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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:*	**06/10/2023**

IN THE CROWN COURT OF NORTHERN IRELAND

SITTING AT LAGANSIDE COURTHOUSE

THE KING

v

GAVIN COYLE

HER HONOUR JUDGE SMYTH

Introduction

[1] The defendant has pleaded guilty to the following offences:

(i) Membership of a Proscribed Organisation contrary to section 11 of the Terrorism Act 2000 (count 3)

(ii) Providing property to be used for the purpose of terrorism contrary to section 15(3) of the Terrorism Act 2000 (count 4)

[2] On Monday 12 May 2008, AB, a serving police officer in Enniskillen, got into his car which was parked in his driveway to drive to work as he was on night duty. He reversed out of his driveway and made his way to the Strabane Road and its junction with the Drumnabey Road. He turned left into the junction. Having travelled a short distance along the Drumnabey Road a bomb which had been placed on the underside of his car, directly under the driver's seat exploded.

[3] The windows of the car shattered, and various parts of the vehicle became dislodged. Somehow, he managed to take control of the vehicle and bring it to a halt. He recalled looking down and seeing his jeans were ripped. There was blood everywhere. He managed to unbuckle his seatbelt and exit the car. He began making his way along the road, shouting for help. Other road users came across him. He told them he was an off-duty police officer, and he believed that something had been placed under his car. It was clear he was in a lot of pain.

[4] He collapsed on the side of the road as a result of his injuries which were serious and substantial. The vehicle caught fire and erupted into flames. Constable AB was attended to by paramedics who noted that he had several puncture wounds on his buttocks and thighs. There appeared to be both entry and exit wounds consistent with a bomb having exploded. He was conveyed to Altnagelvin hospital where he underwent surgery for debridement and extraction of metal debris from the deep puncture wounds and lacerations in the leg muscles. As a result of suffering significant tissue loss he was transferred to the Ulster Hospital for further treatment.

[5] The bomb left a crater measuring around 200mm x 40mm and caused a hole in the floor pan of the vehicle towards the right of the driver's seat next to the door. It was estimated that ½k (1lb) of high explosives had been used in the device which was attached to the underside by a magnet. It contained a timer which would have allowed for up to two hours of a time delay before the device became armed and would have included an initiation switch or motion sensor such as a mercury tilt switch. The travel of the vehicle around the corner at Drumnabey Road would have been sufficient to initiate the switch and cause the device to function. Settings on the switch would have dictated the degree of movement required for the initiation.

[6] The bomb was planted in the early hours of Monday 12 May 2008. The defendant accepts that his vehicle was used in the deployment of that bomb. The vehicle, a silver Audi A4, was driven to Constable AB's home in convoy with another vehicle in order to attach the device to Constable AB's car. This silver Audi A4, was seen making its way toward Constable AB's home in the early hours of the morning. The vehicle was placed by ANPR camera evidence in the area at around 3:10am; by this time the bomb had been planted under the driver's seat of Constable AB's vehicle.

[7] On Tuesday 13 May 2008 "the Tyrone Brigade" of the Real IRA claimed responsibility for the bombing.

The impact on the victim

[8] AB has written to me to explain how he has suffered over a period of 15 years. He had just completed his PSNI probationary period, and every aspect of his life has been affected. He has suffered permanent disfiguring injuries after painful and invasive medical treatment, battled mental ill-health, has lost his home with serious financial consequences and the cumulative stress has wrecked his personal life.

[9] AB had a clear career plan and knew the specialised unit he wanted to join. He has been unable to pursue his goals and his career has spiralled downwards. He has struggled to come to terms with the physical and mental effects of this traumatic event and the consequences are ongoing.

[10] The practical realities of having to relocate away from his family and friends are set out in stark detail, with serious financial as well as emotional repercussions. Omagh was a place he called home but he no longer feels safe there.

[11] The delay in concluding the legal process has also had a significant impact upon him. Repeated adjournments and the uncertainty around the process have dealt heavy blows.

[12] The prosecution and defence have agreed a basis of plea:

Agreed Basis of Plea

(1) The defendant accepts that during the period 1 May 2007 – 13 May 2008 he was a member of the Irish Republican Army.

(2) On the 11 May 2008, the defendant provided his Audi A4 vehicle to others knowing that it would be used for the purposes of terrorism. The defendant was not aware of the precise nature of its use when he provided his car.

(3) The defendant accepts that his car was used in the deployment of the bomb which was planted under the vehicle of Constable AB in the early hours of 12 May 2008. The car was also driven to the location of Constable AB's home on the evening of 12 May 2008 when the bomb had not exploded.

(4) The defendant accepts that whilst a member of the organisation he had sought and obtained information regarding Constable AB from witnesses I and J, as per their statements, which was of a kind likely to be useful to a person committing or preparing an act of terrorism against him. He did not have a legitimate reason for collecting that information. The information he obtained was not of itself capable of mounting this attack, nor is there evidence he communicated what he learned to others.

(5) When the defendant provided his vehicle on 11 May 2008, he did not know or suspect that it was to be used in targeting Constable AB.

The background to the Offences

[13] Constable AB and the defendant were known to each other from childhood, attending the same school and living in the same locality. They were not friends. In 2007 and 2008, the defendant attempted to obtain information about Constable AB from two mutual acquaintances including details of his home address. The reasons he gave for wanting the information were untrue. The information he obtained was minimal.

[14] The prosecution accepts that there is no evidence that the information obtained was communicated to others although, the information sought was of the kind likely to be of use to terrorists. It follows that the defendant is not to be sentenced on the basis that his attempts to obtain information facilitated the subsequent attempted murder of Constable AB months later or that when that act was committed, the

defendant was a knowing party to that offence. Further information would have been required to facilitate the act and the prosecution accepts that there is no evidence that such information was provided by the defendant.

[15] The defendant is to be sentenced on the basis he offered up the use of his vehicle to others who participated in the planting of the bomb knowing that in so doing, the vehicle would be used for a terrorist purpose, although he did not know the precise purpose of those to whom it was provided.

The defendant's arrest and subsequent events

[16] At 6:35am on 15 May 2008, police conducted a planned arrest of the defendant at his home in Omagh on suspicion of the attempted murder of Constable AB and membership of a proscribed organisation. He was cautioned and made no reply. He was conveyed to Antrim Serious Crime Suite where he remained silent and was released without charge on 19 May. He was further arrested and detained between 19 and 25 November 2008 and was again released without charge.

[17] On 5 April 2011 a search was conducted of a free- standing garage and office which was connected to a restaurant and bar complex. The complex is located at 187A Mountjoy Road in Coalisland. Contained within the garage section were four stolen vehicles comprising three cars and a Ford Transit van. Inside these vehicles police recovered a large cache of weapons and explosives. Items of significance recovered included four AK47 rifles with a large quantity of ammunition suitable for use therewith, a quantity of various types of low and high explosive, detonating cord, detonators, incendiary devices, timer power units, a PRIG warhead and component parts for other explosive devices.

[18] The defendant was prosecuted in respect of his possession of the items and pleaded guilty to offences of possession of explosives with intent, possession of firearms with intent and membership of the IRA on a date unknown between the 1st day of April 2010 and the 22nd day of April 2011. In January 2014, HHJ Philpott QC, Deputy Recorder of Belfast sentenced him to a Determinate Custodial Sentence of 10 years comprising five years in custody and five years on licence (the *Mountjoy* offences). It is accepted that the entirety of the custodial period was served in solitary confinement.

[19] Prior to the defendant's release on licence on 6 April 2016, he appeared before Strabane Magistrates Court on 3 December 2015 charged with offences relating to the attempted murder of Constable AB in May 2008. At that hearing, D/C McLaughlin was questioned about the delay in preferring the charges. He indicated that a covert recording of two males in church grounds at Carrickmore on 20 February 2010 provided additional evidence which justified the charges. He also indicated that the recording had been given to Professor French for voice analysis in December 2011.

[20] The defendant was granted bail which was perfected after his release on licence. The PPS decided to prosecute on 30 November 2016.

[21] On 13 February 2017, the defendant was arrested for offences of intimidation and blackmail and his licence was revoked. The trial was protracted and lasted between September 2018 and October 2019. The defendant was acquitted and released again on licence on 10 December 2019.

[22] The trial in relation to the 2008 offences was delayed pending the 2017 offences and ultimately proceeded in May 2023 when an amended Bill of Indictment was lodged, and the defendant entered pleas on an agreed basis. The defendant had been on bail since his release in December 2019.

The Issues

[23] There are broadly three issues to be considered in determining the appropriate sentence in this case:

(i) Is the plea to a charge pursuant to section 15(3) of the Terrorism Act 2000 rather than section 57 of the Act significant for sentencing purposes?

(ii) Have the prosecuting authorities breached the defendant's right to a hearing within a reasonable time? If so, should this be reflected in a reduction of sentence?

(iii) Would the 10 year sentence imposed for the *Mountjoy* offences have been increased if all the offending had come before the court at the same time (*the totality issue*)?

(i) The significance of the section 15(3) charge rather than section 57 of the Terrorism Act

[24] Section 15(3) is contained in Part 111 of the Terrorism Act and provides:

> "**Part 111**
>
> **Terrorist Property**
>
> **Offences**
>
> **15 Fund-raising**
>
> (3) A person commits an offence if he—
>
> (a) provides money or other property, and

(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism." [Emphasis added]

[25] Section 57 is contained in Part V1 of the Act and provides-

"**Part V1 Miscellaneous**

Terrorist Offences

57 Possession for terrorist purposes.

(1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism." [Emphasis added]

[26] The defendant has pleaded guilty to the charge of providing property to be used for the purpose of terrorism contrary to section 15(3) of the Terrorism Act. The agreed facts are that he provided his Audi A4 car to others knowing that it would be used for the purposes of terrorism although he was not aware of the precise purpose, and he did not know or suspect that it was to be used in targeting Constable AB.

[27] The defence submits that since the heading to section 15 is "*fundraising*", the defendant can only be guilty of an offence if the facts are connected with fundraising and that an offence under section 57 is more serious. On that basis, the defence relies on authorities in Blackstone 2023 at B10.124 (*Golamaully* [2017] EWCA Crim 898; *Saleem* [2009] EWCA Crim 920). In *Saleem*, the defendant was specifically charged at count 1 with "fundraising for terrorism purposes" contrary to section 15(1) of the Act as well as inciting terrorism overseas. The prosecution case in respect of count 1 was that the accused made emotive speeches in an attempt to raise money to send to Iraq for the purpose of supporting terrorist insurgents. In *Golamaully*, the two accused were charged with providing money to another to be used for the purposes of terrorism contrary to section 15(3), the prosecution case being that the funds were to support the aims of IS.

[28] The prosecution submits that fundraising is not a feature of this case, there is no mention of fundraising in the agreed facts and an offence under section 57 is not necessarily more serious. The prosecution refers to the minimal distinction in the maximum sentence – 15 years in respect of section 57 and 14 years in respect of section 15(3). The defendant has declined the opportunity of a Newton hearing on this issue.

[29] In *R v Montila and others* [2004] UKHL 50, the House of Lords considered the approach to headings and side notes in legislation from para [31] onwards. At para [34], the court said:

> "34. The question then is whether headings and side notes, although unamendable, can be considered in construing a provision in an Act of Parliament. Account must, of course, be taken of the fact that these components were included in the Bill not for debate but for ease of reference. This indicates that less weight can be attached to them than to the parts of the Act that are open for consideration and debate in Parliament. But it is another matter to be required by a rule of law to disregard them altogether. One cannot ignore the fact that the headings and side notes are included on the face of the Bill throughout its passage through the Legislature. They are there for guidance. They provide the context for an examination of those parts of the Bill that are open for debate. Subject, of course, to the fact that they are unamendable, they ought to be open to consideration as part of the enactment when it reaches the statute book."

[30] Section 15(3) refers to the provision of money or property to be used for the purposes of terrorism. Clearly, fundraising for a terrorist purpose may be charged under this section, and in my view, the purpose of the heading is to signpost a specific type of offending. That does not mean that the offence is limited to fundraising.

[31] In *R v McAllister, O'Hara and Pearson* [2018] NICA 45, *Pearson* was convicted after trial of providing his car to terrorists under section 15(3) and there was no suggestion that the case involved fundraising. He knew it would be used for a terrorist purpose but was unaware it would be used in a murder. He had pleaded guilty along with his co-accused to perverting the course of justice by destroying the vehicle after he became aware it had been used in the murder.

[32] In determining sentence, the trial judge referred to *R v Harkness* [2008] NICA 51, where the defendant pleaded guilty to an offence under section 57, having been stopped in possession of a vehicle in circumstances giving rise to a reasonable suspicion that possession was for a purpose connected to terrorism. There was no evidence that the accused knew his car would be used in connection with a murder, although he knew it would be used for a terrorist purpose and the Crown could not establish a direct link between the murder and the car. He was not charged with membership of a proscribed organisation, had a record of 39 offences which were not relevant and had a good work history and settled family life. The Court of Appeal upheld the sentence of seven years with a starting point of in or about 10 years (see *McAllister O'Hara and Pearson* at para [15])

[33] In *Pearson*, the trial judge considered that the proximity of the offending to the actual murder itself was not as close as it was in *Harkness* and due to his age and absence of convictions imposed a sentence of two years for the possession in suspicious circumstances count, imposed consecutively to a sentence of six years four months for the perverting the course of justice count. Taking into account totality the sentence was reduced to six years.

[34] At paras [16] and [17], the Court of Appeal in *Pearson* said:

> "[16] So far as Pearson is concerned his involvement is different because not alone did he participate in the offence in relation to events after the murder but he also made his vehicle available in relation to events before the murder for the purpose of the exercise. It is clear that his knowledge in each of those was different. Whereas in the second offence it is clear that he knew exactly what he was doing and in connection with which offence he was acting, the evidence does not establish that he had knowledge of the intent to use his vehicle for the purpose of the murder.
>
> [17] Clearly, that would have been a matter of some distinction but it does seem to us that the Recorder exercised some considerable degree of restraint in imposing a sentence of two years in relation to the provision of the vehicle and we certainly would not want anyone to think that a sentence of 2 years in those circumstances would be likely to be a starting point in a case of this kind if it had been the only offence that was established in relation to Pearson. The Recorder was plainly aware of the issue of totality in relation to him and it seems that that must have influenced his decision to exercise the leniency that he did in relation to the provision of the car. He then further dealt with that as a matter of totality when he reduced the total from 6½ to 6 years."

[35] The relevance of the defendant's knowledge of the precise terrorist purpose was addressed in *Harkness* where the Court of Appeal said at para [19]:

> "[19]…the agreed basis of the plea was that at the time when he was stopped the circumstances gave rise to a reasonable suspicion that the vehicle had been used for a terrorist purpose. Such possession was quite consistent with the admission by the appellant to the Probation Officer that he had been approached by a man whom he knew to have paramilitary associations who told him that he would be using his car for a few hours. This admission

> cannot be disavowed by the appellant nor ignored in the sentencing exercise. In effect, the appellant gave open-ended permission for his car to be used for an unspecified purpose. In light of his account to the probation officer, he must have anticipated that this would be a terrorist purpose. His action in permitting the car to be used which facilitated the murder or the avoidance of detection of those responsible for it cannot be divorced from the fact that a murder was committed. The fact that a young man was killed in the incident in which the appellant's car played some part cannot be left out of account in the selection of the sentence that should be imposed on him. As Lord Phillips has said the potential or actual harm caused plays an important part in determining the seriousness of any offence."

[36] In terms of the approach generally to sentencing in terrorist cases, the Court of Appeal in *Harkness* approved the remarks of the trial Judge, now Treacy LJ who said:

> "It is clear that terrorist organisations cannot carry out operations which in many cases may result in murder or other grave crimes unless there are persons who provide the kind of assistance contemplated by Section 57 or by Section 4 (assisting offenders). When a person is convicted or pleads guilty in this terrorist context, and it is undisputed that he committed the offence actively and willingly the court which sentences him should pass an appropriate deterrent sentence which as well as punishing the accused is intended to deter others."

[37] The defendant falls to be sentenced on the basis of the agreed facts and his guilty plea to the provision of his car for a terrorist purpose pursuant to section 15(3). I do not accept that section 15(3) is by definition less serious than section 57, nor do I accept that authorities relating to fundraising for a terrorist purpose are of assistance.

(ii) Culpable delay, breach of convention rights and remedy

[38] The question of delay is central to the issues the court has to consider. For that reason, the court asked for a chronology which is attached at **annex A**. The covert recording from Carrickmore in February 2010 which was a key part of the decision to prosecute for the 2008 offences was the subject of six reports from Professor French over the period 8 February 2012–14 July 2016. Additional reports were required due to changes in the format of the evidential disc, the necessity of recalculating timings and the provision of new sample material following the judgment of the NICA in *R v Corbitt* [2016] NIQB 23.

[39] In December 2015, after the 5th report, the defendant was charged with the attempted murder of Constable AB. The final report was received in July 2016, two months after the new sample material was sent to Professor French and three months after the defendant's release on licence for the *Mountjoy offences.* The defence submits that the expert analysis simply took too long to complete and resulted in culpable delay which has prejudiced the defendant.

[40] Leaving aside the voice analysis issue, the defence submits that the guilty plea to *the Mountjoy* offences in December 2013 strengthened the prosecution case in relation to the 2008 offences, and that he should have been charged at that point.

[41] Contested committal Proceedings in the Magistrates Court were eventually concluded on 10 May 2017. After arraignment on 21 June 2017, the trial was adjourned on three occasions at the request of the defence, for valid reasons (10 October 2017, 26 January 2018 and 1 September 2020). Between September 2018 – October 2019, the defendant was tried along with a co-accused for blackmail and intimidation and acquitted. The defendant did not object to the blackmail trial proceeding even though it caused delay in this case. Thereafter, the trial was vacated on two occasions because of a defence section 8 application and the unavailability of a judge and/or counsel. The trial finally concluded on 17 April 2023 when pleas to an amended Bill of Indictment were entered.

[42] In *R v Dunlop* [2019] NICA 72 and in *DPP Reference No 5 of 2019 Harrington Legen Jack* [2020] NICA 1 the principles the court should apply when determining this question are set out and summarised at para [46] of *Jack*:

(i) The threshold of proving a breach of the reasonable time requirement is an elevated one, not easily traversed.

(ii) In determining whether a breach of the reasonable time requirement has been established the court will consider in particular but inexhaustively, the complexity of the case, the conduct of the defendant and the manner in which the case has been dealt with by the administrative and judicial authorities concerned. The first and third of these factors may overlap.

(iii) Particular caution is required before concluding that an accused person's maintenance of a not guilty stance has made a material contribution to the delay under consideration."

[43] At para [45] the court explained that:

> "If there is a breach of the reasonable time requirement the remedy should be effective, just and appropriate depending on the nature of the breach and all the circumstances including the rationale which is, that a person charged should not remain too long in a state of

> uncertainty about his fate. The appropriate remedy should take into account not only the impact of the delay on the offender but also the requirement that offenders are realistically punished for their offences. In relation to the impact of the delay this must be established in evidence by the offender and must take into account that usually the offender has been at liberty throughout the period of the breach. Frequently a public acknowledgement of the breach will be sufficient."

[44] The court recognised the variety of factual circumstances in which delay may arise and declined to give prescriptive guidance except to observe:

> "That in cases involving hardened recidivists who must be impervious to concern, in the case of vile and heinous crimes or in the case of dangerous criminals who pose a significant risk to members of the public of serious harm the appropriate response would be a public acknowledgment without any reduction in the penalty. The public could not have confidence in a criminal justice system that first caused delay and then as a consequence unleashed a dangerous criminal on the public…"

[45] Clearly, the voice analysis issue required painstaking expert opinion as the legal issues developed and the impact of two judicial reviews with a bearing on the proceedings was considered. However, there is an obligation on the prosecuting authorities to act expeditiously and the availability of a small pool of experts cannot be used as justification for excessive delay. No explanation has been given for the initial delay of two years from the secret recording in February 2010 until the first report by Professor French in February 2012. A further period of two years elapsed before the second report in March 2014. It was October 2015 before the fifth report based on a recalculation of timings was received and the charging of the defendant in December 2015.

[46] Thereafter, a careful perusal of the chronology reveals a number of reasons for delay which do not lie at the prosecution's door. The defendant was granted bail throughout the proceedings and there is no evidence that he suffered any specific prejudice, other than the fact that he was not sentenced on an overall basis for both *the Mountjoy* offences and the 2008 offences. However, that totality issue remains a live issue in these proceedings and therefore I am not satisfied that the defendant has in fact suffered any prejudice.

[47] The question of remedy for the culpable delay between 2010- 2015, does have to be considered. The defendant was in custody in relation to *the Mountjoy* offences for much of that period until his release on licence in April 2016. He has now pleaded guilty on two separate occasions to serious terrorist offences and membership of a proscribed organisation which is committed to murder and destruction. The admitted

provision of his vehicle to others in the knowledge that it would be used for terrorist purposes, albeit he was unaware of the particular purpose, is a very grave matter justifying condign punishment. In my view, taking into account all of the relevant circumstances, the breach can largely be met by a public acknowledgment and any reduction in sentence should be marginal.

(iii) ***The totality argument***

[48] It is an agreed position that in determining the appropriate sentence, the principle of totality requires the court to consider the overall sentence which HHJ Philpott QC would have passed had she been dealing with both the *Mountjoy* offences and the 2008 offences.

[49] In *R v Daniel Curran* [2013] NICA 1, the court referred to *AG Reference (No 4 of 2005) (Martin Kerr)* [2005] NICA 33 and explained the principle in the context of historic sex cases stating that:

> "[16] …the starting point is to consider the sentence appropriate to the offences in respect of which the offender has been found guilty. In *Martin Kerr* the court accepted that where the offences were part of a catalogue of offences in respect of which the offender had already been sentenced it was necessary to have regard to the totality principle which would have applied if the offender had been sentenced for these offences at the same time. The reason is because the totality principle is designed to secure a global sentence that is just and proportionate (see *AG Reference (No 1 of 1991)* [1991] NI 218)."

[50] In *R v Green* [2019] EWCA Crim 196, the Court of Appeal stated that the sentencing judge should consider a number of matters in determining how the totality principle should be applied, in particular , whether on the previous occasion that he was sentenced the offender could realistically have "cleaned the slate" by admitting other offending and whether the offender would receive "an undeserved, uncovenanted bonus which would be contrary to the public interest" if the previous offending was taken into account. (see also *Attorney General's Reference No 2 of 2009* [2010] EWCA Crim 524).

[51] *Green* and other authorities concern cases where similar offences within a similar time frame came to light after the earlier sentence was passed. The issue in this case is different because the 2008 offending was known to the authorities at the time the 10 year sentence was passed for the *Mountjoy* offences and could have been dealt with at the same time. The approach in *Curran* is therefore appropriate.

The 2008 Offences

[52] Both *Harkness* and *Pearson* are of assistance with regard to count 4 (the provision of property), but this is a more serious case because the defendant committed the offence whilst a member of a proscribed organisation. It appears that neither *Harkness* nor *Pearson* were charged with membership and if they had been, the charge would have related to a single date. The membership charge in this case spans a year, and it is an agreed fact that whilst a member of that organisation, he had sought and obtained information regarding Constable AB which was of a kind likely to be useful to a person committing or preparing an act of terrorism against him, without any legitimate reason. Notwithstanding the fact that the information obtained was not of itself capable of mounting this attack and there is no evidence that he communicated what he learned to others, this is a serious aggravating factor. Whilst the defendant was not aware that the precise terrorist purpose was the attempted murder of a serving police officer, the fact that his car played some part in this attack cannot be left out of account. The *Mountjoy* offences are not an aggravating factor because they post-date these offences.

[53] Because I am treating the membership charge as an aggravating factor of count 4, the defendant will be sentenced concurrently for that offence (count 3). The appropriate sentence for membership is determined by the degree of involvement and the seriousness of the associated offences: in *R v McGeough*, [2011] NICC 16, Stephens J referred to *R v Declan Crossan* [1987] NI 355 as the guideline case indicating a starting point of seven years in prison for membership of a person who was "*not shown to be a longstanding or important member of the IRA or a person in authority*" and who had been convicted and sentenced for other serious offences. In that case, the defendant was described as being part of a group of conspirators who were in effect a murder squad who only dispersed when it was decided it would not be practicable to carry out the attack.

[54] In *Workman* [2021] NICA 20, the appellant pleaded guilty to membership of the UVF and false imprisonment. The background was that he had been sworn into the organisation 2½ months before the incident. He said that this was the first time he had been involved. He was sentenced to four years for the false imprisonment charge and three years concurrent for the membership charge.

[55] In *McCourt* [2010] NICA 6, the appellant was convicted of hijacking and membership of the IRA in 1977 and sentenced to five years on the hijacking and three years on the membership charge concurrent.

[56] In *Shoukri* [2008] NICC 20, the accused pleaded guilty to membership of and supporting the UDA for a period of approximately a month and was sentenced to 15 months in prison.

[57] In *Morgan and ors* [2020] NICC 14, the accused Blair pleaded guilty to membership along with multiple serious terrorist offences. He was sentenced to six years on an overall basis with five years imposed concurrently in relation to the membership.

[58] In relation to mitigation, the only information provided is that the defendant is now 46 years old.

[59] In my view, an overall sentence for the 2008 offences is 12 years in prison before a reduction for a guilty plea. In respect of the membership count, I have taken a starting point of 7 years.

[60] The defendant is entitled to full reduction for his guilty plea to count 4 since it was entered as soon as the new charge was available; there is no reason why the guilty plea to the membership charge (count 3) could not have been entered earlier but I am allowing full reduction for both since the guilty pleas avoided a lengthy trial with a significant saving to the court and the public.

[61] The overall sentence is 8 years. The sentence in respect of the membership charge is 4 years 8 months concurrent. I then have to consider the totality issue in respect of the *Mountjoy* offences.

Totality with the Mountjoy offences

[62] The defence submit that the *Mountjoy* offences were more serious than the 2008 offences and that HHJ Philpott QC would not have imposed a sentence longer than 10 years if she had been dealing with both. On that basis, it is submitted that I should not impose an immediate custodial sentence. I reject that submission. Both the *Mountjoy* offences and the 2008 offences were very serious offences and considered together, are indicative of a person committed to acts of terrorism. The need for a severe deterrent sentence is particularly important in this case.

[63] I accept that there should be some reduction to reflect totality and a marginal reduction for delay. I consider that the overall sentence should be 6 years which I shall impose on count 4. Since the sentence for the membership charge is concurrent it shall remain 4 years 8 months.

[64] As a consequence of the Counter Terrorism and Sentencing Act 2021, the custody/licensing split is amended so that 2/3 of the sentence will now have to be served in custody and after that period has been served, the Parole Commissioners will determine when the defendant may be released.

Ancillary orders

[65] The defendant will be subject to notification requirements for 15 years.

[66] There is an application for a Serious Crime Prevention Order which will be the subject of further submissions.