

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 06-03-08

THE QUEEN

-v-

STEPHEN GEOFFREY IRWIN

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DECISION ON TARIFF

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Ruling by Kerr LCJ

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**KERR LCJ**

*Introduction*

1. The prisoner, Stephen Geoffrey Irwin, and four other defendants were tried by Carswell LJ sitting at Belfast Crown Court without a jury in a trial that took place between 20 February 1995 and 24 February 1995. The defendants had been charged with several offences of murder, attempted murder, possession of firearms and ammunition with intent to endanger life and membership of a proscribed organisation, the Ulster Freedom Fighters (UFF). Their trial related to one of the most infamous incidents in Northern Ireland's troubled history when a number of innocent people were ruthlessly killed by gunmen at the Rising Sun Bar in Greysteel on 30 October 1993.

2. At his arraignment on 2 December 1994 the prisoner pleaded not guilty to all charges. On 23 February 1995, the penultimate day of the trial, he was re-arraigned and pleaded guilty to all the offences on which he was charged. These were: eight charges of murder for which he was sentenced to life imprisonment; five charges of attempted murder for each of which he was sentenced to 20 years' imprisonment, the sentences to run concurrently; one charge of possession of firearms and ammunition with intent for which he received a sentence of eighteen years' imprisonment, again to run concurrently with the other determinate sentences; and finally an offence of belonging to the UFF for which he received a concurrent sentence of 7 years' imprisonment.

3. An oral hearing on the tariff to be set under article 11 of the Life Sentences (Northern Ireland) Order 2001 in respect of the life sentences was held on 24 October

2007. I heard representations from Mr Harvey QC, who appeared with Mr Charles MacCreanor for the prisoner. I have also considered written submissions made on his behalf and on behalf of the prosecution. The Crown was represented by Mr Creaney QC and Mr Gary McCrudden and I also heard and have considered Mr Creaney's oral submissions on behalf of the prosecution as to the tariff that should be fixed in this case. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time the prisoner will serve before his case is sent to the Life Sentence Review Commissioners who will then assess his suitability for release on the basis of risk.

4. The prisoner was arrested on these charges on 2 November 1993 and was remanded in custody thereafter. He was released on licence under the Northern Ireland (Sentences) Act 1998 on 28 July 2000. On 10 July 2004 Irwin was arrested on new criminal charges and his licence was suspended by the Secretary of State on 15 July 2004. For the purposes of calculating his release date the period during which he was at liberty on licence under the 1998 Act is not deductible from the period that has elapsed since he was first committed to custody.

#### *Factual background*

5. Just before 10pm on Saturday 30 October 1993, two gunmen in blue boiler suits and wearing balaclavas entered the Rising Sun Bar in Greysteel and opened fire on the patrons in the lounge. The main gunman, Stephen Geoffrey Irwin, was armed with an AK-47 and the second gunman, Geoffrey Deeney, was armed with a 9 millimetre automatic pistol.

6. The lounge bar comprised two areas separated by a wall. The smaller of these had soft seating and tables adjacent to a bar. A sliding partition allowed access from there to a much larger area where there was a dance floor with tables and chairs around it. Geoffrey Deeney was the first gunman to enter the lounge bar. He stood to the right of the entrance door and his role was to 'cover' the main gunman, Irwin, to ensure that no-one interfered with him. Irwin followed Deeney into the building but proceeded further into the bar, more or less on to the dance floor. He said, "Trick or treat?" and then opened fire on the patrons in the bar. There was a long period of gunfire followed by a short cessation of shooting while the prisoner changed the magazine on his rifle. He had two magazines before entering the bar and as soon as he had emptied the first of these he replaced it with the second and opened fire again. From forensic evidence and from the location of the bullet damaged areas in the bar, it was possible to conclude that Irwin had discharged shots from positions in both the lounge bar and the dance hall. A number of witnesses verified this in their statements, saying that during the second burst of gunfire the main gunman appeared at the entrance to the dance area from where he fired a number of shots around the room. In an interview of one of the prisoner's co-accused, Brian McNeill, an account was given of Irwin's own description of the shooting. McNeill told the police that the prisoner laughed about having said, "Trick or treat?" and then described how he had approached an elderly man and

asked him, 'Trick or treat?'. According to McNeill, the prisoner said that the old man laughed whereupon he shot him, describing the killing as having taken "the fucker's head off". A number of the other defendants informed police during interviews that the prisoner had laughed and boasted about the shooting.

7. The getaway car, an Opel Kadett, was left with its engine running in the street outside the bar. During the shooting, another individual in a balaclava, Torrens Knight, stood at the door of the bar armed with a sawn off shot gun. His role was to cover the front of the building in order to prevent anyone from approaching during the attack. He was also the driver of the getaway car and part of his role was to ensure that no-one tampered with the car during the shooting.

8. When the attack ended, the prisoner, Deeney and Knight left in the Opel Kadett travelling at high speed towards Eglinton to a pre-arranged spot where they met Brian McNeill, the driver of the 'clean' or 'safe' car. There the prisoner and Deeney changed their clothing, placing the clothes and balaclavas that they had worn during the shooting together with Knight's balaclava and the three guns in a hold-all. The prisoner and Deeney transferred to the 'clean' car driven by McNeill, taking the hold-all with them.

9. Knight then drove off alone in the Opel Kadett and after travelling a short distance arrived in Eglinton. There he abandoned the vehicle and attempted to set it on fire by sprinkling petrol inside the car and, according to the police, by using an improvised incendiary device. He then ran a short distance and joined McNeill, Deeney and the prisoner in the waiting 'clean' car which had followed the Opel Kadett into Eglinton.

10. McNeill's next task was to drop off the prisoner and Deeney near a hide which had been prepared during the planning of the attack. Because he took a wrong turning, McNeill dropped the prisoner and Deeney off at the wrong place on one of the back roads near Eglinton. Despite this, the prisoner and Deeney decided to get out of the vehicle and took the hold-all containing the clothes and weapons with them. McNeill then drove Knight to the 'Upstairs Downstairs' bar in Londonderry where he met the fifth defendant, Derek Grieve, who had agreed to act as Knight's alibi.

11. After being dropped off, the prisoner and Deeney walked through some fields to try to find the place where it had been arranged they would hide the clothes and weapons. They were unable to find their original hide and eventually hid the hold-all in a forest somewhere between Greysteel and Eglinton. They then walked across the fields towards Eglinton. Once there, they got a taxi which took them to Londonderry. They then went home, arriving at Bond's Place, Londonderry (a house owned by the Ulster Democratic Party where both the prisoner and Deeney rented rooms) after 12am. At Bond's Place, both the prisoner and Deeney changed their clothes and had a bath.

**12.** The scene of carnage in the bar during and after this outrageous attack has been described in various witness statements. Unsurprisingly, while the attack was taking place, there was panic and screaming, people were calling out others' names and women pleaded for mercy from the gunmen. There was total chaos in the lounge. People were crying out for help. The place was covered in glass, water and blood. Those who had escaped injury assisted the wounded until the arrival of the police and ambulances.

**13.** The scene that greeted police when they arrived at the bar was hell-like. A number of bodies lay on the floor, some covered in sheets. Several people were seriously injured and a number of others had sustained less serious bullet wounds, cuts, bruises and lacerations. Many who were physically uninjured were in various states of shock and hysteria. The lounge was in complete disarray – there was overturned furniture, a considerable amount of blood, broken glass and spent bullet cases on the floor. Bullet holes peppered the bar area and the walls.

**14.** Five bodies were found at various locations within the lounge area of the bar. Those pronounced dead at the scene were Karen Thompson and John Moyne (in a snug to the left of the lounge on entering from the main door), Joseph McDermott (on the floor close to the bar counter), Mary Patricia Duddy (in the main lounge) and James Moore (on the floor near to a hatch opening in the bar counter). Stephen Gerard Mullan and John Burns died later that night. Stephen Gerard Mullan was taken to hospital with gun shot wounds to his upper body. Attempts were made to resuscitate him but he was declared dead at 11pm. John Burns had wounds which suggested major abdominal and liver injury and he was taken to the operating theatre in Altnagelvin Hospital. He suffered cardiac arrest on the operating table and could not be resuscitated. His life was declared extinct at 12 midnight. Samuel Victor Montgomery died some months later, on 14 April 1994.

**15.** Statements from various witnesses described the scene before the shooting. They spoke of a convivial gathering with friends and relations who routinely went to the Rising Sun bar on a Saturday night socialising happily together. Most people at the bar knew the other patrons; many had particular areas in the bar where they usually sat. The monstrous, murderous attack on them was all the more horrifying on that account. Family members and friends witnessed the murders of their loved ones and friends.

*Events leading up to the attack – the planning and preparation*

**16.** A clear picture emerged from police interviews with the other defendants, of significant planning for this attack. On Wednesday 27 October 1993, the prisoner, Deeney and McNeill attended a meeting in Bond's Place with one Billy McFarland. Some of the defendants referred to McFarland as the 'Brigadier' and said that he ran the UFF, Ulster Defence Association (UDA) and Loyalist Prisoner's Association (LPA)). At the meeting they were told of the plan to carry out the attack on the Rising Sun bar.

**17.** On the morning of Saturday 30 October 1993, McNeill attended a meeting at a UDA owned house in Macosquin where Knight and two others lived and where Billy McFarland had an office. Robert Smyth (who some of the defendants in police interview said was the Military Commander for the North West UFF), the prisoner, Deeney, Knight and McNeill all attended this meeting at which it was explained that Smyth had bought the Opel Kadett and parked it in Ballykelly. He informed McNeill that he would show him the route to be taken to and from the bar. Smyth and Knight then went to Smyth's mother's house in Ballykelly after first informing the prisoner, Deeney and McNeill to wait for thirty minutes before following them there.

**18.** At Robert Smyth's mother's house, Smyth, the prisoner and Deeney went to a shed in the back garden to examine the guns. Smyth, Knight and McNeill left here at approximately 1.50pm to show McNeill the planned route and where to drop off the prisoner and Deeney after the shooting. After this Smyth was dropped off in Limavady. McNeill and Knight then collected the prisoner and Deeney together with the hold-all of weapons from Smyth's mother's house. McNeill then drove them to a forest outside Ballykelly where they were to hide the three weapons (AK47, 9 millimetre automatic pistol and a sawn off shot gun) and the ammunition (shotgun cartridges, 9mm rounds and ammunition for the AK47). They were then briefed on the weapons and test-fired them. The prisoner test fired five rounds on the AK47 and Deeney test fired two rounds on the 9 millimetre automatic pistol. While this was taking place McNeill and Knight left them in order to go over the route again.

**19.** Approximately half an hour later, McNeill and Knight collected the prisoner and Deeney from the forest. They had hidden the weapons by this stage. McNeill then drove to the Rising Sun bar. The prisoner and Deeney went into the bar and placed an order. This was to familiarise themselves with the layout of the bar and to determine the best positions to shoot from. McNeill then drove them all to the various locations where he was to wait while the shooting took place, where Knight was to set the getaway car on fire and where the prisoner and Deeney were supposed to spend the night after the attack at the Rising Sun bar. At this final location, McNeill and Knight dropped off the prisoner and Deeney so they could build a place to sleep for the night.

**20.** At approximately 4.45pm, McNeill and Knight went to buy boiler suits, gloves, bin bags and insulating tape for the operation. They then returned to pick up the prisoner and Deeney. They went over the getaway route again before returning to Bond's Place, Londonderry. There Knight asked the prisoner and Deeney to draw a map of the bar while he and McNeill went to a filling station to get petrol to set the getaway car on fire. On their return to Bond's Place, Knight briefed the prisoner and Deeney on the execution of the operation for approximately one hour. He then tested them on the map a number of times, asking questions about the height of the seats in the alcove and other general questions. Knight used the office in Bond's

Place as a mock up of the bar and positioned the prisoner and Deeney at the door. He schooled them on how to enter the bar and made them rehearse the shooting. It was agreed that Deeney would open the bar door first, the prisoner would then enter the bar and fire a magazine from the AK47 until it was empty. Then while the prisoner reloaded, Deeney would cover him and shoot at the heads of the men on the ground. When Deeney's gun was empty, the prisoner would take over again. When the prisoner's second magazine was empty, Deeney would fire four or five shots, saving a couple of shots to cover their withdrawal from the bar. This did not actually happen during the attack because, after Deeney had fired one shot at a woman's back while she was running away towards the dance hall, his gun jammed. He tried unsuccessfully to free the weapon.

**21.** As well as driving the 'clean car' to the pick up point after the shooting, it was agreed that McNeill would drive as a 'scout' car in front of the Opel Kadett carrying the gunmen to the scene of the shooting. He was to use a pre-arranged signal of tapping his brake lights three times to warn the car behind of any police check points ahead.

**22.** Following the briefing, McNeill and Knight left to go over the route another time and then returned to Bond's Place. They left there at about 9.15pm in McNeill's vehicle. Knight was dropped off to collect the Opel Kadett and then McNeill took the prisoner and Deeney to the forest in Ballykelly to collect the weapons from the hide. When they had recovered the weapons they were collected by Knight in the Opel Kadett.

#### *Police interviews*

**23.** In his first police interview on 2 November 1993 the prisoner did not admit his involvement in the murders. He told police that on Saturday 30 October 1993 he had been in the house at 4 Bonds Place where he got drunk, got a Chinese take away with Deeney between 9pm and 9.30pm and then they went for a walk some time after 11pm. He said that after the walk they returned to the house at Bond's Place, sat for a while and then went to bed. He continued to deny his guilt during subsequent interviews.

**24.** During his fourth interview, the prisoner was informed that McNeill and Deeney had admitted their roles. He continued to deny involvement in the murders. In the fifth interview on 3 November 1993, it was put to the prisoner that he must have realised that the others were being interviewed about this massacre and that some had decided to tell their part in it. When asked why he could not admit his part he made no reply. The questioning continued but the prisoner remained silent with his head bowed. He was asked at length about his involvement but his response was either, "I've nothing to say" or "I didn't shoot them". In his seventh interview, he was told that his alibi witness, Deeney, had admitted his part. The prisoner made no reply to most of the questions in this interview.

25. In the ninth interview on 4 November 1993 the prisoner was shown a number of exhibits including the boiler suits, shot gun cartridges, the guns, the woollen masks, ammunition and other exhibits. When asked if he recognised the exhibits, the prisoner repeatedly answered, "Nothing to say". When questioned further the prisoner stated that he would not 'sink anybody'. In the eleventh interview on 4 November 1993 the prisoner was asked if he had any remorse and he replied, "I've nothing to say". In the fourteenth interview on 4 November 1993 the prisoner was shown some photographs of the victims' bodies found in the bar. He made no reply but sat with his head in his hands. He refused to answer most of the questions put to him. Later in the interview he began to cry but would not admit his part in the murders.

26. In the sixteenth interview on 5 November 1993 the prisoner was shown the photographs taken during the autopsy of one of the victims, Karen Thompson. He said that he felt terrible but would not be drawn on this. The prisoner asked to see Torrens Knight to see if he had admitted his involvement. He was taken to look through a peephole in the door of the room where Knight was being interviewed. On his return to the interview room, he said that he believed that Knight had admitted his part and agreed to tell the police about his involvement. He stated that he would not name anyone else but would only tell his part after he had spoken to Torrens Knight. He refused to sign the interview notes as he said he was scared of getting a stipulated sentence. He referred to Deeney having led the police to the weapons used in the murders at Greysteel and how that would help him. He stated that Deeney only fired one shot before his gun jammed but he [the prisoner] would be facing a "stip". [It is understood that he meant by this a stipulated sentence *i.e.* a sentence of life imprisonment with a recommendation that he should serve a minimum period.] He was asked if he would show any remorse for what he had done and he replied, "Aye it was a terrible job but I'll not sign the notes" (the interview notes). He was asked again later in the interview if he would show any remorse and the prisoner said, "Later after I have talked it over with my solicitor".

27. During the seventeenth interview on 5 November 1993 the prisoner was escorted to Torrens Knight's interview room. The prisoner asked Knight "Are you admitting?" Knight replied, "Aye I had no other option unfortunately". The prisoner was taken back to his own interview room and he then agreed to tell about the part that he had played but again indicated that he would not sign the interview notes. He only admitted his role and did so without providing full details on the basis that the other defendants would already have told the police these facts. He would not explain what he was doing before 9.30pm on 30 October 1993. In the eighteenth police interview Irwin stated that he was the gunman who had murdered the people in the Rising Sun Bar but would not go over his role again as he had done this in the previous interview. The prisoner did not wish to talk about it any further and said, "...It sickens me. I can't talk about it. I wish to God that it had never happened..."

28. During the nineteenth interview on 6 November 1993, the prisoner would not admit if the murders were on behalf of the UFF or if he was a member of the UFF. When asked where the weapons came from, the prisoner would not answer and said, "I'm not answering that because the other boys have told you the whole story". In the twentieth interview on 6 November 1993, the prisoner would not tell the police anything about the planning of the operation because 'the other boys' had told them.

29. In the twenty-second interview the prisoner admitted the shooting at the bar was carried out under orders and that he was a member of the UFF. He told the police he became a member at the start of the year and that this was his first job. He said the attack in Greysteel was in retaliation for the bombing on the Shankill Road. When asked how he felt about what happened he said, "I am sick and disgusted now about innocent people". During the course of this interview, the prisoner said he could turn up a 9mm pistol wrapped in plastic which was hidden in a hedge but he would not say who gave it to him or where it came from.

30. On 7 November 1993, the prisoner accompanied police to a place where a gun was hidden which they then recovered. When asked where it came from, for how long it had been in the hide, who had given it to him, or whether it had been stolen, he would not answer.

#### *Post mortem reports*

31. Autopsies were conducted on all those who had been killed in the bar. They were: -

*John Francis Alexander Burns (54 years of age)*

In Mr Burns' case, death had been the result of bullet wounds to the trunk. The following is a passage from the post mortem report: -

"... two bullets had entered the right side of the trunk. One had passed slightly forwards and to the left bruising and lacerating the heart before making its exit on the left side of the front of the chest. The other had entered the right flank and had passed downwards to the left lacerating the liver before making its exit on the outer side of the left buttock. These injuries caused his death despite treatment in hospital".

*Stephen Gerard Mullan (20 years of age)*

The pathologist found that Stephen Mullan had been struck by three bullets. His death was also due to bullet wounds to the trunk. The pathologist described this victim's injuries: -

“... a bullet had entered the front of the abdomen and had passed to the left lacerating the liver, the stomach, the spleen and the left kidney before making its exit on the left flank. Another bullet had entered the right side of the back and had passed upward lacerating the right lung before making its exit on the front of the right shoulder. The combined effect of these injuries caused his rapid death.

A further bullet had passed through the left arm fracturing the bone. However, this injury was less severe and so would not have accelerated death to any material extent”.

*James Moore (82 years of age)*

The pathologist found that James Moore had been struck by at least four and possibly five bullets which had come from in front of him. Death was due to a bullet wound of the abdomen. His injuries were described in the following passage from the autopsy report: -

“... a bullet had entered the right side of the front of the abdomen and had passed downwards and backwards lacerating the intestines and the right external artery and vein, which carry blood to and from the right leg. It had then severely fractured the pelvis before making its exit on the back of the right buttock. These injuries would have caused his rapid death.

A bullet had also passed through the right forearm and another had passed through the right leg and two others had grazed the outer side of the right arm. These injuries were of a trivial nature and would not have accelerated death”.

*Mary Patricia Duddy (59 years of age)*

The pathologist found that Mrs Duddy had been struck by three bullets which had come from her right. The pathologist stated that death was due to a bullet wound of the trunk and described this victim's injuries: -

“... a bullet had entered the right flank and had passed upward lacerating the liver, the heart, the pulmonary trunk and the aorta before making its exit in front of the left armpit. It had then entered the left arm and had

lodged on the outer side of the arm. These injuries would have caused her rapid death.

A bullet had also passed through the right thigh whilst another bullet or a bullet fragment had grazed the right ankle. These injuries were not serious and would not have accelerated death”.

*Joseph McDermott (57 years of age)*

The pathologist stated that the death of this victim was due to bullet wounds of the abdomen. His injuries were described in the following passage: -

"He had been struck by three bullets. Two had entered the right side of the chest and had passed downwards, backwards and to the left lacerating the liver and spleen before making their exits on the left side of the back. The other bullet had entered the right flank and had passed slightly upwards and to the left lacerating the liver, the aorta and the spleen before making its exit on the left flank. These injuries to the abdomen would have caused his rapid death”.

*John Moyne (50 years of age)*

Death in this case was due to a bullet wound of the chest. The victim’s injuries included the following: -

“... a bullet had entered the left side of the front of the chest and had passed backwards lacerating the heart sac, the heart and the right lung before fracturing the seventh right rib and making its exit on the back. These injuries would have caused his rapid death.

A bullet had also passed backwards through the soft tissues on the right flank but it had not damaged any of the internal organs. It would not, therefore, have accelerated death”.

*Karen Thompson (19 years of age)*

The pathologist found that Karen Thompson had been struck by three bullets which had come from her right. He described this victim’s injuries: -

“... a bullet had entered just behind the outer opening of the right ear and had passed forwards to the left

fracturing the base of the skull and bruising the brain. The brain subsequently became swollen and this swelling, together with the initial injuries, would have caused her rapid death.

A bullet had also entered the right flank and had passed backwards to the left through the soft tissues on the back to make its exit on the left side of the back. A further bullet had also entered the inner side of the left knee and had made its exit on the back of the thigh. These injuries were not serious and would not have accelerated death”.

*Samuel Victor Montgomery – (76 years of age)*

Mr Montgomery died some months after the attack. The following is the relevant extract from the post mortem: -

“[His injuries] necessitated an operation to remove the bullet jacket and fixation of the thigh bone. As a result of the injury and his immobilisation, blood clots formed in the calf veins. Portions of these clots eventually became detached and travelled via the blood stream to the lungs where they blocked the main arteries to each. This prevented the normal blood flow around the body and precipitated his sudden collapse and death. His death was thus a delayed effect of his bullet wound almost 6 months earlier.

He had suffered from diabetes and a raised blood pressure and a post-mortem examination revealed severe degenerative narrowing of the left coronary artery of the heart. However, these conditions played no part in the death.”

*The charges of attempted murder*

**32.** The following persons were injured as a result of the shooting and these injuries formed the basis of the charges of attempted murder: -

*Rose Fahy*

She sustained an entrance wound on the left back and a larger exit wound on the back of her left shoulder. She had a further wound on the outer aspect of her left thigh. These wounds were consistent with having been struck twice by gunfire. She was admitted to Altnagelvin Hospital for further management of injuries.

*Nellie Burns*

There was a small 1 cm entrance gun shot wound to her left buttock and no sign of an exit wound. She suffered marked blood loss due to her injuries. An X-ray showed there was a fracture of the hip bone. She sustained severe injuries to internal organs and required emergency surgery. She was transferred to intensive care.

*Lorraine Gormley*

The victim sustained bullet wounds to her left upper arm. Her wound was dressed and she was given painkillers. A few days later in casualty she had secondary closure of the entrance and exit wounds in her arm.

*Margaret Kathleen Fleming*

This victim was shot in her arm and left breast and required an operation to remove the shrapnel on 31 October 1993.

*Christine Elizabeth O'Donnell*

This victim sustained bullet wounds in her left arm, left breast, right breast and right arm. A bullet had entered her left arm; it travelled through both breasts and exited through her right arm. All her wounds were excised under general anaesthetic. Most of the wounds were closed with drainage except that on her right elbow.

*The personal background of the prisoner*

**33.** The prisoner was born on 14 January 1973 in Londonderry. The 'report on accused person', prepared by the Royal Ulster Constabulary in February 1995, indicated that he had been educated to secondary level standard. He had been unemployed since leaving school. It also stated that the prisoner was a single man, coming from a family of 4 boys and 1 girl. The family owned their home.

**34.** During police interviews the prisoner indicated that he had a girlfriend. He also stated that he went to Birmingham in August 1992 for a short period where he shared a flat with his brother before finding his own place to live. While he was in Birmingham he was unemployed. At the time of interview, the prisoner claimed he had been living at 4 Bond's Place for 2½ months. He said that he had joined the LPA when he was sixteen years old and that before he joined the UFF, he was in the UDA. The prisoner claimed he joined the UFF at the start of 1993.

35. Irwin had appeared in a criminal court on minor charges of disorderly behaviour and theft on 9 September 1991 for which he was fined. At the time of his trial on these charges he had no other convictions.

*The judge's sentencing remarks*

36. In his sentencing remarks, Carswell LJ commented on the callous and cold-blooded nature of the offences committed by the defendants: -

“You have pleaded guilty to a series of offences which appalled and disgusted all the right-thinking people in this community. In your various ways you were concerned in or connected with one of the most callous and cold-blooded massacres in the catalogue of so many heinous crimes committed in this Province. Comparing atrocities would be as fruitless as it would be painful. It is sufficient to say that on the scale of barbarities which have been perpetrated by cold-hearted practitioners of violence over the last quarter of a century the Greysteel murders rank very high. There is nothing that can be said by way of mitigation in the case of those directly concerned, save that they have now faced up to their responsibility for what they did, pleaded guilty to their crimes and publicly expressed their regret”.

37. Having imposed the mandatory penalty of life imprisonment on the murder charges, Carswell LJ went on to consider whether it was necessary to recommend a minimum term that should be served: -

“In respect of the murder charges to which you other defendants have pleaded guilty, the sentence which I must impose is fixed by law at imprisonment for life. I have had to give very serious consideration to the question whether I should exercise the power conferred upon me by section 1 of the Northern Ireland (Emergency Provisions) Act 1973 to declare a period which I recommend as the minimum period which should elapse before you should be released from prison. If you had contested the charges and been found guilty, I should unhesitatingly have made such a recommendation and made it for a very lengthy period. It is, however, a long-established cardinal principle of sentencing that where a defendant has pleaded guilty, accepted responsibility for his crimes and expressed remorse the court should temper its punishment and reduce to some extent the sentence which it would otherwise have regarded as

appropriate. In the case of a life sentence I think that the court can in an appropriate case give effect to this principle by modifying or omitting the recommendation as to a minimum period which it is minded to make. I have given long and careful consideration to this question and decided for these reasons I do not propose to exercise my power to make a recommendation in respect of any of you."

*Representations made on behalf of the prisoner*

38. I will annex to this ruling the written submissions made by his solicitors on behalf of the prisoner. In those submissions the solicitors refer to three cases in which tariffs have been imposed either by the Crown Court or in a tariff hearing such as the present. In the first of these, *R v Larmour* [2004] NICC 4, the prisoner was sentenced to life imprisonment for the murder of a Catholic taxi driver and, on a separate occasion, for the murder of a Protestant because he was "not liked in the area". The judge in his sentencing remarks referred to the prisoner expressing remorse and pleading guilty and to his confessions being the only evidence against him. The prisoner in that case was also diagnosed with Huntington's chorea, a degenerative disease of the brain, where he was already in need of full time care and would become increasingly disabled. It was accepted by the Crown that this condition should be taken into account in fixing the tariff. In the tariff ruling that I subsequently gave, I concluded that the higher starting point of 15/16 years would be fully justified: -

"There were two murders; they were politically motivated and Mr Campbell's murder was carried out at least partly to defeat the ends of justice, as he had been a witness to the names and faces of the prisoner and his accomplices. Moreover, Mr Campbell was particularly vulnerable. He was working as a taxi driver, an often-targeted group, at the height of the troubles".<sup>[1]</sup>

39. In *Larmour* there were several, significant aggravating factors - the murders were planned and premeditated; illegal firearms were used and the prisoner was armed in advance. In both instances the undoubted intention was to kill. In relation to mitigating factors, I said:

"15. Apart from his medical condition, the principal mitigating factor is the prisoner's approach to the case after arrest. He made full admissions to the police and later pleaded guilty. A further mitigating factor is his youth - the prisoner was aged just 21 at the time of the murders.

40. There are several features which distinguish *Larmour* from the present case. In the first instance the number of people killed is substantially greater. Secondly, unlike *Larmour*, the prisoner in the present case does not suffer from a grossly debilitating medical condition. Thirdly, *Larmour* admitted his guilt during police interview and pleaded guilty from the outset. The tariff fixed in that case (15 years) is not in any way indicative of the appropriate minimum period in the present case.

41. In *R v Barrett* [2004] NICC 28, a minimum period of twenty-two years was imposed on a prisoner who had pleaded guilty to the murder of Patrick Finucane, a solicitor, who was killed in the presence of his wife and children. The sentencing judge, Weir J, expressed the strong view that murder was committed in order to intimidate and deter other members of the legal profession from carrying out their duty to represent without fear or favour all those who came to them for professional advice and assistance. Again, that case is readily distinguishable from the present. Only one murder was involved and while it was a ruthless and brutal murder it does not begin to compare in terms of barbarity with the killings involved in the present case.

42. The third case referred to by the prisoner's solicitors is that of *R v Clifford McKeown* [2003] NICC 3. That case involved the murder of a Catholic taxi driver. It was a random killing based solely on the victim's religion. A number of features made it especially serious - it was a professional killing (in the sense that it was a premeditated execution by firearm), it was politically motivated, the victim was providing a public service, he was particularly vulnerable and was deliberately targeted because of his religion. The defendant contested the charge and a minimum period of twenty-four years was imposed. Again, however, despite the terrible circumstances of that case, it could not be considered to rank remotely alongside the present on a scale of horror.

43. Mr Harvey, in his oral submissions, relied heavily on the fact that Carswell LJ had decided not to make a recommendation as to a minimum term to be served by the prisoner. It was clear, he argued, that the trial judge did not consider an "inordinate" term would be appropriate. Counsel emphasised the youth of the prisoner at the time that these offences were committed and said that the fact that he had begun to make admissions, albeit of a limited nature, after he had been shown photographs of those who had been murdered, afforded clear evidence of the genuineness of his professed remorse.

#### *Practice Statement*

44. In *R v McCandless & others* [2004] NICA 1 the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who were required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* for the purpose of this case are as follows: -

*“The normal starting point of 12 years*

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

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

*The higher starting point of 15/16 years*

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

*Variation of the starting point*

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

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

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

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

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

*Very serious cases*

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

19. Among the categories of case referred to in paragraph 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a

terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.”

### *Conclusions*

**45.** This is, without question, a higher starting point case. It was politically motivated. The victims were completely vulnerable to the prisoner’s depredations. They were deliberately targeted because of their religion. Multiple murders were committed. This was a meticulously planned, ruthlessly executed series of assassinations. They were therefore ‘professional’ killings in the sense that that term has been used in paragraph 12 of the Practice Statement.

**46.** This case also undoubtedly qualifies for inclusion in that category referred to in paragraph 18 of the Practice Statement. A substantial upward adjustment is necessary to reflect the presence of so many of the factors outlined in paragraph 12. It also warrants inclusion in this category because of the number of people killed. It is a case in which a whole life tariff is obviously a possible outcome and one which must be seriously considered.

**47.** The case is also one which falls to be considered under paragraph 19 of the Practice Statement. This was clearly a terrorist enterprise. A single terrorist murder can, in the terms of paragraph 19, attract a tariff of twenty years and upwards. Several terrorist murders, particularly of entirely innocent individuals, will merit a substantially greater period.

**48.** Aggravating factors in relation to the offences are plainly present in that the killings were planned; firearms were used and the prisoner armed himself with a weapon in advance. There are no mitigating factors so far as the offences are concerned. The only clear mitigating features relating to the prisoner are his plea of guilty and his youth. His plea was not timeous, however, and the discount that might otherwise have been applied on account of it must be commensurately reduced. The fact that he was young at the time of the offences, particularly since he was much younger than more sinister people who planned and directed this appalling murderous attack on innocent people, must be carefully weighed in his favour.

**49.** It is claimed that the prisoner has experienced remorse and the trial judge appears to have given him credit for this. In the materials that I have considered, however, I have been unable to detect compelling evidence of a profound sense of remorse, particularly in light of how the prisoner met the charges after his arrest. In the fourteenth interview, when the prisoner was shown photographs of some of the bodies found in the Rising Sun bar, he began to cry but still did not admit his part in the murders. After being shown the autopsy photographs of one of the victims, the prisoner said that he felt terrible but this did not prompt him to admit his part in the massacre. In his sixteenth interview, when asked if he would show any remorse for

what he had done he gave the remarkable reply, “Later after I have talked it over with my solicitor”. In the twenty-second interview, by which time he had admitted his role in the attack, when asked how he felt about what had happened, he said, “I am sick and disgusted now about innocent people”.

50. As was said in *R v Ryan Quinn* [2006] NICA 27, it is frequently difficult to distinguish authentic regret for one’s actions from unhappiness and distress for one’s plight as a result of those actions. In my judgment, the prisoner’s reaction to his involvement in these terrible murders partakes more strongly of the latter of these.

51. I have also taken into account that the prisoner did lead police to an illegal weapon, although I have had to bear in mind that he refused to answer questions about it.

52. Many innocent lives were lost in this unspeakable massacre. Many more lives have been shattered either through physical injury, the trauma of being present at the awful scene or through bereavement. The lives of many families have been shattered and destroyed by this wanton, outrageous, inexcusable attack. Having carefully reviewed all these matters and reflected on all that has been submitted on the prisoner’s behalf, including those submissions to which I have not made express reference in this ruling, I have concluded that the appropriate minimum period in his case is thirty years. This will include the time spent on remand.

## ANNEX

### IN THE MATTER OF:

### **The Queen v Steven Irwin**

### **Life Sentences (NI) Order 2001**

### **Tariff Setting**

1. Steven Irwin was sentenced to life imprisonment in respect of 8 counts of murder, together with a sentence of 20 years imprisonment each on four offences of attempted murder, 18 years imprisonment on a count of

possession of firearms and ammunition and 7 years imprisonment on a count of membership of a proscribed organization namely the UFF. All sentences were ordered to run concurrently.

2. The Judge in sentencing the Defendant was clear in his view that the offending in this case ranked at a very high level "on the scale of barbarities which have been perpetrated by cold blooded practitioners of violence over the last quarter of a century"
3. The Defendant had pleaded guilty. During police interviews the Defendant had admitted his guilt and had expressed his remorse and regret.
4. The Learned Trial Judge took account of the plea of guilty entered to the Court and the public expression of remorse. The Learned Trial Judge declared'

"it is... a long established cardinal principle of sentencing that where a Defendant has pleaded guilty, accepted responsibility for his crimes and expressed remorse that Court should temper its punishment and reduce to some extent the sentence which it otherwise would have regarded as appropriate. In the case of a life sentence I think that the Court can in an appropriate case give effect to this principle by modifying or omitting the recommendation as to a minimum period which it is minded to make."

5. Under Article 11 of the Life Sentences (NI) Order 2001, the tariff represents the appropriate sentence for retribution and deterrence and is the length of time the prisoner will serve before his case is sent to the Life Sentence Review Commissioners who will assess suitability for release on the basis of risk.
6. In R v McCandless & others [2004] NICA 1 the Court of Appeal held that the Practice Statement issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who were required to fix tariffs under the 2001 Order. The relevant parts of the Practice Statement for the purpose of this case are as follows: -

*"The normal starting point of 12 years*

10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.
11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example,

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

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13. Whichever starting point is selected in a particular case, it may be appropriate or the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.
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17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

*Very serious cases*

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.
  19. Among the categories of case referred to in para 12, some offences may be especially grave. These include cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate."
7. The Sentencing Guidelines Council has issued a definitive guideline entitled "Reduction in Sentence for a Guilty Plea" and has considered the position of sentencing in a murder case. The following extract is set out for ease of reference.

*Application to Sentencing for Murder*

- 6.1 Murder has always been regarded as the most serious criminal offence and the sentence prescribed is different from other sentences. By law, the sentence for murder is imprisonment (detention) for life and an offender will remain subject to the sentence for the rest of his/her life.
- 6.2 The decision whether to release the offender from custody during this sentence will be taken by the Parole Board which will consider whether it is safe to release the offender on licence. The Court that imposes the sentence is required by law to set a minimum term that has to be served before the Parole Board may start to consider whether to authorise release on licence. If an offender is released, the licence

continues for the rest of the offender's life and recall to prison is possible at any time.

- 6.3 Uniquely, Parliament has set starting points<sup>5</sup> (based on the circumstances of the killing) which a Court will apply when it fixes the minimum term. Parliament has further prescribed that, having identified the appropriate starting point, the Court must then consider whether to increase or reduce it in the light of aggravating or mitigating factors, some of which are listed in statute. Finally, Parliament specifically provides<sup>6</sup> that the obligation to have regard to any guilty plea applies to the fixing of the minimum term, by making the same statutory provisions that apply to other offences apply to murder without limiting the courts discretion (as it did with other sentences under the Powers of Criminal Courts (Sentencing) Act 2000).

#### Sentencing Guidelines Council

5 Criminal Justice Act 2003, schedule 21

6 Criminal Justice Act 2003, schedule 1 para 12(c)

- 6.4 There are important differences between the usual fixed term sentence and the minimum term set following the imposition of the mandatory life sentence for murder. The most significant of these, from the sentencer's point of view, is that a reduction for a plea of guilty in the case of murder will have double the effect on time served in custody when compared with a determinate sentence. This is because a determinate sentence will provide (in most circumstances) for the release of the offender<sup>7</sup> on licence half way through the total sentence whereas in the case of murder a minimum term is the period in custody before consideration is given by the Parole Board to whether release is appropriate.
- 6.5 Given this difference, the special characteristic of the offence of murder and the unique statutory provision of starting points, careful consideration will need to be given to the extent of any reduction and to the need to ensure that the minimum term properly reflects the seriousness of the offence. Whilst the general principles continue to apply (both that a guilty plea should be encouraged and that the extent of any reduction should reduce if the indication of plea is later than the first reasonable opportunity), the process of determining the level of reduction will be different.

#### *APPROACH*

1. Where a Court determines that there should be a whole life minimum term, there will be no reduction for a guilty plea.

2. In other circumstances,

a) the Court will weigh carefully the overall length of the minimum term taking into account other reductions for which offenders may be eligible so as to avoid a combination leading to an inappropriately short sentence.

b) where it is appropriate to reduce the minimum term having regard to a plea of guilty, the maximum reduction will be one sixth.

c) in the special circumstances of a conviction for murder, even where a minimum term of over 30 years (but not whole life) is fixed, the reduction should never exceed 5 years.

d) the sliding scale will apply so that, where it is appropriate to reduce the minimum term on account of a guilty plea, the maximum reduction (one sixth or five years whichever is the less) is only available where there has been an indication of willingness to plead guilty at the first reasonable opportunity, with a maximum of 5% for a late guilty plea.

e) the Court should then review the sentence to ensure that the minimum term accurately reflects the seriousness of the offence taking account of the statutory starting point, all aggravating and mitigating factors and any guilty plea entered.

8. It is acknowledged that a review of previous tariff decisions is often of little or no benefit to the Court given the diverse range of cases that exist. The following decisions are attached in full hereto which may be of assistance in assessing the appropriate minimum term to be served.

**a) THE QUEEN v DARREN LARMOUR [2004] NICC 4**

**b) THE QUEEN v KEN BARRETT [2004] NICC 28**

**c) THE QUEEN v CLIFFORD GEORGE McKEOWN [2003] NICC 5**

9. Defence Submissions

a) At paragraph 19 of the Practice Statement it is stated that terrorist murders may warrant a tariff of 20 years and upwards. There is no defence argument that this case is a higher starting point case of 15/16years.

b) The principal mitigating factor is the prisoner's approach to the case after arrest. He made full admissions to the police as to his role, expressed remorse and regret and later pleaded guilty. A further mitigating factor is his youth, the prisoner was aged just 20 at the time of the murders.

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[¶](#) Paragraph 13