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IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT BELFAST

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THE QUEEN

-v-

MORGAN & OTHERS

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SENTENCING REMARKS

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COLTON J

INTRODUCTION

[1] At the outset I want to place on record my thanks to all the counsel who appeared in this matter. This sentencing exercise took place in the context of the restrictions required arising from the Covid-19 pandemic. In order to assist the court counsel submitted invaluable lengthy written submissions. I take all of these submissions fully into account. Mr Ciaran Murphy QC led Mr Samuel Magee QC and Mr David Russell for the prosecution. Mr Desmond Fahy QC led Mr Plunkett Nugent for the defendant Patrick Joseph Blair. Mr Patrick Lyttle QC led Mr Stewart Hindley for the defendant Seamus Morgan. Mr Mark Mulholland QC led Mr Joseph O'Keefe for the defendant Joseph Matthew Lynch. Mr Martin O'Rourke QC SC led Mr Tom McCreanor for the defendant Liam Hannaway. Ms Eilis McDermot QC led Mr Barry McKenna for the defendant John Sheehy. Mr Kieran Mallon QC led Mr Bobbie Rea for the defendant Kevin John Paul Heaney. Ms Martina Connolly QC led Mr Terence McCleave for the defendant Terence Marks.

FACTUAL BACKGROUND

[2] During the period between 12 August 2014 and 10 November 2014 a property at 15 Ardcarn Park, Newry (hereinafter "Ardcarn Park") was under surveillance. Recordings were made of conversations which took place in that property on 11 different dates namely:

- 12 August 2014
- 2 September 2014
- 10 September 2014
- 12 September 2014
- 18 September 2014
- 3 October 2014
- 7 October 2014
- 13 October 2014
- 15 October 2014
- 28 October 2014
- 10 November 2014.

[3] Following an analysis of the contents of the audio recordings, the PSNI conducted a search and arrest operation for terrorist offences at the said premises on 10 November 2014. Those arrested at the property included the defendants Patrick Blair, Seamus Morgan, Joseph Lynch, Liam Hannaway and John Sheehy.

[4] On 15 December 2014 police conducted a follow-up search and arrest operation when they arrested 3 other males including the defendants, Kevin John Paul Heaney and Terence Marks.

[5] The contents of the recordings are the evidential basis for the counts each of the defendants face on the indictment.

[6] In short form the recordings revealed discussions between the defendants at various times on the dates set out above at the premises in Ardcarn Park.

[7] The discussions reveal that the defendants belonged to a proscribed organisation, namely the Irish Republican Army and discussed matters relating to terrorist activities. Not all of the defendants were present at all of the discussions. Some of the counts rely on the totality of the conversations and other counts relate to specific conversations on specific dates.

[8] At their most serious the conversations relate 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 including robbery.

PATRICK JOSEPH BLAIR

[9] I propose to deal firstly with the defendant Patrick Joseph Blair. Some of the remarks I make are of general application to all of the defendants and therefore I do not propose to repeat them when I deal with them in turn.

[10] The defendant Patrick Blair faces 15 counts as follows:

Count 1 – Belonging to or professing to belong to a proscribed organisation, contrary to section 11(1) of the Terrorism Act 2000 (11/8/14-11/11/14).

Count 2 – Providing weapons, training or instruction, contrary to section 54(1) of the Terrorism Act 2000 (10/9/14).

Count 3 - Providing weapons, training or instruction, contrary to section 54(1) of the Terrorism Act 2000 (15/10/14).

Count 5 – Conspiracy to possess explosives with intent to endanger life or cause serious injury to property, contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and section 3(1)(b) of the Explosive Substances Act 1883.

Count 6 - Conspiracy to possess firearms and ammunition with intent, contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Article 58(1) of the Firearms (Northern Ireland) Order 2004.

Count 7 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (12/8/14).

Count 8 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (3/10/14).

Count 9 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (18/9/14).

Count 10 - Providing weapons training or instruction, contrary to section 54(1) of the Terrorism Act 2000 (12/8/14).

Count 11 - Providing weapons, training or instruction, contrary to section 54(1) of the Terrorism Act 2000 (2/9/14).

Count 12 - Providing weapons, training or instruction, contrary to section 54(1) of the Terrorism Act 2000 (18/9/14).

Count 13 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (2/9/14).

Count 14 - Collecting information likely to be of use to terrorists, contrary to section 58(1)(b) of the Terrorism Act 2000 (3/10/14).

Count 15 - Collecting information likely to be of use to terrorists, contrary to section 58(1)(b) of the Terrorism Act 2000 (3/10/14).

Count 16 - Preparation of terrorist acts contrary to section 5(1) of the Terrorism Act 2006 (28 October 2014).

[11] Patrick Blair was present at Ardcarn Park on 12 August along with the defendants Joseph Lynch and Liam Hannaway, together with a Mr Winters, the occupier of the premises (now deceased) and two other persons not before the court.

[12] The audio of the conversations demonstrates that this was a meeting where organisational structure, fundraising by way of robbery, embryonic attack planning, the obtaining of munitions and recruitment were all discussed. Three of those present had travelled significant distances from the Republic of Ireland and the defendant Hannaway had travelled from Belfast.

[13] Blair is centrally involved in the discussions and expresses frustration about how disorganised "we" are. Specifically he talks about whether it would be possible to obtain sulphur from a matchbox factory in Dublin. He discusses how they might buy other components for making bombs. He explains to others how a bomb can be made.

[14] In the course of the recorded conversations he also tells the group about an automatic gun he had obtained. The group discussed recruitment of members particularly in the Republic of Ireland.

[15] The meeting on 12 August forms the basis of Count 7 and Court 10 of the indictment in which Blair is jointly charged with preparation of terrorist acts (Count 7) and providing weapons training or instruction (Count 10).

[16] Blair is also present at the meeting on 2 September 2014 along with the defendants John Sheehy, Liam Hannaway and Joseph Lynch. Another person not before the court was also present.

[17] In the course of this meeting Blair and Hannaway are heard explaining how to construct a bomb and where components could be acquired. Blair and Hannaway appear to be imparting their knowledge about bombs to the visitors from the Republic of Ireland namely Sheehy and Lynch.

[18] They speak about recruitment of members. After Sheehy and Lynch depart Blair is heard saying that "we have a 9mm revolver". He talks about sourcing other weapons. Blair and Hannaway express frustration about lack of resources, lack of drivers and possible sources of money.

[19] The meeting of 2 September 2014 gives rise to Count 13 on the indictment where Blair is jointly charged with Hannaway with the offence of preparation of

terrorist acts. This is based on their attendance at the actual meeting. Arising from the contents of this meeting Blair is jointly charged along with Liam Hannaway with a specific count of providing weapons training or instruction on 2 September 2014.

[20] The next meeting occurs on 10 September 2014. Again Blair is present at this meeting in the course of which he explains how a pipe bomb can be made. This forms the basis of Count 2 on the indictment against him, namely providing weapons training or instruction.

[21] The recording dated 12 September 2014 reveals that Blair is there with the defendants Marks and Heaney. Blair talks about a gun and someone paying £2000 for a silencer. There is a general discussion about weapons but nothing in the conversation that forms the basis of any specific count.

[22] A further meeting is recorded on 18 September 2014 at which Blair is present with the defendants Lynch and Hannaway and two other persons not before the court who also feature in the conversations.

[23] In the course of the conversations there are extensive discussions about firearms and explosives. Blair can be heard instructing one of the persons present how to make a pipe bomb. They discuss how such devices could be deployed such as placing one on a road with it lined up for approaching vehicles that had been brought there by "come on" phone calls. There are discussions about who might be joining their group and who was involved with other dissident groups. They discuss how weaponry might be obtained. There are conversations about carrying out burglaries/robberies to obtain legal firearms held by others.

[24] No crystallised plan emerges and they discuss the need for organisation and strategy. There are expressions of frustration about lack of activity and lack of resources. The conversations during this meeting give rise to a specific count against Blair, Lynch and Hannaway of preparation of terrorist acts. They also form the basis of Count 12 namely providing weapons training or instruction in which Blair is jointly charged with Hannaway.

[25] The next recordings in the sequence relate to a meeting which took place on 3 October 2014 at the same location. Again Blair was present at these meetings. In addition to Blair the defendants Lynch and Hannaway were there as was Winters.

[26] In the course of the meetings those present discuss potential strategies for their organisation including, inter alia, how to deal with fellow dissidents, the size and structure of their organisation, the identification of potential targets, training and sources of funding for terrorist activities including robbery.

[27] These are recurrent topics throughout the conversations recorded.

[28] It is clear that the group is frustrated by the lack of progress. They appear to be hampered by scarcity of resources and personnel.

[29] In the late afternoon discussion the defendant Pearce (who was dealt with on 3 May 2019 after pleading guilty on 12 April 2019) makes an appearance during which he tells Blair about a business man who sells exotic birds and who the group clearly regard as a potential target for a robbery. In one passage when they are discussing purchasing guns one of those not before the court states that he had been offered a gun for £300 to which Blair responds "if he has that for £300 you fucking get it … it doesn't matter who the fucking gun kills."

[30] In one passage Blair and Hannaway are heard discussing targeting a prison governor who is known to take walks in the Mourne area. Blair and Hannaway discuss firing down at the courts from a room at the Hilton Hotel.

[31] The conversations are lengthy and strongly support the charge of belonging or professing to belong to a proscribed organisation and the conspiracy charges. Specifically they result in Counts 8 (preparation of terrorist acts), Counts 14 and 15 (collecting information likely to be of use to terrorists) and Count 15 (collecting information likely to be of use to terrorists).

[32] Blair is next recorded as being present on the premises on 13 October 2014. The defendants Marks and Morgan are present. It appears that Blair is largely interacting with Marks. Morgan appears to be speaking to Winters in the kitchen of the premises.

[33] Blair continues to talk about a weapon to which he has referred previously.

[34] They express concern about the premises being "bugged". Blair also discusses the making of pipe bombs, possibly in the Republic of Ireland.

[35] Blair's focus is on the preparation and making of pipe bombs. Blair reveals that he intends to pick up a gun the next day.

[36] These conversations do not form the basis of any specific count against Blair but support the charge of professing to belong to a proscribed organisation and the conspiracy charges.

[37] Blair is again present at the premises on 15 October 2014 along with Heaney and Winters. They are also joined by the defendant Marks. Blair talks about seeing "cops" in Newry. Heaney has been asked again to gather information, it can be inferred, for a burglary.

[38] Blair can again be heard speaking about making pipe bombs.

[39] This gives rise to the specific Count 3 on the indictment of providing weapons training or instruction.

[40] After Marks leaves the premises the defendant Hannaway along with another person not before the court arrive at the premises. Blair leaves the premises but returns.

[41] They discuss how easy it is to get information off the internet about bombs. Blair and Hannaway again discuss their frustrations about backup money and difficulties for the organisation.

[42] Blair attends another meeting at the premises on 28 October 2014 along with Lynch and Hannaway. Again Blair talks about his expectation that he will obtain a revolver on the following day.

[43] In the course of the recordings Blair is heard to leave the premises and CCTV footage identifies him driving to Newry train station where he picks up the defendant Joseph Lynch and another person not before the court. They return to Ardcarn Park where they again discuss strategies and the acquisition of materials for pipe bombs and fixing guns. They talk about recruitment and internal dissent within dissident Republican groups. These conversations form the basis of Count 16 on the indictment in which Blair is jointly charged with Hannaway with preparation of terrorist acts. The preparation is based on their attendance at the meeting.

[44] Blair is again recorded as being present on the premises on 10 November 2014 along with the deceased Winters, Hannaway and Lynch. There are other persons present. The conversations are of a similar theme to previous meetings. There are general discussions about recruitment, organisational issues and relationships with other dissident Republican groups.

[45] This meeting does not form the basis of any specific count but supports the counts of belonging or professing to belong to a terrorist organisation and the conspiracy counts.

[46] This is just a short summary of the contents of the recordings.

Sentencing

[47] In terms of the appropriate sentence for the defendant Blair, it is trite to say that these are very serious offences. The contents of the discussions make 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.

[48] 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.

[49] The charges against Blair relate to a course of conduct between 11 August 2014 and 11 November 2014. I consider that the proper approach in relation to sentencing is to impose a sentence that represents the totality of the offending. I will therefore impose concurrent sentences to reflect the totality of the offending and I intend to adopt a similar approach for all of the defendants.

[50] At its heart the criminality relates to a conspiracy with others to possess and obtain explosives, firearms and ammunitions. In the course of that conspiracy Blair committed multiple offences including providing weapons training and preparation of terrorist acts. The preparation of terrorist acts offences relate to his attendance at the series of meetings which I have summarised above. His attendance at those meetings and the conduct revealed form the evidential basis for the general charges of conspiracy and belonging to or professing to belong to a proscribed organisation.

[51] These meetings were clearly operational meetings with the specific purpose of promoting a proscribed organisation.

[52] In considering conspiracy counts it is important to remember the wide range of activities covered by the scope of such a charge.

[53] As long ago as the case of **R v Declan Crossan** [1989] 2 NIJB 72 Lord Lowry LCJ considered a conspiracy which involved an attempted attack on a police jeep which was described as the nearest possible thing to a very ruthless multiple murder. In that case the conspirators who were in effect a murder squad only dispersed when it was decided that it would not be practicable to carry out the attack. In addition the defendant had a direct participation in the events leading up to the planning for the attack and had been allotted the role of a killer, with a rifle which he was to take up at the appropriate moment.

[54] In that case the court upheld a sentence of 20 years' imprisonment for the conspiracy to murder.

[55] Having described the specific conspiracy Lord Lowry went on to say:

> "When one contrasts that conspiracy (which was all that could properly be charged) with the kind of conspiracy, sometimes of a rather vague nature in a room in a house, which leads to nothing, one can see the very wide range of criminality within which the offence of conspiracy can be committed."

[56] In considering where this conspiracy lies within the potential range I take into account firstly the context of the conspiracy. Had Blair and his fellow conspirators obtained the necessary explosives or firearms it is clear that their intention would have been to cause death and destruction. That nothing came of the meetings does not undermine Blair's clearly expressed aspirations in the course of the meetings. We are not dealing here with 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. That said, I acknowledge that nothing came of the conspiracy and that the contents of the conversations suggest a lack of sophistication. He and his co-conspirators engaged in preparatory acts which did not move beyond the preparatory stage. No effective steps were taken to advance the conspiracy. Thus, using the language of Lord Lowry, the conspiracy committed in this case, although it led to nothing, went beyond something "of a rather vague nature in a room in a house" but fell well short of the conspiracy he was dealing with in the **Crossan** case.

[57] Turning specifically to Blair I consider that he played a leading role at these meetings. He was present at ten out of the eleven meetings recorded. He took the lead in many of the discussions. He clearly was imparting his knowledge and experience in relation to the making of pipe bombs and the use of weapons. That he played a leading role is in my view clear from any objective analysis of the contents of the recorded conversations and is reflected in the multiple counts he faces on the indictment. I consider that this leading role should be reflected in the ultimate disposal of the case.

[58] In relation to Blair I also take into account the fact that he has committed multiple offences which are relevant in terms of the overall sentence I impose, having regard to the fact that I intend to impose concurrent sentences.

[59] An aggravating feature in relation to Blair is the fact that he has previous and highly relevant criminal convictions.

[60] On 5 October 1974 he was involved in a robbery with a firearm/imitation firearm.

[61] On 18 October 1974 he was involved in a hijacking of a lorry at Barcroft Park, Newry. The lorry was driven to Derrybeg Estate, Newry where a hand grenade was placed in the cab. The grenade pin was tied with a piece of cord and the other end of the cord was tied to the door so that when the door was opened the pull pin would cause it to explode when security forces went to investigate. The lorry was then placed across the Newry-Camlough Road. A police officer recovered the lorry and was en route to Bessbrook Police Station when he noticed the undetonated device that was attached to the door. The bomb was then made safe. When Blair was interviewed in April 1975 he made a full admission to his part in the attack. He also admitted producing a revolver to the driver of the hijacked vehicle to ensure that he complied with his orders. He was convicted of possession of explosives with intent and possession of a revolver.

[62] On 13 November 1975 Blair was convicted of attempted murder, wounding with intent, possession of firearms (a rifle) and ammunition with intent; hijacking and possession of a revolver.

[63] This related to the shooting of an off-duty Reserve Constable at Greenbank Industrial Estate, Newry as he waited to collect his girlfriend. The attack was linked to an earlier hijacking of an electricity van at Daisyhill Hospital grounds. Blair made a statement admitting his involvement in the attack. He admitted organising the whole attack, including pressurising his co-accused to participate, hijacking the vehicle, preparing the gun and shooting the off-duty officer. He received a sentence of imprisonment of 15 years.

[64] On 14 November 1974 Blair was involved in the attempted murder of members of the security forces at Newry Police Station; possession with intent of firearms (MI6 rifle, armalite rifle, revolver, ammunition); causing an explosion and possession of explosives with intent (a hand grenade); hijacking.

[65] On that date a car was hijacked and used to transport the attackers and materials to Quinn's Supermarket on Monaghan Street, Newry. At 2.40pm a hand grenade and a number of velocity shots were directed at Newry RUC Station. No persons were injured. One bullet entered a room on the second floor.

[66] The weapons used were recovered and included:

- 35 x armalite live rounds
- 10 x .303 live rounds
- 1 x .303 rifle loaded with 7 rounds
- 1 x Japanese armalite rifle loaded with 18 rounds
- 1 x US rifle.

[67] When Blair was interviewed in April 1975 he made full admissions to his part in the attack.

[68] On 27 November 1974 Blair was involved in the hijacking of a car at gunpoint in Newry which was driven to Dundalk. Whilst in Dundalk a bomb was placed in the rear of the vehicle and he drove the car back to Newry with at least one other person where they parked it at Merchants Quay.

[69] On 3 April 1975 he was detained by the Army on foot patrol in the Derrybeg Estate, Newry on the evening of 1 April 1975. He was interviewed and made statements of confession to the effect that he joined the IRA approximately 12 months before this and having been an active member up until the time of his arrest. He admitted to being OC of the IRA ASU in Newry.

[70] On 7 October 2003 in the Republic of Ireland he was convicted of the offence of the possession of firearms/ammunition in suspicious circumstances. A search warrant was executed at his Dundalk home on 4 December 2002. He was found in possession of 17 rounds of live ammunition in a magazine. He received a sentence of 3 years' imprisonment.

[71] Whilst the vast majority of these offences are of considerable vintage they are in my view a relevant and significant aggravating factor.

[72] In terms of mitigation much of the focus of the defendant's plea relates to personal circumstances.

[73] He is 65 years of age. He is in relatively poor physical health. He has Asthma and suffers from recurring chest infections and respiratory ill-health. He has been treated on an ongoing basis for Chronic Obstructive Pulmonary Disease (COPD) and does present on an ongoing basis with symptoms of that condition.

[74] When he was on remand in HMP Maghaberry for these offences he was admitted for treatment and spent 9 days at Laganvalley Hospital with chest pain arising from exacerbation of Asthma. At that time his Asthma was described as "usually mild and seasonal".

[75] In light of the serious offences to which Blair has pleaded guilty I do not consider that personal circumstances of this type carry any significant weight. It is clear that Mr Blair will receive any necessary medical treatment during the course of any period spent in prison.

[76] In the course of his eloquent plea Mr Fahy drew my attention to the provisions in the Criminal Justice Act 2003 in England and Wales in relation to reductions in sentences arising from credit for time on remand with electronic tag/curfew. It is well-established that these provisions do not apply in this jurisdiction.

[77] In this case Blair was admitted to bail on 27 December 2015. At that time he was subject to a night-time curfew from 7.00pm to 8.00am and was also subject to electronic tagging. Over the passage of time the curfew was amended to 12.00pm to 7.00am as of July 2018 but the tagging remained in place. There were no breaches of any bail conditions in the period between his release and the date of sentencing.

[78] Obviously these bail conditions were considered proportionate in light of the serious charges with which the defendant was charged and to which he has now pleaded guilty.

[79] It has been acknowledged that bail conditions may be taken into account as a mitigating factor so as to "make some modest adjustment in the final sentence" – see **R v Glover** [2008] EWCA Crim 1782. This paragraph was referred to by Stephens J

in sentencing remarks in **R v McDonnell & Fearon** [2013] NICC 16, where the court commented that:

> *"The effect of bail conditions may be a mitigating factor."*

The Court of Appeal in the unreported decision of **R v McConomy** (unreported, 26 September 2014) also confirmed that the court retained a discretion to make an allowance for bail conditions in sentencing.

[80] In the circumstances of this case and given the length of time during which the bail conditions were in place I do consider that it is appropriate to make some modest adjustment in the final sentence to reflect the significant restriction on Mr Blair's liberty whilst he was on bail.

[81] Mr Fahy also raises the issue of the "passage of time" in relation to the investigation, prosecution and completion of this case.

[82] Mr Blair was arrested in relation to these offences in 2014. The matter has not been finally disposed of until November 2020. He has been on bail since July 2015.

[83] At my request the prosecution provided a detailed chronology of the progress of this case. All of the parties accepted that there was no unexplained or culpable delay on behalf of the prosecution.

[84] The question of the passage of time or delay between arrest and conviction has been dealt with in this jurisdiction in the case of **DPP's Reference (No 5 of 2019)** [2020] NICA 1 at paragraphs 40-52. It is clear that this was a complex investigation involving the assessment of a large volume of material involving multiple defendants. There was considerable expert evidence involved in the analysis of the recordings. That analysis was tested at committal hearings. There were numerous pre-trial "No Bill" applications.

[85] The court is conscious of the reasonable time requirement in Article 6 ECHR which provides inter alia that:

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

[86] In the particular circumstances of this case and having regard to the principles set out in the case above I do not consider that any breach of Article 6 has been established in this case.

[87] Apart from the conditions imposed in relation to his bail, in respect of which the court will make a modest adjustment, there is no evidence of any specific impact

of any delay on Mr Blair. He has been at liberty throughout and any impact must be modest, although I am conscious that he remained in a state of uncertainty about his fate during his time on bail.

[88] The court is also obliged to impose a realistic punishment for the offences which the defendant Blair has admitted.

[89] For these reasons in the event that there had been a breach of the reasonable time requirement it seems to me that this is a case which could be eminently dealt with by a public acknowledgement as an appropriate remedy for such a breach, had it been established.

[90] I turn now to the question of discount arising from the Covid-19 pandemic.

[91] It is correct that there have been a number of decisions in England and Wales and in this jurisdiction which have reduced sentences by modest amounts because of the Covid-19 pandemic. The principle underlying such a discount is that the gravity of the pandemic and its impact on those who enter custody during its currency can properly be taken into account in sentencing.

[92] The cases which have dealt with this issue have involved modest prison sentences where it was recognised that the impact of a custodial sentence is likely to be heavier during the current emergency than it would otherwise be. In England and Wales the prevailing situation was that prisoners could be confined to their cells for up to 23 hours per day. They are unable to receive visits. There is obviously an anxiety about the risk of transmission of Covid-19.

[93] This of course is of particular relevance to Mr Blair because of his ill-health. This places him within the "at risk" group in relation to Covid-19.

[94] In relation to the situation in Northern Ireland prisons I am informed by the prison authorities that any adult male who is sentenced will be transported to Maghaberry Prison where they will be interviewed and undergo a medical assessment. In line with PHA guidance a prisoner will be placed in an isolation unit for 14 days to mitigate against the risk of Covid-19 entering the prison. During this time they will be seen daily by healthcare staff, engaged multiple times daily by prison staff, will have access to telephones, showers, tuckshop and virtual visits.

[95] Every prisoner will be given free phone credit to enhance family contact. Pastoral support is available. In-cell activity packs and in-cell distraction packs are also supplied.

[96] Where there is a particular vulnerability through age or health there are two shielding units which can be utilised if necessary.

[97] Newly sentenced prisoners will be screened by healthcare through Covid testing. Any positive cases will be transferred to the area identified for positive cases. To date as I understand it only one incident of Covid has been detected in the prison. Within the isolation unit all staff wear PPE at all times and within the shielding unit staff wear masks when having face to face dealings with individual prisoners.

[98] Extensive hand sanitising and infection control measures are provided within the prison environment.

[99] I understand that with the exception of those in isolation units, all prisoners are unlocked as normal during the day and for evening association but are confined to their landing. On 7 April NIPS introduced an extensive programme of virtual visits which have been widely used and have allowed prisoners to keep in contact with families. NIPS in person visits, under new guidelines, began on 27 July. The NIPS will continue to keep arrangements for visits and other elements of dealing with the pandemic under review.

[100] 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.

[101] It is clear that the Prison Service is making appropriate adaptions to the prison regime arising from necessary restrictions arising from the pandemic and that this will continue.

[102] The defendant Blair will receive appropriate medical attention should it be necessary and will be able to shield safely within the prison regime, as he has been doing whilst at liberty.

[103] This is not a case in which the court faces a "threshold" decision about whether custody should be imposed. It is impossible to predict how the current pandemic will continue to impact in the prison environment. I recognise nonetheless 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. Equally, as I said in relation to the passage of time I bear in mind that the court is obliged to impose a realistic punishment for the serious offences which Mr Blair has committed.

[104] I will return to the question of mitigation later in my sentencing remarks and at that stage I will also deal with the appropriate discount for the defendant's plea of guilty.

Dangerousness

[105] Blair has been convicted of a series of offences which are serious and specified offences under the Criminal Justice (Northern Ireland) Order 2008 – Counts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 16.

Statutory Background

[106] Article 12 of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order"), provides for the meaning of a "specified offence" within the Order if it is a specified violent offence or a specified sexual offence. A specified offence is a 'serious offence' if it is an offence specified in Schedule 1 of the Order.

[107] Article 13 of the Order provides for the imposition of an indeterminate custodial sentence as follows:

> *"13.-(1) This article applies where –*
>
> > *(a) A person is convicted on indictment of a serious offence committed after 15 May 2008;*
> >
> > *(b) The court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.*
>
> *(2) If –*
>
> > *(a) The offence is one in respect of which the offender would apart from this article be liable to a life sentence;*
> >
> > *(b) The court is of the opinion that the seriousness of the offence, or of the offence and one or more of offences associated with it, is such as to justify the imposition of such a sentence, the court shall impose a life sentence.*
>
> *(3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court shall –*
>
> > *(a) Impose an indeterminate custodial sentence;*

(b) Specify a period of at least two years as a minimum period for the purposes of Article 18, being such a period 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."

[108] Article 14 of the 2008 Order deals with the imposition of an extended custodial sentence in the following terms:

"14.-(1) This Article applies where –

(a) A person is convicted on indictment of a specified offence committed after 15 May 2008;

(b) The court is of the opinion –

(i) That there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences;

(ii) Where the specified offence is a serious offence, that the case is not one which the court is required by Article 13 to impose a life sentence or an indeterminate custodial sentence.

(2) The court shall impose on the offender an extended custodial sentence."

[109] The assessment of dangerousness is dealt with in Article 15 of the 2008 Order in the following terms:

"15.-(1) This Article applies where –

(a) A person has been convicted on indictment of a specified offence;

(b) It falls to a court to assess under Article 13 or 14 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.

(2) The court in making the assessment referred to in paragraph (1)(b) –

(a) Shall take into account all such information as is available to it about the nature and circumstances of the offence.

(b) May take into account any information which is before it about any pattern of behaviour of which the offence forms part.

(c) May take into account any information about the offender which is before it."

[110] It therefore falls on the court 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."

[111] As per the statute the court must take into account the matters referred to in Article 15(2).

[112] These provisions have been well traversed and have been summarised in the case of **R v Kelly** [2015] NICA 29. In the discussion of those authorities in **Kelly** Gillen LJ said at paragraph [41] –

"Principles that can be distilled from these authorities include:

(1) The risk identified must be significant. This is a higher threshold than mere possibility of occurrence and can be taken to mean "noteworthy, of considerable amount or importance".

(2) Factors to be taken into account in assessing the risk include the nature and circumstances of the current offence, the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, whether the offending demonstrated any pattern and the offender's thinking and attitude towards offending.

(3) Sentencers must guard against assuming there was a significant risk of serious harm merely because the foreseen specified offence was serious. If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant."

[113] The court also derives assistance from the judgment of Morgan LCJ in **R v Wong** [2002] NICA 54 as follows –

"Consideration

[15] What all of these cases demonstrate is that the assessment of whether an offender presents a significant risk of serious harm requires a careful analysis of all of the relevant facts in the particular case. This is required just as much in a case involving convictions for terrorist offences as in other cases. In such cases the matters likely to require consideration will usually include:-

(i) the nature of the harm to which the offence was directed;
(ii) the intention or foresight of the offender in relation to that offence;
(iii) the stage at which the offending was detected;
(iv) the sophistication and planning involved in the commission of the offence;
(v) the extent to which the conduct of the offender demonstrates a significant role in the carrying out of the offence;
(vi) the previous conduct of the offender;
(vii) the danger posed by the terrorist organisation in question;
(viii) an assessment of the extent to which the appellant is committed to or influenced by the objectives of that terrorist organisation; and
(ix) where there is a dispute about these matters, a Newton hearing may be appropriate.

In terrorist cases the decisions in ***Xhelollari*** *and* ***Nouri*** *may well be of limited assistance. In those cases the court was examining the risk posed of a future loss of control in circumstances where the offender took advantage of a vulnerable woman. In terrorist cases the risk is unlikely to depend upon loss of control or the vulnerability of the victim but rather the evidence of the offender's commitment to participation in the activities of the organisation."*

At paragraph [21] the court said –

"[21] We wish to emphasise that in cases involving firearms and explosives, even with a terrorist background, the court should be careful not to make the assumption that the offender is dangerous. The risks posed by those involved in such offences can vary enormously and each case will be heavily fact sensitive."

[114] In accordance with the authority of **Kelly** I propose to assess the issue of dangerousness and the appropriateness of any sentence designed for the protection of the public in two stages. The first is to assess dangerousness as at the date of sentencing on the basis that the defendant is at large. The second is a predictive exercise so that in considering the issue of public safety I must address the future, that is at a time when Mr Blair will be released from prison, and take into account in so doing all the relevant circumstances, evidence or material which will inevitably bear on this predictive decision.

[115] Taking all these principles into account and applying them to the particular circumstances of this case I am firmly of the view that the conditions of Article 13(1)(b) are met. I am satisfied that there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences.

[116] The factors which lead me to this conclusion are as follows.

[117] I am satisfied that 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 the conspiracy were death and destruction. Mr Blair's previous criminal convictions and the comments made by him in the course of a series of meetings demonstrate that he is a person committed to the objectives of splinter groups of the IRA, commonly referred to as dissident Republican terrorist organisations. Such organisations represent a serious existing and on-going threat to life.

[118] There is nothing before me to indicate that the defendant resiles from that commitment.

[119] It may be said, justifiably, that the planning was not particularly sophisticated. The offending was detected and interrupted at a stage before any plans were put into effect. Over the course of the meetings there is no evidence that any actual act of terrorism was carried out as a result of the meetings. However, this was as much to do with a lack of resources and the fact that the conspiracy was interrupted by the arrest of the defendants and others, as opposed to any lack of commitment on the part of Mr Blair.

[120] The protracted nature of the meetings, the contents of the meetings taken together with the defendant's previous convictions in my view make this an entirely different case from that of the defendants in the case **R v Khan & Ors** [2013] EWCA Crim 468 referred to by Mr Fahy where Leveson LJ at paragraph 73 says when referring to conversations for the purpose of ascribing comparative sophistication –

> *"It is not implausible that some self-publicists will talk 'big' and other, more serious plotters, may be more careful and keep their own counsel."*

[121] In coming to the conclusion that I have I weigh in the balance the fact that Mr Blair has not committed any offences whilst he was on bail. However, this has to be seen in the context of the very strict bail conditions to which I have referred and in respect of which I do intend to make some adjustment in the sentence. Mr Fahy suggests that his personal circumstances and in particular his health are also factors which point against a finding of dangerousness. Whilst there is some merit in these submissions in my view they do not undermine my fundamental conclusion in relation to Mr Blair. Everything the court knows about him points to someone committed to the actions of a terrorist organisation which poses a grave danger to the community.

[122] Given that Counts 5 and 6 carry a maximum sentence of life imprisonment I must consider whether the seriousness of the offence or offences associated with it are such to justify the imposition of a life sentence. When considering this matter I bear in mind the comments of Morgan LCJ in **R v Pollins** [2004] NICA 62 at paragraphs [26] and [27] he observed that:

> *"… Apart from a discretionary life sentence an indeterminate custodial sentence is the most draconian sentence the court can impose. A discretionary life sentence is reserved for those cases where the seriousness of the offending is so exceptionally high that just punishment requires that the offender should be kept in prison for the rest of his life. It is not a borderline decision … An indeterminate custodial sentence is primarily concerned with future risk and public protection…*
>
> *[27] However, in a case in which a life sentence is not appropriate an indeterminate custodial sentence should not be imposed without full consideration of whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the individual offender. In that sense it is a sentence of last resort. The issue of whether the necessary public protection can be achieved is clearly fact specific. That requires, therefore, a careful evaluation of the methods by which such protection can be achieved under the extended sentence regime."*

[123] In the circumstances of this case I do not consider that a life sentence, which is very much a sentence of last resort and should be reserved for the most serious of cases, is justified.

[124] The court therefore must consider whether an extended custodial sentence would be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences.

[125] In this regard the court must assess the future by assessing the risk to the public posed by the commission of future offences by the offender which he would or might commit subsequent to the current sentencing hearing.

[126] In considering this issue I bear in mind the matters to which I have already referred in the assessment of dangerousness. Mr Fahy points to the fact that the convictions to which the court has referred are of significant vintage. He points to the age and ill-health of Mr Blair. He also emphasises the fact that throughout his time on bail there were no breaches of bail nor were any offences committed by Mr Blair. He says that this should be sufficient to persuade the court that the risk is not such as to justify either an extended custodial sentence or an indeterminate sentence.

[127] However, the court has to balance all these factors and form a view about the potential risk.

[128] Having done so the court has come to the conclusion that an extended custodial sentence would not be adequate for the purposes of protecting the public from serious harm occasioned by the commission by the offender of further specified offences.

[129] I do not consider that age or ill-health will be any bar to the defendant Blair on his release from prison involving himself in terrorist organisations or activities which have the potential to cause serious harm to the public in the form of loss of life or damage to property. There is nothing in the papers that suggest any disavowal by Mr Blair of his commitment to terrorism nor has any such submission been made in the course of this hearing. All the material available to the court points to a man who has a longstanding and voluntary commitment to terrorism. The difficulty I have with the imposition of an extended custodial sentence from the point of view of public protection is that at some point after his release from prison he will no longer be subject to any licence requirements or supervision. It may well be that after serving a custodial sentence, his personal circumstances or circumstances in Northern Ireland will be such that he can be safely released and ultimately any licence period may be revoked by the Parole Commissioners on application after 10 years.

[130] Accordingly, I have come to the conclusion that I should impose an indeterminate custodial sentence in Blair's case.

[131] In those circumstances, under Article 13, for the purposes of Article 18 of the 2008 Order I must specify a period which I consider appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the

offences to which the defendant has pleaded guilty. In specifying this period I bear in mind that unlike a determinate custodial sentence the defendant can only be released on licence at the completion of the relevant period.

[132] In this regard I return to the aggravating and mitigating features to which I have referred earlier.

[133] Prior to consideration of any mitigation I would have imposed a period of seven years under Article 13(3)(b) of the 2008 Order.

[134] I propose to reduce this to six years to take account of (a) the consequences of the restrictions arising from Covid-19 and the particular impact this will have on the defendant with his medical condition and (b) of the significant restriction on his liberty arising from bail conditions over a 5 year period.

[135] I turn now to a deduction for the defendant's plea of guilty. He pleaded guilty on 23 January 2020 shortly before the trial was due to commence.

[136] This was not an early plea and so the defendant is not entitled to what might be described as the maximum discount.

[137] It is a well-established principle that a defendant is entitled to a reduction in sentence arising from a plea of guilty.

[138] In this case the pleas of guilty were of particular assistance to the court in that they removed the necessity for a lengthy trial with a panoply of witnesses. This resulted in a very significant saving of court time and public expense. The acknowledgement of guilt is something which is to be welcomed and to be encouraged and reflected in a reduction in the defendant's sentence.

[139] I propose to reduce the sentence of six years to one of five years' imprisonment, which represents a discount close to 20%. Standing back it seems to me this is the appropriate term which the defendant must serve before he can be considered for release on licence. This is broadly equivalent to a ten 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.

[140] I therefore propose the following sentence in respect of each count.

[141] Count 1 – five years' imprisonment. (Insofar as is necessary to do so I direct that this will be made up of two years and six months in custody and two years and six months on licence.)

[142] In respect of Counts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 16 an indeterminate custodial sentence with a minimum term of imprisonment of five years.

[143] Count 14 – five years' imprisonment. (Insofar as is necessary to do so I direct that this will be made up of two years and six months in custody and two years and six months on licence.)

[144] Count 15 – five years' imprisonment. (Insofar as is necessary to do so I direct that this will be made up of two years and six months in custody and two years and six months on licence.)

[145] All sentences are to run concurrently. The defendant is to be given credit for the time he has spent in custody, namely 320 days which will form part of the five year term of imprisonment.

[146] Having been convicted of relevant offences under Section 41 of the Counter Terrorism Act 2008 under the provisions of Section 45 and Section 53 I am compelled to impose counter-terrorism notification requirements on the defendant for a period of 30 years.

SEAMUS MORGAN

[147] The defendant Seamus Morgan faces one count on the indictment namely:

> Count 4 Belonging to or professing to belong to a proscribed organisation contrary to section 11(1) of the Terrorism Act 2000 (11/8/14-11/11/14).

[148] He is not charged with any specific offences relating to any alleged conduct whilst present in Ardcarn Park. It is not alleged that he is part of the conspiracy faced by other defendants in the indictment.

[149] He is identified as being present at Ardcarn Park on 7 and 13 October 2014 and on 10 November 2014 when he was arrested along with others at the scene.

[150] On 7 October he is present at the premises with the occupier Winters. In the course of the conversation Winters was heard expressing frustration at how things are going within the organisation and he is taking the opportunity to vent his feelings. Morgan appears to be sympathetic to Winters' complaints. The prosecution have in my view properly and accurately characterised the conversation as "letting off steam."

[151] Morgan is next recorded as being present on the premises on 13 October. He has called to get his hair cut by Winters. This is a social call rather than an attendance at any planned meeting. He is however present for some of the discussion involving in particular the defendants Blair and Marks and is clearly comfortable in their presence. When someone comments about cars being bugged Morgan makes the comment "if you think they haven't started on us there is

something wrong". The prosecution suggest that the use of the word "us" indicates he is including himself as one of the group.

[152] Morgan is also present in the premises when the police arrest the defendants and others. The transcript of the tape does not identify any comment made by him of any significance on that occasion.

Sentencing

[153] The offence to which the defendant Morgan has pleaded is a serious one. It carries a maximum sentence of 10 years' imprisonment.

[154] Belonging to or professing to belonging to a proscribed organisation covers a wide range of engagement from being passive and inactive to fully engaged and committed.

[155] In this case there is nothing which points to any activity on behalf of the defendant. On the first occasion he was present in the premises he was only there with the occupier. On the second occasion he was there on a social call to have his hair cut.

[156] In the course of the recorded conversations he does not say anything of significance in the context of any planning or organisation of terrorist activities. Nonetheless it is clear that he regards himself as one of the group and appears to be accepted by the others as one of them.

[157] In terms of antecedents the defendant does have a relevant criminal record. On 11 September 1975 he was convicted of an offence of causing an explosion likely to endanger life or property in respect of which he received a term of imprisonment of 14 years. On the same occasion he was convicted of an offence of robbery, possession of firearms in suspicious circumstances and belonging to a proscribed organisation.

[158] The background to the offences relates to a bomb explosion in the Ardmore Hotel, Belfast Road, Newry on 26 May 1973 which caused extensive damage to the premises. On 4 December 1974 the defendant was arrested and interviewed during which he made full admission to his involvement in planting this bomb.

[159] In the course of the same interview he admitted to his involvement in an armed robbery at Hands Bookmakers on 5 October 1974 and to being a member of the Provisional IRA. He further admitted to being involved in the movement of 2 x .303 rifles in Newry.

[160] Since then, apart from a small number of road traffic offences and a minor petty sessions matter he has not been convicted of any relevant or significant offences.

[161] It is correct to say that the convictions in 1975 are of a very considerable vintage. The relevant offences were committed when the defendant was 17/18 years of age.

[162] Nonetheless, they do constitute an aggravating feature.

[163] In terms of mitigation the defendant points to the fact that he was subject to stringent bail conditions including curfew, reporting to the police and electronic tagging for approximately five years, having been released from custody on 25 September 2015.

[164] The electronic tag condition was removed after a bail variation application of 11 November 2019. This was permitted in consideration of the seriously ill condition of his wife who had been diagnosed with pancreatic cancer in September 2019 and who sadly passed away on 23 April 2020.

[165] The defendant also refers to the significant passage of time between his date of arrest and this conviction. I have dealt with both of these issues in the case of Blair and I propose to adopt a similar approach and make a modest adjustment having regard to the restrictions on his liberty during the relevant period of time.

[166] As is the case with all the defendants in this case Mr Morgan is entitled to a reduction in sentence arising from his plea. It was not an early plea but was of considerable utility to the court. As in all the other pleas, it is to be welcomed and encouraged.

[167] Finally, Mr Lyttle urges the court to take into account the impact that custody will have on this defendant in light of the restrictions imposed by the Covid pandemic. He submits that the observation of the court in **R v Manning** [2020] EWCA Crim 592 remains apposite.

> "*Applying ordinary principles, where the court is satisfied that a custodial sentence must be imposed, the likely impact of that sentence continues to be relevant to the further decisions as to its necessary length and whether it can be suspended*."

[168] All of this leads to a forceful submission by Mr Lyttle on behalf of Mr Morgan that this is an exceptional case in which any sentence should not require the defendant to serve any further time in prison.

[169] He has in effect served the equivalent of a two year prison sentence.

[170] The impact of the Covid-19 restrictions certainly are more relevant in a situation where the effect of any prison sentence will be a short period in prison or in a case where the threshold for custody is an issue.

[171] Having regard to the nature of the conviction in this case clearly the threshold for custody is met.

[172] In determining the appropriate sentence I consider that the appropriate starting point before mitigation having regard to the degree of culpability of the defendant and the aggravating feature of his record is one of four and a half years' imprisonment.

[173] I propose to reduce this figure to three years and nine months to reflect the restriction on the defendant's liberty whilst on bail and the impact of the Covid-19 restrictions in the prison environment.

[174] The defendant is entitled to a reduction for his plea of guilty, entered on 23 January 2020, shortly before the commencement of the trial. This was not an early plea and in the circumstances he is not entitled to what might be described as the maximum discount. Nonetheless, the plea of guilty was of particular assistance to the court in that it removed the necessity for a lengthy trial with a panoply of witnesses. This resulted in a very significant saving of court time and public expense. The acknowledgement of guilt is something which is to be welcomed and to be encouraged and reflected in a reduction in the defendant's sentence.

[175] I propose to reduce the sentence to one of three years in custody. I do not consider that there are exceptional circumstances which would justify suspending this sentence or reducing it further to avoid the necessity of the defendant being returned to custody. I have taken into account all relevant mitigating factors in coming to the final disposition.

[176] The defendant will therefore be sentenced to a term of imprisonment of three years in respect of count 4.

[177] Under Article 8 of the 2008 Order I must specify a custodial period which the defendant must serve which cannot exceed one half of the term. Having considered the appropriate licence period I have determined that the appropriate order in this case to be that the custodial period shall be the maximum permitted namely 18 months in custody with a period of 18 months on licence.

[178] The defendant will be given credit for the time already served in custody.

[179] Having been convicted of a relevant offence under Section 41 of the Counter Terrorism Act 2008 and having regard to the provisions of Section 45 and 53 of the Act I am compelled to impose counter-terrorism notification requirements under the Act for a period of 10 years.

JOSEPH MATTHEW LYNCH

[180] The defendant Joseph Matthew Lynch faces the following counts on the indictment:

Count 5 - Conspiracy to possess explosives with intent to endanger life or cause serious injury to property, contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and section 3(1)(b) of the Explosive Substances Act 1883 (11/8/14-11/11/14).

Count 6 - Conspiracy to possess firearms and/or ammunition with intent, contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Article 58(1) of the Firearms (Northern Ireland) Order 2004 (11/8/14-11/11/14).

Count 7 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (12/8/14).

Count 8 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (3/10/14).

Count 9 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (18/9/14).

Count 13 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (2/9/14).

Count 16 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (28/10/14).

Count 20 - Belonging to or professing to belong to a proscribed organisation contrary, to section 11(1) of the Terrorism Act 2000 (11/8/14-11/11/14).

Count 21 - Receiving training or instruction in the making or use of weapons for terrorism, contrary to section 54(2) of the Terrorism Act 2000 (12/8/14).

Count 22 - Attending at a place used for terrorist training, contrary to section 8 of the Terrorism Act 2006 (12/8/14).

Count 23 - Attending at a place used for terrorist training, contrary to section 8 of the Terrorism Act 2006 (2/9/14).

Count 24 - Receiving training or instruction in the making or use of weapons for terrorism, contrary to section 54(2) of the Terrorism Act 2000 (2/9/14).

[181] Joseph Matthew Lynch is from Limerick in the Republic of Ireland.

[182] He is identified as being present at the premises in Ardcarn Park on 12 August, 2 September, 18 September, 3 October, 28 October and 10 November 2014.

[183] On each occasion he has travelled in the company of others from the Republic of Ireland to meet with others involved in the conspiracy with which they are charged.

[184] On 12 August he attended with 2 persons from the Republic of Ireland who are not before the court. However, in the course of the meeting those present discuss organisational structure, fundraising by way of robbery, embryonic attack planning and the obtaining of munitions and recruitment. Specifically in relation to Lynch, he has discussions regarding the making of bombs with Blair and Hannaway. Lynch indicates that he is keen to get the manufacture of the explosives moved on. He is willing to get someone he knows to gather together components but wants Blair and Hannaway to meet this person to explain what exactly is needed as it is beyond his capability. Blair and Hannaway go on to advise and instruct on the components necessary for the making of a bomb and how such the components can be used to construct a bomb.

[185] Before leaving Blair asks Lynch when they will see him again to which he replies "when they want".

[186] His presence at this meeting and the contents of the conversation support both the general conspiracy charges, his belonging to or professing to belong to a proscribed organisation, attending at a place used for terrorist training and receiving training or instruction in the making or use of weapons for terrorism.

[187] Lynch also attends at the premises on 2 September 2014. On this occasion he attends with the defendant Sheehy and another man not before the court, both from the Republic of Ireland. They are picked up at Newry train station by the defendant Blair.

[188] The transcript of the conversations indicate that the "Northerners" present are keen to assess Sheehy's capacity and to train him properly. There is an expectation that there will be further interaction with Lynch hoping that Sheehy will be in a position to train others. In the course of the meeting Sheehy and Lynch receive instructions on the making of a bomb.

[189] His presence at this meeting and his contribution to the meeting support the general counts of conspiracy, the count of belonging to a terrorist organisation,

preparation of terrorist acts (because he attended the meeting) and attending at a place used for terrorist training and also receiving training or instruction in the making or use of weapons.

[190] Lynch is again identified as being present in the premises on 18 September. He is collected at the train station by the occupier of the premises Winters along with 2 other persons from the Republic of Ireland not before the court. As on previous occasions those present discuss how they might give effect to their terrorist intentions. There is a focus on bomb making and getting firearms. Lynch contributes to these conversations which are led by Hannaway, Blair and 2 others not before the court. Along with others Lynch expresses his frustration by the lack of progress and the risk that they will lose people if something is not done soon. Blair, Hannaway and one other person appear to have access to firearms, ammunition and explosives. They are still working towards obtaining more weaponry by making up their own devices and considering carrying out burglaries/robberies to obtain legal firearms held by others. When Lynch leaves the premises he is recorded as saying to Hannaway something about meeting a man and organising something within the next 2 weeks. Lynch comments that "all this man has is the heavy weapon and sawn-off …" Arrangements were made for a possible meeting on Saturday week in Dublin.

[191] On 3 October 2014 Lynch is present with Winters, Blair, Hannaway and 2 other people from the Republic of Ireland. In the course of the meeting they have a general discussion about potential strategies for their organisation including how to deal with fellow dissidents, the size and structure of their organisation, the identification of potential targets, training and sources of funding for terrorist activities including robbery. They discuss the getting together of the component parts of a bomb and the sourcing of firearms. It is clear that members of the group are frustrated by the lack of progress in carrying out its stated intentions. In the course of the conversations Lynch is asked about how many people there are in the South who might be willing to "do things." Lynch replies that he would not know anything about the South generally and that all he could speak for is the area where he comes from.

[192] His presence and contribution to the meeting supports the general conspiracy counts and also the count of preparation of terrorist acts by reason of his attendance at what clearly was a planned meeting.

[193] Lynch is next recorded as being present in the premises on 28 October. On that occasion he is joined by Blair, Hannaway and another unidentified male. The defendant Lynch arrives with another man not before the court having been collected at Newry train station by the defendant Blair. Blair complains about "stuff" that was recently sent over to him "as being disastrous". This appears to relate to aluminium dust which it was hoped might be used for the purposes of making pipe bombs. Lynch is asked about "sulphur" "he has down there" and "how much they have of that". Lynch replies he doesn't think he would have much

and refers to the person who had the material as having been charged himself. Lynch discusses his presence at meetings with people in the Republic of Ireland and as with previous meetings they discuss strategies for the organisation and the sourcing of weaponry. Lynch discusses his involvement in recruitment and the future of the organisation is the central element of the conversations. There are also extensive discussions about what is going on in the prisons. Lynch's presence at this meeting and his contribution to the meeting support the general conspiracy counts, the belonging to a proscribed organisation count and also preparation of terrorist acts on the relevant date.

[194] Lynch is also present with the defendant Sheehy and another person from the Republic of Ireland at the meeting on 10 November when he was arrested. There are suggestions that the other person from the Republic of Ireland, who is not before the court, has been recruited and is coming "on board". No specific charges arise from his presence on 10 November but it does support the general counts of conspiracy and belonging to a proscribed organisation.

Sentencing

[195] It is clear from the above summary that Lynch played a significant role in the conspiracy with which he is charged.

[196] He has travelled from his home in the Republic of Ireland to Newry on 6 occasions. These were clearly planned meetings at which he met with other people of like mind. On each occasion he is accompanied by other people from the Republic of Ireland.

[197] He is involved in discussions about making bombs. It is expected that he will be involved in both recruiting and training members in the Republic of Ireland. Although he does not remain present for the entirety of the meetings which he attended he played a significant role when he was there.

[198] He has pleaded guilty to serious offences. Of course I place those in their proper context namely preparatory acts which went nowhere. As Mr Mulholland says he may have been prepared to "talk the talk" but it is also in my view clear that he shared the aspiration of others present to engage in and organise terrorist activities. Their inability to do so may well have been due to a lack of sophistication, a lack of resources and of course the fact that they were under surveillance by the security services.

[199] In terms of his personal circumstances he has 13 previous convictions in the Republic of Ireland dating between 1955 and 1996. None appear to be significant, with the most serious being a common assault for which he received a sentence of 18 months' imprisonment on 6 July 1991. There is nothing of a terrorist nature disclosed in his criminal record.

[200] Mr Mulholland had much to say by way of mitigation. Most of this related to the defendant's personal circumstances.

[201] He was born on 16 February 1941 and is therefore approaching his 80th birthday.

[202] The court has the benefit of a probation report dated 25 March 2020 and also medical reports from his General Practitioner, Dr Alicia Flynn and from Dr Raymond Paul, Consultant Psychiatrist dated 5 June 2020, all of which provide insights into his personal circumstances.

[203] He has spent the last number of years whilst on bail caring for his wife of 60 years who has recently passed away because of ongoing chronic serious health problems. She suffered from cancer which involved regular hospitalisations and palliative care in the home. In addition to caring for her Mr Lynch has also been the main carer for his adopted adult son who also has significant health issues.

[204] He has 3 adult daughters.

[205] Dr Paul opines that:

> *"In my opinion this gentleman describes symptoms consistent with a probable recurrent depressive disorder over the years and with a current chronic low mood state as a result of the stresses, strain and worry of caring for his wife and his son. His wife tragically passed away recently which has caused a dip in his mood with a loss of appetite and a sense of feeling useless."*

[206] Mr Lynch's General Practitioner also confirms that he suffers from hypertension, cataracts and arthritis. He walks with the aid of a walking stick and takes a range of medications which are outlined in her various reports.

[207] Dr Flynn also confirms that Mr Lynch's son "suffers from Schizophrenia and has had two suicide attempts in the very recent past".

[208] Mr Lynch told Dr Paul that:

> *"This son suffers from Bipolar Disorder and Schizophrenia and that he attends psychiatric services, that he is an adopted child and has mental health difficulties from the age of 16. He told me that he has had 5 or 6 psychiatric admissions and has tried to kill himself on at least 3 occasions including overdosing and trying to drown himself. He told me that his son also has a recognised complication of Schizophrenia whereby he has to drink a lot of water. This has resulted in Mr Lynch having to*

> *remove 3 taps in the home and consequently check that his son is not drinking excess water. He has been admitted with low sodium and at times he is fearful for his son's life as a result of this. He feels he always has to keep an eye on him. He told me that he also keeps his son's tablets and his own tablets out of reach of his son as he has tried to kill himself in the past. He never feels under threat from his son but is worried that his son will harm himself."*

[209] Mr Lynch goes on to express his concerns to Dr Paul:

> *"That his other children will not be able to provide the same level of care for his son and he is worried that his son will drink excess water and need hospitalisation or that his son will try to kill himself during his time in prison. He is very worried and stressed about this. He told me that now his only focus is looking after his son."*

[210] Mr Lynch reports great concerns about the future care needs for his son and how he will be able to manage these. He worries about his ability to care for himself as this would cause a significant burden on other family members. He is worried about his son being a risk to himself through his own behaviours and through his mental state.

[211] In the probation report he acknowledges that his involvement in Irish Republican politics has been a significant part of his life – some of which has resulted in short prison sentences – malicious damage and assault on guards.

[212] Significantly, he reports that "it is all over for me …". He asserts that he no longer is involved or wishes to be involved in dissident Republican activities, something which was reinforced by Mr Mulholland in the course of his submissions on his client's instructions.

[213] In relation to mitigation I am also urged to take account of the restrictive bail conditions upon Mr Lynch was released after spending approximately a year in custody, the effect of the passage of time between conviction and sentence in this case and also the impact of the restrictions in prison arising from the Covid-19 pandemic. In relation to the latter point this is particularly relevant for Mr Lynch as he is someone who would be deemed vulnerable given his age.

[214] On this issue I adopt a similar approach as I have done in respect of the other defendants.

[215] In light of his convictions on Counts 5, 6, 7, 8, 9, 13, 16, 21, 22, 23 and 24 I must consider the issue of "dangerousness" under the 2008 Order.

[216] On this issue I apply the principles set out in my discussion in the case of the defendant Blair which I do not propose to repeat.

[217] Notwithstanding the serious nature of these charges and the role the defendant has played in them I have come to the conclusion that this defendant does not meet the statutory test and I am not satisfied that there is significant risk to members of the public of serious harm occasioned by the commission by this defendant of further specified offences.

[218] In coming to this conclusion I am particularly influenced by the defendant's personal circumstances. I am conscious of the fact that he is 80 years of age and will be older on release from prison. I take into account his health and his obligations in relation to his son. I also take into account his disavowal of any intention to engage in further dissident Republican activities. I understand that such disavowals can be self-serving but on balance I am persuaded that this is genuine on his part. I also bear in mind the fact that the defendant was the first of these defendants to plead guilty.

[219] I consider that this defendant's culpability is high but lower than that of either Blair or Hannaway. I recognise that in deciding he is not dangerous within the meaning of the 2008 Order that this will inevitably lead to a significant difference in the sentence I will impose on him compared to Blair and Hannaway. However, the assessment of dangerousness is very much fact specific. I have decided that in his case the balance tips in his favour for the reasons I have set out.

[220] In light of this conclusion it is not necessary for me to consider the issue of extended custodial sentences or indeterminate sentences.

[221] That being so it remains for the court to impose the appropriate sentence. In my view having regard to the severity of the offences and the role played by the defendant the custody threshold is clearly met.

[222] Mr Mulholland urged me to take an exceptional course and suspend any custodial sentence in this case. In doing so he points to the applicant's age, his obligations to his son and the impact that any custodial sentence will have both on the defendant's health and his son's health, the impact of Covid-19 particularly on someone of his age, the passage of time since the commission of these offences and the fact that he has served a significant period of time in custody.

[223] I accept that in exceptional circumstances it is open to the court to take such a course and I have carefully considered whether it would be appropriate in this case.

[224] However, the overriding obligation of the court is to impose a sentence which reflects the culpability of the defendant and the serious nature of the offences which he has committed. As I have said earlier those who commit these types of offences must expect deterrent sentences.

[225] The matters which Mr Mulholland urged upon me will have a mitigating effect on the sentence but I do not consider that they would be sufficient to justify suspending the sentence in the particular circumstances of this case.

[226] Taking into account the defendant's culpability and the severity of the offences before mitigation I would have imposed a sentence of ten years' imprisonment. I propose to reduce that sentence to one of eight years having regard to his personal circumstances, the restriction on his liberty whilst on bail and the impact of Covid-19 restrictions in the prison environment. This is a somewhat greater discount than I have allowed for the other defendants. I consider this is justified because of the defendant's age (80 years) in addition to the other personal circumstances I have identified.

[227] The defendant is clearly entitled to discount for his plea of guilty.

[228] There can be no doubt that this plea was of immense utility to the court. Mr Mulholland suggests that there were contestable issues in his defence. It is right that there was an opportunity to challenge much of the expert evidence in the case and that the court could have spent weeks and months considering pre-trial disclosure applications. Even after such applications any trial would inevitably have been a lengthy affair.

[229] By pleading guilty to all the offences there is no doubt that considerable time and expense has been saved.

[230] I also take into account the fact that the defendant was the first of these currently being sentenced to plead guilty in this case. He did so on 10 January 2020. In so doing he may well have acted as a catalyst in respect of all of those who subsequently pleaded.

[231] I accept that his plea is a reflection by him of his stated intention to end his links with republican groups, which was a contributing factor to my decision in relation to the assessment of dangerousness.

[232] I therefore propose to reduce the overall sentence to one of six years and six months' imprisonment.

[233] I therefore propose to impose a sentence of six years and six months' imprisonment in respect of Counts 5, 6, 7, 8, 9, 13, 16, 21, 22, 23 and 24.

[234] I propose to impose a prison sentence of five years in respect of Count 20. All of the sentences are to be concurrent.

[235] Under Article 8 of the 2008 Order I must specify a custodial period at the end of which the defendant will be released on licence which cannot exceed one half of

the term. Having regard to the appropriate licence period I consider that the appropriate custodial period is the maximum under the Order, namely three years and three months with the remaining three years and three months to be served on licence.

[236] In respect of Count 20 the custodial period shall be two and a half years with two and a half years on licence.

[237] The defendant is to be given credit for his 323 days spent in custody.

[238] Having been convicted of relevant offences under Section 41 of the Counter Terrorism Act 2008 and having regard to Sections 45 and 53 of the Act I am compelled to impose counter-terrorism notification requirements under the Act for a period of 15 years.

LIAM HANNAWAY

[239] The defendant Liam Hannaway faces the following counts on the indictment:

Count 5 - Conspiracy to possess explosives with intent to endanger life or cause serious injury to property, contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and section 3(1)(b) of the Explosive Substances Act 1883 (11/8/14-11/11/14).

Count 6 - Conspiracy to possess firearms and ammunition with intent, contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Article 58(1) of the Firearms (Northern Ireland) Order 2004 (11/8/14-11/11/14).

Count 7 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (12/8/14).

Count 8 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (3/10/14).

Count 9 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (18/9/14).

Count 10 - Providing weapons, training or instruction, contrary to section 54(1) of the Terrorism Act 2000 (12/8/14).

Count 11 - Providing weapons, training or instruction, contrary to section 54(1) of the Terrorism Act 2000 (2/9/14).

Count 12 - Providing weapons, training or instruction, contrary to section 54(1) of the Terrorism Act 2000 (18/9/14).

Count 13 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (2/9/14).

Count 14 - Collecting information likely to be of use to terrorists, contrary to section 58(1)(b) of the Terrorism Act 2000 (3/10/14).

Count 15 - Collecting information likely to be of use to terrorists, contrary to section 58(1)(b) of the Terrorism Act 2000 (3/10/14).

Count 16 - Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006 (28/10/14).

Count 25 - Belonging to or professing to belong to a proscribed organisation, contrary to section 11(1) of the Terrorism Act 2000 (11/8/14-11/11/14).

[240] Liam Hannaway has been identified as being present at 6 of the meetings which where the subject matter of the surveillance.

[241] Much of the evidence relating to him has been summarised earlier in relation to the defendant Blair.

[242] On 12 August 2014 the defendant travelled to the meeting from Belfast along with another person not before the court. Three of those present had travelled from the Republic of Ireland.

[243] In the course of the meeting the men discuss organisational structure, fundraising by way of a robbery, embryonic attack planning, the obtaining of munitions and recruitment.

[244] Specifically, Hannaway is heard engaging in a conversation about a potential route in Newry which appears to relate to a potential target. He talks about shotguns and collecting them from a hiding place in County Clare. He specifically discusses potential recruitment and the necessity to devise a strategy. He is heard referring to the need to recruit younger members. Along with Blair he talks about making bombs and where components can be bought and for how much for this purpose. Blair and Hannaway lead this discussion. There is a discussion about getting information from those in Fermanagh who would know where arms had been hidden. Blair refers to a timer which he had given Hannaway the day before but which Hannaway had left at home.

[245] Hannaway's presence at this meeting and his contribution to the meeting is evidence supporting the general conspiracy counts against him, and the count relating to belonging to and professing to belong to a proscribed organisation. The evidence also supports Count 7 namely preparation of terrorist acts in the sense that he attended this meeting and also Count 10 which relates to the role he and Blair

played in explaining to the others present how to make an improvised explosive device.

[246] At the meeting on 2 September 2014 he and Blair were again present with the defendants Sheehy, Lynch and another person not before the court.

[247] Hannaway arrives at the premises shortly before 12.50 hours where he is heard discussing recruits including two French men. The defendant Sheehy appears to be aware of these potential recruits. They are heard discussing the risks of surveillance. Hannaway emphasises the need to be aware of this and take steps like leaving phones in their cars rather than bringing them into the meeting. He states that the group needs to realise its limitations and of the need to concentrate on building and going forward. In response to Blair who suggests that they need to make an impact by doing something Hannaway replies that if they were to go out and do something the following day they would all be lifted and the way they were talking on their phones earlier on they would be "*away*."

[248] Blair and Hannaway in particular seemed to be assessing Sheehy's ability to contribute and Blair leads in giving instructions about making bombs with Hannaway contributing. It is clear from the contents of the conversation that Blair and Hannaway are imparting their knowledge of the necessary components and techniques for making improvised explosive devices. Hannaway engages in conversations with Sheehy about whether he is recruiting in his area and whether he knows how to make homemade shotguns.

[249] The group discuss sources of money and the need for funds with Hannaway suggesting getting a fixed supply of cigarettes.

[250] After the group from the Republic of Ireland leave Blair and Hannaway engage in conversation about guns. Hannaway specifically talks about Uzis and the cost of buying one. Hannaway specifically talks about weapons and ammunition. He talks about how if he could get the weapons they could penetrate police vehicles. Hannaway is heard leading a conversation and prompting the defendant Heaney about a potential target for obtaining money. This is a continuing theme from the earlier recording on 12 August. Hannaway says "we can't move without money". He and Blair moan about the lack of drivers. They discuss attacking and robbing a local hotel where Police Board meetings may have taken place.

[251] Hannaway's presence and contribution to this meeting support the general counts in relation to conspiracy and belonging to a proscribed organisation. They support the specific Count 11 of providing weapons training or instruction and the preparation of terrorist acts because of his attendance at the actual meeting itself.

[252] Hannaway is next identified as being present at Ardcarn Park at a meeting on 18 September 2014 along with Blair, Winters and Lynch.

[253] In the course of the meeting Blair and Hannaway gave instructions to a person not before the court on the making of a pipe bomb. The group discuss how to give effect to their terrorist intentions. There is a focus on bomb making and getting firearms. They are having problems getting materials, moving freely because of surveillance and there is a lack of money. There is a lack of consensus as to appropriate targets. Hannaway appears to have access to firearms, ammunition and explosives. They were working towards obtaining more weaponry by making up their own devices and considering carrying out burglaries/robberies to obtain legal firearms held by others. Whilst there is no crystallised plan, targets and potential deployment are discussed. Hannaway suggests at one stage that –

> "*We need to look at a Christmas campaign at something here … because every year we are doing our Christmas campaign*."

Hannaway indicates that "there is enough stuff there to keep them going for a while". In the conversation it is clear that Hannaway and Blair are keen to know what can be done by those from the Republic of Ireland in terms of providing weapons and recruits. Hannaway's presence at this meeting supports the general counts of conspiracy and belonging to a proscribed organisation. His presence at the meeting supports Count 9 namely preparation of terrorist acts and his presence and contribution also support Count 12 in that he provided weapons training or instruction as evidenced by the instructions he gave to a member not before the court as to the making of improvised explosive devices.

[254] On 3 October 2014 Hannaway is again identified as being present with the defendants Blair, Lynch and Pearce. On that occasion Pearce attended and gave information about a potential target for a robbery. (He was charged as an aider and abetter of the source of the information).

[255] The conversations follow by now an established pattern. Those present discuss strategies for their organisation including, inter alia, how to deal with fellow dissidents, the size and structure of their organisation, the identification of potential targets, training and sources of funding for terrorist activities including robbery.

[256] They discuss getting together the component parts of a bomb and the sourcing of firearms. This group clearly aspire to act but are frustrated by a lack of progress. At points the conversations get heated with the group talking over each other as they debate what needs to be done. The defendant Lynch is present with 2 other men from the Republic of Ireland for part of the gatherings on this date. Blair and Hannaway specifically discuss the movements of a prison governor who walks in the Mournes area. Hannaway is heard saying –

> "*You would just pull the fucking rug from under all their feet if you done a governor … they'd all be looking at everyone who the fuck are these wee pricks, where did they*

> *come from? Who are they? … New co would be like a holy fuck, the best about it is we don't need to have a."*

[257] When discussing future actions Hannaway says that the group should be planning to do things 3 or 4 years "down the line" and propose that they "do 2 things a month".

[258] He elaborates –

> *"You have to say are we in a position to fucking whack a cop right … we can go out and do it no problem, it is the consequences after, they will shut everybody down and if we got … they'll hit my house, they'll hit your house and they'll go there's a timer right, put him in, there's a fucking piece of wire, right get him in. Everybody will be just fucking down and then we are back to square one again … We do it at the stage we can sustain at, it doesn't matter if we are all lifted, we have other fucking people who can take liability."*

[259] Other targets were discussed including to "*look at probation officers and anything that is administering British rule*." Hannaway's presence at this meeting supports the general counts of conspiracies and belonging to a proscribed organisation. His presence at the meeting supports the specific Count 9 of preparation of terrorist acts.

[260] Hannaway is next recorded as being present at the premises on 15 October when he arrives with another person not before the court. Whilst present he is recorded discussing with Blair how easy it is to get information off the internet about bombs. Specifically he refers to a German product for killing garden moles that causes an explosion. He grumbles that they have not got money to buy rounds of ammunition yet and that if he were not using his own money nothing would be happening. Most of his money is going on petrol as it is costing a fortune travelling to talk to people.

[261] Hannaway is also heard pressing the defendant Heaney about Heaney getting information. He is subsequently heard putting pressure on Winters to in turn put pressure on Heaney to make progress on the matter.

[262] On 28 October Hannaway is again present at Ardcarn Park with the defendants Blair, Lynch and another person not before the court. An unidentified person is also present during the meeting. They engage in discussions about other dissident Republicans and the need to obtain materials. They discuss potential targets for raising money including a "tiger kidnapping". Specifically Hannaway says –

> "*See if you say to anybody yous know, see getting managers, whether they are the manager of a bar or a manager of fucking you know, that's where the key is cause then we go to their house. Take the house, we can go right listen in yous go, yous have to bring the money out and take the fucking kids and whoever else out, fucking they go away, they do the fucking money, bring it back/and especially now coming to Christmas the likes of restaurants and bars you'll get good money out of them.*"

[263] Hannaway's presence at this meeting supports the general counts on the indictment and the specific count of preparation of terrorist acts.

[264] Hannaway is also present at the meeting on 10 November when he is arrested. No specific count arises from his presence at Ardcarn Park on that date.

Sentencing

[265] Liam Hannaway was arraigned and pleaded not guilty on 28 June 2018 to all counts on the indictment. Upon application he was re-arraigned and pleaded guilty on 29 January 2020 to all of the counts against him on the indictment.

[266] I do not propose to repeat at length what I have said already about these offences. The gravamen of the offences is captured by the conspiracy counts in 5 and 6.

[267] Self-evidently he has pleaded guilty to very serious offences. In my opinion any objective analysis of the contents of the discussions and Mr Hannaway's conduct in the course of the meetings justifies the conclusion that he played a significant and leading role in this conspiracy. This is evidenced in particular by the fact that he faces charges of providing weapons training or instruction. He along with Blair "led" the discussions. In the course of the discussions he characterises himself as holding a leadership role in Belfast. In relative terms I consider his role to be on a par of that of Blair.

[268] An aggravating feature in relation to Hannaway is the fact that he has previous and highly relevant criminal convictions.

[269] On 20 November 2008 he was convicted of the following offences:

(i) Possession of explosives and ammunition with intent on 17 September 2004. The conviction relates to the possession of a coffee jar device, energel explosives, the remains of a number of detonators, the components of a pipe bomb, 8 x 12 bore shotgun cartridges, 34 rounds of .45 ACB pistol cartridges and 34 rounds of 7.62 x 39 mm assault rifles cartridges.

(ii) Possession of a firearm/ammunition in suspicious circumstances on 14 December 2007. The conviction relates to the possession of a Webley Mark 4 revolver and 12 x .22 long rifle rim-fire cartridges.

[270] Mr Hannaway was born 26 November 1969. He is almost 51 years of age. The court has received medical reports from Dr Aidan Devine, senior clinical psychologist dated 8 July 2020 and from Mr Michael Gavin McAlinden, Consultant Orthopaedic Surgeon, dated 17 September 2020.

[271] He suffers from poor physical and mental health. He is described as very over weight with mobility issues. Dr Devine opines that Mr Hannaway suffers from chronic post-traumatic stress disorder, the roots of which can be traced to his experiences of troubles related trauma, threats on his home and most noticeably an attempted murder of his father in which his brother was also wounded. He was prescribed antidepressant medication and continues to engage with counselling. He suffers from a variety of musculoskeletal complaints which are detailed in Mr McAlinden's report.

[272] Like the other defendants Mr Hannaway has been subject to restrictive bail terms. He was released from custody on 24 September 2015 to his home address in Belfast. He was subject to electronic tagging and a curfew between 7.00 pm and 7.00 am. He was ordered to report to police three times per week. The curfew was subsequently amended to 10.00 pm to 7.00 am and later to 12 midnight to 7.00 am.

[273] There has been a significant passage of time since his arrest and sentencing. I recognise that this delay may have an adverse impact on someone who suffers from mental health issues, although this is not expressly referred to by Dr Devine in his report. I also recognise that Mr Hannaway's imprisonment during the current restrictions arising from the Covid-19 pandemic will have an adverse impact on his custodial sentence.

[274] Mr Hannaway has been convicted of a series of offences which are serious and specified offences under the Criminal Justice (Northern Ireland) Order 2008 – Counts 5, 6, 7, 8, 9, 10, 11, 12, 13 and 16. That being so the "dangerousness" provisions under the Criminal Justice (Northern Ireland) Order 2008 come into play.

[275] In considering this issue in relation to Hannaway I apply the principles I have already set out in relation to the defendant Blair.

[276] Mr O'Rourke forcefully argues that the court should not be of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

[277] He points to the six year delay which has been occasioned between November 2014 and today together with the fact that the defendant has not

committed any offences during the five years he has been on bail. He asks the court to bear in mind that the evidence available from the transcript suggests that the defendants lacked the wherewithal and resources to acquire the means to perpetrate any substantive violent offences. He says that there is insufficient evidence to suggest that at the current time this has changed or may change upon his release from imprisonment to such an extent that he could now be assessed as presenting a significant risk of serious harm to members of the public. I have considered these submissions carefully in applying the appropriate principles.

[278] However, the dominant influence on me is the defendant's clear and obvious commitment to terrorism demonstrated in these conversations. That determination or commitment has also to be seen in the context of his convictions in 2008. The imposition of a ten year term of imprisonment clearly had no deterrent effect from such a commitment on his release, after serving four years in custody. There is nothing in the material before me by way of submissions or in the medical evidence which suggests that the defendant in any way disavows that commitment. This conspiracy ended because he and a number of others were arrested. The threat from terrorist organisations remains real and on-going. Just because as a result of extensive surveillance and a lack of resources this particular conspiracy was thwarted does not in my view mean that the defendant does not present as a significant risk of serious harm now or in the future to members of the public.

[279] As I have said the defendant's conduct on bail is a relevant factor but of course he was under very restrictive conditions which were put in place with the purpose of ensuring that any risk posed would be minimised. The requirement for those restrictions was precisely because of the risk posed by the defendant.

[280] For these reasons, applying the appropriate statutory test in accordance with the legal principles to which I have already referred, I have come to the conclusion that in respect of Hannaway the conditions of Article 13(1)(b) of the 2008 Order are met. I am satisfied that there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences.

[281] Given that Counts 5 and 6 carry a maximum sentence of life imprisonment I must consider whether the seriousness of the offence or offences associated with it are such to justify the imposition of a life sentence.

[282] In the circumstances of this case I do not consider that a life sentence, which is very much a sentence of last resort and should be reserved for the most serious of cases, is justified in this case.

[283] The court therefore must consider whether an extended custodial sentence would be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences. In the event that I do not consider that an extended custodial sentence would be adequate

for the purposes of protecting the public from serious harm I must impose an indeterminate custodial sentence.

[284] In this regard the court must assess the future by assessing the risk to the public posed by the commission of further or future offences by the offender which he would or might commit subsequent to the current sentencing hearing.

[285] Considering this issue I bear in mind the matters to which I have already referred in the assessment of dangerousness.

[286] When considering the imposition of an indeterminate custodial sentence I bear in mind the comments to which I have referred earlier in these remarks of Morgan LCJ in **R v Pollins** [2004] NICA 62 where at paragraph [27] he observed that:

> *"[27] However, in a case in which a life sentence is not appropriate an indeterminate custodial sentence should not be imposed without full consideration of whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the individual offender. In that sense it is a sentence of last resort. The issue of whether the necessary public protection can be achieved is clearly fact specific. That requires, therefore, a careful evaluation of the methods by which such protection can be achieved under the extended sentence regime."*

[287] In my view the extended sentence regime would not provide the protection required in respect of this defendant. In my view on release from prison absent on-going supervision, given the particular circumstances of this defendant, there remains the real risk that he will re-engage in actions designed to further the objectives of criminal terrorist activities. It may be that in the future his personal circumstances or the circumstances prevailing in Northern Ireland will result in a change in any licence conditions imposed or considered appropriate when he is released from prison.

[288] In those circumstances I consider that an indeterminate custodial sentence is required in this case.

[289] All the material available to the court points to someone who has a longstanding and voluntary commitment to terrorism.

[290] In those circumstances under Article 13 of the 2008 Order I must specify a period which I consider appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offences to which the defendant

has pleaded guilty. I propose to take a similar approach to sentencing as in the case of Blair.

[291] In this regard I return to the aggravating and mitigating features to which I have referred earlier.

[292] Prior to the consideration of any mitigation I would have imposed a period of seven years for the purposes of Article 13.

[293] I propose to reduce this to six years to take account of the consequences of the restrictions arising from Covid-19. I also take into account the significant restriction on his liberty arising from bail conditions over a lengthy five year period.

[294] I turn now to a deduction for the defendant's plea of guilty.

[295] This was not an early plea and so the defendant is not entitled to what may be described as the maximum discount.

[296] It is a well-established principle that the defendant is entitled to a reduction in sentence arising from a plea of guilty.

[297] In this case the pleas of guilty were of particular utilitarian value to the court in that they removed the necessity for a lengthy trial with a panoply of witnesses. This resulted in a very significant saving of court time and public expense. The acknowledgment of guilt is something which is to be welcomed and to be encouraged. It should be reflected in a reduction in sentencing.

[298] I propose to reduce the sentence of 6 years to one of 5 years' imprisonment. 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 5 year term is served.

[299] I therefore propose the following sentences in respect of each count. On counts 5, 6, 7, 8, 9, 10, 11, 12, 13 and 16 I impose an indeterminate custodial sentence with a minimum term of imprisonment of five years.

[300] Counts 14 and 15 – five years' imprisonment. (Insofar as is necessary to do so I direct that this will be made up of two years and six months in custody and two years and six months on licence.)

[301] Count 25 – five years' imprisonment. (Insofar as is necessary to do so I direct that this will be made up of two years and six months in custody and two years and six months on licence.)

[302] All sentences are to run concurrently. The defendant is to be given credit for time already spent in custody, namely 320 days which will form part of the five year term and sentence.

[303] Having been convicted of a relevant offence under Section 41 of the Counter Terrorism Act 2008 and having regard to the provisions of Section 45 and Section 53 of the Act I am compelled to impose counter-terrorism notification requirements for a period of 30 years.

JOHN SHEEHY

[304] The defendant John Sheehy stands charged with the following counts:

Count 5 - Conspiracy to possess explosives with intent to endanger life or cause serious injury to property contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and section 3(1)(b) of the Explosive Substances Act 1883 (11/8/14-11/11/14).

Count 6 - Conspiracy to possess firearms and/or ammunition with intent contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Article 58(1) of the Firearms (Northern Ireland) Order 2004 (11/8/14-11/11/14).

Count 13 - Preparation of terrorist acts contrary to section 5(1) of the Terrorism Act 2006 (2/9/14).

Count 23 - Attending at a place used for terrorist training contrary to section 8 of the Terrorism Act 2006 (2/9/14).

Count 24 - Receiving training or instruction in the making or use of weapons for terrorism contrary to section 54(2) of the Terrorism Act 2000 (2/9/14).

Count 26 - Belonging to or professing to belong to a proscribed organisation contrary to section 11(1) of the Terrorism Act 2000 (11/8/14-11/11/14).

[305] John Sheehy is from Listowell, County Kerry. He attended at 2 meetings in Newry on 2 September 2014 and 10 November 2014. He travelled to this jurisdiction with the defendant Joseph Lynch and another man not currently before the court arriving at Newry train station before travelling to Ardcarn Park. Also present in the house were the occupier Winters and the defendants Blair and Hannaway. From the transcript it appears that the Northerners, Blair and Hannaway were assessing the defendant Sheehy's capacity to assist in the conspiracy with which they are all charged. In the course of the meeting he is given instructions about how to construct an explosive device. He participates fully in the discussions with Blair and Hannaway about making such a device and asks relevant questions.

[306] There is an expectation that there will be further interaction with the defendant Lynch hoping that Sheehy will be in a position to train others in the future. He is also asked in the course of the conversations by Hannaway as to whether he knows how to make homemade shotguns so that the members would have something to protect themselves. In the course of the conversation Sheehy states that he had robbed guns in the past but that was when gun safes were "more like wardrobes." Sheehy and the others from the Republic are present for just over 2 hours before they leave. Sheehy is also present on 10 November 2014 when he is arrested at the property in Ardcarn Park. From the transcript of the conversations on that date he does not appear to make any comments of any significance.

Sentencing

[307] Mr Sheehy was born on 22 July 1984 and is now aged 36 (30 at the time he committed these offences).

[308] It will be seen that he is significantly younger than all of the other defendants.

[309] He has a clear record save for an offence relating to the sale of Easter lilies in Listowel in 2019 when his failure to pay a fine that was imposed resulted in him spending 24 hours in Cork prison. He has in effect a clear record.

[310] Self-evidently he has pleaded guilty to serious offences. Those offences have to be seen in the context of the nature of the conspiracy itself and the extent of his involvement in that conspiracy. It is clear that nothing came of the conspiracies. In terms of his role the gravamen of his conduct relates to his attendance at Ardcarn Park on 2 September 2014. In the course of that meeting Blair was recorded as giving him instructions in bomb making. There is an expectation that Sheehy will be in a position to train others, but there is nothing to suggest that in fact this was advanced in any way. When asked if "they" had access to weapons he replies that they have "one old dangerous sawn off shotgun". An acquaintance called Tom may provide gunpowder and shotgun cartridges but he is wary of losing his firearms licence if he is associated with "them". In relative terms it seems to me it can be fairly said that his participation and contribution to the conspiracy was at the lower end of culpability. He did nothing to advance the conspiracy.

[311] In terms of his personal circumstances he lives in a remote rural area in Listowel, County Kerry. He appears to have lived a relatively isolated life. His father died before he was born, he has no siblings and he has lived with his mother throughout his life except for the period he spent on remand in custody and on bail in Newry.

[312] He has a seven year old son who stays with him every weekend. I have had the benefit of a character reference from the mother of that child which attests to the contribution he makes to the care of his son.

[313] I have also received a report from Dr Paul, Consultant Psychiatrist, dated 17 August 2020.

[314] Based on the history presented to him and the GP notes available Dr Paul's opinion is that the applicant suffers from depression and anxiety with obsessive compulsive traits. Whilst he has pseudo hallucinations of a derogatory nature these are not indicative of a psychotic illness. However, Dr Paul suggests that the defendant suffers from typical anxiety symptoms.

[315] The defendant spent 318 days in custody before being released to an address in Newry during which time he was fitted with an electronic tag and subject to a curfew between 8.00 pm to 7.00 am. He lived in a bedsit in Newry during this period. He was not familiar with the area nor did he know anyone there. He was unable to have access to his son. During this time he attended Daisy Hill Hospital Community Mental Health Department on a regular basis. It was in this setting that his depression was first identified.

[316] On 16 June 2018 his bail conditions were amended so that he could return home to Kerry.

[317] Since he has been admitted to bail he has complied with all his conditions and not come to the adverse attention of the police in either jurisdiction.

[318] Through his counsel, Ms McDermott, he expresses remorse for attending the two meetings in Newry. He asserts that he was invited to attend; he had never been over the border before; he has no skills which could have been utilised for terrorist purposes; he had no intention of recruiting others and he indicates that he attended on the two occasions because "I just got carried away with myself".

[319] He says that his only social outlet, before the commission of these offences, was that he developed a political interest in Republican Sinn Fein. He sold their papers in Listowel and sometimes helped to take up collections in local public houses for prisoners and their dependents. Of particular relevance, through his counsel, he expressly says that he has severed his connections with Republican Sinn Fein and the IRA in any manifestation. His experience in prison and on bail has thoroughly disabused him of any attraction to terrorism or wish to be involved in it. He asserts that he has severed all political links and that he has utterly resolved not to repeat his past mistakes.

[320] In light of the defendant's convictions on Count 5, 6, 13, 23 and 24 the court must 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*" under the 2008 Order. In approaching this issue I apply the principles which I have already set out in detail earlier in this ruling.

[321] Applying those principles and having regard to all the material available to me in relation to this defendant I have come to the conclusion that the defendant does not present such a risk.

[322] In coming to this conclusion I do bear in mind the serious nature of the offence and the fact that it was committed in a terrorist context which often points to a highly motivated individual willing to commit serious offences notwithstanding the risks or impositions of prison sentences.

[323] However, looking at this particular individual I am influenced by his clear record, his conduct on bail, his personal circumstances and his express disavowal of any ongoing connection with Republican activities. I am persuaded on balance that this is not a case which meets the statutory test for "dangerousness".

[324] Having regard to the defendant's culpability in what is a serious charge I consider the appropriate starting point is a custodial sentence of eight years and six months. I propose to reduce this by a modest amount to reflect the restrictions on the defendant's liberty whilst he was on bail and also the impact of the restrictions arising from the Covid-19 pandemic for those spending time in custody, to one of seven years and six months' imprisonment.

[325] The defendant is entitled to a further reduction in the sentence arising from his plea of guilty. The plea in this case was of significant utility to the court and saved considerable expense and time. It is to be welcomed and encouraged. In this particular case I consider that the plea is in fact evidence of remorse. Accordingly, I propose to impose an overall prison sentence of six years.

[326] Therefore, in respect of Counts 5, 6, 13, 23 and 24 I impose a custodial sentence of six years' imprisonment.

[327] In respect of Count 26 I impose a term of imprisonment of five years.

[328] Under the provisions of Article 8 of the 2008 Order I must specify a custodial period at the end of which he will be released on licence which cannot exceed one half of the term. Having considered the appropriate licence period I consider that the custodial period should be the maximum period namely three years in custody and three years on licence.

[329] In respect of Count 26 the custodial period will be one of two and a half years and two and a half years on licence. All the sentences are to run concurrently.

[330] The defendant will be given credit for the 320 days spent in custody.

[331] Since the defendant has been convicted of an offence under Section 41 of the Counter Terrorism Act 2008 and having regard to Sections 45 and 53 of the Act I am

compelled to impose counter-terrorism notification requirements for a period of 15 years.

KEVIN JOHN PAUL HEANEY

[332] The defendant Kevin John Paul Heaney is charged with one count namely:

Count 27 - Belonging to or professing to belong to a proscribed organisation contrary to section 11(1) of the Terrorism Act 2000.

[333] He is identified as having been present at the premises at Ardcarn Park on 2 September 2014, 12 September 2014, 18 September 2014 and 15 October 2014.

[334] On 2 September 2014 he is present before the "Southerners" arrive with Winters and Blair. The conversation is social with Heaney contributing. They all appear comfortable in each other's company. When Blair is away to collect the "Southerners" Heaney is able to text Hannaway as to Blair's whereabouts. Although present at Ardcarn Park, he does not contribute to the meeting when the "Southerners" arrive. Once they leave Hannaway chats to Heaney. Blair and Hannaway discuss guns in Heaney's presence and targeting police cars, although Heaney does not contribute to the conversation. He is asked by Hannaway whether he is doing "a bit of homework on this". After he leaves Hannaway appears to be suggesting to Winters that he should put pressure on Heaney to find out something for them. When Heaney returns the topic of conversation is changed.

[335] On 12 September Heaney is asked by Winters if he is going to Katesbridge. Marks, Winters and Blair have a conversation which includes a discussion about guns but with no significant contribution from Heaney apart from some conversations about horseracing. On 18 September 2014 Heaney and Winters are present in the house together before the "Southerners" arrive.

[336] When the Southerners do arrive he appears to be acquainted with them.

[337] Blair goes on to ask Heaney if he has any word on the "rich bitch" which had apparently been discussed before. The inference to be drawn is that Heaney has been asked to gather information that may assist in the planning of some sort of robbery.

Sentencing

[338] The defendant Heaney has pleaded guilty to a serious offence. In the context of this case it is fair to say that he has not played a significant role in the meetings/discussions which took place. The vast majority of any contributions he made related to social matters. There is a suggestion that he had been put under some pressure to assist in targeting individuals but no evidence that he in fact did

so. This context is reflected in the fact that he only faces one charge and does not face the more serious offences which appear on this indictment.

[339] He was born on 20 August 1973 and is now 47 years of age. He does have a criminal record with 19 previous convictions ranging between 1992 and 2012.

[340] A serious charge relates to placing an article causing a bomb hoax on 18 May 1992 in respect of which he received a probation order for two years. The most serious conviction on his criminal record relates to a conviction for robbery at Newry Crown Court on 25 September 1997 in respect of which he received a prison sentence of ten years. The background to that offence was that on 4 May 1996 the defendant armed with a handgun entered the premises of Co-Op Travel Care at Market Square, Newry. He pointed the firearm at a member of staff and demanded money which was to be placed into a green plastic carrier bag. The member of staff complied with this direction fearing for her life. He ordered the staff to lie on the floor as he made good his escape.

[341] Whilst these particular convictions are of considerable vintage his criminal record is nonetheless an aggravating feature in his case.

[342] In mitigation Mr Mallon points to the relative lack of involvement by the defendant in the meetings which form the subject matter of the indictment. This is certainly relevant to his culpability and as I have said is reflected in the charge that he faces. Nonetheless, is it clear that he was comfortable in the company of his co-defendants, was familiar with most of them and was fully aware of the context of their discussions.

[343] Mr Mallon points to the defendant's personal circumstances in support of his plea in mitigation. In particular he submits that since the commission of these offences the defendant has matured considerably. He is now the father of a three year old daughter and in a stable relationship with the mother of the child. He has provided a character reference from a local councillor who acknowledges the severity of the offences that have brought the defendant to court. He points out however that in recent times the defendant has contributed to his local community, helped with local clean ups, supported the elderly and was involved in family activity days. He suggests that this conviction and today's sentence will help draw a conclusion and an end to "a darker time in his life". I have also been provided with a very short medical report from the defendant's general practitioner which simply states:

> *"I can confirm that this patient has a long history of significant mental illness.*
>
> *Our first record of severe depression, with intermittent self-harm, dates back to 1995.*

He was diagnosed with post-traumatic stress disorder on 14 April 2014."

No further detail is provided.

[344] As is the case with the other defendants Mr Mallon draws my attention to the fact that the defendant has been on bail for five years after having spent 284 days in custody. During that time he was subject to stringent bail conditions. He submits that a combination of the passage of time and the restrictive bail conditions should result in some mitigation of the sentence which the court should impose. He also relies on the current restrictions necessarily imposed on prisoners in custody because of the Covid-19 pandemic.

[345] In relation to all of these matters I do not consider that there is any merit in a reduction in sentence for any personal circumstances put forward on behalf of Mr Heaney. I do consider that a modest adjustment in sentence should be made arising from the strict bail conditions over a significant period of time and the likely impact of Covid-19 restrictions in place for those currently in custody, which are likely to continue.

[346] However, the real and substantial mitigating feature in this case is the defendant's plea of guilty. It was not entered at the earliest opportunity but it is clear that it was of considerable utility. It has saved substantial court time and huge public expense. The plea is to be welcomed and encouraged.

[347] Given all of these circumstances Mr Mallon urges the court to impose a sentence which will not require an immediate return to custody. He says that this is particularly applicable arising from the current Covid-19 restrictions when any further custodial term will be of a limited nature.

[348] Having considered all of these matters I have come to the conclusion that prior to any mitigation the appropriate sentence in this case would be one of five years imprisonment. I consider his culpability to be marginally greater than that of Morgan. I propose to reduce this to four years and six months before reduction for a plea, to take account of five years restriction on liberty whilst on bail and Covid-19 restrictions in prison. I will reduce the sentence to three years and six months because of the defendant's plea of guilty.

[349] The defendant will therefore be sentenced to a period of three years and six months custody in respect of Count 27.

[350] Under Article 8 of the 2008 Order I must specify a custodial period which cannot exceed one half of the term. Having considered the appropriate licence period I consider that the custodial period should be the maximum of one half.

[351] Therefore the custodial period will be 21 months and the licence period 21 months.

[352] The defendant shall have credit for the 284 days already spent in custody.

[353] Since the defendant has been convicted of an offence under Section 41 of the Counter Terrorism Act 2008 and having regard to Sections 45 and 53 of the Act I am compelled to impose counter terror notification requirements for a period of 10 years.

TERENCE MARKS

[354] The defendant Terence Marks faces two counts:

Count 28 - Belonging to or professing to belong to a proscribed organisation contrary to section 11(1) of the Terrorism Act 2000 (11/8/14-11/11/14).

Count 29 - Receiving training or instruction in the making or use of weapons for terrorism contrary to section 54(2) of the Terrorism Act 2000 (15/10/14).

[355] Terence Marks was present in Ardcarn Park on 12 September 2014, 13 October 2014 and 15 October 2014. No specific counts arise from his presence on 12 September 2014 or 13 October 2014.

[356] The audio relating to 12 September 2014 lasts for about an hour. Those present are Winters, Blair, Marks and Heaney. In the course of the conversation Blair does refer to a gun and someone paying £2000 for a silencer. Heaney, Blair and Winters gossip about people they know with Marks joining in the conversation. Marks says nothing of an incriminating nature during the recordings and the prosecution rely on his presence there to support evidence of other occasions when he was present where speech is attributed to him.

[357] Similarly, on 13 October 2014 Marks is also present with the occupier Winters, Blair and Morgan. Morgan is present to get his hair cut. There is a general discussion about surveillance and people's cars being bugged.

[358] The key evidence against the defendant Marks relates to his presence at the meeting on 15 October 2014. The occupier Winters is present as are the defendants Heaney and Blair. Marks arrives in the premises after Heaney and Winters have left. At that point Marks and Blair are recorded as having a conversation about the making of pipe bombs. In the course of the conversation it is clear that Blair is explaining to Marks how to make a firebomb.

[359] They also have a general discussion about police activity in the town.

[360] In short it can be seen that Marks is only present in the course of the series of meetings for a short period of time. On 15 October 2014 he engages with Blair specifically about the making of pipe bombs. Given his presence on that occasion and on the two other occasions it can be inferred that the defendant was fully aware that those present belonged to a terrorist organisation and that he is someone who is trusted by them.

[361] His presence at the meeting on 15 October 2014 supports the charge of belonging to a proscribed organisation and attending the premises to receive training or instruction in the making or use of weapons.

Sentencing

[362] The charges to which the defendant Marks has pleaded are serious. It can however fairly be said that the evidence points to a peripheral role on his part in the meetings and discussions which were recorded. His attendances were short lived. The two meetings on 12 September 2014 and 13 October 2014 do not give rise to any specific offences against him, nor indeed do they give rise to specific offences against any of the other defendants. The significance of his presence on those dates supports the prosecution attribution of a nickname in order to positively identify voice analysis of him as being present on 15 October which is a date of significance relating to him in this indictment and which gives rise to the more serious count he faces, that is Count 29. His attendance and conduct at Ardcarn Park on 15 October 2014 are the basis of the central allegations against him. The evidence turns on a short exchange lasting approximately 2½ minutes when on his arrival an exchange is initiated by Blair when he explains to Marks how to make a fire bomb. He remains largely passive throughout and provides little by way of input or contribution. Thus in the overall context of this case in relative terms his role is a marginal one.

[363] The defendant was born on 7 July 1960 and is now 60 years of age.

[364] He has a criminal record which contains 13 convictions ranging from 1977 until 1994. The most serious entries relate to possession of a firearm with intent in respect of which he was detained in a Young Offenders Centre for 12 months on 9 January 1981. This incident was not terrorist related. On 14 June 1978 he was convicted of an attempted hijacking and the possession of an imitation firearm in respect of which he received a suspended sentence. This related to the hijacking of vehicles by youths on the Camlough Road, Newry. The youths in questions were masked and dressed in combat/camouflage gear and two of their crowd were carrying firearms. A police patrol came upon the scene. The police stopped and drew firearms and commanded the gunmen to stop. They aimed their weapons at police and after a second warning they fled towards the Derrybeg Estate in Newry. All made good their escape. An imitation .38 revolver and an imitation 9 mm Luger pistol were recovered along with a white mask and camouflage hat. Marks was arrested on 2 December 1977 when he admitted acting as a look out while his associates attempted to hijack a van in the course of this incident.

[365] The defendant was also convicted of a robbery on 15 May 1987 but I have no details of the background to this. He was imprisoned for five years. The date of conviction was 15 May 1987.

[366] It can be seen that the criminal record is of considerable vintage.

[367] In the course of her submissions Ms Connolly focused heavily on the defendant's personal circumstances. The court had the benefit of two reports from Dr Pilkington, consultant clinical psychologist, dated 27 January 2015 and 1 October 2020.

[368] It is clear from those reports that the applicant has suffered from mental health issues and other significant health issues. It is also clear that the defendant's wife is extremely ill and he provides vital care for her.

[369] In his initial report Dr Pilkington reports that the defendant suffers from long term alcoholism. He is described as "dependent and inadequate". He suffers from a number of medical conditions, namely:

- Diabetes, for which he self-administers daily insulin injections.
- Alcoholism, for which he receives daily medication.
- Anxiety and depression, for which he receives medication.
- Seizures – related to stress and anxiety. He therefore is in receipt of very significant daily medication.

[370] Ms Connolly places particular emphasis on the fact that the defendant's wife suffers from a range of serious and acute medical conditions including heart complaints, anxiety, depression and stenosis of spine. She has suffered a number of strokes. A letter from a stroke nurse specialist confirms that the defendant's wife initially suffered a stroke on 16 June 2015. The medical consequences of that played a central role in the subsequent decision to release the defendant on bail on 11 September 2015.

[371] Following his release on bail his wife was again admitted to hospital in January 2016 following another suspected stroke. Because of her on-going health difficulties the defendant's bail conditions were varied to enable him to provide her with on-going care. Mrs Marks' GP, Dr C J Radcliffe, confirmed both Mrs Marks serious medical condition that impacted on her daily life and also the central role of the defendant as her main carer.

[372] The change in the defendant's circumstances from one of dependency to carer is reflected in Dr Pilkington's opinion in his report of 1 October 2020 when he says of the defendant:

> "*In the context of his own deterioration and general health, characterised by the onset of two chronic and potentially debilitating conditions of diabetes and rheumatoid arthritis and his feelings of guilt, he remains vulnerable to depression. However, he has made positive changes and it appears that he has developed a more positive lifestyle in terms of recovering from alcohol dependence and he appears to be better able to regulate his emotions when he is not misusing alcohol. While he was previously dependent on his wife, he has now assumed the role of caring for his wife, who suffers from significant and deteriorating health problems; the function which provides him with a role and purpose and appears to assist his capacity to sustain positive change. Maintaining these positive changes will be important to the maintenance of his own resilience to deterioration of his mental health. This will be particularly important given the general nature of his wife's condition, which will likely increase the demands on his role as carer and also the long term nature of his own medical conditions.*"

[373] In the context of the defendant's personal circumstances Ms Connolly draws my attention to the fact that the defendant has been on restricted bail conditions now for five years, during which time he has not committed any offences or been guilty of any breaches of bail conditions. The passage of time between arrest and conviction it is submitted has had an impact on the defendant given his family circumstances and the deteriorating health of his wife. She also asked the court to take into account the impact any custodial sentence will have on the defendant in light of the current Covid-19 pandemic restrictions. She says that this would be particularly relevant for the defendant because this is a case where the courts should consider whether or not there would be any merit in returning the defendant to custody having regard to his personal circumstances, the situation in the prisons and the fact that he has now served 272 days in custody.

[374] Because the defendant has been convicted of an offence under section 54(2) of the Terrorism Act 2000 I must consider the question of "dangerousness" under the 2008 Order. I apply the same principles in my consideration of this issue as set out in detail in the case of Blair who was the first to be dealt with on the indictment.

[375] Applying those principles I must consider all the material that is before me in relation to the defendant.

[376] I have come to the conclusion that this defendant does not meet the test of dangerousness or more particularly that there is not "*a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences*."

[377] In coming to this conclusion I take into account the limited role of the defendant in the commission of the offence. 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. His previous convictions are of considerable vintage. The one matter giving concern to the court relates to the hijackings which occurred when he was young and which were dealt with by way of a suspended sentence.

[378] When I add this to the personal circumstances of the defendant I consider that the balance falls against a finding of a significant risk of serious harm. His behaviour whilst on bail is also relevant although this was not sufficient in respect of some of the other defendants to tip the balance for the court on this issue.

[379] That being so it falls on the court to determine an appropriate sentence to reflect the defendant's culpability.

[380] Having considered the nature of the offending and the aggravating feature of his record I considered that on a contest the appropriate sentence was one of five years and 6 months. I consider his culpability to be marginally higher than that of Morgan and Heaney which is reflected in the second count which he faces. I propose to reduce this figure to one of five years to reflect the restrictive bail conditions during a five year period and the impact of the Covid-19 restrictions in the prison environment.

[381] The defendant is entitled to discount arising from his plea of guilty. That plea was of considerable utility to the court. The plea also has to be seen in the context of the evidence against the defendant which Ms Connolly argues gave rise to at least a triable issue. The evidence linking him to these charges consisted of covert audio recordings on three particular days. In relation to those covert audio recordings the expert evidence obtained by the prosecution indicated that unlike the majority of the other defendants, the acoustic evidence provided only limited support that the speaker on the covert recordings was the defendant. No further identification, surveillance or forensic evidence existed in respect of this particular defendant. His plea should be considered in this context.

[382] Accordingly, I will reduce the sentence to one of four years' imprisonment to make allowance for the plea in this case.

[383] I have been urged to consider whether or not in light of the appropriate sentence I would be justified in suspending the prison sentence so as to prevent the defendant from returning to custody. The thrust of this submission focuses on the caring responsibilities of the defendant for his wife. It is well recognised that in exceptional circumstances the courts can take a merciful approach. However, it is clear that such circumstances must be truly exceptional. As I have said previously

these are serious offences and those involved in such offences must expect deterrent sentences. Overall I do not consider that it has been shown that the defendant's personal circumstances and that of his wife are such as to warrant him escaping a prison sentence entirely. His wife's personal circumstances have been taken into account however in assessing the appropriate sentence.

[384] Therefore, in respect of count 28 I impose a prison sentence of four years' imprisonment. In respect of count 29 I impose a prison sentence of four years' imprisonment.

[385] Under the provisions of Article 8 of the 2008 Order I must specify a custodial period at the end of which the defendant will be released on licence which cannot exceed one half of the term. Having considered the appropriate licence period I consider the custodial term should be the maximum of one half of the total term, that is two years with a licence period of two years in respect of both Counts 28 and 29.

[386] The sentences are to run concurrently. The defendant is to be given credit for the 278 days already spent in custody.

[387] Since the defendant has been convicted of an offence under Section 41 of the Counter Terrorism Act 2008 and having regard to Section 45 and 53 of the Act I am compelled to impose counter-terrorism notification requirements for a period of 10 years.