

Criminal Justice (Sentencing etc) Bill: PPS Response to the Committee for Justice’s Consultation

Addendum

Introduction

1. The following observations, which relate to life sentences for murder cases (Part 3 and Schedule 3 of the Bill) have been provided to assist the Committee in advance of the PPS’s appearance on 18 June. It had been our understanding, prior to reviewing the Bill in preparation for our evidence session, that the Bill sought to *replicate* the law as it has recently been set out by the Court of Appeal in the case of [R v Whitla \[2024\]](#).¹ However, it appears to us that the Bill actually amends the tariffs that will apply in murder cases in significant respects, and we consider it important that the Committee understands and is able to consider the implications of this.

The Existing Law

2. The Court of Appeal has, for many years, been guided by the case of [R v McCandless \[2004\]](#).² The general framework for tariff setting in that case is as follows:
 - (a) There are three starting points: Normal (12 years); higher (15/16 years); and very serious / especially grave cases (20 years and upwards).
 - (b) The ‘normal’ starting point is stated to normally apply to cases that involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other.
 - (c) The ‘higher’ starting point applies where cases are characterised by a feature which makes the crime especially serious, such as:
 - (i) the killing was ‘professional’ or a contract killing;
 - (ii) the killing was politically motivated;
 - (iii) the killing was done for gain (in the course of a burglary, robbery etc.);

¹ *R v John Paul Whitla [2024] NICA 65 (judgment delivered on 21 October 2024).*

² *R v Trevor McCandless [2004] NICA 1 (judgment delivered on 9 January 2004).*

- (iv) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness);
 - (v) the victim was providing a public service;
 - (vi) the victim was a child or was otherwise vulnerable;
 - (vii) the killing was racially aggravated;
 - (viii) the victim was deliberately targeted because of his or her religion or sexual orientation;
 - (ix) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing;
 - (x) extensive and/or multiple injuries were inflicted on the victim before death;
 - (xi) the offender committed multiple murders.
- (d) Amongst those cases at (c) above, some will be especially grave and merit a 20 year starting point. Those will include cases in which the victim was performing his duties as a police or prison officer at the time of the crime, or the offence was a terrorist or sexual or sadistic murder or involved a young child. In *Whitla*, the Court stated that it could include multiple stabbing cases.
- (e) A substantial upward adjustment will be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years.
- (f) Having selected the appropriate starting point, the sentence will be varied upwards or downwards having regards to the presence of aggravating or mitigating factors.
- (g) Aggravating factors relating to the offence can include:
- (i) the fact that the killing was planned;
 - (ii) the use of a firearm;
 - (iii) arming with a weapon in advance;
 - (iv) concealment of the body, destruction of the crime scene and/or dismemberment of the body;
 - (v) 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.
- (h) 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.

- (i) 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.
 - (j) 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.
3. The Court of Appeal has emphasised that each murder case is fact specific. The guidelines above are not to be applied in a rigid, compartmentalised way. Judges are free to consider factors not specifically mentioned in *McCandless* as aggravation in a particular case, including a track record of domestic violence and desecration of a dead body.
 4. In *Whitla*, the Court noted that the lower starting point rarely arises in murder cases and that most murder cases in Northern Ireland will fall within what had previously been termed the higher starting point of 15/16 years. On that basis it 're-branded' the 15/16 year starting point as the normal starting point.
 5. The Court stated it was content that the descriptors in *McCandless* (see 2(d) above) cover most circumstances that arise for the higher bracket (20 years) but repeated the fact that sentencers have flexibility to consider modern circumstances. The Court stressed, however, that the judgment did not amount to any sea change in terms of murder sentencing.

Tariffs under the Bill

6. The approach taken under the Bill is to specify the cases that will normally attract a 20-year starting point on the basis that the seriousness of the offence is exceptionally high. The types of cases specified are:
 - (a) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death);
 - (b) a murder intended to obstruct or interfere with the course of justice;
 - (c) a murder involving any of the following -
 - (i) sadistic conduct,
 - (ii) gratuitous or excessive violence,

(iii) sexual maltreatment, humiliation or degradation;

(d) the murder of two or more persons;

(e) a murder done for the purpose of advancing a political, religious, racial or ideological cause;

(f) the murder of a police officer, a prison officer or a fire and rescue officer;

(g) the murder of a person who was serving or had ceased to serve as a police officer or a prison officer where the offence was motivated wholly or partly by something done by the victim in the course of their duty as a police officer or a prison officer;

(h) the murder of a vulnerable person;

(i) a murder aggravated by racial hostility, religious hostility, hostility related to sexual orientation, or hostility related to disability;

(j) a murder where the victim and the offender were personally connected within the meaning of section 5 of the [Domestic Abuse and Civil Proceedings Act \(Northern Ireland\) 2021](#);

(k) a murder where the offender had repeatedly or continuously engaged in behaviour towards the victim that was controlling or coercive.

7. It will be noted that the factors at (a), (b), (d), (e), (g), (h) and (i) are all factors that, under the current law, will attract the 15/16 year starting point. Under the Bill they would now attract the 20-year starting point.
8. Whilst the Bill makes specific provision for the higher starting point in relation to police officers, prison officers and fire and rescue officers (see (f) above), there is no reference to the broader category of victims providing a public service – either in the list of cases attracting the 20-year starting point or in the aggravating factors.
9. The factors at (j) and (k) are new factors that were not previously identified as being relevant to the starting point for a murder case. In relation to the former factor, the Committee should note the breadth of the definition of ‘personal connection’ under the 2021 Act which is as follows:

Meaning of personal connection

- 5.—(1) This section has effect for the purposes of this Chapter.
- (2) Two people (“A” and “B”) are personally connected to each other if any of these applies—
- (a) they are, or have been, married to each other,
 - (b) they are, or have been, civil partners of each other,
 - (c) they are living together, or have lived together, as if spouses of each other,
 - (d) they are, or have been, otherwise in an intimate personal relationship with each other, or
 - (e) they are members of the same family.
- (3) They are members of the same family—
- (a) if B is A’s parent, grandparent, child, grandchild, brother or sister, or
 - (b) if—
 - (i) one of them is in a relevant relationship with someone else (“C”), and
 - (ii) the other of them is C’s parent, grandparent, child, grandchild, brother or sister.
- (4) One person is in a relevant relationship with someone else if—
- (a) they are married to, or are civil partners of, each other, or
 - (b) they are living together as if spouses of each other.
- (5) In determining family membership—
- (a) a relationship of the half blood or by affinity is to be treated as a relationship of the whole blood, and
 - (b) a stepchild of a person is to be treated as the person’s child.

10. The Committee may want to consider whether it is good law for the existence of *any* of these relationships *per se* (without any context of actual domestic violence) to sit alongside the other factors in paragraph 1(2) of Schedule 1A as a factor that will normally attract the 20-year starting point.

11. The Committee may also wish to consider factor (k). In the English Sentencing Act factors (j) and (k) are combined:

where the offence was committed on or after the day on which the Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2024 came into force, the fact that the offender had repeatedly or continuously engaged in behaviour towards the victim that was controlling or coercive and, at the time of the behaviour, the offender and the victim were personally connected within the meaning of section 76(6) to (7) of the Serious Crime Act 2015.】

12. The Committee may wish to consider whether it is more appropriate that (j) and (k) are combined in this way.

13. The Committee may also wish to consider the coherence of the current approach. Whilst the Bill identifies controlling or coercive behaviour as relevant to the starting point, “the fact that the murder was the culmination of cruel and violent behaviour by

the offender towards the victim over a period of time” has a lesser status in that it appears only as an aggravating factor (see paragraph 5(1)(f) within Schedule 3 of the Bill).

14. It is ultimately a matter for the Assembly as to what level it wishes to set tariffs for various types of murder cases. However, it is not clear to us that the Committee has previously been made aware of the changes to the level of sentence that would be brought about by the new provisions, as outlined above. The PPS was not aware of any policy objective to increase the tariffs on murder sentences within the Bill. Indeed, the Assembly research paper suggests that the approach to 20- and 15-year starting points reflects the recalibration of starting points in R v Whitla and it had been our understanding that the intention of the Bill was to place the existing law on a statutory basis. We therefore hope that it is of assistance to have highlighted for the Committee the differences between the approach to tariffs under the existing law and that proposed within the Bill.

15 June 2026