

R v Choni Kenny, Rahim Mottley & Josh Whelan

Sentencing remarks

You may all remain seated while I explain the sentences that I am about to impose.

Introduction

- 1) **Choni Kenny**, you have pleaded G to four offences of misconduct in a public office (counts 1, 2, 3 & 5) and to one count of conspiracy to commit misconduct in a public office (count 6).
- 2) **Rahim Mottley**, you have pleaded G to one offence of conspiracy to commit misconduct in a public office (count 6).
- 3) **Josh Whelan**, you have been committed for sentence for three offences of possessing a specified item inside a prison. Those offences are linked to the offence in count 2, committed by Choni Kenny. In addition, you have admitted breaching your bail in relation to these proceedings and, more recently, you have been committed for sentence for four further and completely separate offences.
- 4) I do not intend to repeat all of the details of your offending, as explained yesterday by prosecution counsel. However, if, for any reason, your sentences are considered elsewhere, then reference should be made to prosecution counsel's comprehensive and helpful note of opening for sentence and to the Appendices attached to it, all of which I have taken into account in determining the appropriate sentence in each of your cases. For now, however, I need only summarise the key elements of the offences to which you have pleaded G.

Choni Kenny and Josh Whelan

- 5) **Choni Kenny**, on the 18.08.20, aged 23, you joined GMP where, as part of your training, you were made aware of the requirement to inform your employer of any "notifiable association".

- 6) Josh Whelan is someone whom you have known since primary school, to whom you spoke on social media and with whom you were in a casual sexual relationship. He is also a criminal, a person of interest to GMP and someone who you believed to be involved in the distribution of Class A drugs. You were, therefore, under an obligation to notify your employer of your relationship with him. Your failure to do so, in the period between the 01.04.21 and the 22.06.23, is reflected in your plea of G to count 1.
- 7) Between the 16.11.21 and the 15.02.22, Josh Whelan was in HMP Forest Bank where he had the use of 6 different mobile phones. For most of the period between the 14.02.22 and the 12.11.22, Josh Whelan was in HMP Risley where he had the use of 12 different mobile phones and, between the 16.02.23 and the 22.06.23, he was in HMP Berwyn where he had the use of 2 different mobile phones.
- 8) You knew that Josh Whelan had mobile phones in prison because he used those phones to communicate with you and because you allowed your bank account to be used to facilitate the use of those phones.
- 9) Count 2 reflects the fact that, between the 01.04.21 and the 22.06.23, you funded the use of some or all of those phones, you communicated with Josh Whelan on some or all of those phones and you failed to tell your employer that he had some or all of those phones.
- 10) It is a significant aggravating feature of that offence, as is clear from your conversation with Josh Whelan on the 21.06.22 and from your conversation with Sarah Royle on the 24.02.23, that you knew that Josh Whelan was a drug dealer, that when he was at liberty he ran a drug line and that while he was in prison he delegated the running of that drug line to others. It must, therefore, have been obvious to you that, by facilitating Josh Whelan's use of those phones, you were helping him to supervise that operation from prison.
- 11) Count 3 alleges that, between the 01.04.21 and the 22.06.23, you accessed police information and intelligence without a legitimate policing purpose and disclosed that information and intelligence to Josh Whelan.
- 12) On the 16.11.21, Josh Whelan was charged with several offences, including the use of serious violence, against his former partner and was, as a result, remanded in custody. On several occasions in December 2021 and in January 2022, you accessed police systems to obtain information about those offences and the progress of the case against Josh Whelan. When, following your arrest, your phone was examined, the police found a photograph of the MG5 relating to those offences together with a photograph of the VPS made by the complainant. When you were interviewed, you admitted that you had made those checks at the request of Josh Whelan and that you had passed on everything that you had seen or read.

- 13) On the 25.01.22, you accessed the police system to view a file created after a notice of intended prosecution was sent to Josh Whelan's sister as the registered keeper of a vehicle that activated a speed camera. Again, when you were interviewed, you accepted that you looked at the file at the request of Josh Whelan and that you told him what you read in the file.
- 14) On the 11.11.22, after Josh Whelan was released from prison, you were seen with him, in your car and in a restaurant. Later that day, after reporting for duty, you accessed a document containing the details of prisoners released that week, including Josh Whelan.
- 15) On 24.02.23, after Josh Whelan had been recalled to prison for failing three drugs tests, you were recorded talking to Sarah Royle about the impact of his recall on his ability to run his drugs line. As I said earlier, it is clear from that conversation that you were well aware that Josh Whelan had, for some time, been running that operation both in and out of custody.
- 16) **Josh Whelan**, in dealing with count 2 in relation to Choni Kenny, I have already identified the mobile phones that were available to you while you were in HMP Forest Bank, HMP Risley and HMP Berwyn. Although you have not been charged with any offence to reflect the operation of the drug line discussed in the recorded conversations, it is conceded on your behalf that you were, at some time, involved in drug dealing and that you made some use of those phones in pursuit of that enterprise. Nevertheless, I accept the submission made on your behalf that I should approach this aspect of your offending with caution because it is unclear to what extent you were actively involved in drug dealing while you were in prison and to what extent you used those phones for that purpose.
- 17) In addition, your access to those phones, while in custody, enabled you to communicate with Choni Kenny and to seek and to receive the confidential information to which I have already referred.
- 18) The potential harm caused by the unlawful presence of mobile phones in prison was explained by Openshaw J in R v Saliuka [2014] EWCA Crim 1907, as follows:-

The unlawful possession of mobile phones is also much prized in prison since it gives unlimited and unmonitored access to others outside the prison, by which means harassment, intimidation and interference with the course of justice may be carried out and escapes and other criminal enterprises planned and in cases of modern i-Phones also unlimited access to the internet and communication by unmonitored emails giving rise to all manner of dangers.

- 19) It follows, therefore, that I must also keep in mind the potential use of those phones by others who had access to them and who you assisted by concealing their presence from the authorities.
- 20) On the 11.04.25, this case was listed for mention and you were required to attend court. You failed to do so, claiming that you were ill and that you would provide a sick note from your GP to confirm the position. You failed to provide any such evidence and so I issued a warrant for your arrest. It subsequently emerged that the police were looking for you in relation to other offences and that there was no reasonable excuse for your non-attendance.
- 21) On the 17.04.25, you were arrested for some of those other offences and remanded in custody. You have now admitted breaching your bail by failing to attend court on the 11.04.25 and so I must also sentence you for that offence.
- 22) On the 19.04.25, you appeared before the Magistrates' Court and were committed for sentence for two offences of threatening behaviour involving the fear or provocation of violence, one offence of racially aggravated threatening behaviour involving the fear or provocation of violence and one offence of possessing a bladed article in a public place.
- 23) In early December 2024, Andre Duncan was working as a waste operative, emptying bins in Purley Avenue where you were living following your release from custody. When the lorry temporarily blocked the road, you confronted Mr Duncan and threatened to knock him out. A similar incident occurred on the 04.02.25 but on that occasion, in addition to threatening Mr Duncan, you twice called him a "black nigger".
- 24) On the 17.04.25, you were arrested at a restaurant and found to be in possession of a lock knife.

Choni Kenny and Rahim Mottley

- 25) **Choni Kenny**, you told the author of the PSR that Rahim Mottley was your "best friend" at school and that you remained friends after you left school. You described your relationship from November 2022 as "physical" but "casual". You had previously given the same account when you were interviewed by the police.

- 26) On the 22.02.22, in your role as a response officer, you transported Romero Mottley, the brother of Rahim Mottley, into police custody following his arrest on suspicion of aggravated burglary. As part of the same police operation, Rahim Mottley and his father, Sefton Mottley, were also arrested and taken into custody. The following day, they were all released on bail with a requirement to return to the police station on the 23.03.22. That requirement was subsequently cancelled and they were instead released under investigation.
- 27) Following his arrest, your relationship with Rahim Mottley became a notifiable association and your failure to inform your employer of your friendship is reflected in count 5. Instead, on several occasions, between the 23.02.22 and the 23.03.22, you searched police systems against the name "Mottley" and accessed information relating to the investigation.
- 28) Thereafter, you maintained your association with Rahim Mottley, spending time with him and members of his family, including visiting them in Spain, and allowing his sisters to use your car. In addition, you repeatedly shared confidential information with not only Rahim Mottley but also with members of his family. A detailed account of your behaviour is set out in paragraphs 103-168 of the prosecution note of opening for sentence. The following are a few examples of occasions on which you accessed and/or disclosed confidential information.
- 29) On the 28.09.22, an intelligence report was created, recording that Rahim Mottley had been seen driving a VW Golf without insurance and that also in the car were Romero Mottley and Sefton Mottley. The car was seized pursuant to section 165A of the Road Traffic Act 1988. On the 10.11.22, you searched the police system against the names, "Mottley", "Sefton", "Rahim" and "Romero" and, in the months that followed, you supported Rahim Mottley in his attempts to persuade the police that he was covered by a Spanish insurance policy.
- 30) On the 20.02.23, you searched for and opened an incident log in relation to the search of a house in Sale which, two days earlier, was recorded as the location of a sexual assault, allegedly committed by Sefton Mottley.
- 31) On the 09.05.23, after collecting Rahim Mottley, Romero Mottley and Sefton Mottley from Manchester Airport, you discussed with them your work with Operation Challenger, a unit to which you had recently been transferred and which tackled organised crime groups in Manchester. In particular, you told them about an investigation into a drug line, including the address at which it was suspected that drugs were being stored. You also discussed an Encrochat pack that you had been given that day, revealing the Encrochat handle and the full name of the suspect. You also revealed that there were messages about guns and a plan to kill someone.

- 32) On the 10.05.23, you spoke to Rahim Mottley and one of his sisters about recent shootings at a takeaway restaurant and a private house. You discussed the identity of the victims, the offender and a person in Dubai, "giving the orders". You concluded by saying, "... that's all the intel that came in today".
- 33) On the 27.05.23 and again on the 21.06.23, you researched people suspected of involvement in an ongoing feud which included the commission of the aggravated burglary for which Rahim Mottley, Romero Mottley and Sefton Mottley had been arrested on the 22.02.22.
- 34) On the 13.06.23, you spoke on the telephone to Rahim Mottley and told him about a firearms warrant that was due to be executed later that week. As a direct result of the disclosure of that information, the police called off the execution of that warrant. Later in that conversation, you told Rahim Mottley that you were due to attend a course on handling informants and that, "I'm gonna find out who the local grasses are".
- 35) On the 20.06.23, you told Rahim Mottley about a firearms strike due to take place the following morning and, on the 21.06.23, you told him about your involvement in a different firearms strike. During that later conversation, you divulged various other pieces of police intelligence to Rahim Mottley which, due to their sensitivity, were not outlined in open court but which are explained in the prosecution note of opening for sentence and the Appendices attached to it. When, following your arrest, your phone was examined, the police found a photograph of an intelligence log about some males involved in drug supply in south Manchester. That photograph had been sent to Rahim Mottley together with a video of a cannabis farm.
- 36) The information and intelligence which you accessed and disclosed to Rahim Mottley is the basis of count 6.

The Prosecution case in relation to the information passed by Choni Kenny to Josh Whelan and Rahim Mottley

- 37) In paragraph 215 of the prosecution opening note for sentence it is suggested that:-
- a) the evidence supports the conclusion that you, **Choni Kenny**, were attracted to both Josh Whelan and Rahim Mottley and that you may even have been infatuated with Josh Whelan; and
 - b) you may well have been inclined to discuss your work activities with them, without necessarily being solicited by them for information.

- 38) Accordingly, it is made clear, in paragraph 216, that it is not suggested that either Josh Whelan or Rahim Mottley targeted you for the specific purpose of obtaining information or intelligence or that you sought or were rewarded for the information and intelligence that you provided to them.
- 39) Nevertheless, it is suggested, in paragraph 217, that both you, **Josh Whelan**, and you, **Rahim Mottley**, must have asked Choni Kenny for information and/or intelligence not only about the offences for which you had been arrested or were under investigation but also about other matters in which you were interested.
- 40) For some reason, which prosecution counsel has been unable to explain, you, **Josh Whelan**, have not been charged with conspiring with Choni Kenny to commit misconduct in a public office and so, other than reflecting the receipt of some of that information on a phone unlawfully possessed in prison, I shall leave out of account any suggestion that you encouraged her to access and to disclose confidential information.
- 41) In your case, **Rahim Mottley**, your plea of G to count 6 reflects a concession that you did, on the 21.06.23, actively seek the disclosure of a particular piece of confidential information that was of interest to you. However, I accept the possibility that there was other confidential information revealed by Choni Kenny as part of what has been described as her inclination to discuss, without prompting, what she was doing at work. Nevertheless, it is, in my judgement, highly likely that, realising how freely Choni Kenny was willing to talk, you encouraged her, explicitly or implicitly, to provide information about matters in which you were personally involved or which affected family members or friends and so, to that extent at least, you contributed to her corruption.

Guidelines & authorities

- 42) The maximum sentence for the offence of misconduct in a public office is imprisonment for life. Although there are no sentencing guidelines, in R v Bohannon [2010] EWCA Crim 2261, Leveson LJ identified a number of important principles relevant to sentencing such cases.

First, punishment and deterrence are always important elements in these cases: not only must police officers be deterred from misconduct, but also the public must see that condign punishment will be visited on police officers who betray the trust reposed in them and do not live up to the high standards of the police service. Secondly, an incentive (usually money but it need not be) inevitably increases the seriousness of the offence. Third, misconduct, which encourages or permits criminals to behave in the belief that they will be kept informed of areas to avoid in connection with their criminal activities, or of those who might be informing on the police also increases its gravity. ... Fourth, any misconduct that impacts on police operations moves the offence

into a different category of gravity.

- 43) In addition, I have been referred, by counsel for Choni Kenny, to the decision of the CACD in R v Arthurs [2013] EWCA Crim 2407.
- 44) I have considered with care counsel's analysis of both cases which includes a discussion of the similarities and differences between those cases and this case. However, every case is different and so I am required, in this case, to make an assessment of Choni Kenny's culpability and the harm caused by her offending.
- 45) Firstly, it is conceded that, viewed, as a whole Choni Kenny's offending is such as to require an immediate prison sentence.
- 46) Secondly, I accept that Choni Kenny was not motivated by any financial or other incentive. I agree with the author of the PSR that it is likely that, in part at least, she committed these offences in a misguided attempt to create stronger bonds with Josh Whelan and Rahim Mottley.
- 47) Thirdly, although there is no evidence that the confidential information passed either to Josh Whelan or to Rahim Mottley created any immediate benefit in that it allowed them to avoid detection or prosecution, there is inevitably some benefit in learning what the police know about a suspect and how they propose to pursue their investigation. In addition, in the case of Josh Whelan, there was a direct benefit in the provision of funds to support his continued unlawful use of mobile phones in prison. More generally, the casual disclosure of confidential information about local criminals carries with it the risk that those criminals will discover that information and use it to their advantage.
- 48) Finally, with the exception of one aborted firearms warrant, there is no suggestion that Choni Kenny's activities had an adverse impact on any police operation.
- 49) Section 59(1)(a) of the Sentencing Act 2020 requires me to follow any sentencing guideline which is relevant an offender's case unless I am satisfied that it would be contrary to the interests of justice to do so.
- 50) In so far as Choni Kenny assisted Josh Whelan to run or to supervise his drug line while he was in prison, it could be argued that she participated in the commission of an offence covered by the guideline in relation to the supply of Class A drugs. Given the nature and extent of her involvement, I am satisfied that it would be appropriate to treat her involvement as playing a lesser role in a category 3 offence. For such an offence, the guideline suggests a SP of 3 years' imprisonment and a category range of 2-4½ years' imprisonment.

- 51) Although I shall not use that guideline to determine my sentence, it provides a useful touchstone against which to test whether it is just and proportionate.
- 52) Although Rahim Mottley is not a police officer, his offending is still serious because he contributed to the corruption of a police officer by encouraging her to access and to disclose confidential information and because he received information that was of potential use to himself, to members of his family and to other criminals.
- 53) The maximum sentence for the offences under the Prison Act 1952 admitted by Josh Whelan is 2 years' imprisonment. That is for a single offence. Here, there are three offences relating to three different prisons and a total of 20 phones. As I have already said, those offences are aggravated by the fact that some of those phones were used to receive confidential information and are likely to have been used to run or to supervise Josh Whelan's drug line.
- 54) Josh Whelan's failure to surrender to his bail on the 11.04.25 is a high culpability offence because it was, in my judgement, a deliberate attempt to delay or to evade justice. However, that attempt failed and so there was no substantial delay or interference with the administration of justice. For that reason, it is a category 3A offence with a SP of 14 days' imprisonment and a category range of a LLCO to 6 weeks' imprisonment.
- 55) It is common ground that the offences of threatening behaviour involving the fear or provocation of violence fall into category 2B with a SP of a LLCO and a category range of a discharge to a MLCO. There must, however, be an uplift to reflect the racial element of the aggravated offence. In my judgement, there was a medium level of aggravation, requiring a significantly more onerous penalty of the same type or a more severe type of sentence than for the basic offence. It is a further aggravating feature of those offences that they were committed against a public servant.
- 56) The offence of possessing a bladed article in a public place is a category 2A offence, attracting a SP of 6 months' imprisonment and a category range of 3-18 months' imprisonment.
- 57) It is further aggravating feature of all the recent offences that they were committed while Josh Whelan was on bail for the earlier offences.

Approach to sentence

- 58) In relation to Choni Kenny and Josh Whelan, I must keep in mind the principle of totality so as to ensure that my final sentence is just and proportionate to their overall offending.

59) In the case of Choni Kenny, I shall determine the sentence necessary to reflect the totality of her offending across all of the counts to which she has pleaded G. I shall then impose that sentence concurrently on counts 2, 3 & 6. That means that the individual sentences will be longer than they would have been for any of those counts standing alone. I shall then impose shorter, concurrent sentences for the less serious offences in counts 1 & 5.

60) In the case of Josh Whelan, I must determine the total sentence necessary to mark his unlawful possession of 20 mobile phones in three different prisons. The offences of failing to surrender to bail, threatening behaviour involving the fear or provocation of violence and possessing a blade in a public place all justify consecutive sentences but may require some adjustment to give effect to the principle of totality.

Choni Kenny

61) **Choni Kenny**, you were born on the 21.07.97 and so you are now 27 years of age. You have no other criminal convictions and so you are a woman of previous good character.

62) In addition to the PSR prepared by Philip Wildman, I have read your letter to me and the references written by your parents, your sister, PS Mark Ibbott, who was your supervisor for most of the time that you were a police officer, and Danielle Campsall, the CAO of The Message Trust and the Leader of the Message Community Church. It is clear from those documents that you have the potential, on your release from prison, to make a positive contribution to society and, to some extent, to repair the damage that you have done by committing these offences.

63) I accept that you regret what you have done and that you are sincere in your wish to apologise to GMP and I recognise also that your involvement in these proceedings has taken its toll on your mental health.

64) It is to your credit that you have taken positive steps to deal with some of the issues that contributed to the commission of these offences. You have sought counselling for your mental health issues, you have reconnected with your church and you are now involved in youth programmes in the community.

65) Notwithstanding your extensive admissions in interview, you pleaded NG to all the counts on the indictment prepared for the PTPH held on the 28.06.24 and so a trial was fixed for the 22.04.25 with an estimate of three weeks. Although the indictment at the PTPH was drafted differently to the indictment subsequently prepared for trial, it contained essentially the same allegations to which, in due course, you pleaded G.

66) At a PTR held on the 28.01.25, i.e. seven months after the PTPH and 3 months before the trial, you pleaded G to the counts for which you must now be sentenced. In those circumstances, I shall reduce by one-sixth the sentence that would have been appropriate if you had been convicted after a trial.

Rahim Mottley

67) **Rahim Mottley**, you were born on the 02.04.97 and so you are now 28 years of age. You have two old convictions, from 2015, for driving offences and for producing cannabis. I shall not treat those convictions as an aggravating feature of your offending but they do deprive you of the benefit of a good character.

68) Although you are a similar age to Choni Kenny, you do not share her naivety. It is clear from all the evidence in this case that you associate with or have an interest in people involved in criminality and that, albeit subtly, you encouraged Choni Kenny to disclose information about them.

69) I accept that, notwithstanding the dates in the indictment, your involvement in count 6 runs from your arrest on the 22.02.22. I accept also that your specific request for information on the 21.06.23 was never taken further by Choni Kenny because she was arrested later that day.

70) Although it is conceded that your offending is so serious that it must be met with an immediate prison sentence, I recognise that this will be your first such sentence. In that regard, I have not been asked to obtain a PSR and I do not consider that it is necessary to do so.

71) You were extradited from Spain and appeared in the Magistrates' Court on the 25.10.24 when you were sent to this court for a PTPH on the 29.11.24. The BCM form records that you denied being involved in a conspiracy to commit misconduct in a public office and at the PTPH you entered a NG plea to the indictment. Like Choni Kenny, you changed your plea to G at the PTR on the 28.01.25.

72) By the time of the PTPH, your legal team had access to a case summary and to transcripts of the recorded conversations. Although you had not had the opportunity to listen to those recordings, you were sufficiently aware of the nature of the allegation to have entered a GP at that stage had you wished to do so. In those circumstances, I agree with prosecution counsel that I should reduce by 20% the sentence that would otherwise be appropriate after a trial.

Josh Whelan

- 73) **Josh Whelan**, I have not, in your case, been asked to obtain a PSR and I do not consider that it is necessary to do so.
- 74) You were born on the 09.01.94 and so you are now 31 years of age. You have seven convictions for 31 offences, including offences of dishonesty and violence for which you have served significant prison sentences. You are neither naïve nor immature. You are a committed criminal and so, in your case, I regard your previous convictions as an aggravating feature of the offences for which I must sentence you.
- 75) As is clear from the recordings outlined by prosecution counsel, you were recalled to serve the entirety of the sentence imposed on the 13.01.22, resulting in your release in August 2024. Thereafter, you were on bail in relation to these proceedings. You were, therefore, on bail when you committed the offences for which you have recently been committed for sentence. That is, of course, an aggravating feature of those offences.
- 76) While you were on bail, you were settled in the community, working and seeing your children. You threw that all away by what you have described as an “ill-advised” outburst directed towards Mr Duncan and by your decision to carry a lock knife in a public place.
- 77) You have pleaded G or indicated a plea of G to each of these offences at the earliest opportunity and so you are entitled to a reduction of one-third in the sentence that would otherwise be appropriate.

Sentence

- 78) In each of your cases, I impose the statutory surcharge in whatever is the appropriate amount and I make a collection order.
- 79) You will each serve up to half of the sentence that I am about to impose, less any time that you have served on remand in relation to these offences. In your case, Rahim Mottley, I specify, for the purposes of section 327 of the Sentencing Act 2020, that you were kept in custody for 66 days while awaiting extradition.
- 80) Thereafter, you will be released on licence and your licence will be subject to conditions. If you breach any of those conditions, you will become liable to be recalled to serve some or all of what remains of your sentence.

- 81) **Choni Kenny**, when you joined GMP you were left in no doubt about the need to inform your employer of any notifiable associations and about the need to protect the confidentiality of the information to which you were given access. You were also warned about the risks of exploitation by criminals who might befriend you and seek to persuade you to reveal that information. However, for a combination of reasons, you ignored that advice and, as a result, you have let down not only GMP and the community that it serves but also yourself, your family and your friends.
- 82) I am satisfied that your actions were not motivated by a desire for financial or other advantage or borne out of any malice towards GMP. Rather, they were a consequence of naivety, immaturity and a wish to maintain the friendship of Josh Whelan and Rahim Mottley.
- 83) I have no doubt that Josh Whelan and Rahim Mottley took advantage of your willingness to talk freely about your work and exploited it to obtain information that would be of benefit or interest to themselves and to their criminal associates.
- 84) Nevertheless, you must have known that what you were doing was wrong and you must have realised the risks to those about whom you were speaking and to the integrity of GMP. That is why punishment and deterrence must be the primary considerations in sentencing for offences of misconduct in a public office.
- 85) Looking at your offending as a whole and taking into account the aggravating and mitigating factors that I have identified, I have reached the conclusion that the appropriate overall sentence after a trial would be 4½ years' imprisonment. Reducing that by one-sixth produces a final sentence of 45 months' imprisonment which will be imposed as follows:-
- a) on counts 2, 3 & 6, there will be concurrent sentences of 45 months' imprisonment; and
 - b) on counts 1 & 5, there will concurrent sentences of 10 months' imprisonment.
- 86) **Rahim Mottley**, you were not a serving police officer and so the need for punishment and deterrence is not as acute in your case. Nevertheless, in the ways that I have described, you contributed to the corruption and subsequent downfall of Choni Kenny. I accept that you were friends but you took advantage of that friendship to obtain confidential information that was of interest to you, your family and your criminal associates.
- 87) I recognise that you have no connection and played no part in the disclosure of confidential information to Josh Whelan. In addition, I recognise that, with the exception of one cancelled firearms warrant, the disclosure of information to you did not disrupt police operations.

- 88) Taking into account the aggravating and mitigating features of your case, I have concluded that the appropriate sentence after a trial would be 3 years' imprisonment. Reducing that by 20% produces a final sentence, on count 6, of 28 months' imprisonment.
- 89) **Josh Whelan**, although you were, in my view, fortunate not to have been charged with conspiracy to commit misconduct in a public office, I must only sentence you for the offences with which you were charged and to which you have pleaded G.
- 90) For the reasons explained by Openshaw J in R v Saliuka, the unlawful possession of a mobile phone in prison is a serious offence. In this case, you have pleaded G to three separate offences reflecting your possession of a total of 20 phones in three different prisons between the 16.11.21 and the 22.06.23.
- 91) In my judgement, the totality of that aspect of your offending would, after a trial, justify a sentence in excess of the maximum sentence of 2 years' imprisonment available for a single offence. That sentence will, of course, be reduced by one-third to reflect your pleas of G.
- 92) Although the SP for the offence of threatening behaviour involving the fear or provocation of violence is a LLCO, I am satisfied that the racially aggravated offence requires the imposition of a short custodial sentence.
- 93) In principle, most of the offences to which you have pleaded G justify the imposition of consecutive sentences. However, in order to ensure that the final sentence is just and proportionate to your overall offending, I shall order that some of those sentences should be served concurrently.
- 94) The following sentences all reflect the aggravating and mitigating factors that I have identified, the principle of totality and a reduction of one-third to reflect your pleas of G.
- 95) For each of the offences of possessing a specified item inside a prison there will be a concurrent sentence of 2 years' imprisonment.
- 96) For failing to surrender to your bail, there will be a concurrent sentence of 14 days' imprisonment.
- 97) For the offence of racially aggravated threatening behaviour involving the fear or provocation of violence, there will be a consecutive sentence of 2 months' imprisonment.
- 98) For each of the offences of threatening behaviour involving the fear or provocation of violence, there will be NSP.

- 99) In relation to those offences, I make a Restraining Order in the terms discussed. That Order will last for 3 years. If you breach the terms of that Order, then you will commit a further offence punishable with imprisonment.
- 100) For the offence of possessing a bladed article in a public place, there will be a consecutive sentence of 6 months' imprisonment.
- 101) As requested, I order the forfeiture and destruction of the lock knife.
- 102) The total sentence in your case is, therefore, 2 years 8 months' imprisonment.

HHJ Flewitt KC

23.04.25