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Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 23-01-07

THE QUEEN v MARTIN MURPHY

DECISION ON TARIFF

Ruling by Kerr LCJ and Nicholson LJ

KERR LCJ

Introduction

1. On arraignment at Downpatrick Crown Court on 20 October 1998, the prisoner pleaded not guilty to the charge of murder. On 1 February 1999 after a trial before Nicholson LJ and a jury he was convicted of that offence and sentenced to life imprisonment for the murder of Geraldine Mills on 4 May 1998. Leave to appeal was granted by the single judge but the Court of Appeal dismissed the appeal against conviction on 21 May 2004. The prisoner has been in custody since 7 May 1998.

2. On 18 October 2006 Nicholson LJ and I sat to hear oral submissions on the tariff to be set under Article 11 of the Life Sentences (NI) Order 2001. The tariff represents the appropriate sentence for retribution and deterrence and is the length of time the prisoner will serve before his case is sent to the Life Sentence Review Commissioners who will assess suitability for release on the basis of risk.

Factual background

3. This is most conveniently summarised in the judgment of the Court of Appeal as follows: -

> "[3] The appellant is an unmarried man now aged 65 years. For many years before her death in 1989 he lived with his mother at 10 Elizabeth Gardens, Comber. Mrs Mills worked as a home help for Mrs Murphy and she

and the appellant formed a friendship that, according to the appellant, led in time to a sexual relationship. This continued on and off until some time before the events of 4 May 1998.

[4] After the sexual relationship ended Mrs Mills continued to see the appellant occasionally. She brought him meals and tidied his house from time to time. For his part the appellant was keen to remain in contact with her. He brought vegetables to her home and he gave her money and presents. In the account of a friend of Mrs Mills he was described as being obsessed with her. Mrs Mills' children have said that the appellant stalked their mother.

[5] In January 1995 Mrs Mills met John Lightbody and they began a relationship soon afterwards. Mr Lightbody lived with Mrs Mills until January 1998 when they split up for a short time. They resumed their relationship on 14 April 1998 and Mr Lightbody began living with Mrs Mills again towards the end of that month. The appellant was aware of the relationship between Mrs Mills and Mr Lightbody; he knew that they had split up but appears to have discovered that they were living together again only on 3 May 1998.

[6] According to the appellant he became aggrieved by the fact that Mr Lightbody was once again living with Mrs Mills. He felt that she had taken the money that he had given her under false pretences. He confronted her about this and she agreed to go to his house to sort the matter out on the evening of 4 May 1998. His account of what happened when Mrs Mills came to his house that evening is sparse. Initially he claimed only to be able to remember Mrs Mills arriving at his house and he then "blanked out" and could remember nothing else until he saw her body lying on the floor. When his trial was imminent he found (or so he maintained) that he had recovered some further recollection. Significantly this claimed memory related directly to his defence of provocation. He alleged that Mrs Mills had taunted him about his sexual prowess and that this shocked him greatly and caused him to experience a great sense of shame. This, he suggested, was the last thing he remembered until he found himself standing over her dead body.

> [7] Mrs Mills died as a result of multiple stab wounds to the neck. She had also been stabbed many times in the trunk and limbs. From the number and location of the wounds the pathologist who conducted the autopsy concluded that she had been the victim of a sustained attack.
>
> [8] It appears that after he had killed Mrs Mills, the appellant took several tablets and slashed his wrists. He left a suicide note. He was discovered by friends and members of Mrs Mills' family, however, and taken to hospital where he made a rapid recovery".

4. At the trial, the prisoner did not dispute that he had killed Mrs Mills. He claimed, however, that he had been provoked into doing so. No evidence was given as to his mental condition. On the appeal against conviction he was granted leave to adduce evidence from Mrs Olive Tunstall, a clinical psychologist, and Dr Ian Bownes, a consultant psychiatrist, about his state of mind at the time of the killing. The Court of Appeal heard evidence from these witnesses and Dr Ian Hanley, a consultant clinical psychologist called on behalf of the Crown. The court was not convinced by the theory that the appellant would have been provoked into a murderous attack of tremendous ferocity by feelings of shock and shame. It dealt with this issue in the following passages: -

> "[9] The appellant was first examined by Mrs Tunstall on 11 December 1998. The purpose of the examination was "to determine whether there [was] any evidence to suggest that Mr Murphy may be suffering from some form of amnesia which might account for [his] loss of memory". On this question Mrs Tunstall concluded that Mr Murphy's abuse of alcohol might have caused some memory impairment but that nothing had been revealed by the psychological tests that suggested organic intellectual deterioration or memory loss. In other words no reason for the professed amnesia was found. Significantly, Mrs Tunstall gave it as her opinion that there was "no plausible explanation, in terms of his cognitive functioning, for Mr Murphy's claimed experience of having 'blanked out' at the time of Mrs Mills' death". She recommended that a psychiatric opinion be obtained but this was not done.
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> [10] When he was examined in December 1998 the appellant was found to have an IQ on the Wechsler Adult Intelligence Scale – Revised (WAIS – R) of 77. On

the basis of this result Mrs Tunstall concluded that the appellant was a man of low intelligence with an IQ falling within the borderline mental handicap range. This was "reasonably compatible" with his educational and occupational record. He was found to have an abnormally compliant and unassertive personality. He had an N score (denoting 'neuroticity') of 15.

[11] Mrs Tunstall examined the appellant again on 3 September 2001. He was able to give a fuller account of the events of 4 May 1998. He said that Mrs Mills came to his house and threw a ten-pound note at him and then "lit" on him. He remembered her telling him that he was no good at sex and that she had had better sex with other men and would do so again. On hearing this, the appellant experienced an overwhelming sense of shame such as he had never felt before. It came as a great shock to him that Mrs Mills had not enjoyed having sex with him because he believed that she had valued their sexual relationship. After this he could not remember anything until he was aware that Mrs Mills was lying dead on the floor.

[12] On the occasion of the second examination Mrs Tunstall found that the appellant's IQ had deteriorated markedly. His full scale IQ was found to be 56. At this examination Mrs Tunstall had administered a different test of IQ, the Wechsler Adult Intelligence Scale III (WAIS –III), which might account for a difference of up to three points. In the view of Mrs Tunstall the discrepancy was otherwise inexplicable. It was suggested on behalf of the appellant that the divergence in the test results might be explained by the fact that at the time of the first test he was receiving treatment for depression and that he may have been suffering from this condition when the second examination took place and this could have caused his performance in the tests to suffer. This explanation cannot be accepted. It is true that the appellant was suffering from depression at the time of his admission to prison but all the indications are that this was successfully treated and he had not required medication or even medical attention for a considerable period before Mrs Tunstall's second examination.

[13] On the second examination Mrs Tunstall found that the appellant scored 20 on the N rating. This represented a significant increase on his score of 15 in the earlier test. He scored 18 (out of a possible 21) on the L component of the Eysenck Personality Questionnaire. This test is frequently used as an indicator of the patient's reliability, the 'L' signifying 'lying'. In her evidence Mrs Tunstall asserted strongly that it should not be interpreted for that purpose in the appellant's case. She declared that the appellant was, in her estimation, trying as best he could to complete the test and that the test result should be attributed to a degree of social naïveté on his part or a tendency to conform. We are not disposed to accept this view. The timing of the claimed recovery of memory, its limited content and the nature of the events recalled all point strongly to the appellant having consciously 'remembered' only those aspects of the incident that served his purpose in promoting a provocation defence and being 'unable to remember' aspects of the incident that would be difficult to explain on the basis of a sudden loss of control. In particular we have in mind the fact that the appellant must have deliberately armed himself with a knife to carry out the attack on Mrs Mills.

[14] Mrs Tunstall's principal conclusion from the personality test results was that Mr Murphy was "of an anxious, worrying disposition, likely to over react emotionally and to experience abnormally high levels of emotional arousal from which he is slow to recover". He was likely to be more vulnerable than the average person as a result of these personality traits and his abnormally low intelligence.

[15] Dr Ian Bownes examined the appellant on 5 December 2003. Dr Bownes is a consultant forensic psychiatrist. He had treated the appellant on his admission to prison. At that time he diagnosed the appellant's condition as a "depressive reaction to his situation". He prescribed medication. Initially there was no improvement and in July 1998 a moderately strong anti depressant was recommended for what was then considered to be a reactive depressive disorder. After this the appellant's condition improved to the extent that he was discharged from the outpatient psychiatric list on 3 September 1998 and he discontinued the medication on

6 May 1999. Since that time he had not consulted prison medical staff with any psychological complaints, although he has been treated for various physical ailments.

[16] As a result of his examination of the appellant and his consideration of his medical records Dr Bownes expressed the following opinion: -

> "The clinical picture presented following Mr Murphy's present committal to prison and review of the medical records supplied by his general practitioner was consistent with personality based 'neurotic' tendencies associated with an inherent vulnerability to the psychological effects of stressful and demanding situations. The immediate psychological impact of exceptionally traumatic experiences can sometimes induce a 'defence mechanism' known as 'repression' that may temporarily prevent the individual from consciously recalling relevant events, and I feel that the nature of his personality is such that Mr Murphy would have genuinely found the emotional reaction produced by provocation of the nature that he has described to Ms Tunstall more disturbing and difficult to cope with effectively than most men his age."

[17] In his oral testimony Dr Bownes explained that as many as 20% of the population would have a similar level of 'neuroticity' as that apparently exhibited by Mr Murphy on the second test administered by Mrs Tunstall. Dr Bownes' estimate of the degree of vulnerability that the appellant suffered as a consequence of this feature of his personality was, of course, based (albeit not exclusively) on Mrs Tunstall's findings on her second examination.

[18] Dr Hanley was asked by the prosecution to comment on Mrs Tunstall's and Dr Bownes' reports. He observed that the account given by Mr Murphy of the conversation with Mrs Mills on the evening of 4 May was "quite detailed". This contrasted with his persistent failure to refer to these matters when questioned by the police. Dr Hanley also remarked that Mrs Tunstall made no reference to the appellant having experienced anger after Mrs Mills had taunted him. It was difficult, Dr

> Hanley commented, to square feelings of shame and shock with a prolonged and vicious assault. These aspects of the new account obviously raised questions as to the appellant's veracity.
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> [19] The more substantial reservation expressed by Dr Hanley about Mrs Tunstall's opinion, however, related to the discrepancy between the test results in 1998 and those obtained in 2001. What he described as the "dramatic 21-point drop in IQ" gave rise to an obvious doubt about the genuineness of Mr Murphy's participation in the 2001 test. He considered that the appellant had every reason to present himself in a favourable light and the discrepancy in the scores, taken together with the very high L rating, made the results of the test in 2001 "wholly unreliable".
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> [20] All the members of this court found Dr Hanley's evidence on the lack of reliability of the 2001 tests compelling. We consider that there is substantial reason to distrust the appellant's performance on those tests and we were not impressed by Mrs Tunstall's explanation of his high rating on the L component of the personality questionnaire. We share Dr Hanley's misgivings about the theory that the appellant would have been provoked into a murderous attack of tremendous ferocity by feelings of shock and shame. We consider it to be far more likely that such an attack was prompted by feelings of jealousy and obsession, traits which the appellant had clearly exhibited in the period immediately before the killing of Mrs Mills".

5. The appellant's principal argument on the appeal was that the jury ought to have been provided with evidence as to the appellant's mental condition such as was available from Mrs Tunstall and Dr Bownes and that if such evidence had been given, a verdict of guilty could not have been returned. The Court of Appeal, applying the approach in *R v Pendleton* [2002] 1 WLR 72, had no hesitation in finding that the conviction was safe. It stated: -

> "[30] Applying this approach we have no hesitation in finding that the conviction of the appellant was safe. We do not consider that the evidence of Mrs Tunstall or Dr Bownes creates any doubt, much less any reasonable doubt, that the appellant was provoked (in the legal sense) to kill Mrs Mills. Quite apart from the unreliability of the second set of test results, we do not

believe that the avowed vulnerability of the appellant to provocation of the type that Mrs Mills is said to have presented had any part to play in her murder. One must remember that at all material times he was aware that she had a relationship with Mr Lightbody. The existence of that relationship is not claimed as a basis for his having been provoked. Rather it is suggested that he was provoked by his discovery that Mr Lightbody had resumed cohabitation with Mrs Mills and by the taunts that she had made about his sexual prowess.

[31] As to the first of these, it is impossible to accept that it could have acted as sufficiently provocative to cause a sudden and temporary loss of self-control. All the evidence suggests that it did not. The appellant had known for some time that Mrs Mills was engaged in a sexual relationship with Mr Lightbody. The only new information that came his way shortly before the killing was that Mr Lightbody had moved back into Mrs Mills' home. His reaction to this discovery was to go to her home in order to demand the return of money that he had given her. He repeated this demand when he saw her with Mr Lightbody some short time before the killing. He was not provoked into launching an attack on her when he actually saw her with Mr Lightbody and when, surely, any provocation arising from Mrs Mills' relationship with him must have been at its height. The sight of them together merely prompted a further demand for the return of his money. It is inconceivable that the appellant's discovery that they had started to live together again (as opposed to his knowledge that they were sexually involved) would have provoked him to kill her when she came to his house.

[32] The alleged taunts about lack of sexual prowess are an equally implausible source of provocation, in our view. In the first place, the recovery of recollection of these when trial was imminent casts considerable doubt on their authenticity. Even more important, however, is the consideration that the appellant's claim is that these taunts caused him to experience feelings of shock and shame. It is not suggested that they moved him to anger. As Dr Hanley pointed out, feelings of shame are more likely to inhibit action rather than provoke it. It is unsurprising that the jury rejected this as amounting to provocation.

> [33] The fresh evidence in the case, taken at its height, suggested that the appellant was more vulnerable to emotional arousal than most members of the population and that he was likely to recover more slowly than others from having been aroused. It does not establish that the appellant was in fact provoked into killing Mrs Mills. At most it suggests that he might have been more susceptible to provocation. Ultimately, however, the question for this court must be 'does the fresh evidence raise the possibility that the appellant was provoked'. Having carefully examined the evidence we have concluded that it does not. It raises no doubt in our minds as to the safety of the conviction. The appeal must therefore be dismissed".

Report of Autopsy

6. The post mortem examination of the deceased's body was conducted by John R. Press, consultant pathologist, on 5 May 1998. In respect of the deceased, in addition to bruising, abrasions and numerous incised wounds, he identified a stab wound to the head, three stab wounds to the neck, eleven stab wounds to the trunk, one stab wound to the right upper limb and seventeen stab wounds on the left upper limb. As a result of his examination he concluded that the cause of death was stab wounds of the neck. The pathologist gave his final opinion, as follows: -

> "Death was due to stab or incised wounds of the neck. As a result of these her oesophagus and larynx had been severed as were the right carotid artery and jugular vein. The common carotid artery was partially severed and she had inhaled blood into the air passages and the lungs. The combined effect of these injuries would have caused her rapid breath.
>
> She had also sustained a large number of stab or incised wounds to the trunk and limbs. As a result of two of the stab wounds, the liver had been stabbed twice. These had only caused a little bleeding so they are unlikely to have accelerated death to any material extent. However, had she not died rapidly, they would have required surgical treatment.
>
> Some of the wounds on the arms and hands were sustained as she tried to ward off the knife wielded by her assailant. Some of the bruises and abrasions which she had sustained may have been due to blows from a

> blunt object such as a fist but some may have been caused when she collapsed.
>
> The findings indicate a sustained assault by an assailant wielding a knife".

Personal background

7. The prisoner lived all his life with his parents until their deaths. The victim had cared for his mother in the last years of her life and a relationship between the victim and the prisoner developed. His claims that this was, in its latter stages, a sexual relationship were disputed on trial particularly by Mrs Mills' daughter. Whether that relationship was of an intimate nature is not relevant, however, to the fixing of a tariff in the prisoner's case. It is clear that he was obsessed by the victim and that he had given her presents on a fairly frequent basis. There is evidence that this obsession played a part in his murderous attack on her.

8. The prisoner has no relevant criminal record. He clearly had a problem with alcohol and this led to his being convicted of driving whilst under the influence of drink but we do not consider that this has any bearing on the minimum sentence to be imposed. Indeed, on trial, Nicholson LJ correctly included in his charge the good character direction.

Representations of the prisoner's solicitors

9. The prisoner's solicitors, MacElhatton & Co., submitted representations on his behalf. The following passages are material: -

> "It is submitted the present case falls to be considered as a lower to middle tariff category.
>
> In support of a lower tariff category classification it is submitted that whilst Mr Murphy did not suffer any formal psychiatric illness, which in the event would have affected his fitness to plead, clinical assessment by Dr Bownes for the purposes of the Appeal hearing commenting on his level of 'neuroticity' suggested his personality was such that he would have genuinely found an emotional reaction produced by the alleged provocation more disturbing and more difficult to cope with effectively than others of his age.
>
> Additionally, the clinical assessments by Mrs Tunstall dated 11 December 1998 & 3 September 2001 indicated he

> demonstrated evidence from the personality test results suggesting him to be of…*"an anxious, worrying disposition, likely to over react emotionally and to experience abnormally high levels of emotional arousal from which he is slow to recover"*.
>
> The issue was raised at trial before the jury and on Appeal through the fresh evidence admitted, and, although rejected with the Court preferring the oral testimony of Dr. Hanley [retained by the Crown] who asserted that he did not accept the applicant had a limited capacity for self-control in the context of provocation, it is submitted his mental state at the time of commission of the murder lowers the degree of criminal responsibility for the killing, although in law not affording him a defence of provocation, which as stated was rejected by the jury. It is in our respectful submission important to note that Dr. Hanley agreed with Mrs Tunstall that Mr Murphy was in all probability…*"quite infatuated with and dependent on Mrs Mills""*.

10. The prisoner's solicitors referred to a number of factors that occurred through the prisoner's life which fundamentally contributed to his involvement in the offence, as follows: -

> "[1] – The applicant had lived alone with his mother for a great number of years.
>
> [2] – His attachment problems in relationships and his undoubted reliance on Mrs Mills with the attendant impact of rejection.
>
> [3] – His inability to cope with such rejection.
>
> [4] – His resentment and anger at her new relationship with Mr Lightbody.
>
> [5] – His age at the time of commission of the offence and there existing no basis to suggest that he remains a serious danger to the public".

11. The prisoner's solicitors referred to specific aggravating and mitigating features, as follows: -

> "<u>Specific aggravating features</u>

[a] – The victim was vulnerable on account of her age.

[b] – A weapon was used.

[c] – This was a sustained attack.

[d] – Extensive injuries were inflicted due to repeated stab wounds to the neck, upper chest and trunk region with a knife.

[e] – The attack was motivated out of jealousy

Specific mitigating features

[a] – The fresh evidence adduced for the Court of Appeal hearing suggested that he might have been more susceptible to provocation for those reasons highlighted above, albeit it is accepted that the Court held the evidence did not raise the possibility that he had in fact been provoked. Arguably it could be contended he was provoked in a non-technical sense given the nature of the relationship and his dependence on Mrs Mills arising from a level of social inadequacy.

[b] – The killing was not as a result of careful planning.

[c] – The killing was not committed for gain and lacks any of the identifiable aggravating factors set out at page 4 of the Court of Appeal judgment in *Shaw*.[1]

[d] – There was no attempt at destruction of the crime scene.

[e] – The applicant at no stage disputed that he had killed Mrs Mills".

12. The prisoner's solicitors identified certain factors relating to the prisoner, as follows: -

"[a] – Martin Murphy was aged 59 years at the time of commission of the offence.

[b] – The offender had no prior convictions.

[c] – The offender had limited social skills.

> [d] – There was some evidence of remorse and contrition. The case was solely contested on the issue of provocation although we accept the Court of Appeal indicated in its ruling that medical evidence commenting on the subsequent recollection of events cast considerable doubt on its authenticity".

13. Finally the following concluding points were made: -

> "1. The offender remained at the scene of the killing and self-inflicted injuries in an attempted suicide.
> 2. No effort was made to upset the forensic integrity of the scene.
> 3. The offender at no point attempted to challenge the factual allegation that he was responsible for the killing of the victim.
> 4. The offender sought to appeal the finding of the jury based exclusively on fresh evidence relating to his psychological condition at the material time and how this impacted on the learned trial judge's direction on the issue of provocation *per Regina v Smith*".

14. These submissions were supplemented by an excellent oral presentation made on behalf of the prisoner by Mr Lyttle QC. Although at first disposed to argue that the lower starting point referred to in the *Practice Statement* (to which we shall refer below) should be selected, Mr Lyttle acknowledged in the course of his submissions that the higher starting point was inevitable in light of the number of injuries inflicted on the victim. He sensibly concentrated his argument on the mitigating circumstances that were personal to the prisoner – the fact that he was in the grip of a strongly held obsession with Mrs Mills; his somewhat sheltered existence before his acquaintanceship with her; his vulnerable personality which, while it did not give rise to provocation in the legal sense, nevertheless rendered him susceptible to a loss of control; his obvious remorse; and his ready acceptance of responsibility for the death of the victim.

Practice Statement

15. 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 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 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."

16. The court in *McCandless* emphasised that the *Practice Statement* was to be regarded as providing guidelines rather than a set of immutable closely defined rules which must be applied in an inflexible and rigid fashion. That theme was again taken up in *Attorney General's reference No. 6 of 2004 (Conor Gerard Doyle)*. In that case we said: -

"[23] There is a temptation to try to strain the words of the *Practice Statement* in order to fit a particular case into a specific category or species of case instanced in the statement in pursuit of the aim of consistency. This should be firmly resisted, not least because of the infinite variety of murder cases and the facts that give rise to them. Moreover, Lord Woolf was careful to make clear that the examples that he gave to illustrate the broad categories were precisely that, examples rather than an exhaustive list of all those cases that might be classified in one group or the other. This approach characterises both the selection of the normal or higher starting point and the identification of aggravating or mitigating factors that may warrant a variation of the starting point selected.

> [24] What the *Practice Statement* does is to provide a broad structure for the manner in which the minimum sentence should be chosen. We agree with the submission of Mr McCloskey QC, counsel for the Attorney General, that in the vast majority of cases the sentencer should be able to decide which of the starting points is appropriate to the particular case that he or she is dealing with. The facts of an individual case may not precisely mirror those outlined in the statement but, as we have said, the categories in the *Practice Statement* should be regarded as illustrative rather than comprehensive. Once the starting point has been chosen, the facts of the case should be examined in order to identify those factors that may give rise to a variation of the starting point. Once more, the aggravating and mitigating matters outlined in the *Practice Statement* must be regarded for this purpose merely as examples."

Conclusions

17. This is obviously a higher starting point case. The number of injuries inflicted on the unfortunate victim is alone sufficient to prompt that conclusion. We also consider that the victim fell into the vulnerable category contemplated by Lord Woolf in paragraph 12 (f) of the *Practice Statement*. She was no match for the prisoner armed as he was with a knife. She was completely vulnerable to this attack. On that account also the higher staring point must be chosen.

18. We also consider that the fact that Mrs Mills had come willingly to the prisoner's house in an attempt to resolve the difficulties that he presented is a factor that, although not referred to in the *Practice Statement*, is, as Mr Valentine for the Crown submitted, sufficient warrant for the selection of the higher starting point. Mr Valentine is entirely right in his submission that the circumstances in which a higher starting point will be justified are by no means exhaustively covered in the *Practice Statement* and the particular facts of each case must be carefully examined beyond their coincidence with those outlined in the *Practice Statement* in order to decide which starting point is appropriate.

19. We have concluded that the prisoner's personal circumstances, particularly his somewhat sheltered domestic situation before he met Mrs Mills and his obsession with her after their relationship (whatever its true nature) ended, played a large part in the occurrence of this murder. We do not regard that particularly as a mitigating feature but it is a circumstance which, we feel, cannot be ignored in the decision as to the appropriate minimum term.

20. We also regard the fact that his emotions were, by dint of his personality and psychological make-up, more readily aroused and less easily controlled cannot be left out of account. As was emphasised in the judgment of the Court of Appeal, this cannot begin to excuse his attack on the unfortunate Mrs Mills but it does sound on the issue of his culpability and this must be reflected in the minimum term that is appropriate to his case.

21. The prisoner now suffers from a number of medical problems. He has hypertension and prostate difficulties, both of which conditions require medication. He may have some brain damage, possibly as a consequence of his abuse of alcohol. He is now of mature age. These factors, together with the absence of any significant criminal record may make it more difficult for him to endure the rigours of incarceration than hardened criminals. These are matters to be taken into account but they cannot weigh heavily in the choice of the proper tariff. As the Court of Appeal has frequently said, personal circumstances cannot prevail over the factors that will normally determine the selection of the appropriate sentence where that involves a custodial disposal.

22. After careful consideration of all the circumstances of this case we have concluded that the appropriate tariff is one of thirteen years. This will include the time spent by the prisoner on remand.

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[1] The aggravating and mitigating factors referred in R v James Shaw [2001] NICC 8 by the prisoner's solicitors repeat those set out in the practice statement of Lord Woolf CJ – see below