Couzens and Carrick – Whole Life Orders for Police Officers after R v Couzens [2022] EWCA Crim 1063

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ABSTRACT

Examining two recent cases of police officers committing serious crimes, including the abduction and murder of Sarah Everard, this article scrutinises the application of Whole Life Orders (WLOs) in such instances. Analysing the Couzens and Carrick cases, it assesses judicial interpretations of WLO eligibility and the impact of legal precedents. Proposing legislative reforms, the article advocates for clearer criteria considering misuse of office as a decisive factor, emphasising the need for balanced sentencing that upholds justice and public trust while ensuring the judicious use of WLOs as a last resort.

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INTRODUCTION

In January 2023, Commissioner of the Metropolitan Police, Sir Mark Rowley, told the public to expect two to three Met officers to face criminal trials each week, including for ‘violence against women and girls offences’.¹ The level of criminality within British police forces is so high that Andy Cooke, His Majesty’s Chief Inspector of the Constabulary, noted that crimes by serving officers is a large part of the reason that police forces in England and Wales are facing ‘one of their biggest crises in living memory’.²

This article aims to explore two of these cases, both involving crimes that carry life sentences, to determine how the courts have treated the misuse of the office of police constable in determining whether or not to make a whole life order (‘WLO’). This article makes the argument that when misuse of office is critical to the facilitation of a serious crime, WLOs should be more readily used than at present.

This article will begin by briefly explaining WLOs, their history, and when they are made. There are then summaries of the two cases this article explores: Firstly, Couzens,³ including the first instance sentencing remarks and the appeal, and secondly, Carrick,⁴ though only the first instance sentencing remarks exist for the case of Carrick, there having been no appeal. This article then enters into a discussion of the two cases, looking to unpack the reasoning of the Couzens appeal, and the impact of Couzens’ appeal on Carrick. This leads to a discussion of why Carrick did not receive a WLO, before concluding with some suggestions of how sentencing law may be reformed to better reflect the wrong in these cases.

³ R v Couzens [2021] (Sentencing Remarks).
⁴ R v Carrick [2023] (Sentencing Remarks).
WHOLE LIFE ORDERS

In 1983, upon the abolition of the death penalty in the UK, a new regime of life sentences was introduced.5 Some offences, such as rape, carry a discretionary life sentence;6 others, most notably murder, carry a mandatory life sentence.7 When a judge passes a life sentence, whether discretionary or mandatory, they must set a tariff, or minimum term — the minimum amount of time a person must spend in prison before they can apply for parole.8 It is worth noting that a person on a life sentence is not guaranteed release at the end of their tariff, and even if they are released, they are liable to supervision and recall to prison for the rest of their life.9

In cases where the harm is exceptionally high, in place of a tariff a judge may impose a WLO,10 meaning they can never be released, except in exceptional cases of compassionate release.11 WLOs are truly rare, with only 65 people currently serving WLOs in the UK.12

The framework for the mandatory life sentence for murder is found in Schedule 21 of the Sentencing Act 2020 (‘the Schedule’). This Schedule outlines the law on determining a minimum term for mandatory life sentences. Subparagraph 1 of the Schedule makes clear that WLOs should only be considered if 1) the seriousness of the offence is ‘exceptionally high’13 and 2) the

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7 ibid.
8 ibid.
9 ibid.
10 Prior to 2002 it was the job of the Home Secretary to make such an order, not a judge. This changed following the 2002 ECHR decision in R (Anderson) v Secretary of State for the Home Department [2002] UKHL 46; [2002] 4 All ER 1089.
11 Hutchinson v UK App no 57592/08 (ECtHR, 17 January 2017).
12 Sentencing Council (n 6).
13 Sentencing Act 2020, sch 21, para 2, subpara (1)(a).
offender was aged 21 or over at the time of the offence. Subparagraph 2 goes on to provide cases that would normally be considered ‘exceptionally high’. These are the murder of two or more persons where each murder involves either a substantial degree of premeditation, or abduction, or sexual, or sadistic conduct; the sadistic or sexual murder of a child; the murder of a police or prison officer in the course of their duty; a murder for a political, religious, racial, or ideological cause; and a murder by a previously convicted murderer.

**COUZENS**

It is worth reciting the relevant facts of Couzens’ offence relied on during sentencing.

On the 3rd March 2021, Couzens, a 49 year-old serving police officer, abducted Sarah Everard, a stranger to Couzens, who was walking home. Couzens had hired a car earlier that day, believing a new hire car to be more believable as an unmarked police car than his own. In addition, his preparation suggested significant premeditation. He had also brought his police issued handcuffs. He stopped Ms Everard and showed her

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14 Sentencing Act 2020, sch 21, para 2, subpara (1)(b) — though this criteria has been amended by s 126 of the Police, Crime, Sentencing and Courts Act 2022, to allow for anyone from the age of 18 to be considered for a WLO so long as the seriousness of the offence is considered ‘exceptionally high even by the standard of offences which would normally result in a WLO’.

15 Sentencing Act 2020, sch 21, para 2, subpara (2).

16 Sentencing Act 2020, sch 21, para 2, subpara (2)(a).

17 Sentencing Act 2020, sch 21, para 2, subpara (2)(b) — in 2022, para 2, subpara (b) also introduced the premeditated murder of a child where the premeditation was ‘substantial’.

18 Sentencing Act 2020, sch 21, para 2, subpara (2)(c).

19 Sentencing Act 2020, sch 21, para 2, subpara (2)(d).

20 Sentencing Act 2020, sch 21, para 2, subpara (2)(e).

21 Fulford LJ, 'Wayne Couzens Sentencing Remarks' (September 2021) [2]


22 Fulford LJ (n 21) [13].

23 Fulford LJ (n 21) [4].

24 Fulford LJ (n 21) [5].
his warrant card, before falsely arresting her. This false arrest included putting her in handcuffs and placing her in the back of his car. Couzens would go on to repeatedly rape and strangle her. He then burned her body before throwing it in a nearby pond. Throughout the police investigation, Couzens denied the offence and lied to cover up his actions. Despite these initial denials, he pleaded guilty at his first court appearance.

‘The starting point’ is the legal term used to mean the sentence a judge begins with before the application of aggravating and/or mitigating factors. In Couzens’ case, the starting point was agreed by both the defence and prosecution to be in excess of 30 years, however the defence did not concede that this case warranted a WLO. Notably, it does not fall under any of the examples listed in the Schedule — whilst the offence was premeditated, involved abduction, and involved sadistic and sexual conduct, these criteria are only applicable in cases of two or more victims. When these factors are present but with only one victim, the starting point is 30 years. Notwithstanding, the judge emphasised that subparagraph 2 gives examples of ‘cases that would normally fall’, leaving room for other cases.

The judge in the first instance also appears to accept that his decision will set a precedent (though only a persuasive one, as it is a Crown Court case), acknowledging that a judge should only pass a whole life order in a type of case not listed in Schedule 21 if they are ‘confronted with a new category of exceptionally serious case’. The judge poses the question of whether this is a

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25 Fulford LJ (n 21) [4].
26 Fulford LJ (n 21) [13].
27 Fulford LJ (n 21) [5].
28 ibid.
29 Fulford LJ (n 21) [7].
30 Fulford LJ (n 21) [13].
31 ibid.
32 Fulford LJ (n 21) [11].
33 Sentencing Act 2020, sch 21, para 2, subpara (2)(a).
34 Sentencing Act 2020, sch 21, para 2, subpara (2)(c).
35 Fulford LJ (n 21) [16].
36 Fulford LJ (n 21) [18].
new kind of case as follows: ‘On principle, where a police officer uses their office to kidnap, rape, and murder should it be considered of exceptionally high seriousness, equivalent to the examples laid out in Schedule 21?’

The judge observed that police officers have power of coercion and control of an exceptional category, and the authority of the police at-large is significantly dependent on the public’s consent (and said that such consent is essential to British democratic values). The legal analysis performed by the judge is to then equate the jeopardisation of the public’s trust in the police caused by Couzens’ offence to a murder carried out for the purposes of advancing a political, religious, racial, or ideological cause — a type of offence that is covered by Schedule 21. The judge held that both Couzens’ act and a murder carried out to advance a cause of the type listed above both seek to undermine the ‘fundamental underpinnings of our democratic way of life’, rendering them equivalent. The judge also, in consideration of the aggravating factors (premeditation, sexual conduct, abduction, and destruction of the body), dismissed any credit for the early guilty plea. As such, Couzens was given a WLO.

Couzens appealed the WLO. Whilst the CA dismissed the appeal, they upheld the WLO on a different reasoning. Whilst the first instance judge discussed that a case where a police officer abducts, rapes, and kidnaps should be considered a ‘new category’, the CA prefer a focus on the individual facts of the case, and justification under those specific facts, rather than the creation of a new category. The CA opted to treat Couzens’ position as a police officer as a unique and ‘extreme’ aggravating feature. Thus, the sentencing exercise should, in the CA’s view, begin by holding the lower band of a 30 year tariff as a starting point. Indeed, the facts of this case fit squarely in the 30-year starting point category — namely a single sexual or sadistic murder. It is from this starting point that the

37 Fulford LJ (n 21) [19].
38 ibid.
39 Fulford LJ (n 21) [19].
40 ibid.
41 Fulford LJ (n 21) [21].
42 Fulford LJ (n 21) [24].
43 R v Couzens [2022] EWCA Crim 1063 [78].
44 Couzens (n 43) [82].
45 Couzens (n 43) [83].
application of the aggravating features, most chiefly his misuse of his role as a police officer, the judge should increase the sentence to a WLO.\footnote{Sentencing Act 2020, sch 21, para 3, subpara (2)(e).}

The mechanics adopted by the CA to arrive at the WLO have interesting implications for the interpretation of Schedule 21. Although case law is clear the list is indicative, and not exhaustive, it would appear the courts will not actually allow for a ‘new category’. Rather, they view the list as indicative in that it does not list all situations in which a WLO may be given, but is exhaustive of the categories that will automatically render a WLO as the starting point.

CARRICK

The discussion of the case of Carrick is limited somewhat as he did not appeal his sentence and the Attorney General declined to make a referral on the basis of the sentence being unduly lenient.\footnote{Attorney General’s Office and Michael Tomlinson, 'Statement from the Solicitor General on the case of David Carrick' (3 March 2023) <https://www.gov.uk/government/news/statement-from-the-solicitor-general-on-the-case-of-david-carrick> accessed 30 August 2023.} This discussion will therefore rely on the first instance sentencing remarks.

Carrick was, like Couzens, a serving police officer.\footnote{Justice Cheema-Grubb DBE, 'Rex v David Carrick Sentencing Remarks' (February 2023) [1] <https://www.judiciary.uk/wp-content/uploads/2023/02/R-v-David-Carrick-sentencing-070223.pdf> accessed 30 August 2023.} However, unlike Couzens, he did not commit a single offence. Instead he committed 49 offences, consisting of 71 instances of sexual violence against 12 victims.\footnote{ibid.} This offending took place over the course of 17 years.\footnote{ibid.}

Carrick, just one year into becoming a police officer, began a pattern of meeting women, reassuring them of their safety by telling them he was a police officer, and then, on the basis of this reassurance, inviting them back to his apartment where he
would brutally rape them, often with threats of force.\textsuperscript{51} Victims, including two fellow police officers,\textsuperscript{52} felt unsafe to come forward, citing that no one would believe them that a police officer had raped them.\textsuperscript{53} Carrick was made a firearms officer and around this time he began entering into relationships in which he would be physically, verbally, and sexually abusive.\textsuperscript{54} His victims were locked naked in a small cupboard\textsuperscript{55} and suffered starvation\textsuperscript{56} and bullying.\textsuperscript{57} In one relationship, the 10 year old daughter of Carrick’s victim witnessed some of the abuse of her mother.\textsuperscript{58} As Carrick continued to abuse women, he began to threaten them with his job title; in a 2017-2019 relationship, he sent photos of him standing with his Met-issued firearm, with a message reading ‘remember I am the boss’.\textsuperscript{59} Carrick would also use his police baton and police issued handcuffs to abuse and restrain.\textsuperscript{60}

Before beginning to fully analyse the case of Carrick, it should be restated that Schedule 21 only applies to mandatory life sentences, not to discretionary ones, which are only governed by the Sentencing Council Guidelines,\textsuperscript{61} and therefore does not apply in Carrick’s case. Nonetheless, it has some influence over discretionary sentences.\textsuperscript{62}

The judge introduced the possibility of Carrick receiving a WLO with explicit reference to the idea that any such order would be made given his ‘abuse

\textsuperscript{51} Justice Cheema-Grubb DBE (n 48) [4].
\textsuperscript{52} Justice Cheema-Grubb DBE (n 48) [5].
\textsuperscript{53} Justice Cheema-Grubb DBE (n 48) [8].
\textsuperscript{54} Justice Cheema-Grubb DBE (n 48) [7], [13]-[14].
\textsuperscript{55} Justice Cheema-Grubb DBE (n 48) [14].
\textsuperscript{56} Justice Cheema-Grubb DBE (n 48) [13].
\textsuperscript{57} ibid; Though examples of this behaviour can be found throughout, not just in para 13.
\textsuperscript{58} Justice Cheema-Grubb DBE (n 48) [13].
\textsuperscript{59} Justice Cheema-Grubb DBE (n 48) [14].
\textsuperscript{60} ibid.
\textsuperscript{61} Sentencing Council (n 6).
\textsuperscript{62} Attorney General’s Reference (Nos 688 of 2019 and 5 of 2020) (McCann and Sinaga) [2020] EWCA Crim 1676.
The case of McCann set out when a court may attach a WLO to a discretionary sentence, holding that such an order may only be made when there are ‘wholly exceptional circumstances’. The court imagined such circumstances to be cases of attempted, or conspiracy to commit, murder where the plan was near completion and, if the plan had succeeded, the resulting offence would have met the criteria for a WLO. The judge noted that the court in McCann had not considered a case such as that of Carrick’s, yet concluded the analysis by noting that the prosecution did not seek to have Carrick’s offending categorised as ‘wholly exceptional circumstances’.68

The judge also considered Couzens and noted the common feature of the misuse of office, and the position of police officers within society. As a result, the judge questioned whether the court in McCann may have, if they had considered these circumstances, equated it to a foiled terrorist attack, but concluded that upon consideration that this case is not ‘wholly exceptional’. Hence, no WLO was imposed on Carrick.

It is not relevant to this article, which focuses on WLOs, to recap the entire sentencing exercise with respect to Carrick, thus this summary will focus on the judge’s analysis with respect to making a WLO. However, it is relevant to note that Carrick’s final sentence was one of 36 life sentences with a minimum term of 30 years and 239 days (including time spent on remand).

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63 Justice Cheema-Grubb DBE (n 48) [32].
64 McCann and Sinaga (n 62).
65 McCann and Sinaga (n 62) [89].
66 ibid.
67 Justice Cheema-Grubb DBE (n 48) [32].
68 ibid; It is unclear why the prosecution made this decision. A Freedom of Information request was made to seek information on why the Attorney General did not refer this case under the Unduly Lenient Scheme but was refused on the basis of legal privilege. It would be suggested by the author that the current state of the law under McCann would make any attempt to secure a WLO fruitless and this is why one was not sought.
69 Justice Cheema-Grubb DBE (n 48) [33].
70 Justice Cheema-Grubb DBE (n 48) [3].
71 Justice Cheema-Grubb DBE (n 48) [35].
72 Justice Cheema-Grubb DBE (n 48) [40]-[42].
73 ibid.


**DISCUSSION**

Is it fair that Couzens received a WLO where Carrick did not? *Couzens* and *Carrick* are similar cases in many respects. They both involve off-duty police officers who misused their office to commit violent crime(s) against women, and were ultimately convicted of offences that carry life sentences. Of course, Carrick did not commit murder, but he did have 12 victims who suffered immense sexual violence and degradation at his hands. Is it necessary to reform the law to ensure all police officers who misuse their office to commit the most serious offences receive WLOs? To address these questions, this section will first look at the effect of Couzens’ case, including its impact on Carrick’s case, intending to conclude with a summary of the law’s current position. Then, on the basis of this conclusion, this section will suggest a potential direction for future reform.

To fully understand the position of the law post-*Couzens*, it is perhaps most useful to look at the impact of the appeal when compared to the first instance decision. The CA seems to take particular issue with the wording of ‘new category’ used by the first instance judge. It is clear that the first instance judge regards Couzens’ misuse of office not as an aggravating feature (demonstrated by the fact that he lists ‘the aggravating features’ separately from his discussion of his misuse of office) but as the defining feature of the ‘new category’ he proposes. The wording of ‘new category’ does imply a new fixed set of circumstances that warrants a WLO, where the CA’s approach facilitates a range of circumstances where the principal aggravating factor is misuse of the position of police officer. It is difficult to say at this stage what the impact of this approach will be: On one view, the change by the CA, in contrast to WLO jurisprudence, appears to have widened the scope of WLOs rather than narrowing them, not expecting offending to fit in a fixed ‘new category’ to qualify for a WLO. This would be somewhat incongruent with current case law, with the CA repeatedly asserting the extent to which WLOs should be a last resort. Alternatively, it could be considered that this approach forces courts to justify their approach more closely, they cannot ‘jump into’ a different starting point on the basis of a bespoke ‘new category’. Rather, they must act within existing guidance and justify,

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74 Fulford LJ (n 21) [14]-[15].
75 McCann and Sinaga (n 62) [85].
through specific aggravating and mitigating factors, how they arrive at the final sentence. It is too early to tell the effect of this judgement.

Notwithstanding, both approaches appear to rely on a 30-year starting point, given that the 30-year starting point is the band below a WLO. The CA makes clear that they begin their sentencing exercise at 30 years, and it is to this 30-year sentence that the aggravating features that justify a WLO are applied.\(^\text{76}\) Would the CA have been able to justify upholding a WLO without a 30-year starting point? This is where the analysis of the first instance judge once again becomes relevant. The CA never contradicts the first instance judge’s approach to equate Couzens’ actions to those of a murderer who commits their offence to further an ideological cause. In fact, they embrace the judge’s analysis of the particularly unique position of police officers, both in terms of how society views them and their powers. It is also noteworthy that the CA’s main objection to the ‘new category’ approach appears to be on the grounds that a ‘new category’ should be the job of Parliament.\(^\text{77}\) On these grounds is the implication of the CA that such an ‘extreme’ aggravating factor, as they put it, would be enough to lift even an offence with a lower starting point to a WLO?

This seems unlikely. The reasoning of Couzens’ offending being equivalent to an ideological murder, and therefore equivalent to an offence in the WLO criteria, relies on the extent to which Couzens’ undermined ‘fundamental democratic values’. Would a murder that lacked the features that entail a 30-year starting point (sadistic or sexual conduct) damage fundamental democratic values to the same extent? It would surely still damage these values and decrease trust in the police, but perhaps to a lesser extent. As such, would its power as an aggravating factor be reduced proportionally? This approach appears to find support in \textit{Carrick}.

The aforementioned case of \textit{McCann} used in the analysis of a WLO for Carrick was a conjoined appeal and included some of the UK’s worst sex offenders. The titular McCann abducted and held captive 10 victims, and attempted to abduct another.\(^\text{78}\) Seven of the victims, including two children, were

\(^{76}\) \textit{Couzens} (n 43) [84].

\(^{77}\) \textit{Couzens} (n 43) [82].

\(^{78}\) \textit{McCann and Sinaga} (n 62) [2]-[3].
seriously sexually assaulted.\textsuperscript{79} Sinaga, whose crimes did not involve children and therefore are more relevant to Carrick, was convicted of 136 counts of rape against 44 victims, and further offences of assault by penetration and sexual assault.\textsuperscript{80} Both, after an appeal under the unduly lenient sentence scheme, received life sentences with 40 year tariffs.\textsuperscript{81} Carrick, prior to deductions made for his guilty plea and a $\frac{1}{3}$ reduction made on the basis that his sentence was one of life and the determinate sentence was merely a tariff, would have received almost 40 years.\textsuperscript{82} But this sentence was arrived at on the basis that the key aggravating factor was his misuse of office.\textsuperscript{83}

If misuse of office to commit a serious violent offence alone, not the impact of it, was enough to warrant a WLO then Carrick surely would have received one. Instead, here, the implication of the judge not following in the footsteps of \textit{Couzens} to make a WLO is that misuse of office alone is not enough of an ‘extreme’ aggravating factor to make the jump to a WLO from any starting point. Under this view, for all its awfulness, Carrick’s offending does not have the same impact as a murder, and therefore the weight attributed to his misuse of office as an aggravating factor is reduced to account for its reduced damage to democratic values. The wrong in \textit{Carrick} and \textit{Couzens} cannot be misuse of office of a police officer alone, it must be coupled with serious enough offending, sans any misuse of office. If the offending in Carrick, aggravated by his misuse of office, was not serious enough to warrant escalation to a WLO, then is there any offending short of murder that could see a WLO where a serving police officer misuses their office?

This is where two other features of \textit{Carrick} become relevant, and perhaps indicate different reasons for why Carrick may have not received a WLO. Firstly, as mentioned, \textit{McCann} created a test of ‘wholly exceptional circumstances’ for discretionary life sentences to carry a WLO. Given the examples in \textit{McCann}, which, as noted, all relate to mass-casualty near-misses,\textsuperscript{84} it is perhaps no surprise the judge did not see it as appropriate to fit Carrick into this category. However,

\textsuperscript{79} ibid.
\textsuperscript{80} \textit{McCann and Sinaga} (n 62) [21]-[26].
\textsuperscript{81} \textit{McCann and Sinaga} (n 62) [1].
\textsuperscript{82} Justice Cheema-Grubb DBE (n 48) [38].
\textsuperscript{83} Justice Cheema-Grubb DBE (n 48) [37].
\textsuperscript{84} \textit{McCann and Sinaga} (n 62) [89].
the judge does also acknowledge that McCann never invited a scenario such as the one presented in Carrick.\(^5\) If McCann had not given examples at all, the judge in Carrick may have felt more empowered to consider the case as ‘wholly exceptional circumstances’. Secondly, and aggravating this first feature, is that the prosecution did not seek a WLO.\(^6\) Because of either, or both, features the judge clearly did not feel empowered to make a WLO in this case. But the judge’s view that WLOs for sexual offences have been so constrained by McCann does not seem supported by case law.

In a notable exception, John Wass received a WLO for a non-homicidal offence, and is in fact the only recipient of a WLO for such an offence. John Wass was convicted in 2017 of 17 counts of historical child sexual abuse against 3 victims.\(^7\) Whilst this offending is no doubt abhorrent it stands, especially against the backdrop of McCann and Sinaga (detailed above, the latter of which involved significant child sexual abuse), it is a seemingly low bar for a WLO. Unfortunately, there are no appeals, court reports, sentencing remarks, or even national news reporting available to shed more light on the reasoning of this case. However, it would appear this case is an outlier. The conclusion then should perhaps be that, under the current law, WLOs for offences other than murder, including attempted murder and conspiracy to commit murder, are academic.\(^8\)

THE LAW’S PRESENT AND FUTURE

So, what is the current position of the law? It is difficult to conclude that the courts have recognised any link between misuse of office and a WLO. The courts have certainly recognized misuse of office as an ‘extreme’ aggravating feature, and have appropriately considered the unique position of police officers. But if the courts recognised the central wrong as misuse of office, would Carrick

\(^5\) Justice Cheema-Grubb DBE (n 48) [32].
\(^6\) ibid.
\(^8\) Martin Naylor, the journalist who authored the only report on this case, was contacted for more information by the author, however the case is under strict reporting restrictions and the journalist’s information came only from a police press release.
have surely received a WLO? *McCann* presents particular difficulties in conducting this analysis. It is hugely constraining, and perhaps for good reason. WLOs should be truly exceptional, but particularly the examples in *McCann* have been given significant weight, which has limited the scope for even discussion of WLOs, especially in cases of extreme sexual offending.

This article suggests that the Supreme Court must review *McCann*. This article focuses on police officers and WLOs, but *McCann* appears to render WLOs academic for any sexual offences, regardless of misuse of office. The key here are the examples given by *McCann* which must be recognised as obiter, not ratio, to enable judges to exercise their ability to construct ‘wholly exceptional circumstances’ based on the facts in front of them, rather than with reference to the constraints of *McCann*. *McCann* should still be good law, there is no issue with making WLOs in cases of discretionary life sentences truly exceptional, it just appears that the present formulation of the examples is unnecessarily constraining.

But this article goes further and argues that Parliament must recognise that misuse of office should more easily result in a WLO, and thus must revisit the wording of the Schedule. The case law is clear that WLOs are a last resort, but the case law is also clear that being a police officer carries unique powers and a unique place in public life. Trust in the police, especially by vulnerable groups, is essential. It is, as it is framed in *Couzens*, a fundamental democratic value. British policing, unlike almost any other variety of policing, is built on the original Peelian principle of policing by consent, that is that the police are empowered not by the government but because the general public consent to their own policing. Without trust in the police it is difficult to imagine that the public would consent. When a police officer uses their office, as it was put in *Couzens*, in a way that makes their misuse of office ‘critical’ to their offending, and when such conduct results in murder, or extremely serious sexual offending, only a WLO will fulfil the function of punishment, such being a key criterion for making a WLO. This would not be unprecedented, ‘abuse of a position of trust’ is already recognised

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89 *Couzens* (n 43) [73], [75].
91 Fulford LJ (n 22) [19].
as an aggravating feature under Schedule 21, this merely goes further to recognise the specific wrong when the offence is committed by a police officer.

In 2015, Parliament amended the sentencing legislation to make the murder of a police officer in the line of duty a category of offence that would result in a WLO. The government’s press release said that it was essential that police officers felt the full weight of the state behind them whilst they keep their communities safe. An officer who commits murder using this office, or extremely serious sexual violence, undermines their duty to keep their community safe. It would appear that this is as much an affront to democratic values, if not more so, than the murder of an on-duty police officer. If so, Parliament should introduce legislation that reflects that a murder by a police officer must be punished in the same way as murder of a police officer, bringing in the ‘new category’ proposed by the first instance judge in Couzens.

Of course, this ‘new category’ would not prima facie alter the result in Carrick — though it may well have significantly influenced the judge’s decision in deciding whether or not it constituted a ‘wholly exceptional circumstance’. It is difficult to conclude whether a WLO starting point would be appropriate in these highly serious cases of serious sexual offending facilitated by misuse of office. On one hand, it would clearly punish offenders who commit acts that impact on the ability of the police to police by consent. However, on the other, as Matthew Scott points out, if the sentence is the same for rape and murder perhaps, for some offenders, the incentive not to kill their victims is reduced. There is also the ever-present need to keep WLOs as a last resort. A Law Commission project would perhaps benefit this question — perhaps the project could cover sentencing for police officers who abuse their position generally. However, the conclusion and recommendation of this article would be that Parliament looks to introduce more explicit provisions for when a WLO can be given with regard to

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92 Sentencing Act 2020, sch 21, para 9, subpara (d).
93 Sentencing Act 2020, sch 21, para 2, subpara (2)(c).
discretionary sentences, and, as part of this, misuse of office, where there is also exceptionally serious offending, would result in a WLO starting point.

Naturally, WLOs should be a last resort, and case law dictates that they should only be utilised when it is the only way to achieve the aim of punishment.\textsuperscript{96} It is this article’s contention that where a person takes on an office that critically relies on the public’s trust, and is bestowed with uniquely strong powers of coercion and control, and they misuse this office to commit a very serious offence, such an act is such a fundamental affront to democratic values that it can only be punished with a WLO.

\textsuperscript{96} McCann and Sinaga (n 62) [83].