



Report of the Lady Chief Justice's Sentencing Group (NI)

July 2022 – June 2024

Preface

This is the fifth report¹ of the Lady Chief Justice's Sentencing Group covering the period July 2022 – June 2024.

The Lady Chief Justice's Sentencing Group

The Lady Chief Justice's Sentencing Group was established in 2010 to:

- (a) advise the Chief Justice as to topics for their Programme of Action on Sentencing;
- (b) consider and advise on sentencing guidelines for the Magistrates' Courts in Northern Ireland;
- (c) consider judgments of the Court of Appeal and advise the Judicial Studies Board for Northern Ireland ("JSB") as to their suitability for inclusion within the JSB Sentencing Guideline Compendium (the "*Compendium*")²;
- (c) consider first instance judgments of the Crown Court and advise the JSB as to their suitability for inclusion within the Compendium;
- (d) liaise with the JSB as to the training of the judiciary on sentencing practice and the dissemination of sentencing guidelines;
- (e) make such other proposals and carry forward such other programmes of action relating to sentencing guidelines and practice as may seem fit to them after consultation of the Chief Justice.

The Sentencing Group meets triannually, in each of the legal terms.

¹ The fourth report was published on 10 September 2024 and can be accessed at [LCJ's Sentencing Group 4th Report](#).

² The JSB Sentencing Guideline Compendium can be located at <https://www.judiciaryni.uk/sentencing-guidelines-northern-ireland>

Membership of the Sentencing Group

A list of members of the Sentencing Group as of 30 June 2024 is at Annex A.

During the reporting period the following changes in judicial membership of the Sentencing Group took place:

- i. Her Honour Judge Smyth became an ex officio member in July 2022.
- ii. Presiding District Judge (Magistrates' Courts) Keown became an ex officio member in January 2023.
- iii. District Judge (Magistrates' Courts) Ranaghan was appointed to the Group in June 2023.

During the reporting period, the following changes in non-judicial membership took place:

- i. Dr Russell Orr of Ulster University's School of Law was appointed to the Sentencing Group in February 2023.
- ii. Mr Seamus Mulholland, barrister-at-law, of the School of Law at Queen's University Belfast was appointed to the Sentencing Group in July 2023.
- iii. Ms Geraldine Hanna was reappointed to the Sentencing Group in July 2023 as the lay victims of crime representative in her capacity of Commissioner Designate for the Victims of Crime.

Ms Laura McLaughlin assumed the role of Secretary to the Sentencing Group in January 2023 replacing *pro tem* acting Secretary Mr Terence Dunlop.

Court of Appeal Sentencing Guidelines

The Sentencing Group periodically reviews new judgments of the Court of Appeal in Northern Ireland and where appropriate, judgments of the Crown Court. Where the Group considers that a judgment should be accorded the status of a sentencing guideline it is published in the Compendium.

During the reporting period, the Group identified and published 28 new Court of Appeal sentencing guideline judgments.³ It was agreed at the June 2024 meeting that guideline judgments uploaded to the Compendium going forward would have the key paragraphs highlighted to draw the readers attention to the key guidance.

³ A full list of these judgments, together with keywords, can be found at Annex B.

Crown Court Decisions

One of the initial issues raised by the Sentencing Group was the limited ability of the Court of Appeal to target specific offences for issuing sentencing guidelines (e.g. where the offence has been recently created, or where the offence comes before the Court of Appeal infrequently).

To combat this problem, the Sentencing Group previously adopted a mechanism for Crown Court sentencing decisions in appropriate cases to be accorded the status of interim guidance pending a suitable Court of Appeal decision.

Crown Court judgments are also reviewed and added to the Compendium if they are determined to be of value to sentencing judges generally.

During the reporting period, the following three Crown Court cases were added to the Compendium:

| <u>Case</u> | <u>Citation</u> | <u>Keywords</u> | <u>Section</u> |
|------------------------|---|---|---|
| R v BN | [2023] NICC 5 | Assault occasioning actual bodily harm – attempting to choke with intent to commit an indictable offence (rape) – attempted rape – domestic violence – non-fatal strangulation | Violent Offences |
| R v Jonathan Ritchie | [2024] NICC 5 | Crown Court sentencing remarks which provide assistance in sentencing for the offence of the abuse of a position of trust contrary to Article 23 of the Sexual Offences (Northern Ireland) Order 2008 (See in particular paragraphs [18] – [20]) Five specimen counts of abuse of a position of trust – support worker at a children’s home – looked after child with history of addiction and mental health issues – DCS three years and six months (18 months custody and 2 years statutory supervision) | Sexual Offences |
| R v Michael O’Loughlin | [2024] NICC 12 | This is the first Encrochat sentencing judgment in NI. Crown Court sentencing remarks – various drug offences - Proceeds of Crime Act offences – firearms offences – conspiracy to cause GBH – conspiracy to commit murder – material obtained from the Encrochat | 1. Drug Offences 2. Theft & Other Dishonest Offences |

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| | | network by the NCA through a joint French and Dutch police investigation - 12 years imprisonment | 3. Multiple Issue Sentencing Cases |
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UK Supreme Court Cases

During the reporting period the Sentencing Group added the following two UK Supreme Court cases to the Compendium given their application to Northern Ireland.

| <u>Case</u> | <u>Citation</u> | <u>Summary</u> | <u>Section</u> |
|--|--------------------------------|--|--------------------|
| R v Maughan | [2022] UKSC 13 | This is a judgment given by Sir Declan Morgan in the Supreme Court which reaffirms the different approach in this jurisdiction (from E&W and Scotland) to the question of the reduction for a guilty plea in circumstances where the offender has essentially been apprehended in flagrante. | Guilty Pleas |
| Morgan & Others (Respondents) v MOJ (Appellant) (NI) | [2023] UKSC 14 | A judgment of the UKSC on appeal from NI in which it was unanimously held that section 30 of the Counter-Terrorism and Sentencing Act 2021, which inserted Article 20A into the Criminal Justice (Northern Ireland) Order 2008, is compatible with article 7 and article 5 of the ECHR. | Terrorist Offences |

Magistrates' Courts Sentencing Guidelines

The Sentencing Group's Magistrates' Courts Sentencing Guidelines Sub-Committee has created and published sentencing guidelines for some 126 offences in total, since the Group commenced its work in 2010.⁴ These guidelines cover the vast majority of offences which commonly come before this tier. During the reporting period, the Sub-Committee reviewed and updated the guidelines in respect of planning offences in light of the Planning Act (Northern Ireland) 2011. An Appendix B was also added to the Magistrates' Courts' Sentencing Guidelines which contains hyperlinks to summaries of the key legislation in respect of the most common ancillary orders at this tier. The Sub-Committee also agreed a list of existing offence guidelines in which the case law will be reviewed and, if necessary, updated. This work is ongoing.

⁴ The Magistrates' Court Sentencing Guidelines can be accessed at <https://www.judiciaryni.uk/sentencing-guidelines-magistrates-court>

A list of the members of the Magistrates' Courts' Sentencing Guideline Sub-Committee as at 30 June 2024 can be found at Annex C.

Judicial Studies Board

The Sentencing Group continues to work in partnership with the JSB. A table listing the sentencing related events organised by the JSB during the reporting period has been included at Annex D. The Chairman of the Sentencing Group, Lord Justice McCloskey, is also Chairman of the JSB.

Other Sentencing Group Activities

Members of the Sentencing Group have also participated in a range of wider sentencing events, conferences and meetings throughout Northern Ireland and the UK. These events are as follows:

1. Lord Justice McCloskey, Chair of the Sentencing Group, attended the first Four Corners Sentencing Conference, a meeting of the sentencing bodies of the four jurisdictions of the UK and Ireland, and presented papers on "Rehabilitation: Resurgent or Retreating?" and "The Court of Judicature Northern Ireland: Chief Justice's Sentencing Group" (Edinburgh, 24 & 25 November 2022).
2. The Chair of the Sentencing Group attended a sentencing seminar hosted by the Sentencing Council of England and Wales in collaboration with City Law School, University of London, and the Sentencing Academy on "Current Issues in Sentencing Policy and Research" (City Law School, London, 13 January 2023).
3. Presiding District Judge (Magistrates' Courts) Keown along with the secretary and assistant secretary to the Sentencing Group met with Mr John Blair MLA (Chair of the All Party working Group on Animal Welfare) and Ms Nora Smith (Chief Executive of Ulster Society for the Prevention of Cruelty to Animals) to discuss sentencing in animal cruelty cases (Royal Courts of Justice Belfast, 27 June 2023 & 11 October 2023).
4. His Honour Judge Rafferty KC and District Judge (Magistrates' Court) Broderick attended a number of meetings and provided judicial input into the Memorandum of Understanding between the Strategic Planning and Performance Group of the Department of Health and the Probation Board for Northern Ireland on the 'Completion of reports to advise the judiciary of the likely impact upon a child/children of the imposition of a custodial sentence in respect of a parent/carer' which came into effect on 1 September 2023.
5. Her Honour Judge Smyth, Recorder of Belfast, gave a presentation to students at Queen's University Belfast on sentencing (QUB, 18 October 2023).

6. Her Honour Judge Smyth, Recorder of Belfast along with His Honour Judge Greene KC and Her Honour Judge McColgan KC attended the inaugural Scottish Sentencing Research Symposium held by the Scottish Sentencing Council in conjunction with the Sentencing Academy and the University of Glasgow (Wolfson Medical School, Glasgow, 24 November 2023).
7. McCloskey LJ gave a lecture to QUB School of Law sentencing module students on 9th November 2023.
8. McCloskey LJ and McBride J (Judge -in- Residence) attended the QUB School of Law Institute of Criminology and Criminal Justice Seminar on 'The Language of Sentencing' on 18 January 2023.
9. Presiding District Judge (Magistrates' Courts) Keown took part in 'Changing Lives: The Inside Story of the Probation Service', a video launched by the Probation Board for Northern Ireland to provide education and increase confidence in respect of community sentences.
10. The Lady Chief Justice gave the opening speech at the PBNI event launching the above video (Ulster University, 26 June 2024).

During the reporting period, in Autumn 2023 the Lady Chief Justice launched a pilot involving the filming of sentencing decisions in the Court of Appeal. Four such decisions were filmed on a 'not for broadcast' basis in order to inform analysis of the potential for roll-out of broadcasting appropriate cases following requisite legislative change in this area. On foot of the pilot, the Lady Chief Justice has asked the Minister of Justice to consider bringing forward the necessary legislative changes.

Lady Chief Justice's Programme of Action on Sentencing

The LCJ's Programme of Action on Sentencing was initiated in 2010. It is a 'rolling' programme with topics being added where it is considered appropriate to do so; and topics being removed when suitable guidelines have been issued. The Group advises the LCJ on topics for inclusion in the programme and, where appropriate, establishes guidelines for offences contained therein.

The Group has also worked closely with the JSB to arrange training on the topics within the programme where deemed appropriate.

Annex E sets out the actions taken by the Sentencing Group in relation to each of the offences included on the Programme of Action up to and until June 2024.

Summary and Conclusions

The Sentencing Group has continued its work in the usual way during the reporting period by overseeing the publication of sentencing guidelines and guidance, with the aim of ensuring that the Northern Ireland public, judiciary, legal profession, universities, law students, litigants and all interested agencies are properly informed and periodically updated on sentencing practice. To that end, since the date of the last report until the period ending June 2024, the Sentencing Group has, in particular:

- identified and published 28 new Court of Appeal sentencing guideline judgments;
- identified and published 3 Crown Court guidance cases;
- identified and published 2 UK Supreme Court guidance cases;
- reviewed and updated the Magistrates' Court Planning Offences Sentencing Guidelines;
- created and published an additional appendix to the Magistrates' Court Sentencing Guidelines (Appendix B - Ancillary Orders);
- continued to work in partnership with the JSB to arrange training events on sentencing topics at the various judicial tiers;
- participated in wider sentencing conferences, events and meetings to include presenting papers and sharing sentencing knowledge to increase understanding of the sentencing process; and
- maintained links and information exchange with the other sentencing bodies throughout the UK and Ireland.

Bernard McCloskey

The Rt Hon Sir Bernard McCloskey
Chair, Sentencing Group NI

22 November 2024

Annex A

Membership of the Sentencing Group as of 30th June 2024

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| The Rt Hon Lord Justice McCloskey | Chairperson |
| The Hon Mr Justice O'Hara | Senior Crown Court Judge |
| Her Honour Judge Smyth | Recorder of Belfast |
| His Honour Judge Rafferty KC | JSB Tutor Judge |
| District Judge (Magistrates' Court) Keown | Presiding District Judge (Magistrates' Court) |
| District Judge (Magistrates' Court) Ranaghan | District Judge (Magistrates' Court) |
| Ms Julie McGrath | Legal Secretary to the LCJ |
| Mr Terence Dunlop | Secretary to the Judicial Studies Board |
| Mr Seamus Mulholland | Queen's University Belfast Academic Member |
| Dr Russell Orr | University of Ulster Academic Member |
| Ms Geraldine Hanna, Commissioner Designate for the Victims of Crime | Lay Victims of Crime Representative |
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| Ms Laura McLaughlin | Secretary |
| Mr Alistair Beare | Assistant Secretary |

Court of Appeal Sentencing Guideline Judgments

| <u>Case</u> | <u>Citation</u> | <u>Keywords</u> | <u>Section</u> |
|---|--------------------------------|---|--|
| Attorney General's Reference (No. 8 of 2009) Christopher McCartney | [2009] NICA 52 | In this judgment the Court of Appeal adopts the sentencing guidelines on indecent images issued by the English Court of Appeal in <i>R v Oliver & Others</i> [2002] EWCA Crim 2766. AG's Reference - 30 counts of making an indecent image of a child - sentenced to three years' probation on each count to run concurrently with a condition to participate in a sex offenders programme - offending commenced when defendant was 15 - special circumstances advanced before the court that the defendant was corrupted as a child and his offending was the product of that corruption - court held rehabilitative sentence justified in this case - sentence not unduly lenient - appeal dismissed (The Court of Appeal in <i>King v Andrew Maxwell</i> [2023] NICA 21 has reaffirmed both these cases as the settled sentencing authorities in the area of indecent images of children.) | Indecent Images |
| R v Daniel Raymond Dunlop | [2019] NICA 72 | Appeal against sentence - supply of a Class A and Class B drugs (cocaine) contrary to section 4(3)(b) of the Misuse of Drugs Act 1971 - substantial criminal record of 61 previous convictions, three relate to possession of drugs (cannabis) - delay - approach adopted and weight accorded by the sentencing judge to the factor of the appellant's rehabilitation were erroneous in law - appeal allowed | 1. Drug Offences 2. Personal Mitigating Circumstances - Exceptional Circumstances |
| R v Jason Robert William Stewart | [2020] NICA 62 | Renewed application for leave to appeal a determinate custodial sentence - Assault Occasioning Actual Bodily Harm - strangulation - starting point - discount for the plea - whether discount should have been applied because of the Covid pandemic - appeal dismissed | Violent Offences |
| R v Thomas Valliday | [2020] NICA 63 | Appeal against sentence - escape from custody while serving life sentence - possession of Class C drugs - whether the | Totality/ Consecutive |

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| | | judge erred in directing that applicant's consecutive sentences should commence from date that the Parole Commissioners direct his release on Life Licence under the terms of the Life Sentences (NI) Order 2001- Appeal allowed – as a matter of sentencing principle and for good offender management consecutive terms should apply from end of tariff period | |
| R v Christine Connor | [2021] NICA 3 | Appeal against sentence and DPP's Reference – terrorist offences – causing explosion and attempted murder – 20-year ECS with 4-year extension period – whether sentence manifestly excessive or unduly lenient – intent – sentencing of the trial judge unsustainably generous – substitution by a sentence of 25 years' imprisonment accompanied by 4-year extension period – sentence varied upwards | Terrorist Offences |
| R v Luke Walls | [2021] NICA 19 | DPP reference to the Court of Appeal for unduly lenient sentence – whether sentence unduly lenient – aggravated burglary and stealing, common assault and criminal damage – substantial criminal record – planned criminal enterprise – late pleas of guilty – sentence varied upwards | Burglary |
| R v Niall Shebani | [2022] NICA 9 | Unlawfully displaying force and making an affray – grievous bodily harm with intent and possession of an offensive weapon – whether starting point too high – 33 previous criminal convictions in Republic of Ireland – medium likelihood of reoffending – knife – whether starting point of nine years is excessive – judge may have incorrectly described it as a starting point – significant aggravating factors – duration of incident limited – sentence not manifestly excessive – appeal dismissed | Violent Offences |
| R v Christopher Hughes | [2022] NICA 12 | Guidance in relation to sentencing in cases involving multiple incidents of domestic violence – using motor vehicle without insurance, assault occasioning actual bodily harm, common assault, attempted criminal damage, possession of an offensive weapon – other convictions and caution for common assault against mother and partner – pending | Violent Offences |

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| | | prosecutions in Republic of Ireland - consideration of aggravating and mitigating factors together to reach starting point prior to discount for plea - overall not manifestly excessive - appeal dismissed | |
| R v Christopher Robinson | [2022] NICA 30 | Appeal against sentence - convicted of murder of a senior prison officer and causing an explosion with intent to endanger life - joint enterprise - mandatory life sentence with 22 year minimum term prior to release at first instance - appeal against minimum tariff of 22 years - application to extend time - whether trial judge was wrong to conclude that there was nothing by way of personal mitigation giving rise to a reduction in sentence - <i>R v McCandless</i> [2004] NICA 1 confirmed as leading authority on sentencing in murder cases - high culpability - high harm - case fell within the very serious category - planned - politically motivated - use of explosive device a highly aggravating factor - terrorist crimes involving serving police or prison officers can expect sentences of upwards of 20 years - personal mitigation is likely to be of limited if any value - no merit in appeal - application to extend time refused - appeal dismissed | 1.Terrorist Offences 2.Life Sentences-Mandatory 3.Firearms/ Explosives Offences |
| R v Niall Lehd | [2022] NICA 51 | Appeal against an extended custodial sentence of 24 years imprisonment with an extension period of 5 years - preparation of acts of terrorism - whether the sentencing judge had erred in principle by basing his approach on the guidelines as stated in <i>R v Kahar</i> [2016] EWCA Crim 568 rather than the SGC Guideline - whether NICA should formulate guidelines for sentencing of offences under section 5(1) of the Terrorism Act 2006 - whether the sentence is manifestly excessive- whether the judge erred in deciding that the appellant is dangerous - sentencing judge was not obliged to apply the SGC Guideline - the judge was entitled to base sentencing on <i>R v Kahar</i> in the absence of NICA guidance - no merit in the challenge to the starting point - no merit in the challenge to the judge's assessment of | Terrorist Offences |

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| | | mitigating factors – no error in the assessment of dangerousness – held not appropriate for NICA to formulate guidance for section 5(1) cases - sentencing judges at liberty in section 5 cases to consider <i>R v Kahar</i> and the SGC Guideline – appeal dismissed | |
| R v Shaun Hegarty | [2022] NICA 55 | Guidance in relation to sentencing for rape with aggravating features - appeal against sentence - whether sentence of 20 years plus five years extended term manifestly excessive - rape whilst unconscious – did not disclose previous convictions - grievous bodily harm - attempting to choke - previous rape - no remorse - blamed victim for her injuries – starting point – transparency – methodology of sentence – sentence beyond usual range and may be unprecedented in this jurisdiction – high culpability and high harm with myriad of aggravating factors – appropriate custodial term is one 18 years – no error in 5 year extension period – appeal dismissed | Sexual Offences |
| R v Filippo Sangermano | [2022] NICA 62 | Actual bodily harm – stabbing with nail scissors – whether sentence manifestly excessive and/or wrong – whether level of culpability unsupported by basis of plea – finding of dangerous – whether VOPO necessary – terms of extended custodial sentence licence – right to a fair trial – burden of proof on prosecution in sentencing process – compilation of pre-sentence reports – duties owed by counsel to sentencing court – appeal allowed | Violent Offences |
| R v Laura Adair | [2022] NICA 68 | Death by careless driving – struck and fatally wounded pedestrian on pedestrian crossing - whether 12-month sentence manifestly excessive - whether trial judge made an error of double counting – court confirmed <i>R v Doole</i> [2010] NICA 11 remains the leading sentencing guideline case in relation to death by careless driving - appeal dismissed – | Road Traffic Offences |
| R v ZB | [2022] NICA 69 | Guidance provided on sentencing for two equally serious offences on a concurrent basis applying the totality principle - GBH with intent – sexual assault by penetration of a 12 day old baby – sentence of 19 years imprisonment plus an extended licence | 1. Sexual Offences 2. Violent Offences 3. Totality/ |

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| | | <p>period five years - whether manifestly excessive - starting point - dangerousness - culpability and harm high - whether premeditation - no mitigation save for guilty pleas - sentence not manifestly excessive - exceptional circumstances - appellant provided no explanation or offered remorse - appeal dismissed</p> | Consecutive |
| R v Luong Bui | [2022] NICA 78 | <p>Application for leave to appeal sentence - cultivation of cannabis - abstracting electricity - assisting unlawful immigration - perverting the course of justice - three cannabis factories - strategic control of substantial, sophisticated and highly profitable enterprise - whether sentence for cannabis factory counts too high - whether three year consecutive sentence on top of already stiff sentence manifestly excessive - totality - deterrent sentence of 12 years appropriate - proper global sentence 13 years sentence perverting the course of justice reduced to 1 year consecutive to other counts - total custodial sentence 13 years - leave granted - appeal allowed</p> | <p>1. Drug Offences</p> <p>2. Totality/ Consecutive</p> |
| R v William Hutchison | [2023] NICA 3 | <p>This judgment serves as a guide for sentencing in murder cases which involve domestic violence and are characterised by a prior, prolonged history of domestic violence.</p> <p>Renewed application for leave to appeal a 21 year minimum term imposed in connection with a mandatory life sentence following a late plea to murder - femicide case involving significant domestic violence - whether the judge erred in law when determining the appropriate sentence prior to adjustment for the plea - whether the judge failed to take into account certain factors as mitigation and made insufficient allowance for a guilty plea - court held judge did not fall into error of double counting - the applicant had a history of violence against previous partners - deliberately chose not to summon medical assistance - sentence transparent - no mitigation save for reduction for plea - no basis to interfere with the level of reduction granted - no</p> | Life Sentences - Mandatory |

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| | | remorse – leave refused – appeal dismissed | |
| R v Qing Wen Lin & Others | [2023] NICA 11 | <p>Renewed application for leave to appeal sentence – money laundering operation – Proceeds of Crime Act 2022 – whether sentences manifestly excessive – applications to receive new material granted – principle of mercy applied to two mothers – Article 8 ECHR – the offender’s personal circumstances – judge erred in confining exceptional circumstances to the offending itself – disparity in sentencing – deterrent sentences – culpability – the aggravating factors contained highly prejudicial assertions not agreed or proven – prosecution portrayal of the roles and knowledge attributed to the appellants was inconsistent – roles/rankings which the judge attributed to certain appellants were neither agreed nor proven – leave granted – appeals allowed – sentences reduced</p> <p>Guidance in relation to the following sentencing principles can be found at paragraphs [86] – [110] : mercy in sentencing, Article 8 ECHR to include reference to <i>R v Petherick</i> [2013] 1 WLR 1102, exceptional circumstances, the offender’s personal circumstances, disparity in sentencing, deterrent sentences and culpability.</p> | <p>1.Disparity</p> <p>2.Personal Mitigating Circumstances – Exceptional Circumstances</p> <p>3.Personal Mitigating Circumstances – Imprisonment of Young Mother</p> |
| R v Nathan Phair & Padraig Toher | [2023] NICA 18 | <p>In this judgment the Court of Appeal provides guidance on the credit to be given for a late guilty plea where upon arraignment further evidence is outstanding.</p> <p>Toher - Renewed application for leave to appeal a sentence of 12 years imprisonment - manslaughter – GBI by dangerous driving x 2 – doing an act intending to pervert the course of justice – conspiracy to possess a class A drug (cocaine) – whether the judge’s end point before reduction for the plea of guilty was manifestly excessive – whether the judge was wrong in principle to impose a sentence of four years for the drug offence</p> | Guilty Pleas |

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| | | <p>and three years for perverting the course of justice – whether the judge provided sufficient reduction for the guilty plea – leave granted – appeal allowed - sentence reduced to 11 years to reflect the early guilty plea and remorse – driving disqualification of 10 years untouched</p> <p>Phair - application to appeal a sentence of 11 years imprisonment and 15 year driving disqualification with leave of the single judge as to starting point – causing death by dangerous driving – causing GBI by dangerous driving – causing death by driving whilst unlicensed and uninsured – causing GBI by driving whilst unlicensed and uninsured – supplying a class A drug (cocaine) – whether the starting point of 13 years before mitigation was manifestly excessive – whether the court provided enough by way of mitigation - whether the drug offence was over sentenced – whether the 15 year driving disqualification was excessive – appeal dismissed save the period of disqualification reduced to 10 years.</p> | |
| R v Sharyar Ali | [2023] NICA 20 | <p>This judgment serves as a guideline for appropriate sentencing in cases involving the murder of a young child. DPP reference – whether sentence unduly lenient – murder of an 11 month old child – tariff of 13 years following a “Rooney” indication and after a guilty plea – child subjected to forceful assault – severe trauma to head – rib fractures – multiple blunt blows – whether judge afforded sufficient weight to aggravating factors – whether judge afforded too much weight to mitigating factors – whether reduction for guilty plea was too generous – leave granted – reference allowed – sentence quashed and replaced with a revised tariff of 16 years</p> | Life Sentences - Mandatory |
| R v Francis Devlin | [2023] NICA 71 | <p>Renewed application for leave to appeal a sentence of four years’ imprisonment – four counts of conspiracy to cheat the public revenue – sole issue of impact of imprisonment on applicant’s son – whether sentence should be suspended – Court of Appeal approved the application</p> | <p>1.Theft & Other Dishonest Offences</p> <p>2. Personal Mitigating Circumstances –</p> |

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| | | of the guidance in <i>R v Petherick</i> [2012] EWCA Crim 2214 in NI – circumstances not so exceptional to merit a suspension – public interest in deterrence – appeal dismissed | Exceptional Circumstances 3. Suspended Sentences |
| R v Laurence Creaney | [2023] NICA 75 | The Court of Appeal sets out and endorses the legal principles and guidance contained in <i>R v Tolera</i> [1999] 1 Cr App R 29 and <i>R v Underwood & Others</i> [2005] 1 Cr App R 13 in respect of the interrelated considerations of pleas, basis of pleas and Newton hearings. Renewed application for leave to appeal a sentence of three years imprisonment – arson – whether sentence manifestly excessive – whether the judge erred in rejecting the coercion claim – disparity – whether a non-custodial sentence should have been imposed – leave refused – sentence affirmed | Guilty Pleas |
| R v Jacek Pacyno | [2024] NICA 3 | The Court of Appeal sets out guidance in relation to offences conducted over the internet which involve engaging in sexual activity in the presence of a child or causing or inciting children to engage in sexual activity. The fact that there is no direct physical contact does not alter the seriousness of such offending and the need for condign punishment. DPP Reference to review a three year probation order – pleas of guilty in respect of a range of sexual offences against children online – whether sentence unduly lenient – delay – Reference allowed – probation order quashed and substituted with 18 months imprisonment | Sexual Offences |
| R v CD | [2024] NICA 9 | The Court of Appeal clarifies the law and the approach to be taken with regards to sentencing in cases involving the sexual assault of children, particularly with reference to the application of <i>R v GM</i> [2020] NICA 49. (See in particular paragraphs [44] – [47]) DPP reference in respect of a sentence of two years imprisonment – two counts of sexual assault of a child under 13 – | Sexual Offences |

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| | | whether sentence unduly lenient – court not satisfied that the sentence met the very high threshold of being unduly lenient – leave granted given the issues that arose with regards to the application of <i>R v GM</i> – reference dismissed | |
| R v Fionnghuale Perry | [2024] NICA 11 | <p>The Court of Appeal sets out best sentencing practice in terrorism cases with reference to the new statutory sentencing regime at paragraphs [33] – [36].</p> <p>Appeal against a sentence of four years imprisonment and 12 month licence period – collecting or making a record of information likely to be useful to a terrorist – whether sentence manifestly excessive – whether the sentence was a product of an error of law relating to the new sentencing regime – article 7 ECHR – new approach applied by sentencing judge – one year licence period applied by operation of law rather than any judicial decision or act – no error of law – court reemphasised where a deterrent sentence is required personal mitigation carries little weight – appeal dismissed</p> | <p>1.Terrorist Offences</p> <p>2. Personal Mitigating Circumstances – Exceptional Circumstances</p> |
| R v Jonathan Hutton | [2024] NICA 19 | <p>At paragraph [58] of this judgment the Court of Appeal, while decrying an unduly mechanistic approach, provides guidance to assist sentencing judges when dealing with multiple offence, multiple victim cases.</p> <p>Application to appeal a sentence of 12 years imprisonment – variety of sexual offences – two young female victims – totality – transparency - a sentence in the region of 11-12 years held to be appropriate - appeal dismissed</p> | <p>1.Sexual Offences</p> <p>2.Totality/ Consecutive</p> |
| R v Jonathan Playfair | [2024] NICA 21 | <p>The Court of Appeal provides assistance in relation to online blackmail and sextortion (see in particular paragraphs [66] and [111]-[114])</p> <p>Renewed application for leave to appeal an extended custodial sentence of six years imprisonment and four years extended licence – various sexual offences - indecent images - disclosure of private sexual photographs and films with intent to cause</p> | <p>1.Blackmail</p> <p>2. Indecent Images</p> <p>3.Sexual Offences</p> |

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| | | <p>distress - online blackmail – sextortion - whether the starting point of nine years and the four year extension period were manifestly excessive - whether the SOPO was necessary and contrary to principle - right form of sentence attached to the wrong offences - overall sentence affirmed - leave to appeal granted - sentence restructured - appeal allowed to the extent of setting aside the invalid orders and substituting the sentences outlined in paragraph [116].</p> | |
| R v Gavin Coyle | <p>[2024] NICA 22</p> | <p>The Court of Appeal adopts, at paragraph [37] and [38], the principles set out in <i>R v Green</i> [2019] EWCA Crim 196 when deciding what, if any, impact a previous sentence for similar related offences should have when passing the new sentence.</p> <p>DPP reference and application for leave to appeal the six year sentence by the defendant - terrorism offences - whether 12 year starting point correct - whether there was culpable delay for which a deduction from sentence should have been made - totality - appellant had, since the index offences took place, been sentenced to 10 years imprisonment in 2014 in respect of terrorism offences - whether max credit should have been given for the guilty plea - sentence unduly lenient - leave granted - substituted a sentence of 8 years imprisonment (2/3 in custody) - appeal dismissed</p> | <p>1.Terrorist Offences</p> <p>2.Totality/ Consecutive</p> |
| R v Stephen McKinney | <p>[2024] NICA 35</p> | <p>This judgment provides guidance to sentencers dealing with murder cases in a domestic context where coercive and controlling behaviour is established. (See in particular paragraphs [2], [34], [52] and [66]).</p> <p>Application for leave to appeal a mandatory life sentence with a minimum tariff of 20 years - murder of appellant's wife - whether tariff manifestly excessive - court reiterated the position that pre-existing coercive and controlling behaviour is an aggravating factor that will result in higher sentences when</p> | <p>Life Sentences - Mandatory</p> |

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| | | domestic murders of this kind occur - sentences of 20 years and possibly more will be upheld - appeal dismissed | |
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Membership of the Magistrates' Court Sentencing Guideline Sub-Committee as of
30th June 2024

District Judge (Magistrates' Court) Ranaghan, Chair
District Judge (Magistrates' Court) Broderick
District Judge (Magistrates' Court) P King
District Judge (Magistrates' Court) Conner

JSB Sentencing Events

| <u>Event</u> | <u>Date</u> | <u>Tiers</u> |
|---|--------------------------|----------------------------|
| Sentencing in Immigration Cases | 17 November 2023 | All Tiers |
| Homicide and Terrorism Offences Training | 18 - 20 December 2023 | High Court County Court |

Lady Chief Justice's Programme of Action on Sentencing – Position at 30th June 2024

| <u>TOPIC</u> | <u>ACTION</u> |
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| Domestic Violence | <ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines 2. JSB Publication of Paper by HHJ Burgess (26 January 2011) 3. <i>R v PH</i> [2011] NICA 42 4. JSB Presentation by PBNI (11 September 2013) 5. JSB Presentation by HHJ McFarland (16 September 2014) 6. <i>R v Brownlee (Sentencing)</i> [2015] NICA 58 7. JSB Presentation on Strangulation Law in Domestic Violence Cases (6 June 2019) 8. <i>R v Campbell Allen</i> [2020] NICA 25 9. <i>R v Jason Stewart</i> [2020] NICA 62 10. JSB Presentation on Sentencing & Safeguarding (13 April 2021) 11. JSB Presentation on Domestic Abuse & Coercive Control (20 January 2022) 12. <i>R v Christopher Hughes</i> [2022] NICA 12 13. <i>R v William Hutchison</i> [2023] NICA 3 14. <i>R v BN</i> [2023] NICC 5 |
| Serious Sexual Offences (including offences against children) | <ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines 2. <i>R v SG</i> [2010] NICA 32 3. <i>R v EB</i> [2010] NICA 40 4. <i>DPP's Ref (1 of 2012)(R v DM)</i> [2012] NICA 36 5. <i>R v ML</i> [2013] NICA 27 6. <i>R v Simpson</i> [2014] NICA 83 7. <i>R v McCormick</i> [2015] NICA 14 8. <i>R v TH</i> [2015] NICA 48 9. <i>R v Lukasz Kubik</i> [2016] NICA 3 10. <i>R v MH</i> [2015] NICA 67 11. <i>R v James William Taggart</i> [2017] NICA 5 12. <i>R v WL</i> [2017] NICA 36 13. <i>R v CZ</i> [2018] NICA 53 14. <i>R v QD (DPP's Ref No.6 of 2019)</i> [2019] NICA 23 15. <i>R v Vincent Lewis (DPP's Ref No.1 of 2018)</i> [2019] NICA 26 16. <i>R v KT (DPP's Ref No.2 of 2019)</i> [2019] NICA 42 17. <i>R v Byrne & Cash</i> [2020] NICA 16 18. <i>R v Shaun Hegarty</i> [2022] NICA 55 19. <i>R v ZB</i> [2022] NICA 69 20. <i>R v Jacek Pacyno</i> [2024] NICA 3 21. <i>R v Jonathan Hutton</i> [2024] NICA 19 22. <i>R v CD</i> [2024] NICA 9 23. <i>R v Jonathan Ritchie</i> [2024] NICC 5 24. <i>R v Jonathan Playfair</i> [2024] NICA 21 |

| <u>TOPIC</u> | <u>ACTION</u> |
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| Indecent Images | 1. <i>AG's Ref (No.8 of 2009) Christopher McCartney</i> [2009] NICA 52 2. <i>R v Andrew Maxwell</i> [2023] NICA 21 3. <i>R v Jonathan Playfair</i> [2024] NICA 21 |
| Human Trafficking [including Slavery] | 1. JSB Presentation by PSNI 2. <i>R v Matayis Pis</i> [2012] NICC 14 3. <i>R v Chen, Dempsey and Hinton</i> [2012] NICC 26 |
| Attacks on Public Workers (including police officers) | 1. Magistrates' Courts Sentencing Guidelines |
| Attacks on Vulnerable people | 1. Magistrates' Courts Sentencing Guidelines |
| Attacks on Older People | 1. Magistrates' Courts Sentencing Guidelines 2. <i>R v Cambridge</i> [2015] NICA 4 |
| Duty Evasion and Smuggling | 1. <i>R v Grew; R v Mackle and others</i> [2011] NICA 31 2. Sentencing Case Compendium 3. <i>R v Kumar</i> [2013] NICC 12 |
| Environmental Crime | 1. Magistrates' Courts Sentencing Guidelines 2. JSB Presentation by Professor Sharon Turner (29 September 2011) 3. <i>R v Allingham; R v McKenna</i> [2012] NICA 29 4. <i>R v John Paul Braniff</i> [2016] NICA 9 |
| Honour-based Crime | 1. Sentencing Group Guidance Note |
| Tiger Kidnapping | 1. Sentencing Case Compendium |
| Intellectual Property Crime | 1. Magistrates' Courts Sentencing Guidelines 2. Sentencing Case Compendium 3. <i>R v Paul Mahoney</i> [2016] NICA 27 |
| Road Traffic Offences | 1. Magistrates' Courts Sentencing Guidelines 2. JSB Sentencing Workshop (22 February 2011) 3. <i>R v Conrad Doole</i> [2010] NICA 11 4. <i>DPP's Reference (No.5 of 2012)(Berry)</i> [2013] NICA 9 5. <i>DPP's Reference (No.7 of 2013)(Kevin Brannigan)</i> [2013] NICA 39 6. <i>R v McGrade</i> [2014] NICA 8 7. <i>R v Patricia McKeown</i> [2016] NICA 24 8. <i>R v David Lee Stewart</i> (DPP's Ref No.1 of 2016) [2017] NICA 1 9. <i>R v Paul Holywood</i> [2019] NICA 28 10. <i>R v Laura Adair</i> [2022] NICA 68 |
| Hate Crime | 1. Magistrates' Courts Sentencing Guidelines |
| Health and Safety Offences Causing Death | 1. <i>R v JMW Farm Ltd</i> [2012] NICC 17 2. <i>R v Norman McKenzie</i> [2017] NICA 29 |
| Manslaughter | 1. <i>R v Eamon Coyle</i> [2010] NICA 48 2. <i>R v Crollly</i> [2011] NICA 58 3. JSB Presentation by Hart J (13 September 2013) 4. <i>R v Sean Hackett</i> [2015] NICA 57 |

| <u>TOPIC</u> | <u>ACTION</u> |
|---|---|
| | 5. JSB Homicide Training (18-20 December 2023) |
| Child Cruelty and Neglect and Serious Assaults on Children | <ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines 2. Sentencing Case Compendium 3. <i>R v W</i> [2014] NICA 71 4. <i>R v Darren Fegan</i> [2018] NICA 2 5. <i>R v ZB</i> [2022] NICA 69 |
| Animal Cruelty | <ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines |
| Cyber Crime | <ol style="list-style-type: none"> 1. JSB Presentation by Professor Alisdair Gillespie (24 February 2015) 2. JSB Cybercrime Workshop (27 May 2015) |
| Cyber Bullying | <ol style="list-style-type: none"> 1. <i>R v Balmer and Wilson</i> [2015] NICA 40 2. <i>R v Jonathan Playfair</i> [2024] NICA 21 |
| Psychoactive Substances | <ol style="list-style-type: none"> 1. Magistrates' Court Sentencing Guidelines |
| Non-paramilitary blackmail | <ol style="list-style-type: none"> 1. <i>R v Jonathan Playfair</i> [2024] NICA 21 |
| Credit for guilty plea | <ol style="list-style-type: none"> 1. <i>R v Sean Ruddy</i> [2016] NICA 17 2. <i>R v William Turner & James Henry Turner</i> [2017] NICA 52 3. <i>R v Maughan</i> [2022] UKSC 13 4. <i>R v Nathan Phair & Pdraig Toher</i> [2023] NICA 18 |