Neutral Citation No: [2018] NICC 1 ***Judgment: approved by the Court for handing down (subject to editorial corrections)****	***Ref:*** **COL10515** ***Delivered:*** **29/01/2018**

IN THE CROWN COURT SITTING AT BELFAST

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R

v

GARY HAGGARTY

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Sentencing Remarks

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COLTON J

Introduction

[1] On 25 August 2009 the defendant was arrested by arrangement, interviewed and charged in connection with the murder of John Harbinson. He had been invited to consider providing assistance at a previous meeting he attended with members of HET and the Security Service. After he had been charged, the defendant indicated a willingness to assist the authorities within the framework provided by the Serious Organised Crime and Police Act 2005 ("SOCPA"). In particular, Sections 73 to 75 placed on a statutory footing the practice whereby defendants who have pleaded guilty to criminal charges and provided information and assistance to the police received discounting in their sentences. By virtue of Section 73, a defendant who has pleaded guilty and, pursuant to a written agreement with a specified prosecutor, provided or offered to provide assistance to an investigator or prosecutor will be eligible to receive a reduction in sentence. Before any agreement was formalised with the defendant, police conducted a number of "scoping interviews" to examine the nature and extent of the assistance that he could provide and to form the decision as to whether he was a suitable person to be offered a SOCPA agreement.

[2] There were 21 interviews under caution between 5 and 9 October 2009.

[3] On 13 January 2010 the defendant entered into an agreement with a Specified Prosecutor pursuant to Section 73 of SOCPA. The agreement requires that the defendant:

(a) Admit fully and give a truthful account of his own involvement in, and knowledge of, criminal conduct;

(b) Plead guilty in court to such criminal offences which he admitted and which the prosecutor would determine he would be charged with;

(c) Give a truthful account of the identities and activities of all others involved in that criminal conduct;

(d) Give truthful evidence in any court proceedings arising from the prosecution of any offences disclosed.

[4] He was interviewed over two years by officers from the Police Service of Northern Ireland (PSNI) and the Police Ombudsman for Northern Ireland (PONI).

[5] In the course of those interviews he has implicated himself in multiple offences of the most serious kind over a 16 year period between 1991 and 2007. As is reflected in the counts to which he has pleaded guilty, throughout that period the defendant was a member of the UVF rising to the "rank" of "Provost Marshal". As a consequence he was deeply involved in terrorist crime. He engaged in the full ambit of associated crime, involving intimidation, extortion, possession of arms and ammunition and the infliction of serious violence including murder.

[6] As a result of those admissions the defendant was charged with a total of 202 offences.

[7] The prosecution did not proceed with two of the counts (the original Counts 168 and 169), both of which alleged conspiracy to murder.

[8] The defendant pleaded guilty to the remaining 200 offences upon arraignment, save for count 68 which was not proceeded with by the prosecution. The offences can be summarised as follows:

Summary of offences

- Five counts of murder, contrary to Common Law.

- Five counts of attempted murder, contrary to Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Common Law.

- One count of aiding and abetting murder, contrary to Common Law.

- Twenty three counts of conspiracy to murder, contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Common Law.

- Four counts of Kidnapping, contrary to Common Law.

- Six counts of False Imprisonment, contrary to Common Law.

- Five counts of Hijacking, contrary to section 2(1)(a) of the Criminal Jurisdiction Act 1975.

- Forty seven counts of Possession of firearms and ammunition with intent, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981.

- Nineteen counts of possession of firearms and ammunition with intent, contrary to Article 58(1) of the Firearms (Northern Ireland) Order 2004.

- One count of carrying an imitation firearm with criminal intent, contrary to Article 19(1) of the Firearms (Northern Ireland) Order 1981.

- One count of possession of an imitation firearm with intent to cause fear of violence, contrary to Article 17A of the Firearms (Northern Ireland) Order 1981.

- One count of conspiracy to possess firearms with intent, contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Article 17 of the Firearms (Northern Ireland) Order 1981.

- Two counts of conspiracy to possess firearms 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.

- Nine counts of possession of explosives with intent, contrary to section 3(1)(b) of the Explosive Substances Act 1883.

- One count of possession of explosives under suspicious circumstances, contrary to section 4(1) of the Explosive Substances Act 1883.

- One count of making explosives, contrary to section 3(1)(b) of the Explosive Substances Act 1883.

- Five counts of membership of a proscribed organisation, namely, the UVF, as specified at count numbers 6-10.

- Four counts of directing terrorism as specified at counts 11-14.

- Seven counts of possession of articles for use in terrorism, contrary to section 57(1) of the Terrorism Act 2000.

- Three counts of use of terrorist property, contrary to section 16(1) of the Terrorism Act 2000.

- Seven counts of possession of terrorist property, contrary to section 16(2) of the Terrorism Act 2000.

- Four counts of possession of information likely to be of use to terrorists.

- Two counts of aggravated burglary, contrary to section 10(1) of the Theft Act (Northern Ireland) 1969.

- Eighteen counts of wounding with intent, contrary to section 18 of the Offences Against the Person Act 1861.

- Three counts of causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861.

- Two counts of conspiracy to wound with intent, contrary to Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and section 18 of the Offences Against the Person Act 1861.

- One count of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861.

- One count of common assault, contrary to Common Law and section 47 of the Offences Against the Person Act 1861.

- Three counts of arson with intent, contrary to Article 3(1) and (3) of the Criminal Damage (Northern Ireland) Order 1977.

- One count of criminal damage, contrary to Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977.

- One count of conspiracy to rob, contrary to section 8(1) of the Theft Act (Northern Ireland) 1969 and Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1981.

- One count of possession of an offensive weapon, contrary to Article 22(1) of the Public Order (Northern Ireland) Order 1987.

- Two counts of conspiracy to defraud, contrary to Common Law.

- One count of converting criminal property, contrary to Article 47(1)(b) of the Proceeds of Crime (Northern Ireland) Order 1996.

- One count of Assisting Offenders, contrary to section 4(1) of the Criminal Law Act (Northern Ireland) 1967.

- One count of intimidation, contrary to section 1(d) of the Protection of Person and Property Act (Northern Ireland) 1969.

- One count of conspiracy to riot, contrary to Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Common Law.

[9] Upon his guilty pleas the mandatory sentence of life imprisonment was imposed on the defendant for the five offences of murder and the offence of aiding and abetting murder.

[10] On 8 September 2017 a voluntary bill was entered in respect of the defendant by consent in relation to a first count of wounding with intent contrary to Section 18 of the Offences Against the Persons Act and on a second count alleging possession of an offensive weapon in a public place, contrary to Article 20(1) of the Public Order (Northern Ireland) Order 1987.

[11] He pleaded guilty to both counts on the date the bill was entered.

[12] Finally, the defendant has asked that 301 other offences be taken into consideration. Section 4 of the Criminal Justice Act (Northern Ireland) 1953 provides that an accused may admit an offence and ask the court to take it into consideration. No sentence is passed upon the offence as such, although they can be taken into account when considering the seriousness of an offence which is the subject of a charge and in respect of which the defendant is to be sentenced.

The Sentencing Exercise

[13] The task for the court is to sentence the defendant in respect of all the counts to which he has pleaded guilty.

[14] I want to place on record the court's gratitude for the assistance provided by all counsel in this case. They marshalled a huge volume of material in an orderly and comprehensive fashion. Their written and oral submissions on the applicable legal principles were invaluable. Mr Ciaran Murphy QC led Mr David Russell for the prosecution. Mr Martin O'Rourke QC led Ms Fiona Doherty QC for the defendant.

[15] In determining the ultimate sentence in respect of each count, in the context of a defendant who has entered into an agreement under Section 73 of SOCPA, the authorities indicate that the court must engage in a three stage process. See ***R v Hyde*** [2013] NICA 8.

[16] Firstly, it must determine the appropriate starting point having regard to the offence and taking into account all of the aggravating and mitigating factors, other than the defendant's plea.

[17] Secondly, it must then discount the starting point having regard to the nature and extent of the assistance provided by the defendant.

[18] Thirdly, it must further discount the sentence in recognition of his guilty pleas.

[19] The starting point in the exercise will be to determine the minimum period of imprisonment the defendant must serve under the Life Sentence (Northern Ireland) Order 2001 in respect of each of the six offences to which he was sentenced to life imprisonment.

The tariffs in respect of the life sentences

[20] In respect of the life sentences imposed I emphasise that the defendant will remain subject to the sentence for the rest of his life. The decision whether to release him from custody during the sentence will be taken by the Parole Commissioners who will consider whether it is safe to release him on licence. If he is released from custody the licence continues for the rest of his life and a recall to prison is possible at any time.

[21] Under Article 5 of the Life Sentence (Northern Ireland) Order 2001 this court must fix the minimum term that he must serve before the Parole Commissioners will consider whether it is safe to release him on licence.

[22] It is important to understand that a minimum term is not the same as a determinate or fixed term of imprisonment. There is no remission available for any part of the minimum term unlike the 50% remission available for a determinate sentence.

[23] It is also a matter for the Commissioners to determine whether each or any of the offences committed prior to 10 April 1998 qualify for the early release scheme as governed by Section 3(7) of the Northern Ireland (Sentences) Act 1998.

The relevant legal principles

[24] Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 provides that the minimum term:

> "…shall be such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the

offence, or of the combination of the offence and one or more offences associated with it."

[25] The legal principles that the court should apply in fixing the minimum term are well settled.

[26] In *R v McCandless and 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 are required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* are as follows:

> "**The normal starting point of 12 years**
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> 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.
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> 11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:
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> (a) The case came close to the borderline between murder and manslaughter; or
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> (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
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> (c) The offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or
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> (d) The case involved an overreaction in self-defence; or
>
> (e) The offence was a mercy killing.
>
> These factors could justify a reduction to 8/9 years (equivalent to 16/18 years).

The higher starting point of 15/16 years

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

Variation of the starting point

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

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

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the

extent that this is relevant to culpability rather than to risk.

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

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

Very serious cases

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

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

[27] In applying the *Practice Statement* and the principles contained therein it is important to bear in mind that they are not to be interpreted as a straightjacket designed to create a rigid compartmentalised structure into which a case must be shoe-horned. As the Court of Appeal said in *McCandless*:

> "… The sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in *R v McKeown* [2003] NICC 5, a multi-tier system. Not only is the *Practice Statement* intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may

> start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case."

[28] Selecting a starting point is therefore not a mechanistic or formulaic exercise. The guidelines are there to assist the court to proceed to, what in the circumstances of the case, it considers is a just and proportionate sentence having regard to the guidelines.

[29] Before setting the appropriate tariffs I propose to summarise the circumstances of the offences in respect of which life sentences have been imposed.

The murder of John Harbinson (Count 1)

[30] The first count relates to the murder of John Harbinson between 16 May 1997 and 19 May 1997.

[31] At the time of the murder the defendant admitted he was the so-called "Provost Marshal" of the Ulster Volunteer Force (UVF), which was a proscribed organisation contrary to Section 21(1)(a) of the Northern Ireland (Emergency Provision) Act 1978.

[32] Over a course of a number of interviews the defendant admitted that he was part of a UVF gang who kidnapped John Harbinson, placed him in a taxi, handcuffed him and brought him to an alleyway in Mount Vernon where he was severely beaten. He was left lying there and was subsequently discovered before being pronounced dead.

[33] The defendant named the other gang members involved. The matter appears to have arisen because of allegations that Mr Harbinson had been involved in "hassling" staff in a taxi office.

[34] The defendant indicated that the intention was to inflict physical punishment on Mr Harbinson and to cause him serious bodily harm rather than kill him. He admitted that Mr Harbinson was either to be severely beaten or shot and that a gun was available for that purpose. It appears that in fact a hammer was used in the course of the beating. After the beating the defendant went and got a "carry out" and continued drinking in a nearby house. He made no attempt to obtain assistance or to otherwise help Mr Harbinson. When he later became aware that Mr Harbinson had died he took steps to dispose of clothing worn at the scene and the hammer which was used. He left the area and stayed in a caravan for approximately a week. He was arrested on his return and subsequently released without charge.

[35] Mr Harbinson was born on 13 March 1958. At the time of his death he was separated from his wife with whom he had four children. He was an unemployed taxi driver.

[36] His death was due to multiple injuries as a result of a severe beating and kicking. Dr Carson, pathologist, confirmed the following injuries:

(a) Lacerations to the scalp suggestive of the thread of a boot or shoe.

(b) Heavy bruising of the eyelids and temples, nose and upper lip.

(c) Extensive fractures of the right side and base of the skull possibly caused by stamping or blunt object.

(d) Brain bruised and swollen.

(e) Extensive head injuries.

(f) Extensive injuries on back and chest. Pattern of boot.

(g) Eight rib fractures – six in two places.

(h) Two lung punctures.

(i) Internal bleeding.

(j) Multiple bruising and abrasion on forearms.

(k) Both wrists fractured.

(l) Many injuries to the legs. Some puncture wounds caused by pointed rod object consistent with damage to the trousers.

(m) Ankles and feet extensively injured.

(n) Fractured dislocation of right ankle caused by blows or stamping.

Starting point having regard to the offence and taking into account all of the aggravating and mitigating factors, other than the defendant's plea.

[37] Clearly the higher starting point of 15/16 years is appropriate. The defendant's culpability was exceptionally high and the victim Mr Harbinson was in a particularly vulnerable position. He had been abducted and was the victim of an attack analogous to a "professional" killing. The beating was carried out on behalf of the Ulster Volunteer Force, a terrorist organisation. He was subjected to gratuitous violence involving the infliction of multiple injuries.

[38] The offence was aggravated by the fact that the beating was pre-planned, that the perpetrators were armed with a weapon in advance, which was used, and contemplated the use of a firearm.

[39] By way of mitigation I accept the defendant's assertion that the intention was to cause Mr Harbinson grievous bodily harm rather than to kill him. This is the only mitigating factor that I can identify. There is no relevant personal mitigation.

The murder of Peter McTasney (Count 15)

[40] The defendant has pleaded guilty to aiding and abetting the murder of Peter McTasney on 24 February 1991.

[41] The defendant says that he was sworn into the UVF in January 1991. Within a week he was asked to mind a firearm, which was a 357 Ruger Magnum and approximately 30 rounds of ammunition. Shortly afterwards, a named member of the UVF called at this home and he was told to bring the weapon and ammunition to the Grove Tavern. He carried out the instructions where he was met by a number of UVF members, all of whom he identified. He supplied the weapon and ammunition to the persons who subsequently carried out the murder of Mr McTasney that evening.

[42] The circumstances of the murder are described by Thomas McTasney who was the father of the deceased. He records that on 24 February 1991 he was in the living room with Peter (who lived with him) and two others. He looked out the window at approximately 9.00 pm and saw a taxi car from which two masked men alighted. He and the others in the house, including Peter, began to run out the back but Peter returned to the house as he had forgotten about a child, Lynette, who was sleeping in the living room. That was the last time he saw his son alive. His son was shot in the hallway of the house. It appears that a sledgehammer was used to gain entry and it was lying in the hallway after the shooting. A doctor pronounced Peter McTasney dead at the scene. The pathologist report of Dr Carson concludes that death was due to injury resulting from gunshot wounds. The deceased had been struck by shotgun pellets and struck by five bullets and grazed by one or two more.

[43] The defendant accepts that the weapon and ammunition he provided to the UVF gang was used in this murder.

[44] After the murder the gun was returned to the defendant and he kept it for a number of months before returning it and the ammunition. He had no further contact with the weapon or ammunition. He estimates he had the gun for a period of months.

[45] The defendant also indicated that about one or two weeks after the murder he was present at a UVF meeting when the murder was discussed at a "debrief" session.

[46] Subsequently, whilst in prison, the defendant spoke to a UVF member who admitted the murder of Peter McTasney.

[47] He admitted to providing a weapon on the day of the murder when he knew that the men to whom he gave it were dangerous and that they were going to use it to kill someone.

Starting point having regard to the offence and taking into account all of the aggravating and mitigating factors, other than the defendant's plea.

[48] Clearly the higher starting point of 15/16 years is appropriate. It involved a terrorist motivated killing of a vulnerable victim. The murder was committed in his home in the presence of his father and daughter.

[49] The offence is aggravated by the fact that the killing was planned and that a firearm was used. This was a crime carried out by a terrorist organisation and in accordance with paragraph 19 of the McCandless judgment in such a case a term of 20 years and upwards could be appropriate.

[50] At the time the offence was committed the applicant had only joined the UVF within a week and he was relatively young. His role in providing the weapon and subsequently recovering and re-hiding it means that he was a secondary party to the offence and in those circumstances I consider he is entitled to some reduction in sentence.

The murder of Sean McParland (Count 17)

[51] The defendant has pleaded guilty to the murder of Sean McParland on 24 February 1994.

[52] Mr McParland was murdered in his daughter's and son-in-law's home by a UVF gang in which the defendant was a willing and full participant.

[53] Prior to the murder an armed UVF gang, including the defendant, took over a house belonging to a Pauline Carson. They subjected her to a terrifying ordeal before hijacking her car.

[54] From there, three members of the UVF drove to the scene of the shooting which took place on the night of 17 February 1994 at approximately 9.15 pm. The gang included a driver, a front seat passenger armed with a shotgun and the defendant in the rear of the vehicle, armed with a .45 Webley pistol.

[55] The actual shooting is vividly described in the harrowing account of Sean McParland's grandson, Michael, who was aged 9 at the time.

[56] In his statement he explains that he was at his home at Skegoneill Avenue on the evening of the murder and that his granddad was babysitting him and his three younger siblings – two brothers and a sister aged 8 years, 7 years and 3 years respectively. He states that at about 9.20 pm there was a knock at the front door of the house and his granddad, who had been sitting in kitchen area watching TV with them, got up and went to the front of the living room, and pulled back the curtains to see who was at the front door. At this stage the side door into the dinette was rapped and someone asked "was Mickey there". Michael answered "no" and asked "who is it?" The man replied "It's your daddy's friend Alan". At this point he went to turn the key in the side door lock but before he could open the door the man outside turned the handle of the door and pushed on into the house past him. The man was holding a gun up at eye level and had both hands on the handle. He was wearing a black jacket with a hood which was down and a black mask so that all he could see was his eyes, nose and mouth. His terrified younger siblings ran outside past the gunman. He could see his granddad in the living room who had started to bend down and was flapping his arms. He was unable to speak because of a recent operation for throat cancer. He turned and ran out the door to see if his brothers and sister were all right, when he could see a second man walking down the side of the house. He too was masked and was carrying a shotgun. Before the second man got into the house he heard a shot from the house. The second man went into the house and he then heard another two shots. Thereafter the two men came running out from the house, ran across Skegoneill Avenue and got into a car which was parked in the street opposite their house. There was a man sitting behind the driving wheel and the engine was going.

[57] He ran back into the house to see if his granddad was alright and he could see him lying unconscious in the living room on his side. Mr McParland was brought by ambulance but he died in hospital as a result of his injuries on 24 February 1994.

[58] The autopsy report of Dr John Press concludes that death was due to a bullet wound of the neck which had entered the left side of the face and had passed backwards to the right through his spine lacerating the spinal cord before making its exit on the right side of the back of the neck. The injury to the spinal cord caused paralysis and loss of sensation below the level of the injury. It caused his death one week later despite treatment in hospital.

[59] The defendant admitted his role in this murder during a series of interviews.

[60] In summary he describes how two murders were to take place before the murder of Mr McParland but were stopped because of information he gave to Special Branch. As a result of the second incident being cancelled it was clear to the UVF that someone within the organisation was "talking" to Special Branch. The

UVF therefore sought a different target for the same night of the second planned incident which resulted in the murder of Mr McParland.

[61] The defendant described in detail how the UVF went about the murder. Three persons including the defendant carried out a reconnaissance of the targeted house earlier in the day. The murder was discussed with at least six other UVF members and two females all of whom have been named by the defendant. At this stage the defendant described himself as second in command of the relevant UVF company. He describes in detail how the two guns used in the shooting were brought to the defendant's home beforehand. He describes the hijacking of the vehicle and then driving the hijacked vehicle to the scene of the murder. There were three in the car, the driver, and two gunmen.

[62] The defendant describes that the commander was to flip a coin to decide who would have the "lead" and "backup" roles. However, to "prove himself" to his fellow gang members, so as to avoid suspicion that he was an informer, the defendant volunteered to take the primary role. He lifted the .45 and as per his interview "I was adamant that I was going to be the lead person in the move".

[63] The defendant's description of what took place at the scene tallies with the account given by young Michael Monaghan. The defendant admits that he was the primary gunman and that he approached and entered the house in the manner described by Michael. When he entered the house he shot the deceased at close range in the chest area. Mr McParland fell to the ground and the defendant attempted to shoot him again but there was some problem with the gun. As he was leaving the house he bumped into the other gunman who had arrived with a shotgun. He told him that the victim was dead. The other gunman stepped into the house and fired a shotgun blast.

[64] The defendant in his interviews describes how he fled from the scene in the getaway car and how steps were taken after the event to dispose of the weapons and the clothing worn at the time of the shooting. He then travelled to the Fern Lodge on the Doagh Road. He and the other gunman remained there and left at about 1.15 am.

[65] He had been arrested and questioned on the Monday following the shooting until the Thursday. He made no admissions and was not charged with any offence.

[66] Subsequent to the shooting there was a full "debrief" by the UVF.

[67] In his interview the defendant makes it clear that he fully intended to kill Mr McParland. To quote from his interview "I was on my way to kill him and it was my plan to kill him." His intention was to empty all of the bullets in the pistol into the victim around the chest area.

[68] In the course of the debriefing the defendant alleges it emerged that Mr McParland was not in fact the intended target of the shooting, but rather his son-in-law. It appears he went to the killing unaware of the proper name of the target. He accepts that the murder was a UVF operation and that he was a full and willing participant. In the course of his interviews he expressed remorse that it was the wrong person who was killed and that he was sorry for the children who were present.

Starting point having regard to the offence and taking into account all of the aggravating and mitigating factors, other than the defendant's plea.

[69] Clearly the higher starting point of 15/16 years is appropriate in this case. The defendant's culpability was exceptionally high and the victim was in a particularly vulnerable position. Aggravating factors included the fact that the killing was planned, that the defendant was armed with a weapon in advance, that a firearm was used and that the murder was carried out in front of young children. It also involved the imposition of a terrifying ordeal on an innocent civilian whose home was entered by masked and armed men before her car was hijacked for use in this horrific murder.

[70] The defendant played the primary role in the offence and in fact volunteered to be the "lead" gunman so as to protect his position as an informer. This is manifestly a case to which paragraph 19 of *McCandless* applies. The defendant has expressed some remorse for this killing in the course of interviews but solely on the grounds that the wrong target was murdered. The court pays no weight to this remorse by way of mitigation. There are simply no mitigating factors in relation to this offence.

Murders of Gary Convey and Eamon Fox (Counts 22 and 23)

[71] Gary Convey and Eamon Fox were electrical contractors who were working on a building site at Mount Collyer Avenue in Belfast on 17 May 1994. It was their custom to take their lunch in Eamon Fox's car, a blue VW Polo which was parked close to railings adjoining a children's playground. They were murdered by a UVF gunman on that date as they ate their lunch. Witness A gives a graphic account of the shooting. He was a work colleague of the murdered men and was sitting in the back of the car at the time of the attack. Gary Convey was in the driver's seat and Eamon Fox was in the front passenger seat. A member of the UVF gang approached the railings and fired through them into the car killing the two front seat occupants and injuring witness A who was very lucky to escape (he is the subject of an attempted murder count - 24th count). Both men were pronounced dead at the scene. Professor Jack Crane conducted post mortems of both men and concluded that the cause of death for both was bullet wounds. Eamon Fox was hit by a total of three bullets and death was due to bullet wounds of the trunk. These wounds caused haemorrhaging into the chest cavities which were responsible for his rapid death. In relation to Gary Convey, Professor Crane concludes that his death was due to a

bullet wound of the chest. A single bullet had struck him to the right side of the upper back – this bullet wound caused massive bleeding into the chest cavity and this was responsible for his rapid death.

[72] Gary Convey was born on 13 April 1970, lived with his girlfriend and had one child. Eamon Fox was born on 28 December 1952. He was married and had six children.

[73] They were shot because they were Catholics. They were "soft" and easy targets.

[74] Over a course of a series of interviews the defendant admitted his role in this shooting. He identified the members of the UVF gang who were involved. At that time he was storing a significant amount of weapons for the UVF including a number of Sten guns. Prior to the shooting he was requested by the commander of the UVF to test fire one of the Sten guns to make sure it was working and to ensure it had a full clip of ammunition.

[75] He described testing the gun with another member of the UVF prior to the shooting.

[76] He was told to take the day of the shooting (a Tuesday) off from work. The testing of the weapon took place on the Monday night and he described this in detail. That night he was told that a number of people would be coming to his house in the morning and at 10.00 am five men duly arrived.

[77] In the course of the morning there was considerable discussion about which weapon would be appropriate and he and another named UVF member went and obtained alternative weapons. In the end a Sten gun was chosen and the defendant was to accompany the chosen gunman to a gap in the fence adjoining the playground. It emerged that a number of weeks previously the defendant had gone with another UVF member to remove bolts from a metal fence at the site and it was at this stage that the defendant realised the purpose of that exercise.

[78] Arrangements were made for the escape of the gunman after the shooting and the disposal of the weapons and clothing. After walking the gunman to the site of the shooting the defendant left in his car and drove past two of the other members of the gang to indicate that the gunman was in place. The defendant was actually arrested by the police on his way home after the shooting. He did not co-operate with the interviewers and ultimately he was released without charge. He did indicate that he told Special Branch where the Sten gun which had been used in the shooting was and it was in fact retrieved on 28 May 1994.

[79] In the course of the interviews the defendant admitted his involvement in the storage of weapons which have resulted in other related counts.

[80] The defendant said that he did not know any of the details of the target until subsequent debriefs. Nonetheless, it is clear that he was aware that this was a "UVF operation", which involved the murder of civilians and, as is clear from the summary above, he played a central part in the murders.

Starting point having regard to the offence and taking into account all of the aggravating and mitigating factors, other than the defendant's plea

[81] Self-evidently this is also a case which engages the higher starting point of 15/16 years. The victims in this case were particularly vulnerable. They were deliberately targeted because of their religion. It involved two murders.

[82] The murders were planned, the killer was armed with a weapon in advance and a firearm was used to commit the murders.

[83] This was a terrorist offence and part of an ongoing sectarian campaign which rendered the offences especially grave. A third person was targeted in the murder and was lucky to escape with grievous injuries.

[84] Although the defendant was not the actual gunman in this offence he played a crucial, central and vital role, in this murder.

[85] There are no mitigating circumstances I can identify in relation to this offence.

The murder of Sean McDermott (Count 58)

[86] Sean McDermott was abducted by two members of the UVF from his lodgings in Crosskennan Road, Antrim on 30 August 1994. He was born on 4 November 1956 and was engaged to be married. He was employed as a building site worker. The owner of the property in which Mr McDermott lived has provided a graphic account of two masked and armed men smashing their way in to her bungalow using a sledgehammer before abducting their victim. It was a terrifying experience for her. Just as the men were taking Mr McDermott from her house her daughter arrived home and was able to raise the alarm but too late to save Mr McDermott. He was found fatally wounded in his own vehicle which had been taken by the gang and abandoned at Old Ballynoe Road, Antrim. Dr Derek Carson conducted a post mortem of Mr McDermott's body and concluded that the cause of death was laceration of brain, liver, heart and right lung due to shotgun wounds of head and trunk.

[87] In the course of a series of interviews the defendant admitted that he was aware of the intention to kill Mr McDermott and that he was involved in providing the weapon for the shooting.

Starting point having regard to the offence and taking into account all of the aggravating and mitigating factors other than the defendant's plea.

[88] This too is a case which engages the higher starting point of 15/16 years. This was a murder of a vulnerable victim, abducted from his home. The abduction was particularly traumatic for the owner and occupier of the bungalow in which he lived and also for the lady who arrived in the course of the abduction. The offence was aggravated by the fact the killing was planned, that the perpetrators were armed with weapons in advance and that a firearm was used to commit the murder. It was a terrorist offence which justifies a substantial upward adjustment on the relevant starting points. It is correct to say the defendant's role was as a secondary party. Whilst the firearm he supplied was used in the offence, it was not the actual murder weapon. I consider that any deduction for these factors would be very small indeed.

Other Offences

[89] I have focussed on the offences in respect of which the defendant has received sentences of life imprisonment. In doing so, I do not underestimate or in any way minimise the seriousness of the multitude of offences in respect of which the defendant has pleaded guilty. The effect of these offences, like the murders to which I have referred, have had immense consequences for many individuals and for society as a whole.

[90] A number of the counts are related to the murder counts, for example, possession of weapons and ammunition with intent, false imprisonment, kidnapping and hijacking. The sentences for these offences will be subsumed in the sentences imposed for the primary murder counts.

[91] In addition to the counts of murder the defendant has pleaded guilty to counts of attempted murder and conspiracy to murder.

[92] The defendant has pleaded guilty to two counts of attempted murder of John Flynn, on 12 March 1992 and 5 May 1997; the attempted murder of Witness A who was a back seat passenger in the vehicle when Gary Convey and Eamon Fox were murdered on 17 May 1994; the attempted murder of police officers on 31 December 1994 involving the firing of shots at a police car; the attempted murder of Clarence Gould on 6 April 1997, who was left for dead after a beating.

[93] Each of these offences justify condign punishment in their own right.

[94] The defendant has pleaded guilty to 23 counts of conspiracy to murder. Thirteen of those involved named individuals:

Thomas English - 1 January 1991-30 September 2000;
William Spence - 31 December 1992-30 June 1994;
Liam Maskey - 1 April 1994-22 September 1994;
Michael Donnelly - 18 May 1994-1 January 1995;
John Donnelly - 18 May 1994-1 January 1995;

Leo Morgan - 18 May 1994-31 December 1995;
Terry Fairfield - 1 July 1994-15 September 1994;
Mark Campbell - 1 January 1995-31 December 1996;
Archibald Galway - 13 May 1996;
Samuel Toan - 13 September 1998-1 December 1998
William Beckett – 31 December 2004-1 January 2007;
Laurence Kinkaid – 31 December 2004 – 1 September 2005; and
Mark Haddock – 1 January 2006-31 May 2006

[95] The targets of these conspiracies arose variously from internal UVF disputes, disputes between the UVF, the UDA and the LVF and targeting of alleged republicans.

[96] The counts of conspiracy to murder persons unknown occurred on 31 December 1993-1 January 1995; 31 December 1993-1 January 1995; 26 February 1994-1 September 1994, 31 March 1994-1 June 1994; 1 May 1994-31 August 1994; 1 May 1994-1 September 1994; 1 July 1999-1 November 2000; 27 October 2000-1 January 2001; 27 October 2000-1 January 2001. As was the case in relation to the identified targets these conspiracies related to alleged members of loyalist organisations and alleged republicans.

[97] The defendant has pleaded guilty to a series of counts relating to wounding with intent, including conspiracy to commit this offence. In particular he has admitted to:

- 18 counts of wounding with intention, contrary to Section 18;
- 3 counts of causing grievous bodily harm with intent, contrary to Section 18;
- 2 counts of conspiracy to wound with intent;
- 1 count of assault occasioning actual bodily harm, contrary to Section 47;
- 1 count of common assault.

[98] The majority of these offences relate to punishment shootings/beatings. Victims included: John Owens, Glenn Agnew, William Logue, Stephen Logue, David McCosh (x2), Archibald Galway, William James Galway, Brian Fleming, Mark Campbell, Alan McClure, Thomas English, Graeme Robinson, Alan Clarke, Thomas Beckett, William Montgomery, David Graham, William Glendinning (x2); and Stephen Gaw.

[99] In coming to the appropriate sentences for these offences I have had regard to the JSB paper prepared by Hart J for the appropriate sentencing parameters.

[100] In particular I have considered the cases of *DPP Refs: 2 and 3 of 2010* (see Wood and Others) [2010] NICA 36; *R v McArdle* [2008] NICA 29; *R v Mongan* [2015] NICA 65 and *R v Darryl Proctor* [2009] NICA 15.

[101] The defendant has pleaded guilty to a range of offences related to directing terrorism/membership of a proscribed organisation and possession of articles/money/information connected with terrorism.

[102] He is to be sentenced for 4 counts of directing terrorism as specified at counts 11-14.

[103] The offences span different legislative provisions covering a period between March 1994 (count 11) to March 2007 (count 14) ie a period of 13 years. In addition he stands to be sentenced for 5 counts of membership of a proscribed organisation, namely, the UVF, as specified at count 6-10 during the period from 1991 to 2007.

[104] It is clear that the defendant occupied a prominent leadership position in the UVF throughout this period and actively directed its activities in addition to directly participating in many of its operations. In determining the appropriate sentence I have had regard to the guidance provided in cases including *R v Sean Kelly* [2015] NICA 279 (2017); *R v Fulton* [2007] NICC 2 and *R v Ahmed* [2011] EWCA Crim 184.

[105] Consistent with his involvement in the UVF over the relevant period and with the nature of his activities, the defendant is to be sentenced for a series of offences involving possession of firearms/ammunitions, explosives with intent including conspiracy to possess.

[106] In particular he is to be sentenced for:

- 47 counts of possession of firearms and ammunition with intent, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981 and 19 counts of possession of firearms and ammunition with intent, contrary to Article 58(1) of the Firearms (Northern Ireland) Order 2004.

- 9 counts of possession of explosives with intent, contrary to Section 3(1)(b) of the Explosive Substances Act 1883, 1 count of possession of explosives under suspicious circumstances, contrary to Section 4(1) of the explosive substances Act 1883.

- 1 count of making explosives, contrary to Section 3(1)(b) of the Explosive Substances Act 1883.

[107] In determining the appropriate sentence I have had regard to the decisions in *R v Ceulemans and others* (15/5/14); *Attorney General's Reference (No:3 of 2004)* [2004] NICA 20 and *R v McKenna and others* [2009] NICC 55.

[108] Because of the sheer volume of the offences committed by the defendant I have only set out the background facts of the most serious incidents before summarising the general nature of the remaining counts. In addition to what I have

already set out the defendant also has admitted ancillary and serious offences including arson, conspiracy to rob, aggravated burglary and other assaults.

[109] In addition to the initial counts on the indictment the defendant pleaded guilty to a voluntary bill submitted on 8 September 2017 in relation to a first count of wounding with intent, contrary to Section 18 of the Offences against the Person Act, the particulars being that on 8 April 1997 the defendant unlawfully and maliciously wounded Desmond Roberts with intent to do him grievous bodily harm.

[110] On the second count on the voluntary bill he pleaded guilty to possessing an offensive weapon in a public place, contrary to Article 9(2)(1) of the Public Order (Northern Ireland) Order 1987, namely that on 8 April 1997 without lawful authority or reasonable excuse he had with him in a public place, namely, the Fern Lodge Public Bar, Newtownabbey, namely a baseball bat.

[111] These charges related to a serious assault on Mr Roberts by a number of men in the Fern Lodge Bar, Newtownabbey, on the date in question. He sustained a severe beating and the hospital notes relating to his attendance at the Mater Hospital record that he sustained 3 lacerations; one to the forehead which was sutured; and 2 to the back of the head which were stapled. He had multiple contusions, abrasions and swellings. The defendant has admitted his involvement in in this offence. Because he only pleaded guilty to this offence on 18 September 2017 he has served limited time on remand for these offences. Any sentences I impose in relation to these offences will therefore only take effect from 8 September 2017. I consider that it is appropriate that the period of detention which the accused will serve as a result of the minimum term I have imposed should not be extended because of the offences admitted under the voluntary bill as Hart J said in *R v Stewart and Stewart* [2010] NICC:

> "It is in any event well established that any determinate sentence imposed where a person has also been made the subject of a life sentence cannot be consecutive to the life sentence and must be concurrent. This has been established since *Jones v The DPP* [1962] 46 Cr App R at page 149 that although a judge has a power to make a life sentence consecutive to an earlier determinate sentence, that is undesirable. In the same year in *R v Foy* [1962] 46 Cr App R at page 290 it was held that any consecutive determinate sentence passed to take effect upon the release from custody on licence of someone's sentence of life imprisonment is invalid."

[112] Therefore, as Hart J did in the *Stewart* case I shall adjust the sentences which I impose upon the voluntary bill in order to ensure that the accused does not spend any longer in prison than he would otherwise have done arising from the life tariffs imposed. This means that the sentence I impose in relation to these counts may

appear lenient at first glance but I am satisfied that such an approach is justified having regard to the totality principle which has guided my approach to sentencing in this case.

[113] In approaching the sentencing exercise I have had regard to the 301 TICs. The offences are similar in kind to the offences on the main indictment, save that they do not involve any murders, attempted murders or conspiracy to murder. They are a further reflection of the total immersion of the defendant in terrorist activities over a 16 year period. They would justify the imposition of lengthy prison sentences in their own right but would not affect the overall sentence imposed on the counts in the indictment. The offences however have informed the sentences I have imposed on the counts in the indictment and are reflected in the approach to the overall total sentencing exercise.

[114] All of the offences pre-date the Criminal Justice (Northern Ireland) Order 2008 and therefore no question of "dangerousness" arises.

Victim Impact

[115] In determining the appropriate sentence in this case I have had regard to the undoubted devastating effect that the defendant's criminality has had on a large number of individual victims and their families. This judgment has set out the individual victims identified in the counts, all of whom have suffered at the hands of the defendant. The impact of his conduct is brought home by a number of victim impact reports which have been provided to the court and which I have considered fully. I have received a moving statement from the daughter of Sean McParland from which it is clear that his murder has had a devastating and permanent impact upon the family members. The murder had a huge emotional and practical effect on the immediate family, in particular Mr McParland's wife and also Mrs Monaghan and her husband. The impact upon her young children who were present at the time of the murder has been immense. Out of respect for her privacy I have not set out the personal cost to all of her family.

[116] I have received a statement from the spouse of Witness A on the effect the attempted murder on him and the murders of Gary Convey and Eamon Fox have had on him and his family. Suffice to say that she has played an heroic role in supporting her husband and her family since the time of the murders in 1994. I have also received a statement from Raymond McCord. The defendant has pleaded guilty to a conspiracy to commit damage to Mr McCord's property between 1 February 1999 and 1 April 1999. It is clear that Mr McCord was a target for the UVF. This has caused understandable distress and suffering to Mr McCord and his family.

[117] A feature of some of the statements I have received and some public comment arising from Mr Haggarty's convictions relates to concern about alleged involvement by police officers in the activities of Mr Haggarty. In particular there is a concern

that some police officers failed to provide adequate protection to victims of Mr Haggarty and further there is anger at the decision not to rely on Mr Haggarty's evidence to prosecute individual police officers.

[118] The decision whether or not to prosecute other individuals based on the evidence of Mr Haggarty is a matter for the DPP and not this court. I will refer to the reasons given by the DPP for his decisions later in this judgment. The important point for the sentencing exercise which this court is obliged to undertake is that Mr Haggarty is willing to give evidence if required to do so in any subsequent prosecution.

Criminal Record

[119] I take into account the fact that the defendant has previous convictions for arson and possession of a firearm with intent to cause fear or violence in respect of which he was imprisoned for 3 years' on 8 May 1998.

Appropriate Tariffs

The court's approach to sentencing

[120] In sentencing the defendant I propose to impose concurrent sentences. Given the seriousness and multiplicity of the offences he has committed over a lengthy period of time I consider that this is the best approach. In reaching the appropriate starting point for the most serious offences I will bear in mind the overall criminality of the defendant's conduct and ensure that the totality principle of sentencing is applied. That this is the correct approach is endorsed by the leading Court of Appeal decision in this field namely *R v P, and Blackburn* [2008] 2 All ER 684 which has been adopted by our Court of Appeal in *R v Hyde* [2013] NICA 8. In this context the totality principle was described as "fundamental" – see paragraph 39.

[121] At paragraph 40 the judgment goes on to say:

> "The SOCPA procedure requires the defendant to reveal the whole of his previous criminal activities. This will almost inevitably mean that he will admit, and plead guilty to offences which would never otherwise have been attributed to him, and may indeed have been unknown to the police. In order for the process to work as intended, sentencing for offences which fall into this category, should usually be approached with these realities in mind and, so far as Section 73 agreements are concerned, should normally lead to the imposition of concurrent sentences. "

[122] I propose therefore to deal with the most serious offences first, namely those involving life tariffs and whilst I will impose sentences in respect of many other serious crimes such sentences will be concurrent to those imposed in the most serious charges.

[123] In considering the appropriate tariffs I have taken into account the way in which the principles set out in *McCandless* have been applied in various notorious terrorist incidents in this jurisdiction, bearing in mind that each case turns on its particular facts.

[124] In particular I have considered the cases of *R v Fulton* [2007] NICC 2, *R v Wooton & McConville* [2014] NICA 69, *R v Stewart & Stewart* [2010] NICC 8 and *R v Irwin* [2008] NISLT 5.

[125] I did consider, having regard to the totality of the defendant's offending, whether a whole life term should be imposed. The circumstances in which such a sentence should be imposed have been considered in the cases of *R v Trevor Hamilton* [2008] NICA 27 and *R v Irwin* [2008] NISLT 5.

[126] However, I have decided that this is not an appropriate approach. I consider it is not appropriate because it would not permit the court to temper its sentence in circumstances where the defendant has pleaded guilty and accepted responsibility for his crimes. I also consider that it would defeat the objects of the SOCPA scheme which has provided statutory recognition of the well-established principle in the public interest in discounting the sentences of those defendants who provide assistance to the prosecuting authorities.

[127] Finally, whilst it is generally not productive to compare atrocities I am not aware of any terrorist offences in this jurisdiction in which a whole life tariff has been imposed.

[128] In the words of Kerr LCJ in *R v Hamilton*

> "A whole life tariff should be confined to those instances where `the facts of the case, considered as a whole, will leave the judge in no doubt that the offender must be kept in prison for the rest of his or her life.'"

[129] I do not consider that this is such a case.

[130] What I take from the reported cases is that those convicted of terrorist murders can expect to receive a life tariff of about 25 years before any relevant discounts. Obviously tariffs of 30 years and upwards are reserved for the most heinous of murders, normally involving multiple victims.

[131] I have set out the various aggravating and mitigating factors in each of the murders in which the defendant has been involved.

[132] If these offences had been committed in isolation I have come to the view that the appropriate starting tariff for the murders would be one of 25 years.

[133] I would take a different approach in respect of the McTasney murder in light of the defendant's role and his relative youth at the time. I would also take a different view in relation to the Harbinson murder because I accept that the defendant did not intend to kill the victim.

[134] However, in coming to the appropriate sentence I must have regard to the totality principle and look at the offending of the defendant as a whole. It would be unrealistic to impose consecutive sentences, as the court would be entitled to do in theory, for each of the serious offences he has committed. I propose to choose a starting point before discount for assistance and plea which reflects the totality of the defendant's offending behaviour and which is just and proportionate. I propose to do this by the imposition of concurrent sentences. The concurrent sentences I impose for the more serious charges will be higher than would be the case for a single sentence for a single offence, as each individual sentence is aggravated by the presence of the additional offences.

[135] The offences which the defendant has admitted are ones of exceptional gravity. The fact that he was involved directly in multiple terrorist murders must be an aggravating factor in the determination of the overall minimum term. In addition to the four separate incidents of murder and the incident of aiding and abetting another murder the defendant has admitted a multiplicity of other very serious offences. In effect he has been involved in a terrorist campaign over a 16 year period. That campaign has resulted in deaths for which he was directly responsible. The organisation he has supported and assisted has resulted in untold damage to individual lives and to this society as a whole. The imposition of a whole life sentence was a real possibility in this case but for the reasons I have set out above I have decided not to do so.

[136] However, I agree with Mr Murphy's submission that the totality of all the defendant's offending requires the utmost condemnation and that the appropriate sentences are likely to fall well above those previously identified in this jurisdiction. Accordingly, I propose to impose an overall minimum life tariff term before any discount of 35 years' imprisonment. I propose to achieve this by imposing a 35 year tariff in respect of the murder of Sean McParland, a 30 year tariff in respect of the murders of Mr Convey, Mr Fox and Mr McDermott, a 20 year life tariff in respect of aiding and abetting the murder of Peter McTasney and an 18 year tariff in respect of the murder of John Harbinson. I recognise that these individual tariffs are higher than what I would have imposed if sentencing for a single offence in isolation. I have adopted this approach because of my decision to impose concurrent sentences and to ensure a sentence which reflects the totality of the defendant's offending.

This approach should not be interpreted as suggesting that the murders of those other than Sean McParland were in any way less devastating or traumatic for the families of the victims.

[137] This minimum tariff is the tariff taking into account aggravating and mitigating circumstances before applying discount for assistance and guilty pleas.

Discount for assistance under SOCPA

[138] It is important to understand the public interest principles behind discounting sentences for those who agree to provide assistance to the prosecuting authorities.

[139] The principle has been well expressed in the judgment of Sir Igor Judge in *R v P; R v Blackburn* [2008] 2 All ER 684 in the following way:

> "There never has been, and never will be, much enthusiasm about any process by which criminals receive lower sentences than they otherwise deserve because they have informed on or given evidence against those who participated in the same or linked crimes, or in relation to crimes in which they had no personal involvement, but about which they have provided useful information to the investigating authorities. However like the process which provides for a reduced sentence following a guilty plea, *this is a longstanding and entirely pragmatic convention.* The stark reality is that without it major criminals who should be convicted and sentenced for offences of the utmost seriousness might, and in many cases, certainly would escape justice. Moreover the very existence of this process and the risks that an individual for his own selfish motives may provide incriminating evidence, provide something of a check against the belief, deliberately fostered to increase their power, that gangs of criminals, and in particular the leaders of such gangs, are untouchable and beyond the reach of justice. The greatest disincentive to the provision of assistance to authorities is an understandable fear of consequent reprisals. Those who do assist the prosecution are liable to violent, ill-treatment by fellow prisoners generally, but quite apart from the inevitable pressures on them while they are serving their sentences, the stark reality is that those who betray major criminals face torture and execution. The solitary incentive to encourage co-

> operation is provided by a reduced sentence, and the common law, *and now statute* have accepted that this is a price worth paying to achieve the overwhelming and recurring public interest that major criminals, in particular, should be caught and prosecuted to conviction. (My italics)"

[140] This is not a case where the defendant has had a "road to Damascus" conversion. He is not someone driven by remorse who wishes to atone for his crimes. His motivation is undoubtedly one of self-interest and pragmatism. Notwithstanding this there is, as Sir Igor Judge has pointed out, a well-established public interest in discounting sentences in these circumstances.

[141] What then is the appropriate discount for the assistance provided by the defendant under the SOCPA agreement in this case?

[142] The statute itself does not include any guidance as to the appropriate level of discount to be provided. However the general principles are well-established in a series of decided cases. The leading authority is the case of *R v P; R v Blackburn* (to which I have already referred). As indicated this decision has been adopted and approved by our Court of Appeal in *R v Hyde (*to which I have also referred).

[143] The key passages in *R v P* are as follows:

> "[38] The first principle is obvious. No hard and fast rules can be laid down for what, as in so many other aspects of the sentencing decision, is a fact specific decision.
>
> [39] The first factor in any sentencing decision is the criminality of the defendant, weight being given to such mitigating and aggravating factors as there may be. Thereafter the quality and quantity of the material provided by the defendant in the investigation and subsequent prosecution of crime falls to be considered. Addressing this issue, particular value should be attached to those cases where the defendant provides evidence in the form of a witness statement or is prepared to give evidence at any subsequent trial, and does so, with added force where the information either produces convictions for the most serious offences, including terrorism and murder, or prevents them, or which leads to disruption to or indeed the breakup of major criminal gangs. Considerations like these have to be put into the context of the nature and extent of the personal risks to and potential consequences faced by the

> defendant and the members of his family. In most cases the greater the nature of the criminality revealed by the defendant, the greater the consequent risks. … Accordingly, the discount for the assistance provided by the defendant should be assessed first, against all other relevant considerations, and the notional sentence so achieved should be further discounted for the guilty plea. In the particular context of the SOCPA arrangements, the circumstances in which the guilty plea indication was given, and whether it was made at the first available opportunity, may require close attention. Finally we emphasise that in this type of sentencing decision a mathematical approach is liable to produce an inappropriate answer, and that the totality principle is fundamental. In this court, on appeal, focus will be the sentence, which should reflect all the relevant circumstances, rather than its mathematical computation."

[144] In *R v King* [1985] 82 Cr App Rep 120 (obviously a pre-SOCPA case) Lord Lane CJ said this:

> "It is of course impossible to lay down any hard and fast rule as to the amount by which the sentence upon a large scale informer should be reduced by reason of the assistance which he gives to the police … One then has to turn to the amount by which the starting figure should be reduced. That again will depend upon a number of variable features. The quality and quantity of the material disclosed by the informer is one of the things to be considered, as well as its accuracy and the willingness or otherwise of the informer to confront other criminals and to give evidence against them in due course if required in court. Another aspect to consider is the degree to which he has put himself and his family at risk by reason of the information he has given, in other words the risks of reprisal. No doubt there will be other matters as well … Consequently, an expectation of some substantial mitigation of what would otherwise be the proper sentence is required in order to produce the desired result, namely the information. But the amount of that mitigation, it seems to us, will vary, from about one half to two thirds reduction according to the circumstances as outlined above."

[145] In *R v P* at paragraph 41 the court said:

> "What the defendant has earned by participating in the written agreement system is an appropriate award for the assistance provided to the administration of justice, and to encourage others to do the same, the reward takes the form of a discount from the sentence which would otherwise be appropriate. It is only in the most exceptional case that the appropriate level of reduction would exceed three quarters of the total sentence which would otherwise be passed, and the normal level will continue, as before, to be a reduction of somewhere between one half and two thirds of that sentence."

[146] Mr O'Rourke argues that this is an exceptional case which would justify a reduction in excess of three quarters of the total sentence which would otherwise be passed.

[147] A review of the reported cases confirms a range of between 25% and 75% as being appropriate discounts, depending on the circumstances of a particular case. In *R v Burcombe* [2008] NICC 26 a defendant pleaded to a single count of conspiracy to cause grievous bodily harm. The sentence was reduced by 50% to 3 years' imprisonment pursuant to Section 73 of SOCPA.

[148] In *R v Stewart and Stewart* [2010] NICC 8 the defendants pleaded guilty to the offence of aiding and abetting murder attracting a sentence of life imprisonment with an appropriate minimum term of 22 years. Each of the defendants entered into a Section 73 SOCPA Agreement in relation to loyalist paramilitary activity and a reduction of 75% was applied, resulting in a tariff of three years after deduction for the plea.

[149] In *R v Bevans* [2009] EWCA Crim 2554 the defendant received a reduction of 20% in respect of a minimum term of 26 years for the offence of murder. The defendant declined to enter into an agreement under SOCPA to give information relating to other persons involved in the murder, but did enter into a limited agreement to provide information relating to a corrupt police officer. The reduction in his minimum term was less than would have been appropriate if he had entered into an agreement relating to the murder. In *R v D* [2011] 1 Cr App R(S) 69 the Court of Appeal upheld a 25% reduction for assistance given after sentence in relation to drugs matters. The defendant provided intelligence information to the police but refused to give evidence against anyone and failed to disclose fully the extent of his own criminality.

[150] In *R v Hood* [2012] EWCA Crim 1260 the defendant pleaded guilty to murder and gave evidence against his co-accused. His evidence was considered significant although the prosecution had a case against the co-accused without his evidence.

The minimum term was reduced from 29 years to 22 i.e. a reduction of approximately 25%.

[151] In *R v Hyde* [2013] NICA 8, which is the leading case in this jurisdiction, the Court of Appeal affirmed a reduction of 75% for assistance in respect of multiple offences committed over a 15 year period when the defendant was part of a loyalist paramilitary organisation.

[152] In *R v McCaughey and others* [2015] NICA 76 the Court of Appeal affirmed a 60% reduction for assistance including giving evidence against the defendant's father, a co-accused and principal offender in a murder.

[153] The factual backgrounds in the cases of *Hyde* and *Stewart* are the most closely aligned to the circumstances of this case.

[154] In setting the appropriate discount it is important to remember that the courts discourage an overly mathematical approach. As Gillen LJ put it in *R v McCaughey and others* at paragraph 27:

> "Finally, we emphasise that in this type of sentencing decision the mathematical approach is liable to produce an inappropriate answer, and that the totality principle is fundamental."

This passage echoes the judgment in *R v P*; *R v Blackburn* at paragraph 41:

> "We were asked to consider the possibility of a discount in an exceptional case which, in effect, was that the defendant would not serve any sentence at all. We cannot envisage any circumstances in which a defendant who has committed and for these purposes admitted serious crimes can or should escape punishment altogether. The process under Section 73 and 74 does not provide immunity from punishment and, subject to appropriate discounts, an effective sentence remains a basis characteristic of the process."

[155] In my view it would be wrong in this case to provide a percentage discount for assistance pre-SOCPA, then a percentage discount for SOCPA assistance to be followed by a further discount for a plea of guilty which would result in either no sentence of imprisonment or a derisory one.

[156] In the course of submissions Mr Murphy raised the issue as to whether or not in considering discount for assistance the court should "read across" the decision of the Court of Appeal in the case of *R v Turner and Turner* [2017] NICA 52. In that case

the court gave some guidance to sentencing judges on the appropriate discount for guilty pleas in murder cases.

[157] The court did not endorse the practice in England and Wales where there are express limitations on the extent of the reductions for guilty pleas in murder cases. However, the court did recognise that the sentence prescribed for murder is different from every other offence and is intended to reflect the seriousness with which society regards this crime.

[158] At paragraph 40 the court concluded:

> "We consider, therefore, that there are likely to be very few cases indeed which would be capable of attracting a discount close to one third for a guilty plea in a murder case. The circumstances of a mercy killing for example might possibly achieve that outcome. Each case clearly needs to be considered on its own facts but it seems to us that an offender who enters a not guilty plea at the first arraignment is unlikely to receive a discount for a plea on re-arraignment greater than one sixth and that a discount for a plea in excess of 5 years would be wholly exceptional even in a case of a substantial tariff. We have concluded, however, that it would be inappropriate to give any more prescriptive guidance in this area of highly fact sensitive discretionary judgment. Where, however, a discount of greater than one sixth has been given for a plea in a murder case the judge should carefully set out the factors which justify it in such a case."

[159] Mr Murphy points out that in the case of *R v Hood* [2012] EWCA Crim 1260 the Court of Appeal in England and Wales endorsed a "read across" between discount for guilty pleas and for assistance in murder cases. At paragraph 24 the judgment states:

> "Lastly, the judge attached significance in assessing the adjustment to the sentence to the fact that the offence which the defendant had committed was of the gravest, namely murder. He was referred in that connection to the case of *Bevens* [2009] EWCA Crim 2554; … care needs to be taken in attempting to reason from any single instance sentencing decision to any other case and *Bevens* is simply a single instance decision. But since the judge was referred to it, it is right to say that the court there accepted that it was a significant factor in assessing the

> adjustment that the offence that the defendant had committed was itself murder. We endorse that. It is clear that the policy which informs the statutory restriction on reduction in sentence for plea of guilty in cases of murder reads across into adjustment in cases of assistance. Cases of assistance involve assessing both the gravity of the offence which the defendant witness has committed and also the gravity of the offence of which he is giving evidence or in respect of which he is giving assistance – in the present case both were murder."

[160] In considering this matter it should first be recognised that there is no "statutory restriction on reduction in sentence for a plea of guilty in cases of murder" in Northern Ireland.

[161] I do not consider that the guidance provided in the Turner case supports a restriction on the discount for assistance in murder pleas to a range between one sixth to one third, or to a period of 5 years. It is inconsistent with the decisions of the courts in this jurisdiction – see *R v Stewart and Stewart* where a tariff was reduced by 75% and also *R v McCaughey and others* where on a DPP Reference the Court of Appeal approved the trial judge's reduction of a tariff by 60%.

[162] If the court were to read *Turner* across in the way suggested it would fall into the error of adopting an overly mathematical approach. All the authorities make it clear that the exercise of the discretion in terms of discount is particularly fact sensitive.

[163] If the court's discretion were to be restricted as a result of the *Turner* guidance for reductions for guilty pleas then this could well have the effect of defeating the purpose of the statutory scheme for assistance, particularly in serious terrorist cases. As the Court of Appeal recognised in *Hood* the "normal" level of reduction is:

> "Something in the region of half to two thirds of what the sentence would otherwise have been, is the paradigm case of the professional criminal who gives evidence against dangerous people and who puts himself at considerable risk as a result".

[164] None of these factors were present in the cases of *Hood* or *Bevens*.

[165] In my view the proper approach is that set out in *R v P; R v Blackburn*, *Hyde and McCaughey* cases. In approaching the overall sentencing exercise I of course take into account the very serious nature of the offences committed and admitted by the defendant. This is reflected in the starting points to which I have referred. I also bear it in mind in ensuring that the discount applied does not result in an ineffective

sentence. The seriousness of the offences committed by the defendant are a relevant consideration in the determination of the sentence.

[166] I now consider the extent of the assistance which the defendant has provided.

[167] In terms of the assistance provided it is correct to say that the report from the specified prosecutor did express some concerns. However, the prosecution made it clear that this was not a case in which it was seeking to review the agreement under Section 74 of the Act. The report states that:

> "The defendant has given a vast volume of information in respect of his own criminality and that of others. He has a very good memory and the level of detail in his accounts is remarkable given the significant number of incidents in which the defendant has been involved and the time that has passed since the incidents occurred. The defendant is robust and resistant to challenge and on the whole his accounts have been clear and consistent."

[168] The defendant has been interviewed on over 1,000 occasions between 2010 and 2017. The product of those interviews comprises some 12,244 pages of interview transcript.

[169] In the course of these interviews the defendant has set out in considerable detail his own involvement in the commission of over 500 offences of a very serious nature.

[170] He has provided specific details of the identity and roles of others who participated in these offences.

[171] Without the defendant's admissions there would have been insufficient evidence to have sustained a prosecution against him.

[172] In addition to the information which has resulted in the charges against him the defendant has also provided assistance in respect of matters in which he was not directly involved and which have not led to charges against him.

[173] In a letter dated 17 October 2017 the PPS provided a table summarising the assistance provided in the most serious cases. This indicates that the defendant provided assistance in respect of the following:

TOTAL – MURDERS	
Incidents	31
Victims	55
TOTAL – MURDERS (Types)	
Shootings	22

Bombing	2
Assaults	3
Stabbings	3
Unknown	1

Attempted Murder	20
Conspiracy to murder	56
Punishment Shooting	49
Punishment Beating	22
Robbery	19
Assault	39
Bombing/explosive Offences	24
Shootings	11
Arson	7
Criminal Damage	13
Threats/targeting/intimidation	25

[174] These figures include the murders of Sean McParland, Gary Convey and Eamon Fox, and John Harbinson in respect of which the defendant has been charged.

[175] As a result of the information provided, not only has the defendant been charged with the offences in this case, but the prosecution have been provided with a significant amount of information in relation to very serious criminal activity.

[176] The defendant is willing to give evidence in court in relation to any of the matters he has disclosed in the course of his interviews.

[177] As a result of the information he has provided, the DPP has indicated that it is intended to prosecute in one case which involves murder and that the defendant will be required to give evidence in those proceedings.

[178] The nature and extent of the personal risk to and potential consequences faced by the defendant are extremely serious. In prison he has been held in solitary confinement. When released from prison he will require a new identity with the resultant impact on his family life that this entails. He will remain under threat for the rest of his life.

[179] In addition to the assistance provided by the offender under the SOCPA Agreement the defendant also provided assistance to the authorities whilst operating as a covert human intelligence source ("CHIS") between 1993 and 2004/05.

[180] In accordance with normal practice the prosecution made no comment in relation to this assistance but through his counsel the defendant provided to the court details of the assistance provided by him during this time.

[181] A table submitted on behalf of the defendant records that 300 intelligence documents were received from the defendant.

[182] The material provided concerned operational planning, recruitment, targeting, weapons procurement/storage, explosives, tensions/feuds within loyalist paramilitary groups, protests, parades, street disorder and criminality involving drugs and robberies.

[183] The material provided included pre-emptive intelligence allowing police to have prior knowledge of approximately 44 potential incidents to allow pre-emptive action to be taken. At least 34 individuals were identified as being under threat which allowed police to mitigate that threat.

[184] As a result of the material police were able to conduct a substantial number of searches resulting in arrests and recovery of firearms and explosive devices.

[185] The material also included post incident information in relation to 16 murders, 11 firearm incidents, 5 attempted murders, 5 paramilitary attacks, 5 assaults, 4 arsons, 3 hijackings, 2 bomb/incendiary incidents and a number of lesser offences.

[186] Some of this assistance related to the offences to which he has pleaded guilty. By way of example as a result of information provided by the defendant to Special Branch after the murders of Mr Convey and Mr Fox, the weapon that was used in the shooting was retrieved at the home of a UVF associate identified by the defendant who was subsequently arrested, charged and convicted for the murders. He also gave relevant information after the murder of John Harbinson.

[187] In terms of pre-emptive action the defendant referred to assistance which resulted in steps taken to avert the attempted murder of a Sinn Fein worker and the brother of an alleged IRA member. He also alleged that he gave information which had the potential of preventing the murder of Gerard Brady, Cecil Corrigan, William Doherty and Raymond McCord. This was followed by detailed information after the murders occurred. These details were also provided to the OPONI in the course of his interviews arising from his SOCPA agreement.

[188] There has been controversy about the failure of the Director to bring charges against persons named by the defendant in the course of his extensive interviews. There is a particular concern in relation to the failure to charge two named police officers in respect of whom the defendant made allegations of serious criminality.

[189] This court is simply not in a position to make any assessment on these issues. Mr O'Rourke in the course of his submissions drew my attention to an interview given by the then Director of Public Prosecutions, Barra McGrory QC, to the BBC when he was asked if the decision not to use the defendant as a witness in certain

cases meant that the PPS did not believe what he had told police. Mr McGrory stated:

> "No it does not. What it means is we do not … consider that what he told us is sufficient evidence on its own to prove beyond a reasonable doubt that others were guilty of significant crime. That is all it means."

[190] In any event I note that the DPP will be relying on the defendant to give evidence in respect of a prosecution for murder. The key point from the defendant's point of view is that he remains willing to give evidence in respect of the matters he has disclosed in interview. Should he fail to comply in the future with any requests to give evidence then of course any discount afforded to him can be reconsidered under the statutory scheme.

[191] The defendant is entitled to discount for all the assistance he has provided to the authorities prior to entering into the SOCPA agreement and for the assistance provided under the agreement. I had considered whether it would be appropriate to use the "non-statutory" assistance to adjust the starting point in the sentencing exercise by way of mitigation before applying discount under SOCPA. However, I have come to the conclusion that the proper approach is to discount the starting point having regard to <u>all</u> the assistance provided by the defendant.

[192] I have concluded that the assistance provided by the defendant whilst operating as a CHIS and pursuant to the SOCPA agreement was substantial. It reflects all the factors set out in *R v P* and *R v Blackburn*.

[193] The assistance provided by the defendant both as a CHIS and pursuant to the SOCPA Agreement goes beyond what might be described as "normal" and certainly beyond anything provided in the cases to which I have been referred. As a result of that assistance the defendant has placed himself at considerable personal risk which will have a significant impact for the rest of his life. He will be giving evidence in relation to a trial for murder and he remains willing to give evidence in respect of any of the matters he has disclosed in the course of his interviews. Taking all of these factors into account I consider that the appropriate discount for all of the assistance provided should be 75%.

[194] In terms of the discount it is necessary to separate that part which is attributable to SOCPA assistance so as to facilitate re-sentencing under the statutory scheme if that ever became necessary.

[195] Given the Court of Appeal's enjoinder to avoid an over mathematical approach this is a somewhat artificial exercise but I have decided that 60% of the discount should be attributable to SOCPA assistance and 15% to assistance whilst he acted as a CHIS.

Discount for Guilty Pleas

[196] The defendant is entitled to a discount by reason of his pleas of guilty. The defendant admitted all of his offences in the course of interview and therefore has made admissions at the earliest opportunity. Many of the offences admitted to were undetected and would not have resulted in convictions but for the defendant's confessions.

[197] I have considered the decision of the Court of Appeal in *R v Turner and Turner* and bearing in mind the guidance set out therein I have come to a conclusion that the appropriate discount for the guilty pleas in the life tariffs in this case should be 25%. It might be argued that a greater discount should be provided for the pleas in respect of the offences in respect of which a life sentence was not imposed but the reality is that the lesser sentences will be subsumed by the life sentence cases. Having regard to the approach I have taken and in particular the totality principle and the requirement to pass a total sentence which reflects all of the offending behaviour I do not propose to vary the discount for the guilty pleas across the offences. In applying the percentage discount I have "rounded off" the actual sentences rather than applying an exact figure in terms of days.

[198] I have attached a schedule to this judgment in which I set out the sentence I impose in respect of each of the counts.

[199] The headline figure is set out in Count 17, the murder of Sean McParland. I have determined that the appropriate starting sentencing point including aggravating and mitigating factors, but excluding discount for assistance and plea of guilty, is a minimum tariff of 35 years' imprisonment. When this is reduced by 75% discount for all assistance pre and post-SOCPA and by a further 25% for his plea of guilty this results in a tariff of 6½ years' imprisonment before the defendant is entitled to be considered for release by the Parole Commissioners. All the sentences imposed are concurrent. Therefore, the remaining sentences are subsumed in the sentence in relation to count 17.

[200] Apart from the counts in the Voluntary Bill of Indictment the Defendant will be entitled to credit for the time he has spent on remand. I am informed by the Prison Service that this totals 1186 days for the period 25 August 2009 to the 22 November 2012 and the period from 26 June 2017 to date. The sentences on the counts in the Voluntary Bill will run from 8 September 2017.