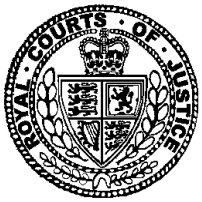

Neutral Citation Number: [2024] EWHC 459 (Admin)

Case No: AC-2023-LON-000719

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 5th March 2024

Before:
FORDHAM J

- -

Between:

MACIEJ HACZELSKI	**Appellant**
- and -	
POLAND	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co) for the Appellant
Tom Davies (instructed by CPS) for the **Respondent**

- -

Hearing date: 20.2.24
Draft judgment: 26.2.24

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

- -

FORDHAM J

FORDHAM J:

Introduction

1. The Appellant is aged 38 and is wanted for extradition to Poland, in conjunction with a conviction Extradition Arrest Warrant dated 1 July 2022, on which he was arrested on 10 November 2022. He has been on bail since then, with an electronically monitored curfew. Extradition was ordered by DJ King ("the Judge") on 10 February 2023, after a hearing on 12 January 2023 at which the Appellant gave oral evidence. As I will explain, the Judge made unassailable findings of fact; but it is appropriate for this Court to revisit the Article 8 balancing exercise afresh, standing on the platform of those findings, given the contact re-established between the Appellant and his now 8 year old daughter, from 25 March 2023 to today. Informed consideration afresh is what Thornton J plainly envisaged when she granted permission to appeal on 16 October 2023.

Whose Article 8 Rights?

2. In sections 21 and 21A of the Extradition Act 2003, Parliament spoke of whether "the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998". Reference is sometimes seen, even in family life cases, to the question as whether extradition is compatible with "the requested person's … Convention rights". However, Parliament did not express it that way. For good reason. Family members impacted by extradition have relevant Convention rights too. The Human Rights Act 1998 made these directly enforceable. The Courts have to be satisfied that, where extradition would be an interference with any person's Article 8 right, that interference is justified as proportionate: see HH v Italy [2012] UKSC 25 at §5.

Putative Fresh Evidence

3. There are before me various documents which were not before the Judge. (1) First, there is the Cafcass Report written by Cafcass Family Court Adviser Nicola Marr on 11 January 2023. This was filed in proceedings in the Watford Family Court, in which the Appellant was seeking contact with the daughter. The Appellant had been interviewed for the purposes of producing it. In due course, the Cafcass Report came to be described in recitals to orders made in the Watford Family Court. (2) Secondly, there are those Orders. They are dated 21 March 2023 and 6 September 2023. (3) Thirdly, there is an undated Addendum Proof of Evidence from the Appellant, written in September 2023, referring to those family proceedings. (4) Fourthly, there is a report produced around 29 January 2024 written by Grace Chukwu an "Independent Parenting Assessor, qualified Counsellor and Psychologist". Mr Davies has not opposed the Appellant being able to put that material before the Court, recognising that it focuses on the position of an affected child. But he makes points about the expertise of Ms Chukwu and the contents of her report; and about the weight and implications of the new materials as a whole.

Expert Evidence

4. In principle, a skilled person can give admissible "opinion evidence" where: (i) the evidence is necessary to assist the court in its task; (ii) the witness has the necessary knowledge and experience; (iii) the witness is impartial in their presentation and assessment of the evidence; and (iv) there is a reliable body of knowledge or experience to underpin the expert's evidence. This is explained, in the context of civil proceedings,

in Kennedy v Cordia (Services) LLP [2016] UKSC 6 [2016] 1 WLR 597 at §44 (see the White Book 2023 Vol.1 at p.1110). Extradition cases are classified as criminal, and expert evidence is governed by CrimPR19 – see especially CrimPR19.4 – rather than CPR35. But the principled discipline applies. One practical observation is that extradition cases are decided by judges, not juries. And judges should, through their experience, be less likely than juries to be "unduly" influenced by skilled witnesses (see Kennedy §35). A skilled witness, like any non-expert witness, can also give evidence of what they have observed if it is relevant to a fact in issue (Kennedy at §40).

Background

5. The Appellant is wanted to serve two years (less one day) of a custodial sentence which was originally imposed, as a suspended sentence, on 18 January 2006 taking effect from 26 January 2006. The period of suspension was 5 years. The index offence to which that sentence related was committed by the Appellant, when aged 20, on 21 September 2005. He picked the lock of a Volkswagen Golf car and stole from it a bag containing personal belongings including an identity card, a broker's ID, a Polish passport, a German passport, secondary education certificates and an army book. In purely financial terms, these belongings were worth PLN 200 (£40). A year earlier, on 26 January 2005, the Appellant had been convicted in Poland of an attempted burglary. This had resulted in a February 2005 two-year custodial sentence, itself suspended for 5 years. That previous conviction, and the fact that the Appellant had breached the conditions of that suspended sentence when he broke into the Golf and stole the bag, were no doubt relevant to the Polish sentencing function in January 2006. Having been convicted and sentenced in January 2006, at a hearing where he was present, the Appellant became the subject of the conditions of the suspended sentence, for the 5 year period through to 2011. Those conditions included a requirement of regular contact with a probation officer.

6. In July 2006 the Appellant left Poland and came to the United Kingdom, discontinuing the required contact with probation, and thus putting himself in breach of the conditions of his suspended sentence. There is, rightly, no challenge on this appeal to the Judge's finding – based on the evidence including the Appellant's oral evidence – that the Appellant came to the UK as a fugitive. This was fatal to the resistance to extradition based on s.14 of the Extradition Act 2003, but the Judge went on to hold that in any event extradition was neither "oppressive" nor "unjust" for the purposes of that statutory extradition bar. The Appellant has been in the UK since July 2006. He has no criminal convictions here. The September 2004 and September 2005 offences in Poland, aged 19 and 20, are his sole criminal convictions. He has been employed in the UK. He has had what the Judge found is a "settled" and "open" life. He was in a first relationship from 2012, as a result of which he and his then partner (the "former partner") had a daughter in 2015. As the Appellant accepted, he had been aware of the activation of the suspended sentence in Poland, from 2013 onwards. He instructed a lawyer in Poland to make applications to defer and appeals against the refusals of those applications. As he described, those applications were refused in November 2016, August 2017 and February 2019, and then his appeals were unsuccessful in July and September 2019.

7. The Appellant's relationship with the former partner ended in 2018. But he continued to have contact with the daughter, between 2018 and 2022 (when she was aged three to seven). The Appellant's relationship with his partner (the "current partner") began in 2021. She had come to the UK in 2016. Her son had been born here in May 2018. The current partner's November 2022 witness statement told the Judge that the Appellant had

recently moved in with her and her son (then aged four). In March 2022, the former partner had become unwilling for the Appellant to continue to spend time with their daughter (now seven). That was what led to the proceedings in the Watford Family Court, by which the Appellant sought to re-establish direct contact. The order of the Watford Family Court on 21 March 2023, following the recommendation in the January 2023 Cafcass Report, was an interim order that the Appellant and the daughter should be able to spend time together on a weekly basis from 25 March 2023, as a consequence of which interim direct contact was duly re-established. The order of 6 September 2023 of the Watford Family Court recorded the by then agreed position for direct contact on a weekly basis (including overnight weekend time together on a fortnightly basis) and during holidays. That order recorded that the daughter has "two parents who are equal, both of whom are involved in her life". As both Counsel accept, the family court proceedings and the extradition proceedings are parallel lines, each addressing distinct issues. For a discussion of the relationship between the two, see T v Poland [2017] EWHC 1978 (Admin) [2017] 4 WLR 137 at §47. The orders of the Watford Family Court record that that court was aware of the extradition proceedings and had been given information about their likely timeframe. The Cafcass Report of January 2023 had referred to the extradition proceedings and the importance of the outcome of any hearing, and of the Family Court then considering whether that outcome would impact in any way on the re-establishing and continuing of direct contact between father and daughter. When the Appellant's direct contact with the daughter was re-established on an interim basis from 25 March 2023 in accordance with the 21 March 2023 order of Watford Family Court, his extradition had been ordered by the Judge (10 February 2023), but the Appellant had filed his Appeal Notice to this Court (13 February 2023). When the Watford Family Court made its order on 6 September 2023, permission to appeal had been refused by this Court on the papers, two days earlier (4 September 2023). The Appellant was subsequently recognised as having a reasonably arguable appeal, on 16 October 2023, when permission to appeal was granted.

Looking at the Overall Article 8 Evaluation, Afresh

8. Mr Hepburne Scott's Article 8 argument reminds me that an appeal should be allowed if the Article 8 question should have been decided differently because the overall evaluation was wrong in the light of the significantly different weight which should have been given to crucial factors (see Love v USA [2018] EWHC 172 (Admin) at §26). He submits that the changed circumstances and fresh evidence justify striking the Article 8 balance afresh, as a result of which this Court should conclude that the factors weighing against extradition outweigh those capable of weighing in its favour, so as to render unjustified as disproportionate the interference with the Article 8 private and family life rights of those affected: the Appellant, the daughter, the partner, and the partner's son.

Standing on a Platform

9. Mr Davies, rightly, does not contest that it is appropriate for this Court to re-evaluate the Article 8 evaluation afresh. But looking afresh does not mean starting with a blank sheet of paper. As both Counsel agree, although this Court revisits the Article 8 evaluation afresh, it does so 'standing on the platform' of the Judge's findings of fact and description of the evidence, set out in the Judge's judgment. Unless some feature of the Judge's factual and evidential assessment has demonstrably been superseded, or unless it can successfully be impugned, this Court derives all the benefits from aspects carefully

recorded by the 'front-line judge' who heard the evidence, including the oral evidence. That is as it should be.

The Article 8 argument

10. Mr Hepburne Scott rightly emphasises the integrated evaluative approach which Article 8 requires. Unlike the Extradition Act 2003's statutory flowchart of distinct extradition bars, which operate like a 'route to verdict', the Article 8 bar raises features which require a holistic evaluation, of all the features which weigh in the balance, for and against extradition.

11. Mr Hepburne Scott submits that this is a case with a "constellation" of "very strong factors" weighing against extradition; as well as a series of features of the case which substantially reduce the weight of the factors capable of weighing in favour of extradition. The key points, on which he relies, are these:

12. First, there is the seriousness of the offence. The weight to be attached to the public interest in extradition varies according to the nature and seriousness of the crime or crimes involved: HH v Italy [2012] UKSC 25 at §8(5). Although the Judge was not wrong to use the word "serious", this offending was nowhere near the top of the scale of criminal offending. That is seen: in the nature and circumstances of the offending (picking a lock and taking a bag), in the relatively modest value of the items that were taken, and in the fact that the sentence was recognised by the Polish courts as appropriate to be suspended.

13. Secondly, there is the fact that the Appellant was aged just 20 at the time of the offending. That is a distinct aspect of the nature of the offending which itself reduces the public interest in extradition.

14. Thirdly, this offence was 18½ years ago, in September 2005. It is not only old; it is "ancient". The delay and passage of time since the crime was committed both (a) diminish the weight to be attached to the public interest, and (b) increase the impact on private and family life: HH at §8(6). Here, the passage of time is very lengthy, and these effects are both very significant and substantial.

15. Fourthly, there are the circumstances of that passage of time, viewed from the perspective of the Polish and UK authorities, their knowledge and their conduct. The Polish probation service was well aware, from July 2006, that the Appellant had breached his suspended sentence condition of remaining in regular contact. And yet the activation of the two-year offence did not take place until April 2013. That was nearly 7 years after the first breach, and more than 2 years after the end of the 5 year suspension period. There was then the further period through to the Extradition Arrest Warrant in July 2022, including the period of nearly 3 years after the dismissal of the final appeal in September 2019. Had the Polish authorities wished to do so they could have acted far earlier. This picture does not suggest any urgency about bringing the Appellant to justice, which is also an indication of the importance attached to his offending (HH at §46).

16. Fifthly, there is the fact that the Appellant has committed no further offences at all in the 19 years since September 2005, and in the 18 years since coming to the UK in July 2006. There has been an "utter transformation", to living a responsible and law-abiding life. Viewed in terms of the Appellant's adult life, this is 19 years out of 21. And it is the most recent 19 years. The Appellant has succeeded in putting offending behind him. This

should weigh strongly in his favour and, again, serves to reduce the weight of the public interest in extradition to serve a sentence.

17. Sixthly, during those 18 years in the UK, the Appellant has done more than live a crime-free life. He has established very strong private and family life ties to the UK. He has established a record of gainful employment. He has established durable relationships. Central to this is the strong bond – recently successfully re-established – of contact with his now 8 year old daughter. There are also the strong bonds of the cohabiting relationship with his partner of 3 years, and her young five year-old son for whom he is a father figure.

18. Seventhly, there are the serious impacts on all those affected, including the entirely blameless victims. There is the serious impact on the partner, and the five year-old stepson, with whom there is a stable family life. There will be serious emotional and financial implications for them both. There is then the exceptionally severe impact for the 8 year old daughter. Her father is being snatched away from her, after the re-establishing of contact between them. Extradition will involve a re-separation, with lasting long term implications, which will be profoundly negative. As the Appellant puts it in updating evidence, extradition will "emotionally devastate" his daughter, at her tender age where stability and consistency are of utmost importance, disrupting the progress made in building the relationship, sending a confusing message where she would not be able to understand the reasons for his absence. There are also serious financial implications for the daughter, and for the former partner as her primary carer. The Appellant provides ongoing financial support – including extra payments for her extra-curricular activities – for the daughter, through the former partner. That will be curtailed by extradition.

19. Eighthly, there is the expert evidence. The Cafcass Report is admissible and weighty opinion evidence, which recorded the concern that the daughter had been:

> ***… significantly emotionally impacted as a resulted of the conflict between her parents. This is because she has not spent time with her father for approximately 11 months as a result of the conflict between her parents and there does not present as being any justifiable reason for this. This has impacted on [her] ability to make positive memories with her father during this time and spend meaningful quality time with him. To some extent, it may also have impacted on the bond which [she] has with her father …***

20. Then there is Ms Chukwu's report. This assists in two ways. One is as relevant evidence of Ms Chukwu's observation of father and daughter playing games and activities and together in the kitchen, showed a significant healthy father and daughter relationship comprising love, care, respect and structure with a strong attachment. The other is as properly admissible "opinion evidence" as to the impact of extradition. The Chukwu Report explains the following: that the relationship would have a positive effect on the daughter as she develops; that the Appellant's consistent role as a "joint parent" seems to be crucial to the daughter's well-being and overall development; that the the absence of a father from a daughter's life can lead to a range of psychological effects known as FDS (Fatherless Daughter Syndrome); that the research on FDS is of "particular relevance" to this case; that; and that growing up without her father, with "all contact" with the daughter "ceasing", may leave the daughter with FDS and unresolved trauma; and that it is in the best interests of the daughter not to be separated from her father.

21. In light of this, and all of the other features of the case, and their cumulative effect on the balance of factors against – and in favour of – extradition, the Article 8 appeal should be allowed. That is the argument.

CRC Article 9

22. At one point in her Report, Ms Chukwu tells me: "Of relevance to the report is Article 9 of the United Nations (UN) Convention on the Rights of the Child (CRC) [which] states that, children must not be separated from their parents unless it is in the best interests of the child (for example, in cases of abuse or neglect)". This is a point which I think I should address. Here is CRC Article 9(1):

> ***States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.***

23. I interpose that CRC Article 9(1) is a provision has been considered alongside "the principle that the child's best interests are a primary consideration when considering [ECHR] Article 8, in the context of extradition" (see R (Abdollahi) v SSHD [2013] EWCA Civ 366 at §§30, 33). The "best interests of the child" as "a primary consideration" derives, not from Article 9, but from Article 3(1) of the CRC. As Mr Hepburne Scott accepts, Article 9 does not mean that extradition – which separates a parent from a child – will violate international law, unless extradition is "necessary for the best interests of the child". Nor would arrest and imprisonment, under a domestic criminal process, do so. Otherwise, Article 9(1) would elevate "a primary consideration" to "the decisive factor". I add this. Doubtless, CRC Article 9 is especially important in the context of "child welfare measures" (see eg. Ibrahim v Norway (2022) 74 EHRR 25 at §145). I note that Tobin's UN Convention on the Rights of the Child (2019) speaks (at p.313) of the content of Article 9 as "preoccupied with the standards and procedures that regulate *state removal* of a child from his or her parents". For the purposes of the present case, I can leave it there.

Discussion

24. I have needed carefully to consider the Article 8 questions of proportionality of the interference – which extradition would constitute – with the rights to respect for private and family life of each and all of the relevant individuals, based on all the materials and all the points that have been made. I have considered individually, and cumulatively, the factors capable of weighing against extradition, and the factors capable of weighing in favour of extradition. Having done so, I am unable to accept that Mr Hepburne Scott's carefully focused constellation of features make extradition disproportionate in this case. In my judgment, the factors in favour of extradition decisively outweigh those capable of weighing against it. That was the Judge's view in February 2023. It is my view, accepting the submissions of Mr Davies, a year later. In my judgment, extradition would not be a disproportionate – but rather a proportionate – interference with the Article 8 rights of each and all of the affected individuals. I will explain why.

25. Mr Hepburne Scott has laid particular emphasis on the impact of extradition on blameless third parties, especially the children whose best interests are a primary consideration, and especially the daughter. That is where I start.

26. I have explained that this is a case where the High Court ought to consider the Article 8 balance afresh, but standing on the platform of the Judge's findings and discussion of the evidence as it was in January 2023. It is right to recognise that the Judge had regard to the impact on extradition in terms of the father-daughter relationship. He recorded that the Appellant "has not spent time with his daughter directly for some time". But he had well in mind the prospect of re-establishing of contact between father and daughter, which extradition would undermine. This is from the Judge's Article 8 'balance-sheet', listing factors weighing against extradition:

> ***… v. [The Appellant] has a 7 and a half year old daughter for whom he has Parental Responsibility and for who he pays financial support; vi. His daughter evidently had a close relationship with him in her early childhood as he and her mother lived as a family unit after she was born; vii. He play[ed] a significant role in her life up to a year ago …; viii. He has demonstrated his love and commitment to his daughter by bringing private law family proceedings to seek an order that he be able to spend time with her; … x. Extradition and consequent separation will cause emotional harm to … his daughter…; …***

The Judge returned to this aspect when referring to the Appellant:

> ***… becoming a father and maintaining a close loving relationship with his daughter and pursuing private law proceedings … His relationship with his daughter will undoubtedly be affected …***

27. The re-establishing of the contact with the daughter clearly derives – on the evidence – from a genuine and close relationship between father and daughter. After a year without seeing one another – with the concerns expressed in the Cafcass Report – the weekly contact has recommenced and has been in place for 11 months, with overnight stays for the last 5 months. At the heart of all of that has been the assessment of the Family Court, accepting the recommendation in the Cafcass Report, that re-establishing contact and ongoing contact of that nature are in the best interests of the daughter. Extradition of the Appellant will interrupt that re-established relationship of contact. It will do so by removing the Appellant to be sent abroad to serve two years in jail. It will do so within a year of that contact having been re-established. It will do so in the case of a child who was aged 7 at the start and is now aged 8. It will do so against a backcloth where she has already once lost contact for a period of the year aged 6, from March 2022. Furthermore, there is the financial impact. The Judge found as a fact that the Appellant is a financial provider for the daughter and contributes to her upbringing, and the ability to continue to do so would be removed by extradition. That will, in turn, impact on the former partner's financial position. I accept the further evidence about the financial support and what it means.

28. I accept that the Appellant's extradition is not a step which will be in the best interests of the daughter. On the contrary, it is the Appellant's discharge which would be in the daughter's best interests. The same is true for the stepson. These best interests are "a primary consideration". They weigh heavily. But they are not, of themselves, a bar on extradition, as Mr Hepburne Scott rightly accepted.

29. It is right to take full account of other aspects of the evidence. The stepson will remain with his mother and the Judge described the partner's evidence, that "she could and

would return to Poland if he was extradited" which is "her country of birth and is where her parents still reside", that being a move which "will not therefore be an intolerable burden upon her given her familiarity with Poland". The daughter lives with her mother – the former partner – with whom she has lived since her birth in August 2015. The mother is and remains in the role of primary carer. I have noted that Ms Chukwu says: "Given what I have been informed, should Mr Haczelski be extradited to Poland and imprisoned, all contact with his daughter would cease". She also speaks of the impact of separation "in the long-term", and the "detrimental impact of [the daughter] growing up without her father". However, the Judge specifically found that the Appellant would be able to return to the UK to resume the relationship with the daughter, after serving his sentence in Poland. He said of the Appellant's relationship with his daughter, that this "could be resumed once he has served his sentence". Mr Hepburne Scott has rightly accepted that this is a finding which he has no basis for inviting me to overturn.

30. I accept that there will be a serious impact – an agony – for father and daughter, in now losing their regular time together, once again. They will be losing the re-established contact, after what was assessed in the Cafcass Report as the significantly detrimental interruption of 11 months. What they have re-established – and what the Appellant fought for – will be removed from them again. On the other hand, it will be for two years with a known horizon. The principle that it is in the daughter's best interests for there to be direct contact has been established through the family proceedings. The Judge had factored in, as one of the detrimental impacts of extradition, that the relationship of contact with the daughter had not yet been re-established. He said extradition would mean the Appellant "not being able to participate in private law proceedings relating to his daughter whilst he is not in the UK with the likely outcome being that an order that he spend time with his daughter would not be made". It is right to recognise that part of the change of circumstances is that the Appellant has, in the event, been able to participate in the private law proceedings, and has in the event established that – in principle – it is in the daughter's best interests for there to be direct contact between the two.

31. I accept the assessment in the Cafcass Report, about the significant emotional impact of the previous interruption in contact between father and daughter. I accept that the daughter would, again, be significantly emotionally impacted. Not, this time, by reason of a conflict between her parents, but because her father now has to go away for two years. I accept that this is more than twice as long as the 11 months described in the Cafcass Report. I accept that this may be, for a two year period, a complete cessation of contact. I accept that it will mean "growing up without her father", interrupting "the significant healthy father and daughter relationship" which Ms Chukwu observed and has properly and helpfully described, for that period.

32. I cannot, however, accept that the Appellant's extradition will mean separation, and "growing up without her father", "in the long-term". And I do not accept that extradition brings the prospect of "Fatherless Daughter Syndrome" or "unresolved trauma". On those points, I share the concerns which have been raised by Mr Davies for the Respondent about the nature of the Chukwu Report, as I will now explain.

33. When permission to appeal was granted at the renewal hearing by Thornton J (16 October 2023), the Order included a recital which recorded

> ***the Court expressing a view that in order to assist the Court with an understanding of the impact of any extradition on [the daughter], there should be a report on the impact of withdrawal of***

> ***contact between the Appellant and [the daughter] consequent on extradition, in circumstances where contact has recently been re-established pursuant to the order of the Watford Family Court dated 6 September 2023.***

There was then an application (20 October 2023) for an extension of the representation order to instruct an "expert clinical psychologist report". Thornton J refused that application on 20 November 2023, directing the filing of any Cafcass Report. She made a direction in two parts. First, if there were no Cafcass Report, the Appellant:

> ***may instruct a registered independent social worker (at legal aid rates) to consider the impact of extradition on the Appellant's daughter, in light of contact having been recently re-established***

Secondly, if there were a Cafcass Report, the Appellant could

> ***file and serve short submissions … if the Appellant still wishes to instruct an independent social worker.***

And the Reasons for the order of 20 November 2023 had said:

> ***to instruct a registered independent social worker who can provide the Court with the necessary assessment. An example is to be found here Expert Assessments in Social Work: WillisPalmer [weblink given]. This example is provided solely to guide the Appellant's representatives as to the assistance the Court has in mind in case they are not familiar with family court proceedings. It is not intended as a recommendation of this particular provider or as a mandatory requirement to use the particular provider.***

Pausing there, I note that Grange and Niblock, Extradition Law: A Practitioner's Guide (LAG, 2021) emphasises the need for relevant proven expertise (§9.39), and gives as an example (§11.88), when identifying a "particular area of expertise", of what may be a choice between "child psychologist" or "independent social worker".

34. An extension of the representation order was subsequently obtained. The Chukwu Report was commissioned and filed. Fresh evidence submissions on 29 January 2024 said this of Ms Chukwu's Report: "a report of this ilk was clearly envisaged by the Order of Thornton J granting permission to appeal". But the first difficulty is that Ms Chukwu is not a "registered independent social worker". In the chronology at the beginning of her report, she refers to the Orders of 16 October 2023 and 20 November 2023 and lists them as documents seen. She describes herself as "a qualified Counsellor, Psychologist and Independent Parenting Assessor", who is a "Parenting Specialist". She has worked for the last 14 years in the Parenting Practitioner Family Support and Protection Team of a local authority. Her qualifications are: (1) Psychology Level 3 Diploma, Association of Learning (2022-2022); (2) ParentAssess training (2023-2023); (3) Triple P Positive Parenting Programme (2015); (4) Clinical & Pastoral Counselling Institute of Counselling (1999-2002); (5) Introduction To Counselling (Advanced Diploma); (6) Grief and Bereavement Counselling (Advanced Diploma); (7) Crisis Counselling (Advanced Diploma); (8) Marriage and Family Counselling (Advanced Diploma). I am not doubting this training or experience, or its value. But she is not the "registered independent social worker" to whom Thornton J was expressly referring. And I have been unable to be satisfied that this enables me to rely, as an expert opinion, on references to extradition bringing the prospect of "Fatherless Daughter Syndrome" or "unresolved trauma".

35. The other main difficulty is the clear premise found within the Chukwu report, about extradition meaning "all contact" with the daughter "ceasing", in "the long-term". Something has gone wrong here along the way. Perhaps Ms Chukwu has been mis-informed; or did not pick up on what the Judge said. The basis for "long-term" is not explained. Ms Chukwu makes no mention of the Judge's finding that the Appellant's relationship with his daughter "could be resumed once he has served his sentence". To compound matters, she also speaks at one point of the need for decision-makers to be properly informed as to the position of a child "affected by the discharge of an immigration function". I do not know why this has been included. This is not a deportation case. Ms Chukwu accepts the positivity of the relationship re-established after the previous one-year interruption, during a period of uncertainty and parental conflict. She does not consider the implications of a two-year separation, with a known horizon. Nor does she address what could be done to explain to the daughter and reassure her. Her entire analysis reads as being premised upon the Appellant's extradition as having a "long-term", terminating effect for his relationship with his daughter. The Judge made an unassailable finding to the contrary.

36. I need to put the impacts of extradition alongside the other features, including those which Mr Hepburne Scott has emphasised. The Judge described the index offending as an offence which is "serious". He referred to the financial loss suffered by the victim and to the lengthy custodial sentence. Mr Hepburne Scott rightly accepted that "serious" is an apt description. This was breaking into a car and stealing a bag, removing personal items including important identity documents. The Appellant was aged 20. But he was an adult. And the seriousness of the offending is aggravated by the fact that it was an offence committed during the period of, and in breach of, a two-year custodial sentence which had been imposed for another offence (attempted burglary) committed less than a year earlier, aged 19. It is appropriate for the extradition court to respect the two years custody and, although originally suspended, the activation.

37. Mr Hepburne Scott is right to emphasise the Appellant's age – 20 – at the time of offending. He is right to emphasise the Appellant's good character and absence of offending during the last 19 years, during the entirety of the 18 years while in the UK. I entirely accept that this is the last 19 years of the 21 years of the Appellant's adult life.

38. That brings me to the 'age' of the offending (which took place in September 2005), and the points about delay and the passage of time. It is important not to see the passage of time in a vacuum, but to see it in its proper context. It is true that the offending goes back to September 2005, and that there was no activation until April 2013. That was in circumstances where the Appellant's failure to keep in contact with probation had arisen from July 2006. On the other hand, the Appellant knew and understood that he had been given this second suspended sentence, with its 5 year suspension period. He knew that, in order to avoid having to serve his two-year custodial term, he needed to keep in regular contact with his probation officer throughout a 5 year period which ran until January 2011. He then left Poland in mid-2006 and came to the UK, failing in his ongoing duty to keep in contact with the probation service, giving rise to an ongoing picture of non-compliance up to 2011. The Judge was right not to criticise the Polish authorities for not activating the suspended sentence until after the 5 year suspension period had run its course, in the context of the Appellant's fugitivity and his ongoing breach which continued through the entirety of the 5 year term. I do not accept that the Judge should have criticised the Polish authorities, or interrogated their conduct, during that initial

period. By 2013, the Appellant was very well aware of the activation of the sentence. The period of time between 2013 and 2019 was directly attributable to the various steps which the Appellant was himself pursuing, unsuccessfully, in Poland to avoid having to serve his sentence. He made no fewer than three applications for deferral of his sentence, all of which failed in November 2016, August 2017 and then February 2019. He then pursued two successive appeals, which also failed in July 2019 and September 2019. His daughter was born during this period, in August 2015.

39. That leaves the passage of time between September 2019 and the issuing of the Extradition Arrest Warrant on 1 July 2022. The fact is that the Appellant was well aware that he was now wanted to serve the sentence. He had failed in his sustained 7-year multiple attempts to have that obligation lifted or deferred. He was and remained a fugitive. He was unlawfully at large. He left the onus on the Polish authorities to pursue extradition proceedings and track him down. And that is what they did. In his reply, Mr Hepburne Scott submitted that 2019-2022 would have been the most critical period of attachment between parent and child, with the daughter ages 4 to 7. But that is very much a double-edged point. For this is the period when the Appellant did have an ongoing presence and direct contact with his daughter.

40. I cannot see how, viewed in context, the sequence of events substantially undermines or reduces the weight attributable to the public interest considerations in favour of extradition. This is not in my judgment a sequence of events indicative of the Polish authorities having no real or significant interest in calling the appellant to account and requiring him to face Polish justice. Indeed, the sequence of unsuccessful attempts by him to avoid, which the Polish authorities rejected and resisted, demonstrates the appetite on their behalf – unmistakeably apparent to him – for the Appellant to serve the activated suspended sentence which he had knowingly breached.

41. I do entirely accept, as did the Judge, that the passage of time serves to strengthen the private and family ties to the UK, increasing the impacts of extradition, as matters capable of weighing in the balance against extradition. The family and private life ties are a function of the passage of time. The changes of circumstances in private and family life have taken place during that passage of time. They involve strong family ties. Which takes me back to the topic with which I started: the impacts of extradition and the innocent third parties.

42. Standing back and looking at the outcome overall, in light of all the features in the case, I have been persuaded by Mr Davies that the public interest considerations in favour of extradition do decisively outweigh those individually and cumulatively capable of weighing against extradition. The Appellant has been successful, pending his extradition, in re-establishing his relationship with his daughter and in demonstrating that contact between father and daughter is in her best interests. There are strong public interest imperatives which outweigh the detrimental impacts for all concerned of extradition. And all of this is a set of direct consequences arising from the Appellant's choices, in failing to adhere to the conditions of his suspended sentence, in running away from those, and then in seeking to avoid the outcome. He was fully entitled to exercise his due process rights in Poland and in these extradition proceedings. But ultimately the Polish authorities are entitled to have him return to serve his sentence. That insistence on which is an interference with Article 8 rights, involving serious impacts for blameless third parties. But it remains a proportionate set of interferences.

Conclusion

43. In all the circumstances and for these reasons the appeal is dismissed. Since it has proved incapable of being decisive, I will formally refuse permission to adduce the fresh evidence.