

Judicial Communications Office

13 November 2020

COURT SENTENCES FOR TERRORIST OFFENCES

Summary of Judgment

Mr Justice Colton, sitting today in Belfast Crown Court, sentenced seven men for terrorist offences arising from the recording of conversations at a house in Newry in 2014.

Factual Background

During the period between 12 August and 10 November 2014 a property in Ardcarne Park, Newry was under surveillance and recordings of conversations took place on 11 dates. Following analysis of the recordings, the PSNI conducted a search and arrest operation for terrorist offences at the house on 10 November and arrested five men. On 15 December 2014 a follow up search and arrest operation was conducted and the PSNI arrested three other men. The recordings revealed that the defendants belonged to a proscribed organisation (the Irish Republican Army) and discussed matters relating to terrorist activities. Not all of the defendants were present for all of the discussions. At their most serious the conversations related to potential strategies for their organisation including how to deal with other “dissident” Republican organisations; the size and structure of their organisation; the identification of possible targets; training and sourcing of weapons and materials for pipe bombs; and sources of funding for criminal activities such as robbery.

The defendants (Patrick Blair, Seamus Morgan, Joseph Lynch, Liam Hannaway, John Sheehy, Kevin Heaney and Terence Marks) pleaded guilty to all the offences with which they were charged. The eighth defendant, Colin Winters, the occupier of the house died on 27 August 2020.

In sentencing the defendants, Mr Justice Colton said the contents of the discussions made grim and depressing reading:

“It is the overwhelming wish and the expectation of all right-thinking law abiding citizens in this jurisdiction that the days of shootings, killings and explosions should be confined to the past. It is clear from the contents of the discussions of those who were present at the meetings described (to varying degrees) that they were willing to return us to the days which so disfigured our society. Those who seek to do so represent a grave danger to the community and those who commit crimes in furtherance of that objective must expect deterrent sentences.”

Patrick Blair

Patrick Blair was charged with 15 counts: conspiracy to possess firearms and ammunition with intent (x1); conspiracy to possess explosives with intent (x1); providing weapons, training or instruction (x5); belonging to or professing to belong to a proscribed organisation (x1); preparation of terrorist acts (x5); collecting information likely to be of use to terrorists (x2). Blair was recorded speaking at 10 of the meetings. The Court said he was centrally involved in the discussions and specifically spoke about sourcing and obtaining firearms, constructing a bomb and where components could be acquired, recruitment of members, potential strategies for their organisation

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and identification of potential targets, training and sources of funding for terrorist activities. The Court said this was not a one-off meeting where there was an element of bravado or loose talk, but a series of meetings with a common theme and purpose. It acknowledged, however, that nothing came of the conspiracy and that the contents of the conversations suggested a lack of sophistication. No effective steps were taken to advance the conspiracy.

The Court considered that Blair played a leading role at the meetings and took the lead in many of the discussions. It said he was clearly imparting his knowledge and experience of making pipe bombs and the use of weapons. It took account of the fact that Blair committed multiple offences. A further aggravating feature was his previous and highly relevant criminal convictions dating from 1974, 1975 and 2003 for offences including robbery, hijacking, possession of firearms and explosives, and attempted murder. In 1975 he admitted to being OC of the IRA Active Service Unit in Newry. The Court said that while the vast majority of the offences were of considerable vintage they are a relevant and significant aggravating factor.

In terms of mitigation, the Court was referred to Blair's age (65) and his relatively poor health (asthma and COPD). It said, however, that in light of the serious offences it did not consider that personal circumstances of this type carry any significant weight and that Blair would receive any necessary medical treatment during the course of any period spent in prison. The Court noted that Blair was admitted to bail on 27 December 2015 and initially subject to a curfew from 7.00 pm to 8.00 am and electronic monitoring. There were no breaches of any bail conditions between his release and the date of sentencing. It was acknowledged that bail conditions may be taken into account as a mitigating factor so as to "make some modest adjustment in the final sentence"¹. Counsel for Blair also raised the issue of "passage of time" in relation to the investigation, prosecution and completion of the case but the Court did not consider that any breach of Article 6 had been established. It said there was no evidence of any specific impact of any delay on Blair and that he had been at liberty throughout, although noting he remained in a state of uncertainty about his fate during his time on bail.

The Court then considered the question of discount arising from the Covid-19 pandemic. It noted a number of decisions in England and Wales and in this jurisdiction where it was recognised that the impact of a custodial sentence is likely to be heavier in the current emergency than it would otherwise be. This was of particular relevance to Blair because of his ill-health. The Court, however, was provided with details of the current regime put in place by the Prison Service and said that Blair will receive appropriate medical attention and be able to shield should it be necessary. The judge said:

"It seems to me that any deduction in sentencing because of the Covid-19 pandemic is more likely to arise in situations where the court is either facing a "threshold" decision about whether custody should be imposed at all or where a relatively short sentence is being imposed during which time the Covid-19 restrictions will be in place. This is not a case in which the court faces a "threshold" decision about whether custody should be imposed. I recognise ... that the current restrictions will result in more restrictive prison conditions for Mr Blair. I therefore do intend to make a modest adjustment in the sentence because of this."

¹ R v Glover [2008] EWCA Crim 1782; R v McDonnell & Fearon [2013] NICC 16

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As Blair was convicted of a series of offences which are serious and specified offences in the Criminal Justice (NI) Order 2008 (“the 2008 Order”) the Court had to assess whether there is a “significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences” (the “dangerousness” provisions of the 2008 Order). The Court was satisfied that the conditions for dangerousness and a sentence for public protection were met for the following reasons:

- The defendant played a leading role in a conspiracy designed to obtain explosives and ammunition and to organise and train members to use any such material so obtained for the purposes of the commission of terrorist offences, the potential consequences of which were death and destruction;
- Blair’s previous criminal convictions and the comments made by him in the meetings demonstrate that he is a person committed to the objectives of splinter groups of the IRA who represent a serious existing and on-going threat to life. There was nothing before the court to indicate that Blair resiles from that commitment;
- The fact that no actual act of terrorism was carried out as a result of the meetings was as much to do with a lack of resources and that the conspiracy was interrupted by the arrests as opposed to any lack of commitment on the part of Blair;
- The protracted nature of the meetings, the contents of the meetings and the defendant’s previous convictions.

In coming to the conclusion the Court weighed in the balance the fact that Blair has not committed any offences whilst on bail, however, this had to be seen in the context of his very strict bail conditions. Counsel also referred to Blair’s personal circumstances as factors pointing against a finding of dangerousness but the Court did not agree:

“Everything the court knows about [Blair] points to someone committed to the actions of a terrorist organisation which posts a grave danger to the community.”

The Court then considered whether the seriousness of the offences are such to justify the imposition of a life sentence for the counts of conspiracy or whether an extended custodial sentence or an indeterminate custodial sentence would be appropriate to address the future risk to the public posed by the commission of future offences by Blair. It said that all the material available to the court points to a man who has a lifelong and voluntary commitment to terrorism. The Court concluded that an indeterminate custodial sentence should be imposed and specified the period which it considered appropriate to satisfy the requirement of retribution and deterrence as seven years. It reduced this to six years to take account of the impact of Covid-19 and the restriction on Blair’s liberty arising from bail conditions over a five year period. The Court then further reduced the period to take account of Blair’s plea of guilty which removed the necessity for a lengthy trial.

It imposed an indeterminate custodial sentence with a custodial element of five years on the conspiracy counts with all other sentences to run concurrently. This is broadly equivalent to a 10 year determinate sentence, subject to, of course, a consideration by the Parole Commissioners as to whether the defendant can be released when the five year term is served.

Seamus Morgan

Seamus Morgan was charged with one count of belonging to or professing to belong to a proscribed organisation. It was not alleged that he was part of the conspiracy faced by other defendants. He

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was identified as being present in the house on three dates. The Court noted that he did not say anything of significance in the context of any planning or organisation of terrorist activities but it was clear that he regarded himself as one of the group and appeared to be accepted by the others as one of them.

Morgan has a relevant criminal record in that he was convicted in September 1975 of causing an explosion at a hotel in Newry. During interview at that time he also admitted his involvement in an armed robbery in 1974 and to being involved in the movement of firearms. He has not been convicted since then of any relevant or significant offences. The Court said the convictions in 1975 were of a very considerable vintage and were committed when Morgan was 17/18 years old, but nonetheless they constitute an aggravating factor.

In terms of mitigation it was submitted that Morgan has been subject to stringent bail conditions for approximately five years and there has been a significant passage of time between his date of arrest and conviction. Counsel for Morgan also urged the court to take into account the impact that custody will have on him in light of the restrictions imposed by the Covid-19 pandemic. It was submitted that Morgan has in effect served the equivalent of a two year prison sentence.

The Court determined that the appropriate starting point before mitigation having regard to the degree of culpability of Morgan and the aggravating feature of his record is one of four and a half years. It reduced this to three years and nine months to reflect the restriction on his liberty whilst on bail and the impact of the Covid-19 restrictions in the prison environment. The sentence was further reduced to reflect Morgan's guilty plea. The Court imposed a sentence of three years' imprisonment and specified that he serve 18 months in custody and 18 months on licence.

Joseph Matthew Lynch

Joseph Matthew Lynch, who will be 80 years of age in February, was charged with 12 counts: conspiracy to possess explosives with intent (x1); conspiracy to possess firearms/ammunition with intent (x1); preparation of terrorist acts (x5); belonging or professing to belong to a proscribed organisation (x1); receiving training or instruction in the making or use of weapons for terrorism (x2); and attending at a place used for terrorist training (x2).

The Court said it was clear that Lynch played a significant role in the conspiracy with which he is charged. He had travelled from his home in Limerick in the presence of others on six occasions for planned meetings with people of like mind. The nature of his conversations focussed on bomb making, getting firearms, potential strategies for their organisation, the identification of targets, training, recruitment and sources of funding. Counsel for Lynch suggested that he may have been prepared to "talk the talk" but the Court's view was that he shared the aspiration of others to engage in and organise terrorist activities.

Lynch has 13 previous convictions in the Republic of Ireland dating between 1955 and 1996 (the most serious being a common assault) but none was of a terrorist nature. By way of mitigation much focus was placed on his personal circumstances. He is approaching his 80th birthday and suffers from a number of medical conditions. He spent the last number of years whilst on bail caring for his wife who recently passed away. He is the main carer for his adopted adult son who has significant health issues. He also has three adult daughters. In the probation report Lynch acknowledges that his involvement in Irish Republican politics has been a significant part of his life but asserts he is no longer involved or wished to be involved in dissident Republican activities. The Court said it would

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adopt a similar approach in taking account of Lynch's restrictive bail conditions, the time between conviction and sentence and the impact of the restrictions in prison arising from Covid-19.

In considering the issue of "dangerousness", the Court concluded that Lynch did not meet the statutory test and said it was not satisfied that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences. In reaching this conclusion, the Court said it was particularly influenced by Lynch's personal circumstances including his age, health, obligations to his son and his disavowal of an intention to engage in further dissident Republican activities. Lynch was also the first of the defendants to plead guilty. The Court considered Lynch's culpability to be high but lower than that of either Blair or Hannaway. It recognised that in deciding he is not dangerous within the meaning of the 2008 Order this will inevitably lead to a significant difference in sentence on him compared to Blair and Hannaway but noted that the assessment of dangerousness is very much fact specific. Counsel for Lynch urged the court to suspend any custodial sentence as a consequent of the mitigating reasons however the Court did not consider this to be appropriate given the culpability of the defendant and the serious nature of the offences he committed.

The Court said that before mitigation it would have imposed a sentence of ten years' imprisonment and would have reduced this to eight years having regard to Lynch's personal circumstances, the restriction on his liberty whilst on bail, the impact of Covid-19 restrictions in the prison environment and his age. The Court further reduced the sentence to reflect Lynch's guilty plea, which it was submitted was of immense benefit as there were contestable issues in his defence and his plea may have acted as a catalyst for the others who subsequently pleaded. It imposed a sentence of six years and six months' imprisonment and specified that he serve three years and three months in custody and three years and three months on licence.

Liam Hannaway

Liam Hannaway was charged with 13 counts: conspiracy to possess explosives with intent (x1); conspiracy to possess firearms and ammunition with intent (x1); preparation of terrorist acts (x5); collecting information likely to be of use to terrorists (x2); and belonging to or professing to belong to a proscribed organisation (x1). He was present at six of the meetings. The evidence relating to Hannaway and Blair is broadly the same. In addition, Hannaway was heard suggesting the organisation needs to "look at a Christmas campaign" and targeting a prison governor or "anything that is administering British rule". The Court said that an analysis of the contents of the discussions and Hannaway's conduct in the course of the meetings justified the conclusion that he played a "significant and leading role in this conspiracy": "He along with Blair "led" the discussions. In the course of discussions he characterises himself as holding a leadership role in Belfast."

The Court referred to the aggravating factor of Hannaway's previous and highly relevant criminal convictions. He was convicted in November 2008 of possession of explosives and ammunitions with intent and possession of a firearm/ammunition in suspicious circumstances and received a prison sentence of ten years for these offences. In mitigation, the Court was told that Hannaway suffers from poor physical and mental health. It was also referred to his restrictive bail terms, the significant passage of time between his arrest and sentencing and the impact of the Covid-19 pandemic.

The Court was satisfied that the conditions for dangerousness and the appropriateness of a sentence for public protection were met for the following reasons:

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- The defendant's "clear and obvious commitment to terrorism" demonstrated in the conversations which had to be seen in the context of his previous conviction in 2008 and that the term of imprisonment "clearly had no deterrent effect";
- There was nothing in the evidence to disavow this commitment. The Court said the conspiracy ended because he and others were arrested and this did not mean the defendant did not present as a significant risk now or in the future to members of the public;
- The requirement for the restrictive bail conditions was because of the risk posed by the defendant.

The Court then considered whether the seriousness of the offences are such to justify the imposition of a life sentence for the counts of conspiracy or whether an extended custodial sentence or an indeterminate custodial sentence would be appropriate to address the future risk to the public posed by the commission of future offences by Hannaway. The Court concluded that an indeterminate custodial sentence was required in the circumstances of this case where the material "points towards someone who has a longstanding and voluntary commitment to terrorism". It said that prior to the consideration of any mitigation it would have imposed a period of seven years as the period which it considered appropriate to satisfy the requirement of retribution and deterrence. The Court reduced this to six years to take account of the impact of Covid-19 and the restriction on Hannaway's liberty arising from bail conditions over a five year period. It then further reduced the period to take account of Hannaway's plea of guilty which removed the necessity for a lengthy trial.

The Court imposed an indeterminate custodial sentence with a custodial element of five years' imprisonment on the conspiracy counts with all other sentences to run concurrently. This is broadly equivalent to a 10 year determinate sentence, subject to, of course, a consideration by the Parole Commissioners as to whether the defendant can be released when the five year term is served.

John Sheehy

John Sheehy was charged with six counts: conspiracy to possess explosives with intent (x1); conspiracy to possess firearms and /or ammunition with intent (x1); preparation of terrorist acts (x1); attending at a place used for terrorist training (x1); receiving training or instruction in the making or use of weapons for terrorism (x1); and belonging to or professing to belong to a proscribed organisation (x1). He travelled from his home in County Kerry with the defendant Joseph Lynch to attend two meetings.

The Court noted that Sheehy participated fully in discussions with Blair and Hannaway about making an explosive device and asked relevant questions. It said there was an expectation that Sheehy would be in a position to train others in the future but nothing to suggest this was advanced in any way. Sheehy also admitted to having robbed guns in the past. The Court considered that his participation and contribution to the conspiracy was at the lower end of culpability. Sheehy, who is significantly younger than all the other defendants, lives in a remote rural area with his mother apart from the period he spent on remand in a bedsit in Newry to comply with his bail conditions. He has a seven year old son who stays with him at weekends. A consultant psychiatrist was of the opinion he suffers from depression and anxiety.

Sheehy, through his counsel, expressed remorse for attending the meetings. It was asserted that he was invited, had never been over the border before, had no skills which could have been used for terrorist purposes and no intention of recruiting others. He indicated that he "just got carried away with myself". Sheehy had developed a political interest in Republican Sinn Fein and helped with

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local collections for prisoners. He stated that he has severed his connections and his experience in prison and on bail has thoroughly disabused of any attraction to terrorism.

The Court considered that the conditions for dangerousness and the appropriateness of a sentence for public protection were not met referring to Sheehy's clear record, his conduct on bail, his personal circumstances and his express disavowal of any ongoing connection with Republican activities. It considered the appropriate starting point was a custodial sentence of eight and a half years and reduced this to seven and a half years to reflect the restrictions on his liberty whilst he was on bail and the impact of Covid-19. The Court further reduced the sentence to reflect Sheehy's guilty plea. It imposed a sentence of six years and specified that he serve three years in custody and three years on licence.

Kevin John Paul Heaney

Kevin John Paul Heaney was charged with one count: belonging to or professing to belong to a proscribed organisation. He attended four meetings. The Court said he did not play a significant role in the meetings but appeared to be comfortable with the other defendants when contributing on social matters, and was fully aware of the context of their discussions. There was a suggestion that he had been put under some pressure to assist in targeting individuals but not evidence that he did in fact do so.

Heaney has 19 previous convictions from between 1992 and 2012, the most serious being related to an armed robbery of a travel agents in Newry in 1996. The Court said that while his convictions are of considerable vintage they are nonetheless an aggravating feature in this case. In mitigation, counsel for Heaney pointed to his relative lack of involvement in the meetings. The Court also heard that Heaney's personal circumstances have changed in that he has matured considerably, is now the father of a three year old daughter and in a stable relationship with the child's mother. A character reference was provided which outlined Heaney's contribution to his local community. The Court was also provided with a short medical report from his GP which indicated that Heaney has a long history of significant mental illness. It commented, however, that it did not consider there is any merit in reduction in sentence for any personal circumstance put forward on behalf of Heaney.

The Court concluded that prior to any mitigation the appropriate sentence would be one of five years' imprisonment. It considered Heaney's culpability to be marginally greater than that of Morgan. It reduced the sentence to four and a half years to reflect the restrictions on Heaney's liberty whilst he was on bail and the impact of Covid-19 and further reduced the sentence to reflect his guilty plea. The Court imposed a sentence of three years and six months and specified that he serve 21 months in custody and 21 months on licence.

Terence Marks

Terence Marks was charged with two counts: belonging to or professing to belong to a proscribed organisation; and receiving training or instruction in the making or use of weapons for terrorism. He was present at three meetings but the counts only relate to his presence on 15 October 2014 when he is recorded with Blair having a conversation about the making of pipe bombs in the course of which Blair can be heard explaining to Marks how to make a firebomb. They also have a general discussion about police activity in Newry. The Court said that given his presence on that date and the two other dates it can be inferred that Marks was fully aware that those present belonged to a

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terrorist organisation and that he is someone who is trusted by them. However, in the overall context of this case, in relative terms his role is a marginal one.

Marks has a criminal record containing 13 convictions ranging from 1977 to 1994. The most serious relate to possession of a firearm with intent in 1981 (which was not terrorist related) and attempted hijacking and possession of an imitation firearm in 1978. Marks was also convicted of a robbery in 1987. Counsel focussed on the defendant's personal circumstances. Reports prepared for the Court referred to him suffering from long term alcoholism, diabetes, anxiety, depression and seizures. The Court was also told that Marks' wife has suffered a number of strokes and following his release on bail he has become her main carer.

The Court considered the question of dangerousness under the 2008 Order. It concluded that Marks does not meet the test for dangerousness or more particularly that there is not a significant risk to members of the public of serious harm occasioned by him of further such offences. In coming to this conclusion the judge took into account his limited role in the commission of the offences: "Whilst I have recognised that the offences are serious the evidence suggests a peripheral role by this defendant and he has not been involved in any sophisticated planning or engagement in the meetings or discussions which form the basis of the conspiracy charges before the court." The Court noted that his previous convictions are of considerable vintage and the hijacking occurred when he was young.

The Court did not consider that Marks' personal circumstances and that of his wife are such to warrant him escaping a prison sentence entirely but said it had taken his wife's personal circumstances into account in assessing the appropriate sentence. It concluded that the appropriate sentence should be one of five years and six months' imprisonment and that Marks' culpability was marginally greater than that of Morgan and Heaney. It reduced the sentence to five years to reflect the restrictive bail conditions during a five year period and the impact of Covid-19 restrictions in the prison environment. The Court further reduced the sentence to reflect Marks' guilty plea. It imposed a sentence of four years' imprisonment and specified that he serve two years in custody and two years on licence.

NOTES TO EDITORS

This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

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