

Neutral Citation Number: [2024] EWHC 1821 (Admin)

Case No: AC-2023-LON-002076

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15th July 2024

Before :

THE HONOURABLE MR JUSTICE LINDEN

Between :

JASON PLATT

Appellant

- and -

THE HIGH COURT OF THE REPUBLIC OF
IRELAND

Respondent

Mr Ben Joyes (instructed by **Sonn MacMillan Walker**) for the **Appellant**
Mr Stefan Hyman (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 19 June 2024

Mr Justice Linden:

Introduction

1. This is an appeal against an order for the extradition of the Appellant which was made by District Judge Sternberg on 30 June 2023 after a hearing at the Westminster Magistrates' Court on 5 June 2023.
2. The Appellant is the subject of an accusation arrest warrant ("the Arrest Warrant") which was issued by the High Court in Ireland on 4 October 2021 under the Trade and Cooperation Agreement between the European Union and the United Kingdom, and certified by the National Crime Agency on 22 April 2022 under Part 1 of the Extradition Act 2003. He faces eight charges which arise out of a claim for damages for personal injury which he brought in the Irish High Court. In summary:
 - i) There is one charge of attempting to commit deception, contrary to common law, between 4 August 2010 and 5 June 2015 ("Offence 1" on the Arrest Warrant);
 - ii) There is one charge of dishonestly providing false and misleading evidence in an affidavit dated 30 April 2015, contrary to section 14(5) of the Civil Liabilities and Courts Act 2004 ("Offence 3"); and
 - iii) There are six charges of dishonestly giving or causing false and misleading evidence to be given, contrary to section 25(1) of the 2004 Act ("Offences 2 and 4 to 8"). Offence 4 relates to evidence which the Appellant himself gave at the High Court in Dublin on 5 and 9 June 2015 in support of his personal injury claim, and Offences 2 and 5-8 concern evidence which he gave to medical experts and an occupational therapist in January and June 2015.

3. Offence 1 carries a maximum sentence of 5 years' imprisonment. The other offences each carry a maximum of up to 10 years.
4. At the hearing before the District Judge the Appellant put forward two grounds for resisting extradition. These were that, pursuant to section 21A(1)(a) of the Extradition Act 2003, it would be incompatible with Article 8 of the European Convention on Human Rights ("ECHR") for him to be extradited. Secondly, it would also be unjust and oppressive given his physical and mental health, contrary to section 25 of the 2003 Act. However, the Perfected Grounds of Appeal limit the issue on appeal to the challenge under Article 8.
5. The appeal, as pleaded, is founded on two factual propositions which, it is said, the District Judge failed or failed sufficiently to recognise:
 - i) First, "*Detention of [the Appellant's partner] under the Mental Health Act 1983 is a virtually certain consequence of the Appellant's extradition*"; ("Proposition 1") and
 - ii) Second, "*There is a real risk that public mental health services will fail to ensure that [the Appellant's partner] does not commit suicide or carry out acts of serious self-harm in the event of the Appellant's extradition*" ("Proposition 2").
6. Mr Joyes' case, framed in terms of section 27 of the Extradition Act 2003, is that the District Judge ought to have made findings to this effect. If he had done so, the balancing exercise in relation to the proportionality of extraditing the Appellant would have come down in his favour and the District Judge would have been required to

discharge the Appellant on the grounds that to do otherwise would be contrary to Article 8 ECHR.

7. Permission was granted by Farbey J on the papers on 6 February 2024 although the Appellant's application dated 1 August 2023 to admit fresh evidence was refused, as was permission to advance arguments at [33]-[39] of the Perfected Grounds which were based on that evidence. That application was, however, renewed before me and there was a further application, dated 5 June 2024, to admit fresh evidence which was not before Farbey J. In his oral submissions, Mr Joyes also raised a third ground of challenge, namely that the District Judge had failed to ask himself whether the degree of hardship which the Appellant and his partner would suffer in the event of his extradition was exceptional.

Explanation of the charges to which the Arrest Warrant relates

8. The Appellant is a British citizen who is now aged 52. He has no previous convictions. His relationship with his partner, Ms Christine McKenna, began in 2005 and they have lived together in St Helens since 2007. She has a son from a previous relationship.
9. On 15 February 2009, the Appellant and Ms McKenna were on holiday in Ireland when he fell from a window of the Old Bank House Hotel in Kinsale, County Cork, and landed on a roof below. He was taken to Cork University Hospital where he was treated for fractures to his right femur and to his ribs, and a punctured lung. He underwent an operation to his right thigh and was subsequently transferred to Whiston Hospital in Merseyside where he developed complications which required a period in intensive care, and the installation of a chest drain. It is not in dispute that his injuries

were initially life threatening and that he will never fully recover from them. As a result of his physical injuries, he also developed psychological problems.

10. On 3 March 2011, the Appellant submitted a personal injury summons in the High Court in Dublin, issuing proceedings against the company which operated the Hotel, OBH Luxury Accommodation Limited (“OBH”). He claimed that as a result of his injuries he was unable to live independently and was very much dependent on Ms McKenna for assistance. In replies to particulars delivered on the 13 September 2011, the Appellant’s condition was said to have deteriorated. It was said that he was unable to keep medical appointments, that he had been referred to a pain clinic and that he required two crutches to stand and a significant amount of assistance to mobilise. It was also asserted that his disabilities were such that he required two carers to attend him four times each day.
11. By the time of the trial, the claim was for damages in the order of 2.35 million euros pursuant to a schedule of loss which the Appellant verified by an affidavit dated 30 April 2015. This affidavit therefore confirmed that his injuries and impairments were such that he had required and would continue to require substantial personal care and support, various aids and equipment and adapted accommodation.
12. The claim was tried over a period of 7 days in June 2015 before Barton J. The witnesses included the Appellant, Ms McKenna who gave evidence in support of his claim, and various expert witnesses who gave evidence about the severity of his impairments and the continuing care and support which he would require. In his evidence the Appellant claimed that he was in severe pain and that his symptoms were worsening. He described himself as having been destroyed and in agony for about 21 hours a day and said that the pains in his legs were akin to what might be expected

following electrocution. He said that he was only able to mobilise using either crutches, a wheelchair or a commode and that he had to use the commode to get to the front door of his house. He was essentially housebound and spent most of his time lying in bed because of the pain. He had not been able to take a shower or a bath for 6.5 years because of his mobility issues and he needed assistance with washing. He had a mobility scheme car which he could use to go the shops, the chemist or to his medical appointments and otherwise in the case of an emergency. Whilst in court, he presented as a profoundly disabled person who sat in a wheelchair, sometimes in a semi-reclined position. The Appellant also demonstrated physical difficulty when moving into the witness box from his wheelchair with the assistance of crutches.

13. Unfortunately for the Appellant, OBH's insurers had carried out video surveillance on him on seven occasions between March 2014 and March 2015. The footage from this surveillance was played to the Court after he had finished giving evidence. It showed the Appellant walking to and from his car on several occasions without crutches and without the assistance of Ms McKenna, albeit with a significant limp. On one occasion he could be seen moving rapidly when walking across the road between moving traffic and, on another, wheeling a shopping trolley around a Tesco store without any apparent difficulty. On a number of occasions he is seen driving his car, and he is shown raising his right arm overhead to close the boot of his car in a brisk and fluid movement.
14. The video footage also showed that, on 6 May 2014, when the Appellant saw the defendants' orthopaedic consultant, Mr Pennie, he walked from his house to his car carrying his crutches but not using them. When he arrived for his appointment,

however, he used his crutches and moved in a highly laborious and slow fashion after he had got out of his car.

15. On the 6 January 2015, the Appellant flew to Ireland for a medical examination with Professor Phillips, the defendants' neurosurgeon, which took place on 7 January 2015. On the video footage he can be seen leaving his home without the assistance of crutches. When he arrived in Dublin, however, he was mobilised in a wheelchair and taken to his appointment by ambulance. The Appellant's physical presentation in the course of the examination with Professor Phillips was such that the Professor felt that he had to examine him whilst he remained in his wheelchair. Later that evening, however, the Appellant was seen moving around without the aid of crutches. The following day, on arrival back in England, he required to be mobilised at the airport in a wheelchair. However, at approximately 5 p.m. he was seen parking his car, after which he walked briskly across a busy roadway and back.
16. At the conclusion of the evidence, the defendants applied for the Appellant's claim to be dismissed pursuant to section 26 of the Civil Liability and Courts Act 2004 on the basis that:
 - i) The Appellant himself at trial had knowingly given false and/or misleading evidence to the Court as to the extent and nature of his injuries, in breach of section 26(1) of the 2004 Act;
 - ii) He had knowingly caused false and/or misleading evidence to be adduced on his behalf in breach of section 26(1) of the 2004 Act in that he had given a false account of his abilities and disabilities to each expert witness retained to examine him and with the purpose of inflating his claim; and

- iii) In breach of sections 26(2)(a) and (b) of the 2004 Act, he had sworn three affidavits, including the final one dated 30 April 2015, verifying a range of disabilities, needs in terms of support, and alleged financial consequences whilst knowing them to be false and/or misleading in several material respects.
17. Section 26 provided that if any of these three bases was made out the court should dismiss the action unless that would result “*in injustice being done*”.
18. In a judgment which was handed down on 19 January 2016, Barton J allowed the defendants’ application and dismissed the claim: [2015] IEHC 793. He found that the Appellant had given evidence that was dishonest, unreliable and lacking in credibility. The extent of his disabilities and the level of his pain as suggested by his demeanour in the course of the trial, and the manner in which he sat and moved from the wheelchair to the witness box, were false and not in keeping with the true extent of his abilities. Barton J was satisfied that the Appellant had presented himself to the expert witnesses as almost incapable of doing anything and then only with the assistance of others. In particular, he had told several witnesses that he could not drive or shop, that he could not bear any weight on his right leg and that he needed either crutches or a wheelchair to mobilise. Barton J said that the video evidence established that the Appellant could negotiate the steps of his house unaided, that he could open the gates to his driveway and that he could do the supermarket shopping and could walk without the use of crutches. He rejected a submission that the Appellant had an honest subjective belief in the seriousness of his injuries and disabilities. Barton J found that his disabilities as portrayed to the court and to the expert witnesses were a gross exaggeration of the truth. He had deliberately exaggerated them.

19. Barton J also concluded that the Appellant had sworn his affidavit of the 30 April 2015 knowing it to be false and/or misleading, and grossly exaggerated, in order to maximise his claim for damages. The fact that his claim for special damages was substantially modified or abandoned in the course of the trial afforded no defence to the defendants' application. Barton J found that in the absence of the video surveillance the Appellant would have proceeded with his claim with his experts giving evidence in accordance with their reports.
20. Barton J's ruling was appealed to the Court of Appeal in Ireland and that appeal was dismissed on 28 July 2017: [2017] IECA 221. The Court of Appeal examined the evidence for itself and held that the Judge was entitled to reach the findings and conclusions which he had reached and had not erred in law.
21. On 3 October 2018, OBH's insurers complained to the Garda National Economic crime bureau about the Appellant's conduct of the personal injury proceedings and said that they had incurred 500,000 euros in costs in defending the proceedings.
22. On 27 October 2020, the Irish Director of Public Prosecutions authorised eight charges against the Appellant. The Arrest Warrant was issued approximately a year later, as I have noted:
 - i) Offence 1 on the Arrest Warrant relates to the Appellant's general course of conduct in the personal injury proceedings between 4 August 2010 and 5 June 2015.
 - ii) Offence 2 alleges that, on 7 January 2015, the Appellant attended Professor Phillips for purposes of a consultation at Beaumont Hospital and dishonestly gave him information which was false and misleading.

- iii) Offence 3 alleges that, on 30 April 2015, he swore an affidavit of verification which sought special damages and damages for future losses, totalling 2.35 million euros. In this affidavit he confirmed that he had been advised that if he made a false or misleading statement, he may commit an offence which carried a maximum sentence of imprisonment of ten years. The affidavit contained information which was dishonest, false and misleading.
 - iv) Offence 4 alleges that on 4 June and 9 June 2015, the Appellant gave evidence before Barton J which mirrored the contents of his affidavits in the proceedings and was dishonest, false and misleading.
23. Offences 5-8 on the Arrest Warrant allege that, by dishonestly giving false or misleading information to the experts and practitioners who gave evidence at the trial he dishonestly caused them to give false or misleading evidence to the High Court. The charges relate to:
- i) Evidence given by Dr Micheal O’Driscoll, an orthopaedic consultant, on 11 June 2015 following his examination of the Appellant (Offence 5);
 - ii) Evidence given by Dr Pennie, on 17 June 2015, including evidence that he attempted to examine the Appellant, but the examination had to be terminated, ostensibly because it was too painful for the Appellant (Offence 6);
 - iii) Evidence given by Professor Phillips on 17 June 2015 about the examination of the Appellant on 7 January 2015 during which the Appellant told Professor Phillips that he was unable to walk without crutches (Offence 7).

- iv) Evidence given by Ms Nicki Bukowski, an occupational therapist, on 17 June 2015, that she had observed the Appellant at home requiring the assistance of Ms McKenna to get out of bed (Offence 8).
24. The Appellant was arrested on 29 April 2022 and was produced at Westminster Magistrates' Court on the next day for an initial hearing. On 11 November 2022 the Appellant's solicitors made a request pursuant to section 21B of the Extradition Act 2003 for arrangements to be made for him to speak to the Irish authorities from or in the United Kingdom. However, further information provided by the Respondent on 1 December 2022 states that:
- i) The Irish Police have instructed that the Appellant was aware of the investigation. On 7 April 2020 he was invited to present himself voluntarily for interview in the United Kingdom, but he declined to do so.
 - ii) The Appellant may contact the Irish Police at any time to make a voluntary statement under caution.
 - iii) No effort has been made by the Appellant or his legal representatives to contact the Irish Police to make arrangements for him to return to the jurisdiction voluntarily.
 - iv) Should the Arrest Warrant be executed, the Appellant will have the opportunity to make an application for bail in Ireland.

Caselaw on the application of Article 8 ECHR

25. As is well known, in *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338 Baroness Hale analysed the decision of the Supreme Court in *Norris v United*

States of America (No 2) [2010] 2 AC 487 and said this at [8] in relation to the issue of proportionality under Article 8 ECHR in the context of extradition:

“We can, therefore, draw the following conclusions from Norris:

(1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life.

(2) There is no test of exceptionality in either context.

(3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition.

(4) There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no “safe havens” to which either can flee in the belief that they will not be sent back.

(5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved.

(6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life.

(7) *Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe.*”

26. Mr Joyes also took me to various passages in *Norris*. These included: [55]-[56], [62], [64]-[65], [82], [91], [109], [136] and [138]. He accepted that *“the interference with human rights will have to be extremely serious if the public interest [in extradition] is to be outweighed”* [55]; and that *“only the gravest effects of interference with family life will be capable of rendering extradition disproportionate to the public interest that it serves”* [82]; but he emphasised that *“the family unit has to be considered as a whole, and each family member has to be regarded as a victim”* [64]. At [65] Lord Phillips said:

“...in trying to envisage a situation in which interference with article 8 might prevent extradition, I have concluded that the effect of extradition on innocent members of the extraditee's family might well be a particularly cogent consideration. If extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, this combination of circumstances might well lead a judge to discharge the extraditee...”

27. Lord Mance gave other examples at [109].

The approach of the High Court in this type of appeal

28. Section 26(1) of the Extradition Act 2003 provides for an appeal to the High Court by a person who is the subject to an order for their extradition. Under section 27:

“(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

(4) The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge.”

29. Both Counsel referred to the familiar authorities on the scope for intervention by the High Court in cases where the District Judge has carried out an assessment of proportionality under Article 8. However, in the context of the present appeal it is worth considering them with care.
30. The role of this court is one of review: see *Belbin v Regional Court of Lille, France* [2015] EWHC 149 (Admin) at [66]. Aikens LJ added:

“If, as we believe, the correct approach on appeal is one of review, then we think this court should not interfere simply because it takes a different view overall of the value-judgment that the District Judge has made or even the weight that he has attached to one or more individual factors which he took into account in reaching that overall value-judgment.”

31. In *In re B (a child)* [2013] 1 WLR 1911 at [93] Lord Neuberger said this:

“93. There is a danger in over-analysis, but I would add this. An appellate judge may conclude that the trial judge’s conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, but on balance considers was right, (iv) a view which she cannot say was right or wrong, (v) a view on which she has doubts, but on balance considers was wrong, (vi) a view which she considers was wrong, or (vii) a view which is unsupportable. The appeal must be dismissed if the appellate judge’s view is in category (i) to (iv) and allowed if it is in category (vi) or (vii).

94. As to category (iv), there will be a number of cases where an appellate court may think that there is no right answer, in the sense that reasonable judges could differ in their conclusions. As with many evaluative assessments, cases raising an issue on proportionality will include those where the answer is in a grey area, as well as those where the answer is in a black or a white area. An appellate court is much less likely to conclude that category (iv) applies in cases where the trial judge’s decision was not based on his assessment of the witnesses’ reliability or likely future conduct. So far as category (v) is concerned, the appellate judge should think very carefully about the benefit the trial judge had in seeing the witnesses and hearing the

evidence, which are factors whose significance depends on the particular case. However, if, after such anxious consideration, an appellate judge adheres to her view that the trial judge's decision was wrong, then I think that she should allow the appeal."

32. In *Polish Judicial Authority v Celinski* [2016] 1 WLR 551, the Divisional Court endorsed the general approach which had been indicated in *Belbin* to reviewing the decision of the District Judge but said that "*application of that approach by use of the analysis in the judgment of Lord Neuberger is likely to achieve a more consistent approach that is compliant with Article 8 and the provisions of the 2003 Act in dealing with appeals*" [23]. Lord Thomas LCJ concluded that:

"24. The single question therefore for the appellate court is whether or not the district judge made the wrong decision. It is only if the court concludes that the decision was wrong, applying what Lord Neuberger said, as set out above, that the appeal can be allowed. Findings of fact, especially if evidence has been heard, must ordinarily be respected. In answering the question whether the district judge, in the light of those findings of fact, was wrong to decide that extradition was or was not proportionate, the focus must be on the outcome, that is on the decision itself. Although the district judge's reasons for the proportionality decision must be considered with care, errors and omissions do not of themselves necessarily show that the decision on proportionality itself was wrong."

33. Mr Hyman also reminded me of the confirmation of the *Celinski* approach to evaluative judgments by the Divisional Court in *Love v Government of the United States of America* [2018] 1 WLR 2889 at [25]-[26], including the following passage at [25]:

“The appeal must focus on error: what the judge ought to have decided differently, so as to mean that the appeal should be allowed. Extradition appeals are not re-hearings of evidence or mere repeats of submissions as to how factors should be weighed; courts normally have to respect the findings of fact made by the district judge, especially if he has heard oral evidence. The true focus is not on establishing a judicial review type of error, as a key to opening up a decision so that the appellate court can undertake the whole evaluation afresh. This can lead to a misplaced focus on omissions from judgments or on points not expressly dealt with in order to invite the court to start afresh, an approach which risks detracting from the proper appellate function.”

34. Although the Divisional Court said, at [26], that the appellate court is entitled to stand back and ask whether a question ought to have been decided differently, Mr Hyman emphasised the margin of judgment which must be left to the District Judges as indicated in the second part of the following passage:

“The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed.” (emphasis added)

The hearing before the District Judge

35. At the hearing on 5 June 2023 the Appellant was represented by Mr Joyes. The District Judge received reports on the Appellant and Ms McKenna, dated 5 December 2022, which had been prepared by Dr Vivek Furtado, a Consultant Forensic

Psychiatrist who had been instructed on behalf of the Appellant. There were also reports on them, dated 17 April and 20 April 2023 respectively, from Dr Inti Qurashi, a Consultant Forensic Psychiatrist, who had been instructed by the Respondent. The psychiatric reports addressed, amongst other things, the impact of the Appellant's extradition on the Appellant and Ms McKenna. Both Dr Qurashi and Dr Furtado also gave oral evidence and were questioned by Counsel and the District Judge.

36. As far as Ms McKenna is concerned, Drs Furtado and Qurashi broadly agreed about the overall picture. The evidence was that she met the criteria for "recurrent depressive, current episode moderate" and for a "panic disorder". There was evidence that she had presented with severe depression with psychotic features in the past, that she had presented with suicidal thoughts, plans and acts over the years and that she was currently presenting with on-going thoughts of passive and active suicidal ideation. Dr Qurashi said that she was reporting "chronic suicidal ideation of a fluctuating severity." She had taken overdoses of her medication in the past, the last one being in 2013, and she had been admitted to a psychiatric unit in 2004 and 2013. She had been receiving mental health support between 2018 and 2021 but was discharged from the mental health recovery team in September 2021.
37. Dr Furtado's evidence was that Ms McKenna was emotionally dependent on the Appellant and unable to view herself as an independent individual. There was also evidence that she became increasingly depressed and anxious in response to him not being around or the fear of him not being around. She was reporting that they had agreed a suicide pact in the event that he was extradited. Dr Furtado's opinion was that should the Appellant be told that he would be extradited "then her risk of suicide would be very high" and she would have the means to do so by taking an overdose of

her medication which would more likely than not be fatal without urgent intervention. Dr Qurashi said that the risk of suicide would significantly increase in the short term if a decision were made to extradite the Appellant.

38. The Appellant himself gave evidence and was cross examined, and there was a statement from Ms McKenna which was admitted in evidence. There were also occupational therapy reports on them dated 8 October and 2 October 2022 respectively which had been prepared by Ms Charlotte Jackson, a Specialist Occupational Therapist.
39. Both Counsel made written and oral submissions.

The Judgment of the District Judge

40. District Judge Sternberg's judgment runs to 35 pages and Mr Joyes rightly accepted that it is detailed and careful. It includes detailed summaries of the reports of Dr Qurashi and Dr Furtado and of their oral evidence in relation to each of the Appellant and Ms McKenna, broken down into evidence in chief, cross examination and re-examination of each of the experts. There is then a detailed summary of the Appellant's statement, his oral evidence in chief and his evidence under cross examination. Ms McKenna's written evidence is then summarised, as are two written reports from Ms Jackson.
41. There is then a section of the Judgment in which the District Judge made findings of fact, including that the Appellant was not a fugitive from justice ([34(ii)]). He made findings as to the background to the charges to which the Arrest Warrant relates. He accepted that the Appellant suffered from a number of medical conditions, that his enjoyment of daily life had reduced and that he could no longer work and was reliant

on benefits. But he also found that the Appellant, in his oral evidence, had been prone to exaggeration and he gave examples. In relation to the Appellant's credibility, he said:

“In short, I did not find [the Appellant] to be a truthful witness for these reasons. I find that he tailored his evidence to some extent to present his case in what he perceived to be the most favourable light.”

42. The District Judge went on to find as follows at [34]:

“vii. However, it is apparent that Mr. Platt and Ms. McKenna do have a very close relationship and that each depend on the other for support. Ms. McKenna provides Mr. Platt with assistance with his physical health care needs and Mr. Platt supports Ms. McKenna in terms of daily living and in terms of contact with the outside world.

viii. Mr. Platt has not previously attempted suicide or self-harmed. I accept that his surrender to Ireland would cause a deterioration in his mental health and with a concurrent increase in the risk of self-harm and the possibility of suicide.

ix. Ms. McKenna is plainly not in good mental health. I accept the diagnoses reached by Dr. Furtado and Dr. Qurashi. She is not suffering from Schizophrenia. It is apparent that she is suffering from depression and from panic disorder. She has been sectioned previously due to her condition of her mental health. Although she does not currently pose a particularly high risk of suicide, in the event of the requested person's extradition either at the point than

an extradition order was made, or at the point that the order was to be carried out, that risk would increase to being a high risk.

x. *In the event of such a ‘trigger point’ being reached, it would be necessary for steps to be taken to assess Ms. McKenna’s risk of suicide and for her to receive appropriate care and support from her local mental health team. If she declined to engage with that team it is a possibility, albeit a last resort. that she would be detained on a compulsory basis for assessment and treatment under sections 2 and 3 of the Mental Health Act 1983.*

xi. *There was no difference on any issue of significance between Dr. Qurashi and Dr. Furtado such that I am required to indicate that I prefer the evidence of one over the other. I accept the evidence that each expert gave as truthful.*

xii. *In the event of Mr. Platt’s surrender to Ireland, Ms. McKenna would remain in the UK. She would not be able to travel to Ireland to visit him due to her agoraphobia.....”. (emphasis added)*

43. The District Judge then referred to *Norris, HH* and *Celinski*, with which he said he was very familiar, before setting out, in detail and at length, the submissions of Counsel. The Judgment records that Mr Joyes submitted, amongst other things, that the most striking feature of the case was the impact on the Appellant’s extradition on Ms McKenna and he developed this argument by reference to the evidence, including various passages from the expert reports which the District Judge set out in his Judgment. Mr Joyes then made detailed submissions as to the impact of extradition on the Appellant himself, again including references to passages in the expert reports

which the District Judge set out. At [37(viii)], one of Mr Joyes' submissions is recorded as follows:

“This is a highly exceptional case where there is a heavily dependent individual who would suffer exceptional interference in their article 8 rights. Her unchallenged evidence is that she would be unable to cope if the requested person was removed, as set out in her statement. She relies completely emotionally on the requested person, as set out in paragraphs 7- 13 of her statement. Mr. Platt said he is her psychiatrist, her doctor, the main person who organizes her life. She has a documented history of not engaging with mental health services. Dr. Qurashi suggests there are steps that can be taken. That is a process that would be bound to fail, her failure to engage at the critical point would mean they would disengage and she would be left alone. He is the only protective factor she has in her life. Considering _____ the unlikelihood of her engaging, detention and treatment against her will seems to be the most probable outcome. That is a disproportionate interference in her article 8 rights. It would be exceptionally severe to remove her from her current life in the community. That is the reality of extradition. It is a highly unusual state of affairs that weighs extremely heavily in the balance.”

(emphasis added)

44. On the issue of the risk to Ms McKenna, at [38] Mr Dolan, who appeared for the Respondent below, is recorded as making the following submissions:

“v. As regards Ms McKenna, while the Judicial Authority acknowledges the opinions of Drs Furtado and Qurashi, it is respectfully submitted that it is not disproportionate, in circumstances where the requested person is accused of

serious offences, and where he has declined to be interviewed in the United Kingdom, for her to avail herself of the support available to mitigate the risk of her suicide.

vi. Dr. Qurashi's evidence was that Ms. McKenna being sectioned was a last resort. He was surprised that Ms. McKenna was not receiving mental health treatment. The trigger point was clear according to both experts. He considered Ms. McKenna would regard it as a relief to receive treatment, it was not as bleak as suggested. Dr. Furtado has a similar view to assessing risk as Dr. Qurashi. Both experts acknowledge the risk is elevated. Dr. Qurashi sets out the steps that would be taken to mitigate the risk. There is nothing to suggest those steps would not be taken.

vii. In respect of Ms. McKenna it is acknowledged that there is a genuine risk of suicide if she was informed of the decision to order her partner's extradition. There are measures that can be taken pre-emptively. There is a known trigger. It is open to the authorities to section her under the Mental Health Act as a last resort. That is not disproportionate in the circumstances." (emphasis added)

45. The District Judge then set out the familiar *Celinski* balance sheet of factors for and against extradition. The factors in favour, at [41], included the constant and weighty public interest in extradition - that people accused of crimes should be brought to trial and people convicted of crimes should serve their sentences, and that extradition arrangements should be honoured - the seriousness of the offences of which the Appellant is accused, and the following:

“v. There is mental health support available for Ms. McKenna in the event of Mr. Platt’s extradition, whether or not she chooses to engage with it.

vi. There is no suggestion that Mr. Platt’s condition of mental and physical health would not be properly treated in prison in Ireland if he is detained in custody in the event of his surrender.”

46. The factors which, the District Judge said, weighed against extradition were the fact that the Appellant is a person of good character in the United Kingdom and is not a fugitive; the fact that there had been delay in the investigation and prosecution of these matters; and the following:

“iii. Mr. Platt will lose the current support he enjoys from his partner in the event of his extradition

iv. The requested person suffers from a number of health conditions for which he receives treatment and medications and medical supervision and check-ups and is awaiting an operation to close his stoma. He may not receive the same quality of care in prison in Ireland as he does at liberty in the UK.

v. Extradition will also cause a deterioration in Mr. Platt’s state of mental health and will increase the risk of suicide.

vi. Mr. Platt’s surrender will also have a seriously deleterious impact on Ms. McKenna’s mental health and wellbeing given her concerns as to how she will cope in his absence. She considers herself dependent on him and has seriously considered suicide in the event of his extradition. She may be

subject to compulsory treatment and assessment due to her mental health in those circumstances.”

47. In analysing these factors, the District Judge then set out the ones which he considered to be of particular importance. The first and second of these were the public interest in extradition which, he found, had not been seriously diminished by the delay, and the seriousness of the offences alleged against the Appellant. The third was the following at [44]:

“...Mr. Platt’s extradition will cause a great deal of distress to his partner Ms. McKenna. They will each lose the emotional and practical support of the other. There is no doubt that this will be seriously detrimental to her mental well-being and she will suffer as a result. Financially she is in receipt of benefits. She receives assistance for her condition of mental health including being prescribed anti-depressants. However, her condition of mental health will deteriorate significantly as a result of Mr. Platt’s surrender and it will require careful monitoring and management of her risk of suicide, which may ultimately involve involuntary inpatient admission. I note that Ms. McKenna has been subject to such detention before. She is also not without support, including from her son and from a friend of the family although I accept that is not akin to the support the requested person provides. However, Ms. McKenna’s own unwillingness to receive help for her condition of mental health and to address her care needs at home will by necessity need to be re-evaluated. Although there will plainly be a serious impact on her caused by Mr Platt’s extradition, with appropriate mental health support and a care package from social services as recommended by Ms. Jackson, the impact will be ameliorated. I have concluded that that does not

render the interference in his and his partner's article 8 ECHR rights disproportionate in this case."

48. The District Judge went on to refer, fourth, to the Appellant's own physical health and, fifth, his mental health before concluding, at [47]:

"I have sought to carefully balance the factors in favour and against extradition and have given thorough consideration to all of the relevant evidence. Having done so, notwithstanding the serious impact on Ms. McKenna caused by extradition, for the reasons set out above I conclude that the requested person's extradition is a proportionate interference in his and his partner's article 8 ECHR rights."

49. He then considered, and rejected, the Appellant's argument under section 25 of the Extradition Act 2003, essentially on the grounds that his extradition would not give rise to injustice or oppression. In particular, he found that the risk of the Appellant committing suicide was not substantial and nor would he succeed in doing so, whatever steps were taken.

50. The District Judge said that in the light of his conclusions as to the effect of the order for extradition on the Appellant and Ms McKenna he had circulated a draft so that such steps as were necessary could be taken to support them when judgment was handed down.

The appeal

51. The appeal centred on the position of Ms McKenna in the event that the Appellant is extradited. Mr Joyes' written submissions set out a number of the passages from the reports of Dr Furtado and Dr Qurashi to which he referred in his submissions to the

District Judge and which are recorded in the Judgment. He then developed his two factual propositions which, he contended, ought to have been findings made by the District Judge. His case was that, if they had been, the District Judge would have been required to discharge the Appellant because the overall *Celinski* balancing exercise would lead to the conclusion that his extradition was disproportionate.

Proposition 1: “Detention of Ms McKenna under the Mental Health Act 1983 is a virtually certain consequence of the Appellant’s extradition”

52. Proposition 1 is essentially an argument that the District Judge should have carried out the proportionality assessment under Article 8 on the basis that a consequence of the extradition of the Appellant would be the detention of Ms McKenna under the Mental Health Act 1983, and that this would amount to an exceptionally severe interference with her Article 8 rights. Whereas the District Judge had entertained the possibility that Ms McKenna’s risk of suicide or self-harm in the event of the Appellant’s extradition could be mitigated by support from mental health services, Mr Joyes argued that there was no “compelling” evidence before the District Judge to suggest that Ms McKenna would be likely to engage with secondary mental health services. The District Judge was therefore wrong to find that detention of Ms McKenna was merely “a possibility, albeit a last resort” (see [34(x)] of the Judgment recited at [42] above). The evidence pointed to a “probability” of detention under the 1983 Act. Indeed, this was “highly probable”.
53. Mr Joyes relied on the fact that it was common ground that Ms McKenna’s mental health would be likely to deteriorate if she were told that it had been determined that the Appellant should be extradited: this would be a trigger point. In addition, he relied on a note of the evidence (“the Note”) which had been prepared by the Appellant. The Note was not agreed but this was because Counsel at first instance had not taken a

sufficiently detailed note to be able to vouch for its accuracy rather than because it was positively said to be inaccurate. The Note records that, when he was cross examined, Dr Qurashi was asked what would happen if Ms McKenna were not to engage with secondary mental health services and about the chances of inpatient admission. His answer is noted as follows:

“...I would be adopting a lower threshold based on the information that I had in terms of admitting her to hospital, mainly because of her history. I understand she has taken or has considered taking overdoses in the past...

If she does not co-operate with the mental health team and she is assessed she will be taken into hospital and held there against her will. She has been detained under the Mental Health Act before. I think the prospect of Mr Platt being extradited and removing her main carer, they do have a co-dependent relationship, it would aggravate her illnesses. I don't think that would be in dispute”

54. When asked, in cross examination, whether he was surprised that Ms McKenna was not receiving secondary mental health care, Dr Furtado is noted as having said:

“I am surprised to a degree. She has a history of involvement. She has had a diagnosis of a mental health disorder of a high severity with psychotic features, she does currently have depressive disorder and panic disorder. I do note that sometimes individuals with mental health disorders do not seek help in fear that they will be detained in hospital. Mental health services are currently so stretched that if individuals do not put themselves forward they are dropped off the caseload. That is what is likely to have happened...”

55. When asked by the District Judge what treatment he would suggest if he were Ms McKenna's treating psychiatrist, Dr Furtado's answer is noted as follows:

“In my view she would benefit from having a community psychiatric nurse who could provide ongoing support and review of her mental health. I understand that unless she is willing for that to happen a community psychiatric nurse is unlikely to be provided. Whether she can benefit from these treatments is dependent on her own motivation and drive, which is limited.” (emphasis added)

56. Mr Joyes also referred me to passages from the expert reports which indicated that Ms McKenna was uncomfortable dealing with people she did not know, and that she had not got in touch with mental health services because she was “worried that they might put me in hospital”. He also drew my attention to the following passage from the report of Ms Jackson on Ms McKenna:

“Ms McKenna previously had a care package in place to assist with daily living tasks, however due to Ms McKenna's mental state and increased paranoia at the time, this caused her significant distress. Mr Platt did report the benefits of this input and explained that he was in agreement that they do both require external involvement from care services on a consistent basis. During the assessment, Ms McKenna became more cooperative and engaging as the assessment progressed and later explained that, due to such difficulty in completing basic day to day tasks, she did understand the imperative need for support at home.”

57. He submitted that the District Judge therefore underestimated the risk that Ms McKenna would be detained under the Mental Health Act 1983 when he said that the likely deterioration in Ms McKenna's mental health “*may ultimately involve*

involuntary inpatient admission”. This was inconsistent with the evidence in the case. Moreover, the District Judge took account of an irrelevant consideration when he said “[t]here is mental health support available for Ms. McKenna in the event of Mr. Platt’s extradition, whether or not she chooses to engage with it” (see [40(v)], recited at [45] above). If Ms McKenna is unable, because of her mental health issues, to engage with mental health services in the community, the presence of mental health support in the community is irrelevant and it cannot render less serious the impact of the Appellant’s extradition upon her Article 8 rights.

Proposition 2: “There is a real risk that public mental health services will fail to ensure that Ms McKenna does not commit suicide or carry out acts of serious self-harm in the event of the Appellant’s extradition”.

58. Mr Joyes argued that the District Judge was wrong to proceed on the basis that public mental health services in England are adequately equipped to carry out “*careful monitoring and management of her risk of suicide, which may ultimately involve involuntary inpatient admission*”; to re-evaluate her unwillingness to “*receive help for her condition of mental health and to address her care needs at home*”; and to provide “*appropriate mental health support and a care package*” ([44] of the Judgment, recited at [47], above). For one thing, the success of these measures to mitigate the risk of suicide would depend on Ms McKenna’s willingness to engage, as to which see Proposition 1 above.
59. For another, Mr Joyes submitted that the District Judge failed to consider the risk that Ms McKenna will attempt suicide or an act of serious self-harm during the period between the Appellant’s surrender and the time at which the community mental health team are engaged and/or she is detained under the 1983 Act. His position was that there was no evidence to suggest that the steps envisaged by the District Judge can or

will be taken in good time or at all. Indeed, the evidence of Dr Furtado suggested the opposite: Ms McKenna is unlikely to benefit from the intervention of community mental health services unless she engages, and her motivation to do so is “limited”. The District Judge failed to factor into the Article 8 assessment the risk that community mental health services do not step in decisively at the crucial point when the risk to Ms McKenna increases very substantially.

60. In this connection Mr Joyes relied on his applications to admit fresh evidence dated 2 August 2023 and 5 June 2024 which evidence, he argued, provides a further basis to suggest that the current lack of resources in mental health care in this country constitutes a further gap in the “*appropriate mental health support*” envisaged by the District Judge. This, in turn, will greatly increase the risk that Ms McKenna will commit suicide or carry out an act of serious self-harm following the Appellant’s extradition.
61. The fresh evidence comprised various articles and reports which raised concerns about the “Right Care, Right Person National Partnership Agreement” between the Home Office, the Department of Health & Social Care, the National Police Chiefs’ Council, Association of Police and Crime Commissioners, and NHS England which was announced at the beginning of 2023 and published on 26 July 2023 (“the RCRP”). The RCRP’s stated aim is to end the inappropriate and avoidable involvement of police in responding to incidents involving people with mental health needs. It provides, in summary, that the threshold for a police response to a mental health-related incident is either to investigate a crime that has occurred or is occurring; or to protect people, when there is a real and immediate risk to the life of a person, or of a person being subject to or at risk of serious harm.

62. The articles which were the subject of the 2 August 2023 application which was rejected by Farbey J were:
- i) British Psychological Society: “response to announcement that police are to attend fewer mental health calls” dated 26 January 2023;
 - ii) Local Government Association: “police mental health withdrawal too quick” dated 26 January 2023;
 - iii) Community Care: “Police to stop attending mental health incidents unless there is significant safety risk or crime” dated 26 January 2023;
 - iv) Royal College of Psychiatrists: “responds to the National Partnership agreement between the Government, police and health and social care services” dated 26 January 2023;
 - v) “MIND responds to news that the Metropolitan police will stop attending emergency calls related to mental health incidents unless there is a immediate threat to life” dated 31 May 2023.
63. These articles expressed concerns in anticipation of the “roll out” of the RCRP including that there was a short timeframe for implementation which could have catastrophic consequences for people in mental health crisis, and concerns about training, resources and funding. Relying on the decision of Morris J in *Paczkowski v Poland* [2023] EWHC 1489 (Admin), Mr Joyes submitted, and Mr Hyman accepted, that it was open to the Appellant to renew this application notwithstanding the decision of Farbey J on the papers, just as it is open to a party to renew an application for permission which has been refused on the papers.

64. The materials which were the subject of the 5 June 2024 application were:
- i) Prevention of Future Deaths Report (“PFDR”) of Senior Coroner ME Hassell concerning Heather Findlay dated 16 June 2023, made pursuant to paragraph 7 of Schedule 5 to the Coroners and Justice Act 2009 and regulations 28 and 29 of The Coroners (Investigations) Regulations 2013;
 - ii) PFDR of Assistant Coroner Adrian Farrow concerning Claire Briggs, dated 8 December 2023;
 - iii) Letter from Daren Mochrie, Chair of the Association of Ambulance Chief Executives to Steve Brine MP, Chair of the Health and Social Care Committee, 30 January 2024 (“AAACE Letter”);
 - iv) Policy Paper, National Partnership Agreement: Right Care, Right Person, updated 17 April 2024;
 - v) Addendum proof of evidence of the Appellant dated 6 June 2024.
65. The PFDR in the case of Heather Findlay related to her death in Humberside in June 2020 and said that, from the evidence which the Senior Coroner had heard, the police and the NHS Trust in this case had differed as to who was responsible for a patient who was seriously ill. The Coroner expressed a need for a crystal clear understanding between the partners as to who was doing what in such a situation.
66. The PFDR in the case of Claire Briggs was more recent in time and it concerned a death which had occurred in Stockport in Cheshire after Ms Briggs had taken an overdose of propranolol on 28 November 2022. The police attended but she declined to be taken to hospital during the critical period after she had taken the tablets. The

police had called the North West Ambulance Service but there were significant delays in providing an ambulance. The Assistant Coroner said that in his opinion there was a risk that future deaths could occur unless action was taken on concerns which had emerged from the evidence which he had heard at the inquest, which ended on 12 July 2023:

“The evidence I heard was that a Joint Operating Protocol between the North West Ambulance Service and the five regional police forces designed to address the issues of which emergency service should take responsibility for incidents involving drug overdoses and the method by which the police officers attending such incidents prior to the arrival of the ambulance service can escalate their concerns over a person suspected to have taken a drug overdose, was in an advanced stage of completion, but was stalled in July 2022.

Whilst I heard that discussions have recently recommenced, they now encompass the Right Care, Right Person model, the findings of the Manchester Arena Bombing Enquiry and that additionally, the Fire and Rescue Service and the British Transport Police have now become involved.

Pending agreement of a Joint Operating Protocol, there does not appear to be any consistent and reliable understanding in place across the police forces and the North West Ambulance Service to provide clarity as to the roles of the respective services and the method by which concerns about individual patients can be escalated to the ambulance service by police officers dealing with those who are suspected to have taken drug overdoses.”

67. The PFDR was sent to the five regional police forces concerned, including Merseyside Police who are responsible for St Helens, as well as eight other police, health and fire and rescue services, with a response required by 2 February 2024. Mr Joyes told me that he had not been able to find any published response.
68. The AACE letter said that the spirit of RCRP was often not being adhered to by police forces in terms of pace of implementation and that this raised significant safety concerns. There were reports from ambulance services of occasions where the police has not attended incidents when requested to provide support that had subsequently resulted in patient harm or ambulance clinicians being assaulted. It was also said that an ambulance service had been involved in eight Coroner's inquests in which the Coroner had raised concerns about gaps in service provision relating to welfare calls.
69. Mr Joyes submitted that the fresh evidence on which he sought to rely fundamentally calls into question what he called the "implicit assumption" of the District Judge that public mental health services in England, and specifically the North West Ambulance Service and Merseyside Police, are able to address the risk of suicide or self-harm by Ms McKenna which would arise as a consequence of the Appellant's extradition. The lack of reported action in response to the PFDR in the Briggs case provides compelling evidence that there is a heightened risk of death to Ms McKenna given the location of her home and her stated intention to commit suicide by overdosing on her medication. As a result of RCRP, there is an even higher probability that the steps which the District Judge envisaged would have to be carried out to protect Ms McKenna will not take place, or will not take place quickly enough to guard against the risk of suicide or self-harm. The District Judge's decision on this issue is therefore unsound.

70. Mr Joyes did not address me on the Appellant’s addendum proof of evidence. I have read it and taken it into account. But it does not materially affect the issues which I have to decide.

Mr Joyes’ argument based on *Norris*

71. At the hearing Mr Joyes advanced an unpleaded and unheralded argument based on *Norris*. Mr Hyman did not object to this argument being raised and I will therefore consider it on its merits, albeit on the basis that Mr Joyes was effectively applying for permission on this point. Mr Joyes submitted that the District Judge failed to address the question whether the level of seriousness of harm which would be caused to the Appellant and his partner was unusual, rare or exceptional. He accepted that the test is not one of exceptionality in the sense that the circumstances must be exceptional, but he argued that the District Judge in the present case ought to have considered whether the level of hardship in this case would be out of the ordinary but did not do so. In this connection he relied on passages from *Norris*, and particularly:

i) Lord Phillips at [62], where he said:

“the judge must have regard to the relevant features of the individual case.

It is at this point that it is legitimate for the judge to consider whether there are any relevant features that are unusually or exceptionally compelling. In the absence of such features, the consideration is likely to be relatively brief. If, however, the nature or extent of the interference with article 8 rights is exceptionally serious, careful consideration must be given to whether such interference is justified. In such a situation the gravity, or lack of gravity, of the offence may be material.”

(emphasis added)

ii) Lord Hope at [91]:

“Separation by the person from his family life in this country and the distress and disruption that this causes, the extent of which is bound to vary widely from case to case, will be inevitable. The area for debate is likely to be narrow. What is the extra compelling element that marks the given case out from the generality? Does it carry enough weight to overcome the public interest in giving effect to the request?” (emphasis added)

iii) Lord Kerr at [136] and [138] including:

“But it is entirely possible to recognise that article 8 claims are only likely to overcome the imperative of extradition in the rarest of cases without articulating an exceptionality test.” (emphasis added)

72. Mr Joyes’ argument, as I understood it, was that the District Judge failed to recognise that his findings that the extradition of the Appellant would have “*a seriously deleterious impact*”..., would cause her “*a great deal of distress*”..., would be “*seriously detrimental to her*” etc, amounted to findings that this was a case of exceptional hardship where the interference with Ms McKenna’s Article 8 rights was not outweighed by the public interest in the extradition of the Appellant. Had the District Judge asked himself the question whether this was an exceptional hardship case, as he ought to have, he would have found that it was and would have discharged the Appellant.

Discussion

Proposition 1

73. Proposition 1 hinges on whether the District Judge ought to have found on the evidence that it was sufficiently unlikely that Ms McKenna would engage with community mental health services to render it probable or highly probable that she would be detained under the Mental Health Act; and on whether it was therefore wrong for the District Judge to proceed on the basis that she “may” be detained in the event of the Appellant’s extradition.
74. Although the point was well argued by Mr Joyes, I was not persuaded that the District Judge “ought to” have dealt with this issue differently for the purposes of section 27 of the 2003 Act. The fundamental point, it seems to me, is that this is classically the sort of issue on which the role of the District Judge as fact finder should be respected. As noted above, Mr Joyes submitted to him that it was unlikely that Ms McKenna would engage and that “the most probable outcome” was therefore detention and treatment against her will. Mr Dolan relied on what he said was Dr Qurashi’s evidence that “Ms McKenna would regard it as a relief to receive treatment” and submitted that “it was not as bleak as suggested”. The issue was therefore very much before the District Judge and it involved an evaluation, as best he could, of what would happen in the future. His approach, which was to proceed on the basis that detention “may” be the ultimate outcome, did not deny the risk that this would happen. Given the evidence and the hypothetical nature of the question, he was not obliged to quantify the level of risk further or in the way that Mr Joyes advocated.
75. Even if the District Judge was required to quantify the risk further, I do not accept that the evidence supported Proposition 1 or, at least, supported it sufficiently clearly for an appellate court to say that he ought to have made the finding contended for, and was wrong not to do so. It is quite apparent from the Judgment that the District Judge

had the passages from the evidence relied on by Mr Joyes well in mind. Indeed, he recited most of them in the Judgment. It is also well recognised in the case law that there are considerable difficulties with an appellate court placing decisive reliance on extracts from the evidence – “island hopping” – when the first instance judge saw and heard all of the evidence and was able to consider the relevant parts of the evidence in that context. Those difficulties are compounded when the appellate court is asked to place reliance on parts of a note of the evidence rather than a full transcript of the questions which were asked and the answers which were given. In any event, for reasons which I will explain, it cannot be said that Mr Joyes’ factual proposition was the only finding open to the District Judge or one which it would be appropriate for me to make on the evidence which I have seen. In short, the evidence on this issue was equivocal and it did not persuade me that I could or should find that it was probable or highly probable that Ms McKenna would fail to engage and, as a result, would be detained under the Mental Health Act 1983.

76. As to this, it is important to note that Dr Qurashi was specifically asked to address, in his report, the question “what measures could the authorities in England take to prevent a successful suicide attempt?” if the Appellant’s extradition were imminent. Part of his answer was:

“I would expect secondary mental health services to undertake a review of Ms McKenna’s suicide risk and put in place monitoring and risk mitigation arrangements. If the risk of suicide is high there would be consideration as to what support and risk reduction strategies can be put in place at her home or alternatively an admission may be required in the short-term.” (emphasis added)

77. That way of putting it was reflected by the District Judge in his Judgment, as noted above. Moreover, nowhere in his report did Dr Qurashi, having set out the measures which could be taken to assist Ms McKenna, say or even hint that this part of his evidence was academic or probably academic because she was unlikely to engage with the assistance offered to her. On the contrary, his report recorded that when he had examined her:

“Ms McKenna expressed a willingness to engage with community mental health services and arrangements to keep her safe in the community.”

78. When I put this to him, Mr Joyes pointed out that earlier in his report Dr Qurashi had said:

“I asked Ms McKenna whether she would engage with mental health services and she replied, “I don’t want mental health support because I don’t want to go back to hospital.”

79. These passages are not necessarily inconsistent with each other – she may have been reluctant but then agreed, for example – but insofar as there was a contradiction, this was a matter for the District Judge to consider when assessing the evidence as a whole. Moreover, the point stands that Dr Qurashi presented assistance from community health services as a realistic option. The Note of Dr Qurashi’s evidence indicates that he was pressed by Mr Joyes on what would happen if Ms McKenna did not engage with community mental health services. At one point he is noted as saying:

“If Ms McKenna’s risk has elevated to a degree where the team has concerns about her immediate safety and she does not want help, it is possible she could be

detained under the Mental Health Act for a brief period of time.” (emphasis added)

80. At another, he said that she would be detained if she did not cooperate with the mental health team. However, it does not appear to have been put to Dr Qurashi that, in fact, she would not engage or would be unlikely to. Nor did he give evidence that she would be unlikely to. On the contrary, his oral evidence about the support which would be available also appears to have been given on the basis that it was meaningful to discuss this topic i.e it was realistic to think that Ms McKenna would engage. Moreover, when asked by Mr Dolan about the extent to which pre-emptive measures could be put in place he said:

“I mentioned that Ms McKenna did agree she would engage with secondary mental health services. It has been such a long time that she could not conceive of getting support for what are treatable mental illnesses. In my report I explained that if I were seeing her in another capacity, I would have sent my report to her GP asking them to immediately refer her for a community psychiatric team assessment, that would be advantageous, it would give her hope. The thought of being left alone without support is causing her a lot of anxiety.” (emphasis added)

81. The District Judge also noted, at [22(ii)] of the Judgment, that Dr Qurashi had said in evidence that *“Ms McKenna did agree she would engage with secondary mental health services”*. And it appears from Mr Dolan’s submission, as noted above, that he understood Dr Qureshi’s evidence as being that the latter considered that she *“would regard it as a relief to receive treatment”*.
82. Dr Furtado’s report said, at [73]:

“Despite the above mental disorders, I do not believe she meets criteria for detention under the Mental Health Act 1983 (as amended) at the present time. This is possible to change over the coming months and she would benefit from regular reviews by her community mental health team. She would benefit from completion of psychological interventions such as Cognitive Behavioural Therapy which is an evidenced based treatment for depression.”

83. Whether or not this was addressing the specific scenario in which an order was made for the extradition of the Appellant, he did not say, anywhere in his report, that she would not engage with community mental health services. The passage relied on by Mr Joyes in the Note - where Dr Furtado said that whether Ms McKenna would benefit from the treatment which he described as available would depend on her motivation and drive, which were “limited” – represents the high point of the Appellant’s case on this point. However, the Judgment records, at [27(i)], that in this part of his evidence he said no more than *“A lot depends on her willingness to benefit from those treatments”*. Moreover, the overall thrust of the Note is that Dr Furtado was not expressing a positive opinion that she probably would not engage: he was, in effect, saying that it was hard to predict.
84. The discussion, above, about the nuances and wrinkles in different extracts from the evidence which were before the District Judge, tends to illustrate why an appellate court is rarely in a position to second guess the findings of the fact finding court or tribunal, particularly where the whole of the evidence is not available and particularly where oral evidence is given. As the authorities to which I have referred at [30]-[34] above reflect, the importance of the fact that the District Judge saw and heard the

witnesses and the arguments of Counsel, and inevitably had a better “feel” for the case than this court, should not be underestimated where the challenge is to an evaluative assessment of the evidence. In the present case I am not persuaded that the District Judge’s assessment or approach to this issue was wrong or one with which I can or ought to interfere.

Proposition 2

85. Leaving aside the question of fresh evidence, in my judgment the findings and approach of the District Judge in relation to whether steps could be taken to mitigate the risk to Ms McKenna of suicide or self-harm are unassailable. Much of the ground has been covered in addressing Proposition 1, above, but the first key point is that the District Judge did not make an “implicit assumption” as alleged by Mr Joyes. His findings as to the support which would be available to Ms McKenna were based on expert evidence which went specifically to this question. Both Dr Furtado and Dr Qurashi agreed as to the steps which could be taken albeit Dr Furtado said that the risk could not be mitigated “entirely”. The District Judge was therefore fully entitled to find as a fact that “*There is mental health support available for Ms McKenna in the event of [the Appellant’s] extradition...*” ([40(v)] of the Judgment) and to carry out the proportionality assessment accordingly.
86. The second key point is that Dr Qurashi’s evidence clearly envisaged that the measures to mitigate the risk to Ms McKenna would be taken in anticipation of her becoming aware of the decision of the District Judge, as did the District Judge himself. Dr Qurashi’s report said:

“Suicide risk assessment and suicide risk management is a core aspect of community mental health services undertaken on a daily basis across mental health services. Ms McKenna will require a contemporaneous assessment of her mental health and suicide risk to determine what measures, if any, need to be put in place to reduce the likelihood of a suicide attempt. I am of the view that arrangements could, with sufficient preparation, be put in place for such an assessment to be undertaken via emergency mental health access structures if required.”

87. He went on to say that with Ms McKenna’s consent he would share the relevant information from his assessment with her GP and advise the GP to make a referral to secondary mental health services for assessments to be made. He also suggested people who could be contacted, including the regional “on call” duty mental health social worker who organises mental health assessments. As I have noted, the District Judge circulated his Judgment in draft so that the necessary steps could be taken.
88. The third point is that therefore Mr Joyes’ complaint that there was a failure to consider the risk of self-harm or suicide between the Appellant’s surrender and steps being taken by the community mental health team is unsound. This risk was anticipated and measures were to be put in place before the decision was communicated to the Appellant and he was extradited.
89. Fourthly, in my judgment the fresh evidence does not show that the judgment of the District Judge on this issue was wrong. As far as the articles which were the subject of the 2 August 2023 application are concerned, I agree with Farbey J that the application fails to meet the requirements in *Hungarian Judicial Authorities v Fenyvesi* [2009] EWHC 231 (Admin) on two grounds:

- i) First, it existed at the time of the hearing before the District Judge and could with reasonable diligence have been obtained by the Appellant. It was therefore at his disposal and could and should have been adduced at that hearing: see *Fenyvesi* [32];
 - ii) Second, I am not satisfied that the additional evidence would have resulted in the District Judge deciding the relevant question differently, so that he would not have ordered the Appellant's discharge: see *Fenyvesi* [35]. The further evidence is far from decisive: it largely dates back to January 2023 and, in any event, its focus is on anticipated rather than actual difficulties with RCRP. The difficulties and concerns raised in these materials are also expressed in very general terms rather than being specific as to the flaws in the arrangements, the areas which they affect and how they are affected.
90. As far as the materials which are the subject of the 5 June 2024 application are concerned, these did not exist and were not at the Appellant's disposal at the time of the hearing before the District Judge. Nor was the Appellant's updating evidence in his addendum proof of evidence. However, again, I do not accept that these materials are decisive. Whilst the PFDRs relied on by Mr Joyes and the AACE letter are concerning, they do not begin to constitute a body of evidence of the level of cogency, contemporaneity and thoroughness of coverage which would enable me to conclude that the risk that the police or the ambulance service would fail to respond adequately in the event that Ms McKenna suffered a mental health crisis is such that the District Judge proceeded on a factual basis which was wrong.
91. As a general point, the District Judge accepted that the crisis which Ms McKenna was likely to experience on being notified of the decision to extradite the Appellant and/or

upon his extradition would be anticipated and mitigated by secondary mental health care services (see the discussion above) whereas the evidence relied on by Mr Joyes is about the likely reaction of the police and the ambulance service if such a crisis did occur. But, in addition to this:

- i) The most relevant of the PFDRs relates to the Briggs case. It is dated 8 December 2023 and, even then, it relates to a death which occurred a year earlier, at the end of November 2022, and it expresses concerns about the evidential picture on or before the inquest ended on 12 July 2023. Although one of the five recipients of the Report was the Merseyside police, Ms Briggs sadly died in Stockport, for which the Cheshire Constabulary is responsible. I accept that Mr Joyes was not able to find any published response to the PFDR, but I am not prepared to assume that there has been none or that no steps have been taken to address the concerns raised, still less that no steps have been taken in the Merseyside area in which Ms McKenna lives. The evidence does not enable me to form any view on this question.
- ii) The AACE letter was written in January 2024 and it gives evidence about the position from March 2023. It is non-specific as to where the problems have arisen. Even if it were more specific, again, I would not be prepared to assume that no steps have been taken to address the issues which it raises.

92. For these reasons and others, the additional evidence therefore falls very far short of providing an evidential basis on which an appellate court could revisit the factual basis for the District Judge's decision on this issue, or conclude that if the current position in St Helens had been known to the District Judge he would have decided the

question differently and discharged the Appellant. The fresh evidence tells me nothing about the current position in St Helens in terms of the operation of RCRP.

93. I therefore refuse the Appellant's applications to adduce fresh evidence and reject the argument that the District Judge was wrong, or has since been shown to be wrong, not to carry out the proportionality assessment on the basis of Proposition 2.

Mr Joyes' argument based on *Norris*

94. I refuse permission in relation to this point.
95. The District Judge specifically referred to *Norris*, *HH* and *Celinski*, with which he was very familiar, as I have noted. He assessed the seriousness of the impact of extradition on the Appellant and Ms McKenna but found, having regard to all of the relevant circumstances, including the seriousness of the offences of which the Appellant is charged, that the public interest in extradition outweighed the seriousness of that impact. It was inherent in this exercise that he asked whether the seriousness of the impact was sufficient to render extradition disproportionate, and he was not required to ask, as an additional question, whether the impact should be characterised as exceptional or rare or unusual. It seemed to me that, in effect, Mr Joyes' argument sought to turn the observation in the authorities - that it will be rare or exceptional for the impact of interference with Article 8 rights to be sufficiently severe to outweigh the public interest in extradition - into an additional test of exceptionality. In *HH* the Supreme Court confirmed that there is no such test.

The overall argument that the decision of the District Judge was wrong

96. Another way of looking at Mr Joyes' argument based on *Norris* is that he was asserting that the District Judge was simply wrong to conclude that this case was not

in the exceptional category of Article 8 cases where extradition is disproportionate. On the District Judge's findings as to harm, the case was in that category. I have stepped back and, taking account of the materials which I was shown, the findings of the District Judge and the arguments of Counsel, asked myself whether this is a case in which the decision of the District Judge was wrong. Having done so, I cannot say that it is.

97. Firstly, although the Appellant is not a fugitive, it has to be borne in mind that the offences of which he is accused are very serious. Although, as Mr Joyes pointed out, he did not succeed in perpetrating the fraud which he intended, the nature of the allegations is that he made a sustained and elaborate attempt, over an extended period of time, and by involving others, to defraud the insurers of OBH of substantial sums of money. Moreover, he used the legal process to achieve his aims and would have procured a judgment of the High Court by fraud if he had not been discovered. Perverting the course of justice "*strikes at the heart of the administration of justice and almost invariably calls for a custodial sentence*" as the District Judge noted, referring to the words of Holroyde LJ in *R v Abduwahab* [2018] EWCA Crim 1399 at [13]. Moreover, the Sentencing Council Guideline for Fraud would indicate a starting point of 7 years' imprisonment based on actual or intended financial harm of £1 million and this being a high culpability offence, with a range of 5-8 years. There is therefore a powerful public interest in the Appellant standing trial on the charges against him. This is far from the sort of case, referred to by Lord Phillips at [65] of *Norris* (see [26] above), where an offence "*of no great gravity*" is being placed into the *Celinski* balance. Moreover, I agree with the District Judge that the delays in this case did not materially weaken the public interest in extradition.

98. Secondly, on the materials which I have seen, the hardship which is likely to be caused to the Appellant and Ms McKenna by his extradition is serious, as the District Judge found. On these materials, it is greater than in a number of cases which come before the High Court on appeal although direct comparisons are problematic because the circumstances of each case are different. But this should not be understood as an acceptance on my part that the circumstances of the present case demonstrate exceptionally severe hardship. The position is not as clear cut as that. The District Judge, who saw and heard all of the evidence, took the view that adequate steps could be taken to mitigate the risk of suicide and to ameliorate Ms McKenna's mental health difficulties. His overall feel for the case was that the risk of detention under the Mental Health Act and the level of suffering which would be occasioned by the extradition were not such as to outweigh the public interest in extradition.
99. Third, the seriousness of the harm or the interference with Article 8 rights which will be occasioned by extradition, and the other factors which militate against extradition including the Appellant's lack of convictions and his ties with this country, are not the only considerations in deciding proportionality. These considerations require to be balanced with the public interest in extradition which in this case is powerful, as I have said. Although I have not seen and heard all of the evidence, I think it likely that I would have reached the same conclusion as the District Judge as to how the balance should be struck in this case. But the key point for present purposes is that this is a review of the District Judge's evaluative judgment on the question of proportionality, and I am not persuaded that his decision was wrong on any of the bases indicated by Lord Neuberger in *In re B (a child)* or by the Divisional Court in *Celinski* or *Love*.

Conclusion

100. For all of these reasons, I dismiss the appeal.

101. As the District Judge did, I will circulate this judgment in draft so as to enable the Appellant's representatives to take appropriate steps to support the Appellant and Ms McKenna when it is handed down.