

IN THE CROWN COURT IN NORTHERN IRELAND

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SITTING AT BELFAST  
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THE QUEEN

v

MICHAEL ROBIN BURNS

and

TREVOR McCLINTOCK  
—————

**WEIR J**

[1] Michael Robin Burns, you have pleaded guilty to nine counts of fraud by false representation, contrary to Section 1 of the Fraud Act 2006 and it is now my responsibility to sentence you for those offences. Your co-accused, Trevor McClintock, ("McC") has pleaded guilty to five of those counts, which pleas have been accepted by the prosecution. Upon the application of his counsel, Mr Webster QC, I have adjourned sentence in his case until Friday 29 May next and therefore today I deal only with you.

[2] The offending in each of the counts to which you have pleaded guilty consists in your giving a solicitor's undertaking on nine occasions to three separate lending institutions in which you purported to act on behalf of the firm of solicitors by whom you were at the time employed. The undertakings involved promising that if various sums of money were either advanced by the lending institution or, if previously advanced then not immediately called in, your employer's firm either had or controlled the sums needed to guarantee those undertakings. In fact, as you well knew, neither you nor your employers held or controlled any of the monies needed to guarantee the undertakings. Your undertakings were simply a lie. As a result, in reliance upon those fraudulent undertakings, the three lending institutions

either advanced monies or allowed monies previously advanced to remain advanced beyond their previously due dates and suffered losses as a result.

[3] Why did you give these undertakings? The answer seems to lie in a business and personal relationship that had developed between you and McC whom you had met because you were both actively involved in the affairs of the church that each of you attended. You had become a non-executive and, so far as I can discover, an unremunerated director of property companies which McC largely controlled known as "The Wellington Group". McC had previously been disqualified from acting as a company director unless under the supervision of others and you and another were asked to fulfil that role. It was thus that you became a Director of McC's companies. He appears to have been an ambitious and, at least while the property market was rising, a successful dealer in property. However, as is now well-known, in early 2008 the property market turned sharply down and McC, in common with many others, was caught with a number of uncompleted property deals and without the means to satisfy his various lenders until, as he hoped, the deals could be completed. In order to buy time he needed either to obtain or to secure the continuation from time to time of interim or "bridging" loans. This is where you came in because, as a solicitor, you were in a position to give undertakings which the lending institutions naturally accepted. There was, as I have said, nothing to back them as you well knew. McC's optimism was, as we all now know, without foundation, the property market continued its downward spiral, one of the lenders applied to your firm to honour one of the undertakings you had given, you were confronted by your principal and admitted what you had done, firstly in relation to that particular undertaking and shortly thereafter in relation to the others. You resigned from the firm in July 2009. Thereafter you were struck from the role of solicitors, a step which you did not resist, and when subsequently interviewed by the police you made a clean breast of what you had done although you would have had little other alternative. Ultimately, you were charged with these offences and pleaded guilty at the first opportunity. You indicated to the prosecution that you would have assisted it in the prosecution of McC, who at that stage had been less forthcoming, but his subsequent pleas of guilty rendered the need for your assistance unnecessary.

[4] The losses which you caused are limited to the amounts of the initial undertakings and do not extend to the entirety of the banks' losses in these transactions which in other respects flowed from the downturn in the property market. Most of the losses suffered by the institutions due to your actions have now been made good either by McC or by the insurers of the Law Society and it may be that outstanding monies paid by those insurers will yet be made good to them by McC. That remains to be seen.

[5] As I have said in a number of recent criminal cases involving solicitors, what elevates the gravity of your crimes to a significantly higher level is that you committed them as a solicitor. I cannot improve upon the reasons for that elevation articulated by Hart J in R v Nurse [2010] NICC 3 at paragraph [12]:

“As a solicitor the defendant was in a particular position of trust because he was permitted by law to handle clients’ money. Members of the public placed their affairs in his hands and he abused that trust to commit these offences. This abuse of trust is the most serious aspect of these offences, because, as Hodge J observed in R v Miles [2007] 2 Cr App R (S)5 at page 23:

‘Here, we have a solicitor who was, as [are] all solicitors, permitted by legislation to handle clients’ money. Solicitors are officers of the court. They owe a duty of utmost good faith to their clients and to the public at large. Any breach of that damages the victims, it damages their colleagues, it damages the profession at large and reduces public confidence in the profession.’”

In my judgment this principle remains of equal application whether the monies the subject of fraud belong to clients or are fraudulently obtained for a client from a third party. The public must be able to rely absolutely upon a solicitor’s undertaking otherwise the ordinary course of commercial business will be disrupted and the profession, almost all of whose members have striven through these recent difficult times to uphold its standards and public reputation, will be reduced irredeemably in the public estimation. Each of that small number of solicitors in this jurisdiction who, like you, has behaved dishonestly has brought shame on themselves but has also by his or her actions tarnished the enviable reputation of your profession, a reputation hard-won over years and all too easily damaged by discreditable behaviour such as yours.

[6] There is no question but that your conduct merits a sentence of imprisonment, a fact realistically acknowledged by your counsel, Mr Lockhart QC, in the course of his well-marshalled and realistically-pitched plea in mitigation. He urges me, however, not to impose an immediate custodial sentence upon you for all the reasons put forward by him and I shall turn shortly to consider what should be the effect of those submissions.

[7] Firstly, however, I wish to observe that I still do not understand why you gave these false undertakings. You received and were to receive nothing for your actions, the loans acquired as a result all went to try to prop up McC’s property dealings, none of that money ever came or was ever to come to you. Mr Lockhart characterised your actions as “irrational” and that seems to me, from all I have been told, to be a fair description. The only possible incentive for you was a belief on your part, encouraged perhaps by McC’s boundless, if misplaced, confidence in his own business acumen with which he managed to infuse you, that if his business grew, as McC confidently expected, so would the opportunities for legal work and

the consequent earning of fees. You may have thought that the need for the bridging finance would soon disappear as McC's deals came belatedly to completion and that there was little risk in giving the undertakings as the bridging loans would be repaid on those completions and no-one would ever discover that your undertakings, unsupported as they were by funds or other security, had not been worth the paper they were written on.

[8] That you were willing to give these false undertakings is made all the more difficult to fathom by the nature of your background and training. You are now almost 51 years of age and have been married for 27 years. You have no previous convictions and trained and later worked as a solicitor in two of the most prominent firms in Belfast before commencing to practice with two others on your own account and, finally, going to work as a salaried partner in the firm where you committed these offences. If anyone knew by their training and by long experience the significance and importance of a solicitor's undertaking it should have been you. You have a strong Christian faith and for many years played a prominent role in the life and work of your congregation before stepping down to spare the church any collateral disgrace from your criminal actions. You suffer from raised blood pressure and a depressive illness while your wife has a significant medical history but is obliged to continue to work in the public service as she is now the only breadwinner in the family. You have applied for many jobs but have been unsuccessful and it may be that those who decide these matters may never again admit you to practice as a solicitor. Your financial state is parlous as an Order to repossess your house has been made and, when sold, is likely to leave you with significant negative equity to add to your other accumulated debts. In short you are a ruined man without prospect of recovery, certainly in the short term.

[9] You are, as an only child, the sole support for your very elderly parents whose needs you attend to diligently and to whom you have only recently felt able to disclose the serious extent of the trouble in which you find yourself. It is not at all clear how they could manage if you were not available to them.

[10] I have been provided with an impressive bundle of character references from professional or retired professional men from many backgrounds including your previous employers. All attest convincingly to your concern for others and to your diligence and probity from their various experiences as employers, members of your congregation or as friends. I do not doubt the accuracy or sincerity of anything that they have said on your behalf but they add to my inability to understand why you acted as you did, contrary to your excellent general and legal education, your professional training and long experience and your hitherto innate honesty and good-standing. My lack of comprehension is shared by the probation officer who prepared a report on you for this court and who assesses you as posing a low likelihood of re-offending.

[11] Mr Lockhart urges me to take account of your clear record, your admissions of guilt at the very earliest opportunity, your personal circumstances and the fact

that you never gained nor was it ever intended that you should gain anything from the monies unlocked by these undertakings. All and any such benefit went solely to help McC in attempting to prop up his collapsing property edifice.

[12] Mr Lockhart also asked me to take account of the fact that although you owned up in 2009 it has taken almost six years for the matter to reach a conclusion during all of which time it and its possible consequences have been hanging over you. I really do not understand why you were not committed for trial until the end of August 2014 but I am clear that you were not to blame for any of that delay and that had you had the opportunity to plead guilty at any time from 2009 onwards you would have immediately taken it.

[13] I do take account of all the matters that Mr Lockhart has urged upon me and of the other factors that I mentioned previously. I am satisfied in all the circumstances that this is one of those exceptional cases where, although a prison sentence is required and richly deserved, it need not take effect immediately. Accordingly, while I sentence you to 2 years' imprisonment on each count to run concurrently, I shall suspend the operation of each for a period of 3 years. That means that if you commit no further offences during that period you will hear no more of these prison sentences. If on the other hand you were to commit a further offence during the period the court that dealt with you for that offence would also have power to put the present sentences into operation.