Neutral Citation Number: [2020] EWHC 2371 (Admin)

Case No: CO/1997/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 September 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

IRENA MAKOWSKA

Appellant

- and -

REGIONAL COURT, TORUN, POLAND

Respondent

- -
- -

MALCOLM HAWKES (instructed by Tuckers Solicitors) for the Appellant
JONATHAN SWAIN (instructed by Crown Prosecution Service) for the Respondent

Hearing dates: 14 July 2020
- -

JUDGMENT ON THE APPEAL

Covid-19 Protocol Note: By Order dated 9 October 2020 the Court declared that the "permitted period" under section 32(5) of the Extradition Act 2003 runs from 9 September 2020 (the date when this judgment, with corrections, was circulated to the parties' representatives). This judgment is subject to further virtual hand-down, listed in the cause list, pursuant to an Order dated 6 November 2020 made by the Court of its own motion having regard to the open justice principle. The date and time for the further hand-down pursuant to that Order will be deemed to be 10:00 am on 20 November 2020.

MR JUSTICE FORDHAM:

Introduction

1. This is a case about whether extradition is compatible with human rights, and when a person sought for extradition is a fugitive. It came before me as an appeal, Steyn J having on 5 December 2019 given permission for the appellant both (i) to appeal and (ii) to rely on fresh evidence. Extradition had been ordered by DJ Jabbitt ("the judge") after an oral hearing on 15 April 2019, the judge finding that extradition of the appellant was compatible with article 8 of the European Convention on Human Rights. The appellant was unrepresented before the judge. The judge declined a request for an adjournment from the legal representatives who had acted for the appellant in previous extradition proceedings, wished to do so again, and have done so on this appeal. In those circumstances, the judge did not have sight of the 'fresh evidence' materials for which Steyn J gave permission. Further updating materials were put before me. It was common ground on this appeal that, in the light of permission to appeal and the permission to rely on fresh evidence, the application of article 8 and its balancing exercise needed to be "carried out afresh" by this Court (as it was put in Mr Swain's skeleton argument). To that end, the updating fresh evidence was adduced before me without objection, and I gave permission to rely on it too, as further fresh evidence.

Mode of hearing

2. The hearing of this appeal was a 'remote hearing' by Skype for Business, at my direction. That was the preferred option of both parties. Counsel were each satisfied that such a hearing involved no prejudice to their clients, as was I. By conducting a remote hearing, albeit during a 'post-lockdown' phase of the Coronavirus pandemic, in accordance with the applicable arrangements for High Court hearings, we were able to eliminate any risk to any person arising from travel to, or physical presence within, a courtroom. There was, in my judgment, no need in the circumstances for a hearing having to be in a physical courtroom. I was satisfied that the open justice principle was secured. The hearing and its start time were published in the cause list, together with an email address for anyone wishing to have permission to observe the hearing. A BT conference call facility could have been set up, had there been any person wishing to observe, but unable to access Skype for Business. The hearing was recorded. This judgment is produced for the parties and for release into the public domain. I was and remained satisfied that, insofar as the mode of hearing constituted any interference with any right, interest or principle, it was justified as necessary and proportionate.

About this case

3. The appellant is aged 41. She is a mother of four. She is wanted for extradition to Poland in conjunction with a European Arrest Warrant (EAW2) issued on 28 November 2018 by the Regional Court of Torun ("the T Court"). EAW2 is a conviction warrant. The background to it is as follows. On 28 March 2011 the T Court imposed on the appellant a suspended sentence of 16 months custody, with a 4-year operational period, on a condition that she pay redress. The

sentence related to incidents of fraud in November 2008 (when entering into a credit agreement with a bank) and November 2009 (when selling vehicles acquired using that credit agreement). The redress was not paid off by the appellant, by the end of the 4-year period as required. The judge found as a fact, having heard oral evidence from the appellant with cross-examination, that the appellant (i) had known about the suspended sentence after its imposition in 2011 and (ii) had known about its activation in June 2015, in each case having been informed of those matters by her lawyer. Mr Hawkes accepts, rightly, that although I am considering the article 8 balance afresh, with fresh evidence, there is no basis for my going behind those findings of fact. I adopt them. Following activation of the 16-month sentence, the appellant was required by the T Court to attend on 25 September 2015 to begin serving her prison sentence. Having failed to do so, a national arrest warrant was issued on 23 June 2016. The T Court issued EAW2 in November 2018, referring to a Leytonstone address and alternatively a Walsall address for the appellant. She was arrested on EAW2 on 26 February 2019 and released on bail the next day. The extradition proceedings in relation to EAW2 have continued since then, culminating in this appeal.

4. That is the story of EAW2, the T Court and the offences of fraud in November 2008 and November 2009. But in order to analyse the legal issues in this case, it is necessary to add two other interwoven stories. One is the story of the appellant's 11-year presence and life in the United Kingdom. But before turning to that, there is the story of another EAW and the events relating to it.

5. The appellant and her husband were previously wanted in relation to a prior EAW (EAW1), issued on 19 May 2015 by a different Polish Court, the Bydgoszcz District Court ("the B Court"). EAW1 was an accusation warrant. It had described the appellant and her husband as understood to be living at the Leytonstone address (later used in EAW2 by the T Court). EAW1 related to alleged fraud by the appellant and her husband and other co-accused, between 9 December 2008 and 8 January 2009. The alleged fraud related to the recruitment of volunteers with false documents for the obtaining of loans. In conjunction with those matters, a domestic arrest warrant had been issued by the B Court on 2 September 2014. The appellant was arrested on EAW1 on 21 November 2015 in Walsall. In the proceedings which followed, the B court agreed on 8 June 2016 to the "temporary transfer" of the appellant and her husband pursuant to section 21B of the Extradition Act 2003. EAW1 was withdrawn on 5 October 2016. The next month, in November 2016, the appellant's husband, and then the appellant herself, travelled on section 21B transfer, in sequence (so that their children would have one parent remaining with them). They did so, in order to speak to prosecutors connected with the B court, investigating the EAW1 fraud allegations. There was then a follow-up interview at the Polish Consulate in London in early 2017 about those matters. Correspondence from the B Court was, by the end of 2016, being sent to the appellant and her husband at the Walsall address (later used by the T Court in EAW2). No further steps were taken against the appellant or her husband in relation to the December 2008/January 2009 alleged fraud offences which lay behind EAW1. This appeal is squarely about extradition in relation to EAW2.

6. I turn to the remaining interwoven story: the story of the appellant's life with her family in the UK. On the evidence, the position is as follows. The appellant and her husband came to the United Kingdom in November 2009, with the 7 year old daughter from the appellant's previous marriage (the husband's stepdaughter). The eldest daughter had been born in Poland in May 2002 (and so was aged 18 at the time of the appeal before me). The family of three had come to the UK very shortly after the disposal of the vehicles on 19 and 25 November 2009 described in EAW2. The appellant was by then heavily pregnant and gave birth to the family's youngest daughter in January 2010 (aged 10 at the time of the appeal hearing). The family had originally lived in Leytonstone and, as I have said, in EAW1 (May 2015) the B Court was giving the Leytonstone address. The family had, however, moved to the Walsall area in 2012 and to their current address in Walsall in January 2014. That was the Walsall address with which the B Court was subsequently communicating with them in 2016 and 2017, in conjunction with EAW1. It was also that Walsall address, alongside the Leytonstone address, which the T Court gave in EAW2 in November 2018. The family grew to a family of six: with sons born in February 2012 and March 2013 (now aged 8 and 7 respectively). The appellant is a person of good character in the United Kingdom who has lived a law-abiding life here since November 2009. The family have been settled in Walsall since 2012 and at their current address since January 2014.

Article 8

7. This is an appeal based on fresh evidence, pursuant to section 27(4) of the 2003 Act, involving conducting the article 8 balancing exercise "afresh". I described the position arising in such a case in Lipski v Regional Court in Torin, Poland [2020] EWHC 1257 (Admin) [2020] 4 WLR 87 at paragraph 17. I also identified in that judgment some key principles regarding the approach to article 8 in the extradition context: see paragraphs 16 and 18 to 22. None of that was contentious in this case and so I can invite attention to those passages without repeating or paraphrasing them here. In the present case certain key topics featured particularly strongly in the parties' written and oral submissions in relation to article 8. I will address each such topic in turn.

(i) Severity of impact

8. The appellant relies on two reports of a clinical psychologist, Dr Sharon Pettle. The first is dated 11 May 2016 and was prepared at the time when the appellant and her husband were facing extradition in conjunction with EAW1. The children were at that time 13, 6, 4 and 3 years old. The second report is dated 23 March 2020 and is an updating report based on a review of the family, undertaken at a time when the children were aged 17, 10, 8 and 7 years old. Steyn J granted permission to rely on the 2016 report, which was not before the judge. I granted permission to rely on the 2020 report, which Mr Swain sensibly and properly did not oppose. Both reports were part of my pre-reading and both Counsel addressed me on the contents. The summary of the reports that follows is taken largely from Mr Hawkes's skeleton argument, on which I was and am satisfied that I was able to draw as accurately encapsulating the content. All of what follows is, in my judgment, of direct relevance to the human rights assessment which I am required to conduct in this case.

9. The 2016 report described a picture with two key aspects. First, the 2016 picture as to each of the children individually. The oldest (13 year-old) daughter had already endured three major events in her young life: domestic violence during her mother's first marriage; moving to the UK and changing schools; and suffering disfiguring facial injuries in a road traffic accident in the UK. She had a secure attachment to her mother and a strong relationship with her stepfather. The arrest of both parents in conjunction with EAW1 had created a clinically significant degree of anxiety which she was struggling to manage. The 6 year-old daughter was an anxious and withdrawn child, close to her parents and lacking confidence outside of the family. Although bright and engaged in her education, she found change difficult and was extremely distressed during her parents' sudden absence following their arrest. Her emotional difficulties were clinically significant. The 4 year-old son was sensitive and rather timid. He coped poorly with the separation of attending nursery, was not confident in class, did not cope well with change, exhibited great distress, and found it difficult to eat and sleep during his parents' absence. The 3 year-old son appeared to be the least affected, but found play more difficult and became more withdrawn.

10. Secondly, the 2016 picture as to the impacts, if both parents – or either parent – were to be extradited. Extradition of either one or both parents would have a profound impact upon the children. An extended separation from one or both parents would cause the children intense and lasting distress. It would be particularly difficult for the youngest three who would not be able to understand the reasons for the parental absence and would need an age appropriate explanation. For the eldest daughter, the uncertainty as to when the family could be reunited would be particularly difficult. Direct contact, which might offer some element of reassurance, was likely to be impossible. The impact on all four children was likely to be profound. This was a very close-knit family. The children may manifest reactions in a variety of ways but it could be expected that a range of emotional responses, along with some behavioural change and a shift in activity levels and attention, would be evident. The length of the separation would affect the period it took for the children to recover emotionally and, if prolonged, may lead to lasting damage and a greater vulnerability to later psychological difficulties. There was a risk to the oldest daughter of developing an anxiety disorder or depression and she would struggle to cope with the future surgery needed for her face and teeth without parental support. The three youngest children's likely immediate reaction would be akin to bereavement, involving over-activity, profound sadness and distress, withdrawal and regression, anger and defiance, poor sleeping and eating, and deterioration in their school behaviour and performance. Family friends, who had reportedly offered to move in to help care for the children could ameliorate the harm to a degree, but this would be unlikely to significantly reduce the devastating sense of loss that all would experience. The children all had strong trusting relationships with their parents. The loss even of one parent was likely to have a significant impact on family finances, daily routines and create a significant degree of upheaval in the children's lives. If the appellant but not her husband were extradited, he would struggle to continue working, as there would be no one to ensure that the children were taken to and from school and there would

be a considerable impact upon the family's finances. He was clinically depressed and his distress at her departure could be overwhelming.

11. The March 2020 report then described the following updated picture, looking at various different interlinked aspects. First, the appellant herself is terrified at the prospect of being removed and separated from her children and husband. She realises that, if extradited, she is highly unlikely to see her family for the duration of her imprisonment at all, or at best extremely infrequently. She fears that the separation after any visit will be very difficult for her and her family, while she remains unconvinced that there would be meaningful telephone contact. A further cause for anxiety relates to a cancer diagnosis in 2019. She tested positive for HPV, a cancerous mole on her leg was removed and the fear is that these cancers may reflect a further source of cancer in her body. The appellant's uncertainty of the level of care, speed of assessment, lack of formal psychological support and anxiety for her family while imprisoned in Poland are highly likely to lead to depression and increased anxiety. The children are aware of their mother's cancer diagnosis and associate the same with death, despite the appellant's attempts to reassure them. The appellant has struggled to control her own emotional response to the twin threats from cancer and extradition, and tries to confine her crying to times when the children are not at home or the evenings.

12. Secondly, the appellant's husband feels helpless and distraught at the prospect of his wife's extradition and these protracted extradition proceedings. He had not yet recovered from the 2016 proceedings and would suffer elevated anxiety, on account of the appellant's health issues and her welfare in prison. Her extradition would severely exacerbate his mental health condition. Such was his distress and fragile psychological state that he had referred to dying from the Covid-19 virus as offering a release from his current, unbearable situation. His acute stress and psychological difficulties would present a significant challenge to his maintenance of the family as a sole parent. Even if he were able to cope with the practical demands of caring for his children, he would struggle to provide emotional support for them. He was relatively isolated, with few friends to provide comfort or help. He expressed the fear that he would be unable to afford to travel to Poland to visit his wife in prison and feared that he would not in any event be able to manage his own emotional response, still less that of the children, to visiting the appellant. He has health issues, including long-term epilepsy and severe disabling headaches. There was an obvious consequence of his becoming incapacitated upon the children and the impact upon the oldest daughter to take on a parental role or the children missing school as a result.

13. Thirdly, there are well recognised risk factors for children of imprisoned parents: risks of offending, mental health problems, school failure, drug abuse and unemployment. There is a strong association between parental imprisonment and adverse outcomes for children: the risk of developing mental health problems and anti-social behaviour being three times higher; children can be profoundly affected at a time when the remaining carer may be least able to cope; children of imprisoned parents have been recognised to feel additional shame and to be shunned by their peers and in need of additional support (support is offered by organisations such as Barnados, but does not appear to be

available in Walsall). Contact between a parent imprisoned abroad and their children is extremely limited. Visiting arrangements can be both unsatisfying and traumatising for children, while the loss of income for a family can make the costs of visiting impractical in the newly constrained financial circumstances.

14. Fourthly, this family is relatively isolated and has been under a 4-year strain which has manifested itself at home. The children have lost their underlying sense of the world being safe and predictable. The younger children have lost an innocence that would have been preserved in many children of their age. All four children understand the position now, as opposed to in 2016, and are able to articulate their distress. The younger children are intensely fearful and cling to time with their mother, fearing her imminent departure, while the oldest daughter chooses to be at home more than her peers to offer support to her mother. There has been a shattering of the sense of security the children had enjoyed with their mother and a lengthy threat of her removal and consequent anxiety. This long-term threat has taken an enormous toll on the developing psyche of a child from which recovery, even if extradition is removed as a possibility will take a long time. The additional adversity of their mother being sent away would have an acute, lasting detrimental impact on all the children and their father who will be alone trying to support them.

15. Fifthly, the oldest daughter is clinically depressed and suffers from a high level of appearance anxiety with significant impact. She would likely be assisted by dedicated cognitive behavioural therapy to address this issue. The impact upon the appellant and her husband of the threat of extradition has led them to overlook the degree to which the oldest daughter requires support. The proposed plastic surgery and further dental work and surgery which she needs will require significant parental support. She requires significant psychological support and intervention to help her achieve her academic ability and attend university. She requires a stable home environment if she is to progress towards autonomy. If her depression and anxiety worsen, she may struggle to cope with her studies.

16. Sixthly, the younger daughter, who in 2016 was an anxious child with clinically significant emotional difficulties, now suffers from an anxiety disorder. Any treatment for that will not be effective for as long as the threat of her mother's extradition remains. The impact of extradition would be a profound psychological blow to a child who is already fragile. She would be at risk of depression and will require a very high level of emotional support if her mother is extradited. A successful transition to secondary school requires stability and support, especially so for a child with an anxiety disorder. The abrupt termination of school due to the current Covid-19 crisis is compounding that sense of uncertainty and anxiety for this vulnerable 10 year-old girl.

17. Seventhly, the sensitive and timid 3 year-old boy encountered in 2016, who was beginning to grow in confidence, is contrasted with the 8 year-old boy who now presents as consumed with fear and anxiety. His emergent behavioural problems, such as uncooperativeness, inability to compromise, lability and angry response are likely to worsen and manifest at school. His mother's absence is the manifestation of one of his worst fears. He would be devastated if his mother were extradited, and it is predicted that he would express his

mental disquiet, through eating and sleeping disorders and problems with concentrating, and would need a high level of emotional support, this will be difficult to provide because of the lack of trust.

18. Eighthly, the youngest child had gone from being the most robust of the four children in 2016 to a boy filled with fear at the prospect of losing his mother for a lengthy period. This would amount to an acute psychological blow. His presentation is consistent with a diagnosis of anxiety disorder which manifests in both physiological and psychological symptoms. It is predicted that he will become more withdrawn and externally hostile as he struggles to manage his reaction akin to grief. He will suffer a loss of trust which will impede his ability to be supported and comforted by others. In addition, his educational progress is likely to be significantly impacted.

19. Ninthly, if the appellant is extradited the impact on all four children will be profound. This is a very close-knit family, and she has been the full-time primary carer for the last ten years. Extended separation from their mother will be a major trauma for the children, worse as this follows an extended period of anxiety which has already destabilised the children significantly. This accumulation of traumatic experiences would cause all of the children intense and lasting distress. There are the following five factors which exacerbate the impact of extradition upon the children and the broader family. (1) There is complete uncertainty regarding the date of family reunification, in terms of whether the appellant would be required to serve all or part of the prison sentence. Unless and until this is identified, there is no date for the children to focus upon in order to begin the process of recovery. (2) Direct contact between the appellant, her husband and their children is likely to be impossible during her imprisonment for reasons of cost, loss of income, capacity as well as desirability, given the risk of retraumatising effects upon all parties of any prison visit. There is no evidence as to indirect contact and the appellant fears that it is either unreliable, likely to be expensive or otherwise restricted. (3) There is highly likely to be an adverse effect upon the children's education. (4) There would be a lengthy process of emotional and psychological recovery for the children who are already damaged; they will all be vulnerable to later psychological difficulties. (5) The appellant's husband will struggle to continue working, given the logistical demands of caring for his three youngest children, their emotional needs, the impact upon him for the same reasons, together with his own long-standing physical health problems. The impact upon him would be serious: he is not psychologically robust and the impact upon him will be profound and acute; his personal distress may be overwhelming. The children will also fear that their father, too, may 'disappear'. In the event that he is unable to cope, the children should be assessed by the local authority as potential children in need and the immediate intervention of a child mental health specialist would need to be sought. Such intervention may provide a degree of attenuation to the family's suffering, but nevertheless the appellant's extradition would result in a profoundly debilitating effect upon the children with significant long-term negative consequences for them all.

20. The above description encapsulates what I took from the substance of the two reports. To that evidence, Mr Hawkes added one specific point of amplification

drawn from the witness evidence. The 2020 report described the fact that the appellant's husband "has had epilepsy since childhood which has been well controlled with medication" but "has experienced severe disabling headaches more recently". There was further evidence before me as to this "severe disabling" nature. In updating written evidence dated 8 July 2020 the appellant said this: "My husband suffers from epilepsy. He takes medication (Tregretol) but he suffers from severe headaches which mean he has to be in bed all day and cannot work. This happens every 2 to 3 weeks". Mr Swain did not invite me to reject this evidence as unreliable or untruthful, nor did he seek to identify any basis for doing so. I accept this evidence. It adds relevant colour and weight to the words "severe" and "disabling" given in the report.

21. In light of this evidence, Mr Swain's submissions as to impact were, in essence, as follows. This is not a sole carer case. The appellant is the children's primary carer and her extradition will have a negative impact on them. But it is the same impact that removal of a primary carer would have on any child, being the impact exactly of the kind which would follow in any such case. The appellant's husband is a loving parent who can mitigate the impact of the extradition of the appellant. He has avenues of appropriate support, including from the school and by accessing child mental health specialists through the state system. He is no more vulnerable than other individuals with children, facing the extradition of a partner. The children have the stability of remaining with their father, at their current schools giving a familiar stable and structured context enabling friendships and serving as a haven, and in the same family home. The fact that the older daughter was expected to move to university in June 2020 indicates an independence from the family unit, and she will be entitled to engage with adult mental health services as appropriate.

22. I turn to my conclusions, based on the evidence. In my judgment, the consequences of extradition in this case are properly and correctly to be characterised as "exceptionally serious" (the phrase used by Lord Phillips in Norris v Government of the United States of America (No.2) [2010] UKSC 9 [2010] 2 AC 487 at paragraph 56). They are properly and correctly to be characterised as "exceptionally severe" (the phrase used by Lady Hale in H (H) v Deputy Prosecutor of the Italian Republic [2012] UKSC 25 [2013] 1 AC 338 at paragraph 8(7)). I cannot accept Mr Swain's submission that this is the same impact that removal of a primary carer would have on any child, and which would follow in any extradition case. Notwithstanding the points made by Mr Swain, and focusing on the particular facts and circumstances in the present case, the evidence leads me to the following conclusion. It is likely that extradition of the appellant would cause serious harm to all six members of the family, and very serious harm to each of the children. Viewed cumulatively and overall, the likely harm is in my judgment at a very high level of seriousness and severity. That is not a 'trump card' which – without more – serves to dispose of the article 8 appeal in the appellant's favour. What it certainly does mean is that there is harm of a nature which – depending on the overall evaluative exercise – is well capable of supporting the conclusion that extradition would be incompatible with article 8 (see the discussion in Lipski at paragraph 40).

(ii) Fugitivity

23. A central point of controversy at the hearing before me is the question of whether the appellant is properly to be characterised as 'a fugitive', so far as EAW2 is concerned. Several things were common ground. First, that the question of fugitivity is relevant to the article 8 balancing exercise. Secondly, that the question is to be addressed in accordance with the guidance given in a line of authorities concerned with the 'passage of time' bar under section 14 of the 2003 Act. Section 14 provides for an extradition bar where, in a conviction warrant case, "by reason of the passage of time … it appears that it would be unjust or oppressive to extradite [the requested person] by reason of the passage of time since [they are] alleged to have… become unlawfully at large". That line of authority includes, cited to me: Wisniewski v Regional Court of Wroklaw, Poland [2016] 1 WLR 375 (discussing the decisions of the House of Lords in Kakis v Government of the Republic of Cyprus [1978] 1 WLR 779 and Gomes v Government of the Republic of Trinidad and Tobago [2009] 1 WLR 1038) and Pillar-Neumann v Public Prosecutor's Office of Klagenfurt [2017] EWHC 3371 (Admin). Thirdly, that the appellant's status as a fugitive must be established to the criminal standard (Gomes para 27, Wisniewski para 58). Fourthly, that the judge made no express finding of fact as to whether the appellant is a fugitive in relation to EAW2 and it is necessary and appropriate for me to determine the issue, having regard to the express findings of fact which the judge did make (and to which I have already referred).

24. In relation to the fourth point, Mr Swain submitted that I could and should properly draw the inference that the judge did find the appellant to have been a fugitive. Mr Swain starts with the judge's findings of fact, to which I have referred and which I have adopted. He then points to the judge's statement, within the article 8 'balance sheet' exercise, that: "The delay is significantly the fault of [the appellant]". As Mr Swain points out, and as I will later explain, such a consequence would flow from the premise of an adverse finding of fact on fugitivity. But I cannot accept that the judge's description of consequence in the present case justifies 'reverse-engineering' an implied finding of fact as to the premise. The questions of whether and when and why the appellant became a fugitive in this case need to be addressed head on, and a reasoned conclusion adopted. Both Counsel have assisted me with those questions, based on the evidence of what the appellant did and including the judge's findings of fact as to the appellant's knowledge. If the correct analysis supports the finding that the appellant was from a point of time a fugitive, then characterising delay thereafter as the appellant's "fault" would be sound. But if such a finding is not supported, such a characterisation was unsound. Whether or not the appellant is a fugitive is, as both parties accept, relevant to the article 8 assessment. The judge did not address the point head on. With each Counsel's assistance, I now need to do so.

25. Mr Swain submits that the appellant is to be characterised as a fugitive on two alternative bases. His primary case is that the appellant was a fugitive as at March 2015, on the basis of her act of knowingly failing to pay off the redress, knowing (as the judge found as a fact and as I have adopted) that to do so was a condition of the suspended sentence imposed by the T Court in March 2011, and knowing therefore that the suspended sentence may in consequence be activated and implemented, as it subsequently was. His secondary case is that

the appellant was a fugitive as at November 2016, when she left Poland to return to the United Kingdom having spoken to prosecutors connected with the B court regarding the alleged offences with which EAW1 had been concerned, knowing (as the judge found as a fact and as I have adopted), and not disclosing to the B court prosecutors, that a suspended sentence had been activated by the T court. Mr Swain submits that, on either of those two alternative bases, each linked to the findings of fact made by the judge, the appellant is to be characterised as having "knowingly placed herself beyond the reach of a legal process", applying the approach in Wisniewski at paragraphs 59-60 and 62.

26. It follows that Mr Swain does not submit that the appellant was a fugitive by the act of leaving Poland for the United Kingdom in November 2009; nor by the act of leaving the Leytonstone address in 2012, or moving within the Walsall area in 2014; nor by any act concerned with failing to keep in contact with the Polish authorities, or provide them with her current location, whether as a condition of the suspended sentence or otherwise.

27. I cannot accept either of Mr Swain's contentions as to the appellant being a fugitive. I will explain why. The principle as to whether the person is a "fugitive" having "knowingly placed [herself] beyond the reach of a legal process" is one of contextual application and falls to be applied "on a case by case basis" (Wisniewski paragraph 59). This is in law a distinct question from whether, and requires more than that, the person has been "unlawfully at large" (as to which see Wisniewski at paragraphs 51-57). The function and purpose of the principle is that any lapse of time or consequences of lapse of time so far as extradition is concerned is a consequence of the persons "own choice and making" (see Kakis at 783B), so that any delay "in the commencement or conduct of extradition proceedings" can be said to have been "brought about by" the person themselves (see Kakis at 783A). Lord Diplock's exposition (in Kakis at 783A, endorsed in Gomes) spoke of the conduct of a person "by fleeing the country, concealing his whereabouts or evading arrest". The description of a person having "knowingly placed [herself] beyond the reach of a legal process" (Wisniewski at paragraph 59) includes a person who breaches the obligations of a suspended sentence (a) by a voluntary act of leaving the jurisdiction in question thereby knowingly preventing themselves from performing those obligations (see Wisniewski paragraph 60) or (b) by a voluntary act of ceasing to keep in contact with the authorities thereby becoming a person whose whereabouts are unknown to the authority which is entitled to know of them, putting it beyond that authority's power to deal with the person (see Wisniewski paragraph 62).

28. In grappling with the idea of fugitivity, expressed in the authorities which were cited and to which I have referred, I have found it helpful to think in particular about the following three linked themes: (i) locational dynamism; (ii) informational deficit; and (iii) intended consequential elusiveness. That is not to say that these are elements of a litmus test; nor that all three themes can be expected to be present. A person whose location changes, with a lack of information, becoming elusiveness can be seen as a paradigm case of a fugitive. These themes, or some of them at least, can be seen to be met by each of the following situations: a person who flees the country; a person who conceals

their whereabouts; a person who evades arrest; a person whose act of leaving a country knowingly prevents themselves from performing obligations; a person who ceases contact with authorities so as to become a person whose whereabouts are unknown to those authorities and cannot be dealt with by those authorities; a person whose actions are the cause of any delays in their pursuit by the authorities. These themes, as it seems to me, reflect the ordinary and natural meaning of the word 'fugitive'. They link directly to the underlying idea of extradition delays being consequential upon the individual's own choices, with what are, in effect, penalising consequences for the individual in an analysis of the extradition circumstances, under the law.

29. I have also found it instructive to consider the position in a case on the other side of the line, namely the Pillar-Neumann case. That was an accusation warrant case. It related to alleged offences of fraud and embezzlement between November 1997 and 2001 in Austria and the Netherlands, the requested person having moved to the United Kingdom in 1998. The Austrian authorities' case was that, knowing that she was wanted by the Austrian authorities, the requested person had knowingly refused to leave the United Kingdom and go to Austria to be arrested pursuant to a domestic Austrian warrant, which was said to have made her a fugitive. Hamblen LJ explained the Divisional Court's rejection of that contention (see paragraphs 64-70). The requested person had been living openly in the UK, not concealing her identity or location (paragraph 66). As Hamblen LJ explained (paragraphs 69-70): "She was not fleeing the country or concealing her whereabouts. She was not taking any positive steps to evade or avoid arrest. She was simply carrying on living in her country of residence, as she was lawfully entitled to do. Nor was she knowingly placing herself beyond the reach of a legal process. She took no positive steps to place herself anywhere." So, there was no locational dynamism, but rather a consistency of location. There was no informational deficit, but rather an openness and lack of concealment. There was no consequential elusiveness. There was thus no basis for the, in effect, penalising consequences for the individual in the extradition analysis.

30. I turn to address first Mr Swain's primary case on fugitivity. He characterises the appellant's action, from within the United Kingdom, of failing to pay off the redress, that being a condition of a known suspended sentence, as rendering her a fugitive. As it seems to me this characterisation of fugitivity, of itself, involves no locational dynamism: the appellant was at a location in the UK where she was settled when the redress came to be due to be paid off. She did not move. But she did not pay it off. As it seems to me it also involves, of itself, no informational deficit; and no consequential elusiveness. I put to Mr Swain, and he accepted, that his logic would render a fugitive a person who failed to pay redress as a condition of a suspended sentence, even if there was full and demonstrable openness with the Polish authorities. Take a person who writes a letter at the time of the default, stating clearly their whereabouts, but says that they are not able or willing to pay the redress. The knowing action is the action of default in paying the redress. That is the reason why extradition pursuit by the authorities becomes appropriate. But it is not of itself also a reason why delay in extradition pursuit becomes the fault of the individual. It is not, of itself, an act of default like an act of fleeing, or an act of concealing whereabouts, an

act of evading arrest, an act of leaving a country so as knowingly to prevent the performance of obligations, an act of ceasing contact with authorities so as to become a person whose whereabouts are unknown to those authorities and cannot be dealt with by them, an act meaning the cause of any delay in being pursued by the authorities is down to the individual. The logic of Pillar-Neumann is that the act of declining to return to Poland to face a domestic warrant for someone's arising out of the default in paying redress would not render the individual a fugitive. But Mr Swain's position is that the act of default, of itself, does. I cannot accept that. No contention is advanced, and no finding of fact invited, as to any lack of openness, any act of concealment or any evasion. No reliance is placed on any condition relating to location or contact as having been breached, and again no finding of fact is invited. Moreover, as I have explained, Mr Swain accepts that the onus would be on him to show that the appellant is a fugitive, are relevant findings of fact, to the criminal standard.

31. It really comes to this. A person who breaches conditions of a suspended sentence from within the United Kingdom by failing to pay redress, but where there is no suggestion of a contact breach or of whereabouts being or becoming unknown, is in my judgment in a materially different position from the person described in Wisniewski at paragraph 62: "a person who breaches conditions of [their] sentence which requires [them] to keep in contact" and who "thereby becomes somebody whose whereabouts are unknown to the authority which is entitled to know of them" and thus "puts it beyond the authority's power to deal with them". That situation has all of the following features: locational dynamism, informational deficit and consequential elusiveness. A situation based solely on knowing default in paying redress has none of them.

32. In those circumstances, and for those reasons, I cannot accept Mr Swain's primary case. I turn to his secondary case. It is that the appellant became a fugitive in November 2016, when she got onto the plane in Poland to return to the United Kingdom, having spoken to the prosecutors connected with the B Court about the matters which had been the subject of EAW1. At that stage, she was (on the judge's finding of fact) aware of the suspended sentence imposed by the T Court had been activated by that court. Mr Swain submits that the fact of returning to the United Kingdom was an act by the appellant "knowingly placing herself beyond the reach of legal process".

33. I cannot accept that submission. I would accept that there was a locational dynamism when the appellant was temporarily transferred under section 21B of the 2003 Act to, and then back from, Poland. There was no informational deficit and no consequential elusiveness so far as the B Court was concerned. There was no new informational deficit or consequential elusiveness so far as the T Court was concerned. The left hand (T Court) did not know what the right hand (B Court) was doing. The logic of Mr Swain's secondary case is that the appellant was not a fugitive the day before she went to Poland in November 2016, but became a fugitive the day she flew back. I cannot accept that submission. In my judgment, the characterisation of the appellant's return to the United Kingdom as an act rendering her a fugitive breaks down when the

specific statutorily underpinned purpose of her temporary presence and guaranteed return are understood.

34. The section 21B transfer to Poland involved the appellant being "temporarily transferred to the requesting territory" (see section 21B(2)(a) and (3)(a)), in conjunction with an identified "warrant" which had been "issued for purposes of prosecution for offence" (section 21B(1)(a)). The "temporary transfer" in conjunction with that warrant served as an alternative to "arrangements … made" without a transfer, "to enable the person to speak with representatives of an authority in the requesting territory responsible for investigating, prosecuting or trying the offence specified in the warrant" (see section 21B(2)(b) and (3)(b)). The purpose of the temporary transfer in this case was to enable the appellant to speak with the prosecutors connected to the B Court, regarding the offences which had previously been the subject of EAW1 issued by the B Court, which offences were the subject of their investigation. Nothing else. As both Counsel accepted, the arrangements for the section 21B temporary transfer will have been accompanied by a guarantee from the Polish authorities that the appellant would be returned to the UK, having spoken to the B Court prosecutors. As Mr Hawkes submitted, and Mr Swain could not contest, the Polish authorities whether connected to the B Court or connected with the T Court or any other Polish authority, could not lawfully or legitimately have taken any step in relation to the distinct matters with which the T Court was concerned, including any step to impede the appellant's return to the UK in November 2016. That was because she was in Poland only for a very specific purpose. It was a temporary transfer, in conjunction with specified matters, as a feature of extradition arrangements relating to EAW1.

35. In those circumstances, I find it impossible to characterise the appellant's conduct in getting onto the aeroplane to return to the United Kingdom in conjunction with the section 21B temporary transfer – without raising with the Polish authorities the question of the activated sentence and the T Court – as conduct rendering her a fugitive. As I have explained, Mr Swain's logic accepts that the appellant was not a fugitive the day before she went to Poland in November 2016. That is so, even though any informational deficit and consequential elusiveness which arose was already present then. The appellant was not volunteering to the Polish authorities any fact or knowledge regarding the distinct matters with which the T Court was concerned. The temporary transfer and interview with prosecutors had a very specific, protected, and tightly circumscribed purpose and function. The appellant was temporarily on Polish soil, but only in connection with that very specific purpose and function. Mr Swain does not submit that she would have become a fugitive if, speaking to the prosecutors connected with the B Court, but on UK territory, in November 2016 (section 21B(2)(b) and (3)(b)), the appellant had failed to raise with those authorities her knowledge of the T Court matters including the suspended sentence and its activation. There is some locational dynamism which arises only in the very circumscribed circumstances of section 21B. There is some informational deficit and consequential elusiveness, but they were pre-existing and independent. In circumstances where the appellant was not and would not already have been a fugitive in November 2016 in the United Kingdom, including when dealing with the Polish authorities in conjunction with EAW1,

she did not in my judgment become a fugitive by virtue of the operation of the temporary transfer pursuant to section 21B and her return to the United Kingdom as part and parcel of that transfer. That disposes of the secondary contention.

36. It follows, in my judgment, that the respondent has not shown the appellant to be a fugitive. No adverse finding on fugitivity can feature in the article 8 analysis. That is a relevant point in the appellant's favour when the overall article 8 balance is struck, including when the lapse of time is considered.

(iii) Nature and seriousness of the crimes involved

37. This topic is the feature of the article 8 analysis described by Lady Hale in H (H) at paragraph 8 (5). She there explained that although the public interest in extradition "will always carry great weight", the position is that "the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved". Mr Swain reminds me that the seriousness of the offending in this case, to which EAW2 relates, is reflected in the sentence of 16 months custody for the fraudulent activity in November 2008 and November 2009. EAW2 describes the criminal conduct as concluding a credit agreement with a bank for an amount the equivalent of £34,200 to purchase 4 vehicles, secured by a promissory note when "she did not have the possibilities or wish to pay back this credit", followed by the selling of 3 of the 4 vehicles in November 2009 using a forged bank declaration recording "payment of the credit in whole and no objection of the bank to perform such sale". EAW2 does not provide a clear indication of the nature and scale of the loss and damage sustained by any individual or the bank by reason of the fraud, nor does any other document, as Mr Swain accepted. An indication of the loss and damage said to have been caused by the appellant's criminal conduct would presumably have been found in the amount of redress which she was required to pay as a condition of suspension of the 16 month sentence. Unfortunately, no document before the court identifies that figure either. The purchasers of the 3 cars described may have parted with money in exchange for cars purchased a year earlier, then finding themselves impeded by the fact that the cars had been assigned to the bank. The bank for its part may have found itself out of pocket in relation to a loan, perhaps only able to recoup part of what it was owed through its ownership of the 4 cars, or perhaps not at all. It is likely that the purchasers, or the bank, lost out. Mr Hawkes pointed out, in my judgment correctly, that it cannot be assumed or inferred that the scale of the loss and damage arising from the fraudulent conduct in the present case was at the level of the £34,200 referable to the credit agreement, and that the respondent has put forward no evidence as to the actual level of loss and damage, as reflected for example in the level of redress which was payable by the appellant. Ultimately, Mr Swain invited me to infer that the likely scale of loss and damage could well have been 'in 4 figures' (i.e. £10,000 or more). There is force in that submission, and I accept it.

38. Adopting the approach which I described in Lipski at paragraphs 43 to 44, I conclude as follows. The offences with which this case is concerned are offences of dishonesty which are certainly not trivial; but nor are they of the criminal offences of a kind to be described as "seriously criminal". In arriving

at that conclusion and characterisation, I was fortified by considering the description given by the Supreme Court of one of the cases in H (H), to which I will return.

(iv) Delay since the crimes were committed

39. The lapse of time and circumstances relating to it, the feature of the article 8 analysis described by Lady Hale in H (H) at paragraph 8(6). As she there explained: "the delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life". The offending in this case was in 2008 and 2009 when the appellant was aged 29 and 30. The suspended sentence of 16 months custody was imposed in March 2011 and activated in June 2015. The crimes are over a decade old, as is the presence of the appellant and her family in the United Kingdom. Her evidence is that she was open about her relocation, her address in Leytonstone, and her address in Walsall. The judge who heard oral evidence made no finding of fact to the contrary. As I have explained, he characterised the delay as attributable to her conduct, but made no finding that she was a fugitive. I have found, on the evidence and based on what in my judgment is the correct approach to the law, that she was not. It follows, in my judgment, that it was not and would not be sound to conclude that the delay was "significantly the fault of" the appellant. Nor, however, am I persuaded that there is a basis for concluding that the Polish authorities were themselves responsible for "culpable" delay. The correct conclusion, in my judgment, is that the substantial lapse of time has both the diminishing effect and the increasing effect described by Lady Hale, that in each respect the effect is substantial, and that they arise in circumstances where the appellant does not fall to be described as a fugitive.

40. During the nearly 11 years in which the appellant and her family have been in the United Kingdom, after the fraudulent conduct of November 2008 and November 2009, she has given birth to the 3 youngest children and established what, on the evidence, it is a very settled private and family life here with her close-knit family of 6. As Mr Hawkes emphasised, she is a person of good character in the United Kingdom and has lived a law-abiding life here. There is, moreover, force in the submissions made by Mr Hawkes based on the comparison of EAW1 and the actions of the B Court, as follows. The B Court issued a domestic arrest warrant in September 2014 and within 8 months was able to issue EAW1 giving the appellant's Leytonstone address. Within a further 6 months in November 2015 the appellant had been arrested in Walsall on EAW1. As Mr Hawkes submits, there is no cogent explanation as to why the T Court was not able similarly to pursue matters following the activation of the suspended sentence in June 2015 and why that court took a further 3½ years to issue EAW2. The point made in the respondent's evidence before the Court is that the T Court did not have the benefit of a computer database which told it what the B Court was doing, and specifically about the section 21B temporary transfer in November 2016. But that does not explain why the T Court was unable to pursue the appellant, in the way that the B Court had been able to do. The contrast is striking. The 11-12 year period since the crimes were committed is a significant period, as was the 3½ year period between June 2015 and November 2018. I conclude as follows: there has been a substantial lapse of

time which substantially diminishes the weight to be attached to the public interest, and which substantially increases the impact upon private and family life; it cannot, moreover, be laid at the appellant's door on the basis of her being a fugitive.

(v) Illustration from H (H)

41. At paragraph 21(i) of Lipski, I described the individual case considered by the Supreme Court in H (H) and discussed by Lady Hale at paragraph 41. I said this:

> In the first individual case, discussed by Lady Hale at paragraph 41, we find a description of "severe detrimental consequences psychologically and for their developmental trajectories" which were "very likely" to be experienced by an 8 year old and 3 year old, upon the extradition of their mother and primary carer, constituting exceptionally severe effects (see paragraph 44), on accusation warrants relating (see paragraph 36) to thefts of clothing worth an equivalent of in excess of £4,300 and three fraud offences which were characterised (see paragraph 45) as "by no means trivial" but "offences of dishonesty which can properly to be described as 'of no great gravity'", in a case of "considerable" delay (see paragraph 46), albeit in circumstances where there was a clear finding that the mother was a fugitive from justice (see paragraph 37). In that case, the Supreme Court concluded that extradition was disproportionate. There, the impact and harm were sufficiently serious and weighty to mean that the factors against extradition outweighed those in favour.

All cases turn on their facts. But I found it a helpful exercise that both counsel in the present case were able to take that example, as a working illustration of article 8 in action, applied by our highest court, and make submissions on it as a reference point.

42. Mr Swain submitted that the criminality involved in that illustrative case was far less significant (the clothing thefts involved loss in the equivalent of around £5,500), than in the present case (where the credit agreement was in the sum of the equivalent of £34,200 and the loss can be taken as being 'in four figures'); that there was a different and lower gravity of offending in that case compared to the present; that the evidence of impact was far weightier including likely severe and crippling depression for the requested person's partner; and that the youngest child in that case only being aged 4. Mr Hawkes submitted that the illustrative case was of assistance. He submitted that the seriousness of the criminal conduct, the nature of the delay and lapse of time, and the evidence of impact, could all properly be regarded as comparable to the present case. He also submitted, in my judgment correctly, that the present case is materially stronger in article 8 terms, because here the appellant is not a fugitive. I prefer the submissions of Mr Hawkes. The present case turns on its own facts, evidence and circumstances. But I am satisfied that the comparison with the case discussed by the Supreme Court in H (H) is one which is helpful to the appellant in the present appeal.

V) Overall balancing exercise

43. I turn to the overall article 8 balance, addressed 'afresh', in the light of what I have said above. Weighing all of the matters in the balance and in light of all the circumstances of the case the balance, in my judgment, in this case comes decisively down against extradition. Viewed objectively, on the basis of the fresh evidence, the judge would in my judgment have held extradition to be disproportionate and discharged the appellant; had the judge failed to do so, I would have overturned that decision on appeal. I would have done so, looking at the matter in the round, on the basis that the outcome was "wrong": see Love v United States of America [2018] EWHC 172 (Admin) at paragraph 26.

44. I am conscious of the 'balance sheet' approach, recognised as a virtuous discipline for district judges (Celinski v Polish Judicial Authority [2015] EWHC 1274 (Admin) [2016] 1 WLR 551 at paragraphs 16 – 17). There is value in my setting out, transparently, here my own 'balance-sheet', in the evaluative exercise which has led me to the conclusion I have described. (A) The principal factors militating in support of extradition are, in my judgment, the following: (1) the strong, constantly-present and always-weighty public interest in extradition, so that people convicted of crimes should serve their sentences; (2) the strong, constantly-present and always-weighty public interest in extradition, that the United Kingdom should honour its treaty obligations to other countries; (3) the overall 16 month custodial sentence imposed and activated by the judicial authorities of Poland and in respect of which those authorities consider it appropriate to pursue the appellant's extradition, in which decisions and evaluations this court must and does place mutual confidence, trust and respect. (B) The principal factors militating against extradition of the following: (1) the serious harm likely to be caused by extradition to the 4 children in the family, and each of them, as well as to the appellant and her husband themselves, as described in the evidence which I have summarised; (2) the nature and seriousness of the crimes, as not being "seriously criminal"; (3) the significant lapse of time – and in this non-fugitive case – which lapse of time substantially diminishes the weight to be attached to the public interest in extradition and substantially increases the impact upon private and family life, all in the context of the appellant's success in building a settled private and family life in the United Kingdom with more than a decade of living as a person of good character in a law-abiding way.

45. The appeal succeeds on the article 8 ground.

The new grounds of appeal

46. By further written submissions dated 7 July 2020, a week before the hearing of the substantive appeal, Mr Hawkes notified the respondent and the court that he would be seeking at the hearing before me to introduce two new grounds of appeal. The first of them involved the section 2 'judicial authority' point of principle raised in Wozniak v Polish Judicial Authority [2020] EWHC 1459 (Admin). The parties were agreed that, if the appeal did not succeed on any other ground, the appropriate course would be to make an order in the following terms: (1) permission to amend the grounds of appeal to seek permission to appeal on the section 2 ground; (2) permission to appeal stayed pending the

handing down of any final decision in Wozniak (if the ground is thereafter maintained, with updated submissions within 14 days); (3) permission to appeal to be considered on the papers thereafter. I would have made an order in substantially those terms, had this appeal otherwise been unsuccessful. Since the appeal has in any event succeeded on the freestanding article 8 ground, this point falls away.

47. The second new ground of appeal was contentious. Mr Hawkes sought to advance argument based on section 14 of the 2003 Act: oppression and the passage of time. His explanation as to why this ground was so belatedly being advanced was that the issue arose out of a contention made for the first time in the respondent's skeleton argument of 15 April 2020, in which for the purposes of the article 8 analysis the respondent contended that the appellant was to be regarded as a fugitive. I found that explanation unconvincing. The section 14 point had been raised squarely in 'summary grounds of appeal' dated 20 May 2019 filed by Mr Hawkes's solicitors. His 'perfected grounds of appeal' document dated 18 June 2019 were then produced, having been drafted on the basis of what can only have been a decision not to advance argument on the section 14 ground in the 'summary grounds of appeal'. The issue of fugitivity was always on the cards as being a key aspect of the article 8 analysis. The respondent then took the position that the appellant was a fugitive in submissions accompanying the respondent's notice, on 23 July 2019. Mr Hawkes had to contest the fugitivity point as part of the article 8 analysis. None of this explains or excuses why section 14 was not advanced far more promptly, if it was considered to be a viable freestanding ground. In cases concerning section 14, fugitivity operates as a bar against the appellant. In cases concerning article 8, it is not a bar but an adverse feature. Fugitivity would have been a shield which the respondent would raise in the context of a section 14 argument. But fugitivity was going to be confronted in the context of article 8, as it has been. It may be that, spurred on by the known and contentious nature of fugitivity for the purposes of article 8, Mr Hawkes thought again about the section 14 point. But if that point was a good one, it was a good one all along and a missed opportunity in the perfected grounds of appeal which Mr Hawkes was seeking belatedly to repair.

48. Be that as it may, as the oral argument developed, it became obvious that the section 14 ground would not have been capable of availing the appellant in this case, were she to fail in relation to article 8. A finding of fugitivity as an adverse feature in the context of article 8, would equally have been a finding of the fugitivity shield barring any section 14 ground. A finding of non-fugitivity would be a relevant finding in the appellant's favour for the purposes of article 8, as it has been. As Mr Hawkes accepted in oral argument, in the present case the features relied on to support a conclusion of section 14 'oppression' are all features included within those on which he relies in the article 8 analysis, in particular in relation to lapse of time and impact. In a case involving a symmetry of that kind, Mr Hawkes accepted that it would be 'unusual' for the section 14 oppression analysis to succeed in the appellants favour, if the article 8 proportionality balance had come down against the appellant. I understood him ultimately to accept that, in the circumstances of the present case, a case on section 14 'oppression' could not realistically be expected to succeed if his case

on article 8 proportionality, by reference to the same (plus other) features, failed. For my part, I could and can see no daylight between the two in this case, which could have enabled section 14 oppression to succeed, if article 8 proportionality failed. On that basis, if it mattered, I would have refused permission to advance the section 14 point. But it does not matter, and I need say no more. In the event, article 8 proportionality has succeeded, and the appeal succeeds.

Conclusion

49. My conclusion, by reference to article 8 and the fresh evidence, alongside the other evidence in the case including the relevant findings of fact by the judge (which I have adopted), is that this appeal is to be allowed and the appellant is to be discharged. I note that the same observations that I made in paragraph 61 of Lipski are equally applicable to the present case. But I do not need to repeat them.

Order

50. Having received written representations from the parties in light of their receipt of this judgment in draft, I make the following order. Paragraph (3) allows 14 days for the respondent to lodge a s.32 application. (1) The appeal against extradition, pursuant to s.21 Extradition Act 2003 (EA 2003) and Article 8 of the European Convention on Human Rights is allowed, pursuant to s.27(1)(a) EA 2003. (2) The Appellant is discharged, pursuant to s. 27(5)(a) EA 2003 and the order for her extradition is quashed, pursuant to s. 27(5)(b) EA 2003. (3) All bail conditions, to which the Appellant has hitherto been subject, are revoked as of the date 14 days after the date of this sealed order. (4) The application to amend the grounds of appeal, pursuant to ss.2 and 14 EA 2003 is refused. (5) There shall be a detailed assessment of the Appellant's publicly funded costs.