive in both her physical health and emotional development. However, she continues to require ongoing and intensive professional support in relation to her emotional health and wellbeing. She continues to present as significantly emotionally distressed in relation to the events of July 2021.

[22] TA also experiences significant difficulties in engaging with any form of indirect contact with the defendant and expresses she does not want to engage with indirect or any contact. On occasions she becomes upset asking 'why did mummy hurt me and baby RV. Following indirect contact she has woken from her sleep visibly sweating and crying, saying she was scared of the dark and mummy.

[23] Despite TA's happy, settled appearance and the fact she is thriving physically her emotional health and wellbeing have been significantly impacted by the stabbing nor can the impact of her life experiences be underestimated.

[24] I am satisfied that the combination of TA's physical injuries, the pain and trauma she suffered together with the loss of her baby brother and attendant psychological sequelae are such that the harm in this case is of a high order.

[25] I have read all victim statements in this case and give them such weight as is considered appropriate.

Available psychiatric and psychological evidence on the defendant

[26] The court has the benefit of extensive psychiatric and psychological evidence concerning the defendant's mental state before, at the time of and subsequent to these present offences.

Dr Paula Murphy, Consultant Forensic Psychiatrist

[27] Dr Paula Murphy, conducted a forensic psychiatric assessment on behalf of the defence. Dr Murphy recorded a history from the defendant of progressively deteriorating mental health during her pregnancy with RV and following his birth, against the backdrop of a deteriorating and increasingly stressful relationship with QM. The defendant described feelings of isolation, hopelessness and fear, reporting that she believed she was receiving little support and that she was unable to secure the assistance necessary to return to her home country with her children. She recounted living in a state of persistent anxiety, fearing that QM or those associated with him might kill her, and stated that she ultimately perceived no alternative other than to end both her own life and those of her children.

[28] The defendant described to Dr Murphy a relationship characterised by conflict and intimidation. She alleged that QM's drinking, aggression and absence from the family home had increased following the birth of RV, leaving her feeling frightened, isolated and emotionally dependent upon him. She reported disturbed sleep, persistent tearfulness, poor concentration and a deteriorating ability to cope with the demands of daily life. In the period immediately preceding the offences, she described herself as being emotionally overwhelmed, hypervigilant, unable to sleep properly, eating little and constantly fearful that harm would come to her.

[29] In relation to the events of 27 July 2021, the defendant told Dr Murphy that following a conversation with one of QM's relatives she concluded that there was no realistic prospect of assistance and decided to end her life and those of her children. She stated that she felt everyone was against her and mocking her and described experiencing overwhelming feelings of despair and hopelessness. Whilst she retained a memory of stabbing both children and subsequently contacting QM and the police, the Crown point to evidence suggesting that certain aspects of her subsequent recollection were inconsistent with contemporaneous material, particularly in relation to the timing of the diary entries. Dr Murphy nevertheless considered that such inconsistencies could be attributable to impaired recall associated with depressive illness.

[30] Dr Murphy also considered a range of collateral material, including text messages, social work records, healthcare records and police interviews. That material demonstrated longstanding relationship difficulties and concerns about the defendant's emotional wellbeing. Some contemporaneous records, however, presented a more nuanced picture. For example, health visitor records from June 2021 described positive interaction between the defendant and QM, while the defendant at one stage told police that she had felt extremely happy following the birth of RV and denied experiencing depression. On other occasions she reported persistent crying, emotional distress and reluctance to seek professional assistance.

[31] Having considered the entirety of the available material, Dr Murphy concluded that the defendant was suffering from a depressive disorder of moderate to severe severity at the time of the offences. She further considered that the relationship dynamics described by the defendant were suggestive of coercive control and that her mental disorder substantially impaired her ability to exercise rational judgement and self-control. Dr Murphy was of the opinion that the defendant was still suffering from the effects of childbirth and that the requirements of the partial defence of infanticide were satisfied.

[32] Dr Murphy explained that, in her opinion, the symptoms described during pregnancy and after RV's birth were consistent with a moderate-to-severe depressive episode. She regarded the defendant's beliefs that she would be harmed, mocked, abandoned and rejected as manifestations of increasingly pervasive depressive thinking, characterised by hopelessness, rumination and extreme pessimism. In considering the issue of infanticide, she attributed particular significance to the reported deterioration in the defendant's mental state following childbirth, the physical and psychological demands of caring for a newborn infant, disrupted sleep, and the social and environmental stresses under which the family was living.

[33] Dr Murphy's conclusions were also informed by the psychological opinion of Dr Papatrian, who identified longstanding dependent personality traits together with paranoid and negativistic features. Those traits were said to contribute to feelings of insecurity, helplessness, anxiety and emotional dependency within intimate relationships.

[34] The prosecution drew to the court's attention that during police interview, the defendant disclosed that she had earlier obtained the knife but had not, at that stage, acted upon her thoughts of harming RV. They argue that it suggests an earlier appreciation of the nature and consequences of her intended conduct and an ability, at least temporarily, to refrain from acting upon it. Dr Murphy accepted that the defendant's mental state may have fluctuated but maintained that, at the time the fatal acts were ultimately carried out, her judgement and self-control were substantially affected by her depressive illness and the effects of childbirth.

Dr Ian Bownes, Consultant Psychiatrist

[35] Dr Bownes concluded that, in the period immediately preceding the offences, the defendant was suffering from a marked deterioration in her mood associated with recurrent ruminative thoughts about her circumstances and the future welfare of herself and her children. He considered that the offences were committed in the context of acute psychological distress and emotional upheaval. In his opinion, the defendant had come to perceive herself as trapped in an intolerable situation from which there was no realistic prospect of relief. Her judgement and decision-making were, he concluded, substantially affected by a clinically significant mood disorder arising from the combined effects of biochemical and social stressors.

Dr Peter Sloane, Consultant Psychiatrist

[36] Dr Peter Sloan, Consultant Psychiatrist, assessed the defendant on four occasions during 2021 and 2022. The defendant reported a deterioration in her mood during pregnancy, with a more marked decline following RV's birth. She described persistent low mood, tearfulness, loneliness, limited support and increasing domestic pressures, together with allegations of physical, emotional and sexual abuse within her relationship with QM.

[37] Dr Sloan diagnosed a mild depressive episode. Although he identified symptoms of low mood, reduced pleasure and fatigue in the weeks preceding the offences, he did not consider that these significantly impaired the defendant's day-to-day functioning. He nevertheless viewed the offending as occurring in the context of a complex combination of psychosocial stressors, including perceived abandonment, social isolation, language difficulties and depressive symptoms. In his opinion, the defendant came to believe that she had no realistic alternative to her circumstances and acted against that background.

[38] Dr Sloan further explained that post-natal depression is a multifactorial condition involving biological, neuroendocrine, psychological and social factors. He considered that women suffering from post-natal depressive illness, together with other significant social pressures are at an increased risk of suicide and, more rarely, infanticide.

Dr Brotherton, Consultant Clinical Psychologist

[39] Dr Brotherton carried out a forensic psychological assessment focusing on PTSD and the impact of coercive and controlling behaviour. The defendant reported that she had not experienced mental health difficulties prior to coming to Northern Ireland but that her mood deteriorated as her relationship with QM changed and she became increasingly isolated. She described symptoms of depression, anxiety and trauma which worsened following the birth of RV.

[40] Based upon the defendant's account of prolonged emotional, physical, financial and sexual abuse, Dr Brotherton concluded that she met the diagnostic criteria for PTSD. She considered that chronic exposure to controlling and abusive behaviour had contributed to anxiety, hypervigilance, helplessness, negative thinking and emotional dysregulation. Dr Brotherton also considered that the increased demands associated with caring for a newborn child, coupled with sleep disturbance and the stresses of her domestic circumstances, exacerbated her already poor mental health.

[41] Dr Brotherton was of the opinion that the defendant's fear for herself and her children, together with her perception that she was unable to escape her circumstances or secure assistance, led her to view death as the only means of escape. She further considered that feelings of abandonment and rejection associated with her belief that QM had left her for another woman contributed to her actions. Her ultimate conclusion was that, at the time of the offences, the defendant was suffering from PTSD together with depression that was causally related to the chronic trauma she reported experiencing and had worsened following RV's birth. Dr Brotherton maintained that the depression was situational in nature rather than post-partum depression.

Dr Christine Kennedy Consultant Psychiatrist

[42] Dr Kennedy was instructed on behalf of the Crown in advance of the anticipated retrial. Her conclusions are conveniently summarised at paragraph 1.8 of her report. Consistent with the opinions previously expressed by all psychiatric experts instructed in these proceedings, Dr Kennedy found no evidence that the defendant lacked the capacity to form an intention either to kill or to cause really serious harm. Accordingly, her opinion did not provide support for a defence based upon an absence of the requisite intent.

[43] In relation to diminished responsibility, Dr Kennedy concluded that at the material time the defendant was suffering from an abnormality of mental functioning arising from a recognised medical condition, namely a mild depressive episode. In her opinion, that abnormality was capable of providing an explanation for the defendant's actions and may have impaired her capacity for rational judgement. However, Dr Kennedy considered that the question of whether any such impairment was substantial was ultimately a matter for determination by a jury.

[44] Dr Kennedy also considered the statutory defence of infanticide. She concluded that there was evidence that the balance of the defendant's mind was disturbed at the time of the killing and identified multiple interacting factors, including the effects of childbirth, as relevant to that disturbance. Whilst she was unable to determine the precise extent to which a failure to recover from the effects of giving birth contributed to the defendant's mental state, she was unable to exclude the possibility that the defendant's actions arose from such a failure.

[45] In reaching those conclusions, Dr Kennedy noted that expert assessments undertaken shortly after the defendant's arrest consistently recorded a significant deterioration in her mood following the birth of RV, with symptoms of low mood occurring on a daily basis. She considered that the effects of childbirth and the post-natal period were likely to have been a significant contributor to the stress experienced by the defendant and thereby to her depressive illness, whilst recognising that there was a complex interaction between numerous social, psychological and situational stressors.

[46] Dr Kennedy further observed that the defendant's fluctuating decision-making during the incident was consistent with a degree of mental instability at the time of the stabbing. She emphasised that it would be an oversimplification to attribute that instability to any single cause. Rather, the evidence pointed to a combination of factors, including pre-existing low mood, relationship difficulties, dependency traits and the additional pressures associated with the recent birth of RV. In her opinion, the defendant's depression and dependency traits were both likely to have intensified following the birth. She also regarded the close temporal proximity between RV's birth and the fatal incident as a potentially significant consideration.

[47] When addressing whether a failure to recover from the effects of childbirth was a substantial cause of the disturbance of the balance of the defendant's mind, Dr Kennedy observed that the defendant's mood had deteriorated following the birth and that the consequences of childbirth represented a significant additional stressor. However, given the presence of numerous other social and situational factors, she was unable to state with confidence the extent to which any failure to recover from the effects of childbirth constituted a substantial cause of the disturbance. Nevertheless, she remained unable to exclude the possibility that the defendant's actions resulted from a disturbance of the balance of her mind arising from such a failure, particularly in light of the consistent findings of post-natal depression by clinicians who assessed her close to the relevant period.

[48] Dr Kennedy also expressed concern regarding the potential adverse impact of a retrial upon the defendant's psychological wellbeing and recommended further assessment by a psychologist or neuropsychologist in relation to the defendant's claimed amnesia for the events in question.

[49] Following disclosure of Dr Kennedy's report, the defence offered a plea of guilty to infanticide in respect of the charge of murder.

[50] However, the partial defence of infanticide offers no defence to attempted murder nor does the partial defence of diminished responsibility and in these circumstances the defendant has pleaded guilty to the attempted murder of TA.

Infanticide as a separate offence and defence to murder

[51] I have read and considered all the relevant and admissible psychiatric and psychological evidence in this case, and I have a detailed knowledge of the background facts and evidence having been the judge who considered the defendant's application for leave to appeal. All counsel agreed to me dealing with this case.

[52] The offence of infanticide is set out in the Infanticide Act (Northern Ireland) 1939 ("the 1939 Act"), as amended by the Coroners and Justice Act 2009. These legislative provisions mirror the provisions in England & Wales dealing with infanticide.

[53] The applicable law is section 1 of the 1939 Act as follows:

> "(1) Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, if the circumstances were such that but for this Act the offence would have amounted to murder or manslaughter, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.
>
> (2) Where upon the trial of a woman for the murder or manslaughter of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, if the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder or manslaughter, return in lieu thereof a verdict of infanticide.
>
> (3) Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter or a verdict of not guilty on the ground of insanity."

[54] The maximum sentence for infanticide is life imprisonment.

[55] It is common case that *R v Tunstill* [2018] EWCA Crim 1696 represents the leading authority on the offence of infanticide. The Court of Appeal in that case identified a number of principles relevant to the proper interpretation and application of the legislation, which were summarised by the Court of Appeal in Northern Ireland (*R v ZX*) and broadly are as follows:

(i) The legislative purpose underlying the Infanticide Acts, both in England & Wales and in Northern Ireland, is one of mercy towards mothers;

(ii) Once evidence capable of supporting a defence of infanticide has been raised, the burden rests upon the prosecution to prove that the requirements of the defence are not satisfied;

(iii) In order to establish infanticide, the balance of the mother's mind at the time of the killing must have been disturbed by reason of her failure fully to recover from the effects of giving birth. However, that failure need not constitute the sole cause of the disturbance It is sufficient if it represents an operative, substantial or contributory cause, provided that its contribution is more than minimal;

(iv) A pre-existing mental illness or psychological condition, when considered together with the effects of childbirth, may provide a sufficient evidential basis to satisfy the statutory requirement that the disturbance arose "by reason of" the failure fully to recover from the effects of giving birth; and

(v) The issue of causation is ultimately one of fact for a jury, which must be determined in accordance with appropriate judicial directions as to what may constitute a legally effective cause.

[56] Having regard to Dr Kennedy's findings, the expert evidence considered as a whole, and the principles set out in *Tunstill* the prosecution accepted that it could no longer discharge the evidential burden required to secure a conviction for murder and, accordingly, accepted the plea offered by the defence to infanticide.

Sentencing guidelines in respect of infanticide

[57] Blackstone's 2026 commentary on infanticide outlines that the approach to sentencing to be taken by the courts was considered by the Court of Appeal in England & Wales in the decision of *R v Sainsbury* (1989) 11 Cr App R (S) 553. In this case the defendant had become pregnant at the age of 15 but concealed the pregnancy from those around her. She subsequently gave birth without medical assistance in squalid conditions and thereafter wrapped the infant in a blanket, took

the child some distance from where she gave birth and caused the infant's death by drowning in a river. The sentencing judge accepted that the balance of the defendant's mind had been disturbed by the effects of childbirth but concluded that her responsibility for her actions had not been wholly removed. A sentence of 12 months' detention in a young offender centre was imposed. On appeal, however, the court had regard to sentencing statistics demonstrating that, in the preceding decade, 59 convictions for infanticide had resulted in no immediate custodial sentence, offenders instead having been dealt with by way of probation, supervision or hospital orders. In those circumstances, the Court of Appeal held that, notwithstanding the inherent seriousness of the offence, the mitigating factors were overwhelming and accordingly substituted a probation order for the custodial sentence initially imposed.

[58] Further support for that approach is found in the sentencing practice of this jurisdiction and can be found in the judgment of Treacy J in *R v AK* [2016] NICC 2 where he imposed a probation order in respect of an offence of infanticide. He relied on the decision of *Sainsbury* and also the decision in *R v Lewis* [1989] 11 Cr App R(S) 457, before making that disposal.

[59] The defence advocates that this is the approach the court should adopt in the present case given the unique fact specific mitigation and circumstances prevailing. The defence position is that the offence of infanticide, involving as it does the loss of life, represents the gravamen of the offending. The Court of Appeal has recognised that the purpose of the infanticide legislation is to afford mercy to mothers whose culpability has been substantially affected following childbirth. It is argued that the circumstances which reduce culpability in respect of the infanticide offence are equally relevant to the assessment of culpability for the attempted murder offence.

Sentencing in attempted murder cases

[60] The maximum sentence for attempted murder is life imprisonment. In the case of *R v Michael Loughlin (DPP's Reference No.5 of 2018)* [2019] NICA 10, it is observed that guidance on the appropriate range of sentencing for the offence of attempted murder is limited by virtue of the fact that the circumstances in which the offence can be committed can vary considerably. However, the paper produced by Sir Anthony Hart reviewing decisions in this jurisdiction demonstrates a range of between 12 and 22 years as the starting point in non-terrorist cases. The Court of Appeal in *Loughlin* stated at para 20:

> "We agree with the Sentencing Guidelines Council that the culpability of the offender is the initial factor in determining the seriousness of the offence. The fact that the offender had an intention to kill demonstrates of itself a high level of culpability but there is a distinction to be made between planned, premeditated, professional

> attempts to kill and those that arise spontaneously. We also consider that the extent of harm caused is relevant to the overall sentence but that the court also has to take into account the harm that the offence was intended to cause or might foreseeably have caused."

[61] The court was referred to the sentencing judgment of Lambert J in the case of *R v SA* of 3 July 2024 sitting at Leeds Crown Court. In that case, the defendant, aged 35, pleaded guilty to three counts of attempted murder arising from a violent attack upon her three young children, then aged four years, two years and 10 weeks. The offences arose from a single incident when her husband was away from the home. Each of the children was stabbed a number of times. The defendant then stabbed herself, inflicting eight wounds to her neck and six wounds to her chest. The offending was committed against a background of chronic mental illness, including severe depressive and psychotic symptoms which had significantly deteriorated following the birth of her youngest child. It was observed she had a sad and troubled history including claims of being sexually abused and subjected to violence in the past. At the time of the offending, she held delusional beliefs that her children were at risk of harm and that she could protect them only by taking them to heaven with her. Although the sentencing judge observed that the defendant could and should have sought assistance when her condition worsened, the court recognised the profound impact of her mental disorder upon her responsibility for the offences. A hybrid order was imposed, comprising a custodial sentence of 10 years and eight months together with detention in hospital pending her recovery.

[62] This case demonstrates that, where a mother possesses the requisite mens rea for murder but fails in her intention, the existence of a significant mental disorder, even one capable of giving rise to a verdict of infanticide or diminished responsibility, does not necessarily reduce culpability to a level inconsistent with the imposition of a substantial punitive sentence. It is argued that the offender's mental condition, whilst highly material to mitigation, does not extinguish personal responsibility for extremely grave offending.

[63] While accepting that a global approach to sentence may be adopted, the defence submits that it would be wrong to allow the attempted murder count to define the overall criminality, divorced from the circumstances which underpin and mitigate the offending as a whole.

[64] The prosecution disagrees. On behalf of the prosecution, it is submitted that the sentencing exercise in the present case is rendered much more complex by the interaction between the offences of infanticide and attempted murder.

Consideration

[65] The plea to infanticide was accepted on the basis that, at the time of RV's death, the balance of the defendant's mind was disturbed by reason of her failure fully to recover from the effects of giving birth. It is accepted that the defendant was suffering from depression at the material time and that the effects of childbirth were a contributory factor to that condition. However, it is undisputed that the defendant retained the capacity to form a specific intention to kill and, in respect of TA, acted upon that intention by attempting to take her life. The deliberate formation of an intention to kill is, of itself, indicative of a high degree of culpability. Nevertheless, it is accepted that the court must consider the extent to which the defendant's depressive illness may have reduced her culpability for the offence of attempted murder. It is for the sentencing court to determine the level of her residual culpability and sentence accordingly. Whilst the expert evidence of Dr Sloan and Dr Kennedy supports the conclusion that the defendant was experiencing a mild depressive episode at the relevant time, the question is what reduction in culpability arising from that condition is to be afforded.

[66] The court considers that the attempted murder in the circumstances of the present case is the more serious of the two offences to which the defendant has pleaded guilty. This is because the offence requires the formation of a specific intent to kill, which the defendant accepts she formed. I accept that Parliament did not legislate for infanticide to apply to inchoate offending where other children are killed or harmed.

[67] Whilst I accept that attempted murder should be regarded as the headline offence, given that it involves an admitted intention to kill, I do not consider that the remaining offence of infanticide can be viewed in isolation from it. Both offences were committed contemporaneously and formed part of a single transaction. Furthermore, there is an accepted relationship between the defendant's mental condition, the surrounding circumstances of the offending and the intentions she formed at the relevant time. In those circumstances, the proper approach is to apply the principle of totality and impose a sentence that fairly and proportionately reflects the overall seriousness of the offending behaviour.

[68] In approaching sentence in the present case I must first consider and assess the culpability of the defendant. This requires a consideration of the defendant's mental disorder and its impact on her offending.

[69] The psychiatric evidence is generally agreed on the fact that the defendant was suffering from depression. The relevant question being whether that is to be considered moderate to severe or mild. Dr Murphy explained that, in her opinion, the symptoms described during pregnancy and after RV's birth were consistent with a moderate-to-severe depressive episode. Dr Kennedy concluded that at the material time the defendant was suffering from an abnormality of mental

functioning arising from a recognised medical condition, namely a mild depressive episode. In her opinion, that abnormality was capable of providing an explanation for the defendant's actions and may have impaired her capacity for rational judgement. The question of whether any such impairment was substantial is a matter for the court.

[70] Dr Sloan diagnosed a mild depressive episode. He nevertheless viewed the offending as occurring in the context of a complex combination of psychosocial stressors, including perceived abandonment, social isolation, language difficulties and depressive symptoms. In his opinion, the defendant came to believe that she had no realistic alternative to her circumstances and acted against that background. He further explained that post-natal depression is a multifactorial condition involving biological, neuroendocrine, psychological and social factors. He considered that women suffering from post-natal depressive illness, together with other significant social pressures are at an increased risk of suicide and, more rarely, infanticide.

[71] Dr Bownes was of the view that the defendant's judgement and decision-making were substantially affected by a clinically significant mood disorder arising from the combined effects of biochemical and social stressors.

[72] Taking the psychiatric evidence as a whole, I am satisfied that the defendant was suffering from a depressive disorder falling between the mild to moderate range, but more towards to moderate range, at the time of offending. That this was a multifactorial condition and involved biological, psychological and social factors. I agree with Dr Bownes that the defendant's judgement and in turn her culpability was substantially affected by this significant disorder.

[73] In assessing culpability absent the defendant's post-natal depressive illness, I am of the view that two factors place the attempted murder of TA in the very high bracket for this type of offending those factors being the attempted murder of a child and the use of a knife in the incident. Having considered the full psychiatric and psychological picture set out in the reports summarised above I find as suggested by Dr Bownes that the defendant's culpability was substantially reduced by a clinically significant post-natal depression. This in my view reduces culpability down to within the lower to medium culpability bracket.

[74] Next, I must consider the assessment of harm caused by the defendant's offending. In terms of harm in respect of infanticide, it is high harm as baby RV lost his life. In respect of attempted murder given the physical and psychological injuries sustained by TA as articulated in the report of Dr O'Connell and Ms Magee, the enduring psychological harm to TA in my assessment is high harm.

[75] Accordingly, I am of the view that in relation to attempted murder of TA the starting point for such an offence encompassing low to medium culpability and high

harm before adjustment for aggravating or mitigating factors gives a starting point of 11 years.

[76] I now identify the following aggravating feature as:

(i) Breach of trust involved in the infanticide of RV and attempted murder of TA;

(ii) the offences were committed by their mother within a domestic setting; and

(iii) the offending involves the stabbing of two children.

[77] In terms of mitigation I identify the following mitigating features as:

(i) at the time of killing her baby son and attempted murder of her two-year-old daughter the defendant was a 29-year-old woman with no previous convictions;

(ii) the defendant was a victim of sexual abuse, domestic violence, and coercive control by her former partner who had a lengthy and relevant record;

(iii) the defendant was confirmed as a victim of modern day slavery by the Home Office;

(iv) she was experiencing social isolation with little or no support network; and

(v) she has expressed remorse.

[78] Applying appropriate weight to the aggravating and mitigating factors identified above, I conclude that the just and proportionate sentence, applying the principle of totality and before any reduction for plea is a global custodial sentence of 13 years.

[79] The defendant pleaded guilty to the count of infanticide at the first available opportunity. However, not so in respect of the offence of attempted murder and full credit cannot be afforded in respect of that offence. However, I give substantial credit for the defendant's eventual plea of guilty to both counts. I reduce the overall sentence by approximately 23% and after reduction the global sentence will be a determinate custodial sentence of 10 years in respect of the offence of attempted murder. In the circumstances, I do not differentiate between the counts in terms of the sentence applied to each given the global nature of the sentence.

Assessment of dangerousness

[80] I have also considered whether the defendant satisfies the statutory test for dangerousness under the provisions set out in the Criminal Justice

(Northern Ireland) Order 2008 ("the 2008 Order"). The relevant question is whether there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences.

[81] The authorities make clear that a significant risk is one which is noteworthy or considerable and involves a threshold substantially higher than a mere possibility. In undertaking that assessment, the court must have regard to the circumstances of the present offending, the defendant's antecedents, her personal history and all other relevant material.

[82] In the present case, the Probation Board has assessed the defendant as presenting a medium risk of reoffending and has not assessed her as posing a risk of serious harm to the public. Whilst that assessment is not determinative, it is a factor to which I attach considerable weight. I also take account of the defendant's clear criminal record. Probation considered the defendant's criminal actions appeared linked to an intolerable home environment which included social isolation and abuse. That immediately following the offending she was diagnosed with depression and medicated. Her offending is viewed as an isolated incident with no established pattern of violence.

[83] Against those matters must be set the seriousness of the present offences and the fact that they involved the infanticide of her son and attempted murder of her daughter. Nonetheless, the evidence suggests that the offending occurred within the context of a mental health crisis rather than as part of any pattern of violent disposition.

[84] Accordingly, whilst the offences are undoubtedly grave, there is limited material to support a conclusion that the defendant poses a significant risk of serious harm through the commission of further specified violent offences. The ultimate determination of that issue is, of course, one for the court upon consideration of all of the evidence. Having taken into account the contents of the pre-sentence report and its finding that the defendant is not dangerous together with the available psychiatric and psychological evidence I conclude that the defendant is not to be assessed as dangerous within the terms of the 2008 Order.

[85] Having imposed a determinate custodial sentence of 10 years this will be split equally between custody and supervised licence and apply to each count. The sentences will run concurrently. I recommend the following additional licence conditions to support risk management of this case:

(i) The defendant must attend all appointments arranged with her GP, mental health services and social services and co-operate fully with any care or treatment they recommend.

(ii) The defendant must actively participate in any programme of work recommended by her supervising officer, designed to reduce any risk she may present and to attend and co-operate in assessments by PBNI as to her suitability for programmes and other offence focused work.

(iii) The defendant must not develop any intimate relationships without first notifying her Probation Officer who will take appropriate steps to ensure that verifiable disclosure has been made and liaise with Social Services in respect of child protection concerns if appropriate.

(iv) The defendant must permanently reside at an approved address and must not leave to reside elsewhere without obtaining the prior approval of her probation officer; thereafter must reside as directed by her Probation Officer.

(v) The defendant must not have any unsupervised contact with any children under the age of 18 unless approved and supervised by social services.

[86] Accordingly, in the ordinary course of events the defendant would be released from custody having time served. However, I have also been informed of the defendant's immigration status and the Home Office intention to commence deportation proceedings. A deportation order was made following the defendant's previous convictions, however, those convictions were subsequently quashed by the Court of Appeal, and the deportation process must therefore begin afresh. At present, the defendant is not subject to a deportation order.

[87] The position is that with a sentence now having been imposed which is in excess of 12 months, the Secretary of State will be required to consider whether a fresh deportation order should be made. The defendant would then have rights of challenge within the immigration jurisdiction. I am further informed that a presumptive detention warrant has been issued and that, irrespective of the sentence I have imposed the defendant is likely to remain in immigration detention pending further decisions by the Home Office.

[88] These are matters which may follow from the sentence imposed. However, they are collateral consequences arising under the immigration regime and do not determine the appropriate sentence, which must be fixed by reference to the seriousness of the offending, the defendant's culpability, the harm caused, and all relevant aggravating and mitigating factors.

[89] If the defendant is transferred to immigration detention or any other custodial or residential facility, it is important that her psychiatric records, treatment history and current medication regime accompany her without delay. Given her established psychiatric vulnerabilities any ongoing treatment needs, continuity of care will be essential to safeguard her wellbeing and to ensure that appropriate clinical support remains in place.

[90] The court will hear counsel on the question of a disqualification order under the Safeguarding Vulnerable Groups legislation and any ancillary order deemed appropriate.