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(subject to editorial corrections)*

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

NEIL HYDE

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Before: Morgan LCJ, Girvan LJ and Coghlin LJ

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MORGAN LCJ (giving the judgment of the court)

[1] This is an appeal with the leave of the single judge against a total sentence of 3 years imprisonment imposed by His Honour Judge Lynch QC for a total of 48 offences which occurred during a 15 year period from 1992 to 2007 when the appellant was a member of a loyalist paramilitary organisation. The sentence imposed was substantially reduced in light of an agreement entered into by the appellant and the prosecution pursuant to the Serious Organised Crime and Police Act 2005 (SOCPA) arising from his assistance to police in the investigation of other paramilitary criminal activity. The applicant seeks leave to appeal on the grounds that the learned judge failed to give additional discount for the mitigating circumstances in the applicant's personal life and that in all the circumstances the learned judge should have suspended the custodial sentences. Mr George QC and Mr Ward appeared for the appellant. Mr Russell appeared for the PPS. We are grateful to counsel for their helpful written and oral submissions.

[2] We have annexed to this judgment guidelines on the sentencing of defendants who have assisted the police in the investigation of crime. As is clear from the guidelines this is not intended to circumscribe in any way the discretion of the individual judge.

Background

[3] In September 2008 detectives from the Retrospective Murder Inquiry Team interviewed the appellant about a number of serious offences. During the course of those interviews he asked to speak to police without his solicitor being present. This led to an interview on 11 September 2008 in which he admitted his connection to those responsible for the murder of Mr Martin O'Hagan, a well-known and respected journalist. Subsequent to those interviews, the appellant entered into an agreement with the Public Prosecution Service on 23 March 2009 whereby he became an assisting offender under the provisions of section 73 of SOCPA. The appellant then underwent a series of debriefing interviews. In general the offending to which he confessed was connected to offences committed in association with persons whom he described either as being members of, or associated with, the paramilitary Loyalist Volunteer Force ("LVF") mainly in and around the Craigavon area.

[4] On 28 October 2011 the appellant was returned for trial at the Crown Court sitting in Belfast on 48 counts. The most serious of these comprised 5 counts of possession of a firearm or ammunition with intent to endanger life, conspiracy to carry a firearm and aggravated burglary involving the theft of three shotguns and £32,000. The remaining 41 counts included affray, arson and making and throwing petrol bombs in connection with the Drumcree disturbances, conspiracy to commit an act of criminal damage, withholding information, attempted robbery, aiding and abetting wounding with intent, aiding and abetting possession of a firearm, managing a meeting in support of a proscribed organisation, assault and various drugs offences including possession with intent to supply. On 1 December 2011 he pleaded guilty to all 48 counts on the indictment. He was subsequently sentenced to a determinate sentence of three years imprisonment by Judge Lynch on 3 February 2012.

[5] The appellant had a criminal record with a total of 10 previous convictions over a 10 year period from 1994 to 2004. The most serious offences were wounding with intent and attempted robbery for which he was sentenced in 1997 to 4 years detention in the Young Offenders Centre. The remaining offences were minor in nature with fines for common assault, public order offences and road traffic offences.

[6] The pre-sentence report noted that the appellant lived with his partner and three children from that relationship. He was employed and the family had settled in their new location. The report stated that the appellant committed a Post Office robbery when 16 years old and was sentenced to imprisonment. It was when he was in the Maze Prison, at the age of 16/17, that he was recruited by the UVF. His role within the organisation was as an "enforcer and facilitator". He did not attempt to minimise his responsibility for the offences. Over time his involvement began to take an emotional toll and he turned to drugs "to survive and make things at least bearable". The risk of harm and likelihood of re-offending was judged to be low.

[7] The learned judge viewed the firearms offences as the most serious offences committed by the appellant as he knew that the weapons were going to be used either in so-called punishment beatings or indeed to kill. The learned judge noted a letter to the Court from the appellant's wife which stated that the appellant had become disillusioned with the paramilitary organisation in 2002 but that he was afraid to leave for fear of reprisal. The learned judge, however, took the view that those who voluntarily join such organisations do so with full knowledge of the nature of the organisation and, therefore, should have limited sympathy. He accepted that the appellant's co-operation had been of the highest order and that he had put himself in grave danger as a result of this. He also accepted that his admissions, particularly of offences which would not have come to light, and his subsequent employment history and settled lifestyle indicated genuine remorse for his actions. He considered that the appellant was entitled to full credit for his plea. He recognised that incarceration would result in loss of employment and hardship to the appellant's family, particularly his wife who had a history of self-harming.

[8] Applying the totality principle he took the view that the appropriate sentence taking into account the aggravating and mitigating factors other than the plea and the reduction for co-operation was 18 years imprisonment. He reduced that figure by 75% for co-operation and then reduced the resulting figure by a third for the early plea. He rejected a submission that this was a case in which the appellant's personal circumstances suggested a sentence that did not result in immediate imprisonment.

[9] The grounds of appeal against sentence are as follows:-

(a) The judge failed to give any or any sufficient credit for the appellant's personal mitigation and in particular for the exceptional progress the appellant had made since he entered the Assisting Offender scheme under the Serious Organised Crime and Police Act 2005 on 24 March 2009;

(b) In all the circumstances the appropriate sentence was lower than that imposed;

(c) In the exceptional circumstances of this case it would have been appropriate for the sentence of imprisonment to have been suspended.

Assisting offenders

[10] The courts have for some time recognised the public interest in discounting the sentences of those defendants who give evidence for the Crown. In R. v. Lowe (1978) 66 Cr.App.R. 122 Roskill LJ said:

> "It must therefore be in the public interest that persons who have become involved in gang activities

> of this kind should be encouraged to give information to the police in order that others may be brought to justice and that, when such information is given and can be acted upon and, as here, has already been in part successfully acted upon, substantial credit should be given upon pleas of guilty especially in cases where there is no other evidence against the accused than the accused's own confession. Unless credit is given in such cases there is no encouragement for others to come forward and give information of invaluable assistance to society and the police which enables these criminals--and these crimes are all too prevalent, not only in East London but throughout the country--to be brought to book. Those are the considerations this Court has to have in mind."

[11] The practice was placed on a statutory footing by sections 73 to 75 of SOCPA although the common law jurisprudence still applies to cases that do not fall within the Act. By virtue of section 73 a defendant who has pleaded guilty and, pursuant to a written agreement with a specified prosecutor, provided or offered to provide assistance to an investigator or prosecutor will be eligible to receive a reduction in sentence. The 2005 Act does not make a reduction in sentence mandatory but in determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered. Where a judge passes a sentence which is less than it would have been but for the assistance given or offered, this fact must normally be stated in open court and the judge must state what the greater sentence would have been in the absence of the assistance. There are special arrangements where it would not be in the public interest that the fact that a defendant was providing assistance became known.

[12] Section 74 deals with the power of the court to review the sentence. This can arise in three ways:

(i) A defendant who has received a discount knowingly fails to give assistance in accordance with the agreement;

(ii) A defendant who has received a discount for assistance offers to give further assistance; or

(iii) A defendant whose sentence was not discounted subsequently decides to give or offer assistance.

Mr Russell in his submissions suggested that the discount for assistance included issues such as remorse and the change of family circumstances which informed the

judge's thinking on that issue and to give further discount would amount to double counting. Mr George points out, however, that for the purposes of section 74 the discount allowed under section 73 which the judge has to identify must relate solely to the issue of assistance and this must be kept separate from other mitigating matters in case the discount for assistance may need to be reviewed.

[13] The English Court of Appeal gave guidance on how to approach the sentencing of an offender under SOCPA in R v P; R v Blackburn [2007] EWCA Crim 2290.

> "The first factor in any sentencing decision is the criminality of the defendant, weight being given to such mitigating and aggravating features as there may be. Thereafter, the quality and quantity of the material provided by the defendant in the investigation and subsequent prosecution of crime falls to be considered. Addressing this issue, particular value should be attached to those cases where the defendant provides evidence in the form of a witness statement or is prepared to give evidence at any subsequent trial, and does so, with added force where the information either produces convictions for the most serious offences, including terrorism and murder, or prevents them, or which leads to disruption to or indeed the break up of major criminal gangs. Considerations like these then have to be put in the context of the nature and extent of the personal risks to and potential consequences faced by the defendant and the members of his family. In most cases the greater the nature of the criminality revealed by the defendant, the greater the consequent risks. …the discount for the guilty plea is separate from and additional to the appropriate reduction for assistance provided by the defendant (see R v Wood [1997] 1 Cr App R (S) 347). Accordingly, the discount for the assistance provided by the defendant should be assessed first, against all other relevant considerations, and the notional sentence so achieved should be further discounted for the guilty plea…. Finally we emphasise that in this type of sentencing decision a mathematical approach is liable to produce an inappropriate answer, and that the totality principle is fundamental. In this court, on appeal, focus will be the sentence, which should reflect all the

relevant circumstances, rather than its mathematical computation."

Discussion

[14] The essence of the point made on behalf of the appellant was that although there could be no criticism of the starting point of 18 years and the subsequent reduction of 75% for assistance and a further one-third for the early plea the trial judge had failed to take into consideration and reflect the remorse of the appellant, his commitment to his employment which he had secured for the first time in his life, the hardship to him as an assisting offender in prison and to his family in light of his wife's medical condition and the complete rejection of his earlier lifestyle.

[15] We do not accept that the learned trial judge failed to take those matters into consideration. In the passage quoted in paragraph 12 above Lord Judge referred to the criminality of the defendant being the first factor taking into account the aggravating and mitigating factors. In his sentencing remarks the judge similarly arrived at his starting point of 18 years after taking into account the aggravating and mitigating factors. There is good reason why he should have approached the starting point in that way. Factors in relation to personal mitigation carry very modest weight in cases of serious crime deserving of substantial sentences for the purposes of retribution and deterrence. In a case where the maximum discount of 75% is being given for assistance and full credit is allowed for a plea every month off the resulting period equates to 6 months off the starting point. It is, therefore, entirely artificial to allow for personal mitigation at the end of the process rather than the start.

[16] Although there was no challenge to the starting point of 18 years we have considered whether in all the circumstances it was appropriate. In Attorney General's Reference (No.3 of 2004) (Hazlett) [2004] NICA 20, during a feud between loyalist organisations, the offender collected a gun and ammunition prior to a gun attack on a house and was also told where to dispose of the weapon afterwards. The offender was convicted of possession of a firearm and ammunition, namely a sub machine gun and 30 rounds of ammunition with intent by means thereof to endanger life or cause serious injury to property contrary to Article 17 of the Firearms (Northern Ireland) Order 1981. The Court of Appeal stipulated that for an offence such as that the normal sentencing range would be 12-15 years imprisonment. In this case there was multiple serious offending and a range of other drugs and public order offences. Applying the totality principle we consider that taking into account the mitigating factors the judge could easily have adopted a starting point of 20 years.

[17] Finally we remind ourselves that sentencing is not a matter of mathematical calculation. We are satisfied that the judge took into account the mitigating factors but we must also be satisfied that he reflected them in his sentence. This appellant

engaged in serious crime and was an active member of a paramilitary organisation over a period of 15 years. He was on the periphery of two murders. He has now turned his life around. He has given co-operation of the highest order to police and thereby put himself in grave danger. He is remorseful for his conduct and has pleaded guilty to many offences which were not known to police. That has properly led to a very substantial reduction in his sentence. We do not accept, however, that those factors justify a disposal which avoids immediate custody having regard to the seriousness and persistence of the appellant's offending. We consider that a sentence of three years imprisonment is well within the appropriate range when all of the issues in this case are balanced.

[18] For the reasons set out we dismiss this appeal.

HYDE ANNEX

GUIDANCE ON THE SENTENCING OF DEFENDANTS WHO HAVE ASSISTED THE POLICE IN THE INVESTIGATION OF CRIME

Summary

1. Where a defendant has assisted the police in the investigation of crime, whether by giving information relating to other offences or by giving evidence during his own trial which assisted in the conviction of the co-accused, the court may be asked to accept the assistance as a form of mitigation when it comes to his sentencing and reduce the sentence that would otherwise have been imposed. This can be complicated where the defendant does not want the public or perhaps his legal representatives to be aware of the assistance he has given.

2. This note sets out some of the legal and practical issues a judge might consider in these cases. Ultimately the court must decide whether the principle of open justice should prevail or if there are other issues, such as the defendant's right to life, which (notwithstanding the importance of the principle of open justice) may take precedence in the individual case. It is recognised that the handling of an individual case is for the judge to determine on the facts of that case.

Statute law

3. Sections 73 to 76 of the Serious Organised Crime and Police Act 2005, "the 2005 Act", which came in to(INTO ??) force on 1st April 2006 extend to Northern Ireland. They provide that a defendant who, pursuant to a written agreement with a specified prosecutor, has provided or who has offered to provide assistance to an investigator or prosecutor will be eligible to receive a reduction in sentence. The 2005 Act does not make a reduction in sentence mandatory, rather s. 73(2) provides that in determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered.

4. Where a judge passes a sentence which is less than it would have been but for the assistance given or offered, this fact must normally be stated in open court and the judge must state what the greater sentence would have been in the absence of the assistance [s. 73(3)]. If circumstances arise where it would not be in the public interest for it to be generally known that an accomplice had or was providing assistance, s. 73(4) provides that the trial judge does not have to announce in open court that the sentence has been reduced. Instead, notice in writing of the fact and of the greater sentence may be given to the prosecutor and the defendant.

5. However, sentencing reductions under the 2005 Act are only available to a defendant who is being sentenced by the Crown Court after entering a plea of guilty

[s. 73(1)(a)]. Thus the 2005 Act does not apply to the magistrates' court. It also does not apply to those cases in the Crown Court where the procedural requirements laid down in the statute and Court Rules cannot be met (e.g. where the defendant does not wish his legal representatives to know of his assistance to the police). In those cases the common law principles and procedures, which were not repealed by the legislation, still have effect. (R v P; R v Blackburn [2007] EWCA Crim 2290)

Common Law

6. The courts have long recognised the public interest in discounting the sentences of those defendants who give evidence for the Crown. The leading case on the subject is R v Lowe (1978) 66 Cr.App.R. 122. In that case Roskill LJ said:

> "It must therefore be in the public interest that persons who have become involved in gang activities of this kind should be encouraged to give information to the police in order that others may be brought to justice and that, when such information is given and can be acted upon and, as here, has already been in part successfully acted upon, substantial credit should be given upon pleas of guilty especially in cases where there is no other evidence against the accused than the accused's own confession. Unless credit is given in such cases there is no encouragement for others to come forward and give information of invaluable assistance to society and the police which enables these criminals--and these crimes are all too prevalent, not only in East London but throughout the country--to be brought to book. Those are the considerations this Court has to have in mind."

7. In their "Guideline Judgments Case Compendium"[1], the Sentencing Guidelines Council for England & Wales outlines the principles to be applied in such circumstances, citing R v A and B [1999] 1 Cr.App.R.(S) 52; R v Guy [1999] 2 Cr.App.R.(S) 24; R v X [1999] 2 Cr. App.R.(S) 294; R v R (Informer: Reduction in Sentence) [2002] EWCA Crim 267; and R v P; R v Blackburn [2007] EWCA Crim 2290.

8. The situation of a magistrates' court being asked to take account of an offender's assistance to police came before the English High Court (Beldam LJ and Smith J) by way of judicial review in R v Huddersfield Justices ex parte D (12th July 1996)(unreported). D appeared before the magistrates' court on the charge of handling stolen goods. At the request of D's legal representative, the court sat 'in camera' during which time he told the court that he was in possession of a letter from the police stating that his client was a police informant. He asked the court to receive the letter and take it into consideration when passing sentence, but not to make reference to it in open court. The Justices ruled that justice not only had to be

[1] The Case Compendium can be viewed in full at:
http://www.sentencing-guidelines.gov.uk/docs/complete_compendium.pdf

done but had to be seen to be done, and therefore refused the application. D sought judicial review of this decision. In quashing the decision of the Justices and directing them to receive the confidential mitigation, the High Court referred to the judgment of Lord Lane in R v Sivan and Others (1988) 10 Cr. App. R.(S) 282, and stated:

> "It is apparent from that citation that the Court recognised, as these Justices did, the importance of openness of justice, that justice should be seen to be done. But it is also clear that the Court recognised the other public interest, which conflicts with the principle of open justice, namely, that a defendant should be entitled to rely on mitigation which cannot be made public, because to do so would or might endanger him or his family and also make it impossible for him to give further assistance to the authorities. In cases where these circumstances arise, the principle of open justice gives way. In my judgment it should have given way here."

Although the cases cited pre-date the Human Rights Act the principles have been applied since its introduction (and are recognised in the Act). Reasoning in post-HRA cases will of course take the Act explicitly into account.

Procedure:

9. The procedure to be adopted in the magistrates' court or, where the 2005 Act does not apply, in the Crown Court is at the discretion of the sentencing judge. What follows is intended to assist in the exercise of that discretion. One point to note is that any aggravating and mitigating factors should be taken into account in determining the sentence to which the discount for assistance is to be applied for the reasons set out in R v Hyde [2013] NICA 8.

10. Lord Lane CJ in the Sivan case (supra) commended the following practice:

> "First of all it is, for obvious reasons, advisable that there should be before the court a letter from a senior officer--maybe a senior officer of police or a senior officer from the Customs and Excise Investigation Department--unconnected with the case, who has examined all the facts and is able to certify that the facts are as reported by the officers conducting the investigation--that is of course the facts relating to the assistance given by the defendant in question. Secondly, as an obvious corollary to that, there must be a statement in writing from the officer in charge of the investigation setting out those facts which will be certified by the senior unconnected officer. Thirdly, we think it advisable in the more important cases that the officer in charge of the investigation should be available to give evidence if necessary, whether in court or in the judge's chambers as the situation may demand. Finally, and again

this scarcely needs stating one imagines, the shorthand writer should be present taking a note of what transpires in the judge's private room.

Apart from that, we think that it would be unwise to set out in any detail a method which should be adopted by the judge in any particular case. It will have to be tailored to the particular circumstances which will vary almost infinitely according to the case which is being handled."

11. In ex parte D (supra), when looking specifically at the magistrates' court, Smith J stated:

> "In Sivan Lord Lane gave guidance to the courts and practitioners as to the procedure to be followed in such cases. That guidance was aimed more towards serious cases heard in the Crown Court, but Magistrates' Court clerks may find it helpful when they advise their Justices as how best to proceed.
>
> Further guidance on the practical approach to such cases has been provided in the case of *Piggott* unreported, Court of Appeal transcript dated 2 December 1994. It is, of course, a matter for the Justices' discretion how they should proceed in each individual case. They should tailor their approach to the requirements of the particular case, but the following may be helpful. Justices will always wish to satisfy themselves that the material they are asked to consider has been properly authenticated. The representatives of both parties should be aware of the material. In most cases, it will be possible for the Crown representative to hand the material discreetly to the Court. Often, it will be unnecessary for any spoken reference to be made. The Court will read the material and take it into account when sentencing. Sentence would not contain any reference to the material. If any clarification of the material becomes necessary it is a matter for the Court to decide how to proceed, but it may there be appropriate for the court to be cleared."

12. Both Lord Lane and Smith J emphasised that no rigid procedure should be laid down. This guidance does not seek to do so as that could restrict judicial discretion. However, when considering how to proceed in a case where the court is asked to take into consideration any assistance provided by the defendant to the police, it may find the following points of help:

    (i) *Where the Defendant has informed his legal representatives of the assistance provided to the police:*

    - It is imperative that the defendant's legal representative should be present at all meetings between the judge, the prosecution and the police. While the principle of open justice should always be considered, it may be that

the nature and content of such meetings, and any discussions relating to them, will require that they be conducted in the judge's chambers. If possible, a record of all exchanges should be made, either by digital audio recording or by a stenographer or shorthand writer. Where this is not possible or where the matters discussed are of a sensitive nature which may give rise to Article 2 ECHR implications[2], it is recommended that all such meetings and any relevant issues discussed should be recorded in a handwritten note made by the judge. The judge may consider it prudent to have all persons present sign this note. Where the note refers to matters of a sensitive nature and its release may have Article 2 ECHR implications, its retention must be in accordance with the procedures prescribed in 'Guidance for the Retention and Storage of Judicial Notes'. Any materials provided to the court either by the prosecution or the police in relation to the assistance provided by the defendant should be returned to the prosecution/police for safe keeping pending any appeal against sentence (with a record of same recorded in the note).

- On many occasions the police will identify a suitable officer in a position to give information regarding the assistance provided by the defendant. The use of a police officer unconnected with the case before the court to analyse and give a balanced opinion on the assistance given by the defendant is commended, with the court having full discretion to decide in any particular case from whom it wishes to receive such information. The seriousness of the offence for which the defendant is being sentenced, the severity of the sentence likely to be imposed if it were not for the defendant's assistance to the police and the credit, if any, that the defendant is likely to receive for giving that assistance should be taken into consideration, along with all other relevant factors pertaining to the case, when determining the position and rank of any such officer. The court will want to consider evidence given on these issues critically.

- It is a matter of judicial discretion how much, if any, reduction in sentence should be given to a defendant for his having assisted the police.

- It is also a matter of judicial discretion whether any reference to the assistance given by the defendant to the police and any credit being given for same by the court is made in open court, taking into consideration, inter alia, the principles of open justice and the defendant's Article 2 ECHR rights. Where a reduction in sentence is considered appropriate, but it is also considered that reference to the assistance is not to be made in open court, the judge may feel it appropriate to have a further note made stating that a reduction in sentence was given due to the defendant

[2] Please note the FTR digital audio recording is not considered to be sufficiently 'secure' for these purposes.

assisting the police, specifying the level of reduction and stating what the sentence would have been had the reduction not been given. Where release of this second note would have Article 2 ECHR implications, its retention should also be in accordance with the procedures prescribed in 'Guidance for the Retention and Storage of Judicial Notes'. In the event of an appeal, the note shall be presented to the appellate court.

- In the event of a defendant requesting a 'Rooney hearing' (see AG's Reference (No.1 of 2005) [2005] NICA 44) any meeting between the judge, the prosecution and the police officer, in order for the court to take consideration of his assistance, should occur prior to the Rooney hearing. Furthermore, those factors that the court would consider in a normal sentencing exercise should be considered by the court in determining whether the defendant's assistance to the police should be referred to during the Rooney hearing.

(ii) *Where the Defendant does NOT wish his legal representatives to be aware of the assistance provided to the police:*

- Even greater care should be taken in a situation where the court is asked to act on information which has been withheld from the defendant's legal representatives at the behest of the defendant. In such a case the Public Prosecution Service may request a hearing in chambers and the judge may wish, before hearing any representations from the police, to obtain, via the prosecution, a signed confirmation from the defendant stating that he wishes the existence of the meeting(s) and any matters discussed therein to be withheld from his legal representatives.

- While the principle of open justice should always be considered, the nature and content of any meetings between the judge, the prosecution and the police may need to be conducted privately in chambers. It is strongly recommended that all such meetings, and any relevant issues discussed, should be recorded by a handwritten note taken by the judge. The judge may consider that all persons present should sign this note. Where the note refers to matters of a sensitive nature and its release may have Article 2 ECHR implications, its retention must be in accordance with the procedures prescribed in 'Guidance for the Retention and Storage of Judicial Notes'. Any materials provided to the court either by the prosecution or the police in relation to the assistance provided by the defendant should be returned to the prosecution/police for safe keeping pending any appeal against sentence (with a record of same recorded in the note).

- On many occasions the police will identify a suitable officer in a position to give information regarding the assistance given by the defendant. The

use of a police officer unconnected with the case before the court to analyse and give a balanced opinion on the assistance given by the defendant is commended, with the Court having full discretion to decide in any given case from whom it wishes to receive such information. The seriousness of the offence for which the defendant is being sentenced, the severity of the sentence likely to be imposed if it were not for the defendant's assistance to the police and the credit, if any, that the defendant is likely to receive for giving that assistance should be taken into consideration, along with all other relevant factors pertaining to the case, when determining the position and rank of any such officer. The court will want to consider evidence given on these issues critically.

- It is a matter of judicial discretion how much, if any, reduction in sentence should be given to a defendant for his assisting the police. The competing interests represented by the principle of open justice and the defendant's rights under Article 2 ECHR must always be weighed, but, ordinarily, in this situation no direct reference should be made in open court or in any written judgment to assistance that the defendant has given the police.

- Where a reduction in sentence is considered appropriate, but it is also considered that reference to the assistance is not to be made in open court, the judge may feel it appropriate to have a further note made stating that a reduction in sentence was given due to the defendant assisting the police, specifying the level of reduction and stating what the sentence would have been had the reduction not been given. Where release of this second note would have Article 2 ECHR implications, its retention should also be in accordance with the procedures prescribed in 'Guidance for the Retention and Storage of Judicial Notes'. In the event of an appeal, the note shall be presented to the appellate court.

- Again, in the event of a defendant requesting a 'Rooney hearing' (see *AG's Reference No.1 of 2005* [2005] NICA 44) any meeting between the judge, the prosecution and the police officer, in order for the judge to take consideration of his assistance, should occur prior to the Rooney hearing. Furthermore, those factors that the court would consider in a normal sentencing exercise should be considered by the court in determining whether the defendant's assistance to the police should be referred to during the Rooney hearing.

Conclusion

13. It is necessary to emphasise again that the exercise of sentencing powers by the Crown Court and the magistrates' court is one of judicial discretion and it is for the court to determine how much, if any, credit should be given to the defendant for any assistance he has provided to the police. However, in exercising this discretion, the

court should always bear in mind the passage in Lord Steyn's speech in Attorney General's Reference (No.3 of 1999) [2001] 2 AC 91, 118, where he described the various interests at stake in criminal proceedings as follows: -

> "The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public."