Neutral Citation Number: [2022] EWHC 849 (Admin)

Case No: CO/2323/2021C

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**DIVISIONAL COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 April 2022

**Before**:
**LORD JUSTICE LEWIS**
**MR JUSTICE BENNATHAN**

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**Between:**

| | |
|---|---|
| **CROWN PROSECUTION SERVICE** | **Claimant** |
| **- and -** | |
| **RODERICK FRASER BEAUMONT** | **Defendant** |
| **(1) THE GOVERNOR OF HER MAJESTY'S PRISON HEWELL** | |
| **(2) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** | **Interested Parties** |

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**David Perry Q.C. and Rosemary Davidson** (instructed by **the Crown Prosecution**) for the **Claimant**
**David Josse Q.C. and John Crawford** (instructed by **Taylor Rose**) for the **Defendant**
**The Interested parties did not appear and were not represented**

Hearing date: 1 April 2022

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# Approved Judgment

**Lord Justice Lewis handed down the following judgment of the court:**

**Introduction**

1. This is the judgment of the Court, to which we have both contributed. This is a claim for a declaration as to the meaning and effect of section 152 of the Extradition Act 2003 ("the 2003 Act").

**Facts**

2. The defendant was born on 3 December 1955. He has three convictions for sexual offences. In 1984 he was convicted and imprisoned for some months for three offences, one of which was an indecent assault. The two later convictions of more direct relevance to these proceedings were as follows:

   (1) On 25 October 2016 at Airdrie Sheriff's Court, he pleaded guilty to an offence of intentionally sending a sexual communication to an older child, contrary to section 34 of the Sexual Offences (Scotland) Act 2009 ("the Scottish offence"). The offence had been committed in December 2015. Sentence was adjourned, whereupon the defendant absconded, and, on 5 December 2016, the court issued a warrant for his arrest.
   (2) Shortly before the guilty plea to the Scottish offence, the defendant had appeared at Warwick Crown Court on 6 October 2016 and pleaded not guilty to two offences of indecent assault, contrary to section 15(1) of the Sexual Offences Act 1956 ("the Warwick offences"). These were allegations of historic sexual abuse between 1979 and 1981 when the defendant had been a teacher at the complainant's primary school. On 23 January 2017 the defendant failed to appear, and a warrant was issued. In September 2017 he was tried in his absence and convicted and in November of the same year sentenced to an extended sentence of 9 years, under section 226A of the Criminal Justice Act 2003, made up of 4 years custody followed by 5 years on extended licence.

3. The defendant was located in Mexico. On 16 August 2018 the Lord Advocate issued a request to the Mexican authorities for the extradition of the defendant for the Scottish offence and for an offence of failing to appear in the Scottish court.

4. The West Midlands police responsible for investigating the Warwick offences were aware that extradition proceedings had begun. The Scottish authorities also notified the Crown Prosecution Service ("CPS") that the defendant had been located and extradition proceedings had started. The CPS did not take steps to seek the extradition of the defendant for the Warwick offences. The CPS lawyer with responsibility for this matter has explained that she was unaware of the specialty rule in extradition which provides that a person may not be dealt with for convictions for offences that predate, and do not form the basis of, the request for extradition. It seems that it was assumed that the defendant could be dealt with for the Warwick offences after he had been dealt with in Scotland. We understand that errors occur and we do not attribute blame to any specific individual (particularly when we have no knowledge of matters such as the training or support that the police and CPS are given with regard to extradition). Whatever the precise cause, however, we agree with the view expressed by Holroyde LJ (in interim proceedings in this case that we will describe shortly) that the failure to appreciate there would be a problem with specialty was "*a significant and serious error*".

5. In the event, the defendant was only extradited for the Scottish offence and the offence of failure to attend the court in Scotland. He was dealt with by the Sheriff's Court. He was sentenced to 12 months' imprisonment to be served concurrently for each matter. The Judge indicated that a sentence of 16 months' imprisonment would have been appropriate but he reduced that sentence by 4 months to 12 months to reflect some of the time that the defendant had spent in custody in Mexico. Under the applicable provisions this gave a release date of 14 July 2021.

6. There were a series of hearings at Warwick Crown Court between February and May 2021. In the course of those hearings, it was realised that the 2003 Act may not permit an extradited person to be dealt with for matters that predate, and were not the basis for, the person's extradition. At one hearing the defendant entered a guilty plea to the offence of failing to surrender under the Bail Act 1976, but that was vacated at the Judge's direction at a later date. The CPS then brought these proceedings to determine the proper interpretation of section 152 of the 2003 Act and also sought the consent of the Mexican authorities for the execution of the sentence imposed for the Warwick offences and to prosecute the defendant for his failure to surrender to bail.

7. There was an interim application in this Court to prevent the defendant's release before the issue of the interpretation of section 152 was resolved. On 13 July 2021 William Davis J (as he then was) granted an ex parte injunction requiring the relevant prison governor to keep the Defendant in custody, with a return date for an inter partes hearing 3 days later. At the hearing on 16 July before Holroyde LJ and May J, the Defendant was present but not legally represented, the Divisional Court determined that the balance of convenience favoured the continuation of the injunction ideally for as short a time as possible to permit the merits of the claim to be considered . Directions for a hearing were given. Holroyde LJ expressed the view that it was important that the defendant be granted legal aid to obtain legal representation. The judgment of the Divisional Court is reported at [2021] EWHC 2050 (Admin). The defendant remains in prison pursuant to the terms of that injunction.

8. In the event there was a degree of confusion and significant delay with regard to legal aid but those matters were resolved in February of this year and the matter was listed for hearing on Friday 1 April 2022 with both the claimant and defendant represented by leading and junior counsel. We are grateful to counsel for the claimant and the defendant for their full and helpful written and oral submissions. The interested parties had notified the court that they did not seek to play any part in this litigation and have not done so.

9. The final matter of significance in the history of these events is that the Mexican authorities have now granted their consent for the execution of the sentence imposed for the Warwick offences and for the prosecution of the defendant for the failure to surrender to bail.

**Preliminary issue – the jurisdiction to grant a declaration**

10. Section 19 of the Senior Courts Act 1981 and CPR 40.20 confer jurisdiction on the High Court to grant declarations. That includes declarations as to the meaning of statutory provisions such as section 152 of the 2003 Act. We are satisfied that this is an appropriate case for the court to consider whether or not to grant such a declaration particularly having regard to the guidance given as to when the Court may appropriately

exercise this discretion by Leggatt LJ, as he then was, in the Divisional Court in *R (Bus and Coach Association Limited) v Secretary of State for Transport* [2019] EWHC 3319 (Admin). The issue raised is one of statutory interpretation to be considered against an established factual background. The declaration will be binding on the defendant, the claimant, and the interested parties including the Governor of the prison where the defendant is currently being held. There has been full argument on both sides as to the meaning of the statutory provision. The declaration does not involve any ruling on whether or not the conduct of the defendant is criminal (that was determined by the Crown Court at Warwick some years ago) and concerns only the question of whether the sentence imposed for that conduct is to be treated as served or remains to be served. We note that, by the end of the hearing before us, there was no argument made that the case was not an appropriate one for considering the grant of declaratory relief.

## THE LEGAL FRAMEWORK

### *Extradition*

11. Specialty is a long standing principle in extradition law. In essence it prevents a requesting state from securing the return of an individual for one offence, then prosecuting or imprisoning them for another offence that predated the extradition. The rationale was explained by the Court of Appeal in *R v Seddon* [2009] 1 W.L.R. 2342 [5].

> "Historically, extradition was generally achieved through separate bilateral treaties between states. Commonly the power of the requested state to refuse extradition in some circumstances was preserved by the terms of such treaties. To give effect to that practice, the principle evolved that if A requested a prisoner from B, A would identify the offence for which the prisoner was wanted, so that B could decide whether there was a sufficient reason to refuse to surrender him. With that went the practice that if surrendered the prisoner could only be dealt with for the offence for which he had been sought, otherwise plainly the surrendering state's power to refuse would be circumvented. That principle is called specialty. It has been recognised in this country by successive statutes dealing with our local rules for extradition both inward and outward. The rationale for it may owe something to the protection of the individual, but it plainly lies principally in the international obligation between states."

12. Modern treaties have introduced a modification to any strict application of specialty. Thus, the European Convention on Extradition 1957, the London Scheme for Extradition within the Commonwealth (2002), the Framework Decision on the European Arrest Warrant (2002) and the relevant provisions of the Trade and Co-operation Agreement all contain provisions that would allow prosecution and/or detention for offences that preceded the extradition and were not the subject of the request, provided the requested state consents. We note in passing that Mexico is not party to any of those treaties.

***The 2003 Act***

13. The 2003 Act deals with 3 types of territories:
    (1) Category 1: These are mainly Member States of the European Union.
    (2) Category 2: These include territories with which the United Kingdom has an agreement but which are not within category 1. Mexico is in this category.
    (3) Category 3: Territories with which the UK has no extradition treaty but may enter into ad hoc arrangements for specific cases.

14. The sections which, in our view, are most central to these proceedings are those which address the issue of prosecutions and sentences of imprisonment for offences that predate an extradition but were not the subject of the request, namely sections 151 as originally enacted and sections 151A and 152 of the 2003 Act.

15. Section 151 of the 2003 Act dealt with extradition from certain category 2 countries (similar provision is made for extradition from Commonwealth and certain other territories by section 150). Section 151 of the 2003 Act was replaced by section 151A by the Policing and Crime Act 2009 ("the 2009 Act"). That section largely reproduces the former section 151 of the 2003 Act save for subsection (1) and further amendments.

16. Section 151(1) of the 2003 Act provided that:

"(1) This section applies if -

(a) a person is extradited to the United Kingdom from a category 2 territory under law of the territory corresponding to Part 2 of this Act, and
(b) the territory is not one falling within section 150(1)(b).

17. Section 151A of the 2003 Act provides that:

"(1) This section applies if a person is extradited to the United Kingdom from a territory which is not—
(a) a category 1 territory, or
(b) a territory falling within section 150(1)(b).

(2) The person may be dealt with in the United Kingdom for an offence committed before the person's extradition only if—
(a) the offence is one falling within subsection (3), or
(b) the condition in subsection (4) is satisfied.
This is subject to section 151B

(3) The offences are—
(a) the offence in respect of which the person is extradited;
(b) an offence disclosed by the information provided to the territory in respect of that offence;

(c) an offence in respect of which consent to the person being dealt with is given on behalf of the territory.

(4) The condition is that—

(a) the person has returned to the territory from which the person was extradited, or

(b) the person has been given an opportunity to leave the United Kingdom.

(5) A person is dealt with in the United Kingdom for an offence if—

(a) the person is tried there for it;

(b) the person is detained with a view to trial there for it."

18. The provisions of subsections (2) to (5) of section 151 of the 2003 Act were the same as the provisions of subsections (2) to (5) of section 151A save for the reference to section 151B. That was introduced by the Anti-Social and Behaviour, Crime and Policing Act 2014 and deals with detention of persons for trial in particular circumstances.

19. Section 152 of the 2003 Act as originally enacted provided that:

> "Remission of punishment for other offences"
>
> (1) This section applies if—
>
> (a) a person is extradited to the United Kingdom from; -
>
> (i) a category 1 territory under law of that territory corresponding to Part 1 of this Act, or
>
> (ii) a category 2 territory under law of the territory corresponding to Part 2 of this Act;
>
> (b) before his extradition he has been convicted of an offence in the United Kingdom;
>
> (c) he has not been extradited in respect of that offence.
>
> (2) The punishment for the offence must be treated as remitted but the person's conviction for the offence must be treated as a conviction for all other purposes."

20. Section 152 of the 2003 Act was amended by the Policing and Crime Act 2009. The effect of the amendments was to apply the section to all territories (where before it had applied to category 1 and 2 territories but not category 3) and to change the terms of subsection 2 so that the words "*The punishment for the offence must be treated as remitted*" were replaced by "*The sentence for the offence must be treated as served*". As this is the version that is subject to the claim for a declaration, we set out the amended version of section 152.

> "Remission of punishment for other offences"
>
> (1) This section applies if—

(a) a person is extradited to the United Kingdom from a territory;

(b) before his extradition he has been convicted of an offence in the United Kingdom;

(c) he has not been extradited in respect of that offence.

(2) The sentence for the offence must be treated as served but the person's conviction for the offence must be treated as a conviction for all other purposes."

21. In argument before us Mr Perry QC, for the CPS, traced the history of those provisions. We mean no discourtesy to his narrative if we simply recite that the 2003 Act's most recent ancestor the Extradition Act 1989 had, within its section 18, similar provisions with regard to offences that preceded an extradition but were not the subject of it, in that there could be prosecutions with consent, but any sentence had to be remitted with no mention of any consent exception.

**The submissions**

22. For the CPS Mr Perry QC submitted that:
    (1) The purpose underlying the material provisions of the 2003 Act were intended to implement the rules governing specialty;
    (2) Section 152 of the 2003 Act should be interpreted so that it only required sentences to be treated as served when to do otherwise would involve a breach of the rules governing specialty;
    (3) Here, there had been no request to extradite the defendant for the Warwick offences but Mexico, the requested state, had subsequently consented to the sentence for the Warwick offences being executed;
    (4) In those circumstances, interpreting section 152 as not applying to the sentence for the Warwick offences would not involve any breach of the specialty rule and would be consistent with the interests of justice in that a person convicted of serious offences should serve the sentence imposed for those offences. Indeed to interpret section 152 as meaning that the sentence for the Warwick offences were to be treated as if it had been served would be to create an injustice by enabling the defendant to avoid serving a significant custodial sentence for serious offences, merely because of a mistake by the CPS;
    (5) Mr Perry relied upon a number of authorities indicating that the courts could depart from the literal meaning of the words used in a statute in order to give effect to the purpose and context of the legislative provisions or otherwise depart from the literal interpretation of a statute in order or to avoid a perverse result which could not have been intended by Parliament or in other circumstances;
    (6) The appellate Courts have eschewed an approach whereby a mistake by the prosecuting authorities must necessarily lead to the negation of what would otherwise be a lawful action against a defendant, citing *R v Soneji* [2006] 1 AC 340.
    (7) The loss of liberty faced by the Defendant in this litigation is brought about by his own misconduct, both in committing the offences and then absconding;
    (8) Although trials in absence were known in England and Wales, they were far less common at the time that Parliament passed the 2003 Act, and as such the Court should interpret the statutory provisions to acknowledge changing times.

23. Initially in the claim form, the declaration sought was that "the effect of section 152(2) of the Extradition Act 2003 is that any sentence falling within section 152(1) may not be executed without leave of the court". Reading in the requirement that sentences could not be enforced "without the leave of the court" was the means by which the court could ensure that only those sentences which would not involve a breach of the specialty rules would be executed. In oral submissions, Mr Perry refined that submission so that the declaration would read that section 152(2) operates only in a case where remission of the sentence is necessary to prevent a breach of the specialty rules applicable in extradition cases.

24. On the defendant's behalf, Mr Josse QC's submission was that the clear words of section 152 permit only one reading and, in the absence of mistake or absurdity, the court should not rewrite legislation to save the CPS from the consequences of their own, serious mistake. The liberty of the defendant was at stake, and as such the court should construe the legislation narrowly. In the defendant's written submissions it was further suggested that the speed at which Mexico had consented to the defendant's imprisonment, seemingly in breach of the terms of their treaty with the UK, should lead this court to reject that consent. In the course of the hearing before us Mr Josse recalibrated that second submission, instead suggesting that the interpretation sought by the CPS would have deprived the defendant of the chance to litigate his imprisonment. Had his extradition been sought for the Warwick offences he could have opposed it in Mexico. Provided post-extradition consent is limited to the launch of a prosecution, any manifest flaws in the consent procedure could be litigated at trial. Yet post-extradition consent to imprisonment would mean the defendant was incarcerated without any court hearing.

**Discussion**

25. The issue in this case is the proper interpretation of section 152 of the 2003 Act. That involves considering the words of the statutory provision, read in context and having regard to the purpose underlying the statute, and bearing in mind any legitimate aids to statutory interpretation,

26. The context is that Parliament has set out a detailed code governing extradition from various territories including category 2 territories, such as Mexico, with whom the United Kingdom has extradition arrangements. The purpose underlying the 2003 Act is to make provision for the extradition of those accused of offences, and who have been convicted offences but who have not yet served the sentences imposed for those offences. As the long title says it is "An Act to make provision about extradition". We are prepared to assume for present purposes that Parliament would not have intended the arrangements to operate in a way which would result in individuals being tried, or having to serve sentences, in circumstances which would breach accepted rules of international law governing extradition between states.

27. Dealing with the specific wording of section 152, its provisions are clear. Section 152(1) sets out the circumstances when the section applies. Three conditions must be satisfied if the section is to apply. The first is that the person is extradited to the United Kingdom. The second and third are the material conditions: before a person is extradited "he has been convicted of an offence in the United Kingdom" and "he has

not been extradited in respect of that offence". Section 152(2) provides what is to happen in respect of sentences imposed for those offences, i.e. for offences committed before extradition and for which the person has not been extradited. The sentence for that offence "must be treated as served" but remains a conviction for all other purposes.

28. We see no realistic scope for interpreting section 152(2) in the way proposed by Mr Perry. In particular, we see no realistic scope for interpreting section 152(2) as not applying to sentences imposed for pre-extradition offences where the individual has not been extradited for that offence but where, after extradition, the requested state consents to the individual serving the sentence for that pre-extradition offence. First, we do not see any realistic way in which the clear words of section 152 could be said to be subject to such an exception. Secondly, the contrast between section 152 and section 151, and section 151A, is instructive. Section 151(3), and now 151A(3), expressly provide that the offences for which a person may be dealt with are (a) the offences in respect of which the person is extradited (b) any other offence disclosed by the information provided to the requested state and (c) "an offence in respect of which consent to the person being dealt with is given on behalf of the territory". The phrase "dealt with" is defined in subsection (5) as being tried or detained with a view to trial. In other words, Parliament specifically made provision for obtaining consent to enable a person to be detained and tried for an offence committed before extradition. It did not make provision for obtaining consent in respect of sentences for pre-extradition offences. If Parliament had intended both situations to be treated the same, it would have made the same provision in section 152 for sentences that it made in section 151 and then 151A of the 2003 Act for trials.

29. In post-hearing submissions, Mr Perry submitted that the definition of "dealt with" in section 150 and 151A (and section 151) was not exhaustive. That is, those sections did not provide that a person was dealt with "if and only if" he were tried for an offence, or detained with a view to trial. The sections were not, therefore, limited to accusation cases and, by implication it seems, could include cases where a person was "dealt with" by being imprisoned for a pre-extradition offence. Dealing with a person was, therefore, permitted under section 150(3) and 151A(3) for the trial, or the execution of a sentence in respect of either the offence for which the person was extradited or where the requested state subsequently consented to that. Section 152 should, therefore, be read as giving effect to the situation contemplated by section 150 or 151A, i.e. as setting out the consequences where a person is not being dealt with (by trial or execution of a sentence) for an offence for which he was extradited or where the requested state subsequently gave consent to that. We do not accept that interpretation of sections 150 and 151A. Those sections set out when a person may "be dealt with". The meaning of that phrase is then defined in sections 150(5) and 151A(5). As those subsections provide a "person is dealt with" when he is tried for an offence or detained with a view to trial. There is no scope for reading sections 150 and 151A as applying to situations where a person is to serve a sentence for a pre-extradition offence.

30. We also consider that there is a rational and obvious basis for treating prosecutions and sentences for events that predate extradition differently: if an offender were extradited back to the UK for a trial for robbery, and evidence later emerged that he had committed a murder, the police and CPS could have sought his extradition in complete and blameless ignorance of the more serious offence, thus explaining the need for providing

for consent to trial subsequent to the extradition. In contrast where, as here, there was a significant and serious prison sentence imposed for an offence committed before extradition is requested, the CPS and police can reasonably be expected to know of it (as they did) and act accordingly in seeking extradition in respect of that offence (as they did not).

31. In those circumstances, the meaning of section 152 is clear. It does not lead to an absurd result. It can be understood why Parliament choose in 2003 to make one set of arrangements governing extradition for trial and detention of offences and a different regime governing the implementation of sentences already imposed for pre-extradition offences. There is no need to depart from the clear meaning of section 152 in order to avoid an absurd result. The clear meaning of section 152, read in context, does not involve a breach of the specialty principle. It seems from the material that we were shown that, in general, current international arrangements permit a state to seek consent after extradition to the person serving a sentence for an offence committed before extradition and for which he was not extradited. The arrangements do not however, require the state to seek to execute a sentence in respect of an offence for which the person was not extradited and to seek consent for that purpose. It is a matter for Parliament, not the courts, to determine whether or not to amend the provisions of section 152 to achieve that result in future.

32. For completeness, we deal with the other principles of interpretation on which Mr Perry sought to rely as enabling us to depart from what we consider to be the clear meaning of section 152. We accept that some statutes may need to be seen as "*always speaking*" and thus subsequent technological, or even social, changes may need to be brought within the scope of the statute as in *R (Quintavelle) v Secretary of State for Health* [2003] 2 A.C. 687. That is not the case here. Trials and sentences in absence were known in the UK by the time the 2003 Act was passed as appears from decisions on trials in the absence of the accused in *R v Hayward* [2001] QB 862 and *R v Jones* [2003] 1 AC 1.

33. We do not accept Mr Perry characterisation of the effect of the line of authority that includes the decision in *Soneji*. That deals with the question of whether failure to comply with a particular statutory requirement renders the action of an administrative body or official invalid and of no legal effect. It is one thing to decide that the failure by a prosecutor or judge to comply with a statutory time limit will not render any subsequent order void, it is quite another (as is asked of us here) to give an interpretation to the words of a statute that it cannot reasonably bear to ensure that prosecutorial failings have no consequence. Nor do we accept that the principle that legislation is not intended to enable an individual to benefit from his own wrong, set out in *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government* [2011] 2 AC 304, is applicable here. The *Welwyn Hatfield* case involved a person who used deception and dishonestly represented for four years that a building which was in fact being used as a dwelling house was a barn. He then sought to prevent enforcement action for a breach of planning control on the ground that the change of use had occurred more than four years ago. It was in that context that the Supreme Court held that the

apparently unqualified statutory language conferring immunity from enforcement did not apply in cases involving deception. That is a far cry from the present case. This is not a situation where the defendant has engaged in conduct in order to obtain the benefit of the provision in section 152 when it would not otherwise be available. It is correct that the defendant committed serious crimes for which he was tried and convicted and a sentence imposed. He also absconded before the sentence was imposed and fled to another country. As a result, he had to be extradited. However, the reason why he cannot be required now to serve the sentence imposed for those offences is that he was not extradited for those offence (as he could have been). In those circumstances, Parliament has prescribed that the sentence must be treated as being served. Disapproval of the conduct of the defendant, both in terms of his criminal acts and his absconding, cannot alter the meaning of the words used by Parliament.

34. We would also draw attention to the difficulties that the interpretation advanced by Mr Perry would create and which were illustrated in argument before us. These difficulties reinforce our conclusion as to the interpretation that we consider to be clear from the statutory wording read in context but our decision is not dependent on them. We asked what would the situation be, under the CPS's proposed reading of the section, if the Defendant had been released and only 2 weeks later Mexico had consented to his serving the Warwick sentence? Would the sentence be treated as having been "*served*" for 2 weeks, then "*not served*"? Would the 2 weeks at liberty count as time served for the sentence? Neither in argument nor in the later written submissions have workable solutions been proposed and the claimant reserves its position in relation to a situation where section 152(2) becomes operative before consent is obtained from the requested state. This is not to criticise the claimant but it does reinforce the fact that the interpretation for which they contend does not result in a comprehensible and readily workable statutory scheme.

35. We understand that the result of our decision will be deeply upsetting to the complainant in the Warwick offences as it will result in the defendant not serving the 4 years custodial element of the sentence for those very serious offences, nor being under the extended licence for 5 years. It will be a matter for the CPS to determine whether to prosecute for the failure to surrender to bail, given that the time spent in custody awaiting the decision of this court will count against any sentence for that offence. We do note that the defendant has served 21 months in custody in Mexico and approaching 9 months awaiting this decision. He may still be under the post-release provisions of the Scottish sentence, and we anticipate he remains subject to the indefinite notification requirements of section 80 of the Sexual Offences Act 2003. Further, if since the date of the Warwick offences the defendant has acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made, it seems it may be open to the police to apply for a Sexual Harm Prevention Order under section 103A of the Sexual Offences Act 2003 which could place rigorous restrictions and conditions on how he behaves. Ultimately, however, our task is not to assess how best this defendant can be managed, but to decide on the meaning of section 152 of the 2003 Act.

**Conclusion**

36. For all the reasons we have given, we conclude that the section means that the result of the CPS's error is that the sentence for the Warwick offences must be treated as served. We would dismiss the claim for the declaration.