



Neutral Citation Number: [2019] EWHC 1185 (Admin)

Case No: CO/1839/2018

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**In the matter of an Appeal under s.26 of the Extradition Act 2003**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10 May 2019

**Before :**

**THE HONOURABLE MR JUSTICE SUPPERSTONE**

**Between :**

**LYNDA THYER**

**Appellant**

**- and -**

**PUBLIC PROSECUTOR AT THE HIGH  
INSTANCE COURT OF PARIS, FRANCE**

**Respondent**

**Ben Cooper** (instructed by **EBR Attridge, Solicitors**) for the **Appellant**  
**Benjamin Seifert** (instructed by **CPS**) for the **Respondent**

Hearing dates: 12 & 28 March 2019

**Approved Judgment**

**Mr Justice Supperstone :**

**Introduction**

1. The Appellant appeals against the decision of District Judge Crane (“the DJ”) made on 4 May 2018 to order her extradition pursuant to a European Arrest Warrant (“EAW”) issued by the judicial authority, the Public Prosecutor of the High Instance Court of Paris on 9 March 2017 and certified by the National Crime Agency on 19 April 2017.
2. Box E of the EAW refers to nine offences alleged to have taken place between 1 June 2015 and 20 February 2017 in Cherbourg, Octeville, Digosville and Saint-Pierre l’Eglise. It seeks the Appellant’s extradition for offences concerning the manufacture and sale, through the internet, without proper marketing authorisation, of two products, “GcMAF” and “GOleic” (“the products”). These products, presented as medicine, were advertised as having “preventive or curative effects on human pathologies such as cancer, autism, AIDS, Lyme disease, herpes, multiple sclerosis, psoriasis, Alzheimer disease or Parkinson disease”.
3. The Appellant is jointly charged with her former partner, Mr David Noakes. He resided in the Channel Islands and had a network manufacturing, conditioning and selling the products which he did through various companies, including some located in the Netherlands, which processed the orders and collected payment. A site in France was used where conditioning, storage and shipping of the products was carried out. Over an 18-month period prior to the issue of the EAW more than 5,400 boxes of the products were sold from France to 50 different countries. They were declared as cosmetics to customs. The proceeds of sale have been estimated at between €2-9million. The EAW states that the Appellant received over €11million in her account from two named Dutch companies, Health Supplements and Duurzaam Gezond Production. [The further information dated 4 April 2018 confirmed that the amount put into the Appellant’s bank account was not €11million, but €11,411.05].
4. The details of the offences in summary are (1) swindles as a gang; (2) illegal exercise of the profession of pharmacist; (3) marketing or distribution without authorisation of products defined as medicine; (4) advertising products defined as medicine; (5) fraud over the nature and substantial qualities of a product; (6) fraudulent possession of products defined as medicine without previous marketing authorisation as a gang, facts considered as importation and exportation as smuggling; (7) concealed work by dissimulation of activity; (8) illegal operation of a pharmaceutical establishment; and (9) biomedical research without obtaining a favourable opinion from the Committee for the Protection of Persons and the authorisation of the competent administrative authority.
5. The framework list is ticked for swindle.
6. The maximum sentence for the offences is 10 years’ imprisonment.
7. Mr Noakes is the subject of an EAW relating to the same offences. However, he, together with others, but not the Appellant, has been charged with offences in the UK relating to the selling of the same products over a period prior to the French offences. On 27 November 2018 Mr Noakes was sentenced by HHJ Loraine-Smith at Southwark

Crown Court to a total of 15 months' imprisonment following his guilty plea in respect of those offences.

8. The Appellant applied for permission to appeal against the decision of the DJ on 8 grounds: (1) the EAW provided insufficient particulars of the alleged conduct pursuant to s.2 of the Extradition Act 2003 ("the Act"); (2) the DJ erred in holding that the Appellant's absence from France was the sole reason that there had been no decision to try her (s.12A of the Act); (3) the DJ wrongly rejected an argument that s.19B of the Act would be breached by the Appellant's extradition ("the forum ground"); (4) the DJ erred in holding that her extradition would not breach Article 3 ECHR; (5) the DJ erred in deciding that her extradition would not be oppressive (on the grounds of her mental and physical health) (s.25 of the Act); (6) the DJ erred in holding that the Appellant's extradition would not be disproportionate (s.21A of the Act); (7) the DJ erred in holding that her extradition would not breach Article 8 ECHR; and (8) the DJ erred in deciding that the Appellant's extradition would not be an abuse of process.
9. On 28 September 2018 Elisabeth Laing J granted permission to appeal on the Article 3 ground only; permission to appeal on all other grounds was refused.
10. In the event that the Appellant's appeal on Article 3 does not succeed she renews her application for permission to appeal on all the grounds in respect of which permission was refused (save for the forum ground which is not pursued).
11. On 28 November 2018 Dove J adjourned the hearing of the appeal after the Respondent had served evidence in accordance with the decision of the Divisional Court of 16 November 2018 in *Shumba and others v Public Prosecutor in Nanterre County Court, France* [2018] EWHC 1762 (Admin) on the Article 3 issue.
12. On 5 March 2019 Mr Ben Cooper, for the Appellant, served written submissions in support of an application to amend the grounds of appeal to submit that the EAW fails to satisfy the dual criminality test (s.10 of the Act).

### **The Article 3 appeal**

13. The DJ found that the Appellant had failed to show that there is a real risk that she will suffer inhuman or degrading treatment from French prison conditions (Decision, para 59).
14. In *Shumba* the Divisional Court (Singh LJ and Carr J) summarised the principles relating to Article 3 in the context of extradition:

"34. Article 3 can in principle apply where a Contracting State proposes to extradite a person to another state, whether or not that other state is itself a party to the ECHR. As it happens France is, like the United Kingdom, a party to the ECHR.

35. There must be substantial grounds for believing that, if extradited, the Appellant faces a real risk of being subjected to inhuman or degrading treatment.

36. Once such evidence has been adduced by the Appellant it is for the requesting state to dispel any doubts about it: see *Saadi v Italy* (2009) 49 EHRR 30, at paras 129 and 140.

37. There is a presumption that parties to the ECHR, such as France, are willing and able to fulfil their obligations, in the absence of, “clear, cogent and compelling” evidence to the contrary. However, that presumption can be rebutted where that evidence comes from an internationally recognised source or is specific to an individual.

38. There may also be a duty on the Court in this jurisdiction to request further information from the state concerned where this is necessary to dispel any doubts.

39. In the context of prison overcrowding, there will be a strong presumption of a breach of Article 3 if any of the following criteria are absent:

(1) a private sleeping place within a prison cell;

(2) at least 3m<sup>2</sup> of floor space per prisoner; and

(3) an overall surface area of the cell which is such as to allow the detainees to move freely between the furniture items.

40. Where a detainee is allocated between 3 and 4m<sup>2</sup> of personal space, a violation of Article 3 will be found if there are other aspects of inappropriate physical conditions: in particular, regard will be had to access to outdoor exercise; natural light or air; availability of ventilation; adequacy of room temperature; access to private toilet facilities; and compliance with basic sanitary and hygiene requirements.”

15. In *Re Criminal Proceedings against Aranyosi and Căldăraru* [2016] 3 CMLR 13, the Court of Justice of the European Union (“CJEU”) considered the approach to be adopted where it is argued that prison conditions in the requesting EU Member state would infringe Article 4 of the Charter of Fundamental Rights of the European Union, which is in the same terms as Article 3 ECHR. The effect of this decision was summarised by Beatson LJ in *Mohammed v Comarca De Lisboa Oeste, Instancia Central De Sintra, la Seccão Criminal, Portugal* [2017] EWHC 3237 (Admin), at para 15:

“In *Aranyosi* the CJEU decided that the consequence of the execution of an EAW must not be that the requested person will, if returned, suffer inhuman or degrading treatment. At [88]-[89], [91]-[92], [95] and [98] the CJEU set out the procedure that must be followed where the judicial authority of a member state is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the state that has issued the EAW.

*Stage 1* of the procedure involves determining whether there is such a risk by assessing objective, reliable, specific, and properly updated evidence. ... A finding of such a risk cannot lead, in itself, to a refusal to execute the EAW. Where such a risk is identified, the court is required to proceed to stage 2.

*Stage 2* requires the executing judicial authority to make a specific assessment of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk. To that end it must request the issuing authority to provide as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained.

*Stage 3* deals with the position after the information is provided. If in the light of that, and of any other available information, the executing authority finds that, for the individual concerned, there is a real risk of inhuman or degrading treatment, execution of the warrant must be postponed but cannot be abandoned.”

16. The Divisional Court in *Shumba* concluded, in the circumstances of the case, that there was sufficient evidence to require the Court to make a request of the French authorities in accordance with *Aranyosi*, setting out certain questions on which they needed specific information before they could permit the extradition of the appellants to France.
17. Following the response to the questions from the French Ministry of Justice the Court in *Shumba* delivered a supplemental judgment ([2018] EWHC 3130 (Admin)).
18. On 20 November 2018, following the supplemental judgment in *Shumba*, a request for supplementary information of the French judicial authorities (“JA”) was sent in respect of the Appellant in the same terms as the request made in *Shumba*, asking the following questions:
  - i) In which part of which institution or institutions will [the Appellant] be detained if she is returned to France? (Question 1)
  - ii) Will [the Appellant] be accommodated in a cell which provides her with at least 3m<sup>2</sup> of space (excluding any in-cell sanitary facility) at all times throughout her detention? If the answer is Yes, will she have between 3m<sup>2</sup> and 4m<sup>2</sup>? (Question 2)
  - iii) Will the overall surface of the cell allow her to move freely between the furniture items in the cell at all times throughout her detention? (Question 3)
  - iv) What will the other detention conditions be for [the Appellant] throughout her detention, including whether she will be accommodated in a cell where she or someone she is sharing with is sleeping on a mattress on the floor, what the sanitary facilities there will be and whether the toilet will be fully partitioned from the rest of the cell, how many hours a day she will be allowed out of her cell, what meals she will receive and whether there remains a serious problem with rats and bed-bugs at the prison? (Question 4)

19. The JA in their response of 27 November 2018 stated:

“... I assure you that European prison standards, as set out in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe’s European prison rules and case law of the European courts are complied with the short stay prisons of Fresnes and Fleury-Merogis, where the majority of people handed over [from] the UK on EAWs are expected to be imprisoned for the first few days on French soil.”

20. The response continued, in summary, as follows:

- i) If the judge makes a decision on the Appellant’s return to France that she should be detained “she would be detained in Fleury-Merogis, or Fresnes, women’s district” (Question 1).
- ii) As at 30 October 2018 the women’s districts at Fleury-Merogis and Fresnes are not over-crowded. The Appellant “will have a floor space of at least 3m<sup>2</sup> and be able to move around [her cell] without difficulty” (Questions 2 and 3).
- iii) In all French prisons prisoners’ dietary needs are considered on request on the basis of medical prescription; prisons offer a minimum of 5 hours of activities per day for each prisoner, not including time spent at the healthcare unit or visitors’ sessions; prisoners enjoy daily walks; the length of time prisoners are confined to their cells at night is limited to 12 hours; at Fresnes and Fleury-Merogis there is a cultural programme and sports facilities; there will be fully equipped visitors’ areas; all prisons have a rodent control contract to tackle vermin; as regards bed bugs, no cell at Fleury-Merogis has been recently impacted by an infestation of bed bugs, and since November 2016 priority action has been taken at Fresnes to eradicate any kind of pests. Consequently the presence of bed bugs is “a marginal phenomenon in the French detention institutions in particular those of the Paris region”. (Question 4).

21. Mr Cooper now seeks permission to introduce in evidence a report dated 1 March 2019 from Mr William Julié, a licenced attorney of law at the Paris Bar, in response to the assurances that have been given by the JA. Mr Julié states in the conclusion to his report:

“In my opinion, the conditions of detention in the women’s sections of Fleury-Merogis and Fresnes prisons clearly constitute inhuman and degrading treatment, particularly in light of the recurrent over-crowding of these prisons, the limited space allocated to each detainee and the general degraded state of these prisons.”

22. Mr Benjamin Seifert, for the Respondent, opposes the admission of Mr Julié’s report on three grounds: first, that the *Aranyosi* procedure did not foresee that a requested person (“RP”) should be permitted to provide evidence in response to every document produced by an issuing judicial authority; second, the principles of mutual trust and confidence should be respected: a clear statement made by the JA, assuring compliance

with Article 3, should be accepted as given in good faith; and third, Mr Julié is not an expert on French prison conditions.

23. I do not accept that the *Aranyosi* procedure precludes the introduction of further evidence after information has been provided by the issuing authority at *stage 3*. Indeed, that stage requires in addition the consideration of “any other available information” (see para 15 above). However, such other information will only be relevant if it is “objective, reliable, specific, and properly updated evidence”.
24. I approach the task, (as did the Court in *Shumba* in the supplemental judgment at para 12) on the basis of the principle of mutual trust and confidence between Member States; and I proceed on the basis that my task is to assess current, not past, conditions.
25. I do not consider that the report of Mr Julié should be admitted in evidence. He is not, as he accepted in his evidence at the extradition hearing, an expert on French prison conditions. The DJ observed: “He does no more than summarise and evaluate public source material”. It was on that basis that the DJ (the Appellant says wrongly) placed no weight on his evidence in relation to the Article 3 issue (Decision, para 55). In his latest report Mr Julié continues to rely on material in the public domain. I too place no weight on his evidence.
26. However, as the information referred to by Mr Julié in his report is in the public domain it does require consideration. Mr Cooper submits that the material demonstrates the following:

- i) Conditions at Fleury-Merogis prison

Overcrowding remains a persistent problem. French government statistics report that as of 1 February 2019 the occupancy rate for women detainees has increased to 124%, or 295 detainees for 237 places, which necessitates prisoners sharing cells. Once multiple occupancy in a cell reaches three prisoners, which testimony from prisoners and the prison chaplain in media reports indicates occurs, the personal space falls below 3m<sup>2</sup>. The wider conditions at the prison are unsatisfactory, including a lack of private toilet facilities, lack of outdoor exercise, inadequate sanitary conditions, high rate of suicide and inadequate provision of mental health treatment.

- ii) Conditions at Fresnes prison

Overcrowding remains a persistent problem. French government statistics report that as of 1 February 2019 the occupancy rate for women detainees remained at 163%, or 170 detainees for 104 places, which necessitates prisoners sharing cells. Once multiple occupancy in a cell reaches three prisoners, which press reports indicate occurs, the personal space falls below 3m<sup>2</sup>. The wider conditions at the prison are unsatisfactory, including a lack of private toilet facilities, a lack of outdoor exercise, and inadequate sanitary conditions. In November 2016 the Inspector General made urgent recommendations regarding conditions at the prison, which were affirmed and renewed on 14 February 2018. Court orders made in 2017 and 2018 raise concerns about hygiene and privacy which exposed inmates “*to inhuman and degrading treatment*” contrary to Article 3 and about conditions of outdoor exercise which violated “*human*

*dignity*”. Applications relating to prison conditions are also pending before the European Court of Human Rights, including a case communicated on 18 January 2018: *A.B. v France and two other applications* (Application No.77572/17).

27. Mr Cooper submits that the Respondent has produced no objective or independent evidence of improvement at Fresnes since the Inspector General’s visit from 3-31 October 2016 and the court orders of 2017 and 2018. Without such evidence, he submits, the assurances provided are theoretical, rather than practical.
28. Mr Cooper has also expressed concern at the length of time that the Appellant may remain in custody pre-trial because of any delay in extraditing Mr Noakes; and he suggests that her confinement will be exacerbated by her mental health condition (see para 100 below).
29. Further, Mr Cooper relies on a decision made at the Westminster Magistrates’ Court on 13 February 2019 in the case of *The Judicial Authority of France v Bakhtyar* (unreported) that the surrender of a requested person to a French prison (Bordeaux-Garignan prison) would be incompatible with his Article 3 rights because it entailed a real risk (in that case 15%) that he would be held in a triple cell and may be sleeping on a mattress on the floor.
30. I am not persuaded that any of the evidence on which the Appellant now relies demonstrates a real risk of breach of Article 3 if the Appellant is accommodated in the women’s district in Fleury-Merogis or Fresnes prisons. There is no “clear, cogent and compelling” evidence from an internationally recognised source or specific to the Appellant (see para 14 above); nor is there “objective, reliable, specific and properly updated evidence” (see para 15 above) to that effect.
31. Even if (as the Appellant contends on the basis of the information referred to by Mr Julié) these prisons are overcrowded, there is no evidence that this will necessitate the Appellant being accommodated in less than 3m<sup>2</sup>. As for the wider prison conditions, the evidence from individual prisoners at these two prisons to which Mr Julié refers, individually and cumulatively, falls far short of establishing a real risk of breach of Article 3 in the Appellant’s case.
32. Much of the evidence referred to by Mr Julié on the conditions at Fleury-Merogis prison significantly pre-dates the further information from the JA of 27 November 2018. Mr Julié relies in particular on the report of the visit of the Inspector General to the prison between 30 March and 2 April 2015, and a further visit between 3-14 October 2016. The evidence in relation to conditions at Fresnes prison is also based largely on reports from the years 2015-2017 relating to earlier visits.
33. Further, I do not accept that there is any basis in the evidence for the contention that the length of time the Appellant may remain in custody pre-trial due to any delay in extraditing Mr Noakes will, because of her mental health condition, create or increase a real risk that she will suffer inhumane or degrading treatment. The DJ found, as she was entitled to on the evidence, that the concerns that had been raised about mental health provision in French prisons are not at such a level that they rebut the presumption that France will be able to discharge its responsibilities to prevent the Appellant

committing suicide or its duty to provide appropriate psychiatric treatment for her whilst detained (Decision, para 68, and see para 98 below).

34. Finally, the *Bakhtyar* decision does not assist the Appellant. It is a case that was decided on its own facts in relation to a remand centre in Bordeaux in respect of which the French judicial authority indicated that it would not provide any further information in response to questions sent by the CPS.
35. This court has received the latest information from the JA on the basis of mutual trust and recognition and is entitled to take into account the statement of assurances referred to in para 19 above which, as the Divisional Court in *Shumba* observed (at para 22), “is more than a bland assurance”.
36. For the reasons I have given the Article 3 ground of appeal is not made out.

### **The renewed applications for permission**

37. I now turn therefore to consider the renewed applications for permission and the proposed amended ground of appeal.

#### **I. Sections 2 and 10 of the Act**

38. In his oral submissions Mr Cooper took these two grounds together.

##### ***Section 2 of the Act***

39. Section 2(4)(c) of the Act requires the EAW to provide:

“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 he is 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.”

40. The Appellant needs to have sufficient details of the underlying offences to enable her to understand what offences she is alleged to have committed and to enable her to consider whether any bars to extradition may apply (*Edutanu v Iasi Court of Law and Others* [2016] EWHC 124 (Admin)).
41. The Decision states, so far as is material:

“28. I am satisfied that sufficient particulars of the offences and the RP’s role are provided:

- (a) Details are provided of the nature of the criminal activity
  - The product[s] sold.
  - That they were marketed as medical products.

- The products were not properly authorised as medicinal products.
- Details of the manufacture of the products.
- The companies used to market the products.
- That the products were sold on the internet.
- The collection of payment by the named companies.
- That the products were packed in France.
- The distribution of the products.
- Packages were mislabelled to mislead customs about the contents.
- The number of parcels sold and the value of those sales.

(b) Details are provided of the amount of payment the RP received from two of the companies used to handle the sales of the products.

(c) The RP's role is detailed as the daily management on French soil of the fraudulent activities.

(d) At the RP's French home documentation, including accounting books for the business, were found.

29. There is no requirement for the JA to set out in detail the *mens rea* for the offences and how this role is proved in relation to the RP. The EAW and FI [Further Information] 04.04.18 read as a whole make clear the RP's role in selling products that were falsely marketed as medicinal products. The clear inference can be drawn that it is alleged that the RP was aware that these were not properly authorised medicinal products. Whether the *mens rea* can be proved will be a matter for trial in France."

42. Mr Cooper submits that it is arguable that the DJ erred in finding that she was satisfied that sufficient particulars of the offences and the Appellant's role had been provided. Further, he submits, the DJ erred in (1) failing to come to any conclusion as to whether the conduct alleged amounted to a conspiracy, and (2) in inferring the *mens rea* of dishonesty for the offences of fraud and swindling.
43. Elisabeth Laing J, refusing permission on the papers, did not give her reasons for refusing permission on this ground.
44. It is, in my view, sufficiently clear from the EAW that it is alleged that the Appellant was involved in committing all the offences with Mr Noakes.

45. The response of the JA dated 4 April 2018 to the request for further information sent on 6 February 2018 states that the Appellant was involved in the daily management of the activities in France. The material parts of the response state:

**“6. In terms of the conduct alleged against Ms Thyer are you able to explain to us precisely her involvement in the criminal acts as opposed to Mr Noakes, her co-accused?**

In December 2005, the United Kingdom (Medicines and Healthcare Products Regulatory Agency – MHRA) informed France (Central Office for Fight against Attacks towards the Environment and Public Health – OCLAEPS) that two products *GC protein derived macrophage activating factor* and *G Oleanolic acid* were being manufactured in France and placed on the market via the Internet and sold throughout the world, without being granted a marketing authorisation (French AMM).

These products, qualified as medicinal products by presentation, are known as Gcmaf and Goelic and were deceitfully attributed miraculous properties and presented as preventative and curative treatments against human diseases such as cancer, autism, AIDS, Lyme disease, herpes, multiple sclerosis, psoriasis, Alzheimer or Parkinson. Several death cases related to the injection of these products were reported across Europe.

EUROJUST made it possible to bring together several investigation services and judges throughout Europe. MHRA explained that it had dismantled a network of fraudulent marketing of these products established in the United Kingdom by a British businessman named Mr David NOAKES, residing in the Channel Islands. His manufacturing workshops having been dismantled in the UK, he set them up again in France and in several other European states.

The investigations conducted confirmed these facts and established that David NOAKES was leading a ‘network’ responsible for manufacturing, packaging, and selling these unauthorised products worldwide.

It was further demonstrated that he relied on different companies, namely located in the Netherlands in the city of Bunnik, and managed by his relatives.

Thus, the companies HEALTH SUPPLEMENTS and DUURZAAM GEZOND PRODUCTION (trade name: EU SUPPLEMENTS) were in charge of handling online orders, processing them, and collecting payments in Guernsey.

Financial flows were also revealed between these companies and the identified persons on French soil in charge of shipping the orders placed with these companies.

This made it possible to locate a packaging site in France as well as a manufacturing workshop set [up] by the accused following the dismantling of the same activities in Great Britain.

It was revealed that David Noakes himself took care of delivering goods by air using his private jet plane registered under the name 2LOVE at the airport of CHERBOURG MAUPERTUIS. He flew his aircraft himself, most often from Guernsey, where he owns a sumptuous residence.

By analysing the content of telephone taps, it was revealed that David NOAKES had many accomplices in Guernsey, where his company was headquartered, in charge of managing orders and financial flows. A financial investigation is ongoing in Guernsey.

The daily management of the activities established by David Noakes on French soil was entrusted by Mr Noakes to his companion, Ms Lynda THYER, whose house was searched and where the accounting books of these activities as well as material related to these facts were found: and to Mr David HALSALL, the latter being in charge of manufacturing, packaging, storing, and shipping the products.

During an operation conducted on the instructions of the judge in February 20, 2017 in the region of Cherbourg, the following elements were discovered and seized: cash in 10 different currencies, 2 silver bars, 2 jaguar vehicles, a storage room, clandestine manufacturing laboratory, a stock of 7,000 vials ready to be shipped – with an estimated resale value of 3,150,000 Euros (7,000 vials at 450 Euros each), as well as many documents (invoices, records, manufacturing memorandum...)

Over the last 18 months, investigators identified over 5,400 parcels containing products sold either as an injectable solution or administered sublingually, shipped from France to around 50 different countries.

Ms THYER appears to be the person in charge of the daily management on French soil of the fraudulent activities set up by David NOAKES.

**7. If so please can you tell me what level or degree of involvement she had in the criminal conduct of Mr Noakes in respect of all 9 offences**

Ms THYER is identified as the co-author for all the offences listed in the arrest warrant.”

46. Mr Cooper submits that the words “daily management” are vague and confusing. It is said this was entrusted to the Appellant and Mr Halsall, but in fact it was Mr Halsall who was “in charge of manufacturing, packaging, storing and shipping the products”.
47. I reject this submission. The allegations are clear. It is alleged that Ms Thyer was “in charge of the daily management on French soil of the fraudulent activities set up by Mr Noakes”. She is identified as “the co-author for all the offences listed in the arrest warrant”. I agree with Mr Seifert that it can therefore be reasonably inferred that she is accused of aiding and abetting all the offences or, in the alternative, conducting a joint enterprise with Mr Noakes.
48. The conduct was not put expressly as a conspiracy, and therefore the DJ was not obliged to come to any conclusion as to whether there was a conspiracy.
49. I am left in no doubt that the only reasonable inference to be drawn from the facts alleged is that the Appellant was aware that these were not properly authorised medicinal products. The description of her conduct was sufficient to impel an inference that her conduct was dishonest.
50. In my view this ground of challenge is not arguable. The EAW (and the further information) provide sufficient particulars of the offences the Appellant is alleged to have committed.

### ***Section 10 of the Act***

51. Section 10 of the Act provides in substance that the judge must ensure that the alleged offence is an extradition offence. The principles which demarcate the boundaries of the dual criminality assessment under the Act are not in issue. Mr Cooper submits that each of the nine offences alleged are not extradition offences because they do not fulfil the requirements of dual criminality.
52. As the DJ noted, no issue was taken at the extradition hearing (when the Appellant was represented by Counsel, not Mr Cooper) that the conduct alleged constitutes extradition offences within the meaning of ss.10 and 64 of the Act. Nevertheless, the DJ properly considered the matter, as she was required to do.
53. Mr Seifert in his opening note on behalf of the JA dated 17 July 2017 stated under the heading “Extradition offences (section 10 and section 64(3))” as follows:

“23. All nine offences are said to have taken place in France and attract a sentence of at least 12 months. In reference to the further information the following are said to be the equivalent of the offences in the UK.

- (i) Aggravated fraud in an organised gang – Section 2, Fraud Act 2006.
- (ii) Aggravated deception in an organised gang – Section 2, Fraud Act 2006.

(iii) Illegal practice of pharmacy – Regulation 38(4) of the Pharmacy Order 2010.

(iv) Marketing without authorisation to market medicine – Regulation 46 of the Human Medicines Regulations 2012.

(v) Advertising of products qualified as unauthorised medicines – Regulation 46 of the Human Medicines Regulations 2012...

(vi) Holding in an organised gang without the supporting documents, products qualified as medicines for human usage: Regulation 46 of the Human Medicines Regulations 2012.

(vii) Opening of pharmaceutical establishments without authorisation: section 84 of the Medicines Act 1968 creates an offence if anyone contravenes section 78 of the Act:

‘78(4) No person shall in connection with a business carried on by him which consists of or includes the retail sale of any goods, or the supply of any goods in circumstances corresponding to retail sale, use the description “pharmacy” except in respect of a registered pharmacy or in respect of the pharmaceutical department of a hospital or a health centre.’

(viii) Biomedical research without authorisation: Regulation 49 of the Medicines for Human Use (Clinical Trials) Regulations 2004 creates an offence if anyone contravenes *inter alia*, Regulation 12(1) and (2):

‘12. Requirement for authorisation and ethics committee opinion

(1) No person shall—

(a) start a clinical trial or cause a clinical trial to be started;  
or

(b) conduct a clinical trial,

unless the conditions specified in paragraph (3) are satisfied.

(2) No person shall—

(a) recruit an individual to be a subject in a trial;

(b) issue an advertisement for the purpose of recruiting individuals to be subjects in a trial,

unless the conditions specified in paragraph (3)(a) has been satisfied.

(3) The conditions referred to in paragraphs (1) and (2) are—

(a) an ethics committee [to which an application in relation to the trial may be made in accordance with regulation 14...] or an appeal panel appointed under Schedule 4 has given a favourable opinion in relation to the clinical trial; and

(b) the clinical trial has been authorised by the licensing authority.'

(ix) Concealed work (absence of declaration of employees and activity) in an organised gang: Cheating the public revenue contrary to common law."

54. The DJ was satisfied on the basis of this information that the conduct alleged constitutes extradition offences within the meaning of ss.10 and 64 of the Act (Decision, para 32).
55. There was no appeal against this finding in the lengthy perfected grounds of appeal, settled by original counsel dated 23 May 2018, or in the renewal grounds dated 8 October 2018, and there was no reference to an application to amend the grounds of appeal in Mr Cooper's skeleton argument dated 16 November 2018 for the hearing on 29 November 2018. Notice of an application to amend the grounds to argue the s.10 issue was first given on 28 November 2018.
56. Nevertheless, I accept that the Appellant may raise the issue of dual criminality on this appeal even though the issue was not raised at the extradition hearing as the issue was available to be raised by her on the evidence adduced at the hearing (*Hohlm v the Government of Norway* [2009] EWHC 1513 (Admin) at paras 18-19 (in relation to s.104 of the Act, which is in all material respects identical to s.27)). Accordingly, I will allow the amendment.
57. Mr Cooper advances, as I understand it, two contentions in support of this submission. First, that the EAW does not identify which specific alleged offence(s) relate to the Appellant and which relate to Mr Noakes and Mr Halsall. No express connection is made between receipt of money by the Appellant and any of the nine listed offences. As a result, in relation to each of the nine offences there is an absence of conduct specified relating to the Appellant that can be said to give rise to equivalent English offences. Second, at least six of the nine offences are offences of dishonesty. However, there is a lack of any information in the EAW relating to the Appellant's alleged intention and/or knowledge.
58. In any event, fundamentally, the EAW, Mr Cooper submits, amounts to a "wholesale failure" to provide necessary particulars to make clear for what offences the Appellant is to be prosecuted. That being so, the further information provided is incapable of remedying the EAW (*Tifrac v Romanian Judicial Authority* [2018] EWHC 1909 (Admin) at paras 13-16).
59. I do not accept the submission that the EAW does not identify which alleged offences relate to the Appellant. I consider this to be clear from the EAW read as a whole. Further, I reject the submission that the EAW amounts to a "wholesale failure" to provide particulars of the alleged offences for which the Appellant is to be prosecuted. The EAW refers to conduct by the Appellant and Box E(ii) refers to the offences which,

it is alleged, she committed. I reject Mr Cooper's contention that as the Appellant's EAW is identical to the EAW of Mr Noakes no separate consideration was given to the Appellant and the distinct case against her. The Appellant is accused of the same conduct as Mr Noakes. I am entirely satisfied that there is sufficient information in the EAW, supplemented by the further information, for the DJ to have found there has been compliance with s.2; and that the description of her conduct was sufficient to impel an inference that her conduct was dishonest.

60. During the course of the hearing on 12 March 2019, submissions were made as to whether the JA should have drafted English charges. Mr Seifert was prepared to draft English charges "on his feet", but I took the view that it was not fair to ask him to do so and, it being near the end of the day's hearing, I adjourned the case in order to give the Respondent an opportunity to draft English charges in accordance with the decision in *Biri v High Court in Miskolc, Hungary* [2018] 4 WLR 50. Before the adjourned hearing on 28 March 2019, I received written submissions from Mr Seifert dated 19 March, a note in reply from Mr Cooper dated 25 March, and further submissions from Mr Seifert dated 28 March.
61. I consider that it is clear from the material before the DJ (which included Mr Seifert's list of the English offences which it was alleged would be constituted by the conduct in the EAW, see para 53 above) that the requirements of dual criminality have been satisfied. It is therefore not strictly necessary for me to consider Mr Seifert's further submissions dated 19 March 2019 setting out equivalent English charges. However, I shall do so briefly.
62. Mr Seifert fairly makes the point (which I have already noted) that notice of an application to raise the s.10 ground of appeal was given by the Appellant for the first time on 28 November 2018, and he adds that he did not receive Mr Cooper's written submissions dated 5 March 2019 in support of the amendment until shortly before the hearing on 12 March 2019. Further, at the time Mr Seifert made his submissions at that hearing, the Appellant had not formally been given permission to argue s.10 as a ground of appeal.
63. In *Biri* Julian Knowles J considered the process which should be followed where dual criminality needs to be satisfied, i.e. where the conduct does not constitute a Framework List offence (para 30). The Framework offence in the present case is "swindle", so it is the other eight offences with which we are presently concerned.
64. The judge stated:

"31. Where a warrant contains a number of foreign offences the judge is not concerned with the ingredients of the foreign offences... He is simply concerned, per the requirements of sections 64 and 65, to ensure that the minimum punishability threshold is satisfied for each offence or, where the person has been sentenced, that a total sentence of at least 4 months' imprisonment has been imposed for the offences: ...

32. For the purposes of sections 2 and 10, the judge's focus should be, instead, on the *conduct* which is said to constitute the offence. The judge should consider the warrant and identify

what the episodes of conduct are which are said to constitute the foreign offences. There may be one episode of conduct in respect of the foreign offence, or more than one. Then, the judge should consider in respect of each episode of conduct, whether the particulars required by section 2(4)(c) or section 2(6)(b) have been provided. If not, then it is open to the judge in an appropriate case to seek further information from the issuing judicial authority. ...

33. Having done that then, as required by section 10(2), the judge should next ask whether each episode of conduct said to constitute the foreign offence (or each of them, if there is more than one foreign offence) is an extradition offence as defined in sections 64 and/or section 65, as appropriate.

...

36. The judge will be assisted in this process if those representing the issuing judicial authority at the extradition hearing revert to the practice which, until recent times, was almost invariably followed of drafting English ‘charges’ as a means of identifying the equivalent English offences for the purposes of the ducal criminality exercise.

37. The practice under the Extradition Act 1989 was for those representing the requesting state to supply a list of the English offences which it alleged would be constituted by the conduct in the extradition request if it had been committed in England in equivalent circumstances...

...

41. When the EA 2003 came into force on 1 January 2004 the practice of drafting English charges continued, initially at least, in extradition hearings under the new Act in cases where the judicial authority was required to demonstrate dual criminality... However, my experience (and this was confirmed by counsel) is that the practice has substantially fallen out of use in recent times.

42. In my judgment it is time that the practice of drafting English charges was revived. Except in the most straightforward of cases, where the issuing judicial authority needs to demonstrate dual criminality for the purposes of sections 64 and 65 I consider that it is essential for the proper presentation of the prosecution’s case for charges to be drafted so as to specifically identify for the benefit of the District Judge and the Defendant the conduct in the EAW that is being relied upon, and what is said to be the equivalent English offence which would, in corresponding circumstances, be constituted by that offence. The use of English charges, whilst not having any formal status, results in

precision as to the conduct for which extradition is, or is not, being requested, and produces certainty as to what conduct extradition is being ordered for.”

65. I accept Mr Seifert’s submission that the case of *Biri* does not compel a judicial authority to draft English charges. The position has now changed since the amendment to the Criminal Procedure Rules requiring such charges came into force on 1 April 2019: see new Rule 50.4(5).
66. Nevertheless, in paragraphs 9-40 of his written submissions dated 19 March 2019, Mr Seifert set out draft English charges in accordance with the decision in *Biri*:
  - i) Offence 1 (fraud in an organised gang) is ticked in the Framework List as “swindle”, and therefore does not need to be subject to an English charge;
  - ii) Offence 2 (illegal practice of pharmacist) and Offence 8 (opening a pharmaceutical establishment in the form of a laboratory without authorisation) akin to an offence in the UK contrary to s.38(4) of the Pharmacy Order 2010;
  - iii) Offence 3 (marketing or distribution of an unauthorised medicine) and Offence 4 (advertising an unauthorised medicine) akin to an offence contrary to Regulation 46(1) of the Human Medicines Regulations 2012;
  - iv) Offence 5 (deception or fraud in relation to the nature and substantial qualities of the products) akin to an offence under s.2 of the Fraud Act 2006;
  - v) Offence 6 (possession, in an organised gang, of medicinal product for human use without any legal supporting) akin to an offence contrary to Regulation 46(3) of the Human Medicine Regulations 2012;
  - vi) Offence 7 (concealed employment by dissimulation of activity in organised gang) akin to the offence of cheating the public revenue, contrary to common law;
  - vii) Offence 9 (biomedical research without consent) akin to an offence contrary to Regulation 49 of the Medicines for Human Use (Clinical Trials) Regulations 2004.

***Application by Respondent to admit further evidence at hearing on 28 March 2019***

67. After the hearing on 12 March the Respondent requested further information from the JA as to the Appellant’s conduct. On 14 March the JA responded to the questions asked. Mr Cooper objects to the admission of this evidence on the basis that it was obtained “contrary to the court’s direction” (Appellant’s amended note dated 25 March, para 8). I have helpfully been provided with an agreed note of the relevant part of the hearing. I directed there should be an adjournment in order to permit the Respondent to draft English charges in accordance with the decision in *Biri*. I said that I did not consider it appropriate to adjourn the case for further information to be obtained. However, I added: “If you [the Respondent] wish to make an application to adduce evidence in due course that is a matter for you”.

68. Mr Seifert invites me to admit the further information in accordance with the principles set out in *FK v Stuttgart State Prosecutor's Office, Germany* [2017] EWHC 2160 (Admin). Hickinbottom LJ (with whom Green J, as he then was, agreed) stated (at para 39):

“... in my view, there is no restriction on the inherent jurisdiction of the High Court on appeal to admit further evidence from a respondent to an extradition appeal. It is open to a respondent to apply to this court to exercise its inherent jurisdiction and admit further evidence in support of an extradition decision of a district judge.”

Hickinbottom LJ observed (at para 49), in circumstances in which the district judge had made a finding but the evidential basis of that finding was, at least arguably, ambiguous:

“... Indeed, given that the court has the jurisdiction to request and admit such evidence, not to request and admit such evidence when the court considers it is in the interests of justice to do so would not only be contrary to the CrimPR, but a curious and perverse course for a court to take.”

69. Mr Seifert submits that the most recent further information provided by the JA differentiates each of the nine offences and, therefore, it is clear that each paragraph in Box E(ii) of the EAW refers to an individual offence or episode of conduct.
70. Mr Cooper submits that the application to admit new evidence should be refused because the Respondent has a statutory requirement to satisfy ss.2 and 10 and has had sufficient opportunity to make its case over a long period of time. The Respondent has failed to comply with the *Fenyvesi* principles which require an explanation as to why the evidence was not adduced before the DJ in a witness statement. The Appellant will, Mr Copper submits, be prejudiced by the admission of the new evidence which, he contends, seeks to present a materially different case to that which is advanced in the EAW and the further information. For these reasons, he submits, the new evidence should not be admitted.
71. In my view it would be wrong to exclude the new evidence. As I have already stated, having reviewed the evidence, I consider that even without it the Respondent has plainly made out its case on ss.2 and 10. Nevertheless, the Appellant, having made a very late application to amend her grounds of appeal to add the s.10 ground, I consider it to be in the interests of justice that the Respondent should be permitted to put before the court further evidence in response, if it wishes to do so (see *FK* at paras 39 and 49).
72. I reject the contention that the Respondent is advancing its case in a new way through the JA's response dated 14 March 2019 or that the Appellant is prejudiced by its admission. The Appellant has had sufficient time to respond to the draft charges and any other matter in the response of 14 March 2019 with which she took issue. I gave Mr Cooper permission to respond to the application to admit new evidence by way of written submission, which he did on 5 April 2019.

### **Conclusion on ss.2 and 10**

73. In my view the conduct of the Appellant for which her extradition is being requested is clear from the EAW and the further information that was before the DJ. The DJ was entitled to find for the purposes of ss.2 and 10 that the warrant is sufficiently particularised and the conduct said to give rise to each of the foreign offences constitutes an extradition offence. That that is so is confirmed by the JA's response of 14 March 2019, and the draft English charges set out in Mr Seifert's written submissions of 19 March 2019.
74. In my judgment the requirements of ss.2 and 10 have been satisfied. I do not consider it arguable that the decision of the DJ is wrong on either of these two grounds.

### **II. Section 12A of the Act**

75. Section 12A ("Absence of prosecution decision") provides:

"(1) A person's extradition to a category 1 territory is barred by reason of absence of prosecution decision if (and only if)—

(a) it appears to the appropriate judge that there are reasonable grounds for believing that—

(i) the competent authorities in the category 1 territory have not made a decision to charge or have not made a decision to try (or have made neither of those decisions), and

(ii) the person's absence from the category 1 territory is not the sole reason for that failure, and

(b) those representing the category 1 territory do not prove that—

(i) the competent authorities in the category 1 territory have made a decision to charge and a decision to try, or

(ii) in a case where one of those decisions has not been made (or neither of them has been made), the person's absence from the category 1 territory is the sole reason for that failure.

(2) In this section '*to charge*' and '*to try*', in relation to a person and an extradition offence, mean—

(a) to charge the person with the offence in the category 1 territory, and

(b) to try the person for the offence in the category 1 territory."

76. The DJ found that the Appellant's extradition was not barred due to an absence of prosecution decision (Decision, paras 38-41). She reached that decision having had

regard to the well settled principles set out in *Kandola v Germany* [2015] 1 WLR 5097 and *Puceviciene v Lithuanian Judicial Authority* [2016] 1 WLR 4937.

77. Mr Julié provided an overview of the French procedure, which the DJ summarised at paragraph 35 of the Decision; and at paragraph 36 she summarised Mr Julié's opinion on the proceedings against the Appellant. His evidence is that if there is in this case a joint investigation a judge may interview her by video link; alternatively the examining judge could come to the UK to speak to her; police criminal investigation officers could travel to England to hear what she has to say; or the English authorities could be asked to question her. Therefore he concludes that the Appellant's absence from France is not the sole reason for the lack of a decision to prosecute her.
78. On 4 April 2018 the French authorities provided the following information in response to request (3):

**"3. If a decision to charge or try has not been made, please can you confirm whether the requested person's absence from the requesting state is the sole reason for this? If it is not the reason, please provide further details.**

...

In the present case, Lynda THYER was informed of the investigation and summoned by the investigators on the instructions of the investigating judge. She did not appear before the judge despite her promise to do so. However, she assigned an advocate who stated that he was waiting for a EAW to be issued against his client Ms Thyer. The minutes attached in Appendix 1 confirm these elements.

The voluntary absence of Ms Thyer justified the issue of an arrest warrant on March 02, 2017; the warrant furthermore states the grounds for this. The arrest warrant and its international dissemination appear to be the only means to search overseas for a person whose address is unknown and who, by refusing to appear when summoned, is deemed to be on the run."

79. In response to request (11) with regard to less coercive measures, the following information was provided:

**"(a) Sending a summons for Ms Thyer to attend a voluntary hearing as a suspect in France**

Ms Thyer had been served summons on instructions of the investigating judge and did not answer the court summons.

**(b) Using videoconferencing**

Videoconferencing is not an authorised method for a first appearance hearing before an investigating judge.

**(c) Travelling to the UK in order to speak to Ms Thyer**

A French judge cannot undertake a first appearance hearing on foreign soil.

**(b) Requesting that the UK authorities prosecute her in the UK for the offences allegedly committed in France**

All the offences attributed to Ms Thyer took place in France and many perpetrators are already charged. Only the appearance of all the perpetrators in a single trial will help determine the criminal liability of each of them and ensure an adversarial procedure for all parties.”

80. In response to request (20) the following information was provided:

**“20. Do you agree with the suggestion... that the EAW was issued in order to determine whether or not it would be appropriate to initiate proceedings against Ms Thyer?**

... The only reason she has not yet been charged is her refusal to respond to the summons served by French authorities. The ongoing investigation aims at confirming or overturn[ing] the charges brought against her and the declarations of Ms Thyer will be relevant to fulfil this objective.”

81. The DJ made the following findings:

“40. I am satisfied there are reasonable grounds for believing that the RP’s absence from France is the sole reason for the failure to decide to try the RP. This is based on:

(a) The evidence from both Mr Julié and the JA is that an essential procedural step in France is that the examining judge provides a person with the opportunity to be questioned prior to being charged. The information for the JA provides details of the investigation conducted and some of the evidence obtained. The investigation cannot proceed further without the examining judge questioning the RP.

(b) The RP has to be questioned in France.

(c) The RP was summoned to France but chose not to answer the summons.

(d) The RP has not taken any steps to liaise with the French authorities to arrange her surrender or to speak to the examining judge.

(e) I do not accept the evidence of Mr Julié that there are other ways that the examining judge could question the RP.

(f) Mr Julié accepted that it was not clear if there was a joint investigation. Without that videoconferencing cannot be used.

(g) I do not accept Mr Julié’s interpretation that because the Court of Appeal has allowed another examining judge to question a person, that means that the judge could travel to the UK to speak to the RP or ask the UK authorities to carry out that duty. The clear evidence of the JA is that the RP must be questioned by the examining judge in France.

(h) In *Puceviciene* (above) it was made clear that mutual legal assistance and section 21B had no relevance to section 21A. In any event the RP has made no request to the French authorities under section 21B either for temporary transfer or to speak to the French authorities.”

82. Mr Cooper submits that the DJ was wrong to find that the Appellant’s absence was the sole reason for no decision to try; rather, the reason no decision to charge or try has been made is due to a combination of the investigation remaining at an early stage, a failure to use less coercive measures or because of some other intervening decision. Mr Julié’s expertise about legal procedure and credibility was unchallenged, and in that context, Mr Cooper submits, the judge was wrong to reject his evidence. Further Mr Cooper submits that the DJ (and the judge refusing permission) applied the wrong standard of proof in being satisfied that there are “reasonable grounds” for believing that the Appellant’s absence from France is the sole reason for the failure to decide to try her. The burden is the criminal standard of proof (see *Kandola* at para 30).
83. I do not accept these submissions.
84. In *Kess v Examining Magistrates, Belgium* [2018] EWHC 983 (Admin) Julian Knowles J referred to *Puceviciene* (at paras 70 and 71) and stated that:

“Where, as a matter of law, a decision to try a defendant could in theory be taken notwithstanding that they are absent from Category 1 territory, but the relevant authority in that territory states that they are not prepared to take that decision until the defendant has been questioned and they wish that questioning to take place in their home state, then the sole reason for the absence of a decision to try the defendant will be the defendant’s absence from the requesting Category 1 territory.”

85. It is clear that the further information showed that the sole reason for not having taken the decision to charge the Appellant was because of her absence from France (see paras 78 and 80 above).
86. For that reason (and for all the reasons given by the DJ) the DJ’s conclusion that the Appellant’s extradition was not barred due to an absence of prosecution decision is not arguably wrong. I am satisfied that the correct standard of proof was applied.

### **III. Section 21A of the Act – Person not convicted: human rights and proportionality**

87. In accusation cases section 21A requires the judge to decide if extradition will be disproportionate, taking into account the matters set out in s.21A(3) and only those matters:

“(a) the seriousness of the conduct alleged to constitute the extradition offence;

(b) the likely penalty that would be imposed if [the RP] 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 [the RP].”

88. Having regard to only those matters the DJ made the following findings (Decision, para 65): (a) the conduct alleged is very serious, with the RP having profited from the conduct and victims around the world; (b) the RP is likely to receive a substantial custodial sentence if convicted; and (c) there are no such other measures (see para 79 above on less coercive measures).
89. Mr Cooper accepts that on the face of it the offending is serious, but, he submits, the failure to particularise active conduct with respect to most of the offences regarding the Appellant, necessarily means the DJ’s conclusion on seriousness was too broad. There was no evidence upon which the DJ could properly conclude a substantial prison sentence would be imposed. Mr Julié set out less coercive measures which the DJ rejected but she failed to provide proper reasons for doing so.
90. It is, in my view, not arguable that the DJ’s decision on this ground is wrong. Plainly the conduct alleged is very serious. It has been properly particularised (see paras 73-74 above on ss.2 and 10). If convicted of all the conduct alleged the Appellant is likely to receive a substantial custodial sentence. Finally, I do not accept, for the reasons given by the DJ (see para 81 above) that less coercive measures are available.

#### **IV. Article 8 ECHR and section 25 of the Act**

91. Mr Cooper took these two grounds together, both raising the issue of the Appellant’s mental health condition.
92. The DJ accepted that the Appellant is suffering from depression and has made a number of suicide attempts. She also accepted that there is an ongoing risk of suicide (Decision, para 68).
93. Dr Wilson, a clinical psychologist, in her report dated 20 September 2017, reported the Appellant as having mild depression and moderate anxiety (para 51). She concluded (at para 54): “Whilst extradition procedures are likely to impact on anyone’s mental state... Ms Thyer is in a particularly vulnerable position with regards to deterioration in her mental state and at increased risk of self-harm or suicide”.
94. Dr Wilson reassessed the Appellant in February 2018 and recorded tests results “suggesting a significant deterioration since our last meeting” (para 27). Dr Wilson concluded (at para 28): “With regards to the prospect of extradition, I have grave concerns about how this would impact on her mental health and wellbeing. She is currently presenting as extremely fragile and emotionally unstable, and I am of the opinion a serious attempt of suicide cannot be ruled out”.

### **Section 25 of the Act**

95. Mr Cooper submits that the Appellant's extradition is prevented because her mental condition is such that it would be oppressive (or unjust) to extradite her within the meaning of s.15 of the Act.

96. The DJ found that:

"Although some concerns have been raised about the provision of mental health care in French prisons... they are not of such a level that they rebut the presumption that France would be able to discharge its responsibilities to prevent the RP committing suicide either during transfer or during any detention, or their duties to provide appropriate psychiatric treatment for the RP whilst detained. The medical reports prepared in relation to the RP can be produced to the French authorities." (Decision, para 68).

On that basis the DJ concluded that it would not be unjust or oppressive to extradite the Appellant due to her mental health condition.

97. Mr Cooper submits that the DJ was wrong to accept as sufficient the generic evidence that prisoners in France will have access to healthcare. He relies in particular on the 2016 Human Rights Watch report that indicates that there are likely to be real difficulties in providing the Appellant with adequate mental health support and that female prisoners face "particularly harsh conditions" including "discrimination in their access to mental health care", there being a very serious shortage of access to psychiatric care (pp3, 15-17, 38).

98. It is uncontroversial that a high threshold has to be reached in order to satisfy the court that a requested person's physical or mental condition is such that it would be oppressive to extradite him (*Turner v Government of the United States of America* [2012] EWHC 2426 (Admin), per Aikens LJ at para 28). Further, as the DJ noted (at para 67(e)) it will ordinarily be presumed that the receiving state within the EU will discharge its responsibilities to prevent the RP committing suicide, in the absence of strong evidence to the contrary (see *Mariusz Wolkowicz v Regional Court in Bialystok, Poland* [2013] EWHC 102 (Admin)).

99. The DJ was, in my view, plainly right on the evidence to conclude that it would not be unjust or oppressive to extradite the Appellant due to her mental health condition.

### **Article 8 ECHR**

100. The Appellant's mental health condition also features at the forefront of her Article 8 challenge. In addition, on Article 8, Mr Cooper submits that the DJ failed to address various factors relevant to the balancing exercise, such as her concern that pre-trial detention particularly if it was to the maximum of 2 years 4 months permitted by reason of any delay in extraditing Mr Noakes, would be disproportionate, having regard to her concern that she would find the isolation of incarceration particularly difficult because she is not a native French speaker which will compound her poor mental health.

101. In my view the DJ carefully conducted the required balancing exercise. All relevant factors were taken into account: the Appellant is a UK national whose date of birth is 5 January 1963; she has a settled life in the UK and regularly sees her 16-year-old daughter, who lives with her father; at the time of the hearing before the DJ the evidence was that her parents resided in the UK and had significant health issues, and the Appellant was the only family member they could call in an emergency, although she was not their carer. However, the allegations are serious and, if convicted, any sentence of imprisonment is likely to be substantial. Proper regard was had to the Appellant's mental condition and to the suicide attempts she has made, which will make both the proceedings and any detention in custody, if ordered, more difficult for her. There is, the DJ stated (at para 63(b)), insufficient information to undermine the presumption that the French authorities can provide appropriate care for her.
102. In my judgment that evidence falls well short of making out an arguable case that the Appellant's extradition would amount to a disproportionate interference with her private and family life under Article 8.

***Events since the hearing on 28 March 2019***

103. The parties informed the court that on 16 April 2019 the Appellant's father, Mr Brian Banks, passed away.
104. On 18 April 2019 the Appellant filed a further statement, together with a letter from Dr Bahadur, her parents' GP, dated 11 March 2019.
105. At my request I have received further written submissions from Mr Cooper and Mr Seifert, both dated 1 May 2019, addressing the evidence concerning this development.
106. Mr Seifert accepts that evidence relating to an event that took place after the last hearing is in principle admissible.
107. In her witness statement the Appellant states that her father was the full-time carer for her mother, Mrs Joyce Banks, who, she says, is wheelchair bound, and that she will now be her mother's full-time carer. There are no other relatives who can help her mother. As for her mother's state of health she states:

“My mother had an accident approximately four years ago resulting in her impaired immobility. She lives in an adapted bungalow. She has been diagnosed with osteoporosis and osteoarthritis and has had her left knee replaced. She has had two knee operations and a fused muscle in her leg. My mother also suffers from high blood pressure.

She has been assessed by physiotherapists who have advised her that she is unlikely to walk again. She often falls during the night and I have to be there to help her back into bed.”

The letter from Dr Bahadur confirms that the Appellant is registered at his surgery as her mother and father's carer.

108. Mr Cooper submits that the Appellant's father's death is a material development that requires the court to assess afresh whether the extradition of the Appellant is compatible with both her Article 8 rights and those of her infirm mother. It also requires the proportionality of extradition to be assessed afresh. Relevant to these assessments is, Mr Cooper submits, the issue as to whether surrender is in fact necessary at this time when the trial of the Appellant and her co-accused in France will not commence until Mr Noakes is extradited, which will not take place, he contends, for some very considerable period of time. In considering this issue Mr Cooper submits that regard should be had to a real risk of lengthy pre-trial detention that the Appellant faces in prisons in France that have been condemned by a range of authoritative sources, and which provide inadequate mental health care and treatment. Her mental condition in such prisons is likely to be exacerbated by her father's death and her responsibility for her mother.
109. I accept that the Appellant's father's death is a development that requires me to reconduct the *Celinski* balancing exercise.
110. In so doing I have had regard to the medical condition of Mrs Banks, and whether there is a need for the Appellant to be her full-time carer.
111. The evidence before the DJ from Mrs Banks in her statement dated 23 March 2018 is that she "can only walk very short distances with a walking aid and suffers from high blood pressure" (Decision, para 11). As a factor against extradition the DJ had regard to the fact that the Appellant's parents had "significant health issues and the RP is the only family member they can call in an emergency". However, the DJ added: "She is not their carer. They do not yet require home help. In an emergency, they will be able to dial 999 for assistance" (Decision, para 63(c)).
112. Mr Seifert observes that the letter from Dr Bahadur was written weeks before the last hearing before this court and there has been no explanation as to why it has been served at this late stage in the proceedings. In any event it merely records that the Appellant is registered at his surgery as the carer of her parents. Mr Cooper did not challenge the findings of the DJ that the Appellant was not their carer and they did not require home help (see para 111 above). Indeed, in his latest written submissions (at para 6) Mr Cooper confirms that "at the time of the hearing before the District Judge the Appellant had not assumed the role of caring for her parents".
113. There is no evidence to demonstrate that Mrs Banks' health has deteriorated significantly since the hearing before the DJ. There is no evidence as to the amount of support she requires; and there is no evidence to suggest that there are insufficient funds available to provide assistance and personal care for her, should she require it; or that she will be left without care in the event of the Appellant's extradition.
114. I agree with the DJ that the allegations are serious and any sentence of imprisonment is likely to be substantial. The public interest in this country complying with its international obligations has to be taken into account, as does the mutual confidence and respect that should be given to a request from the judicial authority of a Member State. The development that has taken place since the last hearing does not affect the conclusions I reached as to the conditions in the prisons in which the Appellant is likely to be held pending trial, and the presumption that the French authorities can provide appropriate care for her.

115. I do not accept that the extradition of the Appellant would, in the light of the development since the last hearing, be arguably disproportionate or arguably amount to a disproportionate interference with the Article 8 rights of the Appellant or her mother.

## V. Abuse of process

116. Extradition will only amount to an abuse of the extradition process if the statutory regime in the Act is being “usurped” (*R (Birmingham) v Director of the Serious Fraud Office* [2007] QB 727 at para 97). The “usurpation” of the statutory extradition regime has to result in the extradition being “unfair” and “unjust” to the RP (*Federal Public Prosecutor, Brussels, Belgium v Bartlett* [2012] EWHC 2480 (Admin)).
117. Mr Cooper submits that it is clear the French authorities have used material from the UK investigation to bring about police involvement in France (which is of course not improper), but then used it themselves to obtain a French domestic warrant and EAW and they did so without supplying the necessary particulars. That, he submits, is material to the operation of the statutory scheme. The Appellant is only a potential suspect. Other less coercive measures and/or prosecution in the UK would be more appropriate. Accordingly, pursuing extradition represents an abuse of the EAW scheme.
118. I reject this submission. It is clear, as the DJ notes, that the French authorities have carried out their own investigations and obtained further relevant evidence (Decision, para 71). The UK investigation led to the closing down of Mr Noakes’ operation in the UK and charges relating to the period January 2012 to March 2015. The operation then moved to France and the Netherlands and the French charges relate to activities after March 2015.
119. I agree with Mr Seifert that in any event there would be no usurpation of the statutory regime in prosecuting the Appellant in France with evidence from the UK investigation. Further, it cannot be said that the Appellant is only a potential suspect when there has been a decision to charge her (conditional on the investigating judge questioning her (Decision, para 72)).
120. I do not consider that the decision of the DJ that there is no abuse of process by the French authorities seeking the Appellant’s extradition is arguably wrong.

## Conclusion

121. In my judgment, for the reasons I have given (1) the Article 3 ground of appeal fails, and (2) none of the other grounds of appeal are arguable. Accordingly, the Article 3 appeal is dismissed, and the applications for permission to appeal are refused.