Neutral Citation Number: [2024] EWHC 3303 (Admin)

Case No: AC-2022-LON-003427

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2024

Before :

MRS JUSTICE FARBEY

- -

Between :

MARTYNA DEBICKA	**Appellant**
- and -	
REGIONAL COURT IN GDANSK (POLAND)	**Respondent**

- -
- -

David Williams (instructed by **Taylor-Rose MW**) for the **Appellant**
Adam Squibbs (instructed by **Crown Prosecution Service Extradition Unit**) for the **Respondent**

Hearing date: 29 October 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on Thursday 19th December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE FARBEY

Mrs Justice Farbey:

Introduction

1. The appellant is a Polish national born on 1 April 1995. She appeals under section 26 of the Extradition Act 2003 ("the Act") against the order for her extradition made by District Judge Clews ("the DJ") at Westminster Magistrates' Court. The appellant was arrested on 26 July 2022 and produced at court on the following day for an initial hearing. The extradition hearing took place before the DJ on 10 November 2022. The DJ's reasons for ordering that the appellant be extradited are set out in his judgment dated 26 November 2022 which was handed down by District Judge Pilling on 28 November 2022.

2. Following the grant of permission to appeal, Garnham J granted the appellant permission to rely on fresh evidence that was not before the DJ. The fresh evidence comprises:

    i) Two further witness statements from the appellant, dated 15 November 2023 and 14 June 2024 respectively;

    ii) An updating report dated 21 August 2024 by Dr Lu Daynes, a Chartered Counselling Psychologist with specialist experience in the field of child and adolescent mental health. Dr Daynes had provided a report, dated 1 November 2022, for the proceedings before the DJ;

    iii) A report by Kerry Chafer, an Agency Social Worker in Kingston Upon Hull City Council ("the local authority"). The report is not signed or dated but it was filed on 13 September 2024; and

    iv) A response from Dr Daynes to Ms Chafer's report in the form of a two-paragraph email, with a statement of truth, dated 23 September 2024.

3. The sole ground of appeal is that extradition would breach the appellant's right to respect for private and family life under article 8 of the European Convention on Human Rights. More specifically, the appellant submits that:

    i) The fresh evidence demonstrates that separating the appellant and her young son would amount to a disproportionate interference with the appellant's and her son's family life; and

    ii) On the evidence before him, the DJ erred by giving inappropriate weight to a number of factors in the *Celinski* balancing exercise (*Polish Judicial Authority v Celinski* [2015] EWHC 1274 (Admin), [2016] 1WLR 551).

Factual background

4. The appellant's extradition is sought pursuant to an arrest warrant ("AW") issued on 9 March 2022 and certified by the National Crime Agency on 20 June 2022. The AW is a "conviction" warrant based on the appellant's convictions and sentence in relation to four offences dealt with under two case numbers in Poland. In the first case, the appellant was convicted and, on 27 March 2013, sentenced to a total of one year and six months' imprisonment for one offence of possession of 17.9g of amphetamine and

one offence of the supply of amphetamine to others. The sentence was suspended for five years. These drug offences took place between July and August 2012, when the appellant was aged 17.

5. In the second case, the appellant was convicted and, on 9 December 2015, sentenced to a total of one year's imprisonment for two offences of burglary. All but one day of this sentence remains to be served (a deduction being made for one day spent on remand in custody). The burglaries took place on 1 and 2 September 2014 respectively, when the appellant was aged 19.

6. The burglaries are described in the AW. As regards the first burglary, the appellant acted jointly with three men. The group broke into a grocery store. As it happens, nothing was taken from the store because the group was disturbed. As regards the second burglary, the appellant acted together with the same three men. The group broke into a different grocery store and stole six plastic beer crates.

7. As the burglaries took place during the currency of the suspended sentence, the appellant is now wanted in order to serve the entirety of the sentence for the drug offences, so that the total custodial sentence that she faces in Poland is 2 years and 6 months less one day.

8. The appellant attended the proceedings in relation to the drug offences. In relation to the burglaries, she attended only one of the four court hearings and did not attend her trial.

9. On 4 October 2015, the appellant arrived in the United Kingdom. She was 20 years old. She found employment and began a relationship with Daniel Nagorski. In April 2018, she gave birth to a son whom (in light of his young age) I shall call XN. At the time of the hearing before the DJ, the appellant and Mr Nagorski had separated and did not live together.

The DJ's judgment

10. At the extradition hearing, the appellant gave evidence. In his judgment, the DJ considered that the principal issue arising from her evidence was whether she had left Poland and come to the United Kingdom as a fugitive from justice. Disbelieving the appellant's evidence on this question, the DJ held that she was a fugitive. There is no appeal against this finding.

11. Mr Nagorski provided a written statement which said (among other things) that he had been in a relationship with the appellant for four years. The relationship had ended about two years previously. He stated that they were getting closer again but he did not regard them as being in a relationship at that stage. He confirmed that XN lived with the appellant full time. Mr Nagorski spent the weekends with XN, spending the day with him while the appellant worked and spending the night at the appellant's home where XN felt more comfortable. Mr Nagorski would sometimes visit during the week for an hour or two. He paid maintenance to the appellant for XN in the sum of £40 per week.

12. In relation to Mr Nagorski's evidence, the DJ observed:

> "[Mr Nagorski] says he has a good relationship with XN but that it 'does not compare to the relationship he has with [the appellant].' XN often asks about his mother and looks forward to seeing her and she has a strong positive impact on him. He believes that extradition would have 'a dramatic impact on XN' and 'XN would not be able to understand or accept the situation.'…
>
> … I accept that at least in the short term, it would be difficult for XN to come to terms with his mother's absence and the situation would be challenging for his father, but I cannot attach any real weight to the statement that XN would not be able to accept the situation. His father cannot know. **Children can get used to any situation**" (emphasis added).

13. Dr Daynes was called to give evidence. She adopted the content of her report and was not asked further questions. Her report dealt with (among other things) the effect that the appellant's extradition would have upon XN. In his judgment, the DJ noted that the report stated that XN did not have any developmental concerns. He noted Dr Daynes' conclusion that XN would be "devastated by the loss of his mother" and would be likely to experience "immediate and ongoing harm in all areas of his life." The DJ noted that the report relied on generalised conclusions from published research, on subjects such as attachment theory, the effect of parental incarceration on children, and "Adverse Child Experiences" meaning stressful events during childhood that can have a profound impact on an individual's present and future health.

14. The DJ made the following observations about Dr Daynes' report:

> "34. The report does not deal with the potential duration of any separation and the research quoted does not include any comment on how separation can successfully be mitigated by the remaining parent, nor on whether preparing a child in advance for the departure might assist. Nor does it seek to differentiate between mothers and fathers beyond saying 'Children may be more affected by parental imprisonment if their mother is imprisoned.' There does not seem to be any certainty in terms of how XN would react and cope to his mother's absence. He is coming out of the period of 'critical attachment' which, I am aware from other literature, lasts from approximately 6 months old to age 4 or 5, and he might manage better than expected. He would remain in the care of his father with whom he seems to have a good relationship and he already spends a substantial amount of the time when he is not at school with his father. I can't know with any certainty, but it does seem to me that to describe the likely effect upon him as he would be 'devastated' and would 'experience immediate and ongoing harm in all areas of his life' seems to me to be putting it very strongly and is difficult to know that it will come to that. I accept [Dr Daynes] has provided a professional opinion, and I must take account of it but there can't be any certainty in what she predicts for XN".

As this passage shows, the DJ was critical of Dr Daynes' report and did not accept that Dr Daynes' evidence demonstrated that the appellant's extradition would breach article 8.

15. Having summarised the evidence and made factual findings, the DJ set out the principles derived from the case law on the approach to be taken to article 8 in extradition cases. He applied the *Celinski* balance sheet approach, listing the factors for and against extradition.

16. Among the factors in favour of extradition were that there was a constant and weighty public interest in the United Kingdom honouring its treaty obligations; the later offences had been committed in breach of a suspended sentence order; there was a significant period of imprisonment to be served; the appellant was a fugitive; and Mr Nagorski was able to care for XN.

17. Among the factors against extradition were that the offences dated back to when the appellant was 17 and 19 years old; she had been living in the United Kingdom for over 7 years; she was living with her son who was by then 4 years old; her relationship with her son would be disrupted if she were to be extradited; and the effect on her son "may be harmful."

18. The DJ went on to weigh the various competing factors. He took into consideration the appellant's age at the date of the offences and the impact on XN. He concluded, nevertheless, that the factors in favour of extradition outweighed the factors against it. He held that the appellant's extradition would not be disproportionate and that it would be compatible with her Convention rights. Accordingly, he ordered the appellant's extradition.

The fresh evidence

19. I turn to the fresh evidence produced for this appeal.

20. In a witness statement dated 15 November 2023, the appellant stated that her relationship with Mr Nagorski had come to an end again because they were not compatible. She stated that he had reduced his contact with XN in order to punish her. As an example, she accused him of cancelling a visit to XN because he wanted to go cycling with his brother. She stated that Mr Nagorski had told her that XN could not sleep over in his home because his flatmate brought friends to the home for a drink on occasions. She said that she was now essentially raising XN by herself.

21. In a witness statement dated 14 June 2024, the appellant stated that her relationship with Mr Nagorski had worsened. She described Mr Nagorski as being very angry and spiteful towards her, shouting and swearing at her in front of XN. She claimed to have received text messages from him containing verbal abuse but no messages have been produced to the court. Despite these problems, she permitted Mr Nagorski to care for XN from Friday evening to Sunday each week. She accepted that XN enjoyed going to his father's home and spending time with him there. She stated that XN was forced to sleep on some duvets at his father's home because there was no bed for him. She alleged that Mr Nagorski was unable to take proper care of XN in relation to such matters as bathing and medication. She stated: "I think it's good that Mr Nagorski spends time with XN but I wish he would do more."

22. Dr Daynes' updating report was based on interviewing the appellant and XN at their home on 26 July 2024 and observation of XN there. Her report records that Mr Nagorski did not agree to be interviewed.

23. In the report, Dr Daynes confirmed that there were no developmental concerns about XN. In so far as material to the issues in this appeal, her overall conclusions were that:

> "7.04 As I stated in the previous assessment, **XN will be entirely devastated if Ms Debicka was removed from him**. As summarised in previous research, separation from a parent is almost always detrimental to a child (the exceptions to this are where a parent is neglectful or abusive – there is no evidence of either from Ms Debicka). **The loss of his primary caregiver will have a profound effect on XN and is likely to lead to a poor prognosis as he learns to manage her absence from his life. This is likely to include difficulties sleeping, behavioural problems and high levels of anxiety especially in relation to fear of losing others**.
>
> 7.05 **Furthermore, XN would not be able to maintain a face-to-face contact with Ms Debicka which will have a serious detriment to their relationship going forwards**. Given XN's young age, it is unlikely he will benefit from written contact with his mother. It also must be noted that, according to Ms Debicka, XN's father has threatened to withhold contact between them which, if true, will only add to his distress.
>
> 7.06 XN has regular time spent with his father in the house where his father lives (which Ms Debicka states he shares with another person) and so is used to this part of his living arrangements. If Ms Debicka was extradited and XN lived permanently with his father, this would represent significant upheaval as he had to learn a new set of routines and boundaries. It is unclear what the future living arrangements would look like – if XN would have his own room or bed, if Mr Nagorski would continue to share with his friend and how any visitors to the flat would impact on a young boy in the home. All of these changes would leave XN feeling more uncertain and anxious – both of which are already noticeable for him.
>
> 7.07 XN's school has identified future support which could be implemented in order to help him manage if his mother is extradited. It is essential that XN continues to attend the school as this will provide a level of stability, familiarity and predictability during what will be an unsettling and traumatic time.
>
> 7.08 **Ms Debicka has raised significant concerns regarding Mr Nagorski's ability to parent XN**. If her claims are proven accurate then this brings the potential for XN to be removed from his father and placed in care, which will have lasting psychological and emotional damage, likely to cause behavioural problems and generally have a poor outcome overall" (emphasis added).

24. Turning to Ms Chafer's report, the extent of her involvement with the appellant and XN is not clearly set out but, for the purposes of her report, she visited them at home and spoke to them. She records that Mr Nagorski did not give his views to her but relied on what he had already told Katie-Rae Smith, a Pre-Registration Social Worker working for the local authority who had produced a report apparently for family

proceedings in the County Court. Although she did not interview him, Ms Chafer's report states that Mr Nagorski had told her that the appellant should not be extradited as XN needed both of his parents. He told Ms Chafer that the appellant's extradition would cause XN to suffer distress.

25. Ms Chafer's report noted that XN's parental contact was arranged between his mother and his father to take place every weekend. XN had not raised any concerns about his contact with his father which he enjoyed. Mr Nagorski was renting a room from a friend, such that XN did not have a bed of his own, but Mr Nagorski had made an area on the floor for XN to sleep. The appellant had informed Ms Chafer that Mr Nagorski was no longer renting this room and was "sofa surfing."

26. Ms Chafer noted that if the appellant were to be extradited, XN may have to move home and adapt to further changes. Nevertheless, Ms Chafer understood that should the decision be made that the appellant be extradited, Mr Nagorski would have a home in place and that this would be close to school for XN. Mr Nagorski remained clear that he would care for XN and that he would ensure that he has everything in place including accommodation in order to care for XN.

27. Ms Chafer's conclusion was expressed in the following terms (grammatical errors retained):

> "It would be my professional view that extraditing Mother back to Poland would have a profound impact upon XN, especially as he has lived his life in the care of his mother and father, whether this be in a relationship or separated. Whilst parents can have a fractious relationship, **XN resides with his mother and has regular contact with his father. XN does not raise any concerns about the time he spends with either parent**…
>
> …
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> Any extradition would impact upon XN's right to a private and family life, considering this is all that he has known. The emotional distress upon XN could be detrimental, as he is not aware of the ongoing proceedings and for him to be unable to have physical contact with his mother for potentially several years could impact upon his relationship with his mother. It would also need to be considered the impact upon FN whilst in the care of his father, and how Father could manage and support XN's emotions, and XN's understanding of the situation. XN could express his emotions in different ways such as behavioural, which is not the child that XN currently presents as.
>
> Should the court make the decision that Mother is extradited back to Poland, **my professional view is that XN would need to be subject to a Child in Need plan, as there are unknowns at this time in relation to Father and his circumstances. It is also my professional view that XN may need to be open to a Child in Need plan** regarding the contact handover, if the extradition order is not made, as I am concerned that XN is likely to be witness to ongoing arguing between his parents" (emphasis added).

28. I have also been provided with the report by Katie-Rae Smith that I have mentioned above. Ms Chafer's report updated Ms Smith's report which is dated 20 September 2022 and so was in existence at the date of the extradition hearing. Ms Smith's report was presented to me as having been provided to the DJ but the DJ's judgment does not deal with it. No point is taken against the DJ in that regard.

29. Ms Smith's view was that any significant changes in XN's life would likely cause him a lot of distress. Nevertheless, Ms Smith's report noted that Mr Nagorski ensured regular contact between XN and his paternal grandparents who "would support him in caring for XN."

Legal framework

Court's powers on appeal

30. The court's powers on appeal are contained in section 27 of the Act which provides in so far as relevant:

> "(1) On an appeal under section 26 the High Court may—
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> (a) allow the appeal;
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> (b) dismiss the appeal.
>
> (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
>
> (3) The conditions are that—
>
> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
>
> (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.
>
> (4) The conditions are that—
>
> (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
>
> (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
>
> (c) if he had decided the question in that way, he would have been required to order the person's discharge."

Article 8 of the Convention

31. In *H(H) v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25, [2013] 1 AC 338 the Supreme Court considered the correct approach to article 8 of the Convention in the context of extradition where the interests of children were affected. Baroness Hale of Richmond JSC summarised the principles that can be extracted from the earlier

case of *Norris v Government of the United States of America (No.2)* [2010] UKSC 9, [2010] 2 AC 487. She stated:

> "8. We can, therefore, draw the following conclusions from Norris: (1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life. (2) There is no test of exceptionality in either context. (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. (4) There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no 'safe havens' to which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe."

32. In the same case, Lord Judge CJ stated at para 132:

> "…When resistance to extradition is advanced… on the basis of the article 8 entitlements of dependent children and the interests of society in their welfare, it should only be in very rare cases that extradition may properly be avoided if, given the same broadly similar facts, and after making proportionate allowance as we do for the interests of dependent children, the sentencing courts here would nevertheless be likely to impose an immediate custodial sentence: any other approach would be inconsistent with the principles of international comity. At the same time, we must exercise caution not to impose our views about the seriousness of the offence or offences under consideration or the level of sentences or the arrangements for prisoner release which we are informed are likely to operate in the country seeking extradition. It certainly does not follow that extradition should be refused just because the sentencing court in this country would not order an immediate custodial sentence: however, it would become relevant to the decision if the interests of a child or children might tip the sentencing scale here so as to reduce what would otherwise be an immediate custodial sentence in favour of a non-custodial sentence (including a suspended sentence).

33. The Divisional Court in *Celinski* considered the basis on which this court may interfere with the conclusions of a District Judge who has determined the proportionality of extradition under article 8. In a familiar passage, Lord Thomas of Cwmgiedd CJ held at para 24:

> "The single question . . . for the appellate court is whether or not the district judge made the wrong decision. It is only if the court concludes that the decision was wrong . . . that the appeal can be allowed. . . In answering the question whether the district judge . . . was wrong to decide that extradition was or was not proportionate, the focus must be on the outcome, that is on the decision itself. Although the district judge's reasons for the proportionality decision must be considered with care, errors and omissions do not of themselves necessarily show that the decision on proportionality itself was wrong."

Extradition offences committed as a child or young person

34. In *Deaconescu v Romania* [2023] EWHC 870 (Admin), Lane J considered the approach to proportionality in cases where an individual faces extradition for offences committed as a child. He stated:

> "11 It is plain, in my view, that the age of an appellant is a highly significant matter if the person concerned was a minor at the time of the offence in respect of which extradition is sought. I would respectfully agree in that regard with the judgment of Steyn J in *Bogdanovic v Regional Court in Bialystok (Poland)* [2020] EWHC 706 (Admin) at para.20, that age is 'a very significant factor'.
>
> 12 Andrew Baker J had made observations in the same vein in *Stragauskas v Regional Court in Lithuania* [2017] EWHC 1231 (Admin):
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> > 'I do not think it is appropriate for the court simply to proceed upon an assumption given Lithuania's entitlement to set its own sentencing policy that its policy and the application thereof have properly had regard to the appellant's Article 8 rights or Lithuania's responsibilities to put the welfare of the child first in the case of young offenders.'"

35. On behalf of the respondent, Mr Squibbs accepted that, in relation to offending after a person has passed his or her eighteenth birthday, the court should adopt the approach adopted in relation to sentencing young people in England and Wales that is set out in *Attorney General's Reference (R. v Clarke) R. v Andrews* [2018] EWCA Crim 185; [2018] 1 Cr. App. R. (S.) 52 in which Lord Burnett of Maldon CJ observed:

> "5. Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing… Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research… is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday…"

The parties' submissions

36. On behalf of the appellant, Mr Williams submitted that the fresh evidence demonstrated that the DJ's conclusion was wrong. Had that material been before the DJ, he would or should have reached a different conclusion as to the compatibility of an order for extradition with the appellant's article 8 rights. This was a rare case in which in all the circumstances extradition would be disproportionate.

37. Mr Williams emphasised that Ms Chafer had concluded only that XN *may* require a Child in Need Plan as a result of the deterioration in the relationship between his parents whereas, and by contrast, she had concluded that he *would* be subject to such a plan were the appellant's extradition to take place. He submitted that Mr Nagorski did not appear to have the financial resources to care for XN and that his personal situation (such as his "sofa surfing") was precarious. Mr Nagorski's failure to engage with either Ms Chafer or Dr Daynes in order to update the court should be held against him.

38. Mr Williams submitted that, at the date of the hearing before the DJ, the evidence demonstrated that the family unit would (in Mr Williams' words) "cope" if the appellant were to be extradited. That optimism was no longer well founded in light of (i) the fresh evidence of the deterioration in the relationship between the appellant and Mr Nagorski; (ii) the instability of Mr Nagorski's personal situation; and (iii) his abusive conduct towards the appellant. In this latter regard, Mr Williams directed my attention to information on police records (summarised in the reports before me) that Mr Nagorski had a history of sending abusive text messages and of some violence towards the appellant. Mr Williams accepted that Mr Nagorski would do his best to care for XN but emphasised that XN was now two years older than at the time of the extradition hearing so that adjustment to living without his mother would be harder.

39. Mr Williams submitted that the significant weight to be attributed to the appellant's young age at the time of the extradition offences and the devastating effect that her extradition would have on XN had made the case before the DJ a finely balanced one. The appellant was XN's primary carer. The extradition offences had not been especially serious and would not lead to a sentence of immediate imprisonment in the United Kingdom, particularly given the appellant's age and other personal mitigation. In light of delay in issuing the AW and the passing of time (even since the extradition hearing), the offences were old, which reduced the public interest in extradition. The fresh evidence could and should affect the *Celinski* balance to the extent that the conditions under section 27 of the Act were met.

40. In the alternative Mr Williams submitted that the DJ's decision taken on its own was wrong because he had criticised Dr Daynes' expert report on a basis that was not open to him. The report's conclusions had not been challenged by any cross-examination. The DJ had raised no issues about Dr Daynes' report at the hearing and had not suggested that any adverse view could be taken of it, despite the DJ being asked (so I was told) if he had any questions for Dr Daynes. It was unfair for the DJ to criticise the report when the nature of his criticisms had not been raised so that Dr Daynes could answer them. He relied on the general rule in civil cases, elucidated in *Griffiths v TUI Ltd* [2023] UKSC 48, [2023] 3 WLR 1203, paras 43, 70, 75-77, that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted.

Griffiths confirmed (at para 70(i)) that the rule extends not only to witnesses of fact but also to expert witnesses.

41. Mr Williams submitted that the DJ had failed to take into consideration or give proper weight to the fact that Dr Daynes had described the potential effect on XN of his mother's extradition as "devastating" and that her expert opinion was that XN would likely suffer "immediate and ongoing harm in all areas of his life." Dr Daynes' findings were clinically justified. There was no challenge to her expertise by the respondent and no scope for the DJ to reject her conclusions. The DJ had in addition failed to give proper weight to the appellant's young age at the date of the extradition offences.

42. Mr Williams drew attention to the DJ's conclusion that "children can get used to any situation" which he submitted was wrong and based on no evidence. He emphasised the DJ's reference to unspecified "other literature" when reaching the conclusion that the critical attachment period ends at age 4 or 5. He submitted that it was wrong and unfair for the DJ to rely on unspecified evidence that was not before the court.

43. Mr Squibbs submitted that there were no grounds for criticising the DJ's treatment of Dr Daynes' first report. He submitted that the fresh evidence did not meaningfully alter the position that existed at the time of the extradition hearing. On the contrary, Dr Daynes had reached very much the same conclusions in her first and second reports.

44. Mr Squibbs accepted that, if taken in isolation, each of the individual extradition offences was not of the greatest gravity but submitted that the court should consider the totality of the offending. The appellant had received a suspended sentence for offences of some severity. Notwithstanding that she had been given a chance to avoid prison, she had breached the terms of the suspended sentence both by committing the burglary offences as part of a group and also by stopping all contact with her probation officer.

45. Mr Squibbs submitted that, even making some allowance for the appellant's age, such flagrant breaches of a suspended sentence order which itself had been imposed for serious offending would likely attract an immediate custodial sentence if the sentencing exercise were taking place in England and Wales. As a fugitive, the appellant was properly regarded by the DJ as responsible for the delay in her case. While the appellant's young age at the time of her offending and her strong relationship with XN were factors weighing against extradition, it could not be said that they outweighed the factors which the DJ regarded as weighing in favour of extradition. There were no grounds for this court to interfere.

Discussion

The position of XN

46. It is surprising that (as I have quoted above) the DJ used the phrase "children can get used to any situation." That statement is wrong. However, in the context of the present case, it formed only a small part of the DJ's reasoning. On a fair reading of the judgment, this error did not make any difference to the outcome. It does not make the extradition decision wrong.

47. I agree with Mr Williams that the DJ should not have relied on his knowledge of "other literature" to reach the conclusion that the critical attachment period ends at age 4 or 5.

It is trite that the DJ was required to decide the issues on the basis of the evidence before him rather than on other, unspecified sources. However, Dr Daynes' first report said that, according to research, the critical attachment period lasts from birth to 5 years old. The DJ therefore made no material error. I reject Mr Williams' additional submission that there may have been unstated matters in the "other literature" which influenced the DJ. There is no indication in the judgment that any of his other conclusions were rooted in anything other than the evidence before him.

48. The fact that Dr Daynes was not cross-examined by the respondent or questioned by the DJ does not mean that the DJ was bound to accept that XN would suffer such severe consequences that his mother ought not to be extradited. This case is distinguishable from *Griffiths* because the DJ's criticisms of Dr Daynes, and his adverse conclusions about her report, did not flow from any lack of cross-examination or any lack of proper inquiry by the court. They stemmed from the inherent inability of the report to demonstrate that the appellant's extradition would give rise to consequences for family life that would be "exceptionally severe" (see *HH*, para 8, above).

49. Mr Williams submitted that Dr Daynes ought to have been probed about her conclusion that XN had no developmental concerns which, in context, means that XN had no particular or additional vulnerabilities that would (in addition to his age) weigh against his mother's extradition. However, neither cross-examination nor inquiries by the DJ could have led to further useful information about developmental concerns: there were none.

50. Mr Williams submitted that the DJ should not, in the absence of any questioning, have rejected Dr Daynes' conclusion that the loss of his primary carer would have a "devastating effect" on XN. I do not agree. Dr Daynes' conclusion was strong but it was broad and unparticularised. The DJ was entitled to look at the report itself in order to ascertain what those devastating effects would be. As I have set out above, the report mentioned sleeping difficulties, behavioural problems, and high levels of anxiety. The inability of XN to have face-to-face contact with the appellant in Poland would give rise to "serious detriment to their relationship." I accept that XN will suffer in these various ways and do not belittle the seriousness of such problems for a young child. However, the DJ was, on established principles of law, entitled to conclude that the specific problems described in Dr Daynes' first report do not outweigh the public interest in the extradition of criminals.

51. Mr Williams emphasised that the DJ had criticised Dr Daynes' failure to mention the extent to which Mr Nagorski could and did provide care for XN when Dr Daynes was not asked about this. It is however difficult to conceive how cross-examination or questions from the DJ would have assisted the appellant rather than elicited from Dr Daynes that there was (as set out in Ms Smith's broadly contemporaneous report) an adequate plan for XN's care, agreed between both his parents, which involved XN living with Mr Nagorski.

52. Much of Dr Daynes' report was expressed in general terms on the basis of the research literature that I have described. The level of generality is not helpful for the appellant. The DJ was, however, entitled to expect Dr Daynes to respond fully to her instructions which included giving her opinion on the effect of extradition on XN. There was no duty on the court to engage in a fishing expedition to elicit some form of additional and different information. If there were specific harms to XN, Dr Daynes should have stated

them in accordance with her instructions. There is no reason to suppose that she did not do so and no reason to suppose that questions in cross-examination or by the judge would have elicited a different picture.

53. I was provided with no persuasive submission that fairness required that certain matters be put to Dr Daynes. The DJ was critical of Dr Daynes' evidence but he was entitled to proceed on the evidence before him as adduced by the parties. He was not required to improve Dr Daynes' report for the benefit of the appellant, which would involve entering into the arena, which judges must not do.

54. In any event, the appellant has had a fresh opportunity to advance psychological evidence in this court and has submitted Dr Daynes' updating report. In the extradition context, where the High Court has a narrow jurisdiction under section 27(4), the court can expect fresh evidence to be targeted to the issues in the appeal.

55. Dr Daynes' fresh report is expressed at a high level of generality. It repeats much of what she had already said in the first report, to the extent that Mr Williams was bound to accept that its conclusions are materially the same. It relies to a significant extent, and uncritically, on what the appellant told Dr Daynes about Mr Nagorski's fluctuating personal situation and about his alleged failings as a carer for their son. Given that the appellant's evidence was to a significant extent disbelieved by the DJ, the appellant can expect the court to treat what she told Dr Daynes with a degree of scepticism.

56. Dr Daynes' response to Ms Chafer's report contains no proper analysis of any of the questions that arise in the present appeal. In short, the fresh evidence from Dr Daynes provides the court with no reason to interfere with the DJ's conclusions.

57. As regards other elements of the fresh evidence, Ms Chafer's report made plain that XN maintained regular contact with his father, despite the appellant's alleged concerns about his parenting skills. XN was said to enjoy the contact that he has with Mr Nagorski. Ms Chafer stated that there was no evidence that XN has suffered neglect, sexual or physical harm. Her concern that XN may have to adapt to changes and that he would suffer an emotional impact from his mother's extradition do not demonstrate the sort of exceptional severity contemplated in *HH*. Even if Mr Nagorski has housing problems, there is nothing to suggest that his problems are permanent. He has the support of his own parents in caring for XN. There is nothing to suggest that, if placed in a Child in Need Plan, XN would not be able to live with his father supported by his grandparents as suggested by the Deputy Safeguarding Lead at XN's school as related in Dr Daynes' first report. There is nothing in Ms Chafer's report which would make the appellant's extradition disproportionate.

58. The last element of the fresh evidence comes from the appellant herself. She has made two witness statements criticising Mr Nagorski's personal flaws and parental competence. The proposition that the appellant's fresh witness statements show any meaningful change of circumstances since the DJ's decision was not pursued with any particular vigour or in any detail. The statements were made in the bright light of an extradition order and cannot easily be regarded as objective. Even taking the content of the statements at their highest, they do not provide any basis for interfering with the DJ's decision.

Age of appellant at time of offending

59. The appellant was a child at the time of the drug offences and only 19 years old at the time of the burglaries. Her age at the time of her offending reduces her culpability and is a significant factor against extradition. The DJ had her age in mind and treated it as a factor against extradition. He weighed the fact that, when she offended, the appellant was "still in her teens". As part of his consideration of proportionality, he observed that the appellant's young age was "an important feature of the case." I do not accept that he should have done more or adopted a different approach.

60. As the DJ stated, the appellant's age was not decisive. She is a repeat offender who has breached the terms of a suspended sentence. Using domestic standards as a cross-check, I agree with Mr Squibbs that a person in her position would be likely to face a term of immediate custody in England and Wales even at a young age. The appellant's age does not provide a ground for concluding that the DJ's decision was wrong.

Overall balance

61. Mr Williams submitted that the appellant's young age and the position of XN mean that the case before the DJ was a finely balanced one. As such, this court can and should consider nuances in the evidence and small developments shown by the fresh evidence. In a finely balanced case, it was the nuances and small developments that could affect the outcome of the *Celinski* balancing exercise.

62. Attractively as this submission was made, there are no grounds to interfere with the DJ's decision. Weighing the relevant factors and taking the matter in the round, the appellant's extradition is proportionate.

63. The appellant is a fugitive who came to the United Kingdom to avoid the consequences of criminality. The delay between the offending and the issue of the AW was properly accorded little weight by the DJ in light of the appellant's fugitive status. Contrary to Mr Williams' submission, the delay between lodging the appeal and the appeal hearing in this court also carries little weight. The appellant chose to appeal and must face the consequences of doing so. Neither the appellant's age at the time of the extradition offences nor XN's welfare nor the nature of the appellant's offending outweigh the public interest in extradition for the purpose of serving her sentence.

64. Mr Williams relied on information reported to the police about Mr Nagorski. For example, the police recorded that on 28 June 2020 the appellant alleged that she and Mr Nagorski had had an argument in front of XN. She told the police that Mr Nagorski had hit her but failed to say how or where she was hit. The police saw no visible marks and the appellant then withdrew her support for further police action. Other information on police reports is equally vague. The probative value of this vague evidence is limited and does not demonstrate that the appellant should not be extradited. I should add that there is no suggestion that Mr Nagorski has ever contemplated violence against his son. Ms Chafer's report states expressly that the police have no information about Mr Nagorski that has "safeguarding relevance."

Conclusion

65. For these reasons, I am not satisfied that the DJ ought to have decided a question raised at the extradition hearing differently (section 27(3)) or that the fresh evidence would have resulted in the DJ deciding a question differently (section 27(4)). The appeal is dismissed.