Neutral Citation Number: [2025] EWHC 1956 (Admin)

Case No: AC 2024 LON 003132

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2025

Before :
Mr Justice Dexter Dias

- -

Between :

ANTANA SINKEVICIUS	**Appellant**
- and –	
(1) REGIONAL COURT IN KAUNAS **(2) PROSECUTOR GENERAL'S OFFICE OF THE REPUBLIC OF LITHUANIA**	**Respondents**

- -
- -

George Hepburne Scott (instructed by **SG Law Solicitors**) for the **Appellant**
Adam Squibbs (instructed by **CPS Extradition Unit**) for the **Respondents**

Hearing dates: 26 June 2025
(*Judgment circulated in draft: 21 July 2025*)

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JUDGMENT

Remote hand-down: this judgment was handed down remotely at 10.30 am on Monday 28 July 2025 by circulation to the parties or their representatives by e-mail and release to the National Archives.

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THE HON. MR JUSTICE DEXTER DIAS

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Mr Justice Dexter Dias :

1. This is the judgment of the court.

2. To assist the parties and the public to follow the main lines of the court's reasoning, the text is divided into ten sections, as set out in the table of contents above. The table is hyperlinked to aid swift navigation.

I - Introduction

3. This is an extradition appeal.

4. The appellant and Requested Person ("RP") is Antanas Sinkevicius, a Lithuanian national. He was born on 19 June 1990 and is now aged 35. The appellant is represented by Mr Hepburne Scott of counsel. The respondents are judicial authorities in Lithuania: the Regional Court in Kaunas and the Prosecutor General's Office of the Republic of Lithuania. The respondents are represented by Mr Squibbs of counsel. The court is grateful to counsel for their focused and informed submissions.

5. By way of a notice of appeal dated 18 September 2024, the appellant sought to appeal the decision of District Judge Tempia ("**the Judge**") sitting at

the Westminster Magistrates' Court on 5 September 2024. In a reserved judgment dated 12 September 2024, the Judge ordered the appellant's extradition to Lithuania. The RP was found by the Judge to be a fugitive from Lithuanian justice. The appellant appeals with the permission of Morris J granted on 11 February 2025.

6. Lithuania has been designated as a Part 1 territory pursuant to an order made under section 1 of the Extradition Act 2003 ("the Act") and the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003/3333 (as amended). The Lithuanian judicial authorities have issued two warrants in this case:

   (1) A **conviction** warrant issued by the Kaunas Regional Court on 1 June 2023 and certified by the National Crime Agency on 20 December 2023 ("**AW1**").

   (2) An **accusation** warrant issued by the Prosecutor General's Office of the Republic of Lithuania on 9 June 2023 and certified by the National Crime Agency on 22 January 2024 ("**AW2**").

7. The conviction warrant can be dealt with immediately. The parties agree that the appellant has spent sufficient time on remand to have served the 15-months' custodial sentence imposed by the Lithuanian court. After the appeal hearing, as will be explained at the end of the judgment, the conviction warrant was withdrawn by the respondents. I ordered the discharge of the appellant in respect of AW1 only. Therefore, this appeal only deals with the accusation warrant AW2. However, the facts of the fraud offence relating to AW1 retain relevance to the overall assessment of the case.

8. The accusation warrant may also be simplified. Although there were three offences under its cover, the Judge correctly concluded that Offence 2, a fraud at the bottom of the scale of harm, was not sufficiently serious to constitute an extradition offence. Focus has therefore been trained on Offences 1 and 3.

II - Chronology

9. The appellant was arrested on AW1 on 17 January 2024 and produced at Westminster Magistrates' Court for an initial hearing on 18 January 2024. He did not consent to his extradition and the proceedings were opened and adjourned to a final hearing date. He was the arrested on AW2 on 26 April 2024 and appeared at Westminster Magistrates' Court for an initial hearing on the same day after being arrested in the cells at court on that day. Once more, he did not consent to his extradition and the case was opened an adjourned to a final hearing date. He has been remanded in custody throughout the proceedings.

10. The chronology can be confusing as several relevant events overlap. To assist, the sequence of events has been helpfully set out in a table by Mr Hepburn

Scott, and the court gratefully draws on his industry, removing those matters that remain controversial between the parties.

19/06/1990	Appellant's date of birth
8 to 9/ 07/2020	AW1 extradition offence committed – fraud – value €12,220
18/12/2020	AW2 offence (1) committed – attempted fraud
05/01/2021	AW2 offence (2) committed – fraud €450 (The Judge ruled this not to be an extradition offence: the maximum penalty is 45 days' custody)
06/08/2021	AW2 offence (3) committed – fraud €1,000
26/02/2022	Appellant released from prison on bail (re AW2(1) offence)
27/05/2022	Notice of suspicion served on the Appellant re the AW2(2) offence
23/06/2022	Appellant convicted in Lithuania of AW1 offence
21/10/2022	Search of Appellant ordered
28/10/22	Appellant apparently breaks probation anklet (re AW2(1) offence)
October 2022	Appellant leaves Lithuania for the United Kingdom
14/11/2022	Search ordered re AW2(2) offence
06/01/2023	Appellant convicted of the AW1 offence: 15 months' custodial term imposed
27/01/2023	Lithuanian Court ordered coercive measure of arrest ordered
06/02/2023	Information received that the Appellant is 'hiding in the UK'
05/04/2023	Appellant's appeal dismissed re the AW1 conviction
01/06/2023	TCA Extradition Arrest Warrant issued (conviction)
09/06/2023	TCA Extradition Arrest Warrant issued (accusations)
20/12/2023	AW1 certified as a Part 1 warrant under the Extradition Act 2003 by NCA
17/01/2024	Appellant arrested on AW1
18/01/2024	Appellant appeared at his initial hearing (extradition) at Westminster Magistrates' Court and remanded in custody where he remains
22/01/2024	AW2 certified as a Part 1 warrant by NCA
26/04/2024	Appellant arrested on AW2
05/09/2024	Extradition Hearing before District Judge Tempia, reserving judgment
12/09/2024	Judgment delivered. Extradition ordered
18/09/2024	Appellant's Notice lodged at the High Court
11/02/2025	Permission to appeal granted on the papers by Morris J on Grounds 1 and 3; permission refused on Ground 2 (Article 3 claim)

III - Remaining grounds of appeal

11. The Appellant has been granted permission to appeal on the following grounds:

    (i) Section 21A of the 2003 Act. The Judge was incorrect in ruling that the Appellant's extradition for the AW2(i) offence was not disproportionate under section 21A.

(ii) Article 8 ECHR. Extradition would constitute a disproportionate interference with the appellant's right to respect for his private and family life contrary to article 8 and the Judge's conclusion to the contrary was incorrect.

IV - Legal framework

12. Since the court is considering an accusation arrest warrant, the relevant statutory provision under the 2003 Act is section 21A. It provides:

> **"21A Person not convicted: human rights and proportionality**
>
> (1) If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person ("D")—
>
> (a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;
>
> (b) whether the extradition would be disproportionate.
>
> (2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.
>
> (3) These are the specified matters relating to proportionality—
>
> (a) the seriousness of the conduct alleged to constitute the extradition offence;
>
> (b) the likely penalty that would be imposed if D was found guilty of the extradition offence;
>
> (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D.
>
> (4) The judge must order D's discharge if the judge makes one or both of these decisions—
>
> (a) that the extradition would not be compatible with the Convention rights;
>
> (b) that the extradition would be disproportionate.

> (5) The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions—
>
> (a) that the extradition would be compatible with the Convention rights;
>
> (b) that the extradition would not be disproportionate.

13. The leading authority in relation to section 21A is *Miraszewski v District Court in Torun, Poland* [2014] EWHC 4261 (Admin) ("*Miraszewski*"). The lead judgment in the Divisional Court was given by Pitchford LJ. At paras 36-41, Pitchford LJ examined the factors relevant to determining proportionality under section 21A(1)(b)):

> "**Subsection (3)(a) – seriousness of the conduct alleged**
>
> 36. I have already considered the general approach to seriousness in paragraphs 30 — 33 above. Section 21A(3)(a) requires consideration of "the seriousness of the conduct alleged to constitute the extradition offence". I agree that, as Mr Fitzgerald QC argued, paragraphs (a), (b) and (c) of subsection (3) all assume an approximate parity between criminal justice regimes in member states that embrace the principles of Articles 3, 5 and 6 of the ECHR and Article 49(3) of the Charter of Fundamental Rights of the European Union . In my view, the seriousness of conduct alleged to constitute the offence is to be judged, in the first instance, against domestic standards although, as in all cases of extradition, the court will respect the views of the requesting state if they are offered. I accept Mr Summers QC's submission that the maximum penalty for the offence is a relevant consideration but it is of limited assistance because it is the seriousness of the requested person's conduct that must be assessed. Mr Fitzgerald QC's identification of 7 years imprisonment as the maximum sentence for theft in England and Wales makes the point. Some offences of theft are trivial (see the Lord Chief Justice's Guidance); others are not. In my view, the main components of the seriousness of conduct are the nature and quality of the acts alleged, the requested person's culpability for those acts and the harm caused to the victim. I would not expect a judge to adjourn to seek the requesting state's views on the subject.
>
> **Section 21A(3)(b) – the likely penalty on conviction**
>
> 37. Section 21A(3)(b) requires consideration of "the likely penalty that would be imposed if D was found guilty of the extradition offence". Since what is being measured is the

proportionality of a decision to extradite the requested person under compulsion of arrest, I consider that the principal focus of subsection (3)(b) is on the question whether it would be proportionate to order the extradition of a person who is not likely to receive a custodial sentence in the requesting state. The foundation stone for the Framework Decision is mutual respect and trust between member states. The courts of England and Wales do not treat as objectionable the possibility that sentence in the requesting state may be more severe than it would be in the UK. Raised in the course of argument was the case of a member state that imposed minimum terms of imprisonment for certain offences by reason of the particular exigencies of the crime in the territory of that state. Appropriate respect for the sentencing regime of a member state is required under subsection (3)(b) ; the UK has itself imposed minimum terms of custody as a matter of policy. However, in the extremely rare case when a particular penalty would be offensive to a domestic court in the circumstances of particular criminal conduct, it is in my view within the power of the judge to adjust the weight to be given to "the likely penalty" as a factor in the judgement of proportionality.

38. It would be contrary to the objectives of the Framework Decision to bring mutual respect and reasonable expedition to the extradition process if in every case the judge had to require evidence of the likely penalty from the issuing state. Furthermore, the more borderline the case for a custodial sentence the less likely it is that the answer would be of any assistance to the domestic court. Article 49(3) of the Charter of Fundamental Rights of the European Union requires that the severity of penalties must not be disproportionate to the criminal offence. The EAW procedure has since 2009, when the Charter came into effect, been the common standard for members of the Union. In my judgment, the broad terms of subsection (3)(b) permit the judge to make the assessment on the information provided and, when specific information from the requesting state is absent, he is entitled to draw inferences from the contents of the EAW and to apply domestic sentencing practice as a measure of likelihood. In a case in which the likelihood of a custodial penalty is impossible to predict the judge would be justified in placing weight on other subsection (3) factors. However, I do not exclude the possibility that in particular and unusual circumstances the judge may require further assistance before making the proportionality decision.

39. While the focus of subsection (3)(b) is upon the likelihood of a custodial penalty it does not follow that the likelihood of a non-custodial penalty precludes the judge from deciding that extradition would be proportionate. If an offence is serious the

> court will recognise and give effect to the public interest in prosecution. While, for example, an offence against the environment might be unlikely to attract a sentence of immediate custody the public interest in prosecution and the imposition of a fine may be a weighty consideration. The case of a fugitive with a history of disobeying court orders may require increased weight to be afforded to subsection (3)(c) : it would be less likely that the requesting state would take alternative measures to secure the requested person's attendance.
>
> **Section 21A(3)(c) – less coercive measures**
>
> 40. Section 21B of the Extradition Act 2003 , inserted by section 159 of the Anti-Social Behaviour, Crime and Policing Act 2014 , enables either the requesting state or the requested person to apply to the court for the requested person's return to the requesting state temporarily or for communication to take place between the parties and their representatives. Section 21A(3)(c) is concerned with an examination whether less coercive measures of securing the requested person's attendance in the court of the requesting state may be available and appropriate. His attendance may be needed in pre-trial proceedings that could be conducted through a video link, the telephone or mutual legal assistance. The requested person may undertake to attend on issue of a summons or on bail under the Euro Bail scheme (if and when the scheme is in force) or the judge may be satisfied that the requested person will attend voluntarily and that extradition is not required.
>
> 41. It would be a reasonable assumption in most cases that the requesting state has, pursuant to its obligation under Article 5 (3) ECHR , already considered the taking of less coercive measures. I accept the submission made by Mr Summers QC that there is an evidential burden on the requested person to identify less coercive measures that would be appropriate in the circumstances. Where the requested person has left the requesting state with knowledge of his obligations to the requesting state's authorities but in breach of them, it seems to me unlikely that the judge will find less coercive methods appropriate. On the other hand, as the Scott Baker report recognised at paragraph 5.153 there may be occasions when the less coercive procedure is appropriate. If the requested person fails to respond to those alternative measures the issue of a further warrant and extradition could hardly be resisted."

14. In *Vascenkovs v Latvia* [2023] EWHC 2830 (Admin) ("*Vascenkovs*") at paras 10-11, Swift J noted:

> "the proportionality assessment required is an overall appreciation of the situation rather than an exercise of precise calibration…the court should allow a significant margin before concluding extradition would be disproportionate, since reaching such a conclusion too readily could call into question the requesting authority's decision to issue the warrant (as a disproportionate use of that court's power). A conclusion that extradition would be disproportionate would not necessarily be at odds with the notion of mutual recognition. For example, it might rest on information not available to the requesting authority when it made its decision to issue the warrant. However, the principle of mutual recognition means that a conclusion that extradition is disproportionate in this sense will be an occurrence more rare than common, likely to arise only in unusual circumstances.
>
> Putting the matter another way, the judgment Miraszewski does not suggest that the bar on extradition contained within section 21A(1)(b) exists to pursue a purpose that goes any further than explained by the Home Secretary in her statement in parliament in July 2013 and the statement by the Home Office Minister made when the amendment was introduced (see, the judgment in Miraszewski at paragraph 30): i.e., to provide a further brake on extradition for "very minor offences". A further brake because the definition of extradition offence in section 64 of the 2003 Act already excludes the possibility of extradition for some types of minor offending"

15. He added at para 24:

> "Any resort to the Sentencing Council Guidelines to consider the type of sentence that might be imposed for similar offending in England is undertaken only to obtain a general idea of the seriousness of the allegation and the likely consequences of conviction. It is a hypothetical exercise. A District Judge is not in a position to undertake the sort of precise sentencing exercise that would be performed following a trial. There has been no trial and the precise circumstances of the offending and of the accused when the offending took place are not known."

16. I have also been referred to the much-cited observations of Baroness Hale in *H(H) v Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338 at para 8:

> "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."

17. In *Lauri Love v USA* (2018) EWHC 712 (Admin) ("*Love*"), the Divisional Court stated the following, at para. 26:

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

18. The approach of this court to an evaluation of the Judge's extradition decision is heavily informed by the leading authority of *Celinski v Poland* [2015] EWHC 1274 (Admin). The Divisional Court said at para 22:

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

V - The appeal test

19. This appeal falls under sections 27(3) and 27(4) of the Act. They provide:

> "(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."

20. As to the approach to review of the Judge's decision below, the Divisional Court said in *Belbin v Regional Court of Lille, France* [2015] EWHC 149 (Admin) ("*Belbin*") at para 66:

> "If, as we believe, the correct approach on appeal is one of review, then we think this court should not interfere simply because it takes a different view overall of the value-judgment that the District Judge has made or even the weight that he has attached to one or more individual factors which he took into account in reaching that overall value-judgment. In our judgment, generally speaking and in cases where no question of "fresh evidence" arises on an appeal on "proportionality", a successful challenge can only be mounted if it is demonstrated, on review, that the judge below; (i) misapplied the well established legal principles, or (ii) made a relevant finding of fact that no reasonable judge could have reached on the evidence, which had a material effect on the value-judgment, or (iii) failed to take into account a relevant fact or factor, or took into account an irrelevant fact or factor, or (iv) reached a conclusion overall that was irrational or perverse."

21. Much cited in this regard is the Supreme Court's exposition of the test in *Re (B)* [2013] UK SC 33. Lord Neuburger stated:

> "93. There is a danger in over-analysis, but I would add this. An appellate Judge may conclude that the trial judge's conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, but on balance considers was right, (iv) a view which she cannot say was right or wrong, (v) a view on which she has doubts, but on

> balance considers was wrong, (vi) a view which she considers was wrong, or (vii) a view which is unsupportable. The appeal must be dismissed if the appellate judge's view is in category (i) to (iv) and allowed if it is in category (vi) or (vii).
>
> 94. As to category (iv), there will be a number of cases where an appellate court may think that there is no right answer, in the sense that reasonable judges could differ in their conclusions. As with many evaluative assessments, cases raising an issue on proportionality will include those where the answer is in a grey area, as well as those where the answer is in a black or a white area. An appellate court is much less likely to conclude that category (iv) applies in cases where the trial judge's decision was not based on his assessment of the witnesses' reliability or likely future conduct. So far as category (v) is concerned, the appellate judge should think very carefully about the benefit the trial judge had in seeing the witnesses and hearing the evidence, which are factors whose significance depends on the particular case. However, if, after such anxious consideration, an appellate judge adheres to her view that the trial judge's decision was wrong, then I think that she should allow the appeal."

VI - Evaluating the offending

22. Key to this case is a clear understanding of the appellant's criminal offending, both proved and alleged. Under section 21 of the Act, the court must assess the seriousness of the underlying conduct alleged. Further, and since there is no evidence about the "likely" sentence for the AW2 offences in Lithuania, the court must assess the comparable sentencing in the United Kingdom, and have regard to the most relevant domestic sentencing guidelines issued by the Sentencing Council. This is on the assumption, as noted by Pitchford LJ in *Miraszewski* at para 36, that a broad and "approximate parity" exists between Convention signatories in their criminal justice systems. As he continued at para 38:

> "It would be contrary to the objectives of the Framework Decision to bring mutual respect and reasonable expedition to the extradition process if in every case the judge had to require evidence of the likely penalty from the issuing state."

AW1: Conviction

23. This is a conviction warrant based on decision of the District Court of Alytus, Chamber of Lazkljai dated 23 June 2023. The appellant appeared in person in court on 23 June 2023. He appealed that decision and his appeal was dismissed on 5 April 2024. The appellant absconded from the execution of the sentence. Therefore, the appellant was wanted to serve a sentence for an offence of conspiracy to commit fraud between 8 – 9 July 2020. He and others

committed bank fraud in the sum of €12,220 belonging to the Gardener's Community Kankle. The appellant's role included obtaining by deceit bank details of Gablja Daukenyte for monies obtained by fraud, and then directed Ms Daukenyte to withdraw the fraudulent funds obtained and provide them to a third party. A sentence of 1 year and 3 months custody was imposed. As noted, it has been served.

AW2: Accusations

24. **Offence 1**. This is an allegation of attempted fraud. The appellant, acting with a group of accomplices, attempted to defraud the victim of €1000 on 18 December 2020, whilst serving a prison sentence. He falsely placed an advertisement online for the sale of a Caterpillar E313 excavator and promised to deliver it to the complainant once the €1000 deposit had been paid. He did not possess an excavator and did not deliver the equipment to the complainant. The fraud was detected, and the money returned to the complainant.

25. **Offence 3**. The allegation is of an offence of fraud when the appellant, acting with others, defrauded several victims of at least €1000. On 6 August 2021, whilst still serving a prison sentence, he illegally used a mobile phone to place false advertisements online about an Audi A4 and a VW Multiva, promising to deliver the vehicles once deposits had been paid. The appellant did not have the vehicles and did not deliver them to the complainants.

26. The maximum sentence for the AW2 offences 1 and 3 is 3 years' custody.

VII - Sentencing discussion

27. It is agreed between the parties that the Judge used the wrong domestic sentencing guidelines for the AW2 offences. However, the Judge cannot be criticised in this. She made her analysis on the basis of the submissions of counsel. Before me, the appellant's counsel frankly accepted that these submissions were made to the Judge on an erroneous basis. Be that as it may, the fact is that the Judge's analysis of the AW2 offences was based on an importantly false premise. The correct categorisation of the AW2 offences is under 5B of the fraud sentencing guidelines. This entails a starting-point of medium level community order and a range from Band B fine to 26 weeks' custody. The total fraud and attempted fraud under AW2 is agreed to be £2635.

28. However, the sentencing guidelines specify indicative sentencing for one offence. Here there are two. There are two obvious methods that a court may legitimately use to sentence for these two offences:

(1) making one the lead offence and uplifting for the other while making its sentence run concurrently; or

(2) by the imposition of consecutive sentences.

29. The point is that whichever route is taken, the sentence should be the same. It is a question of construction not outcome. The overall sentence should be adjusted for principles of totality. The court must impose a sentence that reflects the totality of the offender's culpability and harm, but must adjust it to avoid double punishment or disproportionality.

30. These are distinct offences against different victims. In such circumstances, there would be nothing objectionable in passing consecutive sentences with the overall sentence discounted to take totality into account. On either analysis, the sentence will be meaningfully higher than for a single offence. An offender cannot commit further crimes with impunity. It seems to me that one cannot simply aggregate the total fraud as if it were one offence with a loss of just over £2500 and a resulting starting-point of medium community penalty. There were two offences not one with different targeted victims. After a failed attempt at fraud, the appellant persisted in his fraudulent ambitions and succeeded. I regard this as a seriously aggravating feature.

31. The completed fraud offence is likely to be the lead offence with the attempted fraud made to run concurrently, having uplifted the lead crime. In the 5B category, the starting-point is based on harm of £2500. Here the harm for the completed fraud was £1000, which would require a notional reduction in starting-point. However, several aggravating factors exist:

    i. The offence was committed while the appellant was in prison and "illegally" used a mobile phone while in prison. This is a seriously aggravating factor;
    ii. This was group offending with multiple victims, both aggravating factors;
    iii. The offence was committed following the more serious fraud for which he was convicted and sentenced to 15 months' custody, another aggravating factor (in the United Kingdom it constitutes a statutory aggravating factor as a previous relevant offence);
    iv. The attempted fraud would then be added. That attempted fraud has aggravating factors as well: once more committed while in prison; again an act of group offending. This must result in a further uplift in sentence.
    v. It is not known what mitigation the appellant may have. One proceeds on the basis of conviction and so there is no reduction due to guilty plea.

32. Putting all this together, I judge that several conclusions are clear:

    i. The AW2 offending cumulatively crosses the custody threshold. Here is a persistent fraudster who is not deterred from criminal offending by the fact of his incarceration, instead using his detention as another opportunity to commit fraud. Having failed with his first attempted fraud from prison, undeterred he continued to offend and succeeded in his later prison fraud. I am

clear that with this background neither a fine nor community sentence would be justified.

ii. It is possible under domestic sentencing guidelines to move beyond the upper limit of a particular offence category, especially if there are aggravating factors and/or multiple offences. Both these features are present in the AW2 case.

iii. I judge that a sentence of at least 6 months' custody, the upper limit of 5B, is the "likely" outcome of the sentencing exercise as an aggregate sentence to reflect all the appellant's AW2 offending. There is a real possibility of moving above the 6-month upper limit. But I proceed on the basis of a likely sentence of at least 6 months' custody, emphasising that as Swift J noted in *Vascenkovs* at para 10, I do not attempt a "precise calibration", but assess the general outcome.

iv. In that, I am not persuaded that the "age of the offences", as relied on by the appellant, is significant. The Judge said at para 118 that offences are "old", alleged to have been committed in "2020 and 2021". The domestic guidelines on delay make it plain that delay attributable to the culpable conduct by the offender significantly reduces or eliminates any reduction that would otherwise result. For example, the Sentencing Council's General Guidance: Overarching Principles (Step 2: personal mitigation et cetera) states that "Where there has been an unreasonable delay in proceedings since apprehension which is not the fault of the offender**,** the court may take this into account by reducing the sentence **if this has had a detrimental effect on the offender."** (original emphasis) Here the delay is principally due to the appellant's fugitivity in placing himself beyond the reach of Lithuanian justice. It is unclear what "detriment" has been caused to him, as commonly understood by the sentencing guidelines.

v. I find that the mitigation of his personal relationships in the United Kingdom to be of limited value. The relationships were developed principally after he fled Lithuanian justice, while noting that he appears to have met his partner before he arrived in the country. In any event, he developed these personal relationships after he committed the AW2 offending and in full knowledge of his fugitivity, understanding that he may have to be returned to Lithuania.

33. I cannot accept the submission on behalf of the appellant that the sentence should be "2 months' custody approximately" at a maximum or "more likely" a community penalty. I cannot accept the temperately framed submission of counsel that "2 months' custody" is a "perfectly respectable sentence to end at".

34. With a notional sentence of 6 months' custody, and being within the suspended sentence order ("SSO") limit of two years', the court would be bound to consider an SSO. The guidance on SSO domestically helpfully provides a table with factors for and against. I examine these now:

Factors indicating appropriate to suspend sentence:

i. **Realistic prospect of rehabilitation**: there is no evidence of such a prospect. Indeed, the appellant is a recidivist fraudster and persistent and serious criminal offender, committing further offences from prison;
ii. **Strong personal mitigation**: none has been put before the court, save the personal relationships developed while the appellant has been evading Lithuanian justice;
iii. **Immediate custody will result in significant harm to others**: here to his partner and her children. However, the children are not his biologically; his relationship with their mother has been of relatively short duration; they are not married and have been living apart in excess of a year due to his remand in custody.

Factors against suspending:

i. **Risk/danger to the public**: the appellant is a persistent offender, seeking to defraud a variety of victims. He presents a risk of obvious and significant harm to the public by his criminality. The conviction offence is a serious matter for which he received a 15-month custodial term. He has continued offending targeting other innocent members of the public. His previous offending in the United Kingdom is very grave and he received a custodial sentence in excess of 9 years' custody for firearms-related offences. He was returned to Lithuania from this country to serve the balance of that sentence and then while in prison in Lithuania committed the offences in AW2.
ii. **History of poor compliance with court orders**: he continued committing frauds, if the allegations are proved, while in prison, and using a mobile phone in prison illegally. He then fled Lithuania and has been a fugitive from Lithuanian justice in this country to evade the judicial authorities in Lithuania.
iii. **Only immediate custody appropriate**: because of his antecedents and pattern of persistent offending and fraudulent offending, I am quite satisfied that only a sentence of immediate custody is appropriate – certainly, it is "likely". His antecedents are significant in assessing statutory aggravating factors. The appellant is not a man of good character in the UK. In 2015 he was sentenced to a term of imprisonment for 5 years and for 112 months, He says he was sentenced to 9 years and 4 months and after serving one year was transferred to Lithuania to serve the rest of his sentence. He has a has two previous convictions in Lithuania. The first was on 27 September 2010 for an offence of violation of public order for which he received a community order. On 17 May 2011, for an offence of robbery he was sentenced to two years one month's custody. In Finland on 13 February 2014, for an

> offence of robbery, he received a sentence of two years six months' custody. Therefore, the appellant has committed offences in multiple jurisdictions and received prison sentences in three different countries for serious offences.

35. For all these reasons, I am sure that the factors against suspending sentence decisively outweigh those in favour. Therefore, I accept the respondent's submission that an SSO is "highly unlikely". Section 21A(3)(b) requires consideration of "the likely penalty that would be imposed if D was found guilty of the extradition offence". The result of the sentence analysis, within the limitations noted by Swift J, is that the appellant would have imposed the penalty of a custodial sentence of significant duration for the AW2 offences, in my judgment around or in excess of 6 months' custody.

36. At the point of this appeal hearing, the appellant will have accumulated remand time relevant to AW2 of 2 months and 8 days. The appellant submits that he will have served the equivalent of a 4-month custodial sentence. This claim must be carefully examined. The Supreme Court has restated the position recently in *Andrysiewicz v Poland* [2025] UKSC 23. The court said at para 78:

> "[b]ecause (save in rare cases) a court in this jurisdiction should not embark on predicting the likelihood of the outcome of [an early release application], the bare possibility of early release on licence adds "little weight" in determining whether extradition is a disproportionate interference with article 8 ECHR rights."

37. The court continued at para 80:

> "80. We envisage that a rare case is confined to cases where there is agreed or uncontested evidence sufficient to demonstrate an overwhelming probability: (a) that the requested person would be released under article 77 of the Polish Penal Code upon an application; (b) as to when that release would take place; (c) as to what the probation period and conditions attached to that release would be; and (d) that the inability of a court in this jurisdiction to provide for such a probationary period and to attach such conditions would not adversely affect the interests of the offender or of the public."

38. Using the Supreme Court's authoritative rubric, here there is no "agreed or uncontested evidence" sufficient to demonstrate to "an overwhelming probability" (a) that the appellant would benefit from early release under Lithuanian law; (b) when that release would take place; (c) whether there would be a probation period and attached conditions; (d) that the inability of this court to provide (direct) a probation period with attached conditions would not adversely affect the public interest with the appellant release unsupervised. Put another way, the appellant fails each limb of the Supreme Court's "rare case" test.

VIII - Article 8

39. The Judge was bound to make her decision on the material and submissions before her. As I have indicated, in respect of the categorisation of the frauds under domestic sentencing guidelines, it was certainly no fault of hers that she was directed to the incorrect offence category. Equally, in respect of the article 8 balance, the landscape has moved on. I have indicated to counsel that I consider it appropriate to stand back in *Love* terms and reassess the situation as it has developed, especially since the appellant has now served the entirety of the AW1 sentence. In this section, I examine the Judge's decision on its own terms, before proceeding to the *Love* analysis.

The Judge's approach

40. The Judge followed the principles established in the cases of *Norris v Government of United States of America* [2010] UKSC 9, *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25 and *Polish Judicial Authorities v Celinski and Other*s [2015] EWHC 1274 (Admin), citing all three cases at para 100 of her judgment. The respondents submit that the Judge conducted a balancing exercise to weigh the relevant factors as required by *Celinski,* and upon completion of this exercise came to a reasoned conclusion that extradition would be compatible with the appellant's article 8 rights. The respondents submit that the Judge made no error of fact or law in this process and neither improperly omitted nor placed undue weight on any particular piece of evidence before her.

41. The Judge heard the appellant's evidence. She found that he was not "a credible witness at all". His explanation for fleeing Lithuania due to threats to his life was rejected. I accept the respondents' argument that no weight can be placed on his assertion of being imperilled. The Judge also heard his partner's evidence. The Judge's article 8 decision was made having carefully taken into account all of their evidence, which she sets out in detail in the judgment.

42. Almost all extraditions involve some kind of hardship; it is inherent in the nature of forcible removal of the affected person. Such dislocation very often affects a host of other people, who are likely to be innocent of any wrongdoing. Here the appellant's partner will be affected, the Judge found. This is clearly the case. However, his partner has coped during the period of an excess of a year during which he has been remanded. Further, her children will be affected should the appellant return to Lithuania through an enforced extradition order. It must be noted that the children will have had limited, if any, contact with the appellant in any event following his arrest and remand and had not known him for an extended period before his remand. Thus the impact upon the appellant's partner and her children must be viewed in its proper context, and as the Judge noted, this was "a short relationship" (para 119).

43. The test for when article 8 family considerations outweigh the return of fugitives from justice is clear and has been recently restated by the Supreme Court in *Andrysiewicz*. What is required is impact that is "exceptionally severe", as Baroness Hale put it in *HH* at para 8. The Judge correctly noted the "resilience" of the appellant's partner, who has previously worked professionally as an interpreter. Although she has lived with cancer, it is in remission, as the Judge noted at para 6. The appellant's partner is plainly resourceful and has only had to call on others for help "three or four times" (para 119). The appellant had been in the United Kingdom for just in excess of a year before he was remanded in custody. He is not the biological father of the children. He is not married to their mother. He has not been living with his partner and the children for over a year, a period of time approximating to the time he was with them before his remand. It is submitted that the appellant helps his partner by "cooking and cleaning and regularly doing the school run." One of the children suffers from nosebleeds and regularly has to visit the hospital, the appellant states. Further, it is correct that the welfare of the children is a primary consideration due to the United Kingdom's international obligations including under the Convention on the Rights of the Child 1989. But "primary" has not been interpreted in extradition cases as "paramount", determinative or unanswerable. The Judge carefully reviewed the evidence of both the appellant and his partner. For example, the Judge said at para 70:

> "70. In the past two years the RP is given her daughters more love and affection than their biological father has in 10 years. Any further separation from the RP would break her daughters' hearts … He has been a wonderful partner to her, and they would have been married."

44. The Judge also noted that the children call the appellant "Dad". While his partner's characterisation of him is a positive endorsement, the critical point of comparison is with poor parenting provided by the children's biological father. It seems to me that looking at everything that was before the Judge, she was correct to conclude that there is nothing that begins to approach the necessary degree of severity required to counterbalance the "constant and weighty" public interest in the appellant facing the Lithuanian justice from which he has fled.

Conclusion: Judge's analysis

45. In conclusion, I do not accept that the Judge was wrong in her decision as matters stood before her. I conclude with no hesitation that in *Celinski* terms, the Judge did not make the wrong decision. She was correct to make the extradition order on the material before her. She should not have reached a different decision.

46. Testing that conclusion using the *Belbin* rubric, I conclude that the Judge did not misapply well-established principles; did not make unreasonable material findings of fact; and reached a conclusion that was rational. Indeed, I judge that on the material at the extradition hearing, she was right. There remains

the question of the incorrect categorisation of the 4B offence. Nevertheless, as I have explained in detail, once the offence is categorised correctly as a 5B offence, the conclusion remains the same. This is the prime test: whether the decision overall was correct. It was.

IX - Standing back (Love analysis)

47. The point of embarkation to my reconsideration is to recognise that the landscape has shifted. The appellant has served the entirety of the AW1 sentence. Thus, I do not consider it in the proportionality analysis; the Judge did, and correctly at that earlier stage. As time has moved on, the appellant has served a little over 2 months' custody for any custodial term imposed for the AW2 offences. These are material changes. But I have earlier explained how I find that it is likely that the appellant would receive a custodial sentence of at least 6 months' custody if convicted on AW2. Mr Hepburne Scott correctly abandoned his submission of early release during oral submissions once reminded of the terms stipulated by the Supreme Court in *Andrysiewicz*. As explained, I cannot accept his submission that the frauds under AW2 would likely receive a community penalty or a suspended sentence or at a maximum 2 months' custody. Such a proposal substantially underestimates the circumstances of their commission and the very serious and aggravating antecedents of the appellant. He has two offences of very serious dishonesty that aggravate the fraud offences, the robberies in both Lithuania and Finland. An offender who commits further offences from prison while serving other offences is a clear risk to the public, particularly when the cause of his imprisonment is firearms-related crime resulting in a 9-year-plus sentence. It seems to me that suspending the sentence is out of the question. I therefore proceed in the altered legal landscape on the basis that the appellant at this point still has a substantial and significant custodial sentence to serve on conviction under AW2.

48. In *Celinski*, the Divisional Court stated at para 39 that where a requested person is a fugitive from justice, very strong counterbalancing factors need to exist before extradition could be regarded as disproportionate. The Judge found to the requisite criminal standard that the appellant is a fugitive. That finding has not been challenged, nor plausibly could be, especially given the RP's materially rejected account. Having examined all the factors in his favour, they individually and cumulatively come nowhere near to the high threshold necessary to counterbalance the "constant and weighty" public interest, as Baroness termed it, in returning him for the Lithuanian judicial authorities to decide how to treat his case once he has surrendered.

49. I cannot identify the necessary "exceptionally severe impact". I note, for example, that the appellant's partner told the Judge that following her cancer diagnosis, she had assistance with the younger three children as her 19-year-old daughter (her fourth child) "was at home and helped her" (para 71). Therefore, she does have a support network to draw on if necessary. She also told the Judge that usually she (the partner) picked the children up from school

(para 72). On the day she gave evidence, a friend stepped in to help her out with the children. Therefore, she has family and friends. Although she said that she does not want to "disturb" her daughter if she needed further help with the children, it is clear that the eldest daughter stepped in previously (para 80). I note, however, that the daughter does not live nearby. Overall, it is hard to conceive of this as a situation in which she cannot cope or which is resulting in exceptionally severe adverse impacts. While I accept in principle Mr Hepburne Scott's broad submission that a negative impact on the primary carer may impact the children indirectly due to her limited emotion availability to them, there is very little evidence to indicate that this is in fact the case. Their mother seems on the evidence before the Judge to be a loving, concerned and attentive parent, who has coped with the appellant's absence through remand. There is no evidence indicating that this could not continue. Indeed, she works as a freelance interpreter while the children are at school.

50. As to the impact on the appellant of the separation from his partner and her children by return to Lithuania, he developed his family and private life in the United Kingdom in full knowledge that he was a fugitive from Lithuania. Therefore, he deepened his ties with his partner and her children knowing that he may be returned to Lithuania to face criminal proceedings there. He has taken that obvious risk.

51. I judge that the grounds the appellant puts forward to oppose extradition are not "very strong", as submitted to me, but weak and carry little weight in the renewed balancing exercise. I cannot accept that the AW2 offences are "not serious" as the appellant submits. The appellant in part relies on the assessment by the Judge at para 118 that the AW2 offences are "not the most serious". That is objectively correct: they are not the most serious. But I judge that they are serious. This is because the overall gravity of offending must be judged by the harm and culpability, and viewed in the context of the offending history of the offender. It is submitted that the AW1 fraud was more serious because it was a fraud on the banking system. However, the AW2 frauds were targeted at individual members of the public who may have fewer resources to cope with the monetary loss than a large financial institution. The impact on individuals cannot be underestimated in terms of the livelihoods and sense of security and confidence of victims. It is true, as the respondents submit, that the offences are not in the list of specified offences for which it would be disproportionate to make an extradition order. But the court retains the duty for non-list offences to carefully assess the seriousness, and this I have endeavoured to do.

52. That said, I do accept the appellant's submission that the court must be cautious about reading across from the AW1 Lithuanian sentence as the respondent invites the court to do. The argument runs that the Lithuanian sentence of 15 months' custody appears to exceed the sentencing levels compared to an application of domestic sentencing guidelines. Therefore, this makes it more likely that the sentence for AW2 would exceed the 5B guideline. I agree with Mr Hepburne Scott that from this distance, and without the sentencing remarks from Lithuania, we simply do not know why a

sentence of 15 months' custody was imposed. It seems to me to involve perilous speculation to try to deduce the reasoning of the Lithuanian court and I decline to do so. Indeed, in *Celinski*, the Divisional Court said in terms about conviction warrant cases at para 13:

> "The judge at the extradition hearing will seldom have the detailed knowledge of the proceedings or of the background or previous offending history of the offender which the sentencing judge had"

53. I take the point that we also do not know about any remand time that was or was not allowed for. The better course, and the one I adopt, is to do the court's best to apply the domestic guidelines. Having done so, and when all the relevant factors are properly assessed, the likely sentence is at least 6 months' custody for the two offences committed in prison hard on the heels of the AW1 fraud. If proved, the AW2 offences are not trivial or negligible acts of criminal offending. They are planned and premeditated acts group offending targeting multiple victims by a person persistently committing fraud against members of the public, even when he is in prison. I judge that the fact the offences were committed while incarcerated in Lithuania having been returned for the United Kingdom to serve the balance of a sentence for very serious firearms offences to be a factor of particular gravity. Consequently, I cannot accept the submission that there is a "relative weak public interest" in the appellant's extradition. I reach the opposite conclusion. I take note of what Swift J said in *Vascenkovs* at para 10:

> "the court should allow a significant margin before concluding extradition would be disproportionate, since reaching such a conclusion too readily could call into question the requesting authority's decision to issue the warrant (as a disproportionate use of that court's power)."

54. I regard this as part of mutual recognition and respect. International comity remains a vital consideration and the United Kingdom must meet its treaty obligations. This country cannot become or become regarded as a safe haven for fugitives from justice.

X - Disposal

55. Therefore, I conclude:

(1) The entirety of the sentence on AW1 is served. This court granted an order on 2 July 2025 discharging the appellant on this matter only following the warrant's withdrawal by the respondents.
(2) The Judge was correct to conclude that extradition would be proportionate under section 21A(1)(b) of the 2003 Act;

(3) On considering the balancing exercise afresh in the altered circumstances, extradition is not disproportionate, and is compatible with the appellant's Convention rights, in particular with his qualified right under article 8.
(4) The appeal in respect of AW2 is dismissed.
(5) The appellant's surrender to the Lithuanian authorities must proceed under section 21(3) of the 2003 Act.