Neutral Citation Number: [2024] EWHC 1131 (Admin)

Case No: AC-2022-LON-0002789

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/05/2024

Before :

MR JUSTICE KERR

- -

Between :

MR NAYANMONI DEB	**Appellant**
- and -	
GREEK JUDICIAL AUTHORITY	**Respondent**

- -
- -

Mark Summers KC and George Hepburne Scott (instructed by **Bark & Co**) for the **Claimant**
Louisa Collins (instructed by **Crown Prosecution Service**) for the **Defendant**

Hearing date: 18 April 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 16 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE KERR

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down at 3pm on Thursday 16 May 2024 may be treated as authentic.

Mr Justice Kerr :

Introduction and Summary

1. In this appeal, the appellant resists extradition to Greece based on an accusation warrant alleging that while resident in this country in April 2015, he defrauded a Greek company of about €126,000 by pretending to be a representative of another company to which the victim company owed money; and by inducing the victim company to pay the money into a bank account in Hammersmith, London, controlled by the appellant. The offence carries a sentence of imprisonment from five to ten years, in Greek law.

2. The appellant says he is innocent and that the fraud was engineered by someone else, albeit using his bank account. In his second proof of evidence, he said, in July 2022: "I strongly deny any involvement in financial allegation against me; rather I am a victim of financial scam and manipulation by my accountant, Mr. Md. Nural Ahad". If the appellant is extradited, that assertion would become a matter to be addressed by the Greek justice system.

3. District Judge Grace Leong ordered the appellant's extradition in a judgment handed down on 7 October 2022. The appellant's partner and mother of his two children then left this country and went to Bangladesh in November 2022, leaving the appellant to care for their two young sons. Sir Duncan Ouseley, recognising that the "article 8 balance" would have to be looked at again in the light of this development, granted permission to appeal on 5 May 2023.

4. The main submission made to me on appeal is that Ms Mahmuda Khanum, the children's mother and a former diplomat at the Bangladesh High Commission in Manchester, is unable to care for the two children and neither is any other friend or family member; so that if the appellant is extradited they will have to be taken into care and eventually adopted and will lose contact with both their natural parents.

The Facts

5. The appellant and Ms Khanum are both nationals of Bangladesh. She was born on 1 December 1986. She says she came from "a humble, conservative and impoverished family background" and grew up "in a small town, far away from the capital city". He was born on 17 October 1990. His family are from Sylhet in the east of Bangladesh, where his parents still live. Ms Khanum's evidence is that she left home in 2004 to study and obtained degrees in social science from the University of Dhaka.

6. In February 2010, the appellant came to the UK on a student visa and obtained a diploma in business management before obtaining a work permit. He has had various jobs. He recently described his occupation as working full time from home in property management. In 2011, he met a British woman and they married, but have since divorced. There were no children of that marriage. Ms Khanum married in 2012. She described it as an arranged marriage which was unhappy. They had no children. She wished to divorce her husband.

7. In April 2015, the fraud was committed, as later explained in the accusation warrant. The appellant was living in Hammersmith at the time. After the suspect transactions,

his bank account was closed. He did not go to the police. He remained in contact with the accountant, Mr Nural who, he says, was the perpetrator of the fraud and later tried to bribe him. The accusation warrant alleges that the appellant sent faked emails to the victim company, successfully inducing it to transfer monies to his Hammersmith bank account.

8. On 11 May 2017, at the request of Greece, the Home Office wrote to the appellant serving on him a summons to attend before a criminal court in Athens on 20 June 2017 "to defend himself for the offence of Fraud committed repeatedly and by profession and habit, with total profit and total damage caused exceeding the amount of 30,000 euros as well as the one of 120,000 euros". An accompanying draft indictment gave full particulars of the alleged *modus operandi* including the faked email messages.

9. The next day, DC Paul Valverde of the Metropolitan Police International Assistance Unit, wrote to the appellant stating that he had received "a request from the Greek authorities to speak with you in relation to an allegation of fraud". He invited the appellant to contact him. The appellant did not do so. He does not deny receiving the documents from the Home Office or the letter from DC Valverde. He took no action in response to them.

10. According to the evidence of the appellant and Ms Khanum, they met in Bangladesh the same year, 2017. The appellant helped Ms Khanum to move to the UK. They soon began an intimate romantic relationship and decided to start a family. Ms Khanum accepted, in her later evidence at the hearing before the district judge, that she was aware in 2017 of the accusation of fraud against the appellant and knew of the summons from the Greek authorities.

11. On 29 November 2017, the accusation warrant was issued. For reasons that are not clear, it was not certified by the National Crime Agency until years later. The appellant and Ms Khanum based themselves in Manchester, living in a three bedroom property provided by the Bangladeshi government because of Ms Khanum's job as an officer of the Bangladesh High Commission. The appellant did not have a regular job but did some property development or management.

12. In 2020, the appellant and his British wife were divorced. The first son of the appellant and Ms Khanum, whom I will call RM, was born in Manchester on 30 April 2021. I have seen a copy of his passport. He is a British citizen. There is no contemporaneous evidence from the early months of RM's life that Ms Khanum was mentally or physically unwell or having difficulty coping with being a working mother. Then on 14 December 2021, when RM was about seven months old, the National Crime Agency certified the accusation warrant.

13. This led to the arrest of the appellant about a week later, in Manchester on 22 December 2021. He was brought before Westminster Magistrates' Court the same day and granted bail. He has been on conditional bail since. He signed his first proof of evidence on 7 February 2022. He gave his address as Landor House, Westbourne Park Road in west London. It is the same address as later given by his young friend, Mr Fokor Uddin, also from Sylhet. It is quite near the nursery and GP surgery later attended by the two children.

14. The appellant described his parents as "loving" and said "[w]e have a close relationship and maintain regular contact". He said nothing about them disapproving of his marrying and then divorcing the British woman and disapproving of his son having been born out of wedlock. He went on to say:

> "I am now in a long-term relationship with a woman from my country … We have become romantically involved in 2017 … we have formed a healthy and loving relationship that is mutually supportive. … As our relationship became more loving and committed, we made a decision to start a family. We have a son, who was born on 30 April 2021. My partner is now pregnant with our second child and the due date is May 2022."

15. The appellant said nothing in that proof of evidence about any illness or depression or other impediment to Ms Khanum acting as a mother, apart from her job. He said he did not want her to be involved in the proceedings as "I do not want her career to be at risk". He did mention "the cultural sensitivity related to outside marriage relationships" and that Ms Khanum was not yet divorced, but added:

> "We certainly have the intention of spending the rest of our lives together. Our relationship was strong from the beginning. Even so, we continued to grow stronger. We compromise, support and encourage each other through the good and the bad and help each other to be the best version of ourselves. I love my family dearly."

16. He then went on to describe his strong bond with his son, then aged about nine months. He referred to RM having acute eczema and food allergies and sensitive skin. He said he spends a lot of time in Manchester looking after RM and was working flexible hours as a delivery driver so he could combine work and child care. He then explained in detail how he claimed to be innocent of the fraud, before returning to the subject of his partner and son:

> "I am very attached to my partner and son. I devote all my free time to my family and try to spend with them as much time as I can. My partner is an amazing person. She is always there to help me pick up myself back up [sic] when I am down. She gives me strength to work through and accomplish all my endeavours. I am just grateful for her by my side. Her love and support have helped me develop into the man that I am today. I know that I also play a vital role in her life. She will be deeply distressed and will struggle emotionally in case of my extradition. Also, my son will never be able to understand why I am not around."

17. Their second son, whom I will call AS, was born on 26 May 2022, in Manchester. He too is British, having been born here. Both parents are named on his birth certificate. His mother's occupation is given as "Diplomat"; his father's, "Company Director (Property Development)". Both the London (Landor House) and Manchester addresses are included on the birth certificate.

18. On 19 July 2022, a week before the extradition hearing, the appellant signed his second proof of evidence, again giving the London address. All but the last of the 17 paragraphs were devoted to a detailed account of how the appellant had been duped by his accountant and was innocent of the fraud with which he is charged in Greece. The 17th and last paragraph then mentioned Ms Khanum:

> "Kindly bring the fact that I have 2 sons, older one is 15 months old and younger one is only 02 months old. After having baby, my partner is under treatment for postpartum depression and currently taking medication. Her Health visitor and GP are well aware of

> her condition. I am enclosing my children's Birth certificates and British passports copies as annex-8."

19. The first seven annexes were documents mentioned in his account of his defence against the fraud allegation. There was no medical evidence from the health visitor or GP of Ms Khanum's depression or any prescription. Nor was there any statement from Ms Khanum herself. The case then came before District Judge Leong on 25 July 2022, with both parties represented, the appellant by Mr Hepburne Scott who also appears in this appeal.

20. The appellant gave oral evidence. He confirmed the correctness of his two statements. He reiterated their content. In her later judgment, the judge recorded his evidence that he did not know how Ms Khanum would manage if he were extradited. "She would be even more depressed. Her maternity leave may be for up to a year." He had looked after RM full time when Ms Khanum returned to work at the end of her first maternity leave.

21. The judge summarised his evidence on community ties as follows:

> "The RP [appellant] has good community ties with the Bangladesh community in London and he also has some ties in Manchester. MK [Ms Khanum] has an uncle in London and another uncle in Manchester. MK's mother lives in Bangladesh. MK is due to work in United Kingdom until 2025. She does not have indefinite leave to remain in the United Kingdom."

22. According to an account given by Ms Khanum to a social worker in August 2022, the allocated health visitor, a Ms Higgins, "recently" referred Ms Khanum to her GP as she had been suffering from low mood following the birth of AS. Again according to Ms Khanum's account given to the social worker, she was prescribed sertraline by her GP and a sleeping tablet called zopiclone; and, the social worker recorded, a referral had been made to the perinatal mental health team for possible further assessment. However the social worker was not clear whether the low mood was the result of the birth or the threat of extradition.

23. The account given to the social worker therefore tallied with the briefer account given by the appellant in paragraph 17 of his second statement. It was not supported by any evidence from Ms Jessica Higgins, the health visitor, or Ms Khanum's GP, nor from Ms Khanum herself. On 25 July 2022, the district judge adjourned the extradition hearing to enable a report to be obtained from the relevant social worker under section 7 of the Children Act 1989.

24. The social worker in Manchester who prepared that report was Ms Nichola Lawless. She saw both parents and their two children on three occasions (on 8, 12, and 23 August 2022) at their Manchester address. The health visitor, Ms Higgins, attended on the third occasion. In her later report (dated 1 and 5 September 2022), Ms Lawless recorded that "[t]he children are currently living at home with both of their parents"; and both had parental responsibility.

25. Ms Khanum gave Ms Lawless the account of her depression, as I have already mentioned. At this point, the inability of Ms Khanum to cope with caring for the children from a mental health perspective was first raised. The appellant's evidence, by contrast, had until the last paragraph of his second statement focussed on his

partner's job as the impediment. At the time of Ms Lawless's visits, both parents were caring for the children, Ms Khanum being on maternity leave and the appellant "not currently being in employment".

26. There were no safeguarding concerns about the children, Ms Lawless recorded; though RM had additional health needs because of his allergies and acute eczema. Ms Khanum worked long hours in a demanding role. They had been hoping the extradition would not happen. Ms Lawless highlighted concerns "through discussions" in regard to Ms Khanum being the sole carer. She mentioned Ms Khanum's account of depression and possible further assessment by the perinatal mental health team.

27. The parents made clear to Ms Lawless that they regard the appellant as the main carer for the children. Ms Lawless recorded that Ms Khanum:

> "has also advised me that she has had two difficult pregnancies and traumatic births and as a result of this she struggled to provide some of the initial basic care to the children in the days following their birth. … My concern is that a combination of these factors may be impacting on the day-to-day care that Ms Khanum is currently above to provide to the children".

28. Further, Ms Lawless recorded, should the appellant be extradited, "there is no option for Ms Khanum to extend her maternity leave or consider looking for alternative work that would fit in with her care of the children". She would not be allowed to remain in the UK in that event. Further, Ms Khanum is still married to another man; and:

> "[p]arents have advised me that there is no possibility of taking the children to Bangladesh with her. This is due to what parents perceive to be the cultural shame of the children being born to parents who are not legally married."

29. Ms Lawless noted that there was no evidence that the children were at risk or suffering significant harm. Ms Khanum had raised the possibility of them being placed in foster care. The home conditions were maintained to a high standard. But the home would be lost if she ceased her employment; the home went with the job. Ms Lawless's concern was that if the appellant were extradited, this "would have a detrimental impact on the well-being of the children".

30. She recorded that "[t]here is very limited if any family or friends support to Ms Khanum identified at the current time which would work to mitigate the loss of the children's father in their life". There was no mention Ms Khanum's two uncles, in Manchester and London. Ms Lawless recommended that the two children should remain open to Manchester Children's Services on a "Child in Need Plan".

31. At this point, Ms Khanum made a signed statement. She signed it on 12 September 2022, about a week after Ms Lawless's report was produced. After setting out her family and employment background and her still undissolved marriage (though her husband in Bangladesh is already married to another woman), she explained the history of her relationship with the appellant and that they now have two sons. She then said:

> "My mother is aware of my present relationship and the children; however, she has forbidden me to visit Bangladesh with the children unless my first marriage is dissolved. She also advised me to marry the father of the children. My brothers are not comfortable

> about my relationship and the children as they believe it brought disgrace to our family.…."

32. Ms Khanum then added that she was struggling to cope and "going through a painful recovery process to overcome mental health issues". She had experienced "mood swings" since the birth of AS. She was suffering from "serious nervous breakdowns" when she has to leave the children as "I feel they are not safe with me". She made clear in detail that she should not be regarded as a fit carer for the children. She then turned to RM's health needs and the strength of the bond with her father. She had not bonded with RM.

33. She said she was "unable to return to Bangladesh as my boys will be harassed and abused as they were born outside of marriage". She could not stay in the UK once her consular employment is over; she could not "apply for switching visa". She referred to the contact from "a social worker"; presumably, Ms Lawless. She felt "devastated" at the prospect of her children being put up for adoption:

> "I brought these children into this world and I have failed them. I do want them to have a normal life and safe and loving environment. I want [the appellant] to be part of their lives."

34. After reading Ms Khanum's statement, the district judge directed that she attend for cross-examination at the resumed hearing, on 26 September 2022. The judge recorded later, in her judgment, that Ms Khanum "is suffering from possibly post-natal depression although there is no medical evidence confirming this. She only consulted her doctor in July 2022. MK provided a list of her medication that included sertraline."

35. As for Ms Khanum's oral evidence, the judge recorded that she said her maternity leave was due to end in November 2022. She could apply to extend it but a decision on that would rest with headquarters in Dhaka. Her employers were not aware of her predicament. She had not sought to extend her employment. She eventually conceded after "repeated questioning because she did not answer the question" that she would be able to bring her children back to Bangladesh to live with her. But she did not want to because her divorce had not gone through and "she needed help in raising her children".

36. The judge described Ms Khanum avoiding questions about her knowledge of the facts that had led to the accusation of fraud, attempting to play down her knowledge of the matter and of the accountant Mr Nural. She regarded it as a financial matter and was preoccupied with her own problems and that she could not look after her sons. She had almost forgotten about the Greek matter, she said. She had heard about it in 2017 but it did not become a serious concern until the appellant became the father of her children.

37. In answer to a question from the judge, Ms Khanum said that when her diplomatic passport expired in January 2023, she would want to return to Bangladesh with the appellant as it was her intention to marry him and "give social status" to her sons. She then said she would apply for a new diplomatic passport. Her children would live in "social disgrace". Her husband knew of her relationship with the appellant and the birth of their two sons. The divorce process "would take a matter of months". She had searched (on Google) for nursery care for the children in case their father were extradited.

38. The reserved judgment of District Judge Leong was given on 7 October 2022. I have already touched on some of the evidence she recorded in her judgment. I will return to the judgment when considering the parties' submissions. For now, I add only this. The judge found that the appellant was not a fugitive. While it was not for her to assess the merits of the fraud charge, the appellant's attempts to exculpate himself had done the opposite and "undermined his credibility severely". He embarked on the relationship with Ms Khanum and had his children with her knowing that the Greek matter had not gone away.

39. The judge rejected the submission that it would be oppressive to extradite the appellant due to passage of time (Extradition Act 2003, section 14). She rejected the submission that extradition was barred by reason of article 3 of the Convention (a decision not appealed against). As for article 8 and section 21A of the 2003 Act, she considered the relevant practice direction and case law. She regarded the alleged offending as serious. There were no available "less coercive measures" than extradition. She undertook the *Celinski* balancing exercise and decided to order the appellant's extradition.

40. As part of her "findings under Article 8", the judge noted that "MK's secret is out in her community"; there was "no impediment to MK bringing the children to Bangladesh as the divorce is merely a formality." The "shame" of bringing them to Bangladesh while married to another was "ultimately a matter for MK to grapple with". It did not tip the balance against extradition. The judge rejected her account given to Ms Lawless and to the court to the effect that she is an unfit mother for mental health reasons and the children were unsafe with her.

41. The judge stated that Ms Khanum had a number of choices. She could return to work and purchase full time care, as she had done for RM before the appellant joined them in Manchester (on his bail address being varied). She could afford to do so as she had a good salary and paid no rent. If unfit to work, she could apply for extended leave of absence. She could leave her job and become a full time mother in Bangladesh; or she could apply for leave to remain as a carer and claim state benefits in this country, with help from social services as needed.

42. The judge accepted that there was no objective evidence of a cultural stigma and the impact it would have on the two children if they were taken to Bangladesh. Any stigma would be unlikely to last long. The divorce would not take long. If Ms Khanum were to go to Bangladesh without the children, social services would have to take care of the children and would only consider adoption as a "last resort". The judge then continued at paragraphs 93 to 96 as follows. I will set them out in full:

> "93. I recognise that both MK and RP would urge me to find that the RP should not be extradited for the sake of their children. I bear in mind that the international obligations remain an imperative as quoted in §132 of HH. I note that where there are competing interests such as the Article 8 entitlements of the two young children and the interests of society in their welfare, it should only be in very rare cases that extradition may be properly avoided after making proportionate allowances for the interests of dependent children.
>
> 94. I reiterate again that both MK and the RP knew or were aware that the RP was wanted by the Greek government since 2017. I reject MK's evidence that she did not think it was anything other than a financial issue. She is an intelligent person long entrusted by the Assistant High Commission to undertake an important role in his office. It is inconceivable that she was not aware of the gravity of the circumstances in which the RP found himself.

> It is against that background where matters remained unresolved with the Greek allegations that both began their relationship.
>
> 95. As I have said above, MK has choices as to what she should do with regard to looking after her children and it is a question of whether she chooses to bring up her children herself or to abandon them to adoption. If it is the former, MK will have ensured that the impact of extradition on the Article 8 rights of the children is much reduced. If it the latter, then it falls to Social Services to ensure that the impact of extradition on the Article 8 rights of the children is lessened.
>
> 96. I have said more than once that this was a serious offence involving a large amount of loss caused to the Greek company as a result of a planned conspiracy with others and where the sentence of imprisonment will be 5 to 10 years. The weighty public interest in extradition does outweigh the Article 8 rights of MK and her children after making appropriate allowances for their interests."

43. It is obvious from reading the judgment that the judge did not find either the appellant or Ms Khanum to be honest and truthful witnesses. In particular, she plainly rejected Ms Khanum's insistence that she was unable to look after her children. The balance was not tipped against extradition by the impossibility of taking them to Bangladesh or caring for them in this country. Ms Khanum had said these things were impossible but the judge did not agree.

44. That was the state of the evidence when the judgment below was given. I, however, have further evidence before me which, it is said, I should admit on the basis that it is credible, it might well have an important influence on the outcome and there is good reason why it was not adduced below (see Sir Anthony May's judgment of the court in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin)). The fresh evidence has been obtained at the direction of judges of this court or with applications made to adduce it.

45. The latter category of evidence must initially be considered *de bene esse*, in the usual way. I continue the chronological narrative on that basis. The appeal was brought on 10 October 2022. Less than a month later, on 4 November 2022, Ms Khanum left for Bangladesh, without the children. They are being cared for by the appellant, who is on bail. On 15 November 2022, a trainee legal officer at Manchester City Council, Ms Rosa Richardson, emailed District Judge Leong stating that Ms Lawless had asked for the judge to be updated. Ms Lawless informed as follows. She did not state her source but it is likely to be information provided to her by the appellant or Ms Khanum or both:

> "The mother of the children returned to Bangladesh on 4th November 2022. This was against the advice of the mental health team, as the mother's mental health had significantly declined, and her consultant recommended mother to voluntarily go into hospital for treatment. The father, Mr Nyanmoni, plans to return to London with the children as the family will be homeless as the home in Manchester was linked to mother's employment within the UK. As the mother has now left the UK and her employment within the UK, the family cannot stay at the previous address.
>
> The father and children will be staying in London with a friend.
>
> Ms Lawless, the social worker, will be making a referral to Westminster Children's Services, which the father has consented to. The father has also informed his solicitor of

> the house move as he is wearing a tag, so this will need to be approved at the new address. As father has stayed there before, he does not feel that it would be an issue."

46. The judge (being *functus officio*) passed the message on to the appellant's legal representatives. The appellant then made a third proof of evidence, giving no address, signed on 12 December 2022. He said Ms Khanum was "instructed to back Bangladesh by her employer [sic]". He claimed Ms Khanum was "taking specialist treatment for her mental health issues". Her brother had been kind enough to "share her present medical conditions". He said "[w]e have a very limited contact. We are not married but we have children together, which is socially and culturally unacceptable in Bangladesh."

47. The appellant then continued by giving a long and detailed account of Ms Khanum's mental condition, including that she was "diagnosed a severe depressive illness". There is no medical evidence to support this diagnosis or to confirm that Ms Khanum is having "specialist treatment" for mental health issues. The appellant's account is to the effect that she fled the family and the jurisdiction in mental turmoil and that he had to give up work and move to London, where he rents a room, with the children and help from social services.

48. In January 2023, Ms Khanum's diplomatic passport was due to expire. By then, Ms Khanum had already been in Bangladesh for about two months. The appeal proceeded and on 5 May 2023 Sir Duncan Ouseley, aware of the further evidence since the judge's decision, granted permission to appeal on the papers and directed a further report from Westminster Social Services:

> "on the way in which the children are now cared for, with what support, and what Social Services would do were the RP to be extradited, and how that might develop over time, in the event of conviction and imprisonment. Any information about the prospect of the mother now returning to the UK, or looking after the children in Bangladesh for a while would be useful too."

49. From then on, there is evidence from medical sources about medical issues, both regarding the appellant and his two sons, but none about Ms Khanum. In June 2023, RM was awaiting a formal diagnosis of autism and taking melatonin because of disturbed sleep patterns. The appellant and RM attended the accident and emergency department of St Mary's Hospital in Paddington on 7 June 2023. The appellant reported that RM had had five seizure episodes since March 2023. He was due to start part time nursery in September 2023.

50. On 6 July 2023, McGowan J ordered a further local authority report from the London Borough of Enfield. As a result another social worker, Ms Mawande Yawa of Enfield social services, met the appellant and the two children on 16 August 2023, not at Landor House but in temporary accommodation in Enfield provided by Westminster City Council. The appellant told Ms Yawa that Ms Khanum had not made any contact with the family since leaving for Bangladesh. However, he provided a Whatsapp call telephone number for her.

51. Ms Yawa stated in her subsequent report dated 6 October 2023:

> "After a long deliberation, Mr Nayanmoni shared that should he be arrested, he has a friend Mr Fakhruddin who can stay and look after his children and he would be assisted by his

> other friend Mr Saleh Ahmed. He also shared that there is no possibility of returning the children to Bangladesh due to what parents perceive to be the cultural shame of the children being born to parents who are not legally married."

52. Pausing there, I infer that Mr Fakhruddin is likely to be Mr Fokor Uddin, aged 24, from Sylhet and resident at the Landor House address, who subsequently prepared a witness statement dated two days before the appeal was heard. I do not have any evidence about who Saleh Ahmed is, other than that he is described as a friend of the appellant.

53. Ms Yawa was able to speak by Whatsapp call to Ms Khanum on 29 August 2023. She was "very clear that she had no intentions of returning to the UK as she was still recovering from her mental health issues." She told Ms Yawa that she had left the children more than a year ago (in fact, it was about nine months); so "they do not know her and there isn't a regularly [sic] relationship with the children". She "did not want to be involved in the care of [RM] and [AS] and she would not be coming back anytime soon".

54. Ms Yawa asked her to put that into writing. She did not do so and thereafter did not return Ms Yawa's calls. There were no concerns about the children's care or welfare, apart from RM's acute eczema and allergy which were being addressed by medical professionals. The relationship between the appellant and the children appeared good and his parenting appropriate. The home was clean and tidy. He did not want them to go to Bangladesh because of the stigma of having been born out of wedlock, Ms Yawa explained.

55. Ms Yawa concluded that since Ms Khanum was unavailable, the children should remain in the care of their father. Her solution was simple: the court should consider not extraditing the father. Mr Fakhruddin and Mr Ahmed were not suitable; they did not have parental responsibility and care by friends for long periods was not in the children's interests. The children's care needs would be met by the appellant; there should be no need for local authority support.

56. From 4 September 2023, RM started attending the Notting Hill Nursery School, a private nursery not far from the Landor House address. On 8 September 2023, McGowan J granted funding for a psychological report on the possible impact on the appellant and his two children of extraditing him. On 19 September, the appellant reported that RM had had a further seizure, the sixth he had reported since March 2023. They attended St Mary's Hospital Paediatric Outpatients department. RM was prescribed medication for epilepsy called lamotrigine.

57. On 26 September 2023, RM was given an "asthma plan" and a brown salbutamol inhaler. He was thought to have a peanut allergy and was to be reviewed after three months. The appellant's copies of the medical correspondence were sent to the Landor House address. On 29 September, the paediatric nurse wrote to his GP confirming the prescription and dose of lamotrigine.

58. On 11 October 2023, a representative of Westminster City Council observed RM at his nursery school. He was only attending for three hours each day, five afternoons a week. He had ups and downs but found it difficult to separate from his father, who had told staff he had had "lots of very challenging changes at home over the last year". The early years and inclusion adviser reported that RM would "babble" and say a few words

such as "bye-bye". He thought RM would "make good progress once he feels safe, secure and happy".

59. On 6 November 2023, the nursery school headteacher wrote (giving RM's address in Enfield) to the appellant's GP, alluding to distress and frustration shown by RM and difficulties with speech. She sought a professional assessment for RM as he was "struggling in the areas of development" and to support him it was necessary to "fully understand his needs". He would cry when apart from his father and stop crying when reunited with him.

60. The appellant's solicitors instructed a psychologist, Dr Timothy Green, to prepare a report as per McGowan J's second order. He interviewed the appellant on or about 4 December 2023 over a Zoom call, with the two children present and interacting with their father. His report was dated 5 December 2023. At the request of the respondent, he gave oral evidence at the appeal over a live link and was cross-examined by Ms Collins, for the respondent.

61. Not surprisingly, Dr Green observed that the appellant was in a state of anxiety. He was taking sertraline, although Dr Green could not comment on the dosage, which had recently increased. He was concerned that the appellant might become a suicide risk, if extradited. He accepted from the appellant that "his wife [sic] has now left him with the two children, following her becoming seriously mentally unwell and returning to live in her native Bangladesh".

62. He quoted his instructions to provide:

> "... a report from an expert psychologist on the perspective impact of extradition upon the [upheaval] of his two young children is likely be [sic] of significance to the court on the ultimate issue and that the same ought to be obtained in the interests of justice."

63. Dr Green attributed the appellant's high levels of anxiety to the dread of separation from his two children, who had already lost their mother the previous year. While social services would do their best for the children if they had to be taken into care, the impact on the children would probably be very detrimental. Both were acutely vulnerable, physically and psychologically. Since preparing his report, Dr Green had learned that RM was (later) formally diagnosed as autistic, which could only increase his difficulties.

64. Dr Green reported that the appellant tended to a degree to exaggerate his symptoms. He explained that this tendency can be enhanced in a manner unfair to the subject because the observer has to take account of contextual information such as sources of anxiety. He likened the measuring process to that of measuring a person's height erroneously without taking account of the person wearing platform shoes. He attributed the appellant's anxiety to the prospect not just of losing his liberty but also losing the children.

65. In cross-examination, he accepted that he had not been specifically asked to comment on any suicide risk; and that the medical notes provided to him contained no reference to any such risk, though they did mention prescribing anti-depressant medication. He accepted that his assessment was of the appellant and not of the children directly; it

would not be possible to interview them because of their young age but he had seen them interact with their father.

66. On 12 February 2024, at the appellant's request an appointment was made for RM to be assessed over 90 minutes on 29 February to consider a diagnosis of autism. Before that appointment, on 20 February, the appellant attended the accident and emergency department of St Mary's Hospital, Paddington, complaining of headache and chest pain over the preceding 24 hours. After various tests, nothing untoward was found but the appellant was given aspirin and referred to the "TIA" clinic.

67. "TIA" stands for transient ischaemic attack, i.e. a minor stroke. The appellant was discharged the same day. He attended the clinic by appointment on 23 February 2024 and was prescribed further medication. The main diagnosis was "[l]ikely TIA". The clinician's letter of 23 February to the appellant's GP included the reported symptoms and that his son had a diagnosis of autism, ADHD and epilepsy. The follow up appointment was then fixed for 25 November 2024, with the precautions in the interim of an "event monitor" test on 29 May 2024 and a "bubble echocardiogram" test on 30 July 2024.

68. Probably on 29 February, RM was assessed for autism in a multi-disciplinary setting and found to be on the autistic spectrum. His communication difficulties and other problems were rehearsed in the later follow up letter and therapies were recommended. The feedback was given later, both verbally and in that letter (probably wrongly dated 15 February 2024). The letter also recorded that the appellant had reported being a single father and "also has a full time job working from home in property management".

69. At some point after 29 February 2024, the appellant provided a fourth proof of evidence, unsigned and undated and again without giving an address at the start but stating in the body of the statement that he currently resided in council accommodation in Enfield, i.e. not the Landor House address named in the medical correspondence. In the statement, he claimed that his partner had left, "cutting off all contact and leaving me to handle the challenges of parenting alone". He referred to an episode when he and the children had had to move out of the Enfield accommodation temporarily, due to a water leak.

70. He then described the symptoms of his stroke; it had left him weak and he was "currently in the process of gradually reintegrating into daily life, including driving my children to school/nursery". He said he did not have a support network in London. His "close friend", he said, lives outside London and contact is "sporadic". He described the children's developmental difficulties, reiterated that he could not return the children to Bangladesh due to stigma and expressed the hope that he could remain with the children.

71. On 8 March 2024, the appellant again attended the accident and emergency department of St Mary's Hospital in Paddington. A follow up letter of 9 March (giving the Landor House address as the appellant's address) described the incident as a self-referral, with the same symptoms being reported as on the previous occasion. The letter recorded "[n]o abnormality was detected"; "treatment complete"; there was no follow up referral and the appellant "declined treatment".

72. RM has various follow up appointments scheduled in July and September 2024, to check on his asthma and autism and concerning enlarged lymph nodes in the neck; the latter is also a concern of the appellant in the case of RM's younger brother, AS. On 9 April 2024, shortly before the date fixed for the appeal hearing, the appellant produced his final proof of evidence, consisting of an updated version of the previous one with additions in red type.

73. Three further statements were produced to the court, dated 16 April 2024, two days before the hearing of the appeal. The first is from the appellant's father in Sylhet, Nikhil Chandra Deb, on behalf of himself and his wife, Sabita Rani Deb, the appellant's mother. Mr Nikhil describes a happy family and good relations with the appellant until the relationship "went turmoil when he got married and divorced without our consent … I was really upset with him …". The relationship "further deteriorated when he had two kids without marriage…".

74. From then on he had "little communication" with the appellant; however, he was shocked by the allegation of fraud as it "does not match the personality and character he has". Mr Nikhil then states that for "numerous reasons" he and his wife could not look after their two grandchildren; "my reputation and image will be tarnished" and "the kids will also struggle as they will be bullied" and even finding a school for them would be "a very challenging task".

75. Mr Fokor Uddin states that he lives at the Landor House address with his grandparents. He is British, aged 24, born in Sylhet. He says the appellant moved to Landor House about one and a half years ago. Mr Uddin works for Thames Valley Police in accounting and stays in Oxford during the working week, three or four nights a week. He is fond of RM and AS and helps with them when he can, but does not have experience of child care, nor the bond that a father has. The children are not comfortable being alone with him, he says.

76. Finally, Md Alaul Kabir Mazumder, an Imam at the Surrey Muslim Center in Carshalton, explains that he knows the appellant as the latter sometimes attends weekly prayers there with his friends. The Imam states that childbirth out of wedlock is "Zina", a major sin. He refers to the "challenges" the children would face if they were brought up in Bangladesh; children born out of wedlock "face societal stigma" and are often marginalised, he says.

77. At the hearing of the appeal, I asked Mr Summers KC, for the appellant, for clarification about where the appellant lives and whether he is working. Mr Summers' instructions were that the appellant is not in work, lives at the Enfield council property and drives to the nursery each week day with the two boys. However, he clearly retains a connection with the Landor House property where Mr Uddin lives with his grandparents.

78. He uses that address for medical purposes, clearly including GP registration. It is near the nursery school. The appellant's local accident and emergency department is St Mary's Hospital in Paddington. RM's autism assessment was carried out at a centre not far away. Most of the appellant's activities are in the London W2 area, far from Enfield. As for work, the appellant recently told a doctor that he has "a full time job working from home in property management".

The Parties' Submissions

79. Mr Summers submitted that it would be "gross oppression" to RM and AS to proceed with extradition and that both section 21, read with article 8, and section 14 on delay, provide the mechanism to prevent extradition in the "extraordinary circumstances" of this case. On article 8, Mr Summers criticised the judge for not taking at face value the evidence that Ms Khanum could not look after the children which, he said, was "corroborated" by the report of Ms Lawless.

80. He submitted that the judge had failed to consider the ages and health needs of RM and AS, particularly RM who had already been diagnosed with eczema and allergies; failed to consider the effect on them of being deprived of their primary carer; unfairly "downplayed" Ms Khanum's health issues; and wrongly concluded that Ms Khanum could care for the children either in this country or in Bangladesh, overlooking the stigma to which they would be subject there.

81. In the balancing exercise, Mr Summers complained, the judge had said the UK should not be a safe haven for "fugitives". This was misconceived because she rightly found that the appellant was not one. She also wrongly gave weight to the fact that they formed their relationship and had children knowing that the Greek criminal matter was hanging over the appellant; and that if Ms Khanum went to Bangladesh without the children, it would be her choice to leave them.

82. Mr Summers took me on a tour of about 12 cases in which the adverse effect on children had founded a decision that extradition should not occur. I will return to some of them. He described these as working examples of how article 8 should operate. They covered cases where children would have to go into care in the event of extradition; where children had particular vulnerabilities and needs; and cases where extradition had been refused despite serious offending.

83. The judge should not, Mr Summers submitted, have omitted delay as a factor in the balancing exercise pointing against extradition, albeit that she considered it separately under the rubric of section 14 and noted the "overlap" between that exercise and the article 8 balancing exercise. His submission was that, on the state of the evidence before the district judge, the case against extradition was so overwhelming that it could not but be accepted. The needs of the children were a primary consideration and were not properly assessed.

84. In oral argument, Mr Summers said the judge had misjudged the mental health problems of Ms Khanum; that it was wrong to suppose that she could care for the children; that the judge had misjudged the stigma of taking the children to Bangladesh; that the article 8 balancing exercise wrongly did not place weight on the likelihood of the children being taken into care; that even on the footing that Ms Khanum would pick up the reins, the judge did not engage with the impact of the children losing their primary carer; and that the judge's reasoning amounted to punishing the children for the actions of their parents.

85. Turning to the post-judgment evidence and the need for a fresh balancing exercise, Mr Summers submitted that all the evidence met the criteria for inclusion identified in the *Fenyvesi* case and should be admitted. With the possible exception, he was inclined to accept, of the Imam's letter of 16 April 2024, none of that evidence could have been

adduced before the judge, because it concerned events postdating the judgment below or matters made relevant by those subsequent events, in particular the departure of Ms Khanum.

86. Assessing the article 8 balance as it now stands, the case against extradition was even stronger. Both children are now shown to have complex needs. They have lost their mother. They require a high level of care. They would be likely to go into care and be adopted if the appellant is extradited. Ms Yawa is against extradition because it would not be in "the best interests of the children", as she stated in her report. The appellant is of good character; he is not a fugitive; and nine years have now passed since the alleged offending.

87. Factors in favour of extradition that have fallen away and are now irrelevant, argued Mr Summers, are the fact that Ms Khanum earned a good salary; that this country should not be seen as a safe haven for fugitives from justice, the appellant not being one; that the parents started their relationship knowing the Greek criminal matter remained and had not gone away; and that Ms Khanum had chosen to abandon her children, a decision for which the children are not responsible.

88. To that, Mr Summers added that in relation to section 14 of the 2003 Act, the judge should have considered the question of culpability for the four year delay between issue of the arrest warrant and its certification by the National Crime Agency. The Greek authorities had done nothing, on the evidence, to get the warrant certified. Insufficient weight had been given to the overall passage of time since the alleged offending, which is now about nine years (and, I interject, was about 7½ years since the judgment below).

89. In oral argument, Mr Summers added that the alleged fraud offence, though not trivial, was not at the most serious end of the spectrum. He took me to the fraud sentencing guideline used in this country, submitting that the amount involved (€126,000), would indicate a sentence here that could be less than two years' imprisonment and therefore could be suspended.

90. He also pointed out that it would not be a simple matter for Ms Khanum to return to this country and take the children to Bangladesh, even if she were inclined to do so. The children are British citizens. The family court would have to be involved. There had been no request to cross-examine the appellant. In answer to a point I raised at the hearing, he submitted that the court should not take amiss the silence of Ms Khanum in the face of this appeal. She had made her position very clear to Ms Yawa and was now "out of the picture".

91. For the respondent, Ms Collins began in the conventional manner by reminding me, uncontroversially (as Mr Summers did too) of principles derived from well known high level authorities; among them, *Norris v Government of United States of America* [2010] UKSC 9; *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25; *Celinski v Poland* [2015] EWHC 1274 (Admin); and *Love v United States of America* [2018] EWHC 712 (Admin).

92. Ms Collins defended the judge's analysis of the child care issue. The judge had elicited from Ms Khanum that she could take the children back to Bangladesh but did not want to because she was still married and "needed help in raising her children". She had searched online for nursery care for the children. The judge was entitled to conclude

that Ms Khanum would remain involved although the appellant would be the primary carer.

93. The judge had obviously taken account of the children's ages. She stated their dates of birth and referred to maternity leave and bottle feeding. She was alive to RM's eczema, medication, food allergies and rashes, which she mentioned. The level of health need was not particularly grave. She did not downplay Ms Khanum's mental health but did not accept that it disqualified her from giving some care to her children.

94. The report of Ms Lawless left open whether Ms Khanum would opt out of caring for them altogether. The judge's analysis of the choices open to Ms Khanum was not flawed, Ms Collins argued. The judge was right to call them "choices" because she did not accept Ms Khanum's disavowal of ability to provide care for her children. The choices included applying to stay on in the job with the High Commission in Manchester, or staying here but ceasing or changing her employment, or going to Bangladesh with, or without, the children.

95. The judge's use of the word "fugitive" was not a misdirection, Ms Collins submitted. It was an unattributed allusion to what Lady Hale had said in *HH* at [8]: "… there should be no 'safe havens' to which either [accused or convicted persons] can flee in the belief that they will not be sent back". That logic applied to a person resisting extradition who is not a "fugitive" in the sense of the statute and case law. The use of the word did not affect the judge's determination of the balancing exercise.

96. The judge's mention of the timing of the relationship was made in the context of the finding that Ms Khanum must have known about the seriousness of the matter. It was consequently relevant to any argument that the appellant had been put under a false sense of security and was entitled to suppose that the problem for him in Greece had gone away. That in turn diminished his ability to rely on lack of fugitive status for the purpose of the section 21 delay argument.

97. The judge's treatment of the section 14 delay issue was not flawed, Ms Collins submitted. She noted the four year delay and the absence of any explanation for it; but that was counterbalanced by the conscious decision of the appellant to ignore the summons to attend court in Athens in 2017, which was relevant to the section 14 argument; and also to the article 8 balance; there was an "overlap" between the two issues in that regard.

98. The appellant was trying to persuade the court to disagree with the weight the judge chose to place on individual factors within the balancing exercise. That was wrong. The cases cited by the appellant as working examples were all fact specific and did not assist much, if at all, with the factual analysis undertaken by the judge, and to be revisited in this appeal; and the balance of factors for and against extradition, which could not be gleaned from other cases.

99. Accepting that the court needed to look again at the balancing exercise in the light of Ms Khanum's departure, Ms Collins submitted that it did not mean the balance must be tipped the other way. She criticised the report of Ms Yawa for not having, she submitted, adequately considered alternative carers such as Mr Fakhruddin (as he was called in the report) or Mr Ahmed. She had not contacted them. She had too readily

accepted Ms Khanum's statement by telephone that she is not able to look after the children due to her own mental health demands.

100. Ms Yawa concluded that the solution was not to extradite the appellant, thereby adopting their position and becoming an advocate for it. She did not address the further point Sir Duncan Ouseley had asked to be considered: "any information about the prospect of the mother now returning to the UK, or looking after the children in Bangladesh for a while would be useful too." Ms Yawa did not ask herself why Ms Khanum was disqualifying herself from the role of carer before ceasing contact and not returning calls.

101. Ms Collins reminded me of the seriousness of the alleged offending, that it involved planning and premeditation and that it carried a sentence from five to ten years' imprisonment. The further evidence obtained since either did not meet the *Fenyvesi* criteria – in particular, the Imam's letter could have been obtained at any time, before the hearing below. The other fresh evidence such as the appellant's minor stroke and RM's diagnosis of autism were worthy of sympathy but did not tip the balance against extradition.

102. A detrimental impact on the children must be acknowledged, but the high threshold of "exceptionally severe" impact was not met, Ms Collins submitted. The fresh untested evidence from the appellant should be given limited weight because it had not been tested in cross-examination and the judge had not found the appellant an unreliable witness. There was evidence from Ms Khanum before the judge and in her account reproduced in Ms Lawless's report which entitled the judge to disbelieve Ms Khanum's assertion of inability to care for, or contribute to the care of, her children.

103. As for Ms Khanum's mental condition, the only evidence of a medical nature was that she was taking anti-depressant medication, which could reflect no more than a report from her to a GP that she was depressed. It is far from clear that the children would go into care or be adopted if the appellant were extradited. That would be a last resort and was far from a foregone conclusion. There was no reason to reject the judge's treatment of the article 8 issues; and the admissible evidence since then should not tip the balance the other way.

104. As for delay, neither the court below nor this court was required to go into why the four year delay occurred. It was not unjust or oppressive for the appellant to bear the consequences of a delay of his own making. He chose not to attend the court summons to Athens in 2017; nor did he acquaint the Greek authorities with his factual defence (about which the judge was sceptical); see *Kakis v Cyprus* [1978] 1 WLR 779, HL, per Lord Diplock at 782H-783C; *Gomes v Trinidad and Tobago* [2009] 1 WLR 1038, PC, opinion of the board at [26]-[27]. Culpable delay is only relevant where it is *not* of the accused's making.

Reasoning and Conclusions

Factual issues considered on appeal and below

105. I will start with the credibility of the appellant and Ms Khanum, as it was an important part of the judge's reasoning. I agree with the judge that the appellant's detailed account of his factual defence to the fraud charge lacks plausibility. The more one reads it, the

more unlikely it appears that it is true. While the strength of the Greek prosecutor's case is not a relevant factor, giving an unreliable and probably dishonest account of the fraud is relevant to the appellant's credibility, as the judge observed.

106. Next, Mr Summers did not dispute that the appellant had, in 2017, been made aware of the fraud case against him and had "put his head in the sand", as Mr Summers put it. He had avoided Greek justice not by becoming a "fugitive" in the sense discussed in the case law, but in the sense that he was unwilling to risk facing trial in Greece. He was in Bangladesh that year, developing the relationship with Ms Khanum which became increasingly intimate and loving.

107. Ms Khanum knew in 2017 about the Greek criminal charge. I agree with the judge that Ms Khanum's evidence that the matter was of little concern to her was unrealistic and rightly rejected. If Ms Khanum had been frank and honest when giving her evidence, she would have told the judge that she was worried about the Greek criminal matter.

108. My factual starting point in this appeal is therefore that both parents of the children whose interests lie at the heart of it are witnesses who have given unreliable and in some respects untruthful evidence to the court below, a conclusion the judge reached and one with which I agree. My assessment of the children's prospects, like the judge's, must be made with that in mind.

109. There is no medical evidence of any post-natal or other depression suffered by Ms Khanum in the months following the birth of RM, before the National Crime Agency certified the arrest warrant in December 2021. The appellant in his first proof of evidence in February 2022 described his relationship with Ms Khanum in glowing terms, using language such as "healthy and loving" and "mutually supportive". There was no hint of any impending decision to split up and go separate ways. They had "the intention of spending the rest of our lives together". His concern about her related to her job, not her mental health. He also played "a vital role in her life", he said.

110. The appellant's first proof of evidence sits uneasily with the statement of his father over two years later. For the appellant in February 2022, "we have a close relationship and maintain regular contact"; there is no mention of any negative side to their relations. His father, in April 2024 spoke of good relations with the appellant until the relationship "went turmoil when he got married and divorced without our consent …" and "further deteriorated when he had two kids without marriage…". The appellant had said nothing about this in his first proof of evidence in February 2022.

111. After the birth of AS in May 2022, the appellant in his second proof of evidence just before the hearing in July 2022, only mentioned post-natal depression of Ms Khanum at the very end of the statement, "[a]fter having baby", i.e. after having the second child not the first. Ms Khanum's mental health impairing her ability to care for the children is a theme that develops from this point onwards, not earlier than July 2022 when the first hearing below was held.

112. The report of Ms Lawless does not, with the greatest respect to her, provide objective expert support for the proposition that in August 2022, Ms Khanum was disabled by mental health problems from caring for the two children. She was, at that time, living with the appellant and her two children in Manchester, on maternity leave, helping her partner care for the two children. Her likely inability to continue doing so effectively

was asserted in a verbal report by Ms Khanum to Ms Lawless, repeated by the latter in her written report.

113. The only medically grounded basis for Ms Khanum's proposition was that she been prescribed sertraline by her GP in July 2022. Many doctors are willing to prescribe such medication on the strength of a report of symptoms by the patient. I make no criticism of a doctor prescribing anti-depressant medication in such circumstances but the willingness of the doctor to do so says nothing about whether the cause of the patient's low mood is the birth of a child or the spectre of her partner's extradition, or a combination of the two.

114. Next, Ms Lawless reported having been told by Ms Khanum that she had no possibility of extending her maternity leave or changing her job to fit in with caring for the children. That is inconsistent with the judge's finding that, while her maternity leave was due to end in November 2022, she could apply to extend it but the decision would rest with headquarters in Dhaka. I am clear that it was Ms Khanum's decision not to ask for any extension to her maternity leave, but she did not want Ms Lawless to know that she had that option.

115. Similarly, having told Ms Lawless that she could not take her children back to Bangladesh because of "what parents perceive to be the cultural shame …", Ms Khanum accepted on questioning by the judge that she could take the children back to Bangladesh with her but did not want to do so because her divorce had not gone through and she needed help in raising her children. Ms Lawless was not told about Ms Khanum's two uncles in Manchester and London but did note the high standard of housekeeping and absence of any safeguarding concerns.

116. When Ms Khanum came to make her statement just after Ms Lawless's report, her statement matched what she had told Ms Lawless about her mental health. However she also identified a solution to the "stigma" problem, with which her mother agreed. Her mother had advised her to complete her divorce and marry the father of her children. Ms Khanum did not deny that, were that to happen, she could bring the children to Bangladesh. She denied being able to stay in the UK after her job was over or being able to "switch visa".

117. Why, then, have I heard nothing in this appeal about the progress of Ms Khanum's divorce and why has she not, if she has seen it through, married the appellant? The divorce should be complete some time ago; it was only to take a matter of months after Ms Khanum's return to Bangladesh; yet I am not told whether it has been completed or not. I am sure that the appellant knows whether Ms Khanum is at present divorced or not and that he would have told this appellate court the present position if he had wanted me to know what it is.

118. The evidence about social stigma suffered by children in Bangladesh born out of wedlock is very unsatisfactory. There was no objective evidence of it before the judge, as the respondent's then counsel pointed out. The letter from the Imam in April 2024 could as easily have been provided to the judge below, but was not. Although it does not qualify as impartial objective expert evidence, I think the judge would have been willing to admit it. Even if she had done so, I do not think it would have altered her finding that any stigma would probably be short lived and largely overtaken by Ms Khanum divorcing her husband.

119. The judge did not have before her all the evidence which I have just been discussing, but the more recent evidence which she did not have only strengthens her findings that the accounts given by the appellant and Ms Khanum were not candid and honest. I find no fault with any of her findings of fact and it is in that context that I turn to evaluate the criticisms of her conclusions drawn from those findings.

Assessment of submissions on the judge's decision

120. Mr Summers submitted that the judge should have taken at face value the contention of Ms Khanum that she was unable effectively to care for her children. I disagree. For the reasons I have just given, the judge was right not to accept Ms Khanum's evidence to that effect. I reject the submission that Ms Khanum's evidence to that effect was "corroborated" by Ms Lawless's professional opinion. In so far as Ms Lawless formed that opinion, despite the good order in the house and the contribution to the children's care being made by Ms Khanum, it was an opinion founded on a self-serving account.

121. I reject the submission that the judge overlooked the needs of RM and AS and the stigma they would endure if taken to Bangladesh. Her treatment of those issues was not flawed as Mr Summers submitted. She was right to strike the balance taking account of the position as she found it to be, not as the appellant would have it.

122. I do not accept that the judge overlooked the innocence of the children and their lack of complicity in any decision of their mother to abandon them. She accepted the risk that Ms Khanum might abandon them but weighed that risk and found that it did not outweigh the factors in favour of extradition. I will need to revisit that balance in the light of developments since, but I do not accept that on the evidence before the judge, she was wrong to find that the risk did not tip the balance against extradition.

123. Nor do I accept the submission that the judge fell into error by weighing in the balance in favour of extradition the proposition that the UK should not become a safe haven for "fugitives", having found that the appellant was not one. I think this argument is mere semantics. Lady Hale used the words "safe haven" in the *HH* case. That is the operative phrase and is exactly what the appellant is seeking in the UK in this case. In that sense, he *is* a fugitive from Greek justice, albeit not in the technical sense of the case law. He consciously decided in 2017 to avoid Greek justice if he could.

124. I will return to the cases which Mr Summers asked me to look at as comparables when I come to reconsider the balance for and against extradition. As for delay, I find no fault with the judge's rejection of any invitation to assess whose fault it was that the warrant was not certified until some four years after it was issued. The case law – in particular *Kakis* and *Gomes*, cited by Ms Collins and by the judge in her judgment – fully justifies the refusal to embark on that enquiry because there was no false sense of security on the appellant's part. The judge rightly focussed on the effect of the delay, particularly on the children, not its cause, which was the appellant's decision not to answer the summons in 2017.

The fresh evidence; admissibility

125. I have concluded that, as the evidence before the judge stood, her findings were open to her, her reasoning was sound and her conclusion justified. I would not be close to persuaded to interfere with it, subject to considering any impact of admissible fresh

evidence, which I must now do. I approach this task without engaging in a lengthy and arid preliminary analysis of each piece of fresh evidence. I need to consider all of it in order to consider whether I should do so or not, applying the *Fenyvesi* tests.

126. Some of it was obtained at the direction of my colleague judges and is admissible for that reason. Some is evidence of events that postdated the judgment below; notably, the departure of Ms Khanum for Bangladesh. That evidence could not have been called below and must be admitted. Some of the additional evidence may be of dubious credibility but I prefer to treat it as *prima facie* admissible and then evaluate it. As for the influence of the fresh evidence on the outcome of the appeal, I will need to determine that shortly.

127. By way of exception, I do not admit the letter of 16 April 2024 from the Imam at the Surrey Muslim Center. As already noted, that evidence could have been adduced before the judge. Even if I had admitted it, with great respect to the Imam it is not impartial and objective expert evidence of the kind commonly followed by a declaration of impartiality in words such as those found in Part 35 of the Civil Procedure Rules. It forms part of a letter of support for the appellant's cause, urging the court to decide that allowing the appellant to remain in the UK "would be in the best interests of all parties involved".

128. The respondent reminded the court in an email of 24 April 2024 that to be admissible, the fresh evidence should be worthy of belief: "[w]hile we remain neutral to the admission of material regarding developments which have occurred since the extradition hearing at first instance, we do not agree to the contents of the Proof of Evidence where there is reference to matters upon which there were findings by the District Judge and that have not changed (for example his innocence and his interaction with police … .)."

Fresh evidence on appeal; the procedural position

129. The procedural position appears to have changed since the *Fenyvesi* case was decided in 2009. This court no longer has power to remit the case back to the district judge. The options open to this court on appeal under section 27 of the 2003 Act do not include remission back (cf. section 33(8)(b) and (c), requiring the Supreme Court to remit the case back to the High Court in certain cases). The change in the applicable procedural law is well explained in the White Book (2024) vol. 1 at 52.1.6:

> "**High Court's jurisdiction under the Extradition Act 2003**
>
> Until 1 October 2014, the rules for appeals to the High Court against orders approving or refusing extradition made in the magistrates' courts or by the Secretary of State under the Extradition Act 2003 were the normal rules for appeals to the High Court as stated in Pt 52 and supplemented by para. 21.1 of Practice Direction 52D. As a result of amendments made by s.174 of the Anti-social Behaviour, Crime and Policing Act 2014 to the Civil Procedure Act 1997 s.1 and to the Courts Act 2003 s.68 (with effect from that date appeals to the High Court in extradition cases were made subject to the Criminal Procedure Rules 2015 (SI 2015/1490), particularly Pt 17 thereof), the appeal provisions in the CPR no longer apply in relation to the High Court's exercise of such jurisdiction. (Accordingly, para.21.1 was removed from Practice Direction 52D by CPR Update 75 (July 2014); the change entailed no amendment to rules in Pt 52.) Extradition hearings in magistrates' courts are conducted before District Judges in accordance with rules in the Criminal

> Procedure Rules 2014. The advantage of the changes triggered by s.174 of the 2014 Act is that the whole extradition process including appeals to the High Court (albeit a civil and not a criminal process) is governed by the same set of procedural rules."

130. The learned editors might have added that the disadvantage is that this court can no longer remit a case back, if (which is now an academic question) the wording of section 27 of the 2003 Act ever allowed it to do so. The Divisional Court in *Fenyvesi* appeared to think that the then application of CPR Part 52 allowed remission back (see the judgment of Sir Anthony May, PQBD, and Silber J, at [6]). Both parties agree that I cannot now remit the matter back. In my view, it would be a useful addition to the appellate court's powers because the magistrates' court is a better forum for examining disputed fact with the benefit of cross-examination; but primary legislation would be required.

The fresh evidence in the appeal

131. In this appeal, the respondent did request the attendance of Dr Green, the psychologist, but not of the appellant himself or anyone else. I would not wish to encourage applications to cross-examine in an appeal; the more they proliferate, the more like a "second first instance procedure" the appeal becomes. Here, the appellant adduced further evidence from (among others) himself, having already been found an unreliable witness and not expecting to be cross-examined on his new evidence.

132. I accept the submission of Ms Collins that this must diminish the weight to be placed on his new evidence; that this court can treat it with scepticism, draw appropriate inferences or reject it. The appellate court should give appropriate weight to the assessment of credibility made by the judge below. The onus was on the appellant in this appeal to produce objective and credible evidence, in particular medical evidence, to validate his account, rather than further contentious proofs of evidence. He has produced medical evidence about himself and his sons but none in respect of the mental health of Ms Khanum.

133. These considerations create a difficulty for the appellant, since most of Mr Summers' submissions proceeded from the premise that (i) the judge below was wrong to reject the evidence of the parents and (ii) I should accept the appellant's fresh evidence as true and reliable (though he did also submit that even if it were right to suppose that Ms Khanum would come back to look after the children, the appeal should be allowed). I do not agree with either of propositions (i) and (ii). The fresh evidence throws up further problems, which I have already mentioned.

134. The first point that concerns me is that Ms Richardson, the trainee legal officer, recounts the return of Ms Khanum to Bangladesh by reference to supposed medical evidence I have not seen. The mother, says Ms Richardson, returned "against the advice of the mental health team, as the mother's mental health had significantly declined, and her consultant recommended mother to voluntarily go into hospital for treatment". I am concerned that Ms Richardson had not seen that medical evidence either and that she relied on a lay hearsay account.

135. Next, the appellant's detailed account of Ms Khanum's mental condition comes not from any doctor but, ostensibly, from Ms Khanum's brother. Ms Khanum's diagnosed "severe depressive illness" is unsupported by any medical evidence. Furthermore, the

appellant's third proof of evidence says Ms Khanum was "instructed to back Bangladesh by her employer [sic]". That is not fully consistent with Ms Richardson's account; nor with Ms Khanum's answers to questions from the district judge, where she conceded that she could seek an extension to her maternity leave; nor with the judge's finding that she could seek extended leave of absence.

136. Next, Ms Khanum sought to influence the course of events while Ms Yawa was preparing her report in August 2023; while remaining out of reach of her children. She was prepared to communicate to Ms Yawa her inability to care for the children and thereafter withdrew from communication and avoided Ms Yawa. It is obvious that she was aware of the appeal process and supportive of the appeal, founded as it was on the proposition that only the father could care for the children. Yet, at no point has she or the appellant gone as far as to say that they do not still love each other and their children.

137. The evidence seems to me to bear the hallmarks of a temporary separation of the family members while the extradition proceedings are heard on appeal. On the other hand, there is evidence that the children, particularly RM, do have health issues and would suffer grievously if separated from their father who, at present, is their main carer. I accept that RM has allergies, asthma and speech delay; and that he has been diagnosed as autistic and is on medication for epilepsy; though the reports of his seizures come from the appellant.

138. The latter was proactive in seeking medical for himself and his children in the run up to the hearing of this appeal. The further medical appointments in his diary are largely precautionary. He is not himself ill at present and attended court without difficulty. All that said, I do not underestimate the difficulty and distress he and his children would suffer if he were now extradited to face trial in Greece.

139. I did not find Dr Green's evidence particularly helpful because it did little more than confirm that obvious proposition. Any separation of child from parent is likely to be distressing; this case is no exception. I do not place weight on his perception that the appellant could become a suicide risk, if extradited. He was not asked to opine on that issue; there is no direct support for it in any medical record of the appellant's; Dr Green is not a medical doctor, as he was careful to point out; there is no resistance to extradition based on the appellant's own mental health (under section 25 of the 2003 Act); and nothing to suggest the Greek authorities could not deal with any such risk.

140. There are further considerations. It is said that Ms Khanum has had no or almost no contact with her children since November 2022. I am not willing to accept the word of the appellant on that issue. Ms Khanum has remained silent in this appeal, after talking to Ms Yawa in August 2023. I am not told who is paying for the nursery school in Notting Hill Gate. Ms Khanum was the main breadwinner, on a good salary. I do not know if that establishment was one of those she researched online before leaving for Bangladesh.

141. I am not told whether Ms Khanum is contributing financially in other ways to the cost of raising the children. The appellant told his lawyers at the hearing before me that he is not in work. He told a doctor otherwise within the last couple of months; he was working "full time … from home in property management". Is he claiming benefits? I do not know. He has two addresses. Which is "home" for the purposes of his career

in property management? I do not know. He is said to travel by car between Enfield and the Notting Hill area.

Submissions on the effect of the fresh evidence; "comparable" cases

142. In the face of these difficulties, Mr Summers invited me to consider the facts of other cases in which extradition was prevented by the adverse effect it would have on innocent children. He was not deterred by what Moses LJ said in one of the cases he cited, *A and B v. Central Court in Pest, Hungary* [2013] EWHC 3132 (Admin), at [36]:

> "There are difficulties in comparing cases. There will never be an exact comparison. It is dangerous to ask the court to descend into what may be a mechanical exercise of comparing those features which are similar and those which are dissimilar."

143. While Ms Collins' submissions were to the same effect, reminding me that all the cases depended on their own facts - and different appellate judges could reasonably reach different decisions on the same facts - Mr Summers preferred the observations of Fordham J on "working illustrations" at [28] in *Koc v. Turkey* [2021] EWHC 1234 (Admin), stating that it may be helpful:

> "acting always with discipline, rigour and focus — to place before the Court 'working illustrations' of principles and legal tests 'in action'. Such examples can assist the Court's appreciation. That does not mean there should be a proliferation of authorities, in a game of 'tit for tat'. The temptation to overload authorities' bundles — a temptation which is the greater when the bundle is electronic — must always be avoided."

144. There is a tension between the two approaches. The former predates electronic bundles. The latter probably encourages over-citation of authority, which can unnecessarily increase costs and is difficult to reconcile with the then Lord Chief Justice's often overlooked *Practice Direction (Citation of Authorities)* [2012] 1 WLR 780, not updated since the advent of electronic authorities bundles and therefore as much to be respected as when it was introduced. It provides at [4] that the bundle of authorities should "in general … not include authorities for propositions not in dispute"; and for a maximum of ten authorities "unless the scale of the appeal warrants more extensive citation".

145. Mr Summers was undaunted by such considerations but his tour of the authorities only served to reinforce the importance of looking at the individual facts of this case. He himself described the circumstances of this case as "extraordinary". Among the cases he cited were the following, all involving a child care problem in the event of extradition:

- Murray J's decision in *DF v. Amtsgericht Nürnberg, Germany* [2022] EWHC 2224 (Admin); but there, there had been little factual dispute before the district judge in the court below and some 18 years since the alleged offending;

- my own decision in *Prisacariu v. Judecatoria Suceava, Romania* [2022] EWHC 538 (Admin), a conviction warrant case. But there, it was undisputed that the children would have to go into care if Ms Prisacariu were extradited; and her offending consisted of driving dangerously, causing injury and taking part in smuggling cigarettes with a probable financial gain to herself of no more than the equivalent of about £12,000;

- *Antochi v. Amtsgericht München* [2020] EWHC 3092 (Admin), an accusation warrant case involving alleged supermarket distraction thefts in early 2009, where Fordham J did not accept that a custodial sentence in Germany was the likely penalty and found that there had been culpable delay not of the appellant's making (see at [19] and [43]-[46]);

- McGowan J's decision in *Karaqi v. Public Prosecutor's Office, Athens Court of Appeal, Greece* [2020] EWHC 2650 (Admin), a bizarre tale in which the appellant had absconded from a prison in Corfu in 1996, with 11 years left to serve of a 13 year sentence for robbery with firearms;

- *Ciemniak v. Regional Court in Bydgoszcz, Poland* [2019] EWHC 1340 (Admin), where the facts that confronted Holman J included drugs offences committed in 2008, a complex history including interim extradition to Poland and service of a sentence there of about 15 months, wrong findings below that Ciemniak was a fugitive and was not the primary carer; and exaggeration of the seriousness of the offending (see at [11] and [17]-[30]);

- *M v. Circuit Court in Czestochowa, Poland* [2019] EWHC 1342 (Admin), an accusation warrant case decided by Holman J involving high value VAT fraud, the birth of twins aged 6½ at the date of the appellate judgment, a third child born in 2015, a change of mind by the appellant about whether to consent to her extradition, having offended in the UK and the genuine unavailability of other family members to care for the children including their father, not least because he was in custody in Poland (see at [5], [7], [9], [20]-[22] and [43];

- Wyn Williams J's decision in *JB v. Lithuanian Judicial Authority* [2018] EWHC 34 (Admin), where there was one conviction warrant for four offences of dishonesty, with 18 months unserved; and an earlier accusation warrant for five similar offences; all the offences having been committed from 2009 to 2011; the judge accepted disputed evidence that if the children's mother were extradited, she would have no chance of defeating care proceedings brought by the local authority; and the judge left open possible future extradition, depending on the turn of events;

- Cox J's decision in *Sosik v. Prosecutor General, Lithuania* [2014] EWHC 2487 (Admin), which concerned an accusation warrant for an alleged dangerous driving offence in April 2010 where injuries were caused to the victims, the details of which were not clear (see at [3]); the appellant denied that he was the driver of the car; the judge below had applied the prohibited "exceptionality" test (see at [19] and [26], citing the judgment of Lord Judge in *HH* at [124]); there was no attempt to "overplay the impact of extradition" ([31]); and there was long unexplained delay not attributable to the appellant ([45]-[46]);

- the decision of Bean J (as he then was) in *Ode v. High Court, Criminal Courts of Justice, Dublin, Ireland* [2013] EWHC 3718 (Admin), an accusation warrant case alleging a €10,000 bank loan fraud committed in 2005; he accepted that the mother of the appellant's teenage autistic son would be unable to cope with caring for him alone; saying (judgment, third page, without paragraph numbering in my copy) that such arguments "are commonly advanced but rarely

succeed" and that he had never seen a case where "the evidence of the inability to cope alone is as powerful as in this case"; the offending while not trivial was not the most serious; and the sentence would not be custodial here;

- *A and B v. Central Court in Pest, Hungary* [2013] EWHC 3132 (Admin) (cited above); where both parents were alleged to have committed a kind of mortgage fraud in 2003 to 2005; the father's appeal against extradition was dismissed; and Moses LJ noted at [1] that if the other appellant, the mother, were extradited, a nine year old girl would be left without parental care, the consequences for her would be "devastating" and "no one has suggested to the contrary"; and

- the appeal of F-K, alone successful of the five appeals heard together by the seven judge Supreme Court in *HH*, for the reasons given by Lady Hale at [35]-[48]; where husband and wife allegedly misappropriated clothing worth the equivalent of £4,307 in 2001, there had been long delay, the father had reduced physical mobility due to an accident and the court accepted that on the facts the public interest in returning F-K "is not such as to justify the inevitable severe harm to the interests of the two youngest children in doing so" ([48]).

146. The exercise of considering supposedly comparable cases leads me back to where I started: to the facts of this case, unique as they are like the facts of the other cases. With the greatest respect to the diligent and careful submissions of Mr Summers, the value of the exercise is in inverse proportion to the time it takes to carry it out.

The fresh evidence and the article 8 balancing exercise; conclusions

147. Standing back and considering the cumulative impact of all the evidence, there is a very strong circumstantial case that Ms Khanum is "lying low" to protect the appellant against extradition, cementing his role as the only viable carer. She has no prior history of mental health problems. Both are educated, intelligent and, the judge thought, devious. They embarked on something of a whirlwind romance, with two children arriving within about five years, under the shadow of criminal process in Greece.

148. On Ms Khanum's own evidence, the obvious solution to any stigma affecting the children would be divorce followed by marriage, were it not for the extradition issue. I do not accept that Ms Khanum would be unable easily to extricate the children from this country, should she wish to return them to Bangladesh. The British authorities would not stand in the way of that course. No contrary evidence has been adduced and it would defy common sense in the absence of objective evidence that Ms Khanum is an unfit mother.

149. I also infer that she could apply for a further diplomatic posting in this country, should she choose to do so; though I do not say it would necessarily be granted. She is still, as far as the evidence goes, employed by her country's government. She was posted to several other countries between 2013 and 2017, before arriving here. She is likely to be divorced by now, if she chose to push the divorce through. There would be no impediment to her marrying the appellant and, if divorced, she can probably still do so whether or not he is extradited.

150. I reject the submission that the alleged offending is not particularly serious. Having read the draft indictment containing the alleged *modus operandi*, I find it is serious. If

the appellant's defence is untrue, the offending was sustained and cunning, as well as highly profitable for him and any associate or associates. To the extent that it is relevant, I reject the submission that a custodial sentence would be unlikely in this country and agree with the judge that the seriousness of the offending and the amount involved would be likely to result in use of the £100,000 to £500,000 bracket in our domestic sentencing guideline.

151. I accept that, as is sadly usually the case, there will be detrimental impact on the children if the appellant is returned to Greece; and also on the appellant himself and Ms Khanum. The judge recognised that, but recognised also the international obligations of this country (and citing Lord Judge's judgment in *HH*, at [132]). In revisiting the article 8 balance, as I must now do, I pay acute attention to the detrimental impact on the children which will be especially serious if Ms Khanum does not replace the appellant as their main carer.

152. To be clear, I accept that there is some risk that the children will have to go into care; it is quite likely they will temporarily, pending clarification of their longer term future. However, I think the risk of long term local authority care followed by adoption is quite low, albeit not non-existent. I think the strong likelihood is that Ms Khanum will make appropriate care arrangements, either returning to care for them herself, here or in Bangladesh or a third country to which she may be posted; or by arranging for a family or extended family member to do so, at least until the appellant has completed his reckoning with Greek justice.

153. The risk that Ms Khanum and all the rest of the family would wash their hands of the two children and leave them to their fate seems to me low, considerably less than even and therefore less than on the balance of probabilities. Ms Khanum would have to be heartless as well as devious to abandon her children completely. She has not said that she does not love them and their father. She has not said that her relationship with the appellant is over for ever. Her evidence is that she wants the best for the children, as any parent would. The furthest she has gone is to say she has been unable to bond effectively with RM.

154. Thus, while Ms Khanum has put physical distance between herself and her children, the evidence does not support the proposition that she has abandoned them emotionally. I am confident that the main reason she went to Bangladesh in November 2022 was that she hoped it would increase the appellant's chances of avoiding extradition. Her main purpose was, in my judgment, to put pressure on this court to allow her partner's appeal. I do not believe the appellant's evidence that she left because of her mental health or any diagnosed mental condition, of which there is no medical evidence.

155. On that factual basis, I undertake the exercise of balancing factors for and against extradition, again using the *Celinski* method, but without on appeal setting out *seriatim* a "balance sheet" of factors for and against extradition. The balance still comes down, albeit narrowly, clearly in favour of extradition. Since I have assessed the risk of irreversible and severe damage to the interests of the two children as only moderate and considerably less than even, that risk carries a correspondingly lower amount of weight as a factor against extradition.

156. The factors in favour of extradition remain as powerful as ever and in my judgment should prevail. For the reasons I have given, I think the appellant should stand trial in

Greece and it is my hope and expectation that, if convicted and sentenced to custody there, he will be able to reconnect with his children afterwards and meanwhile that his children will be able to keep in touch with him with the help of Ms Khanum, other family members and, if required, social services. The conclusion is that the appeal must be dismissed.