



Neutral Citation Number: [2021] EWHC 1238 (Admin)

Case No: CO/4220/2019

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11/05/2021

**Before:**

**MR JUSTICE CHAMBERLAIN**

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**Between:**

**PIOTR PINK**

**Appellant**

**- and -**

**REGIONAL COURT IN ELBLĄG (POLAND)**

**Respondent**

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**MALCOLM HAWKES** (instructed by **Langfield Law**) for the **Appellant TOM HOSKINS** (instructed by the **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 27 April 2021  
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**Approved Judgment**

## MR JUSTICE CHAMBERLAIN:

### Introduction

- 1 The appellant, Piotr Pink, is sought by the Regional Court, Elbląg, in Poland pursuant to a European arrest warrant (“EAW”) issued on 28 March 2018 and certified on 23 April 2018. The Polish judicial authority seeks his surrender to serve the 1 year and 9 months remaining from an aggregate sentence of 4 years and 9 months’ imprisonment imposed on 8 December 2011 for offences committed in 1999 (a series of residential burglaries), 1999-2000 (supply of marijuana and amphetamines to a minor and possession of a narcotic drug) and 2005 (possession of marijuana and amphetamines, forging an employment and income certificate and purchasing documents for use as forged documents) and 2005 (a final single incident of non-domestic burglary).
- 2 On 22 October 2019, at Westminster Magistrates’ Court, District Judge Mallon ordered his extradition. He appeals against that order pursuant to s. 26 of the Extradition Act 2003 (“the 2003 Act”). Permission to appeal was granted by Lane J on three grounds. The appellant has applied to amend the grounds of appeal to add a fourth.
- 3 The grounds are that:
  - (a) extradition would constitute a disproportionate interference with the appellant’s rights under Article 8 ECHR and is therefore barred by s. 21 (ground 1);
  - (b) the EAW contains insufficient particulars of the offence to satisfy the requirement in s. 2(6) (ground 2);
  - (c) the offences of which the appellant was convicted are not extradition offences within s. 10 (ground 3);
  - (d) legislation relating to the appointment and tenure of judges in Poland means that the Polish judicial authority is no longer to be regarded as sufficiently independent and impartial to be regarded as a “judicial authority” for the purposes of s. 2 (ground 4).
- 4 For the Polish judicial authority, Tom Hoskins accepts that the appellant should have permission to amend to add ground 4 and that, so far as it relates to that ground, the appeal should be stayed pending the decision of the Divisional Court in *Woźniak* (CO/4299/2019) and *Chłabicz* (CO/4976/2019), which are listed together for hearing in May 2021. I indicated at the hearing that I would grant permission to amend and the stay sought in relation to ground 4.
- 5 There are two contested applications to admit fresh evidence. The first was made on 11 November 2020 by the Polish judicial authority to adduce further information dated 22 July 2020 from the Polish court. The second was made by the appellant on 23 April 2021 to admit a new proof of evidence and certain associated documents.

## **The history of the case**

- 6 The appellant committed the first series of offences in 1999 and 2000, when he was 17 and 18 years old. He committed the last in 2005, when he was 23. He first came to the United Kingdom in 2005 and worked in the construction industry. He was convicted and sentenced in 2011, when he was 30. The first EAW for these offences was issued on 29 March 2012 and certified on 26 April 2014. A second EAW was issued on 4 July 2014 for a separate offence of attempted burglary of a grocer's shop in July 2005 for which he had been sentenced to 12 months' imprisonment. The appellant was arrested pursuant to these two warrants on 23 July 2014.
- 7 On 10 October 2014, there was an extradition hearing before Senior District Judge Riddle at Westminster Magistrates' Court. The judge discharged the appellant in respect of the first warrant because there was no information to show how the sentences had been aggregated, so the court could not be satisfied as to which (if any) of the sentences was for an extradition offence. In relation to the second warrant, however, the judge ordered the appellant's extradition, finding that he was a fugitive.
- 8 By that time, the appellant had a partner and son. Prior to his extradition, they moved to Poland, because the cost of living was lower there. He was then extradited and served 7 months of his sentence. He was not required to serve the remainder due to good behaviour.
- 9 The appellant says that, on release from this sentence, he was given written permission to leave the country and did so. There was at that stage no attempt by the Polish authorities to seek the consent of the appellant to execute the sentence the subject of the first warrant. Nor was there any request for the consent of the UK to deal with him under Article 27(4) of Framework Decision 2002/584/JHA ("the Framework Decision"), which provides for such requests.
- 10 The appellant accordingly returned to the UK, where in 2016 he began a relationship with another woman. They have been together for some 4 ½ years. She now has settled status in the UK and works as a primary school teacher. He also set up a company, Pinkman Construction Ltd.

## **District Judge Mallon's judgment**

- 11 District Judge Mallon recorded that she had heard oral evidence from the appellant, who said that, since his return to the UK in 2015, he had made voluntary maintenance payments in respect of his son (then 13) of about PLN 1,000 (£200-220) per month. He had savings of about £6,000, which he could use to support them if he were extradited. His former partner and son live in a property which is owned, not rented. He did not know if they would still have a roof over their heads if he were unable to continue to support them. He speaks to his son daily. He also sent money to his sister-in-law and 12-year old nephew following the death of his brother in 2015.
- 12 The appellant explained that his company was currently contracted to conduct 3 large-scale building projects around London. The company engaged seven subcontractors, who have worked with him for a long time. He also uses teams of window installers and electricians on an *ad hoc* basis. If he were extradited, the company would close, though he agreed that the subcontractors would find alternative work.

- 13 The appellant said that he had the court's permission to leave Poland. This was given in a "bigger written document". He agreed that, when he left Poland, "he knew that there was an outstanding sentence for which a request could be made".
- 14 The judge accepted the appellant's evidence about his business, personal relationship and the financial support provided to his son and nephew. Given the relatively modest sums involved, she did not find that either was financially dependent on him. She noted that his former partner owns the home where she and her son live and that the appellant did not know whether she had a new partner. His sister-in-law had family nearby, who could offer support.
- 15 The judge found that the appellant's partner was in stable, full-time employment. She had previously lived with her sister. The judge had no doubt that she could do so again. There was no evidence that she would have to return to Poland if the appellant were extradited.
- 16 As to the business, the judge found that those who worked for it were self-employed. They would be able to find work elsewhere. There was no evidence to suggest the appellant would not be able to establish a business similar to his current one, although this would take time.
- 17 As to the appellant's financial situation, the judge noted that Mr Pink was arrested pursuant to the current EAW at the airport on the way to a holiday in Bali. This holiday had cost £5,000. He said this had been paid for from monthly savings of £50 for two years or more. The judge observed that, if this were true, it would have taken him over 8 years to save the money. Accordingly, she did not accept his evidence as reliable. She said that the ability to afford such an expensive holiday suggested that the appellant and/or his partner had access to more substantial funds than he was prepared to admit. This was "relevant to the assessment of the impact of his extradition upon his partner and the relative contribution he makes to his son and nephew".
- 18 At [23]-[24], the judge said this:

“23. It is abundantly clear from his own evidence that the RP has been well aware of the sentence has passed, the offences to which they relate and that duration. He was represented at the hearing. The sentences were amalgamated at his own request. He knew when he returned to the UK in 2015 that there was still a sentence outstanding for which a request could be made.

24. It was asserted on behalf of the RP that he is of good character in the UK. That is not the case. He received a caution from the Metropolitan Police for shop theft on 04/07/07. It is not the most serious matter, of course, but the RP is not entitled to assert he is of good character in the UK.”
- 19 The judge dealt with s. 2 first. She noted that the appellant had submitted that the EAW was deficient for not specifying which sentence applied to which offence. Under cross-examination, however, he confirmed that he did know what the sentences were for, that his own lawyer had asked for them to be amalgamated and that he was aware of that fact. The judge said: "I concur with the submission on behalf of the JA that to now rule that the sentences lack specificity would be absurd."

- 20 Next, the judge turned to s. 10. The appellant's submission was that the offence of participating in an organised group whose aims were committing crimes against property only became a dual criminality offence on 3 March 2015 and was not retrospective. The response of the Polish judicial authority was that, prior to 2015, the appellant could have been charged as a conspirator with others contrary to s. 1 of the Criminal Law Act 1977; and that it was permissible for an indictment to contain six counts reflecting the direct actions of the defendant, together with a single conspiracy count, the particulars for which were provided by the six individual counts. The judge said: "The offence is quite clearly an extradition offence."
- 21 The judge then dealt with s. 14, holding that it did not bar extradition. There is no need to say anything about that, because the appellant does not rely on it on appeal.
- 22 As to Article 8, the judge cited *Norris v Government of the USA* (No. 2) [2010] UKSC 9, [2010] 2 AC 487, *HH v Italy* [2012] UKSC 25, [2013] 1 AC 338 and *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551. She said this:
- "Clearly the article 8 rights of the requested person, his partner, son and extended family are engaged. His partner, son and nephew will all suffer a degree of financial hardship were he to be extradited. Whilst not losing contact completely, it is unlikely that the RP would be able to maintain daily telephone contact with his son, so to that extent, his son would also suffer. The RP's business would not be continued in his absence. He would have to rebuild it upon his return. His workers would, however be able to find alternative employment. He is not a man of good character in the UK. I find that his financial situation (and by extension, that of his partner) is more secure than he admitted in evidence. His position now vis-à-vis his Article 8 situation is better than it was when he was, nevertheless, previously extradited."
- 23 The judge listed the factors favouring extradition: (a) the strong public interest in the UK complying with its international extradition treaty obligations; (b) the mutual confidence and respect that should be given to a request from the judicial authority of a Member State; (c) the serious nature of the offences; (d) the length of the sentences; (e) the fact that the UK should not be seen as a safe haven for those fleeing from justice.
- 24 She went on to list the factors against extradition: (a) the financial impact upon the appellant's partner, son and nephew; (b) the emotional impact on the appellant's son of a decrease in contact with him; (c) the impact on the appellant's business and his workers; (d) the age of the offences.
- 25 The judge concluded that, having regard to these factors, extradition would be a proportionate interference with the appellant's Article 8 rights.

## **The applications to admit fresh evidence**

### The Polish judicial authority's application

- 26 The proper approach to the admission of fresh evidence adduced by a respondent is set out by the Divisional Court in *FK v Stuttgart State Prosecutor's Office, Germany* [2017] EWHC 2160 (Admin). At [38], Hickinbottom LJ rejected the suggestion that a

respondent must comply with the restrictive conditions imposed on appellants by ss. 27 and 29 of the 2003 Act:

“Allowing a respondent to submit further evidence in support of the district judge’s findings, far from delaying a matter, would often if not usually expedite it: it would avoid the situation where an EAW is discharged on the basis of some defect that could be cured by the provision of further information, only to be reissued with that information included. Nor do I accept that an appellant has less than a full opportunity to present evidence in relation to an EAW – that opportunity, given equally to both parties, arises before the district judge. Furthermore, if information were to be provided by the respondent which, the court considers, it is in the interests of justice to admit, the court would be likely to conclude that it would be in the interests of justice also to admit evidence in response or rebuttal. The statutory provisions merely avoid a party that loses before the district judge – whether that party be requested person or requesting authority – having a second bite of the cherry. They are therefore supportive of the principle of finality, and generally of the broad principles that underlie the Framework Directive. It is not contrary to the letter or spirit of article 6 of the ECHR, or the common law requirements for a fair trial, to allow a party on an appeal to submit further information in support of a decision of the district judge where (for example) that information might confirm a finding of fact made by the district judge, whilst proscribing an unsuccessful party from submitting further evidence in support of the proposition he was wrong.”

- 27 Thus, there was “no restriction on the inherent jurisdiction of the High Court on appeal to admit further evidence from a respondent to an extradition appeal”: [39]. However, as was made clear at [40], this “does not allow such a party carte blanche to adduce new material to bolster an existing decision in his favour, particularly if the material was ‘available’ before the district judge”. The “availability” of the evidence below is one of the factors to be considered in deciding whether it is in the interests of justice to admit the fresh evidence. However, “where the new evidence sought to be admitted merely confirms a factual finding made by the district judge, or clarifies an issue of fact or law that might otherwise be ambiguous or unclear, it may be straightforward to persuade the court that it is in the interests of justice to admit it”.
- 28 In this case, the fresh evidence from the Polish authority responds to the appellant’s grounds 2 and 3, giving further clarity as to the sentences imposed and the offences to which they relate. Mr Hawkes points out that the judge refused the Polish judicial authority’s application to adjourn to adduce this evidence. I accept that this is a relevant matter, but it is not determinative. The situation here is precisely that envisaged in *FK*. Although the Polish judicial authority could have adduced the evidence earlier, its purpose is to bolster – rather than to undermine – the conclusions of the judge. There is no suggestion that the appellant would be prejudiced by its admission. If it were not admitted, and the appellant were discharged on ground 2 or 3, it would be open to the Polish judicial authority to issue a further warrant curing the deficiencies in the last one. These facts mean that it is in the interests of justice to admit the Polish authority’s further evidence.

### The appellant's application

- 29 The appellant's fresh evidence can be admitted only if it satisfies the condition in s. 27(4)(a), i.e. that it "was not available at the extradition hearing". In my judgment, the evidence here satisfies that condition. It seeks to update the court as to the appellant's family and relationship status. No prejudice would be caused by its admission. Where the principal ground of appeal concerns Article 8 it is appropriate that the court should be informed of the up-to-date position if and to the extent that it has changed materially since the date of the judgment under appeal. In the exercise of my discretion, I admit the appellant's fresh evidence.

### **Ground 1**

#### Submissions for the appellant

- 30 For the appellant, Mr Malcolm Hawkes submits that the judge failed to take into account three matters: first, the very substantial time the appellant had already served; second, the failure of the Polish authorities to seek the UK's consent to deal with the appellant while he was in their custody pursuant to the second EAW; third, the overall passage of time between the offences and these extradition proceedings.
- 31 As to time served, Mr Hawkes points out that the appellant has already served three years of his total sentence of 4 years and 9 months' imprisonment, which is almost two thirds. If he had been serving his sentence in the England and Wales, he would already have been released. In Poland, there is no entitlement to release, but the court retains a discretion to release once half of the sentence has been served. Mr Hawkes submitted that the very significant term already served diminishes the public interest in extradition in this case, particularly given the length of time since the offending took place.
- 32 Mr Hawkes submits that the Polish authorities have never satisfactorily explained why they did not seek the UK's consent to deal with the sentence for the outstanding offences. If they had done, it would have been open to him to seek discretionary release, having served more than half of his sentence. The position of the Polish authorities is that the appellant invoked his specialty rights. This is wrong, but in any event, s. 54 of the 2003 Act provides a mechanism by which the sending State can consent to the requested person being dealt with even where he has not waived his specialty rights. In the circumstances, and in the absence of any evidence of any restriction on the appellant's right to leave Poland, there was no proper basis for the judge's finding that the appellant was a fugitive. In this regard, reliance was placed on the judgments of the Divisional Court in *Pillar-Neumann v Public Prosecutor's Office, Klagenfurt* [2017] EWHC 3371 (Admin), [72] and of Fordham J in *Makowska v Poland* [2020] EWHC 2371 (Admin), [25], for the proposition that failure to surrender does not in and of itself make one a fugitive.
- 33 As to the passage of time, Mr Hawkes relied on the appellant's change of position since his return from Poland in 2015. He now had sub-contractors who relied on him. He provided financial support to his son and nephew. The effects of losing this support were relevant to the Article 8 balance. The judge was wrong to treat the caution in 2007 as relevant. Cautions are deemed spent as soon as they are issued: see para. 1(1)(b) of Schedule 2 to the Rehabilitation of Offenders Act 1974. In any event, "between the age of 20 and 28 a young man with perhaps a while to side will settle down, mature and become a model adult. It is the actual change in life and age which is important in judging

the proportionality of a return to serve a sentence”: *Chmura v Poland* [2013] EWHC 3896, [10] (Ouseley J).

- 34 Finally, Mr Hawkes relied on the uncertainty arising from Brexit. He cited *Antochi v Germany* [2020] EWHC 3092 (Admin) and *Rybak v Poland* [2021] EWHC 712 (Admin). In the latter, Sir Ross Cranston held that the district judge had fallen into error in failing to take into account, as part of the *Celinski* balancing exercise, the distress caused by the uncertainty of family reunification post extradition. In the appellant’s case, there was evidence that he would face serious difficulty in returning to the UK. He would have to apply for a visa and disclose his criminal convictions as part of that process.

#### Submissions for the Respondent

- 35 For the respondent, Tom Hoskins submitted as follows.
- 36 First, one year and nine months imprisonment was a substantial sentence. It had been imposed for offences which were far from trivial. The public interest in extradition was strong.
- 37 Second, the Polish authorities have explained in the further information supplied in 2020 that the earliest a request could be made under Article 27(3) of the Framework Decision was 26 November 2017, 45 days after the appellant had served his sentence for the offences the subject of the second EAW. Given that the EAW the subject of the current proceedings was issued in March 2018, the delay was not significant. In any event, the judge had it well in mind: see [30] of her judgment.
- 38 Third, the passage of time since the commission of the offences supplies no substantial argument against extradition because this is a case where the respondent has made repeated requests to the UK courts for extradition and has pursued the surrender of the appellant with sufficient diligence. The judge was entitled to regard the appellant’s caution in 2007 as relevant: see by analogy *R v Olu* [2010] EWCA Crim 2975, [70]. In any event, however, it is clear from the judgment that her findings on this point played little or no part in the decision to order the appellant’s extradition.

#### Discussion

- 39 The judge did not refer to the fact that the appellant had served nearly two thirds of the sentence for which he is sought. Nonetheless, the fact remains that there is 1 year and 9 months of that sentence outstanding. That is a substantial sentence. Whether to remit some or all of it is a matter for the Polish authorities in the exercise of their discretion. Unlike some extradition appellants in this jurisdiction, the appellant has made no parallel application in Poland for remission of his sentence. In performing the Article 8 balancing exercise, the judge therefore had to proceed on the footing that, at the present time, the outstanding sentence of 1 year and 9 months’ imprisonment remains to be served in full.
- 40 That being so, the fact that the appellant had already served a substantial period of imprisonment was not, in and of itself, a factor of any substantial weight telling against extradition. The public interest in favour of extradition was the same as it would be in a case where one year and nine months represented the total sentence for which extradition was sought. The courts generally take the view that there is a strong public interest in favour of extradition in such cases. It follows that I do not consider that, by failing to



make specific reference to the time served, the judge left out of account a significant factor against extradition.

- 41 As to the appellant's criticisms of the judge's finding that the appellant was a fugitive, Mr Hawkes did not dispute that the appellant was a fugitive at the time of the first extradition proceedings in 2014. He could not credibly have disputed it, given Senior District Judge Riddle's finding in his judgment of 10 October 2014. The Senior District Judge said this:

“Although Mr Pink tells me that he came to this country to work, it is an inescapable conclusion that he knew that he was to serve a prison sentence and failed to surrender himself for that purpose. He did not provide the Polish authorities with his UK address, even in the appeal proceedings. He was living with a different identity, and his PNC details show an alias name and yet another date of birth. It is clear from his comments to the officer on his arrest and from his evidence to me that he was very well aware of the outstanding sentence and the expectation that he would serve it.”

- 42 This is what the judicial authority was referring to when it submitted before District Judge Mallon that “[o]n his own evidence, the RP is a fugitive, by virtue of his being aware of the proceedings, having instructed lawyers to act on his behalf”: see [32(iv)] of her judgment. Although it is true that the Polish authorities could, in 2015, have sought the UK's consent to deal with him for the offences the subject of the present warrant, the fact that they did not does not somehow expunge the appellant's historic fugitive status.
- 43 It is important to focus on exactly what District Judge Mallon said on this point. At [36] of her judgment, she referred to “the public interest in this country complying with its treaty obligations and especially not being a safe haven for those fleeing justice”. She had referred to the same consideration at [34(e)]. For my part, I do not consider that these references by themselves disclose any error on the part of the judge. If extradition were refused, the consequence would be that the appellant would have avoided serving a substantial part of his sentence by coming to the UK. In that respect he would have achieved a benefit by fleeing from justice.
- 44 The judge did not put this point in its proper context by referring to what had happened in and after 2015. It would have been better to do so. But the question for me is whether, had she done so, she would have been required to order the appellant's discharge: s. 27(3) of the 2003 Act. I do not consider that she would.
- 45 As Mr Hawkes submitted, the judge did not say whether she accepted the appellant's evidence that, on his release from prison in Poland in 2015, he had been given a long document in which he had been given permission to leave the country. I am prepared to assume for present purposes that this evidence was true. But there is no inconsistency between this and the judge's finding at [23] of her judgment that “[h]e knew when he returned to the UK in 2015 that there was still a sentence outstanding for which a request could be made”.
- 46 Even on the appellant's case, the evidence about what happened in 2015 amounts to no more than this: the Polish authorities missed an opportunity (i) to invite the appellant to waive his specialty rights; or (ii) to seek the UK's consent under Article 27(3) of the Framework Decision to deal with the appellant in relation to these offences. This has two consequences: first, although the appellant had been a fugitive, he was no longer one after

2015; second, there was a period of 2 ½ years' delay between the appellant's release from detention in the autumn of 2015 and the issue of the present warrant on 28 March 2018.

- 47 These facts were both relevant to the Article 8 balancing exercise and both should have been taken into account and considered in the judgment. But, even if they had been, the result would in my judgment have been the same. I have reached that conclusion for five reasons.
- 48 First, the private and family life interests relied upon by the appellant here were considerably less powerful than in many other cases. The appellant's son was now in Poland. Whilst there would be some emotional impact on him if the appellant were imprisoned, this was not a case where a joint or sole carer would be removed from a family setting. The contact between father and son currently takes place by telephone. Such contact could continue if the appellant were imprisoned in Poland, although its frequency might be reduced.
- 49 Second, I am prepared to assume, without deciding, that the financial impact of extradition on the appellant's son and nephew are in principle relevant to the Article 8 balancing exercise. Even on that assumption, the judge did not accept the appellant's own evidence about his financial resources. She declined to find that the son nor the nephew were financially dependent on him (see at [19]) and said that the appellant's ability to afford an expensive holiday suggested that he and/or his partner had access to more money than they had said: see at [22]. Mr Hawkes did not say that these findings were not open to the judge. In those circumstances, the financial effects on the son and nephew cannot carry much weight.
- 50 Third, there was no evidence that the financial effect on the appellant's current partner would be severe. As the judge said at [20], she was in a stable long-term job and had previously lived with her sister. There was nothing to suggest that she would have to return to Poland. I doubt whether it could be relevant to consider under the rubric of Article 8 the financial effects of extradition on others who are not family members, but I do not have to decide the question whether such effects are categorically irrelevant. This is because, even on the appellant's own evidence, the financial effects on the subcontractors used by his business would be minimal, since they would be able to find other work.
- 51 Fourth, it is true that, during the period of delay by the Polish authorities between the autumn of 2015 and March 2018, the appellant entered into his current relationship and built up his business. But he did so knowing that he had an outstanding sentence to serve and that he might be subject to further proceedings in respect of that sentence. He could at any stage have sought to regularise his position in Poland by applying for its discretionary remission.
- 52 Fifth, I accept on the basis of the appellant's latest evidence that there is a prospect that, if extradited, the appellant may not be readmitted to the UK after completing his sentence; and that this would put his current partner (who has settled status) in the difficult position of having to leave if she wishes to continue the relationship. But I do not think that this can properly be regarded as a consequence of extradition. It is, rather, a consequence of (i) the appellant's criminal convictions in Poland and (ii) the change to the immigration rules as a result of Brexit. Mr Hawkes said that the appellant could expect to acquire settled status if discharged from the existing warrant by this court. He was not, however, able to point to any policy document indicating that the Home Office's attitude to

applications by persons with criminal convictions in EU Member States would be affected by whether the applicant had been extradited in respect of those offences. In the absence of any such document, I do not think it would be safe to make the assumption that extradition would make a difference to a person such as the appellant, who has been in the UK for a continuous period of more than 5 years since his release from prison in Poland in 2015.

- 53 Whilst I agree with Mr Hawkes that the caution for shoplifting in 2007 should have been treated as irrelevant, it is plain that it did not affect the judge's conclusion to any great extent. In any event, performing the Article 8 balancing exercise afresh myself on the basis that the appellant has been of good character while in the UK, the private and family life interests advanced in this case are not such as to outweigh the public interest in extradition in this conviction warrant case, despite the very considerable period that has elapsed since the offences were committed.
- 54 Ground 1 accordingly fails.

### **Grounds 2 and 3**

- 55 Mr Hawkes submitted that the judge was wrong to find that ss. 2 and 10 were satisfied *on the basis of the materials before her*. The argument was that these materials contained lacunae which meant that the warrant was defective. Mr Hawkes accepted in terms, however, that, if the fresh evidence is admitted, it "largely" cures the defects relied upon. Accordingly, he did not submit that he could succeed on grounds 2 or 3 if the judicial authority's fresh evidence were admitted.
- 56 In those circumstances, having admitted the judicial authority's fresh evidence, I need say no more about grounds 2 or 3. However, having considered the fresh evidence carefully myself, I am entirely satisfied that it addresses the arguments advanced under grounds 2 and 3 and confirms the correctness of the judge's conclusion that neither s. 2 nor s. 10 bars the appellant's extradition in this case.

### **Conclusion**

- 57 For these reasons, the appeal will be dismissed save in relation to ground 4. As I have indicated, proceedings on that ground will be stayed pending the decision of this Court in *Woźniak* and *Chłabicz*.