Neutral Citation Number: [2024] EWHC 1436 (Admin)

Case No: AC-2022-LON-002579

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

Wednesday, 12th June 2024

**Before**:

**FORDHAM J**

- - - - - - - - - - - - - - - - - - - - -

**Between:**

| | |
|---|---|
| **VERONICA GRIGORIE** | **Appellant** |
| **- and -** | |
| **VALCEA LAW COURT (ROMANIA)** | **Respondent** |

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Matei Clej** (instructed by Coomber Rich Ltd) for the **Appellant**
**Alex Du Sautoy** (instructed by CPS) for the **Respondent**

- - - - - - - - - - - - - - - - - - - - -

Hearing date: 1.5.24
Further evidence: 10.5.24, 23.5.24
Draft judgment: 4.6.24

- - - - - - - - - - - - - - - - - - - - -

# Approved Judgment

- - - - - - - - - - - - - - - - - - - - -

FORDHAM J

**FORDHAM J:**

Introduction

1. This is an extradition case where the High Court is evaluating "afresh" whether extradition would be a proportionate interference with Article 8 ECHR rights (to respect for private and family life), including the Article 8 rights of young children for whom extradition brings the prospect of being taken into local authority care. The children are the Appellant's son aged 7 years 8 months (the "Son") and daughter aged 3 years 5 months (the "Daughter"). They ("the Children") were both born in the UK and are British citizens.

2. The Appellant is aged 42. Her country of origin is Romania. She had come to the UK in August 2013 (aged 31), after which she went back to Romania intermittently. In July 2015 she joined the Children's father Marius Nicolescu (the "Father") in the UK. They had recently rekindled a relationship. The Father's country of origin is Romania and he had come to the UK earlier in 2015. The Father obtained settled status here in April 2021. The Appellant, who has no criminal convictions in the UK, obtained settled status here in January 2019. The Appellant, the Children and the Father lived together as a family. They were joined here in May 2023 by the Appellant's 75 year old mother (the "Grandmother"). The Appellant is wanted for extradition to Romania, in conjunction with a conviction Extradition Arrest Warrant ("the ExAW"). It was issued on 5 February 2020 and certified on 5 October 2021. The Appellant was arrested on the ExAW on 10 November 2021 and released on bail on 19 November 2021. The index offending (see §35 below) had taken place between December 2013 and May 2014. In September 2018, when the Appellant was on one of her intermittent visits to Romania, she was interviewed about the offences and admitted them on affidavit. She was back in the UK when she was tried, convicted and sentenced in November 2018 to 4 years 4 months imprisonment. The Son was then a 2 year-old. After an appeal, the sentence became final on 28 March 2019. Were the Appellant extradited, she would have a right of retrial under Romanian law. Extradition was ordered by District Judge Turnock ("the Judge") at Westminster Magistrates Court ("WMC") on 15 September 2022. That was after an oral hearing on 26 August 2022 at which the Appellant gave oral evidence and was cross-examined. She adopted as her evidence her proof of evidence, the contents of which were summarised by the Judge in the judgment. The Father give evidence in the form of a witness statement which was adopted into evidence by agreement between the parties. He was not required by either party to give oral evidence.

Working Illustrations: Children Taken Into Care

3. In Deb v Greece [2024] EWHC 1131 (Admin) this Court has repeated the previous warning (see A v Hungary [2013] EWHC 3132 (Admin) at §36) against a "mechanical" exercise of trying to compare features of fact-specific cases. In Deb the Court found, in a tour of 12 authorities, a value in inverse proportion to the time spent (see §§142-146). In this case, Counsel fell into no similar trap. I asked for their help in identifying Article 8 'working illustration' cases where children would, in consequence of extradition, be taken into local authority care (Deb was itself not such a case: see §§153-154). There was no mechanistic comparison or wasted hearing time. Here is a list – with a brief outline – of 7 relevant 'working illustration' cases which Counsel and I were able to find:

i) In HH v Italy [2012] UKSC 25 [2013] 1 AC 338 (SC 20.6.12), it was Article 8-proportionate (6-1) to extradite a mother (HH) and father (PH), to serve 9y6m and 8y4m custodial sentences (respectively) for participation in a major drug smuggling conspiracy (§§53, 71), where the assessed consequences for children (aged 11, 8 and 3) were (a) being taken into care and (b) possible separation from one another (§§66, 68-69, 157).

ii) In A v Hungary (DC 24.7.13), it was Article 8-disproportionate to extradite a mother, to face trial for 4 mortgage fraud offences (£100k) and serve a sentence of 2y10m for 34 fraud offences (£1.5k) (§9), where the assessed consequence for a child (aged 9) was (a) being taken into care (b) with no cogent or satisfactory plan.

iii) In A v Germany [2014] EWHC 2517 (Admin) (DC 19.6.14), it was Article 8-proportionate to extradite a mother, to face trial for a people-trafficking offence involving sexual exploitation (§61), where the assessed consequence was that a child (aged 12) with significant special needs (§§3-5) may be taken into care (§74).

iv) In Parlinska v Poland [2014] EWHC 3251 (Admin) (Supperstone J 15.12.16) it was Article 8-disproportionate to extradite a mother, to serve an activated 2y sentence for 7 incidents of relatively high value shoplifting (£2.8k), where the assessed consequences for children (aged 8 and 5) were (a) being taken into care and (b) possible separation from one another (§21).

v) In M v Poland [2019] EWHC 1342 (Admin) (Holman J 8.5.19) it was Article 8-disproportionate to extradite a mother, to face trial for participation in an VAT fraud (£11m) (§§5, 46), where the assessed consequence for children (twins aged 6½ and the youngest 3¾) was being taken into care (§48).

vi) In Prisacariu v Romania [2022] EWHC 538 (Admin) (Kerr J 28.2.22) it was Article 8-disproportionate to extradite a mother, to serve a 5y2m sentence (with eligibility for release after two-thirds) for participation in cigarette smuggling (£12k) (§84) and driving while disqualified (§2), where the assessed consequences for the child (aged 2¾) were (a) being taken into interim care and then (b) uncertainty (§§99-100).

vii) In Stumbre v Lithuania [2024] EWHC 406 (Admin) (Swift J 27.2.24) it was not wrong for WMC to find (§23) it Article 8-proportionate to extradite a mother, to face trial for 33 charges of very serious fraud (€250k) (§20), where the assessed consequences for the children (aged 15, 10 and 3) were (a) being taken into care and (b) being separated from one another (§19).

4. So far as 'assessed consequences' are concerned, three key points emerge:

i) First, it is appropriate for the Court to assess what, on the evidence before it, is "likely" to happen if the requested person is extradited. HH spoke of the information about "the likely effect upon the individual child" (§83). A (Germany) spoke of the assessment of the child's Article 8 rights as being "based on the court's best assessment of the likely effects on the child on the basis of the evidence it has" (§73). T v Poland [2017] EWHC 1978 (Admin) [2017] 4 WLR 137 identified a conclusion, "on the material before us", as to "the likely outcome" (§77) and the arrangements "likely to be made" (§79). A (Hungary) described "the likelihood …

that the child would be taken into care" (§19). M (Poland) also spoke of "the likelihood" that the children "would face the bleak prospect of some form of public care" (§48). Stumbre said the children "will go into local authority care" and it was "likely they will be separated" (§19). Parlinska spoke of an inference that the children would be taken into care (§§16, 21). Hungary v Horvath [2022] EWHC 3484 (Admin) identified "the likely scenario" (§79).

ii) Secondly, it is also appropriate for the Court to take into account real risks and possibilities. So, there is no single legal litmus test based on likelihood. To take one obvious example, in an "accusation" ExAW case the requested person would be extradited to face trial, and the extradition Court cannot say whether they would be convicted. Often, there will be uncertainties. HH spoke of the possibility of the children being separated from one another (§§66, 157) and their "anticipated plight" (§148). T (Poland) said the Court could not "discount the possibility of foster care" (§77). A (Germany) spoke of "a realistic possibility" and "a real risk" that the child would go into foster care (§§18, 59, 74). Parlinska spoke of the children "possibly" being separated (§21). Deb itself identified "some risk that the children will have to go into care" (§152).

iii) Thirdly, in assessing likelihood and considering real risk, the Court may consider it necessary or appropriate to elicit further information, especially from the relevant local authority. HH spoke of the Court as requiring investigation about likely effect and arrangements (§83). A (Hungary) said this was of particular importance (§14). A (Germany) said it was preferable (§72). In the present case, as in Parlinska (§5), there have been previous court orders making directions for local authority reports and statements from family members (see §11 below).

Lord Judge's Question

5. In HH, Lord Judge said this (at §132):

> ***When resistance to extradition is advanced … on the basis of the Article 8 entitlements of dependent children and the interests of society in their welfare, it should only be in very rare cases that extradition may properly be avoided if, given the same broadly similar facts, and after making proportionate allowance as we do for the interests of dependent children, the sentencing courts here would nevertheless be likely to impose an immediate custodial sentence: any other approach would be inconsistent with the principles of international comity.***

The "making proportionate allowance as we do" is seen in domestic sentencing cases like R v Petherick [2012] EWCA Crim 2214 [2013] 1 WLR 1102 at §17.

6. Extradition is very different from domestic sentencing (see HH §§132, 170). The extradition Court does not, and is not equipped to, undertake a proxy sentencing function: see Swiatek v Poland [2024] EWHC 726 (Admin) at §§22, 28(2). In extradition, the parent is being removed to another country. That country's judicial and public authorities have the function of addressing questions of sentence, contact arrangements, early release. Nevertheless, there is an Article 8 reference-point for extradition and domestic sentencing, where impacts on children arise (see HH §127; Petherick §16). Having identified his Question (§5 above), Lord Judge made these further observations (§132):

> ***At the same time, we must exercise caution not to impose our views about the seriousness of the offence or offences under consideration or the level of sentences or the arrangements for prisoner release which we are informed are likely to operate in the country seeking extradition. It certainly***

> ***does not follow that extradition should be refused just because the sentencing court in this country would not order an immediate custodial sentence: however it would become relevant to the decision if the interests of a child or children might tip the sentencing scale here so as to reduce what would otherwise be an immediate custodial sentence in favour of a non-custodial sentence (including a suspended sentence).***

7. Lord Judge's Question was asked and answered in HH itself. In the case of one requested person (FK), Lord Judge explained that it could "safely be said that an immediate custodial sentence would not be in contemplation" (§133). In the case of another requested person (PH), Lord Judge explained that, making full allowance for the interests and welfare of the children, anything lower than a ten-year sentence would be improbable (§136). Lord Wilson recognised the force of the point (§170). Lord Brown, Lord Mance and Lord Kerr agreed with Lord Judge and Lord Wilson (§§96, 103, 149). From looking at the 'working illustration' cases about the prospect of children being taken into care, Lord Judge's Question was considered helpful in A (Germany) at §§28, 62; and in Horvath at §§18-19 and 76; though it is not treated as a necessary question in the case-law as a whole. In the present case, both Counsel submitted that great care and caution are needed in placing reliance on the answer to Lord Judge's Question. I am sure they are right. However, approached with great care and caution, Lord Judge's Question may properly be asked – as it was in HH, A(Germany) and Horvath – at least as a 'cross-check', when thinking about the assessed consequence of children facing being taken into care. The point is not to ask what the domestic sentence would be or have been. The point is not to equate UK imprisonment (and contact arrangements) with extradition. Instead, Lord Judge's Question may add perspective in thinking about how public interest considerations in a criminal justice context interrelate with children's Article 8 rights, at least in this most anxious context of a child or children facing being taken into care.

Evaluation Afresh

8. High Court extradition appeals are statutorily-designed – where appropriate – to receive fresh evidence and consider changed circumstances. The High Court has no power to remit the case back to WMC for a fresh hearing (Deb §129). As was explained in Josza v Hungary [2023] EWHC 2404 (Admin) at §18: a High Court Judge in a "change of circumstances/ fresh evidence case" should "make my own assessment de novo, on the material as it now stands, in order to determine whether extradition would be a disproportionate interference with … Article 8 rights"; and not "go through the rather artificial exercise of trying to determine what the district judge should have decided if [they] had the material now available". That does not mean putting the WMC judgment entirely to one side. The judgment will serve as an appropriate "platform" (Haczelski v Poland [2024] EWHC 459 (Admin) at §9), insofar as findings on evidence are unaffected by the changed circumstances and fresh evidence, and are otherwise unimpeachable.

Impacts and Implications: the Judgment

9. Here is how the Judge saw the position, on the evidence before her in September 2022. First, from the Appellant's evidence (as "the Requested Person"), the Judge recorded:

> ***17.(i) The Requested Person was born and grew up in Romania. Her father is deceased and her mother, who is in a care home as she suffers from Alzheimer's, is in Romania. She has no siblings. (ii) She moved to the UK in August 2013 for a better life and to move away from her ex partner who abused her for many years. (iii) The Requested Person has worked in various jobs since coming to the UK. She is currently working for a transport company – she does 30 hours per week which she fits around her daughter's nursery schedule and her son's school. Her***

> ***partner, who is a driver for the same company, is only at home one day per week as he works from Monday to Saturday. (iv) She received settled status in January 2019 and her partner has settled status to remain in the UK also. (v) Her and her partner have two children, are aged 6 years and 20 months respectively. They are both British citizens. (vi) Her eldest child was born prematurely and experienced health problems and developmental delay. He is now at school in the UK and "is much happier." (vii) The only family they have in the UK is her partner's brother and they "don't see too much of him". They don't have a wide support network the Requested Person does have "a couple of friends." (viii) She states that if she were to be extradited her children would "suffer" and her husband couldn't take care of the children and wouldn't be able to work or to financially support them. She doesn't think that her children would cope in Romania as the support is "zero" and her children do not speak Romanian. She believes her son "would grow up in poverty"...***

Next, from the Father's evidence, the Judge recorded:

> ***10.(iv) He states that he "cannot even think about the consequences" that his wife's extradition would have on his family and he believes he "would not be able to work as I would have to stay with the children who are very small." His current working schedule is descried as "very intense" as he sleeps in the truck at night and is away throughout the entire working week. (v) Mr Nicolescu is "afraid" that his eldest son "will have a breakdown if his mother will be sent to prison" and notes that he has difficulties when meeting new people and when he socialises generally …***

10. Then, in the familiar Article 8 'balance-sheet' exercise, the Judge included this as a factor weighing against extradition:

> ***42.(ii) The Requested Person is the main care-giver to her two young children, as her husband works away from home six days a week as a driver. Accordingly, their separation from their mother would have a significant emotional impact upon them. In particular, her eldest son does not speak Romanian, is settled in school in the UK and has suffered from some development delays meaning that he may require special assistance/care.***

Finally, the Judge's findings on Article 8 included these passages about impacts:

> ***45. The most significant argument advanced in favour of the Requested Person's Article 8 rights is the impact that extradition would have on her two young children. It will clearly be difficult for the Requested Person's partner to become a single parent, not least because it may mean that he would need to obtain a different job to enable him to financially provide for his children whilst managing their childcare needs. However, there are many single parents who manage to support young children in the UK, whether in reliance on part-time employment or state benefits or a combination of the[m] both and sufficient information has not been adduced in this case to demonstrate why such a situation would not be possible for the Requested Person's partner. Crucially therefore, this is not a situation in which the Requested Person is the sole carer for her children and where her extradition would leave them without any parental support - she does have a partner who can fulfil this role following her extradition.***
>
> ***46. [W]hilst the arguments in respect of Article 8 are finely balanced in this case, I do not consider that the impact of the Requested Person's extradition on her two young children would be sufficiently severe to counterbalance the seriousness of the offending for which the Requested Person's extradition is sought, especially taking into account the background against which this offending took place and the fact that the Requested Person has known for some time that she may be required to Romania to serve a sentence of imprisonment. I do not therefore think that the impact of her extradition would be a disproportionate interference with her, or her children's, rights under Article 8 of the ECHR.***

Fresh Materials and Court Directions

11. It is common ground that I should receive all of the new material, in what is now a 'de novo' case requiring evaluation afresh, to see where it leads. The appeal was lodged on 20 September 2022. On 24 January 2023, permission to appeal was refused on the papers. Procedurally, this is what then happened. On 6 March 2023, the Appellant's solicitors made a first application to adduce fresh evidence (ie. medical evidence, records and a referral relating to the Son). At a hearing on 7 March 2023, permission to appeal was granted with a direction that the Appellant provide a witness statement (producing and explaining those documents relating to the Son). That witness statement was duly produced (24.3.23). On 22 August 2023, the Appellant's solicitors made a second application to adduce fresh evidence (ie. a social worker's assessment (14.6.23) detailing disclosures about the Father). That application also sought (i) prior authority for the instruction of a child psychologist to assess the children and the likely impact of separation from the Appellant and (ii) a direction for a Social Services Report (pursuant to section 7 of the Children Act 1989) in relation to the children. On 20 September 2023, (i) was refused and (ii) was granted. The s.7 Report was duly produced (2.10.23). On 30 October 2023, the Appellant's solicitors made a third application to adduce fresh evidence (ie. a witness statement from the Appellant (30.10.23) about the Grandmother). That application also sought a direction for a Supplemental s.7 Report in relation to the children. At a hearing on 31 October 2023, the Court directed a Supplemental s.7 Report, to deal with the following:

> ***(1) Since the report (2.10.23) identified the presence of the Appellant as a protective factor with regard to the father's previous conviction for the rape of a minor, what was the Council's view of the risk posed to the children if the Appellant were to be extradited to Romania to serve a significant sentence of imprisonment, leaving the children in the sole care of the father? (2) In the event of the Appellant being extradited to serve a significant sentence of imprisonment, what did the Council foresee as being the practical arrangements for the care of the children? (3) Was the Council able to offer any further views on the impact on the children if their mother were to be extradited to Romania to serve a significant sentence of imprisonment?***

The Supplemental s.7 Report was duly produced (25.3.24) and on 26 April 2024, the Appellant's solicitors made a fourth application to adduce it as fresh evidence. On 29 April 2024, the Appellant's solicitors made a fifth application to adduce fresh evidence (ie. a new speech and language report relating to the Son). As I will explain, yet further evidence was given at, and after, the hearing before me.

The Grandmother

12. As has been seen (§9 above), the Judge described the evidence about the Grandmother living in a care home in Romania. In the fresh evidence, the Appellant's witness statement (30.10.23) tells me the following: that the Grandmother's husband (the Appellant's father) passed away 20 years ago and the Grandmother "does not have anyone in Romania"; that 3 years ago the Grandmother had collapsed a few times at her house and was found by a neighbour, after which she went into the care home; that the conditions at the care home were appalling, and it was being closed, so the Appellant "had to bring her over" to England in May 2023 "to live with me"; that the Grandmother is very ill, cannot move and cannot see (having macular degeneration, glaucoma and cataract); that the Appellant is the Grandmother's carer; that the Grandmother needs care 35 hours a week, cannot go to the bathroom by herself and wears diapers, has dementia and is fully dependent on the Appellant; and that the family does not have "anyone at all"

in Romania. Various documents have been filed. There is a UK hospital letter recording the Grandmother's attendance at a medical retina clinic (19.6.23) following an optometrist referral. There are medical records including a referral for an ECG and dementia tests, with a description of short term forgetfulness and some disorientation. There is a Department for Work and Pensions decision letter (24.8.23) granting the grandmother attendance allowance from 30.6.24, based on her daytime and night-time needs; and another (4.10.23) granting the Appellant carer's allowance for the grandmother from 2.7.23. The Appellant was cross-examined (see §18 below).

13. My findings are as follows. (1) The Grandmother is 75. She came to the UK in May 2023. She lives in the same family home as the Appellant and the Children. The Grandmother has a family life with the Appellant and the Children, at the family home. (2) She has significant care needs which have been assessed by the relevant UK public authority. She has the various eye conditions claimed; and there is a suspicion of dementia. The Appellant has state-recognised caring responsibilities. (3) The Grandmother was previously in a care home in Romania for around two years. The Appellant chose to have the Grandmother come to the UK rather than be in a care home, or a new care home, in Romania. That was after the Appellant's extradition had been ordered and when the Appellant's position was known to be precarious. (I do not accept that there was no alternative for the Grandmother in Romania, where she had lived as a single older person for 20 years including two years in a care home; and there is no evidence to corroborate closure of the care home or sudden unaffordability of care home fees.) (3) If the Appellant were extradited: the Grandmother would lose her recognised carer and her home in the UK; she would likely become dependent on state welfare support here, with the alternative of return to Romania to a care home environment. The Appellant's extradition would break up that family life between the Grandmother, the Appellant and the Children. There is a real risk that the children would lose touch with the Grandmother.

The Son's Developmental Difficulties

14. As has been seen (§10 above), the Judge described the evidence of "some developmental delays" meaning that the Son "may require special assistance/care". I have fuller and more up-to-date information. Mr Clej says the documents show the following picture, which I accept: the Son is a 7 year old child with "developmental difficulties"; he is now making "good progress" ("significant progress", with "lots of progression"); he is "beginning to follow routines" and "is beginning to show a little independence to access teaming within some lessons"; that progress has arisen in the context of the Son being settled at school, and having the support of the Appellant as mother and care-giver.

The Father's Disappearance

15. The social worker's Supplemental s.7 Report (25.3.24) included this:

> ***4.3. In January 2024, Ms Grigorie stated that she and Mr Nicolescu have ended their relationship. Ms Grigorie stated that Mr Nicolescu had not seen his children since before Christmas. She shared she would be concerned for Mr Nicolescu's ability to care for the children as he has previously suffered from mental health concerns and has never provided significant care for the children. Ms Grigorie stated that she believed Mr Nicolescu was no longer in the UK. 4.4. In February 2024, social care was contacted by border enforcement who were searching for Mr Nicolescu. Social care were informed by border enforcement that they were assessing Mr Nicolescu for deportation. 4.5. Social care have since received information in April 2024 from a third party professional body that Mr Nicolescu my be frequenting the property however, we have been unable to confirm this information and have not been able to contact Mr Nicolescu.***

Based on this and that report as a whole, Mr Clej's skeleton argument (22.4.24) said:

> ***The Court is invited to find that the addendum Section 7 report supports a conclusion that this is now a 'sole carer case' and extradition is likely to result in care proceedings and 'significant and traumatic' consequences for the children, and is therefore disproportionate.***

At the hearing, Mr Clej confirmed that he was inviting findings of fact, reflecting the contents of §4.3: that what the Appellant had told the social worker in January was true; that she and the Father have ended their relationship; that the Father has not seen his children since before Christmas; and that the Appellant believes the Father is no longer in the UK. Mr du Sautoy confirmed at the hearing that the Respondent did not accept these as facts.

16. This raised a number of particular challenges. The Judge had made a decision which emphasised a finding that the Father would be able to take care responsibilities for the Children (§10 above); rejecting assertions, as to his inability to do so, from the Father and from the Appellant (§9 above). That decision was under appeal. Now, in the run up to the appeal hearing, the Father was said to have disappeared. The truth of this was not accepted. The sole evidential basis relied on was a recorded statement of what the Appellant had told a social worker, two months earlier. There was no witness statement or proof of evidence from the Appellant on this topic. There was no evidence from her with a statement of truth. There had been further witness statements from her, filed earlier in the appeal (24.3.24 and 30.10.23), put forward with two of the many applications to adduce fresh evidence. But nothing now, on this topic. There was no independent corroborative evidence. The Supplementary s.7 Report (§4.5) told me that a "third party professional body" had provided unconfirmed information that the Father "may be frequenting" the family home. The Appellant has convictions in Romania for dishonest criminal conduct. One obvious possibility was that the 'disappearing Father' narrative had been constructed to bolster the prospects of this appeal; and he is 'waiting in the wings'. Those were key challenges for the Court, in thinking about the Children.

17. As can be seen from 'working illustration' cases (§3 above), extradition Courts encounter events – or claimed events – which raise concerns as to manipulation or fabrication. A rather different example arose in HH, where a child had been conceived very soon after both parents had been arrested on the extradition arrest warrant. That was said to raise a question about a manipulative motive. What happened was that the judge at WMC dealt with the point, hearing evidence, and declining to find there had been any "deliberate attempt to improve the position" in the extradition proceedings (see HH §77). That meant this could not be an adverse factor – alongside the obvious and legitimate interests of the child – in the assessment of Article 8 proportionality (see §§78, 139). Another example, also in HH, was that family members were saying they could not look after the children. That was addressed, with the benefit of inquiries by the Official Solicitor, which enabled Lady Hale to say that these assertions appeared to be "genuine" (see §69). In M (Poland), grandparents had written a letter saying they were not willing or able to care for the children (§26). That evidence was accepted (§29). In Horvath, a psychologist's report recorded family members in Hungary saying they were now no longer able to help (§56). That was an assertion which the High Court rejected, finding it likely in the event of extradition that the child would be cared for by those relatives (§79). Evidence of a similar change of position by family members had also been rejected in a first High Court case in Stumbre (see §5). But it was later found to be reliable in WMC after oral evidence and cross-examination (see §51). In Parlinska, the district judge at WMC had recorded

the father's specific confirmation that he would look after the children (§8), but the High Court accepted from a social services report and requested person's witness statement (§§12-14) that this had now changed (§16). In Deb the mother had returned to Bangladesh, was said to have no present contact and to be unable to care for the children. The High Court rejected that evidence, finding she was deliberately lying low, and was likely to make arrangements if the father were extradited (§§140, 147, 152-154). All of these were assessments of evidence, making findings. The only oral evidence and cross-examination was where the question arose at WMC (HH §77; Stumbre §51).

18. I have described the particular challenges in this case (§16 above). Ultimately, both Counsel were agreed about three things. First, that the Court should receive from the Appellant a further witness statement (§19 below), prepared and signed at lunch-time, with a statement of truth. Secondly, that this Court has the power on an extradition appeal, exceptionally, to hear oral evidence. Thirdly, that it would be appropriate – in the special circumstances of the present case – to exercise that power. That was the joint invitation of the parties and I acceded to it. Each Counsel had the considered the procedural position and made submissions. The Appellant had attended Court. Counsel were agreed that, at WMC, there would undoubtedly have been oral evidence and cross-examination. Mr Clej told me that he wished to call the Appellant to give oral evidence, and that she wished to give oral evidence; here and now. No adjournment was sought. No interpreter was needed. Mr du Sautoy told me that he wished to cross-examine; here and now. This could readily be done, without any delay, and without materially affecting the time estimate for the hearing. It was a tight and focused solution. It could readily be taken in the stride of the hearing. It furthered the interests of justice and the overriding objective. So far as concerns the jurisdiction, exceptionally, to receive oral evidence, this is seen in HH §67 (where the High Court "heard as well as read the psychiatric evidence"); Dzurkova v Czech Republic [2016] EWHC 1480 (Admin) (psychiatric evidence); and Popoviciu v Romania [2021] EWHC 1584 (Admin) at §§62, 167 (Romanian lawyer). After hearing oral evidence in this case, I have seen the observations in Deb (at §131), where – in the context of calling an expert psychologist – Kerr J said he "would not wish to encourage applications to cross-examine in an appeal; the more they proliferate, the more like a 'second first instance procedure' the appeal becomes".

19. This is what the Appellant told me in her new witness statement on the day of the hearing:

> ***I spoke with [the social worker] in preparation of the Section 7 report in January 2024. I told her that Mr Nicolescu and I have finished our relationship. The relationship had ended since before Christmas 2023. He simply left home and did not come back. He said that he had had enough of our problems and everyone should deal with their own problems. Since he left, he has not been back. I have not spoken to him on the phone. I tried to phone him a month ago on the last occasion. I have tried to ring him on several occasions. I have not been able to. He has been sought at my address in February and March 2024. It was the officer who is managing his sex offender notification. Bailiffs have attended looking for him in March. It is not true that Marius attended my address after he left. I don't understand who is saying that. If he has been at the address, I know nothing about it. I live entirely off benefits now that Marius has left. I am just about managing. I maintain that, as I told [the social worker], I have no other family members and I have no relationship with the children's paternal family.***

20. The Appellant's oral evidence was given on oath. She adopted the new witness statement. She also told me the following. If she were extradited, the Children could not be looked after by the Father, because "he's gone". She has not seen him. He has "blocked her everywhere", on phone and social media. There are letters which were still coming for him, including from bailiffs who were collecting a fine. She has removed him from the

council tax and tenancy documents. She has also started to return letters to their senders. She does not know whether the Father is in the UK. He said to her in December 2023 that he would go from the UK. She would no longer want him in her life, though she would still intend him to be in the Children's lives. She had not previously known about his sex offence in Romania.

21. Cross-examined by Mr du Sautoy about recent visits to the home address, the Appellant told me that an officer involved in the Father's sex offender registration had come in February 2024. She had told the officer that the Father was not at home and had said: "I don't know; maybe he's working; maybe he's sleeping in his truck". This, she explained, was a reference to his being an HGV driver who would be away and sleep in the HGV cab. When reminded of her proof of evidence before the Judge, which said she and the Father worked for the "same" transport company, where he was an "agency driver", the Appellant said: that this was "wrong"; that they had "never worked together"; that she had worked for Patrick Transport Ltd for two years (until her maternity leave at the end of December) and again from August 2021 to June 2023 (when "they would not give me part-time work"); that she was doing the rotas for the drivers working as agency drivers for other companies; that the Father was never one of those agency drivers; that he had never worked for that company; that he had instead driven, direct, for Jure Transport; that he had stopped working in September 2023 (saying he "wanted a break"); and that he had already stopped financially supporting her and the Children "in June or July 2023" (because he was gambling). When asked whether documents from Patrick Transport would confirm what she was now saying – that they "never worked together" for that company – the Appellant told me: that the Father "owned" that company; but that he never "worked" for it; that he worked for Jure Transport. Given an opportunity after the hearing to produce any further documentation on which she wished to rely, the Appellant produced 8 invoices in the Father's name to Jure Transport (one week in May 2021, one in September 2021, one in December 2021, two in March 2022, one in May 2022, one in October 2022 and three in August 2023). She also produced her P60 Forms for 2021 and 2023.

22. I found the Appellant to be an unreliable witness. Her evidence of telling the officer in February 2024 "maybe he's working; maybe he's sleeping in his truck", raised obvious questions about what she knew. She sought to distance herself from his work, saying things which now meant her proof of evidence had been wrong, which she could not explain. Having distanced herself, but then faced with the prospect that company documents could be obtained, she accepted that it was "his company", maintaining he never drove for it. She produced 8 invoices, covering 10 weeks across 2 years. There was and is no explanation of why the proof of evidence, put forward as evidence in chief in August 2022 – and recorded in the Judge's judgment – should have been wrong, and never corrected. It said clearly: "I work in transport for a Company called Patrick Transport Ltd… My partner works for the same company and is an agency driver". This was an important document. It had a statement of truth. It was produced for the oral hearing before the Judge. It was put to the Appellant and adopted by her as her evidence. There is no plausible reason as to why that statement should have been made as it was, if it was wrong on two scores: (i) they did not work for the same company; and (ii) he was not an agency driver. There is no reason why that would have been said, and why it would not have been corrected at any time. There is also no plausible reason why the Appellant would now say "they would not let me work part-time", when it was her partner's company. There is no plausible reason why he would "own" a company, for

HGV drivers; that he would himself be an HGV driver; and yet he would never work as a driver within his own company. I could find no plausible reason why he would stop working – supposedly for "a break" – in September 2023. Nor why he would stop financial support "in June or July" of 2023. Nor, if he did so, why this would not be mentioned in any of the fresh evidence or applications for fresh evidence. I cannot accept the Appellant's assertions that she has had no knowledge of the Father's whereabouts since before December 2023. I find that she knew – and knows – much more about his recent whereabouts than she was prepared to say to this Court. I find that she knows he has remained in the UK, driving HGV lorries.

23. Despite this impaired reliability, I do not find that the Father's 'disappearance' has been 'staged' to bolster the prospects of success of this appeal. There is a clear risk that this is what has happened, and that he is 'waiting in the wings'. But, on balance, I find as follows. There has been a breakdown in the relationship between the Appellant and the Father. She wants nothing more to do with him and does not want him in her life. She was not previously aware of his sex offence in Romania. That fits with the documents which are before the Court. It fits with the background chronology. It fits with the Appellant's oral evidence – which I accept – about being unaware of his conviction in Romania for the sex offence. The documents include the Social Worker's Assessment (14.6.23). It was addressed to the Appellant and records a previous (21.3.23) police referral about the Father's past. The documents contain no mention of the Appellant being understood, by any of the authorities, to have been aware of that past. The question of her knowledge is specifically recorded as not known and a feature for investigation. The s.7 Report (2.10.23) explains what had happened. The Father had been arrested for a driving offence and, upon conducting ACRO checks, it was

> ***… discovered that Mr Nicolescu had previous sexual offences against children in Romania.***

The application made, by the Appellant herself through her representatives (20.8.23), for that s.7 Report to be directed by this Court, said that the June 2023 Social Worker's Assessment was evidence tending to show that the father "is potentially no longer an appropriate carer" for the two children. What had come to light was that the Father was convicted of, and served a 12 year sentence of imprisonment for "the rape of a minor in Romania". This was referred to in the Court's directions (31.10.23): §11 above. The background chronology is that the Appellant and the Father, who had first known each other "20 years ago" had reconnected in June 2015 and the Appellant had joined him in July 2015. The Supplementary s.7 Report records that there are relevant authorities, who have been in touch with the local authority, regarding the Father now being on the sex offenders' register. I find it entirely plausible that the Appellant was not aware of the Father's rape of a minor in Romania, nor his 12 year prison sentence for that offence. I accept that, in the aftermath of that revelation and all the circumstances, there has now been a genuine breakdown in their relationship. I accept that her position now is that she wants nothing more to do with him.

The Prospect of the Children Being Taken into Care

24. I can now return to Mr Clej's submission (§15 above) that the Appellant's extradition is "likely" to result in "care proceedings" for the Children. My key findings are as follows. I find it is likely, if the Appellant were extradited, that the Son and the Daughter would be taken into local authority care. I find that there is a real risk that, in local authority care, they would be separated from one another.

25. My reasons for these findings are as follows.

    i) First, although I have rejected parts of the Appellant's new evidence, I have accepted that the Father's 'disappearance' has not been 'staged', to manipulate the prospects of this appeal, with the Father 'waiting in the wings'.

    ii) Secondly, the revelation, after March 2023, about the Father's 12 year prison sentence for rape of a minor in Romania has been a distinct basis for concerns expressed by the local authority social worker, as to the Father being the sole and primary carer for the children following any extradition. The s.7 Report (2.10.23) explained that the Father was assessed in July 2023 as posing a low risk to his children, with the Appellant identified "as a protective factor for the children", where she was the main carer, and where he was "working away from home for the majority of the week".

    iii) Thirdly, the Supplemental s.7 Report (25.3.24) expresses this view and assessment as to what is likely if the Appellant were extradited:

> ***At the present time, I am of the view that Mr Nicolescu cannot safely care for [the Son] and [the Daughter]. He has not engaged with any assessment work and would need to do so before a recommendation could be made in regard to Mr Nicolescu's suitability to provide care.***
>
> ***In the event that Ms Grigorie is expedited to Romania, Social Care would look to accommodate the children in Local Authority care. This would likely mean that social care would need to seek care proceedings for the children in order to share parental responsibility for [the Son] and [the Daughter] and seek a care order. Permanency planning, including further exploration of eligible friends and family could be explored as part of these proceedings. Should Ms Grigorie be [extradited] and the children be accommodated there is no guarantee that the children would be placed together and this would result in further distress to the children.***
>
> ***In conclusion, it has not been possible to complete further assessment of Mr Nicolescu and social care are not able to recommend that he can safely care for the children in the event that Ms Grigorie is extradited to Romania. In the event that Ms Grigorie is extradited, social care would look to accommodate the children in Local Authority placement and there is no guarantee that the children would be placed together. It is likely that the local authority would need to initiate care proceedings in order to share parental responsibility for the children so that decisions can be made for them. At present, there are no alternative family members or friends identified to care for the children. Social care could explore this further as part of care proceedings in the event that Ms Grigorie is [extradited].***

    Although I have found aspects of what the Appellant had told the social worker to have been unreliable, nevertheless – in the light of what I have accepted and the other aspects and circumstances of this case – I accept this assessment.

26. I must grapple with the impact and implications of this. Any extradition case where there is the prospect of a child or children being taken into local authority care, and where there is the prospect of siblings being separated, will always receive close and anxious scrutiny. HH spoke of "intense and long lasting distress" (§68); A (Hungary) spoke of "undoubted devastating consequences" (§38); A (Germany) described "deep emotional and psychological harm" (§56); M (Poland) spoke of "severe harm" and "devastating harm with longer-term consequences" (§37); Prisacariu spoke of "serious emotional harm" (§92); Stumbre spoke of "very severe" consequences "of a different order to the

overwhelming majority" of article 8-based extradition claims (§19). In A (Germany) the Court recognised that the impact of a child being taken into care, as a consequence of extradition, would be "deeply distressing both for her and her mother" (§74).

27. I accept the evidence in the Supplemental s.7 Report, describing the impacts in this way:

> ***Likely Impact on [the Son] and [the Daughter]. 6.1 As Ms Grigorie is the main carer for her children, any separation from her is likely to significantly impact on [the Son] and [the Daughter] and be traumatic for them. Both children have been observed to have a loving relationship with their mother and are clearly settled at home and in her care. 6.2 [The Daughter] and [the Son] are young children. [The Daughter] is likely to be too young to understand the reasons for the separation and [the Son] would possibly have limited understanding why he was no longer in his mother's care. Social care would endeavour to complete direct work with [the Son] to help him understand the reasons for the separation. 6.3 In addition, [the Son] has additional needs which are carefully managed with a support plan in school, which Ms Grigorie implements at home. Though [the Son] does not have a formal diagnosis, it is possible that his needs may make it more difficult for him to process the separation and change and may impact on his development. This could impact further on [the Son]'s emotional wellbeing. 6.4 Given that Ms Grigorie is likely to face a prison sentence in Romania, this would impact on the contact that the children could have with their mother. For example, if the children were in Local Authority care, it is unlikely that they would be able to have face to face contact with her. Contact through telephone or video call may be possible but as I am unfamiliar with the Romanian prison system, I cannot guarantee that this would be possible. As a result, the children may struggle to maintain the relationship with Ms Grigorie, which is likely to be traumatic for them. 6.5 Both children are from a Romanian background and while they reside in the UK, they have been raised within a Romanian family. While social care would endeavour to match the children to carers who could meet their cultural needs, there is no guarantee that they would be placed with a family from the same culture. As a result, the children's identity development may be impacted. 6.6 [The Son] and [the Daughter] are currently settled in school and nursery, where they attend regularly and are involved in after school clubs. While social care would endeavour to keep the children in their education provisions, the availability of Local Authority carers may mean this is not possible. This would cause further instability for [the Son] and [the Daughter].***
>
> ***Conclusion… 7.4. Any separation from a parent is significantly traumatic for a child. [The Son] and [the Daughter] present as happy and settled in their mother's care. Due to their young ages, it is likely that the children will have limited or no understanding of why they are not able to reside with their mother. This is likely to have a significant impact on their emotional wellbeing.***

Return and Reunion

28. Mr Clej rightly accepts that there is no evidence that the impact of extradition would be adoption. He accepts that – given her settled status in the UK – if the Appellant were extradited and served 4 years 4 months, that period of absence would not prevent her subsequent return to the UK. The Judge had rightly identified that as a factor in support of extradition. The Son and Daughter are UK citizens. On all the evidence before me, I find as follows. The likely consequence of extradition would be separation for 4½ years, with the Children in local authority care and possibly separated from one another, until being reunited with the Appellant. There is a real risk that contact between each of the Children and the Appellant will be difficult, during that 4½ year period, while the Appellant is serving the prison sentence in Romania.

The Position 2013 to 2018

29. In conducting afresh the Article 8 assessment, I now need to consider the other features of the case. I start with the position 2013 to 2018. The Judge found as follows: that the Appellant moved to the UK in August 2013, but was back in Romania intermittently after

that; that she was in Romania in December 2013, then back in the UK in January 2014, then back in Romania in September 2014; that the Father was living in the UK in 2015, working as a truck driver; that the Appellant and the Father rekindled a romance in 2015 (they had first met back in 2003, but that did not work out); that the Appellant came to the UK in July 2015 to join the Father here; that the Son was born here in September 2016; that the Appellant could only be interviewed by the investigating Romanian authorities in September 2018, when she returned to Romania for the baptism of the Son; that the Appellant then made a full confession admitting the offending, including in a sworn affidavit (dated 18.9.18), and asked for the proceedings to proceed based on the confession; that the Appellant then left Romania for the UK again, in the full knowledge (a) that she had admitted the offending (including in that sworn affidavit), (b) that the case could proceed in her absence, and (c) that she was likely to be convicted and face a sentence of imprisonment; that it was not credible that she thought – as she claimed – that it would be a suspended sentence; that she was summoned to attend the trial, including by emails to the email address she had given; and that she became aware of the sentence by checking on the relevant website. These findings relating to 2013 to 2018 stand as unimpeachable findings of facts on the evidence, unaffected by the fresh evidence and the changed circumstances. I adopt them.

30. As to fugitivity, the Judge recorded that it was conceded by the Respondent that it could not be proved to the necessary criminal standard that the Appellant was a fugitive. That is a factor in the Appellant's favour. But it is not a weighty factor in all the circumstances. As the Judge also found (§29 above), the Appellant left Romania in 2018 to return to the UK having admitted the offence on affidavit and being aware of the prospect of conviction and of a custodial sentence; and she later became aware of the sentence itself. Accordingly, as the Judge rightly recognised, the public interest in the UK not being a "safe haven" for those sought by other countries to serve a sentence is plainly engaged in this case. That was correct: see eg. Deb at §123.

The Passage of Time

31. The Judge identified as a factor weighing against extradition the passage of time (8 years) since the offending. But, as the Judge went on to explain, delay was not a significant factor in the Article 8 balancing exercise. That was to say, on all the facts found by the Judge, there was no delay properly attributable to the Romanian authorities, such as could materially diminish the weight to be attached to the public interest in support of extradition (HH §8(6)). As the Judge explained, the Appellant could only be interviewed by the authorities in relation to this offence when she returned to Romania for the baptism of the Son in September 2018, after which she then left Romania. The Appellant also appeared, on the evidence, to have made repeated applications to adjourn and/or appeal against decisions made in the criminal proceedings. The reasons for any delay in this case therefore appeared to the Judge to be entirely attributable to the Appellant's conduct. This assessment was criticised by Mr Clej, but it was in my judgment an assessment plainly open to the Judge. Being thus unimpeachable, it stands as part of the platform for my consideration afresh. Having said all this, as the Judge also rightly recognised, and as is a consequence of the passage of time, the Appellant has a young family, has been living in the UK since January 2014, has a firmly established life here. These were all factors which weigh against extradition. They are aspects of the passage of time serving to increase the impact upon private and family life (HH §8(6)).

No Further Criminal Offences

32. The Judge rightly recognised that the Appellant has committed no criminal offences since the offence for which the ExAW was issued. That means no further criminal offending since May 2014, which is now just over ten years. This is a factor which weighs in the balance against extradition.

Strong Public Interest Considerations in Extradition

33. As the Judge recognised, and as must I, there are constant and weighty public interests in extradition: that people convicted of crimes should serve their sentences; that the UK should honour its treaty obligations to other countries; and that there should be no safe havens for those sought by other countries to serve a sentence.

The Index Offending

34. As the Judge recognised, and as must I, the weight to be attached to the public interest considerations in favour of extradition in the particular case vary according to the nature and seriousness of the crime or crimes involved. That is another aspect which I need to consider with care. One clear indicator of seriousness is the 4 year 4 month prison sentence imposed by the Romanian court and upheld on appeal.

35. The following description reflects the summary in the Judge's judgment in the same sequence as in the ExAW, from which some further details are derived. Between December 2013 and May 2014, the Appellant defrauded ten victims to a total of 25,783.21 lei (approx. £4,421), using fake advertisements for goods on the internet. The ten instances of the fraud are summarised as follows:

    i) The Appellant pretended to be the representative of Depofarm and posted online an advert for medical products at a price below the market value. An aesthetic physician in London, contacted the Appellant under the Appellant's false identity and agreed to buy some products, partly based on fake posts on a 'Ella dermafiller' Facebook page. The physician transferred €430 (27.12.13) to the Appellant but did not receive the products and was not reimbursed.

    ii) A physician from Brazil received an offer for aesthetic medical products from the Appellant's accomplice, Manea Elena. The victim transferred €947 (31.1.14) to Manea Elena but did not receive the products. Manea Elena has admitted that she cashed the money received and handed it to the Appellant, in exchange for a fee of 40%.

    iii) A co-worker of a Ukrainian dermatologist transferred €930 (22.5.14) to the Appellant for aesthetic medical products, but never received them.

    iv) Another co-worker of the same Ukrainian dermatologist also transferred €930 (22.5.14) to the Appellant for aesthetic medical products, but never received them.

    v) The same Ukrainian dermatologist transferred €470 (23.5.14) to the Appellant for aesthetic medical products, but never received them.

    vi) An aesthetic surgeon from Italy got in touch via Facebook with a user named "Hella Dermal Filler", who was offering non-pharmaceutical devices for medical use at low prices. He sent €120 (10.12.13) to the Appellant but did not receive the products.

vii) Another Ukrainian citizen ordered pharmaceutical products on the internet and transferred €250 (17.4.14) to the Appellant, but did not receive the ordered products. The Appellant cashed the money sent by the victim using her identity card.

viii) Another Ukrainian aesthetic dermatologist ordered several rejuvenation products from "Derma Filler" and transferred €690 (22.5.14) to the Appellant, but did not receive the ordered products.

ix) Another Italian aesthetic surgeon contacted someone on Facebook and ordered aesthetic products they were advertising. He paid €250 (3.2.14) to Manea Elena, accomplice of the Appellant. Manea Elena cashed the money using her identity card, and handed it to the Appellant, minus the agreed fee of 40%. The aesthetic surgeon did not receive the ordered products.

x) A Russian physician ordered pharmaceutical products from Manea Elena and sent her $741 (1.4.24), but did not receive the products. Manea Elena cashed the money using her identity card and handed it over to the Appellant, minus the agreed fee of 40%.

36. The Judge's characterisation of this offending was that it involved "serious" criminality, committed transnationally; and that it was "particularly" serious. The Judge added that it was, moreover, criminal conduct committed while the Appellant was living intermittently between the UK and Romania; which means the Appellant started building her life in the UK against the background of this fraudulent activity. There is, in my judgment, no basis for impugning any of this. I adopt it.

The Previous Offending and Suspended Sentence

37. The Judge thought it was significant that the offending was aggravated by the fact that the Appellant had a previous conviction; so that the offending was both "particularly serious" and "aggravated by her previous criminality". The Judge did not accept the Appellant's evidence that she thought she would get a suspended sentence, "particularly in light of the fact that she had previously been convicted of similar offending in Romania and received a suspended sentence of imprisonment". The Judge recorded that the Appellant, in cross-examination, had accepted having used her ID card to cash money "for the offences of which she was previously convicted". Mr Clej points out that the Respondent has adduced no ACRO international conviction record in evidence. But the ExAW records the three incidents of the same kind of offences, committed between September 2011 and August 2012, for which the Appellant received a 3 year sentence of imprisonment imposed on 18 September 2013, which became final on 2 December 2013, which was suspended. Here is the previous offending as recorded in the ExAW:

> ***From the criminal record extract it results that the defendant is known for her criminal record, committing the offence repeatedly, after conviction, offence stipulated by Art. 41(1) of the Criminal Code, being previously convicted to a resulting punishment of 3 years imprisonment with the suspension of sentence servicing under supervision, pursuant to criminal sentence no. 450/18.09.2013 stated by Ramnicu Valcea Court in file no. 412/288/2013, final on 2 December 2013, the conviction regarding the same kind of offences committed during 2012. It was acknowledged that during September 2011 - August 2012, the defendant, using fake names and capacities and, at the same time, entering altered informatics data on the Internet, misled and accordingly prejudiced a number of three victims with the amount of 12,000.00 euro and 675 USD.***

The Judge was quite right to recognise this as a serious aggravating factor, when looking at the 4 year 4 month sentence for the ten incidents between December 2013 and May 2014. It meant the index offending had been a resumption of recent criminal conduct for which the Appellant, very recently, has received a 3 year sentence; which was a suspended sentence.

The Article 8 Proportionality Balance

38. I have identified and analysed the key features of the present case. Having done so, I need now to retake the decision. These are key features which weigh against extradition:

    i) There is the firmly established private and family life for the Appellant since returning to the UK in 2015; for the Appellant and the Children since their births here in September 2016 and December 2020; for all of them with the Grandmother since coming here in May 2023.

    ii) There are the extremely serious impacts and implications for the Children. There is the inevitable separation of the Son (7) and the Daughter (3) from their mother and primary carer. There is the likelihood of the children being taken into local authority care. There is their separation from their mother. There is the real risk of the siblings being separated from one another. There is the real risk of the loss of contact and communication between the Appellant and the Children. There is the risk of jeopardising the Son's progress, given his developmental needs. There are the very young ages of the Children and the crucial importance and implications of their formative years. The Children are innocent third parties whose Article 8 rights would be interfered with. Extradition would be strongly contrary to their best interests, which are a primary consideration.

    iii) There is the position of the Grandmother, which her significant health conditions and state-recognised care needs, with the Appellant as her state-recognised carer. Her circumstances are seriously imperilled by the Appellant's extradition, and she is likely to need to fall back on welfare support here, or return to a care home environment in Romania. She will also lose the family life with her daughter and grandchildren, after living in the same household over the last year, but now being unable to continue to do so. The Grandmother is an innocent third party whose Article 8 rights are engaged and would be interfered with. For her, the Appellant's extradition would be very serious.

    iv) There are the impacts for the Appellant herself, including of having to leave her children, and of the likelihood of their being taken into local authority care, with the possibility of their separation from one another and that loss of contact and communication; and there is the lost ability to care for the Grandmother.

    v) There are the facts that the Appellant is not, in law, a fugitive; that there has been a passage of time of 10 years since the index offending; and that the Appellant has committed no further criminal offences since May 2014.

39. These are the key features which weigh in favour of extradition:

    i) There are very strong public interest considerations in support of extradition: that people convicted of crimes should serve their sentences; that the UK should honour

its treaty obligations to other countries; and that there should be no safe havens for those sought by other countries to serve a sentence.

ii) These are serious fraud offences, with multiple victims, committed transnationally. They were committed, in her 30s, after the time when the Appellant first came to the UK. They were significantly aggravated by the previous similar offending, which had attracted a recent 3 year suspended sentence. The 4 year 4 month sentence – less 9 days of qualifying remand – is a substantial custodial term, for very serious offending with its significant aggravating context. It deserves very significant respect.

iii) There is the fact that, although not in law a fugitive, the Appellant came back to the UK in 2015 fully aware of the proceedings, having admitted the offences on affidavit, and knowing she was facing a custodial sentence. Linked to that, there is the fact that there has been no substantial passage of time in the pursuit of the Appellant. She committed the offences between December 2013 and May 2014. She could only be interviewed in 2018. She was promptly prosecuted, convicted and sentenced, which became final in March 2019 and was pursued by the ExAW issued in February 2020. Since her extradition arrest in November 2021, she has been exercising her rights in resisting extradition.

iv) There is the fact that the Appellant's private and family life here, including the 2016 birth of the Son and the 2020 birth of the Daughter, were built on a known fragility (that she stood to be convicted again for the 2013/14 offending, as she had previously been in September 2013); and the fact that the bringing over of the Grandmother was a choice built on obvious precariousness (where the Appellant's extradition had been ordered and she was pursuing this appeal).

v) There is the fact that the Appellant has settled status in the UK, where the Children are UK citizens, and should therefore be permitted to return to the UK once her sentence of imprisonment has been served; so that the separation of the Appellant from the Children – and possible separation from each other – would be for 4½ years, to the ages of 11 and 7.

40. These are difficult cases. I recognise that the Judge described the arguments as "finely balanced", and used the word "crucially" when relying on the Father being able to fulfil the parental and carer role (§10 above). I have had the responsibility of retaking the decision, afresh, standing on the platform of the Judge's findings of fact. I have considered all the features and circumstances of the case, as identified and analysed through the course of this judgment, with Counsel's assistance. I have taken such assistance as I properly can from fact-specific 'working illustration' cases (§3 above). Subject to a final cross-check, my conclusion would be as follows. I find that the Article 8 balance comes down in favour of extradition. The cumulative effect of the factors weighing in favour of extradition outweigh the cumulative effect of those capable of weighing against it. Extradition would not be a disproportionate interference with the Article 8 rights of any, and all, those affected.

Lord Judge's Question Revisited

41. I have chosen so far to put to one side Lord Judge's Question (§5 above), as to which great caution and circumspection is needed (§§6-7 above). But, in the end, I would not

want to determine this case without asking Lord Judge's Question, at least by way of a final cross-check. Given the same broadly similar facts, and after making proportionate allowance – as we would in domestic sentencing – for the interests of dependent children, would sentencing courts here nevertheless be likely to impose an immediate custodial sentence? Mr du Sautoy's answer was "yes". Mr Clej's answer was "not necessarily". I think Mr du Sautoy is clearly right. I have considered the Sentencing Guideline for Fraud:

i) What is described is the Appellant posting advertisements on the internet; pretending to be a representative of Depofarm; commending the Facebook account with its fake posts from physician clients all over the world; communicating with victims; receiving monies direct; receiving other monies through an accomplice in exchange for a 40% cut; identified as the launcher of the fake offers, carrying on the correspondence with the victims. The total was £4.4k. It involved sophistication and significant planning. There 10 victims over 6 months. I cannot see it as below "high" culpability; or below the top end of harm "Category 5"; meaning a starting point of 36 weeks custody (if it were £2.5k), and a range up to 12 months custody. A principal aggravating factor is the Appellant's recent and relevant previous convictions. A principal mitigating factor is the role as sole carer for the Children and the Grandmother as dependent relatives.

ii) Notwithstanding what has become the clear prospect of rehabilitation, and the significant harmful impact of custody upon others (the Children and Grandmother), there is no getting away from the deliberate continued offending, in the face of the very recent custodial sentence – suspended – for the same type of fraudulent offending. I have not been able to see how appropriate punishment could be achieved other than by immediate custody.

Given the same (or) broadly similar facts, and after making proportionate allowance for the interests of dependent children, the sentencing courts here would, in my judgment, nevertheless be likely to impose an immediate custodial sentence. I repeat: that is not the answer to the case. But it is legitimate perspective, by way of a cross-check. And, having considered it, this does not cause me to revisit the view provisionally formed.

Conclusion

42. For the reasons I have given, I am not able to accept that extradition would be incompatible with the Article 8 rights of those affected. The appeal will therefore be dismissed.