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*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **25/10/07**

IN THE CROWN COURT IN NORTHERN IRELAND

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THE QUEEN

v

PATRICK McPARLAND and JOHN McPARLAND

Defendants.

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STEPHENS J

[1] Patrick McParland, you have pleaded guilty to two offences of cheating the Inland Revenue contrary to common law. The prosecution have agreed that they will not proceed with seven further counts of cheating the Revenue without the leave of this court or the Court of Appeal.

[2] John McParland you have pleaded guilty to two offences of cheating the Inland Revenue contrary to common law. In your case also the prosecution have agreed that they will not proceed with seven further counts of cheating the Revenue without the leave of this court or the Court of Appeal.

FACTUAL BACKGROUND

[3] The factual background is that both of you were the subject of an investigation conducted by the Inland Revenue that commenced in February 1992 and concluded in 1993 ("the 1992/93 investigation"). That investigation had been prompted by receipt of information that both of you held an offshore account with the Northern Bank Finance Corporation in Dublin, the interest from which you had failed to disclose.

[4] The 1992/1993 investigation was under the Hansard procedure. The purpose of Hansard is to induce a person who has committed serious fraud against the Inland Revenue to make full disclosure of all facts bearing on liability to tax and to pay the amount of duty lost including a penalty without a criminal sanction.

[5] During the course of the 1992/1993 investigation both of you did disclose that you had operated further offshore bank accounts in Dublin, Jersey and the Isle of Man none of which had previously been declared to the Inland Revenue. In addition you both disclosed that, other than transfers between accounts, the capital deposits in those accounts arose from undisclosed profits from the building partnership operated by both of you based in Newry.

[6] During the course of the 1992/93 investigation you both commissioned a report to be prepared by Russell McConville Associates. The purpose of the report was to quantify the extent of the profits that had been omitted from the partnership accounts and deposited in the various offshore accounts and to determine the amount of duty lost to the Inland Revenue arising from those omissions and detailing all irregularities.

[7] The responsibility for the accuracy and completeness of the Russell McConville report rested entirely with both of you. You were both requested to and did certify the report. You both completed statements reflecting your total assets and certificates that a full disclosure had been made to the Inland Revenue.

[8] In March 1993 Russell McConville Associates submitted a report to the Inland Revenue. Both of you had signed the report and certified that you had examined it.

[9] The accuracy and completeness of the report was challenged at the time by the Inland Revenue. However you, Patrick McParland, advanced the explanation that amounts totalling £500,000 out of offshore accounts had been paid as "protection money" to paramilitary forces over a 15 year period. The inspector suggested that the likely destination of the money was another offshore account or accounts. This was denied by both of you.

[10] A settlement meeting with both of you took place on 6 October 1993. In the absence of evidence to the contrary the Inland Revenue accepted the account that the amounts of £500,000 went to paramilitaries. Settlement figures were agreed.

[11] On 1 November 1993 revised certificates of full disclosure and signed statements of assets and liabilities were submitted to the Inland Revenue by both of you.

[12] That brought to an end the 1992/93 investigation. However nine years later in September 2002 you received correspondence from the Bank of Ireland indicating that they had an obligation to report the establishment of two trusts to the United Kingdom Inland Revenue. Prompted by that letter and on 11 October 2002 you wrote to the Inland Revenue disclosing the

existence of those two trusts and stating that they had not been disclosed to the Inland Revenue during the 1992/1993 investigation.

[13] The Inland Revenue commenced a further investigation and discovered that in addition to the two trusts disclosed in the letter dated 11 October 2002 there were in fact two further trusts that had not been disclosed in the 1992/1993 investigation. All four trusts were set up during the course of the 1992/1993 investigation.

[14] The amount of money in the four trusts concealed from the tax authorities was in excess of £2 million. The amount of tax and interest lost to the Inland Revenue amounted to £1,684,463. It is accepted by the prosecution that this latter amount must be divided equally between you when considering the amount of the loss to the Inland Revenue for which each of you is responsible.

The guideline cases.

[15] The Court of Appeal in England and Wales in the case of *R v Jozef Eugene Czyzewski* (2003) EWCA Crim 2139, [2004] 3 All ER 135, [2004] 1 Cr App R (S) 49, set out guidelines in relation to sentencing for offences involving the evasion of duty on imported goods. The guidelines are for sentences following a trial for a defendant with no relevant previous convictions and disregarding any personal mitigation. At paragraph 9 of the judgment Lord Justice Rose stated:-

> " **9** We adopt the Panel's suggestions that, following trial, for a defendant with no relevant previous convictions and disregarding any personal mitigation, the following starting points are appropriate:
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> (i) where the duty evaded is less than £1,000, and the level of personal profit is small, a moderate fine, if there is particularly strong mitigation, and provided that there had been no earlier warning, a conditional discharge may be appropriate;
>
> (ii) where the duty evaded by a first time offender is not more than £10,000, which approximately equates to 65,000 cigarettes, or the defendant's offending is at a low level, either within an organisation or persistently as an individual, a community sentence or curfew order enforced by tagging, or a higher level of fine; the custody threshold is likely to be passed if any of the aggravating features which we have identified above is present;
>
> (iii) where the duty evaded is between £10,000 and £100,000, whether the defendant is operating individually or at a low level within an organisation, up to nine months' custody; some of these cases can appropriately be dealt with by magistrates, but others, particularly if marked by any of the aggravating features which we have identified, should be dealt with by the Crown Court;

(iv) when the duty evaded is in excess of £100,000, the length of the custodial sentence will be determined, principally, by the degree of professionalism of the defendant and the presence or absence of other aggravating factors; subject to this, the duty evaded will indicate starting points as follows: £100,000 to £ 500,000, nine months to three years; *£500,000 to £1 million, three to five years;* in excess of £1 million, subject to the comment we have made earlier where many millions of pounds are evaded, five to seven years". (Emphasis added)

Lord Justice Rose in paragraph 10 went on to stress two matters namely:-

"**10** ... First, our proposals provide guidelines, not a straitjacket. Secondly, from the starting points indicated, sentencers can be expected to move up by reference to aggravating factors, or down, by reference to mitigating factors, particularly a prompt plea of guilty and co-operation."

[16] Applying that guideline to this case, and subject to the qualification in paragraph 10 of the judgment of Lord Justice Rose, it was contended on behalf of the Crown that the sentence for each defendant (before mitigating and aggravating factors) fell into the bracket of a term of imprisonment of 3-5 years.

[17] The Court of Appeal in Northern Ireland in *R v McCorry (2005) NICA 57* dismissed an appeal against a sentence of 3 years imprisonment imposed by Mr Justice Morgan. The defendant in that case, Mr McCorry, over a 16 year period from 1979 to 1985 had used tax free offshore accounts to place business profits that he had not declared to the Inland Revenue. He had been subjected to an Inland Revenue investigation in 1990 and a further investigation in 1993. In the second investigation Mr McCorry had signed a false declaration of full disclosure as to his assets. That statement failed to disclose the offshore accounts which were the subject of the prosecution. The matter came to the Inland Revenue's attention in November 2001. Mr McCorry had made full restoration for the fraudulent offences and pleaded guilty. The Court of Appeal had taken those factors into account as well as the personal circumstances of Mr McCorry and his family.

[18] The aggravating features in the case of *R v McCorry* were that the defendant had failed to disclose the accounts during the second investigation. The offences were premeditated and persistent in the sense that over a 16 year period the defendant continued to add undisclosed profits from his business to the offshore accounts. There is a significant difference between *R v McCorry* and this case. In *R v McCorry* there had been a persistent use of offshore accounts over a 16 year period to deposit undisclosed profits. In this case it is accepted by the Crown that after the 1992/93 investigation there were no further payments of undisclosed profits by either of you into the offshore accounts. That the offshore accounts and the offshore trusts

increased in size was purely through interest payments. Furthermore that as well as not putting further money in neither of you took any money out after the 1992/1993 investigation. I accept that your persistence in maintaining these offshore accounts is consistent with an apprehension on your behalf of the consequences of discovery after you were committed to this course of action rather than a desire to continue to place undisclosed profits offshore.

[19] The guidelines in relation to an order pursuant to Article 5 of the Company Directors Disqualification (NI) Order 2002 are contained in the case of *Re Sevenoaks Stationers (Retail) Limited* [1991] Ch 164 as applied in the criminal sphere by *R v Millard* (1993) 15 Cr App Rep (S). In the Sevenoaks case the Court divided periods of disqualifications into 3 broad bands:

a. The lowest bracket, up to 5 years, for cases where the case is, relatively, not very serious;

b. The middle bracket, (above 5 years and up to 10 years), serious cases not justifying the top bracket;

c. The top bracket (over 10 years): particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him/her falls to be disqualified again (as other civil cases show, such cases are far from limited to "repeat" disqualifications).

I have also been referred to the case of *R v Mahood and Cuzner-Charles* [2005] NICC 46. In that case, McLaughlin J, imposed, inter alia, a seven year disqualification on two Defendant's aged 65 and 51 who had been convicted of a count of conspiracy to defraud in the amount of £2.5 million.

Aggravating features.

[20] I have taken account of the following aggravating features:-

(a) You were previously given the opportunity to put your tax affairs in order, without criminal sanction in 1992 when they were dealt with by way of the Hansard procedure. Having been given this opportunity you failed to make full disclosure to the Revenue authorities. Further, you allowed this situation to persist until the present investigation. It is correct to say that you did not persist in making further payments from undisclosed profits into these offshore accounts but you did set up these offshore trusts at the very time that the 1992/1993 investigation was being carried out and that situation was allowed to persist for another 9 years.

(b) The only disclosure made by you was in respect of two of the four offshore trusts you had opened. No disclosure was made in respect of two trusts; the income arising from the investments made by the trustees on your behalf nor of the offshore bank accounts opened and interest arising therein that you had operated prior to the establishment of the trusts.

(c) The amount of money in the four trusts concealed from the Tax Authorities was, in excess of £2,000,000.

Mitigating features.

[21] I have taken account of the following mitigating factors:-

(a) Character and contribution.

(i) You both have clear records and are businessmen previously of good character and provide significant employment within your community. In that respect I have heard character evidence during the course of a hearing for an advance indication of sentence and I have been provided with written character statements from an impressive array of individuals as follows namely:-

(1) Seamus Mallon (former MP for Newry and Mourne).
(2) Councillor Danny Kennedy, MLA, deputy leader of the Ulster Unionist Assembly Party and a member of the Northern Ireland Policing Board.
(3) Feargal McCormack, a managing partner of FTM Accountants.
(4) J D F Fisher, proprietor of Phoenix Merchants Limited.
(5) Thomas McCall, Clerk and Chief Executive of Newry and Mourne District Council.
(6) Councillor Michael Carr, Mayor of Newry and Mourne District Council.
(7) David Hanna MBE, President of Newry Chamber of Commerce and Trade.
(8) Gerard Clifford, Auxiliary Bishop of Armagh.
(9) Peter Savage MCC Chairman Cross Border Body.
(10) Conor Murphy, MP, MLA.

(ii) I was also provided with a statement from Garda Paul Dunne who served in Dromad, County Louth, which is on the border on the main Belfast/Dublin Road.

(iii) I have read and considered medical reports from Dr Digney dated 26 September 2006 and 28 February 2007 relating to the health of John McParland and the report from John McEntee, Occupational Therapist in relation to his daughter. I have also read and considered the medical reports of Dr Digney dated 26 September 2006 and 28 February 2007 in relation to the health of Patrick McParland.

(iv) I heard evidence from Seamus Mallon, Councillor Danny Kennedy MLA, and Feargal McCormack.

(v) Each of the witnesses emphasised the significant contribution made by both of you to the Newry and Mourne economy. That this contribution was made at a time when Newry and its surrounds were in a parlous condition. You employ 800 people in the Newry area and have made and continue to make significant contributions through your building firm and two successful hotels to the economy of the area. That you are fair and equal employers. That you make significant and continuing contributions to charities and public works in your area.

(vi) I accept that you both are of previous impeccable character.

(b) Once these matters came to light you put £3,258,183 on joint deposit receipt so that regardless as to the outcome of the criminal proceedings that money would be available to the Inland Revenue. This figure represented the amount of tax and interest owed in the totality of the crime; of which £1,874,157.00 represents tax and interest due under the indictment with no element of criminal penalty. The remaining figure represents compensation and restitution. This balance of circa £1.4 million is to be repaid as confiscation. (The same interest rate prevails under civil or criminal recovery.) The figures that have been agreed with the tax authorities reflect the taxes due and the statutory interest arising thereon and reflect the fact that the taxes due are paid late. The interest rates charged on the late paid taxes are in accordance with statute laid down within sections 86-88 of the Taxes Management Act 1970 and run from a prescribed due date, at a prescribed rate, up to the date the late taxes were agreed. A payment has now been made totaling £3.4 million.

(c) The monies held in the trust accounts were not added to nor does it appear any other trusts were set up since 1992.

(d) All other tax affairs (personal and business) of both of you have been checked and appear in order. You have both sworn affidavits to that effect.

(e) Both of you have, from the outset of the present investigation indicated a willingness to settle your outstanding tax liabilities. This is accepted by the prosecution as demonstrative of genuine co-operation and remorse. Further more the early financial settlement by both of you is viewed as exceptional by the Revenue.

(f) The amount of money concealed, in excess of £2,000,000, must be divided between both of you.

(g) The proceedings against you have had a detrimental affect on the health of both of you.

(h) The prosecution accept that you are entitled to maximum credit for your guilty pleas.

(i) Since these offences were discovered and in March 2007 the Inland Revenue have made available to persons holding offshore accounts a specific facility to register with them and thereafter to disclose the contents of any account. By virtue of these criminal proceedings against you, you were not able to make disclosure under this facility and accordingly lost the opportunity for the exercise of the Revenue's discretion as to what action the Revenue might take on that disclosure. Some 60,000 account holders have sought registration. Some 200,000 have been written to by the Inland Revenue inviting disclosure. It is clear that this opportunity was not afforded to you and I consider that if it had been available at an earlier stage you would have availed of it. You were therefore deprived of a substantial chance that these matters could have been dealt with under that facility without criminal proceedings. That was a chance afforded to others but not to you.

(j) Each of you work and continues to work in two jurisdictions of the European Union. Eighty percent of the business of your building company depends on public contracts subject to the Public Procurement Rules. In view of these convictions your companies are prima facie ineligible for the continued award of those contracts. This means that the economic viability and continued existence of your building companies may be substantially

jeopardised by the criminal convictions of you both. A criterion for the rejection of an economic operator under the Utilities Contracts Regulations 2006 is a conviction of a director of cheating the revenue. You both now have such convictions. Your building company is ineligible unless a positive decision is taken by the utility to disregard the prohibition on the basis of an overriding requirement in the general interest.

(k) The 1992/1993 Hansard procedure was carried out without any caution or tape-recording. The prosecution have accepted that you both would have had a strong arguable case for the exclusion of material yielded by the old Hansard procedure with potentially fatal consequences for counts 1 and 2 and 9 and 10 on the indictment. Similarly the way in which the prosecution has the benefit of the material gathered from the old Hansard procedure would have provided a plausible basis for an application to stay the present proceedings as an abuse of process. Furthermore that had you had legal advice in 1992/93 full disclosure could well have been made at that stage.

(l) It is acknowledged by the prosecution that they have witness difficulties and this may have presented them with difficulties in proving the case against you.

(m) There is a live and ongoing issue as to the reasonable time requirement for bringing proceedings against you for the purposes of Article 6 of the European Convention. If that had been decided in your favour that would have meant that you would have avoided any conviction.

(n) I take into account the very serious impact that disqualification as a director will have on your business affairs.

(o) Finally I have taken into account the various other matters which are set out in the three agreed statements of fact which I attach to these sentencing remarks. I also take into account all the submissions that have been made on your behalf by your respective counsel.

Procedural requirements.

[22] A pre sentence report has not been made available to me. I have considered the provisions of Article 21 of the Criminal Justice Order (Northern Ireland) 1996. I am of the opinion that it is unnecessary to obtain a pre sentence report by virtue of the fact that experienced senior counsel for both of you have indicated to me that there is no need for such a report. I also

consider that there is no need for such a report in view of the extensive evidence that I have heard and the detailed submissions that have been made to me both in writing and orally.

[23] I also now state in open court in accordance with the requirement set out in Article 33 of the Criminal Justice (Northern Ireland) Order 1996 that in view of the fact that both of you have pleaded guilty I am imposing on both of you a punishment which is less severe than the punishment I would otherwise have imposed.

[24] In determining your sentence I have also borne in mind the provisions of Article 19(2)(a) and Article 19(4) of the Criminal Justice (Northern Ireland) Order 1996. I consider that the offences before me now are so serious in their content that only a sentence which has as one of its constituent elements a custodial element is justified. However as will appear I consider that in the wholly exceptional circumstances of this case the term of imprisonment should be suspended.

Sentence.

[25] As I have indicated I attach to this judgment the agreed statements of fact which were submitted to me when you sought advance indications of sentence in accordance with the procedure set out in *A-G's reference No 1 of 2005 (Rooney)* [2005] NICA 44. The sentence that I now impose is the maximum sentence that on 21 September 2007 I indicated that I would impose.

[26] I turn to a consideration of the appropriate sentence in relation to you Patrick McParland.

(a) I impose a fine on you of £1,100,000.

(b) I make a disqualification order in relation to you under Article 5 of the Company Directors Disqualification (NI) Order 2002 for a period of seven years. That means that for a period of seven years you shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) you have the leave of the High Court, and you shall not act as an insolvency practitioner.

(c) I turn now to consider the appropriate sentence of imprisonment that I should impose on you. I sentence you to prison for a period of 4 years. I consider the factors which I have listed above to be wholly exceptional. All of those factors

have been agreed by the prosecution in your case. There is no doubt that you have made significant contributions to the area of Newry and South Armagh and that these convictions have and will have a considerable impact on your businesses in the future. In those wholly exceptional circumstances, which I have set out at some length, I am prepared to suspend the sentence of imprisonment for a period of 5 years. That means that if you commit any further offence within the next 5 year period you will not only be sentenced for that further offence but you should also proceed on the basis that you will go to prison for a period of 4 years for this offence. I should also explain to you the effect of the affidavit that you have sworn. If at any future stage, that is without any limit of time, it turns out that what you have told the court about your present tax affairs is false then you can expect to be prosecuted for that further tax offence and also in addition for the offence of perjury. In effect you will have the suspended sentence hanging over your head for a limited period of time that is for the next five years in relation to any further offence. You will always have hanging over your head the potential for a perjury charge in relation to any tax evasion that has not been disclosed in the affidavit filed in court.

[26] I turn to a consideration of the appropriate sentence in relation to you John McParland.

(a) I impose a fine on you of £1,100,000.

(b) I make a disqualification order in relation to you under Article 5 of the Company Directors Disqualification (NI) Order 2002 for a period of seven years. That means that for a period of seven years you shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) you have the leave of the High Court, and you shall not act as an insolvency practitioner.

(c) I turn now to consider the appropriate sentence of imprisonment that I should impose on you. I sentence you to prison for a period of 4 years. I consider the factors which I have listed above to be wholly exceptional. All of those factors have been agreed by the prosecution in your case. There is no doubt that you have made significant contributions to the area of Newry and South Armagh and that these convictions have and will have a considerable impact on your businesses in the future. In those wholly exceptional circumstances, which I have

set out at some length, I am prepared to suspend the sentence of imprisonment for a period of 5 years. That means that if you commit any further offence within the next 5 year period you will not only be sentenced for that further offence but you should also proceed on the basis that you will go to prison for a period of 4 years for this offence. I should also explain to you the effect of the affidavit that you have sworn. If at any future stage, that is without any limit of time, it turns out that what you have told the court about your present tax affairs is false then you can expect to be prosecuted for that further tax offence and also in addition for the offence of perjury. In effect you will have the suspended sentence hanging over your head for a limited period of time that is for the next five years in relation to any further offence. You will always have hanging over your head the potential for a perjury charge in relation to any tax evasion that has not been disclosed in the affidavit filed in court.

APPENDIX

IN THE CROWN COURT IN NORTHERN IRELAND

R -v- JOHN McPARLAND AND PATRICK McPARLAND

Advance Indication of Sentence Hearing Requested by Defence

Prosecution Statement of Facts

Introduction

1. The Defendants' application to the Court is for an advance indication of sentence hearing in accordance with the principles set out in R –v- Rooney N.I. Court of Appeal [2006].

Charges

2. The advance indication of sentence is sought on the basis that each accused would plead guilty to one count of cheating the Revenue between 11th March 1993 and 1st November 1993.

Factual Background

3. The McParland brothers, (hereinafter referred to as "the Defendants") were the subject of an investigation conducted by the Inland Revenue, Enquiry Branch, Manchester, that commenced in February 1992 with a negotiated settlement in excess of £1.4 million. The case had come to the attention of Enquiry Branch following receipt of information that

the brothers held an offshore account with the Northern Bank Finance Corporation in Dublin the interest from which they had failed to declare. The balance in that account totalled £598,619 sterling in December 1985. The source of the capital invested was not apparent from the business accounts submitted to the Revenue.

4. The investigation was opened under the Hansard procedure, as is the policy in cases suspected of serious fraud, on 30 March 1992. The purpose of Hansard is to induce a person who has committed serious fraud against the Inland Revenue to make a full disclosure of all facts bearing on liability to tax and to pay the amount of duty lost including a penalty. At that meeting the Defendants disclosed that they had operated offshore bank accounts in Dublin, Jersey and the Isle of Man none of which had previously been declared to the Revenue. In addition the Defendants disclosed that, other than transfers between accounts, the capital deposits in those accounts arose from undisclosed profits from the building partnership operated by the Defendants based in Newry. At that initial meeting the Defendants suggested that the account that had been held with the Northern Bank Finance Corporation in Dublin had been closed with the money transferred to an account with the Northern Bank in the Isle of Man and a Midland Bank Trust Corporation account held in Jersey. In March 1992 these latter two accounts were reported as still in operation. At the meeting on the 30th March 1992, at the request of the Revenue, the Defendants provided signed mandates for specific banks, building societies and other financial institutions and also signed general mandates for presentation by the Revenue to any bank, building society or financial institution it saw fit, to enable the Revenue to obtain details of any accounts the Defendants had with any of the said banks, building societies and other financial institutions. These mandates were not

used by the Revenue to obtain details of the Defendants' bank accounts.

5. The Defendants commissioned a report to be prepared by Russell McConville Associates, advisers specifically appointed to carry out this task. The purpose of the report was to quantify the extent of the profits that had been omitted from the partnership accounts and deposited in the various offshore accounts and to determine the amount of duty lost to the Inland Revenue arising from those omissions and detailing all irregularities.

6. It was stated at the said meeting on 30 March 1992 that responsibility for the accuracy and completeness of the report rested entirely with the Defendants and that any omission or understatement in the report could not be blamed on anyone else. It was pointed out to the Defendants that they would be required to certify the report and complete supporting statements reflecting their total assets at a specific date and certificates that a full disclosure had been made to the Inland Revenue. As was normal practice in all cases investigated by Enquiry Branch a warning that false statements can result in prosecution was drawn to the attention of the Defendants.

7. Russell McConville Associates submitted a report prepared on behalf of the Defendants to the Inland Revenue in March 1993. This report was signed and certified by the Defendants that they had examined the said report. The report acknowledged "open points remain" and the bank certificates submitted with the report contained entries marked "outstanding". The content of this was considered by the Inspector who concluded it was appropriate to challenge its accuracy and completeness. This was because the final destination of some of the withdrawals from some of the undisclosed offshore accounts could not

be identified. Formal Certificates of Disclosure, Certified Statements of Bank Accounts (with entries marked 'outstanding') in existence during the period of investigation and Certified Statements adopting the report all dated 12 March 1993 supported the disclosure report (with the caveat that the report was incomplete).

8. Of particular concern was a withdrawal from an offshore account in the amount of £100,000 and the Defendants were asked to account for its destination. Patrick McParland initially suggested that he had lost the money gambling on horses but then changed his mind and said it had been donated to various charities including his local church. He finally advanced the explanation that this amount, together with other sums totalling around £400,000 had been paid as "protection money" to paramilitary forces over a 15 year period. The Inspector suggested that the likely destination of the money was another offshore account or accounts but this was denied.

9. A settlement meeting with the Defendants took place on 6 October 1993 in the presence of their solicitor and accountant. In the absence of evidence to the contrary, the Inland Revenue accepted the assurance that the £400,000 went to paramilitaries and settlement figures were agreed. Revised Certificates of Disclosure, Statements of Assets and Certificates of Bank Accounts in existence were requested. It was acknowledged that the certificates as submitted by the Defendants were incorrect. It was made clear to the Defendants' advisors that prosecution could flow from the provision of revised certificates if they proved to be incomplete or incorrect. On 1 November 1993, Revised Certificates of Full Disclosure and Certificates of Bank Accounts held during the period 6 April 1971 to 31 August 1992, signed by the Defendants, were submitted along with signed Statements of their Assets and Liabilities as at 31 August 1992.

10. On 11 October 2002, Aegis Consulting, a firm of specialist advising accountants, acting on behalf of the Defendants, wrote to the Inland Revenue to disclose the following information on their behalf:-

- In the period from the early 1980's to the early 1990's monies were diverted from the Defendants' business before being taxed.
- The money was deposited in offshore accounts.
- In 1991, some of the money was settled on two Trusts where the Trustees were the Bank of Ireland and the beneficiaries were the Defendants.
- The existence of the Trusts were not disclosed to the Inland Revenue during the investigation which was started in 1992.
- The source of the sums settled on the Trusts were bank accounts that had not been disclosed to the Inland Revenue.
- Interest had been added to the amount settled on the Trusts, which is chargeable to Income Tax on the Defendants'.
- The value of the Trusts was £1million.

11. The Defendants had previously received correspondence from the Bank of Ireland in September 2002 in relation to the said Trusts. The correspondence stated :-

- That an inheritance tax issue had arisen in relation to the Trusts.
- That a recent review of the various Trusts indicated that the obligation to report the establishment of the Trusts to the UK Inland Revenue under section 218 of the UK Inheritance Tax Act 1984 had not been complied with by the Bank.
- That the Bank had reported to the Inland Revenue the names of the Trusts.
- That the Bank had discussed the Trusts with the Inland Revenue.
- That if other tax implications arose e.g. income or capital gains tax these would not involve the bank. But that the Bank believed that if

there was any such outstanding tax liability, it was the Bank's belief that an early disclosure would be treated by the Inland Revenue as a significant factor in their consideration of the matter.

- That the Bank strongly suggested the Defendants seek independent advice from a professional tax advisor.

12. The first Trust is the Corrog Trust. The settlor and beneficiaries are Patrick and Clare McParland. The Trust was set up in July 1992 and the value of the Trust at that time was £972,863. This Trust was set up 4 months after Hansard was given to Patrick McParland and 16 months before settlement of the investigation into his tax affairs and completion of the certificates referred to at paragraph 8 above.

13. The second Trust is the Tee Trust. The settlor and beneficiaries are John and Catherine McParland. The Trust was set up in July 1992 and the value of the Trust at that time was £363,398. This was 4 months after Hansard was given to Patrick McParland and 16 months before settlement of the investigation into his tax affairs and completion of the certificates referred to at paragraph 8 above.

14. Following the issue of a Letter of Request to the Jersey authorities copy documentation was obtained and examined. Further resulting enquiries in the Republic of Ireland identified a further Trust set up in June 1992 by John McParland with the Allied Irish Bank Trust Company (Jersey) Limited. The initial sum settled was £679,654 and the title of the Trust is the Deere Trust.

15. This third Jersey Trust was set up on 24 June 1992. The existence of money invested therein was not reflected in the Statements of Assets and Liabilities and Certificates of Full Disclosure completed by each of the Defendants at the conclusion of the investigation in November

1993. None of the income accrued by the Trust since it was created has been declared in Tax Returns completed by John McParland.

16. As a result of work carried out by way of a Letter of Request to the Isle of Man Authorities a fourth Trust has been discovered. This is known as the Cam Settlement and was formed on 24 July 1992. The majority of the funds deposited into this Trust emanated from an Allied Irish Bank account previously held in the Isle of Man, the existence of which the Defendants' had also failed to declare to the Inland Revenue. The initial capital introduced upon closure of the Allied Irish Bank account Isle of Man account was £277,782.70.

17. The Deere Trust was set up 3 months after and the Cam Settlement was set up 4 months after Hansard was given to the Defendants and 16 months before settlement of the investigation into his tax affairs and completion of the certificates referred to at paragraph 8 above.

18. Details of the remaining offshore bank accounts, the interest from which has not been declared to the Inland Revenue, have been obtained by various means. Mandates were provided by the Defendants' in relation to the accounts previously held with the Ulster Bank (Isle of Man) Limited. With the assistance of the Attorney Generals Office following the issue of Letters of Request to both Jersey and the Isle of Man details of previous accounts held with the Bank of Ireland (Jersey) Limited and the Bank of Ireland (Isle of Man) Limited were obtained. Details of accounts previously held by the defendants' with the AIB Bank and the Bank of Ireland in the Republic were obtained from the files of Fitzpatrick & Kearney, the accountants acting for the Defendants following the issue of a production order under section 20BA Taxes Management Act 1970. The said Production Order was obtained on consent.

19. It is known that a further two bank accounts had been held with the AIB (CI) Limited in Jersey, the money from which was used to set up the initial sums deposited into three accounts operated by the Trustees of the Deere Trust. Due to the passage of time and in accordance with the Bank's retention of records policy substantive records are no longer available. The initial sums deposited in the accounts of the Deere Trust have been treated as unrecorded takings from the defendants' businesses.

20. The Defendants voluntarily attended Banbridge Revenue Office on 22 January 2003 and were interviewed under caution in accordance with the Codes of Practice of the Police and Criminal Evidence (NI) Order 1989. Each Defendant read from and handed over a pre-prepared statement that made reference to the two Trusts that had been set up by the Bank of Ireland Trust Company (Jersey) Limited, and each provided a copy of a letter that had been sent to them in respect of their respective Trust. No reference was made to either of the remaining two Trusts revealed during the course of the investigation and despite questioning no explanation was provided as to the source of the money used to set up the two Bank of Ireland Trust Company (Jersey) Limited Trusts.

21. Both Defendants were arrested and brought in for further questioning at the PSNI Station, Banbridge, on 25 February 2004 and subsequently charged and remanded on bail on the 25th day of February 2004.

Aggravating Circumstances

22. The Defendants were previously given the opportunity to put their tax affairs in order, without criminal sanction, in 1992 when they were dealt with by way of the Hansard Procedure. Having been given this opportunity they failed to make full disclosure to the revenue authorities. Further, they allowed this situation to persist until the present investigation.

23. The only disclosure made by the Defendants was in respect of two of the four offshore Trusts they had opened. No disclosure was made in respect of two Trusts, the income arising from the investments made by the Trustees on their behalf nor of the offshore bank accounts opened and interest arising therein that they had operated prior to the establishment of the Trusts.

24. The amount of money in the four trusts concealed from the Tax Authorities was, in excess of £2,000,000.

Mitigating Circumstances

25. The Defendants have clear records, are businessmen previously of good character and provide significant employment within their community.

26. The Defendants have agreed to make payment of £3,258,183.00 in to court prior to trial. This figure represented the amount of tax and interest owed in the totality of the crime; of which £1,874,157.00 represents tax and interest due under the indictment with no element of criminal penalty. The remaining figure represents compensation & restitution by agreement with the Defendants' counsel and this balance of circa £1.4 million is to be re-paid as confiscation. (The same interest rate prevails under civil or criminal recovery.) The figures that have

been agreed with the Tax Authorities reflect the taxes due and the statutory interest arising thereon and reflect the fact that the taxes due are paid late. The interest rates charged on the late paid taxes are in accordance with statute laid down within S86/88 of the Taxes Management Act 1970 and run from a prescribed due date, at a prescribed rate, up to the date the late taxes were agreed.

27. The monies held in the trust accounts were not added to nor does it appear any other trusts were set up since 1992.

28. All other tax affairs (personal and business) of the Defendants have been checked and appear in order.

29. The Defendants have, from the outset of the present investigation indicated a willingness to settle their outstanding tax liabilities. This is accepted by the prosecution as demonstrative of genuine co-operation and remorse. Further more the early financial settlement by the Defendants is viewed as exceptional by the Revenue.

30. The amount of money concealed, in excess of £2,000,000, must be divided between the Defendants.

31. The proceedings against the Defendants have had a detrimental effect on their health.

32. In the event that the Defendants plead guilty to the charges they are entitled to maximum credit for their guilty plea.

Sentencing Guidelines

33. Sentencing guideline in cases of this type were discussed in the cases of R -v- Czyzewski 2004 1 Cr. App. R. (S) and Att. Gen. Ref. Nos. 87 & 86 of 1999 at 2001 Cr.App. R. (S) 141. (Copies attached)

34. In the Crown Court in Northern Ireland the case of R –v- McCorry [2005] NICA 57 is a relevant authority. (Copy attached)

35. In the Southwark Crown Court in England the case of R -v- Davies (Portsmouth Director) is a relevant authority. (Abstract attached)

36. In the Crown Court in Northern Ireland the case of R *.v.* Mackin [2004] NICC 33 is a relevant authority (copy attached)

37. The recent statement made by the Home Secretary, the Attorney General and the Lord Chancellor to the Judges and Magistrates in relation to sentencing and prison overcrowding is a relevant consideration.

Stephen Fowler QC **Michael Lavery Q.C.**

David Cartmill BL **Gregory Berry Q.C.**

AGREED ADDENDUM

IN THE CROWN COURT IN NORTHERN IRELAND

R -v- JOHN McPARLAND AND PATRICK McPARLAND

Advance Indication of Sentence Hearing Requested by Defence
ADDENDUM to Agreed Prosecution Statement of Facts

(a) The agreed statement of facts indicates that the accused are entitled to maximum credit for any plea of guilty entered at this stage. However, it is also significant that a plea of guilty at this stage would be in circumstances where the accused have eminently contestable cases and workable defences. They have not been "caught red handed" (as per *R –v- Charles Malachy Oliver Pollock [2005] NICA 43* Kerr LCJ). The accused have many issues upon which the trial itself could be contested and there is also merit in the pre trial applications grounded upon delay and their contesting the admissibility of hearsay evidence. In arriving at the appropriate sentence the court should take into account, to the credit of the accused, their decision to surrender this position of strength in the event of a plea of guilty being entered. "

Stephen Fowler Q.C. **Michael Lavery Q.C**

David Cartmill B.L. **Gregory Berry Q.C.**

SUPPLEMENTARY STATEMENT OF AGREED FACTS

1. Since March 2007 Her Majesty's Revenue & Customs have made available to persons holding offshore accounts a specific facility to register with them until 22 June 2007 and thereafter to disclose the contents of any account on or before 26 November 2007. In essence, persons availing of this facility, will have to pay a fixed penalty of 10% of tax or duties which have been underpaid. It is contended that each of the Defendants could have made disclosure to settle, availing of this facility, had they not been subject of a criminal investigation and a previous `Hansard' procedure.

2. The following disclosures have been specifically stated by the Revenue authorities as being unlikely to be settled through the aforesaid facility:-

   - Disclosures from people suspected of being involved in serious organised crime against the Revenue (including VAT, MTIC, carousel-fraud, VAT Bogus Registration, Repayment fraud or Organised Tax Credit fraud), and those involved in wider criminality or others whose circumstances would result in a criminal investigation with our published Criminal Investigation Policy.

3. This facility is unprecedented in the history of UK tax investigations.

4. The relevant HMRC investigating officer and the prosecution were not aware of the Offshore Disclosure Facility on the 9 March 2007, and nor were the Defendants or their present legal representatives.

5. The position on the conclusion of the above mentioned registration period, on 22 June 2007, was that some 60,000 account holders had sought registration, and that some 200,000 persons had been written to by HMRC, inviting disclosure. This opportunity has not been afforded to the Defendants.

6. By virtue of the extant criminal proceedings against the Defendants they are, and would have been, outwith the terms of the Offshore Disclosure Facility, they have lost the opportunity of making disclosure, and lost the opportunity for the exercise of the Revenue's discretion as to what action the Revenue might take on that disclosure.

7. Save for the matters which are the subject of this Indictment, each of the Defendants is a person of hitherto unblemished character and as such each of them has been able to tender for contracts involving the

dispersal of public monies, both in this jurisdiction and in the Republic of Ireland.

8. Each of the Defendants has worked and continues to work in two jurisdictions of the European Union. There is co-ordination of procedures within the Union for the award of public works contracts. The domestic implementation of this Directive locally is targeted not only on Directors but on persons who have been Directors within the preceding five years.

9. The economic viability and continued existence of the Defendants' building companies may be substantially jeopardised by the criminal conviction of the defendants.

10. The agreed facts contained hereinbefore appearing in this Supplementary Statement of Agreed Facts constitute mitigating circumstances.

11. This Statement of Agreed Facts is supplemental to the earlier lodged Statement of Agreed Facts and addendum thereto.

IN THE CROWN COURT
FOR THE COUNTY COURT DIVISION OF NEWRY
SITTING AT COLERAINE

Regina
v
Patrick McParland
and
John McParland

Agreed statement of facts
for the purposes of an Advance indication of sentence

1. The Defendants refer to the two previously agreed statements of facts placed before the Court on the advance indication hearings. The purpose of this agreed statement is to highlight additional mitigation features.

2. Between 30 March 1992 and 6 October 1993 the Defendants were subject to an investigatory and enforcement procedure known as the "Hansard" procedure (a copy of the then current Hansard procedure is annexed hereto).

3. In summary what occurred under the then current Hansard procedure was that without any caution or tape recording tax payers were (a) urged to confess tax irregularities and (b) warned that HMRC reserved full discretion over whether or not to initiate a prosecution for tax fraud. In critical meetings where a revenue official was present at no time was either of the Defendants cautioned; at no time was any meeting tape recorded, nor is there any indication that either defendant was advised to seek the assistance of a solicitor.

4. Unknown to HMRC at that time the then current Hansard procedure did not comply with Article 6 ECHR (see King v UK (No 2) [2004] STC 911 and King v UK (No 3) [2005] STC 438). In addition it was subsequently held (R v Gill [1998] STC 550) that PACE codes of practice apply to all Hansard procedures and that the defendants in this case should have been given a formal caution.

5. Had the accused been cautioned properly and represented by a solicitor from the outset it is possible that full disclosure would have been made, and that the matter would have been dealt with civilly.

6. Under the old Hansard procedure not only did the accused perceive themselves to be under pressure to make admissions but they were

also concerned about prosecution and therefore did not make full admissions. This contextualises the non-disclosure in the present case.

7. Given the failure of the old Hansard procedure to comply with Article 6 ECHR it is accepted that the accused would have had a strong arguable case for the exclusion of material yielded by the old Hansard procedure with potentially fatal consequences for Counts 1 and 2 and 9 and 10.

8. Similarly, the way in which the prosecution has the benefit of the material gathered from the old Hansard procedure would provide a plausible basis for an application to stay the present proceedings as an abuse of process.

9. It is acknowledged that the prosecution has witness difficulties as evidenced by the current Hearsay applications. In terms of the merits of any substantive defence it is acknowledged that the prosecution would have difficulty in establishing to the requisite criminal standard that all of the undisclosed monies were susceptible to UK tax.

10. It is acknowledged that there is a live issue concerning a breach of the Article 6 reasonable time requirement.

11. With respect to figures owed the relevant figure for each accused without interest is £842,231.57. The relevant interest figure is £801,250.96. The total sum lodged on account, to be paid to the Revenue, inclusive of interest is £3,399,042. Had the matters been resolved civilly in 2002/3 the accused would have paid c£4.25 million in total which sum includes revenue penalties at 60%. At the previous Rooney hearing this figure was stated to the Court to have been c£5.2 million.

12. In summary it is accepted that the criminality of the accused consists in the untruths told during the old Hansard procedure and does not (unlike the position in McCorry [2005] NICA 57) consist of repeated and systemic evasions.

13. The prosecution in its duty of disclosure have brought to the attention of the defence the fact that employees of Trust Companies to which monies from the Bank Accounts were transferred actively encouraged the setting up of the accounts in the knowledge that an income tax investigation was on going. Offshore Trust Company representatives visited the defendants and advised them to establish trusts in these circumstances. Such conduct by the Trust Companies was wrong, potentially misleading and potentially criminal.

14. It is agreed that the defendants will make payments in total of £3,399,042 thus ensuring that HMRC are in a position to recover tax owing.