IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2023] EWHC 3039 (Admin)

AC-2023-LON-001038

Royal Courts of Justice

Wednesday, 8 November 2023

Before:

MR JUSTICE CHOUDHURY

B E T W E E N :

ADEYINKA OMISORA
(AKA OMISORE) — Appellant

- and -

CENTRAL INVESTIGATIVE COURT NO 5
MADRID
(A SPANISH JUDICIAL AUTHORITY) — Respondent

MS R HILL and MS E CROW (instructed by Taylor Rose MW) appeared on behalf of the Appellant.

MR D BALL (instructed by CPS Extradition Unit) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE CHOUDHURY:

1 The appellant is wanted by the Spanish Judicial Authority on an accusation warrant to stand trial for three offences arising out of his alleged role in a large-scale cyber fraud conspiracy. The warrant was issued on 28 December 2020 and was certified by the National Crime Agency on 9 March 2022. The appellant's extradition hearing took place before DJ Griffiths ("the judge") on 3 November 2022.

2 Extradition was resisted on a number of grounds, including the lack of particularisation in the warrant and the appropriateness of having a trial in Spain. By a judgment issued on 5 January 2023, the judge rejected those grounds and ordered the appellant's extradition to Spain. The appellant now appeals against that decision, leave having been granted by Swift J on 1 August 2023 on three of the grounds relied upon.

Background

3 The appellant was born in Nigeria and moved to the United Kingdom in 1970. He returned to Nigeria in 1975 and remained there until 2005, when he moved back to the United Kingdom. He lives with his partner and their two children aged 12 and 9, although his work as a freelance builder means that he is away from home a lot. The couple have two older children from previous relationships who no longer live at home. He currently has the right to remain in the UK and is seeking indefinite leave to remain.

4 The warrant in this case has been translated from the original Spanish. An initial version of the warrant was very poorly translated and was, I am told, virtually unintelligible. A further retranslated warrant was prepared. References herein to the warrant are to that retranslated warrant. As one of the grounds of appeal concerns the adequacy of the particulars contained in the warrant, it is helpful to set out the salient parts in full. Section (c) of the warrant, "Indications on the length of sentence", provides:

> 1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s): **6 years imprisonment**."

Section (e), "Offences," provides as follows:

> "Adeyinka Oluwafemi OMISORE is user of the telephone number 447438017738. In November 2015, he had several conversations with Hakeem Oluwasegum TAIWO, but it was in January 2015 when he started to use Hakeem's network of clearing account holders to make fraudulent transfers from different countries.
>
> There are tapped communications describing the transaction of three hundred and fifty-nine thousand euros (€359,000) to Mariano José ORS JIMENEZ's clearing account belonging to BBVA, coming from Azerbaijan. The ING account referred to could be the only one provided to him by Hakeem Oluwasegun TAIWO from Fernando MARINA PINTO or the one from Rafael ZURRO FERNÁNDEZ.
>
> The clearing account holders that have been provided to SPONK are listed below:

- Mariano José ORS JIMENEZ.
- Myraim ROJAS DÍAZ.
- Rafael ZURRO FERNÁNDEZ.
- Fernando MARINA PINTO.
- Carlos DAPENA ALCAIDE.
- Luis SOUSA DE LATORRE.
- Florentina Juana MBULITO AMUGU.

The conversations between the two of them, Adeyinka Oluwafemi OMISORE and Hakeem Oluwasegun TAIWO, are explicit:

- Some discussions indicate that this type of crime has its established annual periods where productivity is to be increased, and another annual period where the profits made during the season are to be realised in moveable and immovable property in Nigeria.

- SPONK lectures how to move money in a nimbler way than Hakeem Oluwasegun TAIWO does, about the international banks that are laxer, as well as about the countries that are less rigorous in their controls. In addition, he encourages him to travel aboard to open clearing accounts in the name of companies with which he subsequently can operate. Likewise, SPONK illustrates how he has acquired immovable property in Lekki – NIGERIA, (an exclusive residential area of this country, where the wealthiest people in Nigeria reside), and his intention to purchase this year other properties in BANANA ISLAND (within the previous area, this is the most elitist possible zone).

All in all, SPONK operates with the network located in the United Kingdom, is the person in charge of contacting Hakeem Oluwasegun TAIWO and informing him of the transfers to be made, to which clearing accounts, and in case he does not have a suitable one, he asks Hakeem Oluwasegun TAIWO for one of the ones he has. These clearing accounts are managed by Hakeem Oluwasegun TAIWO according to the characteristics of the swindle to be carried out and according to the information provided by the organisation in the United Kingdom about the victim."

5 There is no explanation in the warrant as to the identity of "SPONK". The warrant goes on to provide the maximum penalties for the offences of participation in a criminal organisation, swindling and money laundering, those being three years and six months, four years, and four years respectively:

"Nature and legal classification of the offence(s) and the applicable statutory provision/code:

Offence of participation in a criminal organisation, provided for and punishable under Articles 570 bis 1st and 2 of the

Criminal Code with a maximum penalty of 3 years and 6 months imprisonment.

Offence of swindling, provided for and punishable under Articles 248 1st and 2 a) and 250.1. 5th of the Criminal Code, with a maximum penalty of 4 years' imprisonment.

Offence of money laundering, provided for and punishable under Article 301 1st, 12th, 5th and 302 1st, 5th of the Criminal Code, with a maximum penalty of 4 years' imprisonment."

6 The Judicial Authority ("JA") has provided further information in three separate documents. The first of these, referred to here as "FI 1", is dated 30 June 2022. The judge summarised the contents of FI 1 as follows:

> "a) The term 'SPONK' is the alias of the RP. Therefore, the acts carried out by 'SPONK' are said to be carried out by the RP.
>
> b) The modus operandi of the fraud offence was to hack bank accounts by using bridging accounts and transferring money of the victims which is further explained below.
>
> c) The RFFI response goes on to explain how the group hack the e-mail account by essentially using a phishing technique, how they establish the bridging accounts to be used, how the money transfers from the victims accounts were carried out and the final destination of the bank transfers to a bridging account.
>
> d) The RP was part of a criminal organisation which indiscriminately sent spam emails at both a national and international level. The emails pretended to share a document with a victim using for example a google drive or drop box or cloud based storage system. The emails invited victim to click on a link. The link would direct the victim to a sham website simulating the cloud based service the victim was expecting to access, and instead seeking to capture their details. This allows the hackers to access and control the victims' email accounts.
>
> e) The hackers would monitor the victims' emails and bank accounts. They would then extract money from the account and send it to a 'bridging account'. These bridging accounts are accounts held by natural or legal persons who have a long term relationship with their bank and where the transactions will not raise any suspicions with the bank. The holders of a bridging account need to be aware of the receipt of money. The hackers themselves would never open a bridging account in their own name. They would instead have a series of bridging accounts until one would be the final end place of the scammed money. The hackers therefore need, 'the collaboration of

third parties to provide them with bridging accounts as the final end place of the scammed money'."

7 The second set of further information, FI 2, is dated 25 August 2022. It contains the JA's response to questions about forum and, in particular, why the JA considers it would be in the interests of justice for the appellant to be prosecuted in Spain rather than in the UK. FI 2, so far as relevant, provides:

> "The Prosecution Service submitted a report dated August 22, 2022 in which they set out the need for the extradition of the requested person to take place, since it would be in the interests of Spanish justice that the Requested Person was prosecuted in Spain, taking into account that there had been no indication within these proceedings that measures of the Requested Person's activity occurred in the United Kingdom, unless the requested person used a British telephone or victims were found in the United Kingdom. Furthermore, it must be emphasised that the conducts took place in Spain and in some African country, that the victims who lodged the reports are located in Spain as well as all the pieces of evidence that were collected within these proceedings; Which, together with the fact that the requested person belongs to a criminal organisation and that she has been investigated along with more than 50 other individuals within these judicial proceedings that were instituted in Spain and who were prosecuted in Spain, with legal persons based in this country, it should be concluded that it is more appropriate for the interests of justice and the for a compensation for the loss and harm caused to the victims, that the conduct for which the said citizen has been requested be prosecuted in Spain.
>
> Consequently, adhering to the arguments put forward by the Prosecution Service, and having regard to where the offence was committed as well as to the fact that the National Court has jurisdiction to hear the case, in my capacity as Senior-Judge I affirm once more that it is desirable or necessary that the requested person be tried in Spain since it is in the best interest of justice."

8 The final tranche of further information, FI 3, is dated 15 November 2022. This was served by the CPS after the final hearing but before judgment. The judge summarised the contents of FI 3 as follows:

> "a) The RP's 'participation in the criminal network under investigation' stems from the results of wiretap evidence. It explains that the excerpts of wire tap conversations are between 17 February 2016 and 31 March 2016. This is the evidence referred to in the first RFFI response at page 83 of the bundle.
>
> b) It also explains that there is not 'any evidence in the case file as to when [he] stopped participating with the organisation under investigation'. It says this organisation was 'dismantled as a result of police and judicial actions' following the initiation of the present proceedings in Madrid on 25 May 2016."

9 Also, by way of background, the judge made reference to the evidence of an earlier investigation in the United Kingdom as to the appellant's activities:

> "[9] There is a witness statement from DS Daniel Newbury, which explains that the RP was arrested on 26 April 2016 by the NCA and that he was interviewed in relation to 'concealment of criminal funds dispersed from OCG based in Spain consisting of 50 plus money mules. Records show matter NFA due to being passed to the Spanish authorities for further investigation'."

10 It was contended before the judge that the particulars in the warrant were so deficient as to amount to a "wholesale failure" to provide the particulars required by s.2 of the *Extradition Act 2003* ("EA 2003"). The judge rejected that contention, stating:

> "[37] I do not agree that the warrant amounts to a wholesale failure to provide particulars required by section 2 of the Act. There is a lot of information in the re-translated AW and the particulars that are set out in the AW cannot in anyway be said to amount to a wholesale failure to provide the particulars required. I am satisfied that this is not a wholesale failure to comply with the Act and therefore, I find that I am entitled to rely upon the RFFI response from the JA in which the further details of the underlying offence have been provided."

11 The judge therefore went on to conclude that she was entitled to rely upon the further information provided to rectify any lacunae in the warrant. As to the dates of the offence, the judge concluded:

> "[39] d) … It is clear from the AW and the RFFI response that the conduct officered from January 2015, with November 2015 being referred to specially. Further, the RFFI response explains that wire tap evidence related to conversations involving the RP between 17 February 2016 and 31 March 2016. Finally, it also explains that there is not 'any evidence in the case file as to when [the RP] stopped participating with the organisation under investigation' but that the organisation was 'dismantled as a result of police and judicial actions' following the initiation of the present proceedings in Madrid on 25 May 2016. Therefore, it is clear that the offence took place between a date in 2015 and no later than 25 May 2016. For offences such as these, a more specific date is not required, and it is clear what period of time the offending is said to have taken place over."

12 The judge also found that the maximum sentence is provided for in the warrant:

> "[39] h) The maximum sentence for the offence is provided for. Whilst there is a difference in the maximum sentences for the individual offences and the maximum sentence which can be imposed in Box B, I find it clear what the individual maximum sentences are for each offence and then there is a maximum sentence referred to in Box B for the conduct. I find that this is sufficient."

13 As to forum, the judge considered the factors for and against the operation of the forum bar under s.19A EA 2003. In relation to the place where most of the loss or harm resulting from the extradition offence occurred, or was intended to occur, the judge concluded that that place was Spain, as that is where the victims who lodged complaints are based. The judge, following *Lauri Love v The Government of the United States of America* [2018] EWHC 172 (Admin) 1 WLR 2889 [22], considered this to be a "very weighty factor" against the operation of the forum bar. As to the other specified factors to be taken into account under s.19B(2)(b) EA 2003, the judge found as follows:

(1) Interest of victims.

The victims, being those who lodged reports, are based in Spain, and a trial there would be likely to cause the least inconvenience.

(2) Belief of a prosecutor that the UK would not be the most appropriate jurisdiction in which to prosecute the appellant.

No prosecutor's belief was expressly relied upon by the CPS. The respondent submitted that the fact that the appellant had been 'no further actioned' in 2016 was indicative of a decision by the CPS not to prosecute in this country. The judge could not confirm that that had been the case and treated this as a neutral factor.

(3) Whether evidence could be made available in the UK.

The judge accepted that it could and treated this as a factor in favour of the forum bar.

(4) Delay.

The judge concluded that the trial in Spain was likely to be concluded much more swiftly. This was therefore a factor weighing against the forum bar.

(5) Desirability and practicability of all related prosecutions taking place in the same jurisdiction.

The judge noted that some 50 individuals associated with this conspiracy had already been prosecuted in Spain. This was therefore a factor weighing against the forum bar.

(6) The appellant's connections with the UK.

The judge found that the appellant had strong ties with the UK but that this had to be balanced against the fact that the appellant's children will remain in the care of their mother and that they would cope without the appellant, albeit that it would be difficult financially and emotionally. This was a factor in favour of the forum bar.

The judge's overall value judgment on forum was that the interest of justice lay in favour of extradition in this case.

The grounds of appeal

14 The three grounds in respect of which leave was granted are that the judge was wrong to conclude that:

(1) the warrant contains adequate particulars of conduct within the meaning of s.2(4)(c) EA 2003;

(2) the warrant contains adequate particulars of sentence within the meaning of s.2(4)(d) EA 2003; and

(3) extradition is not barred pursuant to s.19B, EA 2003.

I shall deal with each ground in turn.

Ground 1: Inadequate particularisation

15 Ms Hill, who appears for the appellant, as she did below, submits that the judge was wrong to consider the warrant to be adequate on the basis that it contained "a lot of information" without analysing whether the particulars provided actually enabled the appellant to understand what offence he is alleged to have committed, when he is said to have committed it, and where. It is said that the details provided do not make clear whether a particular transaction concerning the sum of €359,000 involved the appellant. Moreover, there is, submits Ms Hill, no clarity as to when the criminality took place, the duration of the conspiracy of which he is said to be part, and where those transactions took place. These inadequacies give rise, she says, to the serious concern that the appellant would be entirely unable to assert his specialty protection upon return.

16 Ms Hill further submits that even if the warrant is not considered defective on its face such that further information is admissible, that further information falls short in this case of establishing the parameters of the appellant's alleged criminality. Particular reliance is placed upon the uncertainty over the period of the alleged conspiracy which, until the service of FI 3, appeared to be between January and November 2015.

17 As to the particulars of sentence, it is said that the warrant is internally inconsistent, in that it refers on the one hand to a maximum sentence of six years and, on the other, to different maximum sentences for each of the three offences alleged.

18 Mr Ball, who appears for the respondent, as he did below, submits that the judge was correct to conclude that there was no "wholesale failure" to provide particulars. The appellant makes no complaint about the particulars as to his identity or as to the nature of the warrant.

19 It is submitted that the references to the appellant being "in charge of informing" TAIWO about the destination of proceeds makes it clear that the appellant played a leading role. As to the period over which the offending occurred, it is made clear that this commenced in January 2015, with particular incidents highlighted in November 2015 involving recorded conversations with TAIWO. It is submitted that although the warrant does not explain who "SPONK" is, it can be inferred from the context that this refers to the appellant, as has been confirmed by FI 1. If one takes account of the further information, he submits there can be

no doubt as to the adequacy of the particulars. In these circumstances, it cannot be said that the judge was wrong to conclude as she did.

Ground 1 discussion

20 Section 2, EA 2003 implements the *Trade and Cooperation Agreement*, which reflects its predecessor, the European Framework Decision, and governs the surrender procedures between member states. The material part of s.2, for present purposes, is contained in s.2(4) which stipulates the information that is to be contained in a Part 1 warrant:

> "(4) The information is –
>
> (a) particulars of the person's identity;
>
> (b) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;
>
> (c) 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;
>
> (d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it."

21 These requirements as to the information to be contained within an arrest warrant have been the subject of much judicial consideration. The relevant principles are summarised by Nicol J in *M B v Preliminary Investigation Tribunal of Napoli, Italy* [2018] EWHC 1808 (Admin):

> "[46] I do not consider that the following propositions are controversial:
>
> i) Unless an EAW satisfies the terms of EA s.2, extradition cannot be ordered.
>
> ii) It is for the Judicial Authority to show that what purports to be an EAW does indeed satisfy the requirements of s.2 – See EA s.206.
>
> iii) In this, as in all other matters relating to the extradition, the Judicial Authority must prove its case to the criminal standard *ibid*.
>
> iv) In approaching the EAW, the District Judge must to do so in the spirit of mutual trust and confidence. This must include making reasonable allowance for difficulties that may arise

> because of documents being written in languages other than English.
>
> [47] It is fundamental, as is clear from EA s.2, that the warrant should identify the offence or offences for which the Requested Person is sought. One reason for this is that the offence (and each offence if there is more than one) must be an 'extradition offence' see EA ss.10(2) and 64. A second reason is that, if extradited, the Requested Person can only (putting it over-simply) be prosecuted for the offences for which extradition was ordered. A Requested Person is unable to assert his or her entitlement to Specialty Protection if insufficient particulars are provided."

22 It is important to bear in mind that these requirements are to be construed with the objective of the *TACA* in mind, one of which is the simplification of extradition procedures; see *Ektor v National Public Prosecutor of Holland* [2007] EWHC 3106 (Admin) per Cranston J, [7]:

> "…As with any European instrument, these requirements must be read in the light of its objectives. A balance must be struck between, in this case, the need on the one hand of an adequate description to inform the person, and on the other the object of simplifying extradition procedures. The person sought by the warrant needs to know what offence he is said to have committed and to have an idea of the nature and extent of the allegations against him in relation to that offence. The amount of detail may turn on the nature of the offence. Where dual criminality is involved, the detail must also be sufficient to enable the transposition exercise to take place."

In this context, it has been said that "substantial compliance" with the requirements of s.2 suffices; see *Poland and Sabramowicz* [2012] EWHC 3878 (Admin) [22].

23 In relation to allegations of conspiracy, it is helpful to note what was said by Collins J in *Pelka v Judge Radomir Boguszewski Regional Court in Gdansk Poland* [2012] EWHC 3989 (Admin):

> "[6] Certainly, where involvement in a conspiracy is alleged, it is not necessary to include any great detail as to the precise acts committed in furtherance of the conspiracy. But, as a general proposition, it seems to me that a warrant ought to indicate, at least in brief terms, what is alleged to have constituted the involvement or the participation of the individual in question. It seems to me that, prima facie, simply to say there was a conspiracy and he conspired with others is to do whatever the end result of the offence is, is likely not to be sufficient."

24 In *Pelka*, it was held – even taking the warrant in that case as a whole – that it did not indicate clearly what offences the appellant was actually being charged with, or as to the location or part of the conspiracy with which he was being charged. The question for the court in such cases is whether the warrant, although not needing to contain highly detailed information as one would find in a civil pleading:

> "…contains enough information to enable the requested person to understand with a reasonable degree of certainty the substance of the allegations against him, namely, what he is said to have done, when and where…"

See *Dhar v Netherlands* [2012] EWHC 697, *per* Moore-Bick LJ at [117].

25 Where there has been what may be described as a "wholesale failure" to provide the necessary particulars, as opposed to there being a "lacuna" which can be filled, then the warrant should be discharged; see *Alexander v France & Di Benedetto v Italy* [2017] EWHC 1392 (Admin) at [75]. Failure to comply with the requirements of s.2, EA 2003 means that the warrant cannot amount to a Part 1 warrant for the purposes of the Act; see *Kings prosecutor, Brussels v Cando Armas & Anor* [2006] 2 AC 1 at [28]. If the arrest warrant is not a Part 1 warrant, the judge has no power to deal with it; see *Dabas v High Court of Justice, Madrid* [2007] 2 AC 31 at [50].

26 With these principles in mind, I turn first to the warrant itself. Even allowing for difficulties in translation, the warrant is far from being a model of drafting. It contains terms and names that are undefined and unexplained, and sections of it appear to have been 'cut and pasted' from another document. Thus, the reference to "SPONK" is unexplained, as is the reference to an "ING bank account." One sentence in the warrant, which reads, "The ING account referred to could be the only one provided to him by Hakeem Oluwasegun TAIWO from Fernando MARINA PINTO or the one from Rafael ZURRO FERNÁNDEZ," appears somewhat vague and unclear.

27 However, such obvious deficiencies on the face of the warrant would not necessarily be fatal to the validity of the warrant if it could be said that there was substantial compliance with the requirements of s.2 such that the appellant can know with a reasonable degree of certainty what it is he is alleged to have done, where he is alleged to have done it, and when.

28 As to what he is alleged to have done, the warrant states that the appellant, as a user of a specified number, had several conversations with TAIWO in November 2015, and that he had started to use TAIWO's network of clearing account holders to make fraudulent transfers from different countries in January 2015. It is not clear from this whether the conversations in November 2015 were culpable in any respect, although it would be reasonable to infer that that was what was being alleged. This is, on any view, a fairly generalised description of alleged criminal activity. On its own, it does not provide sufficient particulars.

29 Mr Ball submits that one can infer from the reference in the next paragraph to "tapped communications", that it is the transactions being referred to therein that are the subject of the charge. However, even that does not shed much light on the matter. The tapped communications refer to a single transaction involving €359,000 coming from Azerbaijan. Apart from the fact that no reference is made to the appellant, it is far from clear what the appellant is supposed to have done beyond describing the transaction.

30 It may be that there is an error in translation and that instead of "described", it was intended to say "directed". However, I am conscious that this is said to be an improved translation, and I should proceed on the basis of what that translation says. As it stands, the allegation goes no further than, at best, that the appellant was involved in a phone call in which the impugned transaction was described. On the basis of these particulars, the appellant's

involvement in the call does not necessarily disclose the criminal offences of participation in a criminal organisation, swindling, or money laundering. Alternatively, if it does disclose an offence, it does not specify with sufficient particularity the appellant's role in it.

31 These two paragraphs at the beginning of the warrant also say very little about the location of the offending, although it can be inferred, by reason of the reference to a UK telephone number, that the appellant's alleged involvement occurred within this jurisdiction. Mr Ball submits, however, that these passages, when read with the remainder of the warrant, adequately specify the appellant's involvement.

32 All but one of the subsequent paragraphs refer to the activity of "SPONK". We know now from FI 1 that SPONK is a reference to the appellant. However, there is nothing whatsoever on the face of the warrant to indicate that that is so, or at least nothing express on the face of the warrant to indicate that that is so. In the paragraph immediately following the introduction of SPONK, there is once again reference to the appellant by name and to TAIWO.

33 On one reading of the warrant, one could be forgiven for thinking that SPONK was a separate third participant whose details have been included as a result of a rushed cut and paste exercise. Such warrants are not, however, to be construed as one would an indictment or a civil pleading. The question is whether there is sufficient material here, reading the warrant as a whole, for one to infer that the references to SPONK are indeed to the appellant, and that there are sufficient particulars of the offending alleged. Having considered the warrant closely, it is my view that there is sufficient information here.

34 The first reference to SPONK comes immediately after a passage about the use of clearing accounts for fraudulent transactions by, it may reasonably be inferred, the appellant. SPONK is then identified as the person to whom a number of named clearing accounts have been provided. Given that the warrant names the appellant as the requested person, it does not require any leap of logic to infer that SPONK must be a reference to the appellant. The very next paragraph refers to conversations between the appellant, who is named, and TAIWO.

35 There are then two bullet points describing those discussions. The first bullet does not refer to any person by name, and the second describes the "lectures" given to TAIWO by SPONK. The fact that these two bullet points are, it would appear, given as examples of conversations between the appellant and TAIWO, provides strong support for the inference that SPONK is indeed intended to refer to the appellant. The same may be said of the final reference to SPONK, which commences:

> "All in all, SPONK operates within the network located in the United Kingdom…"

This summary statement would appear to confirm that SPONK is the person that is the subject of the warrant.

36 It is clearly unhelpful that SPONK has not been identified in the warrant itself. However, I am satisfied that the failure to do so gives rise to a lacuna or gap that may be filled by a request for further information, as it was in this case, and does not amount to a wholesale failure to provide the required information. Once it is established to the required standard

that SPONK is the appellant, then one can see that there is more information as to the nature of the appellant's involvement in the alleged offending.

37 I agree with Ms Hill that the paragraph describing SPONK's discussions with TAIWO refers to discussions about apparent fluctuations in the fraud market and the use of profits to purchase property in Nigeria. These do not necessarily disclose any offending. These conversations would appear to be generic ones about the conditions for fraudulent activity or about the spoils of crime, with no particulars to enable one to say whether the discussions relate to specific transactions carried out within the period in question or to some other transactions undertaken by others.

38 The concluding paragraph, however, is far more informative. It states that SPONK operates with the network located in the United Kingdom, is the person in charge of contacting TAIWO, and informing him of the transfers to be made, to which clearing accounts and, in case he does not have a suitable one, he asks TAIWO for one of the ones he has.

39 Although there are no particulars of precisely when such contact was made, what transfers were directed or what amounts were involved, the nature of the fraudulent conduct being alleged, and the appellant's alleged role in it are, in my view, tolerably clear. Thus, the appellant would appreciate, with a reasonable degree of certainty, that he is alleged to be the "person in charge of contacting TAIWO" to direct the transfers to be made and to which account.

40 In my judgment, this amounts to more than a bare assertion of involvement in a conspiracy: the warrant gives sufficient information as to the mechanics of that conspiracy and the appellant's role within it *vis-à-vis* TAIWO. Gaps clearly remain, but that does not amount to a wholesale failure to provide the required information.

41 As to the question of where the offending allegedly took place, this is clear from the reference to the UK phone number used by the appellant. Ms Hill submitted that that is insufficient because the person could use their phone abroad. That is undoubtedly correct. However, the warrant goes on to state that SPONK, i.e. the appellant, "operates with a network located in the United Kingdom." Once again, gaps remain. However, the broad thrust of the allegation – namely, that the appellant was, in effect, operating in the conspiracy in the UK – is clear.

42 As to when the conduct is said to have occurred, the warrant refers to two periods, both of which are set out in the first paragraph of section (e) of the warrant. The offending is said to have commenced in January 2015. However, as Mr Ball fairly accepts, no end date is specified. There are instances given of conversations in November 2015, but the appellant cannot know from the warrant if that is the end of the relevant period. There is not even the hint that fraudulent activity allegedly continued into 2016.

43 We know now from FI 3 – which itself was not produced until after the hearing but before judgment – that in fact the allegation is of involvement until at least May 2016, with involvement in a specific transaction alleged in February to March 2016. The question is whether that failure to provide an end date or details of involvement in activity in 2016 amounts to a wholesale failure to identify when the offence was alleged to have been committed. In my judgment, it does not.

44 This is not a case where no attempt at all has been made to identify the time of the offending or where the timeframe is irretrievably uncertain. The warrant is clear that the appellant's involvement commenced in January 2015. It identifies instances of tapped communications in November 2015. The absence of an end date in an allegation of a large-scale multi-jurisdictional conspiracy will not always amount to a failure to comply with s.2. There may be instances, as in this case, where the precise date of the cessation of the requested person's involvement in the conspiracy is not known. The inability to provide an end date in these circumstances, far from being any sort of failure to provide information that is available, is merely a consequence of the nature of the offence being investigated.

45 FI 3 confirms that the organisation under investigation was dismantled by May 2016. Thus, once FI 3 was available, the appellant would be in no doubt that no allegations were made in respect of the period after that month. The court raised with Mr Ball the concern that if the extradition had been ordered before the receipt of FI 3 on 15 November 2022, and its subsequent admission into evidence – as was a possibility if the district judge had proceeded to deliver an *ex tempore* judgment on the day of the hearing or immediately thereafter –then the appellant might have faced proceedings relating to events in 2016 that had not been foreshadowed in the warrant. Mr Ball submitted that in those circumstances it would be open to the appellant to raise an objection to such proceedings before the Spanish court. He further submits that the absence of an end date amounts to no more than a lacuna in the circumstances of the present case and would not mean that the warrant was not compliant. I agree with those submissions.

46 For these reasons, I consider that the warrant, deficient as it was, did not give rise to the sort of wholesale failure to provide information that would require the court to move to discharge. This was a case of there being gaps, some quite serious, in the warrant which could be (and were) filled by further information.

47 Ms Hill submits that the further information did not advance matters. I disagree. The further information taken together clarifies both the nature of the offence and the appellant's role in it. True it is that FI 1, for example, refers to the "perpetrators" undertaking certain acts rather than the appellant himself. However, given that the allegation is one of conspiracy, that is not an approach that can be criticised, particularly where the Judicial Authority goes on to identify in the further information the specific involvement of the appellant.

48 Taking the information in the three sets of further information together with the warrant, it is clear, in my view, that the requirements of s.2, EA 2003 are met. For these reasons, Ground 1 of the appeal, is dismissed.

Ground 2: Sentence

49 Ms Hill's submission is that the warrant is internally inconsistent, in that it refers on the one hand to a maximum sentence of six years and on the other to different maximum sentences for each of the three offences alleged. It is said that this gives rise to an ambiguity which could be very easily resolved by the Judicial Authority confirming that the maximum stated in Box C is as a result of the sentencing practices in that jurisdiction. Mr Ball submits that there is nothing equivocal in the warrant. The maximum sentence is clearly stated, and the references to the sentences for the individual offences do not undermine that statement.

Ground 2: discussion

50 A similar point arose in the case of *Manuel v Portugal* [2020] EWHC 744 (Admin). In that case, it was contended that a reference to a maximum sentence of 25 years, in respect of 127 separate offences, was inadequate in circumstances where the sentences for each offence were not set out in the warrant. Swift J held as follows:

> "[11] I will take Mr Williams's points in turn. First the point under section 2(4)(d). The Warrant states that the maximum sentence that may be imposed is 25 years. This is in respect of the totality of offending referred to in the EAW. The further information goes on to state that the maximum sentence for the offence under section 256 of the Penal Code is 5 years and the maximum sentence for the offence under sections 217 and 218 of the Penal Code is 8 years. In my view, the information on the Warrant as originally provided is sufficient. There is no reason to doubt that 25 years is the maximum sentence that the Appellant could face if convicted on all matters referred to in the Warrant. The Warrant is not deficient because the specific maximums for the individual offences were only provided by way of the further information. Given the number of offences alleged, the relevant information was that concerning the maximum term of imprisonment that could be imposed on the Appellant if he were convicted on all counts."

51 Ms Hill submits that that case can be distinguished. It seems to me that even though the way in which the different sets of sentences arose in that case is somewhat different from this case, where both sets of sentences were included in the warrant, the principle that there is no reason to doubt the sentence stated as the maximum under the relevant section of the warrant holds good.

52 There is no inconsistency, in my judgment, in the warrant providing that the maximum sentence for all the offending was six years. That statement is wholly unequivocal. The inclusion of maximum sentences for the individual offences being charged does not undermine the statement in Box C of the warrant. Furthermore, it is not necessary for the Judicial Authority to describe precisely how that maximum is reached or to describe domestic sentencing practices in order to explain the maximum stated. For these reasons, Ground 2 of the appeal is dismissed.

Ground 3: The forum bar

53 Ms Hill submits that the judge was wrong to conclude that the forum bar is not engaged. There was, she says, insufficient evidence to conclude that the place where most of the harm or loss occurred was in Spain. She points to the fact that the only particularised fraud relates to a transaction received from Azerbaijan and that evidence of bridging accounts being held in Spain does not indicate loss or harm to any victims in that jurisdiction.

54 Whilst she accepts that it is desirable for all prosecutions to be undertaken in one jurisdiction, there are, in this case, co-conspirators in the UK, and some of the related evidence, namely the mobile telephone records and interview evidence, was obtained here. Finally, it is said that the judge ought to have treated the appellant's connection with the UK as more weighty than it did and that the tribunal fell into error in adopting an Art.8 style approach to that factor. Mr Ball submits that the judge considered all the relevant factors at length and reached an evaluative decision that cannot be said to be wrong.

Ground 3: discussion

55 Section 19B of EA 2003, so far as is relevant, provides:

> "(1) The extradition of a person ("D") to a category 1 territory is barred by reason of forum if the extradition would not be in the interests of justice.
>
> (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—
>
> (a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and
>
> (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
>
> (3) These are the specified matters relating to the interests of justice—
>
> (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
>
> (b) the interests of any victims of the extradition offence;
>
> (c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
>
> (d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;
>
> (e) any delay that might result from proceeding in one jurisdiction rather than another;
>
> (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—
>
> (i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and
>
> (ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;

(g) D's connections with the United Kingdom."

It is not in dispute that the first limb of s.19B(2) is satisfied. That is to say, a substantial measure of the appellant's activities were performed in the United Kingdom; however, extradition would be not in the interests of justice if the court decides, having regard to the specified matters in (3), that the extradition should not take place.

56 The judge dutifully worked through each of the specified matters in s.19(B)(3). As to the first of these, Ms Hill's primary submission was that the judge erred in concluding that most of the harm or loss occurred, or was intended to occur, in Spain. Whilst it is correct that the only transaction specifically identified was one where funds were transferred out of Azerbaijan, it is incorrect to say that there was no harm in Spain. As the judge found, several individuals were sufficiently concerned about the use of their bank accounts to lodge a report. Whilst the use of those accounts may not have resulted in any direct pecuniary loss as such, there can be no doubt that the undesired use of accounts in this way did, or could, result in harm. There is the harm of knowing your accounts have been used in this way, the fear of being unwittingly caught up in a criminal enterprise, and so on.

57 The judge is fully entitled to have regard to the existence of such reports in concluding that there was harm in Spain. Insofar as funds were transferred from other countries, the evidence, such as it is, suggests that the common link between those other countries and perpetrators, whether in the UK or in Spain, was the bridging accounts of the victims in Spain. In my view, it cannot be said that the judge was wrong to conclude as she did.

58 By the same token, the judge was clearly not wrong to find that the interests of the victims lay in prosecution in Spain. While such victims may be alerted to proceedings in other jurisdictions, the knowledge that proceedings are being conducted in Spain, with punishments meted out in that country, would be likely to produce a more satisfactory outcome as far as the victims are concerned. The judge made no error in her assessment of the transferability of the evidence. Indeed, it was considered to be in favour of the bar applying.

59 As to other related proceedings being conducted in the requesting country, Ms Hill referred me to the judgment of Burnett LJ in *Scott v Government of the United States of America* [2018] EWHC 2021 (Admin) at [55]:

> "In a case where there is more than one defendant, it is desirable when practicable for prosecution to take place in a single trial. That ensures that all relevant evidence is available, promotes consistency of decision making, and is more efficient. However, the position is less weighty when, even if the prosecutions take place in the same jurisdiction, separate trials are inevitable. In those circumstances there is some saving in public resources and a gain in efficiency from the fact that a single investigation can be undertaken, but the full advantages of a single trial cannot be achieved. The evidence may be different, as may the approach of the factfinder (particularly if that is a jury), and there will have to be two trials instead of one. That said, the cases would be tried under the same law and procedure, which promotes consistency of approach. If these are convictions, there would also be consistency in sentencing."

60 The present case is one where the trials are separate, proceedings having already been conducted in respect of other defendants in Spain. However, given the number of prosecutions that have already been conducted in Spain, it is in the interests of promoting consistency of approach that proceedings against the appellant are also conducted there. The judge was correct to conclude that this was a factor against the bar, and one to which weight should be attached.

61 The final matter relied upon by Ms Hill is in relation to connection with the United Kingdom. The judge considered the appellant's connections with the UK with care and also considered what effect his removal would have on those connections. In my judgment, there was no error of principle or law in taking that approach. A consideration of the effect of removal is part and parcel of the evaluative judgment to be made as to the strength of connection in the UK. It is artificial to suggest that an Art.8 style of assessment is wholly out of place in this context.

62 My attention was drawn to the case of *Shaw v Government of the United States of America* [2014] EWHC 4654 (Admin) where, at [42], the court addressed the approach to be taken in determining whether the judge has gone wrong in the evaluative judgment to be made in respect of the applicability of the forum bar:

> "42 In this case the judge did go through each of the specified matters set out in section 83B(3). He reached what can be called a 'value judgment' on whether it was in the interests of justice that the extradition should not take place. There is therefore a threshold question on an appeal concerning a Forum Bar issue: on what basis can this court interfere with the judge's 'value judgment'? Plainly, if the judge has erred in misconstruing the statutory wording of one of the specified matters, or if he has failed to 'have regard' to a specified matter or he has had regard to other matters, or lastly if his overall 'valued judgment' is irrational or unreasonable, this court, as an appellate court, can interfere. If this court decides that the DJ has erred in any one of those ways, that must, in my view, invalidate the DJ's 'value judgment'. In those circumstances this court would have to re-perform the statutory exercise and reach its own 'value judgment'."

63 There is no suggestion in the present case that the judge had misconstrued the statutory wording of any of the specified matters or, indeed, that she had failed to have regard to any of them.

64 It seems to me that Ms Hill's submissions under this ground essentially boil down to a challenge to the weight attached by the judge to each of the individual factors. However, that is not sufficient to enable this court to interfere, even if this court had a different view as to the weight to be attached to a factor. It would only be where the overall evaluative judgment could be said to be irrational or unreasonable that this court would interfere. In my judgment, there is nothing in this appeal which gets close to establishing an error or decision of that nature. Accordingly, this ground of appeal is also dismissed.

65 In conclusion, for these reasons, and notwithstanding Ms Hill's powerful submissions to the contrary, this appeal fails and is dismissed.

CERTIFICATE

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This transcript has been approved by the Judge.