Neutral Citation Number: [2023] EWHC 691 (Admin)

Case No: CO/365/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 28th March 2023

Before:
MR JUSTICE FORDHAM

- -

Between:

MAUREEN ADEBAYO	**Appellant**
- and -	
CENTRAL INVESTIGTION COURT NO 3 MADRID (SPAIN)	**Respondent**

- -
- -

Alex Tinsley (instructed by Raj Law Solicitors) for the **Appellant**
David Ball (instructed by CPS) for the **Respondent**

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Hearing date: 16.3.23

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. This is an extradition case at whose heart is the difference between (a) a non-particularised allegation and (b) a non-allegation. It comes before me as an appeal against the decision of District Judge Zani ("the Judge") who on 27 January 2022 ordered that the Appellant (aged 54) be extradited to Spain. He did so, after an oral hearing on 14 December 2021, for the reasons set out in a 22-page judgment ("the Judgment"). Extradition is sought in conjunction with an accusation European Arrest Warrant ("the EAW") issued on 5 April 2019 and certified on 29 November 2020. The Appellant was arrested on 29 November 2020 and the old law (EU Framework Decision) applies. The EAW is accompanied by Form A - Supplementary Information ("SI") and has been augmented by Further Information ("FI") dated 8 January 2021 ("FI#1") and 30 March 2021 ("FI#2"). It is common ground that the SI, FI#1 and FI#2 are "part and parcel" of the EAW. I can proceed straight to the three issues.

The Section 2 Issue (Particulars)

2. Section 2(4)(c) of the Extradition Act 2003 prescribes, as required information for a statutorily-compliant accusation EAW:

> ***particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which [they are] alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence.***

In FK v Germany [2017] EWHC 2160 (Admin) the Court said (at §54):

> ***About the particularisation required by these provisions, the following propositions, regularly repeated in the authorities … are uncontroversial. There is a particularly high level of mutual trust, confidence and respect between states which are parties to the Framework Decision. The object of the EAW process is to remove the complexity and potential for delay in extradition between such states. There is consequently no requirement for full and exhaustive particularisation, the appropriate level of particularisation being dependent upon the circumstances of the specific case. In assessing whether a description is adequate, the EAW should be considered as a whole. However, sufficient circumstances must be set out to enable the requested person and the requested state (i) to identify the offence with which the requested person is charged; (ii) to understand, with a reasonable certainty, the substance of the allegations against the requested person and in particular when and where the offence is said to have been committed, and what he is said to have done; (iii) to perform a transposition exercise, when dual criminality is in issue; and (iv) to determine whether any compulsory or optional barriers to extradition apply. Where a request for extradition is made in respect of more than one offence, each offence must be adequately particularised.***

3. The EAW identifies three alleged offences and the applicable provisions of the Nigerian Criminal Code. The following appears in EAW box [e], under the heading "Nature and legal classification of the offence(s) and the applicable statutory provision/code" (numbering in square brackets is added for ease of cross-referencing):

> ***[i] Continual swindling, set forth in Article 74, 249 and 250-1.5 of the Criminal Code, [ii] receiving stolen goods and/or money laundering, set forth in Articles 298 and 301 of the Criminal Code, and [iii] participation in a criminal organisation, set forth in Article 570 bis of the Criminal Code.***

4. EAW Box [e] says this, under the heading "Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person" (numbering in square brackets added):

> ***Investigations conducted so far provide rational indications of criminal activity, through which it is possible to establish the following facts:***
>
> ***[1] The current investigation is being carried out on a criminal organisation dedicated to swindling and money laundering.***
>
> ***[2] They are criminal activities that adopt one of the deceptions used in the so called "Nigerian letters" criminal modality: fraudulent offering of transactions for an apparent money gain.***
>
> ***[3] The investigated Maureen MOWUNMI ADEBAYO is engaged in the criminal organisation, playing the role of a "mule", which consists of knowingly providing the organisation with bank accounts, in her own name or in the name of legal entities of which she is the administrator, so as to receive the fraudulent transfers made by the victims, and then making further transfers or withdrawals of cash; in this way, the profits made from the criminal activity committed are channelled, facilitating the circulation of the fraudulent economic benefit and its laundering, with full knowledge of the illicit origin of the funds.***
>
> ***[4] The charged person, Maureen MOWUNMI ADEBAYO, following the methodology used by this organisation, after receiving a transfer from Klaus Dieter MULLER, transfers the money to someone called Gladys, with the aim of moving the money between different accounts, generally belonging to people from her country, thus making it more difficult its tracking. These people, called mules, sometimes hold a network of bank accounts, either in their own name or in the name of various companies, as in the case of Maureen MOWUNMI ADEBAYO, who is the sole administrator of ALKABIR GLOBAL SERVICES and of the company M.A.M Holding Incorporations S.L.***
>
> ***[5] Documents received from the banks with the accounts held by legal entities or companies related to this charged person show transactions for which she uses three accounts in two banks.***
>
> ***[6] In short, international transfers and revenues received by Maureen MOWUNMI ADEBAYO from illicit origin amount to, at least, €30,915.33.***

5. The SI says, under "Description of the Circumstances":

> ***The present investigation deals with deception through the use of 'Nigerian letters'. The defendant Maureen MOWUNMI ADEBAYO is related to the Criminal organization where she provided bank accounts for the organization. This way she received fraudulent transfers from the victims. Each time she received a money remittance, she would make another transfer in order to make it difficult to follow the money. At the end the income received with fraudulent origin, adds up to at least a total of 30.915,33 euros.***

6. FI#1 says (again, with numbers in square brackets added):

> ***[1] Maureen Mowunmi ADEBAYO, with NIE Y-1697661-E, born on 11/08/1968 in Lagos (Nigeria) sole administrator of the company that owns the described Cajastur account, it is about which, following the methodology used by this After receiving the transfer from Klaus Dieter MÜLLER, the organization makes a transfer to Gladys JOHNSON with NIE X-3286801-D, born on 07/15/1974 in Delta (Nigeria), with the aim of moving the money between different accounts , generally of compatriots, and thus make it difficult to follow.***

> ***[2] The banking operations described are consistent with the modus operandi that the organization has been using to receive money from alleged victims of fraud, through social engineering. In this way, those investigated would make use of psychological techniques and social skills used in a conscious and premeditated way, to manipulate and produce deception in order to get potential victims to carry out acts to their own detriment, consisting of making bank transfers.***
>
> ***[3] The involvement of the affiliate stems from the relevant effects intervened against the defendant SAMSON EBERE, alias "Bigi" with NIE X-2913442-D. Among them are documents related to the Cajastur entity in relation to banking operations of the account 20480323173404001679 in the name of the company ALKABIR GLOBAL SERVICES S.L. as of 07/23/2014. The transactions include the receipt of a transfer dated 07/22/14 for the amount of €12,000 from the sender of Klaus Dieter Müller, followed by the sending on the same day of another transfer for the amount of €10,000 to Gladys Johnson.***
>
> ***[4] This people. called mules, are sometimes holders of a network of bank accounts, either in their name or in the name of various companies, as is the case of the so-called Maureen Mowunmi ADEBAYO, which appears as the sole administrator of the aforementioned ALKABIR GLOBAL SERV1CES and of the company MAM HOLDING INCORPORATIONS SL, establishing a police record for this person for reasons such as Usurpation of Civil Status, Fraud, Money Laundering, Documentary Falsehood and Illicit Association.***
>
> ***[5] TRANSFER NUMBER 01 On 08/19/2013, MAUREEN MOWUNMI ADEBAYO receives in this account by international transfer, the amount of 2,884.33 euros, from SWIFT BOFAUS3NXXX, from the account / 0000149342257, belonging to the entity BANK OF AMERICA, NA. Located in (NEW YORK, NY) with MARY HADDEN METCALF as payer, being the concept "transfer: Foreign Currency".***
>
> ***[6] TRANSFER NUMBER 02 On 09/13/2013, MAUREEN MOWUNMI ADEBAYO receives in this account by international transfer, the amount of 3,031.00 euros, from SWIFT DEUTDEFFXXX, from the account / 1000151545661, belonging to the entity DEUTSCHE BANK AG. Located in GERMANY stating as payer KATHLEEN M MILLER, the concept being "transf: IN YOUR FAVOR".***
>
> ***[7] TRANSFER NUMBER 03 On 09/25/2013, MAUREEN MOWUNMI ADEBAYO receives in this account by international transfer, the amount of 5,000.00 euros, from SWIFT DEUTDEFFXXX, from the account / DE826007002409, belonging to the entity DEUTSCHE BANK PRIVAT located in GERMANY stating as payer RUDNER, WOLFGANG, the concept being "transf: IN YOUR FAVOR".***

7. I turn to the Appellant's arguments on this issue. So far as the first offence ("continuous swindling") is concerned, Mr Tinsley submits in essence as follows:

'What':

i) FI#1 paragraph [2] (§6 above) stands alone in providing the relevant description of this "fraud" offence, identifying the all-important "conduct which is said to constitute the offence" (Biri v Hungary [2018] EWHC 50 (Admin) [2018] 4 WLR 50 §32). This offence is clearly distinct from the second offence (receiving or money laundering). The fraud is the conduct of 'tricking people into making a bank transfer'. It is what the Respondent's Notice describes as the Appellant's "involvement … which goes further … than her involvement as a mule". Paragraph [2] of FI#1 puts it as follows:

> ***… the modus operandi that the organization has been using to receive money from alleged victims of fraud, through social engineering… [where] those investigated***

> ***would make use of psychological techniques and social skills used in a conscious and premeditated way, to manipulate and produce deception in order to get potential victims to carry out acts to their own detriment, consisting of making bank transfers.***

It is true that different alleged criminal offences may overlap and be "closely interconnected" (as in Tappin v USA [2012] EWHC 22 (Admin) at §§39, 46). For example, as would be the case where the same conduct is described alternatively as fraud, theft or obtaining by deception; or where the same conduct is described alternatively as receiving stolen property and money laundering. But here there is distinct conduct constituting the offence of fraud but wholly lacking in particulars far as the appellant's alleged conduct is concerned.

ii) So, that is the fraud. But there are no particulars at all of any such incident in which the Appellant is said to have acted in this way: to 'trick any person into making a bank transfer'. Transfers are described in September 2013 and July 2014 (EAW box [e] paragraph [4]; FI#1 paragraphs [5]-[7]). But, in relation to those transfers, no participation in the fraud (tricking the individual into making the transfer) is attributed to the Appellant. The expansive outlines are vague and generic making specialty protection ineffective and illusory. There are "insufficient particulars", of a nature as would leave the Appellant – post-surrender – in a position where she would be "unable to assert … her entitlement to Specialty Protection" (M & B v Italy [2018] EWHC 1808 (Admin) [2018] ACD 98 §47), a protection which operates by asking "whether there is a sufficient correspondence" between the EAW offence and one identified post-surrender (Leymann Case C-388-08 1.12.08 §59).

iii) There are further problems. Even if the Appellant's alleged participation did not involve an act by her of 'tricking a person into making a bank transfer', there still need to be particulars describing those acts by whoever did them. The Appellant needs to be told in what she is said to have been 'participating'. There is no specific description of any incident. There is no description of any specific representation made, by whom, to whom, when or with what purpose. Further, no chain of knowledge and therefore secondary participation is described. Then there is this problem. The EAW refers to a possible 6 year sentence. But that would involve a swindled amount exceeding €50,000 or a "large number of people" swindled (Article 250 of the Criminal Code). But EAW box [e] paragraph [4] and FI#1 paragraphs [5]-[7] identify only four specific victims (in date sequence: Metcalf, Miller, Rudner and Muller) and EAW box [e] paragraph [6] and the SI identify only an aggregate amount of "at least €30,915.33".

'When':

iv) As to when the alleged fraud offending took place, section 2(4)(c) requires "particulars of … the time at which [the Appellant] is alleged to have committed the offence", "sufficient … to enable [her] to understand with a reasonable certainty when the offence is said to have been committed" (FK at §54). That, in principle, requires a specified date or specified date range.

'Where':

v) As to where the alleged offending took place, section 2(4)(c) requires "particulars of … the place at which [the Appellant] is alleged to have committed the offence", "sufficient… to enable [her] to understand with a reasonable degree of certainty… where the offence is said to have been committed" (FK §54). Even leaving aside any question of whether there was any element which took place in the territory of Spain, and recognising that the transferred funds of three named victims (Metcalf, Miller and Rudner) are described as having been in the US and Germany, clarity of particulars is needed as to where the Appellant's alleged offending is said to have taken place.

vi) Whether any part of the offending was in Spain has a particular relevance in the context of being able to "perform a transposition exercise, when dual criminality is in issue" (FK §54). As the Respondent accepted before the Judge and in the Respondent's Notice, viewing this as the "extraterritorial" offence of "fraud" (which 'tricking individuals to make bank transfers' must be), dual criminality would need some of the relevant conduct to have taken place in Spain (cf. FK §70). It follows that it is essential that the particulars spell out the conduct said to have taken place in Spain.

vii) However, as to whether any conduct took place in Spain, nothing in the EAW/SI/FI describes conduct in Spain. It is impossible to "infer" such conduct from the EAW/SI/FI, and wrong in principle to seek to do so from "external" evidence. It is true that in Mlynarik v Czech Republic [2017] EWHC 3312 (Admin) [2018] ACD 16 at §17 and Hughes v Sweden [2020] EWHC 2707 (Admin) at §8, Courts were prepared to derive 'gap-filling' assistance from a requested person's own evidence or conduct. Those cases are distinguishable (being about dual criminality). They are also wrongly decided on this point. That is because dual criminality engages section 66(1A) of the 2003 Act with its deliberate focus on the conduct specified in the EAW, codifying the principle in Shlesinger v USA [2013] EWHC 2671 (Admin) at §12. The Judge was therefore wrong to accept arguments relying on "Cajastur" and the "Cajastur account" (FI#1 paragraphs [1], [3]) as describing a Spanish bank and Spanish bank account, derived from extraneous open source material. The Judge was also wrong to accept an argument relying on the Appellant's own evidence that she was in Spain at the material times, and an evidenced Spanish conviction for a December 2015 offence (cf. Bober v Poland [2016] EWHC 1409 (Admin) §34). The Respondent is wrong on this appeal now to rely on "Cajastur" as a Spanish sounding name (cf. Bober §33). As to the EAW/SI/FI, no sound inference can be derived from the fact (recorded in FI#2) that the Spanish Supreme Court in February 2017 decided that the Spanish courts have criminal jurisdiction (cf. Bober §32); or from the fact that there was a letter of request from the German authorities specifically inviting the Spanish to carry out an investigation. The Judge was wrong to accept that the allegation against the Appellant involves alleged receipt of transferred monies into Spanish bank accounts operated or controlled by her; still less to the criminal standard.

8. So far as concerns the second alleged offence ("receiving stolen goods and/or money laundering"), Mr Tinsley submits in essence as follows. First, here the conduct

constituting this alleged offence is the knowing receipt into bank accounts of transferred funds. There are the four transactions identified: 19 August 2013 (Metcalf), 13 September 2013 (Miller), 25 September 2013 (Rudner) and 22 July 2014 (Muller). The originating location of the funds for the three transactions in 2013 is specified as the US and Germany; but no originating account is described for the Müller transaction in July 2014. It is true that – unlike "fraud" – no element of conduct in Spain would be needed for the purposes of dual criminality, because "money laundering" is an extra-territorial offence in the UK (R v Rogers [2014] EWCA Crim 1680 [2015] 1 WLR 1017). There is, nevertheless, a freestanding insufficiency of particularisation in failing to specify 'where' the funds were allegedly received (and no inference can be drawn, for reasons already summarised). There is in any event no clarity about what is said to be wrong with any of these transactions. Unlike the July 2014 transfer no outward transaction is identified for any of the three 2013 transfers. There are evidently other unspecified transactions and it is not known or explained when they took place, whether they relate to the companies Alkabir or MAM, or whether they relate to the "Cajastur account". The four specified transfers together amount to €22,875.33, whereas the EAW refers to "at least" €30,915.33. There are two problems with that. One is that there is a missing €8,000. The other is that the phrase "at least" reflects a lack of particularity and a material uncertainty. Just as with the first alleged offence, there is an insufficiency as to 'when', in giving specified dates or a specified date range.

9. So far as concerns the third alleged offence ("participation in a criminal organisation"), Mr Tinsley accepts that no distinct and freestanding section 2 particularisation issue arises. There is, he argues, a failure of compliance with the legally required level of particularisation. But, given what is said about a criminal organisation, he accepts that the same conduct as is relied on for the first and second alleged offences can and will in this case be taken as the conduct constituting the offence. Any deficiencies in particularisation that arise are parasitic upon having established the shortcomings in relation to the first and second alleged offences.

10. I cannot accept these submissions. In my judgment the Judge was not wrong in identifying the absence of any contravention of section 2(4)(c). My reasons, accepting submissions made by Mr Ball, are as follows. I can start, as the Judge did, with the law. The Judge began this issue with a pithy encapsulation:

> ***The High Court has repeatedly stated that, in effect, the requested person merely needs to be made aware of what it is that he is said to have done wrong and what crime(s) he is to be tried for in the event that extradition were to be ordered.***

The Judge also referenced section 206 and the need to be satisfied that the required particulars are made out to the criminal standard. He made reference to a number of authorities including judicial observations about: the importance of identifying one or more "episodes of conduct" constituting each of the foreign offences (Biri §32); and the importance of particulars being sufficient to enable an accused person to be able adequately to secure the protection of the specialty rule, post-surrender (citing Dhar §63). None of the Judge's discussion of any of this has been criticised by Mr Tinsley.

11. Mr Tinsley's principal arguments involve as a premise that there is a material distinction between the "conduct" constituting the first alleged offence (swindling) and the "conduct" constituting the second alleged offence (money laundering).

However, as Mr Tinsley accepted, conduct constituting different alleged offences may be "closely interconnected" and the same conduct may, in principle, be relied on by a requesting state as constituting each of two listed offences. A 'working illustration' case is Tappin where there were three offences (§39): conspiracy to export Hawk missile batteries; attempting and aiding and abetting the attempt to export the batteries; and conspiring in attempting to pay for the batteries. As the Court explained (§44) the conduct regarding those three counts "did not have to translate into three reciprocal offences in English law'; and this was the context for describing "the behaviour behind the three counts" as concerning "the same criminal enterprise" as to which "as a whole" the conduct was "closely interconnected" (§46). This is linked to the observation that it is not necessary that the relevant "courses of conduct… be broken down and attached to the various specified … legal offences" (Islam v Cyprus [2009] EWHC 2786 (Admin) §14). The essential point is that the focus is not on "the ingredients of the foreign offences" but rather "on the conduct which is said to constitute the offence" (Biri §§31-32). The Judge plainly had that well in mind, citing that passage.

12. Mr Tinsley starts from the idea that FI#2 paragraph [2] description of 'trickery' (manipulation and deception to get potential victims to carry out bank transfers to their detriment) constitutes the unparticularised allegation against the Appellant, of swindling. He is quite right that nowhere is there any particularised allegation against the Appellant that she herself engaged in such trickery: an act by her of manipulation or an act of deception to get a victim to carry out a bank transfer. Mr Tinsley says that is the non-particularised allegation. But in my judgment the answer is simpler. This is a non-allegation. This is not the relevant course of conduct for the first alleged offence over any of the alleged offences.

i) The Judge's (accurate and uncriticised) summary of the EAW at the beginning of his judgment was this:

> ***The details of the criminal conduct in the EAW can be summarised as follows: [a]The Spanish conducted an investigation into a criminal organisation dedicated to swindling and money laundering by a "Nigerian Letters" method of fraudulently offering transactions for monetary gain; [b] Ms Adebayo acted as a "mule" for the criminal organisation (and thereby was engaged with it). [c] She knowingly provided the criminal organisation with bank details of three accounts held at two banks comprising personal account(s) and two accounts held by business entities (Alkabir Global Services and MAM Holding Incorporations S.L) she was associated with; [d] These accounts received fraudulent transfers made by victims; [e] Thereafter, she then made further transfers or withdrew cash with full knowledge or the illicit origin of the frauds. [f] After receiving a transfer from Klaus Dieter Müller, she transferred money to another person (named 'Gladys') with the aim of moving it between accounts belonging to people from Nigeria and making it more difficult to trace. [g] The RPs received 30,915.33 Euros of money of illicit origin.***

ii) The Judge's (accurate and uncriticised) summary of FI#1 included this description of FI#1 paragraph [2], being that:

> ***The criminal organisation would use 'psychological techniques and social skills used in a conscious and premeditated way, to manipulate and produce deception in order to get potential victims to carry out acts to their own detriment, consisting of making bank transfers'.***

Mr Tinsley's argument treats this paragraph, which the Judge was right in characterising as the description of what "the criminal organisation" was doing, as constituting an unparticularised alleged course of conduct on the part of the Appellant. But it is not.

iii) The submission which the Judge carefully recorded in the Judgment, and which he accepted in the context of the description of the "fraud", was as follows:

> ***[T]he description of the fraud <u>does</u> relate to MA. She is said to be involved in receiving the proceeds of the fraud directly from the victims in relation to at least four offences. Furthermore, this receipt was said to have been in the full knowledge of the deceitful way in which the money was obtained and it is submitted that it is not necessary to point out that the receipt of the monies is a crucial element of the successful completion of the fraud. Her involvement on the totality of the information is said to have gone further than her involvement as a mule.***

iv) If I posit the Appellant straightforwardly asking:

> ***What courses of conduct are alleged against me?***

The answer is equally straightforward.

> ***You knowingly made bank accounts (of yours or under your control) available to an organised group, for them to use in fraudulently inducing bank transfers for bogus transactions. You then knowingly received moneys into those bank accounts – including transfers direct from victims – knowing the 'illicit origination' of those bank transfers. You also knowingly received transfers and made transfers, in and out of those accounts, to dissipate and distance amounts received from bank transfers with this illicit origination'.***

I have used the phrase "illicit origination" deliberately. The EAW/FI speaks of known "illicit origin" (EAW box [e] paragraphs [3] and [6]). But, plainly, that cannot be a description of the victims' bank accounts, as the 'source' <u>from which</u> the transfers are said to have originated. The known "illicit origin" is <u>how</u> the transfers originated. That is, that the organised group was using the Appellant's controlled bank accounts as a destination – including a direct destination – for bank transfers 'made by victims to their own detriment', as a result of 'the conscious and premeditated manipulation and deception' by members of 'the criminal organisation'. The Appellant did not undertake that premeditated manipulation and deception. But she knew that premeditated manipulation and deception was the 'illicit origination' of the transfers.

v) Mr Tinsley's arguments seize on the description of the Appellant being alleged to have had an involvement "further" than as a mule. But that does not mean she is being alleged to have been a perpetrator of the 'trickery': the 'conscious and premeditated manipulation producing the deception to get a victim to carry out a detrimental bank transfer'. This is clear from the Judge's summary of the submission which he accepted (§12iii above). It is also clear from §§44a-b of the Respondent's Notice on this appeal. To set the scene, §11 of the Perfected Grounds of Appeal, like Mr Tinsley's oral argument, had focused on paragraph [2] of FI#1. The response (Respondent's Notice §§44a-b) said this:

> ***The description of the fraud goes beyond the extract given the Applicant at paragraph 11 of the Perfected Grounds (albeit that this description alone does describe a clear fraud). The totality of the information in the EAW and FI should be considered, for example describing the conduct as 'carding', the description of the underlying legislation and the Framework List being marked for 'swindling'. Furthermore, there are four instances of specific transfers directly from the victims of the fraud into her account which evidently constitute a crucial part of the fraud, being the immediate fruits thereof. The description of the fraud does relate to the Applicant and her role within this is clearly specified. She is clearly involved in receiving the proceeds of the fraud directly from the victims on the four specific occasions. Furthermore, this receipt was in the full knowledge of the deceitful way in which the money was allegedly obtained. It is otiose to point out that the receipt of the monies is a crucial element of the successful completion of the fraud. Her involvement on the totality of the information goes further, therefore, than her involvement as a mule.***

13. There is no difficulty here in the Appellant being protected by specialty rules following any surrender. The principle in Dhar §68 is directly engaged. To paraphrase it: the particulars of the conduct alleged are sufficiently clear and unambiguous to enable the Appellant to invoke the principle of specialty if on her surrender she, for example, finds herself facing allegations and the requested state as regards her degree of participation in the alleged offence, for example having the master role in the conspiracy – or, I interpose, the role of using manipulation and deception – would go materially beyond that which has been alleged in the EAW. Mr Ball accepts that that specialty protection, as described in Dhar §68, would arise in that situation. I agree.

14. On the premise that the "swindling" course of conduct is as the Judge described it, no problem arises of a lack of particularity relating to whether it is alleged that part of the conduct took place in Spain, for the purposes of dual criminality. Mr Tinsley, in his reply, accepted that this would be the consequence, on that premise. Given that the focus is on the course of conduct which constitutes the offence, dual criminality poses the question whether that conduct would constitute a crime in the UK notwithstanding the absence of an element of conduct here. The answer is that it would be. That is because the conduct could here be charged and prosecuted as money laundering.

15. But in any event, and even if that is wrong, it was in my judgment plainly open to the Judge to infer that the alleged receipt into bank accounts all controlled by the Appellant is being said to be receipt into bank accounts in Spain. The Judge cited Alexander v France [2017] EWHC 1392 (Admin) for the proposition that "extraneous" information can be taken into account, including Further Information, insofar as it fills a "lacuna" as opposed to seeking to correct a "wholesale failure". The Judge also cited Mlynarik in support of the proposition that the court is entitled to take into account evidence of the requested person, in determining whether the section 2 particularisation is sufficiently made out. I find myself unpersuaded by Mr Tinsley that any of this was wrong.

    i) In FI#1 (part and parcel of EAW) there is reference to "Cajastur" and the "Cajastur account". The point made by the Judge goes very much further than this being a "Spanish sounding name". After all, so is Santander, as Mr Tinsley points out. The point is that "Cajastur" is a Spanish bank (Google it). The phrase "Cajastur account" is describing an account in a Spanish bank. That is what those words mean in the EAW. I do not think that is filling a lacuna. It is an interpretation of the words. It is an interpretation, using a

sensible aid to interpretation, to understand what it is it is being said in the EAW. It is not "reading in". Suppose a UK EAW accused someone of a burglary at "the Shard". A Spanish extradition judge might need no assistance to understand that locational significance. But if help were needed, it would be in explaining and understanding what the words mean. If I am wrong, and this is gap-filling, I do not see it as offending against the meaning or purpose of any provision or principle. Added to that is the feature described in FI#2 that the Spanish Supreme Court has made a decision that the conduct engages the criminal jurisdiction of the Spanish criminal courts, a point convincingly relied on in Bober §32, and one which is not based on any extraneous material.

ii) In any event, provided always that all relevant purposes of section 2 particularisation are satisfied and secured, I cannot see why points arising from the requested person's own evidenced lived experience should be disregarded. At the heart of the function of section 2 particularisation is the idea of the requested person being in a sufficiently informed position to know the substance of the allegations being made against them. Their own evidenced position could be relevant to whether they are unable to understand what is being said. I have not been persuaded that Mlynarik and Hughes are wrongly decided or distinguishable because they are concerned with section 10. I cannot accept the suggestion that the principle codified in section 66(1A) was overlooked, not least because that principle derives from Shlesinger at §12, which featured in Mlynarik at §23. I see no error of approach in the Judge taking into account that the Appellant, on the evidence, was resident in Spain at the times of the alleged receipt of moneys into bank accounts which she controlled.

16. The EAW and FI go into considerable detail about four transfers between 19 August 2013 and 22 July 2014. That provides dates and a date range. There is a clear description of accounts with banks and of companies of which the Appellant was sole administrator. Amounts are given for direct transfers from victims to accounts all controlled by the Appellant. An onward transfer on the same day as the fourth victim's transfer (22.7.14) is specified, as to amount and destination. The Judge was satisfied that there is sufficient clarity as regards the 'what', the 'when' and the 'where' for the conduct constituting the three alleged offences. In my judgment, that conclusion is unimpeachable. Indeed I would arrive at the same conclusion even if conducting the entire valuation of fresh. Once the premise of the principal arguments is critically examined, it falls away. The remaining points all fail when it is remembered. The requirement of sufficient particularisation involves realism and a balance. Cases have said: that particularisation is to be a approached on the basis of the high level of mutual trust confidence and respect; that the validity of the EAW is to be examined in the round without undue technicality; that the object of the process is to remove complexity and potential for delay in extradition; that there is no requirement for full and exhaustive particularisation; that great detail is unnecessary; that it is not necessary or appropriate to subject an EAW or Further Information to the requirements of specificity required of counts in an indictment; that the object is that the conduct be expressed concisely and simply; that the purpose is so that the requested person knows with reasonable certainty the substance of the allegations against them in particular when and where the offence is said to have been committed and what they are said to have done; that the requested person needs to know what

offence they are said to have committed and to have an idea of the nature and extent of the allegations against them in relation to that offence; that the requested person must have sufficient particulars to be able to raise extradition bars including the dual criminality transposition exercise; and that the requested person must have sufficient particularity to be able to invoke the principle of specialty post-surrender. That is how the requirement of particularisation works. It and its purposes are not infringed in the present case.

The Section 21A(1)(b) Issue (Statutory Proportionality)

17. Section 21A(1)-(5) of the 2003 Act provide as follows:

> ***21A Person not convicted: human rights and proportionality (1) If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person ("D")— (a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998; (b) whether the extradition would be disproportionate. (2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account. (3) These are the specified matters relating to proportionality— (a) the seriousness of the conduct alleged to constitute the extradition offence; (b) the likely penalty that would be imposed if D was found guilty of the extradition offence; (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D. (4) The judge must order D's discharge if the judge makes one or both of these decisions— (a) that the extradition would not be compatible with the Convention rights; (b) that the extradition would be disproportionate. (5) The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions— (a) that the extradition would be compatible with the Convention rights; (b) that the extradition would not be disproportionate…***

18. On this issue Mr Tinsley submits, in essence, as follows. The Court may, depending on its s.21A(2) evaluation of the s.21A(3) matters, conclude that extradition would be disproportionate on the basis that s.21A(3)(c) "less coercive measures" to ensure attendance are reasonably available to the requesting state in the circumstances: Miraszewski v Poland [2014] EWHC 4261 (Admin) [2015] 1 WLR 3929 at §31. FI#2 describes the Spanish authorities seeking to have "arrested" and "questioned" the Appellant, and describes Spanish criminal procedure to "summon" an accused "to receive a statement". The section 21B request for a video interview (26.4.21), and the parallel request made on her behalf in Spain (27.4.21) were proposing precisely what the Spanish authorities had sought: an interview of the Appellant. She is not a fugitive and thus a good candidate for less coercive measures. Bafflingly harsh reasons were given for the rejection of less coercive measures. The rejection – in a reasoned appeal decision (5.1.22) – say that "at the outset" the proposed interview "could be considered reasonable and perhaps even logical, taking into account the personal circumstances of [the Appellant]". But the decision then relies on the Appellant's reluctance to have come forward and made herself available and her refusal personally to attend a court in Spain. Given that she is not a fugitive, which the Respondent accepts, this amounts to holding against the Appellant that she has declined to consent to extradition. That is unfair and unreasonable. Indeed, the absence of a consent to extradition is precisely what is expected for any question of any measure "less coercive" than extradition. There is also a legally inapt reference in the appeal decision to Brexit, treating a domestic Spanish provision as inapplicable, by reason of the fact that the Trade and Cooperation Agreement governs these

extradition proceedings. It does not. All in all, the refusal is unreasonable. The extradition court – while acknowledging that the refusal decision belongs to the Respondent alone – can critically evaluate the reasons given, to inform the "appropriate" degree of weight to be given to the "possibility" of taking less coercive measures than extradition (Antochi v Germany [2020] EWHC 3092 (Admin) [2021] ACD 15 at §27). The Judge is not to be criticised for doing more in the Judgment than recording the fact of the refusal, since the reasoned appeal decision (5.1.22) post-dated the hearing before the Judge (14.12.21). But this Court has the reasoned appeal decision and has heard submissions on it. On a re-evaluation, the weighing of the Spanish authorities' unreasonable position on less coercive measures, alongside the other statutory considerations (s.21A(3)(a)(b)) namely seriousness and likely penalty on any conviction (prison not being inevitable), support the outcome that extradition is section 21A(1)(b) and (4)(d) "disproportionate". That should be this Court's conclusion.

19. I cannot accept these submissions. In my judgment, accepting the submissions of Mr Ball, the position is as follows. The starting point is that the decision on less coercive measures is one for the Spanish authorities, which this court must respect. Next, there has been a refusal which has been appealed and rejected on appeal in a fully reasoned decision taken by a Spanish appellate court. Next, it is not an attribution of blame or a mistaken implication of fugitivity that the Spanish judicial authority on appeal should consider it appropriate to have regard to 'where we are' in the context of an April 2019 EAW and November 2020 extradition arrest, and an April 2021 less coercive measures request. Next, the reasoning does not state that an earlier request would necessarily have been accepted, but only that it "could" have been considered "reasonable" and "logical". Critical evaluation for weighing does not necessitate a 'judicial review' for 'material error of law' of the reasoned decision of a Spanish appellate court, still less on a point not expressed as the sole and decisive answer. It is, in my judgment, impossible to characterise this refusal as patently unreasonable, given the Spanish authorities' broad prerogative, the nature of the case, and all the circumstances. Indeed, even if I take the position at its highest from the Appellant's point of view and give significant weight to the possibility that the Spanish authorities could have taken the requested course, that feature does not, in my judgment, in the circumstances of the present case begin to support a conclusion that extradition would infringe the test of statutory disproportionality, when regard is had to the other specified matters. So far as they are concerned, the Judge convincingly found: that the allegations are clearly serious, carrying as they do maximum punishments of 6 years, 6 years and 8 years imprisonment respectively; and that the nature of the criminal conduct means that there must be a serious possibility that a prison term of some length may be imposed in the event of conviction after return, having in mind that the Appellant has a previous criminal conviction in Spain. It is clear, in my judgment that the outcome on this issue was not wrong. Even were I to strip away all latitude on the part of the Judge as the front-line extradition judge, re-evaluating the entire picture afresh, I am fully satisfied that the outcome is the correct one.

The Article 8 Issue (Private and Family Life)

20. Turning finally to Article 8 ECHR, Mr Tinsley submitted in essence as follows. This is a case involving very harsh impacts of extradition, viewed in terms of the interference with private and family life. Highly relevant is the Appellant's family

living in Nigeria, and their family life: the Appellant's 96 year old mother; the Appellant's sister who cares for the mother, and the Appellant's daughter with two children aged nine and six. The Appellant regularly send money to Nigeria and there is putative fresh evidence which describes the ways in which those funds are a lifeline on which the family members depend. Added to this, one of the Appellant's two brothers in Nigeria died in February 2023 after a serious recent accident while working on a farm. That has removed the element of care and support which he was providing for the mother. The Judge commented on limitations in the evidence, but this Court now has updating evidence providing greater detail and explaining that the position has materially worsened. The Article 8 balancing exercise should be retaken. The fresh evidence should be admitted as being capable of being decisive when viewed alongside the other features of the case. To all of the family and private life considerations and impacts need to be added the availability, but harsh refusal, of less coercive measures. That is relevant because alternatives to extradition are recognised as a proper feature of an Article 8 extradition evaluation (see King v United Kingdom Application No. 9742/07 26.1.10 at §29). The Appellant is not a fugitive. The alleged offending is nearly 10 years old. She has been settled in the United Kingdom since December 2016, with no convictions here, and with secure employment and stable accommodation. The alleged offences would not inevitably leads to a custodial sentence on conviction. In all the circumstances of the case, the Article 8 outcome is the wrong one.

21. I am unable to accept these submissions. Everybody in this case has proceeded on the basis that impacts on family in Nigeria can engage Article 8, for the purposes of the proportionality of the interference with private and family life, in extraditing the UK-resident Appellant to Spain. So will I. In my judgment, agreeing with the submissions of Mr Ball, the position is as follows:

i) There was no error of law or approach in the Judge's Article 8 assessment. The familiar trilogy of authorities (Norris, HH and Celinski) were all identified. The Judge faithfully applied the Article 8 'balance-sheet' and 'balancing' exercise. The Judge had regard to the relevant features. That included the Appellant's settled position in the UK since December 2016 her employment and accommodation and her absence of UK convictions. It included taking full account of the fact that she is not a fugitive. The Judge had regard to the position of the daughter and granddaughters and the payments being sent to Nigeria. He had regard to the position of the mother. He also weighed in the balance the fact that it is not inevitable that there would be imprisonment on conviction. But having said all that, he explained that there was the strong public interest consideration in favour of extradition; the seriousness of the alleged offences; the previous conviction in Spain; the limited nature of the ties to the UK; the absence of any evidence from the Appellant's UK-based husband; and the position as to the expiry of her leave to remain in September 2022.

ii) So far as the payments to Nigeria were concerned, the Judge identified discrepancies in the evidence. Foremost among this was an affidavit from the daughter which clearly states amounts of regular monthly payments. The documentary evidence, including the putative fresh evidence before me, does not substantiate those claimed amounts. One of the problems with that is that it

gives rise to doubts about the veracity of what is being said in the evidence. There is clearly a real prospect of material exaggeration. The daughter's written statement – which was not accepted and on which she was not being cross-examined – was rightly approached with caution by the Judge. There was no evidence about the two brothers, also living in Nigeria. Looking at the putative fresh evidence before me, it now emphasises that the recently deceased brother was providing a material degree of care for the mother until the fatal farm accident in February 2023. The evidence that was before the Judge made no mention of the mother being cared for, to any extent, by that brother. His support has featured now in the evidence, to make a point about significant care no longer being available. That again raises obvious question marks about the veracity of the evidence as a whole. It also brings into sharp focus what the position of the other brother is on which there is still no evidence. Unlike the hearing before the judge with oral evidence from the Appellant and cross-examination, this Court on appeal is being asked to accept recent documents at face value. Circumspection is appropriate.

iii) Taking at their highest all the matters capable of weighing against extradition, and in combination, including the contention that the less coercive measure of an interview would be a viable next step alternative, I am unable to conclude that the outcome at which the Judge arrived on Article 8 was the wrong one. On the contrary, I am entirely satisfied that the Judge was correct. The alleged offences are serious matters. They can be expected, on a conviction, to lead to a significant period of custody. There are strong public interest considerations in favour of extradition, which decisively outweigh the features capable of weighing against it. The putative fresh evidence is incapable of being decisive and I will formally refuse permission to adduce it. This final ground of appeal therefore fails and with it the appeal as a whole.