

**Neutral Citation No: [2021] NICC 4**

**Ref: [2021] NICC 4**

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

**ICOS: 20/050949**

**Delivered: 28/06/2021**

**IN THE CROWN COURT IN NORTHERN IRELAND  
SITTING IN BELFAST**

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**THE QUEEN**

**v**

**NIALL LEHD**

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**SENTENCING REMARKS**

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**HHJ Fowler QC  
Recorder of Belfast**

[1] The accused was arraigned and pleaded not guilty to count 1 Preparation of Terrorist Acts contrary to section 5(1) of the Terrorism Act 2006 and counts 2-5 possessing explosives with intent to endanger life or cause serious injury to property contrary to section 3(1)(b) of the Explosive Substances Act 1883.

[2] On 1<sup>st</sup> June 2021 the defendant asked to be re-arraigned and pleaded to an amended count 1 with the remaining counts 2 - 5 left on the court file with the usual order. He pleaded guilty on an agreed basis as set out in the Basis of Plea document dated 1<sup>st</sup> June 2021 and attached to these sentencing remarks. Count 1 was amended to reduce the temporal scope of the offending to between 1<sup>st</sup> January 2011 and 28<sup>th</sup> February 2013.

[3] The court is grateful for the detailed prosecution opening in this case and the comprehensive written submissions in mitigation from the defence. While I do not make mention of all matter raised by counsel in their able submissions I confirm I have read carefully and in detail all the documents provided to the court. I take them into account when sentencing.

**Factual Background**

[4] The accused grew up in Larne and went to school with an associated offender Ciaran Maxwell. The accused is 3 years younger than Maxwell. They both knew each other from childhood and lived in the same housing estate. They were from a catholic background but lived in a predominantly loyalist area. It appears Lehd had Republican sympathies from an early age. Ciaran Maxwell on the other hand joined the Royal Marines in September 2010 when he was aged 24 years old. The two men met regularly when Maxwell was at home on leave from the military. Approximately one year after he joined the military in and about 2011 Maxwell and Lehd became involved in activities relating to the manufacture of explosives which they stored in hides in the general vicinity of Larne. The charge for which Lehd falls to be sentenced relates primarily to what they did together between 2011 and Lehd's arrest on 28<sup>th</sup> February 2013 for terrorist related offences.

[5] On Thursday 28<sup>th</sup> February 2013, police recovered a rucksack in Larne which contained a pipe, pipe ends, ball bearing matrix, fuse wire, plastic lunchbox with switches and wires attached together with high explosive diazodinitrophenol (DDNP) and 2 (of 3) ingredients for a further high explosive, hexamethylene triperoxide diamine (HMTD).

[6] The accused approached police officer and told them everything in the rucksack was his and that it contained high explosives. He was arrested and questioned. In he stated that he had discovered the items in two blue barrels buried in a field off the Old Glenarm Road, in Larne. He said he intended throwing the items into the sea. Later he told police he had been told to look after the material by a man with a Larne accent, but he did not know him. He claimed there had been no communication since Christmas with the man.

[7] On searching the accused's home address, 37 Seahill Road, Larne. They recovered another metal cylinder and ball bearings, piping, a magnetic stirrer and heating element which could be used for the manufacture of explosives. The search found traces of HMTD in the house. At this time the high explosives, DDNP and HMTD, had never been encountered before in Northern Ireland. Significantly, a bin liner in the rucksack used for packaging and items in the bag had 3 of Ciaran Maxwell's fingerprints on them.

[8] Lehd was convicted in January 2014 of Possession of explosives with intent and Possession of ammunition in suspicious circumstances. The time frame for these offences being 1 December 2012 - 1 March 2013. He was sentenced to a Determinate Custodial Sentence of 6 years made up of 3 years custody and 3 years supervised licence. He was released at Christmas 2015 for home leave and finally released on licence on 1<sup>st</sup> March 2016.

[9] Then in March and May 2016 a number of blue barrels were uncovered and found to contain explosives and bomb making items. Forensic examination of the items recovered connected them to Ciaran Maxwell who was still a serving member of the Royal Marines. Maxwell was arrested in August 2016 and during interview

he admitted his part in sourcing items and making explosives. He also outlined the involvement of the accused Lehd who he claimed was involved in this offending from 2011 up to the date of his arrest on 28<sup>th</sup> February 2013.

[10] Maxwell also disclosed to police the location of seven further hides in the Larne area and subsequently entered into an agreement under the *Serious Organised Crime and Police Act 2005 (SOCPA)* process. Pursuant to this he provided two evidential witness statements detailing evidence that the accused was jointly involved in the Northern Ireland terrorist enterprise.

[11] On arraignment Maxwell pleaded guilty at the Old Bailey, to three offences specifically, preparation of terrorist acts, contrary to section 5(1)(a) of the Terrorism Act 2006, possession of a controlled drug, namely cannabis a class B drug, with intent to supply to another contrary to section 5(3) and (4) of the Misuse of Drugs Act 1971 and possession of articles for use in fraud, contrary to section 6 of the Fraud Act 2006.

[12] Maxwell was sentenced to a term of 23 years, (18 years in custody and 5 years on licence). His sentence was substantially reduced from a starting point of 42 years to reflect the assistance that he provided to police. The 42 years, was reduced to 27 years for assistance, reduced to 18 years for his plea of guilty.

[13] In his two evidential statements Maxwell referred to a number of locations where he and Lehd worked on perfecting their skills in the manufacture of explosive substances and bombs. They then stored the munitions they either made or acquired, including high explosives, explosive compounds, improvised explosive devices, components for under vehicle improvised explosive device (UVIED), pipe bombs, anti-personnel directional mines (claymores), explosively formed projectiles (EFPs), timer power units, tilt switches, detonators and initiators. Maxwell described how they had constructed hides and stored their munitions. The hides were located at Carnfunnock, Inver River, Bleach Works, Drumalis Convent, Town Parks and Drains Bay.

[14] From his time with the military Maxwell received training in explosives and when on leave Maxwell and Lehd began making HMTD explosives and looked at PTUs, switches and initiators. Lehd stole bomb making chemicals from a farm he was working on and extracted the necessary explosive constituents. He obtained the blue plastic barrels to store the explosives. They jointly made hides which Lehd finished when Maxwell returned to England. Maxwell also described how they also made around 800g of ENT which they considered a very good explosive and similar to PETN. They looked at the ingredients for DDNP. However, it was very complicated to manufacture and they made only a small quantity.

[15] They researched and obtained information from Torrent (TOR) websites and moved to the Dark Web which provided them with more security. On the 26<sup>th</sup> August 2016, the home address of the accused at 37 Seahill Road, Larne was

searched by virtue of a Schedule 5 Terrorism Act warrant. A hand-written document (Exhibit NMC5) was found in the kitchen. This document contained information on how to access 'Dark Web' with written instructions for downloading the Tor browser.

[16] In 2012 after about a year of explosive manufacture, Lehd mentioned knowing dissident republicans in Belfast and seemed keen for themselves to make devices for people in Belfast. Lehd also wanted to go to a training camp in the Republic of Ireland.

[17] At this point they began to look at electronic detonation options for the explosives they had made. They also began to manufacture military style anti-personnel mines - 'claymores' - filled with ball bearings, and made explosively formed projectiles (EFP), shaped charges to allow high velocity molten projectile to be propelled upon detonation. They also manufactured pipe bombs a number of which were later deployed.

[18] Maxwell although he appears the more intelligent of the two claimed that Lehd contributed significantly to all of their activities. He procured the barrels for the hides and was responsible for digging them. They made HMTD together and sourced the chemicals. Lehd assisted in weighing, pouring and stirring the items, purchased beakers and thermometers. They both made picric acid a precursor component. There were two types of pipe bombs: copper pipe bombs which Maxwell created on his own, and threaded metal conduit made from galvanised steel, which Lehd sourced in Belfast. They worked as a team. It was it appears Lehd's idea to create a Claymore anti-personnel mine. Together they created an EFP (explosively form projectile).

[19] However, following Lehd's arrest in 2013, Maxwell worked individually on these devices.

[20] I am sure that the role of the accused Lehd was to act as an essential part of an independent engineering team, to supply the explosives and devices made to persons within dissident republican groups. Many of the items manufactured were lethal in nature and designed as anti-personnel devices to be used in connection with dissident republican violence.

[21] The accused was initially arrested on 29<sup>th</sup> August 2016 after the arrest of Maxwell. The accused refused to answer any questions or engage with police in any way for the duration of the interviews.

[22] Following Maxwell entering the SOCPA process and providing evidential statements the accused was again arrested on 18<sup>th</sup> December 2018 and further interviewed. The accused again refused to answer any questions or engage with the interviewing officers in any way.

[23] In terms of personal circumstances the accused is now 32 and in a relationship with his fiancée for 11 years. They have three children together and the accused is also step-father to his fiancée's 15 year old daughter. He is the primary carer of the children while his fiancée works full time. I have read the contents of the letters provided to the court by his fiancée, mother and father.

[24] While in custody the defendant completed a number of courses and on release has not offended. The defence suggest he is a different man now to the one that committed this offence.

[25] It has to be recognised that sentencing offences under s.5(1) of the Terrorism Act 2006 is such that personal circumstance are of limited relevance particularly where a deterrent sentence is contemplated. The position is clearly set out in the authority of R v Raymond Gerard Quigg [1991] 9 NIJB 38 Hutton LCJ where it is stated:

*"In cases which have a link with terrorism (and particularly where the accused has himself been a gunman or a bomber or has been an active participant in the storing or transporting of guns or explosives) personal circumstances can very rarely permit a judge to reduce the deterrent sentence which otherwise should be passed."*

[26] I do not consider the fact that when required to sentence the defendant for an offence which occurred before his previous prison sentence and overlapped with the present offending changes that position. This is particularly so when the defendant failed to tell the truth, on being questioned by police, regarding the full extent of his criminal involvement. He chose to protect others and allow this substantial cache of explosives and material to remain hidden and available for deployment.

[27] It is suggested the accused's involvement was for a limited time – just over a year and within that year only on the days and weeks Maxwell was in Northern Ireland on leave. That the accused was young at the time of offending – 22 years of age while Maxwell was 25. That none of the devices manufactured were deployed proximate to the time when the accused was involved. They were not deployed until much later in 2016. Unfortunately, that is of little comfort in the sense that as a result of the accused's participation in the construction and highly effective hiding and storage of the pipe bombs meant that they were available and eventually deployed. It was simply fortuitous that no one was injured or killed.

[28] The defence argue that Maxwell's offending was relatively more serious in that it was trans-jurisdictional and involved hides in England and detailed planning for attacks over a much longer period of time. That the defendant Maxwell's offending has the additional elements of breach of trust with additional drugs and fraud preparation offences. This in my view fails to recognise that the accused was not only fully engaged in the preparation and storage of explosive devices he was

highly motivated politically and to be the conduit for these devices to be distributed around dissident activists.

[29] It is suggested and agreed by the prosecution that there should be recognition in sentencing that the offending for which he now falls to be sentenced for pre-dates his last prison sentence and covers a similar time frame and is directly connected to the present charges. I agree and some downward adjustment in my view is appropriate.

[30] In terms of sentencing the offence of preparation of terrorist acts section 5(1) of the Terrorism Act 2006 is an offence throughout the UK, and by virtue of this there is a strong presumption that there should be consistency of sentencing principles throughout the UK, and no logical basis for departing from that principle in Northern Ireland. The defence argue that the court is not bound to follow the decisions of the English courts in this area. I agree that courts in Northern Ireland have their own sentencing practice and that the definitive terrorism sentencing guidelines do not apply in Northern Ireland. However, there is support for the view that in offences of this nature there is a strong presumption in favour of consistency found in the case of R v Kumar [2013] NICC 12 where McFarland J (as Recorder of Belfast) observed:

*“Although not necessarily desirable for every type of offending, when judges are dealing with offences created by legislation applying throughout the United Kingdom and when the offending has a national and international aspect to it, a consistent approach throughout the United Kingdom is appropriate. I therefore consider the Sentencing Council guideline is of merit when considering sentencing in this jurisdiction. It is however important that there must remain a degree of discretion within the formula suggested...”*

[31] Accordingly, I find the decision in R v Kahar [2016] EWCA Crim 568 to be of assistance. Here the court held that the following broad principles are applicable in the consideration of sentence for a s.5 offence:

- (i) Conduct threatening democratic government and the security of the state has a seriousness all of its own.
- (ii) The purpose of sentence in s.5 cases is to punish, deter and incapacitate (albeit that care must be taken to ensure that the sentence is not disproportionate to the facts of the particular offence) and, save possibly at the very bottom end of the scale, rehabilitation is unlikely to play a part.
- (iii) In accordance with s.143(1) of the CJA 2003, the sentencer must consider the offender's culpability (which, in most cases, will be extremely high), and any harm which the offence caused, was intended to cause, or might foreseeably have caused.

- (iv) The starting point is the sentence that would have been imposed if the intended act(s) had been carried out – with the offence generally being more serious the closer the offender was to the completion of the intended act(s).
- (v) When relevant, it is necessary to distinguish between a primary intention to endanger life and a primary intention to cause serious damage to property – with the most serious offences generally being those involving an intended threat to human life.

[32] Accordingly, it is necessary to assess the number, nature and gravity of the intended terrorist acts; the degree of planning, research and complexity and sophistication involved in conjunction with the level of commitment on the part of the accused; the period of time over which the offending took place; the accused's commitment to violent Republicanism.

[33] The terrorist acts contemplated were explosions with murderous intent. There was careful planning and sophistication in the development, making and storing for later distribution of a significant cache of munitions. These munitions were well stored and ready to deploy. The clear intended harm in this case was multiple deaths, serious personal injury and damage on a substantial scale. This defendant's involvement was over a period of a year and only cut short by virtue of his arrest and imprisonment in 2013.

[34] The court in R v Kahar then went on to outline 6 categories or levels which cases may fall into and I agree that this case falls within the level 2 categorisation. Here a life sentence is generally called for with a minimum term of between 21-30 years or a very long determinate sentence and an extension period of five years

[35] In terms of aggravating features I identify the following: careful planning, research and sophistication was involved in the manufacture of explosives never seen in Northern Ireland before and the design and construction of improvised explosives; the quantity and lethal nature of the munitions made and stored ready for use; the intention to share these munitions with dissident republicans for use in their campaign of violence; in this context the potential for multiple deaths; the ultimate deployment of some of the contents of the hides.

[36] In terms of mitigation I identify the following factors; the accused's plea of guilty albeit at a late stage on the morning of the trial; that a downward adjustment is proper in relation to the sentence already passed given the material the subject of those charges was part of that which this accused and Maxwell had jointly produced.

### **Notification Requirement**

[37] The Counter Terror Notification Requirements are found in Sections 40-61 of the Counter Terrorism Act 2008. (App C)

- (a) Section 41 provides that offences under section(s) 5 of the Terrorism Act 2006 initially “triggers” the notification requirements.
- (b) The second “trigger” and whether the accused is in fact made subject to the notification requirements is found with section 45 of the Act. It is dependent upon whether a sentence of imprisonment is imposed and if so its nature length.
- (c) If there is a requirement for notification, the period of notification is determined by the nature and length of any *sentence imposed*, see *section 53 of the Act*.

### **Dangerousness**

[38] Preparation of Terrorist Acts Section 5(1) Terrorism Act 2006 is both a serious and specified offence under the Criminal Justice (NI) Order 2008 with a maximum sentence imprisonment for Life.

[39] In these circumstances an assessment of dangerousness is necessary. Whether an offender presents as a significant risk of serious harm requires a careful analysis of all the relevant facts in the case. This is as relevant in a case involving conviction for terrorist offences as in any other case. I bear in mind the observation of Morgan LCJ in *R v Wong* [2012] NICA 54 that:

“... in cases involving firearms and explosives, even with a terrorist background, the court should be careful not to make the assumption that the offender is dangerous. The risks posed by those involved in such offences can vary enormously and each case will be heavily fact sensitive.”

[40] The relevant statutory provisions dealing with dangerousness are set out in articles 13 to 15 of the Criminal Justice (Northern Ireland) Order 2008:

"13. – (1) This Article applies where –

- (a) a person is convicted on indictment of a serious offence committed after [15th May 2008]; and
  - (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.
- (2) If –



- (a) the offence is one in respect of which the offender would apart from this Article be liable to a life sentence, and
- (b) the court is of the opinion that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of such a sentence,

the court shall impose a life sentence.

(3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court shall –

- (a) impose an indeterminate custodial sentence; and
- (b) specify a period of at least 2 years as the minimum period for the purposes of Article 18, being such period as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it.

(4) An indeterminate custodial sentence is –

- (a) where the offender is aged 21 or over, a sentence of imprisonment for an indeterminate period,
- (b) where the offender is under the age of 21, a sentence of detention for an indeterminate period at such place and under such conditions as the Department of Justice may direct,

subject (in either case) to the provisions of this Part as to the release of prisoners and duration of licences...

14. – (1) This Article applies where –

- (a) a person is convicted on indictment of a specified offence committed after 15 May 2008; and

- (b) the court is of the opinion –
  - (i) that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences; and
  - (ii) where the specified offence is a serious offence, that the case is not one in which the court is required by Article 13 to impose a life sentence or an indeterminate custodial sentence.

(2) The court shall impose on the offender an extended custodial sentence.

(3) Where the offender is aged 21 or over, an extended custodial sentence is a sentence of imprisonment the term of which is equal to the aggregate of

- (a) the appropriate custodial term; and
- (b) a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences...

(8) The extension period under paragraph (3)(b) or 5(b) shall not exceed –

- (a) five years in the case of a specified violent offence  
...

15. –(1) This Article applies where –

- (a) a person has been convicted on indictment of a specified offence; and
- (b) it falls to a court to assess under Article 13 or 14 whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.

- (2) The court in making the assessment referred to in paragraph (1)(b) –
- (a) shall take into account all such information as is available to it about the nature and circumstances of the offence;
  - (b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
  - (c) may take into account any information about the offender which is before it."

[41] The test for dangerousness under Article 13(1) of the 2008 order is met where the offence is a serious offence and the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.

[42] In making this assessment, in accordance with Article 15, the court:

- (a) Shall take into account all such information as is available to it about the nature and circumstances of the offence;
- (b) May take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
- (c) May take into account any information about the offender which is before it.

[43] In R v EB [2010] NICA 40 the Court of Appeal approved the approach of the English Court of Appeal in R v Lang [2005] EWCA Crim 2864 on how the assessment of the risk of serious harm should be made under these provisions:

"(i) The risk identified must be significant. This was a higher threshold than mere possibility of occurrence and could be taken to mean 'noteworthy, of considerable amount or importance.'

(ii) In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, details of which the prosecution must have available, and, whether the offending demonstrated any pattern; social

and economic factors in relation to the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional state. Information in relation to these matters would most readily, though not exclusively, come from antecedents and pre-sentence probation and medical reports. The sentencer would be guided, but not bound by, the assessment of risk in such reports...

(iii) If the foreseen specified offence was serious, there would clearly be some cases, though not by any means all, in which there might be a significant risk of serious harm. For example, robbery was a serious offence. But it could be committed in a wide variety of ways, many of which did not give rise to a significant risk of serious harm ...

(iv) If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant ...”

[44] *R v Wong* [2012] NICA 54 is also instructive in relation to the approach to be taken in terrorist cases when assessing dangerousness. Morgan LCJ at paragraph [11] cited with approval the following passage from *R v Pedley and Others* (2009) EWCA Crim 840:

“... we agree that within the concept of significant risk there is built in a degree of flexibility which enables a judge to conclude that a somewhat lower probability of particularly grave harm may be significant and conversely that a somewhat greater probability of less grave harm may not be.”

[45] He went on to suggest at paragraph [15] that in terrorist cases the matters likely to require consideration will usually include:

- “(i) the nature of the harm to which the offence was directed;
- (ii) the intention or foresight of the offender in relation to that offence;
- (iii) the stage at which the offending was detected;

- (iv) the sophistication and planning involved in the commission of the offence;
- (v) the extent to which the conduct of the offender demonstrates a significant role in the carrying out of the offence;
- (vi) the previous conduct of the offender;
- (vii) the danger posed by the terrorist organisation in question;
- (viii) an assessment of the extent to which the appellant is committed to or influenced by the objectives of that terrorist organisation; ...”

### **Assessment of Dangerousness**

[46] The defence argue that the defendant is not a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences. They point to the following matters:

- (i) That this offending occurred before his last prison sentence;
- (ii) The offending for which he is sentenced today overlaps with his offending in 2013;
- (iii) That he behaved well in prison and spent only one day away from ‘normal’ location;
- (iv) That the Parole Commissioners decided he met the statutory test for release after his recall;
- (v) That he has pleaded guilty;
- (vi) That he was a relatively immature man at the time of the offence, some eight years ago;
- (vii) That he has settled into family life on release;
- (viii) That he now has three children;
- (ix) That he takes a full part in the care of his family and has been very supportive of his fiancée and mother; and,

(x) That he has not committed any offences since his arrest in 2013.

[47] The Defence submit that the criteria are not met for a finding that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.

[48] In assessing the issue of dangerousness in this case I consider the nature of the harm intended was directed towards promoting violent republicanism. The intention and foresight behind the manufacture of high explosives and bombs was a clear and unequivocal intention to cause or enable others to cause multiple deaths, injury and serious damage to property. The offending was only detected after it had reached an advanced stage with unique high explosives having been manufactured and various types of bombs and improvised devices having been developed and manufactured. The only thing to stop the defendant's continued participation was his arrest in 2013. The planning and preparation required to make high explosives, claymores and other IEDs required sophistication. The defendant played a leading role in carrying out the offence and was the conduit between the bomb maker, the cache of munitions and dissidents ready and able to deploy them. These terrorists in Northern Ireland have carried out repeated attacks on the security forces. I am sure the accused supports a violent political philosophy and has established connections and sympathies with violent republican terrorism. The defendant's committed and pivotal role in the preparation and storage of these munitions demonstrates his high level of commitment to a Dissident Republican cause and a willingness to provide the means to cause multiple murders to further its ends without remorse. I am sure he continues to hold these views and is unlikely to change. This is particularly so in light of his possession of information on how to access the TOR browser and the dark web in 2016 proximate to the discovery of the hides and after his release from prison. His continued association with dissidents whilst in prison and after his release is concerning.

[49] Having considered all the fact specific circumstances of this case I am satisfied the test for dangerousness as set out in *R v Lang*, *R v EB* and *R v Wong* has been met and I find the defendant dangerous as defined by the 2008 Order.

[50] Having found the defendant dangerous the court is required to consider the following sentences, a life sentence, indeterminate sentence or extended sentence.

[51] Life sentences are reserved for a small category of cases that are so exceptional that they require the defendant to be imprisoned for the rest of his life see *Kehoe* [2008] CLR 728. I do not consider this case falls within the ambit of Article 13(2) requiring the imposition of a life sentence.

[52] Turning now to Article 13(3) I must consider whether an extended custodial sentence would not be adequate to protect the public from serious harm occasioned by the commission by the offender of further specified offences in this instance. In

the event that it would not be adequate I must impose an indeterminate custodial sentence.

[53] Of particular importance when considering the imposition of an indeterminate custodial sentence is the case of *R v Pollins* [2014] NICA 62. Morgan LCJ in this case at paragraphs [26] and [27] observed that:

“[26] ... Apart from a discretionary life sentence an indeterminate custodial sentence is the most draconian sentence the court can impose. A discretionary life sentence is reserved for those cases where the seriousness of the offending is so exceptionally high that just punishment requires that the offender should be kept in prison for the rest of his life. It is not a borderline decision. ... An indeterminate custodial sentence is primarily concerned with future risk and public protection. ...

[27] However, in a case in which a life sentence is not appropriate an indeterminate custodial sentence should not be imposed without full consideration of whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the individual offender. In that sense it is a sentence of last resort. The issue of whether the necessary public protection can be achieved is clearly fact specific. That requires, therefore, a careful evaluation of the methods by which such protection can be achieved under the extended sentence regime.”

[54] The question therefore is whether an indeterminate custodial sentence is the only way of dealing with the future risk presented by the accused or whether an extended custodial sentence would be adequate for the purpose of protecting the public.

[55] In determining whether the court should impose an indeterminate custodial sentence or an extended custodial sentence it is necessary to consider the nature of an extended custodial sentence. An extended custodial sentence will be the aggregate of a custodial term and an extension period. The custodial term will be a commensurate sentence and will not make any reduction for a notional remission. This will be built into the release provisions.

[56] The extension period will be for such period as is considered necessary to protect the public from serious harm. The two aspects of sentence serve different purposes. The first is to punish and the second is to protect. The provisions of Section 30 of the Counter- Terrorism and Sentencing Act 2021 inserts a new Article

20A into the 2008 Order. The new Article 20A provisions apply to the offending which the accused has pleaded guilty to. The provision does not engage the sentence which the Court imposes but the release provisions only. It provides that an offender subject to an extended custodial sentence will have to serve two thirds of the custodial sentence before his case can be referred to the Parole Commissioners, whereas in the past that offender would have served half of the custodial element before his case was able to be referred. It has effect in relation to *all* prisoners currently serving extended custodial sentences (whenever they were imposed) and has effect in respect of this accused on the basis I am sentencing on or before 28 June 2021.

[57] The in circumstances of this case the protective element cannot exceed 5 years.

[58] While I have no doubt that these were very grave offences, involving high culpability together with both intended and foreseeable high harm. The intention was that you were prepared to facilitate others to kill. Fortunately, no one was killed or injured. However, given that a life sentence is a sentence of last resort and you were relatively young at the time of offending and the period over which you were involved was more limited I intend to impose an extended sentence.

[59] In terms of sentence the appropriate tariff in your case for the preparation of acts of terrorism after a contested hearing would have a sentencing range of between 30 – 40 years with a starting point of in or about 33 years in the circumstances of the present case. Taking into account the aggravating and mitigating factors already identified, I am of the view that on conviction after a trial I would have imposed a sentence of 35 years' imprisonment.

[60] I must now consider the discount to be afforded for your plea of guilty. In the circumstance you did not plead to Count 1 at the first available opportunity and you made no comment in interview. A number of charges were not proceeded with but that would not have prevented you from pleading guilty to Count 1, at an earlier opportunity. In the circumstance I am of the view you are entitled to 20% credit for your plea. I do not consider any further credit is applicable in terms of *R v Beggs* or *R v Stewart* given the deterrent nature of the sentence. This will give a sentence of 28 years' imprisonment.

[61] However, I will take into account the earlier sentence you received in 2014 and reflect that in a down ward adjustment of your sentence given that the material the subject matter of those earlier charges was part of the munitions that you and Maxwell had jointly produced. I will reduce your sentence by 4 year resulting in a sentence of 24 years' imprisonment with an extension period of 5 years.

[62] You will be subject to and have to sign the Notification Requirements under section 53 of the Counter Terrorism Act 2008 this requirement will be for a period of 30 years.



[63] £50 offender levy applies.