

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2024] EWHC 1526 (Admin)



No. AC-2022-LON-002505

Royal Courts of Justice

Thursday, 16 May 2024

Before:

MR JUSTICE HOLGATE

B E T W E E N :

MICHAEL TURNER

Appellant

- and -

IRELAND

Respondent

Ms SIAN PRIORY appeared on behalf of the Appellant.

Mr TOM DAVIES (instructed by Crown Prosecution Service, Extradition) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE HOLGATE:

- 1 This is an appeal by Mr Michael Turner against the decision of District Judge Griffiths given on 24 August 2023 ordering his extradition to Ireland on an accusation EAW dated 8 June 2020.
- 2 In summary, the appellant is accused of being involved in three offences. First, on 12 June 2017 in Fairgreen, County Laois, he threatened to kill Stephen Garvey and sent the following Facebook message to Nikita Lawless,

“tell Steven he is dead if he want Knock that’s what he is getting and you’re getting it ya whore”.

Second, it is alleged that on 5 July 2017 at 12.10 p.m. at Enfield Post Office, a single male entered the post office with a handgun and demanded money. No money was handed over and the person fled the scene. Third, on 5 July 2017 at 4.20 p.m. a single male entered Mountrath post office and produced a handgun then held it to a customer’s head and demanded money. He was given nearly EUR 7,000 and then fled by vehicle.
- 3 On 11 July 2017, the appellant was arrested in Ireland in relation to the two robberies on 5 July 2017. When he was interviewed by the police he admitted being involved in those offences but said that he had only been the getaway driver. On 18 December 2017 he was questioned again by the police, this time regarding the messages sent on 12 June that year. He admitted sending the messages.
- 4 Not long afterwards the appellant returned to the UK to live in Wales.
- 5 Meanwhile in Ireland on 26 June 2018 a bench warrant was issued for two offences and then on 8 August 2019 an arrest warrant for the third offence. The EAW was issued on 8 June 2020 and certified by the NCA on 22 February 2023.
- 6 On 1 March 2023, the appellant was arrested by police in Caerphilly, Wales. He has been remanded in custody since then.
- 7 The extradition hearing was fixed for 26 June 2023, but at the CMH on 19 May the appellant successfully applied to have that hearing vacated so that a psychiatric report on him could be prepared.
- 8 The extradition hearing took place on 23 August 2023 and the judge gave an *ex tempore* judgment the same day. There is a note of that judgment before this court which has been agreed by counsel and by the judge. No psychiatric report was filed before the hearing and the appellant did not ask for any further adjournment to enable such a report to be obtained.
- 9 Before the judge, the appellant raised only two bars to extradition. First, it was submitted that there was a substantial risk of articles 2 and 3 of the ECHR being violated by non-state actors. This was based on allegations of violence suffered by the appellant at the hands of a gang, or gangs, in Ireland and threats made against his safety. Secondly, it was said that extradition would involve a violation of the appellant’s right to family and personal life under article 8 of the ECHR, also involving his partner and two children.
- 10 In his proof of evidence, the appellant said that he had been born in November 1990, and so he is now 33, His partner Thelma is 39. She suffers from depression and anorexia. They had

a daughter, who was then aged three. The appellant described his difficult upbringing as a child, which included violence inflicted by his father, both on his mother and himself. Eventually his mother left to live in Ireland. In 2017 the appellant went to visit and stayed with her. He met Thelma at that stage. It is said that they provided mutual support for each other in relation to their respective mental health issues.

- 11 The appellant was unable to hold down jobs in Ireland and he started abusing drugs. He said he had been made to act as a driver in connection with the two robberies on 5 July 2017.
- 12 After being interviewed in Ireland, the police granted the appellant bail. He says that this resulted in him being kidnapped and beaten by the gang with whom he had been associated. He thought he was going to die. He went back to Wales for safety. He said that he still received threats through social media.
- 13 In his proof, however, I note that one of the people who, according to the appellant, harmed him was Stephen Garvey. That person appears to have been the subject of the message containing the threat to kill which in the EAW the appellant is alleged to have made. Indeed, the appellant has accepted in interview that he made that threat to kill. No doubt in the extradition hearing this was relevant to the credibility of his evidence that he felt threatened by people in Ireland who had harmed him.
- 14 Importantly, there was no mention in the appellant's proof of evidence of any attempted suicide on his part, whether in January 2023 or at any other time. There was also no reference to self-harming or to suicidal ideation. Those matters were not mentioned at all to the district judge.
- 15 In her judgment, the judge set out her main findings on the facts in para.6. First, in para.6(a), she found that the appellant was a fugitive from justice and she gave her reasons for coming to that conclusion. That aspect is not under challenge in these proceedings.
- 16 The judge said that the appellant had said that he had left Ireland not because he wanted to avoid the matters the subject of the EAW, but because both he and his partner had received threats from gang members. But the judge explained why she did not accept that evidence. She did not believe it. There was no corroborating evidence. But, even if she was wrong about that, the judge said that, on his own account, the police had asked the appellant whether he wanted to report his injuries and he had replied that he did not. The judge took the view that the appellant could have asked for help from the police and for protection. She said that the defendant did not report the incidents when invited to do so by the police and he had produced no evidence that the authorities in Ireland would be unable to keep him safe.
- 17 In para.6(b) the judge found that the alleged offences are undoubtedly serious. Although the EAW did not allege that it was the appellant who went into the post offices with the gun, he had made admissions to being the getaway driver and, arguably, that formed part and parcel of a joint enterprise. Accordingly the judge said that if the appellant were to be convicted, he would be likely to receive a significant custodial sentence.
- 18 In para.6(c), the judge dealt with the appellant's personal circumstances. He is a UK national. He had been living in Wales at the time of his arrest with his partner and his then three-year old, now four-year old, daughter. He had a settled intention to remain in Wales. The judge accepted that extradition would result in emotional distress for the appellant's partner and child and other family members.

- 19 The appellant also has a 13-year-old son from a previous relationship, whom he used to see weekly prior to his arrest. The judge accepted that there would be emotional distress for his son, but distress of this nature is not unusual in extradition cases. This was not a case where the appellant was the sole carer for either of his children. His son was living with his maternal grandmother and the evidence was that he had coped and would continue to cope despite the difficulty that would follow from extradition. The appellant's daughter lives with her mother, with whom she would remain.
- 20 The appellant's father, whilst he continues to work, is able to offer some support for the appellant's family when he can and to take them to visit the appellant in prison. The judge concluded that the family had coped and would continue to cope.
- 21 The judge also addressed the financial position.
- 22 In para.6(d), the judge noted the appellant's evidence that his partner has health issues, but no evidence had been provided to corroborate this. The judge added that the appellant's father could provide support. She acknowledged that there had been some delay between the offences and certification of the EAW, but the appellant was a fugitive and had contributed to that delay.
- 23 The judge then went on to reject the appellant's case on articles 2 and 3. She found that there had not been any threats to the appellant at the hands of non-state actors in Ireland, but, even if there had been, the presumption was that the Irish state would provide adequate protection for the appellant. There was no evidence to the contrary. There was no real risk to the appellant's life and no real risk of him suffering torture or inhuman or degrading treatment.
- 24 In relation to article 8, the judge directed herself by reference to *Norris v. Government of USA (No.2)* [2010] 2 AC 487; *HH v. Deputy Prosecutor of Italian Republic, Genoa* [2013] 1 AC 338; *Celinski v. Slovakian Judicial Authority* [2016] 1 WLR 551.
- 25 The judge then proceeded to strike the *Celinski* balance as follows:

9. I find the following factors in favour of extradition:

- a. Strong public interest in this country complying with international treaty obligations and not being havens for those fleeing foreign jurisdictions or seeking to evade justice. The judicial authority should be afforded a proper degree of confidence and respect;
- b. Independence of the prosecutorial decision must be borne in mind. The requested person's extradition is sought in relation to undoubtedly serious allegations. The maximum sentences are 10 years and life imprisonment, and whilst I do not know what sentence the judicial authority would impose, in this jurisdiction they would attract a significant sentence and the time spent remanded in custody would not amount to time served;
- c. The requested person has not been of good character since these offences. There is a conviction on the PNC from 2019 and the requested person is a fugitive. I do not intend to repeat my findings in respect of this.

10. I find the following factors against extradition;

- a. The requested person is a UK national with a settled intention [to] remain in UK;
- b. There will be emotional distress to him and his family, particularly his children should he be extradited;
- c. He would not be able to work and so there will be some financial hardship to his family;
- d. There is some delay, again I do not intend to repeat the findings I have just given

11. So then I have to carry out balancing exercise and I have firmly in mind the guidance given in *Celinski*. I remind myself that there is a very high public interest in ensuring extradition arrangements are honoured and that the request should be accorded a proper degree of mutual confidence and respect. I did give significant weight to the emotional distress the children will undoubtedly suffer. Sadly, this is not unusual. As I have said this is not a sole carer case and whilst they are the innocents in all of this I find that they would cope with the support available, the daughter with the support of the mother, and the son with the support of the grandmother, and the support of the grandfather. In relation to financial hardship, I accept there will be some but nothing in this case goes beyond that which is usual in extradition cases.

12. The requested person as I say has not been of good character. He has committed a further offence. The allegations are undoubtedly serious. I do not intend to repeat my findings and he is a fugitive. And whilst there has been some delay which weighs in his favour, the delay is at least in part due to the way he left Ireland as he did. I cannot ignore his fugitive status.

13. Some cases are finely balanced but I am afraid this is not one of those cases. The high public interest in extradition is not outweighed and extradition is not incompatible with his Article 8 rights. The balance falls strongly in favour of extradition.”

26 At para.14 of her judgment, the judge turned to consider section 21A of the 2003 Act:

“I then have to consider section 21A and the issue of proportionality. There are three matters to consider. The first is the seriousness of the offence and I have already said that are undoubtedly serious. Second is the likely sentence, and again I find a significant custodial sentence is likely. It is ultimately up to the judicial authority but having regard to the guiltiness in this jurisdiction I find the likely sentence is a custodial one. Finally the question of less coercive measures, the burden of which is on the requested person, and none have been highlighted. I don’t find there are any that would be appropriate”.

The judge found there to be no bars to extradition and that extradition would not be disproportionate to any Convention rights.

- 27 In the perfected grounds of appeal dated 13 September 2023, the appellant no longer relied upon articles 2 and 3 of ECHR as regards the acts of non-state actors. Instead, Ms Sian Priory submitted on the appellant's behalf that an application would be made to rely upon new evidence in the form of a report from a consultant psychiatrist, Dr Arvind Kumar Gupta. It was submitted that:
- (i) this new evidence is admissible because it was not available at the extradition hearing applying the principles in *Hungary v. Fenyvesi* [2009] EWHC 231 (Admin.);
 - (ii) the report established that the conditions for barring extradition under section 25 of the 2003 Act are satisfied, such that the judge would have refused to order extradition;
 - (iii) in the alternative, if the judge had had the report of Dr Gupta, she would have struck the *Celinski* balance differently and concluded that extradition would involve a disproportionate interference with article 8 rights.
- 28 Mr Tom Davies on behalf of the respondent submitted that on the first issue, the report of Dr Gupta should not be admitted applying *Fenyvesi*. In relation to the second issue, he submitted that, if the report were to be admitted, the evidence does not show that there is a suicide risk so substantial as to make the extradition sought oppressive. There is no bar to extradition under section 25. In relation to the third issue, he said that the report would not have led the judge to strike the *Celinski* balance differently, so that she would have decided that extradition would violate article 8. Accordingly, the judge would not have been required to order the appellant's discharge (s.27(4) of the 2003 Act).
- 29 I deal first of all with the issue of admissibility. In granting leave to appeal on 9 February 2024, Thornton J made it clear that she was leaving that issue to the appeal judge.
- 30 Paragraph 32 of the judgment of the Divisional Court in *Fenyvesi* stated:
- “In our judgment, evidence which was ‘not available at the extradition hearing’ means evidence which either did not exist at the time of the extradition hearing, or which was not at the disposal of the party wishing to adduce it and which he could not with reasonable diligence have obtained. If it was at the party's disposal or could have been so obtained, it was available. ... In addition, the court needs to decide that, if the evidence had been adduced, the result would have been different resulting in the person's discharge. This is a strict test, consonant with the parliamentary intent and that of the Framework Decision, that extradition cases should be dealt with speedily and should not generally be held up by an attempt to introduce equivocal fresh evidence which was available to a diligent party at the extradition hearing. A party seeking to persuade the court that proposed evidence was not available should normally serve a witness statement explaining why it was not available ...”
- At para.35, the court added:
- “Even for defendants, the court will not readily admit fresh evidence which they should have adduced before the district judge and which is tendered to try to repair holes which should have been plugged before the district judge, simply because it has a Human Rights label attached to it. The threshold remains high. The court must still be satisfied that the evidence would have resulted in the judge deciding the relevant question differently, so that he

would not have ordered the defendant's discharge. In short, the fresh evidence must be decisive”.

31 The application notice EX244 seeking the court’s permission for the appellant to rely upon fresh evidence was dated 3 October 2023. The application was made and signed by Mr. Jettender Arora of Saunders Solicitors Limited acting as the Solicitor on behalf of the Appellant. In section 2 of the form Mr Arora stated that he wished to rely upon “the evidence in section 3”. Section 3 stated: “Please see the attached document setting out the background to the application as drafted by counsel with a copy of the report prepared by Dr Gupta”. That report was dated 11 September 2023. The “attached document” was entitled “Application to Adduce Fresh evidence” and was signed by Ms Priory and dated 2 October 2023. On page 3 of the EX 244 Mr Arora signed a Statement of Truth, declaring his belief that the facts stated in the application notice were true and that he was duly authorised by the appellant to sign the statement.

32 In the application document dated 2 October 2023, under the heading “Was the evidence available at first instance?”, counsel said in paras. 4 to 10:

“4. The evidence was not available at first instance, although the need for the evidence was identified at that stage in proceedings.

“5. The Requested person was originally unrepresented in his these proceedings, with those instructing being granted Legal Aid in late May 2023.

“6. The Applicant’s Proof of Evidence and counsel’s Statement of Issues were promptly served following instruction on 6 June 2023, with the following issues having been raised therein:

- Section 21 / Article 8. – right to private and family life
- Section 21 / Article 2 & Article 3 – right to life / not to be subjected to inhuman or degrading treatment (non-state actors)

“7. Following further instructions from the Applicant concerning his mental health, counsel advised that the Applicant be psychiatrically assessed with a view to serving an expert report concerning the same on the court as part of defence evidence. To this end, counsel drafted an advice for the purposes of submitting an application for prior authority to the Legal Aid Agency on 17 July 2023.

“8. When Prior Authority for funding was granted, those instructing sought to formally instruct the expert who had provided a quote. Those instructing struggled to find a Psychiatrist who had capacity to take on the matter at present. Eventually, Dr Gupta confirmed that he had capacity to assess the Applicant and draft an expert report and was instructed on 5 August 2023.

“9. The final extradition hearing took place before District judge Griffiths on 24 August 2023. At this stage there were insufficient instructions and no evidence to warrant raising an additional challenge under section 25 Extradition Act 2003.

“10. Due to significant delays in booking legal visits at HMP Wandsworth, the earliest that Dr Gupta could assess the Applicant was on 4 September 2023. Dr Gupta then promptly provided his expert report to those instructing on 11 September 2023.”

33 In essence the same explanation was advanced in paras. 11 to 17 of counsel's skeleton dated 2 May 2024, prepared for the hearing before me. I note that both the solicitor and counsel were saying to the court *inter alia* that:

- Dr Gupta's evidence was not available at first instance, although the need for it had been identified at that stage;
- Legal aid was only granted to Saunders in late May 2023;
- The Appellant's proof on 6 June 2023 raised art.2 and art.3 issues which at that stage were only related to non-state actors;
- A challenge to extradition based on s.25 of the Extradition Act 2003 was not raised at the extradition hearing on 2023 because "at that stage there were insufficient instructions and no evidence"

34 I do not accept that Dr Gupta's report or a report from another consultant psychiatrist could not with reasonable diligence have been obtained before the hearing on 24 August 2023. Even taking at face value what was said in support of the application EX244, there was unexplained delay between "late May 2023", or more accurately 19 May 2023 (the date of the CMH when the hearing fixed for 26 June 2023 was vacated so that a psychiatric report could be obtained), and the application for legal aid funding for that report on 17 July 2023. I should make it clear that the advice that supported that application for funding was prepared by counsel then instructed on behalf of the appellant, Georgia Beatty, and not Ms Priory. She was not instructed until later when it appeared that Ms Beatty would not be available for the hearing on 24 August 2023. Once the application for funding was made, the Legal Aid Fund appears to have reacted promptly.

35 The policy underlying the 2003 Act is that delay in the resolution of extradition proceedings should be avoided wherever possible consistent with the requirement for those proceedings to be fair. It has not been shown by the appellant that, if reasonable diligence had been used, the psychiatric report directed at the questions put to Dr Gupta could not have been prepared in good time for the hearing on 24 August 2023.

36 Alternatively, and in any event, once Dr Gupta was instructed on 5 August, an application should have been made to the court straight away to adjourn the hearing on 24 August for a relatively short period to enable the report of Dr Gupta to be put before the district judge dealing with the extradition hearing. A short adjournment for the same purpose as had justified vacating the hearing date on 26 June 2023, would have resulted in less delay and cost than the current appeal in the High Court relying on fresh evidence. In addition, it would have avoided the resources of this court being used for that purpose. The matter ought to have been dealt with in the magistrates' court. Here, again, reasonable diligence was not used to ensure that the report was before the magistrates' court.

37 But because, and only because, I asked questions during the hearing this morning, Ms Priory responded with more information, including an email from her sent between the hearing and this judgment, which showed the position to be substantially worse than the explanation accompanying the EX 244 she had drafted (dated 2 October 2023) on instructions from the solicitors who have been acting since the grant of legal aid, Saunder Solicitors. Whereas from October 2023 the court was being led to believe that legal aid was not granted until late May 2023 (see para.5 of the application to adduce fresh evidence), it turns out today in response to my question that the certificate was granted on 25 April 2023, even before the CMH on 19 May. The covering email from Ms Priory apologises for this "entirely inadvertent misleading as to the position". Plainly, counsel recognises that, putting the matter at its lowest, the effect of the statement in the application to adduce fresh evidence clearly misled the court. Although it is to be inferred that counsel's drafting was based upon

- instructions from the Solicitors, how this could have been “entirely inadvertent” is unexplained.
- 38 This misstatement was made as part of the attempt by the appellant’s lawyers to justify the claim that the evidence was “not available at the extradition hearing”. It was being suggested that Dr Gupta could not have been instructed sooner, in part, because legal aid had not been granted until late May 2023. That was included in the statement dated 2 October 2023 (and repeated in the skeleton at para. 12) for no other purpose.
- 39 On the material presently available to the court, I am not able to say that that was deliberate. That would require further investigation. But in my judgment, it was, on any view, plainly careless and possibly reckless. It would have been very simple to check the facts. Moreover, the solicitor responsible for this case relied upon the document drafted by counsel. Ordinarily he would have been responsible for providing the information on which the document was based. He ought to have read it and checked it before the application was made. But it does not stop there.
- 40 At the hearing on 24 August 2023, Ms Priory appeared on behalf of the appellant. She accepts that at that stage she knew that Dr Gupta had been instructed to provide a report on psychiatric issues. The appellant’s solicitor must have known that too.
- 41 The obvious question for the appellant and his legal team was whether an application should be made to the court to adjourn the hearing so that it could take into account the psychiatric report. At that stage, it is reasonable to infer that those concerned would have appreciated that the report was likely to be produced relatively soon. But this morning, in response to a question from the court, Ms Priory said that the appellant instructed her not to apply for an adjournment.
- 42 Given the appellant’s successful application at the CMH on 19 May 2023 to vacate the hearing on 26 June to enable a psychiatric report to be obtained, Mr Davies wanted to know at the extradition hearing on 23 August the position regarding that report. He was told by Ms Priory that the appellant wished to “crack on” without the psychiatric report or any ground based on mental health issues. So counsel for the respondent proceeded on the basis that the appellant did not wish to rely upon any additional ground relating to mental health. Accordingly, there was no need for him to trouble the district judge with any procedural issue about it.
- 43 In my judgment, the appellant, through his solicitors and counsel, ought to have told the district judge that the appellant had instructed his lawyers not to apply for a further adjournment so that the psychiatric issue could be addressed. After all, the possibility of a s.25 issue had been the reason why the earlier hearing had been adjourned and the position at the second hearing had been explained to the respondent. This was necessary in order to promote the overriding objective and to assist the court in identifying and case-managing the real issues (Crim. PR 1.1, 1.2, 3.2 ad 3.3).
- 44 Likewise, that same information should have been given to the High Court as part of the application to rely upon fresh evidence filed by the appellant’s legal team on his behalf. That follows from the duty of candour which the Appellant owed to the court (which at the very least must mean in this context a duty not to mislead the court) and from the professional obligations of the lawyers to the court. If a client were to say to his lawyers that such information should be concealed from the court, it is difficult to see how they could continue to act for him in the proceedings. It was misleading for the appellant’s skeleton argument dated 2 May 2024 to state that s.25 of the 2003 Act was not raised at the extradition hearing because “at that stage there were insufficient instructions ...”. The true position is that there were positive instructions from the appellant not to ask for an adjournment so that Dr

Gupta's report could be received by the court and the s.25 matter dealt with in the extradition hearing. He elected not to pursue that issue in the extradition hearing.

- 45 No justification has been given for the failure to volunteer this information to the court. There was every reason why the court needed to be given it, so that it could control the ability to appeal and its process appropriately. Thornton J, was not made aware of these matters when she granted permission in this case,. She ought to have been placed in the position whereby she could take them into account. They could well have affected the way in which she approached the decision on whether to grant permission or how procedurally that matter should be handled.
- 46 Returning to *Fenyvesi*, for the reasons I have given, the court would be entitled, without going any further, to refuse to admit Dr Gupta's evidence. The appellant and his legal team are fully aware of the tactical choice made in the magistrates' court. There has been no explanation from the appellant as to why he wanted matters to proceed in that way and no attempt to justify that course of action. Without the application to rely upon fresh evidence, including a psychiatric report, his appeal would be bound to fail in any event.
- 47 However, so that there should not be any doubt about the matter, I have gone on to consider carefully the second and third issues. In case the appellant could succeed on either of those grounds of appeal, then, because of the court's role under the ECHR, I have considered whether the expert report does support either of those ground, such that the appellant should be discharged. I should make it clear that I only do so because of the nature of the risk which the report purports to address.
- 48 Turning to the second and third issues, both counsel agreed on the principles that the court should apply in relation to section 25 of the 2003 Act. In *Turner v. Government of the United States of America* [2012] EWHC 2426 (Admin), the Divisional Court stated at [28]:

“... The relevant cases, which were recently examined with care by Bean J in *Marius Wrobel v Poland* [2011] EWHC 374 at [17] establish the following propositions: (1) the court has to form an overall judgment on the facts of the particular case: *United States v Tollman* [2008] 3 All ER 150 at [50] per Moses LJ. (2) A high threshold has to be reached in order to satisfy the court that a requested person's physical or mental condition is such that it would be unjust or oppressive to extradite him: *Howes v HM's Advocate* [2010] SCL 341 and the cases there cited by Lord Reed in a judgment of the Inner House. (3) The court must assess the mental condition of the person threatened with extradition and determine if it is linked to a risk of a suicide attempt if the extradition order were to be made. There has to be a 'substantial risk that [the appellant] will commit suicide'. The question is whether, on the evidence the risk of the appellant succeeding in committing suicide, whatever steps are taken is sufficiently great to result in a finding of oppression: see *Jansons v Latvia* [2009] EWHC 1845 at [24] and [29]. (4) The mental condition of the person must be such that it removes his capacity to resist the impulse to commit suicide, otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying and if that is the case there is no oppression in ordering extradition: *Rot v District Court of Lubin, Poland* [2010] EWHC 1820 at [13] per Mitting J. (5) On the evidence, is the risk that the person will succeed in committing suicide, whatever steps are taken, sufficiently great to result in a finding of oppression: *ibid.* (6) Are there appropriate arrangements in place in the prison system of the country to which extradition is sought so that those authorities can cope properly with the

person's mental condition and the risk of suicide: *ibid* at [26]. (7) There is a public interest in giving effect to treaty obligations and this is an important factor to have in mind: *Norris v Government of the USA (No 2)* [2010] 2 AC 487”.

I interpose to record that Ms Priory said that the appellant pursues section 25 solely on the basis of oppression and not injustice.

49 In *Wolkowicz v. Regional Court of Bialystok, Poland* [2013] 1 WLR 2402 the Divisional Court stated at [10]:

“The key issue, as is apparent from propositions 3, 5 and 6 [referring to *Turner*] will in almost every case be the measures that are in place to prevent any attempt at suicide by a requested person with a mental illness being successful”.

50 The court decided that the issue should be examined in relation to three stages. First, while the requested person is being held in custody in the UK, the position is clear. A person does not escape a sentence of imprisonment in this country simply by pointing to a high risk of suicide. Instead the court relies upon the executive branch of the state to implement measures to care for the prisoner.

51 Second, when a requested person is being transferred to the requesting state, arrangements are made with the authorities of that state to ensure that during transfer proper arrangements are in place to prevent suicide in appropriate cases. Amongst other things, in a case of genuine suicide risk, medical records should be sent with the requested person and delivered to those who will have custody during transfer and in subsequent detention.

52 Of most importance to the present case is the third situation, when the requested person is received by the requesting state in the custodial institution in which he is to be held. “It will ordinarily be presumed that the receiving state within the European Union will discharge its responsibilities to prevent the requested person committing suicide, in the absence of strong evidence to the contrary”.

53 The court went on to decide that, in the absence of evidence to the necessary standard questioning the ability of the receiving state to discharge its responsibilities, it should not be necessary for this court to require assurances from the requesting state. “It will therefore ordinarily be sufficient to rely on the presumption. It is therefore only in a very rare case that a requested person will be likely to establish that measures to prevent a substantial risk of suicide will not be effective”. I was also referred by Mr Davies to relevant passages in *Modi v. Government of India* [2022] EWHC 2829 (Admin.)

54 I turn to Dr Gupta’s report dated 11 September 2023. In para.1.7.1, he says that he had an interview with Mr Turner on 4 September 2023 by video, but he does not say how long it lasted. He does say at para.1.10 that this was his first contact with Mr Turner. He does not indicate that he has had any further contact with the appellant since then. He was supplied with the prosecution evidence, Mr Turner’s proof of evidence, the statement of issues and counsel’s advice, the last of which, of course, has not been shown to the court.

55 At para.7.2 of his report, Dr Gupta said that he could not find any indicators to suggest that the appellant was feigning, exaggerating, under-reporting or was manipulative. “His responses were consistent and reliable and were in keeping with the information provided to me and his clinic presentation and cross-sectional mental state”. However, he does not state whether he carried out any tests on the subject of feigning and reliability and, if he did, what those tests were and with what results. He asserts that the answers were “reliable”, but he does not say why.

56 In para.1.5.1 of the report, Dr Gupta refers to the account given by the appellant, including the assertion that he had previously experienced “extreme violence” at the hands of gang members. Mr Turner had said that he had been kidnapped from his home by the gang and severely beaten. I interpose to say that that was the incident which involved Mr Garvey. Dr Gupta also records that the appellant has alleged that he has continued to receive threats via social media. I remind myself that the judge did not accept the appellant’s evidence on those threats.

57 At section 1.6, Dr Gupta records the instructions he has received. He says, “I have been instructed to assess Mr Turner and provide a psychiatric report to assist with his ongoing immigration matter addressing below ...”. His instructions were to assess the appellant’s current mental condition, to diagnose any mental health conditions from which he may be suffering, to provide recommendations as to treatment and to explain the likely impact that extradition, including the experience of detention and prolonged separation from his partner, children and family members, would have on the appellant’s mental health. He was asked to assess suicide risk, both presently and in the event of extradition. Specifically, section 7.2 of the report records that Dr Gupta was asked:

“If there is a risk of suicide, whether Mr Turner’s mental condition is such that it ‘removes his capacity to resist the impulse to commit suicide’ – per *Turner v. Government of the USA* [2012] EWHC 2426 (Admin.) at [28(4)].”

58 In para.2.1, Dr Gupta says:

“Mr Turner stated that his mental health has been poor in the last many years and has been gradually deteriorating. He stated that he remains anxious and depressed. He suffers from insomnia and his appetite is low”.

What Dr Gupta does not say at this point, or at any stage, is whether he asked the appellant about any consultations he had previously had with doctors, any diagnosis or any treatment. This is a report which, most unusually, has been prepared without any suggestion that that author has attempted at the time, or subsequently, to examine the appellant’s medical records.

59 In paras 2.2 and 2.3 of the report Dr Gupta says:

“2.2 Mr Turner reported to be experiencing anxiety, low mood, irritability, poor concentration, variable sleep, and appetite along with poor motivation and lethargy. Mr Turner often experiences episodes characterised by palpitations, tightness in the chest, tremors, shortness of breath or hyper-ventilation, headaches,

dizziness, excessive sweating, lump in the throat, dryness of mouth and feelings of impending doom and as if he will die of heart attack.

2.3 Mr Turner also carries poor self-esteem, self-image and lacks in confidence. Mr Turner described getting muddled, foggy, overwhelmed, and distressed as he finds extremely difficult to process the thoughts in his mind and ventilate them effectively. During this period of intense overwhelming mental state, he experiences death wishes and suicidal thoughts”.

60 By 4 September 2023 the appellant had been in prison for about six months. I would have expected such matters to have been raised with the prison medical services during that period. In response to a question from the court, counsel said that she could not say whether Dr Gupta or the solicitors have asked the prison services, with the appellant’s consent to provide copies of the medical records to see, for example, the extent to which the appellant’s assertions can be corroborated.

61 On the following page of the report, Dr Gupta briefly explains why he is of the view that the appellant describes symptoms consistent with PTSD.

62 In section 4 of his report, Dr Gupta deals with medication. The appellant is “currently prescribed” Mirtazapine at a dose of 45 mg per night. This is to address his symptoms of anxiety and low mood. I infer that this is a drug which has been prescribed whilst he has been in prison.

63 In section 5 of his report, Dr Gupta deals with the appellant’s mental state as at interview. In para.5.4 he says:

“There were no abnormal thought processes. There was no evidence of abnormal or false, firm and fixed beliefs. Mr Turner expressed guilt and remorse for his past actions. He also expressed helplessness over the past and current situation that is largely beyond his control”.

64 In para.5.5, Dr Gupta said that there was no evidence of the appellant seeing or hearing things in the absence of any active stimuli.

65 In section 6, Dr Gupta assessed risks. In para.6.1, he says,

“Mr Turner said that he has suicidal thoughts, as he feels hopeless and worthless. He has cut himself, hit himself and in January 2023, he cut his wrists, hit himself and attempted to hang himself. He continues to harbour suicidal thoughts with high intent. His family acts as protective factors. He remains distressed with these thoughts. He complained that his life is not getting any better.is not getting any better”.

This indication that the appellant had previously self-harmed and that in January 2023, he had cut his wrists, hit himself and attempted to hang himself was never mentioned in his proof of evidence before the district judge and, so far as counsel was concerned, it was

not something of which she was aware at the hearing on 24 August 2023. This is something that has emerged solely from the interview carried out by Dr Gupta.

66 It is pertinent that this incident or these incidents are said to have taken place before the appellant was arrested in Wales. There is no suggestion that he was aware at that stage of his impending arrest. No information is given by Dr Gupta as to what is said to have precipitated these events, if they took place. No information is given by the expert on what happened in January 2023 as a result. Was there any admission to hospital? Was he sectioned? Was he seen by community mental health staff? It does not appear that the appellant's team has made any application for the medical notes relating to this incident or any subsequent events to be provided. Likewise there is no indication that this issue has been raised by Dr Gupta with the prison authorities.

67 All this leads to an important question. What has happened to the appellant since he has been in prison? On this, Dr Gupta's report is completely silent (see also [60] above). Nothing is said in the report about whether he has explored with the prison staff whether there has been any subsequent suicidal ideation, whether they have noticed anything of concern, whether there have been any further suicide attempts or self-harming since he has been incarcerated. The question of whether any treatment which the prison has given has been successful or unsuccessful has not been explored. For these and other reasons previously given, the report is wholly inadequate.

68 Dr Gupta gives his opinion in section 7 of the report. In para.7.1, dealing with an assessment of the appellant's current mental condition and a diagnosis of any conditions from which he may be suffering", Dr Gupta says this:

"Mr Turner presents with signs and symptoms suggestive of Complex Post Traumatic Stress Disorder. He has poor coping skills and poor problem-solving skills and get gets easily emotionally overwhelmed and harbours suicidal thoughts. He suffers from a lack of identity, and he remained vulnerable all his life. He is now insightful into his dysfunctional and criminal patterns of behaviour, and he expressed guilt and remorse for his past actions".

69 In relation to the subject of complex PTSD, Dr Gupta says this:

"Due to the nature and severity of his mental illnesses, Mr Turner suffers from significant distress and disability in his personal, social, and occupational functioning".

70 In para.7.2, Dr Gupta gives his recommendations for treatment.

"1. Medication for agitation and anxiety, and sleep disturbance.

2. Grounding Skill aimed at improving emotional distress, emotional dysregulation, mindfulness, and inter-personal effectiveness.

3. Trauma focussed Cognitive Behaviour therapy, after the mental health is stabilised using grounding skills.

4. Engagement in meaningful and socially inclusive activities".

71 It is not suggested by the appellant's counsel that these recommendations are not provided for by the current regime in the UK where the appellant is being held, or would not be provided for in an Irish prison. As Mr Davies fairly characterised the recommendations, they are conventional and nothing out of the ordinary.

72 At the top of p.14 of his report, Dr Gupta set out the questions which he had been posed, in terms of suicide risk and, in particular, the issue raised by para.28(4) of *Turner*. His answer is as follows:

“Mr Turner harbours suicidal thoughts and carries a high intent of ending his life. He attempted to end his life in January 2023. Currently, his family is acting as protective factor. In my opinion, if Mr Turner is extradited, there is a high risk of Mr Turner ending up committing suicide as the protective factors will be removed”.

It will be noted that the removal of protective factors relates solely to that protection which is said to relate to his family, the interaction with his family.

73 At the top of p.15 of his report, Dr Gupta said:

“In my opinion, Mr Turner is an extremely vulnerable person. If Mr Turner were to be extradited to Ireland, there is a high likelihood that his mental health will deteriorate significantly, and the support and help he receives in the United Kingdom may not be there. There is a high likelihood of both planned and impulsive suicide by Mr Turner as he will not have any protective factors”.

74 Overall, in my judgment Dr Gupta has produced a very flawed report because of the various failings to which I have already referred. I am, however, conscious that there has been no oral examination of Dr Gupta as there would have been, and should have been, if his report had been produced and he had been called before the magistrates' court. That is down to the appellant. But putting it at its very lowest, there does seem to be a worrying lack of objectivity and supporting data. The report does not show that the third proposition in *Turner* is satisfied.

75 But there is another fundamental concern. During her oral submissions it was accepted by counsel for the appellant that Dr Gupta did not address the fourth proposition in para.28 of *Turner*. In my judgment, that concession was rightly made. I note that in the passage I have just cited Dr Gupta says that the support and help he receives in the UK may not be present in Ireland. However, that is pure speculation on his part. He does not provide any basis for raising that as a possible concern. It is not an objective opinion supported by evidence. It has no place in the report of an expert, whose function is primarily to assist the court. It can safely be disregarded.

76 Furthermore, in para.29(ii) of the appellant's skeleton, it is stated that no suggestion is being made, despite that speculation on the part of Dr Gupta, that the judicial authority is unable to offer appropriate medical treatment. I understand that would include appropriate protective measures against the risk of suicide.

- 77 For completeness I should address a subsequent, faint suggestion that Dr Gupta attempted to address the fourth proposition in *Turner* by stating that, in his opinion, there was a high likelihood of both “planned and impulsive suicide”. That expression is unexplained and unacceptably ambiguous. Dr Gupta does not explain how planned suicide can sit with impulsive suicide. As Mr Davies rightly submitted, the opinion that there could be planned suicide connotes the possibility of voluntary action not attributable to mental health conditions and undermines the suggestion that there is a risk of impulsive suicide.
- 78 Paragraph 29(ii) of the appellant’s skeleton continues:
“But rather that the inevitable separation from his ‘protective factors’ will exacerbate his mental health conditions to such an extent, as opined by Dr Gupta, that the risk of suicide is high and that there may be little the Judicial Authority could do to counter that, whatever steps are taken ...”
- 79 The position is that Dr Gupta has produced no evidence, and the appellant has not produced any other evidence, to rebut the presumption in *Wolkowicz* that Ireland will discharge its responsibilities to prevent the appellant committing suicide. What is said in that part of para.29(ii) which I have just quoted is assertion, unsupported by any evidence at all.
- 80 To summarise, looking at the whole of Dr Gupta’s evidence, I accept Mr Davies’ submission that he has not produced evidence which meets the test set out in the third proposition of para.28 of *Turner*. He has not produced evidence adequately supported to show that the risk of the appellant succeeding in committing suicide, whatever steps are taken, is sufficiently great to result in a finding of oppression.
- 81 Even if I were to be wrong about that, turning to *Turner* proposition four, although the expert raised the question in his report, as he was instructed to do, he did not answer it. As I have said, the expression “planned” suicide on p.15 of his report is not further explained and it is consistent with the possibility of a voluntary act which would not justify treating extradition as oppressive. No explanation is given by Dr Gupta as to how the reader could understand the two terms “planned” and “impulsive” as being consistent with each other and why they are not contradictory.
- 82 In the final analysis, Dr Gupta does not say that the mental condition of the appellant removes his capacity to resist the impulse to commit suicide. That was the question that was clearly put to him. He does discuss the effect of the removal of support from his family as a protective factor, but that is another consideration.
- 83 Irrespective of the views I have expressed on proposition four, this is not a case where Dr Gupta or the appellant shows that extradition would not pass the tests in propositions five and six. In other words, this is not shown to be a case where any genuine risk of suicide is so high that, whatever steps are taken and whatever protective measures would be in place in Ireland, that risk would not be reduced to an acceptable level in terms of the oppression test in section 25.
- 84 Even if it were to be assumed in the appellant’s favour that proposition three is satisfied, contrary to the conclusion I have reached, this is one of those cases which would fall

within para.117 of *Modi*. But at this point in the analysis too, the section 25 ground must also fail because of, *inter alia*, the failure on the part of the appellant and/or Dr Gupta to deal with the adequacy of protective measures: in particular, to rebut the presumption which applies.

85 The challenge to the article 8 decision hinges entirely on the new evidence from Dr Gupta. Ms Priory fairly accepts that, absent that new evidence, no challenge could properly be made in this court to the striking of the *Celinski* balance by the district judge. Given the flaws and weaknesses in Dr Gupta's report, in my judgment, that document could not conceivably alter the striking of the *Celinski* balance so as to indicate that the district judge should have ordered discharge if he had had access to that material. The challenge in relation to article 8 fails as well. There is no basis for this court to intervene under s.27(4) of the 2003 Act.

86 Accordingly, the application to adduce fresh evidence must be refused and the appeal must be dismissed.



*Transcribed by **Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

This transcript has been approved by the Judge.