



**THE HIGH COURT
JUDICIAL REVIEW**

[2026] IEHC 490

Record No: 2025/485 JR

BETWEEN

JAMES DUFFY

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

**JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 20th day of
July, 2026**

INTRODUCTION

1. In these proceedings, the Applicant seeks to quash a return for trial made by the District Court on the 3rd of March, 2025 in respect of a single alleged offence of evading excise duty on cigarettes, contrary to s. 119(2) of the Finance Act 2001 (as amended) (the “2001 Act”).

2. In substance, he contends, *inter alia*, that the return was vitiated because the prosecution's election as to the mode of trial was unlawfully made contingent upon his plea, the election was not communicated before he was required to indicate that plea and the summons was not accompanied by the written information required by European Union (Right to Information in Criminal Proceedings) Regulations 2022 (S.I. No. 549 of 2022) (the "EU Information Regulations"). He contends that the cumulative effect was a breach of his rights to information, legal assistance, fair procedures and trial in due course of law.
3. The Director of Public Prosecutions (the 'DPP') contests the Applicant's entitlement to relief in circumstances where an open offer to concede *certiorari* and remittal was rejected. The purpose of the concession was to permit summary disposal in the District Court on a guilty plea and thereby, the DPP contends, to cure any unfairness arising from the fact that the Applicant did not have the benefit of legal advice and information when he entered a plea of not guilty. The DPP objects to remittal other than for the purpose of entering a guilty plea. It maintains that, if the Applicant were to plead not guilty following remittal, he would necessarily be sent forward once more for trial in the Circuit Court and that the proceedings would therefore serve no practical purpose.
4. The broad issue for determination is therefore whether the events of the 22nd of January, 2025 and the 3rd of March, 2025, disclose a legal defect sufficient to invalidate the return for trial. That question involves the relationship between the prosecution's election in a hybrid case, the guilty-plea procedure under s.13 of the Criminal Procedure Act, 1967 (as amended) ("the 1967 Act"), the information requirements imposed by the EU Information Regulations and the constitutional requirement of fair procedures at the stage when the applicant was asked to indicate his plea.
5. If I conclude that there is such a defect, then a secondary question arises as to the relief which should be ordered in circumstances where the DPP's conditional offer in open correspondence to concede relief was not accepted.

BACKGROUND

6. These judicial review proceedings arise from the prosecution of the Applicant for a single alleged offence of evading excise duty, contrary to s.119(2) of the 2001 Act in

connection with the bringing of cigarettes into the State. It is alleged that, shortly after midnight on the 26th of April, 2024, the Applicant arrived at Terminal 1, Dublin Airport, from Málaga, carrying 14,000 John Player Blue cigarettes in three items of baggage. The cigarettes bore Spanish but not Irish tax stamps. The estimated value of the cigarettes, inclusive of duty and tax, is stated to be €11,442.20.

7. According to statement and notes contained in the Book of Evidence, the Applicant admitted that the bags were his and he had packed them himself. He maintained that he had bought the cigarettes in a shop in Torremolinos and he had receipts. He claimed the cigarettes were for himself and that he smoked approximately 40 cigarettes per day. He said the cigarettes had cost approximately €4,337.
8. Customs deemed the quantity to be commercial. The 14,000 cigarettes were seized under s.141 of the 2001 Act, placed in two bags, sealed and secured in the Terminal 1 lock-up. A notice of seizure was issued on the 26th of April, 2024. The sealed bags were transferred to the State Warehouse on the 2nd of May, 2024.
9. The Prosecution contends that the Applicant is guilty of intentional evasion of Irish excise duty. The offence under s. 119(2) of the 2001 Act is a hybrid offence capable of being dealt with summarily or on indictment, depending upon the prosecution's election and, if summary disposal is proposed, the District Court's acceptance of jurisdiction.
10. The Applicant was summoned to appear before District Court No. 8 at the Four Courts on the 22nd of January, 2025. The summons had been issued under s.1 of the Courts (No. 3) Act 1986 ("the 1986 Act"). The Applicant's pleaded case is that the summons was not accompanied by the written information concerning procedural rights prescribed by Regulation 2 of the EU Information Regulations, namely, information concerning access to a solicitor, entitlement to free legal advice and the conditions governing it, and rights to interpretation and translation.
11. The Applicant was not legally represented when he appeared on the 22nd of January, 2025. According to the account given in his grounding affidavit, the District Judge asked him whether he was pleading guilty or not guilty, and he indicated that he was pleading not guilty. When applying *ex parte* for leave to seek judicial review, the Applicant did not claim to have a complete recollection of the precise sequence of the

exchanges that followed. A transcript of the Digital Audio Recording ('DAR') has since become available

12. The DAR transcript confirms that when the case was called, the Judge asked about the nature of the case and the Prosecution Solicitor (Ms Holden) said it concerned a detection at Dublin Airport and offences under s.119. The judge clarified that it was the "*cigarettes case*". The Judge next asked the Applicant for his plea as follows:

"How do you plead? Guilty or not guilty?"

Mr Duffy replied:

"Not guilty, your honour."

13. As is apparent from the DAR transcript, the Judge initially proceeded on the basis that the case would be heard summarily. Having heard the not-guilty plea, the Judge said he would give the Applicant a hearing date and that the Revenue Commissioners would call their evidence, which the Judge would hear. The Prosecution Solicitor then intervened to correct that understanding. She stated:

"Judge, sorry to interrupt you but it's actually summary disposal on a guilty plea only."

14. She initially added that the matter would need to be adjourned for DPP directions.
15. The Judge then explained the prosecution position to the Applicant. He told him that it was a serious case and explained that the DPP would deal with it in the District Court only if he entered a guilty plea. If he did not plead guilty, the case would be dealt with

in the Circuit Court before a judge and jury. The Applicant indicated that he understood and was “*prepared for that*”.

16. The Judge next explained the potential sanction on indictment. The Judge referred to a possible penalty of up to five years’ imprisonment in the Circuit Court. The transcript records the Prosecution Solicitor as responding affirmatively.
17. Only after the plea and the explanation of the prosecution direction did the Judge ask about legal representation. The Judge asked:

“*Now do you have a solicitor?*”

The Applicant replied that he did not have a solicitor. The Judge then asked whether he was working and discussed the apparent income threshold for legal aid. The Judge indicated that he would otherwise assign a solicitor to the Applicant. There was a brief discussion about allowing time to obtain representation. The Judge suggested giving the Applicant until the 26th of March to “*get your ducks in order*”. The Applicant declined this opportunity replying that he had matters ready to proceed.

18. The Judge then asked the Applicant to confirm his plea a second time as follows:

“*So you’re pleading not guilty, okay?*”

The Applicant again replied:

“*Not guilty.*”

The Judge responded that this made the position straightforward and asked how long was required for the book of evidence.

19. The Prosecution Solicitor suggested obtaining further DPP directions because the DPP might permit the matter to remain summarily. The Judge disagreed that further directions were necessary, observing that directions had already been given; the case could proceed in the District Court “*on a plea of guilty only*”. He stated that this constituted directions for the purposes of the proceedings before him.
20. The matter was adjourned for service of the book of evidence. A period of six weeks was allowed. The registrar identified the 3rd of March, 2025 and the Judge adjourned the case to that date in District Court No. 8 at 10.30 a.m. for service of the book of evidence. The Judge then explained the next procedural step telling the Applicant that the DPP would prepare a book containing the documents and evidence to be relied upon; that the Applicant would receive it on the next date; and that he would then be sent forward for trial in the Circuit Criminal Court. The Applicant indicated that he understood.
21. The Applicant’s central factual contention is that, before he was first asked to indicate his plea, neither he nor the District Court had been informed whether the prosecution had elected for summary disposal or trial on indictment. In particular, he says he was not told in advance that the prosecution would consent to summary disposal only if he pleaded guilty, whereas a plea of not guilty would result in the case proceeding on indictment. He therefore maintains that he indicated a not guilty plea without legal representation, without the prescribed written information concerning his procedural rights and without being informed of the procedural and penal consequences said to attach to his choice of plea.
22. The DAR transcript confirms that the Applicant’s first indication of a not-guilty plea preceded disclosure that summary disposal was available only upon a guilty plea, explanation that a not-guilty plea would lead to trial in the Circuit Court, discussion of the materially greater potential penalty on indictment and any inquiry about whether he had a solicitor or might be eligible for legal aid. However, after those matters had been explained and legal representation had been discussed, the Applicant expressly confirmed the not-guilty plea a second time. The case was then adjourned for preparation and service of the book of evidence.

23. On the 3rd of March, 2025, the Applicant again appeared before District Court No. 8 without legal representation. He was served with the book of evidence and formally sent forward for trial to the Dublin Circuit Criminal Court, with the matter listed in Court No. 5 of the Criminal Courts of Justice on the 10th of April, 2025. He subsequently obtained legal representation and advice.

PROCEEDINGS BY WAY OF JUDICIAL REVIEW

24. Papers in proceedings by way of judicial review were filed in the Central Office on the 10th of April, 2025. The Applicant sought an order of *certiorari* quashing the District Court's return for trial of the 3rd of March, 2025, together with a stay on the criminal proceedings and related relief.
25. Leave to seek judicial review was granted by Gearty J on the 14th of July, 2025, and a notice of motion issued on the 18th of July, 2025.
26. The case as pleaded in the Statement of Grounds raises two related, but distinct, issues.
27. First, the Applicant contends that, in the case of a hybrid offence, the prosecution may not lawfully defer its election between summary disposal and trial on indictment or make that election conditional upon the accused's intended plea. On his case, the prosecution must first elect whether the case is to proceed summarily or on indictment and must communicate that election to the accused and the District Court. If summary disposal is elected, the District Court must then decide whether the alleged offence is minor and suitable for summary trial. If trial on indictment is elected, the statutory return-for-trial procedure applies, subject to the distinct guilty-plea procedure under s.13 of the 1967 Act.
28. The Applicant therefore characterises the direction given in this case, summary disposal on a guilty plea, but trial on indictment on a not-guilty plea, as an impermissible conditional or provisional election. He says that an Accused's intended plea cannot lawfully be used to determine the mode of trial in that manner. The statutory context includes s.4A of the 1967 Act, under which a person charged with an indictable offence is ordinarily sent forward for trial unless the case is being tried summarily or dealt with under s.13. Section 4B expressly contemplates service of the book of evidence

following, among other events, the prosecutor's election to try a hybrid offence on indictment. Section 13 separately provides that, where an accused wishes to plead guilty to an indictable offence and understands the nature of the offence and the alleged facts, the District Court may, with the prosecutor's consent, deal with the case summarily or send the accused forward for sentence on a signed plea.

- 29.** Second, and in the alternative, the Applicant argues that even if the prosecution is legally entitled to make the mode of disposal dependent upon the intended plea, fair procedures required him to be informed of that position before he was asked to indicate a plea. He relies in that regard upon the EU Information Regulations, constitutional fair-procedure guarantees under Article 38.1 of the Constitution and the general principle that procedural rights must be made effective at the stage when important decisions affecting the accused are made.
- 30.** The Applicant says that the absence of the prescribed written information was particularly significant because he was unrepresented and because his answer to the plea question had immediate consequences for the forum and potential penalties. He contends that he was not advised that a not guilty plea would lead to his case being sent forward to the Circuit Criminal Court. On that basis, he maintains that the summons was non-compliant or ineffective and that the ensuing return for trial was made in breach of fair procedures.
- 31.** The Applicant places emphasis on the materially different consequences of summary disposal and trial on indictment. His pleadings refer to the fine available on summary conviction, including the statutory power under s.130 of the 2001 Act to mitigate an excise fine by up to 50%, and to the legislation excluding the application of s.1 of the Probation of Offenders Act 1907 ("the 1907 Act") to excise offences.
- 32.** A statement of opposition and a verifying affidavit sworn by the Prosecution Solicitor were filed on the 4th of February, 2026. In the Opposition papers, the DPP's essential position is that, although the written information required by the EU Information Regulations was not sent with the summons, that omission caused the Applicant no prejudice and had no legal effect because he understood the relevant rights, was maintaining a not-guilty plea, and was in fact sent forward for trial consistently with

that plea. The DPP also maintains that the direction permitting summary disposal on a guilty plea only was lawful.

33. The Statement of Opposition expressly accepts that the Applicant is being prosecuted under s.119(2) of the 2001 Act and that the written procedural-rights information required by the EU Information Regulations was not sent with the summons. It is further accepted that the prosecution direction was for summary disposal on a guilty plea only. It is also admitted that the Applicant was unrepresented in the District Court. It is not disputed that he was asked to indicate his plea, and did so, before the prosecution direction was communicated in court and he was sent forward for trial to the Circuit Criminal Court on the 3rd of March, 2025.
34. The DPP accepts that the summons should have been accompanied by written information concerning the right of access to a solicitor, the entitlement to free legal advice and the conditions for obtaining such advice, and the right to interpretation and translation. The DPP nevertheless maintains that the omission caused no prejudice. It relies on the transcript as demonstrating that the Applicant knew that he could obtain a solicitor, was aware of the availability of legal aid and its means-related conditions, did not appear to require interpretation or translation and, after the procedural consequences had been explained to him, maintained his intention to plead not guilty
35. The DPP therefore rejects the proposition that non-compliance with the EU Information Regulations automatically invalidates either the summons or the subsequent return for trial. Its case is that the legal consequences of the breach must be assessed by reference to any practical prejudice caused, rather than by treating non-compliance as giving rise to invalidity *ipso facto*.
36. As to the lawfulness of the prosecution's direction, the DPP maintains that a direction consenting to summary disposal on a guilty plea only was lawful. It rejects the Applicant's contention that the mode of disposal had to be determined independently of his intended plea. The Statement of Opposition further contends that, where such a direction has been given, a solicitor would advise the accused that a guilty plea would allow the District Court to consider dealing with the matter summarily, whereas a not-guilty plea would result in the matter being sent forward for trial on indictment.

37. The DPP infers from the Applicant's refusal of the proposed remittal that he continues to maintain his intention to plead not guilty. On that basis, the DPP contends that the absence of legal advice before the Applicant's initial indication of plea made no difference to the procedural course of the prosecution and that no prejudice has been established.
38. The DPP places significant reliance on an open offer made by letter dated the 17th of December, 2025. In that letter, the DPP offered to consent to *certiorari* of the return for trial if the Applicant wished to change his plea to guilty, so that the case could be remitted to the District Court and dealt with summarily in accordance with the original prosecution direction.
39. The proposal was rejected by the Applicant through his solicitors on the 13th of January, 2026. They stated that there was no basis for assuming that the Applicant was willing to plead guilty and that a concession of the judicial review on the proposed terms was unacceptable.
40. The DPP cites that refusal as confirming that the Applicant maintains his not-guilty plea. It argues that quashing the return because of the omitted information would therefore serve no practical purpose. This is in circumstances where, if the matter were remitted and the Applicant again pleaded not guilty, the case would once more be sent forward for trial.
41. Section 1(1) of the 1907 Act ordinarily permits a court, in appropriate cases, to dismiss a charge or conditionally discharge an offender without recording a conviction. However, s.126 of the Finance Act, 2001 excludes the application of s.1(1) of the 1907 Act to specified Revenue offences. The DPP's position is that the 1907 Act provision is consequently unavailable for the offence charged, whether the matter is dealt with summarily or on indictment. It therefore rejects any suggestion that the difference between summary and indictable disposal (and therefore alleged prejudice from sequencing) includes a possible entitlement to an order under s. 1(1) of the 1907 Act in the District Court.
42. In short, the DPP accepts the formal failure to provide the prescribed written information but maintains that the Applicant had actual knowledge of the relevant

rights, the consequences of the prosecution direction were explained to him in court, he confirmed and continues to maintain his not-guilty plea, he has declined an offer which would have restored the opportunity for summary disposal on a guilty plea, the direction itself was lawful and there is no prejudice, invalidity or practical basis for *certiorari*. The DPP accordingly seeks dismissal of the proceedings and denies entitlement to *certiorari*, damages or any other relief. A formal plea of futility has not been included in the Statement of Opposition.

LEGISLATIVE FRAMEWORK

Right to Information in Criminal Proceedings

43. As set out above, the summons in this case was issued under s.1 of the Courts (No. 3) Act, 1986 and required the Applicant to appear before the District Court on the 22nd of January, 2025. It charged an offence under s.119 of the 2001 Act.
44. The European Union (Right to Information in Criminal Proceedings) Regulations, 2022 (S.I. No. 549 of 2022) (referred to above as “EU Information Regulations”) require that where a summons issues either under s. 11(2) of the Petty Sessions (Ireland) Act, 1851 or s. 1 of the Courts (No. 3) Act, 1986, it shall be accompanied by written information on the procedural rights of the person in relation to:
- (a) his or her right of access to a solicitor;
 - (b) his or her entitlement to free legal advice and the conditions for obtaining such advice;
 - (c) his or her right to interpretation and translation.
45. The EU Information Regulations implement Directive 2012/13/EU on the right to information in criminal proceedings. The requirement is expressed in mandatory terms and the summons “*shall be accompanied*” by the prescribed written information.

Sequencing and Mode of Trial on Excise Offence

- 46.** The Applicant is charged under s.119(2) and (3) of the 2001 Act. Section 119(2) makes it an offence for a person to be concerned in the evasion or attempted evasion of a duty of excise on excisable products, with intent to defraud, directly or indirectly, the State of that duty.
- 47.** Under s.119(3) of the 2001 Act, the offence may be dealt with either summarily in the District Court or on indictment in the Circuit Criminal Court. It is therefore commonly described as a hybrid offence. The statutory penalties on summary conviction are a fine of up to €5,000, imprisonment for up to 12 months, or both; and on conviction on indictment, a fine of up to €126,970, or, in cases where the value of the products exceeds €250,000, three times their value, together with imprisonment for up to five years, or both fine and imprisonment.
- 48.** Section 119(4) of the 2001 Act applies s. 13 of the 1967 Act to an offence under s. 119. It provides, in substance, that the penalties specified in s. 119(3)(a) are to apply in place of the penalties otherwise specified in s. 13(3) of the 1967 Act.
- 49.** Section 13(2) of the 1967 Act provides that, where the District Court ascertains that a person charged with an offence to which the section applies wishes to plead guilty, and is satisfied that the person understands the nature of the offence and the facts alleged, the court may follow either of two courses. First, under s. 13(2)(a), it may, with the consent of the prosecutor, deal with the offence summarily. Secondly, under s. 13(2)(b), if the accused signs a plea of guilty, it may, subject to s. 13(2A), send the accused forward for sentence with that plea to the court to which the accused would otherwise have been sent forward for trial.
- 50.** Section 13(2A) of the 1967 Act provides that the accused shall not be sent forward for sentence under s. 13(2) without the consent of the prosecutor.

Sending forward for Trial on an Indictable Offence

- 51.** Section 4A of the 1967 Act governs the sending forward for trial of an accused charged with an indictable offence. Under s. 4A(1), where an accused is before the District Court

charged with an indictable offence, the court must send the accused forward to the appropriate trial court unless one of the statutory exceptions applies, including where the offence is being tried summarily or dealt with under s. 13. The accused may not be sent forward for trial without the prosecutor's consent. If the prosecutor withholds that consent, the District Court must strike out the proceedings, without prejudice to the prosecutor's power to institute fresh proceedings. Further, the accused may not be sent forward until the documents prescribed by s. 4B(1) have been served.

Penalties and Consequences of Conviction

52. The applicable penalties are prescribed by s. 119(3) of the 2001 Act and differ depending on whether the offence is dealt with summarily in the District Court or on indictment in the Circuit Criminal Court. Section 1 of the 1907 Act may ordinarily permit a court, in an appropriate case, to dismiss a charge or conditionally discharge an offender without proceeding to conviction. However, s. 126(6) of the 2001 Act excludes the application of s. 1 of the 1907 Act to the excise offences to which that section relates. It is therefore unavailable in respect of an offence under s. 119(2), whether the matter is dealt with summarily or on indictment. The contention, not pressed at hearing, that the Applicant loses rights under the 1907 Act by reason of the DPP's election is therefore not correct in law.

ANALYSIS AND DECISION

Overview

53. The issues are: first, whether the prosecution acted unlawfully in directing that summary disposal would be available on a guilty plea only; secondly, whether the failure to provide the information prescribed by the EU Information Regulations, together with the sequence in which the Applicant was asked to indicate his plea, rendered the procedure unfair; and thirdly, if procedural unfairness is established, what remedy is appropriate in light of the subsequent events.
54. The Applicant does not challenge the validity of s. 13 of the 1967 Act or s. 119(4) of the 2001 Act. His first argument concerns the timing and allegedly conditional character

of the prosecution's direction. His alternative argument is that, even if that direction was lawful, fair procedures required it to be communicated sufficiently in advance of any invitation to indicate a plea to afford him a meaningful opportunity to obtain legal advice.

55. The relevant authorities include *The State (Healy) v. Donoghue* [1976] I.R. 325, *DPP v. Gormley and White* [2014] 2 I.R. 591, [2014] IESC 17, *DPP v. Czelusniak* [2023] IECA 159 and *TH v. DPP* [2004] IEHC 76. The decisions of the Supreme Court in *Healy* and *Gormley* establish that constitutional fairness is not confined to the trial itself and may require access to legal advice before an accused is asked to make a decision capable of affecting the later course of criminal proceedings. *Czelusniak* (like the earlier decision in *TH v. DPP*) confirms the significant and enduring consequences of a plea entered within the s. 13 framework and recognises the more limited sentencing jurisdiction of the District Court as part of the statutory *quid pro quo* associated with a guilty plea.

56. The decision in the *DPP v. Galvin* [2025] IESC 35 was referred to in submissions but not relied upon in oral argument. The majority of the Supreme Court found that a constitutional challenge to the exclusion of relief under the 1907 Act in an excise case was premature in a case where the District Court had not yet determined the facts or engaged in the sentencing process. It is relied upon to reinforce the importance of the Applicant having a proper opportunity, with full information and knowledge of a right to seek legal advice, to consider his position before a plea is sought.

Information as to Procedural Rights and Opportunity to Access Legal Advice

57. It is common case that the summons was not accompanied by the information prescribed by the EU Information Regulations concerning access to a solicitor, entitlement to free legal advice and the conditions governing that entitlement, and interpretation and translation. The requirement is mandatory, and its breach is established. The question is whether that breach invalidated the subsequent return for trial or otherwise requires *certiorari*.

- 58.** Non-compliance with the EU Information Regulations does not, without more, invalidate every subsequent step in the proceedings. The Court must identify the consequences of the non-compliance and determine whether it caused prejudice that materially compromised the fairness of the procedure. If so, the Court must then consider what remedy is required, so far as practicable, to restore the Applicant to the position he would have occupied had the prescribed information been provided.
- 59.** The return for trial followed service of the book of evidence and, on its face, complied with the statutory requirements governing the sending forward of an accused for trial. The relevant defect therefore did not lie in the formal terms of the return itself, but in the earlier process by which the Applicant was first asked to indicate his plea without the prescribed information or an effective prior opportunity to obtain legal advice
- 60.** Before his initial appearance in the District Court, the Applicant had not received the prescribed information concerning his procedural rights and had not obtained legal advice. After his first indication that he would plead not guilty, however, the District Judge explained that a guilty plea would allow the District Court to consider summary disposal, whereas a not-guilty plea would result in trial in the Circuit Criminal Court. The Judge also raised the questions of legal representation and legal aid and offered the Applicant an adjournment to obtain a solicitor. The Applicant declined the adjournment and confirmed his intention to plead not guilty. The subsequent explanation, discussion of representation and renewed invitation to indicate his position substantially mitigated the effect of the premature plea question and the initial absence of information. They did not, however, afford the Applicant the same opportunity as advance notification followed by independent legal advice.
- 61.** Information provided by a court is not equivalent to independent legal advice directed to the interests of the accused. The Judge could explain the available procedural options but could not advise the Applicant as to which course would best serve his interests. As decisions in *Healy* and *Gormley and White* make clear, what is protected is a real and practical opportunity to obtain legal advice before making a legally significant decision. In the circumstances, the Court cannot safely regard the Applicant's refusal of an adjournment as a free and informed waiver of that opportunity. He had not received the advance notification required by law, and the questions of legal representation and the

consequences of his intended plea were first addressed only after the plea process had begun. Moreover, what he received from the Judge was information, not independent legal advice.

62. The prejudice arising from the failure to provide the prescribed information in advance was the loss of a fair opportunity to obtain legal advice before participating in a plea process capable of affecting the forum and the Applicant's sentencing exposure. It is neither necessary nor appropriate to speculate as to whether legal advice would probably have resulted in a different plea.

Sequencing and Election as to Mode of Trial

63. The Applicant's separate contention that the prosecution unlawfully made the mode of trial contingent on his intended plea cannot succeed. The combined effect of s. 119(4) of the 2001 Act and s. 13 of the 1967 Act is that, once the prosecution treats the offence as indictable, the District Court may consider dealing with it summarily under s. 13 only where the accused wishes to plead guilty, the prosecutor consents and the other statutory requirements are satisfied. If the accused pleads not guilty, the matter is to proceed through the statutory procedure for sending the accused forward for trial on indictment.
64. The legal effect of the prosecution's direction, that summary disposal would be available on a guilty plea only, was that the offence was being treated as indictable, while the prosecutor would consent to the statutory summary procedure if the Applicant wished to plead guilty. Once the prosecution had adopted that position, the consequences of a not-guilty plea flowed from the statutory scheme rather than from a further or provisional prosecutorial election. The direction was therefore neither unlawful nor provisional merely because the availability of the s. 13 procedure depended on the Applicant wishing to plead guilty. The outcome is dictated by the statutory scheme and does not arise from an unlawful or provisional prosecutorial election. *Czelusniak* recognises the legitimacy of the statutory framework and the legal consequences associated with the s. 13 procedure.
65. Under these provisions there are several matters which must exist before the District Court has jurisdiction to consider disposing of a case in a summary manner. It is

necessary to establish whether the prosecution is treating the offence as indictable or summary and the DPP must consent to the case being disposed of summarily which, in the case of an indictable offence, can only occur on a guilty plea. Before accepting a plea of guilty, the Court is also required to be satisfied that the accused understands the nature of the offence and the facts alleged.

66. If the statutory conditions are satisfied, the District Court may deal with the offence summarily, but it is not obliged to do so. Alternatively, where the accused signs a plea of guilty and the prosecutor consents, the court may send the accused forward for sentence to the court to which the accused would otherwise have been sent forward for trial. A person sent forward for sentence may withdraw the written plea and plead not guilty pursuant to s. 13(4). It is nevertheless clear from s. 13(2) that an accused's wish to plead guilty is an essential precondition to the District Court's exercise of the summary jurisdiction conferred by that subsection. In the absence of such a wish, s. 13(2)(a) cannot be invoked: see *T.H. v. DPP* and *DPP v. Czelusniak*.
67. The proper sequence is nevertheless important. In a hybrid case, the prosecution's position as to the mode of trial should ordinarily be identified before the accused is invited to indicate a plea. If the prosecution treats the offence as indictable, the accused should also be informed whether the prosecutor would consent to the District Court dealing with the offence summarily under s. 13(2)(a) if the accused wished to plead guilty. That information is relevant both to the legal advice the accused may receive and to an informed decision as to plea.
68. The DAR transcript shows that the District Judge initially proceeded on the mistaken assumption that the case would be heard summarily and asked the Applicant to indicate his plea before the prosecution's position had been clarified. After the prosecution solicitor intervened, the Judge explained the principal procedural consequences of the direction, raised the question of representation and asked the Applicant to confirm his position. The subsequent exchange indicates that the Applicant's first response was not treated as determinative. While an issue remains in relation to the absence of a proper prior and effective opportunity to obtain legal advice in advance of entering a plea, there was no unlawfulness in the prosecution direction itself.

69. The Applicant's first indication that he would plead not guilty was not treated as determinative. The Judge subsequently clarified the prosecution's position, explained the principal procedural consequences and raised the question of legal representation before asking the Applicant to confirm his position. Those steps corrected the immediate sequencing problem created by the premature plea question. They did not, however, place the Applicant in the position he should have occupied from the outset: having received the prescribed written information in advance and having had a real and practical opportunity to obtain legal advice before making a decision as to plea.

Prejudice and Appropriate Remedy

70. The practical choices available to the Applicant were limited but legally significant. With appropriate legal advice, he could choose to plead guilty, in which case the District Court could consider summary disposal with the DPP's consent and subject to the other statutory requirements. Alternatively, he could plead not guilty, in which case the statutory process for sending him forward for trial would follow. The prejudice caused by the failure to provide the prescribed information in advance was the loss of a fair opportunity to make that decision with the benefit of legal advice.

71. In deciding on the appropriate remedy, I am mindful that any remedial order should cure the established procedural unfairness without conferring an unwarranted substantive advantage. To cure the identified unfairness in this case, it is necessary to restore the lost opportunity to make an informed decision as to plea with the benefit of legal advice before engaging in the plea process. To achieve this the procedural consequence of the earlier plea process must be set aside and the Applicant restored to the point at which the decision ought lawfully to have been made.

72. The DPP's open offer of the 17th of December, 2025, is relevant in this context. Under that offer, the DPP was prepared to consent to the return for trial being quashed and to the matter being remitted if the Applicant wished to plead guilty, thereby allowing the District Court to consider summary disposal. The offer did not, however, restore an unconditional opportunity to make a fresh decision as to plea. It required the Applicant to commit in advance to a guilty plea. It was therefore a conditional compromise

proposal, rather than relief formulated following a judicial determination of the procedural unfairness.

73. Having found that the procedural unfairness lay in the loss of an informed choice made with the benefit of legal advice, I consider that the appropriate remedy is to restore that choice rather than prescribe its outcome. It would not be a proper exercise of the Court's remittal jurisdiction to make remittal conditional on the Applicant entering a particular plea. In any event, counsel for the DPP did not invite the Court to make an order in those terms.
74. I will therefore make an order of *certiorari* quashing the return for trial and remit the matter to the District Court so that the Applicant may make a fresh decision as to plea. The order is not based on a finding that the Applicant would or should plead guilty. Its purpose is to afford him a fair opportunity to make that decision with the benefit of legal advice, consistently with the principles identified in *Healy* and *Gormley and White*.
75. This conclusion does not detract from the significance of the DPP's open offer. If the Applicant again pleads not guilty, the statutory process for sending him forward for trial will follow, and he will return to the Circuit Criminal Court. If he pleads guilty and the DPP maintains its consent, the District Court may consider dealing with the matter summarily under s. 13. The substantive procedural outcome will therefore differ only if the Applicant elects to plead guilty. For that reason, I consider that the DPP acted reasonably in offering to concede relief on a conditional basis.
76. The December offer, which was made before the Statement of Opposition was filed, was a sensible and pragmatic attempt to address the practical consequences of the alleged unfairness while preserving judicial resources. If, with the benefit of legal advice, the Applicant had decided to plead guilty, the offer would have enabled the return for trial to be quashed and the matter to be remitted so that the District Court could consider summary disposal. It did not restore the unconditional choice that the Court has now determined should have been available, but it would have provided an effective practical remedy if the Applicant wished to change his plea.

77. The Applicant's refusal of the December offer resulted in additional time and expense. He has, however, obtained an order that differs from the relief the DPP offered to concede: remittal is not conditional on his committing in advance to a guilty plea. The practical value of that difference is limited, because it will alter the subsequent procedural course only if the Applicant chooses to plead guilty. If the offer was refused on the basis that the DPP had unlawfully deferred its election between summary disposal and trial on indictment, that contention has not been established on the facts. If it was refused on the basis that the DPP could not lawfully consent to summary disposal only where the accused wished to plead guilty, that contention has been rejected as a matter of law.
78. The fact that the order I now make differs from the proposed order the DPP was prepared to concede in December, 2025, does not necessarily justify the maintenance of these proceedings. The December 2025 offer and the limited practical difference between its terms and the relief now granted together with the clarity offered as to the legal position by the terms of the Statement of Opposition may have consequences for costs. In this regard, I note that the Applicant had the benefit of legal advice when that offer was made and refused and could make an informed decision as to whether he would plead guilty or not guilty in the event of remittal.
79. By the time of the December offer, the Applicant had the benefit of legal advice and was in a position to understand the likely procedural consequence of either plea. A not-guilty plea following remittal would ordinarily lead to a further return for trial, whereas a guilty plea would allow the District Court to consider summary disposal if the DPP maintained its consent. The unconditional remittal now ordered restores the procedural choice to which the Applicant was entitled, but it will alter the subsequent forum only if he chooses to plead guilty.

CONCLUSION

80. For the reasons given, I will make an order in terms of paragraph D(1) of the Statement of Grounds quashing the return for trial made on the 3rd of March, 2025. I will remit the matter to the District Court for a fresh plea. I will hear the parties as to the effect of the December offer on costs before determining the appropriate costs order.