Neutral Citation Number: [2019] EWHC 2084 (Admin)

Case No: CO/4500/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2019

Before :

SIR DUNCAN OUSELEY
sitting as a Judge of the High Court

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Between:

HARRY MEADOWS	**Appellant**
- and -	
EXAMINING COURT, MALAGA, SPAIN	**Respondent**

- -
- -

Benjamin Seifert (instructed by **JD Spicer Zeb**) for the **Appellant**
Richard Evans (instructed by **CPS Extradition**) for the **Respondent**

Hearing dates: 19 June 2019

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Approved Judgment

Sir Duncan Ouseley, sitting as a Judge of the High Court:

1. This is an appeal against the decision of District Judge Goldspring sitting at Westminster Magistrates' Court on 5 November 2018 ordering the extradition of the Appellant, Harry Meadows, to Spain to face trial pursuant to an EAW. He is accused of participating in a number of bank robberies in Spain between late December 2013 and February 2014.

2. The issues in this appeal revolve around his deafness and associated problems, which have given rise to arguments about oppression under s25 of the Extradition Act and fitness to plead, and breach of his ECHR Article 6 fair trial rights. He also raised the particularity of the EAW in relation to his role in the robberies. The District Judge also considered his Article 8 ECHR rights and those of his children.

3. He is 38 years old. He was born deaf. The District Judge found that he could not read or write effectively; he could not do sign language. There are significant issues over his lip-reading and its effectiveness. His attainment of knowledge and skills have been adversely affected by his deafness. A psychologist expert said that he had "borderline intellectual ability." He cannot communicate over the telephone. He has an alcohol and drug dependency.

4. He has six children by a now deceased former partner, and a seventh with his new partner. Four of his children are in care, and two live with his mother under some court approved arrangement. He too lives with his mother. He also had a son, who, aged 17, was shot dead in what the police described as a targeted shooting, in October 2017.

5. His surrender is sought for trial alongside seven co-Defendants. It is not clear whether they are in Spain or not. It appears that he and a number of the others were arrested in Spain, at houses where significant quantities of cannabis were found, but those are not the subject of the charges faced by Mr Meadows. The offences in question are described as follows, starting with the conspiracy offence:

> "1-All through the months of December 2013 and January and February 2014, the defendants agreed to make use of a hand-made explosive device made by themselves in order to seek illicit profit. The device was composed of two oxygen and acetylene bottles, a manometer, a two-tubes hose, a cable and a battery, and was intended to rob ATMs by explosing them."

6. There then follows a list of 14 specific offences of which the first and fourteenth are sufficient to exemplify the particularity of the EAW; almost all are alleged to have been committed in the early mornings, in Malaga or Marbella.

> "1:-The early morning of 18/12/13 the defendants set off the ATM of the banking establishment Deutsche Bank, at the road Carretera N340, Malaga. They managed to rob 9649,70 euros. As a result of the explosion, the ATM was damaged, but the damages has not yet been assessed by the experts….14:-

> Finally, on 21/02/14, the defendants set off the ATM of the bank establishment Barclays Bank, at Urbanizacion Pueblo Los Arcos, Autovfa A-7, km 191 Marbella. They robbed 40,000 euros and damaged the bank establishment, which claims damages. The damages have not yet been assessed by the experts."

7. The EAW continues:

> "Some days before the robberies, the defendants agreed to buy an AUDI RS4 of illicit origin for the purpose of using it in their criminal activities. The exact date of the purchase is unknown. Probably in order not to be identified, they changed the number plate of the car from the Spanish 0761GZM to the new on BX06BCY, which has proved to belong to a Volvo car without registration certificate, which was equally seized from the defendants. The stolen vehicle AUDI …has been returned to its owner." The total value of the burglaries, excluding damage to the banks was €295,218.

8. He was arrested and questioned in Spain; he spent some three months in custody there before he was allowed to leave subject to certain requirements, which it is not said he breached. He is not a fugitive. He was arrested in the UK in August 2017 in Liverpool, driving a scooter, when, after being passed a suspect unknown package, he rode off along the pavement and into a nearby housing estate. He was picked up shortly afterwards, and gave his name, date of birth and various addresses, according to the arresting officer's statement. He had no insurance, MOT or driving licence. When told he was under arrest for the extradition offences and cautioned, he replied that he had never been to Spain. He had explained that he was deaf, and could not do sign language, but used lip-reading, and confirmed to the officer that he fully understood what was happening. When told that he was being arrested for extradition proceedings, "he became somewhat volatile." He said "unprompted" that he had lost his passport two years ago and had never bothered to apply for a new one. He was bailed after a week or so in custody.

9. The case came before District Judge Goldspring on four occasions in 2018 before judgment was delivered on 5 November 2018. He had the benefit of four expert reports and the oral evidence of three of the experts. He also had the evidence of others who had been involved with Mr Meadows, notably his mother.

10. The principal argument pursued for Mr Meadows was that he was and would continue to be unfit to plead. There is no specific statutory provision about the effect of unfitness to plead on extradition. This issue is dealt with under s25, which requires a person to be discharged where it appears to the judge in the extradition hearing that "the physical or mental condition of the [requested person] is such that it would be unjust or oppressive to extradite him." As this was not a case in which the conditions would change, an adjournment to see if he would recover could not be granted; the only power would be to discharge him. It was argued that he would inevitably be found to be unfit under the Spanish procedure.

11. It was also contended that there was a real risk of a flagrant breach of Article 6, as that phrase is analysed in *Lis and Others v Poland* [2018] EWHC 2848 (Admin) at [58-63], because the Spanish trial Court had not been shown to be able to cope with the particular consequences of Mr Meadows' deafness in a way that would enable him to have a fair trial.

Unfitness to plead

12. The issue of unfitness to plead for extradition purposes has been considered in a number of cases. The principles are clear, and can be found in *Republic of South Africa v Dewani (No. 2)* [2014] EWHC 153 (Admin), D Ct, and other authorities including *Lynch v High Court of Dublin* [2010] EWHC 109 (Admin), and *Edwards v Government of the USA* [2013] EWHC 1906 (Admin). The judgment on fitness to plead is normally for the courts of the requesting state. This presupposes that the requesting state has a procedure for determining the issue. It would be comparatively unusual for extradition to be ordered of a person who was currently unfit to plead and had been unfit for some time, and there was no case in which a person had been extradited who was unfit to plead, and it was unknown when he would be fit to plead. However, if the requested person was unfit to stand trial, and was likely to remain unfit after a further period for recovery, his extradition would be oppressive if he were not to be returned to the UK, rather than face indefinite incarceration in the requesting state, perhaps after a procedure equivalent to the trial of the facts.

13. The Divisional Court in *Dewani* stated at [50-51]:

> "50. We therefore accept…that the breadth of the factors to be considered under section 91 [the equivalent for Category 2 countries of s25 for Category 1 countries] include looking at the question whether it was unjust or oppressive to extradite the person at the time the request was being considered as well as looking forward to what might happen in the proceedings in South Africa if he was extradited. We must take into account all such matters, including the consequences to the requested person's state of health and age….
>
> 51. We do not, however, accept that there are any hard and fast rules; that would be inconsistent with the position that each case must be specifically examined by reference to its facts and circumstances. The only situation in which a court would most probably say it would be oppressive and unjust to return him is where it is clear that he would be found by the court in the requesting state to be unfit to plead…."

14. The procedure for determining whether a person is unfit to plead in a criminal trial in England and Wales is provided for in s4 of the Criminal Procedure (Insanity) Act 1964. Sections 4A and 5 deal, respectively, with what happens if someone is found unfit to plead: there may be trial of the facts, that is whether the defendant did the act charged against him; and the consequences of a finding of that he did: hospital order, supervision order, or absolute discharge.

15. The operation of the procedure was considered in *R v Marcantonio* [2016] EWCA Crim14, [2016] 2 Cr.App.R.9, Lloyd-Jones LJ delivering the judgment of the Court. This referred to *R v Walls (Robert)* [2011] EWCA Crim 443; [2011] 2 Cr. App.R.6, in which Thomas LJ, delivering the judgment of the Court emphasised at [37]:

> "(i) a finding that a defendant is fit to plead has the consequence that the court must determine whether he did the act…. The court appoints a representative to put the case for the defence, but the defendant himself will not give evidence and ex-hypothesi, his ability to give instructions or the ability to obtain an account from the defendant is limited. Depriving the defendant of these very significant rights is a very serious step;
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> (ii) there are available to those with learning disabilities, in this age, facilities that can assist. Consideration can now be given to the use of an intermediary…. Plainly consideration should be given to the use of these powers or other ways in which the characteristics of a defendant evident from a psychological or psychiatric report can be accommodated within the trial process so that is limitations can be understood by the jury, before a court takes the very significant step of embarking on a trial of fitness to plead; and
>
> (iii) a finding that a defendant did the act in question, has the consequence that the court's powers of disposal are limited to a hospital order (where the issues are too well known to need stating), a supervision order for a specified period of no more than two years or an absolute discharge -see s.5 the Criminal Procedure (Insanity) 1964. The court's ability either to protect the public or to assist the defendant is severely limited."

16. At [14] in *Marcantonio,* Lloyd Jones LJ continued:

> "[Thomas LJ] went on (at [39]) to emphasise that the court must rigorously examine the evidence of psychiatrists adduced before it and then subject to that evidence to careful analysis against the *Pritchard* criteria as interpreted in *Podola*:
>
> > "Save in cases where the unfitness is clear, the fact that psychiatrists agree is not enough, as this case demonstrates; a court would be failing in its duty to both the public and the defendant if it did not rigorously examine the evidence and reach its own conclusion.""

17. The six *Pritchard* criteria were discussed in *Marcantonio;* the defendant on the balance of probabilities had to be able to do each of them: (1) understand the charges; (2) decide whether to plead guilty or not; (3) exercise his right to challenge jurors; (4) instruct solicitors and counsel; (5) follow the course of the proceedings; and (6) give evidence in his own defence. In [8], Lloyd Jones LJ set out cogent criticisms of the criteria, particularly in their application as a single test, even where the defendant had capacity to plead guilty, and not all the criteria

could be applicable. However, in [7], recognising that they were the current law, he said:

> "It seems to us, however, that in applying the *Pritchard* criteria the court is required to undertake an assessment of the defendant's capabilities in the context of the particular proceedings. An assessment of whether a defendant has the capacity to participate effectively in legal proceedings should require the court to have regard to what that legal process will involve and what demands it will make on the defendant. It should be addressed not in the abstract but in the context of the particular case. The degree of complexity of different legal proceedings may vary considerably. Thus, the court should consider, for example, the nature and complexity of the issues arising in the particular proceedings, the likely duration of the proceedings and the number of parties. There can be no legitimate reason for depriving a defendant of the right to stand trial on the basis that he lacks capacity to participate in some theoretical proceedings when he does not lack capacity to participate in the proceedings which he faces. It is in the interests of all concerned that the criminal process should proceed in the normal way where this is possible without injustice to the defendant. Moreover, it seems to us that such an approach is essential, given the emphasis which is now placed on the necessity of considering the special measures that may assist an accused at trial. (See, for example, *Walls*.) The effectiveness of such measures can only be assessed in the context of the particular proceedings."

18. The circumstances of *Walls* are not without interest in the light of the submissions made to the District Judge and to me. Although the issue of fitness to plead was only raised on appeal, two psychiatrists gave evidence that the defendant had been unfit to plead, but their evidence was rejected on a consideration of all the factors including what happened at trial, and in earlier questioning. The disability was a combination of learning disability, with an IQ in the extremely low to borderline intelligence range, and deafness, of unknown degree. The important points are (i) that this is a modern example of the range of "disability" which brings in s4 of the 1964 Act, which, despite its name goes beyond mental illness and insanity, (ii) the need for the court itself to consider the evidence from psychiatrists rigorously, and (iii) the problem faced by the defendant and public where unfitness to plead is found. The Court clearly had well in mind the problems of defendants, who could be serious repeat offenders, yet who could not be dealt with satisfactorily or fairly under s5 of the 1964 Act. This is likelier with those whose disabilities do not prevent them knowing that what they do is wrong, and a crime, for which they can be punished, yet then choose to commit it. That would apply to Mr Meadows, who, on the evidence to which I come, was both perfectly capable of understanding that theft and burglary were wrong, and of committing them.

19. Indeed *R v Pritchard* itself, concerned a defendant who was "mute by visitation of God", profoundly deaf, and unfit to stand trial, as did *R v Stafford Prison*

Governor ex p Emery [1909] 2 KB 81, in which a totally deaf person, mute by visitation of God, and found incapable of pleading and communicating or being communicated with, was not tried but held until His Majesty's pleasure was made known. Habeas corpus was refused, a response to the problems identified in *Walls* not now to be applied.

The expert evidence

20. I shall have to set out the expert evidence in some detail, not least because the District Judge's findings in [182] appear to use "unlikely" and "undoubtedly unfit to plead" when that is not what he meant, as Mr Seifert recognised, in view of his other findings and conclusions.

21. The judgment sets out the medical evidence fully. Dr Sue O'Rourke, a consultant clinical psychologist instructed on behalf of Mr Meadows, is highly qualified and very experienced in mental health and deafness. She has worked with deaf people since 1991. Amongst other positions, she had until recently been Head of Psychology in a medium secure unit for deaf people; she has published works on the treatment of deaf people, and was the lead author of the Advocacy Training Council's Toolkit 11 "Planning to Question Someone who is Deaf". She is fluent in sign language.

22. The sources consulted for the report did not include Mr Meadows' criminal record. They included statements from his mother and partner. She interviewed him - with his mother present, contrary to her initial intentions as it became apparent that he struggled with communication without her. He did not have sign language; and his speech was indistinct, and difficult to understand, particularly when he was more animated or upset. Dr O'Rourke used some gestures to communicate. Although he found lip reading extremely difficult at the start of the interview, he seemed more able to read her lips as he got used to their pattern. She judged that he was clearly trying to understand what was being said. He had been born deaf, but did not know why; his mother intervened to say that it was because of German measles. He had had a box hearing aid at school, but no specialist support or sign language. He had not used hearing aids since 16, as he was bullied for being deaf. He stated that he left secondary school unable to read or write. He had not worked since leaving school.

23. Mr Meadows told her that he had gone to Spain for a holiday, and just went out at night, staying in by day; he denied blowing up cash machines. He said that he had no idea what was being said to him in Spain, though he signed forms as his friend, who did not understand Spanish, told him to. Jail in Spain was "OK", he said; he swam, and played football, but was unable to communicate with staff or other prisoners.

24. In these proceedings, he had been to court in London, but could not understand his solicitor, "who is Chinese", despite the use of lip-speakers; his solicitor spoke to his girlfriend who explained things to him. He had spent two weeks in HMP Wandsworth but he could not understand people. He had been bullied in HMP Walton, where most of his friends were, because of his deafness.

25. He was low in mood in reaction to his son's death. He was on anti-depressant medication, but had never been referred to mental health services. He smoked cannabis nightly and drank three bottles of vodka at night at weekends. These "maladaptive coping strategies" had some physical health consequences. He denied any suicidal ideation, though his mother said that he had tried to hang himself when his former partner died. Most of his life was spent sitting in his mother's house, to which he had returned after his son's death, doing very little. He helped with the shopping and cooking but was given money for specific purposes by his mother rather than managing his own money. He could find his way around the local area independently, but would get lost on his own in new places; he needed help from railway staff on the trains coming back from London.

26. His reading age was 6 years 4 months, below the 7-9 year range of the deaf child of normal intelligence leaving school. He was of "borderline intellectual ability; 96% of the population would be higher than him though he was not quite at the level for a diagnosis of Learning Disability. However, his deafness and developmental experiences had limited his access to information and adversely affected his attainment of knowledge and skills in a manner not uncommon for deaf people. They could give the appearance of having a difficulty with understanding matters that a person of similar intellectual ability, who was not deaf, would not struggle with. His attainment of knowledge and skills had been exacerbated by the fact that he had never learned to use sign language, had not used hearing aids for 20 years, was effectively illiterate and therefore severely limited in his ability to acquire information and learning. His reading was impaired compared to deaf peers. He had no contact with the deaf community. His view of himself as incompetent also prevented him developing new skills, leaving him heavily reliant on his family to communicate. "All matters will have to be simplified and explained to him by family or a lip-speaker as discussed below. Even with this in place, I am still not confident that he will understand anything other than the gist." He would be likely to find court proceedings stressful, which too would affect his ability to concentrate and understand, as well as adversely affecting his mental health.

27. Dr O'Rourke's view on capacity issues and extradition was this:

> "In the event that Mr Meadows was being tried in the UK, in my opinion he would be unfit to plead. He has an understanding of the charges against him in the role of the court, but is unable to understand fully evidence against him and would be unable to give evidence in his own defence due to severe communication difficulties which cannot be fully remediated with support.
>
> In the event that he has to appear in court in Spain, he would be unable to follow proceedings. Assuming that there would be a Spanish to English interpreter, this would not allow him access for two reasons. Firstly, his ability to lipread is severely limited. Lipreading is a difficult and imprecise skill (see below) and he is not very good at it. Lip pattern is affected by accent and there is individual variation; he appears to lipread his family best and then people from the same area of the

> country. Having worked with deaf people for many years, I am aware that my lip pattern is clear and is relatively local to his area; he did become somewhat accustomed to my lip pattern during the course of the assessment, but it was a struggle and required his mother to assist several times.
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> The second issue is the content of proceedings; he would be unable to lipread and understand what is being said as concepts would be unfamiliar and beyond his experience. In the event that he is required to stand trial in Spain, I would recommend that there is Spanish to English interpretation which is then conveyed to him via a lip speaker from his local area. The professional register of lip speakers… provides only one such person, Anthony Redshaw, who is known to me and would be appropriate. However, I am of the strong opinion that, although this would be the best solution in terms of access, he would remain severely disadvantaged in proceedings and unable to understand much of what was being said."

28. Dr O'Rourke then made particular reference to lip-reading: it was not a reliable means of communication. It was a difficult skill with approximately 40% of sounds being made with the same shape of lip. Effective lip-reading required a good understanding of English and the vocabulary in use, which was not the case with Mr Meadows, and was particularly relevant in a legal setting when vocabulary may be complex and unfamiliar. Deaf people were often adept at looking as if they were lip-reading effectively, when they were only picking up the odd word and making a best guess.

29. She added that deaf people were not inevitably more suggestible than others but suggestibility was increased (1) where there was a lack of understanding, which was highly likely here, and (2) where there was a difference in power between the person questioned and the person questioning as in the formal setting of the court, with power being exercised by those with hearing.

30. Deaf people in prison, of whom she had extensive experience, generally had no access to communication whatsoever within the prison environment. There were often funding difficulties for formal meetings and the more so for prison activities. Relationships with other prisoners were often difficult because of teasing or even bullying especially of the vulnerable, which could affect his mood and anxiety leading to a serious risk of his becoming depressed and attempting suicide or self-harm.

31. Dr Manjit Gahir is a consultant forensic psychiatrist, currently employed at Rampton Hospital; he is also Lead Consultant of the National High Secure Deaf Service, and approved under s12(2) Mental Health Act 1983. He interviewed Mr Meadows, accompanied by Mrs Hannah Cobb, a qualified lip-speaker and language interpreter. Mr Meadows' mother was also present and assisted in communication. He had read, amongst other matters, Dr O'Rourke's report, but did not have Mr Meadows' criminal record. His account of the background did not add materially to her report. The murder of his son in 2017 had increased his depression, which had begun when his former partner died. His mood had

worsened over recent months. He had been drinking more heavily, 10 cans of lager a day with vodka. His mother controlled his access to his fortnightly benefits. He spent £20 a day on cannabis.

32. Mr Meadows provided some information about his criminal record, but he could not remember much about it, and his mother explained that most of the offending had been in relation to motor vehicles. He had been arrested on his return from Spain in connection with a burglary offence for which he was later sentenced to 3 years in prison. He copied out names provided by his mother in order to request prison visits; he could not understand people around him; he got up when his cellmate told him it was time, and went where he was told.

33. Mr Meadows said in relation to the offences alleged in Spain that he and a friend had driven over there for a two-week holiday, and had met 5 other people there. His friend had refused to help him return after the two weeks was up. The first he knew of any offence was when the police broke in to the accommodation where he was staying. At the police station, they were put in separate rooms; he had no interview but was just given some forms to sign; he had no lawyer or interpreter or lip-reader; he understood nothing of the court proceedings; in prison in Spain, separated from his friend, there was no one to speak English, and there was no communication or legal representation.

34. He did not appear particularly anxious but did appear depressed and at times tearful. He could lip-read Dr Gahir with the assistance of a lip-speaker, and at times his mother. His indistinct speech at times caused Dr Gahir to rely on them to clarify what he said. He often said that he did not know the answer to questions, and his mother provided further information. He thought he would kill himself if he went to a prison where no one spoke English or could communicate with him.

35. Dr Gahir then asked questions related to fitness to plead. Mr Meadows knew he was charged with some offences relating to banks, but said he did not know the details or the number of offences. He had difficulty understanding his current solicitor. He could explain the difference between pleading "guilty" and "not guilty" with some limited understanding of the consequences of pleading guilty, which would mean prison in Spain. He was eventually able to explain that the officers of the court were the judge and there were solicitors. He did not understand what a jury was or the process of challenging a juror. His mother said he had never been involved in a jury trial as he pleaded guilty to the previous burglary charges. He could understand that there were 12 people who listened to the evidence, but did not understand what they did or how they would decide on the evidence. When asked about instructing a solicitor in his defence, Mr Meadows simply denied doing anything, without understanding the paper allegations, repeating that he could not read or understand his solicitor and depended on his mother to find out what was going on. Dr Gahir commented, on following proceedings in court, that although he sat for a two-hour interview, Mr Meadows was not engaged in the process, repeatedly looking to his mother to answer. "Even when it was explicitly explained to him and his mother that it is very important for me to know what Mr Meadows understands or is able to tell me himself, he still tended to ask his mother to reply and when he looked away or closed his eyes, it was impossible to communicate with him."

36. Dr Gahir incorporated in his report a report from Mrs Cobb, a qualified lip-speaker since 1991. She had worked in the field of deaf mental health since 1995. Mr Meadows had started off explaining that he was unable to lip-read people who were not from Liverpool. She commented that he was however able to lip-read Dr Gahir, [from Nottingham], for the majority of the interview and required his mother or her a few times. She pointed out that this was a one to one interview, using simple terminology with plenty of time to rephrase questions that were not understood. Her professional opinion was that he would "struggle to understand the Court proceedings as his language is very limited and he is unable to read or write to a high enough standard to comprehend a palantypist." His spoken language was difficult to understand times, and became slightly frustrated when he was not understood. She thought him a vulnerable individual who struggled with his identity, fitting neither the deaf or hearing worlds. He would be "totally disadvantaged" outside a one-to-one situation; his understanding of language seemed very limited.

37. Dr Gahir's opinion was that Mr Meadows suffered from a mental disorder within the Mental Health Act 1983: moderate depressive illness with biological symptoms and occasional suicidal ideation. Taking into account his deprivation of language, his inability to read or write and his poor communication skills, "he would be unable to participate in the Court process especially if it is undertaken in a foreign language in Spain." On the basis of the *Pritchard* criteria, he was currently unfit to plead. He was able to differentiate the meaning and implications of pleas of guilty and not guilty, but he did not understand the charges against him, had very limited understanding of the officers of the Court and their roles, did not understand the concept of a jury or how he could challenge a juror and would not be able to follow proceedings in Court even with the assistance of a lip-speaker.

38. Dr Gahir then considered whether additional measures could be put in place to overcome these difficulties. The interview had taken place on a one-to-one basis with Mr Meadows close enough to be able to lip-read. Even so, there were times when he had to ask his mother to assist, including by answering for him, which would not be appropriate in court. Dr Gahir was also very concerned that, even with a professional lip-speaker, Mr Meadows "would simply miss large pieces of information." The situation would be much more difficult in Spain; he did not believe that a process of interpretation from Spanish to English and then English to lip-spoken simplified English would be "viable." He could not be helped with the use of written information or a contemporaneous transcription by a palantypist.

39. Dr Cumming, also a Consultant Forensic Psychiatrist, approved under the Mental Health Act 1983, employed at the South London & Maudsley NHS Foundation Trust, was instructed by the CPS. He had the reports of Dr O'Rourke and Dr Gahir. He also had a list of the previous convictions of Mr Meadows. The background is not materially different to that provided to Drs O'Rourke and Gahir. The extent of his drinking and drug taking was confirmed.

40. Dr Cumming provided considerable detail of the burglary offence committed in November 2013, not long before Mr Meadows went to Spain. He took these from the prosecution statements. Mr Meadows had pleaded guilty. It was a night time

attempted ram raid on a shop, with another man and a large 4x4. They forced the shutter and broke the windows to enter. The tow rope they then attached to the ATM snapped. They drove off; a patrol vehicle found the 4x4 shortly after. Mr Meadows was stopped nearby by a police officer, and told him untruthfully that he had just been checked by a patrol; he said that he was visiting his mother, but replied "no comment" when asked where that was, and became obstructive. He made no reply when cautioned on arrest. He was interviewed at the police station, but denied going anywhere near the offence location, stating that he had been at a friend's house nearby, and was on his way to his mother's house. He was bailed. Forensic examination of the glass at the scene and on his clothing provided very strong support for his presence there. He failed to answer his bail and was arrested at the airport on his return from Spain. He replied to caution "I thought that it was this month." He was interviewed again, and could provide no explanation for the glass on his clothing, maintaining his previous explanation for his whereabouts.

41. Dr Cumming had been asked to express an opinion on Mr Meadows' ability to participate effectively in proceedings. This meant the accused having:

> "a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence."

42. Mr Meadows told Dr Cumming that he went to Spain for a holiday for a few weeks in December 2013 and had no involvement with any offence. Neither he nor his mother wanted to discuss the earlier burglary. He said he was in Spain for around 4 months of which 3 ½ months were spent in prison. Part of the holiday was to look after a house which belonged to the person he had gone with, for which he was told he would be given some money. He joined other people to look after it. He repeatedly stated that he was not involved, and did not know what the others were doing. In Spain, he had manned the house and then might go to the pub for meals or other reasons but otherwise did nothing else. The others were not always with him and he was often on his own. He communicated through friends who would come over and tell him to go to the pub and so on. Two were in prison in Liverpool, two in London and one in Durham, one was on the run and he was the last to be charged. He would plead not guilty. He said he would kill himself if he went to Spain because he was not guilty and he did not like Spain "because of the police, batons" and "the police might whack us for no reason." The police had hit him with a gun in the apartment during the arrest. He was told to sign things at court; he could afford no lawyer; he has repeatedly told to sign something to be allowed home. He said he was not aware of what he was charged with nor did his family know. He did not understand what was happening in court; he could not lip-read what was said as he could not understand Spanish, though they were

aware he was deaf. He said he did not know whether he could cope in Spain with an interpreter and lip-reading.

43. He commented that he could only lip-read those with Liverpool accents. He knew that barristers were different from solicitors; he has had solicitors. He did not know exactly what barristers did, "but was aware that one was for him and the other 'put me down'. He said he did not know who decided if he was guilty; his mother clarified that he had never had a trial by jury; he generally had pleaded guilty. He said he did not know what a judge did, adding that 'they have to say you have a fine'; he was thus aware that the judge passed sentence. He said he would not know what to do if he disagreed with some evidence. When Dr Cumming suggested he could ask his barrister or solicitor if he did not understand, his mother commented that he 'does not have a clue'; Mr Meadows commented that he often could not understand what was said.

44. Dr Cumming had a lip-speaker present at the interview, together with Mr Meadows' mother, because it was clear from other assessments that the presence of his mother was essential for the assessment he had to make. Mr Meadows engaged well with the assessment; but spoke with a heavy garbled accent which Dr Cumming found very difficult to penetrate; in general, he had to ask either the lip-speaker or his mother to explain.

45. Dr Cumming described the assessment as interesting and challenging: "The key issues seem to be one of deafness and a degree of learning disability, both of which are probably linked. He also has a degree of depression, anxiety and a developing/evolving problem with alcohol." There was a contrast between his narrow lifestyle and high dependence on his mother who managed his finances and care, and his significant history of offending, his fathering of several children and several other abilities. This tended to imply a certain level of capability and someone who had been through the criminal justice process many times. "I tried in the interview to probe this but both Mr Meadows and his mother were resistant."

46. He commented on this:

> "82. It would be reasonable to consider that as his deafness and learning disability are reasonably constant, that if he was fit to plead on previous occasions, then he should be fit now, i.e. why is the issue relevant now. It is important to note that in his previous offences he has generally pleaded guilty and his mother confirmed that he has not had a jury trial. In the interview it was noticeable that he struggled to understand me and there seemed to be confirmation that his functioning is more about understanding local accents as expressed in being able to lip read them.
>
> 83. The other issue is to determine whether a trial in this country with all of the appropriate interventions such as a lip reader, appropriate adult and intermediary would equate to a trial in Spain. I tried to understand how these difficulties would be amplified in Spain, where there is an inquisitorial system. It

> would in my opinion require a considerable level of planning, expense and confidence that he would be able to get through that process. In my opinion the issue is largely technical and the judicial system is likely to be far more challenging for someone of Mr Meadow's level of functioning….
>
> 85. I was not convinced around his lack of recognition around his previous offences and as I tried to probe further he refused to discuss. This seemed in my opinion deliberate and being awkward. This again seems to infer a certain level of capability and functioning in being able to make that choice/decision.
>
> 86. I did have some sense that he would tend to acquiesce and would cope very poorly with interrogation and cross examination." This would pose considerable challenges in court. Both deafness and learning disability led to a tendency to hide the disability rather than promote it, made acquiescence more likely.
>
> "87. As noted above, there does appear to be a considerable contrast and gap between how he presents at interview and what might be gleaned from an overall evaluation of his functioning and his offending history. As commented earlier he quickly indicated he did not wish to discuss earlier offences and/or the offence in West Kirby in 2013, which implies a degree of cognisance of what this might lead to. It would seem reasonable to consider that one explanation for this gap between how he presents and the overall consideration, would be that this is deliberate and therefore he is functioning at a higher level than he presents with."

47. Dr Cumming then set out the *Pritchard* criteria, and referred back to the responses already outlined in his report; he believed Mr Meadows to be aware of the charges, of the terms guilty and not guilty and could make a decision in that respect. The other factors:

> "are more difficult to fathom. The key areas are those around understanding and pertinently instructing counsel, following proceedings and giving evidence in his own defence. Though it would be a challenge (and would require a lip-speaker and an interpreter to be simultaneously present) it would seem technically possible for him to follow proceedings and give evidence and as noted above it is more a technical decision than a psychiatric one. The key area is in my view instructing counsel and it is here where there would seem to be most difficulty. If his presentation is a reliable portrayal of his functioning, then I would not consider him fit to stand trial but if it was not reliable then the opposite would be a reasonable position."

48. Dr O'Rourke commented orally that she thought that Dr Cumming was over-reliant on Mr Meadows' presentation at interview and had not taken his development into account, in particular the problems for understanding which growing up with little communication created. Within certain predictable or familiar situations he could function reasonably well, but he would really struggle with understanding anything novel in words. He could not cope, it appeared, with his children nor travel alone to his appointment with her in Liverpool. Dr Cumming did not understand the enormity of the task faced by a deaf person, let alone one who was not good at lip-reading. Mr Meadows was one of the most difficult cases with whom she had worked. Even for those who lipread well, only 40% of words "look well on the lips." He could not hope to get more than the basic gist of what was happening at a trial. The best adjustments which could be made would be to have a lip-speaker with breaks to check his understanding and to further explain things but even so "it is extremely unlikely that he will understand proceedings." A Court would have to understand that, quite apart from translation problems, lip-reading was an art not a science. She thought it very unlikely he was malingering because he was very sensitive to being thought of as stupid, which made him present himself in a particular way.

49. Dr O'Rourke explained, for her part, that she had not been asked and had not asked about his previous convictions, but she was aware that he was reluctant to talk about them. She did not agree with Dr Cumming that the way in which Mr Meadows presented himself was at odds with his previous offending. Understanding that it was wrong to go along with friends and blow up cashpoints was not the same as understanding the evidence and proceedings against him.

50. Dr Gahir was also asked to comment orally on Dr Cumming's report: it was a reasonable psychiatric report, but not one with expertise in deafness. Mr Meadows was illiterate, and lacked language as an effective means of communication. His general understanding of the world would be very limited in consequence. It would not be just the technical aspects of language in court that would be the problem, it would be about the concepts underlying what was happening in court proceedings. There was much more to that than just language, and getting the words across. Dr Gahir had real concerns about what would happen in Spain when he looked at the difficulties that would arise in an English court. He too had not had the details of the previous convictions, but he, like Dr O'Rourke, had also seen people who had been through the criminal process who were clearly unfit to plead. A deaf person might be advised to plead guilty, and fitness to plead would not be addressed. A deaf person might just nod and agree.

51. Dr Gahir did not have the GP records which he agreed were important. He had spoken to Mrs Meadows, who had explained that her son had no ability to plan, save or spend appropriately. He had asked about previous court hearings, but had been told that Mr Meadows had always pleaded guilty, and had used the same solicitor for a number of years. Dr Gahir did not know enough about the allegations in Spain to comment on his capacity to think and act independently. Mr Meadows had only said that he had agreed to go on holiday with a friend; he was there with other people but was dependant on them for transport to return.

52. Dr Cumming accepted that he was not an expert with deaf patients. But what struck him was the difference between how Mr Meadows presented in a single

interview and what could be gleaned from a bigger perspective. Mr Meadows had been through the criminal justice system 13 times, and Dr Cumming questioned whether that could have happened without anyone picking up unfitness to plead. There was no reference in the case summary for the UK ram raiding conviction to deafness or to a lip-speaker, but he gave an account of being at a friend's. He got no sense that Mr Meadows had just agreed to it, and his account would have been one of the best sources. Mr Meadows had cut in rapidly when Dr Cumming asked about that and said that he would not discuss previous offences. The offence was so similar as to give rise to an immediate issue about why unfitness had at no point been detected or commented on. This gap between presentation at single interviews and the bigger picture explained why he was cautious about accepting that Mr Meadows was unfit to plead. In reality he said, his fitness to plead was unknown. Dr Cumming agreed that it was necessary to consider all Mr Meadows' life experiences, lack of academic progress, and the toughness of his life.

53. Mr Meadows had refused to discuss the Spanish allegations with Dr Cumming, who described the response as "rather scattergun". Dr Cumming agreed that instructing counsel required sophistication, but there had to be a technical way of dealing with it because it would obviously be wrong for Mr Meadows not to be subject to the due process of the law. There were real problems however. In the UK, there would be lip-speakers and information for the judge. Mr Meadows would be advised not to give evidence, and the jury would be instructed not to draw adverse inferences from that.

54. Mr Seifert produced a report from Dr Campaner Munoz, a Spanish criminal lawyer, dealing with the steps which a Spanish Court could take to deal with someone with Mr Meadows' "vulnerabilities." This, he said, would be very hard for a Spanish Court. Foreign defendants were not well served by competent interpreters, citing a Supreme Court decision that this often led to gaps in understanding, although every defendant who needed one had the right to one. He did not think that Mr Meadows would be able to understand what was happening during hearings, especially as he could not read sign language and was severely limited in his ability to lip-read. His mother would not be allowed to assist him while he was being questioned, nor could she even be in court, were she to give evidence about his intellectual limitations, literacy and mental health. Mr Meadows would be the first to testify, and she would have to be outside court the while.

55. Only the requesting court could say whether a lip-speaker who spoke English would be available. But it was unlikely that, in the absence of special arrangements, an English-speaking lip-speaker would be available. "However, it is possible that, for the benefit of the Court and Mr Meadows' lawyers the Court provide an English lip speaker along with a Spanish/ English interpreter." It was worth exploring the provision of a lip-speaker from the UK, but he thought that the Spanish Court would be reluctant to assist, since interpreters were accredited by the Ministry of Justice. Video based assistance was also possible. It was often used to obtain evidence from witnesses other than the defendant. The documents would all be translated into English. In general, however, a sign language interpreter, and probably a lip-speaker would be available, but they were unlikely to speak English.

56. Dr Campaner Munoz did not think that the trial would be conducted slowly enough to ensure that Mr Meadows, as with other foreign defendants in his experience, could understand proceedings. The Court would ensure that he understood the trial during his questioning and again when, at the end and after his counsel had spoken, he himself had the last word, the opportunity to say something in his defence. This was important because, under Spanish procedure, the defendant gave evidence first in the trial, and so could only respond to any of the other evidence for or against him, in this last word. But if he had been unable to follow the evidence, the effectiveness of this last word was impaired.

57. When it came to fitness to plead, a doctor appointed by the court would give his expert opinion on the defendant's mental state, but he was unlikely to be a specialist in deaf people. He would test whether the defendant could understand the charges, decide whether to plead guilty or not, to instruct lawyers, follow proceedings and give evidence. This would be done through a personal interview, consideration of his medical history, and possibly an interview with Mr Meadows' mother.

58. Accordingly, it did not seem to Dr Campaner Munoz that Mr Meadows would receive a fair trial, because the trial would not be conducted slowly enough for him to understand proceedings; it was unlikely that he would be provided with a lip-speaker from the Liverpool area, his rights to the last word would be ineffective, and his rights in relation to interpretation under the Spanish criminal procedure Code, would be violated.

59. There was a provision in the Spanish Criminal Code, which he thought should be pursued: an exemption from criminal liability existed where someone had suffered "alterations in perception since birth or since childhood, and has a seriously altered awareness of reality." Mr Meadows' deafness and intellectual ability could also be mitigation if not exoneration. Being deaf-mute did not of itself exempt someone from criminal liability; it had to cause serious socio-cultural isolation, a lack of communication arising from a lack of instruction or education such that the defendant has suffered "an important and intense loss in his access to knowledge of the proper values of the criminal rules." A lesser degree of alteration of awareness of reality caused by deafness would be sufficient however for mitigation.

60. Mr Meadows was unlikely to be granted bail pending trial; there was a custody time limit of two years, but it was extendable. Prisoners could make telephone calls to approved numbers.

61. Dr Campaner Munoz added, in his conclusions, that the Spanish Court would find it very hard to deal with Mr Meadows. It was possible that the Court would provide an English lip-speaker and a Spanish-English interpreter, but a lip-speaker from England was dependant on assignment by the Ministry of Justice. CCTV could be use by Mr Meadows to follow the trial, but it was unlikely that it would be used for his own evidence.

The other evidence before the District Judge

62. The District Judge had Mr Meadows' criminal record in this country, which played an important part in the evidence of Dr Cumming. He had been convicted on 15 occasions of some 21 offences, including juvenile offences. The PNC record shows that on only one occasion, where the pleas are known, did he plead not guilty. There are a number of burglary and shoplifting offences, and others relating to the courts, usually failing to surrender to custody. All were dealt with by Magistrates' Courts in the broad Merseyside area, save for one, where he pleaded guilty at Liverpool Crown Court to an offence recorded as burglary with intent to steal on 21 November 2013, shortly before the extradition offences are alleged to have been committed, for which he received a three year sentence on 24 June 2014, and from which he was released on 7 October 2015. The District Judge described this as a form of ram raid, not dissimilar to the EAW offences.

63. Mrs Meadows, the Appellant's mother, made two statements. When in custody recently he had been completely isolated, and only able to communicate with his family when he received visits.

64. She agreed that no one had ever suggested that he was unfit to plead on any of the previous occasions when he had been involved with the criminal trial process. None of the cases had been of any complexity requiring long periods of concentration. He had always pleaded guilty on her advice, because she knew what the evidence was and it had always been clear; for example in shoplifting, the question was whether he had taken the goods but he had always been caught red-handed. The forensic evidence on the burglary case had also been clear and she had advised him to plead guilty in return for the lighter sentence. She did not recall that a lip-reader had been present for that case. She had not been in court. He has always used the same local Liverpool firm, Levins, to defend him and it had usually been Mr Lowe who did the advocacy; he had not used a barrister. He had never been through a trial. She was sure that he would not be able to follow one in this country, let alone in Spain. He knew the difference between right and wrong.

65. She described her son as a very simple person, who lived a simple life, without ever working, dependant on £241 fortnightly benefits. She managed his banking, bought and cooked his food and gave him spending money, which all went on drink and smoking. He had no friends, and spent most of his time watching television. He needed his family's help to function, acting as his translators as they had learnt to understand him. Without that, being in a foreign court would destroy him; she was certain that he would just give up and plead guilty.

66. There was a statement from Robert Wong, the Appellant's solicitor in these extradition proceedings. Its purpose was to explain the difficulties he had in obtaining instructions from Mr Meadows. They first met when Mr Wong was the duty solicitor; there was no lip-reader; it was very difficult to take basic instructions for making a bail application and most of the information came from his mother. He had tried to take instructions over a video-link but even with the help of two lip-speakers, they were unable to communicate. Mr Meadows was produced for the next hearing but Mr Wong and two lip-speakers still found it difficult to communicate with him. "It seemed that the problem centred around his articulation, which was particular to him." The two lip-speakers estimated that they were able to understand only 50% of his words, and told Mr Wong that they

foresaw great difficulty with a trial because of the scarcity of qualified lip-speakers even in the UK. Two would be required because it was tiring work, frequent breaks were required because of the concentration required by lip speakers, so it could only be done in short bursts. He had obtained his instructions through Mrs Meadows.

67. Mr Wong had also raised with Mr Lowe of Levins whether there had ever been any previous consideration of fitness to plead. Mr Lowe had replied, in an email before the District Judge, that there had never been any fitness to plead issues when Mr Meadows instructed Levins, and he had never instructed them that he had any mental health issues. He had said that he had difficulties understanding lip-reading when the other person was not speaking with a Liverpool accent.

68. The District Judge had three documents containing further information from the requesting judicial authority. On 16 February 2018, it informed the District Judge that Mr Meadows had been questioned by Spanish authorities in relation to the alleged offences, but no details were supplied of how that had been managed. It confirmed that the Spanish Courts had a fitness to plead procedure, based on an assessment of a defendant's mental and medical condition: following an examination by a forensic doctor either at the defendant's request or at the request of the court, he would report to the judge, who would then decide in the light of the report. It guaranteed that this procedure would be applied to Mr Meadows. If found unfit to plead, his personal situation would be decided in the light of the medical reports. Mr Meadows would be assisted by two interpreters, under s520 of the Spanish Criminal Procedure Code: an English interpreter and a sign language interpreter at all stages of the criminal proceedings.

69. This was elaborated on 14 May 2018. Mr Meadows would be assisted by an interpreter "in order to guarantee his correct understanding of every communication and so that he can properly communicate and be understood by us, as established" by s520 of the Code. If he were found unfit to stand trial, he would be allowed to return to the UK no more than 6 months later. The British liaison magistrate had said that Mr Meadows did not understand sign language and required a specific lip-speaker, Hannah Cobb, because of his dialect. On 5 June 2018, the senior judge in Malaga replied to the liaison magistrate that the court could not guarantee that Hannah Cobb would be present at the trial as interpreter since that was an issue for the court of trial and not for the examining judge.

The District Judge's findings

70. District Judge Goldspring rejected the argument that the particulars of the offences in the EAW were inadequate for the EAW to be valid. Offence 1 was a conspiracy offence; the others were the specific offences carried out pursuant to the conspiracy. The allegation is that he acted as a principal. Whether or not he had the capacity to do what was alleged against him went to his defence and not to particularisation.

71. He found that there would not be a flagrant breach of Article 6 ECHR in the light of the Further Information from the Spanish Judicial Authority, which showed that

it was aware of the problems faced by Mr Meadows, and would take steps to ensure his fair trial.

72. The District Judge concluded that the Article 8 rights of Mr Meadows, his children and new partner would not be disproportionately interfered with by his extradition. In the course of dealing with Article 8, the District Judge made various points relevant to both Article 6 and to oppression under s25.

73. He found at [179] that Mr Meadows' deafness since birth: "has resulted in linguistic delay. He also suffers from alcohol and drug dependency. He can neither effectively read nor write. He cannot sign and has a minimal ability at lip reading. He has recently been in custody in the UK when, his mother Teresa Meadows says, he was completely isolated because the only way he could communicate with his family it was when he received visits….[183] There is clearly a prospect of Mr Meadows spending a long period on remand in prison in Spain, in circumstances where he would be completely unable to communicate with other inmates and even to communicate effectively with prison staff. That will inevitably cause a considerable amount of distress to him and his family."

74. The District Judge found, at [182], that it was "possible that Mr Meadows is capable of taking part fully in his trial in Spain. If effective interpreters are available to lip speak and also interpret the court proceedings… It is unlikely that he would still be able to understand a reasonable proportion of the proceedings. He is undoubtedly unfit to plead and it reasonable to conclude that his condition cannot improve. [sic]."

75. At [188] in his analysis of the proportionality of extradition under Article 8, the District Judge said that "there is at least a chance that he will be found unfit to be tried, if as is likely he is remanded in custody awaiting trial or other determination of the case he is likely to be isolated and vulnerable due to his profound deafness." He had however already spent time in a Spanish prison telling Dr O'Rourke that it was "ok", "thus the impact of a remand in custody may not be as detrimental as at first blush it might appear". Although he was heavily reliant upon his family for many basic everyday needs, he had been able "to independently go on holiday to Spain with friends without the need of his mother's assistance, in addition he has clearly engaged in serious criminal activity previously." He would deal later with fitness to plead and the *Pritchard* criteria, but nonetheless accepted "that the prospect of being found unfit to plead is a relevant factor in the balancing exercise." Those factors did not outweigh the very significant public interest in surrendering a person alleged to have committed these serious offences.

76. The District Judge then turned to oppression and ill-health, at [192]. In this context he said that the real issue was whether it was clear now that he would be found unfit to plead by the Spanish court. He found that it "is not clear that the Requested Person is unfit to plead." A finding by the Spanish court that he was unfit to plead was neither indisputable nor inevitable. There was no complete consensus on the criteria, but rather a sufficient difference of opinion to leave the question to the Judicial Authority.

77. He referred to Dr Cumming's appraisal, and in particular to the gap between his presentation at interview and an overall evaluation of functioning and offending

history. At [196], the District Judge commented that he could not make a specific finding as he had not "had an opportunity to assess the RP in oral evidence, however the possibility that [he] is deliberately malingering cannot, in my view, be completely ruled out, notwithstanding the evidence of Dr's Gahir and O'Rourke on the point." The District Judge found it extraordinary, at [197], in the light of his criminal record and the sentence imposed for burglary in 2014, that he had always been represented by:

> "a firm of lawyers that he trusts and appear on the face to be competent criminal advisers, without ever there being raised by either his advisers, a probation officer or indeed the judge over his fitness to plead. [198] There is no mention of difficulties in providing instructions. The Requested Person has appeared before the Crown Court where he would have been represented and therefore, by inference, any issue of fitness to plead would have been addressed."

78. The District Judge noted the conviction for a similar offence, and that Mr Meadows had simply refuse to engage with Dr Cumming's attempt to establish how he got through those proceedings without any question of his deafness or understanding being raised. He commented that the answer might have been enlightening as to whether this was a deliberate attempt to present as functioning at a lower level than was in reality the case, or whether there was negligence in his advisers not even raising the issue. His mother had not attended the Crown Court when he pleaded guilty and was sentenced; contrary to her understanding, he had been represented by a solicitor advocate from Levins, with over 34 years' experience; it was reasonable to assume that any difficulties in communication and fitness to plead would have been assessed.

79. In [201], the District Judge found Dr Cumming's evidence about this gap in his presentation "to be a significant factor in leaving the door open to this being a deliberate attempt to present a somebody functioning at a lower level than in fact… he actually does. It is significant in my view that he was able to go on holiday independently, at the request of his friend (at least on his account), to commit serious crimes throughout his adult life and importantly be able to provide sufficient instructions to those advising him in these proceedings so as to put forward a potential defences [sic] in relation to the vehicles." Additionally Mr Meadows had been able to provide significant detail to Dr O'Rourke concerning his medical history, upbringing, family life and the alleged offences. He had demonstrated an ability to understand the evidence against him and to give his account. When arrested. he provided details to the arresting officer.

80. District Judge Goldspring concluded in [203] that it was not clear whether the Judicial Authority would find that Mr Meadows was fit to plead, in the light of the gap between presentation and interview and an overall evaluation of his functioning, his offending history and involvement in the alleged offences, the reports of Dr O'Rourke and Dr Gahir notwithstanding. To the District Judge, it was significant that they had not been aware of his criminal history when they assessed fitness to plead, and the District Judge was not persuaded by their evidence that they would have come to the same conclusion. As Mr Meadows might not be found unfit to plead, this was an issue for the requesting judicial

authority to decide. It had also given assurances about his return to the UK. Accordingly, the oppression argument was rejected.

Ground 1: s2 Extradition Act and particularisation of the offences

81. Mr Seifert for Mr Meadows submitted that the EAW was invalid because it did not contain the particularisation of the offences required by s2(4)(c) of the Extradition Act. The specific role alleged to have been played by Mr Meadows in the conspiracy and the substantive offences should have been particularised. Not all eight alleged offenders, his internet researches showed, could have got into the Audi so some must have played a different role from the others. It was unlikely that a person with the disabilities of Mr Meadows would have been either the mastermind or even had a significant role. A broad omnibus description of the criminal conduct such as "obtaining property by deception" would not suffice. Although no great detail was necessary, merely saying that some one conspired to commit the offence would probably be inadequate, as Collins J said in *Pelka v Poland* [2012] EWHC 3989 (Admin) at [6]. What was provided had to enable the Requested Person to raise any bars to extradition, and for the Court to assess the proportionality of extradition under Article 8 ECHR; *King v France* [2015] EWHC 3670 (Admin). Collins J, in *Felix v Comarca de Lisboa, Portugal* [2016] EWHC 3518 (Admin), at [44], pointed out that the degree of participation in the offending had to be set out, which he treated as the nature and extent of participation. The issue in that case was whether a conspiracy was being alleged or not.

82. I do not accept Mr Seifert's submissions. Those which challenge the strength of the evidence or the prospects of conviction are irrelevant to this issue. The allegation of conspiracy, that Mr Meadows was a party to it and of the substantive acts which were carried out pursuant to it are also clearly and adequately particularised. It is clear that Mr Meadows is said to be a party to the joint enterprise. That satisfies the Framework requirement for the degree of participation. It also enables the gravity of the alleged offending to be assessed for Article 8 purposes, and the substantive offences are adequately particularised for the bars to extradition, notably dual criminality, to be assessed.

83. The contention of Mr Seifert, based on a misunderstanding of various comments of Collins J, in the context in which they were pronounced, is in substance that the validity of the EAW depends on greater precision in the assignment of the specific roles in the joint enterprise to individual alleged gang members: planner, reconnaissance, driver, guardian of the safe house, look out, present in the site of the robbery and so on. That is well beyond what is required. It would frequently be impossible to assign such roles because disguise or evidential limitations prevent it. Nor does criminal liability for joint enterprise robbery, pursuant to an agreement, depend on that degree of precision of role being proved.

Unfitness to plead and fairness of trial

84. I take these together because they overlap, and rather more in this case than in the general run of fitness to plead cases, where there is a significant mental disability or illness.

85. First, I regard it as clear that the District Judge did not decide that Mr Meadows was unfit to plead, or that any court would inevitably hold that he was unfit to plead. Nor did he hold that a trial would be flagrantly unfair, which would be the probable consequence had he held that the court of trial would inevitably find that he was unfit to plead yet proceed to try him. Something has gone wrong with the text of the judgment of the District Judge at the end of [182], but all the other passages which I have set out are not consistent with a finding that Mr Meadows was unfit to plead, and are instead wholly consistent with his finding that it was not clear whether Mr Meadows was unfit to plead, that it was not inevitable that he would be found unfit to plead by the Spanish court of trial, and that the issue was for the decision of the Spanish Court, which could make adjustments which would enable his trial to be fair. I note also that the District Judge found that Mr Meadows had "minimal ability at lip-reading", in [179] of his judgment. That is wrong in the light of the evidence of those who interviewed him, and of his dealings with his mother and others. Dr O'Rourke had described him as "not very good at it," and the extent of his lip-reading varied with his familiarity with the person and the lip-speaker's Liverpool accent or otherwise.

86. Second, there was no issue but that the District Judge had directed himself properly as to how the issue should be approached in the light of the authorities. They are set out above, and show that extradition would probably be oppressive where the individual was adjudged unfit to be tried by the English Court, which also concluded that he would inevitably be found unfit by the court of the requesting state. Otherwise the issue was for that state's courts. The Spanish legal system provides a satisfactory mechanism for determining whether someone is fit to plead, and appropriate assurances had been given about what would happen were he found unfit to plead.

87. Third, the issue was whether the judgment that he was not unfit to plead, and that the Spanish Court would not inevitably find him unfit to plead, was wrong. Mr Seifert put his case with his usual skill, pointing to all the agreements of Dr O'Rourke and Dr Gahir, the way in which Dr Cumming differed from them only because of the "gap " in Mr Meadows' presentation which he discerned, but who lacked the experience which they had to dealing with deaf people, and who had explained why they did not accept that Mr Meadows was feigning his degree of difficulty. And it was not just deafness, submitted Mr Seifert, but the consequence of deafness, and perhaps drinking and drugs on Mr Meadows' cognitive abilities, his inability to read or sign read, which deprived him of the more common coping mechanisms for deaf people. He was dependent on his mother for much legal communication. Even for lip-speaking, he required a specialist lip-speaker who could pronounce words, and shape lips, to produce a Liverpool accent, a specialism rare in England, and rarer still in Spain. Mr Seifert submitted that the Further Information from the Spanish Courts did not offer the requisite level of assurance that the difficulties would be overcome by the slow and complex procedures necessary for even a limited understanding by him of the process, and for his participation through instructing counsel.

88. However, I am not prepared to hold that the District Judge was wrong. He was entitled to recognise the force of what Dr Cumming said. Mr Meadows has been through the criminal justice system on a number of occasions, usually pleading

guilty, and on the last occasion pleading guilty to a serious attempted burglary. No one on any occasion has raised any question of his fitness to plead. The participants have dealt with him using the accommodations available to enable him to understand what he needed to understand. The response that the defence advocate lacked experience is wholly contrary to the evidence of his years of experience, and Mrs Meadows did not know who represented her son at the Crown Court when he pleaded guilty to the attempted ram raid. There is no suggestion that the Crown Court judge was not aware of the disability of the defendant before him; no one has mentioned any reports being obtained for him for sentencing purposes, but it would a surprise if none were. The evidence of Dr O'Rourke and Dr Gahir, that they had experience of defendants going through the criminal justice system who were in their view not fit to plead, is far too general to be of value to the suggestion that Mr Meadows might have been in the same category. The faint suggestion that Levins did not really know what they were doing is without foundation.

89. Mr Meadows' attitude towards his past offending, and especially the last offence, did not assist the reliability of the judgments of Dr O'Rourke and Dr Gahir, who did not test him against any of that material. Other evidence including his reactions on arrest on the EAW, and on apprehension over the West Kirby ram raid, his ability to father 7 children with two partners, to purchase alcohol and illegal drugs, his comments about his time in prison in Spain, all support Dr Cumming's scepticism about the interview presentation of Mr Meadows.

90. But I would go further. First, I consider that the District Judge was plainly right in his conclusion that it was not inevitable that the Spanish court would find Mr Meadows unfit to plead. It is clear from [14] of *Marcantonio*, and [39] of *Walls* that the judgment is one for the court and the agreement of the experts does not require the court to accept what they say. Second, I have real anxieties about the evidence of Dr O'Rourke and Dr Gahir who did not consider the external picture of Mr Meadows' activities and dealings with courts and the police, as well as others. But third, and most important, their evidence about fitness to plead shades too readily into arguments about how the Spanish Courts could do nothing to assist Mr Meadows to cope with the trial, how their endeavours would not work, when they had yet to be tried, was not related to any defence case and how it might be presented, or to any substantial knowledge of Spanish criminal procedure.

91. This matters because of what Thomas LJ said in *Walls*. Courts should be very wary, and it applies with force in this sort of case, which has some similarities to *Walls*, of finding someone unfit to plead. It removes their right to defend themselves, whilst not protecting the public from their activities. As I understand Dr O'Rourke and Dr Gahir, and even to some extent Dr Cumming, if Mr Meadows' presentation were accepted as the full picture, he would be unfit to plead, yet the limited options available could not protect the public from the actions of a man who knew that he was committing crimes, but could not be dealt with by any punishment. I think that Mr Meadows would readily understand the enormity of the implications.

92. I would not have been persuaded that Mr Meadows was unfit to plead by the evidence of Dr O'Rourke and Dr Gahir, had that evidence alone been presented to

me for decision in an English trial. A judge making such a decision would expect to see the nature and extent of the evidence with which Mr Meadows was going to have to grapple, and to know what his defence was to be, were he to be pleading not guilty. The judge, particular with these specific disabilities in mind, might expect to hear from Mr Meadows himself. He would also know what the trial procedures would be, in particular how Mr Meadows' evidence would be given, if given at all, how the evidence of the co-defendants might be given and how they could interact with each other's defences. The judge would also have the advantage of knowing what specific measures he could order to assist Mr Meadows, and with what effect on the progress of the trial. He would know that he could keep the issue under review. It would be a very defendant and trial-specific issue, and one resolved with the fullest possible knowledge. That is very much in line with what Lloyd-Jones LJ said in *Marcantonio*,[7]. It is not an issue which would be decided in the abstract.

93. The District Judge did not have any significant evidence about how Spanish trials were conducted beyond that the defendant gave evidence first, and that they were inquisitorial, so the role of cross-examination by the prosecutor or on behalf of co-defendants was not in evidence, nor rebuttal evidence on behalf of the defendant or his supporting witness evidence. None of that was asked for. Nor did he have the evidence from the Spanish prosecutor, or further material fleshing out the allegations in the EAW. There was no evidence from Mr Meadows explaining, as in a defence statement, what his defence might be: he had denied being in Spain on arrest in the UK, which seems an improbable alibi defence in view of his arrest there; some material could be gleaned from the expert reports, especially that of Dr Cumming for the CPS. Other evidence suggests that he accepts that he was with the other named defendants in Spain over the period of the offending alleged in the EAW, sharing their accommodation. But it goes no further.

94. It is clear that the question of unfitness in this case is bound up with, indeed is critically dependant on, the measures which the court in Spain may order to be taken to enable Mr Meadows to participate fairly in the trial. All three mental health experts acknowledge that there are measures which could be taken to assist his participation. It would be for the Spanish judge to decide what was necessary and obtainable, and with what effect on the whole trial process, in the light of its fitness to plead procedure. The experts differ to some extent on the prospects of such measures working. However, Mr Meadows is clearly able to communicate, albeit to an uncertain extent, with proper support, and there is good evidence that he can communicate to a degree without special support. He found it easier to understand Dr O'Rourke as the interview went on. He would need, not just the normal interpreter from Spanish to English, but also a lip-speaker; that lip-speaker would have to have a Liverpool accent to maximise what he could more readily understand.

95. The question of how adequate that would be, and what would be left beyond his comprehension, rather depends on what his defence is if he pleads not guilty, and what the evidence against him is, and how disruptive to the trial the slowed pace of proceedings would be. His defence seems to be a simple defence that he was there in Spain but knew nothing of what the others may have been doing. It does not seem likely to be a very paper-based prosecution, but there could be all sorts

of expert evidence. How significant the remaining degree of disadvantage would be, is a matter for the trial judge, accepting, as I do, that there are many word which a lip-reader does not pick up, and that his ability to fill in those gaps is very limited because of his borderline intellectual ability and his limited understanding of courts and legal concepts. Dr Gahir did not believe that interpreter and lip-speaker would suffice for Mr Meadows to understand enough to meet the *Pritchard* criteria.

96. I do not think, however, that this Court has enough information about the facts of the case or the trial procedure in this case to make that judgment. Dr Cumming, rightly in my judgment, saw it as more of a "technical issue" than a psychiatric one. By "technical issue", I take him to mean an issue about the techniques and adjustments which could be adopted to enable Mr Meadows to participate in the trial as fully as necessary for fairness. All of this reinforces my view that, although Mr Meadows will need an interpreter and a lip-speaker with a Liverpool accent, and other adjustments in relation to explanation, breaks for the lip-speaker and greater time to instruct counsel, it is for the Spanish Court to arrange what it thinks is necessary for a fair trial, and to judge, in the light of the techniques, support and adjustments, whether Mr Meadows can follow the trial and participate sufficiently for the trial to be fair.

97. To my mind, this puts the emphasis where it belongs. It is not so much a question of whether Mr Meadows is unfit to plead, in a way which would make his extradition oppressive, but a question of whether there is a real risk of a flagrantly unfair trial. Of course, at root, the *Pritchard* criteria are about fairness. However, fitness to plead judged by those criteria is not an easy issue in the context of extradition, which explains why the question is whether a person is fit to plead is left to the trial court unless its answer would have to be that he was unfit to plead. But what is really being examined is not fitness to plead as such, but oppression by reason of mental or physical condition. The *Pritchard* criteria have their limitations in that respect. In the light of the analysis of their deficiencies by Lloyd-Jones LJ in *Marcantonio*, I see no reason, when applying them in the context of extradition, not to take account of the fact that a person may be fit to understand the evidence and procedure to plead guilty, without necessarily being fit to understand and to give necessary instructions about all the prosecution or co-defendants' cases, if he pleads not guilty. Understanding the concepts of juries and challenges seems quite unnecessary in the context of trials without juries, but it is still necessary for him to understand that he is in a trial process, that the judge decides his guilt and in the light of that decides on his punishment.

98. I do not consider that there is a real risk of Mr Meadows having a flagrantly unfair trial if he is extradited. I consider that the Spanish Court has to be trusted to ensure that he will have either a fair trial, or no trial at all and will be returned to the UK. There is a procedure for determining fitness to plead, which will be applied to Mr Meadows. The Spanish court is well aware of the need for considerable adjustments beyond having an interpreter. The Further Information of 5 June 2018 shows first that the British liaison magistrate realised what Mr Meadows needed. The Spanish response was not that this would not be provided, but that the provision of a specific lip-speaker was not a matter which the examining judge could guarantee, because it was not for him. He was not saying that a specific

Liverpool-accented lip-speaker would not be required and obtained. If the trial court decides that such a person is necessary but cannot be brought to court, it is difficult to see how the trial could proceed fairly. The Spanish procedural code requires an interpreter, and the reference to a sign language interpreter shows that the authorities recognised Mr Meadows' deafness and would enable him to cope with it, although they had not at that stage appreciated quite how severe and specific his needs actually were. That does not surprise me nor cause me anxiety about how they will decide whether the necessary mechanisms will in fact enable him to have a fair trial. They must know that it will be a slow and cumbersome process, which will require considerable patience if it is to be undertaken fairly.

99. There is much in Dr Campaner Munoz's report which I found helpful in terms of provision of the Spanish code and procedure. I cannot accept his conclusions, however. His view that was the Court would be unlikely to provide the necessary assistance and time for Mr Meadows to follow proceedings adequately, and would violate his rights under the Spanish Code. Accepting that would be to refuse to trust the judges of an EU Member State to abide by their own law, and to provide a fair trial, or, if that could not be done, not to try Mr Meadows and instead to return him to the UK. That would require evidence far surpassing Dr Campaner Munoz's. They have given assurances about fitness to plead, assistance, and return, such that I cannot but conclude that the District Judge was not wrong to hold that Mr Meadows' fair trial rights would not be flagrantly violated.

Other ECHR rights

100. There is nothing in the District Judge's consideration of Article 8 to show that he was wrong to consider that extradition would be proportionate. He was right, through it was not raised to any significant degree by Mr Seifert, to consider the children to the extent that he did. The offences alleged against him are serious offences. I accept that his experience of custody in Spain, before and after conviction, if he is convicted, will be very difficult for him, isolated as he would be. But the Spanish authorities have to be trusted to take sufficient medical care and other care for him, perhaps seeking his return to the UK, that his rights are not breached. It would not breach his Article 3 rights.

Conclusion

101. This appeal is dismissed. I will consider any submissions from the parties about any specific arrangements which need to be made for his removal and reception in Spain, including contact and communication with lawyers which may require a delay in the usual removal timetable.