

# JUDICAL STUDIES BOARD FOR NORTHERN IRELAND

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## SENTENCING IN CASES OF MANSLAUGHTER, ATTEMPTED MURDER AND WOUNDING WITH INTENT

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### **Introduction**

In recent years the Northern Ireland Court of Appeal has given a number of important guideline decisions in the areas of manslaughter and wounding with intent, and there have been a large number of decisions at first instance in which these guidelines have been applied. As was made clear in R v. Magee [2007] NICA 21 “offences of manslaughter ... cover a wide factual spectrum”, and in all three categories of cases considered in this paper various sub-categories of offence can be identified that are readily encountered in practice. Almost all of the cases considered in this paper involved pleas of guilty, but the guideline cases generally indicate what the appropriate sentence would be on a contest, and there are a number of decisions referred to in this category.

### **Manslaughter**

1. Manslaughter is often described as one of the most difficult categories of case in which to sentence because, as Kerr LCJ observed in Magee, “offences of manslaughter typically cover a wide factual spectrum”, and the spectrum ranges from cases which are little more than a tragic accident to those which are barely distinguishable from murder. From the guidelines decisions, and decisions at first instance, for sentencing purposes manslaughter cases can be identified as falling within one of seven broad sub-categories.

- (i) Cases involving substantial violence to the victim. Whilst sentences range from 6 years on a plea to 14 years on a contest, pleas in cases at the upper end of the spectrum attract sentences of 10 to 12 years, with sentences of 12 years being common. Sentences of 6 to 8 years tend to be reserved for cases where there are strong mitigating personal factors, or the defendant was not a principal offender.
- (ii) Diminished responsibility. Where the defendant was suffering from diminished responsibility at the time of the offence, and his psychiatric history shows that he may continue to be a danger to members of the

public in future, sentences of life imprisonment with a minimum term of 5 to 6 years are almost always imposed, although in one case (Murray) a minimum term of 12 years was imposed.

- (iii) In terrorist cases where the defendant was a secondary party, in two cases 8 years imprisonment was imposed and 5 years was imposed in the third.
- (iv) Domestic disputes where there may have been an element of violence and/or provocation by the deceased. In almost every case the defendant resorted to a knife to stab the deceased. On a plea sentences range from 4 to 7 years, with the majority attracting sentences of 5 years.
- (v) "Single punch" cases. Sentences range between 2 and 5 ½ years, with sentences of 4 to 5 years reserved for cases where there are many aggravating factors and few mitigating factors.
- (vi) Negligence or "unlawful act". This residual category encompasses a wide range of different factual circumstances, sentences range from 1 to 4 years, although in one case (Coyle) the Court of Appeal considered that the sentence should have been one of 5 to 6 years imprisonment, but reduced it to 4 to take account of double jeopardy.
- (vii) "Corporate manslaughter" involves the failure by a company to meet its duty of care to ensure the safety of its employees, and may overlap with cases involving offences under health and safety legislation where death occurs. Such cases are considered in J.M.W. Farm Ltd [2012] NICC 17. (See below)

### **Attempted Murder**

2. There are no guideline cases in Northern Ireland laying down how sentencing is to be approached in cases of attempted murder. The English authorities suggest that sentences can range from 6 years on a plea to 20 years on a contest, with sentences arising out of domestic circumstances usually attracting 10 years on a plea and 15 to 16 years on a contest. Sentences in Northern Ireland generally follow this pattern, although in cases where the injuries inflicted upon the victim were particularly grave, and there were no mitigating circumstances as such as a plea, determinate sentences of 20 years have frequently been imposed, with sentences of 22 to 25 years being imposed in some cases of exceptional gravity. In one case a life sentence was imposed.

### **Wounding with intent contrary to s. 18 of the Offences Against the Person Act, 1861**

3. The Northern Ireland Court of Appeal has considered this on two occasions in recent years. In R v. McArdle [2008] NICA 29 it identified a range of 7 to 15 years imprisonment following a contest. In DPP's Reference (Nos 2 and 3 of 2010) (McAuley and Stewart) [2010] NICA 36 the Court of Appeal stated that the McArdle range of 7 to 15 years after a contest "is generally appropriate where the offence under s. 18 is committed by attacking a victim who is lying on the ground with a shod foot with intent to do him grievous bodily harm". The court emphasised that "in virtually every case the fact that an attack of this kind is launched will itself be an indicator of high culpability in the commission of the offence under s. 18". However, the Court expressly recognised that "exceptionally there may be cases of slightly lower culpability, such as where only one blow was struck, and where the harm caused is at the lower end of the scale which would justify a marginally reduced starting point".

4. Many s. 18 cases commence as a charge of attempted murder, with the prosecution accepting a plea to s. 18 at, or shortly before, trial. These cases are therefore usually at the upper end of the scale in terms of gravity and the number of aggravating features that are present. Aggravating features which are commonly found in such cases are:-

- (1) the use of a knife or some other weapon;
- (2) the infliction of very serious injuries;
- (3) premeditation;
- (4) a sectarian motive;
- (5) previous convictions for violent and/or sexual offences;
- (6) that the defendant was under the influence of alcohol and/or drugs;
- (7) kicking or stamping to the victim's head as he lies on the ground.

5. Mitigating features include:

- (1) plea (the credit allowed depending on the time at which the plea is entered);
- (2) the absence of serious injuries to the victim.

6. As in cases of manslaughter, the spectrum of s. 18 cases is such that it is possible to identify a number of sub-categories of sentence.

- (1) A life sentence or a hospital order without the limit of time under art. 50A(3)(b) of the Mental Health (NI) Order 1986 will be appropriate where the defendant has a significant history of violence, and/or suffers from a psychiatric condition, either of which means that the defendant presents a high risk of danger to the public in future.
- (2) Where the injuries to the victim were exceptionally severe, sentences range from 12 to 14 years on a plea to 15 years on a contest.
- (3) Where the injuries to the victim had been less severe than at (2), but there are still significant sequelae, and a knife or other weapon has been used, sentences in the range of 8 to 10 years are usually imposed.
- (4) Sentences of 6 to 7 years are usually imposed where there has been either a single serious stab wound, or multiple lesser stab or puncture wounds.
- (5) A sentence in the region of 5 years may be expected where the defendant kicks or stamps his victim to the head as he lies on the ground but no serious injury is caused.

7. In the summaries of each case which are contained in the remainder of this paper the case is almost invariably referred to by the neutral citation number, and frequently the sentence imposed was a custody probation order. The total figure for the commensurate sentence will therefore be shown in brackets, e.g. McNally [2010] NICC 15, custody probation order (CPO) 9 years plus 1 year (equals 10 years imprisonment). It must be appreciated that under the new sentencing regime contained within the Criminal Justice (Northern Ireland) Order 2008 it may well be necessary in many of these cases to address the “dangerousness” provisions of the Order. However, unless an indeterminate or an extended sentence is imposed, the total of a determinate sentence under the 2008 Order may be expected to be the equivalent of the total of the custody probation order, so in McNally’s case 10 years will translate into a determinate sentence of 10 years, of which 5 years would be spent in custody and 5 years on licence.

### **Manslaughter**

8. Unlawful act of manslaughter involving the use of substantial violence. The normal range of sentence is 8 to 15 years, with the possibility of a sentence up to 17 years or thereabouts, although in some cases an indeterminate sentence may be imposed.

9. The leading case is Magee [2007] NICA 21 where the Court of Appeal said:

[23] It is the experience of this court that offences of wanton violence among young males (while by no means a new problem in our society) are becoming even more prevalent in recent years. Unfortunately, the use of a weapon – often a knife, sometimes a bottle or baseball bat – is all too frequently a feature of these cases. Shocking instances of gratuitous violence by kicking defenceless victims while they are on the ground are also common in the criminal courts. These offences are typically committed when the perpetrator is under the influence of drink or drugs or both. The level of violence meted out goes well beyond that which might have been prompted by the initial dispute. Those who inflict the violence display a chilling indifference to the severity of the injury that their victims will suffer. Typically, great regret is expressed when the offender has to confront the consequences of his behaviour but, as this court observed in *R v Ryan Quinn* [2006] NICA 27 “it is frequently difficult to distinguish authentic regret for one’s actions from unhappiness and distress for one’s plight as a result of those actions”.

[26] We consider that the time has now arrived where, in the case of manslaughter where the charge has been preferred or a plea has been accepted on the basis that it cannot be proved that the offender intended to kill or cause really serious harm to the victim and where deliberate, substantial injury has been inflicted, the range of sentence after a not guilty plea should be between eight and fifteen years’ imprisonment. This is, perforce, the most general of guidelines. Because of the potentially limitless variety of factual situations where manslaughter is committed, it is necessary to recognise that some deviation from this range may be required. Indeed, in some cases an indeterminate sentence will be appropriate. Notwithstanding the difficulty in arriving at a precise range for sentencing in this area, we have concluded that some guidance is now required for sentencers and, particularly because of the prevalence of this type of offence, a more substantial range of penalty than was perhaps hitherto applied is now required.

[27] Aggravating and mitigating features will be instrumental in fixing the chosen sentence within or – in exceptional cases – beyond this range. Aggravating factors may include (i) the use of a weapon; (ii) that the attack was unprovoked; (iii) that the offender evinced an indifference to the seriousness of the likely injury; (iv) that there is a substantial criminal record for offences of violence; and (v) more than one blow or stabbing has occurred.

10. It should be noted that in *Magee* the Court of Appeal referred to the possibility of sentences being beyond the range of 8 to 15 years “in exceptional cases”. In *Harwood* [2007] NICA 49 the defendant stabbed the unarmed deceased twice in the chest. The defendant had previous convictions for assaults on the police, common assaults on adults, one grievous bodily harm with intent, two assaults occasioning actually bodily

harm and four robberies. The manslaughter occurred five days after the defendant had been released from the custodial element of a CPO. The Court of Appeal dismissed the appeal against a sentence of 13 years on a plea, saying the proper sentence "was above 15 years by at least 2 years", so the court contemplated that a sentence of 17 plus years on a contest might be appropriate.

11. It should also be noted that in Harwood the Court of Appeal accepted that the defendant should not be penalised for entering a late plea to the count of manslaughter because he was entitled to keep open the possible defence of the self defence until it became clear that the prosecution would accept a plea to manslaughter.

Demski [2010] NICC 46. 14 years (7 custody and 7 license) on a contest. The defendant broke his cousin's leg with one blow from a golf club, and 6 months later used the crutch the deceased still had to use as a consequence of the earlier attack in a drunken attack of exceptional ferocity. The defendant struck the deceased at least ten times with the crutch, inflicting 84 sites of injury to the head, arms, hands, trunk and legs. These caused numerous life-threatening lacerations which bled heavily, as well as fractures of the nasal bones, the right cheek bone and two ribs, and a full thickness laceration of the upper lip. The defendant was acquitted of murder but convicted of manslaughter.

Francisco Notarantonio [2008] NICC 39. CPO 11 years plus 1 year (equals 12 years). The defendant equipped himself with a chef's knife with an 8 ½" blade and joined in an affray, swiping at one person, stabbing a second and fatally stabbing the third in front of his partner and children. The other attacks were aggravating features, as were their occurring in a public place exacerbating an existing feud. Mitigating features were youth and pleas of guilty.

Gerald Patrick Donnell [2006] NICA 8. Plea, CPO 10 years plus 2 years (equals 12 years). The defendant was charged with murder and entered his plea to manslaughter on the fifth day of the trial. The deceased died as the result of multiple blunt force trauma involving fractured ribs, lacerations of the left lung, deep laceration of the spleen and multiple lacerations of the left kidney. The defendant had a lengthy criminal record and a propensity for violence when under the influence of alcohol or drugs.

Russell Hector Hunter [2007] NICC 33. CPO 10 years plus 2 years (equals 11 years). The deceased was murdered by a co-accused and Hunter was sentenced on the basis that he had also assaulted the deceased who was a vulnerable and helpless individual who was being degraded and humiliated by the defendant's co-accused. Mitigating features were (1) late plea, (2) a

virtually clear record, (3) remorse, (4) alcoholism and (5) that the defendant had now abstained from alcohol for some 2 years.

McNally [2010] NICC 15. CPO 9 years plus 1 year (equals 10 years). The defendant committed an unprovoked attack on a defenceless, vulnerable 71 year old man in poor health. He knocked his victim to the ground and kicked him with considerable force to the head, causing a fracture to one of the facial bones. The victim died some months later in hospital. The deceased had a complex pre-injury medical history, the investigation of which meant that the case was slow to come to trial. The defendant was just short of his 18<sup>th</sup> birthday at the time of the offence, which was committed after a prolonged drinking spree during which he consumed ecstasy and cocaine.

Hargan [2008] NICC 33. CPO of 7 years plus 1 year (equals 8 years) on a plea. The defendant was one of three involved in inflicting a “vicious and sustained beating mainly to the head” with a “rod-like implement” (which was not recovered), apparently because of a dispute about £20 owed by the victim to the defendant. Death occurred some time later. The defendant was aged 49, with a low IQ and was an alcoholic with a minor record.

Gerard McKenna [2007] NICC 43. Plea. CPO 4 years plus 2 years (equals 6 years). The defendant committed manslaughter by the use of a motor vehicle when he used his car to frighten and then collide with the deceased. English authorities on “motor manslaughter” considered and followed.

12. **Diminished responsibility.** The leading authorities in this area are the decisions of R v. Chambers (1983) 5 Cr App R(S) 190 and R v. Stubbs (1994) 15 Cr App R(S) which establish:-

- (i) “Diminished responsibility” does not mean no culpability deserving of punishment in custody.
- (ii) If the defendant’s responsibility for his acts was so grossly impaired that his degree of responsibility for those acts was minimal, and if there is no danger of repetition of violence, the defendant will usually receive a non-custodial sentence, possibly with some supervision.
- (iii) If the psychiatric reports recommend and justify it, a hospital order may be appropriate.
- (iv) If a hospital order is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time the sentence will usually be life imprisonment.
- (v) If there is no basis for a hospital order, and the defendant’s degree of responsibility (sometimes referred to as his “residual responsibility” is

not minimal a determinate sentence is appropriate. The length of the sentence will depend upon:-

- (a) the degree of the defendant's responsibility for his actions, and
- (b) the period of time he will continue to be a danger to the public.

NB. The "dangerousness" provisions of the 2008 Order may well have to be considered in such cases.

Chambers was applied by the Court of Appeal in Crolly [2011] NICA 58 where the Court said:

"In R v Chambers [1983] 5 CR App R(S) 190 Leonard J, giving the judgment of the court in which Lane LCJ presided, said -

"In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence will, in all probabilities, be one of life imprisonment. In cases where the evidence indicates that the accused's responsibility for his acts was so grossly impaired that his degree of responsibility for them was minimal, then a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the accused his freedom, possibly with some supervision. There will however be cases in which there is no proper basis for a hospital order; but in which the accused's degree of responsibility is not minimal. In such cases the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public."

[25] This judgment was given at a time when minimum terms or tariffs were not set by the trial judge. However, this passage was approved by a five judge court presided over by Lord Judge LCJ in R v Wood [2010] 1 Cr App R(S) 2, albeit in the context of a life sentence imposed for manslaughter by reason of diminished responsibility under section 252 of the Criminal Justice Act 2003 which has no equivalent in Northern Ireland. In the course of his judgment Lord Judge LCJ said –

“15. Our approach is consistent with the authorities, in particular, Chambers (Stephen Francis) (1983) 5 Cr. App. R. (S.) 190 where the various sentencing options then available to judges in cases of diminished responsibility were summarised. Although reference was made to a hospital order if recommended by a psychiatric report and justified, where the defendant constituted a danger to the public for an unpredictable time, the right sentence would probably be life imprisonment. However if the defendant's responsibility for his acts was so grossly impaired that his degree of responsibility was minimal, then a lenient course would be open, but the length of any determinate sentence depended on the judge's assessment of the degree of the defendant's responsibility and his assessment of the time for which the accused would continue to represent a danger to the public. At the time when Chambers was decided imprisonment for public protection was not available. Nevertheless Chambers remains relevant to our decision. This is because the judge concluded that, notwithstanding the acceptance by the prosecution of manslaughter on the grounds of diminished responsibility, what the judge described as a “very substantial amount of mental responsibility remained”. The Court did not consider that his observation, and the process of proceeding to sentence on the basis of it, provided any grounds for criticism. Indeed the Court decided that the conclusion was right. This approach has not, so far as we are aware, been called into question.”

McGleenon (Michael Philip) [2011] NICC 24. Plea. ICS. 5 year minimum term. D suffered from paranoid delusions and stabbed his father to death. D had failed to take his anti-psychotic medication.

Murray [2008] NICC 1. Plea. Life sentence with a minimum term of 12 years imprisonment. Defendant pleaded guilty to the manslaughter of an elderly man and the rape of his elderly sister. Aggravating factors were that the defendant broke into their house, had been drinking and taking cannabis, he had a psychiatric history and was not taking his medication, and had several convictions for offences of violence.

Robert John Flanagan [2006] NICC 9. Plea. Life sentence with a minimum term of 6 years. The defendant suffered from paranoid schizophrenia and paranoid psychosis at the time of the attack on the deceased, whom he stabbed eight times, two of the wounds perforating the lung and another the liver.

Warwick [2008] NICC 42. Plea. Life sentence with a minimum term of 5 years imprisonment. The defendant dismembered the body of his victim, and had a substantial history of violence to the person as well as a well-documented history of paranoid schizophrenia. The trial judge considered the defendant had a high level of residual culpability having abused alcohol and failed to take anti psychotic medication. He suggested that a speedy transfer to the secure psychiatric hospital at Carstairs in Scotland was appropriate.

Seamus Lyttle [2007] NICC 16. Plea. Life sentence with minimum term of 5 years. The defendant suffered from paranoid schizophrenia, the harmful use of drugs and alcohol and dissocial personality disorder. He had a well-documented psychiatric history, and had been drinking heavily. He administered a "ferocious beating" to his mother as a result of which she died. He then carried her upstairs and put her to bed. Some days later he brought a neighbour into the house who then called the police. As a personality disorder is excluded from the Mental Health (NI) Order 1986 a hospital order was inappropriate.

Mullan [2008] NICC 40. CPO 3 years plus 3 years (equals 6 years). The defendant had a well documented and lengthy history of severe alcoholism, depression and delirium tremens.

### 13. Terrorist Cases

William Samuel Courtney [2007] NICC 11. Plea, 8 ½ years reduced to 8 for delay. During UDA feud drove the deceased to meet members of the UDA where he was then shot dead. Defendant did not shoot the deceased but was sentenced as a secondary party.

Garry Meenan [2010] NICC47. Plea, 8 years. Defendant was one of a group of armed men who were moving around the Bogside area of Londonderry, one of whom fired a shot at the deceased when the deceased chased the group. The defendant did not fire the fatal shot, had a clear record and was 18 at the time of the offence.

Iain Rea [2007] NICC 6. 5 years on appeal. Defendant pleaded guilty to manslaughter on the basis that he lured the deceased to a bar where he was then murdered by a gunman. Defendant knew the deceased would come to some harm short of death or serious bodily harm. Late plea and delay in dealing with the matter (reduction of sentence by 8 months approximately for delay).

### 14. Use of knives in circumstances of provocation and domestic violence

Cases of manslaughter due to the use of the knives during fights, whether during an affray or during domestic arguments, are common. In both situations there is often an element of provocation by the deceased which falls short of being sufficient to amount to self defence. In these cases sentences ranged from 4 to 7 years, with the majority attracting sentences of 5 years.

Diana Beckett [2008] NICC 10. CPO 3 years plus 2 years (equals 5 years). During a drunken argument between the defendant's mother and the deceased the defendant picked up a knife. Her mother and the deceased grappled with the defendant in order to disarm her, and during that struggle the defendant deliberately stabbed the deceased, although the prosecution accepted the defendant did not intend to kill or cause grievous bodily harm, and that moderate force was used. The defendant had previous convictions for assault, reoffended whilst on bail but had a tragic and dysfunctional upbringing and a drink problem. She was 19 when she committed the offence. She had been charged with murder but changed her plea to manslaughter early in the trial.

Kerri Cassidy [2009] NICC 57. CPO 3 years plus 2 years (equals 5 years). The defendant was charged with murder, but her plea to manslaughter was accepted at the beginning of the trial. The prosecution accepted that in the course of a drunken argument the defendant may have picked up the knife in self defence, or to ward the deceased away, but then struck a blow that went beyond reasonable self defence. The defendant was 27 when sentenced, a heavy drinker with a well-documented history of over dosing. She had two children, one of whom had died. She remarried and had a third child whilst on bail on the charge and now had a much more settled lifestyle.

Sadowska [2010] NICC 51. CPO 4 years plus 3 years (equals 7 years). A 36 year old Polish woman was engaged in a prolonged and drunken argument with her partner, and there was evidence that each had struck the other during the argument. The defendant stabbed the deceased with two different knives. It was agreed that the defendant suffered from diminished responsibility due "to a dissociative state as a result of long term and severe physical, emotional and sexual trauma". The defendant was hard working, remorseful and had a considerable alcohol problem.

Theresa Rafacz [2011] NICC 5. Plea. 4 years (2 years custody plus 2 years licence). The defendant was a 29 year old Polish woman and in a spasm of anger at her drunken, spendthrift, husband who had gone out drinking leaving their 3 ½ year old son alone and hungry, kicked the deceased to the head and stamped on his head as he lay on the ground. No effort to seek medical attention. Mitigating factors, (1) plea, (2) clear record, (3) out of character and (4) will be separated from child while serving her sentence.

## 15. "Single Punch" Manslaughter

The leading authority is Ryan Arthur Quinn [2006] NICA 27 where the Court of Appeal decided not to follow the English guideline cases of Coleman and Furby which proposed a starting point of 1 year's imprisonment, deciding that a more suitable starting point in Northern Ireland for this type of offence was 2 years imprisonment, rising to 6 years where there were significant aggravating factors. Quinn was a plea, as were Coleman and Furby, and therefore the range would be materially higher in the case of a contest. Aggravating factors identified in Quinn and other cases are: (1) the attack was unprovoked; (2) the victim was not in a position to defend himself and wholly unprepared for the attack; (3) the attack was premeditated; (4) the defendant was under the influence of alcohol, and (5) the attack occurred in a public place. The sentence of 4 years imprisonment was upheld. Sentences range between and 2 and 5 ½ years, with sentences of 4 to 5 years reserved for cases where there are many aggravating factors and few mitigating factors.

In Quinn Kerr LCJ stated:

[20] As the court in Furby said, however, where the consequences of a single blow were not foreseeable, care must be taken to ensure that the sentence imposed is not disproportionate. While acknowledging the strength of this factor, we cannot believe that a starting point of twelve months imprisonment adequately caters for the considerations that we have outlined in the preceding paragraph. We consider that a more suitable starting point in Northern Ireland for this type of offence is two years' imprisonment and that this should rise, where there are significant aggravating factors, to six years. It follows that we must reject the argument that the judge's sentence in the present case must be regarded as excessive because it does not accord with the guidelines contained in Coleman.

[21] We agree with the view of the Court of Appeal in Furby, however, that no valid distinction can be drawn between the case where a light or moderate blow unexpectedly causes death and that where the blow causes the victim to fall and sustain, as a result of the fall, injuries which prove fatal. Such a distinction is, of course, justified, where the blow is particularly severe and, for the reasons that we have given, we consider that the blow struck in this case falls into that category.

Rush [2008] NICA 43. CPO 3 ½ years plus 2 years (equals 5 ½ years). The deceased crossed the road and deliberately struck the defendant. Whilst the defendant then struck the deceased several blows these were of moderate severity. Although the attack was in a public place that was not of the defendant's choosing. The defendant was a long term alcoholic whose condition impaired his ability to react to and defend himself against an attack.

Valters [2008] NICC 29. Plea. CPO 4 years plus 1 year (equals 5 years). The defendant was possibly not the only person who attacked the deceased, but he did admit kicking the deceased in the face, and then hitting him several times in the face. Mitigating factors were (1) his plea; (2) that it was an unpremeditated attack; (3) no weapon had been used; (4) there was no intent to cause serious injury, and (5) the defendant showed deep remorse.

Stonkus [2009] NICC 1. 4 years imprisonment on a plea. The defendant and a co-defendant were brawling with the deceased, and the defendant had already struck the deceased before he struck him a further, single, blow with such force that the deceased fell to the ground and sustained a fractured skull, the effects of which led to his death. Aggravating features were (1) the amount of force behind the blow; (2) the defendant had already kicked the deceased as he lay on the ground at the end of the earlier confrontation; (3) he pursued the deceased after the first confrontation; (4) he then attacked another man between the two confrontations; and (5) both attacks on the deceased took place in the public street.

Viktoras Fedrenko [2008] NICC 45. Plea. CPO 18 months plus 12 months (equals 2 ½ years). The defendant intervened in a fight to come to the aid of his friend who had been assaulted. The defendant struck a single blow with considerable force, causing the deceased to strike his head against the road, causing brain damage from which he later died. Aggravating factors were (1) that the blow was struck in public; and (2) it was disproportionate to the need to defence his friend. Mitigating factors were (1) acting in defence of his friend; and (2) there were causation issues because the deceased fell off a trolley in A&E and may have suffered a head injury at that time; (3) remorse, and (4) plea.

Ciaran Gerard Corbett [2009] NICC 16. 2 years and 9 months on a plea. Aggravating features were that the attack was (1) unprovoked; (2) there was some premeditation; (3) the deceased had no idea he was going to be attacked; (4) the blow was of moderate force; (5) the defendant had no regard for the possible consequences of the below; (6) the defendant was fit and sober and 16 years younger than the deceased, and (7) the attack was in a public place in a club. Mitigating factors were that (1) the defendant went to the police when he heard that the deceased had died and admitted the offence; and (2) he was remorseful and 9 months later tried to self harm; (3) there was an early plea, and (4) the defendant's record was not an aggravating factor.

Ciaran Brendan Laverty [2009] NICC 18. 2 years on a plea. The defendant was an 18 year old first year student at QUB when he struck the deceased a single blow. Aggravating factors were (1) the attack was entirely unprovoked; (2) the deceased was wholly unprepared for the below; (3) the blow was a forceful one; (4) it was delivered in a public place, and (5) the

defendant had consumed a lot of alcohol. Mitigating features were (1) immediate remorse; (2) good character; (3) admission of guilt in interview, and (4) pleaded guilty on arraignment.

William John Liam Brady [ ] NICC 22. Plea. CPO 4 years plus 18 months (equals 5 years). The defendant attacked his wife who had formed a relationship with another man and said she would leave the defendant. She had thrown a glass at her daughter and threatened to wreck the house in her anger at the defendant going to a pub on New Year's Day to watch sport on TV. When he returned to the house the deceased abuse him and their daughter, whereupon the defendant "just lost it" and strangled his wife

#### 15. **Unlawful Act Manslaughter**

Eamonn Coyle [2010] NICA 48. 5 to 6 years but 2 years imprisonment and 2 year on licence to allow for double jeopardy on a reference. The defendant pleaded guilty to manslaughter at the commencement of his retrial for the murder of his grandfather when the defendant was aged 16. The defendant went to his grandfather's home to get money for his rent. Whilst there he grabbed his elderly grandfather by the neck in the crook of his arm which probably caused his grandfather's death. The defendant was armed with a knife which inflicted two puncture wounds on his grandfather's neck. The defendant used the knife to instil fear in his grandfather. He had a caution and one previous conviction for offences of dishonesty. The defendant lived a chaotic lifestyle before the offence, but had participated effectively in a rehabilitative programme whilst on bail.

Porter and Regan [2010] NICC 23. Pleas. 3 years and CPO of 18 months and 18 months (equals 3 years). The defendants abandoned the deceased on a forest road at the top of the Glenshane Pass when he was extremely drunk and not properly clothed to deal with near freezing temperatures.

James John McNeill [2007] NICC 18. 2 years imprisonment on a plea. The defendant's wife had been in the grip of severe alcoholism for many years, and her general health had seriously degenerated as a result. Her drinking led to a strained relationship between them. The defendant found his wife lying on the floor in an intoxicated and helpless condition. He lost his temper and struck her, kicked her feet and stamped on her hands, then failed to seek medical assistance for her.

Zych [2008] NICC 27. 1 year on a plea. The defendant failed to ensure that a proper look out was kept as his trawler approached a difficult harbour entrance in poor and deteriorating weather conditions. The trawler hit the rocks and two crew members were drowned.

#### 16. **Corporate Manslaughter**

J.M.W. Farm Ltd [2012] NICC 17. (Guideline case pending a guideline decision by the Court of Appeal). Deceased was washing the inside of a large metal bin which was positioned on the forks of a forklift truck, in its raised position. He was standing on another piece of equipment, a bale compactor, but when the bin was being moved away he jumped onto the side of the bin and it then toppled. He fell to the ground with the bin falling on top of him resulting in his death. The safe operation of the raising and positioning of the bin required the forks of the forklift fitted into sleeves on the underside of the bin so that the bin could not tilt unless the operator carried out that operation (which the forklift truck was constructed to achieve) and there would be no danger of the bin falling from the forks. A replacement fork lift was being used, the forks of which could not fit into the sleeves of the bin.

Judge Burgess applied the guidance by the The Sentencing Council in England and Wales

“The guidelines provide:

“Seriousness should ordinarily be assessed first by asking

:

- a) How foreseeable was serious injury? The more foreseeable it was, the graver usually will be the offence.
- b) How far short of the applicable standard did the defendants fall?
- c) How common is this kind of breach in this organisation? How widespread was the non-compliance? Was it isolated in extent or indicative of a systematic departure from good practice across the defendant’s operations? and
- d) How far up the organisation does the breach go? Usually, the higher up the responsibility for the breach, the more serious the offence.

[11] In addition, other factors are likely, if present, to aggravate the offence (the list is not exhaustive)

- (a) More than one death, or very grave personal injury in addition to death:
- (b) Failure to heed warnings or advice, whether from officials such as the Inspectorate, or by employees (especially health and safety representatives) or other persons, or to respond appropriately to “near misses” arising in similar circumstances:
- (c) Cost-cutting at the expense of safety:
- (d) Deliberate failure to obtain or comply with relevant licences, at least where the process of licencing involves some degree of control, assessment or observation by independent authorities with a health and safety responsibility:

(e) Injury to vulnerable persons. In this context vulnerable persons would include those whose personal circumstances make them susceptible to exploitation.

[12] Conversely, the following factors, which are similarly non-exhaustive, are likely, if present, to afford mitigation:

- a) A prompt acceptance of responsibility:
- b) A high level of co-operation with the investigation, beyond that which will always be expected:
- c) Genuine efforts to remedy the defect:
- d) A good and healthy record:
- e) A responsible attitude to health and safety, such as the commissioning of expert advice or the consultation of employees or others affected by the organisation's activities.

[13] The guidelines also afford assistance in terms of any sentence to be passed, which in the majority of cases will be a financial penalty. They provide:

"The means of any defendant are relevant to a fine, which is the principle available penalty for organisations. The court should require information about the financial circumstances of the defendant before it. The best practice usually will be to call for the relevant information for a three year period, including the year of the offence, so as to avoid any risk of typical figures in a single year. It is just that a wealthy defendant should pay a larger fine than a poor one: whilst a fine is intended to inflict a painful punishment, it should be one which the defendant is capable of paying, even if appropriate over a period which may be up to a number of years".

[14] In assessing the financial consequences of a fine, the court should consider:

(a) Inter alia - the following factors.

- (i) The effect on the employment of the innocent may be relevant:
- (ii) Any effect on shareholders will, however, not normally be relevant: those who invest in and finance a Company take the risk that its management will result in financial loss:
- (iii) The effect on directors will not, likewise, normally be relevant:
- (iv) Nor would it ordinarily be relevant that the prices charged by the defendant might in consequence be raised, at least unless the defendant is a monopoly supplier of public services:
- (v) The effect upon the provision of services to the public will be relevant: although a public organisation such as a local authority, hospital trust or police force must be treated the same as a commercial company where the standards of behaviour to be expected are concerned and must suffer a punitive fine for breach of them, a different approach to determining the level of fine may well be justified:

(vi) The liability to pay civil compensation will ordinarily not be relevant: normally this will be provided by insurance, or the resources of the defendant will be large enough to meet it from its own resources:

(vii) The cost of meeting any remedial Order will not normally be relevant, except to the overall financial position of the defendant: such an Order requires no more than what already have been done:

(viii) Where the fine will have the effect of putting the defendant out of business will be relevant: in some bad cases this may be an acceptable consequence”.

The judge reduced the fine by 25% to recognise the plea of guilty, making a fine of £187,500, together with prosecution costs of £13,000 plus VAT, with six months to pay.

## 17. Attempted Murder

Kerr [2009] NICC 79. Life imprisonment with a minimum term of 10 years on a contest. The defendant attempted to set fire to a house with the occupants inside hours before he was due to stand trial for burglary of the same house. This was the second burglary the defendant had committed at that address, and the occupants gave evidence against him on his trial for the first burglary.

William James Fulton [2007] NICC 2. 25 years on a contest. The defendant planned and directed sectarian attempted murder. This was one of a large number of terrorist offences for which the defendant was convicted and received life with a 27 year minimum term, together with many determinate sentences including one of 25 years for the attempted murder of four police officers.

Colin Victor McDonald [2001] NICA 26. 22 years on a contest. The defendant repeatedly struck his girlfriend with a wooden stair spindle, threw her down stairs, then dragged her upstairs by the hair before stabbing her in the hand and stabbing her 20 times in each leg, as well as inflicting wounds to her neck, back, shoulders and abdomen. He then raped her, later striking her with the hose of the vacuum cleaner and stamping on her head.

Aaron White [2007] NICC 34. 22 years imprisonment on a contest, his brother receiving 16 years on a plea two years earlier. The defendant played a primary role in a group that went to the house where they knew the victim would be present, intending to murder him because he was a Roman Catholic. The victim had a ligature placed around his neck, was beaten and stabbed. He feigned death and then escaped. The defendant had canvassed the possibility of dismembering the victim.

Brian Anthony Edwards [2003] NICA 11. 20 years on a contest. The defendant savagely attacked his former girlfriend, inflicting 25 to 30 wounds to her face, neck, limbs and body. If it had not been for the low temperature, the alertness of a local resident who saw her and telephoned the police, and the exceptional skill of the surgeons she would have died.

Stone [2011] NICA 1. 16 years on a contest. The defendant went to Stormont with various weapons, including nail bombs, intending to kill Gerry Adams and Martin McGuinness by lobbing the nail bombs at them.

Gerard Michael Donegan [2005] NICC 6. CPO 15 years plus 18 months (equals 16 years). The defendant and his brother broke into a house in south Belfast after failing to steal a car. The defendant attacked one of the occupants with a hammer, inflicting "catastrophic" injuries upon him. Late plea.

Loke Kwong Fatt [1999] NI 165. 12 years on a contest. The defendant knew his victim and accompanied two men to the victim's house. The men then attacked the victim with knives, and inflicted five very grave wounds. The evidence showed that the defendant was either a direct participant and had a knife, or was an aider and abetter who contemplated that the others would attack the victim. There was a breach of trust as the defendant used his friendship with the victim to deceive the victim into opening his door to his attackers.

Northcott [2008] NICC 11. 12 years on a plea. The defendant was a part-time police officer who shot her lover, a sergeant, with her police issue weapon when their relationship soured. He was left paralysed from the upper chest down. Late plea but good character and some strong mitigating personal factors.

#### **18. Wounding with intent, contrary to s. 18 of the Offences Against the Person Act, 1861**

Kenneth Scott [reported in R v. McCandless and others [2004] NI 269] [2004] NICA 1. Life sentence with a 6 year minimum term imposed on a plea. The defendant used a knife in an unprovoked attack on two women outside a nightclub in Belfast City Centre, inflicting a deep wound to the lower back of one, and repeatedly stabbing the other to the head, left breast, abdomen, left upper back and arm and left hand. Both victims suffered considerable physical and psychological sequelae. The defendant's record showed an increasingly severe propensity to violent and sexual offending, and a history of drug and alcohol abuse. The defendant was reluctant to co-operate with the medical profession. The minimum term of 8 years was reduced to 6 on appeal on the basis that 8 was the equivalent of a determinate term of 16 years.

Carswell LCJ.

[51] The minimum term fixed by the judge of eight years equates to a determinate sentence of 16 years. We note that he did not invite counsel for the appellant to address him on the length appropriate to the case, and it would have been preferable for him to do so. A sentence of 16 years in a case of grievous bodily harm represents a very high point on the scale of sentences on a plea of guilty in that type of offence. It would normally only be justified if the court were imposing a term, pursuant to Article 20(2)(b) of the Criminal Justice (Northern Ireland) Order 1996, which is longer than that which is commensurate with the seriousness of the offence, in order to protect the public from serious harm from the offender. Where a life sentence is imposed, however, the protection of the public is achieved by the executive discretion over the time of his release after the minimum term has elapsed, since the offender will not be released if he still presents sufficient risk to the public. It is therefore unnecessary to extend the minimum term to a length which would afford that same protection. We accordingly are of opinion that the minimum term of eight years fixed in this case is longer than is required to reflect the elements of retribution and deterrence. We consider that a term of six years, which equates to a determinate sentence of twelve years, would suffice for this purpose. After that period has elapsed, it will fall to the Life Sentence Review Commissioners to assess the risk to the public presented by the appellant and determine whether he can safely be released.

Lewis Alexander Mawhinney [2008] NICC 44. Plea. Hospital Order without restriction of time. The defendant had been found guilty but insane. He had an outstanding scholastic career, going to Oxford and then to Sandhurst. He developed paranoid schizophrenia and believed he had been recruited by MI5. Discharged by the army on medical grounds he spent a short time in the French Foreign Legion. The defendant returned to Northern Ireland believing that he had been instructed by MI6 to find a particular individual. He attacked a work colleague in a lift with a knife, inflicting three wounds, two superficial and none leaving permanent injury.

Alan Stewart [2009] NICA 4. CPO 14 years plus 1 (equals 15 years) on a contest. The defendant was one of three men variously convicted of attempted murder (20 years) and grievous bodily harm with intent (12 years) following "a savage and unprovoked" attack on a young man in Belfast City centre in which Stewart took an active part. Previous convictions showed a "propensity to random senseless violence". The victim suffered catastrophic injuries, he is effectively blind, has permanent impairment of bowel function and foot drop in both feet.

Darryl John Proctor [2009] NICA 51. CPO 12 years plus 1 (equals 13 years). The defendant was not quite 16 when he took part in a concerted sectarian

attack on a group of young Roman Catholic men innocently socialising around a bonfire. One of the group was injured so severely to the head that he remains in a low-level, probably vegetative state and will require full-time care for the rest of his life. His life expectancy had been reduced to 10 to 15 years from the attack. Late plea, the defendant struck another member of the group, but was sentenced on the s. 18 charge on the basis that whilst it could not be proved he attacked the victim he was a participant in the joint enterprise to carry out this violent attack.

R v. McArdle [2008] NICA 29. (2009) NIJB 212.

[28] In cases such as the present where there can be no question that the grievous bodily harm was inflicted deliberately and that the appellant intended that his victim should sustain grievous injury, we do not believe that the range of sentences should be significantly different simply because, fortuitously, a fatal injury was not sustained. This is particularly so because, we are satisfied, if Ms Doherty had not intervened, the appellant would have stabbed Mr Sumner again, quite possibly with fatal consequences. We have concluded, therefore, that for offences of wounding with intent to cause grievous bodily harm the sentencing range should be between seven and fifteen years' imprisonment, following conviction after trial. An appropriate reduction on this range should be made where the offender has pleaded guilty but in the present case that cannot be significant. The appellant maintained his innocence virtually until trial, despite overwhelming evidence against him. Any reduction on this account must be modest.

The defendant stabbed the injured party in a senseless attack when drunk. His victim was blinded in one eye and the victim's life was "totally devastated" by the attack. A CPO of 13 years plus 1 year's probation was upheld.

Kernaghan [2003] NICA 5. [2004] NIJB 92. CPO of 10 ½ years imprisonment and 18 months probation (equals 12 years) upheld. The defendant attacked his former lover whilst she was in bed with her husband, striking her husband with a hammer on the head and body. He forced the woman into a car and drove off and then indecently assaulted her. Her husband suffered serious injuries as a result of the attack.

Hilditch [2009] NICC 42. 12 years on a plea. The defendant attacked a man in bed with a lump hammer causing severe and permanent brain damage.

Turley [2008] NICC 18. CPO of 10 years plus 1 (equals 11 years). (7 ½ years under s. 18, 3 ½ years consecutive for other offences). The defendant became involved in an argument and stabbed his victim, inflicting multiple stab wounds to the torso and arm resulting in serious injuries. His victim has been left with impairment of sensation in his right fingers and thumb and significant psychiatric sequelae, with severe consequences for his

long term physical and mental health that may be permanent. The defendant also pleaded guilty to intimidation of witnesses and threats to kill. Late plea. 7 ½ years imprisonment on the s. 18 charge with 3 ½ years consecutive for the intimidation and threats to kill.

Brendan Quinn [2010] NICC 16. CPO of 9 years imprisonment plus 1 (equals 10 years). The defendant shot the victim in the chest using a shotgun, inflicting serious and permanent injuries to the victim's abdomen and his right hand, leaving him with significant and long term functional problems with his right hand. Late plea. Premeditated attack.

A and B [2008] NICC 37. Pleas. 6 years detention in the Juvenile Justice Centre. Both defendants were 13 when they attacked a 19 year old woman making her way home through a park. They robbed her of her handbag, then pulled her into bushes where she was held down and "subjected to expletive laden and sexual comments", before being stabbed 17 times in the groin, left thigh and calf. She was also subjected to an attempted rape and an indecent assault before she escaped. The defendants had already served 2 years detention (which had to be ignored) and so the sentence equated to one of 9 years or thereabouts.

McMaster [2006] NICC 15. CPO 7 years plus 2 (equals 9 years). The defendant attacked her father in law with a hammer and a knife, inflicting injuries which have left serious debility to his arms and serious disfigurement. The attack was unprovoked and pre-planned.

William Peter Barron, Richard David Kirk, Matthew Wood and William Wood [2009] NICC 22. All four were part of a gang of six who burst into a flat and chased one of the occupants down several flights of stairs and he slipped at the bottom and fell to the ground. As he lay helpless and face down Kirk jumped on the victim's back and head several times. Matthew Wood then kicked the victim, and Barron then stabbed him twice in the lower back, and would have done so a third time had not William Wood grabbed his hand and prevented him. The victim suffered considerable physical and psychiatric sequelae. (1) a dislocated shoulder which continues to cause constant pain and requires surgical intervention; (2) broken ribs; (3) the two stab wounds; (4) the victim had psychiatric problems before the attack which had significantly worsened as a result. Late pleas and clear records except for Kirk. CPOs in all four cases.

- Barron, 7 years detention plus 1 year (equals 8 years).
- Kirk, 7 years detention plus 1 year (equals 8 years).
- Matthew Wood, 2 years detention plus 1 year (equals 3 years).
- William Wood, 1 year detention and 1 year (equals 2 years).

John Thomas McDonagh and Patrick Michael Ward [2007] NICC 31. Pleas. CPO 7 years plus 18 months (equals 8 years) for one defendant, 8 years

imprisonment for the other. The defendants broke into a flat, one hit the injured party with a broken bottle and the other got knives from the kitchen and gave them to his companion, who then stabbed the victim six or seven times. The victim collapsed and was then kicked and punched.

Cecil Jones [2007] NICC 37. Plea. CPO 6 years plus 2 (equals 7 years). A drunken argument between friends led to the defendant equipping himself with a knife and stabbing his victim, once in the neck and once over the collarbone, inflicting life threatening injuries. The use of a knife was an aggravating factor and the defendant had previous convictions for violence, together with a history of abuse of drugs and alcohol and possible schizophrenia. The defendant was under the influence of drink and drugs when he attacked the victim with a knife, inflicting (1) a wound to the right forearm which healed without a functional disability, but leaving extensive scarring; and (2) scars on the top of his head which are not presently visible on close inspection.

Wesley Smylie [2007] NICC 50. Plea. CPO 5 years plus 2 (equals 7 years). The victim had formed a relationship with the defendant's estranged wife. The defendant's suspicions were confirmed when he had been drinking heavily. He armed himself with a knife and went to the victim's home, smashed the window of the door and stabbed the victim, who was in the hallway inside the door, in the neck. Early plea. The defendant had drug, alcohol and psychiatric problems.

Francisco Antonio O'Brien [2009] NICC 5. Plea. CPO 4 years plus 2 (equals 6 years). The defendant was aged 19 and had been drinking when he accused the victim of having robbed the defendant earlier that day. The defendant then stabbed the victim in the left upper chest, causing a left haemorthorax. Dysfunctional background and upbringing and a drink problem.

Christopher Kenny [2009] NICC 6. Plea. CPO 4 years plus 2 (equals 6 years). The 19 year old defendant had been drinking and taking drugs for an extended period before becoming involved in an argument with the victim, who he then stabbed in the chest inflicting a punctured left lung. Late plea. The defendant had done well at school until he started abusing alcohol and drugs and dropped out.

Colin McCartney [2005] NICC 11. Plea. CPO 5 years plus 2 (equals 6 years). The defendant had an argument with his partner in the course of which he either pushed her to the ground, or she fell, and in the course of the ensuing struggle he inflicted four lacerations upon her. The defendant had one well at school until he started abusing alcohol and drugs.

DPP's Reference (Nos 2 and 3 of 2010) (McCauley and Seward) [2010] NICA 36. McCauley CPO 2 years plus 2 (equals 4 years). The sentence should have

been 5 years imprisonment but was not unduly lenient. The defendant had been involved in a neighbour dispute, and in the ensuing fracas punched a 60 year old man in the face, knocking him backwards so that he struck his head on the ground and was rendered unconscious. The defendant then stamped once on his victim's head, and committed other offences of assault and criminal damage. Previous convictions for assault occasioning actual bodily harm and assault. Although armed with a knife the defendant did not use it to cause any injuries. As only a single kick as his victim lay on the ground and the harm inflicted was at the lower end of the scale, the appropriate sentence on a contest should have been about 7 years. Late plea, the appropriate sentence was 5 years, the sentence of 4 years was lenient but not unduly so, if it was the sentence would not have been increased due to the double jeopardy principle.

Seward. CPO 18 months imprisonment and 1 year (equals 2 ½ years) increased to 3 ½ years imprisonment and 1 year (equals 4 ½ years). This defendant attacked a man who was escaping from an attack by others, and when another man went to the aid of his companion he was punched and fell to the ground. The defendant then repeatedly kicked this victim to the head. The victim sustained considerable swelling and bruising to his head and face, as well as a wound to the forehead and a fracture of the nasal bones. This should have attracted at least 8 years on a contest. Allowing for an element of delay and the double jeopardy principle the custody probation order was increased to 3 ½ years imprisonment and 1 year's probation (equalling 4 ½ years imprisonment).

DPP's Ref. (Nos 8,9 and 10 of 2013) (Newton, Doey and Todd) [2013] NICA 38. All three defendants were part of a gang that set upon another young man in the street in Coleraine. The IP was punched to the ground, and then kicked and stamped upon as he lay on the ground.

Doherty Sentence should have been 5 years, 3 increased to 4 because of double jeopardy. Previous convictions for assaults as part of a street or gang fight.

Doey. 14 8/12 at time of offence. Previous convictions for street fighting. Early admissions and plea. Proper sentence should have been 3 years detention, increased to 2 year JJC as will have to return to custody.

Newton 179/12 at time. Kicked IP on ground. Previous convictions for common assault and disorderly behaviour, as well as a subsequent conviction. 12 months suspended increased to 3 years suspended for 3 years.