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IN THE CROWN COURT OF NORTHERN IRELAND SITTING AT ANTRIM

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THE QUEEN

v

ALAN GINGLES

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HER HONOUR JUDGE SMYTH

Introduction

[1] Alan Gingles you faced one count of murder contrary to common law on the indictment, the particulars being that on 30 March 2020 you murdered your grandmother, Elizabeth Dobbin.

[2] You pleaded not guilty on 21 January 2021 and your trial was listed on 20 December 2021.

[3] After medical evidence was received from two Consultant Psychiatrists, namely Dr Paul Devine on your behalf and Dr Christine Kennedy on behalf of the prosecution, you applied to be re-arraigned on 20 December 2021 and pleaded guilty to manslaughter on the grounds of diminished responsibility, which was accepted by the prosecution.

[4] The matter was then adjourned for sentencing and to allow further medical evidence to be obtained in order to assist the court with the appropriate disposal. Upon receipt of an addendum report from Dr Kennedy and a presentence report, both prosecution and defence lodged written submissions and a plea and sentence hearing was listed on 15 March 2022.

[5] In advance of that date, the parties were informed that the court was minded to depart from the assessment in the pre-sentence report that you did not pose a

significant risk of serious harm to members of the public and further submissions were invited on that issue and on the question of your residual responsibility.

[6] The nature and extent of your residual responsibility was unclear from the medical reports, particularly in view of the fact that Dr Kennedy was of the view that not only could you avail of the partial defence of diminished responsibility but that there was a basis on which you could rely on the complete defence of insanity. Dr Devine had not expressed a view on insanity in his report and was therefore asked to comment on whether or not he agreed with Dr Kennedy's opinion.

[7] In an email dated 9 December 2021 he stated that while he agreed that you were suffering from a mental abnormality at the time of the offence and that he could confidently say that there was substantial impairment, he could not say with the same degree of confidence that the test for insanity was met. Neither expert explained the evidential basis for their differing opinions.

[8] The court directed an experts meeting to clarify the extent of your responsibility but no experts' meeting took place and the court was told that you had instructed your lawyers that you wished to enter a plea of guilty to manslaughter.

Factual background

[9] The facts leading up to the killing of your grandmother, Elizabeth Dobbin, known as Betty, are helpfully summarised in the prosecution submission:

(a) You are 34 years of age. You were 32 at the time of the offending.

(b) You had lived with your grandmother for approximately 10 years.

(c) During the course of the late afternoon and early evening of the 30 March you had been texting your father Patrick Gingles. You had been discussing online computer games and other family matters. The messages were light-hearted and good-natured. At 8.40pm your father wished you goodnight by text.

(d) Over the course of the same afternoon and evening you had been in contact with your cousin Leah Sleator. Your conversation with her had been more morose in tone and you suggested that you were wasting your days away and that on a scale of 1-100 you were feeling 99% bad. You also told Ms Sleator that your grandmother appeared unwell.

(e) Ms Sleator then telephoned your father and they discussed their concern over what you had said to Ms Sleator and whether they should try and access mental health services for you.

(f) Just after 9.00pm you began messaging your father saying that your grandmother was unwell. You exchanged texts about whether she may have Covid and whether to get the out of hours doctor.

(g) Ms Sleator also had a conversation with you which concerned her as you seemed distracted. She contacted your father and he decided to go down to the house. On his way he phoned you who said your grandmother was "unresponsive".

(h) As a result your father phoned an ambulance.

(i) The ambulance crew arrived at the house before your father did. They found your grandmother lying dead in the living room of the property. They noted she had sustained serious head injuries and that there was significant blood.

(j) The paramedics spoke with you and you gave a number of accounts. Firstly you claimed your grandmother had fallen and that you then gave her CPR. Secondly you claimed she had fallen down the stairs.

(k) Police attended the scene and observed a significant injury to the back of your grandmother's head together with blood splatter on the wall. You were initially permitted to leave the scene with your father however you were arrested on suspicion of murder early the next morning.

Interviews

[10] You were initially interviewed without a solicitor or a registered intermediary. You told police you had heard voices and that something had come over you and you then hit your grandmother over the head with a hammer and also strangled her. You said the hammer used was orange handled and after the killing you put it under a board in a box. This was recovered by police.

[11] In the remaining interviews you told police that you had been seeing zombies and that there were zombies in the room with granny and that they were shouting at you. You said you thought your grandmother was turning into a zombie and that is why you had hit her on her head with the hammer.

Post mortem

[12] A post mortem examination was carried out. The pathologist, Dr Johnston, determined that your grandmother had been subjected to a serious blunt force assault principally directed to the back and left side of her head. He noted at least 6 separate lacerations to the back of her head as well as a large depressed skull

fracture. He considered the injuries were consistent with strikes from a hammer and that there would have been at least 8 separate blows.

[13] Dr Johnston also found injuries to the neck and eyelids which were consistent with manual strangulation prior to your grandmother's death.

[14] He also found bruising to the face and back which were consistent with having been caused in the assault which led to her death.

Pre-sentence report

[15] You had a difficult and traumatic childhood. Your mother died by suicide when you were an infant and thereafter you were brought up by various family members at various stages, moving school repeatedly. Your father eventually remarried and you returned to live with him and his new wife but you felt rejected by her and believe that this was the reason you were then sent to boarding school, thereafter moving to live with a family member in Orkney.

[16] You have identified the loss of a personal relationship as being the catalyst for emotional deterioration, holding down jobs for short periods, experiencing mounting debt and difficulties in independent life. Your grandmother, the victim of this attack, was always there for you, and between attempts to gain and sustain work in England you would return to live with her and in fact had been living with her for some time at the time of her death.

[17] During your 20s and 30s, you turned to the internet and radio output focusing on conspiracy theories which progressed to an obsession and belief about all forms of conspiracy, which escalated at the beginning of the Covid pandemic. In particular, you formed the view that people were turning into zombies and it was the end of the world. On the evening in question, you believed that your grandmother was already dead and in a zombie state and that she was going to harm you. You expressed remorse to the probation officer and demonstrated some insight into the effect of your grandmother's death on other family members, feeling that you had let a lot of people down.

Diminished Responsibility

[18] The court received the following reports:

(a) Report from Dr Paul Devine, Consultant Psychiatrist dated 4 October 2021 prepared on the instruction of the defendant.

(b) Report from Dr Christine Kennedy, Consultant Psychiatrist prepared on the instruction of the prosecution dated 1 November 2021.

(c) Email from Dr Devine dated 9 December 2021.

(d) Addendum report from Dr Kennedy dated 15 February 2022.

[19] With regard to diminished responsibility, section 5 of the Criminal Justice Act (Northern Ireland) 1966 as amended by section 53 of the Coroners and Justice Act 2009, sets out the requirements which must be established in order to establish the partial defence of diminished responsibility. The defendant must be suffering from an abnormality of mental functioning which:

(a) Arose from a recognised medical condition.

(b) Substantially impaired his ability to do one or more of the things mentioned in the statute.

(c) Provides an explanation for the defendant's acts and omissions in doing or being party to the killing.

[20] The things referred to in the statute are:

(a) To understand the nature of the defendant's conduct.

(b) To form a rational judgment.

(c) To exercise self-control.

[21] The Consultant Psychiatrists agree that you suffer from a mental disorder which may either be described as schizophrenia or schizotypal disorder with a tendency to recurrent psychotic symptoms. The difference in description is due to different medical interpretations of your blunted affect and unusual use/style of language, but the difference in the diagnoses is perhaps more academic as, regardless of formulation, you will require indefinite antipsychotic medication as well as mental health monitoring and support, along with psychological work. It is also agreed that at the time of this offence you were floridly psychotic with a complex system of delusional beliefs, in particular that coronavirus was turning people into zombies, that your grandmother was turning into a zombie, that there were zombies around you and that it was the end of the world. You may well have experienced auditory hallucinations although it is unknown if you were commanded to act as you did.

[22] The agreed psychiatric opinion is that your mental state substantially impaired your ability to form a rational judgment and provides an explanation for your conduct. You were clearly out of touch with reality and delusionally, believed that your grandmother was a zombie, was already dead and represented a risk to you. This is the basis upon which the partial defence of diminished responsibility has been accepted in this case.

Victim impact

[23] Before determining the appropriate sentence it is essential to remember the victim in this case and acknowledge the impact her brutal and violent death has had on her many friends and relatives. Betty's son George has provided a detailed victim impact statement which conveys the horror and devastation that his mother's death has caused to those who knew and loved her. She was known to her great granddaughter as "Great Dobbin", a term of affection, which demonstrates how important she was within the entire family circle.

[24] George has found it particularly difficult to come to terms with his mother's death because she was the person who did everything that she could to provide you with the stability that was lacking from your early life. The questions that remain for him and no doubt for other family members are, how you could have done that to her, of all people, and how did they miss the signs that something was terribly wrong.

[25] George had to identify his mother in the mortuary, in her injured condition and the shock of that experience remains with him as does the sad tragedy of a Covid funeral, with only six family members permitted to attend. He has since suffered another close family tragedy and although he has the comfort of knowing that he was with his wife as she passed, the loneliness of his mother's death haunts him.

The appropriate sentence

[26] You fall to be sentenced within the framework of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order"). Any reported decisions prior to the implementation of the Order should be treated with care.

[27] The approach to sentencing in cases of manslaughter on grounds of diminished responsibility is set out in *R v Sean Hackett* [2015] NICA 57.

[28] The first issue is whether or not a Hospital Order, with or without restrictions, would be an appropriate disposal. Whether this is the right course will primarily depend on the medical evidence before the court. In this case, the medical experts are agreed that a Hospital Order is not appropriate because the necessary treatment that you have been receiving in the Shannon Clinic is almost complete and therefore the grounds for such an order are not met.

[29] Manslaughter is a "specified offence" and a "serious offence" for the purposes of Chapter 3 of the Criminal Justice (NI) Order 2008 .

[30] Since a Hospital Order is not appropriate, in this case, you fall to be sentenced in accordance with Article 13 of the 2008 Order. Under that provision, a judge when dealing with an offender who has committed a serious offence which carries a maximum sentence of a discretionary life sentence, should proceed in the following manner:

- First, consider whether the offender is dangerous.
- If dangerous, consider whether a life sentence is appropriate.
- If a life sentence is not appropriate, consider whether an Extended Custodial Sentence is adequate to protect the public.
- If not adequate, pass an Indeterminate Custodial Sentence.

[31] In determining whether you are dangerous, that is, whether there is a significant risk to members of the public of serious harm occasioned by the commission of further offences of the type specified in the 2008 Order, I have followed the approach suggested by the Court of Appeal in the case of *R v EB* [2010] NICA 40 , the English case of *R v Lang* [2005] EWCA Crim 2864 and more recently the case of *R v Nelson* [2020] NICA 7.

[32] Article 15 (2) of the 2008 order provides that in making the assessment of dangerousness the court:

> (a) shall take into account all such information as is available to it about the nature and circumstances of the offence;
>
> (b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
>
> (c) may take into account any information about the offender which is before it.

[33] In *R v EB* [2010] NICA 40, Morgan LCJ, observed at para 10:

> "[10]…. (1) The risk identified must be significant. This was a higher threshold than mere possibility of occurrence and could be taken to mean `noteworthy, of considerable amount or importance'.
>
> (2) In assessing the risks of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, details of which the prosecution must have available, and, whether the offending demonstrated any pattern; social and economic factors in relation to the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional_state. Information in relation to these matters would most readily, though not exclusively come from antecedents and presentence

probation and medical reports. The sentencer would be guided but not bound by the assessment of risk in such reports. A sentencer who contemplated differing from the assessment in such a report should give both counsel the opportunity of addressing the point.

(3) If the foreseen specified offence was serious, there would clearly be some cases, though not by any means all, in which there might be a significant risk of serious harm. For example, robbery was a serious offence. But it could be committed in a wide variety of ways, many of which did not give rise to significant risk of serious harm. Sentencers must therefore guard against assuming there was a significant risk of serious harm merely because the foreseen specified offence was serious. A presentence report should usually be obtained before any sentence was passed which was based on significant risk of serious harm. In a small number of cases, where the circumstances of the current offence or the history of the offender suggested mental abnormality on his part, a medical report might be necessary before risk can properly be assessed.

(4) If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant. Repetitive violent or sexual offending at a relatively low level without serious harm did not of itself give rise to significant risk of serious harm in the future. There might in such cases, be some risk of future victims being more adversely affected in past victims but this, of itself, did not give rise to significant risk of serious harm."

[34] In *R v Nelson* [2020] NICA 7, McCloskey LJ observed at para 20 that "[the assessment of dangerousness] is not arithmetical or scientific in nature, entailing rather the exercise of evaluative judgement on the part of the sentencing court." In this context, the following quotation from *R v Johnson and Others* [2007] 1 Cr App R(S) 112, which has been adopted in the previous decisions of this court noted above, is apposite. The President of the Queen's Bench Division, Sir Igor Judge, delivering the judgment of the Court of Appeal (Criminal Division) in England and Wales, said at [10]:

"We can now address a number of specific issues:

(i) Just as the absence of previous convictions does not preclude a finding of dangerousness, the

> existence of previous convictions for specified offences does not compel such a finding. There is a presumption that it does so, which may be rebutted….
>
> (ii) If a finding of dangerousness can be made against an offender without previous specified convictions, it also follows that previous offences, not in fact specified for the purposes of Section 229, are not disqualified from consideration. Thus, for example, as indeed the statute recognises, a pattern of minor previous offences of gradually escalating seriousness may be significant. In other words, it is not right, as many of the submissions made to us suggested, that unless the previous offences were specified offences they are irrelevant."

The question of Dangerousness

[35] A Risk Management Meeting was held by PBNI in order to consider whether you meet the statutory test of significant risk of serious harm. The assessment was made that you present a *medium* likelihood of reoffending in view of your mental health, personal coping skills, anxiety and stress management along with protective factors, namely acknowledgement of your mental health and the need to address this, willingness to engage in treatment and programmes of work to address offending risk and an awareness of the consequences of your offending for yourself and others and expressed regret.

[36] In the pre-sentence report, the probation officer indicated that PBNI assesses an individual to be a significant risk of serious harm if there is a *high* likelihood of an offender committing further offences causing serious harm. In this case, the Risk Management Meeting concluded that you are not currently assessed as presenting a significant risk of harm. The factors taken into consideration in this assessment are:

- you have a clear criminal record
- in particular you have no previous history of violent offending
- medical assessments indicate that you have a psychotic illness and on the balance of probabilities at the time of the offence did not fully appreciate what you were doing
- you demonstrate an awareness that your actions at the time were not based on your response to reality and you were unwell
- you are responding to treatment and are willing to continue to engage in future identified treatment to address your mental illness
- you have stated an awareness that there are future risks to be managed and a willingness to cooperate and work to address these

- you have insight into the consequences of your behaviour and have expressed regret for your actions and the effect of these

[37] Dr Kennedy prepared an addendum report dated 15 February 2022 to assist the court in sentencing and addressed the question of dangerousness at para 3 of her report. Dr Devine was not asked to do so by the defence. At para 2 of her report, Dr Kennedy sets out relevant factors at the time of the offence. She notes that there is no apparent motivation for the offending other than your delusional belief system concerning zombies into which you had incorporated your grandmother. She also notes that you did not come to psychiatric attention before this offence, although it is clear from other evidence that your grandmother in particular was concerned about your well-being and wanted you to engage with your GP. It appears that you had a long history of absorbing information particularly from the internet and becoming anxious and paranoid. You had regularly had beliefs verging on delusional for over a decade and on a few occasions in this period had probably been delusional although the precise duration of such beliefs is unclear. The intensity of the beliefs fluctuated depending on stress and you also have experienced fleeting visual and auditory perceptual abnormalities. Your social and occupational functioning had deteriorated in tandem with your mental health over many years.

[38] There is no evidence that drugs or alcohol played any part in this offence, there is no evidence of any dissocial personality characteristics and no prior offending. In relation to this offence, Dr Kennedy does note the nature of the attack which included a sustained assault on your grandmother involving strangling and multiple blows with a hammer. She also draws attention to your behaviour immediately after the offence, when you washed the hammer and provided inconsistent accounts of how your grandmother had sustained injury whilst presenting as calm and unemotional. She points out that these factors could be seen as aggravating the offence but she also records your account that you were frightened to tell and you believed the various agencies investigating the death were part of the zombie apocalypse and seeking to recruit or kill you. You explained that the washing of the hammer was because it is habitual to wash items. She opines that your blunted emotional responses which are a result of mental disorder mean that you do not display what might be considered normal reactions in the circumstances. Whilst you present as emotionally detached from your behaviour and loss, the blunting of emotions could be seen as a lack of remorse or interpreted as callous disregard but it reflects your mental illness.

[39] In relation to the specific assessment of dangerousness, she explains that risk is a dynamic concept which can go up and down dependent on circumstances. The assessment of risk of future violence is complex and cannot be forecast with certainty at an individual level as there are many influential variables operating at any point in time. Although that is so in every case, the question is how the evidence of future risk should properly be assessed in this case.

[40] Dr Kennedy used the HCR-20 tool, a form of structured professional judgement widely used in psychiatric practice to assess risk of future violence. In

terms of static risk factors which represent the baseline risk (and do not change), out of 10 potential factors, 5 are fully met, 1 is partially met and 4 are absent. Currently, the dynamic (ie the last 6 months) clinical risk is minimal because:

- You have *partial* insight into your future violence risk. While you accept that you have mental illness and need medication and support you do not think there could be any recurrence of past violence as you *would be able to take a step back* in the future.
- There are no recent problems with mood, behavioural or cognitive instability.
- There are no recent problems with treatment or supervision response and you are very compliant with all that is asked of you.

[41] In terms of risk management and future problems she opines "that it is very likely that you will continue to work collaboratively with services. Given [the nature of] this offence [you] will be required to engage with appropriate professional services and should not be able to slip through the net in the future. Provided [you] are adequately supported and supervised, including the taking of psychotropic medication as needed, [your] risk should be manageable."

[42] At para 3.10, Dr Kennedy opines that "the main risk factor of high relevance to future violence risk is [your] mental illness and management. [Your] acute psychotic symptoms have responded very well to treatment. You are fully compliant with and have responded well to oral antipsychotic medication, so you no longer have any troubling delusions or hallucinations. There are underlying issues of past trauma relating to adverse early childhood experience which have made [you] vulnerable to mental illness. [You] have engaged in some formulation work around this with the Shannon Clinic psychologist. Risk factors relating to problems with employment and relationships seem to be consequential on [your] mental illness and can be targeted with psychosocial rehabilitation going forward."

[43] Whilst the current situation appears relatively positive, at para 3.11, Dr Kennedy notes some important caveats with regard to future risk. She says "the index offence was driven by a psychotic mental state. [Your] mental illness fluctuated under stress prior to treatment. Since receiving treatment you have been very stable, but you have had no testing out or exposure to the internet, which potentially could trigger conspiracy thinking again. The future pattern of [your] illness is not known at this stage, whether it remains stable for as long as [you] comply with medication or whether it will fluctuate depending on stress <u>regardless of medication</u>. Should [you] become psychotic and not be in receipt of medication or support, the context of previous violence would be created with potential for serious consequences. Therefore monitoring by forensic mental health services will be needed for an indefinite period." (Emphasis added)

[44] Although Dr Kennedy indicated in the introduction to her report that she had had sight of the pre-sentence report completed by PBNI, she made no comment on its assessment of future risk and correctly indicated that it is for the court to consider

the medical information contained in her report and determine if you meet the criteria for dangerousness, which is a legal concept. It is unclear whether PBNI had sight of Dr Kennedy's addendum report.

[45] In my view, although you have responded well to treatment and your mental health is currently stable, there are a number of imponderables in determining with any degree of accuracy the level of future risk that you may pose to the public once you are released from prison. There is no question, given the nature of your grandmother's death, that if the circumstances are such that your mental health deteriorates either through stress or non-compliance with medication or even regardless of compliance, any future offence is likely to be violent and serious.

[46] The fact that you had no contact with mental health services prior to this offence gives rise to a concern about the poor level of insight you had for a long period of time regarding your mental ill-health. For at least 10 years, you suffered from delusions of varying degrees of intensity and duration and despite efforts by your grandmother to persuade you to engage with your GP you refused to do so. Your lack of insight cannot simply be a consequence of your condition because you clearly had periods of mental clarity. I refer to this at para 57 below in the context of your residual responsibility. In any event, it is correct to say that your insight is likely to have significantly increased as a consequence of your behaviour and what you have shown yourself capable of doing whilst unwell. However, your insight into your future risk of violence is still described as "partial" by Dr Kennedy, because you think that you would be "able to take a step back" in future. Should you become floridly psychotic again, for whatever reason, it is highly unlikely in my view that you would be able to take a step back. That is the nature of your mental illness.

[47] The support and supervision that you have enjoyed in the Shannon Clinic, is artificial and does not reflect the situational stresses that may impact upon you upon release into the community. There has been no testing regarding your needs and the precautions that need to be put in place to safeguard the public. It may be that you will remain compliant with medication and that you will be able to cope with the pressures of life. Even so, it is not known whether you will continue to access the internet which triggered so many of your paranoid delusions. Whilst a Violent Offenders Prevention Order (VOPO) could be imposed, prohibiting such access, the question is how such an order could adequately be supervised given the readily available opportunities for Internet access.

[48] It is for the court to make an evaluative judgement whether the statutory test for dangerousness has been met, taking into account the information about this offence and all of the information about you. Lord Philips in *R v Smith* [2011] UKSC 37 emphasised at para [17] that it was implicit that the question posed by the legislation must be answered on the premise that the defendant is at large. He stated:

> "It is at the moment that he imposes the sentence that the judge must decide whether, on that premise, the

> defendant poses a significant risk of causing serious harm to members of the public."

In my judgement, on the basis that you are at large and given your unproven ability to maintain mental health, there is a significant risk of serious harm which means that, at this point, it's occurrence is more than a "mere possibility", and is "noteworthy or of considerable importance" (which is the test set out in the judgment in*EB* which I have already referred to in para 33). Whilst I have taken into account the assessment made by PBNI, I do not consider that it reflects the potential and uncertain risk related to your mental illness. I therefore find you to be dangerous under the provisions of the 2008 Order.

[49] Having reached that conclusion, I must consider whether or not the seriousness of the offence is such as to justify the imposition of a life sentence. In *R v Hackett* [2015] NICA 57, the Court of Appeal considered the appropriateness of a life sentence or an indeterminate sentence where an offender is assessed as dangerous. At paras [52] and [53], the court said:

> "[52] The approach which the court should take in applying the similar provisions in England and Wales was addressed in *R v Kehoe* [2008] 1 Cr App R (S) 41 and is helpfully encapsulated in paragraph 17:
>
> > `When, as here, an offender meets the criteria of dangerousness, there is no longer any need to protect the public by passing a sentence of life imprisonment for the public are now properly protected by the imposition of the sentence of imprisonment for public protection. In such cases, therefore, the cases decided before the Criminal Justice Act 2003 came into effect no longer offer guidance on when a life sentence should be imposed. We think that now, when the court finds that the defendant satisfies the criteria for dangerousness, a life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly grave.'
>
> [53] Lord Judge CJ returned to this issue in *R v Wilkinson (Grant)* [2009] 1 Cr App R (S) 628 where he said that the crucial difference between a discretionary life sentence and a sentence of imprisonment for public protection arising at the time of sentence is the seriousness of the

instant offence as assessed in the overall statutory context. He continued at para [19]:

> `In our judgment it is clear that as a matter of principle the discretionary life sentence under section 225 should continue to be reserved for offences of the utmost gravity. Without being prescriptive, we suggest that the sentence should come into contemplation when the judgment of the court is that the seriousness is such that a life sentence would have what Lord Bingham observed in *R v Lichniak* [2003] 1 AC 903 would be a ''denunciatory'' value, reflective of public abhorrence of the offence, and where, because of its seriousness, the notional determinate sentence would be very long, measured in very many years.'"

[50] Before reaching a determination on that issue, I have considered whether an Extended Custodial Sentence would be adequate to protect the public from serious harm occasioned by the commission by you of further specified offences. Such a sentence would involve the imposition of a commensurate custodial term. You would have to serve at least one half of that term and thereafter may be released at a time to be determined by the Parole Commissioners. You would then have to spend a further period on licence (of up to 5 years) within the community.

[51] I do not consider that an extended custodial sentence would be adequate because of the uncertain duration of the significant risk you pose. The question therefore is whether a discretionary life sentence should be imposed or an indeterminate sentence.

[52] In this case, given the ferocious attack that you unleashed on your grandmother, this a grave case. However, the key to the question whether a discretionary life sentence should be imposed or an indeterminate sentence for public protection, lies in the extent to which your offending is attributable to your mental condition and the possibility that treatment and supervision might prevent a recurrence of florid psychosis. On the basis of the medical evidence, it cannot be said that your culpability is particularly high because you were delusional at the time and no other motive for the killing can be discerned. Factors such as alcohol and drugs are not relevant, although there is one reference from a work colleague that he was told by you 2-3 weeks before you killed your grandmother that you had been hallucinating all weekend and taking hallucinogenic drugs. In the circumstances, it is not the case that the notional determinate sentence "would be very long, measured in very many years" and indeed, the reason for a sentence for public protection is that the extent of the future risk is uncertain. I am satisfied that an indeterminate

sentence is appropriate to safeguard the public because the Parole Commissioners will be able to assess the risks after you have left the Shannon Clinic and returned to custody, determine whether and if so, when, it is safe to test your release into the community and in so doing, impose necessary conditions at that point in time.

[53] It must be made clear, that whilst I am required to set a tariff at which point you will be eligible to be considered for release, you will only be released if the Parole Commissioners consider that it is safe to do so.

Setting the Tariff

[54] In order to set the tariff, I must determine the extent of your residual responsibility for the offence. The principles are set out in Sir Anthony Hart's JSB paper on sentencing in cases of diminished responsibility:

(a) "Diminished responsibility" does not mean no culpability deserving of punishment in custody.

(b) If the defendant's responsibility for his acts was so grossly impaired that his degree of responsibility for those acts was minimal, and if there is no danger of repetition of violence, the defendant will usually receive a non- custodial sentence, possibly with some supervision.

(c) If the psychiatric reports recommend and justify it, a hospital order may be appropriate.

(d) If a hospital order is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the sentence will usually be life imprisonment.

(e) If there is no basis for a hospital order, and the defendant's degree of responsibility (sometimes referred to as his "residual responsibility") is not minimal a determinant sentence is appropriate. The length of the sentence will depend upon:

(f) the degree of the defendant's responsibility for his actions, and

(g) the period of time he will continued to be a danger to the public.

[55] Having considered the authorities and the relevant principles, Hart J said:

> "Where the defendant was suffering from diminished responsibility at the time of the offence, and the psychiatric history shows that he may continue to be a

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

[56] The aggravating factors are:

- The victim was vulnerable due to her age
- She was attacked in her own home
- There was a breach of familial trust
- You used a hammer

[57] In mitigation, the most significant factor (prior to any consideration for discount in respect of your plea) relates to your undoubted diminished responsibility but the prosecution points out that since this is the basis on which a plea to manslaughter was accepted, the court must be careful not to double count when assessing mitigation. You have a clear criminal record, had some history of employment albeit no doubt affected by your deteriorating mental illness. Any perceived lack of emotion or remorse, must, as Dr Kennedy has explained, be considered as attributable to your mental illness.

[58] The court must make an assessment of your residual responsibility having regard to the circumstances of the case and the medical evidence it has received. It is noted that over a 10 year period prior to your grandmother's death you regularly had beliefs verging on delusional, and on a few occasions had probably been delusional. The intensity of the beliefs fluctuated depending on stress. That means that during periods of clarity, you ought to have been aware of those periods of mental ill-heath. Although, you reported feelings of anxiety and stress to your GP, there is no record of paranoid delusions. On 6 November 2019 there is a note that a sick line was issued for anxiety. The note says "long discussion feels anxiety flaring at present, paranoid at times but no abnormal perceptions or thought disorder." Other notes refer only to complaints of anxiety.

[59] There are entries in your GP records noting concerns reported by your grandmother, and a neighbour reported arguments between you and your grandmother where she had asked you to leave a month earlier because you were anxious and paranoid (interview 7). You told Dr Kennedy that your grandmother used to force you to go to the GP, but you would just report anxiety and put the tablets in the bin, fearing side-effects and a paranoid fear that the GP would euthanise you, and you would end up being hospitalised like your mother who died by suicide. While all of this may be considered a feature of mental illness, you had a responsibility during what were undoubtedly periods of mental clarity to seek proper medical help, supported by your grandmother's entreaties.

[60] Taking into account all the evidence, it is my view that your residual responsibility is low, but not minimal and a custodial sentence is necessary particularly given the potential level of risk you may pose in the future and the

uncertain duration of that risk given that your ability to maintain mental health in the community is uncertain.

[61] The prosecution had declined in its written submission for sentencing to indicate either the level or the basis for residual responsibility, other than referring to the authorities in Hart J's paper. The defence had submitted that your residual responsibility is low primarily on the basis of the assessment by PBNI that you do not pose a significant risk of serious future harm (which I have rejected), along with Dr Kennedy's view that the test for insanity is met, which is not shared by Dr Devine.

[62] At the sentencing hearing, both parties agreed that you do meet the test for dangerousness and that the reasons I have given to explain your residual responsibility are correct.

[63] Both parties also agreed that the appropriate range of tariff in this case is 5-7 years taking into account your guilty plea.

[64] In my view, given the extent to which your offending is attributable to your mental ill-health, a tariff of 5 years is appropriate and I make an indeterminate custodial sentence with that tariff.