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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

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IN THE CROWN COURT IN NORTHERN IRELAND

THE CROWN COURT SITTING AT LAGANSIDE COURTS BELFAST

THE QUEEN

-v-

DECLAN KEVIN O'NEILL

Sentencing Remarks

COLTON J

[1] The defendant was charged with the murder of his mother Anne O'Neill on 21 October 2017.

[2] He was arraigned at Belfast Crown Court on 6 February 2019 and entered a not guilty plea. The trial was due to commence on 7 October 2019. In advance of this, on 23 September 2019, the defendant was re-arraigned and entered a plea of guilty to the single count of murder.

[3] Having pleaded guilty, the court accordingly imposed upon the defendant the only sentence permitted by law for that offence, one of life imprisonment. It is now the responsibility of the court in accordance with Article 5 of the Life Sentences (Northern Ireland) Order 2001 to determine the length of the minimum term the defendant is required to serve in prison before he will first become eligible to have his case referred to the Parole Commissioners for consideration by them as to whether, and if so, when he is to be released on licence. I make it clear however that if and when he is released on licence he, for the remainder of his life will be liable to be recalled to prison if at any time he does not comply with the terms of that licence.

[4] In considering the appropriate tariff I should impose I am grateful for the helpful written and oral submissions I have received from counsel in this case.

[5] Mr Neill Connor QC led Ms Kate McKay on behalf of the prosecution. Mr Gregory Berry QC appeared with Mr Luke Curran on behalf of the defendant. Mr Connor presented the case on behalf of the prosecution comprehensively and fairly. The factual background set out below is taken from his opening. Mr Berry entered an able and sensitive plea on behalf of the defendant in this difficult case.

Background

[6] Sometime between 6.30 am and 7.00 am on Saturday 21 October 2017, neighbours in the quiet residential area of Ardmore Gardens/Drive, Finaghy were awakened by banging type noises emanating from the rear garden of No. 29 Ardmore Avenue. The banging was described as a steel pole or piping being struck against a wall or the ground or some other solid object. It was accompanied by raised voices, both male and female and then a *“hysterical”* female voice shouting, *“leave me alone Declan”*. The banging noises continued and were accompanied by audible crying and screaming from the female who was heard to shout on more than one occasion, *“leave me alone”* and *“somebody help me”*. It was clear that the female was in considerable distress and was injured and in need of urgent help.

[7] The police were alerted at 6.57 am and arrived at No. 29 Ardmore Avenue at 7.16 am. There had been no noise from the rear garden for approximately 10 minutes prior to the arrival of police. Constable Gilchrist made his way to the rear of the property. He found a female lying face down at the bottom of some steps. The steps led to a small terraced area at the back of the house with an open door leading into the kitchen. There were copious amounts of blood on the terrace, steps and surrounding area. Additionally, hair and a tooth from the victim were found on the ground and steps. With the assistance of other police officers the female was turned face up and CPR was commenced. It was noted that the victim’s head was covered in blood. Ambulance personnel attended and continued to render assistance until life was pronounced extinct at 7.59 am by Dr Aiden Cullen who noted a *“massive head injury”* with associated *“massive bleeding from the back of her head”*.

[8] The deceased was identified as Anne O’Neill (DOB: 3/11/1965). She had been living with her parents at 29 Ardmore Avenue at the time of her death. Her parents George and Claire Burleigh were located by police in a bedroom at the property.

[9] The autopsy of the deceased was carried out by Professor Jack Crane on 22 October 2017. The cause of death was given as *“bruising of brain with multiple fractures of skull”*. He noted multiple lacerations to the scalp caused, most likely, by a combination of blows from a blunt object and the head of the deceased having been impacted against a hard surface. The underlying skull (particularly at the back) was badly fractured and there was bleeding over the surface of the brain which was bruised in places. He opined:

“It was the effects of the injury to the brain which were responsible for her rapid, but not immediate death.”

[10] Additionally, there were facial injuries including bruising and abrasion on the centre of the forehead, on the nose (which was also fractured) and the mouth, where two teeth had been knocked out. Lacerations to the centre and right side of the forehead could have been caused by her face and head having been forcibly impacted against the ground or from blows whilst an area of patterned bruising around the left eye could have been caused by a kick. Bruising and lacerations to the forearms and hands were consistent with defensive type injuries. Professor Crane summarised his findings in the following terms:

“This woman died as a result of injuries sustained in an assault. She had been struck repeatedly on the head with a heavy blunt object, the back of her head had been pummeled against the edge of the tiled steps and her face had been thrust against a hard uneven surface such as the concrete path or patio.”

[11] The police at the scene identified the deceased’s son as the defendant Declan O’Neill (DOB: 5/5/1990). Enquiries revealed that his black Ford Fiesta GGZ 6691 had been sighted on two occasions on the Lisburn Road at around 7.09 am heading city wards. This information coupled with the deceased’s reference to the name “Declan” led police to the home of the defendant at Malone Avenue. At 8.33 am police entered the property and located the defendant in bed with his partner. The washing machine was in use and there was evidence that the shower had been recently used. The black Fiesta car was parked outside although the defendant insisted he had not been out and that he had last seen his mother the previous evening.

[12] The defendant was arrested and taken to Musgrave Police Station.

[13] The police investigation identified a residential property close to the murder scene with CCTV recording at the relevant time. This footage depicted a male similar in build and appearance to the defendant arriving in the vicinity at 5.56 am and walking in the direction of his grandparents’ home. At 7.03 am the same male can be seen running away from the property. He is wearing dark clothing and white trainers and appeared to be carrying a light coloured bag and holding a torch in his mouth.

[14] CSI seized a mobile phone from the home of the deceased. Forensic examination revealed the deceased’s blood on the phone. An examination of the Fiesta car also revealed the presence of the deceased’s blood on the steering wheel, gear stick, driver’s door pillar and handle. Telephone enquiries revealed that the defendant had contacted the deceased at 6.10 am and 6.23 am on the date in

question. CCTV footage also confirmed that the defendant purchased Top-Up credit for this phone at the Spar shop on the Malone Road at 5.54 am on the same date.

[15] A search of the area to the rear of the defendant's flat located a bloodstained bag containing shoes, woollen gloves, a metal chisel type tool, black hat, a roll of black tape and a black rubber face mask with attached black hood. Forensic examination identified the deceased as a source of the bloodstaining on the bag and items contained therein.

[16] The defendant was interviewed on 19 separate occasions. He denied involvement in the murder until interview number 14 when he accepted killing his mother. He stated he was sorry for doing it: *"I didn't mean to I just couldn't take anymore. You don't know what it's like. Everyday thousands of pounds debt in my name. Keeps taking more money off me, wants all of my time, we are not allowed any time together"*. The remaining five interviews were largely *"no comment"*.

The relevant legal principles

[17] As indicated earlier, the task for the court is to fix the minimum term the defendant must serve before the Parole Commissioners will consider whether it is safe to release him on licence.

[18] 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."

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

[20] In **R v McCandless & Ors** [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 for the purposes of this case are as follows:-

"The normal starting point of 12 years ...

10. *Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred*

to in paragraph 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

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

These factors could justify a reduction to 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 a 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) *that extensive and/or multiple injuries were inflicted on the victim before death;*
- (k) *the offender committed multiple murders.*

Variation of the starting points

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 features 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 combination 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; or*
- (b) *spontaneity and lack of premeditation.*

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."*

Submissions on Tariff

[21] On behalf of the prosecution, Mr Connor submitted that this is a case to which the higher starting point identified in paragraph 12 of **McCandless** applies given the extensive and/or multiple injuries inflicted on the victim and the fact that she was vulnerable by reason of her own physical impairment and reliance on a walking frame at the time of her death.

[22] In terms of aggravating factors, the prosecution say that there was some element of pre-planning as evidenced by the timing of the visit and the use of dark clothing, gloves, mask, torch and other items to assist in the carrying out of the killing. The defendant also appears to have armed himself with a metal chisel in advance of the killing. The presence of the deceased's blood and hair on the item are indicative of its use in the course of the attack.

[23] Mr Connor accepts that there are a number of mitigating factors;

- (i) The plea of guilty – whilst not at the earliest opportunity, the defendant admitted killing the deceased during interview and it was anticipated that any defence would be based on the issue of diminished responsibility;
- (ii) Clear evidence of remorse;
- (iii) The presence of a mental disorder (depression) which lowered his criminal responsibility for the killing although not affording a defence of diminished responsibility; and
- (iv) Provocation (in a non-technical sense).

The prosecution accepted that there was evidence of an extreme “controlling” personality of the deceased which had a clear impact and effect on the defendant.

[24] Mr Berry disagreed with Mr Connor's suggested starting point. In particular he points to matters set out in paragraph 11 of the **Practice Direction**. He says that any one of these factors could reduce the normal starting point to one of 8/9 years. In this case he submits that 3 of the features are in fact present and that accordingly the starting point in this case should be below the normal 12 year period. He does not take any serious issue with the aggravating features identified by Mr Connor.

[25] His main focus is on the medical evidence received by the court to which I will refer later. He submits that this is a case in which the defendant had more than a reasonable prospect of successfully contesting the murder charge on the grounds of diminished responsibility. The plea entered in this case was on the express instructions of his client so as to avoid further stress to his family. He argues therefore that the plea is compelling evidence of genuine remorse.

[26] He points to the defendant's good character as evidenced by a reference from a colleague and his absence of any previous criminal convictions.

[27] Central to his plea was the extreme controlling behavior of his mother throughout his life which is supported by the medical evidence and by his sister and grandparents. He does not say that this excuses what he did. Rather he says the defendant was very ill at the time of the murder and as a result his culpability is very significantly reduced.

The Appropriate Tariff

[28] In applying the legal principles, I bear in mind that they are not to be interpreted as a straitjacket designed to create a rigid compartmentalised structure into which each case must be shoehorned. 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, 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 instance case.'"*

[29] Thus selecting a starting point is not a mechanistic or formulaic exercise. The guidelines are there to assist the court to proceed to, what, in the circumstances of this case, is considered as a just and proportionate sentence having regard to the guidelines.

[30] If ever a case demonstrated the merit of this approach, it is surely this case. All murders are tragic, but there is something particularly troubling about the murder of a mother by a son. It runs against the natural order of things. As Solomon says, *"It is a foolish man who despises his mother"*. On hearing of such an event, the natural reaction is that something has gone badly wrong. The immediate question is what is the background, what has led to such an unnatural event?

[31] The murder becomes stranger when one learns that the defendant is in fact a qualified medical doctor, a profession devoted to the care of others and the protection of life.

[32] The answer in this case emerges from the additional material which has been provided to the court as follows:

- Report from Dr Maria O'Kane, Consultant Psychiatrist, prepared on the instructions of the defendant dated 30 January 2019.
- Report from Dr Samuel Sengupta, Consultant Psychiatrist, prepared on the instructions of the defendant dated 14 April 2019.

- Report from Dr Richard Bunn, Consultant Psychiatrist, prepared on the instructions of the prosecution dated 17 July 2019.
- Report from Dr Carine Minne, Consultant Psychiatrist, prepared on the instructions of the defendant dated 15 October 2019.
- Pre-sentence report prepared by the Probation Board for Northern Ireland dated 25 October 2019.
- Summary of police interviews with Claire O'Neill sister of the defendant and daughter of the deceased conducted during the course of the police investigation.
- Victim personal statement of the deceased's daughter, Claire O'Neill dated 25 September 2019.
- Victim personal statement of Claire Burleigh, mother of the deceased and grandmother of the defendant.

[33] In a comprehensive report, Dr O'Kane analyses the medical notes and records in relation to the deceased and the defendant's detailed notes and records from university. The defendant was born on 5 May 1990 and is now aged 29.

[34] The defendant describes a most unhappy relationship with his mother. His parents separated when he was very young. He has one sister, a couple of years older. Throughout his teenage years his mother placed restrictions on his lifestyle. Neither he nor his sister was allowed to bring friends home. The home itself was extremely spartan. His mother constantly tore it apart, involved others in dismantling it, such as builders and then attacked and punished them for their role in all of this. Overall he describes a very controlling relationship. Throughout his life his mother was extremely abusive of him. Throughout his time as a medical student, she constantly contacted his supervisors criticising him. At this stage he had become her main carer. She had retired as a nurse after suffering an injury. She placed constant demands on him and he continued to live at home throughout his time at university and after his qualification. He had moved out from home when he was 25 years of age but his mother continued to rely on him.

[35] He says that both his sister and his two grandparents with whom he had a lot of contact, experienced similar difficulties. His sister "escaped" from home about 3 months before he moved out with the assistance of her father. His mother constantly blamed him for his sister's leaving. He believed that his mother hated him intensely throughout his life. Both he and his sister always appeared to disappoint her.

[36] He claimed that his mother shamed and humiliated him throughout his life. He recalled that his mother has always had control of his money. She took his student loan to pay bills. After he moved out he gave her £13,000 in cash to pay her bills. She had direct access to his credit card and ran up debts of £20,000 - £30,000. He gave her £600 per month, had a loan repayment for £13,000 and gave her £400 every month to pay his rent on his flat.

[37] He disclosed to her when he was 25 that he was gay and he has been in a steady and loving relationship with his partner over the last number of years. His mother disapproved of this relationship and made this clear to him.

[38] It was Dr O’Kane’s opinion that the defendant suffers from a mild to moderate depressive disorder. She supported a defence of diminished responsibility under section 53 of the Coroners and Justice Act 2009 (“the 2009 Act”) on the basis that he was suffering from dissociative symptoms at the time of the killing and as such that he was unable to form a rational judgment and exercise self-control. She also supported the defence of loss of control under sections 54-56 of the 2009 Act. On this issue she says:

“In Declan O’Neill’s case I believe that the loss of self-control was attributable to things having being said and done over many years which constituted circumstances of an extremely grave character and gave him a justifiable sense of being wronged. That is that throughout his entire life since childhood he was subjected to relentless and unpredictable physical, emotional and psychological violence, intimidation and manipulation by his mother to control his actions and responses. This behavior appears to have been undiluted by the lack of interventions of others. He was subjected to undermining, bullying and controlled by a sense of unrelenting threats to shame and expose [sic] throughout this life. This appears to have resulted in a highly pathological relationship between the two resulting in an enmeshed existence, where they could not leave each other and their psychological, physical, emotional and financial lives were not separated and were a constant source of tension.”

[39] Dr O’Kane advised that, given the complexity of this case and the highly unusual nature of what has occurred, a report should be sought from Dr Carine Minne, Consultant Psychiatrist in Forensic Psychotherapy, at the Tavistock and Portland Clinic in London and Broadmoor High Secure Hospital.

[40] Dr Minne was unable to prepare a report in time for the trial but a colleague, Dr Samuel Sengupta, provided a report dated 14 April 2019. In that report he records a similar history to that of Dr O’Kane. He focused on the issue as to whether or not the defendant’s medical condition at the time of the incident was such as to afford him a defence of diminished responsibility.

[41] It was Dr Sengupta’s opinion that at the time of the murder the defendant was suffering from an abnormal mental functioning. He diagnosed a moderate to severe depressive disorder. Examined by Dr Sengupta, the defendant indicated that he could not recall the circumstances of the murder. He indicated that on Thursday 9 October 2007, he went out with his partner, Christopher, to celebrate their

anniversary. There he drank more than his usual consumption. He said that he drank more than a bottle of wine and became "*quite drunk*". His mother continued to text him throughout the evening. When he did not reply she started texting Chris.

[42] The following morning he felt anxious and unwell. He phoned in sick but felt guilty for not going to work. He drove to work and as he sat in the car park he had a panic attack. He said he, "*froze*" in the car and sat still. He could not get himself out of the car. He felt a dull aching pain in his chest and felt the world was going to collapse or something bad was going to happen. The feeling lasted for an hour or two.

[43] He told the doctor that he returned home thereafter. At about 2/3pm he went to his mother's house to pick her up and drop her off to his grandparents' house. They had an argument when his mother became abusive. She shouted at him and repeated her usual accusations. She said how disappointed she was with him. She also said that his grandparents disapproved of his sexuality. She said Christopher was not good for him and that he only cared for him and not for the family. He reported feeling worthless and distraught. He cancelled his meeting with the friends and instead went home. At home he remembers feeling miserable and hopeless. He felt that if he quietly died nobody would notice. He wanted to kill himself with a rope and hang from the bannister. He remembered sending a text to Christopher that he loved him. He felt numb so he did not remember much of the rest of the evening and fell asleep feeling very low in mood.

[44] He remembered Christopher returning home late from his work party. He got up, had a cigarette and went back to bed. He reported that he did not remember anything thereafter.

[45] It was the doctor's opinion that at the relevant time the defendant suffered from abnormal mental functioning, arising from a recognized medical condition which substantially impaired his ability to form a rational judgement and to exercise self-control. He felt that this provided an explanation for his acts in committing the murder. He also felt that the defendant met the criteria for loss of control under section 54 of the 2009 Act.

[46] This opinion was disputed by Dr Richard Bunn who was instructed on behalf of the prosecution.

[47] He felt that there were significant inconsistencies in the defendant's narrative of how the murder occurred. He accepted that the defendant did have mental health issues and agreed with Dr O'Kane's diagnosis of a mild to moderate depressive disorder. However his opinion was that his symptoms were not so severe that they prevented him from planning the murder and he knew what he was doing was wrong and contrary to the law.

[48] In particular he rejects any suggestion that the defendant was in a “*dissociative state*” at the time of the killing. He particularly relied on the actions of the defendant which he described as “*purposeful*”. These actions included getting dressed, getting his car keys, getting the items for his murder kit, including a rope, a weapon and a mask, starting the car, driving the car, purchasing a sim card, phoning his mother, killing his mother, driving home, disposing of the bag, putting on a wash and having a shower.

[49] Dr Minne did provide a report for the court dated 15 October 2019. She rehearsed what has already been set out. Her diagnosis of the defendant was that he suffers from recurrent depressive disorder of moderate to severe intensity and that he has suffered from this condition at least since adolescence. He has remained undiagnosed and therefore untreated. She was also of the opinion that he suffers from a generalised anxiety disorder.

[50] It was her opinion that if the defendant was still facing a trial she would have supported a partial defence of manslaughter on the grounds of diminished responsibility on the basis that he was suffering from a recurrent depressive disorder as well as a generalised anxiety disorder which substantially impaired his ability to form a rational judgment and to exercise self-control due to the highly aroused mental state he was in at the time of the killing. She has ongoing concerns about his mental state.

[51] The pre-sentence report unsurprisingly assesses the likelihood of the defendant reoffending as being low and concludes that he does not meet the PBNi's criteria for significant risk of serious harm to others.

[52] The pre-sentence report provides a comprehensive and detailed assessment of the defendant's background, his account of his family circumstances and his account of the murder. Commenting on the defendant the report records:

“During the pre-sentence report interviews Mr O’Neill presented with a high level of regret; evidenced throughout by his statements and demeanour. He is clearly struggling to come to terms with the consequences of his actions and repeatedly stated how much he missed his mother. In discussing the offence Mr O’Neill was emotional during all three interviews and repeatedly expressed his sorrow at what he had done. Having had the opportunity to reflect on his actions over the past 2 years he states he should have left Northern Ireland and started afresh somewhere else in order to escape the stress regarding his mother. He now recognises he was in the midst of an extremely abusive relationship and recognises he should have sought help. Mr O’Neill easily identified the hurt and trauma his family have been subjected to as a result of his actions in both the short and longer term. However, it is worth

noting that over the past 2 years his father, sister and maternal grandparents have all visited him on a weekly basis in custody. They have been consistent in their support of Mr O'Neill."

[53] The support from the defendant's family is evidenced by the victim personal statements which I have received in this case.

[54] Those statements are a unique and compelling aspect of this case. Victim impact statements are recognised as an important part of the sentencing process. What is most striking in this case is that both the victim impact statements, from the defendant's sister and maternal grandmother are extremely supportive of the defendant. His sister describes him as *"timid and very kind natured"*. She fully supports his account of his mother's behaviour, something she set out in detail to the police when she was interviewed about the matter during the course of the police investigations. She points to the fact that he actually helped support her cope with the difficulties she encountered because of the controlling behaviour described by him.

[55] The defendant's account is also supported by his maternal grandmother.

[56] The grief and anguish that this murder has caused is eloquently expressed in both statements. Claire, his sister, says that *"I have grieved for my mum and I still miss her very much"*. She accepts that her brother Declan *"has done wrong in the fact that he had no right to kill my mother"*. His grandmother points out that not only has she lost her daughter but also her grandson. Both make a compelling and moving plea for clemency on the defendant's behalf. His grandmother says:

"I know that Declan will have a prison sentence to serve because of this but I just ask that my views on this will be listened to and that Declan's sentence will not be too hard. He had no life growing up and he is still a young man and deserves to have another chance in the world after he is released. I am now 83 years old and George is 84 years old. We are still able to travel to prison to see Declan however with our family health we do not know how long we will be able to do this. We are both suffering from stress and anxiety about what happened to Declan and I just trust and pray that the judge will take this all into consideration when deciding Declan's sentence."

[57] In similar vein his sister says of the defendant:

"I have no anger or resentment towards him. I am the only person in this world who fully understands the life that we had."

She goes on to say:

“However now I rely on him for support. I trust his judgment in all aspects of life and he has been a great support to me recently due to my ill health. In all honesty I have only been able to get through the last 2 years with the support I have got from him and therefore I would ask that any sentence handed to him by the judge is as lenient as possible so we as a family can move on and try to regain some sort of normal life.”

[58] It is essential that I remember that a person has been killed as a result of the defendant’s actions. The law must satisfy the requirements of retribution and deterrence. Anne O’Neill’s death was brutal, senseless and unnecessary. Much has been said about her in the course of these remarks but nothing that has been said should take away from this fundamental point.

[59] It has been necessary and appropriate for the court to hear and consider the full circumstances which gave rise to Anne O’Neill’s death. This is not to attack the deceased but to arrive at an understanding of the defendant’s conduct and to ensure that the tariff I impose is a fair one.

[60] Returning to the deceased the more I heard about the matter and considered the papers it is hard to disagree with the view recently expressed by Dr Minne that the deceased too suffered from mental health issues. In her report Dr Minne opines of the deceased:

“She appears to have suffered from mental health difficulties, manifested by the descriptions of her disturbed behaviours, possible paranoid symptoms, as well as reference to episodes of deliberate self-harm. Unfortunately, for these difficulties and they appear to have been chronic over many years, she does not appear to have accepted to receive treatment, presenting instead to her GP who described her as tending to medicalise her personal problems. It would appear that concerns were raised about her mental health, with her GP referring her to the Community Mental Health Team (CMHT) in June 2016 but that she did not engage with appointments offered following the initial one. She was referred back to CMHT in December 2016 but again only attended the initial appointment. She did agree to meet with her GP Practice Counsellor in March 2017. I understand that she made allegations to her GP that her son, Dr O’Neill, was verbally abusive and hostile towards her and, as a result, adult safeguarding became involved. However she twice refused the offer of involvement following a referral to the safeguarding team, in June 2016 and again in August 2017. It would appear that her two young adult children were too frightened to report her behaviour towards them and to seek

help themselves for fear of the repercussions at home from their mother."

[61] Irrespective of what tariff I impose the defendant will be the subject of a sentence of life imprisonment. It is clear that he will carry the burden of his actions for the rest of his life. It may well be that in his mentally disturbed condition he killed his mother as a desperate bid to escape her controlling behaviour – "*to be free*" as he put it to Dr Minne. As he is now acutely aware there has been no release or freedom, only further mental anguish for him and his immediate family.

[62] When it comes to setting the tariff it may not matter which counsel is right in terms of selecting an appropriate starting point. Nonetheless the defendant and the public are entitled to know the basis upon which the final tariff is reached, bearing in mind that the objective remains to set a right and appropriate sentence for the particular facts of this case.

[63] I agree with Mr Connor that the appropriate starting point in this case is the higher starting point. I say so because of the extent of the multiple injuries which were inflicted on the deceased who was vulnerable because of her disability. I also agree that the offence is aggravated by the element of pre-planning involved. Taking this all into account I conclude that the appropriate starting point before mitigation is one of 16 years.

[64] I turn now to mitigation. I consider that there is very substantial mitigation in this case. I take the view that this case clearly comes close to the borderline between murder and manslaughter. There were three respected Consultant Psychiatrists who were prepared to support a partial defence of manslaughter. Ultimately this would have been a matter for the jury to decide in light of all the evidence including that of Dr Bunn who rejected the evidence of the other psychiatrists. Nonetheless I consider that there was at the very least a realistic prospect of a successful defence to the charge of murder. Even if this is not the case the evidence overwhelmingly supports the submission that the defendant suffered from a mental disorder at the time of the killing which lowered the degree of his criminal responsibility for the killing even if it did not afford a defence of diminished responsibility.

[65] These factors alone in my view entitle the defendant to a significant reduction in the starting point.

[66] The key feature of this case however was the fact that at the very least the defendant was provoked (in a non-technical sense) by the prolonged and unsupportable stress he endured as a result of the controlling behaviour exerted by the deceased. This issue is more commonly experienced by the courts in the context of domestic violence between partners, particularly inflicted on vulnerable females. There is an increased understanding and acceptance by the courts that such conduct can drive people who would otherwise never be before a court to the point of unlawful killing which may not amount to murder. That is not to justify or excuse

such actions. As indicated the defendant faces a life sentence and will spend a significant period in prison before he can be considered for release. Nonetheless the evidence in this case overwhelmingly points to coercive control by the deceased as the major contributing factor to the defendant's unlawful conduct.

[67] I consider that there should be substantial discount in the tariff for this reason as well.

[68] I also accept that there is genuine and well-evidenced remorse on behalf of the defendant. I consider that that remorse is particularly significant in a case such as this given the relationship between the defendant and his mother.

[69] Taking all these mitigating factors into account I consider that the appropriate tariff excluding any discount for the plea will be one of 10 years' imprisonment.

Discount for Guilty Plea

[70] What then is the appropriate reduction, if any, for the guilty plea in this case?

[71] It is a long and firmly established practice in sentencing law in this jurisdiction that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate. The defendant is clearly entitled to a reduction for his guilty plea in this case.

[72] In considering the appropriate discount for a plea of guilty in a murder case it is necessary to take into account the guidance issued by the Court of Appeal in the case of **R v Turner and Turner** [2017] NICA 52.

[73] In that case the Court of Appeal considered the discount which was appropriate in tariffs in murder cases and came to the conclusion, at paragraph [40]:

"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 the case of a substantial tariff."

[74] The court however did go on state that:

"We have concluded, however, that it would be inappropriate to give any more prescriptive guidance in this area of highly fact sensitive discretionary judgement. 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."

[75] In determining what the lesser sentence should be the court should look at all the circumstances in which the plea was entered.

[76] In my view notwithstanding the fact that the defendant pleaded not guilty at first arraignment this is a case in which a discount of greater than one-sixth should be given. The factors which justify it in this case are as follows. The defendant has accepted his role in the deceased's death at interview stage. At first arraignment it was clear that he accepted that he had caused the deceased's death but the only issue that arose related to the issue of manslaughter and the necessity of the defence to obtain psychiatric evidence on this point. Notwithstanding the fact that that psychiatric evidence supported the defence of diminished responsibility the defendant instructed his lawyers to plead guilty. Although his plea was not at the earliest opportunity it can in these circumstances be described as a timely plea. More importantly it must have been of significant assistance to the prosecution given the state of the medical evidence in the case. To an extent I have already factored in the issue of the potential defence of manslaughter in this case in reducing the tariff before discount for a plea to 10 years.

[77] In these circumstances I consider that the appropriate discount is one of 2 years reducing the appropriate tariff to 8 years. Taking account of all the factors in this case I consider that this is the right and appropriate tariff.

[78] Dr O'Neill, a sentence of life imprisonment has already been imposed on you pursuant to your plea to the count of murder. Pursuant to Article 5 of the Life Sentence (Northern Ireland) Order 2001 I determine the minimum term that you must serve in prison before you will first be eligible to have your case referred to the Parole Commissioners for consideration by them as to whether you should be released on licence is to be one of 8 years. The tariff shall include a period of 702 days which is the period you have already served in custody on remand for this offence prior to the imposition of the life sentence on 6 September 2019.