Case No: CO/806/2021

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

Neutral Citation No: [2022] EWHC 1088 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 May 2022

Before:

THE HONOURABLE MR JUSTICE LINDEN

- -

Between:

JACEK PIEKARSKI

Appellant

- and -

THE DISTRICT COURT IN LUBLIN, POLAND

Respondent

- -
- -

Florence Iveson (instructed by **National Legal Service**) for the **Appellant**
Tom Cockroft (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 5 May 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Covid-19 Protocol: this judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time of hand-down is deemed to be 10.30am on 10 May 2022

MR JUSTICE LINDEN:

Introduction

1. This is an appeal from a decision of the Westminster Magistrates Court - Senior District Judge Goldspring ("the SDJ") - dated 26 February 2021, to order the extradition of the appellant to Poland. It was common ground before the SDJ that the appellant was a fugitive and the SDJ rejected the two bars to extradition contended for by him, namely that the respondent was not a valid *"judicial authority"* for the purposes of section 2 of the Extradition Act 2003 and, secondly, that the extradition of the appellant was contrary to Article 8 of the European Convention on Human Rights ("ECHR").

2. The appeal is brought pursuant to section 26 of the 2003 Act and it originally challenged the SDJ's decision on both the section 2 and the Article 8 points. By order dated 20 July 2021, the section 2 ground was stayed by Griffiths J pending the outcome of **Wozniak v Circuit Court in Gniezno, Poland** [2021] EWHC 2557 (Admin). Permission was granted on the Article 8 ground. The section 2 ground has now fallen away in the light of the decision of the Divisional Court in **Wozniak** and so the only live challenge before me was to the SDJ's decision on Article 8 ECHR.

The warrant and the arrest of the appellant

3. The European Arrest Warrant ("EAW") in this case was issued on 6 June 2017 and certified on 21 June 2017. It concerns the conviction of the appellant of an offence equivalent to criminal damage which was committed on 13 July 2011. The particulars of the offence are that he smashed the window of a Volkswagen Passat which was parked in an unmanned car park in Lublin and threw a bottle of a flammable substance into the car, which then caught fire causing damage to the value of approximately £1,425. The appellant pleaded guilty to this offence at a court hearing on 7 March 2012 and was informed that judgment would be handed down at a further hearing on 11 April 2012, but he failed to attend having left Poland to come to this country. He received a suspended sentence of two years' imprisonment with a condition that he paid compensation for the damage which he had caused within a year, but he failed to do this, and, on 13 October 2013, the suspended sentence was activated.

4. The appellant was said by the Polish authorities to have become unlawfully at large on 24 January 2014. It was established by 7 March 2017 that he had left Poland and was living in the United Kingdom and the EAW was applied for. By the time it was issued on 6 June 2017, the appellant was believed to be living in Cardiff. Although the EAW was certified shortly after this, the appellant was not arrested until 24 September 2020. He has been in custody since then.

The issues in the appeal

5. The appeal is primarily on the basis that, in reaching his decision on the issue of proportionality in relation to Article 8 ECHR, the SDJ relied on material findings which appear to relate to a different case and/or are wholly incorrect insofar as they actually are findings about the appellant's case. However, Griffiths J also gave permission for the wider issue of the compatibility of the SDJ's order with Article 8 to be raised.

6. In her clear and helpful skeleton argument, Ms Iveson accepted that the SDJ's self-directions of law were broadly correct and that he broadly included the relevant matters when setting out the factors for and against extradition on the **Celenski** balance sheet. However, she demonstrated that when the SDJ came to carry out the balancing exercise itself at [62]-[65] of his judgment, he appears to have included findings from another case. She pointed to references to submissions by an advocate who had never been involved in this case and findings of fact and comments about the case which are wholly at odds with the evidence, and she submitted the facts of the present case are materially different to those which the SDJ said that he took into account. She submitted that the SDJ had therefore plainly erred. Ms Iveson also pointed to a small number of unfinished sentences and/or sentences in the judgment which did not make sense. Although she was evidently too polite to say so, it appears highly likely that the errors to which she drew attention were the result of cutting and pasting from another judgment, a failure to proof read the judgment in draft and/or a draft being promulgated, rather than the final version. Whatever the cause, it was hardly necessary to say that this was a very unfortunate state of affairs.

7. In answer to questions from me, Ms Iveson confirmed that her submission was that, applying **Belbin v Regional Court of Lille, France** [2015] EWHC 149 (Admin) [66] I should hold that the SDJ *"made a relevant finding of fact that no reasonable judge could have reached on the evidence, which had a material effect on the value-judgment, and/or he failed to take into account a relevant fact or factor, or took into account an irrelevant fact or factor"*. She accepted, however, that the effect of sections 27(3) and (4) of the Extradition Act 2003 is that I would only allow the appeal if the SDJ *"ought to have"* ordered the discharge of the appellant, rather than his extradition, on the evidence before him (section 27(3)) or would have been *"required to"* order his discharge on the evidence which is now available (section 27(4)).

8. Ms Iveson also confirmed that she was not submitting that the SDJ *"ought to have"* discharged the appellant on the evidence before him at the hearing in February 2021. Her case was that as the appellant has been in custody since his arrest on 24 September 2021, he had now served 1 year, 7 months and 12 days of his 24-month sentence. It was not proportionate to order his extradition when the other circumstances of the case are taken into consideration. The case fell within section 27(4) of the 2003 Act. I should carry out the Article 8 assessment on the evidence now before the court and order the discharge of the appellant.

9. Mr Cockroft agreed with this analysis of the appellant's case. In particular:

    i) He did not dispute that there were the errors in the SDJ's judgment which Ms Iveson identified in her skeleton argument, that they were material and that therefore there were errors in the SDJ's reasoning in the **Balbin** sense referred to above. In my view he was right not to do so as, unfortunately, Ms Iveson's criticisms of the judgment were all well founded.

    ii) He agreed that therefore I should carry out the Article 8 assessment myself on the materials currently available and decide whether it would be proportionate to extradite the appellant. He did not suggest that the phrase *"would have been required to order the person's discharge"* in section 27(4)(c) of the 2003 Act required a narrower approach than this, although there are suggestions to the contrary in **Lazarov v Prosecutor's Office in Varnia, Bulgaria** [2018] EWHC

3050. I will proceed on the assumption that the approach agreed between counsel is correct.

iii) He accepted that I may therefore take into account the one factor which is said by the appellant to have changed since the SDJ's order, namely that he has served the bulk of his sentence. Again, this concession was correctly made, compare **Newman v District Court of Krakow, Poland** [2012] EWHC 2931 (Admin) [20].

10. It followed that the agreed position between counsel was that I should decide whether the extradition of the appellant would be compatible with Article 8 ECHR. The evidence on which I was asked to do so comprised the two witness statements of the appellant and the documents which were before the SDJ, those of his findings of fact which were based on the evidence in this case, and the fact that the appellant has remained in custody since the hearing before the SDJ.

Legal framework

The general approach to applying Article 8 ECHR in this context

11. As is well known, by virtue of section 21 of the Extradition Act 2003 extradition to a category 1 territory may only be ordered if to do so is compatible with the ECHR. Article 8 ECHR provides:

> *"**Right to respect for private and family life***
>
> *1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

12. In the present case the appellant has no family in this country and he therefore relied on *"respect for his private…. life…."*. There was no dispute that extradition would interfere with his private life, that the interference would be *"in accordance with the law"* and that it would have a legitimate aim, namely the prevention of disorder or crime. The issue was therefore whether the interference was necessary in a democratic society i.e. proportionate and, in particular, the fourth question in the formulation of the test by the Supreme Court in Bank **Mellat v HM Treasury (No 2)** [2014] AC 700 namely "*whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure"* (per Lord Reed at [74]).

13. Nor was there any real dispute as to the general approach to this aspect of the proportionality issue in the context of extradition. This is set out in the well-known decisions of the Supreme Court in **Norris v Government of the United States of America (No 2)** [2010] AC 487 and **HH v Deputy Prosecutor of the Italian Republic, Genoa** [2013] AC 338 as well as the decision of the Divisional Court in **Celinski v Polish Judicial Authority** [2016] 1 WLR 551. Counsel agreed that [8] of the judgment

of Baroness Hale in **HH** contains a statement of the general principles which is sufficient for present purposes:

> *"…. (2) There is no test of exceptionality…. (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."*

Delay

14. As far as delay is concerned, Ms Iveson's skeleton argument referred to a number of authorities but ultimately there was not a great deal of disagreement about this consideration. As Baroness Hale said in the passage cited above, "*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"*. There was some discussion of the relevance of the culpability of any delay at the hearing, and Mr Cockroft reminded me that culpability has to be apparent on the evidence rather than assumed (see: **Wolack v Regional Court in Gdansk, Poland** [2014] EWHC 2278 (Admin)[9]) but ultimately it is not necessary to explore this issue in any detail as Ms Iveson limited her case to a submission that the delay after the certification of the EAW in the present case was culpable and Mr Cockcoft did not disagree.

The effect of Brexit

15. There was disagreement about the effect of Brexit on the Article 8 analysis. I was referred to the judgment of Choudhury J in **Gorak v Regional Court in Poznan** [2022] EWHC 671 (Admin) and the passages from the decisions in **Antochi v Richtern am Amstegericht of the Amstgericht Munchen (Munich), Germany** [2020] EWHC 3092 (Admin) and **Rybak v District Court in Lublin (Poland)** [2021] EWHC 712 (Admin) to which he referred, as well as [52] of the decision of Chamberlain J in **Pink v Regional Court in Elblag (Poland)** [2021] EWHC 1238 (Admin). I have also considered the **Antochi** and the **Rybak** judgments themselves. These authorities were presented on the basis that they show a difference of approach as between **Anochi**, **Rybak** and **Gorak** on the one hand and **Pink** on the other.

16. One of the questions addressed by Fordham J in **Antochi**, albeit obiter, was whether what the District Judge in that case had identified as "*the uncertainty inherent in the UK's departure from the EU"* was or was not a relevant consideration in carrying out the proportionality balancing exercise or whether, as the District Judge had said, it would be wrong to speculate about the consequences of Brexit [49]. Fordham J noted

that it was not disputed that *"the uncertainty in relation to Brexit raises a very real question as to whether or not the Appellant would be able to come back and re-establish her family life in the United Kingdom"* and he accepted a concession by counsel for the respondent that the anguish which this caused the appellant and her family was a relevant consideration [50]. He also said that:

> *".... there is no reason why the uncertainty should be taken into account only as a 'subjective' factor (relevant to 'anguish') and not as an objective factor. In my judgment, it risks distortion to speak or speak in terms of 'temporary absence' from the family home of the Appellant as mother and primary carer, with Anita meanwhile enjoying the stability of home, aunts, grandmother, school and friends, and totally ignore the accepted risk (it being 'impossible to say') that mother will not be allowed back to the United Kingdom to the family home. .... In* ***HH*** *, Lady Hale put it this way (paragraph 33): "Careful attention will ... have to be paid to what will happen to the child if her sole or primary carer is extradited" . ..... In my judgment, that "close attention" as to "what will happen" should, at least in the present case, be informed by the objective substantial risk that (a) the Appellant as primary carer would not be able to return to be reunited with her daughter in the family home in the United Kingdom so that (b) Anita would only be reunited with her mother by moving to another country... "* . (emphasis added)

17. Fordham J was therefore being asked to decide whether the fact that it was uncertain whether the appellant would be able to re-join her family in the United Kingdom at the end of the criminal proceedings in Germany (this being an accusation warrant case) should be brought into account. His answer was that it should be because to treat the absence as merely temporary and proceed on the basis that the offender would be able to return to this country in due course would be artificial. It does not appear that any question was raised before him as to what the position would be if the appellant in **Antochi** would have been liable to deportation in any event if extradition was refused and, of course, she had not been convicted of the index offence.

18. In **Rybak**, a conviction warrant case, Sir Ross Cranston also held that the District Judge *"ought to have taken into account the potential difficulties in the appellant returning to the UK as an express factor in the* ***Celinski*** *balancing exercise"* [36] and *"the risk, because of the Brexit point, of separation from the father, at least for what seems to be a not insignificant period."* [37]. Sir Ross agreed with Fordham J's views on the same point in **Antochi**. I note that it was submitted in **Rybak** that it was clear that, if extradited, the appellant would not be able to re-join his family in the UK [33] and that he referred to it being *"common knowledge for many years that criminal convictions, and other signs of poor character, negatively affect applications for leave to enter the UK"* [36]. However, he approached the matter on the basis that it was a question of taking a risk, rather than a certainty, into account. Again, the questions of the immigration position of the appellant if he were not to be extradited, and its potential relevance, do not appear to have been explored before him.

19. In **Pink**, having been referred to **Antochi** and **Rybak** (see [34]) Chamberlain J said this at [52]:

> *"Fifth, I accept on the basis of the appellant's latest evidence that there is a prospect that, if extradited, the appellant may not be readmitted to the UK after completing his sentence; and that this would put his current partner (who has*

> *settled status) in the difficult position of having to leave if she wishes to continue the relationship. But I do not think that this can properly be regarded as a consequence of extradition. It is, rather, a consequence of (i) the appellant's criminal convictions in Poland and (ii) the change to the immigration rules as a result of Brexit. Mr Hawkes said that the appellant could expect to acquire settled status if discharged from the existing warrant by this court. He was not, however, able to point to any policy document indicating that the Home Office's attitude to applications by persons with criminal convictions in EU Member States would be affected by whether the applicant had been extradited in respect of those offences. In the absence of any such document, I do not think it would be safe to make the assumption that extradition would make a difference to a person such as the appellant, who has been in the UK for a continuous period of more than 5 years since his release from prison in Poland in 2015."*

20. As I read this passage, Chamberlain J's point was that it is necessary to consider whether the immigration position of the offender is materially altered by the extradition itself. Granted the offender will have difficulties in returning to this country if they are extradited but, subject to the facts of the case, they may face deportation in any event if they are not extradited given their history of offending. In the **Pink** case, the appellant had not shown that the concerns about his immigration position in the event that he was extradited which he raised would not arise in any event.

21. In **Gorak**, a conviction warrant case, Choudhury J said:

> *"Whilst the judgment of Chamberlain J in **Pink** appears to take a different view, there does not seem to be, in that judgment, any reasoned analysis of why the position as set out in **Antochi** and/or **Rybak** was incorrect, or not to be followed."* [26]

22. He went on to hold that the District Judge's decision in **Gorak** was flawed, in part because of *"the Brexit consideration"* and to hold that the extradition of the appellant would be disproportionate, in part because the impact on the appellant's family:

> *"..is exacerbated by the Brexit/immigration status considerations, which I have mentioned above; the uncertainty generated by Brexit on the ability of the appellant to return to the UK, and the potential extension of his stay in Poland as a result, are further factors which weigh against this extradition*." [30]

23. In the light of this issue, by the time of the hearing before me Ms Iveson had already taken steps to reduce the so-called *"Brexit uncertainty"*. She submitted that if the appellant in the present case is extradited it is almost certain that he will not be given leave to (re)enter. He would have to identify a relevant ground for entry (e.g. as a skilled worker) and, even if he could do this, he would be met by Rule 9.4.1 of the Immigration Rules which provides that an application for entry clearance, permission to enter of permission to stay:

> *"must be refused where the applicant…(a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of 12 months or more…"*

24. Mr Cockcroft agreed. I asked Ms Iveson whether any application of this Rule might be subject to arguments under Article 8 ECHR and she said that it would be, albeit on the basis that the hurdle would be a very high one. This issue is potentially complex, and it was not raised in the pleadings or explored in any detail at the hearing. I also do not think that is necessary for me to reach a conclusion on it on the facts of the present case, and I therefore did not do so.

25. At the hearing, I also asked for a Joint Note on the effect in law on the appellant's immigration status of his conviction and sentence in Poland if he is not extradited i.e. to fill the evidential gap which Chamberlain J identified in the **Pink** case. The helpful Joint Note which I received appeared to submit that under Appendix EU of the Immigration Rules, assuming a valid application under paragraph EU9, and given that the appellant satisfies the five year residence rule under condition 3 of EU11 and no *"supervening event"* has occurred, there would be no basis under EU15 or 16 on which he could be refused indefinite leave to remain on suitability grounds.

26. Since the matter had not been addressed during the hearing I sought confirmation, by email dated 5 May 2022, that it was being submitted *"that the appellant's offence and sentence in 2011/2012 will not be relevant to any application by him for permanent settlement and/or ILR as an EU citizen, that there is no rule which permits or requires it to be taken into consideration in this regard and that it will not render him liable to deportation or removal?"* I asked *"If this is so, is it agreed that whereas Rule 9.4.1 would stand in the appellant's way if he were to be seeking to return from Poland later this year, his conviction and sentence do not threaten his ability to remain here if he is not extradited?"*. The answer to both questions was unqualified confirmation from both counsel.

27. The position in the present case is therefore that it is agreed that the extradition of the appellant would make a highly material difference to his immigration position. On Chamberlain J's approach, then, the difficulties which the appellant will face if he seeks to re-enter the United Kingdom after he has served his sentence are a consequence of his extradition and should form part of the balancing exercise. I therefore need not resolve any differences which there may be between his approach and the approach adopted in the **Antochi** line of cases. I will assume, in carrying out the Article 8 balancing exercise, that it is likely that the extradition of the appellant will lead to him being excluded from the United Kingdom for the foreseeable future rather than merely until the completion of his sentence.

Further relevant facts

28. The appellant is Polish national aged 38. He has four convictions other than the one which led to the EAW in the present case. These were (a) on 31 October 2002 for theft; (b) on 25 March 2003 for burglary, for which he received a suspended sentence of 18 months' imprisonment which was subsequently activated; (c) on 15 July 2004 for domestic violence and theft in 2000/2001; and (d) on 19 June 2013 for "threats", for which received a suspended sentence of 18 months which was subsequently activated for 48 days. This offence was committed in 2011.

29. On the evidence, the appellant came to the United Kingdom in March/April 2012 at the age of 24 having been born and brought up in Lublin. After he left school, he attended a one-year course and obtained a qualification as a tiler. From the age of 19 he worked

for 4-5 years for a company called Glazura Krolewska through a subcontractor, but he then lost his job when the subcontractor went bankrupt. He started working in the building trade but, he says in his statements, there was a lack of stable work and he was not able to earn enough money to support himself.

30. The appellant's statements do not say much else about his life and his social relationships in Poland before he left. He was brought up by his mother after his parents had divorced, although he remained in contact with his father. His older brother lived with the father and the appellant lived with his mother until he got his first job and was then able to rent a flat.

31. In his evidence to the District Judge, the appellant claimed that he had admitted to the index offence in order to protect a friend who had in fact caused the damage to the car but whose girlfriend was pregnant. However, Ms Iveson accepted that it was not for me to go behind the conviction or to make findings which cast doubt on whether the appellant was actually guilty.

32. The appellant also claimed that he had come to this country in 2011 but the SDJ found that this could not be correct given that he attended the hearing in Lublin on 7 March 2012. He claimed in evidence that on 7 March 2012 he was not told anything about further hearing dates or, at least, he could not remember being given further hearing dates. He said that he thought that he had been given a fine, that he would be notified of how to pay and that the matter was now concluded. The SDJ did not believe him on this point and said that he found the appellant's evidence unconvincing: *"I am satisfied he remembered very well the hearing and chose to flee Poland to avoid serving his sentence"*.

33. The appellant therefore arrived in Wales as a fugitive in March/April 2012 and has not been back to Poland since then. According to his witness statements, an unnamed friend paid for his bus ticket to Wales and the friend then returned to Poland shortly after the appellant arrived. The appellant also met other unnamed people who helped him. This was the only mention of any social relationships in Wales which he made in his evidence, although the MG11 says that three men who described themselves as friends of his directed the police to the appellant's address when they came to arrest him. He is single and was living in rented accommodation before he was remanded into custody in September 2020, but there was no evidence about how long he had been living at any particular address.

34. As far as employment is concerned, the appellant had jobs at a hotel and a large restaurant from around 4 months after his arrival. For the first year and a half his job at the restaurant was that of a kitchen porter. He was then promoted to work as a chef. After five years he moved to work as a chef at another restaurant, Zizzi's, but he was made redundant when the Covid-19 pandemic began. He was then unemployed and on universal credit until his arrest.

35. Other than this, there was very little evidence about the appellant's life in the United Kingdom before the District Judge or before me. He said in his statements that he *"had a good life here"* until the pandemic and was able to earn enough to pay rent and all the basic necessities whilst putting money aside for the future. He had been in Cardiff for a decade *"creating a life for himself"*. He was happy here and his plan was to stay. But

there was nothing specific about his life here which added force to his Article 8 argument.

36. As for the prospect of returning to Poland, the appellant said that there is nothing waiting for him in Poland and that he had no idea what he would do once he had completed his sentence. His father has passed away and he has lost touch with his mother who is an alcoholic. He did not refer to his older brother.

Submissions

37. Ms Iveson submitted that it would be disproportionate to order the extradition of the appellant. She pointed out that the offence which is the subject of the EAW is not of the highest order of seriousness and was committed nearly 11 years ago. The appellant has not committed any further offences during that period. She argued that therefore there was no need for him to serve the rest of his sentence for the purposes of rehabilitation. Indeed, extraditing him would set back the progress which he has made in becoming a contributing member of society. She said that extraditing him may mean that he has to start again in a country in which he has not lived for more than 10 years and in which he previously struggled to find regular work.

38. Second, she relied on delay. She pointed out that there had been more than three years between the appellant being unlawfully at large and the Polish authorities applying for an EAW. After the EAW had been certified there was then a delay of more than 3 years before the appellant was arrested although it was believed that he was living in Cardiff and, in fact, he was. She placed greater emphasis on the post EAW period which, she submitted, was culpable.

39. Third, Ms Iveson pointed out that even assuming an order for extradition on 5 May 2022, and that the appellant was extradited at the earliest lawful opportunity thereafter, he would have just over 4 months to serve on his sentence on his return to Poland. She pointed out that under section 65(3)(c) of the 2003 Act an EAW cannot be issued in relation to a sentence of less than 4 months' imprisonment in a category 1 territory and she submitted that this was a reasonable yardstick by which to measure proportionality in the present case.

40. Fourth, she submitted that the near certainty of the appellant not being able to return to this country means that extradition would have exceptionally severe consequences for the appellant. She argued that had the authorities acted more rapidly after the EAW was certified, he could have returned to the United Kingdom having completed his sentence in Poland before Brexit removed the right to free movement. And, in any event, indefinite exclusion from the United Kingdom was a disproportionate price for him to pay for the sake of the short period of his sentence which remained to be served.

41. Finally, she said in her skeleton argument that the appellant intends to pay the compensation which was the condition of his custodial sentence being suspended. This point was not pursued in her oral submissions and, in my judgment, rightly so. No steps had in fact been taken by the appellant to find and pay the owner of the car. There was no real evidence about the practicalities of this proposal including the appellant's ability to pay and the whereabouts of the payee. Even if the proposal was practically achievable, it was not suggested that there was any mechanism by which I could require him to pay and, in any event, in my view it would be a question for the Polish authorities

rather than me as to whether very belated payment of the compensation, in order to avoid extradition, meant that extradition was no longer required.

Conclusion

42. I start with the interference with the appellant's rights under Article 8 ECHR which will result from his extradition. As I have pointed out, the evidence as to his private life in Wales is very thin in terms of both the detail and what the limited information reveals. The appellant has lived in Cardiff for a number of years but there is no evidence that he has put down roots: he is single, he does not give any real evidence about social relationships or involvement in the local community or any other ties to this country. His most recent job was for a period of 2 years and it came to an end around 2 years ago. He lived in rented accommodation rather than owning a home here and has not been living in that accommodation since his arrest in September 2020.

43. There is no test of exceptionality or exceptional severity, but the question whether extradition can be described as having exceptionally severe consequences in a given case has to be measured by reference to the effect on the rights protected by Article 8 ECHR. Even assuming that the appellant will be unable to re-enter the United Kingdom in the foreseeable future, on the evidence this is not a severe infringement of his right to respect for his private life.

44. Even assuming it is, the usual considerations which apply in favour of extradition apply in this case: see paragraph 8 of the judgment of Baroness Hale in **HH** cited at [13] above. The index offence in this case was not of the most serious order and the appellant's sentence reflected this. The public interest in extradition referred to by Baroness Hale at [8(4)] of her judgment may also have been weakened to a degree by the delay to which Ms Iveson pointed, but in my view it remains powerful in the circumstances of this case. There was no evidence of any particular increase in the appellant's Article 8 ties to Cardiff as a result of the delay in arresting him. On the evidence it simply meant that he had lived there for longer. It appears that he had changed job after June 2017, but no particular significance was attached to his role at Zizzi's by Ms Iveson. The argument that had the authorities moved more rapidly the appellant would have completed his sentence before Brexit took effect is speculative but, as I have said, I will assume for present purposes that the position now is that extradition would have the effect of excluding the appellant from the United Kingdom for the foreseeable future.

45. As to the argument that indefinite exclusion is a disproportionate price to pay to achieve the outcome of the appellant serving what is in effect a four-month sentence in Poland, to my mind this is problematic. The reality is that the Polish authorities were and are seeking extradition so that the appellant serves a sentence of two years' imprisonment which, in their view, was an appropriate sentence for his offence. In effect, Ms Iveson tacitly accepted that it would have been proportionate to extradite the appellant in February 2021 and she was right to do so. The argument based on the fact that there are now only approximately 4 months to serve has come about, in large part, because the appellant took a point under section 2 of the 2003 Act which had to be stayed and which ultimately was found to be without merit. It would be surprising if this meant that, whereas it would have been proportionate to extradite him in February 2021, he is now in a materially better position in terms of the proportionality of his extradition. The situation is not the same as if the extradition had only ever been sought in order to

enforce a 4 month sentence, or 4 months remaining on a 2 year sentence, and I do not accept that the right approach is for me to proceed on the basis that it is.

46. However, assuming that the argument based on the period of the sentence which is left to serve tells in the appellant's favour it is also double edged: the very fact that he has spent more than 18 months in custody has weakened such Article 8 ties to this country as he had. It does not outweigh the public interest in his extradition.

47. Overall, then, I am satisfied that the public interest in the extradition of the appellant to serve the remainder of his sentence outweighs his right to respect for his private life in the circumstances of this case. The appeal is therefore dismissed.