

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

R. L. T

RESPONDENT

**PRELIMINARY JUDGMENT of Ms. Justice Donnelly delivered on the 27th day of February, 2018**

1. The surrender of the respondent is sought by an issuing judicial authority of the United Kingdom of Great Britain and Northern Ireland ("UK") on foot of a European Arrest Warrant ("EAW") dated 23rd May, 2017. His surrender is sought in respect of three separate offences against him. The first offence is an offence of exposure to which he pleaded guilty but did not appear for sentencing. The second offence is an allegation of failure to answer bail, and the third offence is an allegation of failure to notify the relevant authority of travel abroad. The respondent's main objection to surrender is that the minimum gravity provisions set out in s. 38 of the European Arrest Warrant Act 2003 as amended ("the Act of 2003") have not been satisfied. An issue also arose at the hearing in respect of the correspondence of the offence of failure to notify of travel abroad with an offence in this jurisdiction. Finally, the respondent relies upon the notification by the UK, under Article 50 of the Treaty on the Foundation of the European Union, of its intention to withdraw from the European Union. This "Brexit" point has been held in abeyance to await the decision of the Supreme Court in the case of *Minister for Justice and Equality v. O'Connor* [2016] IESCDT 26.

2. Before dealing with these matters, there are certain conditions under the Act of 2003 with which this Court must be satisfied if it is to make an order of surrender pursuant to a European arrest warrant. I will deal with these uncontested issues first.

**A Member State that has given effect to the framework decision**

3. I am satisfied that the Minister for Foreign Affairs has designated the UK as a Member State for the purposes of the European Arrest Warrant Act of 2003, as amended, ("the Act of 2003").

**Section 16 (1) of the Act of 2003****Identity**

4. I am satisfied on the basis of the evidence of Garda James Kirwan, member of An Garda Síochána, and the details set out in the EAW, that the respondent, R.L.T., who appears before me, is the person in respect of whom the EAW has issued.

**Endorsement**

5. I am satisfied that the EAW has been indorsed in accordance with s. 13 for execution.

**Sections 21A, 22, 23 and 24 of the Act of 2003**

6. Having scrutinised the documentation before me, I am satisfied that I am not required to refuse the respondent's surrender under the above provisions of the Act of 2003.

**Part 3 of the Act of 2003**

7. Subject to further consideration of s. 37, s. 38 and s. 45, of the Act of 2003, as amended and having scrutinised the documentation before me, I am satisfied that I am not required to refuse the surrender of the respondent under any other section contained in part 3 of the said Act.

**Section 38 of the Act of 2003**

8. Section 38 of the Act of 2003 provides for two situations in which surrender may be ordered for specific offences. If the offence is an offence set out in para. 2 Article 2 of the 2002 Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States ("the 2002 Framework Decision") then, provided the requirements of minimum gravity in terms of available sentencing powers, there is no requirement for correspondence of the offence for which the person is requested with an offence in this jurisdiction. If the offence does not come within that list, correspondence and a different requirement of minimum gravity must be shown. Section 5 of the Act of 2003 states that for the purposes of the Act, an offence specified in a EAW corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the EAW is issued, constitute an offence under the law of the State.

9. In the first offence of exposure, the EAW states that a woman was walking home alone in the early hours of the morning when she was followed by the respondent and, fearing for her safety, she slowed to let him pass. The respondent did pass her but made eye contact with her, causing her to fear for her safety, and when she sought to move away from him, the respondent walked in front of her, unzipped his trousers and exposed his penis. He masturbated in front of her while continuing to make eye contact with her. She fled, but was followed by the respondent who ran and jumped over benches while holding his unzipped trousers before masturbating again.

10. At the date of issue of the EAW, the Criminal Law (Sexual Offences) Act, 2017 ("the Act of 2017"), had been enacted and the provisions of s. 45 of the said Act had commenced. According to s. 45(1) of the Act of 2017, a person who exposes his or her genitals intending to cause fear, distress or alarm to another person is guilty of an offence. It is clear that the exposure here was intended to cause fear, distress or alarm to the other person, there is therefore correspondence with s. 45 of the Act of 2017. Undoubtedly, given the placing of the complainant in fear throughout this process, the act also corresponds with the offence of assault contrary to s. 2. of the Non-fatal Offences Against the Person Act, 1997. It is also an offence of sexual assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act, 1990.

11. In relation to the alleged offence of failure to answer bail, this corresponds with an offence contrary to s. 13 of the Criminal Justice Act, 1984. He had attended at court for the exposure case and had pleaded guilty. His case was adjourned for sentence but the EAW records that he failed to answer bail. In circumstances where bail must be given its ordinary and plain meaning, it is clear that there is correspondence with the above offence.

12. A separate issue arose with respect to the third alleged offence, namely that of failure to notify the relevant authority of travel abroad contrary to s. 91(1)(A) of the Sexual Offences Act, 2003. In the EAW, it is stated that on 29th January, 2016 at Uxbridge Magistrates' Court, an order was made which required the respondent to notify the police of any intention to travel abroad ("the notification order"). He did not notify the police and he is now known to be in Ireland. He had been convicted of an offence of indecent exposure in Australia at Melbourne Magistrates' Court on 23rd October, 2015 and of offences of sexual assault and five counts of indecent exposure at the same court on 11th December, 2015, respectively. He was thereafter deported from Australia and arrived in the United Kingdom on 23rd January, 2016.

13. Pursuant to UK law a notification order was made by the relevant court and the respondent was required to register as a sex offender for a period of seven years. He was required to notify the police within three days of the order being made of his name and home address. The respondent completed that notification and his notification requirements were explained to him which included a requirement to notify police no fewer than seven days in advance of any intended period of foreign travel. He failed to answer bail at Cardiff Magistrates' Court on 18th October, 2016. Inquiries revealed that he had been arrested for sexual offences in Dublin.

14. The charge alleged against him as set out in the EAW is that:

"between 18th October 2016 and 30th December 2016, at Newport, being a relevant offender within the terms of section 80 of the Sexual Offences Act 2003, failed without reasonable excuse to comply with regulations made under section 86(1), namely to give notification of travel outside the United Kingdom in that between 18th October 2017 and 30th December 2017 [R.L.T.] travelled to the Republic of Ireland."

It is clear that there is a typographical error in the later reference to 2017. The fact that this is an error was not disputed during the hearing. The Court will proceed on the basis that the reference is to 18th October, 2016 and 30th December, 2016.

15. In this jurisdiction, the Sex Offenders Act, 2001 ("the Act of 2001") does not include identical provisions to the sex offender requirements under the law of the United Kingdom. Under the Act of 2001, a person convicted of an offence abroad, who at the time of the conviction or thereafter becomes resident in the State, may be subject to the notification requirements. This applies if the act constituting the offence concerned would, if done in the State, constitute a sexual offence.

16. I am satisfied that the reference to the sexual assault conviction, given its ordinary and plain meaning, corresponds to a sexual assault in this jurisdiction. Insofar as he received a sentence for that offence, it is a sexual offence within the meaning of the 2001 Act.

17. For the purposes of considering correspondence, the High Court is obliged to transpose the allegations in the EAW to this jurisdiction. On transposition therefore the Court must consider that this respondent is alleged to have committed a sexual offence in Australia and returned to live in Ireland, as a citizen of this jurisdiction. In such circumstances the respondent would be subject to notification requirements in Ireland. This is an automatic requirement to notify and there is no need to have a court order such as is required under UK legislation. As it is the acts that must be compared, the Court is satisfied that at a general level, the notification requirements correspond with the Act of 2001 in this jurisdiction.

18. The Act of 2001 does not provide for similar requirements in respect of travel abroad as does the comparable UK legislation. Section 10 of the 2001 Act deals with the various requirements relating to notification. Section 10(1) requires that a person, subject to the requirements of that part of the Act, notify An Garda Síochána of their name, or any name that they use, and their home address before the end of the period of seven days beginning with the relevant date.

Section 10(2) provides:

"A person who is subject to those requirements shall also, before the end of the period of 7 days beginning with-

(a) The person's using a name which is not the name, or one of the names, last previously notified by him or her to the Garda Síochána under this section,

(b) Any change of his or her home address

(c) the person's having resided or stayed for a qualifying period [a period of 7 days or 2 or more periods in any 12 months amounting to 7 days] at any place in the State, the address of which has not been notified to the Garda Síochána under this section as being his or her current home address, or

(d) the person's returning to an address in the State, having, immediately prior to such return been outside the State for a continuous period of seven days or more.

Section 10(3) provides:

"If a person who is subject to the requirements of this Part intends to leave the State for a continuous period of 7 days or more he or she shall notify the Garda Síochána of that intention and, if known, the address of the place outside the State he or she intends to reside or stay at."

Section 10(4) provides:

"If a person who is subject to the requirements of this Part is outside the State for a continuous period of 7 days or more and did not intend, on leaving the State, to be outside the State for such a continuous period, the person shall, subject to subsection (5), notify the Garda Síochána, before the expiry of a further period of 7 days, reckoned from the 7th day that he or she is so outside the State, of that fact and the address of the place at which he or she is residing or staying outside the State."

Section 10(5) provides:-

"Subsection (4) shall not apply if the person concerned has returned to the State before the expiry of the further period of 7 days mentioned in that subsection."

Finally, s.12 makes it an offence to fail to comply with these relevant subsections of s. 10.

19. In the present case, the respondent is charged in England with offence of failing to notify of his intention to leave the UK. In Ireland there is no similarly worded offence. Under the Act of 2001, the Oireachtas chose different requirements of notification and made failure to comply with those requirements a criminal offence. It is only an offence to fail to notify before the end of a period of seven days that you are, *inter alia*, changing address. If you are leaving the State, it is only a requirement to register if you intend to leave for a continuous period of seven days or more.

20. The Court directed that further information be obtained from the UK as to the details of the allegation against the respondent. The UK were asked to confirm when the respondent is alleged to have travelled in a manner which was deemed to be a failure of the UK notification requirements. The answer provided was that he was last seen by police in the UK on 12th September, 2016 and he was subsequently arrested in Ireland on 30th October 2016. They were unable to state from what specific period, in advance of his intention to travel, he should have given the 7 day notice, as they said he had never completed any notification. When asked whether they could confirm that the acts alleged against the respondent included, by implication or otherwise, that he had an intention of leaving the UK for a continuous period of 7 days or more, the issuing state replied that notification is required irrespective of the duration of foreign travel. It should be noted that the question sent to the issuing state was seeking information as to the factual position in the UK and not the legal position. They were also asked to provide any details as to how he travelled and the use of his brother's passport. The UK stated that it was not known if he used the passport or not for the purpose of travel.

21. It is important to restate that in deciding on correspondence of offences, this Court must compare the facts of the case with the law in this jurisdiction to determine if the facts would amount to a criminal offence.. The factual scenario as presented in the EAW is that between 18th October and 30th December, 2016, the respondent failed to notify the relevant authorities about his foreign travel. It is apparent that he was in Ireland from 30th October, 2016 onwards. The Act of 2001 imposes requirements under s.10(2) about any change of home address or having resided or stayed for a qualifying period (7 days) at any place in the State and from the allegations set out in the EAW and the additional information, it is established that the respondent did not notify any relevant authority of his current address during a 7 days period within the time frame set out in the charge, namely 18th October 2016 and the 30th December 2016. .

22. The allegations against this respondent include a claim that he has not notified the authorities of his foreign travel. In fact, the allegations make clear that he did not notify them at all that he was in Ireland and specifically that he did not notify them that he had a new address. The allegation covers a period when it is clear he was in Ireland for more than a 7 day period and he did not notify them of this change of address. In those circumstances, there is correspondence with an offence contrary to s.10(2) and s. 12 of the Act of 2001. It is also the position that regardless of his intention when he left the UK, the allegation includes an allegation that he was present in this state for a period of 7 days but did not notify the authorities of that fact. Even if a person has not intended to stay outside the State for such a period when he first left, it is clear under the Act of 2001 that the obligation to notify arises after 7 days. Therefore, there is correspondence with an offence in this jurisdiction.

23. In respect of all three offences, the Court is satisfied that there is correspondence with an offence in this jurisdiction. The Court must go on to consider whether the provisions of minimum gravity have been met.

#### **The provisions of minimum gravity**

24. Under the provisions of s. 38(1)(a) of the Act of 2003, a person may only be surrendered if the offence corresponds to an offence under the law of the State and:

- i. Under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or
- ii. a term of imprisonment or detention of not less than 4 months has been imposed on the person..."

25. In the EAW it is stated that the maximum length of the custodial sentence or detention order which may be imposed for the offences are as follows:

"Exposure – two years imprisonment

Failure to notify the relevant authority of travel abroad – five years

Failure to answer bail – twelve months."

On the face of the warrant therefore, the periods of minimum gravity have been met in respect of each offence.

26. The respondent makes the case however, having obtained an opinion from counsel at the bar of England and Wales in Cardiff, that the maximum period of punishment that will be applied to this individual is less than the twelve month period of minimum gravity. In support of his contention that it is punishment for the "acts" that is of relevance in determining minimum gravity as distinct from the legislative framework under which the person is prosecuted, counsel for the respondent relies upon Article 2, para. 1 of the 2002 Framework Decision. Article 2, para. 1 states as follows:

"A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months."

27. Section 5 of the Act of 2003, as set out above, also refers to the "act or omission that constitutes the offence" as being relevant to the consideration of correspondence. That reflects a longstanding requirement of extradition law that it is not a comparison of the juridical offences that is to be considered in establishing double criminality, rather it is whether the act committed or alleged to have been committed corresponds with an offence in the executing state.

28. Counsel for the respondent, in submissions of great clarity, stated that he was not asking the Court to engage in a "proportionality" exercise. The issue of proportionality of sentence was clearly a matter for the trial court in the issuing state. On the contrary, counsel submitted that he was relying on a statement of law by counsel of England and Wales that the acts which this respondent had committed were punishable by a maximum which was less than the maximum stated by the issuing judicial authority.

29. The respondent relied upon the advice of Mr. Christopher Rees of Apex Chambers in Cardiff. Mr. Rees had been asked to advise on the likelihood of the three offences being dealt with summarily and not an indictment taking each offence separately. Mr. Rees indicated that the questions which he was asked to address were as follows:

- "(1) Whether the penalties for these offences meet the minimum gravity (12 months imprisonment)?
- (2) What is the likelihood or jurisdictional basis for trial/sentencing on indictment in this case?
- (3) Is the practical reality of the case that [R.L.T] will have his trial and sentencing of the three named offences in the Magistrates' Court?"

### **The Respondent's Evidence**

30. Mr. Rees identifies s. 19 of the Magistrates' Court Act 1980 as setting out the criteria for decisions as to allocation for offences triable either summarily or on indictment. Section 19 states that the court shall decide whether the offence appears to be more suitable for summary trial or for trial on indictment. In doing so, the court "...shall have regard to any allocation guidelines (or revised allocation guidelines) issued as definitive guidelines under section 122 of the Coroners and Justice Act 2009."

31. With respect to the exposure offence, Mr. Rees stated that the maximum sentence for exposure was six months imprisonment on summary trial and two years imprisonment on indictment. In relation to the exposure offence, he stated that the Magistrates' Court had already retained jurisdiction on the exposure offence and the conclusion drawn by the court therefore was that the sentencing powers of the Magistrates' Court would be sufficient on conviction. That would indicate that the court will sentence him to six months imprisonment or less on the exposure offence. In his view, the Magistrates' Court had a residual power under s. 3 of the Powers of Criminal Courts (Sentencing) Act, 2000, to commit to the Crown Court for sentence, but the likelihood is that the Magistrate, having retained jurisdiction, would sentence R.L.T, limiting the sentence to six months imprisonment or less.

32. Mr. Rees went on to say:

"In any event, the Sexual Offences Definitive Guidelines, applicable to all offenders sentenced for offences committed on or after the 1st April 2014, set out the sentences for offences of exposure... The most serious "Category 1" offence has a starting point of 26 weeks custody with a range of 12 weeks to 1 year's custody after trial. As [R.L.T]] pleaded guilty and would be entitled to a minimum of ten% credit, his sentence could be no more than 10½ months custody even if committed for sentence to the Crown Court. This is a sentence below the minimum gravity (12 months) sentence."

Mr. Rees went on to say that the case was likely to fall into "Category 1", although it would not be categorised as a Most Serious Category 1 case. He indicated specific issues relating to the acts and indicated a starting point of 26 weeks imprisonment raised due to relevant previous convictions with a ten percent reduction for plea, leading to a sentence of around six months imprisonment.

33. In respect of the failure to answer bail, he said that this has a maximum sentence of three months when tried summarily, and twelve months on indictment. He referred to the Magistrates' Court Sentencing Guidelines which set out the sentencing framework of offences for failing to surrender to bail. He said that the most serious offences are deliberate failure to attend, causing delay and/or interference with the administration of justice. The starting point was fourteen days custody with a range of low level community order to ten weeks custody. He said there were a number of aggravating features indicating higher culpability, which were a serious attempt to evade justice and determined attempt to seriously undermine the course of justice.

34. Mr. Rees said:

"There is greater harm as there was a lengthy absence. In any event, the top end sentence for the most serious failing to surrender offence is 10 weeks imprisonment. In those circumstances, it is inevitable that the case would be dealt with in the Magistrates' Court. The sentence is likely to be reduced by 1/3 for a guilty plea resulting in a sentence of around 6 weeks imprisonment."

35. In relation to the failure to notify the relevant authority of an intention to travel abroad, Mr. Rees stated that the maximum sentence when tried summarily was six months imprisonment and five years imprisonment on indictment. There were no specific sentencing guidelines for the offence, but there were Magistrates' Court sentencing guidelines that were applicable. There are however Magistrates' Court sentencing guidelines in relation to other offences. Mr. Rees looked at illustrative examples of sentences in the court of appeal. Mr. Rees stated that:

"[t]he likely sentence is likely to be above the 18 week starting point for the most serious cases in the Magistrates' Court Sentencing Guidelines. This is because the [R.L.T] (sic) has fled the jurisdiction to avoid sentence and has previous convictions for committing sexual offences abroad. I would assess the sentence to be on the cusp of the limits of the powers of the Magistrates' Court. Therefore, I consider that the case may be sent to the Crown Court. However, considering the authorities of Day and Grosvenor I would not anticipate a sentence of 12 months imprisonment or more particularly as [R.L.T] would be likely to plead guilty to the offence and be given 1/3 credit for a plea."

36. Finally, Mr. Rees said he had provided his opinion on sentence and jurisdiction based on the information provided. He stated that he had not sighted the pre-sentence report, nor a full list of previous convictions.

37. Counsel for the respondent quite fairly conceded that he was on the weakest ground with regard to the failure to notify offence. This was because the indication from counsel was that this may well be sent to the Crown Court and that at best, he stated he would not anticipate a sentence of twelve months or more. This was an appropriate concession to make as the evidence from Mr. Rees does not state, with any degree of certainty, that the sentence the respondent will receive will be below the twelve month minimum gravity range. Therefore, this argument is rejected insofar as this offence is concerned.

### **The Court's Analysis and Determination**

38. The submission of counsel for the respondent is confined to a narrow proposition that this Court must have regard to the maximum sentence possible for the specific acts which have been committed (or alleged to have been committed) by the requested person, and not an overall statement of what sentence may be provided for the offence. In his submission, the High Court is bound by the evidence of Mr. Rees and cannot look beyond that. He submitted that the general rule is that it was the testimony of the expert which constituted the evidence on the issue and not the textbooks or other legal materials referred to by him. He submitted that the Court was not to have regard to what was stated in the sentencing guidelines but only to have regard to what was actually stated by Mr. Rees in his testimony.

39. The Court agrees that it is the general rule that the court must have regard to the testimony of the expert rather than the

textbooks or legal materials put forward by that expert. That general rule also envisages that the court must be entitled to have regard to the underlying material where the evidence given is unclear or where there is a conflict between the experts. In this case, the evidence given by Mr. Rees was unclear as to the certainty of the jurisdiction of the Magistrates' Court, or as to the sentence the respondent may receive should he be convicted of the offences alleged. It is also the Court's view that it is not correct to say that there is no other evidence before the Court. There is evidence before the Court, and that evidence is contained within the European arrest warrant. The EAW states that these are offences which carry sentences in excess of minimum gravity and the Court must have regard to that, especially having regard to the mutual trust and confidence which this Court has in a judicial authority of the United Kingdom.

40. It is an important consideration that Mr. Rees does not dispute that the Magistrates' Court would be entitled to refuse jurisdiction in relation to the exposure case and send the matter to the Crown Court. Indeed, counsel for the respondent made his argument based upon the opinion that a sentence of ten and a half months was the sentence that would be imposed on the respondent even if he were committed to the Crown Court. Mr. Rees had only indicated a likelihood of the case being kept in the Magistrates' Court in respect of the exposure matter.

41. In the view of the Court, it is not sufficient by way of proof, when challenging the statement as to minimum gravity set out in the EAW, to rely upon a likelihood of a particular sentence being imposed, or the likelihood of a particular jurisdiction being adopted for the prosecution of the offence. These are quintessentially matters for the issuing state and indeed for the trial court to decide.

42. Although the respondent posited that his argument was not a proportionality argument, the argument suffers from many of the same failings found in those proportionality arguments. For the respondent's argument to succeed, this Court would be obliged to make a determination on the acts alleged against the respondent and to seek to anticipate how the courts in the issuing state will ultimately deal with the respondent on sentencing. The Court does not find support for such contention in either the Act of 2003 or the 2002 Framework Decision.

43. It is perhaps striking that s. 38(1) (a) uses the word "offence" and not "acts". Under that section, the High Court is being directed to look at the punishment for the offence under s. 38(1)(a)(i) and (ii) of the Act of 2003. On the other hand under s. 5, the test for correspondence requires a focus on the "acts" underlying the offence. Even if one reverts to Article 2 paragraph 1 of the 2002 Framework Decision which refers to "acts" in order to understand the reference to offences in s.38(1)(a) (i) and (ii), that has to be viewed in the context of the 2002 Framework Decision. It is trite law that the Act of 2003 must be interpreted in accordance with the wording and purpose of the 2002 Framework Decision unless to do so would be "*contra legem*". To give an interpretation to the concept of minimum gravity in the Act of 2003 and in the 2002 Framework Decision which would require the executing judicial authority to adjudicate upon the specific acts alleged and make a determination as to how a sentencing court would approach the case, would be contrary to the purpose of the Act of 2003, based upon the 2002 Framework Decision, which is to introduce "a new simplified system of surrender between judicial authorities" and to "remove the complexity and potential for delay inherent in [extradition] procedures." (Recital 5 2002 Framework Decision). There is no basis for interpreting the Act of 2003 in the narrow manner for which the Respondent contends. In those circumstances, where there is a possibility for the maximum sentence set out in the EAW to be imposed for the acts for which surrender is sought, provided that maximum sentence reaches the requirement of minimum gravity, surrender is not prohibited.

44. It is also worth observing that even if the Court accepted that the appropriate interpretation is to look at the maximum sentence for the actual acts committed or alleged to have been committed by a requested person, it is clear in the present case that the respondent simply does not meet the test he has set for himself. This is because in his evidence, Mr. Rees accepts that the appropriate sentence for the act is a sentence of up to twelve months imprisonment. He then goes on to say that this is to be reduced by ten percent for a plea of guilty. A plea of guilty is not referable to the "acts" committed. It is a matter of mitigation that operates outside the maximum sentence for the act committed. It is a matter of sentencing that applies after the act has been committed and is to be applied by a sentencing court. Therefore, even on his own submission, the guilty plea is not something which Mr. Rees should have calculated in determining what he regards as an appropriate sentence.

45. The Court has not had regard to the sentencing guidelines that have been referred to and attached to the advices of Mr. Rees. The Court is quite satisfied to reject his submission based upon what he himself has stated, and based upon submissions of counsel for the respondent. The Court however does note that the sexual offences definitive guidelines state that "relevant recent convictions are likely to result in an upward adjustment".

46. As Mr. Rees has not taken into account any relevant recent convictions, as he was not instructed to, it cannot be said that he is making a statement with any sense of finality. Furthermore, in the guidelines it refers to reduction for guilty pleas and states that the Court should take account of any potential reduction for a guilty plea in accordance with s. 144 of the Criminal Justice Act 2003 in the guilty plea guidelines. It is simply unclear from that as to whether the reduction is mandatory or simply a potential one. It is important to restate that none of this is relevant to the Court's consideration.

47. With regard to the offence of failure to answer bail, I have had regard to the fact that the evidence provided by the respondent on this heading refers only to the Magistrates' Court. Mr. Rees refers to the top end sentence in the Magistrates' Court being ten weeks custodial. He says in those circumstances, it is inevitable that the case would be dealt with in the Magistrates' Court. He does not deal with why it is inevitable and expressly does not deal with sentencing guidelines for the Crown Court in this regard. He does not explain what he means by the reference to inevitability, and the Court can only conclude it is because it is his view that a ten week sentence is an appropriate sentence. In those circumstances, this is not so much a matter of law but a matter of opinion as to what a court is likely to do, and that of course is not the purpose of these proceedings.

48. In the present case, I have a statement from an issuing judicial authority that the maximum sentence available is twelve months. If the respondent were to succeed in showing that that was an incorrect statement of the law, he would have to demonstrate to the Court a logical process by which it was being stated that the twelve month indication was simply incorrect and that a different maximum sentence applied to the act in question. Mr. Rees has singularly failed to do this insofar as he does not address with any degree of clarity his reasoning for his statement. In truth, the Court is being left to deal with a statement of law by the issuing judicial authority which has not been addressed by the respondent.

### Conclusion

49. In the course of this judgment, I have found that there is correspondence with each of the three offences with an offence in this jurisdiction. I have also found that the provisions of minimum gravity have been reached. In particular, I have rejected the narrow interpretation of the concept of "acts" that was contended for by the respondent. There is no basis for that interpretation in the Act of 2003 and furthermore, when read in conformity with the wording and purpose of the 2002 Framework Decision, it is clear that there

is no basis for the argument that the High Court, as an executing judicial authority, must make a determination as to how the sentencing court in the issuing state will proceed to sentence. Provided there is at least a possibility that a sentence which meets the requirements of minimum gravity could be imposed, there is no basis for prohibiting surrender. I therefore reject the respondent's points of objection in this regard. Apart from further consideration of the impact of the notification by the UK of its intention to withdraw from the EU and in particular the Supreme Court decision in the case of *Minister for Justice and Equality v. O'Connor* [2016] IESCDT 26, there is no other reason as to why he cannot be surrendered.