

**NI SENTENCING POLICY STATEMENTS CONTAINED IN GUIDELINE
JUDGMENTS**

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INTRODUCTION

In this document the Lady Chief Justice's Sentencing Group have extracted the main Northern Ireland sentencing policy statements from judgments contained within the Judicial Studies Board Sentencing Guideline Compendium for the assistance of sentencers.

SECTION 1 - ATTACKS ON THE ELDERLY

1.1 Robbery of householder - deterrence and need to protect the elderly and infirm

[*R v Edward Stuart Cambridge* \[2015\] NICA 4](#)

“[49] We have concluded that the commensurate period for the custodial aspect of this extended custodial sentence will be the period of 10 years determined by the learned trial judge... Whilst this does constitute a stiff sentence and is probably at the higher end of the appropriate bracket, nonetheless we do not consider it to be manifestly excessive or wrong in principle in a case of this despicable nature where deterrence and the need to protect the elderly and infirm are highly relevant components.”

1.2 Aggravated burglary of elderly householders - relevance of age and vulnerability

[*R v Luke Walls* \[2021\] NICA 19](#)

“[23] The factors of age and vulnerability invite further reflection. In the vast majority of cases involving the elderly these twin factors will fuse. Age and vulnerability feature prominently in the sentencing framework which the cases outlined above have developed. There is one feature of sentencing practice in this area worthy of note. In cases of aggravated burglary involving physical attack on a male householder of younger years the tendency has been to impose more lenient sentences...”

1.3 Domestic burglary - Persistent offenders/multiple offending - “Sneak thieving”- targeting the elderly may aggravate seriousness of offending

[*R v Anthony Megarry* \[2002\] NICA 29](#)

The COA (at page 13) referred to *R v Brewster and others* [1998] 1 Cr App R (S) 181 in which Lord Bingham of Cornhill CJ laid down guidelines for sentencing courts in domestic burglary cases and detailed a number of factors which may aggravate the seriousness of an offence of this type including targeting the elderly:

“Generally speaking, domestic burglaries are the more serious ... if they are targeted at the elderly ...”

SECTION 2 - ATTEMPTED MURDER

2.1 Non-terrorist attempted murder – factors to consider in sentencing

[*R v Michael Loughlin \(DPP's Reference \(No. 5 2018\) \[2019\] NICA 10*](#)

“[19] This court has not, however, given any further guidance on the appropriate range of sentencing for the offence of attempted murder. The circumstances in which this offence is committed can vary considerably. That point is reinforced by the extensive catalogue of aggravating and mitigating factors to which the Sentencing Guideline Council makes reference and which we consider should be taken into account in determining the correct sentence. The paper produced by Sir Anthony Hart reviewing relatively recent decisions in this jurisdiction, shows a variation between 12 and 22 years as the starting point in those non-terrorist attempted murder cases.

[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.

[21] We consider that the intention to kill is a significant factor suggesting a materially higher range of sentencing than that adopted in *McCauley and Seaward*. There are cases involving substantial provocation, mental health issues or youth of the offender and little actual harm where starting points below those noted in the paper prepared by Sir Anthony Hart and set out at paragraph [18] above would be appropriate. Although the spontaneous commission of this offence with no aggravating circumstances might also lead to a starting point below the range set out above, generally we consider that the starting point for sentences for this offence are likely to lie within that range. We do not consider that it is possible to give any more specific guidance.”

2.2 Relevance of combination of features to the assessment of culpability and no evidence re intention of offender; manner of commission of offence can constitute an aggravating factor

[*R v Michael Loughlin \(DPP's Reference \(No. 5 2018\) \[2019\] NICA 10*](#)

“[23] We accept that an essential element of this offence requires a finding of a specific intent to kill. We agree that the features set out in the previous paragraph were evidentially material to the intention of the offender. This was not a case where there was evidence of admissions or other evidence which demonstrated his intention. We consider, however, that the combination of features in a case of this kind is relevant to the assessment of culpability. This was a persistent attack over a prolonged period where the victim’s face was pummelled by the offender’s fists and his head was subject to repeated stamping. Much of this continued after the offender’s body had gone limp, he was offering no resistance and was incapable of any self-protection. The manner in which an offence is committed can be an aggravating feature and was so in this case.

...

[27] The learned trial judge recognised the need to ensure that he did not attribute as aggravating factors those matters which were actually part of the offence. For the reasons set out above, however, we are satisfied that he was correct to recognise the persistence of the attack as indicative of the extent of the determination of the offender to achieve the intended result. We are satisfied that the manner of the commission of the offence can in appropriate circumstances constitute an aggravating factor and that such was the case in this instance.”

2.3 Need to protect the public from exposure to such violence

[*R v Michael Loughlin \(DPP's Reference \(No. 5 2018\) \[2019\] NICA 10*](#)

“[30] We have set out ... above the significant physical and mental impacts upon the victim of this horrendous, brutal assault. It occurred as the victim was trying to make his way to the sanctuary of his own home. It is clear from the depositions that this frightening attack was carried out in full view of those in the public street, thereby exciting feelings of apprehension and danger among those passers-by. Members of the public going about their everyday business need to be protected from being exposed to the apprehensions caused by seeing such violence.”

2.4 Endorsement of guidance re personal circumstances

[*R v Michael Loughlin \(DPP's Reference \(No. 5 2018\) \[2019\] NICA 10*](#)

“[31] ... We endorse the continued relevance of the guidance about personal circumstances in *Attorney General's Reference (No 7 of 2004) (Gary Edward Holmes)* [2004] NICA 42 at paragraph [15]; *Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33 at paragraph [37] and *R v Keith McConnan* [2017] NICA 40 at paragraph [49].”

SECTION 3 - BLACKMAIL

3.1 Online blackmail - “Sextortion” and catfishing

3.1.1 Assessment of totality; serious aggravating factors

[*R v Jonathan Playfair* \[2024\] NICA 21](#)

“[66] ... where the possession of images are produced or obtained through coercion and thereafter disseminated ... it is proper to regard them as serious aggravating factors in the overall assessment of totality.”

3.1.2 Seriousness of blackmail offences

[*R v Jonathan Playfair* \[2024\] NICA 21](#)

“[87] Blackmail involves the demanding of payment or benefit (or both) from someone in return for not revealing compromising or damaging information about them. Blackmail has many faces, all ugly. Blackmail, at its core, involves the abuse of power to extort. In the present case we are dealing with the threatened and actual dissemination of a non-consensually obtained sexual recording and images involving schoolchildren as the means of coercion. The seriousness of the offence of blackmail is reflected in the fact that it can attract a maximum sentence of imprisonment of 14 years.”

3.1.3 Requirement for deterrent custodial sentences/the seriousness of online threats to victims

[*R v Jonathan Playfair* \[2024\] NICA 21](#)

“[111] We consider that there can be no doubt that in all but exceptional cases, deterrent custodial sentences should be imposed upon those who engage in blackmail and overlapping or related sexual offending, particularly where the victim is young, vulnerable or both.

[112] As the judge noted, an increasingly significant number of blackmail cases are being dealt with in the Crown Court in Northern Ireland where the blackmail takes place online or through social media. In *A-G Ref (no. 8 of 2009) (R v McCartney)* [2009] NICA 52 the court commented at paragraph 16:

‘[16] The internet has revolutionised the way in which we live. It has provided us with ready access to information and facilitated social contact. Children have enjoyed many positive educational

experiences, but it is in the social sphere that the change has been most marked. An Ofcom survey carried out last year found that 49% of children aged 8 to 17 have an online profile on a social network and indeed more than a quarter of 8 to 11-year olds in the United Kingdom also have such a profile. A survey published this week by the University of Ulster found that 48% of P7s use social network sites even though the providers of those sites purport to prohibit children of that age from such use. Although it is clear that there is much that is positive about the internet this case demonstrates the dangers to which children can be exposed as a result of which they may be corrupted or indeed in some cases exploited.'

[113] Fast forward 15 years to 2024 and the menacing problems identified in *McCartney* have significantly grown. So called "sextortion", as the sentencing judge pointed out:

'ranges from the use of social media where the offender and victim know each other in real life through to organised online gangs in so-called "troll farms" who stalk the internet accessing computers and devices of the often vulnerable to then exploit those victims to send intimate images which are then used to blackmail them. There have been a number of such cases, where confronted with humiliation, young people have taken their own lives.'

[114] We agree with the trial judge that the online threat to a victim that they will stand humiliated or embarrassed indefinitely, given the near permanent nature of online publication, is a serious threat."

3.2 Blackmail - general and paramilitary context

3.2.1 Blackmail is a serious offence which requires deterrent sentences; paramilitary dimension and requirement of greater penalties than in non-terrorist context

[Attorney General's Reference \(No. 5 of 2004\)\(Thomas Potts\) \(AG Ref 10 of 2004\) \[2004\] NICA 27](#)

"[16] ... [The Court of Appeal in *R v Hughes* [2003] NICA [16] echoed the remarks of Scott Baker JJ in *R v Cioffo* [1996] 1 CR App R (S) 427:]

'Blackmail is always a serious offence. As has been said by this Court in the past it preys on the soul of the victim, in this case not only the victim but his family too. Deterrent sentences have

to be passed by the courts when those guilty of these offences are brought to justice.'

...

[17] As Scott Baker J said in *Cioffo*, blackmail is always a serious offence. It is a particularly grave crime in Northern Ireland. The presence of paramilitary organisations in our community and their criminal activities cause many people in Northern Ireland to feel vulnerable to pressure that is exerted overtly or nominally on behalf of those organisations. More seriously than that, however, is the threat that paramilitaries in general and blackmail carried out in their name particularly, pose to the peace and good order of our society. The purpose of these organisations is to set up parallel and alternative structures to the institutions of the state. They are determined to undermine the rule of law. They seek to enforce their own code of conduct and to thwart the proper administration of justice. Crimes committed by paramilitary organisations, or ostensibly on their behalf must occupy a more serious category on that account.

[18] In *Attorney General's reference (No 3 of 2004)* this court observed that, "[s]o long as paramilitary violence continues in our society ... those convicted of offences associated with that type of violence should receive more severe sentences, as a general rule, than those whose crimes are committed in a non-terrorist context". We consider that this applies equally to crimes such as blackmail where violence is threatened. As a matter of course, therefore, crimes with a terrorist or paramilitary dimension should be visited with greater penalties than their non-terrorist counterparts.

[19] A further aspect of blackmail offences carried out on behalf of or represented to be on behalf of paramilitary organisations is the natural reluctance of victims to alert the police to their occurrence. People are understandably afraid to reveal that they have become the targets of those who stand for paramilitary organisations. They are afraid to give evidence. The courts must respond to this by imposing severe penalties where victims are prepared to testify so as to convey to those who might be tempted to perpetrate such crimes that the consequence will be, where they are detected and successfully prosecuted, a substantial penalty."

SECTION 4 - BURGLARY

4.1 Aggravated burglary

4.1.1 Emphasis on deterrence

[R v Luke Walls \[2021\] NICA 19](#) (aggravated burglary of elderly householders)

“[22] This *excursus* through the relevant decided cases [at paras [16] – [21]] yields [that] ... there is a marked emphasis on deterrence in the sphere of this type of offending.”

4.1.2 Attacks due to ill feeling between families not comparable to violence used by robbers

[R v Luke Walls \[2021\] NICA 19](#) (aggravated burglary of elderly householders)

“[24] ... The Lord Chief Justice also identified a further distinguishing feature, namely this was a case of ill feeling between two families which –

‘.. was not comparable to the violence used by robbers when they break into homes and use violence (and often very severe violence) to force the householders, often elderly people, to hand over their money and their valuables.’

4.1.3 Attacks due to ill feeling between families distinguished from domestic burglaries including attack on occupants

[R v Murray and Armstrong \[2003\] NICA 24](#)

“[11] We consider that for the type of offence of which *R v Moore* [i.e. a premeditated revenge attack by a group on a man living in a caravan with his wife and children] and the present case are examples it is not necessary to impose sentences of a length appropriate to punish and deter burglars who break into houses for gain and attack the occupants. The severity of the beating, the degree of premeditation and the use of the weapon are features which required the court to impose custodial sentences...”

4.2 Domestic burglary

4.2.1 Attempted burglary

[R v McCaughey and Smyth \[2014\] NICA 61](#)

“[13] ... We accept the proposition that the sentence for an attempt should almost always be less than the sentence which would have been imposed if that offence had been completed. We also recognise, however, that much will depend on the circumstances in which the attempt failed ...”

4.2.2 Relevance of Sentencing Guidelines Council's guidance

[*R v McCaughey and Smyth* \[2014\] NICA 61](#)

“[22] In Northern Ireland we have a small Crown Court judiciary who have the benefit of regular meetings with colleagues where sentencing issues can be discussed both formally and informally. Sentencing is carried out exclusively by full-time judges most of whom have had considerable experience of criminal law before going on the Bench. We recognise the assistance to be derived from the aggravating and mitigating features identified by the Sentencing Council in its guidance but we have discouraged judges and practitioners from being constrained by the brackets of sentencing set out within the guidance.

[23] We set out the rationale for that approach at paragraph 25 of *R v McKeown, R v Han Lin* (DDP's Reference Nos 2 and 3 of 2013).

‘The Definitive Guideline suggests starting points and ranges depending upon the category of harm and the nature of the role into which the offender falls. There are, however, dangers with that approach. In many instances there will be competing considerations affecting the offender's role and inevitably considerable variation even within each category of harm. We consider that in attempting to categorise each case in the way suggested in the Guidelines the judge may be distracted from finding the right sentence for each individual case. Guidelines and guidance in this jurisdiction are intended to assist the sentencing judge without trammelling the proper level of discretion vested in the sentencer. This is not to say that the Definitive Guideline does not provide useful assistance in identifying aggravating and mitigating factors and indicating appropriate ranges of sentencing worthy of consideration depending on the precise circumstances of the individual case.’

[24] Despite this clear statement of principle we note that the submissions in the court below and in this court have sought to place considerable emphasis on the bracket into which these cases fall. We have also noted in other appeals that there has been some tendency to interpret the remarks of this court at paragraph 16 of *R v SG* [2010] NICA 32 that assistance may be derived from the final report of the Sentencing Guidelines Council as somehow

indicating a different approach in sexual offences. We wish to make it clear that the approach set out at paragraphs 22 and 23 above applies in those cases also.”

4.2.3 Suspended sentence – exceptional case does not qualify the general principle in *R v Ferguson*

[Attorney General's Reference \(No. 2 of 1993\) \[1993\] 5 NIJB 71](#)

At page 7:

“We fully recognise the gravity of the offence committed in this case. But having regard to the authorities relating to the suspension of sentence which we have cited, and to the considerable number of extenuating features in this case, we are of the opinion that, in the special circumstances of the case, whilst the course taken by the learned trial judge in suspending the sentences was lenient and merciful, that course was not unduly lenient. Accordingly we have decided not to substitute immediate sentences of imprisonment for the suspended sentences passed on the offender.

So that there is no misunderstanding of this judgment the court wishes to emphasise the following. This judgment does not mean that this court has in any way altered or qualified the general principle which it expressed in the case of *R v Ferguson* (as yet unreported) that

‘It must be brought home to offenders who violate the privacy and security of old people in their homes and expose them to violence that immediate and heavy sentences of imprisonment will follow their detection and conviction.’

We again endorse this as the usual approach which should be taken in sentencing. But every just system of sentencing offenders must permit a judge to show leniency in an exceptional case. The exception in no way alters the general rule. We are of the opinion that because of the considerable number of mitigating factors here the learned trial judge was entitled to regard this as an exceptional case.”

4.3 Persistent offenders/multiple offending

4.3.1 Requirement for deterrence sentences in cases of repeated burglaries; effect of burglary on victims and general factors which increase the seriousness of domestic burglary

[*R v Anthony Megarry* \[2002\] NICA 29](#) (“Sneak thieving” case)

Pages 11 – 13 :

“There has been a considerable swell of public opinion in recent years, to the effect that repeated burglaries have become increasingly intolerable and that stiffer sentencing is required by way of deterrent...

The prevalence of such offences in England and Wales is set out in detail in the judgment of Lord Bingham of Cornhill CJ in *R v Brewster and others* [1998] 1 Cr App R (S) 181, in which the Court of Appeal laid down guidelines for sentencing courts in domestic burglary cases. Lord Bingham affirmed the statement of the court in *R v Cunningham* [1993] 2 All ER 15 that the prevalence of the offence is a legitimate factor in determining the length of the custodial sentence to be passed, since the seriousness of an offence is clearly affected by how many people it harms and to what extent. In discussing the effect upon victims of burglary in *R v Brewster* Lord Bingham said at page 185:

‘Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled.’

At page 186 he detailed a number of factors which may aggravate the seriousness of an offence of this type:

‘Generally speaking, domestic burglaries are the more serious if they are of occupied houses at night; if they are the

result of professional planning, organisation or execution; if they are targeted at the elderly, the disabled and the sick; if there are repeated visits to the same premises; if they are committed by persistent offenders; if they are accompanied by vandalism or any wanton injury to the victim; if they are shown to have a seriously traumatic effect on the victim; if the offender operates as one of a group; if goods of high value (whether actual or sentimental) are targeted or taken; if force is used or threatened; if there is a pattern of repeat offending.’”

4.3.2 Criminal record in domestic burglary cases of more significance than in other crimes

[R v O'Keefe \(16/02/98\)](#)

At pages 2 - 3:

Reference is made to *R v Brewster and others* [1998] 1 Cr App R (S) 181 in which the Lord Chief Justice in England, Lord Bingham, stated:

“The record of the offender is of more significance in the case of domestic burglary than in a case of some other crimes. There are some professional burglars whose records show from an early age they have behaved as predators preying on their fellow citizens, returning to their trade almost as soon as each prison sentence has been served. Such defendants must continue to receive substantial terms of imprisonment. There are, however, other domestic burglars whose activities are of a different character, and whose careers may lack any element of persistence or deliberation. They are entitled to more lenient treatment.”

4.4 Burglary of commercial/business premises – requirement for deterrent sentences

[R v Lendrum \[1993\] 7 NIJB 78](#)

At page 6:

“... We consider that the court should seek to protect the occupiers of shops and other commercial premises against burglaries by imposing sentences for such offences which contain a deterrent element, particularly when the offender has previous convictions for burglary...”

4.5 Burglary of post offices – requirement for deterrent sentences with habitual offending warranting substantial sentences

[R v Robert Black \[2003\] NICA 51](#)

“[9] We agree with the judge that burglaries of post offices must attract deterrent sentences. We also agree with him that the appellant’s long record demonstrates that he is a habitual criminal committing regular offences for gain and that a substantial sentence was warranted...”

SECTION 5 – DRUG OFFENCES

5.1 Cultivation of cannabis/production of drugs

[R v Luong Bui \[2022\] NICA 78](#) (cultivation of cannabis on a wider commercial scale)

“[10] The maximum sentence for cultivation of cannabis contrary to section 6(2) of the Misuse of Drugs Act 1971 is 14 years’ imprisonment. The guideline cases that we have been referred to concerning sentence in cases involving cannabis cultivation are this court’s decision in *McKeown & Han Lin* [2013] NICA 38 and the England and Wales Court of Appeal decision in *R v Xiong Xu and others* [2007] EWCA Crim 3129...

[11] In *Xiong Xu* which was cited with approval in *McKeown* the Court of Appeal in England and Wales indicated at paragraph 6 that they did not intend to lay down any guidelines with regard to sentencing in commercial cannabis cultivation cases, but rather to indicate brackets to achieve consistency in sentencing. The court went on to suggest:

‘ ... we consider that for those involved at the lowest level, the starting point should be three years before taking into account any plea of guilty and personal mitigation ... For those who set up and control individual operations, the organisers, the starting point should be 6 to 7 years depending upon quantity of cannabis involved ... The starting point for managers will be somewhere between three and seven years depending on the level of their involvement and the value of the cannabis being produced. Severer sentences may be appropriate for those who control a large number or network of such operations...’

[12] In *McKeown* this hierarchical structure in relation to cannabis factories was repeated. It referred at the lowest level to workers/gardeners, then managers and above the managers were the organisers, those who secured the premises, the workers and equipment. Then a top echelon of offenders who controlled a substantial number of such operations.

[13] This court recognises a tier or sentencing bracket above organisers of a single cannabis factory. A bracket for those involved in a ‘network of operations’ which must be higher than the 6-7 years starting point. Depending on the scale of the network of such operations that range must be between 7 – 14 years.”

[See also [DPP's Reference \(No.2 of 2013\) \(R v McKeown\); R v Han Lin \[2013\] NICA 28](#), paras [19] and [20].]

5.2 Supply of drugs

[R v Dunlop \[2019\] NICA 72](#)

“[12] The maximum sentence for supply of a Class A drug contrary to section 4(3)(b) of the Misuse of Drugs Act 1971 is life imprisonment and in relation to class B drugs is 14 years imprisonment on indictment. The decision of this court in *R v McKeown and R v Han Lin, DPP's Reference No 2 of 2013* [2013] NICA 28 at [16], (applying *R v Hogg and others* [1994] NI 258) establishes what may be termed the strong general rule that the offence of supplying drugs will ... “in all but exceptional cases...attract an immediate custodial sentence”. The judgment continues:

‘Much will depend on the circumstances of the supply, its scale, frequency and duration, the sums of money involved and the defendant's previous record, together with his or her individual circumstances.’

[13] In *McKeown & Han Lin* this court, unsurprisingly, did not embark upon any illustration or elaboration of what might rank as an exceptional case justifying a non- custodial disposal for this kind of offending. Some useful guidance can be found in three decisions of the English Court of Appeal, namely *Attorney-General's Reference No 101 of 2009* [2010] EWCA Crim 238 (*Matheson*) which commented upon *R v Alfonso & Ors* [2004] EWCA Crim 2342 and *Attorney General's Reference No 64 of 2003 (Boujettif and Harrison)* [2003] EWCA Crim 3514.

[14] In the first of this trilogy of cases, *Boujettif & Harrison*, the Court of Appeal formulated two qualifying conditions to be satisfied in order to justify a non- custodial disposal for this kind of offending:

- (I) the offence must be of a kind which if punished by a non-custodial disposal public confidence in the criminal justice system will not be undermined; and
- (II) there must be a proper basis justifying a real reason to believe the defendant wants to rid himself of drugs.

...

[16] The key passage in *Matheson* is at [12]:

‘We want to say absolutely nothing which is capable of discouraging sentencing judges in the Crown Court from passing in a suitable case sentences of either drug treatment and testing orders (where still available) or community orders or sometimes (as here) suspended sentences with a drug rehabilitation requirement. **Such orders are capable of being constructive, of capitalising on motivation to change and thus they are capable of being very much in the public interest. If a drug addict who is also in consequence a criminal can indeed be helped to put his use and abuse of drugs behind him, with that will pass habitual criminal offending, that is in everybody’s interest.**’

[Emphasis added.]

[17] The decision in *Matheson* is a reminder of one of the more hallowed principles of sentencing law, which has some purchase in the present context. In *R v Brannigan* (DPP’s Ref No 7 of 2013) [2013] NICA 39, at [10], this court cited *Attorney General’s Reference* (No 4 of 1989) [1989] 11 Cr App R(S) 517, recalling the frequent judicial statement that –

‘Sentencing is an art rather than a science and [that] an appeal court has to pay proper respect to the views of the sentencing judge.’

[18] Also to be reckoned is the well-established principle that the offender’s good character, or good deeds, normally count for little in cases where the offending traverses a certain threshold of gravity. In this context there is a pertinent passage in *R v Stalford and O'Neill* (unreported, 3rd May 1996), which concerned drugs offences, where this court stated:

‘... as was said in *R v Slater and Scott* 16 CAR(S) 870 at 877 ‘good character in offences of this gravity are of little importance ...[continuing] ...

‘While a late conversion to good sense and behaviour is an encouraging feature it must be looked at in the overall seriousness of the offending.’

...

[37] The decision in *Matheson* highlights the multi-layered nature

of the public interest in the rehabilitation of offenders. The beneficiaries of the rehabilitation of an offender are the public at large, the offender and the offender's social, community and family circles. Moreover there will usually be some benefit to the economy. Issues of rehabilitation in the sentencing of an offender will invariably entail a balancing exercise. Broadly this will normally involve the balancing of rehabilitation, retribution and deterrence in the fact sensitive individual case. As *Matheson* makes clear rehabilitation can, in an appropriate case, attract determinative weight. In the specific context of the drugs offences considered in the decision of this court in *McKeown and Han Lin* a persuasive case for rehabilitation, supported by appropriate evidence, can potentially warrant the conclusion that exceptionally a non-custodial disposal is the appropriate sentencing course. The requirement of exceptionality can in principle be satisfied in this way."

[DPP's Reference \(Nos. 1, 2, 3 & 4 of 2015\) \(R v Hughes & Others\) \[2015\] NICA 53](#)

"[31] This court recently reviewed the guidance on sentencing for supply of drugs in *R v Gary McKeown and R v Han Lin* [2013] NICA 28. The court approved the guidance in *R v Hogg and others* [1994] NI 258 that supply of appreciable commercial quantities of class A drugs could attract sentences of 4 or 5 years or more. In *Attorney General's Reference No 8 of 2004* [2005] NICA 18 the court approved the *Aramah* guidelines suggesting that the supply of massive quantities of class B drugs would justify sentences of 10 years for those playing anything more than a subordinate role. By way of qualification the court also approved the decision of this court in *R v McIlwaine* [1998] NI 136 which indicates that the higher sentencing range may be reached in this jurisdiction with lower quantities than were suggested in *Aramah*.

[32] The weight of drugs alone, however, will not determine the sentencing bracket. In *Hogg* this court indicated that it was not possible to narrow the range of sentencing because much will depend on the circumstances of supply, its scale, frequency and duration, the sums of money involved and the defendant's previous record together with his or her individual circumstances. The aggravating and mitigating factors identified by the Sentencing Guidelines Council can be of great assistance in helping the judge to find the appropriate sentence...

...

[34]... It was submitted that it was a material mitigating factor that the purity of the drugs was somewhere between 4 and 8%. We do

not accept that submission. We recognise that where the cocaine is of high purity there may be circumstances indicating that it was intended to be bulked up so that the eventual quantity sought to be placed on the market would be even larger than that obtained. We consider, however, that the bulking up of cocaine with unknown and untested impurities should not generally lead to material mitigation.

[DPP's Reference \(No.2 of 2013\) \(R v McKeown\); R v Han Lin \[2013\] NICA 28](#)

“[14] The guideline case on the sentencing of offenders for possession of drugs with intent to supply remains *R v Hogg and others* [1994] NI 258. The court adopted the principles set out in *R v McCay* [1975] NICA 5 by Lord Lowry:

- ‘1. Possession of a drug is less serious than supplying it to another;
2. Introducing drugs to someone with no previous experience is more serious than supplying drugs to someone who is already using them;
3. Possessing or supplying L.S.D. or heroin is worse than possessing or supplying cannabis.
4. In connection with the offences of supplying and permitting premises to be used, a previous conviction for a similar offence should weigh heavily against the accused;
5. A previous clear record in connection with drug offences is relevant but is not by itself a clear indication against a custodial sentence;
6. In possession cases, and to a lesser extent in cases of supply and permitting premises to be used, a previous criminal record unconnected with drugs is of minor importance;
7. Severe sentences, including custodial sentences of any kind, are of assistance in signifying the community's rejection of drug taking and its hostility to traffickers in drugs and even to those who supply them free of charge;
8. The importation of drugs, especially when done for gain, ought to be very severely punished;

9. One who runs an establishment or organises parties or groups to encourage drug-taking should normally receive a heavy prison sentence;

10. The same principle applies strongly to those who in relation to drugs corrupt young people in this fashion or otherwise;

11. The fact that the offences involve a group or “cell” of people may constitute a circumstance calling for heavier punishment than would be appropriate in purely individual cases.’

[15] The court then added some observations of its own:

‘(i) The supply of any Class A drugs or their possession with intent to supply should generally be visited with a heavier sentence than in the case of Class B drugs. The legislature has drawn a distinction between them, and the Court of Appeal in England has consistently followed this course. In *R v Martinez* (1984) 6 Cr App R (S) 364 it was stated that distinctions should not be drawn between the different types of Class A drugs; (cf also *R v Virgin* (1983) 5 Cr App R (S) 148). In *R v Aramah* (1982) 4 Cr App R (S) 407 the court made no distinction within the categories of either Class A or Class B drugs.

(ii) There are several different levels of gravity of involvement in the supply of drugs. In general, the importer of substantial quantities is to be regarded as the most serious offender and should receive the heaviest punishment. Below him is the wholesaler, who supplies the small retailers with drugs for distribution to the public on commercial arrangements which may be straight sale, sale or return or the retention by the retailer of a percentage of the selling price. The next category in descending order of culpability is the retailer who sells to the public for commercial gain. At the bottom of the scale is the person who supplies a small amount without a commercial motive, for example, where cannabis is supplied at a party (see *R v Aramah*).

(iii) The offenders in drugs cases are generally young people, frequently of good backgrounds and without any previous criminal involvement. Not

uncommonly the major suppliers use the services of such people for retailing, as the importers use young people of presentable appearance as couriers, in order to attempt to avoid detection of the traffic. In many cases a custodial sentence can blight a promising career. It is always right for a court to keep such considerations in mind when sentencing, but the importance of deterrence of others and the marking of the community's rejection of drug taking will often prevail and lead to the imposition of an immediate custodial sentence.'

[16] The court then summarised its conclusions:

'1. Importation of drugs on a large scale is the most serious offence in this area, and is invariably to be visited with a substantial custodial sentence. We respectfully agree with the guidelines set out by Lane CJ in *R v Aramah*.

2. Supplying drugs is the next in descending order of gravity, with possession with intent to supply a short distance behind. In many cases there may be little distinction between them, for the charge may depend on the stage of the proceedings at which the defendant was apprehended. In all but exceptional cases they will attract an immediate custodial sentence, which may range from one of some months in the case of a small quantity of Class B drugs to one of four or five years or more in the case of supply of appreciable commercial quantities of Class A drugs. We do not find it possible to narrow the range any more closely, for much will depend on the circumstances of the supply, its scale, frequency and duration, the sums of money involved and the defendant's previous record, together with his or her individual circumstances.

3. More flexibility may be adopted by the sentencing court in the case of possession where there has been no supply of drugs or intent to supply them to other persons. Large-scale possession, even without supply to others, and repeated offending may still require an immediate prison sentence. Possession of Class B drugs may generally be regarded as less heinous than possession of Class A drugs. In many cases of the former at least there will be room to consider a

suspended sentence or noncustodial methods of dealing with the offender.’

[17] It is clear that the court drew heavily on the decision of the English Court of Appeal in *R v Aramah*. It is worth noting in this context that in relation to the supply of Class A drugs that court said:

‘It goes without saying that the sentence will largely depend on the degree of involvement, the amount of trafficking and the value of the drug being handled. It is seldom that a sentence of less than three years will be justified and the nearer the source of supply the defendant is shown to be, the heavier will be the sentence.’

[AG’s Reference \(No.8 of 2004\) \(Dawson & Others\) \[2005\] NICA 18](#)

“[34] In *R v Hutton* [1998] NIJB 27, at 30E MacDermott LJ said:-

‘The attitude of the courts in this jurisdiction to the offence of supplying proscribed drugs is well known (see the observation of the Lord Chief Justice in *Haveron* and a series of subsequent cases). In short the courts in this jurisdiction view the supply or possession with intent to supply, of any controlled drug, whether of class A or class B, as a serious offence which will almost inevitably attract an immediate custodial sentence.’

[35] In *R v McIlwaine* [1998] NI 136 an appeal against a sentence of four years imprisonment for possession of 9.88 kilos of cannabis resin with a street value of £100,000 was dismissed. MacDermott LJ said at page 141:-

‘So we return to the question—was this sentence manifestly excessive? We are satisfied that it was not. Even allowing for the early guilty plea we would not have interfered with a five-year sentence. This was a substantial quantity of cannabis, no assistance was given to the police by the appellant who already had a relevant conviction. We would repeat yet again—those who offend in this way will on conviction receive lengthy custodial sentences. The public is entitled to be protected from the evil of drug abuse and it is the duty of judges in this jurisdiction to make it clear that they will seek to discourage anyone from participating in that trade.’

[36] In *Attorney General's reference (No 5 of 2003)* [2003] NICA 38, although this court did not interfere with the sentence imposed because of the exceptional nature of that case, Carswell LCJ emphasised that persons convicted of possession of drugs with intent to supply "must ordinarily expect a custodial sentence"...

[37] The effect of these decisions is inescapable. In all but the most exceptional cases those convicted, even on their plea of guilty, of offences of possession of drugs (be they class A or class B drugs) with intent to supply, should receive an immediate custodial sentence.

5.3 Northern Ireland Court of Appeal response to the growing amount of cannabis circulating in NI

[*R v McIlwaine* \(Unreported, 11 March 1998\)](#)

"The judicial attitude to drugs cases in this jurisdiction is or ought to be well known. Those who are in possession with intent to supply will face a virtually inevitable custodial sentence..."

The statistics which we have already quoted make it clear that cannabis resin is now being seized in sizeable quantities. As seizures may only represent the "tip of an iceberg" we are satisfied that a growing trade in cannabis is developing in this jurisdiction and the courts must make it clear that they will not tolerate that development. In sentencing for possession with intent the maximum permitted sentence remains at 14 years despite the upsurge in such offending since the 1971 Act was passed...For our part we would express the hope that the Government in this jurisdiction will review this unrealistic upper limit as a positive effort to prevent Northern Ireland becoming more deeply involved in the evil drug trade.

In this jurisdiction 200 kg appear to be the largest seizure of cannabis to date. Its value is some £2 million and is a significant indeed massive quantity of a potentially harmful drug and in principle, while recognising that larger consignments may exist in this jurisdiction, possession with intent of such an amount should attract a sentence of about 10 years' imprisonment. In so stating we appreciate that we are departing slightly from the English suggestion that the 10 year figure involves a seizure of some 500 kg. We take this course because we are satisfied that it is essential that we try to curb the increasing traffic in this drug in this jurisdiction.

The appropriate sentence cannot be calculated simply by an arithmetical calculation based on weight or value though those will be relevant considerations. That said we are satisfied that possession of a substantial quantity of cannabis (which would include a one kg consignment) should attract a sentence of at least 5 years' imprisonment which would rise according to, among other reasons, weight and value to about 10 years for a 200 kg seizure. Larger quantities would attract sentences up to the maximum which could well be appropriate in many cases.

Sentences will, of course, always have to be appropriate to the circumstances of a particular case which means that mitigating and aggravating factors will have to be reflected in the actual sentence."

5.4 Ecstasy

[R v Stalford & O'Neill \(Unreported, 3 May 1996\)](#)

"We have already mentioned the cases of *Hogg* and *Haveron* and do not repeat the good sense enshrined in those cases, which remain a useful guide to sentencing. We would also mention the recent case of *Gallagher and Mullan* (15 December 1995) in which this court drew attention to the fact that the use of Ecstasy was escalating in this province, that it was a dangerous and potentially lethal drug, that those possessing it faced lengthy custodial sentences and that sentences on those participating in this evil trade would continue to rise as the courts in a discharge of their public duty sought to deter people, and especially young people, from having anything to do with Ecstasy and other class A drugs. That does not mean that the courts adopt a tolerant view towards class B drugs. That is not the position in this jurisdiction no matter what may be fashionable elsewhere.

...

As we pointed out in *Gallagher and Mullan*, Holland J dealt with the 'small quantity' argument in *Asquith* 16 CAR(S) 453 (a seizure of 44 Ecstasy tablets) and said "the starting point for the considerations of a court when having to sentence a person involved with intent to supply is, in truth, five years". We adhere to that view. A sentencer will wish to know as much as he can about the accused with whom he is dealing: possession of any amount of Ecstasy with intent to supply reveals him to be a person who is prepared to involve himself in the drug trade for his own financial benefit or to feed his addiction. It also must not be forgotten that in facilitating himself he may be introducing the buyer to drugs or fuelling the addiction of others.

....Parliament's attitude towards possession of class A drugs with intent to supply can be seen in the fact that the maximum sentence is life imprisonment.

...

Both appellants are comparatively young men. Sadly however experience shows that it is at just that age that people stupidly become active in the use and supply of dangerous drugs and it is in their interest as well as that of the public generally that the courts must enforce deterrent sentences. Background circumstances are relevant in any case but as was said in *R v Slater and Scott* 16 CAR(S) 870 at 877 "good character in offences of this gravity are of little importance". As we observed in the course of the argument, no judge likes to send a young person to prison or detention for a period of years, but when such persons get involved in drugs offences it is the judicial duty to impose stiff but appropriate sentences."

[*R v Gallagher & Mullan* \(Unreported, 15 December 1995\)](#)

"The use of Ecstasy tablets appears to be becoming commonplace. This must not be allowed to conceal the fact that it is a dangerous and potentially life threatening substance. Recent well publicised cases show that it can kill. In *Slater & Scott* 16 CAR(S) 870 the Court of Appeal saw fit to repeat and entirely agree with the trial judge's description of Ecstasy. He had said:

'I begin with the fact that Ecstasy is a Class A drug. In a case in the Court of Appeal in 1993 called *Allery* 14 Cr App R(s) 699 the Court described it as a 'synthetic amphetamine derivative'. The judgment of the Court said that they had material which indicated that it was capable of causing convulsions, collapse, hyperpyrexia, discriminated intravascular coagulation and other very unpleasant consequences and was also capable of causing acute renal failure [That acute renal failure, frequently, if not invariably, leads to death.] They commented that Parliament had been well advised to include this as a dangerous drug in the Class A. Even without that material it is plain from its mere characterisation of Class A that it is to be seen in the same category as, for instance, heroin and cocaine.'

Those who play any part in the supply of this dangerous substance, Ecstasy, are participating in an evil trade. In this jurisdiction statistics show a truly enormous and frightening

increase in the amount of Ecstasy seized...The readiness to use and supply this drug shows that current sentencing levels are not acting as a deterrent and that therefore the imposition of longer sentences will be entirely appropriate. Judges in this jurisdiction are faced with the evil effects of this drug in Northern Ireland and should not feel constrained to follow English sentencing guidelines if they consider they are at too low a level.”

5.5 Addiction not a mitigating factor

[DPP's Reference \(No.2 of 2013\) \(R v McKeown\); R v Han Lin \[2013\] NICA 28](#)

“[18] The submission that an offender’s addiction might be taken into account as a mitigating factor was rejected by this court in *R v Stalford and O'Neill* NICA (03/05/96). The court approved the statement of Simon Brown J in *R v Lawrence* 10 CAR(S) 463:

‘We cannot make too plain the principle to be followed. It is no mitigation whatever that a crime is committed to feed an addiction, whether that addiction be drugs, drink, gambling, sex, fast cars or anything else. If anyone hitherto has been labouring under the misapprehension that it was mitigation, then the sooner and more firmly they are disabused of it the better.’

5.6 Surrounding circumstances of the offending

[R v Ming Chen \[2012\] NICA 17](#)

“[5] We accept that the learned trial judge was obliged to sentence in relation to the charges which were laid against this accused and that those did not include charges of cultivation, but he is entitled to have regard to the surrounding circumstances and indeed were he not take into account the material in relation to cultivation it would have been closing his eyes to the blindingly obvious.”

5.7 Imposing a licence period in excess of 50% of the DCS

[DPP's Reference \(No.2 of 2013\) \(R v McKeown\); R v Han Lin \[2013\] NICA 28](#)

“[31] When a judge decides to impose a period of licence in excess of the minimum period of 50% of the determinate sentence, he should give brief reasons for that decision which will often include reference to matters contained in the probation or other relevant reports. Where he rejects such a submission he should also give reasons. That is necessary to make the sentence transparent.”

5.8 Not upsetting a probation order already in place

[AG's Reference \(No.8 of 2004\) \(Dawson & Others\) \[2005\] NICA 18](#)

"[48]...It is relevant that in *R v Duporte* (1980) 11 Cr App R (S) 116 it was held that a sentencer should not ordinarily intervene to upset the course of a probation order, unless there is reason to do so. That principle received endorsement from this court in *Attorney General's reference (No 5 of 2003)* [2003] NICA 38. While the decision in that case involved consideration of the propriety of interference with a probation order at first instance, we are of the opinion that there should be similar requisite reluctance on the part of this court to put in jeopardy the work that is being undertaken with the offender in fulfilment of the probation order."

5.9 Further offences committed on bail

[DPP's Reference \(Nos. 1, 2, 3 & 4 of 2015\) \(R v Hughes & Others\) \[2015\] NICA 53](#)

[33]... We recently repeated our support for the principle in *R v Richardson* (unreported 19/12/97) in *R v Hedley* that subject to the principle of totality a consecutive sentence will almost invariably follow where further offences are committed on bail.

5.10 Relevance of Sentencing Council Guidelines

[DPP's Reference \(No.2 of 2013\) \(R v McKeown\); R v Han Lin \[2013\] NICA 28](#)

"[24] We have examined the Definitive Guideline of the Sentencing Guideline Council on drugs offences published in February 2012. We are satisfied that the factors related to culpability are of assistance in the assessment of culpability in this jurisdiction as are the quantities in respect of the category of harm. We wish to make it clear, however, that where very large quantities are involved a different approach may be taken for the reasons set out in *R v McIlwaine* [1998] NICA (11 March 1998). We also consider that the factors influencing seriousness are appropriate factors to take into account in the sentencing process.

[25] The Definitive Guideline suggests starting points and ranges depending upon the category of harm and the nature of the role into which the offender falls. There are, however, dangers with that approach. In many instances there will be competing considerations affecting the offender's role and inevitably considerable variation even within each category of harm. We

consider that in attempting to categorise each case in the way suggested in the Guidelines the judge may be distracted from finding the right sentence for each individual case. Guidelines and guidance in this jurisdiction are intended to assist the sentencing judge without trammelling the proper level of discretion vested in the sentencer. This is not to say that the Definitive Guideline does not provide useful assistance in identifying aggravating and mitigating factors and indicating appropriate ranges of sentencing worthy of consideration depending on the precise circumstances of the individual case.”

[NB: Updated guidelines have since been published in England and Wales]

SECTION 6 – ENVIRONMENTAL OFFENCES

6.1 Personal mitigation and need for general deterrence

[*The King v Paul Doherty, Gerard Martin Farmer and City Industrial Waste Limited* \[2025\] NICC 13](#)

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

6.2 Increase in public interest in maintenance of the environment – suspended sentences

[*The King v Paul Doherty, Gerard Martin Farmer and City Industrial Waste Limited* \[2025\] NICC 13](#)

“[45] I have considered whether these sentences can be suspended. In my view, they cannot. In 2016, the court in *Braniff* noted “the public interest in the maintenance of the environment has intensified.” There is little doubt that since 2016, the public concern for, and interest in, the environment has increased even further. The time has long since passed where those who commit environmental crime motivated by greed can expect to walk free from the consequences of their actions. Both sentences are immediate.”

6.3 Persistent flouting of environmental regime requires deterrent sentence

[*Queen v John Paul Braniff* \[2016\] NICA 9](#)

“[19] ... Against this background of persistent flouting of the environmental regime a deterrent sentence is plainly necessary and personal circumstances can, therefore, carry little weight.”

6.4 Risk of environmental damage not as serious as actual harm

[*Queen v John Paul Braniff* \[2016\] NICA 9](#)

“[20] ... The risk of environmental damage is itself a significant material factor but will generally not be as serious as actual harm...”

6.5 Confiscation orders – questions for the court

[*Queen v Allingham and Allingham; McKenna* \[2012\] NICA 29](#)

“[41] The purpose of the Proceeds of Crime Act 2002 is to deprive defendants of any benefit they have gained from their relevant criminal conduct through confiscation of the benefit. In *R v May*

(2008) 2 Cr App R 28 the House of Lords provided guidance on how a Crown Court should proceed. Three questions should be posed:

Has the defendant benefited from relevant criminal conduct?;
If so, what is the value of the benefit obtained?; and
What sum is recoverable from the defendant?

[42] The Court must establish the facts on the material available as these will be decisive as to the outcome. Critically the House of Lords stated at page 414 –

‘(4) In addressing the questions the court should focus very closely on the language of the statutory provision in question in the context of the statute and in the light of any statutory definition. The language used is not arcane or obscure and any judicial gloss or exegesis should be viewed with caution. Guidance should ordinarily be sought in the statutory language rather than in the proliferating case law.

(5) In determining under the 2002 Act whether D has obtained property or a pecuniary advantage and, if so, the value of any property or advantage so obtained, the court should (subject to any relevant statutory definition) apply ordinary common law principles to the facts of the case as found. The exercise of this jurisdiction involves no departure from familiar rules governing entitlement and ownership. While the answering of the third question calls for inquiry into the financial resources of D at the date of determination, the answering of the first two questions plainly calls for a historical inquiry into past transactions.

(6) D ordinarily obtains property if in law he owns it, whether alone or jointly, which will ordinarily connote a power of disposition or control, as where a person directs a payment or conveyance of property to someone else. He ordinarily obtains a pecuniary advantage if (among other things) he evades a liability to which he is personally subject. Mere couriers or custodians or other very minor contributors to an offence, rewarded by a specific fee and having no interest in the property or the proceeds of sale, are unlikely to be found to have obtained that property. It may be otherwise with money launderers.’”

SECTION 7 – FIREARMS/EXPLOSIVES OFFENCES – NON-TERRORIST

7.1 Possession of imitation firearm with intent to cause fear of violence requires sentence of imprisonment save in most exceptional circumstances

[Attorney General's Reference \(No.1 of 2006\) Gary McDonald, John Keith McDonald and Stephen Gary Maternaghan \(AG Ref Nos 11-13 of 2005\) \[2006\] NICA 4](#)

“[29] A sentence of imprisonment should follow conviction, even on a plea of guilty, of an offence under article 17A save in the most exceptional circumstances. Recent decisions in England confirm this approach...”

7.2 Discretion to quash sentence imposed and substitute more severe penalty on appeal; personal circumstances and relevance of illness of a relative

[Attorney General's Reference \(No.1 of 2006\) Gary McDonald, John Keith McDonald and Stephen Gary Maternaghan \(AG Ref Nos 11-13 of 2005\) \[2006\] NICA 4](#)

“[39] It is permissible to have regard to any physical disability or illness which will subject the offender to an unusual degree of a hardship if he is imprisoned ... The effect that personal circumstances may have on the selection of a sentence was discussed by this court in *R v Sloan* (Neutral Citation no. (2000) 2132). In that case Carswell LCJ said: -

‘There is a well settled line of authority that in certain cases the court can impose a lighter sentence than that which would normally be appropriate for the type of offence where the offender suffers from some physical or mental disability: see, *e.g.*, the discussion in *R v Bernard* [1997] 1 Cr App R (S) 135 and the principles deduced from the previous reported cases by Rose LJ at pages 138-9:

‘(i) a medical condition which may at some unidentified future date affect either life expectancy or the prison authorities’ ability to treat a prisoner satisfactorily may call into operation the Home Secretary’s powers of release by reference to the Royal Prerogative of mercy or otherwise but is not a reason for this Court to interfere with an otherwise appropriate sentence (*Archibald Moore*);

(ii) the fact that an offender is HIV positive, or has a reduced life expectancy, is not generally a reason which should affect sentence (*Archibald Moore and Richard Moore*);

(iii) a serious medical condition, even when it is difficult to treat in prison, will not automatically entitle an offender to a lesser sentence than would otherwise be appropriate (*Wynne*);

(iv) an offender's serious medical condition may enable a court, as an act of mercy in the exceptional circumstances of a particular case, rather than by virtue of any general principle, to impose a lesser sentence than would otherwise be appropriate.'

We respectfully agree with the approach of the court in that case, but would emphasise that it is important to bear in mind the passage which Rose LJ earlier cited from *R v Wynne* (1994, unreported):

'It is always to be borne in mind that a person who has committed a criminal offence, especially one who has committed a serious criminal offence, cannot expect this or any other court automatically to show such sympathy so as to reduce, or to do away with altogether, a prison sentence purely on the basis of a medical reason. It is only in an exceptional case that an exceptional view can be taken of a sentence properly passed. In this case a proper sentence was passed for a serious offence.'

[40] There are instances where the Court of Appeal in England and Wales has opted for a more lenient penalty because of circumstances affecting an offender's family rather than him personally...

[41] In line with these decisions we consider that it is open to us to take account of the condition of the McDonalds' parents in deciding whether we should exercise our discretion to increase the sentence passed on them and if so, to what extent. In each of the cases referred to in the preceding paragraph there was, in our judgment, a more pressing reason that the offender should be given his liberty than in the present instance. We are not unsympathetic to the plight of the parents but we do not consider that it has been shown that their circumstances are such as to warrant the offenders escaping a prison sentence entirely."

7.3 Imitation firearms hard to distinguish from real firearms – victim usually as frightened and intimidated as if real firearm used

[Queen v George Angus McKenzie \[2005\] NICA 7](#)

“[27] ... [In *R v Avis and others* [1998] 1 Cr App R 420, Lord Bingham CJ said:]

‘Where imitation firearms are involved, the risk to life and limb is absent, but such weapons can be and often are used to frighten and intimidate victims in order to reinforce unlawful demands. Such imitation weapons are often very hard to distinguish from the real thing – for practical purposes, impossible in the circumstances in which they are used – and the victim is usually as much frightened and intimidated as if a genuine firearm had been used. Such victims are often isolated and vulnerable.’

7.4 Possession of a weapon designed to discharge a noxious liquid gas or thing – *R v Avis and others* [1998] 1 Cr App R 420 – usually appropriate to ask a series of questions

[*Queen v George Angus McKenzie* \[2005\] NICA 7](#)

“[27] ... [In *R v Avis and others* [1998] 1 Cr App R 420, Lord Bingham CJ said:]

“The appropriate level of sentence for a firearms offence, as for any other offence, will depend on all the facts and circumstances relevant to the offence and the offender, and it would be wrong for this Court to seek to prescribe unduly restrictive sentencing guidelines. It will, however, usually be appropriate for the sentencing court to ask itself a series of questions:

(1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.

(2) What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.

(3) With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specified criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.

(4) What is the defendant's record? The seriousness of any firearm offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence."

SECTION 8 - LIFE SENTENCES - DISCRETIONARY

8.1 General sentencing policy

[*The King v Alexander McCartney* \[2024\] NICC 30](#)

“[78] The main sentencing options which are open to me are life sentences or an extended custodial sentence (an ECS). The difference between them is this. If I impose a life sentence ... I will set a tariff. A tariff is the minimum number of years which has to be served in custody before release from prison is even considered. The decision to release will be taken by Parole Commissioners who will only release the defendant if they are satisfied that, at that time, he no longer poses a risk to the public. If they decide that he does not pose a risk he will be released, but he will remain on licence for the rest of his life, subject to recall to prison in the event of further offending. If the Parole Commissioners decide that he cannot be released because in their view he still poses a risk to the public, the defendant will stay in prison until his case is reconsidered some years later.

...

[80] The essential difference between the two sentences, which both require the Parole Commissioners to be involved, is that with an ECS there is no element of control or supervision over an individual after the licence period expires. With a life sentence, however, there will always be the risk of recall to prison and there will always be some supervisory control, the nature of which will depend on the extent to which a defendant has changed his ways.

[81] It is also important to note that whether I impose a life sentence or an ECS, I cannot then impose consecutive sentences for other offences committed by the defendant which do not carry the possibility of a life sentence.

...

[91] ... I should not impose a life sentence unless I am satisfied that it is necessary to do so. That is because the life sentences are discretionary not, as in the case of murder, mandatory. This is an issue which has been considered repeatedly in different circumstances by the Court of Appeal over a number of years. It might illustrate the point to take just one example, *R v Gallagher* [2004] NICA 11... It had the following to say at para [24] about the circumstances in which a discretionary life sentence should be imposed:

‘A discretionary life sentence should be reserved for those cases where an extremely grave offence has been committed. Of course, it is true that the criminal record of the offender may affect the view to be taken of the seriousness of the offence since a repeat of earlier offending may indicate a more determined and settled criminal propensity and may cast doubt on any claim that the offence was spontaneous. But it would be wrong to impose a life sentence solely because it was considered that the offender is likely to re-offend on release from a determinate sentence for a less than serious offence. As Lord Bingham CJ pointed out in *Chapman*, a sentence of life imprisonment is the most condign punishment that a court may impose, and it is therefore fitting that this should be reserved for the most serious type of offence and where it is likely that there will be further offending of a grave character.’

8.2 Threshold for Discretionary Life Sentences

[R v Alan McDonald \[2016\] NICA 21](#)

“[33] The conditions for the imposition of a discretionary life sentence may be stated as follows. First of all, the offence for which the sentence is being imposed should be an extremely grave offence and secondly it is likely that there will be further offending of a grave character. These conditions arise from the judgment of Kerr LCJ in *R v Gallagher* [2004] NICA 11...

[35] In *R v Whittaker* the conditions were stated under two heads. The first was that the offender should have been convicted of a very serious offence. The second was that there should be good grounds for believing that the offender may remain a serious danger to the public for a period which could not be reliably estimated at the date of sentence. This broader formulation was restated in *R v Chapman* and was adopted by Kerr LCJ in *R v Gallagher* as appears from the passage cited above...

[48] Sentencing courts should consider all available sentencing options. Subject to any statutory requirement, it is not necessary that the sentencing judge should state in terms that he or she has done so, nor that the available options be set out in the sentencing remarks.”

8.3 Nature of Future Risk

[*R v Alan McDonald* \[2016\] NICA 21](#)

“[39] The sentencing judge was entitled to take into account the history of offending ... and was entitled to conclude that the convictions and the history established a likelihood of such offences being committed in the future.”

8.4 Threshold for Life vs ICS

[*Queen v Sean Hackett* \[2015\] NICA 57](#)

“[51] All parties were agreed that the only appropriate custodial sentences were a life sentence or an indeterminate custodial sentence. In both cases the subsequent release of the prisoner on licence is dependent upon an assessment of dangerousness by the Parole Commissioners. The distinctions between the two are that:

- (i) the Parole Board has a power to direct the expiry of the licence where the prisoner has been released on licence for a period of at least 10 years; and
- (ii) a whole life sentence cannot be imposed by way of an indeterminate custodial sentence...

[52] The approach which the court should take in applying the similar provisions in England and Wales was addressed in *R v Kehoe* [2008] 1 Cr App R (S) 41 and is helpfully encapsulated in paragraph 17:

‘When, as here, an offender meets the criteria of dangerousness, there is no longer any need to protect the public by passing a sentence of life imprisonment for the public are now properly protected by the imposition of the sentence of imprisonment for public protection. In such cases, therefore, the cases decided before the Criminal Justice Act 2003 came into effect no longer offer guidance on when a life sentence should be imposed. We think that now, when the court finds that the defendant satisfies the criteria for dangerousness, a life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly grave.’

[53] Lord Judge CJ returned to this issue in *R v Wilkinson (Grant)*

[2009] 1 Cr App R (S) 628 where he said that the crucial difference between a discretionary life sentence and a sentence of imprisonment for public protection arising at the time of sentence is the seriousness of the instant offence as assessed in the overall statutory context. He continued at paragraph [19]:

‘In our judgment it is clear that as a matter of principle the discretionary life sentence under section 225 should continue to be reserved for offences of the utmost gravity. Without being prescriptive, we suggest that the sentence should come into contemplation when the judgment of the court is that the seriousness is such that a life sentence would have what Lord Bingham observed in *R v Lichniak* [2003] 1 AC 903 would be a ‘denunciatory’ value, reflective of public abhorrence of the offence, and where, because of its seriousness, the notional determinate sentence would be very long, measured in very many years.’”

[*R v William Desmond Gallagher* \[2004\] NICA 11](#)

“[24] ... A discretionary life sentence should be reserved for those cases where an extremely grave offence has been committed. Of course it is true that the criminal record of the offender may affect the view to be taken of the seriousness of the offence since a repeat of earlier offending may indicate a more determined and settled criminal propensity and may cast doubt on any claim that the offence was spontaneous. But it would be wrong to impose a life sentence *solely* because it was considered that the offender is likely to re-offend on release from a determinate sentence for a less than serious offence. As Lord Bingham CJ pointed out in *Chapman*, a sentence of life imprisonment is the most condign punishment that a court may impose and it is therefore fitting that this should be reserved for the most serious type of offence and where it is likely that there will be further offending of a grave character.”

[*R v WL* \[2017\] NICA 36](#)

“[28] In advance of sentencing the learned trial judge alerted counsel that a discretionary life sentence was being considered and she invited them to make submissions. In her sentencing remarks Her Honour Judge Smyth referred to *R v McDonald* [2016] NICA 21 and correctly identified the two limb test for the imposition of discretionary life sentence, namely:

- (i) Stage 1 – The offence for which the sentence is being

imposed should be an extremely grave offence.

(ii) Stage 2 – It is likely there will be further offending of a grave character.

...

[30] *McDonald* sets out a two stage test for the imposition of a life sentence. Before considering the requirements of each limb it is important to remember that both limbs are inter-linked. Stage 1 acts as a filter to ensure that concern about public safety, whilst important in all cases, can only lead to the imposition of a life sentence when the offences are “extremely grave”. At stage 2 the court then considers whether a life sentence should be imposed. A life sentence is a sentence of last resort and will only be imposed when no other sentencing regime is sufficient to adequately protect the public. As a result of having this 2 stage test, the stage 1 filter does not have to be set so high that it only includes exceptional cases. Therefore, an offence, which may not exhibit all the features of an exceptionally grave case, will nonetheless still pass the stage 1 threshold if it can be categorised as an extremely grave cases.”

SECTION 9 – LIFE SENTENCES – MANDATORY

9.1 General sentencing policy for murder

[*R v John Paul Whitla* \[2024\] NICA 65](#)

“[40] This appeal turns upon application of *McCandless* once again. As such we consider that the time has come to refresh the *McCandless* categories. This approach is based on the collective experience of the members of this court that a lower starting point of 12 years, previously termed the normal starting point (sub para [10] of the Practice Statement) rarely arises in murder cases. Only exceptionally if the circumstances explained in *McCandless* arise may consideration be given to the lower culpability of the offenders. The experience of this case illustrates the fact that having to consider this starting point in every case may deflect the sentencer away from reaching an appropriate sentence. Recourse to this starting point will only arise where culpability is low and so arises in only a small number of cases. This should be the practice going forward.

[41] We are cognisant that most murder cases in Northern Ireland will fall within what has previously been termed the higher starting point of 15/16 years which involves high culpability (sub para 12] of the Practice Statement.) As such we think it better that this should now be termed the normal starting point.

[42] In addition, where exceptionally high culpability arises a higher starting point as described in sub para [19] of the Practice Statement adopted in *McCandless* can be applied of 20 years or more. We are content that the descriptors given in *McCandless* cover most circumstances that arise for this higher bracket based upon exceptionally high culpability but repeat the fact that sentencers have flexibility to consider modern circumstances. Multiple stabbing cases can come within this bracket.

[43] We stress that what we have said does not amount to any sea change in terms of murder sentencing. It is simply a recalibration to reflect the complexion of cases we have had before our courts in the 20 years since *McCandless* was penned. In summary, *McCandless* should now be read with following revision: (i) The normal starting point is 15/16 years. This is based on high culpability (ii) In exceptional cases of low culpability, the starting point may reduce to 12 years. (iii) In cases of exceptionally high culpability the starting point is 20 years.

[44] It is not necessary for us to redefine *McCandless* any further as the factors that feed into each starting point and aggravating

or mitigating factors are comprehensively set out. In addition, sentencing judges are expressly reminded that they have the flexibility to vary the starting point upwards or downwards to take into account the particular circumstances of each case.

[45] However, we provide one further matter of clarification in relation to multiple stabbing cases as the issue has arisen. We reiterate the fact made in *Doyle* that where the court chooses the higher starting point because of one particular aspect of the case, it should not normally vary the starting point upwards because of the same factor. Where, however, there are several reasons that a case might be regarded as meriting a higher starting point, then some measure of increase of the minimum sentence may be warranted. It is important to avoid an over-mechanistic approach to this issue, while guarding against the danger of double counting.”

9.2 Coercive and controlling behaviour as an aggravating factor

[*R v Stephen McKinney* \[2024\] NICA 35](#)

“[52] Lest there is any lingering uncertainty, we consider that coercive and controlling behaviour in a relationship is a specific aggravating factor which should be read into para [12] of the Practice Statement which *McCandless* applies. In any event the statutory provisions we have discussed require its consideration.

...

[66] We echo these sentiments and reiterate the position that pre-existing coercive and controlling behaviour is also an aggravating factor that will result in higher sentences when domestic murders of this kind occur and that sentences of 20 years and possibly more will be upheld.”

9.3 Lengthy sentences for terrorist crimes; minimal role of personal mitigation

[*R v Christopher Robinson* \[2022\] NICA 30](#) (Murder of a senior prison officer)

“[26] In line with previous Court of Appeal authority we have mentioned this court reiterates the position that in this jurisdiction such lengthy sentences should be applied to offences of this nature not least to mark our society’s abhorrence of such terrorist crimes. We repeat the fact that personal mitigation has a minimal role to play for offenders who chose to act in this way.”

9.4 Assisting police pursuant to SOCPA 2005

[*R v Haggarty* \[2020\] NICA 22](#)

“[25] The discount under the 2005 Act should be applied to the figure resulting from the aggravating and mitigating circumstances. To apply the discount under the Act to the figure comprising only aggravating circumstances leads to an increase in the discount. That, in our view, is not consistent with the underlying scheme of the 2005 Act that the discount for assistance should be applied once aggravating and mitigating factors excluding the discount for the plea have been factored in.

9.5 Reduction for a guilty plea

[*R v Turner \(William\) & Turner \(James Henry\)* \[2017\] NICA 52](#)

“[40] We consider, therefore, that there are likely to be very few cases indeed which would be capable of attracting a discount close to one-third for a guilty plea in a murder case. The circumstances of a mercy killing for example might possibly achieve that outcome. Each case clearly needs to be considered on its own facts but it seems to us that an offender who enters a not guilty plea at the first arraignment is unlikely to receive a discount for a plea on re-arraignment greater than one-sixth and that a discount for a plea in excess of 5 years would be wholly exceptional even in the case of a substantial tariff. We have concluded, however, that it would be inappropriate to give any more prescriptive guidance in this area of highly fact sensitive discretionary judgement. Where, however, a discount of greater than one-sixth is being given for a plea in a murder case the judge should carefully set out the factors which justify it in such a case.

9.6 Culpability

[*R v Greer* \[2017\] NICA 4](#)

“[15] ...This court noted in *R v Brown and Taylor* [2013] NICA 5 that there are many circumstances in which there was no parity of culpability between principals and secondary parties. That does not, however, lead to the conclusion that the culpability of a secondary party need be materially less than that of the principal. Each case is fact specific. In some cases the culpability of the director of the crime is greater than that of the principal.

...

[17] ...This is an area where the public are entitled to expect substantial deterrent sentences.”

9.7 Murder of a young child

[*R v Sharyar Ali* \[2023\] NICA 20](#)

“[59] In a case such as this the starting point should have risen prior to reduction for the plea from the 16 years to 20 years. We see no mitigation which would reduce it back down. We are bound to say that in cases where an accused has a prior criminal history or there is a pattern of abusive behaviour towards a child the starting point of 20 years would likely rise.”

9.8 Stages to consider when assessing the appropriate minimum term

[*R v Paul James Morrin* \[2011\] NICA 24](#)

“[14] It may be of assistance to judges engaged in the difficult exercise of assessing the appropriate minimum term in such cases if we indicate that it may be helpful if judges were to consider the various factors in stages, first of all identifying which is the appropriate starting point, and explaining why that starting point has been chosen. The judge should then proceed to the second stage when he should consider whether the appropriate starting point should be varied upwards or downwards to take account of any aggravating or mitigating factors. Thirdly, and particularly in those cases where the aggravating factors are such that a minimum term in excess of 15 or 16 years is appropriate, judges should bear in mind the comments of Carswell LCJ to which we have already referred that the court’s ‘duty is to end up at a figure which properly represents the minimum term for which the perpetrator of the crime should be detained before his release can be considered.’”

9.9 Period of foreign detention relating to the subject crime

[*R v Ching \(Wong Siu\)* \[2010\] NICA 12](#)

“[24] If the period of foreign detention relates to the subject crime there is no reason in logic why the period of detention in the foreign prison pending extradition should not properly be considered as part of that period to be served before release can be considered. It is a period of incarceration served, and it relates to the murder charge. The aims of deterrence and retribution are not frustrated by taking account of that period of detention in the calculation of the appropriate tariff. Accordingly, a court fixing a tariff, following the approach enunciated in *McCandless*, should take account of the period already spent in custody in relation to the offence in respect of which tariff is being determined. The court may take account of that period either by way of reducing the tariff making it clear that it takes account of the period spent in the foreign prison or it may fix the tariff directing that in calculating the earliest date when release may be considered credit should be given for the period of

imprisonment in the foreign prison pending extradition.”

9.10 Whole life sentences

[*R v Trevor Hamilton* \[2008\] NICA 27](#)

“[38] Although his comments were made in relation to the 2003 Act, we agree with the view of Lord Phillips CJ in *Jones* that the imposition of a whole life tariff should be confined to those instances where ‘the facts of the case, considered as a whole, will leave the judge in no doubt that the offender must be kept in prison for the rest of his or her life’. While this was a heinous offence that must rank as one of the most grave that our community has suffered, after much anxious thought, none of the members of the panel who heard the appeal felt that this was a case in which he could feel no doubt that the appellant should remain in prison for the rest of his life.”

SECTION 10 - MANSLAUGHTER

10.1 General sentencing policy

[*R v Stephen Magee* \[2007\] NICA 21](#)

“[22] ... Offences of manslaughter typically cover a very wide factual spectrum. It is not easy in these circumstances to prescribe a sentencing range that will be meaningful...

[23] It is the experience of this court that offences of wanton violence among young males... are becoming even more prevalent in recent years...

[24] The courts must react to these circumstances by the imposition of sentences that sufficiently mark society's utter rejection of such offences and send a clear signal... that the consequence of conviction... will be condign punishment...

[26] We consider that the time has now arrived where, in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years' imprisonment. This is, perforce, the most general of guidelines.”

[*R v Mark John Rush* \[2008\] NICA 43](#)

“[11] It has frequently been observed that offences of manslaughter, in company with most offences of violence, cover a very wide factual spectrum and, in such circumstances, there is always a need to observe caution when considering the application of guideline cases.”

[*R v Ryan Arthur Quinn* \[2006\] NICA 27](#)

“[11] Sentencing levels in cases where death has occurred as the result of a single blow were reviewed recently by the Court of Appeal in England in *R v Furby* [2005] EWCA Crim 3147. In that case Lord Phillips CJ commented on the difficult sentencing exercise that cases such as this can present: -

‘11. The judge was right to say that cases such as this present a difficult sentencing exercise. A sentence must reflect the seriousness of the offence. The seriousness depends on the culpability of the

offending conduct and on the harm that has resulted from it. Difficulty arises where there is a wide disparity between the culpability of the offender and the harm that he has caused. In the crime of manslaughter the harm caused is an element of the offence. No harm can be more serious than the death of a victim. Its impact usually extends, as it does in this case, to the relatives who have lost a loved one. They may, understandably, feel that no sentence can properly reflect the harm that has been caused. Because of the harm caused, the offence of manslaughter will usually, though not inevitably, attract a custodial sentence, regardless of the nature of the wrongdoing that has caused the death.”

10.2 Diminished responsibility

10.2.1 Diminished Responsibility - General

[*R v Barry Donnelly* \[2025\] NICA 7](#)

“[28] These are extremely difficult and tragic cases given the fact that deaths are caused by people who suffer from mental impairment. The harm element will always be high. Some account is also made for the mental impairment in the offence itself given that a murder charge is reduced to manslaughter in these circumstances. Furthermore, diminished responsibility does not mean no culpability deserving of punishment in custody. Thus, a sentence must be tailored to meet the individual facts of each case considering the seriousness of the case and the residual culpability of the offender. A sentence must also be clearly explained by a judge in order that the public can understand the sentencing rationale and what happens to an offender with mental impairment by way of court disposal and by way of the Parole Commissioners’ processes.”

10.2.2 Assessing level of residual culpability

[*R v Barry Donnelly* \[2025\] NICA 7](#)

“[32] In cases of this nature the degree of residual responsibility can be high, medium or low. In this regard, the England & Wales Sentencing Guidelines on manslaughter by reason of diminished responsibility provides some assistance in terms of the methodology to be followed by a sentencing judge. Drawing from that guidance we approve the following steps that should be taken:

- (i) The court should determine what level of responsibility the offender retained: high, medium or low.
- (ii) The court should consider the extent to which the offender's responsibility was diminished by the mental disorder at the time of the offence with reference to the medical evidence and all the relevant material available to the court.
- (iii) The degree to which the offender's actions or omissions contributed to the seriousness of the mental disorder at the time of the offence may be a relevant consideration. For example: where an offender exacerbates the disorder by voluntarily abusing drugs or alcohol, or by voluntarily failing to seek or follow medical advice, this may increase responsibility. In considering the extent to which the offender's behaviour was voluntary, the extent to which a mental disorder has an impact on the offender's ability to exercise self-control or to engage with medical services will be relevant.
- (iv) The degree to which the mental disorder was undiagnosed and/or untreated may be a relevant consideration. For example, where an offender has sought help but has not received appropriate treatment, this may reduce responsibility."

10.2.3 Sentencing ranges based on assessment of residual culpability

[*R v Barry Donnelly* \[2025\] NICA 7](#)

"[38] Self-evidently, these cases are characterised by specific often unique features and so other decisions are necessarily of limited value to sentencers. In addition, a trial judge will have a unique feel for a case of this nature. That is why judges should have flexibility in sentencing... Therefore, we take this opportunity to provide some guidance going forward. Low culpability cases should now attract a minimum tariff of somewhere between six and eight years. Medium culpability cases should attract tariffs between eight and ten years. High culpability cases should take a sentencing judge to between ten and twelve years.

[39] The above are guideline figures only from which judges may depart if circumstances demand a higher or lower sentence. The key to a good sentence is that the judge explains their rationale by way of listing aggravating and mitigating factors and providing a clear assessment of residual culpability."

10.2.4 Public interest and articulation of likely sentence if murder charge sustained notwithstanding mental illness

[*R v Barry Donnelly* \[2025\] NICA 7](#)

“[41] Finally, Mr Murphy KC suggested to us that a judge should articulate what a likely sentence would be if a murder charge could be sustained, so notwithstanding a mental illness... We understand the point which is well made given the public interest in knowing what the sentence would have been absent diminished responsibility. We agree that there is utility in this approach. In this case we agree with Mr Murphy that the likely tariff would have been in the region of 20 years.”

10.2.5 Desire to inform the public

[*R v Barry Donnelly* \[2025\] NICA 7](#)

“[42] In addition, we take this opportunity to state that in every case the public should be informed by the judge in simple terms of the following to explain why a lesser tariff applies in cases of diminished responsibility:

- (i) The nature of the mental illness which has led to a reduction of a murder charge to diminished responsibility.
- (ii) The level of culpability of the offender notwithstanding diminished responsibility.
- (iii) The aggravating and mitigating factors.
- (iii) The appropriate sentence based upon the residual culpability of the offender.
- (iv) The fact that this is a minimum tariff before the Parole Commissioners can consider release.
- (v) The fact that once that threshold is met the Parole Commissioners must decide whether it is safe to release a person who has offended in this way into the community.
- (vii) If the Parole Commissioners do decide that the person is not safe to be released at the end of the minimum tariff or any time thereafter, the offender will remain in custody. This will be a reality for many dangerous offenders, and so, notwithstanding the application of a minimum tariff there is an added robust protection by virtue of the Parole Commissioners carefully assessing the risk to the public with the benefit of medical and other evidence before considering release.”

10.3 Provocation

[*R v Michael Malachy Murray* \(unreported, 1993\)](#)

“... sentencing policy has not so hardened that 7 years should in all cases be considered to be the maximum sentence for a killing which has been reduced to manslaughter on the ground of provocation.”

10.4 One-punch/public violence

10.4.1 Northern Ireland-specific sentencing range

[*R v Ryan Arthur Quinn* \[2006\] NICA 27](#)

“[20] ... a more suitable starting point in Northern Ireland for this type of offence is two years’ imprisonment and that this should rise, where there are significant aggravating factors, to six years.”

10.4.2 Aggravating features that increase culpability

[*R v Ryan Arthur Quinn* \[2006\] NICA 27](#)

“[22] The unprovoked nature of the attack... the fact that it occurred in a public place... the attempt by the applicant to excuse his behaviour by a mendacious account... and the fact that the assault occurred when the applicant was under the influence of alcohol.”

10.4.3 Location of offence in public as aggravating factor

[*R v Ryan Arthur Quinn* \[2006\] NICA 27](#)

“[28] “The fact that the assault... took place in a public place... must also rank as significant aggravating features.”

10.4.4 Distinguishing between provocation and unprovoked attack

[*R v Mark John Rush* \[2008\] NICA 43](#)

“[11] “... it is a matter of some importance that he was not in any way responsible for the initiation of this incident.”

10.5 Corporate/gross negligence manslaughter

[*R v Norman McKenzie* \[2017\] NICA 29](#)

“[26] Sentences for gross negligence manslaughter vary widely reflecting the wide variety of situations in which the offence can be committed.

...

[41] Cases such as these where men are required to work from dangerous heights with an obvious potential for serious or fatal consequences if they are not protected, require deterrent sentences for three reasons.

[42] First, to ensure that it is brought home to offenders that gross negligence of this kind, where the lives of workmen are at risk, will usually require custodial sentences.

...

[44] Secondly, deterrence is necessary to prevent others behaving in this way and to bring to the attention of the construction industry generally the consequences of failure to ensure the safety of workmen...

[45] Thirdly, men such as the deceased and other casual labourers are particularly vulnerable and exposed in dangerous workplaces such as this. It is the role of this court to protect the public in general and such men in particular where their lives are at risk in working at heights."

SECTION 11 – PUBLIC ORDER OFFENCES

11.1 Riotous assembly – need for deterrent sentences

[*R v Robert McKeown, Edward Lynn and Stephen Ferris \(DPP's References \(Nos 13, 14 and 15 of 2013\) \[2013\] NICA 63*](#)

“[10] We have spent some time setting out the circumstances of the offending ... because it demonstrates that there remain a significant number of people, usually male, who persist in lending themselves to this violent mob activity. The gravamen of this offence is the decision to participate in the assembly thereby causing fear and alarm to those members of the public affected. Each participant adds to the weight of numbers in the mob and fuels the level of aggression that has been evidenced to us in these cases. Even for those who participate by presence and encouragement only, their culpability must be judged by the total picture of the disorder and violence caused.

[11] Such persistent criminal conduct spread as it is across our community inevitably requires a deterrent sentencing framework. Those who chose to participate by presence and encouragement had the option of walking away. Those who actually used violence did so as part of the violent disorder. Their conduct cannot be viewed in isolation. Where a deterrent sentence is required previous good character and circumstances of individual personal mitigation are of comparatively little weight. Secondly, although in this jurisdiction there is no statutory requirement to find exceptional circumstances before suspending a sentence of imprisonment, where a deterrent sentence is imposed it should only be suspended in highly exceptional circumstances as a matter of good sentencing policy. Thirdly, where there is compelling evidence such as video material, an offender is unlikely to get full credit for admissions and a plea where there realistically was no alternative. It was submitted to us that such a sentencing approach was only appropriate for those involved in petrol bombing or similar offences. Although we accept that *R v Blaney and others* [1989] NI 286 is authority for the proposition that deterrent sentences are required in such cases, we do not accept that this inhibits in any way the need for deterrent sentences in these cases.

...

[14] It has been argued that the Bradford riots were of a larger scale than some of those that we are dealing with here. That is balanced, however, by the recurrence of this offending behaviour in this jurisdiction across the community. Where there is any participation, including participation by way of presence and

encouragement, in large scale riots involving the use of serious violence and extensive public disruption a deterrent sentence of immediate custody is required other than in highly exceptional circumstances..."

SECTION 12 – ROAD TRAFFIC OFFENCES

12.1 Comparator cases – causing death by dangerous driving

[*R v Vladimar Kovac* \[2024\] NICA 72](#)

“[15] Mr O’Rourke referred to various other cases in this area and decisions of this court such as *DPP’s Reference (No 1 of 2016)* *R v Stewart* [2017] NICA 1, *Attorney General’s Reference No 2 of 2008 (R v McGinn)* [2008] NICA 40, *R v Nelson* [2020] NICA 7, *R v Finn* [2019] NICA 17, and *R v Moore* [2013] NICA 80. It is immediately apparent that all of these decisions are based on their own facts and particularly that *McGinn* and *Finn* concerned juvenile offenders. While these cases are of use in terms of the broad parameters of sentencing in this area, they cannot displace the judicial exercise in any individual case which is to arrive at a sentence which meets the justice of the case in the overall circumstances.”

12.2 Purpose of disqualification from driving

[*R v Vladimar Kovac* \[2024\] NICA 72](#)

“[21] Previously, this court in *R v Phair* [2023] NICA 18, has referred to the purpose of a disqualification which is ‘to reflect culpability and the need for public safety by virtue of risk. There should also be some correlation between the term of imprisonment and the extent of any disqualification.’”

[*R v Paul Holywood* \[2019\] NICA 28](#)

“[27] It can be seen that this court in *McKeown* set out the purposes of disqualification as including protection of the public and punishment. We emphasise that the primary purpose is forward looking aimed at the protection of the public but that there are also punitive and deterrent purposes...

[28]... Disqualification is an integral part of the sentence so that a greater adverse impact of a period of disqualification might be taken into account in arriving at the appropriate length of a custodial sentence...

[29] There is no power to make a sentence of disqualification consecutive to another period of disqualification, see *R v Meese* [1973] 1 WLR 675.”

12.3 Approach of Court of Appeal to appeals – restraint principle

[*R v Laura Adair* \[2022\] NICA 68](#)

[19] – citing *R v Ferris* [2020] NICA 60 at [36] to [46], the Court of Appeal “will interfere with a sentence only where of the opinion that it is either manifestly excessive or wrong in principle”. The Court of Appeal operates the restraint principle.

[23] – the Court of Appeal may test the merits of discrete points of challenge “by standing back panoramically”.

[28] – there may be flaws in a judgment but, for the Court of Appeal, “The main focus of this court is on terminus.” And whether the terminus “accords with governing principles”.

12.4 Sentencing approach & deterrent sentence

[*R v David Lee Stewart, DPP Ref \(No 1 of 2016\)* \[2017\] NICA 1](#)

“[28]...The proper approach is to identify the impact of all of the aggravating and mitigating factors to determine the starting point before applying the reduction for any plea. In that way both the aggravating and mitigating factors are subject to the same treatment.

...

[34] ...In cases of this kind [causing death by dangerous driving] it follows that deterrent sentences must continue to be imposed.”

[*R v Patricia McGrade* \[2014\] NICA 8](#)

“[20] ... the legislature did not require any direct connection between the consumption of alcohol and the bad driving. It is clear that the statutory purpose was to deter those who might drive with excess alcohol. Where a sentence has a clear deterrent purpose personal circumstances will not weigh as heavily as they might in other circumstances.”

12.5 Role of guidelines

[*R v Conrad Trafford Doole* \[2010\] NICA 11](#)

[6] “A recurring theme in the caselaw of this court is that guideline decisions are only what they purport to be, that is to say guidance to sentencers. They are not prescriptive. They are intended to provide a proper focus for sentencers but not a straight jacket. Every case must be decided justly in its own factual context taking account of the relevant considerations and evidence. Guidance and guidelines

provide useful assistance to sentencers in the proper identification of those considerations.”

12.6 Grounds of appeal

[*R v Thomas Anthony McCartney* \[2007\] NICA 41](#)

[5]... “generally leave to appeal should not be granted on a ground that has not been sought by the applicant.”

12.7 Absence of aggravating factors is a neutral factor

[*R v Thomas Anthony McCartney* \[2007\] NICA 41](#)

“[24] Indeed, the exercise of enumerating the aggravating features that are *not* present seems to us to be of highly questionable relevance to an appraisal of a defendant’s blameworthiness. What is surely more important is the presence of aggravating features.”

12.8 Sentencing a youth

[*R v David Anthony McElhone* \[2004\] NICA 46](#)

“[26] The applicant’s youth must rank as one of the most important factors in the selection of the appropriate sentence...”

[27] We do not consider, however, that the guidelines should be abandoned where the offender is a young person.”

12.9 Suspended sentences

[*R v Kevin Brannigan DPP’s \(No.7 of 2013\)* \[2013\] NICA 39](#)

“[10] ...In sentencing for these types of offences both in relation to the careless driving causing grievous bodily injury and in relation to offences around perverting the course of justice the authorities make it clear that it is only in exceptional circumstances that the sentence can be suspended...we do not consider that exceptional circumstances have been demonstrated. We do not consider that it was appropriate to suspend the sentences and we consider that it was unduly lenient to do so.”

SECTION 13 - ROBBERY

13.1 The need for deterrent sentences

13.1.1 Armed robbery

[Attorney General's Reference \(No. 1 of 2008\)\(Damien Gibbons, Stephen Gibbons, Declan Stilges and David Martin Crone\) \[2008\] NICA 41](#)

"[52] Robbery remains one of the most prevalent types of serious crime in our community. The courts must react to this regrettable phenomenon with sufficiently severe penalties to ensure that a clear signal is sent to those who may contemplate involvement in such activity that lengthy periods of imprisonment will be imposed where involvement in such crime is established."

[Attorney General's Reference \(No. 1 of 2005\)\(Bernard Rooney, Denis Dorrian, Gerard Irvine, Seamus Cunningham and Sean Doran\) \[2005\] NICA 44](#)

"[14] The maximum penalty for robbery is life imprisonment - section 8(2) of the Theft Act (Northern Ireland) 1967. Because of its current prevalence in our community and the very serious nature of the crime severe penalties for this type of offence are warranted. Unfortunately, however, the frequency of robbery offences is in no way a recent trend..."

[15] The imposition of severe sentences following O'Neill regrettably did not bring about a reduction in the incidence of robbery in this jurisdiction. In *R v Colhoun* [1988] 12 NIJB 16 ... Hutton LCJ said: -

'Since the judgment of this court in *R -v- O'Neill* there has been no diminution in the number of armed robberies. They are very serious crimes which put innocent members of the public in fear and this court desires to emphasize again that armed robbery is an offence which must be met by severe sentences which contain an element of deterrence.'

[Attorney General's Reference \(No. 1 of 2004\)\(Zoe Lynne Pearson\) \[2004\] NICA 6](#)

See the passages quoted from various judgments in paras [7] – [10].

"[12] These passages illustrate the courts' determination to ensure that the law's protection is afforded to those who provide the

indispensable service to the public of staffing small shops, post offices and other commercial premises. The staffing levels and the location of these premises mean that those who provide these facilities must often do so in vulnerable circumstances. It is precisely because of their vulnerability to the type of robbery involved here that substantial sentences must be passed.

Experience has shown that this type of offence will continue unless it is made clear to those who contemplate such robberies that they will, if apprehended, face lengthy terms of imprisonment."

[R v McKeown, Loyal and Glasgow \(Neutral Citation No. 181297, delivered 18 December 1997\)](#)

At pages 2 - 3:

"The judicial approach to robberies of small post offices and similar premises where large sums of money are present is clear.

Thus Lord Lane CJ in *Attorney General's Reference No. 9 of 1989 (Lacey)* [1990] 12 Cr.App.R.(S) 7 said at page 9:

'Businesses such as small post offices coupled with sweetie-shops - that is exactly what these premises were - are particularly susceptible to attack. They are easy targets for people who wish to enrich themselves at other people's expense. That means that in so far as is possible the courts must provide such protection as they can for those who carry out the public service of operating those post offices and sweetie-shops, which fulfil a very important public function in the suburbs of our large cities. The only way in which the Court can do that is to make it clear that if people do commit this sort of offence, then, if they are discovered and brought to justice, inevitably a severe sentence containing a deterrent element will be imposed upon them in order so far as possible to persuade other like-minded robbers, greedy persons, that it is not worth the candle.'

And more recently by Lord Bingham in *Attorney General's Reference Nos 23 and 24 of 1996* [1997] 1 Cr.App.R.(S) 174 at 176-77:

'At the outset it has to be acknowledged ... that these are very serious offences. It is common knowledge that branch post offices, betting offices,

off-licences, garages and very many other premises are served by single, often female, assistants, in possession of cash, who are vulnerable to an extreme degree to the depredations of those who choose to behave in the lawless manner demonstrated by the 2 offenders. It has been said that in this field the public interest to protect such people is paramount and must override any personal considerations which might otherwise weigh in favour of a defendant. This Court would wish to give its emphatic endorsement to that principle. It is fundamental that the courts must be seen to protect the public.'

In this jurisdiction there have been an alarming number of cases of this nature in the recent past and we wholeheartedly endorse those observations...

These principles also apply when the offenders are frustrated by being captured before the offence is committed. So the fact that the charge is one of conspiracy to rob is not an ameliorating factor..."

Also, at page 3:

"The Court of Appeal made it clear that the practice of holding members of a household hostage while a parent or other member is sent to collect money for the raiders or otherwise assist in the execution of their criminal plan will attract immediate and lengthy custodial sentences so that the offenders may be duly punished and others may be deterred from doing likewise."

13.1.2 Robbery of householders

[*R v Robert Alexander Skelton and Dale Mooney* \[1992\] NIJB 26 \(Delivered 30 March 1992\)](#)

Pages 4 – 7 refer extensively to passages from other cases (including *R v Ferguson*) which reflect the need for immediate and heavy sentences of imprisonment for robbery of householders using violence. Also, the vulnerability of elderly and infirm citizens is highlighted.

In particular, page 7 provides:

"...The purpose of the courts in sentencing in cases of this nature must be to make it clear that those who rob citizens in their homes with violence, whether the robbery is pre-planned or carried out

without prior planning, will be punished severely, and that if serious violence is used the punishment imposed will be of the u[t]most severity in order to deter others from similar crimes...”
Also, page 10 provides:

“These were brutal and outrageous crimes perpetrated against an elderly and defenceless old gentleman in his own house where he should have been safe and secure. The sentences imposed by the trial judge were richly deserved. In upholding these sentences this court again gives the clearest warning that those who rob citizens with violence in their homes will be punished with u[t]most severity.”

13.2 Weight given to personal circumstances

[Attorney General's Reference \(No. 1 of 2004\)\(Zoe Lynne Pearson\) \[2004\] NICA 6](#) (armed robbery of commercial premises)

“[7] It has been well recognised that small commercial premises such as off-licences and post offices (which often provide a vital service for the community) are vulnerable to the type of robbery perpetrated by this offender and her accomplice. In *Attorney General's Reference Nos 23 and 24 of 1996* [1997] 1 Cr App R (S) 174 (a case involving a series of robberies of small shops) Lord Bingham of Cornhill said at 176- 77:

‘At the outset it has to be acknowledged ... that these are very serious offences. It is common knowledge that branch post offices, betting offices, off-licences, garages and very many other premises are served by single, often female, assistants, in possession of cash, who are vulnerable to an extreme in the lawless manner demonstrated by the 2 offenders. **It has been said that in this field the public interest to protect such people is paramount and must override any personal considerations which might otherwise weigh in favour of a defendant.** This Court would wish to give its emphatic endorsement to that principle. It is fundamental that the courts must be seen to protect the public.’” [my emphasis]

13.3 Relevance of Sentencing Guidelines Council Guidance

[Attorney General's Reference \(No. 1 of 2008\)\(Damien Gibbons, Stephen Gibbons, Declan Stilges and David Martin Crone\) \[2008\] NICA 41](#)

“[44] As we have repeatedly made clear, the guidance provided by the Sentencing Guidelines Council must always be regarded as secondary to the guidelines provided by the Court of Appeal in this jurisdiction. There will be occasions where the guidelines accord

with local experience in which case they may be followed but there will also be occasions where they should not be applied...”

13.4 Duty of counsel to bring guideline cases to the attention of the sentencing judge

Attorney General's Reference (No. 1 of 2008)(Damien Gibbons, Stephen Gibbons, Declan Stilges and David Martin Crone) [2008] NICA 41

“[41] Very unfortunately ... the judge was not referred to relevant guideline cases from this court on sentencing for robbery. In *Attorney General's reference (No 6 of 2006)* [2007] NICA 16, we said: -

‘[18] This court has provided guidance on the proper sentencing range in a number of robbery cases in the recent past. Despite the existence of those guideline cases, no authority was referred to by either counsel who appeared before the Recorder nor did she advert to any of the recently decided appeals in her sentencing remarks... We deprecate this failure. In a case such as the present, counsel for the prosecution and for the defence should have had ready copies of the well-known guideline cases and should have drawn these to the attention of the judge.’

[42] Observations such as these have been made on several occasions both before and since that case. It is a matter for considerable regret that they must be repeated. We are at a loss to understand why counsel in important cases such as the present neglect what we consider to be their elementary duty of bringing to the attention of the judge relevant guideline cases...”

SECTION 14 – SEXUAL OFFENCES

14.1 Sexual offences against children – deterrent sentences required

14.1.1 Engaging in sexual activity with a child or causing and inciting a child to engage in sexual activity over the internet

[R v Pacyno \[2024\] NICA 3](#)

“[27] ...sexual offending against children calls for deterrent and condign punishment as set out in *AG’s Reference (No.2 of 2002)* [2002] NICA 40, para [15] and *AG’s Reference (No 4. of 2005) (Martin Kerr)* [2005] NICA 33 para [23].

...

[39] Offences involving engaging in sexual activity with a child or causing or inciting a child to engage in sexual activity should in future attract an immediate custodial sentence.

...

[41] Consideration of a non-custodial option will properly arise if a sentence of 12 months or less is contemplated or if circumstances arise which persuade a judge that a non-custodial route is appropriate. In either circumstance a judge should fully explain by way of reasons why that option is preferred and should refer to the evidence upon which the decision is based.

...

[49] This case will serve as guidance for sentencers going forward in relation to offences conducted over the internet which involve engaging in sexual activity and causing or inciting children to engage in sexual activity. As we have said the fact that there is no direct physical contact does not alter the seriousness of such offending and the need for condign punishment. In addition, the fact that there are no identified victims does not mean that many children have not been exploited, corrupted, and degraded by this activity and that a deterrent sentence is required.”

(See also [R v Kasak \[2026\] NICA 2](#), para [13] in which the NICOA reaffirmed para [41] of *Pacyno* in relation to cases involving sexual activity with a child).

14.1.2 Blackmail and related online sexual offending

[R v Playfair \[2024\] NICA 21](#)

See Section 3 - Blackmail Offences.

14.1.3 Sexual assault of a child under 13

[R v CD \[2024\] NICA 9](#)

“[32] ...it is timely to comment that offences of this nature are clearly serious and require condign punishment. The maximum sentence on indictment for the offences at issue is now 14 years’ imprisonment. The current sentencing policy is obviously that appropriate sentences must reflect the gravity of the offence, the need to deter others, the obligation to protect the most vulnerable members of our society, and the grave public concern and revulsion aroused by this type of offence. These points of principle are not in dispute.

[33] Additionally, not in dispute, is the fact that sentencing in this area is extremely fact sensitive. That is why we agree and reiterate the point made by previous compositions of this court that it is difficult and unwise to set rigid guidelines for sentencing in this area. A sentencing judge will, in the course of daily work, come across very many different circumstances unfortunately which involve this type of offending and ultimately must, in weighing up all the relevant factors, settle upon a sentence which meets the justice of the case.”

14.1.4 Sexual abuse of children to whom the offender owed a duty of care and trust

[R v O’Hara \[2021\] NICA 1](#)

Para [10] refers to the case of *R v DO* [2006] NICA 7 which sets out,

“The need to impose ‘severe sentences...condign punishment...’ in cases entailing the sexual abuse of young children to whom the offender owed a duty of care and trust; see [29].”

14.1.5 Sexual abuse falling short of rape

[R v O’Hara \[2021\] NICA 1](#)

“[10] ...In the immediately preceding passage Kerr LCJ quoted from this court’s decision in *Attorney General’s Reference No 1 of 1989* [1989] NI 245 at 251:

‘The threat of sexual abuse to children in modern society has become so grave and the duty resting on the courts to deter those who may be tempted to harm little children sexually has become so important that severe sentences must be passed on those who commit rape against little children even if before the offence they had good records and good reputations.’

As demonstrated by a succession of decisions of this court, these

sentiments apply with full force to offences of sexual abuse of children falling short of rape.”

14.1.6 Sexual offences against children generally

[R v QD \[2019\] NICA 23](#)

“[38] The approach to sentencing in cases involving sexual abuse of young children has been set out in *Attorney General’s Reference (No. 2 of 2002)* [2002] NICA 40 by Carswell LCJ who stated:

‘Counsel for the Attorney General submitted that the course taken by the judge was excessively lenient and that it failed to reflect the gravity of the offence, the need to deter others, the obligation to protect the most vulnerable members of society, the grave public concern and revulsion aroused by this type of offence and the importance of maintaining public confidence in the sentencing system. He pointed to the remarks of this court in *Attorney General’s Reference (No. 3 of 2001)* (2002, unreported) at page 8, where we placed renewed stress on the necessity for the courts to mark emphatically the abhorrence of acts of child abuse, which he submitted were, *mutatis mutandis*, entirely apposite to the present case and had not been taken into account by the judge. In a similar vein were the court’s remarks in *Attorney General’s Reference (No. 2 of 2001)* [2002] NIJB 117 at 122a:

‘It is a prime function of criminal justice to impose condign punishment on those who attack vulnerable members of society, in order to deter others from following their example’.

Also in *Attorney General’s Reference (No. 4 of 2005)* (*Martin Kerr*) [2005] NICA 33, Kerr LCJ stated that:

‘This court has repeatedly warned that sexual offences against young children will be met with severe punishment...’

We confirm that this remains the approach to sentencing in cases of this nature.”

[R v KT \[2019\] NICA 42](#)

“[42] The offences in this case involved young children and in that respect we refer to the guidance of this court in *Attorney General’s Reference (No. 2 of 2002)* [2002] NICA 40, *Attorney General’s Reference (No. 4 of 2005) (Martin Kerr)* [2005] NICA 33 and *R v QD* [2019] NICA 23. We repeat that this remains the approach to sentencing in relation to sexual offences involving children.”

[*R v DO* \[2006\] NICA 7](#)

“ [29] Despite the imposition of severe sentences for sexual abuse of young children to whom the offenders owed a duty of care and trust, this type of offence remains disturbingly prevalent. The courts must react to this enduring and unacceptable phenomenon by the imposition of condign punishment, even where the offender pleads guilty.”

14.2 Offence of abuse of position of trust

[*R v Ritchie* \[2024\] NICC 5](#)

“[19] The “mischief” underlying this offence was the perceived lacuna left in the law whereby a teacher was criminally liable for offending involving a pupil but someone in equal authority such as a sports coach or social worker wasn’t. By this enactment Parliament’s intention was to close that lacuna...it must be understood that this was done deliberately by Parliament to provide protection for young people.”

[20] When assessing Breach of Trust it is important to guard against double counting. However, it is equally important to note that the assessment of this will often involve a qualitative assessment. To slavishly tick a box and regard this factor as dealt with is precisely the mechanistic approach which the Northern Ireland Court of Appeal have warned against. Some positions/breaches of trust will be more onerous or egregious than others. The vulnerability of the complainant will often be a factor that runs alongside this assessment.”

14.3 Evolution of sexual offences legislation

[*R v Hutton* \[2024\] NICA 19](#)

“[45] The case *R v GM* [2020] NICA 49 also discusses the evolution of the law in this area and the fact that reforms were made to reflect the need for appropriate sentencing and deterrence given the rise in this type of offending and society’s condemnation of it. Paras [38] and [39] refer:

[38] Since then statutory reforms have effected a veritable sea change in the prosecution and punishment of sexual offences. These developments (noted briefly above) began in the jurisdiction of England and Wales with the introduction of the Sexual Offences Act 2003 (the “2003 Act”). This is commonly regarded as the most significant overhaul of the law in this field since the Victorian era. The White Paper which preceded the new legislation contained the following passage: ‘The law on sex offences, as it stands, is archaic, incoherent and discriminatory. Much of it is contained in the Sexual Offences Act 1956 and most of that was simply a consolidation of 19th century law. It does not reflect the changes in society and social attitudes that have taken place since the Act became law and it is widely considered to be inadequate and out of date.’ The 2003 Act, which came into force on 1 May 2004, created over 50 offences and abolished a series of offences which had become increasingly archaic including incest, indecent assault, buggery, bestiality and gross indecency between men.

[39] The jurisdiction of Northern Ireland followed suit soon after with the enactment of the Sexual Offences (NI) Order 2008 (the “2008 Order”), which came into operation on 2 February 2009. This measure mirrors closely its English statutory counterpart. The parallels between these two instruments are detailed in a helpful schedule in Sexual Offences Law and Practice (Rook and Ward 5th Edition) at 32.75 in a chapter written by His Honour Judge McFarland, the (then) Recorder of Belfast. This valuable treatise demonstrates, inter alia, that this major reform of the law of Northern Ireland preceded the devolution of policing and justice powers to the Northern Ireland Assembly via the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010. This serves to emphasise the close alignment between the new statutory regimes in the two jurisdictions. The 2008 Order, in tandem with its English counterpart, namely the Sexual Offences Act 2003, represented the legislature’s response to the growing prevalence of this kind of offending, the compelling need to protect the vulnerable, the necessity of greater deterrence and society’s revulsion at this type of criminality.”

14.4 Factors to take into consideration when sentencing for sexual offending against children

[R v QD \[2019\] NICA 23](#)

“[39] In *R v Millberry & Ors* [2003] 2 Cr App R (S) 31 it was stated that in assessing the gravity of an individual offence there are broadly three dimensions to consider. The first is the degree of harm to the victim; the second is the level of culpability of the offender and the third is the level of risk proposed by the offender to society. Those three dimensions were approved by this court in *Attorney General’s Reference (No 2 of 2004) (Daniel John O’Connell)* [2004] NICA 15 and *Attorney General’s Reference (No 3 of 2006) (Michael John Gilbert)* [2006] NICA 36. We consider that it will always be necessary to consider any individual case as a whole taking into account the three dimensions to which we have referred.” (Also cited in [R v KT \[2019\] NICA 42](#), para [41]).

[R v SG \[2010\] NICA 32](#)

“[13] In a case of this kind the culpability of the offender will be the primary indicator of the seriousness of the offence. It will also be necessary to take into account the age and vulnerability of the victim, the age gap between the child and the offender and the youth and immaturity of the offender.” (See also *R v Bell* [2021] NICA 5, para [13] and *R v Hendry* [2022] NICA 77, para [37]).

14.5 Approach to Sentencing Council Guidelines

[R v MH \[2015\] NICA 67](#)

“[14] ...This Court last reviewed the assistance to be derived from guidelines issued in England and Wales in *R v McCaughey and Smith* [2014] NICA 61. The case concerned pleas of guilty to counts of burglary, attempted burglary and obstruction. As was made clear at paragraph [24] of the judgment, the approach set out applied equally to sentencing sexual offences cases. The Court of Appeal stated (*italics added*) -

‘(i) In Northern Ireland we have a small Crown Court judiciary who have the benefit of regular meetings with colleagues where sentencing issues can be discussed both formally and informally. Sentencing is carried out exclusively by full-time judges most of whom have had considerable experience of criminal law before going on the Bench. We recognise the *assistance to be derived from the aggravating and mitigating features* identified

by the Sentencing Council in its guidance but *we have discouraged judges and practitioners from being constrained by the brackets of sentencing set out within the guidance (para [22] of R v McCaughey and Smith).*

(ii) The Definitive Guideline suggests *starting points and ranges depending on the category of harm and the nature of the role into which the offender falls. There are, however, dangers with that approach.* In many instances there will be competing considerations affecting the offender's role and inevitably considerable variation even within each category of harm. We consider that in attempting to categorise each case in the way suggested in the guidelines the judge may be distracted from finding the right sentence for each individual case. Guidelines and guidance in this jurisdiction are intended to assist the sentencing judge without trammelling the proper level of discretion vested in the sentencer. This is not to say that the Definitive Guideline does not provide *useful assistance in identifying aggravating and mitigating factors and indicating appropriate ranges of sentencing worthy of consideration depending upon the precise circumstances of the individual case (para [23] of R v McCaughey and Smith).*

[15] It appears from the conduct of sentencing appeals in the Court of Appeal and from what the appeals illuminate about the conduct of sentencing hearings, that practitioners tend to disregard the above propositions and seek to engage in detailed analysis of the contents of the sentencing guidelines in England and Wales. Taking account of the character of the Crown Court Judiciary in Northern Ireland, this Court restates the position as follows –

First of all, assistance may be obtained from the lists of aggravating and mitigating factors.

Secondly, while ranges of sentences may be considered, sentencers should not be constrained by the ranges of sentences. In particular, the guidelines are developing ranges of sentences based on degrees of harm and degrees of culpability, resulting in multiple ranges of sentences for an offence. For reasons set out at 14 (ii) above, this Court considers there to be dangers in this approach. Accordingly, consideration of the range of sentences for a particular offence should be of the overall range across the categories of harm and culpability. Ultimately the reference to the ranges of sentences permits the sentencer to identify a comparator for the sentence

to be imposed, without the sentencer being constrained by that comparison in the exercise of discretion.

Thirdly, the sentencer should take account of all relevant circumstances, which will include the harm factors and the culpability factors set out in the guidelines. Again that is part of the overall sentencing exercise, without the sentencer being constrained to adopt stated categories of harm and culpability in arriving at a starting point.”

[R v McCormick \[2015\] NICA 14](#)

“[7] It is clear from the sentencing remarks of the learned trial judge that the submissions made to him focussed to a large extent on the application of the Sentencing Council Guidelines. As we have recently sought to explain in *R v McCaughey and Smith* [2014] NICA 61 the danger with this approach is that the court is encouraged to identify specific aggravating or mitigating factors which may alter the position of the sentence in a particular sentencing box. At paragraph 11 of *R v DM* [2012] NICA 36 we pointed out that the circumstances in which this offence [engaging in sexual activity with a child] can be committed vary widely and the court is required to balance those particular circumstances. We indicated in *R v DM* that *R v Corran*, *R v Barrass* and *R v Frew* were likely to be of more assistance than the Sentencing Council Guidelines in arriving at the appropriate sentence.

(see also *R v Ritchie* [2024] NICC 5, para [18] and *R v Hutton* [2024] NICA 19, para [49]).

14.6 Totality

14.6.1 Sentencing in multiple offence, multiple victim cases

[R v Hutton \[2024\] NICA 19](#)

“[40] Any judge sentencing for more than a single offence needs to have express regard to the totality principle. Of course, in most cases, that is a relatively straightforward matter. But in a case like this, where there were a variety of different offences, committed at different times, it was important for the judge to have particular regard to the overall length of the sentence that he intended to impose, in order to ensure that it was just and proportionate.

[41] The defence submission references Blackstone’s Criminal Practice 2024 E13.22 when dealing with the application of the totality principle and cites the England & Wales Sentencing Guidelines which comprises two elements:

(a) the overall sentence should reflect all the offending behaviour with reference to overall harm and culpability, together with aggravating and mitigating factors; and

(b) be just and proportionate.

Blackstone continues in the following vein:

‘There are no inflexible rules as to how the sentence should be structured. If consecutive, it is usually impossible to arrive at a just and proportionate sentence simply by adding together notional single sentences. Ordinarily some downward adjustment is required. If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the overall offending. Ordinarily some upward adjustment is required.’

We adopt these passages.

[42] In this jurisdiction we do not have formal rules on the totality of sentence guidance referenced above. However, judges sentencing in the Crown Court are well versed in the totality principle and the ultimate test which is to reach a sentence just and proportionate in each case.”

(see also guidance provided at paras [57] and [58]).

14.6.2 Sentencing for two equally serious offences

[R v ZB \[2022\] NICA 69](#)

“[62] ...In a case such as this the judge cannot simply add the two sentences which he would have reached for the offences if separate. Rather, he should decide what is an appropriate overall sentence having considered both offences which in this case are equally serious.”

14.7 Explanation of sentence imposed

[R v Hutton \[2024\] NICA 19](#)

“[35] When a judge imposes any term of imprisonment, particularly one as long as 12 years, it is always necessary for him or her to explain, in simple language, how that term has been calculated. The judge is not required to identify every last plus or minus in the

calculation, or to use particular phrases or expressions; sentencing is not a formulaic exercise; and it is an art, not a science. But it is necessary to explain to a defendant, in clear terms, how the overall term of imprisonment has been calculated.”

SECTION 15 – THEFT & OTHER DISHONEST OFFENCES

15.1 Fraudulent evasion of customs duty on cigarettes

[*R v Ruddy* \[2025\] NICA 13](#)

“[28] Turning to the issue of the starting point for sentence the guiding authorities are *Kumar* [2013] NICC 12, *McDonnell & Fearon* [2013] NICC 16, *Czyzewski* [2004] 3 All ER 135 and *Grew & McLaughlin* [2011] NICA 31. Drawing from these we can see that the broad categories of sentence for a first-time offender are:

- Less than £1000 - fine or conditional discharge
- £10,000 - community service, high fine or custody
- £10,000-£100,000 - up to nine months for a low-level offender
- More than £100,000 - sentence to be determined by degree of professional and aggravating features, but nine months to three years for £100,000-£500,000
- Three years to five years for £500,000-1million
- Five to seven years for several million.

[29] Of course a sentencing judge also retains a discretion to impose a higher sentence based on aggravation such as previous offences or for instance if violence is involved. Also, the greater the organisational involvement of an offender the higher the sentence and those with the lowest level of involvement lower sentences. However, the above brackets are a helpful guide in cases of this nature in this jurisdiction.”

15.2 Conspiracy to steal

[*The King v Kenneth Clarke and Jamie McConnell* \[2024\] NICA 52](#)

“[39] By way of final comment, we point out that sentences in this area must be a deterrent given the outrage that this type of persistent reckless offending engenders, and the financial loss and damage occasioned to local businesses. Those who commit these offences can expect significant sentences if they are involved in this type of offending for a period of time.”

...

[41] “Furthermore, the specific guidance we provide is that in cases involving multiple incidents a range of ten to fourteen years’ imprisonment is appropriate before reduction for a guilty plea. Where one or two incidents are involved over a short period the appropriate range is five years to seven and a half years before reduction for a guilty plea. In cases where it can be established that a defendant was more centrally involved in this type of offending than either of these two respondents a longer sentence would be justified, or consecutive sentences may be imposed.”

15.3 Conspiracy to cheat the public revenue - suspended sentences

[*The King v Francis Deolin* \[2023\] NICA 71](#)

“[24] The Court of Appeal in Northern Ireland has consistently stated that where a deterrent sentence is required as a matter of good sentencing policy, the court should only suspend the sentence of imprisonment in highly exceptional circumstances – see *DPP’s References (Nos 13, 14 and 15 of 2013)* (*R v McKeown, Lynn and Ferris* [2013] NICA 63).

...

[32] The sentencing of offenders who are the sole or primary carers for dependent children or others in a vulnerable position is a difficult and delicate exercise. However, such considerations cannot automatically displace the need for punishment, deterrence and the protection of the public. The circumstances must be highly exceptional before a sentence can be suspended for this reason alone.”

15.4 Money mule offences

[*R v Coleman* \[2020\] NICC 5](#)

“[46] The experience of this court, is that benefit fraudsters will often receive suspended prison sentences, unless they have previous convictions for similar offences, other dishonesty offences, other significant criminal offences, or have failed to respond to earlier attempts within the criminal justice system to reform their conduct. Such an approach is reflected in the Court of Appeal judgment in *Brady*.

[47] I therefore consider that it is within the discretion of a sentencing judge to leave open the option of suspending a sentence, without the specific need to consider the existence of exceptional circumstances. The need for such circumstances would apply should this be a second money laundering offence, fraud or other dishonesty offence.

[48] Before leaving the matter of suspended sentences, defendants, and their legal advisors, should be aware that such an outcome would be unlikely after a finding of guilt by a jury. Suspended sentences are a means of expressing the seriousness of the offences with an acknowledgment that the custody threshold has been passed. The suspended sentence, however, allows the offender to remain in the community to assist in their rehabilitation, but still with a threat hanging over them should they re-offend. If there is no remorse or acknowledgement of guilt a suspended sentence could well be inappropriate.”

15.5 Conspiracy to defraud

[R v Paul Mahoney \[2016\] NICA 27](#)

“[20] The Sentencing Guidelines Council of England and Wales issued guidance with effect from 1 October 2014 in relation to offences of fraud, bribery and money laundering. The Guidelines accordingly included the offences of conspiracy to defraud which appear in counts 1 and 2 on this indictment. The structure of the Guidelines is to recognise that culpability and harm are the driving factors for determining the sentence. We agree that the factors identified as contributing to culpability and harm in the Guidelines are appropriate and should be taken into consideration in this jurisdiction. We also agree that the aggravating and mitigating factors identified in the Guidelines are of assistance.”

15.6 False accounting, making false declarations with a view to obtaining social security benefits and the imposition of confiscation orders under POCA 2002

[R v Donna McCool and Michael Harkin \[2015\] NICA 31](#)

“[17] It is common case that the 2002 Act must be given effect in a manner which avoids a violation of Article 1 Protocol 1 of the Convention and that a confiscation order which did not conform to the test of proportionality would constitute such a violation. This was confirmed in *R v Waya* [2012] UKSC 51. It is further agreed that as a result section 156(5)(b) of the 2002 Act has to be read subject to the qualification “except in so far as such an order would be disproportionate and thus a breach of Article 1, Protocol 1”.

...

[Quoting *Waya*],

“A confiscation order must therefore bear a proportionate relationship to this purpose.”

15.7 Fraud by false representation – probation orders

[*R v Connor Joseph Hamilton* \[2015\] NICA 15](#)

“[16] The Report of the Departmental Committee on the Probation Service suggested four conditions which should be met before making a probation order. These are still worthy of consideration:

‘Firstly, the circumstances of the offence and the offender’s record must not be such as to demand, in the interests of society, that some more severe method be adopted in dealing with the offender, secondly, the risk, if any, to society through setting the offender at liberty must be outweighed by the moral, social and economic arguments for not depriving him of it; thirdly, the offender must need continuing attention, since otherwise, if the second condition is satisfied, a fine or a discharge will suffice; and fourthly, the offender must be capable of responding to the attention while he is at liberty.’

[17] We consider that the position is accurately stated in Valentine’s *‘All the law of Northern Ireland’*, Folder 7 – Sentence/prisons where the learned editor highlights the purpose of probation. A probation order whether in the context of a custody probation order or a combination order should only be made if the court considers that (a) probation will reduce the risk of harm to the public or make reoffending less likely; and (b) the defendant will co-operate and benefit from the rehabilitatory effects of probation (cf Doyle [1999] 7 BNIL 92). Where a probation officer has not recommended probation, it is not normally appropriate to choose this option. The probation officer will generally be in the best position to decide these matters and the court should be slow to make such an order unless it has the support of the probation officer.”

15.8 Selling goods bearing an unauthorised trademark and trading in counterfeit products

[*R v Rafal Tomasz Rymacki and Krzysztof David Jankowski* \[2013\] NICC 20](#)

“[14] Any person involved in the manufacture and distribution of counterfeit items should expect to receive a custodial sentence. At this level of offending there is a strong element of deterrence in the sentence. It follows that unless there are exceptional circumstances this sentence should not be suspended (see *DPP’s Ref 13, 14 and 15 of 2013* [2013] NICA 63 at [14]). As to the length of such a sentence much will depend on the circumstances of the case. Offences of this nature are essentially confidence frauds, so the seriousness of the offence will depend largely on the amount of

loss to the trademark owner or profit generated by the offenders whichever figure is the more accurate in determining the correct level of culpability. Sums up to £20,000 should attract sentences, after a contest, with a starting point of between 1 and 3 years, sums up to £100,000 should have a starting point of between 3 and 4 years, sums up to £500,000 should have a starting point of 4 and 5 years, and for sums over £500,000 the starting point should be between 5 and 6 years.”

15.9 Failure to declare a change of circumstances and making a false declaration with a view to obtaining income support and housing benefit – imposition of a compensation order

[*R v William Brady* \[2011\] NICA 4](#)

“[18] The Criminal Justice (Northern Ireland) Order 1994 Article 14(1) provides:

‘Subject to the provisions of this article, a court by or before which a person is convicted of an offence instead of or in addition to dealing with him in any other way, may, on application or otherwise, make an order ... requiring him to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence, or to make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road; and a court shall give reasons, on passing sentence, if it does not make such an order in a case where this article empowers it to do so.’

This provision, thus, makes clear that the court is required to give reasons when it does not grant such an order where it has the power to do so. This indicates that in any case where a compensation order appears to be *prima facie* appropriate the court must explain why it has decided not to make such an order. Since the effect of a compensation order may be to reduce the means of a defendant and would thus affect his ability to pay a fine, the question whether a compensation order should be made is a logical first question to be addressed by the court in deciding the form of any financial penalty imposed on the defendant instead of or in addition to a custodial or suspended sentence.

[19] Lord Lane in *R v Stewart* recognised the appropriateness of the

making of a compensation order in a benefits fraud case while recognising that in many instances the defendant may not have the means to pay compensation. It is noteworthy that he appears to have envisaged that a compensation order rather than a fine is the suitable financial penalty for a defendant with the means to pay compensation.”

15.10 Making a false instrument

[R v William David John McCracken \[2007\] NICC 51](#)

“[14] Accordingly, even with a clear record, someone who systematically flouts the established procedures will inevitably face a significant custodial sentence not only to punish but also to deter others from engaging in such potentially very damaging conduct. Those avoiding compliance or tempted to avoid compliance with export procedures established in the public interest are now explicitly on notice of the consequences of noncompliance.”

SECTION 16 - TERRORIST OFFENCES

16.1 Requirement of deterrent sentences generally

[*The King v Gavin Coyle* \[2024\] NICA 22](#)

Para [32] refers to para [22] of *R v Harkness* [2008] NICA 51 in which the Court of Appeal endorsed the learned trial judge's remarks that "terrorist organisations cannot carry out operations which in many cases may result in murder or other grave crimes unless there are persons who provide the kind of assistance contemplated by section 57 [of the Terrorism Act 2000] ... and participation in such activities generally warrant the imposition of severe deterrent sentences."

[*The King v Fionnghuala Perry* \[2024\] NICA 11](#)

"[21] It is appropriate to elaborate on the latter issue at this juncture. We consider that the significant 2021 sentencing reforms evinced in the clearest terms Parliament's intention to introduce a more austere sentencing regime reflecting public concern and revulsion regarding offending of this kind, with a particular focus on protection of the public. This is particularly clear from *Morgan and others v Ministry of Justice* [2023] 2 WLR 905 ("Morgan"), at paras 66 – 71

...

[80] The scourge of terrorist offending continues to demand condign punishment in the unsettled and challenging post – conflict world of Northern Ireland. Terrorism in all of its manifestations is fundamentally and irredeemably antithetical to the rule of law."

[*Director of Public Prosecution's Reference \(No 17\) of 2013 \(Ryan McDowell\)* \[2014\] NICA 6](#)

"[13] In two recent cases [*DPP Reference (Nos 13, 14 and 15 of 2013)* [2013] NICA 63 and *DPP Reference (No 1 of 2013)* [2013] NICA 73] this court has underlined the requirement for deterrent custodial sentences in cases of sectarian violence in the absence of exceptional circumstances... Such decisions of this court constitute an important form of guidance for sentencers but such guidance should not be seen as in any way relieving the sentencer of the fundamental duty to ensure that all relevant aspects of the specific offence and offender are properly and effectively taken into account and weighed in the balance. In some cases the serious nature, circumstances and/or prevalence of the offence may require that the public interest in deterrence of others by way of custodial

sentences should take priority over the personal details of the offender. However, rehabilitation, rather than incarceration, may in particular cases be the most effective means of achieving lasting personal deterrence, a result that is also very much in the public interest. One of the most difficult and demanding tasks for the sentencing judge in cases of this nature is to arrive at a solution that is just and fair to all in the circumstances of the particular case.”

“[14] ... The placing of hoax devices should not be seen as constituting minor offending, given the fear, anxiety and distress that is likely to ensue...”.

[*R v Gareth Edward Marcus \(Director of Public Prosecution's Reference \(No. 1 of 2013\)\)* \[2013\] NICA 73](#)

“[9] There can be no doubt whatever but that the circumstances of these offences warranted deterrent sentences and that the sectarian element enhanced the requirement for such sentences... Sectarianism has fuelled community hatred and violence in this jurisdiction for many years and, sadly, appears to continue to do so...”

“[15] We simply conclude ... by re-emphasising once again what should by now be self-evident, namely, that in this jurisdiction acts of violence influenced by any form of sectarianism must, in the absence of exceptional circumstances, attract significant deterrent custodial sentences.”

[*R v Brian Joseph Arthurs \(29-03-96\)*](#)

P5: “This court has constantly made it clear that a grave terrorist offence must be punished with a very severe and deterrent sentence even if the accused is a person with a previous clear record.”

pp 5 and 6: “As we have already observed, because of the killing capacity of this mortar bomb, this was a very grave terrorist offence. The Crown Court and this court in recent years have frequently passed very heavy sentences for very serious terrorist offences and have repeatedly stated that it is correct to pass severe sentences both to punish offenders and also to act as a deterrent to other possible offenders...”

[*R v Cunningham and Devenney* \[1989\] NI 350](#)

p5: “This leads us to emphasise that courts in Northern Ireland in sentencing for actual or inchoate crimes of violence by terrorists should, as a general rule, while the present campaign of terrorism

continues, pass sentences to give effect primarily to the principles of deterrence (of the accused and also of other potential offenders), retribution and prevention. Personal mitigating circumstances of the offender and considerations of rehabilitation must necessarily give way to the application of these principles though some allowance to a minor degree may be made in respect of them..."

pp6 refers to the following passage in *R v Crossan* [1987] 2 NIJB 73: "This community has now for many years been undergoing what amounts to a state of siege, and crimes of the sort we have dealt with this morning have been a common occurrence. 30 years ago, and also 51 years ago, there were outbreaks of violence committed by organisations and involving a number of explosions and shootings, attacks on the community and on the security forces, but these attacks were of nothing like the same extent and were carried on for nothing like the same length of time as the current crop of violence. In those days the kind of sentences we are dealing with here would have been regarded as absolutely commonplace, because the enormity of the crimes committed made a full impact on society and on the courts. This, to some extent, is not true now, because the sensitivity of everyone has been dulled by repetition, but in reality we have to remember that the crimes are even more prevalent than during the periods we have recalled and the attacks on the security forces have certainly not abated in any degree; indeed, they have in some respects increased. They pose a grave danger to the whole community, the perpetrators are difficult to bring to justice and the crimes in themselves are very wicked crimes indeed meriting severely deterrent and exemplary punishment..."

16.2 Restricted eligibility for early release of terrorist prisoners

[*Morgan and others \(Respondents\) v Ministry of Justice \(Appellant\) \(Northern Ireland\)* \[2023\] UKSC 14](#)

"114. I have set out the nature and purpose of the measures contained in section 30 of the 2021 Act and Article 20A of the 2008 Order. The purpose was to protect the public from terrorist prisoners by confining them for a longer period under their determinate custodial sentences and then only releasing them on licence after the Parole Commissioners directed their release being satisfied that it was no longer necessary for the protection of the public that they should be confined."

16.3 Murder/attempted murder of a prison officer or police officer (public servants) - personal mitigation of limited, if any, value & deterrent sentences required

[*R v Christopher Robinson* \[2022\] NICA 30](#)

“[16] ... personal mitigation is likely to be of limited, if any value, in a case of this nature...”

[26] In line with previous Court of Appeal authority we have mentioned this court reiterates the position that in this jurisdiction such lengthy sentences should be applied to offences of this nature not least to mark our society’s abhorrence of such terrorist crimes. We repeat the fact that personal mitigation has a minimal role to play for offenders who choose to act in this way.”

[R v Christine Connor \[2021\] NICA 3](#)

“[7] There is a related sentencing principle, again well settled ... namely that in sentencing for terrorist offences the requirement of deterrence is the dominant consideration... As these passages demonstrate, this principle operates with the allied principle that the personal circumstances of the offender will rarely carry any appreciable weight in such cases.”

“[19] ... The attempted murder of any member of the security forces in Northern Ireland is a heinous crime, demanding of condign punishment.”

[R v Wootton and McConville \(Director of Public Prosecution’s Reference \(Numbers 2 & 3 of 2012\)\) \[2014\] NICA 69](#)

“[22] ... The nature of terrorist offences is that there is some degree of political motivation, they involve a great deal of planning and the use of a firearm is common. Such aggravating factors will not normally add significantly to the tariff although these will be material in terrorist offences not involving the imposition of a life sentence tariff.

[23] In this case, however, there is the significant aggravating factor that this terrorist offence involved the killing of a police officer in the course of his duties. Paragraph 12 of the Practice Statement recognises that where the victim is a public servant that, of itself, would move the case into the higher starting point. The reason for that approach is not because the lives of public servants are more valuable than other lives but because public servants should be protected by way of deterrence having regard to the obligations and risks which they take on for the benefit of the community.

[24] The issue of deterrence is also plainly involved at paragraph 19 where there is specific reference to the murder of a person performing his duties as a prison officer. That provision is designed to ensure that anyone who would consider harming those charged

with managing dangerous offenders realises that they will be severely dealt with when made amenable. We consider that there is no material distinction between the position of prison officers who manage dangerous offenders and police officers who investigate serious crime and bring offenders to justice. Their roles may be different but the need for deterrence in each case is plain.”

[R v Kevin McCann \(18-01-96\)](#)

p2: “This court has emphasised in a considerable number of cases that those who commit serious terrorist offences must receive very severe deterrent sentences, and attempted murder is one of the most serious offences which can be committed.”

16.4 Conspiracy to murder

[R v Adams & Others \(26-10-95\)](#)

p5: “It has to be remembered, however, that elaborate murder bids of this type require a variety of participants carrying out a variety of roles, and that although some may be less directly concerned in the final attack on the target their participation is essential to its successful completion. Any differentiation between the participants should generally be of only slight degree. We must also observe that it has regularly been said that the need for sentences in serious terrorist crimes to constitute a deterrent to others substantially reduces the allowance which might in other cases be made for youth and personal circumstances: see R v Cunningham and Devenney [1989] 9 NIJB 12, 18-20.”

16.5 Firearms and explosive offences

[Attorney General's Reference \(No.3 of 2004\) \(Thomas John Hazlett\) \(AG Ref 4 of 2002\) \[2004\] NICA 20](#)

“[21] An offence under article 17 [of the Firearms (NI) Order 1981] is, by definition, a serious offence. On that account, those convicted of such an offence must expect to and should receive substantial sentences and those sentences should contain a significant deterrent element. The deterrent component of the sentence should be enhanced when the crime has, as here, a paramilitary setting. So long as paramilitary violence continues in our society, therefore, those convicted of offences associated with that type of violence should receive more severe sentences, as a general rule, than those whose crimes are committed in a non-terrorist context.”

[R v Andre Shoukri \[2003\] NICA 53](#)

"[21] ... A strictly enforced system of licensing those who are permitted to have firearms and prescribing the conditions under which they may hold them is obviously vital for the protection of the public. Those who flout that system, particularly if this involves obtaining firearms from an illicit source, must expect to be dealt with severely. It is, moreover, necessary to ensure that a sentence for this type of offence contains a sufficient element of deterrence to discourage others."

[*R v Clive Jones* \(27-01-95\)](#)

p5: "We desire to make it clear that if a man is in possession of a weapon and/or works on a weapon or firearm without a firearm certificate in suspicious circumstances where it appears that the weapon may have been held by some illegal organisation, or may find its way into the hands of an illegal organisation, invariably he should go to prison, often for many years."

[*R v Connolly* \[1994\] NIJB 226](#)

pp3 and 4: "It is also appropriate to remember that the maximum sentence for offences under s.3(1)(b) of the Explosive Substances Act 1883 and Article 17 of the Firearms (Northern Ireland) Order 1981 is life imprisonment, which reflects the opinion of Parliament that these are amongst the most serious and grave offences in the criminal calendar. As criminal activity using firearms and explosives continues, sentences in excess of 20 years' imprisonment will be neither wrong in principle nor excessive. Each case depends on its own facts and a factor in sentencing is that if the existing level of sentences for a particular offence is failing to deter then the level of sentencing may well have to rise. In relation to explosives we note that in this case there were many incendiary devices as well as anti-personnel devices. Very extensive and very costly damage to commercial and other property has been caused in recent times by incendiary devices planted by terrorists. Possession of such devices, with intent, like possession of explosives with intent to kill or injure persons, must attract very heavy sentences."

[*R v O'Reilly and Montgomery* \[1989\] 10 NIJB 20](#)

pp4 and 5: Refers to *R v James Francis O'Reilly* [1989] NI 120 which provides - "It is self-evident that terrorist organisations cannot carry out explosions which in many cases cause deaths and grave injuries unless there are persons who store or move explosives for them. Parliament has provided that the maximum sentence for the offence of possession of explosives with intent is imprisonment for life. Where a person is convicted of possession of explosives

with intent and it is clear as in this case, that he has committed the offence actively and willingly, then the court which convicts him unless there are very exceptional circumstances should pass a very heavy deterrent sentence which as well as punishing the accused is intended to deter others..."

p5: "Circumstances in relation to the precise nature of the offence and circumstance in relation to the background and record of the accused may differ somewhat in individual cases of possession of explosives with intent and these differences may lead to some variations in the sentences imposed, but an accused guilty of possession for a terrorist organisation of explosives with intent will always be guilty of a very serious offence and, save in the most exceptional circumstances, a heavy deterrent sentence should always be imposed upon him."

p7: "We consider that Lord Morris' warning that duress must never be allowed to be the easy answer of those whom he describes applies with equal force to those who plead guilty and then seek to reduce the sentence to be imposed upon them by suggesting that they acted "under some pressure".

That a person guilty of a terrorist offence acted "under pressure" or was the tool of "sinister persons in the background" are pleas commonly put forward in this jurisdiction by way of mitigation. They are easy to put forward and more often than not impossible to refute. The plea may sometimes be based on nothing more than reliance on the fact that the accused lives in a part of the Province where terrorist organisations are active. If this is the basis of the plea it will have little or no weight.

But there may be cases where on the evidence (either contained in witness statements or written confessions or given in the witness-box) the judge forms the opinion that the accused was subjected to definite pressure from a terrorist organisation in respect of the particular crime committed. In such cases it would be just and right to take account of that pressure in deciding on the sentence, whilst at the same time taking account of Lord Morris' warning."

pp10 and 11: "In a case where a person is guilty with intent of storing or moving a large quantity of an explosive substance for a terrorist organisation a court in sentencing must always bear in mind that the explosion or explosions intended to be caused by that explosive substance will probably kill or cause appalling injuries to 1 person or a number of persons, and that the person who stores or moves the explosive substance knows this, even though he may use the euphemistic term "stuff" to describe the explosive substance. In

sentencing such a person the overriding duty of the court is to protect innocent members of the public and to deter others who may be asked to store or move explosives, and accordingly the court should impose a substantial sentence...”

SECTION 17 - VIOLENT OFFENCES

17.1 Kidnapping

[King v Adam Potts \[2025\] NICA 22](#)

“[14] Accordingly, we take the opportunity in the written judgment to highlight two subsequent cases from the Court of Appeal in England & Wales which are more on point: *R v Mahmood* [2015] EWCA Crim 441 and *R v Saqib (Harris)* [2022] EWCA Crim 213. In particular, we endorse the factors set out at para [24] of *Saqib* which refers to the aggravating elements of a kidnapping:

‘24. Finally, in *Attorney General Reference (No 92 of 2014)* [2014] EWCA Crim 2713, this court said that relevant factors in assessing the gravity of cases of this kind would include the length of detention, the circumstances of detention, including location and any method of restraint, the extent of any violence used, the involvement of weapons, whether demands or threats were made to others, the effect on the victim and others, the extent of any planning, the number of offenders involved, the use of torture and humiliation, whether what happened arose out of previous criminal behaviour, and any particular vulnerability of the victim.’”

17.2 Non-Fatal Strangulation generally & the application of the statutory domestic abuse aggravator

[King v Darryl Haughey \[2025\] NICA 10](#)

“[32] One way to protect vulnerable people from abusive behaviours is to have available high sentences designed to deter offenders from engaging in abuse. NFS is a particularly risky behaviour where it is just too easy for perpetrators to cause catastrophic damage to victims. We have no doubt that the Assembly intended to deter such behaviour by giving the option of imposing a deterrent sentence on those who engage in it.

...

[81]... It is intended to be used to specifically identify, penalise and deter violent behaviour in a domestic context where its effects and consequences may be materially different from violence and abuse in other contexts. We consider that these objectives are best achieved by imposing one clearly identified period of time within the sentence and labelling it as the ‘extra’ time

the offender must serve because he was abusive in a domestic setting triggering the statutory aggravator.”

[see also [R v Maguire \[2026\] NICA 12](#) which reaffirmed *Haughey* on NFS and recalibrated the application of the statutory domestic abuse aggravator).

[King v BN \[2023\] NICC 5](#)

“[29] I am satisfied that cases involving choking or non-fatal strangulation require to be considered on a case-by-case basis. However, I am satisfied that there are a number of principles or matters which require consideration in assessing cases of this type: (i) Non-fatal strangulation must be clearly understood as a very serious offence in its own right. It is a terrifying experience for any victim and deterrent sentences are required not just to punish the offender but to deter others...”

17.3 Domestic violence

[Queen v Christopher Hughes \[2022\] NICA 12](#)

“[51] It will be apparent from what we have said that in future perpetrators of sustained domestic violence such as this can expect to obtain higher sentences for this type of offending. Such sentences are a reflection of the growing appreciation of the seriousness of this type of offending, the frequency of it within our society, the repetitive nature of it and the effects on victims. Higher sentencing reflects society’s need to deter this type of behaviour and mark an abhorrence of it. There is also a need for the education of society in general, to understand that this behaviour is not normal, it should not be tolerated, and if it does occur it will result in significant sentences.”

17.4 Sectarian attacks

[R v Darryl John Proctor \[2009\] NICA 51](#)

[13] ...“Those who take any significant part in such brutal beatings must expect to be severely punished even if they themselves do not inflict some, or even a majority, of the serious injuries...”

[16] ...courts in this jurisdiction have a duty to respond to such sectarian violence by imposing sentences that are severe enough to sufficiently mark the total abhorrence of law-abiding society and adequately comply with the requirements of deterrence and retribution.”

17.5 Punishment beatings and shootings

[*R v Sean Patrick McGuigan* 141197](#)

Final two (unnumbered) paras:

“No one in Northern Ireland can be unaware of the misery that punishment beatings and shootings have caused in recent years. This experience is alone sufficient to warrant the imposition of a more severe penalty than would be appropriate to most grievous bodily harm cases. But perhaps of even greater importance is the consideration that these attacks are designed to undermine the rule of law, not only in substituting the savage and arbitrary sanction of paramilitary organisations for the operation of the criminal law but also in preventing victims from testifying against their attackers.

Sentences for punishment beatings must therefore carry a substantial deterrent element. Sadly these attacks have not only continued but have increased since this Court gave its decision in *Hawkes and Geddes*. The need for a substantial deterrent sentence was clearly recognised by the very experienced trial judge in this case. We consider that not only was the sentence which he imposed not excessive but correctly reflected our society's abhorrence of this type of crime.”