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*(subject to editorial corrections –corrected version circulated on **07/05/09**)**

IN THE CROWN COURT FOR THE DIVISION OF LONDONDERRY

_____

THE QUEEN

–v-

TERENCE PHILIP WHITING

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McCLOSKEY J

[1] During the late evening of 21st November 2007, Wendy Ann McAteer, who was then aged seventeen years, lost her life in her home town of Limavady. The Defendant, Terence Philip Whiting, then aged thirty years, has pleaded guilty to her murder.

[2] There is no eyewitness account of how the murder was perpetrated. Nor has the Defendant provided any description of the event itself or what immediately preceded it. When interviewed by police, the Defendant purported to recall in some detail much of what occurred during the earlier stages of the evening in question and in the aftermath of the murder. However, he has remained non-committal about the deed itself. This is illustrated in the following passage contained in the pre-sentence report:

> *"Mr. Whiting informed me that on the day in question he and Wendy went to Clarke's Bar in Limavady around 2.30pm. He states that they were drinking in the bar most of the day. He reports that he consumed two pints of beer, fifteen bottles of Budweiser, half a bottle of vodka and half a bottle of Jack Daniels whisky…*
>
> *He claims that he left the bar at around 8.45pm to walk home. Mr. Whiting initially claimed that he could remember nothing about that until he woke up in a police cell. When … probed … some more about his memory of the events, he admitted that he and Wendy had an argument outside of the bar and that she told him that she was glad that she miscarried their baby. He accepts that he was extremely angry at this comment and stated that the*

argument became quite heated on the way home. However, he still denies having any memory of actually killing her."

[3] On the Defendant's own account, following the murder he walked back to Wendy's home, where he had been a guest of Wendy's mother and her partner for some time. In his own words, his clothes were covered in blood. His jeans, socks and training shoes were subsequently found to be heavily contaminated with the blood of the deceased. At this juncture, the Defendant made a change of clothing, placing the bloodstained clothes under the bed. He then took possession of his passport, bank book, money and left the house. He attempted to secure accommodation in a nearby hotel and, when this failed, he sought to procure the services of a taxi to travel to the City of Derry Airport, with the intention of returning to England. This proved to be his undoing and was the impetus for the police being alerted, leading in turn to the discovery of Wendy's body in an alleyway located between St. Mary's High School and Limavady High School. When interviewed by police, the only material admissions volunteered by the Defendant were that he and the deceased had been arguing and that, at one stage, he pushed her from behind to the ground, where she remained. He claimed, and still claims, to remember nothing about subsequent events.

[4] The cause of Wendy's death and the nature of the attack which brought it about emerge from the report of Dr. Ingram, Assistant State Pathologist for Northern Ireland, in the following terms:

"*There was clear evidence that she had been assaulted and strangled. There were large areas of bruising on the face involving both eyes and extending onto the cheeks and temples with some superimposed streaky abrasion on the cheeks. The bruises around both eyes merged across the bridge of the nose, the underlying bones of which were fractured. Bruises were also present on the forehead, overlying the left side of the lower jaw and on the left side of the chin and there was some bruising of both ears. The vermilion borders of both lips were bruised and both had been badly lacerated, the lower lip in two places, and the lining of the mouth was extensively bruised. In addition to these external injuries there was also widespread bruising of the under surface of the scalp over virtually its entire surface. Furthermore there was also some bleeding over the surface of the underlying brain, of two types termed subdural and subarachnoid haemorrhage, as well as a small area of bruising on the surface of the brain. These injuries were consistent with a number of blows to the head, probably as a result of her having been kicked and/or punched with some almost certainly having been sustained whilst she lay on the ground. In addition there was a laceration within an area of bruising on the back of the*

> *scalp consistent with her having struck her head on a hard surface, perhaps if she had fallen, or been pushed, backwards or been knocked to the ground by one of the blows to the face. On their own it seems unlikely that the injuries to the head could have been responsible for her death although it is possible that they could have caused a degree of concussion or possibly unconsciousness.*"

Dr. Ingram's report also documents a series of significant injuries to the neck of the deceased, including a fracture of the hyoid bone, prompting the commentary:

> "*These injuries were consistent with having been made by the grip of a hand, or hands, and the constriction of the neck had been sufficient to at least interfere with the blood flowing back from the head …*
>
> *Compression of the neck to this degree would have led to a loss of consciousness and if sustained could have resulted in death. However, detailed examination of the brain by a neuropathologist revealed acute degenerative changes which indicate that she had survived for a period, probably for at least thirty minutes, after having been assaulted and strangled although she would almost certainly have been unconscious during this period …*
>
> *It would seem reasonable to conclude that the hypoxic brain injury had occurred as a result of the combined effects of the head injury and her having been strangled.*"

In short, death was caused by a combination of strangling and a serious head injury.

[5] The report of Mr. Craig, a forensic scientist who attended the scene and conducted various tests and examinations following the death, includes an assessment of various items of clothing attributed to the Defendant. Blood stains were found on a tee-shirt, sweatshirt, socks and, in particular, training shoes. Each of the shoes "*carried heavy blood staining with the upper of the right shoe almost completely covered in blood*". Full DNA profiles matching those of the deceased were obtained from these various items. Mr. Craig comments:

> "*The distribution of the blood on the training shoes and jeans was consistent with both the right shoe and right lower leg of the jeans being brought forcibly into contact with a source of wet blood*".

[6] The Defendant has been convicted of criminal offences on several previous occasions. Two of these convictions are of significance in the present context, as they entailed assaults perpetrated against a female partner. On the Defendant's

account, the first of these consisted of a slap in the face, which he claims was stimulated by provocation. On the second occasion, he head butted his victim. Neither of these offences attracted a custodial disposal. The Defendant is not, therefore, a person of previous good character.

[7] The Defendant's plea of guilty was made at a very late stage. His trial was scheduled to commence on 23rd March 2009 (a Monday). On 19th March 2009 (the previous Thursday) his counsel informed prosecuting counsel that there would be an application to have the Defendant re-arraigned, to enable him to change his plea to one of guilty. While the matter is not entirely clear, I shall assume that the bereaved family learned of this on either 23rd or 24th March 2009.

[8] The punishment for murder is fixed by law and consists of life imprisonment. The meaning of this has been explained repeatedly by both first instance and appellate courts. In ***Regina –v- Doyle*** [2004] NICA 33, the Court of Appeal stated:

> "**[15]** *The system of fixing minimum terms in life sentence cases was described with admirable clarity by Carswell LCJ in R v McCandless and others [2004] NICA 1. For those who wish to have a clear understanding of that system we commend the judgment in that case. Despite the precision of the explanation that the judgment contains, it is, sadly, evident that there remains a widespread misconception as to the essential features of the system …*
>
> **[16]** *As the judgment in McCandless makes clear, a minimum term fixed by a judge in a life sentence case does not represent the totality of the sentence imposed. Every adult convicted of murder in the United Kingdom must be sentenced to life imprisonment. This does not in practice mean that he will be detained for the whole of the rest of his life, save in a few very exceptional cases. Under the Life Sentences (Northern Ireland) Order 2001 a judge who sentences a person to life imprisonment is required to fix a minimum term that must be served by the prisoner before his release can be considered. This exercise involves the judge making an estimate of the period that is necessary to satisfy the requirements of retribution and deterrence …*
>
> **[17]** *What has perhaps been lacking in the past is a clear understanding that the judge does not fix the total term that a prisoner must serve. He decides what minimum period must be served before the prisoner's case is considered by the Life Sentence Commissioners under article 6 of the 2001 Order. When the matter has been referred to them, under article 6(4)(b) the Commissioners must be satisfied that it is no longer necessary for the*

protection of the public that the prisoner should be confined, and if they are so satisfied they will then direct his release, pursuant to article 6(3)(b) of the Order. Moreover, a life sentence prisoner when released does not obtain unconditional freedom. He is released on licence and will be subject to recall to prison if he breaches the terms of the licence. Finally, what has not emerged with sufficient prominence in press reports of this type of sentencing is that a minimum term sentence, unlike other determinate sentences passed by judges, is not subject to normal remission rules. Thus a minimum term sentence of, say, ten years is the equivalent of a determinate sentence of twenty years on which full remission is earned."

[9] Thus the task of this court is to determine the minimum term, sometimes labelled "the tariff". This is explained in the statutory language as follows:

> "*(1) Where a court passes a life sentence, the court shall, unless it makes an order under paragraph (3), order that the release provisions shall apply to the offender in relation to whom the sentence has been passed as soon as he has served the part of his sentence which is specified in the order.*
>
> *(2) The part of a sentence specified in an order under paragraph (1) shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it*".

See Article 5 of the Life Sentences (Northern Ireland) Order 2001 ("*the 2001 Order*").

It is also instructive to recall the observations of Carswell LCJ in ***Regina –v- McCandless and Others*** (*ibid*) at paragraph [2]:

> "*When a Defendant in a criminal matter is sentenced to imprisonment for life, that does not in practice mean that he will be detained for the whole of the rest of his life, save in a few very exceptional cases. He will ordinarily be released after a period has elapsed which is regarded as appropriate to reflect the elements of retribution and deterrence, provided it is no longer necessary for the protection of the public to detain him. The factual background of murder cases is infinitely variable and the culpability of individual offenders covers a very wide spectrum. Reflecting this variation, the terms for which persons convicted of murder have actually*

> *been detained in custody have accordingly varied from a relatively few years to very long periods, even enduring in a few cases to the rest of the offender's life*".

As the Lord Chief Justice further observed, the statutory regime in this sphere has evolved during recent years, largely to reflect the requirements of the European Convention on Human Rights and Fundamental Freedoms and the relevant jurisprudence of the European Court of Human Rights.

[10] As a result of the decisions in ***McCandless*** and ***Doyle***, the selection of the minimum term in a murder case requires consideration of two different "starting points", which are, respectively:

(a) The "normal" starting point of twelve years.

(b) The "higher" starting point of fifteen/sixteen years.

This structured scheme can be traced to a Practice Statement promulgated by Lord Woolf CJ on 31st May 2002, reported at [2002] 3 All ER 412. In ***McCandless***, Carswell LCJ stated:

> "*[10] … We consider that the levels laid down in the Practice Statement, which accord broadly with those which have been adopted for many years in this jurisdiction, continue to be appropriate for our society*".

In the same passage, his Lordship stated that the level of minimum terms prescribed in the Practice Statement "*… in our view represent a just and fair level of punishment to reflect the elements of retribution and deterrence*".

[11] The terms of the Practice Statement are reproduced in ***Doyle,*** where Kerr LCJ stated:

> **"[20]** *As in all manner of criminal offences, our courts have striven to achieve a measure of consistency in sentencing when fixing a minimum period to be served by those sentenced to life imprisonment. In* ***McCandless*** *the Court of Appeal adopted as a principal guideline the Practice Statement issued by Lord Woolf CJ on 31 May 2002 and reported at [2002] 3 All ER 412. This set out the approach to be adopted in respect of adult offenders in paragraphs 10 to 19: -*
>
> > *'The normal Starting Point of 12Yyears*
> >
> > *10. Cases falling within this starting point will normally involve the killing of an adult*

victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The Higher Starting Point of 15/16 Years

12. The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual

maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the Starting Point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include:

(a) the offender's age;
(b) clear evidence of remorse or contrition;
(c) a timely plea of guilty.

Very Serious Cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate'."

[12] On behalf of the prosecution, Miss Orr QC contended that the higher starting point is appropriate in the present case, by virtue of factor (j), which is expressed in the language "*extensive and/or multiple injuries were inflicted on the victim before death*". On behalf of the Defendant, Mr. Fowler QC submitted that the court should apply the lower starting point, on the basis that, having regard to the available evidence, this was a case involving a progressively escalating argument, with an absence of premeditation and an explosive outcome, following excessive consumption of alcohol. While disposed to accept that the case is borderline in nature, Mr. Fowler invited the court to conclude that the murder was, in the language of the Practice Statement, the culmination of "*a quarrel or loss of temper between two people known to each other*".

[13] In determining this important issue, I remind myself that while it is not to be approached in a rigid, mechanistic fashion, paragraph 10 of the Practice Statement states unambiguously that cases belonging to the lower category "*will not*" display the characteristics which engage the higher category. I consider this language to be indicative of, as a minimum, a strong general rule. I further remind myself of the opening statement in paragraph 12:

> "*The higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position*".

I consider this to be the dominant statement in paragraph 12, constituting the overarching pre-requisite for the allocation of any murder to the upper category. I make the following conclusions:

(a) This is demonstrably a case of exceptionally high culpability. The brutal attack which brought about this young girl's death was senseless, inexplicable, inexcusable and, plainly, intentional in every respect. The Defendant's state of mind, in this respect, can be readily inferred from his calm, calculating conduct during the period which ensued: see paragraph [3] *supra*.

(b) The Defendant, a male aged thirty years, viciously murdered a female teenager who was in a position of both psychological and physical vulnerability. The victim was defenceless.

(c) In the particular circumstances of this case, I consider that the deceased was not the kind of "*adult victim*" contemplated by paragraph 10 of the Practice Statement.

(d) Furthermore, I consider that the sustained and prolonged brutality to which the deceased was evidently subjected lies outwith the ambit of the "*quarrel or loss of temper*" envisaged by paragraph 10.

(e) The attack on the deceased which caused her to die entailed the infliction of multiple injuries: the substantial body of evidence to this effect is self-explanatory. Further, in light of the pathologist's finding that some of the deceased's head injuries were almost certainly sustained while she lay on the ground, I consider that the Defendant indulged in gratuitous violence: see paragraph 12(i) of the Practice Statement.

(f) While the initial attack on the deceased was probably of a spontaneous and explosive nature, what followed thereafter cannot reasonably be described in these terms and belongs more properly to the realm of intentional, determined and unbridled brutality.

The conclusion that the higher starting point of fifteen to sixteen years applies in this case follows inexorably.

[14] As explained by Carswell LCJ in ***McCandless,*** at paragraph [8], when the appropriate starting point has been selected it is then to be "*… varied upwards or downwards by taking account of aggravating or mitigating factors*". This accords with the

meaning to be attributed to the term "*starting point*" in the generality of cases, most recently illuminated by Judge LCJ in ***Regina –v- Saw and Others*** [2009] ECWA. Crim 1, at paragraph [4]:

> "*It* [i.e. the expression 'starting point'] *is nowadays used to identify a notional point within a broad range, from which the sentence should be increased or decreased to allow for aggravating or mitigating features, rather than the lowest point in the range*."

In sentencing for murder, the selection of the appropriate starting point constitutes the first step in a two-stage exercise. The starting point need not necessarily be coterminous with the outcome. Rather, at the second stage, the court is enjoined to consider in particular whether there are aggravating and/or mitigating factors and, if so, to weigh such considerations accordingly.

[15] In the particular circumstances of the present case, it is submitted on behalf of the Crown that the Defendant's culpability is aggravated by his criminal record. This belongs to the menu of aggravating factors adumbrated in paragraph 15 of the Practice Statement. Mr. Fowler QC, on behalf of the Defendant, was, properly, disposed to acknowledge the force of this submission. The relevant particulars of the Defendant's criminal record are outlined in paragraph [6] *supra*. I find that this constitutes an aggravating factor. No other aggravating feature was urged on behalf of the prosecution.

[16] With regard to possible mitigating factors, Mr. Fowler laid particular emphasis on the Defendant's plea of guilty, praying in aid the statement of the Lord Chief Justice in ***Doyle***:

> "**[39]** *The strongest mitigating factor is the offender's plea of guilty whereby he spared witnesses, particularly his victim's family, the ordeal of giving evidence. This stands clearly in his favour although we bear in mind that no possible defence was available to him. Although he did not plead guilty at the first available opportunity, we accept the submission of Mr O'Donoghue that this should not tell significantly against him since a number of legal issues would have had to be addressed before final advices could be given to the offender.*"

In addition to this passage, it is appropriate to recall the guidelines promulgated by the Northern Ireland Court of Appeal in ***Attorney General's Reference No. 1 of 2006*** [2006] NIJB 424:

> *"[18] … If a Defendant wishes to avail of the maximum discount in respect of a particular offence on account of his guilty plea he should be in a position to demonstrate that he*

> *pleaded guilty* ***in respect of that offence*** *at the earliest opportunity. It will not excuse a failure to plead guilty to a particular offence if the reason for delay in making the plea was that the Defendant was not prepared to plead guilty to a different charge that was subsequently withdrawn or not proceeded with.*
>
> *[19] To benefit from the maximum discount on the penalty appropriate to any specific charge a Defendant must have admitted his guilt of that charge at the earliest opportunity. In this regard the attitude of the offender during interview is relevant.* ***The greatest discount is reserved for those cases where a Defendant admits his guilt at the outset ...***
>
> *In the present case the solicitors acting on behalf of two of the offenders appear to have advised them not to answer questions in the course of police interviews. Legal representatives are, of course, perfectly entitled to give this advice if it is soundly based. Both they and their clients should clearly understand, however, that the effect of such advice may ultimately be to reduce the discount that might otherwise be available on a guilty plea had admissions been made at the outset*".

[Emphasis added].

The statutory underpinning for this approach is found in Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996, which provides:

> "*In determining what sentence to pass on an offender who has pleaded guilty to an offence a court shall take into account –*
>
> *(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty and*
>
> *(b) the circumstances in which this indication was given*".

The pitfalls for a Defendant of a belated plea of guilty are illustrated in the recent decision of the English Court of Appeal in ***Regina –v- Elicin and Moore*** [2008] EWCA. Crim. 2249, where Hooper LJ observed:

> "*[11] In our view a judge is entitled to refuse any reduction where there is an overwhelming case, as there is in this case, and where thereafter there has been a* ***Newton***

> *hearing during which the Defendant has clearly lied as to his involvement in the offence.*"

I am conscious, of course, that the second of these ingredients is not present in the instant case.

[17] The justification proffered for the lateness of the Defendant's guilty plea in the present case is the timing of certain expert reports commissioned on his behalf. On the Defendant's behalf, issues relating to his mental capacity were investigated, an exercise which generated the preparation of reports by Dr. Bownes and Professor Davidson. When these reports were eventually completed, during the period of two weeks prior to the scheduled trial commencement date, some time for reflection was reasonably required and, it was submitted, there was no undue delay in the alteration of the Defendant's plea at that stage.

[18] On behalf of the prosecution, Miss Orr informed the court that the intimation of the Defendant's change of plea, notwithstanding its belated nature, did have a beneficial impact on the bereaved family. Independent confirmation of this is found in the victim impact statement submitted on behalf of Wendy's mother, which contains the following passage:

> "*I am glad that Terence Whiting pleaded guilty to murder for the sake of the family. I could not listen to the details of how he killed my daughter.*"

However, I must also balance in this particular equation the strength of the prosecution case. Miss Orr submitted that the case against the Defendant was a compelling one. In my view, from the earliest stage, the Defendant's guilt was inescapable, subject only to any substantial issue of mental incapacity. In this respect, I would highlight amongst the exhibits a letter written by the Defendant from prison to the mother of the deceased (see exhibit No. 41), which comes close to an unequivocal acceptance of responsibility by him and discloses no semblance of any possible mental incapacity.

[19] Furthermore, I have already highlighted the nature of the Defendant's conduct in the immediate aftermath of the death and I refer also to his responses during initial questioning by the police. All of these sources impel inexorably to the conclusion that the prosecution case against the Defendant was so strong as to be virtually overwhelming. However, I have no reason to question the propriety of the advice which, presumably, precipitated investigation of the Defendant's mental state. Nor can I hold the Defendant accountable for the delays which this process entailed. Plainly, the Defendant cannot avail of the credit which would have accrued from an early acceptance of guilt. On the other hand, by well established principle, this factor qualifies to be accorded some weight. In the particular circumstances, I hold that the Defendant qualifies to benefit from around one-half of the maximum credit notionally available.

[20] I find that the Defendant has no true remorse for this terrible deed. Self pity there may be, but, in my view, genuine remorse there is none. This finding flows readily from various passages in the pre-sentence report, where it is recorded, *inter alia*:

> "*During our discussions about these incidents, it became apparent that he had a negative attitude towards females and that he liked to feel superior, dominant and in control of relationships. He also indicated that when he was drunk he would be more likely to resort to violence if his status of power or superiority was challenged by a female …*
>
> *Whilst the Defendant accepts that he was responsible for the death of Wendy McAteer, he talks about it as something which happened to him as opposed to something which he played an active role in. During our interview* [he] *used alcohol as an excuse …*
>
> *Mr. Whiting perceived himself as a victim in the situation …*
>
> *The Defendant did not perceive Wendy to be a victim but did have some basic insight into the impact that her death had on her family …*
>
> *He also refused to talk about the impact that the offence had on his family and friends, opting rather to discuss how it impacted on him losing his freedom …*
>
> *During out interviews, Mr. Whiting did claim that he was remorseful for 'what happened', however, he did not convey a genuine sense of remorse or regret to me. The Defendant displayed little or no empathy for Wendy McAteer, her family or indeed his own family. He appeared more concerned about how he has lost his freedom because of 'what happened' than he was for what he had done.*"

Furthermore, when juxtaposed with these observations, the Defendant's apology to the family, articulated through his senior counsel at the outset of the sentencing hearing, rings decidedly hollow and, in my view, falls far short of an expression of genuine remorse.

[21] I must also address the issue of premeditation, given the twofold submission on behalf of the Defendant that this factor was absent and its absence should accrue to the Defendant's advantage. I am disposed to accept that the Defendant's attack on the deceased was not planned. Simultaneously, I recognise that by virtue of the

Practice Statement [paragraph 15] spontaneity and lack of premeditation have the potential to constitute mitigating factors in a case of murder. Whether these considerations in fact thus qualify must depend upon the court's assessment of the individual case. I consider that paragraphs 14-17 of the Practice Statement are not to be applied slavishly by the court. Rather, they must be approached in a flexible and realistic fashion and be tailored to the circumstances of the particular case. In this respect, I refer to my conclusions in paragraph [13] above. Having regard to these conclusions, I consider that the initial spontaneity which probably characterised the Defendant's attack on the deceased was quickly overtaken by a callous determination to prolong his brutal assault, to the point of extinguishing his defenceless victim's life. This, in my view, coupled with the other conclusions above, operates to reduce the lack of premeditation to a merely neutral factor.

[22] To summarise, in the matter of the aggravating/mitigating factors equation, I conclude that the notional pendulum swings somewhat to the advantage of the Defendant, having regard to the weight which I attribute to his plea of guilty, notwithstanding its timing. However, the benefit which thereby accrues to him is diminished by the exacerbation of his offending that flows from his criminal record.

[23] The materials before the court include reports documenting the impact of Wendy's death on her family. While I have considered these with care, I do not propose to rehearse their contents. To place them in context, it must be observed that what they disclose is not advanced on behalf of the prosecution as a discrete aggravating factor. I concur with this. Nonetheless, it is merely humane to highlight the grief and suffering of the members of the McAteer family, in particular Wendy's mother, who is to be commended for the dignified content and tone of her victim impact statement, in which the themes of betrayal, anger, grief, despair and self-blame feature prominently.

Conclusion

[24] I conclude that in order to satisfy the requirements of retribution and deterrence, having regard to the seriousness of this murder, the Defendant must serve a minimum term of fourteen years imprisonment. As already explained painstakingly in the body of this judgment and on previous occasions in court, the Defendant will serve the whole of this term, following which all questions pertaining to his release will lie within the province of the Life Sentence Commissioners. It is for the Commissioners, and not this court, to evaluate the risk of serious harm posed by the Defendant ventilated in the pre-sentence report and the various factors bearing thereon. The minimum term of fourteen years will include the period of the Defendant's remand in custody to date: see ***McCandless***, paragraph [52].