Neutral Citation No: [2026] NICA 49 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* *ICOS No:* *Delivered:*	**KEE13184** **23/078122/A01** **17/11/2026**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

_____

THE KING

v

DAMIEN HARTE

_____

Mr Hutton KC with Mr Michael Forde (instructed by Phoenix Law Solicitors) for the Appellant
Ms Minford (instructed by the Public Prosecution Service) for the Crown

_____

Before: Keegan LCJ, Colton LJ and McDowell J

_____

KEEGAN LCJ (*delivering the ex-tempore judgment of the court*)

Introduction

[1] This is an appeal from a sentence imposed by Mr Justice Fowler ("the judge") on 27 October 2025 sitting at Craigavon Crown Court when he imposed a sentence of five years and three months plus a further licence period of one year under Article 15A of the Criminal Justice (Northern Ireland) Order 2008 on the appellant. That was for three terrorist related offences after a plea of guilty.

[2] The offences in the amended indictment were all contrary to section 57(1) of the Terrorism Act 2000 ("the 2000 Act") and comprised in counts 3, 4 and 5. In brief, these counts related to the following. Counts 3 and 4 related to possession of articles for use in terrorism found on 30 October 2017 after a search of the appellant's property, namely a handwritten speech and note which gave rise to a reasonable suspicion that the possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism. Count 5 was an attempted possession charge which is dated 26 February 2017, of a part of a revolver or firearm which also gave rise to a reasonable suspicion that possession would be for a purpose connected with the commission, preparation and instigation of an act of terrorism.

[3] We have looked at the leave requirement afresh in the light of section 5(7) of the Justice and Security (Northern Ireland) Act 2007 as this is a sentence rather than a conviction appeal which can proceed as of right. Whilst we have not heard full argument on the point, we are attracted to an argument that leave may not be required in this type of case as with conviction. In any event, we consider this was a case where leave should have been granted if necessary.

[4] In terms of the case history, the appellant was returned to Craigavon Crown Court on 10 November 2023. He pleaded not guilty to the three counts on the original indictment. The trial began on 16 September 2024. After the first day of trial, two further counts were added. The appellant was rearraigned and pleaded guilty to the three counts explained above.

Factual background

[5] The offences arise from events occurring in 2017. On 6 June 2017, police executed a search of the appellant's home address in Lurgan under terrorism legislation. During that search an Apple iPhone belonging to the appellant was seized. The appellant acknowledged ownership of the device and provided the passcode which allowed police to access the telephone. Forensic examination of the phone revealed internet searches relating to firearms and firearm components, including research into Webley revolvers and replacement parts. The appellant's browsing history included activity on the website of an American firearms retailer, Numrich Gun Company, including use of a shopping cart and the shipping pages.

[6] Subsequent enquiries revealed that an order for a firearm mainspring had been attempted using an email address linked to the appellant and a bank card issued to him with delivery nominated to his mother's address. The order was marked as restricted and ultimately was not fulfilled. Expert evidence was later obtained that indicated that a mainspring forms part of the trigger mechanism of a firearm but, is not itself, classified as a component part under the Firearms (Northern Ireland) Order 2004.

[7] There was a second search of the appellant's home which took place on 30 October 2017. During that search police seized two handwritten documents, one between the kitchen and hallway of the house and one secreted in a sofa. One document contained handwritten notes referring to flare gun conversions and firearm components. A firearms expert concluded that the notes referred to items capable of converting flare guns into firearms and the second document was a handwritten speech threatening violence against Translink infrastructure and personnel and aligning with dissident republican terrorism. Handwriting and fingerprint evidence link both documents to the appellant. He was interviewed in October 2017; he made no comment at interview.

[8] The sentencing remarks made by the judge set out the factual basis which we have just summarised. He also refers to mitigation in this case. He recorded that the

appellant was 51 years old, had longstanding mental health difficulties, possessed a very limited criminal record consisting of a single entry dealt with by way of conditional discharge. The judge had the benefit of expert evidence from a Dr Husain, a Consultant Psychiatrist, and a Mrs Kiera Groves, an Educational Psychologist. Having considered all the materials before him, including these reports, the judge decided that the appellant did not meet the statutory test for dangerousness and he proceeded to sentence on that basis.

[9] One other matter which is relevant to this appeal is that the judge was asked to consider the delay in this case. The appellant was first arrested on 30 October 2017. He was advised that he would be reported by the police to the Public Prosecution Service for prosecution. He was not charged until after a complaint was made to a Lay Magistrate on 30 August 2023 to initiate an indictable summons returnable to Craigavon Magistrates' Court on 4 October 2023. There was therefore period of six years between arrest and charge. The case was not disposed of until 27 October 2025.

[10] As a result of the above history there was a robust defence submission made that there had been a breach of the reasonable time requirement. The judge found that there had been no delay in the case.

[11] In determining sentence, the judge adopted the sentencing methodology set out in a recent case in the Crown Court which was also considered by the Court of Appeal of *R v Perry* [2024] NICA 11 and proceeded on the basis that Article 15A of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order") applied. He considered the offending to be serious, assessed culpability as high and harm as medium and concluded that a custodial sentence was required for the purposes of punishment and deterrence.

[12] The statutory maximum sentence for this offence is 15 years. The judge having considered aggravating and mitigating factors, fixed a starting point of what he said was a range of 7-10 years' custody. After consideration of aggravating and mitigating factors, he settled on seven years and allowed 25% reduction for the plea and that led to the resulting sentence of five years and three months. The judge decided that all sentences were to run concurrently.

Grounds of appeal

[13] The grounds of appeal have been helpfully refined by Mr Hutton KC. In summary, Mr Hutton argues that the starting point was too high, that the judge made various misapprehensions of fact in relation to the offending and the circumstances of this offender, that he did not pay enough regard to personal mitigation given the expert reports that were before the court and that he should have reduced the sentence for delay.

Consideration

[14] The territory which this case concerns was comprehensively discussed in the case of *Perry*. Specifically, that case explains that Article 15A of the 2008 Order which was inserted by section 24 of the Counter Terrorism and Sentencing Act 2021, came about as a result of Parliament's intention to introduce more austere sentencing to deal with terrorist offending.

[15] The case of *R v Rowe* [2007] EWCA Crim 635 is also helpful, in that it discusses section 57 of the 2000 Act. In that case the court explained that this was an offence enacted to capture preparatory acts and involved offending, which was highly culpable conduct, but it was not as culpable as attempting to commit or actually committing the terrorist act in question. As Lord Phillips CJ said:

> "The seriousness of the offence consists not merely in the culpability of the offender but the potential of his conduct to cause harm."

[16] The argument that, because the offence is dated from 2016-2017, there is a breach of article 7 of the European Convention on Human Rights was not substantially argued before us given previous authority in *Perry*. It is simply noted and we need say no more about it.

[17] In dealing with substantive grounds of appeal, we have reached the following conclusions.

[18] First, the judge's starting point of seven years was within range. The maximum sentence for this type of offence, as we have said, is 15 years. In our view, the judge was entitled before reduction for the plea to start at seven years for the three offences that were before him.

[19] Secondly, given the nature of the offending, the judge was entitled to find high culpability.

[20] Thirdly, whilst it may be hard to prove ongoing offending between the two searches, this argument does not avail the appellant as the judge did not apply consecutive sentences but took an overall view of the offending. There was also as Ms Minford has said, persistent offending over the internet in terms of trying to purchase the mainspring.

[21] Fourthly, the judge did take into account mitigation. Perhaps he could have expressed himself in more fulsome terms, but that is not the test on appeal. We also observe that in fixing the starting point, the judge moved from a range of seven to 10 years to the lowest point of that at seven years. To our mind, this reflects his understanding of both the aggravation and the mitigation in this case.

[22] Fifthly, this sentence accords with the principle of totality expressed most recently by this court in a case of *R v Hutton* [2024] NICA 19. On an overall view, the sentence for offending of this nature with the two elements of the internet activity and written materials was not disproportionate. We find the reliance on other decisions in this area to be of limited value because each case is fact specific.

[23] The only argument on this appeal with any traction, in our view, is that the judge after reaching his sentence should have made some allowance for delay. The time to do this, as the recent case in this court of *McGinley* [2025] NICA 11 provides, was after arriving at the sentence and having reduced the sentence for a plea of guilty, because any reduction for delay must be to reflect state failings in progressing a case to a timely conclusion.

[24] We are struck by the fact that Mr Russell KC who was trial counsel made several telling representations to the sentencing judge. He said, "this case has its own complexities in the sense of the involvement of an American company, but we do not think we can say that justifies all the delay." He also said, "I would be hard pressed to try and justify all of the delay in this case."

[25] Rightly, Ms Minford does not resile from this position. A chronology has been provided by the Public Prosecution Service ("PPS") augmented by Mr Hutton in submissions, which is stark in terms of the delay in this case. In summary, this chronology highlights the fact that for much of the six years of the time when the file was with the PPS it was passed between prosecutors and was the subject of enquiries with the USA authorities which ultimately did not aid prosecution. It is also conceded that this case was also not progressed by police as they were involved in another case.

[26] We agree with Mr Hutton that the judge dismisses the argument on delay summarily in one sentence. We are also persuaded that Mr Hutton is right and when he characterises this as a case as of substantial unexplained delay.

[27] To our mind, there was a breach of the reasonable time guarantee which is embedded in our common law and also reflected in article 6 of the ECHR. The judge should have reflected that. The second element is that this delay over years has undoubtedly impacted the appellant who is a person with marked mental health difficulties. The expert evidence from Dr Hussain indicates quite clearly that he has had a deterioration in his health over seven years, during which time he also experienced bereavements and other life events all with this case hanging over him. Furthermore, had the case been prosecuted in a timely fashion, it is probable that the appellant would not have been subject to the Article 15A licence.

[28] In accordance with authorities provided by this court, principally *R v Dunlop* [2019] NICA 72 and *McGinley*, the methodology for considering delay is, that a court must first consider has there been a breach of the reasonable time requirement. We think there has been. The court must also consider the impact. We think there has

been an established impact on this appellant. Then the court must consider whether there should be any reduction in sentence.

[29] There are different ways of reflecting delay as Ms Minford says. We are not attracted to the argument that because the judge allowed a reduction of 25% for a plea of guilty, that that is sufficient to reflect the delay in this case. The issue of reduction for delay is directed to the breach of a reasonable time requirement which rests with the state. This was an investigation which should have proceeded at a much greater pace. The delay is at a substantial level. We believe, in all of the circumstances, that there should have been a reduction in sentence to reflect this and we set that as six months.

[30] In all other respects, we affirm the sentence in this case. We do not accept any of Mr Hutton's other arguments that the judge neglected to reflect the explanations provided by the appellant. He was clearly entitled to reject those. The overall sentence that the judge settled on was appropriate for this suite of offending associated with terrorism.

Conclusion

[31] Therefore, the appeal is allowed and the appellant's sentence will now be a determinate custodial sentence of four years and nine months plus one year on licence to reflect the modest reduction that we have made to reflect the delay. In reaching this conclusion we hope that the message is conveyed that cases of this nature should be progressed in a much timelier manner.