

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

Delivered: **01/04/2008**

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 07-01-09

THE QUEEN

-v-

ANDREW NEVILLE BROWNE

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DECISION ON TARIFF

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Ruling by Kerr LCJ

KERR LCJ

Introduction

[1] On 2 March 1992 the prisoner was convicted of the murder of Loughlin Maginn by Kelly LJ sitting at Belfast Crown Court without a jury. He was also convicted of associated charges of soliciting murder, collecting information likely to be useful to terrorists, conspiracy to collect information and possession of firearms and ammunition with intent. He was sentenced to life imprisonment for the murder of Mr Maginn and received total concurrent sentences of 20 years' imprisonment in respect of the other charges.

[2] At the same court the prisoner was also convicted of the murder of another man, Liam McKee. He appealed against his conviction on all charges. On 2 July 1993 his conviction for the murder of Liam McKee was quashed but his appeal against conviction for the murder of Loughlin Maginn was dismissed. The Court of Appeal also allowed his appeal against sentence in respect of the charges of possession of firearms and ammunition with intent, substituting for the 20 year sentences concurrent sentences of 16 years' imprisonment.

[3] On 7 January 1999 the prisoner was released on licence under Section 6 of the Northern Ireland (Sentences) Act 1998. The terms of the licence were that he should not support a specified organisation, become concerned in the

commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland or become a danger to the public. At the time the prisoner was released on licence he had served a total period of 9 years 3 months in prison including time spent on remand.

[4] Following his release from custody the prisoner went to live in Chester, undertook a training scheme and qualified as a forklift truck driver. He obtained employment in Birkenhead and settled there for approximately five years. He then returned to live in Chester. In September 2005 the prisoner assaulted his neighbour, Sean Henderson, and on being charged with this offence the Secretary of State suspended the prisoner's licence and recalled him to prison on 9 November 2005. On 13 January 2006 the prisoner was convicted by a jury at Chester Crown Court of assault occasioning actual bodily harm and sentenced on 10 February 2006 by Davies J to 12 months in prison which he served at HMP Altcourse.

[5] The prisoner was repatriated to Northern Ireland and applied for a review of the suspension of his licence. The Sentence Review Commissioners decided that the licence should be revoked. The prisoner has now served a further period of 2 years and 11 months in custody making a total of 12 years 2 months. An oral hearing took place on 29 September 2008 during which I heard representations made on his behalf by Mr Girvan on the tariff to be set under article 11 of the Life Sentences (Northern Ireland) Order 2001. I also received submissions from Mr Valentine on behalf of the Crown. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time that the prisoner will be required to serve before his case is sent to the Parole Commissioners (formerly the Life Sentence Review Commissioners) whose responsibility it will then be to assess his suitability for release on the basis of risk. For the purposes of calculating his release date the period during which the prisoner was at liberty on licence under the 1998 Act is not deductible from the period that has elapsed since he was first committed to custody.

Factual background

[6] The prisoner was originally from Scotland. He joined the British Army and served in Northern Ireland. He then joined the Ulster Defence Regiment as a full time member and was living in an estate in Lisburn. In a statement to the police, the prisoner stated that he had agreed to help the Ulster Defence Association and the Ulster Freedom Fighters (two elements of the same notorious paramilitary organisation which has been responsible for the murder of many innocent Catholics in Northern Ireland). This assistance was supplied using his knowledge from his army service.

[7] The prisoner informed his contact in the UDA, Stephen Scott, that a man called Loughlin Maginn from Rathfriland was an active member of the IRA.

The prisoner was then asked to find out more about Mr Maginn by which he understood that he was to find out his home address, the vehicles he drove, where he worked, his family and any patterns of behaviour. He told police officers that he targeted Mr Maginn on six occasions and reported back on his movements to the UDA. He watched Mr Maginn's house and also spoke to three men asking them where Loughlin Maginn lived. He also watched Mr Maginn's place of work. He made a couple of trips near the end of July 1989 to make observations on Loughlin Maginn's house and took notes of the registration numbers of cars sitting outside. In early August he also drove past Mr Maginn's house and checked out possible escape routes for an assassin. He reported all this information back to his UDA contact who told him that "the hit was on for the following weekend". The prisoner stated he was happy to go along with this so long as he was not part of the 'hit team'.

[8] On 10 August 1989 Browne carried out another check of Loughlin Maginn's house and workplace and did a final tour of the getaway route. While doing this he had an accident on his motor cycle which involved a dog and he reported the accident to the police in Rathfriland. He claimed that he believed that the UFF might call off 'the hit' because of this accident and the report to the police. The 'hit' did not take place on the weekend that he had been told it would. Two weeks later, however, Mr Maginn was brutally murdered. Browne told police that when he saw the news coverage of Loughlin Maginn's murder, he knew it was his information which had been used and claimed, "I was shocked when I saw the whole thing on TV and realised what I had done".

[9] In his judgment convicting Browne, Kelly LJ stated that he had no doubt that the prisoner had targeted Mr Maginn, his house and movements with the intention and for the purpose of having him assassinated by his associates in the military wing of the UDA. It was plain that the prisoner had passed on all the information he had obtained to his associates and there was no doubt that the prisoner at all material times knew that his associates were connected to the UFF, had the intention of assassinating Mr Maginn and had the means of doing so.

[10] The learned judge made the following findings of fact -

- (1) The prisoner began targeting Mr Maginn in July 1989 and continued thereafter to pass on to his UDA contact, Scott, what he had discovered.
- (2) On 3 August 1989 he went with Scott and a co-accused, Jones, to where Mr Maginn lived. They reconnoitred the area in which the house was located and the layout of the estate. They discussed an escape route. Browne also took Scott to Mr Maginn's place of work. On that

occasion Scott told Browne that Mr Maginn would be shot shortly afterwards.

- (3) On Friday 4 August Scott told Browne that he had discovered that Mr Maginn was not permitted to drive because his driving licence had been suspended. The prisoner went back to Rathfriland to check and was able to see Mr Maginn. He reported this to Scott who told him that the hit was on for the following weekend – 11 to 13 August.
- (4) On 10 August the prisoner went back to Rathfriland for a final check but collided with a dog and he reported the accident to Rathfriland police station. He informed Scott who told him the hit would not take place that weekend because Browne had reported the accident to the police.
- (5) Two weekends later, on 25 August 1989 at about 12.45 am, Loughlin Maginn was murdered in his home by gunmen who burst into his house using a sledge hammer to gain entry. The getaway car used by the gunmen was later found at about 1.30 am in a laneway off Lissize Road, Rathfriland. It had been set on fire.
- (6) On the morning after the murder Scott came to see the prisoner and it was obvious from the conversation between them that Scott and his associates had murdered Mr Maginn and that they had acted on or at least been substantially assisted by the information supplied by Browne.

Sentencing remarks

[11] In sentencing Browne, Kelly LJ observed that the prisoner had committed himself to collecting information about victims and spent a considerable time travelling around the province on his motor cycle gathering intelligence on other Republican suspects and passing it on to the UDA. He commented: –

“Throughout these criminal activities the deplorable fact was that Browne was serving as a full time member of the UDR. But his lawbreaking did not stop with them. He involved others. He approached a fellow soldier, Andrew David Smith and suggested he should steal guns and ammunition left about in the barracks by other soldiers of the Company. Smith would then hide them and then after a time Browne would pass them on to the UFF. He pestered Smith in this way and eventually [Smith] gave him 2 magazines

and 18 rounds of ammunition and at a later date a box of 20 rounds of ammunition. All these were taken by the accused Browne to be handed over to the UFF. He also persuaded Smith, who served in the Loughbrickland area, to give detailed information about Loughlin Maginn and part with his army notebook and a map of military patrol areas in South Down. The shame of it all is that Browne, a long time serving soldier first in the regular army in the Gordon Highlanders and later the UDR nurtured and sustained [in] discipline and entrusted with promoting law and order should sink to the lowly depths of soliciting and assisting street gunmen in the wickedness of murder. It had been said on behalf of the accused that he was suffering from a hyper thyroid condition to a serious degree in 1989. [The Crown] accept that but I cannot see that that should obscure a realisation of what the accused was doing with evil."

[12] Having imposed the mandatory penalty of life imprisonment for the murder of Mr Maginn, Kelly LJ said: -

"Because you were at one time an exemplary soldier and an honourable man I will not recommend [that] a minimum period should elapse before your release on licence is ordered."

Previous convictions

[13] The prisoner had one previous conviction on 5 January 1988 for unlawful carnal knowledge of a girl under 17 for which he was fined £150. He informed the probation officer who prepared the pre-sentence report that this involved having intercourse in Northern Ireland with a girl aged 16. He claimed to have been unaware that the age of consent in Northern in this jurisdiction was 17 years of age.

Personal background

[14] A pre-sentence report dated 9 February 2006 was prepared by Ellen-Marie Marquez. It recorded a history from Browne that he had had a troubled childhood. His mother abused him physically. He had been born and brought up in the Paisley area of Glasgow and had a mixed Catholic/Protestant parentage. He joined the army in 1982 and during that time was posted to Belfast. He became engaged to a local girl who said she

would not leave her home and he then chose in 1987 to transfer from the army to the UDR. He ended the relationship with his fiancée as he believed her life was in danger.

[15] Browne told Ms Marquez that, after his release under the Good Friday Agreement he had been convicted of possession of an air weapon for which he was given a 12 month conditional discharge. He had also been cautioned for possession of cannabis. He informed the probation officer that he had only purchased the air rifle to kill vermin and that the shop keeper who sold it to him had told him that an air rifle did not require a firearms licence. He stated that he was an occasional user of cannabis mainly to ease pain that he suffers as a result of damage to his joints.

[16] The report referred to the findings of a psychologist, Dr Beesely, who examined the prisoner in July and August 2005 and found that he was suffering from severe levels of anxiety and low mood. He also had significant post traumatic stress symptoms including high levels of flashbacks and hyper arousal – sleep difficulties, irritability and anger with a tendency to have verbal altercations with others. It was noted that this had not escalated into violence since his release from prison until the offence that had led to the revocation of his licence. He was considered to present what was described as “a manageable risk” of re-offending.

[17] The probation officer concluded that the prisoner did not pose a risk of significant harm but that the severity of his post traumatic stress disorder would require effective work to address his problems and that supervision after release should be offered.

The NIO papers

Representations from the victim's family

[18] A written representation was received from the victim's mother, Mrs Rose Maginn. She stated that Loughlin was her only son and they had a very close relationship. He was very supportive and caring to her and the loss of him has been devastating. She recalled having been informed by neighbours that her son had been shot and she was taken to the scene. She was in shock and became hysterical. It was some hours before she was permitted to enter the house and there saw her son in a body bag.

[19] Mrs Maginn stated that she had particularly idolised her son as she had lost five other children at birth. The effect on her of his murder required her to attend psychiatric care and she was hospitalised twice for her mental health. She continues to receive treatment.

[20] Her son was a loving and devoted father to his four children who were aged 10, 8, 7 and 11 months at the time of his death. The children were petrified when they heard the attack unfolding and the 8 year old boy witnessed his father lying on the top of the stairs landing. All the children had to be carried out from their bedrooms over their father's body and saw the blood everywhere. Her eldest grandson in particular suffers from depression and suicidal tendencies and the other three are still deeply traumatised. Mrs Maginn's daughter in law moved away and the strain of what had happened caused a breakdown in their relationship. As a consequence, Mrs Maginn did not have contact with her grandchildren for about 7 years. However Loughlin junior came to live with his grandmother when he was 24 years old. He still lives with her. He suffers from depression and had suicidal ideas. He is withdrawn and introverted and does not mix well.

[21] The family poultry business which was run by the deceased and his father went bankrupt as his father was unable to cope and resorted to alcohol. This caused major financial difficulties and Mrs Maginn senior now depends on Social Security benefits. She has tried moving house to make a fresh start but now realises that this is futile. She does not believe that the prisoner has ever expressed any remorse for her son's murder and believes that at the trial on one occasion the prisoner turned round and smirked at her and her daughter in law. This has not been established by evidence and must therefore be left out of account.

[22] What cannot be ignored, however, is the devastating and overwhelming effect that this brutal murder, which Browne effectively facilitated and planned, has had on the entire family of Loughlin Maginn. It is plain that they will never recover from it. There is no evidence that persuades me that Browne has any real insight into the calamitous consequences of his actions in bringing about this murder or any authentic remorse for having done so.

Submissions of the prisoner

[23] Written submissions were made on behalf of Browne which can be summarised thus:-

1. Persons other than the prisoner carried out the murder. The mastermind of the murder was Scott and the UFF carried it out, not the prisoner. He was one of seven co-accused but his role was that of an accessory, not a principal directly responsible for the murder. Reference was made to the statement in the judgment of the Court of Appeal in *R -v- Kwong Fatt Lok* [1999] NI 165 at page 171 to the effect that "an accessory is liable to be tried, indicted and punished as a principal offender, but he nevertheless remains an accessory, and the common law principles governing the extent of liability of accessories

will determine the nature of the intent to be proved against him". (One may observe that this is not relevant to setting the minimum period to be served by the prisoner but relates rather to the mens rea element of the offence; indeed the passage relied upon also contains the statement that "*an accessory is liable to be punished as a principal offender*".)

2. Whilst Browne did not plead guilty, the judgment makes clear that he had made significant admissions in relation to his involvement in the offences including confessions at interview. Credit should be given for this.
3. The prisoner had been distressed by the murder of a colleague by the IRA and his involvement with the UDA/UFF was born out of frustration that active members of the IRA were at large and planning further attacks.
4. Kelly LJ accepted that the prisoner suffered from a hyperthyroid condition and stated that the prisoner was "at one time an exemplary soldier and an honourable man". (Although the judge acknowledged that Browne had suffered from this condition, as he made clear, it was entirely irrelevant to his involvement in the murder of Mr Maginn).
5. The prisoner was originally released on licence after 7 years and did not breach the terms of his licence for a significant period of time following release.
6. Davies J, when sentencing the prisoner for the offence of assault occasioning actual bodily harm in February 2006, stated that the prisoner was not to be categorised as a "dangerous offender" that his previous conviction for murder should be seen in the proper context of the Northern Ireland situation and that since release the prisoner had not been in trouble in any significant way. It was clear that an indefinite sentence would not be appropriate. The learned judge further stated that in his view "it would be entirely inappropriate to revoke the licence in the circumstances of this particular offence". (With respect to Davies J, it was not his role to comment on whether the licence should be revoked and if the learned judge's remarks about the murder being 'seen in the proper context of the Northern Ireland situation' betoken a view that it is somehow to be regarded as less grave on that account, I emphatically do not agree with them.)
7. The court should give weight to the fact that the prisoner re-offended at a time when he had not been treated for mental health problems. It should also give weight to the fact that the prisoner has now been in prison for a period much in excess of the 12 months' sentence imposed for the offence on which he was recalled.

8. The prisoner has not been properly treated for his mental health problems whilst in prison. (This matter is the subject of judicial review proceedings for which leave has been granted and it does not appear to me that it can play any part in the selection of the minimum term to be served by the prisoner.)

[24] Mr Girvan helpfully elaborated and expanded on these written submissions in his oral argument before me and I have taken closely into account all that he and Mr Valentine have had to say.

Medical reports

Report of Forensic Clinical Psychologist Dr Adrian West 13 February 2007.

[25] This report was the product of 9 ½ hours of interviews. Dr West found that the prisoner was a man of average of intelligence and whilst always civil was verbally forceful. He presented as a person who had a reasonable degree of rational understanding of his history but in Dr West's view Browne had demonstrated repeated instances of paranoid/grievous thinking and disturbed behaviour particularly during his detention in prison in Northern Ireland. He may also have been experiencing a delusional disorder at the time of the assault.

[26] Dr West considered that the prisoner's suspiciousness, sensitivity to threat and hyper vigilance were not only evidence of post traumatic stress disorder but might be better understood as signs and symptoms of a paranoid delusional disorder. He quoted from several examples detailed in the prisoner's notes and records. The prisoner's history revealed several risk factors associated with future risk of violence such as significant disruption to early family life including physical abuse and emotional neglect, a documented history of aggressive anti social behaviour as an adult and numerous instances of aggressive behaviour in community and custodial settings. He was also prepared to take the law into his own hands. He had marked anti social traits, a failure to accept responsibility for his actions, egocentricity and apparent lack of remorse. He did not meet the criteria for psychopathy, however.

[27] The prisoner was reluctant to discuss involvement in the offence with Dr West but he did say that what he had seen in the news every night had influenced him – Enniskillen was happening then, Protestant workers were being killed for working in an army base and he just wanted the IRA defeated by any means. However he also claimed that the UDA intimidated him to work for them. The prisoner stated that he had witnessed traumatic incidents during his time in the UDR including hearing gun shots when a part time

UDR soldier was killed and knowing another who had been shot on a golf course.

[28] Browne suggested to Dr West that he had reason to believe that he had been the target of assassination attempts. Dr West commented that there was no evidence to substantiate this. The prisoner claimed that he had wanted to have the attack on Loughlin Maginn aborted and that for that reason he had spoken to local people asking where Maginn lived (he did not need to do this as he was aware of Maginn's address). I find this claim impossible to believe. All of the contemporaneous evidence points unmistakably in the opposite direction. The fact that Browne is now prepared to make that claim speaks loudly as to his lack of remorse for this horrendous murder. All that he has said about the killing is indicative of a desire to distance himself from his obvious central role in the planning of the murder of Mr Maginn.

[29] The prisoner claimed that he now felt that he had been the victim of "historical circumstances" due to the political situation and "the dirty war". He stated that he regretted it and felt bad for Maginn's family. He now supported the peace process and he was not sectarian pointing out that he had a Catholic father. He claimed that his grievance was against the IRA but not against Catholics. Again, I consider this account to be entirely self-serving. It is utterly implausible to now cast himself in the role of victim. His expressed sympathy for the Maginn family seems perfunctory.

[30] On the subject of the offence which had prompted his recall to prison, Browne said that after his release he had deliberately left Northern Ireland and gone to live in England in a hope of getting away from the situation in Northern Ireland. The victim of his offence in England was someone originally from Northern Ireland in whom the prisoner had confided about his past. He claimed that this person had referred to him as a murdering Scottish bastard and tried to blackmail him and threatened that he would lose his flat, his girlfriend and his car. The prisoner then hit him once but restrained himself from any further attack.

[31] Dr West did not consider that the prisoner was imminently at risk of perpetrating an act of severe aggression. However mindful of the family history of schizophrenia (the prisoner's mother appeared to suffer from this) he was concerned about the risk to the public that the prisoner might present in the long term without supervision from relevant mental health specialists. He recommended that before the prisoner was considered for release he should be required to undergo an assessment by an experienced forensic psychiatrist and the prisoner's risk to the public could be significantly reduced if he complied with mental health supervision in the community and did not use cannabis. The prisoner said he was willing to see a psychiatrist and to consider the use of medication. Dr West concluded that prolonged detention without psychiatric or psychological assessment and treatment

could aggravate the prisoner's sense of grievance and other symptoms. These issues are not strictly relevant to the question of the determination of the appropriate minimum term that the prisoner must serve but will, no doubt, be closely taken into account by the Parole Commissioners.

Report of Dr Chris Todd, Chartered Clinical Psychologist

[32] Browne told Dr Todd that following his release from prison he had problems fitting into normal life and experienced flash backs such as an incident in which a fellow soldier was killed in a booby trapped building. He has suffered from depression, acute anxiety, mood swings, irritability and reverse sleep pattern. He had attended clinical psychology for a number of sessions and was diagnosed with PTSD and offered 20 sessions of treatment but he was then arrested for the offence and unable to participate in the treatment. He had suffered an industrial accident which had injured his lower left back giving him chronic pain and he had to use a walking stick.

[33] In relation to the murder of Mr Maginn, he stated that he had been suffering from an over active thyroid, sleep problems and stress. He was affected by the violence he witnessed and atrocities such as the Enniskillen bombing. He claimed that he had been the victim of an attempted assassination and was feeling desperate when he began to assist the UDA in the provision of information. He stated that after his period in the Maze he regretted his actions.

[34] Browne denied committing the assault that had prompted his recall to prison and gave an account that someone else had committed it but had falsely given the prisoner's name. This, of course, entirely at odds with the account that he gave Dr West and throws his credibility on any issue into serious doubt.

[35] Dr Todd carried out certain psychometric assessments which indicated that the prisoner suffered from low self esteem/low mood, was pessimistic and dejected, self critical, lacking in confidence, socially anxious and expects rejection. However he did not score on anti social sadistic, narcissistic or passive aggressive personality traits. In terms of clinical disorders the prisoner scored in the clinical range for symptoms of anxiety disorder and post traumatic stress disorder.

[36] Dr Todd believed that the risk of the prisoner being involved in organised/terrorist activity was relatively low. There was a risk of inter personal violence, however, and the risk factors included the untreated PTSD, his depression/depressive traits, anti authoritative attitudes and chronic pain. The positive factors were his current relationship and if he could be given suitable employment and support from probation services. The prisoner's

presentation was consistent with a diagnosis of PTSD with associated anxiety chronic depressive features and some irritability.

[37] In an addendum to his report, Dr Todd referred to the account that Browne had given Dr West in which he had admitted his involvement in the assault. The prisoner had also disclosed a family history of schizophrenia. Not surprisingly, Dr Todd concluded that there was increased evidence that the prisoner had been guarded in his presentation of his history and offences and had only recently accepted responsibility for the current offence. There was a wider pattern of volatile behaviour and externalisation of blame on to others. It was unclear to what extent the prisoner's beliefs revealed underlying paranoid personality traits but a psychiatric assessment would be helpful and psychological therapy and medication if necessary needed to be delivered prior to the prisoner being released. Dr Todd still felt there was no imminent risk of severe aggression but that it would be prudent to have further assessment and ongoing treatment/engagement with probation prior to his release. He did not feel that a prolonged period of custody in itself would reduce the risk and detention without treatment could exacerbate the prisoner's difficulties.

Practice Statement

[38] In *R v McCandless & others* [2004] NICA 1 the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who were required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* for the purpose 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 para 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 unupportable 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 eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

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

Variation of the starting point

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

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

that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

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

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

Very serious cases

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

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

Conclusions

[39] This is clearly a higher starting point case. The prisoner's culpability was exceptionally high and the victim of the crime which he planned was entirely vulnerable to the murderous attack on him which Browne instigated, planned and reconnoitred. As I have earlier made clear, I do not accept Browne's disavowals of willing participation in this dreadful murder. His suggestion that he thought the attack would not take place because he had reported an accident involving the dog, risible in itself, is made wholly unbelievable by his account that Scott told him that the only consequence of this would be that the killing of Mr Maginn would be postponed for a short time. It is clear that Browne's role was indispensable to the entire brutal enterprise. I consider that he was centrally involved and has been conspicuously lacking in any true remorse for his awful crime.

[40] It is true that the prisoner has suffered from personality disorders and has an unfortunate familial background but these can neither excuse nor even explain his participation in this shocking and ruthless killing. The effects of that killing will be felt forever by Mr Maginn's family and the suffering that they have endured cannot be left out of account in fixing a minimum term to be served by Browne in order to fulfil the requirement of retribution, in particular.

[41] This was clearly a terrorist crime, carried out by a terrorist organisation whose ruthless murder of many Catholics was notorious at the time of his killing. Browne's identification of Mr Maginn as a target effectively sealed his fate. But he went much further in the planning and organisation of the murder and in his efforts on behalf of UDA/UFF. This I regard as a particularly serious aspect of the murder.

[42] Taking all these factors into account and having regard to all that has been said on Browne's behalf, I fix the minimum period to be served by him at twenty years. This will include the time spent on remand.