Neutral Citation No.: [2009] NICC 23 | *Ref:* **McCL7457**

Judgment: approved by the Court for handing down | *Delivered:* **20/03/09**

*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

_____

BELFAST CROWN COURT

_____

THE QUEEN
–v-
ANTHONY GRIFFITHS

_____

McCLOSKEY J

[1] The Bill of Indictment in this matter comprises fifty-six counts. The Defendant has pleaded guilty to the first count, which is aiding, abetting, counselling or procuring misconduct in public office, contrary to common law. The particulars of this count recite the following:

> "*That Constable A, on dates between 1st September 2002 and 14th December 2006 … being a public officer acting as such, namely a police constable … without reasonable excuse or justification, wilfully misconducted himself to such a degree as to amount to an abuse of the public's trust in him as the officeholder, in that he obtained information held on the PSNI Integrated Crime Information System* ***and disclosed the said information to you, a person who was not authorised to request, receive or hold such information and that you ... did aid, abet, counsel or procure the said Constable A to commit the said offence***".

[Emphasis added].

Given the proportions of the indictment, it is important to explain the significance and implications of the Defendant's plea of guilty to the first count only. This, coupled with the presentation of this case to the court on behalf of the prosecution, will hopefully serve, *inter alia*, to eliminate any speculation or misunderstanding about the nature of this prosecution and its outcome.

[2] Miss O'Kane of counsel, on behalf of the prosecution, helpfully confirmed to the court that the first count in the indictment is designed to be generic in nature,

encompassing the whole of the Defendant's offending during the entirety of the period in question. The remaining fifty-five counts represent specific, individual instances of the offending embraced by the dominant count. The Defendant having pleaded guilty to the first count, there is no question of the prosecution proceeding on the remaining counts, inviting the court to place such counts on its records or to take them into account, as further and separate offences, in sentencing the offender. This court's evaluation of the appropriate sentence in the particular circumstances of this case is to be understood against this background.

[3] I would add that where the offence of misconduct in a public office is concerned, the device of formulating a general count seems not uncommon. It is illustrated in, for example, ***Attorney General's Reference No. 140 of 2004*** [2004] EWCA. Crim 3525, where the offender pleaded guilty to a general count of misconduct in a public office particularising thirteen instances of the offending in question, which related to the illicit disclosure to a third party of the personal data of the registered keepers of thirteen motor vehicles. The mechanism of a single count also appears to have been employed in ***Regina –v- O'Leary*** [2007] 2 Cr. App. R(S) 51. In short, in the present case, the offender will be sentenced for the totality of his offending during the period under consideration and his plea of guilty to the first count only secures no advantage – technical, tactical or otherwise – for him, in this respect.

[4] The basis upon which the court is to sentence the offender is agreed between prosecution and defence, subject to one proviso, which I will highlight below. That basis is as follows. In November 2005, the Defendant, who had been operating a private investigator's business for a period of some four years, obtained information from a police officer known to him. The information consisted of the registration details relating to a specific private vehicle. The significance of the vehicle in question was that it was being used by Northumbria Police in an undercover operation which had as its objective the detection of serious drugs offences. One of the undercover police officers was in direct contact with one of the suspects. The suspect specifically informed the officer that he would be arranging to check the registration details of the officer's vehicle, in order to establish its authenticity. The suspect indicated that he could obtain such information for a small payment. It would appear that the suspect then directed his request to a private investigator carrying on business locally. This individual, in turn, contacted the Defendant, who transmitted the request to a PSNI constable (about whom I shall say more, presently). The latter proceeded to obtain the information requested from the PSNI Integrated Crime Information System ("*ICIS*") and provided same to the Defendant who, in turn, transmitted it to the English private investigator. At the end of this chain, the information was supplied to the suspect who was the focus of the Northumbria undercover police operation.

[5] Subsequent investigations by the PSNI exposed the conduct of the Defendant and the constable concerned in the events described in the immediately preceding paragraph. More detailed police scrutiny of the conduct of the two persons

concerned followed. It transpired that there had been a working relationship between the police constable and the Defendant during the period specified in the indictment. The constable routinely responded to the Defendant's requests for various kinds of information. It would appear that the constable and the Defendant had been known to each other for some time. The nature of their relationship and *modus operandi* emerged from the retrieval and examination of both computer files and hard paper files generated for the purposes of the Defendant's business, coupled with the Defendant's admissions during police interviews. These files exposed extensive and illicit disclosure of personal information stored on the ICIS system by the police constable concerned to the Defendant during a protracted period, beginning around September 2002 and continuing until December 2006. The court was informed that the information thus disclosed consisted of vehicle registration details, criminal records, social security particulars, the names and addresses of individuals and the known associates of particular persons. It was specifically confirmed to the court on behalf of the prosecution that there was no disclosure of any intelligence information. This seems to be borne out by the interview transcripts, which have been read by me.

[6] A helpful table compiled on behalf of the prosecution illustrates the circumstances in which, and purposes for which, the Defendant routinely sought, and obtained, information stored on the PSNI ICIS from the police officer concerned. This table shows that the Defendant's clients consisted mainly of solicitors, insurance companies and assorted businesses. It would appear that a large proportion of the services which he provided to these clients entailed the preparation of surveillance reports. Such reports were requested for the purpose of investigating and determining personal injury and other insurance claims. The Defendant's clients also engaged him to provide reports and information designed to facilitate the investigation of cases of suspected fraudulent credit and the suspected fraudulent acquisition of motor vehicles. In a significant percentage of this latter variety of cases, surveillance of individuals by the Defendant (or those employed by him) would not have been required. It would appear that the information unlawfully disclosed to the Defendant was utilised by him for the benefit of his clients. For example, the information might have enhanced the investigations and/or surveillance carried out by the Defendant. This would have been reflected in the reports prepared by him for his clients. In other cases, the Defendant, it seems, would simply have disclosed the information directly to the client concerned: for instance, in the case of an employer seeking to establish whether a potential employee was a person of good character.

[7] An illustrative example of the use to which the Defendant put the information improperly obtained by him during his cycle of offending was presented to the court. It consists of one of the many surveillance reports contained amongst the exhibits. The report in question was prepared upon the instructions of a highly respectable firm of solicitors, acting on behalf of an insurance company. The instructions to the Defendant were to observe an individual who was pursuing a claim for damages for personal injuries at the time. The person in question was

located and identified by the Defendant utilising the information which forms part of the generic charge to which he has pleaded guilty. The outcome of the surveillance was to expose possible dishonesty and/or exaggeration on the part of the claimant. The report noted that the claimant had been observed walking and training his two dogs, an activity which he had claimed he was no longer able to pursue. The claimant was also observed bending down to carry out various tasks, undermining his claim that he was unable to put his shoes and socks on. Furthermore, on one notable occasion, he was observed to walk rapidly, unaided and without a limp, notwithstanding his asserted reliance on a walking stick.

[8] A comparable illustration is provided by a detailed surveillance report which established that the personal injury claimant in question was engaged in frequent and heavy working activities, a fact of obvious significance to his claim for compensation. An examination of the interview transcripts reveals that the information improperly obtained by the Defendant and subsequently utilised for the purposes described above consisted of the names, addresses, vehicle registration details and criminal records of individuals. One also finds within the transcripts instances of information being sought and utilised by the Defendant for the purpose of advising a prospective employer about the character of a candidate for employment (for example, in a security related post). Further, there are instances where the Defendant seems to have made no use at all of information provided to him by his police contact. The interview transcripts further confirm the breadth and speed of the Defendant's admissions.

[9] It is appropriate, at this juncture, to focus on the *consequences* of the Defendant's offending, this being the only factual issue in dispute between prosecution and defence. With specific reference to the "index" event, the Defendant, when interviewed, asserted that he did not know why the English private investigator wished to have the information in question, adding that, by well established convention, private investigators do not enquire into each other's business. I would observe that the Defendant's assertion about this matter was not challenged on behalf of the prosecution. It was represented to the court that the English private investigator with whom the Defendant had dealings on this occasion was, ostensibly, a legitimate operator who advertised his services in the normal way and attended trade events. There is no suggestion that the Defendant had any insight into the background to or reasons for the request for the vehicle registration information sought by his professional colleague. Moreover, it is important to emphasize that, in the events which occurred, this disclosure of information by the Defendant did not *in fact* jeopardise the safety of any of the police officers involved in the undercover drugs operation, though I consider that it gave rise to a risk to their personal safety. Nor did it undermine the operation, which had a successful outcome, culminating in the prosecution and conviction of the offenders.

[10] It was submitted on behalf of the prosecution, in general terms, that the Defendant conducted himself recklessly "*with regard to how the information would be used or into whose hands it would end up*" [per Miss O'Kane's written submission]. This

was disputed on behalf of the Defendant. In considering this matter, I must bear in mind the nature of the burden imposed on the prosecution in criminal proceedings. I consider that I must also be alert to the distinction between mere assertion (on the one hand) and evidence, or a sufficient inference (on the other), in considering whether it is appropriate to apply the label of "reckless" to the Defendant's conduct, as described and summarised above.

[11] The Defendant's clients were, typically, legitimate, *bona fide* entities - solicitors, insurance companies and some other private businesses. There was no suggestion that *any* of the Defendant's clients had criminal contacts or were intending to use, or actually did use, the information transmitted by the Defendant (whether directly or through his reports) for any criminal, or other illicit, purpose. On the Defendant's behalf, it was submitted by Mr. Harvey QC (appearing with Mr. McCreanor) that, in many cases, the aim and effect of the Defendant's conduct was positively beneficial to society, in that it entailed the exposure of fraudulent or exaggerated claims or other kinds of dishonest activity. This was not disputed by the prosecution. I have already outlined above the material facts and considerations bearing on the "index" event. With regard to the remainder of the Defendant's offending, spread across the period in question, I refer to the pattern outlined in paragraphs [6] – [8] above which, it seems to me was not really challenged by the prosecution. On the material before the court (which I stress), I consider that the Defendant's conduct does not merit the suggestion of risk-laden third party disclosures potentially exposing individuals to risk. I further consider it essential that I deal with this case on a concrete, rather than fanciful or speculative, basis. Approached in this way, I find no sufficient basis, whether formed by direct evidence or appropriate inference, for any suggestion of reckless disregard on the part of the Defendant in his handling and use of the information obtained.

[12] I consider the *consequences* of the offender's criminal conduct in a case of this nature to be a factor of substantial importance. Indeed, its significance might be regarded as self evident. This theme features with some prominence in the judgment of Judge LJ in ***Attorney General's Reference No. 140 of 2004*** [2004] EWCA. Crim 3525, in the following passage:

> "*[9] It is clear that there are aggravating features of this case. The offender was in a position of trust. His activity has damaged confidence in the way in which DVLA records are kept and maintained. The information at the DVLA is confidential. The unauthorised disclosure of information held in any records kept and maintained only for public purposes should always be regarded as a serious offence. The amount of private information about each and every single citizen in this country, available to public servants, has increased, and with modern technology continuing increase is virtually inevitable. Citizens are entitled to assume that the information so kept will only be made available to those who are entitled to see it, and only for the express purposes permitted by law.* ***Wrongful disclosure sometimes works to***

> ***the benefit of someone who is not entitled to the advantage so provided. Sometimes wrongful disclosure causes damage. Even if an offender has not fully anticipated the consequences of disclosure, it will be very unusual for him to be entirely ignorant of the possible consequences, and, even if those consequences are unforeseen, the impact of disclosure on any individual whose privacy has been betrayed is a critical ingredient of the sentencing decision****. It seems to us that those are essential principles which should be noted by any judge facing a sentencing decision in this class of case.*"

[Emphasis added].

This theme resurfaces later in the judgment:

> "*… we suggest that the appropriate principle to be observed – once the considerations to which we have already made reference have been taken account of by the judge – is that cases of this kind are fact specific.* ***Attention has to be paid to the extent of the disclosure and the consequences of the disclosure in the way that we have indicated***".

[Emphasis added].

Thus, where there is evidence of detrimental impact on some individual or individuals, this will undoubtedly be a material factor and is likely to rank as an aggravating feature in the great majority of cases. Conversely, where there is no evidence of a deleterious effect on individuals, this should, logically, tend to reduce the offender's culpability, though I make clear that this does not, in my view, rank as a mitigating factor.

[13] The issue of the offender's *culpability* is one which must now be addressed in a little detail. It is a matter which I consider to be of obvious importance in a case of this kind. In the instant case, I accept the submission on behalf of the prosecution that the Defendant's former employment as a police officer aggravates his wrongdoing, to some extent. However, he was not a serving officer at the material time. Furthermore, it was accepted on behalf of the prosecution – properly, in my view – that if the miscreant police officer and the Defendant were being prosecuted simultaneously, it would be appropriate to distinguish their cases, on the ground that the conduct of the former was more culpable than that of the latter. This, in my view, provides a useful barometer in the court's analysis of the culpability equation. It is not, of course, determinative *per se*. In summary, I consider that the *capacity* in which the offender receives information in a case of this kind will almost invariably be a factor of some significance and will usually have a material bearing on the offender's culpability.

[14] Secondly, the use to which the information was put by the Defendant and the consequences, actual and likely, of this are clearly factors of significance in measuring his culpability. I have already addressed this issue above. In particular, there is no evidence that innocent citizens suffered any measurable detriment in consequence of the Defendant's offending and, in the particular circumstances of this case, I decline to assume or infer any such adverse impact, other than the fact of disclosure of information some of which is intrinsically private in nature. I distinguish the latter type of information from that which, nowadays, is more readily available to certain members or sections of the public – such as criminal records and the names and addresses of individuals.

[15] Next, it seems to me appropriate to take into account motive. In this respect, I am disposed to accept the submission on behalf of the Defendant that he considered that his conduct, by and large, would be instrumental in the exposure of wrongdoing which, in some instances, might amount to criminality. A further factor of significance is the undisputed suggestion that the Defendant secured no reward, financial or otherwise, for procuring and using the information in question. It was similarly undisputed that the Defendant's activities did not entail the conferral of any benefit, financial or otherwise, by him on the police officer concerned. I also accept that, in some instances at least, the Defendant's requests for the criminal records of certain individuals were motivated by considerations of personal security, taking into account his professional background and having regard to the realities of life in Northern Ireland.

[16] The combination of factors highlighted above impels me to the conclusion that, on the notional scale of culpability, and bearing in mind the infinite variety of circumstances in which this kind of offence might be committed, the Defendant's offending is positioned somewhat closer to the lower end than its upper extremities. This is not to underestimate or dilute the seriousness of the offending in this matter. It is, rather, a recognition of the concrete facts and features of this case which I have sought to identify above.

[17] I then turn to consider aggravation and mitigation. I have already highlighted above the only aggravating factor suggested on behalf of the prosecution. As regards mitigation, the single, outstanding feature of this case is the Defendant's swift, spontaneous and extensive acceptance of his guilt – so extensive, indeed, that this was instrumental in the suspension of his interviews for a period of several months, to enable more extensive investigations to be conducted. The Defendant co-operated fully throughout, in circumstances where the nature and extent of his admissions could only have detrimental consequences for him. I consider that where an accused person makes prompt and comprehensive admissions in a case of this *genre* substantial credit is appropriate, not least because this avoids a lengthy and expensive trial. Furthermore, in this particular case, the police officer concerned, tragically, took his own life prior to the commencement of interviews. In the event of a contested trial, it seems likely that the officer's surviving spouse would have been a witness. Irrespective of whether this is so, the

Defendant's acceptance of guilt, in my view, has spared this lady pain and anguish and I consider this to be to the Defendant's credit.

[18] There are certain aspects of the Defendant's personal background, private life and family life which are of a highly sensitive nature. These are detailed particularly in a commendably balanced report prepared by Dr. Weir, consultant clinical psychologist and, in the particular circumstances, need not be rehearsed *in extenso*. It suffices to highlight that, but for this offending, the Defendant presents as a person of exemplary character. Until he retired from the police force in 2001, his working career had entailed a lifetime of public service. The evidence establishes that he was both industrious and professional in his employment, appreciated by colleagues and those who benefited from his services alike, particularly when a member of the so-called "Close Protection Unit". Given the self-sacrifice, dedication and daily risk to life and limb which these services entailed, I consider that this must stand to the Defendant's credit, in the court's assessment of mitigation.

[19] While the question of remorse is not explicitly addressed in the reports available to the court, the information supplied is suggestive of its existence rather than its absence. Moreover, I accept that the Defendant has suffered feelings of shame and despair since this matter was first exposed some three years ago. Dr. Weir expresses the following opinion:

> "*His physical health has suffered, as has his psychological health and symptoms and problems are beginning to emerge. These are all, in my opinion, linked to the turmoil and distress he feels regarding the offence and the subsequent suicide of his friend and colleague*".

In addition, the Defendant is not expected to reoffend and this is a factor which the court is obliged to take into account. According to the pre-sentence report:

> "*Mr. Griffiths has no previous convictions and there is no indication from the current offence that he would intentionally behave in such a way which would pose a risk of causing harm to the public. Using the PBNI approved assessment instrument, the likelihood of reoffending has been assessed as low as no significant risk issues were identified*".

Having regard to all the information available to the court, this conclusion is unsurprising.

[20] In sentencing in a case of this nature, there are no "guidelines" judgments of the Court of Appeal, nor is there any published guidance from the Sentencing Advisory Panel or the Sentencing Guidelines Council. The emphasis in ***Attorney General's Reference No. 140 of 2004*** that cases of this nature are intrinsically fact sensitive is fully borne out by the present case. It follows from this observation that

I derive comparatively limited assistance from examples of sentencing for the offence of misconduct in public office in other cases. The reported cases which have come to my attention are all concerned with misconduct in public office by public officials – to be contrasted with the present case, which is one of a private citizen aiding, abetting, counselling or procuring the commission of such offence. This is a common law offence, triable on indictment only and punishable by a maximum sentence of life imprisonment.

[21] When I turn to consider what guidance can be derived from some of the reported cases belonging to this sphere, I note in particular that in ***Attorney General's Reference No. 1 of 2007*** [2007] 2 Cr. App. R(S) 86, the Court of Appeal, in substituting a sentence of nine months imprisonment for one of twenty-eight weeks imprisonment suspended for two years, placed some emphasis on the nature of the Defendant's public office (he was a police officer), together with the nature and likely consequences of the illicit disclosures made by him: in short, his conduct generated a real risk of significant harm to third parties at the hands of a known criminal to whom the offending police officer had divulged the relevant information. The Court of Appeal converted a sentence of suspended imprisonment into one of immediate incarceration on the basis that the aggravating features of the offending included a gross breach of trust, a desire for private retribution, a previous reprimand for comparable misconduct and the supply of the information to a known criminal who had recent convictions. Lord Phillips CJ observed:

> "[24] … *Most significant of these is that the offender gave information to a known criminal whose record included offences of violence in order to enable him to take the law into his own hands by dealing with no less than three men who had, so he believed, committed offences against him or a close friend. It must have been obvious to the offender that there was a serious risk that Jolley would subject these men to physical violence*".

The contrast with the present case is immediately apparent.

[22] I have also considered the decisions in ***Regina –v- O'Leary*** [2007] 2 Cr. App. R(S) 51 which demonstrates that, in this field, the criminality of a police officer can give rise to a custodial disposal of as much as three-and-a-half years duration and ***Regina –v- Nazir*** [2003] 2 Cr. App. R(S) 114, where the Defendant was also a police officer and his offending gave rise to a sentence of one month's imprisonment. Another rather different case is that of ***Regina –v- Kassim*** [2006] 1 Cr. App. R(S) 4, where the Defendant police officer secured financial benefits of around £14,000 for the illicit disclosure to a diplomat of information stored on police computers, resulting in a sentence of two-and-a-half years imprisonment. This prompted the observation in the judgment of the court:

> "[19] *It seems to us that, especially nowadays, the preservation of the integrity of information regarding members of the public held*

> *on databases like those maintained by the police is of fundamental importance to the wellbeing of society. Any abuse of that integrity by officials including the police is a gross breach of trust, which unless the wrongdoing is really minimal will necessarily be met by a severe punishment, even in the face of substantial personal mitigation.* ***This is particularly so in the case of police officers or others, approached by those attached to foreign embassies, who may have any number of unacceptable reasons for wishing to obtain confidential information and who may then be able to claim diplomatic immunity***".

[Emphasis added].

The theme identifiable in the highlighted passage requires no elaboration. Furthermore, the factor of monetary gain was also a matter of evident significance in that case. Finally, I have considered the recent judgment of Hart J in ***Regina –v- Stewart and Others*** [2008] NICC 24.

[23] The various reported judgments which I have considered, outlined above, provide some guidance on the principles and factors which should normally govern sentencing in a case of this kind, while declining to impose any detailed, prescriptive sentencing model. I consider that it is for the individual court to give such weight as it reasonably considers appropriate to these principles and factors, having regard to the particular facts and circumstances of the case of which it is seised. In my view, where the offence of misconduct in public office is concerned, a sentence of imprisonment is *presumptively* appropriate. This formulation admits of the possibility that, exceptionally, a non-custodial disposal may be a just and appropriate outcome. I further consider that the offence of aiding, abetting, counselling or procuring misconduct in a public office will normally (though not invariably) be somewhat less serious than misconduct in public office itself, with the result that the presumption in favour of imprisonment is somewhat weakened and the possibility of a non-custodial outcome is commensurately increased. Where the court is presented with a borderline case, the choice will typically lie between an immediate sentence of imprisonment and a suspended sentence of imprisonment. I consider the present case to belong to these margins.

[24] The correct approach to suspended sentences is contained in the judgment of Hutton LCJ in ***Attorney General's Reference No. 2 of 1993*** [1993] 5 NIJB 71, at pp. 75-76 and reiterated by MacDermott LJ in ***Attorney General's References Nos. 1 and 2 of 1996*** [1996] NI 456, at p. 463:

> "*At this stage, we would venture to repeat the elementary, but sometimes forgotten, proposition that before suspending a sentence a judge has to apply his mind to two separate questions: (1) Does the offence require a custodial sentence; and (2) if it does do circumstances exist which would justify a suspension of the sentence?*"

In the present case, I consider that having regard to the nature, scale and duration of the Defendant's offending, a custodial sentence is warranted: see Article 19(2) of the Criminal Justice (Northern Ireland) Order 1996. I turn to consider next whether there are factors which would justify suspending the sentence.

[25] I take into account particularly my assessment of the offender's culpability; the absence of any injury or material detriment to any individual, whether proven or properly to be inferred; the nature and timing of the Defendant's acceptance of guilt, which by well established principle attracts the maximum credit available; the impact on the Defendant of his offending and its consequences; the Defendant's otherwise impeccable character; and the professional assessment that any risk of reoffending by the Defendant is minimal. The explicit warning in this judgment that this type of offending will *normally* attract a sentence of immediate imprisonment should suffice to deter others. As regards police officers and other public servants, there is already ample deterrence in the reported decisions which I have considered above.

[26] Finally, I take into account that, in the peculiar circumstances of this case, the main aim of sentencing must be that of retribution, bearing in mind the tragic outcome for the police officer concerned and my view that the Defendant personally requires no further measure of deterrence. I am of the opinion that the requirements of retribution do not dictate that the Defendant be punished by an immediate custodial sentence. Taking all of the foregoing into account, I conclude that the appropriate punishment of the Defendant is to impose a sentence of one year's imprisonment, suspended for a period of three years. The effect of this is that should the Defendant reoffend within the period of suspension, this sentence is liable to be activated, in addition to such further punishment as the Defendant's reoffending may generate.