[2019] IEHC 251

THE HIGH COURT

[2017/116 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

PLAINTIFF/APPLICANT

AW

RESPONDENT

JUDGMENT of Ms Justice Donnelly delivered on the 10th day of April, 2019

1. The surrender of this respondent to the United Kingdom of Great Britain and Northern Ireland ("the UK") for prosecution for twelve offences is sought under a European Arrest Warrant ("EAW") issued on the 6th January, 2016. Since his arrest on the 11th June, 2017, the respondent has resisted his surrender on a number of grounds. A significant part of the time lapse in the hearing of this application resulted from the need to await the decision of the Court of Justice of the European Union ("the CJEU") in respect of the notification by the UK of its intention to withdraw from the European Union. Further delay was caused by requests for further information from the issuing state on certain issues and the respondent's amended pints of objection. Another delay was caused by the respondent's late notification to his solicitors of certain mental health difficulties on which he sought to rely to resist his surrender.

2. The respondent first filed points of objection on 24th July, 2017. He objected to his surrender on grounds relating to lack of clarity and lack of correspondence of offences set out in the EAW and on the basis of the UK withdrawal from the European Union. He filed supplemental points of objection on the 30th May, 2018. The respondent claimed that he would be subject to a real risk of being exposed to inhuman and degrading conditions arising out of conditions in prisons in the Liverpool area. As will be seen, he subsequently filed further points of objection claiming that the High Court could not rely on further information provided by the issuing state because the information had not been forwarded by an issuing judicial authority.

Background to the European Arrest Warrant

3. The EAW states at point (e) that it relates to twelve offences. The description of the circumstances in which the offences were committed are set out in the EAW as follows:

> *(1) "Before 25/01/2015 conspiracy to possess a firearm and ammunition contrary to s.1 Criminal Law Act 1977 - one offence. During searches of Liverpool addresses on 6/8/14 at [redacted] Road and 3/9/14 at [Redacted] Road, quantities of firearms and ammunition and phones containing images of firearms and ammunition were found which can be linked forensically to [AW] and his associates. These addresses are linked to AW and his associates.*
>
> *(2) Before 25/01/2015 conspiracy to possess prohibited firearms and ammunition contrary to s.1 Criminal Law Act 1977- one offence. During searches of Liverpool addresses on 6/8/14 at [Redacted] Road and 3/9/14 at [Redacted] Road quantities of firearms and ammunition and phones containing images of prohibited firearms and ammunition were found which can be linked forensically to AW and his associates. The addresses are linked to AW and his associates.*
>
> *(3) On 06/08/2015 possession of a prohibited weapon contrary to s.5 Firearms Act 1968 – 2 offences. During a search of [Redacted] Road, Liverpool on 6/8/14 two prohibited firearms were found which were linked forensically to [AW]. This is his address.*
>
> *(4) On 06/08/2015 possession of ammunition without a certificate contrary to s.1 Firearms Act 1968 – two offences. During a search of [Redacted] Road, Liverpool on 6/8/14 ammunition was found which is linked forensically to [AW]. This is his address. He does not hold a certificate.*
>
> *(5) On 06/08/2015 possession of prohibited ammunition contrary to s.5 Firearms Act 1968 – two offences. During search of [Redacted] Road, Liverpool on 6/8/14 prohibited ammunition was found which is forensically linked to [AW]. This is his address.*
>
> *(6) On 06/08/2015 possession with intent to supply controlled drugs of class A. contrary to s.4 (1) Misuse of Drugs Act 1971 – two offences. During a search of [Redacted] Road, Liverpool on 6/8/14 controlled drugs diamorphine (heroin) and cocaine, were found which are linked forensically to [AW]. This is his address.*
>
> *(7) Between 30/06/2014 and 13/08/2015 conspiracy to possess firearms with intent to cause fear of unlawful violence contrary to s.1(1) of the Criminal Law – one offence. During searches of Liverpool addresses on 6/8/14 at [Redacted] Road and 3/9/14 and [Redacted] Road quantities of firearms and phones containing images of firearms were found which can be linked forensically to [AW] and his associates. The addresses are linked to [AW] and his associates. There is evidence of a dispute between associates of [AW] and another Liverpool male, which dispute has involved the brandishing of and use of firearms to cause fear and criminal damage.*
>
> *(8) Between 05/08/2014 and 13/08/2015 conspiracy to possess controlled drugs of class A. contrary to s.1 Criminal Law Act 1977 – one offence. During searches of Liverpool addresses on 6/8/14 at [Redacted] Road, 3/9/14 at [Redacted] Road, 23/10/14 at [Redacted] Road and 12/8/15 at 12 Low Bridge Court quantities of drugs and drugs paraphernalia were found which can be linked forensically to [AW] and his associates. These addresses are linked to [AW] and his associates".*

4. The EAW then sets out the nature and legal classification of the offences. Prior to endorsement of the EAW by this Court, further information was sent over by the issuing state by letter from the Crown Prosecution Service ("the CPS"). This stated that:-

> *"The dates of the offences in Section (e) paragraphs 3,4,5, & 6, is given as 6/8/15. This is a typographical error and should be 6/8/14. The date in the first instance warrant attached is correct".*

5. The letter also confirmed that the drugs referred to in the last paragraph were cocaine and heroin which had been referred to in para. 6 of point (e) of the warrant. Finally, the CPS stated:-

"As a result of a problem we have had in proceedings against a co-accused and co-conspirator over the length of the conspiracy and the span of dates, we will be seeking to amend the dates of the drugs conspiracy s.E para. 8 to 'between 1/1/14 and 13/8/15'. The starting date for the conspiracy was 5/8/14. I hope you can agree to this amendment being made to the charge. It has also come to my attention whilst dealing with these queries that the offence at s.E para. 8 is erroneously described as a conspiracy to possess class A drugs. This again is a typographical error and should read conspiracy to supply class A drugs. The offence is correctly described in para. C of the EAW and in the Domestic Warrant."

6. This Court endorsed the EAW on the 15th May, 2017. On endorsing the warrant, the Court indicated that further clarification as to whether the request to surrender the respondent was *"to face a charge of conspiracy committed in the period from 01/01/2014 to 13/08/2015 and not in the period from 05/08/2014 to 13/08/2015*" should be sought. Confirmation was also sought that they were not asking the executing judicial authority (the High Court) to amend the charge.

7. The reply from the CPS dated 19th May, 2017 stated that, having recently prosecuted a co-accused of the respondent, an issue arose over the span of the conspiracy. As a result of their experience in the case against a co-accused, the CPS said they *"wish to amend the dates of the conspiracy so that the span of the conspiracy is expressed to be "Between 1/1/14 and 13/8/15"".*

8. On the 7th July, 2017, the central authority sent over a request for further information. The request concerned the offences of conspiracy to possess firearms, possession of prohibited ammunition and conspiracy to possess firearms with intent to cause fear of unlawful violence. The central authority asked if the requested person was the holder of a certificate, licence, authorisation or permit or was otherwise authorised, to hold the firearm and/or ammunition the subject of the offence. In response, by letter dated 11th July, 2017, the CPS said that he was not the holder of any certificate, licence, authorisation or permit permitting him to possess any firearm or ammunition nor was he otherwise authorised to possess any firearm or ammunition the subject of any of the offences in the warrant.

9. In addition to the contested matters, this Court must also be satisfied that all the conditions for surrender under the European Arrest Warrant Act of 2003 as amended ("the Act of 2003") have been met.

A Member State that has given effect to the Framework Decision
10. The surrender provisions of the Act of 2003 apply to the member states of the EU that the Minister for Foreign Affairs have designated as member states having, under their national law, given effect to the Framework Decision of the 13th June, 2002 on the European arrest warrant and the surrender procedures between Member States ("the Framework Decision"). I am satisfied that the Minister for Foreign Affairs has designated the UK as a member state for the purpose of the said Act.

Section 16(1) of the Act of 2003
11. Under the provisions of s.16(1) of the Act of 2003, the High Court may make an order directing that the person be surrendered to the issuing state provided that:

(a) The High Court is satisfied that the person before it is the person in respect of whom the EAW was issued,

(b) the EAW has been endorsed in accordance with s.13 for execution in this jurisdiction,

(c) the EAW states, where appropriate, the matters required by s.45,

(d) the High Court is not required under s.21(a), s.22, s.23 or s.24 of the Act of 2003 to refuse surrender,

(e) the surrender is not prohibited by part 3 of the Act of 2003.

Identity
12. I am satisfied on the basis of the affidavit of Brendan Bergin, member of An Garda Síochána, the affidavit of the respondent and the details set out in the EAW, that the respondent, AW, who appears before me, is the person in respect of whom the EAW has issued.

Endorsement
13. I am satisfied that the EAW has been endorsed in accordance with s.13 for execution in this jurisdiction.

Sections 21A, 22, 23 & 24 of the Act of 2003
14. 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. Section 22 deals with the principle of speciality i.e. a person returned on an extradition warrant should not be proceeded against for any other offence unless certain conditions are met. I will mention this principle further below.

Section 45 of the Act of 2003
15. The above provisions deal with trial *in absentia*. As the respondent is sought for prosecution, the provisions of s. 45 of the Act of 2003 do not require further consideration.

Part 3 of the Act of 2003
16. Subject to further considerations of s.37 and s.38 of the Act of 2003, 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 (Correspondence of offences)
Section 11 of the Act of 2003 (Lack of clarity)

17. Section 38 of the Act of 2003 provides for two situations in which surrender may be ordered for specific offences. If the offence in the EAW is an offence referred to in Article 2 para 2 of the Framework Decision then, provided the requirements of minimum gravity in terms of available sentencing powers have been met, there is no requirement to find correspondence/double criminality of the offence with an offence in this jurisdiction. In this EAW, the issuing judicial authority did not designate any offence as being an offence to which Article 2 para. 2 applied.

18. Section 11 of the Act of 2003 requires, *inter alia*, that the circumstances in which the offence was committed or alleged to have been committed, including the time and place of commission or alleged commission and the alleged degree of involvement of the requested person, be set out therein. The alleged lack of clarity led to further argument on the issue of whether double criminality could be established.

19. Counsel for the respondent submitted that there was no correspondence of the offences with an offence in this jurisdiction. Counsel submitted that, although words were to be given their ordinary meaning in an extradition warrant, the word 'conspiracy' was not similar to 'theft' or 'rob'. In those circumstances, he submitted it must be established from the express wording of the EAW, that there was an agreement between the respondent and other persons to commit acts which would be criminal in this jurisdiction if committed here.

20. In relation to the firearms and ammunition offences, counsel submitted that there were no facts set out in the EAW that would enable this Court to establish correspondence of offences. Counsel submitted that information as to the nature of the firearms and the nature of the ammunition was required, before this Court could hold that there had been correspondence.

21. In relation to the points of objection, the respondent laid heavy emphasis in his submissions that there was a lack of clarity. He pointed out that there was no information for example in relation to the offence at para. 2 of point (e), as to the particular date before the 25th January, 2015 in which the conspiracy to possess the prohibited firearms and ammunition had been committed. He also submitted that in relation to the conspiracy offences, no place of commission of the conspiracy was set out.

22. Counsel for the minister submitted that there was ample information in the European arrest warrant. She relied on the cases of the *Attorney General v. Dyer* [2004] IESC 1 and also *Minister for Justice Equality and Law Reform v Altaravicius (No. 2)* [2006] IEHC 270 in terms of establishing facts. She submitted that the ordinary meaning of firearm was sufficient. She did submit however that it was a matter which could be canvassed with the issuing judicial authority by way of s. 20 of the Act of 2003.

23. Having heard submissions on the 15th November, 2018, the High Court decided to exercise its powers under s. 20 of the Act of 2003 to seek further information. The High Court sought the following information by request dated 21st November, 2018: -

> (a) Please give some more detail in respect of the conspiracy offences. In particular, please indicate with whom he is alleged to have conspired, the dates between which the conspiracy is alleged to have occurred, and the degree of participation of this requested person in those offences. Please note that it is not necessary to provide a synopsis of the entirety of the evidence, but further detail is requested.
>
> (b) Please indicate the place in which the offences are alleged to have occurred. For example, please indicate if the offences of conspiracy are alleged to have taken place in Liverpool or in the jurisdiction of England and Wales.
>
> (c) In relation to offences 1 and 2, please give the date on which it is alleged the conspiracy commenced. It is noted that those offences simply say before 25/01/2015.
>
> (d) In relation to the firearms that form part of the alleged offences, please indicate the type of firearm at issue in each case. Please indicate which firearm or firearms relate to each offence.
>
> (e) Please indicate the type of ammunition involved and relate that ammunition to each of the alleged offences as appropriate.

24. The CPS replied by letter dated the 7th December, 2018 in great detail. An almost identical letter of the same date was also sent. This second letter corrected a statement concerning the identity of the person who had brandished a gun in a café. The Court will only refer to the second version of the letter.

25. The CPS stated that the conspiracy started from the 1st January, 2014 and ended on the 13th August, 2015. It said the police have established that throughout the year 2014 AW had repeatedly associated with his co-conspirators, especially AC and JC. The CPS said that: -

> *"It is the prosecution case that [AC] was involved in an altercation on 1st July 2014 during which he brandished a handgun in a café, on Aigburth Vale, Liverpool, in order to cause fear or violence and accused persons present in the café to be "on our turf". Upon review of the footage taken near the scene, the police were able to conclude that [AC] was the person who wielded the firearm and made off using a bicycle. They indicate that he was the tenant of the flat at [Redacted] Road which was searched by the police on the 6th August 2014. They said that the following firearms and ammunitions were recovered: -*
>
> > *(i) An 11mm French Ordnance revolver "St. Etienne" capable of firing .44 calibre,*
> >
> > *(ii) A double barrelled Beretta "sawn off" shotgun found under the floorboards outside Room 6, [AW]s' DNA was recovered from several areas of that weapon, including the safety switch,*
> >
> > *(iii) 65x 2.2 long rifle calibre cartridges, 64 of Winchester brand and 1 of CCI brand. They had all been loaded with bullets designed to expand on impact,*
> >
> > *(iv) 5 9x19mm Parabellum Winchester brand cartridges. One was dismantled and found to consist of a semi – jacketed hollow point bullet and propellant in a primed case. They are a projectile designed to expand on impact,*
> >
> > *(v) 4x7.65 BR calibre cartridges with various head stamps,*
> >
> > *(vi) A 0.32in unfired rimfire calibre cartridge and two fired 12 gauge calibre cartridge cases, one of Ely brand and the other of the Kent brand together with two unfired 12 gauge calibre shotgun cartridges."*

26. The CPS then proceeded to indicate that on the same day in the same premises, the police found cutting agents together with a variety of what they termed Class A drugs, namely diamorphine and cocaine. Various quantities were found in different packages and in different places in the flat. The CPS stated it is the prosecution's case that all the items belonged to AW and that he was a supplier of drugs.

27. The CPS also stated that on the 3rd September, 2014, the police searched the address of one of his associates who lived on North Sudley Road, a short distance from the respondents' address and seized a Remington revolver. That person's mobile phone received images of several firearms and ammunition clearly taken at [*Redacted*], the address of the respondent. Following a call from a member of the public, the police also seized a canvas bag containing a sawn off shotgun and two unfired 12-gauge shotgun cartridges in October 2014.

28. In January 2015 they arrested JC, an associate of AW, seized his mobile telephone and retrieved a picture of AC holding a firearm. That picture had been taken at [*Redacted*] Road. Another picture showed the St. Etienne revolver seized from the same address. JC also posed with the Beretta shotgun while masking his face. On the 12th August, 2015, the police arrested JC, searched his address in Liverpool and seized controlled drugs, a money counting machine and quantities of cash in English and Scottish denominations.

29. In response to specific questions raised in the queries, the CPS stated the conspiracies in offences No. 1 and 2 arose between the 1st January 2014 to the 13th August 2015. They also replied that the alleged offences occurred in Liverpool and do not allege any extra territorial offending. They replied that in relation to the conspiracies at offences 1, 2, and 12 they apply to all the firearms and ammunition. In respect of the substantive offences they confirmed that offence No. 3 related to the sawn-off Beretta shotgun, offence 4 related to the St. Etienne revolver at [*Redacted*]. They said that offences 7 and 8 refer to the type of ammunition designed to expand on impact which relates to the seizure from [*Redacted*], detailed at (iii) and (iv) above. They said that offences 5 and 6 referred to the prohibited possession of ammunition without certificate, linked to the seizure from [*Redacted*] detailed at V and VI.

30. In respect of offences 9 and 10 of possession of controlled drugs, these related to diamorphine and cocaine in terms of the seizure at [*Redacted*] Road. It was the prosecution's case that the defendant had possession of those with intent to supply them and was heavily involved in the unlawful supply of Class A drugs. The CPS stated that the respondent had conspired with JC and AC to supply diamorphine and cocaine. They said that the substantial offences relating to the drugs were alternatives to offence 11 should the jury not believe that the respondents unlawful activities arose from an agreement with his co-accused.

31. The CPS then went on to say that it was plain that the offences were covered by the Framework Decision list and that the boxes relating to the illicit trafficking of weapons and narcotics should have been ticked. They said it did not happen because a named colleague was at the time given inaccurate advice by the National Crime Agency ("the UK central authority"). The UK central authority claimed that conspiracies were outside the Framework Decision list. That was incorrect and the CPS referred to the law in force in the United Kingdom.

32. A further hearing took place on the 25th January, 2019. It was at this hearing that the Court was asked to adjourn the matter because of information about the mental health status of the respondent. Counsel for the respondent submitted that Article 2 para.2 was not invoked by what had been stated by the Crown Prosecution Service. Counsel submitted that the evidence as regards the conspiracies concerning the firearms did not show correspondence. There was now no correlation between the possession of the handgun belonging to AC and the other events. Counsel submitted that there was no sufficient evidence that pointed to him being involved in the conspiracies.

33. In relation to the firearms offences, counsel for the respondent pointed in particular to offence no. 4. This referred to a revolver. He submitted that while it might be considered at first blush to be a firearm, it was not in the same category as some of the other matters. He referred to the case of *Minister for Justice and Equality v. Swacha* [2016] IEHC 796 where an expert report had been furnished. He was not submitting that in every case expert evidence was required but that in the present case one could not accept that. In relation to offence 5, he submitted that the reference to the cartridges in that were not capable of being considered ammunition within the meaning of the Act.

34. The respondent had no submissions concerning offences 6, 7, 8, 9 and 10. In relation to offence 12, he submitted that the substantive offences were an alternative to conspiracy. He submitted that in the absence of agreement there could be no correspondence. He submitted that the letters were internally inconsistent with reference at various stages to different people that he conspired with. The degree of participation was not set out. He submitted that they had had ample evidence to show an agreement to an unlawful end.

35. Counsel for the minister submitted that the additional information was sufficient in relation to the matter. She submitted that the author was the senior prosecution official and that this was sufficient. She accepted however that it was not a case that one could rely on Article 2, para. 2 in relation to the matter.

36. Having considered the matter further, this Court sent a further request for information by letter dated the 1st February, 2019. Having referred to the further arguments raised in court on lack of clarity and double criminal, the letter stated:

> *"In the circumstances, the High Court seeks the following additional information from the issuing judicial authority:*
>
> *(a) Is it the intention of the issuing judicial authority to invoke Article 2 paragraph 2 of Framework Decision 2002/584/JHA by ticking boxes in the list set out therein;*
>
> *(b) If so, could the issuing judicial authority please indicate the box(es) upon which it is sought to rely, and specify for which offence(s) a box is ticked;*
>
> *(c) If the issuing judicial authority is not relying on Article 2 paragraph 2 of the Framework Decision, please given further information about (a) the 11mm French Ordnance Revolver, in particular is this a lethal firearm or other lethal weapon from which any bullet or missile can be discharged and (b) the 7.65 Br. Calibre cartridges, in particular is this ammunition for a lethal firearm or other lethal weapon*
>
> *(d) In respect of the conspiracy offences, please specify who is alleged to have entered into an agreement to commit the alleged unlawful acts and the degree of involvement of the respondent.*
>
> *If the issuing judicial authority wishes to invoke Article 2 paragraph 2 of the Framework Decision, this should done by the issuing judicial authority, rather than the CPS or the National Crime Agency."*

37. In response to that letter, the CPS replied as follows: -

> *"I believe a misunderstanding occurred in relation to Article 2 (2) of the Framework Decision 2002/584/JHA. I had indicated, in the penultimate paragraph of my letter dated 7th December that Mrs. Morris had been wrongly advised by*

the National Crime Agency that conspiracy offences were outside the Framework list at Article 2 (2).

In England and Wales, European Arrest Warrants are drafted by a Crown prosecutor then presented to the court for approval. In this case, the District Judge did not rectify the draft and once signed, usually, the issuing court no longer deals with the warrant until it is executed, it is circulated at the initiative of the CPS and the police. Consequently, all queries raised by the High Court are addressed by the prosecuting authority.

There is, at this stage, no intention on the part of the CPS to apply for the European Arrest Warrant to be reissued by the Court.

However, the Crown Prosecution Service wanted to point out how the mistake had occurred and why it would not arise again.

Consequently, I hope this reply addresses points A and B.

Dealing now with point C, I can answer as follows: -

> *The 11mm French Ordnance revolver was indeed a lethal firearm under the provisions of s. 57 (1) of the Firearms Act, 1968. Although the ammunition calibre for such a weapon is not readily available, the expert Mr. Botha, successfully test fired the revolver with modified .44 Smith and Wesson calibre cartridges and modified .44 Russian cartridges.*
>
> *The four 7.65 BR calibre cartridges found in the nag of ammunition ANH – 3 are indeed ammunition for use in a firearm: the expert, Mr. Botha, dismantled one of the cartridges which includes a full metal jacketed bullet and propellant in a primed case. The propellant and primer were subjected to test and the propellant burned as expected while the primer initiated as expected.*
>
> *The round was suitable for use in a firearm although not in the St. Etienne revolver, nor in the shotgun seized, the ammunition was subject to the certification procedure under s. 1 of the Firearms Act 1968."*

The CPS also included the relevant statutory provisions in the letter.

38. The CPS then stated: -

> *"With regards to point (d) the defendant [AW] is accused of having entered into an agreement to commit all offences alleged in the first instance warrant and European Arrest Warrant with the following:*
>
> *-AC*
>
> *-JC,*
>
> *-MM,*
>
> *However, the prosecution does not purport to having identified all conspirators in this case.*
>
> *The prosecution wishes to make clear that when MM was prosecuted for substantive offences of possession of firearms and ammunition, and possession of controlled drugs of Class B with intent to supply, to which he pleaded guilty in 2014, as no conspiracy had been established by then.*
>
> *JC was prosecuted for conspiracies to possess firearms and ammunition and to supply controlled drugs of Class A and pleaded guilty in February 2016. He received a custodial sentence of fifteen years' imprisonment in total.*
>
> *AC was arrested in the United Kingdom and prosecuted in respect of the same conspiracies to which he pleaded guilty. He received a custodial sentence of thirteen years' and four months' imprisonment in total on 18th May 2017.*
>
> *The defendants' role is pivotal in that he stored firearms and ammunition at his address at [*Redacted*], enabling his associates to use those weapons in order to intimidate, or threaten potential rivals as and when they wished to. He is a controlling mind in the criminal agreement.*
>
> *He stored controlled drugs and cutting agents in order to supply them with his associates. The fact that a cash counting machine was recovered at the address of one of his co – conspirators, [JC], is highly significant."*

The New Points of Objection

39. Following the receipt of that information, the respondent raised an entirely new set of objections. Ultimately, these objections are based upon the fact that the further information provided in this case does not come from an issuing judicial authority but has been provided by the CPS or the National Crime Agency. Counsel for the respondent submitted that this is contrary to the principles set out in the EAW system as established by the Framework Decision and the Act of 2003. He submitted that it is a system providing for the involvement of judicial authorities and to ensure respect for fundamental rights and fundamental legal principles. Counsel also submitted that this violated the respondent's rights to a fair trial under Article 6 of the ECHR and/or Article 47 of the Charter on Fundamental Rights and Freedoms ("EU Charter"). He submitted that the CPS is a moving party in the proceedings in the issuing state for which the respondent is sought and therefore cannot be said to be impartial. He submitted that there has been no judicial oversight in relation to the responses. He stated that the CPS has outlined a policy of not having recourse to the issuing judicial authority. The CPS has provided information which is at variance with the EAW as issued by the issuing judicial authority. He also stated that the CPS has requested the executing judicial authority to make amendments to the charges.

The law on correspondence and clarity

40. The law on correspondence has been much discussed in the case law in this jurisdiction. The starting point is s. 5 of the Act of 2003 which states that: -

> *"an offence specified in a European Arrest Warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence under the law of the issuing state would, if committed in the State, on the date on which the European Arrest Warrant is issued, constitute an offence under the law of the State".*

41. In the decision of Dyer, the Supreme Court held that the enquiry into correspondence of offences was concerned with the factual components of the offence specified in the warrant. Although that case concerned the provisions of the Extradition Act 1965, the Supreme Court in the case of *Minister for Justice, Equality and Law Reform v. Szall* [2013] IESC 7 confirmed that the same principles applied to offences under the Act of 2003.

42. The Supreme Court in *Dyer* also confirmed that:-

> *"Normally words used in an extradition warrant will be given their ordinary meaning. This enables the courts to give effect, without resort to extrinsic evidence, to extradition requests where words such as 'steal' 'rob' and 'murder' are used. It is possible that such words have different meanings in the law of the requesting state, but, in the absence of anything suggesting that, the courts will examine correspondence by attributing to such words, when used in a warrant, the meaning that they would have in Irish law. In some cases however, the word used in the requesting jurisdiction may be unfamiliar to Irish law."*

Correspondence and clarity established without reliance on additional information

43. Despite the Court having sought further information with a view to assisting in establishing whether there was correspondence, it is appropriate for the Court to assess in the course of this judgment, whether such information was truly necessary. The Court has considered that the above dicta in *Dyer*, covers the situation in the present case. In Irish law words such as "steal", "rob" and "murder" have particular legal meanings. They are also words in common usage and understanding. Words such as "conspiracy", "firearm" and "ammunition" also have particular legal meanings in this jurisdiction. On the other hand, they are common words in everyday usage. For example, conspiracy when given its ordinary and natural meaning in the context in which it appears, namely in respect of a criminal allegation, means an agreement between two persons to carry out an act that is criminal. Firearm is commonly understood to be a lethal weapon which discharges ammunition which, by definition, may cause death.

44. Unlike in the *Swacha* case, where a particular description of the firearm had been used in the EAW which gave rise to concerns about whether it was a firearm within the meaning of Irish law, there is nothing to suggest in the present EAW to suggest meanings that are different to what is meant in Irish law. In the absence of the respondent providing any information that they have different meanings, this Court must accept that there is correspondence of offences based upon the ordinary and nature meaning of 'conspiracy', 'firearm' and 'ammunition'.

45. In addition, with respect to the conspiracy offences, the Court notes that the EAW had referred in point (e) II to it being an offence when one person agrees with another to pursue a course of conduct which will amount to the commission of an offence by one of the parties. The Supreme Court in *Minister for Justice Equality and Law Reform v Dolny* [2009] IESC 48 determined that the Court was required to read the EAW as a whole when seeking to establish correspondence of offences. Those words clearly establish correspondence with the offence of conspiracy in this jurisdiction.

46. Even without the additional information giving precise information as to the place of the conspiracy, the Court is satisfied from the information on the EAW that the conspiracy was in the territory of England and Wales. The offences of the conspiracy refer to "*during searches of Liverpool addresses…*" That is sufficient to establish that the conspiracy is not an extraterritorial offence as acts in furtherance of the conspiracy, i.e. the possession of the firearms and possession of the drugs took place within the jurisdiction of the United Kingdom. In those circumstances no further information is required.

47. The respondent also claimed that in relation to the first two offences there was no beginning date for the conspiracy. The Court is satisfied that this date is not required for the purpose of establishing correspondence. The Court is also satisfied that it is not fatal to the validity of the EAW on the grounds of lack of clarity. There is a clarity for the respondent in this timing as this gives him information as to the last date of the conspiracy. He has information from the statement of the offences concerning the conspiracy that point to searches being carried out at particular addresses on particular dates. He has that clarity and in the view of the Court that is sufficient.

48. The respondent has also claimed that his surrender is prohibited because the information does not set out the degree of participation of the respondent in the offences. The information in the EAW has already been set out. This does not list the names of the people he conspired with. The requirement for detail in the EAW is set out in the Framework Decision and in the Act of 2003. The Superior Courts in a number of cases have examined the reasons for the giving of details. These are to permit the High Court to carry out its functions under the Act of 2003 of endorsing the EAW and establishing correspondence and also to permit the respondent to challenge his surrender on grounds such as the rule of speciality (s.22), *ne bis in idem* and extraterritoriality (See *Minister for Justice and Equality v Cahill* [2012] IEHC 315 and *Minister for Justice Equality and Law Reform v Desjatnikovs* [2008] IESC 53). The respondent also has the right to know the reason for his arrest.

49. In the present case, any claimed lack of detail by the respondent, does not affect any of those items. The respondent has not indicated any real difficulty and therefore his complaints about lack of detail are only theoretical in nature. The issuing judicial authority is not required to give every single detail as to the degree of participation. (*Minister for Justice, Equality and Law Reform v Stafford* [2009] IESC 83). The details required are those which relate back to the reasons why such detail is required.

50. That leaves a final issue with regard to the conspiracy to possess drugs set out in the EAW as offence no. 12. It is stated in point (c) of the EAW that he is wanted for a conspiracy to *supply* controlled drugs of Class A and that this carries life imprisonment. At point (e) it is stated that he is being sought for conspiracy to *possess* controlled drugs of Class A contrary to s.1 of the Criminal Law Act, 1977. The nature and legal classification of the offences and the applicable statutory provision and code are also set out and it is said that between certain dates conspiracy to *possess* controlled drugs of Class A. However, at point (e) II in relation to the full description of offences not covered by s.1 above (Article 2, para. 2) is a reference to, *inter alia*, s.1 of the Criminal Law Act, 1977 conspiracy and to s.4 Misuse of Drugs Act 1971 – restriction on the *supply* of controlled drugs. It is stated that it is unlawful for a person to *supply* controlled drugs. The respondent complained that there is a discrepancy between conspiracy to possess and conspiracy to supply drugs.

51. According to the decision of the Supreme Court in *Dolny*, this Court is required to read the warrant as a whole in order to establish correspondence. In my view by reading the warrant as a whole, it is well established that the offence for which a surrender is set out in the EAW is that of conspiracy to supply controlled drugs of Class A. That is set out in both point (c) and in point (e).

There is no other offence of simple possession of drugs set out. Therefore, this Court does not have to have any resort to the additional information to be satisfied that this is an offence of conspiracy to supply Class A drugs, namely cocaine and diamorphine. The Court is entitled to infer from the warrant that in the search of [*Redacted*] Road the diamorphine and cocaine that were found there and were forensically linked to him are the same drugs that are referred to in offence no. 12 as the drugs that were found in [*Redacted*] Road. That is sufficient information for the Court to be satisfied that there is an allegation that he was in a conspiracy to possess those controlled drugs.

52. In the present case, the issuing state did give further details on all relevant matters referred to above. The respondent made further complaints about the contents of that information and whether correspondence and clarity had been established. For the sake of completeness, I will deal with the issues that arose.

Correspondence and clarity established with the additional information
53. The Court is satisfied that sufficient information has been included in the replies to establish that for the purpose of the conspiracy offences, namely, offences 1, 2 & 12, the respondent was clearly in a criminal conspiracy within the meaning of our legislation. The final piece of information stated that the respondent is accused of having entered into an agreement to commit all offences alleged in the first instant warrant and the EAW with three other identified persons. The conspiracy offences relating to drugs refer to the possession with intent to supply diamorphine and cocaine which are controlled offences under our Misuse of Drugs Acts. In relation to each of the substantive firearms and ammunition, it is established from the further information referred to above that, the individual descriptions of those items demonstrate that they encompass firearms and ammunition within the meaning of our Firearms Acts. The conspiracy offences relating to firearms and ammunition possession relate to the items which are so detailed.

54. Insofar as the respondent has continued to make claims as regards lack of detail about his participation in the alleged offences, this argument does not bear scrutiny. He is alleged to have been involved in the conspiracy, the conspiracy is set out insofar as it is to possess the firearms and the ammunition, and also the controlled drugs. The degree of his participation is set out as he is a controlling mind in respect of these matters. Although certain matters within the conspiracy do not specifically mention him, for example, AC wielding the firearm in the Café, this does not affect the nature of the respondent's involvement. That is simply an aspect of the proof of the overall conspiracy.

55. There has been further clarification in respect of the dates of the alleged conspiracy. Therefore, in respect of the assessment of the overall information that has been provided by the issuing state, the provisions of s.5 and s.38 of the Act of 2003, as regards correspondence of offences, have been met. As regards s.11 of the Act of 2003 and the requirement to provide at ss.(1A)(f) thereof, the circumstances in which the offence was committed or alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence, can be seen from the information provided above that all of those requirements have been met. Information about the firearms and ammunition is also sufficient in the new information. The respondent is under no difficulty in terms of knowledge about the nature of the offences he faces or the ability to challenge his surrender on any ground under the Act.

56. In all of those circumstances, there is sufficient information provided by the EAW and additional information so as to comply with the requirements of the Framework Decision and in particular with the requirements of s.11 of the Act of 2003.

Challenge to information provided by Crown Prosecution Service
57. On the 19th March, 2019, the respondent sought to make a fresh claim arising out of the information that had been provided by the CPS on the 19th February, 2019 in response to this Court's request. His point was that none of the information provided by the issuing state should be considered by this Court as it had not been provided by an issuing judicial authority. The minister objected to proceeding with that point on the basis that no notice had been given in relation to the point. Furthermore, the minister objected on the basis that some of the information had been in the possession of the respondent for a considerable time. This Court considered it appropriate to adjourn the case for further hearing on the basis that the respondent would serve an updated point of objection.

58. On the 21st March, 2019, the respondent filed a further eight points of objection. In essence, these can be reduced to an objection to receipt of information from the CPS, on the basis that the entire surrender procedure must be carried out under judicial control and this process was not carried out under such control.

59. On the 27th March, 2019, this Court heard the further submissions. Counsel for the respondent referred to a number of provisions in the Framework Decision. He submitted that it was important to approach this from the perspective of fundamental principles. He referred to recital 5 which states that the traditional cooperation which had prevailed up till now should be replaced by a system of "free movement of judicial decisions in criminal matters". Recital. 6 states that the EAW was the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the cornerstone of judicial cooperation. Counsel also referred to various articles in the Framework Decision such as Article 1, para. 1, Article 1, para. 3, Article 5, para, 1, Article 8 in particular 8(1)(c) and Article 15, Article 17(4) and Article 19(2).

60. In counsel's submission, the Framework Decision established that what is at issue is a conversation between an issuing judicial authority and an executing judicial authority. In his submission, the case law of the CJEU supports this interpretation. He referred to tkhe following five cases. *Mantello (C-261/09), Bob Dogi (C-241/15), Jeremy F. (C-168/13), Aranyosi and Caldararu (C-404/15 & & C-659/15), Tupikas (C-270/17), Piotrowski (C-367/16).*

61. Counsel submitted that para. 48 of *Mantello* supported the view that this was a conversation between judicial authorities. In para. 63 in *Bob Dogi*, counsel submitted that the CJEU, having held that failure to comply with the requirement under Article 8(1)(c) of the Framework Decision must, in principle, result in the executing judicial authority refusing to give effect to the EAW, went on to hold that Article 15(2) required the executing judicial authority to request further information from the judicial authority of the issuing member state. He also referred to the case of *Jeremy F*. at para. 46 in which it was stated that:

> *"The entire surrender procedure between member states provided for by the framework decision is therefore, in accordance with that decision, carried out under judicial supervision."*

62. Counsel also referred to the decision in *Aranyosi and Caldararu* in which the CJEU held that, if an executing judicial authority was faced with evidence of the existence of systemic or generalised deficiencies in respect of detention conditions that may give rise to a real risk of inhuman and degrading treatment, the executing judicial authority must *"pursuant to Article 15(2) of the Framework Decision request of the judicial authority of the issuing Member State that there be provided as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State*". Finally, counsel relied upon the case of *Piotrowski* at para. 60 thereof in which it was stated that under Article 15(2) there was an option:

> *"To request that the necessary supplementary information be furnished as a matter of urgency in order to obtain other evidence produced before the issuing judicial authority."*

63. Counsel submitted it was clear from the case law that what was at issue in the surrender procedures established by the Framework Decision was a judicial decision with judicial protection in operation at all levels. This necessarily included judicial oversight. He submitted that this was a mandatory requirement and that it had not been complied with in the present case.

64. The supplementary points of objection filed on behalf of the respondent included a claim that the provision of information by the CPS rather than the issuing judicial authority was contrary to Article 6 ECHR and/or Article 47 of the EU Charter. In response to a specific question by this Court, counsel did not give an answer as to how he contended that this was so. This point of objection in itself was somewhat surprising in light of case law from the European Court of Human Rights ("ECtHR") which suggests that extradition hearings may not be covered by Article 6 provisions. In any event, leaving aside the specifics of whether or not extradition proceedings are so covered, counsel did not identify any specific aspect of a fair trial right that was being violated either in this jurisdiction or in the jurisdiction of the issuing state by virtue of the provision of this information in the form that it had arrived i.e. provision of information by the CPS on behalf of the issuing state. There is no evidence which raises even the suspicion that there will be an unfair trial in the issuing state. All the information provided by the CPS does is give to this respondent even greater clarity than he may already have had (or have been entitled to) from the European Arrest Warrant.

65. Similarly, in respect of a further claim that the respondent's right to liberty, under Article 5 ECHR and Article 6 of the EU Charter, was being violated by the provision of the responses in a format which had not allowed this Court perform its functions under the Act of 2003, counsel for the respondent could not identify any manner in which his detention was thereby unlawful. Indeed, counsel specifically conceded that he was not contending that his detention was unlawful arising out of the provision of the responses. For the avoidance of doubt, this Court is satisfied that, the respondent is in lawful custody and has been in lawful custody during the course of these proceedings. The respondent's case was adjourned and he was remanded in custody to permit this argument to be pleaded by the respondent and responded to by the minister. The only issue therefore for this Court, is one as to the procedural requirements of the surrender process under the Framework Decision, rather than on any issue of fair trial that might arise out of an alleged failure to comply with those procedures.

66. Counsel for the minister accepted that this was a case in which subsequent to the EAW being issued, the issuing judicial authority had no further involvement in the provision of information. In her submission, this was not fatal to the application for surrender. She referred to the provisions of s.20 sub-sections 1 and 2 thereof, which referred to the High Court and the central authority respectively, granting authority to seek further information from either the issuing judicial authority or the issuing state. She also referred to Article 7 of the Framework Decision which allowed for the provision of central authorities to assist the competent judicial authorities and also to be responsible for the administrative transmission and reception of EAWs as well as for other official correspondence relating thereto.

67. Counsel for the minister also referred to Article 15 of the Framework Decision. She submitted there was a crucial distinction between Article 15(2) and Article 13(3). Article 15(2) allowed an executing judicial authority to request necessary supplementary information to be furnished as a matter of urgency but Article 15(2) did not refer to that information being provided by the issuing judicial authority. On the other hand, Article 15(3) permitted the issuing judicial authority at any time to forward additional useful information to the executing judicial authority.

68. Counsel relied in particular on the decision of the CJEU in the case of *ML* (*Generalstaatsanwaltschaft Bremen*) [2018] C-220/18 PPU. In that case the CJEU ruled on an assurance which was not given or endorsed by an issuing judicial authority. Where an assurance is not so given, the CJEU held that it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority.

69. Counsel submitted that the Court was entitled therefore to have regard to all of the information before it. The Court was entitled to have regard to the fact that this was information from the CPS which was an emanation of the state of the United Kingdom. Counsel made the point that mutual recognition was a matter which concerned the recognition of judicial decisions from another member state. On the contrary issues of mutual trust and confidence go further and relate to the member states themselves. She submitted that in relation to *Aronyosi and Caldararu* that had made it clear that the court was entitled to rely on material otherwise than that provided by an issuing judicial authority. That had been demonstrated in the decisions such as *Tupikas* and also *Bob Dogi.*

70. Counsel for the respondent submitted that s.20 was simply permissive, but did not take away the fact that there must be judicial oversight. He referred also to the particular issues in this case which went beyond issues of dates but related to the particulars of the offence, the date of the offence and the correspondence. He said these were issues that had to be complied with under the provisions of the Framework Decision in s.11 and 38 of the Act of 2003. He submitted there were many tensions within the European Arrest Warrant. He relied in particular on the case of *Bob Dogi* in which it was stated that the information had to come from the issuing judicial authority.

Analysis and Decision on the issuing of provision of information by an authority other than the issuing judicial authority

71. The Framework Decision introduced a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences. This was accomplished a system of free movement of judicial decisions in criminal matters. This system provided for a principle of mutual recognition of judicial decisions as regards arrest warrants in other member states. The EAW, being a judicial decision issued by a member state, must be executed in another member state on the basis of the principle of mutual recognition and in accordance with the provisions of the Framework Decision.

72. Recital 8 of the Framework Decision makes clear that decisions on the execution of the EAW must be subject to sufficient controls, which means that a judicial authority of the member state where the requested person has been arrested will have to take the decision on his or her surrender. Recital 10 also states that the mechanism of the EAW is based on a high level of confidence between member states. As Fennelly J. stated on behalf of the Supreme Court in *Minister for Justice and Equality v. Stapleton* [2007] IESC 30:-

> *"The principle of mutual recognition applies to the judicial decision of the judicial authority of the issuing member state in issuing the arrest warrant. The principle of mutual confidence is broader. It encompasses the system of trial in the issuing member state".*

73. Article 15 of the Framework Decision provides for the situation where an executing judicial authority may find that the information provided to it by the issuing member state is insufficient to allow it to decide on surrender. It cannot be considered merely accidental that Article 15(2) and Article 15(3) use different language to describe the manner in which additional useful information may be either

requested by or forwarded to the executing judicial authority. Article 15(2) permits the executing judicial authority to seek further information. It does not however require that the additional information be furnished by the issuing judicial authority. Furthermore, Article 15(2) refers to a situation where information communicated by the *issuing member state* is insufficient. Article 15(3) on the other hand allows the issuing judicial authority at any time to forward additional useful information.

74. In the view of this Court, the case of *ML* puts beyond doubt any question of whether information may only be received from an issuing judicial authority. At para. 108, having referred to Article 15(2) which permits an executing judicial authority to request that the necessary supplementary information be furnished as a matter of urgency, the CJEU went on to state:-

> *"In addition, under Article 15(3) of the Framework Decision, the issuing judicial authority may at any time forward any additional useful information to the executing judicial authority."*

In the view of this Court, that is an indication that the sub paragraphs of Article 15 are to be considered separately. That indication of the CJEU is further emphasised by the reference in para.109 to the principle of sincere cooperation set out in the first sub-paragraph of Article 4(3) Treaty on European Union ("TEU") in which it is said that the *"European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties."*

75. Paragraph 110 of the decision in *ML* refers to the executing judicial authority and the issuing judicial authority being permitted respectively to request information or give assurances concerning the actual and precise conditions in which the person concerned will be detained in the issuing member state. Paragraph 112 refers to an assurance that is being given or at least endorsed by the issuing judicial authority. In *ML* it was noted that the assurance was given by the Hungarian Ministry of Justice. It was not endorsed or provided by the issuing judicial authority. At para.114, the CJEU stated:-

> *"As the guarantee that such an assurance represents is not given by a judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority."*

76. The other cases referred to by the respondent above, did not preclude information being obtained from other sources. Indeed, cases such as *Aronyosi and Caldararu* and *Tupikas* expressly considered that that might be the position. In the case of *Bob Dogi*, the reference to the obtaining of the information from the judicial authority of the issuing member state pursuant to Article 15(2) be read in the context of what was being argued in that particular case.

77. Even if the request is made of the issuing judicial authority, the decision in *ML* clearly envisages the reply being provided by a competent authority of the member state. That reply must be assessed by the executing judicial authority. The principle of judicial supervision is one which in accordance with recital 8 is one which is primarily to be carried out by the executing judicial authority. The process is commenced by an EAW issued by a competent judicial authority in the issuing state. Without such a judicial decision, there is no request for surrender within the meaning of the Framework Decision or the Act of 2003. However, in the context of taking a decision on the execution of that judicial decision in this member state, the High Court as executing judicial authority, must take into account all of the information provided to it by the issuing state. The fact that information is not provided by the issuing judicial authority, is a factor that the executing judicial authority must take into account when making a decision to surrender in reliance on that information.

78. This Court must also have regard to s.20 of the Act of 2003. Section 20 provides express authority for both the Central Authority and the High Court to seek information from either the issuing judicial authority or the issuing state. The purpose of this information can only be to assist in the carrying out of the functions under the Act of 2003. In light of the specific provisions of s.20, this Court must be entitled to rely upon the receipt of that information in making its determination as otherwise the enabling provision would be otiose. The Oireachtas cannot be considered to have legislated in vain. In those circumstances, the Act of 2003 must be interpreted as permitting the High Court to rely upon the information obtained from a competent authority within the issuing state. That provision would apply even if the Framework Decision did not permit the obtaining of such information. To hold otherwise would be to act *contra legem* to the provisions of the Act of 2003. On the basis of the decision in *ML* and the express provisions of Article 15 of the Framework Decision, it is however clear that the provisions in s.20 are not in any way in opposition to the provisions of the Framework Decision. I am therefore satisfied that, the information provided by the CPS in the UK is information to which I may have regard.

79. The information provided by the CPS, is information that is provided by a competent authority of the United Kingdom; the public prosecution service. It has not been suggested, by way of evidence or by way of submission, that the CPS is an institution inherently unreliable or is specifically unreliable in the present case. At most what the respondent submitted was that within the context of the UK legal system, they are an adversary to the respondent in the present case. While the CPS may be the moving party in relation to the criminal proceedings in the UK, for the present purposes, as a prosecution authority of a member state, they are informing this Court that the respondent will be prosecuted in respect of certain matters.

80. The CPS has explained how an error in advices led to a decision not to include in the draft EAW presented to the District Court in the UK an indication that Article 2, para. 2 covered these alleged offences. The CPS has not sought in the view of this Court to seek to amend the warrant by giving its explanation as to what happened. On the contrary, the CPS is providing an explanation as to why this has not occurred. The CPS has given information about the procedure in the UK as regards answering questions from executing judicial authorities in relation to European Arrest Warrants. In the view of this Court, that has the result that this Court cannot accept that the EAW itself can be, or has been, amended by the issuing judicial authority. Therefore, this Court will not accept, nor does it believe it was asked to accept, that Article 2 para. 2 applies to any of these offences. In those circumstances correspondence or double criminality must be established.

81. The information that has been provided by the CPS in relation to the extent of the offences alleged against this respondent, has been presented as information in order to assist this Court in establishing correspondence. It should be noted that s.11(2A) provides that *"[i]f any of the information to which subsection 1A (inserted by s.72(a) of the Criminal Justice Terrorist Offences Act 2005) refers is not specified in the European Arrest Warrant, it may be specified in a separate document".* Section 12(8)(c) states that a document that purports to be a document referred to in s.11(2A) shall be received in evidence without further proof. The result of the foregoing is that evidence may be supplied in a further document.

82. The EAW in the present case sets out twelve offences in respect of which the respondent's surrender is sought for prosecution. The information provided by the CPS provides further clarification in respect of each of those offences certain matters. The provision of such information as the location of the conspiracies as being in Liverpool, the nature of the firearms and ammunition, the identity of the co-conspirators and the role of this respondent as a controlling mind, cannot be described as anything other than information which clarifies the details of the offences alleged against him (where such information may be necessary). This has been provided by the CPS, the public prosecution service in England and Wales, and therefore a prosecuting authority within the United Kingdom. There

is no reason whatsoever to doubt the authenticity of the information and the *bona fides* of the public prosecution service.

83. This Court must apply mutual trust and confidence to the information that has been received by the public prosecution authority of another member state. In the absence of any real or substantive objection to the *bona fides* of that response, it may provide the basis for the consideration of whether clarity in respect of the nature and number of the offences has been obtained and whether there is in fact correspondence of offences.

84. In respect of the information as regards the date of the alleged conspiracies, the CPS has indicated that it wishes to amend the dates of the conspiracy. It is not for this Court to amend the dates on the EAW, that would be a matter for the issuing judicial authority. The CPS has chosen not to seek the permission of the issuing judicial authority in that regard. That is not however the end of the matter. The issuing judicial authority has sought the surrender for a conspiracy in respect of these offences. What has been provided to this Court is information that the CPS will seek to prosecute and amend those charges if he is to be prosecuted in the issuing state.

85. This Court on two occasions invited the parties to address the decision of the CJEU in *Leymanns and Pustovarov* (Case C-388/08). This was raised in the context of a question of whether the rule of specialty would be breached, if this respondent was to be surrendered to face the charges in respect of which the EAW was issued if those charges were to be amended in the issuing state to the extent indicated by the CPS.

86. In *Leymanns and Pustovarov*, the individuals had been surrendered by Poland/Spain respectively to the Finnish authorities in respect of serious narcotics offences. The EAW had referred to amphetamines whereas they were convicted of offences in respect of hashish. In the CJEU it was held that:-

> *"In order to establish whether the offence under consideration is an 'open offence' other than that for which the person was surrendered within the meaning of Article 27(2) of Council Framework Decision 2002/584/JHA of 13th June, 2002 on the European Arrest Warrant and the surrender procedures between states, requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27 (4) of that Framework Decision, it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing state, are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the Arrest Warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed insofar as they derive from evidence gathered in the course of the proceedings conducted in the issuing state concerning the conduct described in the Arrest Warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 & 4 of the Framework Decision."*

In that case, the modification of the description of the offence concerning the kind of narcotics involved was not of itself sufficient to amount to an offence other than that for which the person had been surrendered.

87. There is no doubt but that, as regards the time of the alleged conspiracy, the issuing judicial state would be entitled to permit amendments to be made in the course of proceedings to the charge. This would depend on the evidence given in the proceedings. In the present case what has occurred is that the prosecution are now aware that a more specific timeframe can actually be given. They have made this jurisdiction aware of it. The respondent is now aware that if he was surrendered, there would be an application to amend the charges to include this greater timeframe. If that request was made and granted, it would not require the consent of this Court. In the view of this Court, it also does not prevent his surrender. There is no lack of clarity as to the offence for which his surrender is sought. The offence is that set out in the EAW with the timeframe as indicated. There is an intention on his surrender to extend that period. That would be a matter for the court in the United Kingdom. He has been made aware of that. All his rights have been respected in that regard. I therefore reject this point of objection.

88. Finally, as indicated above the Court was satisfied that, that the statement in the EAW as regards conspiracy, would in fact have been sufficient on its own to amount to a criminal offence in this jurisdiction. The further information by the CPS, dated 4th February, 2019 stated that the respondent entered into an agreement with three other named persons to commit the offences set out in the European Arrest Warrant. The respondent's objection that there is no indication of an agreement to commit a crime which establishes correspondence must be rejected.

89. Counsel for the respondent also stated that this Court should take into account the failure of the issuing judicial authority to respond to the central authority of this state regarding his claims about prison conditions. The central authority had sent a letter dated 27th June, 2018 enclosing the respondent's affidavit and inviting comments. Whatever about the central authority's duties and rights under s. 20 of the Act of 2003 to seek further information, there does not appear to be a corresponding right under the Framework Decision. In *ML*, the CJEU at paragraph 80 with reference to Article 15(2) stated: "*That provision thus cannot be used by the executing judicial authorities to request, as a matter of course, that the issuing member State provide general information concerning detention conditions in the prisons in which a person who is the subject of a European arrest warrant might be detained."* There is nothing untoward about the issuing state not responding to a general request for comment. In any event, it is a matter for the High Court to assess the overall information before it can come to a determination as regards prohibition of surrender on a fundamental rights basis. This Court has carried out that assessment in this judgment in the paragraphs bellow.

90. In respect of all objections related to lack of correspondence of offences or in relation to lack of clarity, this Court rejects the respondent's points of objection. It is perhaps unfortunate that the Court sought the further information it did, as on further consideration, it appears that the EAW was not deficient in any regard. Having considered the submissions, the Court is also satisfied that it is entitled to have regard to the information provided by the issuing state, namely that provided by the CPS. The Court has considered that there is no reason in the present case why that information cannot be relied upon as information about what this prosecution in the UK involves. The Court is satisfied from all the information provided that there is sufficient information for this Court to perform its functions and for the respondent to be able to meet the case against him. There is no basis for refusing his surrender on any issue arising out of the information, or lack thereof, provided in the EAW as to the offences for which his surrender for prosecution is sought.

Section 37 of the Act of 2003

Article 3 ECHR – Prison Conditions

91. The respondent claimed that his right not to be subjected to inhuman and degrading treatment would be violated should he be surrendered to the issuing state. The respondent relied on what he said was specific and updated information concerning the conditions of detention in the UK, in particular in Her Majesty's Prison ("HMP") Liverpool that showed that he would be at real risk of being subjected to conditions contrary to Article 3 of the ECHR and Article 4 of the EU Charter.

92. The law on this area was not at issue at the hearing. The principles are to be found in the decision of *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] IESC 45 and in the CJEU decision of *Aranyosi and Caldararu*. It is a matter for the respondent to establish that there are substantial/reasonable grounds for believing that he will run a real risk of being subjected to the prohibited conditions if he is surrendered.

93. As set out in *Aranyosi and Caldararu*, the mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people or certain places of detention, with respect to detention conditions in the issuing member state does not necessarily imply that, in a specific case, the individual concerned will be subjected to inhuman or degrading treatment in the event that he is surrendered to the authorities of that member state. Instead, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, must determine specifically and precisely, whether in the particular circumstances of the case, there are substantial grounds for believing that following the surrender of that person to the issuing member state, he will run a real risk of being subject in the member state to the prohibited treatment.

94. In the decision of the Court of Justice in *ML*, the CJEU considered which prisons in the issuing state must be considered by the executing judicial authority in terms of assessing their conditions. It was held that an obligation on the part of the executing judicial authority to assess the conditions of detention in all the prisons in which the individual concerned might be detained in the issuing state was clearly excessive. The CJEU held that "*in view of the mutual trust that must exist between Member States….. the executing judicial authorities are solely required to assess the conditions of detention in the prisons in which, according to the information available to them, it is actually intended that the person concerned would be detained, including on a temporary or transitional basis*" (para 87). It was held that the compatibility with the fundamental rights of the conditions of detention in the other prisons in which that person may be possibly be held at a later stage is, in accordance with the case law referred to in para. 66 of the judgment, a matter that falls exclusively with the jurisdiction of the courts of the issuing member state.

95. In the present case, the respondent has put forward evidence from solicitors in Liverpool who appear to be his acting solicitors in these proceedings. They have stated that at the present time prisoners are still being held at HMP Liverpool and ordinarily those defendants appearing at Liverpool Crown Court ultimately are remanded to either HMP Liverpool or, in the alternative, HMP Altcourse also in Liverpool. I am satisfied that this is sufficient to demonstrate that those prisons are the ones where it is actually intended to detain him should he be surrendered. I do not have to decide whether there is an onus on a requested person to provide such evidence or whether this is a matter for request of the issuing state. I am satisfied that where two prisons are identified as alternative prisons in a somewhat equal balance, that is sufficient to justify the examination by the High Court of the conditions in each of those two prisons for the purpose of establishing whether there is a real risk of the respondent being exposed to inhuman and degrading conditions on surrender.

HM Chief Inspector of Prisons report regarding HMP Liverpool

96. Her Majesty's (HM) Chief Inspector of Prisons in the UK produced report on an unannounced inspection of HMP Liverpool that had been carried out between the 4th and the 15th September, 2017. HM Chief Inspector of Prisons is part of the National Preventative Mechanism ("NPM") under the Optional Protocol to the UN Convention Against Torture ("OPCAT"). It is appropriate material to which this Court should have regard in assessing conditions.

97. It is necessary to put the findings of the report in context. HM Chief Inspector of Prisons reports carry a summary of conditions and treatment of prisoners, based on the four tests of a healthy prison that were first introduced in 1999. These tests are: -

> (i) Safety – Prisoners particularly the most vulnerable, are held safely
>
> (ii) Respect – Prisoners are treated with respect for their human dignity
>
> (iii) Purposeful activity - Prisoners are able and expected to engage in activity that is likely to benefit them.
>
> (iv) Rehabilitation and release planning – prisoners are supported to maintain and develop relationships with their family and friends. Prisoners are helped to reduce their likelihood of reoffending and the risk of harm is managed effectively. Prisoners are prepared for their release into the community.

98. It can be readily seen from this that it is more likely that the first two categories that will have any relevance to the question as to whether prisoners have been held in conditions constituting inhuman and degrading treatment. It must be acknowledged however that in a consideration of the overall circumstances in a prison, failures under the other two headings may point towards the overall failure to keep prisoners inhuman and non-degrading conditions which respect their right to human dignity.

99. Under each of those tests, there are four possible outcomes. These are outcomes for prisoners are good, outcomes for prisoners are reasonable good, outcomes for prisoners are not sufficiently good, and outcomes for prisoners are poor. Outcomes for prisoners are poor which means that there is evidence that the outcome for prisoners are seriously affected by current practice. There means a failure to ensure even adequate treatment of and/or conditions for prisoners. Immediate remedial action is required.

100. The reports often contain recommendations. At a 2015 inspection, 89 recommendations had been made. It appears that 22 of those recommendations had been fully achieved by this 2017 inspection, fourteen partially achieved and 53 not achieved. In an overall sense, the 2017 report held that the prison had deteriorated in the areas of respect and purposeful activity and these were judged as poor. The remaining two areas were judged still to be not sufficiently good. Not sufficiently good means that there is evidence that outcomes for prisoners are being adversely affected in many areas or particularly in those areas of greatest importance to the wellbeing of prisoners. Problems/concerns if left unattended, are likely to become areas of severest concern.

101. It should be noted that at the time of the inspection in 2017, the prison was operating at less than its certified normal capacity and significantly less than its operational capacity. The background to HMP Liverpool is that it is said to be a traditional local jail with a strong local identity.

102. The main points at issue in the 2017 report was that violence of all kinds had increased since the last inspection. Over a third of prisoners told the inspectors that they felt unsafe at the time of their inspection and half said they had been victimised by staff. There was a prevalence of illicit drugs in the prison. The next issue was the regime in the prison. Prisoners were being left locked in their cells for long periods of time and about half were locked in their cells during the working day.

103. Some of the most concerning findings were around the squalid living conditions endured by many prisoners. The living conditions were extremely poor. Many of the cells were not fit to be used and should have been decommissioned. There were issued with

unrepaired windows, lavatories were filth blocked or leaking, infestations of cockroaches, broken furniture, graffiti, damp and dirt. The prison was generally untidy and in some places piles of rubbish which had even required cleaners to come in as it was so hazardous it could not otherwise be cleaned within the prison itself. Shower units were screened but most were dirty. There was an issue with pressing emergency call bells. There were leadership issues.

104. Counsel on behalf of the respondent referred in particular to a number of matters under safety. In particular, s. 7 of the report concerning the prisoners who felt unsafe and the significant increase in recorded assaults against staff and prisoners since their last inspection. A significant number of prisoners were self-isolating including some who feared for their safety. Violence reduction work was under resourced. Four prisoners had taken their own lives since the previous inspection and two more suspected suicides occurred shortly after the inspection. Numbers of self-harm was increasing.

105. Under the heading of "Use of Force" it was said that force had been used on 288 occasions in the previous six months, fewer than at their last inspection. They found that while batons had been drawn on six occasions there was one incident which had not been recorded. Recent use of force records were incomplete. Some records referred to an officer who "threw a punch at a prisoner" but this was not legitimately explained. They were not identified and reviewed by managers until pointed out by the inspectors.

106. It appears that drugs were readily available in the prison. Drones carrying drugs and other illicit items were a substantial problem. Caging had been installed around windows and the drones were sometimes disrupted by using technology. Cannabis and synthetic cannabis were the most commonly used drugs. 37.5% of the random drug tests taken in the last six months had proved positive including for synthetic cannabis. The report says drug testing was insufficiently random and only three weekend tests in the previous six months.

107. In terms of respect, it was said that 55% of prisoners said that staff treated them with respect, against the comparator of 77% and 74% at the previous inspection. They did go on to say however that most interactions between staff and prisoners were relaxed and courteous. However, the inspectors said that many staff had low expectations of prisoners and did little to encourage them for example to engage with the activities or rehabilitation work.

108. In terms of purposeful activity, a complaint was that time spent unlocked remained poor. It is noted however that it was more predictable than at the last inspection. 43% of prisoners said that they usually spent less than two hours out of their cell on a typical weekday, against the comparator of 29%. Only 3% of respondents said they received the expected ten hours a day out of cell during the week. There was not enough activity for prisoners. And the prison managers did not ensure that prisoners attended activities regularly and on time. Too many prisoners were locked up during the core day with little opportunity to develop their skills and improve their life chances after release.

109. Under rehabilitation and release planning, counsel for the respondent relied upon that section of the report which said that the support given to men to maintain contact with the outside world had deteriorated since the last inspection and opportunities were missed in several areas. Families were not routinely involved in supporting prisoners and family relationship courses had not been delivered in the previous six months. There were significant delays in adding telephone numbers to their PIN phone account. These delays were up to a month in some cases. 66% of prisoners said that they had problems sending or receiving mail as against a comparator of 48%. They found that mail could be delayed particularly when the staff who processed mail were redeployed.

110. Counsel for the respondent also referred to the answers to the surveys which were included in the report. He relied upon statements from the Howard League for Penal Reform ("Howard League"), the penal reform charity in the UK as to its response to the Liverpool prison inspection. This added little to the Court's understanding of the report save to say that the director of campaigns at the Howard League stated that the report was one of the worst the Howard League had seen in recent years. He said that the physical condition of Liverpool prison is only one dimension of what has gone wrong in the establishment but it confirmed that the issue goes beyond the shortcomings of the liquidated contractor Carillion. He said that it was clear that maintenance in Liverpool was responsibility of another contractor Amey and it was clear from this and other inspections of the company was also failing to deliver. He also referred to Ministry of Justice Prison Population Projections 2018 to 2023 and submitted that it was clear that overcrowding was going to get worse.

111. Counsel drew the attention of the Court to the number of recommendations that had not been achieved or implemented following the 2015 report. In relation to safety, these referred to use of force not being fully recorded, prisoners being given notice of planned transfers and not being held in reception for long periods. There were also others to which he referred. Counsel submitted that the failure to implement those recommendations meant that the court should be very slow to accept the response of HM Prison and Probation Service ("HMPPS") to the chief inspector of prisons report. This action plan was published on the 19th January, 2018. This response referred to each recommendation that was made in the inspectorate report. It stated that it either agreed, partly agreed or did not agree with the recommendation. It then set out the response action taken/planned. It indicated the function responsibility/policy lead for that response or action and it also set out the target date.

112. Of considerable significance is the first recommendation. This had set out that concerted action should be taken at national and local level to ensure that the prison environment is brought up to an acceptable standard. In particular, all cells should provide decent hygienic and well maintained conditions and necessary repairs should be completed swiftly. Cells falling below basic standard should not be occupied. In that regard the prison service said that it agreed. It stated that 172 places had been taken out of use at HMP Liverpool due to unacceptable conditions.

113. It should also be said that the solicitor from Liverpool engaged on behalf of the respondent also agrees that certain areas of the prison are now the subject of refurbishment, which has led to the dispersal of some prisoners. In the view of the Court, it is clear therefore that the worst cells i.e. those that fall below basic standards have been taken out of circulation. It is also clear from the response of HMPPS that by January of 2018 "a full condition survey was underway" was underway on which investment for a medium term refurbishment will be based. They also said that funding had been agreed for a full programme of window replacement. In the interim remedial action was being taken to repair existing damaged windows on a rolling basis. In respect of daily accommodation cell fabric, they said that checks were being conducted and unacceptable cells are reported and taken out of condition until adequate repairs have been taken. There was a new monthly cleaning programme in place and the number of prisoners working in the area cleaning party has been increased to eighteen. A cleaning schedule is in place with oversight of custodial managers. That is said to have been completed and ongoing. It is fair to say that most of the recommendations have been agreed and are listed as completed and ongoing.

114. In the view of the Court, the appalling conditions in Liverpool which had been identified by HM Chief Inspector of Prisons have clearly been ameliorated. This is indicated from the response of the HMPPS and is confirmed by the evidence of the English solicitors retained by the respondent. The material conditions that were the most criticised and gave rise to the most concern were the fact

that there were particular cells that were totally unsuited and did not meet rather basic standards. These have been taken out of commission. Moreover, issues around the cleaning and rubbish in particular alleyways or areas appears to have been addressed and in any event that on its own may not have reached minimum thresholds. In all the circumstances, I am satisfied that there is no cogent evidence before the Court to support the contention that the living standards in HMP Liverpool, by virtue of the fabric of the prison, do not meet minimum standards for compliance with Article 3 of the European Convention on Human Rights.

115. A major point raised by the respondent was recommendation 5.5. This recommendation had said prisoners should be unlocked and engaged in constructive activity during the working day. The regime should include an hour to exercise in the open air, evening association, frequent library access and sufficient time to carry out domestic tasks. Managers should ensure that poor attendance and punctuality are addressed. That was said to be only partly agreed.

116. HMPPS was said that "prisoner unlock to engage in constructive activity has improved since the inspection. The introduction of interim profiles allows for a regime which delivers daily exercise in the open air in line with PSI 75/2011, weekly visits to the library for all prisoners who wish to attend and 1 hour association within which domestic tasks can be undertaken". That was said to have been completed and ongoing.

117. There were also planned further improvements to increase the number of men who were able to access evening association in line with policy. That was said to be completed in April 2018 as a target. There was then an activity manager who had been appointed to ensure poor attendance and punctuality in relation to activities are addressed. In terms of the one hour exercise this was where the most contentious issue arose. National policy PSI 75/2011, residential services states the prisoners are afforded a minimum of 30 minutes in the open air daily. This provision is mandatory subject to weather conditions and the need to maintain good order and discipline. There is no requirement to provide one hour or more than 30 minutes in the open air.

118. Counsel for the respondent pointed to this as inhuman and degrading treatment. No legal support for the contention that a failure to give an inmate an hour outside activity amounted to a breach of his rights not to be subjected to inhuman and degrading treatment. The respondent's submission also fails to take into account that there are other aspects to the "unlock" regime. Time out of cell is not limited to 30 minutes, it is only that time outside of over 30 minutes that will not be guaranteed. In my view, a restriction of daily outside time to 30 minutes is not something which, on its own and in the absence of other concerning conditions, can be said to give rise to a real risk of being subjected to inhuman and degrading treatment.

119. The respondent also complained about the fact that prisoners should not be held in overcrowded conditions. This was a recommendation that was not agreed. It was stated that for the foreseeable future and in common with other prisons it will be necessary for Liverpool to operate with an operational capacity that involves a level of crowding above its certified normal accommodation. It was stated that *"as part of prison reforms the long term goal is to reduce crowding, while maintaining sufficient capacity in the prison estate to manage the demands of the courts and the sentenced population as efficiently as possible. This level is kept under constant review, taking into account fluctuations in the prison population and usable capacity across the estate. The prison insures that this level of operational capacity is set to reflect the provision of safe and decent accommodation and the operation of suitable regimes and the levels of crowding in prisons are carefully managed."* The reply also went on to state *"the occupancy of prison cells is determined by the governor of each establishment and, where cells are proposed for sharing when they were originally designed for single occupancy, this is certified by the relevant prison group director in accordance with PSI 17/2012, which provides clear guidelines for determining cell capacities."*

120. It is obviously a concern that a certified normal accommodation limit will be exceeded. That does not however mean that overcrowding will reach the level of inhuman and degrading treatment. Conditions may be suboptimal in a prison, but will not have reached the level of inhuman and degrading merely because of overcrowding. There must be aspects of that overcrowding which give rise to concern, either because of the lack of living space or other conditions of living which arise due to that overcrowding.

121. It is noted in particular, that even with overcrowding, there is a requirement not to have prison capacity in excess of what is safe and decent. In other words, there is a set operational capacity which is the capacity for which the prison can provide safe and decent accommodation. There is no suggestion that that will be violated. Furthermore, there is no evidence in HM Chief Inspector's report or from other information, that these operational limits would breach minimum levels of overcrowding. It is to be noted that in a system which is quite transparent as evidenced by the publications of the UK inspection reports, that there is no suggestion that the overcrowding either in this prison or in other prisons are such that they in fact breach minimum space requirements. Furthermore, the respondent has solicitors acting on his behalf in Liverpool, and despite their knowledge of where persons are committed from the courts in Liverpool and their knowledge as to the refurbishment of Liverpool prison, they do not make any adverse comments about the nature of that overcrowding. In short, there is no evidence before the Court to demonstrate substantial grounds that there is a real risk that this respondent would be held in inhuman and degrading conditions should he be surrendered to the UK.

122. The respondent has also referred to recommendation 5.62 which was that sufficient family days and parenting courses should be provided to meet demand. This was not agreed by HMPPS because it was said that given resource constraints they could not commit to meet demand regardless of its level. It does appear however that certain provision is being made will be increased. The respondent complains that because he has family attachments here that he is at real risk of suffering these conditions. In the view of the Court this is a rather spurious submission. There was no attempt to set down what family entitlements he was available to in this jurisdiction or what is generally available to families in this jurisdiction. There was no attempt to show how a failure to provide family days and planned parenting courses could equate to being held in inhuman and degrading conditions. As the ECtHR has repeatedly stated, there is a minimum threshold before which conditions can be said to be inhuman and degrading. It is abundantly clear that lack of access to family days and planned parenting courses does not reach that level. It is not being submitted that he would have no access to visits from his family. Similarly, the complaints that were made about lack of access to contacts on a telephone list for up to a month simply does not meet the minimum threshold of ill treatment required to amount to inhuman and degrading treatment.

HMP Altcourse

123. The respondent also made the case that his rights would be violated should he be surrendered because there was also a real risk that he might be sent to HMP Altcourse. This was a surprising submission to make in light of the report of an unannounced inspection of HMP Altcourse dated 13th to the 23rd November, 2017. The overall conclusion of that report was that HMP Altcourse showed that a local prison can provide fundamentally decent treatment and conditions for prisoners, despite facing many of the same challenges as the rest of the prison service. The report stated that "there was much here from which others could learn".

124. In the course of the hearing, there was nothing in the report that counsel for the respondent could refer to in order to demonstrate that conditions would come remotely near the concept of inhuman and degrading treatment. What counsel submitted in a very general way that the fact that HMP Altcourse was overcrowded because it was holding more prisoners than its certified normal capacity but within its operational capacity. He submitted this demonstrated a real risk of being subjected to inhuman and degrading

conditions.

125. In the view of the Court, such an approach to the question of inhuman and degrading conditions is entirely misdirected. As stated above, it is not the fact of being overcrowded that makes a prison a place where conditions must be said to be inhuman and degrading. It is the nature of that overcrowding, or indeed the consequences of that overcrowding, which must be considered. It is clear from the decision of the European Court of Human Rights in *Mursic v. Croatia* [2015] ECHR 420, that it is only where overcrowding goes below 3m2 of living space per prisoner that such overcrowding will, save in very exceptional circumstances, be deemed inhuman and degrading. Living accommodation ranging between 3m2 and 4m2 may, in combination with other factors especially lack of time outside cells, amount to inhuman and degrading treatment. None of those factors exist in HMP Altcourse. This submission must be rejected as it is not based on any cogent evidence that gives rise to a real risk that he will be subjected to inhuman and degrading treatment.

Further submissions – mental health

126. After an oral hearing on the issue of inhuman and degrading treatment, the matter was adjourned for further argument on other matters. During that period, the respondent disclosed to his legal representatives a matter of concern regarding his mental health. Additionally, counsel argued that there were issues of substance abuse which may impact the surrender of the respondent. Counsel for the respondent sought and was granted an adjournment to put this case on affidavit. In due course the respondent swore two affidavits.

127. In the first affidavit, the respondent exhibited his prison medical records and stated that he had suffered with mental health issues and referred to a concerning passage in the September 2017 report of the Chief Inspectorate of Prisons on HMP Liverpool. The second affidavit, sworn about a week later, gave a little more information about his mental health issues prior to going into custody. He said that on a number of occasions he had contemplated suicide and that in 2013 he was diagnosed with anxiety, depression and prescribed anti-depressants. He found it difficult to deal with negative changes in his life. He was upset that his girlfriend had questioned whether she could continue their relationship. He said that the care he received in prison in Ireland had saved his life. He said that after an attempt at suicide he was dealt with very quickly by the psychiatry staff. He completed an anxiety management course over a period of 6-8 weeks, which helped in the short term. He attended mental health awareness week run by the Samaritans and Irish Red Cross. A short letter from the clinical psychologist was handed in which showed that he had attended 12 one to tone mental health sessions. There had taken place both before and after his suicide attempt.

128. Counsel for the respondent referred the Court at some length to the medical records which demonstrated that there had been an incident where he was found crying that he had wanted to hang himself. He had a rope made from the sheets and tried strangulating himself. He had been risked assessed on occasion. Counsel did not really engage with the psychiatric report that had been presented to the Court from Dr. Conor O'Neill of the Central Mental Hospital. That report had been commissioned by the respondent's solicitor.

129. Dr. O'Neill took a detailed personal, medical, psychiatric and substance misuse history. He noted the events in September 2016 when he was found in his cell with a short ligature. He was noted to have slight redness on the right side of his neck but was not significantly injured. The respondent said the ligature snapped. He told his GP the next day that the incident had been "a cry for help." Dr. O'Neill described the subsequent assessments of the respondent in the aftermath of the incident. A clinical impression was that he did not present with pervasive symptoms of a major mental illness including major mood disorder or psychotic disorder. He had denied further thoughts of self-harm or suicide. Over the following months there was no evidence of psychiatric disorder. In February 2019, he reported feelings of distress and low mood to prison staff. He reported that his partner had taken an overdose of tablets. A cousin also died in Liverpool. He was transferred to a safety observation cell. The following day he reported to the GP that he was feeling better and he denied any thought of self-harm or suicide. He asked to be returned to a normal landing. On that day he was also assessed by Dr. O'Neill.

130. Dr. O'Neill concluded that he did not present as suffering from any major affective or psychotic condition when interviewed on 20th February 2019. In particular, there was no evidence of any major affective or psychotic illness. He formed the opinion that the respondent did not meet the criteria for mental disorder as defined in the Criminal Law (Insanity) Act, 2006 or the Mental Health Act, 2001 at the time of his most recent assessment. There was no indication for psychiatric admission or medication at the time. He has been discharged to the care of the prison GP and the Irish Prison Service Psychology Service. He said that in the event the respondent was to be returned to the UK, he would benefit from engaging with the prison psychology service there.

131. Counsel referred to the September 2017 report by the Chief Inspector of Prisons in relation to HMP Liverpool and to paras 2.82 to 2.87 in particular. These paragraphs set out that due to significant staff vacancies and a lack of cover for psychiatric leave, mental health provision had deteriorated significantly. Men with mental health needs were not consistently seen promptly or reviewed frequently enough, including those on care programme approach. There were examples where men had not seen a nurse or psychiatrist for lengthy periods. One man had waited about 10 weeks for an appointment. On the other hand, there is an indication that the Talking Therapies service was an excellent beacon in an otherwise struggling service.

132. The respondent in this case makes the claim that he is vulnerable by virtue of his mental health. Undoubtedly, he has certain issues that require to be addressed by him with the support of the psychology services. He is not suffering from any major affective or psychotic conditions at the time of examination. He is not under specialist psychiatric care at present, having been referred back to the GP in the prison. He is not being treated by psychotropic medication. His present conditions does not make him vulnerable to the type of issues set out in the 2017 report. I am not satisfied that there is any cogent evidence that he is at real risk of being subjected to inhuman and degrading treatment because of any mental health issue.

133. Moreover, the respondent has failed to address the action plan from January 2018 as referred to above. In relation to the recommendation that the mental health service should be adequately resourced and staffed to ensure that all prisoners with mental health needs receive prompt assessment and regular input to address and review their individual risks and needs, the action plan addressed this under three headings. The plan agreed with the recommendation. It said that since the inspection an e-rostering system was now in place and all rotas are now managed via this. Service leads work with staff to fill shortfalls as necessary and escalate to Service Manager if staffing levels do not meet minimum requirements. This was said to be completed and ongoing. In respect of staffing levels generally it was said that the Lancashire Care Foundation Trust had established a demobilisation groups which will review and monitor staffing levels on an ongoing basis until the end of contract on 31 March, 2018. Post that date the NHS and the Prison Service were committed to re-let the new contract based on the health needs analysis with appropriate mental health care. Finally, it was said that the above Trust's lead nurse, along with others were reviewing the tasks and team procedures for well men's assessments (a general healthcare check), and case management. The NHS and Trust were working together to review the staffing model for healthcare. These were to be complete by March 2018.

134. In light of that updated information, it is clear that certain actions have already been taken with regard to the recommendation.

Further action was planned. The totality of the information does not disclose that there is any real risk at present in relation to the risk of being subjected to inhuman and degrading treatment by virtue of his vulnerabilities as regard his mental health state.

135. I have also considered the mental health provisions in respect of HMP Altcourse. There is no evidence of any real risk of being subjected to inhuman and degrading treatment in that prison arising out of his mental health state.

136. Finally, I do not accept that the evidence regarding drug use in HMP Liverpool in particular, give rise to any real risk that he will be subjected to inhuman and degrading treatment. There is no link or no sufficient link between the real risk of being exposed to inhuman and degrading treatment and the level of availability of drugs in the prisons at issue in the present case.

137. I am satisfied that there are no substantial grounds for believing that this respondent will be at a real risk of inhuman and degrading treatment should he be surrendered to the United Kingdom. This is made on the basis that he is likely to be sent to HMP Liverpool or indeed HMP Altcourse.

Article 8 ECHR – Respect for personal and family rights

138. The respondent relied upon his personal and family rights under Article 8. In the view of the court this point of objection was quite correctly not addressed in oral submissions at the hearing. It is a point of objection which does not meet the threshold set down in *Minister for Justice and Equality v. J.A.T. (No. 2)* [2016] IESC 17 for consideration by this Court. These are extremely serious alleged offences of possession of firearms and possession of drugs with intent to supply in particularly serious circumstances. They are offences of particular gravity. He has been in this country for a very short period of time prior to his arrest. His main point of interest was in the UK and his relationship with a person in this jurisdiction does not reach the threshold where this Court must consider this matter in any further detail. This Court is satisfied that the public interest in his surrender in relation to these offences clearly outweigh his personal and family rights.

Brexit

139. The respondent objected to his surrender on the ground that the UK had indicated its intention to leave the EU by invoking the provisions of Article 50 of the Treaty on European Union ("Brexit"). The issue of Brexit was considered by the CJEU in the case of *Minister for Justice v. R.O.* (C-327/18 PPU). The CJEU set out the duty imposed by the 2002 Framework Decision in respect of a member state which has notified its intention to withdraw under Article 50:

> *"in the absence of substantial grounds to believe that the person who is the subject of the EAW is at risk of being deprived of rights recognised by the Charter of Fundamental Rights of the European Union, and Council Framework Decision 2002/584/JHA of 13th June 2002 on the European Arrest Warrant ("the 2002 Framework Decision") and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26th February, 2009 ("the 2009 Framework Decision"), following the withdrawal of the EU of the issuing Member State, the executing Member cannot refuse to execute that EAW while the issuing Member State remains a member of the European Union"*

140. The respondent has not produced any evidence at all to demonstrate that he is at risk of being deprived of rights recognised by the Charter and the Framework Decision. I therefore reject this point of objection.

Conclusion

141. This Court rejects the points of objection made on behalf of the respondents. The Court may make an order for his surrender in accordance with s.16(1) of the Act of 2003 to such other person as is duly authorised by the issuing state to receive him.