

THE HIGH COURT

[2022] IEHC 72
[2020 No. 196 EXT.]

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

FARAH DAMJI

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 31st day of January, 2022

1. By this application the applicant seeks an Order for the surrender of the respondent to the United Kingdom of Great Britain and Northern Ireland ("the UK") pursuant to a European arrest warrant dated 29th July, 2020 ("the EAW") issued by Judge Gledhill, sitting at Southwark Crown Court, as the issuing judicial authority. The EAW seeks the surrender of the respondent for the execution of a number of custodial sentences imposed upon her in the UK in respect of breach of a restraining order and stalking-type offences.

Preliminary Matters

2. The EAW was endorsed on 10th August, 2020 and the respondent was arrested and brought before this Court on 17th August, 2020.
3. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
4. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), have been met. Each sentence in respect of which surrender is sought is in excess of 4 months' imprisonment and these are set out in the EAW as:-
 - (i) order dated 30th March, 2020, imposing a sentence of 9 months' imprisonment on the first count of breach of a restraining order and a consecutive sentence of 18 months' imprisonment on the second count of breach of a restraining order, making a total of 27 months' imprisonment, all of which remains to be served; and
 - (ii) order dated 19th August, 2016, imposing a total sentence of 5 years' imprisonment (consisting of 3 consecutive sentences of 18 months', 18 months' and s years' imprisonment, respectively) of which 8 months remains to be served on foot of a recall on licence due to breach of licence conditions.
5. I am satisfied that none of the matters referred to in ss. 21A, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein. As regards s. 22 of the Act of 2003, this is dealt with separately herein.
6. At part E of the EAW, reference is made to case summaries which are attached to the EAW in respect of the offences in question. The first attachment carries a reference "*MG5 (SP611) POLICE REPORT URN 01 WH 216 14*" and sets out the circumstances in respect of the 3 offences of harassment contrary to s. 4A of the UK Protection from Harassment Act, 1997, to which the sentence of 19th August, 2016 relates. The second attachment

carries a reference "MG5 Form - MET Total Policing URN O1CW/03185/18" and sets out the circumstances in respect of the 2 offences of harassment – breach of restraining order, contrary to s. 5 of the UK Protection from Harassment Act, 1997, to which the sentence of 20th February, 2020 relates.

7. As regards the initial sentence of 19th August, 2016, the respondent was released on licence and, upon the licence being revoked, she was required to serve the balance of that sentence.

Additional Documentation

8. The respondent swore an affidavit dated 19th November, 2020, in which she avers that she suffers from asthma and had developed double pneumonia in 2020. She avers that she contracted Covid-19 in April/May 2020 and feared if she contracted it again she might die. As regards her mental health, she avers that Dr. Graham Rogers, a psychologist, has diagnosed her as having complex post-traumatic stress disorder, that she had been misdiagnosed in prison in the UK and had not received appropriate treatment in custody. She exhibits a report from Dr. Rogers, dated 31st October, 2019, in which the diagnosis of complex post-traumatic stress disorder is set out. Dr. Rogers indicates that the treatment for this condition is generally cognitive behavioural therapy, but due to the longevity and complexity of her condition, the respondent requires a treatment known as psychodynamic psychotherapy. Having reviewed her medical records, Dr. Rogers indicates that while in custody in the UK, she had been misdiagnosed with a personality disorder, but even then she did not receive the recommended treatment. He opines that the respondent requires treatment 2 to 3 times a week for 3 to 4 months, followed by weekly treatment over the long-term. The estimated cost would be £150 to £375 per week for the first 3 to 6 months.
9. A report from Dr. Seán Ó Domhnaill, consultant psychiatrist, dated 20th October, 2020, was also put before the Court by the respondent. Dr. Ó Domhnaill does not appear to be in complete agreement with Dr. Rogers. It is difficult to discern the precise diagnosis made by Dr. Ó Domhnaill, but it appears to be his opinion that the respondent suffers from autism spectrum disorder/ADHD with high-level anxiety and possibly hyperkinetic disorder. I apologise to Dr. Ó Domhnaill if my brief synopsis fails to do justice to his report, but as he points out in his report, most mental health practitioners would not have the training to diagnose and treat the conditions in which he specialises, he being the only recognised neurodevelopmental specialist on the island of Ireland.
10. By letter dated 23rd November, 2020, the Court furnished the issuing judicial authority with Dr. Ó Domhnaill's report together with various reports on Covid-19 in UK prisons and sought the following additional information:-
 1. Confirmation that the prison where the respondent would be detained has or has access to adequate medical facilities and practitioners to treat the respondent;

2. Confirmation that such prison has adequate facilities and protocols in place to deal with the risks posed by the Covid-19 pandemic as regards persons particularly vulnerable to the virus;
 3. Whether the respondent was legally represented throughout the trial, up to and including sentence;
 4. Particulars as regards the offences to which the 2016 sentence relates;
 5. Particulars as regards the breach of the restraining order in relation to [V.C.] and [B.C.]; and
 6. Particulars as regards the victim personal statement made by [B.C.].
11. One might have expected that a requesting state or issuing judicial authority would be able to provide the requested information without much difficulty. Unfortunately, the response received by the Court was less than satisfactory. There was no single reply from a single entity but rather a series of piecemeal replies strung out over a prolonged period from different persons.
12. The first reply, described as a "*partial response*", was by way of email dated 26th November, 2020, signed simply "*NCB Manchester, National Crime Agency*". That reply dealt with the particulars sought at questions 5 and 6 above. The reply indicated that the writer was not able to state in respect of which offence the respondent was sentenced to 9 months' imprisonment and which offence she was sentenced to 18 months' imprisonment on 30th March, 2020, as he/she did not have a copy of the indictment.
13. The next reply was by way of email dated 3rd December, 2020, signed by a named officer of the National Crime Agency. By way of answer to question 3, it was confirmed that the respondent was represented by the same legal team, up to and including sentence. In response to questions 4 and 5, it was stated that case summaries of the offences had been included as part of the EAW papers.
14. A further reply was received by email dated 9th December, 2020 from police officer [V.C.], one of the victims of the respondent's offending. [V.C.] expressed his concerns that the respondent was not being truthful to the medical practitioners and thus, their assessments might be flawed. In respect of question 4, he set out considerable detail concerning the offences relevant to the 2016 sentence. He also enclosed the most up-to-date MG5 case summary and a copy of bad character research he had compiled on the respondent which does not appear relevant to the questions posed.
15. As no reply had been received to questions 1, 2 or all of 6, relating to the respective sentence for each count, a reminder was sent by way of letter dated 10th December, 2020, stating that the respondent had been in custody since 17th August, 2020 and the Court wished to conclude hearing the matter.

16. A reply was received by way of email, dated 7th January, 2021, from NCB Manchester, referring to an email sent to NCB Manchester on 17th December, 2020, some 3 weeks previously, from the Crown Prosecution Service confirming that the 18-month sentence had been imposed in respect of the offence concerning [B.C.]. It also advised NCB Manchester to consult the Home Office Prisons Department in respect of prison conditions. A copy of the indictment was attached.
17. A further reply was received by way of email dated 8th January, 2021 from NCB Manchester, referring to an email (no date apparent) from the HM Prison and Probation service. In response to question 1, the prison service referred to HMP Bronzefield Prison ("HMP Bronzefield") and confirmed it is equipped with all of the required medical equipment in line with the National Institute for Health and Care Excellence guidelines and National Health Service ("NHS") specifications, as well as setting out the wide range of medical practitioners at the prison, including psychiatrists and psychologists. The prison contains a 15-bed in-patient unit for prisoners with enhanced mental or physical care needs. Prisoners are also referred to outside hospitals if necessary and the prison has access to outside social care services. As regards question 2, the email confirmed that the prison had put measures in place to deal with Covid-19 pandemic in line with the relevant guidelines, including enhanced measures for persons who are more vulnerable to the virus.
18. The solicitor for the respondent, Mr. James MacGuill, swore an affidavit dated 1st February, 2021, in which he averred that, acting on the instructions of the respondent, he had communicated with counsel in London who had represented the respondent in an appeal in respect of the sentences of 30th March, 2020. He had been advised that the appeal court had ordered that the sentence of 9 months' imprisonment and the sentence of 18 months' imprisonment, both imposed on 30th March, 2020, should run concurrently rather than consecutively, as ordered by the trial court. He had also been in communication with a different counsel in London in respect of a personal injuries action which the respondent had commenced against the Central and North West London NHS Foundation Trust in respect of the medical care of the respondent at HMP Bronzefield and other prisons. Mr. MacGuill expressed his concern that the EAW indicates that the respondent's licence as regards the 2016 sentence had been revoked by the judge upon conviction and sentence in 2020. In particular, he expressed his understanding that such revocation was not normally a judicial function.
19. The respondent, through her legal representatives, had not brought the existence of such appeal proceedings to the attention of the Court previously. After delivery of the Court's ruling dated 11th October, 2021, the respondent indicated that reference to same had been contained in the materials which the respondent had personally and directly sent to the Court. If that was so, that was not a proper manner for the respondent to deal with this application as she was legally represented by both solicitor and counsel, through whom she was obliged to deal with the Court. Counsel for the respondent submits that it was no longer clear what sentence the respondent would have to serve. She also submits that the information received by the Court in respect of her likely medical treatment, if

surrendered, was not sufficiently clear. She submits that further information was required as regards the revocation of the licence, and that the location of each offence, and the sentence imposed in respect of same, were still unclear.

20. By letter dated 4th February, 2021, the Court sought additional information:-
- i. In regard to the length of sentence the respondent would be required to serve in light of the information about an appeal;
 - ii. Seeking more specific assurances as regards medical treatment and in particular:-
 - (a) whether Ms. Damji will be medically assessed as soon as is reasonably practicable after she is surrendered, including in relation to her mental health;
 - (b) whether consideration will be given in the course of that assessment to the medical reports of Mr. Rogers and Dr. Ó Domhnaill; and
 - (c) Whether, whilst in custody, she will receive such medical treatment as is deemed necessary on foot of that assessment and subsequent medical opinion, including in relation to her mental health.
 - iii. Particulars as regards the revocation of licence; and
 - iv. Particulars regarding the location and numbering of offences.
21. Once more, the response of the issuing state was piecemeal and protracted. By email from NCB Manchester, dated 18th February, 2021, a number of documents were furnished with no accompanying narrative. These consisted of 2 attendance notes from the trial in 2020 and a copy of an order of the Court of Appeal of England and Wales, Criminal Division, dated 18th December, 2020. The copy order indicated that the Court of Appeal, Criminal Division, had considered the respondent's appeal against conviction and had dismissed same; it made no reference to sentence.
22. By email dated 23rd February, 2021, the Court sought a narrative reply to the questions posed by letter dated 4th February, 2021. By email dated 24th February, 2021, NCB Manchester furnished a copy of the recall notification and indicated that details in respect of the offences would be forwarded when received. The copy recall notification indicated that the respondent's licence had been recalled by the Secretary of State for Justice on 24th February, 2020, for failing to attend with her supervising officer and for having "*displayed poor behaviour*". This is at odds with the statement at part E of the EAW, which states:-

"Upon conviction and sentence for the offence above, the Judge revoked the unexpired section of the requested persons prison licence that she was subject to for a matter of stalking, contrary to section 4A(1) Protection From Harassment Act 1997."

No explanation for the apparent discrepancy was or has been given. This is noteworthy as the EAW was issued by the trial judge and the senior crown prosecutor named therein has been involved in the process of furnishing additional information.

23. By further email from NCB Manchester, dated 24th February, 2021, it is indicated that the UK police did not have access to the database regarding licence recall. It is also indicated that the indictment was not in possession of the author but that "*within CCC*" referred to "*within the jurisdiction of the Central Criminal Court*".
24. The respondent's solicitor, Mr. MacGuill, swore a supplemental affidavit dated 25th February, 2021, exhibiting a copy of the judgment of the Court of Appeal of England and Wales in *R v. Farah Damji* [2020] EWCA Crim 1774, which indicated that the 2 sentences of 30th March, 2020 had been ordered to be served concurrently. He also exhibited a transcript of the sentence hearing on 30th March, 2020 in which it was stated by the trial judge, the issuing judicial authority in respect of this EAW, that "*Breach [of bail] proceedings will no doubt take place after she has been arrested*". The trial judge also indicated that the respondent would be required to serve half the sentence imposed and would then be released on licence. Mr. MacGuill indicates that this was in line with the advice he had received in relation to the sentence.
25. On 25th February, 2021, the Court indicated to the parties that it would determine the matter on the basis of such documents received by 8th March, 2021, subject to the right of the respondent to seek to reply to any further documents received from the issuing state prior to that date.
26. By further email, dated 1st March, 2021, from a named person, a response is given in respect of the questions concerning medical services as follows:-

"A - Yes, Ms Damji will be immediately seen by a nurse upon her arrival and subsequently by the General Practitioner (GP).

B - All medical notes will be made available to the GP.

C - The GP will provide treatment and refer to other specialists as deemed necessary."
27. Also, on 1st March, 2021, the Court received a reply from the Crown Prosecution Service in the UK providing a full narrative reply to the request for information dated 4th February, 2021. This again stated that the trial court had ordered the sentences of 30th March, 2020 to run consecutively and that the case had been referred for appeal but this was dismissed on 18th December, 2020. It reiterated the position as regards health services set out in the email dated 1st March, 2021. In relation to the recall on licence, considerably more detail was provided and it was confirmed there was no judicial involvement or court hearing in same. It was clarified that count 1 referred to the second part of the MG5 Form and count 2 referred to the first part thereof. It indicated count 1 was committed via the internet and count 2 was committed within the jurisdiction of

London. It stated that the fact that one was said to be committed via the internet and the other within the CCC made no difference to the location.

28. By letter dated 3rd March, 2021, the Court indicated to the UK authorities that it would determine this matter on the basis of documents received by 8th March, 2021. A copy of the judgment of the Court of Appeal of England and Wales was enclosed. The letter mistakenly requested a response to point 3 of the request of 4th February, 2021 under the heading 'Treatment for Mental Health Issues', whereas point 3 of that earlier request dealt with revocation of licence and the responses of 1st March, 2021 had dealt with the assurances in respect of medical treatment and the revocation of licence.
29. By email dated 3rd March, 2021, further information was received from NCB Manchester concerning the recall of licence and attaching an email sent to the respondent from her probation officer dated 26th February, 2020, informing her that her licence had been recalled.
30. An email dated 8th March, 2021 attached a letter signed by the Director General (Prisons) of HM Prison and Probation Service, dated 5th March, 2021, in which the following assurances were given:-

"A. *Ms. Damji will be immediately seen by a nurse upon her arrival and subsequently by the General Practitioner (GP).*

B. *All medical notes will be made available to the GP to include if required reports from Graham Rogers and Dr. Seán Ó Domhnaill.*

C. *The GP will provide treatment and refer to other specialists as deemed necessary."*

The letter re-stated the medical facilities and services available at HMP Bronzefield Prison and the measures in place in respect of Covid-19. The Director General went on to state:-

"Following completion of the court case, if convicted and sentenced I am aware that assurances have been provided by the United Kingdom."

I find the reference to "*convicted and sentenced*" to be most likely based on a mistaken understanding as to the basis on which surrender is sought. The importance of the letter is the assurances given therein and the Director General's knowledge of same.

31. By letter dated 5th March, 2021, the Crown Prosecution Service acknowledges that the information furnished by the respondent indicated that the appeal had not been simply dismissed and sought time to obtain clarification from the Court of Appeal of England and Wales as regards same.
32. When the matter came before the Court on 8th March, 2021, it was with considerable reluctance that the Court agreed to allow a short period for the UK authorities to obtain clarification from the Court of Appeal for England and Wales. The judgment of that Court had only been sent on Wednesday 3rd March, 2021, allowing only 2 working days before

Monday 8th March, 2021 for the UK authorities to consider same. On 8th March, 2021, a further affidavit of Mr. MacGuill dated that day was put before the Court, exhibiting an updated report from Mr. Rogers, consultant psychologist, and taking issue with the information provided by the UK in respect of whether the respondent could appeal or contest the revocation of licence.

33. The Court informed the UK authorities that it was allowing a short time for the result of the appeal to be clarified and, at the request of counsel for the respondent, the Court set out the time spent in custody on foot of the EAW, the relatively short time period to be served in custody if surrendered and called on the UK authorities to indicate whether the request for surrender was being sustained. By reply dated 11th March, 2021, it is confirmed that the Court of Appeal of England and Wales had ordered the sentences to run concurrently and the total sentence to be served is 18 months' imprisonment. It is also confirmed that surrender is still sought, that the prison will calculate the time left to be served and that the respondent may be under licence conditions which the UK would want to monitor.

Points of Objection

34. Points of objection were delivered and supplemented as different legal teams took over representation of the respondent. These may be summarised as follows: -
- (i) surrender is precluded by s. 45 of the Act of 2003, being a conviction *in absentia*;
 - (ii) surrender is precluded by s. 38 of the Act of 2003 as there is no correspondence between the offences to which the EAW relates and offences under the law of the State;
 - (iii) surrender is precluded by s. 22 of the Act of 2003 as the issuing state intended to prosecute the respondent for an offence other than those in respect of which her surrender was sought;
 - (iv) surrender is precluded by s. 37 of the Act of 2003 as it would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR") and in particular, if surrendered, the respondent would be subjected to inhuman and degrading treatment due to the unavailability of adequate treatment of her diagnosis of complex post-traumatic stress disorder and/or because the respondent had suffered human rights abuses in the UK and the UK can no longer enjoy the mutual trust and confidence which underpins the European arrest warrant system;
 - (v) the EAW did not contain sufficient details or clarity so as to comply with s. 11 of the Act of 2003; and
 - (vi) surrender is precluded as the arrangements for surrender between the State and the UK following the UK's departure from the European Union ("the EU") are unlawful and/or surrender on foot thereof would be disproportionate.

Section 45 of the Act of 2003

35. An objection to surrender based on s. 45 of the Act of 2003 was not seriously pursued at hearing. I am satisfied that neither the hearings in 2016 nor in 2020 can be regarded as *in absentia* hearings. The respondent appeared in person at both hearings, although she absconded before final determination of the trial in March 2020.
36. As regards the appeal which resulted in a variation of the 2020 sentences from consecutive to concurrent, on the basis of the decision of the Court of Justice of the European Union ("CJEU") in *Tupikas* (Case C-270/17 PPU), the relevant hearing for the purposes of s. 45 of the Act of 2003, and Article 4a of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), is the hearing before the Court of Appeal of England and Wales. In so far as any judgment or sentence is to be enforced, it is the judgment/sentence of the Court of Appeal of England and Wales and not the judgement/sentence of 30th March, 2020. This was a hearing at which the respondent did not appear in person and so the requirements of s. 45 of the Act of 2003 are to be complied with. It appears that the respondent initiated the appeal, gave a mandate to a legal counsel appointed by her to represent her at such proceedings and was indeed represented by that legal counsel. Thus, point (d)3.2. of the Table set out in s. 45 of the Act of 2003 was complied with. The respondent's defence rights were adequately protected at the appeal and were not breached at the appeal proceedings.

Section 38 of the Act of 2003 – Correspondence

37. Section 38(1)(a) of the Act of 2003 precludes surrender in respect of an offence unless the acts stated to constitute that offence would also constitute an offence in this State and carry a maximum penalty in the issuing state of at least 12 months' imprisonment, or a sentence of at least 4 months' imprisonment has been imposed by the issuing state in respect of the offence. Section 38(1)(b) provides an alternative procedure but this does not arise in the present case.

38. Section 5 of the Act of 2003, which deals with correspondence, provides:-

"5. – For the purposes of this Act, an offence specified in a relevant arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the relevant arrest warrant is issued, constitute an offence under the law of the State."

39. In *Minister for Justice v. Dolny* [2009] IESC 48, Denham J., as she then was, stated at para. 38 of her judgment:-

"38. In addressing the issue of correspondence it is necessary to consider the particulars on the warrant, the acts, to decide if they would constitute an offence in the State. In considering the issue it is appropriate to read the warrant as a whole. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a

helpful analogy to consider whether the words would equate with the terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they would constitute an offence if committed in this jurisdiction."

40. The applicant submits that the acts, as set out in the EAW, said to constitute the offences in respect of which the sentences had been passed would, if committed within this jurisdiction, amount to criminal offences. In respect of the UK offence contrary to s. 4A of the UK Protection from Harassment Act, 1997, the applicant submits that the corresponding offence in this jurisdiction is an offence contrary to s. 10 of the Non-Fatal Offences Against the Person Act, 1997 ("the Act of 1997"), which provides:-

"10.- (1) Any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with or about him or her, shall be guilty of an offence.

(2) For the purposes of this section a person harasses another where-

(a) he or she, by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other, and

(b) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to the other.

(3) Where a person is guilty of an offence under subsection (1), the court may, in addition to or as an alternative to any other penalty, order that the person shall not, for such period as the court may specify, communicate by any means with or about the other person or that the person shall not approach within such distance as the court shall specify of the place of residence or employment of the other person.

(4) A person who fails to comply with the terms of an order under subsection (3) shall be guilty of an offence.

(5) If on the evidence the court is not satisfied that the person should be convicted of an offence under subsection (1), the court may nevertheless make an order under subsection (3) upon an application to it in that behalf if, having regard to the evidence, the court is satisfied that it is in the interests of justice so to do.

(6) A person guilty of an offence under this section shall be liable-

(a) on summary conviction to a fine or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment to a fine or a term of imprisonment not exceeding 10 years, or both."

41. I am satisfied that correspondence exists between the acts alleged to constitute the offences contrary to s. 4A of the UK Protection from Harassment Act, 1997 referred to in the EAW, to which the sentence of 19th August, 2016 relates, and an offence under the law of the State, viz. an offence contrary to s. 10 of the Act of 1997. This was not seriously contested at hearing.
42. In respect of the UK offence of harassment – breach of a restraining order, contrary to s. 5 of the UK Protection from Harassment Act, 1997, to which the sentences of 30th March, 2020, relate, the applicant submits that the corresponding offence in this jurisdiction is an offence contrary to s. 5(5)(b) Criminal Justice Act, 1993.
43. Section 5 of the Criminal Justice Act, 1993 provides:-
- "5.(1) This section applies to an offence where a natural person in respect of whom the offence has been committed, has suffered harm, including physical, mental or emotional harm, or economic loss, which was directly caused by that offence.*
- (2)(a) When imposing sentence on a person for an offence to which this section applies, a court shall take into account, and may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed.*
- (b) For the purposes of paragraph (a), a 'person in respect of whom the offence was committed' includes, where, as a result of the offence, that person has died, is ill or is otherwise incapacitated, a family member of that person.*
- (3)(a) When imposing sentence on a person for an offence to which this section applies, a court shall, upon application by the person in respect of whom such offence was committed, hear the evidence of the person in respect of whom the offence was committed as to the effect of the offence on such person.*
- (b) For the purpose of paragraph (a), where the person in respect of whom the offence was committed–*
- (i) is a child under the age of 14 years, the child, or his or her parent or guardian, may give evidence as to the effect of the offence concerned on that child,*
- (ii) is–*
- a person with a mental disorder (not resulting from the offence concerned), the person or a family member,*
- (II) a person with a mental disorder (not resulting from the offence concerned), who is a child, the person or his or her parent or guardian,*

may give evidence as to the effect of the offence concerned on that person,

(iii) is a person who is ill or is otherwise incapacitated as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned on that person and on his or her family members,

(iv) has died as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned—

(I) on the person between the commission of the offence and his or her death (where relevant), and

(II) on the family members of the person who has died.

(c) A person who has been convicted of an offence to which this section applies may not give evidence pursuant to paragraph (b) in respect of that offence.

(d) Where more than one family member seeks to avail of paragraph (b), the court may direct the family members to nominate one or more family members for the purpose of that paragraph.

(e) Where the court directs the family members to nominate one or more family members pursuant to paragraph (d) and the family members are unable to reach agreement, the court may, having regard to the degree of relationship between the family members and the person in respect of whom the offence was committed, nominate one or more family members as it considers appropriate.

(4) Where no evidence is given pursuant to subsection (3), the court shall not draw an inference that the offence had little or no effect (whether long-term or otherwise) on the person in respect of whom the offence was committed or, where appropriate, on his or her family members.

(5)(a) The court may, in the interests of justice, order that information relating to the evidence given under subsection (3) or a part of it shall not be published or broadcast.

(b) If any matter is published or broadcast in contravention of paragraph (a), the following persons, namely—

(i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

(ii) in the case of any other publication, the person who publishes it, and

(iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,

shall be guilty of an offence.

- (c) *A person guilty of an offence under paragraph (b) shall be liable–*
- (i) *on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or*
 - (ii) *on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.*
- (d) *Where an offence under paragraph (b) is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.*
- (e) *Where the affairs of a body corporate are managed by its members, paragraph (d) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.*

- (6) *In this section and in sections 5A and 5B, unless the context otherwise requires–*

'Act of 2010' means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

'civil partner' means a person in a civil partnership or legal relationship to which section 3 of the Act of 2010 applies;

'cohabitant' means a cohabitant within the meaning of section 172(1) of the Act of 2010;

'broadcast' has the meaning it has in section 2 of the Broadcasting Act 2009;

'child' means a person under the age of 18;

'family member' in relation to a person in respect of whom an offence is committed, means–

- (a) *a spouse, civil partner or cohabitant of the person,*
- (b) *a child or step-child of the person,*
- (c) *a parent or grandparent of the person,*
- (d) *a brother, sister, half brother or half sister of the person,*
- (e) *a grandchild of the person,*
- (f) *an aunt, uncle, nephew or niece of the person, and*
- (g) *any other person–*

- (i) who is or, where the person is deceased, was dependent on the person, or
- (ii) who a court considers has or, where the person is deceased, had a sufficiently close connection with that person as to warrant his or her being treated as a family member;

'guardian', in relation to a child, has the meaning it has in the Children Act 2001;

'mental disorder' includes a mental illness, mental disability, dementia or any disease of the mind;

'publish' means publish, other than by way of broadcast, to the public or a portion of the public."

44. Section 5 of the UK Protection from Harassment Act, 1997, provides:-

"5. Restraining orders on conviction

- (1) *A court sentencing or otherwise dealing with a person ('the defendant') convicted of an offence may (as well as sentencing him or dealing with him in any other way) make an order under this section.*
- (2) *The order may, for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from conduct which–*
 - (a) *amounts to harassment, or*
 - (b) *will cause a fear of violence,**prohibit the defendant from doing anything described in the order.*
- (3) *The order may have effect for a specified period or until further order.*
- (3A) *In proceedings under this section both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3.*
- (4) *The prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.*
- (4A) *Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (4).*
- (5) *If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.*
- (6) *A person guilty of an offence under this section is liable–*

(a) *on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or*

(b) *on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.*

(7) *A court dealing with a person for an offence under this section may vary or discharge the order in question by a further order."*

45. Counsel on behalf of the applicant referred the Court to the details of the offences contrary to s. 5 of the UK Protection from Harassment Act, 1997, to which the sentences of 30th March, 2020 relate, as set out in document "MG5 Form – MET Total Policing URN O1CW/03185/18" attached to the EAW. From this, it appears that the offences in question consisted of the respondent posting material on Twitter which contained a link to a crowd-funding page, which in turn contained links to other documents which named persons [B.C.] and [V.C.] that had been identified within a restraining order issued on 14th November, 2016, against the respondent. The documents also contained a copy of the victim personal statement of [B.C.] dated 18th August, 2016 and a copy of correspondence between [V.C.] and lawyers in the United States of America. By the restraining order, the respondent was prohibited from, *inter alia*:-

"...4. contacting, directly or indirectly, [V.C.], or referring to him, expressly or impliedly, by communication in written form, in transcript, by email or on social media, save in specified limited circumstances;

...11. Referring, expressly or impliedly to, inter alia, [B.C.], by communication in written form, in transcript, by email or on social media, save in specified limited circumstances."

46. Counsel on behalf of the applicant submits that as a copy of the victim personal statement of [B.C.] was contained within the materials in the links referred to in the post on Twitter by the respondent, that the facts of the offence set out in the EAW would constitute an offence in this jurisdiction under s. 5(5)(b) of the Criminal Justice Act, 1993, at least as regards the second offence concerning [B.C.]. She conceded that similar correspondence could not be established with the first offence or with that part of the second offence which concerned [V.C.].
47. Counsel on behalf of the respondent submits that the UK offence and the offence in this State are entirely different in their nature. It is submitted that the UK offence has as its essence the breach of the specific terms of a court order. The terms of the order can vary considerably, and thus the offence is not the commission of the acts in question in themselves but rather the commission of such acts in breach of the court order. Indeed, commission of the acts might be perfectly lawful where it not for the court order restraining the specific person from doing so. Thus, the ways and means of committing the offence were unlimited and so diverse that it could not reasonably be regarded as corresponding with the Irish offence under s. 5(5)(b) of the Criminal Justice Act, 1993,

which could only be committed in a single manner, namely by publication of victim impact evidence. It is submitted that simply because one of the judicially restrained acts committed by the respondent, publication of victim impact evidence, was capable of being judicially restrained and a breach thereof made subject to criminal sanction in this jurisdiction, this did not establish the necessary correspondence. The UK order is directed against a specific person who has been convicted, whereas the Irish order is directed at persons generally.

48. In this case, the UK court order restrained the respondent from referring to [V.C.] or [B.C.]. In respect of the first offence, she was sentenced to 9 months' imprisonment for referring to [V.C.] with no suggestion of reference to victim impact evidence. In respect of the second offence, she was sentenced to 18 months' imprisonment for referring to [V.C.] and [B.C.], but the reference to victim impact evidence was only in relation to [B.C.]. I am not satisfied that correspondence has been made out as regards the first of those offences, in respect of which the sentence of 9 months' imprisonment was imposed.
49. Turning to the offence in respect of which the sentence of 18 months' imprisonment was imposed, counsel on behalf of the applicant submits that the acts as set out in the MG5 Form showed that the respondent had, *inter alia*, published victim impact evidence in breach of a court order restraining publication of same and this would constitute an offence in this State contrary to s. 5(5) of the Criminal Justice Act, 1993. Thus, it is submitted that, applying the reasoning in *Dolny*, correspondence has been established.
50. Counsel for the respondent submits that on a proper reading of s. 5 of the Criminal Justice Act, 1993, there is a distinction to be drawn between victim impact evidence given orally before a court and victim impact evidence received in writing by a court and that the offence created by s. 5(5) only relates to evidence given orally before the court. In the current case, the victim impact statement had been received by the UK court in written form and so there is no corresponding offence under Irish law. She submits that s. 5(5) of the Criminal Justice Act, 1993 specifically enabled the court to restrain publication of information relating to evidence given under s. 5(3) only. In that regard, s. 5(3)(a) of the Criminal Justice Act, 1993 provides that:-

"5.(3)(a) ... a court shall, upon application by the person in respect of whom such offence was committed, hear the evidence of the person in respect of whom the offence was committed as to the effect of the offence on such person." (Emphasis added)

This is to be contrasted with s. 5(2)(a) of the Criminal Justice Act, 1993 which provides:-

"5.(2)(a) ... a court shall take into account, and may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed." (Emphasis added)

She submits that written evidence received by the court is received under s. 5(2)(a) and oral evidence heard by the court is heard under s. 5(3)(a), and only oral evidence received under s. 5(3)(a) could be subject to a restraining order.

51. I am not satisfied that s. 5 of the Criminal Justice Act, 1993 is to be given such a restrictive interpretation. There does not appear to be any purpose to be served by such a reading, but more importantly the wording itself does not indicate such a meaning. Section 5(2)(a) of the Criminal Justice Act, 1993 provides that the Court *may* receive evidence or submissions and from whom that evidence or submission is to be heard is not expressly limited. The Court has a discretion to allow or exclude such evidence. However, s. 5(3)(a) of the Criminal Justice Act, 1993 provides that the Court *shall*, upon the application of the victim, hear the victim's evidence. The Court has no discretion to refuse to hear the victim's evidence. I do not believe that a court could refuse to receive a victim's written statement of the effect of the crime upon him or her by purporting to exercise the discretion under s. 5(2)(a) of the Criminal Justice Act, 1993. In accordance with s. 5(3)(a) of the Criminal Justice Act, 1993, the victim must be heard. I do not believe that "*hear the evidence*" in s. 5(3)(a) of the Criminal Justice Act, 1993 refers only to the oral evidence of the victim, but rather covers a written statement of the victim. Victim statements, whether given orally or in writing, often contain extremely personal details and I do not believe that the Oireachtas, in enacting the relevant provisions, intended that in order to have a right to inform the court of the impact of the crime upon them and/or to obtain the benefit of non-publication of such matters, victims would have to go through the ordeal of giving oral evidence concerning same. Such an interpretation could lead to injustice and absurdity as far as the victim is concerned.
52. Applying the reasoning in *Dolny*, and considering the EAW and the additional information from the issuing state as a whole, I am satisfied that correspondence has been established between the second offence, in relation to which the sentence of 18 months' imprisonment was imposed on 30th March, 2020, and an offence under the law of the State, viz. an offence contrary to s. 5(5) of the Criminal Justice Act, 1993.

Section 22 of the Act of 2003

53. It is submitted on behalf of the respondent that because the trial judge, who is also the issuing judicial authority in this matter, indicated that the respondent should be brought before him in respect of her breach of bail that, if surrendered, she would be prosecuted and punished for an offence, viz. breach of bail, in respect of which she would not have been surrendered.
54. Section 22 of the Act of 2003 incorporates the rule of specialty as set out in Article 27 of the Framework Decision, and provides as follows:-

"22. – (1) In this section, except where the context otherwise requires, 'offence' means, in relation to a person to whom a European arrest warrant applies, an offence (other than an offence specified in the European arrest warrant in respect of which the person's surrender is ordered under this Act) under the law of the issuing state committed before the person's surrender, but shall not include an

offence consisting, in whole, of acts or omissions of which the offence specified in the European arrest warrant consists in whole or in part.

(2) *Subject to this section, the High Court shall refuse to surrender a person under this Act if it is satisfied that—*

(a) *the law of the issuing state does not provide that a person who is surrendered to it pursuant to a European arrest warrant shall not be proceeded against, sentenced or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal liberty, in respect of an offence, and*

(b) *the person will be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal liberty, in respect of an offence.*

(3) *It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to—*

(a) *proceed against him or her,*

(b) *sentence or detain him or her for a purpose referred to in subs. (2)(a), or*

(c) *otherwise restrict him or her in his or her personal liberty,*

in respect of an offence, unless the contrary is proved.

(4) *The surrender of a person under this Act shall not be refused under subs. (2) if—*

(a) *upon conviction in respect of the offence concerned he or she is not liable to a term of imprisonment or detention, or*

(b) *the High Court is satisfied that, where upon such conviction he or she is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his or her personal liberty,*

the said other penalty only will be imposed if he or she is convicted of the offence.

(5) *The surrender of a person under this Act shall not be refused under subs. (2) if it is intended to impose in the issuing state a penalty (other than a penalty consisting of a restriction of the person's liberty) including a financial penalty in respect of an offence of which the person claimed has been convicted, notwithstanding that where such person fails or refuses to pay the penalty concerned (or, in the case of a penalty that is not a financial penalty, fails or refuses to submit to any measure or comply with any requirements of which the penalty consists) he or she may, under the law of the issuing state be detained or otherwise deprived of his or her personal liberty.*

(6) *The surrender of a person under this Act shall not be refused under subs. (2) if the High Court–*

(a) *is satisfied that–*

- (i) *proceedings will not be brought against the person in respect of an offence,*
- (ii) *a penalty will not be imposed on the person in respect of an offence, and*
- (iii) *the person will not be detained or otherwise restricted in his or her personal liberty for the purposes of an offence,*

without the issuing judicial authority first obtaining the consent thereto of the High Court,

(b) *is satisfied that–*

- (i) *the person consents to being surrendered under s. 15,*
- (ii) *at the time of so consenting he or she consented to being so proceeded against, to such a penalty being imposed, or being so detained or restricted in his or her personal liberty, and was aware of the consequences of his or her so consenting, and*
- (iii) *the person obtained or was afforded the opportunity of obtaining, or being provided with, professional legal advice in relation to the matters to which this section relates,*

(c) *is satisfied that–*

- (i) *such proceedings will not be brought, such penalty will not be imposed and the person will not be so detained or otherwise restricted in his or her personal liberty before the expiration of a period of 45 days from the date of the person's final discharge in respect of the offence for which he or she is surrendered, and*
- (ii) *during that period he or she will be free to leave the issuing state, except where having been so discharged he or she leaves the issuing state and later returns thereto (whether during that period or later), or*

(d) *is satisfied that such proceedings will not be brought, such penalty will not be imposed and the person will not be so detained or restricted in his or her personal liberty unless–*

- (i) *the person voluntarily gives his or her consent to being so proceeded against, such a penalty being imposed, or being so detained or restricted in his or her personal liberty, and is fully aware of the consequences of so doing,*
- (ii) *that consent is given before the competent judicial authority in the issuing state, and*

- (iii) *the person obtains or is afforded the opportunity of obtaining, or being provided with, professional legal advice in the issuing state in relation to the matters to which this section relates before he or she gives that consent.*
- (7) *The High Court may, in relation to a person who has been surrendered to an issuing state under this Act, consent to–*
- (a) *proceedings being brought against the person in the issuing state for an offence,*
- (b) *the imposition in the issuing state of a penalty, including a penalty consisting of a restriction of the person’s liberty, in respect of an offence, or*
- (c) *proceedings being brought against, or the detention of, the person in the issuing state for the purpose of executing a sentence or order of detention in respect of an offence,*
- upon receiving a request in writing from the issuing state in that behalf.*
- (8) *The High Court shall not give its consent under subs. (7) if the offence concerned is an offence for which a person could not by virtue of Part 3 be surrendered under this Act.”*

55. It should be noted that s. 22 of the Act of 2003 does not contain an absolute bar on prosecuting a person surrendered for an offence other than an offence in respect of which they have been surrendered. A number of different circumstances are set out in s. 22 of the Act of 2003 in which such prosecution may take place. Moreover, what is prohibited under s. 22 of the Act of 2003 is prosecution and deprivation of liberty on foot of such prosecution. Thus, a person may be prosecuted and convicted of an offence other than that in respect of which he/she was surrendered, but provided no deprivation of liberty occurs as a result thereof, then there is no breach of s. 22 of the Act of 2003 or Article 27 of the Framework Decision. In *Leymann and Pustovarov* (Case C-388/08 PPU), the Court of Justice of the European Union (“the CJEU”) stated at para. 76 :-

“76 ... the exception in Article 27(3)(c) of the Framework Decision must be interpreted as meaning that, where there is an ‘offence other’ than that for which the person was surrendered, consent must be requested, in accordance with Article 27(4) of the Framework Decision, and obtained if a penalty or a measure involving the deprivation of liberty is to be executed. The person surrendered can be prosecuted and sentenced for such an offence before that consent has been obtained, provided that no measure restricting liberty is applied during the prosecution or when judgement is given for that offence...”

In *Minister for Justice and Equality v. Sliwa* [2016] IEHC 185, Donnelly J. expressed the view at para. 64:-

"64. The correct interpretation of the relevant provisions of s. 22, both in their plain and ordinary meaning and indeed when subjected to a confirming interpretation with Article 27 of the 2002 Framework Decision, is that their surrender is not prohibited where a person will be proceeded against and indeed sentenced but no measure restricting his or her personal liberty will be applied in the issuing state."

The decision of the High Court in *Sliwa* was appealed and in *Minister for Justice and Equality v. Sliwa* [2016] IECA 130, while the Court of Appeal did not directly address the issue, it was stated at para. 5:-

"5. The situation in respect of petitions 4 and 7 is (or, at least, pending further clarification, may be) different in that it appears that the authorities in those cases have proceeded before the Polish courts in these two cases. It is, however, agreed that the steps taken to date do not infringe Article 27 of the Framework Decision as construed by the Court of Justice in Case C-388/08 Leymann [2008] E.C.R. I-8983. As these matters are not before this Court, we refrain from exercising any view in respect of these two petitions."

If the issuing state wishes to proceed to deprive the surrendered person of his/her liberty in respect of an offence, then it must only do so in accordance with one of the provisions of s. 22 of the Act of 2003 or Article 27 of the Framework Decision, which allow same, for instance by obtaining the consent of the surrendered person or the consent of the executing judicial authority to do so.

56. I am not satisfied that the comments of the trial judge demonstrate an intention on the part of the issuing state to act contrary to the Framework Decision. Indeed, there is nothing before this Court to indicate that the trial judge acted in a particularly unusual manner by indicating that a person who has absconded be brought before the court in respect of breach of bail. As stated earlier herein, s. 4A of the Act of 2003 provides for a presumption that the issuing state will comply with the Framework Decision unless the contrary is shown. I am not satisfied that the contrary has been shown in this case. If the respondent is surrendered, and if proceedings are initiated against her in respect of breach of bail, it is reasonable to assume that she will have the benefit of legal representation in respect of any such proceedings to ensure that the Framework Decision is complied with. I dismiss the respondent's objection to surrender grounded in s. 22 of the Act of 2003.

Section 37 of the Act of 2003

57. It is submitted on behalf of the respondent that there was a real risk that, if surrendered, the respondent's fundamental human rights would not be respected and therefore the Court was precluded by s. 37 of the Act of 2003 from making an order for surrender. The respondent in her affidavit lays emphasis on generalised complaints of previous treatment by the UK authorities. Counsel on behalf of the respondent placed more emphasis on the respondent's medical needs and how these had, or had not, been dealt with during the respondent's previous incarceration in the UK.

58. Counsel for the respondent relies upon the report of Dr. Ó Domhnaill, to the effect that the respondent had been misdiagnosed in the past and it was unlikely that the treatment recommended therein would be made available to the respondent in prison in the UK. She also relies upon the two reports of Mr. Rogers to the effect that during her previous incarceration in the UK, she had been misdiagnosed and even then, had not received treatment on foot of that misdiagnosis until late into her sentence. In his report dated 8th March, 2021, Mr. Rogers took issue with the assurances given by the UK authority. He noted that GPs are not experts in mental health or in the assessment of complex mental health needs. Mr. Rogers outlined that there is a shortage of properly-qualified mental health professionals in the UK national health system generally and in the prison system. In his opinion, the appropriate treatment is long-term psychodynamic psychotherapy, but there is a shortage of psychodynamic psychotherapists. He expressed some concern as to whether the respondent would get the treatment, although he did concede that in recent times there was evidence that treatment recommended by him was being given to prisoners and the situation was slowly improving. He remained of the view that, at this time, the respondent would not be able to access appropriate treatment.
59. From the medical reports before the Court, it is clear that in the past, doctors have differed as to the nature of the respondent's mental health needs. It is not for this Court to direct or require that the UK authorities must accept the diagnoses of Dr. Ó Domhnaill and Mr. Rogers, or to direct or require that the UK must provide a specific treatment to the respondent. The risk that a person, upon surrender, will not receive one particular treatment over another cannot in and of itself mean that surrender would be incompatible with the State's obligations under the ECHR or the Constitution. This is particularly so where there has been a difference of opinion between doctors as to diagnosis and/or treatment, where the recommended treatment is of a very specialised nature and limited in its availability both inside and outside of prison. Just as with legal systems, prison health services and conditions differ from one issuing state to another. Difference in itself cannot be a reason to refuse surrender. What must be established is that there are substantial reasons for believing that, if surrendered, there is a real risk that the respondent would be detained in conditions which are not simply sub-optimal, but rather which amount to inhuman and degrading treatment. The Court has been furnished with details as to the extensive medical facilities and services available at HMP Bronzefield where the respondent is likely to be detained, if surrendered. The Court has received assurances from the UK authorities, including assurances endorsed by the Director General of the UK Prison and Probation Service. These assurances have been set out hereinbefore. The Court is assured that shortly after her surrender, the respondent will be assessed by a GP. While the GP may or may not be an expert in the diagnosis or treatment of complex mental health needs, the Court is assured that the GP will refer the respondent to such other specialists as deemed necessary. All medical notes will be made available to the GP.
60. Can it be said that, despite the medical facilities and services available, and despite the assurances given, the likely unavailability of psychodynamic psychotherapy would render the conditions of the respondent's detention inhuman and degrading? I think not. It is

almost inevitable that detention in prison will limit the nature and extent of health services to which a person might otherwise be able to avail of if they were in the general community, on a public or private basis. Provided one has the resources, while free in the community, one might engage any number of medical specialists and undergo any number of treatments or therapies. However, when detained one clearly cannot expect or demand a similar approach to health services. Persons in detention are entitled to reasonable access to adequate medical care. What is reasonable or adequate will vary from person to person, depending upon their medical needs, but also depending upon the medical care available to persons in the general community who are not in custody. As Mr. Rogers points out in his report dated 8th March, 2021, there is a general shortage of properly qualified mental health professionals in the UK national health system generally. This is reflected in the prison health system and is slowly improving.

61. I am not satisfied that there are substantial grounds for believing that there is a real risk that, if surrendered, the respondent's conditions of detention would amount to inhuman or degrading treatment in breach of Article 3 ECHR or in breach of her right to bodily integrity or any other rights under the Constitution.
62. It is submitted that the respondent had suffered violation of her fundamental human rights in the past in the UK and therefore the Court should refuse surrender. I am not satisfied that the respondent's submission in this regard is supported by such cogent and objective evidence to justify this Court in determining that the respondent's fundamental rights will be breached or are at real risk of being breached if she is surrendered. Section 4A of the Act of 2003 provides for a presumption that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown. The Framework Decision incorporates respect for fundamental human rights. The presumption in s. 4A of the Act of 2003 has not been rebutted in this case. Leaving the presumption aside, I note that the UK is a party to the ECHR and has incorporated same into its domestic law.
63. Ultimately, bearing in mind the wording of s. 37 of the Act of 2003, this Court has to determine whether surrender of the respondent would be incompatible with the State's obligations under the ECHR, the protocols thereto, or would contravene a provision of the Constitution. I am satisfied that the surrender of the respondent is not incompatible with the State's obligations in that regard and would not contravene any provision of the Constitution.
64. I dismiss the respondent's objections to surrender grounded in s. 37 of the Act of 2003.

Lack of Detail

65. I am satisfied that, reading the EAW and the additional information as a whole, sufficient detail as to the relevant matters has been furnished. The surrender of the respondent is sought to enforce a number of sentences, namely-
 - I. The remainder of a sentence of 5 years' imprisonment imposed on 19th August, 2016, in respect of stalking-type offences. The remainder to be served is 8 months'

imprisonment. A sufficient description of the offence to which this relates has been furnished, including the date, place and degree of participation in the offence by the respondent;

- II. A sentence of 9 months' imprisonment imposed on 30th March, 2020, in respect of an offence of breach of a court restraining order. A sufficient description of the offence to which this relates has been furnished, including the date, place and degree of participation in the offence by the respondent; and
- III. A sentence of 18 months' imprisonment imposed on 30th March, 2020, in respect of an offence of breach of a court restraining order. A sufficient description of the offence to which this relates has been furnished, including the date, place and degree of participation in the offence by the respondent.

It is noted that the respondent was fully aware of the trials that resulted in the said sentences. As regards the trial in 2020, she attended same but absconded before it concluded. She was legally represented throughout same, up to and including sentence. Lawyers acting on her behalf appealed the conviction and sentence, and succeeded in having the 2 sentences imposed therein changed from consecutive to concurrent sentences. The respondent has put before the Court information from her legal counsel in that appeal. There is no suggestion that the appeal was taken without instructions from the respondent.

- 66. The date of the recall of her licence in respect of the 2016 sentence has been established together with the reason for same.
- 67. I am satisfied that there is no lack of detail of any substantial nature which would be necessary for the respondent to deal with this application. I dismiss the respondent's objection grounded in an alleged lack of details.

UK Withdrawal from the EU

- 68. The Court heard submissions on all issues in this matter save on the issue concerning the withdrawal of the UK from the EU. As that issue had been referred by the Supreme Court to the CJEU, the Court adjourned hearing that issue to await the outcome of the reference to the CJEU. In the meantime, the Court delivered its ruling on 11th October, 2021 in respect of all of the other issues in the case.
- 69. Following the decision of the CJEU in SN and SD (Case C-479/21 PPU), the respondent no longer pursued any point in relation to the UK's withdrawal from the EU.

Further Submissions

- 70. By further supplementary affidavit dated 4th November, 2021, the respondent avers that as a result of her own experiences of what she described as the "*inadequacy and dysfunction of the mental health services available to women prisoners*" in the UK, she became an advocate and campaigner for reform within the prison system and has been involved with "*The View*" magazine that gives a voice to women in the criminal justice system. She avers that in May 2020, she commenced civil proceedings in the UK arising

from an alleged failure of the Central and Northwest London NHS Foundation Trust to diagnose her with post-traumatic stress disorder while in HMP Bronzefield, among other prisons, and failure to provide her with adequate mental health treatment. These matters had already been set out to the Court. She avers that she found it difficult to pursue those proceedings whilst in custody and that she is expecting a hearing date in early 2022. She avers that she has commenced therapy in Ireland, has found this to be beneficial and is anxious to continue with same. She exhibits an up-to-date medical report from Dr. Pratish Thakkar, a clinical forensic psychiatrist, dated 24th September, 2021 in which the diagnosis of complex post-traumatic stress disorder is confirmed and Dr. Thakkar opines that, at the time of the respondent's incarceration in HMP Bronzefield, she should have received psychological therapy. She avers that she has been advised that her proceedings in the UK have the potential to generate positive and far-reaching reforms in the mental health treatment available in the UK prison system. She expresses her concern that, if surrendered, she will be deprived of her liberty on other offences other than those in respect of which she has been surrendered. I note that, in the medical report of Dr. Thakkar, the respondent is referred to as Ms. Farah Dan.

71. The respondent's solicitor, Mr. James MacGuill, in an additional supplementary affidavit, dated 13th December, 2021, avers that the respondent is currently attending counselling arising out of an incident which occurred on 8th/9th September, 2021 and which is being investigated by An Garda Síochána. He avers that the respondent instructs him that her UK civil proceedings have been listed in early February for a time limited 'warned list' which means it could be listed for trial at any time during the given period. He also avers that around 3rd December, 2021, the respondent contacted a barrister in the UK who has advised her and has undertaken to commence judicial review proceedings on her behalf before the UK courts challenging the issuing of the EAW. A letter from the counsel is exhibited in which it is indicated that he would have to write to the Crown Prosecution Service to see if they concede, then take the matter to court if they did not agree and would have to have an answer on permission within 3 months.
72. The matter was listed for judgment on 17th January, 2021, and was adjourned on medical grounds until 24th January, 2021. On 19th January, 2021, Ms. Martin-Vignerte, solicitor for the respondent, swore a further affidavit exhibiting a letter from a UK-based barrister to the Crown Prosecution Service, seeking a review of the continued prosecution of the extradition proceedings and indicating that should the UK authorities fail to respond with an agreement to discontinue the extradition proceedings, then the respondent intends to commence judicial review proceedings.
73. I have considered these additional affidavits filed by or on behalf of the respondent. I do not regard the matters raised therein as sufficient to change my earlier rulings on the various issues argued before the Court or to constitute any fresh reason for refusing surrender.
74. As matters stand, the respondent, upon surrender, has only a short period of incarceration to serve and will then be released on licence. In such circumstances, she will

be free to pursue her civil litigation against the UK authorities as regards her alleged misdiagnosis while previously incarcerated. Indeed, even if she were to serve a longer period in prison, this would not prevent her pursuing her civil litigation. No evidence has been put before the Court to indicate that her surrender to the UK will pose any insurmountable difficulties as regards the investigation of her current complaint which is being investigated by An Garda Síochána or any prosecution which might result from same.

75. As regards the possible bringing of judicial review proceedings in the UK, I note that the respondent was arrested in this jurisdiction on 17th August, 2020 and it is now approximately 16 months later that such proceedings in the UK are being contemplated. To attempt to predict the outcome of same would be to engage in mere speculation. As matters stand, there is a valid European arrest warrant before this Court which must be given effect to, unless surrender is precluded for one of the specific reasons set out in the Framework Decision or provided for in the Act of 2003. I find no basis for concluding that surrender is precluded for any of those specific reasons.
76. This matter was listed for judgment on 24th January, 2022. The respondent was unable to attend for Covid-19-related reasons. The matter was re-listed for judgment today, 31st January, 2022, and, when the matter was called, counsel on behalf of the respondent indicated that she had been instructed to hand into the Court 2 further documents. These were received by the Court without the need for same to be exhibited in an affidavit. The first document is entitled "*Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to December 2021, Assaults and Self-harm to September 2021*". This document contains statistics in relation to self-harm incidents in 2021 which had increased in female prisons by 5% but had shown a 10% decrease in the last quarter. The other document is titled "*The Fifth Report of the House of Commons Justice Committee on Mental Health in Prison*" published on 29th September, 2021. This highlights a significant unmet need for mental healthcare services in prisons. The report acknowledges that there has been an improvement in mental healthcare provision in prisons but that same are still not adequate. The report also highlights deficiencies and failings in meeting the mental healthcare needs of prisoners upon their release and re-integration into the community. I reiterate my views, already set out herein, on the respondent's submission that surrender is precluded on the basis of the mental healthcare she will receive if surrendered. I am not satisfied that the general deficiencies, or recommended improvements in, mental healthcare services in prisons in the UK are of such a fundamental nature or level as to justify the refusal of surrender of the respondent. In particular, I note the specific information furnished by the issuing state as regards the care which will be provided to the respondent upon her surrender.
77. I have considered all of the recently submitted materials but in light of the provisions of the Framework Decision and the Act of 2003, I am satisfied that same do not establish any valid reason, taken in isolation or cumulatively with the other materials already provided herein, for refusal of surrender. In particular, bearing in mind the wording of s. 37 of the Act of 2003, I am satisfied that surrender of the respondent is not incompatible

with the State's obligations under the ECHR, or the protocols thereto, and nor would it contravene any provision of the Constitution.

78. I dismiss the respondent's objections to surrender.
79. Having dismissed the respondent's objections to surrender, it follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to the UK.

Final Remarks

80. The Court has sympathy for the respondent in relation to her mental health difficulties but this matter cannot be determined on the basis of sympathy and must be determined in accordance with law.
81. The respondent has mental health needs in respect of which she has in the past received different and possibly conflicting diagnoses. None of this goes to justifying the criminal behaviour in respect of which she has been convicted, but it might shed some light on the manner in which this matter has progressed. The respondent retained various sets of legal representatives, solicitors and counsel, and after a period discharged them, save for her final representatives. She made serious allegations concerning her previous representatives. She insisted on attempting to correspond directly with the Court, sending materials containing criticism of persons in the UK who have had to deal with her in the course of their work. The Court was furnished with an affidavit in which the respondent averred that while detained on foot of the current EAW, she had been considered for suicide watch and was being monitored every 20 minutes. The Governor of Mountjoy Female Prison swore an affidavit dated 6th February, 2021, flatly refuting such claims.
82. I feel that it is only fair to all the legal representatives in this matter that I should note that as far as the Court is concerned, each and every one of the practitioners involved in the proceedings before this Court carried out their duties to the respondent and to the Court in a professional, competent and ethical manner in what were clearly difficult circumstances. At least, as observed by the Court, the members of the legal profession, An Garda Síochána, the Irish Prison Service and the Courts Service have treated Ms. Damji with courtesy and respect throughout this process.