Before the Appropriate Judge sitting at Westminster Magistrates' Court

Between:

GOVERNMENT OF THE UNITED STATES OF AMERICA

Requesting State

-and-

CHRISTOPHER TAYLOR

Requested Person

JUDGMENT

Date of Full Hearing: 26-28 October 2020

Date Judgement delivered: 7 December 2020

ISSUES

- s.83A EA 2003 – Forum;
- s.87 EA 2003 – Article 3 (risk of suicide of both RP and his wife Wendy Taylor);
- s.87 EA 2003 – Article 8 (family life – impact on RP and his wife);
- s.91 EA 2003 – RP's physical or mental condition.

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PRELIMINARIES

1. This extradition request is subject to the provisions of Parts 2, 4 & 5 Extradition Act 2003 ("EA 2003").

Definitions

RS – Requesting State – Government of the United States of America

RP - Requested Person – Christopher Taylor

FI – Further Information provided by RS

Judges Powers

2. By s.77 EA 2003 at the extradition hearing the appropriate judge has the same powers (as nearly as may be) as a magistrates' court would have if the proceedings were the summary trial of an information against the person whose extradition is requested.

Burden & Standard of proof

3. By s.206 EA 2003, save where otherwise provided for by EA 2003, the appropriate judge must treat any question arising as to the burden or standard of proof by applying any enactment or rule of law that would apply if the proceedings were proceedings for an offence as if RP were accused of an offence and as if RS were the prosecutor of that offence.

Representation

4. RS was represented by Mr. Sternberg.

5. RP was represented by Mr. Cooper QC.

BACKGROUND

6. RS requests RP's extradition to stand trial on an indictment (superseding an earlier one) returned on 15 January 2019 by a grand jury sitting in the Northern District Court of Georgia

in the United States of America. The indictment was signed, and an arrest warrant issued, by the Clerk to the District Court on 16 January 2019.

7. The request for RP's extradition was certified on behalf of the Secretary of State under section 70 EA 2003 on 18 June 2019. The certificate states that the request for extradition is valid and has been made in the approved way.

8.The indictment contains three counts –

> Count 1: Wire fraud, in violation of 118 U.S. Code, Section 1343, maximum penalty 20 years imprisonment;
>
> Count 2: Computer fraud, in violation of 18 U.S. Code, Sections 1030(a)(2)(C) and (c)(2)(B)(ii) carrying a maximum penalty of 5 years imprisonment; and
>
> Count 3: Computer fraud in violation of 18 U.S. Code, Sections 1030(a)(5)(A), 1030(b) and 1030(c)(4)(B)(i) carrying a maximum penalty of 10 years imprisonment.

9. It is conceded that these are by definition extradition offences (see below).

10. Mr. Sternberg suggested (and Mr. Cooper did not take issue with that suggestion) that the equivalent offences in the UK would include –

> a. Fraud by False Representation contrary to section 2 of the Fraud Act 2006, punishable on conviction with imprisonment for up to 10 years;
>
> b. Voyeurism contrary to Section 67 of the Sexual Offences Act 2003, punishable on conviction with imprisonment for up to 2 years;
>
> c. Unauthorised Access to Computer Material contrary to section 1 of the Computer Misuse Act 1990, punishable on conditions with imprisonment for up to 2 years;
>
> d. Unauthorised Acts with Intent to Impair; or with Recklessness as to Impairing the Operation of a Computer, contrary to section 3 of the Computer Misuse Act 1990 punishable on conviction with imprisonment for up to 10 years.

11. The conduct alleged against RP (and accepted by him) arose in the following circumstances. RP, through online gaming, developed an interest in computers. He experimented with computers, building them from scratch. He became interested in malware and how to build it and distribute it.

12. In April 2014, computer system administrators at Georgia Institute of Technology ('Georgia Tech') located in Atlanta, Georgia, in the United States of America alerted the FBI to suspicious activity on the computer network in the university's aerospace research laboratory.

13. The investigation ultimately determined that "CyberGate" malware had been installed on a laptop belonging to a student worker which enabled the computer which deployed the malware to communicate with the infected device. The student's laptop, on connecting to Georgia Tech's computer network, compromised that network. Remediating the harm to the network cost $5000.00

14. The source of the malware was traced to the IP address allocated to RP's home address in Wigan.

15. In February 2016, the USA made a request for Mutual Legal Assistance to the UK, a search warrant was obtained, and RP's computer was seized. RP was interviewed on a voluntarily basis in PACE 1984 compliant conditions by a Detective Constable of Greater Manchester Police, with an FBI Special Agent present as an observer.

16. In interview RP confessed to disguising malware as recognisable and legitimate computer programs which the victims then downloaded to their computers. In doing so, those victims unwittingly enabled RP to install further malware which in turn enabled him to take control of the victims computer webcam.

9. RP's seized computer was analysed and "CyberGate" and other remote access tools were found on it.

17. Also found were computer files – one per victim (of which there were 770) containing hundreds of saved webcam images, including images of people in various stages of undress and involved in sexual activity. None, it would seem, were aware of RP's illicit observation of them. Certainly, none of them consented to it. The period of alleged offending was between August 2012 and July 2015.

18. The evidence obtained by the Manchester Police was provided to the FBI. RP was not re-interviewed about the findings of the examination of his computer.

19. There was and is no investigation into RP's activities by a UK police force, nor has the CPS been involved in the prosecution of any offending in the UK.

INITIAL HEARING & HISTORY

20. RP was arrested on 13 September 2019 and appeared at Westminster Magistrates Court the later the same day. He did not consent to the request for his extradition. He was granted bail.

21. A full hearing was listed for 25-26 March 2020. That hearing was vacated on 23 January and re-listed for 1, 6 and 7 May 20202. That was to assist RP in the preparation of his case.

22. That hearing was vacated on 27 March 2020 to enable RS to obtain psychiatrist evidence in response to that provided on RP's behalf. Neither RP nor Mrs. Taylor could at that time be seen by a psychiatrist instructed by RS as both were shielding from Covid 19.

23. The Full Hearing before me was fixed on 4 May 2020 and directions for the progress of the case made. Supplemental directions were made at hearings on 30 July 2020 and 16 September 2020.

24. An application to vacate was heard and refused by DJMC Rimmer on 22 October 2020. RP's poor health and consequent high Covid 19 infection risk precluded his travel to Westminster for the Full Hearing. His wife was also required to give evidence and (as it proved) was manifestly incapable of undertaking a journey to Westminster to give her evidence by reason of her obvious and serious physical disabilities. Directions that both RP and his wife give their evidence via live links were made, in addition to those previously granted in respect of other participants.

25. On 23 October 2020 I received emails suggesting that RP had served further expert evidence relating to his risk of acquiring Covid 19 in the event that his extradition was ordered – an obvious result of which would involve his detention for transport to the US, and pre-hearing detention once there. I received an email indicating that RS would object to such late-served material.

26. The same email observed that the Bundle prepared on RP's behalf failed to include a joint expert report prepared by Dr's Qurashi and Furtado, and attached a copy of that Report.

THE EXTRADITION HEARING

Documents

27. The hearing bundle was extensive - comprising 45 documents and a total of 1592 pages. I do not reproduce the contents of the bundle, and I have had to be selective in that evidence

which I have included in this judgment – albeit I recite a considerable amount of it mainly from the notes I made during the hearing.

28. I have read each witness statement.

29. I do not pretend to have read each of the documents attached to each witness statement. For example, Professor Kaufman (for RP) provided a report of 11 pages, but with attachments totaling 1,110 pages. I have read those documents I was specifically referred to in the course of the hearing.

Witnesses

30. RP and the following of his family gave live evidence –

- Wendy Taylor – RP's wife.
- Gemma Price – Mr. & Mrs. Taylors 1st daughter.
- Kerrie Worden - Mr. & Mrs. Taylors 2nd daughter.
- Christopher Taylor junior - Mr. & Mrs. Taylors son.

31. Witnesses called to give live evidence on RP's behalf as to conditions in the US prisons were -

- Maureen Baird (ex prison Warden), as to the conditions of transfer to and detention of RP in a US prison taking account of his medical and mental health issues.
- Professor Kaufman (assistant professor of law) as to the treatment of RP as a non-US citizen during the pre-conviction, sentencing or post conviction phases of a federal criminal trial.

32. Witnesses called to give live evidence as to RP's mental condition, the issue of autism, and the threat of suicide were –

- Professor Baron-Cohen – for RP on the issue of autism.
- Dr. Furtado – for RP on the issue of mental health and suicide risk of both RP and Mrs. Taylor.
- Dr. Qurashi – for RS on the issue of mental health and suicide risk of both RP and Mrs. Taylor.

33. I read the following witness statements provided by RS –

- Mr. Panepinto – US Marshals Service – as to travel and care arrangements for RP post extradition on transfer from the UK to the US – with RP assumed to have depression, suicidal ideation and severe depressive episodes without psychotic symptoms.
- Ms. Pfister – affidavit in support of the extradition request.
- Ms. Pfister – further information dealing with Forum issues.
- Ms. Pfister – as to RP's trial rights as a foreign national, and to the right to a "speedy trial" within 70 days of his first court appearance.
- Dr. Yeh – medical Dr. - declaration as to health care arrangements within the US prison system for RP with regard to his COPD, depression and suicidal ideation.
- Mr. Wolff – licensed physician employed within the US Marshals Service – declaration as to allocation of RP within the US pre-trial prison system – with RP assumed to have diagnoses of depression, suicidal ideation and severe depressive episodes without psychotic symptoms.
- Mr. Brewer - Acting Senior Assistant Director for the Correctional Programmes Division of the Federal Bureau of Prisons – as to RP's accommodation post sentence and the care facilities available to manage his conditions.
- Dr. McLearen – licensed psychologist – as to programmes available to those imprisoned in the US.

34. I read a Report from Ms. Jackson assessing Mrs. Taylors daily care needs.

Preliminary Representations

35. Mr. Sternberg raised the issue of the absent joint expert statement of Dr. Qurashi and Dr. Furtado objecting to its absence from the bundle in strong terms. Insofar as they jointly rejected Professor Baron-Cohen's conclusion that RP is autistic, Mr Cooper asked that I considered delaying accepting the joint report in evidence until such time as Professor Baron-Cohen could offer a rebuttal of that specific conclusion. I saw no merit in that.

36. Mr Sternberg objected to the late filing of a report by Professor Coker, served on the last working day before the full hearing commenced. That report dealt with the danger COVID 19 poses to RP with his diagnosis of COPD.

37. Mr Sternberg submitted that were the Report admitted in evidence, basic fairness would require RS be given the opportunity to obtain evidence in response. He pointed out that the prevalence of COVID-19 and its potential impact on a person with RP's diagnosed lung

disorder was not something that could not have been anticipated on RP's behalf and so the late service could not be excused.

38. Mr. Sternberg noted that at tab 30 of the bundle there was a letter instructing RP to shield as a result of his particular vulnerability (including his COPD). That letter is dated March 2020. The issue of COVID-19 has not, said Mr. Sternberg, been ignored. It recurs throughout the evidence. It is common knowledge that that there are those with medical vulnerabilities whose health would be gravely impacted should they acquire COVID-19. RP is such a person. The evidence of that is in the letter at Tab 30 and that from his GP confirming the COPD diagnosis at Tab 31.

39. The question professor Coker asked to address in respect of RP was –

> *"Is Mr Christopher Taylor at significant risk of suffering death should he acquire COVID-19"*

40. His summarised opinion was –

> *"Mr Taylor faces a substantial risk of serious illness and death from COVID-19 because of his age sex and COPD. Furthermore, imprisonment would increase his chances of exposure given the challenges being witnessed worldwide around preventing cases of COVID-19 from entering prison estates and the conditions within hindering public health controls about breaks once they start."*

41. I note that both the prison service in the UK and the prison service in the US (and indeed society more generally) are being forced to deal with the risk COVID-19 poses to those communities. This is a fast-developing pandemic involving a new virus. There has been no opportunity for randomised controlled trials and peer review of either the spread or mutation of the virus, nor the means to treat and control it. Evidence and knowledge in these respects are, at this time, in short supply.

42. There cannot, yet, be a firm evidence base as to the impact of COVID-19 within the prison estate. Professor Coker's evidence was served far too late (and for no good reason) to be admitted and can be of limited relevance to the real issues in this case. That RP has COPD and is as a result at an enhanced level of susceptibility to contracting COVID-19 in conditions where self isolation would be difficult (as must be the case within the confines of a prison) is obvious. It is a factor I will consider in the round rather than as an impermissibly late-raised

stand-alone point that would otherwise require a pointless adjournment for yet another speculative statement based on as yet limited science.

43. Finally, Mr Sternberg objected to Mr Cooper's service of a 36 page supplementary skeleton argument at 0039 hours on the morning of the hearing. Service of skeleton arguments was to be in accordance with a timetable. Mr Sternberg asked at what stage he was expected to consider the contents of, and respond to, the supplementary skeleton argument, which appeared to me to be fair questions.

44. I had read the supplementary document. I appreciate that it was intended to direct me to specific documents within the bundle, and so aimed to assist me rather than put Mr. Cooper at an advantage. Nonetheless, I did not consider it fair to Mr. Sternberg to permit Mr. Cooper to formally rely upon his late filed skeleton argument.

Evidence & Findings of Fact

45. I read and heard a lot of material. I have chosen to consider the evidence by topic, and make appropriate findings of fact, before going on to consider the substantive matters of challenge. The topics (as identified by me) are –

- Family circumstances and connections
- Autism
- Suicide
- Arrangements for transfer to US
- Arrangements for safeguarding in US custody
- Delay in the trial process

Family circumstances and connections

46. RP is 57 years of age. He has been married to his wife Wendy for 38 years. They have three children aged 37, 36 and 34. Kerrie is the oldest, married with a child and working as a manager at a garden centre. The second child is Gemma, married with two children and employed full time in a pre school nursery. Their son Christopher junior has a child, is separated from that child's mother and is employed full time in the construction industry. Although he lives at RP and his mothers home address, he lives a separate life – the more so during the current pandemic

when he is obliged to distance from his parents, both of whom are at high risk of contracting COVID-19. He works anything up to 60 hours per week at various locations. When not working, he spends time in the company of his daughter.

47. RP works for 10 hours per week, in a single shift. On that day his wife's sister visits her to offer some care and company. He gave up full time employment 30 years ago in order to provide daily care to his wife. She is in poor health. Her primary illness is diabetes. In her proof she describe suffering memory problems following a period of coma. In her evidence to me she described how her husband does everything day to day in caring for her.

48. Following a fall earlier this year, as a result of which she broke an ankle, she has been almost entirely dependant on her husband. She describes her worries that she might never be able to walk again. She cannot walk at present. She spent 10 weeks in hospital but her ankle is not healing. It remains swollen to the extent she cannot move without assistance. She has been warned that it might be 12 to 18 months before her ankle will have healed sufficiently for her to be able to walk.

49. For now and for the foreseeable future her husband uses a hoist to help her out of bed, he dresses her, takes her to the stair lift, helps her from that into her chair, prepares her breakfast, provides her injection pens so that she can take her insulin, and brings her tablets to her. When required, he uses a hoist to lift her onto commodes in the living room and the bedroom. At bedtime, he undertakes the reverse sequence to that just outlined.

50. He does the housework, he does the shopping, he helps her wash, and he helps her to clean herself after she's been to the toilet. She described the degradation of being dependant upon strangers for such basic needs - something she experienced when she was in hospital following her fall earlier in the year. Were RP to be extradited she says simply that she wouldn't want to live. She would not wish to be a burden on her children. She described being a burden on her husband but as they had been together so long, she appears willing to accept being that burden so long as he is willing, and is in a position, to shoulder it.

51. She is certain that, were he to be extradited, her husband would not return from an American prison. She said she would be worried sick about what would be happening to him in there. She described watching programmes about American prisons on the television. She said she would be a nervous wreck and would be unable to cope with that for the years her husband would be away. She said, bluntly, that she would take her own life. She agreed, when asked by

Mr Sternberg, that she has never self harmed or attempted suicide before. She has constant thoughts doing it, but to date has not done anything but contemplate suicide.

52. Aware of her children's various commitments and noting that her own sister is in employment and could, at best, help her twice a week, Mrs Taylor agreed that she would have to accept help from the local authority or external carers. She didn't like the thought of strangers providing personal care to her and she didn't like the idea of strangers coming into her home – *"you don't know what they are doing".* With the uncertainties caused by the pandemic, she feared the risk of contracting COVID-19 from such visitors.

53. Whilst that fear of contracting COVID-19 might appear to sit at odds with her suicidal ideation, it appeared to me that Mrs. Taylor was trying to rationalise a risk of COVID-19 to her as it is today, rather than projecting forward to a point after the extradition of her husband. That interpretation would certainly sit better with the psychiatric examinations undertaken to assess the extent of the suicidal ideation she has undoubtedly been consistently verbalising. I will return to that under the heading "suicide."

54. Returning to RP's narrative - his account of caring for his wife mirrors hers. He describes it as a full-time task. He says she is not coping very well, she has started doing a lot of crying. He tells her to try not to think about what is happening to him but it doesn't seem to help her. He says she is terrified of his being extradited - and her being left alone.

55. RP is not in good health himself. He has COPD and he is depressed. He describes being so worried about what is going to happen to him and his family that he is just not coping. He describes having bad thoughts about ending his life. His fear is that he would never see his family again if he were removed to America – *"I would come back in a coffin- I know I would. I know my wife would not be able to stand it. I know she would end her life too. I am so sorry."*

56. He agreed that he has never self harmed nor has he ever attempted suicide although he did come very close to doing so one night in September 2020. His son confronted him and was so concerned at his fathers presentation that he called his sister Gemma for help. There was no medical help sought on that occasion.

57. More than once he described being so sorry for what he had done. He recalled the police interview in which he gave his account and admitted what was alleged against him.

58. RP confirmed that he spent two weeks as an in-patient in hospital in early 2020. During that time, his son Christopher and his wife's sister cared for his wife. He confirmed that he has

not investigated the possibility of care being provided for his wife by the health service or the local authority. He said simply that she would not want anyone else looking after her. He has always looked after her. It was suggested to him that the family would rally round to help look after his wife if he were extradited. As did his wife, RP pointed to their children's own full lives, their work, their children, and the fact they would not have time to look after their mother to anything like the degree he could provide, and which she required.

59. He agreed his wife's sister would probably have some time, and a willingness, to help care for her sister. He did not accept that she could provide the level of daily care and companionship that he provides.

60. RP's second daughter Gemma said that she helps as in when she can. She said extradition would be detrimental to her mother – whom she has heard state will commit suicide if RP is extradited. She said her mother saw no point living if her father was not there to look after her. She described her mothers depression and general mental health saying "*I can tell how she has been over these last few years. Her mental health has got dramatically worse. She could not manage without him. He is the sole carer. He does everything - shopping, household chores, he gets her to the toilet, in and out of bed- he does a lot."*

61. She described her fathers health as getting drastically worse. She said he's trying to carry on despite the threat of extradition hanging over him but that he is struggling. She described the bond between her parents - *"they have been married many years and if it he got sent away it would destroy them both."*

62. She described her dilemma in stepping in to help her mother were her father extradited. She has her work and her own family. She said she could not take on her fathers role and be with her mother for the amount of time she would be needed for. Much as she would love to help and *"awful as it sounds"* she said she just cannot commit to the necessary extent.

63. She said that the impact of the stress of the fear of extradition upon her father is affecting her. She suffers sleepless nights, daily worry, and has herself been prescribed medication to help her to cope. She said that if RP also extradited the family could not help their mother in his place. She described her mothers health issues as needing more than *"just us dipping in and out- she needs someone there most of the day."*

64. Although she would do what she could to try and help she recognises it wouldn't be enough. When it was suggested that other agencies would help she replied that her mother would not

want that. Her mother doesn't want her children helping with self care, and would not accept help of that type from other agencies. She said *"but it wouldn't be an option if my dad was extradited because my mum would not be here"* - a reference to her mothers declared intention to commit suicide if RP is extradited.

65. She described her father as *"deteriorating before us."* She described the instance in September 2020 when she was called by her brother during the night over concerns he had over their father's distress. She found her father crying, with his head in his hands and saying he could not go on anymore, and that *"he was going to end it".* She asked him not to, and he told her he would not.

66. She said that she has stood by her dad throughout. She described holding him and trying to reassure him that "he'll be okay". But she added to me that *"we don't know if he will be okay".* On her return to her own home she broke down. She now worries every day that she is going to get a call to say that her father "*has done something"* – that is, killed himself.

67. She said *"his health may kill him or extradition will. It's a lose-lose situation. He'll kill himself or die over there."* She voiced an awareness of the impact of COVID-19 19 in prisons – *"He just won't last."*

68. RP and Mrs Taylor's eldest daughter Kerrie Worden painted the same picture of her mothers daily dependence upon RP in almost every aspect of her daily existence. She confirmed her mothers physical illnesses, her poor mental health, the fact her mother does not leave the house. She said that if her dad was extradited her mum would be alone all day. She commented on her and her siblings work and family ties noting *"we could only pop round after work".* She said that the care which her dad provides to her mother is more then a nurse or carer could give her. Whilst others could give basic care, they could not provide the level of care of her father. She commented that it is not just the care that her father provides to her mother but also the love and attention he provides as a husband.

69. She says her mother does not talk during phone calls, she cannot talk about what is going on without getting upset, and Kerrie has heard her mother talk about *"doing something stupid."* That is clearly her euphemism for suicide, as she added *"I do genuinely believe she would do something stupid if he was extradited - and then we lose both parents as dad wouldn't be here and mum wouldn't be either."*

70. Like his sisters, Christopher Taylor junior confirmed the extent of the daily care provided to their mother by RP. He confirmed that when his dad was in hospital earlier in 2020, he helped care for his mother but described his aunt as providing most of the daily help. He helped by getting what they needed from the shops. He said his mother would let him get her food from the shop, but he never cooks her tea - his father does it. It was her sister who helped with meals during that short two weeks.

71. He described how he would normally be out in the evenings but how, during the pandemic, he sits upstairs in a different room in order to distance from his parents so as to minimise the risk of transferring COIVID-19 to them, as he mixes with others during his working day.

72. He agreed that if his dad was extradited, he, his sisters and his aunt would do what they could to help care for his mother. He added that she would not want that help and she would not survive his fathers absence. He said whilst he helps where he can, that is limited to the things his mother would not be ashamed to be helped with. For example, she will not let him help her shower or change her clothes. These are things only his father can help with.

73. His testimony was blunt –

> *"My worry is that if you send him there it will kill them both. I have been going through all of this for four to five years and they have both gone really downhill. Then she has broken her ankle. The stress in this house is unreal. It has been devastating. Dad is a shell. He doesn't eat, he isn't sleeping. This is killing him. I am concerned about what he might do to himself. I am terrified that my mum will go straight after him. When he broke down in September I had to phone my sister. My mum was crying 'don't leave me' and dad was saying 'I want to go'".*

74. I interject here that there is no possibility that Christopher Taylor junior interrupted a conversation in which his father was indicating a willingness to go to America. His narrative continued –

> *"If he goes to the USA she will kill herself. He does everything for her. He is basically her rock. You won't get him over there- he will kill himself. He is close to it himself. When he came out after he gave evidence* [before me in these proceedings] *he was shaking like a leaf. He could not sit still. This is how he is for this hearing how do you think he will cope with the main one?"*

75. He concluded by asking why his father couldn't serve his sentence in the UK where-

"people – us - would be able to see him but if he goes to America then you can order a box - I cannot say it any clearer".

76. Of his mother, he said that even if his father were imprisoned in the UK she would still die. It appears to me that the essence of Christopher Taylor juniors testimony was that his mother could not accept help for her most personal daily needs from anyone but her husband. He certainly appears convinced that she will kill herself rather than suffer the indignity of an indeterminate period of daily care from someone other than RP.

77. I read a Report prepared by Charlotte Finlayson–Jackson (BSc Hons Occupational Therapy, HCPC/BAOT Registered), a specialist occupational therapist. She noted that Wendy Taylor's

"medical comorbidities are impacting on her ability to complete daily living tasks independently. She therefore requires full care support from Mr Taylor to manage day to day. If Mr Taylor is extradited to the USA, Mrs Taylor has reported that she will be unable to manage and the impact on the couple's mental health would be devastating. Both Mr and Mrs Taylor's mental health would deteriorate significantly, and this is likely to impact further on both of their physical conditions."

78. She observed that –

"Mrs Taylor became very tearful at the thought of her husband being extradited and reported that if this occurred, that she would have no option but to commit suicide."

79. The following observations were also made –

"It was evident during the assessment that Mrs Taylor's endurance and pace were impinged due to her medical conditions, and that she does require additional support and specialist equipment to improve her level of functioning and comfort. Due to Mrs Taylor's medical conditions being chronic the care she requires from Mr Taylor is ongoing and her disabilities are unlikely to improve."

"There were no impairments due to her cognition, however her physical functioning due to her chronic illnesses severely impacts on her day to day functioning. From the assessment completed, Mrs Taylor reported that she often felt low in mood due to such deterioration of her health and the requirement of support and care that she needs especially during a time where her husband is increasingly stressed also."

Mrs Taylor requires significant resting periods and energy conservation. Pain levels can intensify in the morning, especially within her back and shoulder, therefore further assistance is usually required during this time. Due to Mrs Taylor's physical limitations, shopping is almost impossible therefore Mr Taylor completes all shopping tasks. Mrs Taylor requires ongoing treatment and continual reviews regarding her diagnosis at the hospital and requires support from Mr Taylor when attending her medical appointments including driving to and from the hospital, due to her being unable to drive."

80. Considering Wendy Taylors position were RP to be extradited, Ms. Finlayson–Jackson noted –

*"Care packages are organised and provided by the local Social Services authority or paid privately**.** A maximum care package consists of four call periods per day, which is **the level of care that Mrs Taylor will require if not more**, to meet all care needs within the future. If Mr Taylor is extradited, then a full care package will be required. A care package would assist in all areas of daily living tasks which would include washing and dressing, getting into and out of bed, preparation of meals, washing and dressing and laundry tasks."*

Family circumtances and connections – my findings

81. What do I conclude from the testimony of these members of RP's family, and that of RP himself, in the light of the verifiable disability suffered by Mrs. Taylor? Certainly each of these points –

- Wendy Taylor, RP's wife of 38 years, is and has been for many years in very poor health. She is obviously physically unfit, and by reason of her combination of illness and recent injury, incapable of physical exercise involving anything other than the minimal use of her legs. Her diabetes has damaged the nerves in her feet – and that was the cause of the fall that most recently disabled her. Even if she recovers the use of her injured leg within 12 to 18 months, she will remain physically dependant, and to a high degree, on others. She is effectively housebound and is almost entirely dependant on others for her daily physical needs.

- The maximum available care package is 4 periods per day. Mrs. Taylor requires more than that level of care. It would appear that only RP can provide that. If he were

extradited, then unless her children and her sister (from whom I did not hear) can step in on a daily basis, then Mrs Taylor faces a diminution below the minimum level of care she needs.

- Even if her children and her sister could offer a degree of assistance, Mrs. Taylors sense of degradation at requiring personal care from anyone other than her husband is at the least deeply distressing to her.

- Mrs. Taylor has verbalised to me, to RP, to each of her children, to Ms. Finlayson Jackson and to RP's legal team an intention to commit suicide if she were to lose RP's continuous daily support and companionship to his extradition. Her children are convinced of the genuineness of her threat. I will return to that under the topic "Suicide".

- I do not doubt that even if she does not resort to suicide, the quality of her daily life will be immeasurably inferior to that which it is now. As it is now, she is a near captive of her various ailments, unable to leave home other than for medical appointments. Separation for an indeterminate period from her husband of 38 years, and her sole carer of 30 years will be close to unbearable. Expecting others to fill what is bound to be a void is no answer. I return to this under my consideration of the impact of extradition upon Mrs. Taylors Article 8 Rights.

82. What are my conclusions with regard to RP as a result of the family testimony? These –

- Perhaps never a gregarious individual, RP has retreated into a life in which his near total focus in providing for his wife's physical daily care. He also sits with her for much of the day offering her companionship. That cannot be all absorbing, however, as I have read of his computer obsession in which he spent well into the early hours engaged in the computer hacking which (he admits) has led him into the predicament he now faces.

- Over the almost five years since his initial arrest and interrogation, but the more so in the period since his arrest under this extradition request, RP has further retreated. He is now "a shell". His children comment on his loss of weight. He does not wash himself nor brush his teeth as often as he did, nor change his clothes as regularly as he should. He is described as appearing to have aged visibly. The professional witnesses who have examined him observe that he appears physically older than his actual years.

- He suffers physical ill-health – most notably from COPD. Notwithstanding the impact of smoking on that illness, the stress of his predicament causes him to continue to smoke.
- He is terrified of the threat of removal from the security of his home, and from his marriage, to be tried and sentenced in America.
- He is terrified of leaving his wife to cope without him.
- He is convinced she will kill herself if he is removed from her life.
- His fears revolve primarily around the impact of his wrongdoing on his wife – the result of which will be that she will be left essentially alone and with inadequate daily care and support. He fears she will resort to suicide rather than endure that life. Whilst afraid for himself, I believe that is his secondary concern.

Autism

83. Simon Baron-Cohen, Professor of Developmental Psychopathology Trinity College, Cambridge, conducted a clinical interview with RP, as the basis for establishing if he warranted a diagnosis of autism.

84. Professor Baron-Cohen is, in addition to his post at Trinity College, the Director of the Autism Research Centre (ARC) in Cambridge. He is the author of *Autism and Asperger Syndrome: The Facts (OUP, 2008)*. He has published over 500 peer reviewed scientific articles on autism and related topics. He is Co-Editor in Chief of the journal Molecular Autism and has awards from the American Psychological Association, the British Association for the Advancement of Science, and the British Psychological Society (BPS) for his research into autism. He was the Chair of the National Institute of Clinical Excellence (NICE) which produced Guidelines on the assessment of autism and has spoken at the UN in New York on Autism Awareness Day on autism and human rights.

85. His diagnosis was as follows –

> *"In my opinion, he has autism: In particular, he has social difficulties, communication difficulties, obsessional behaviour and interests, and difficulties with adapting to change. These are the criteria used in the international classification systems such as DSM-5 (the Diagnostic and Statistical Manual, published by the American Psychiatric*

Association, covering clinical practice in the US) and ICD-11 (the International Classification of Diseases, published by the World Health Organisation, covering European clinical practice).

I use the term 'autism' to cover what previously was also referred to as 'Asperger Syndrome', which is autism in individuals who have intelligence in the average (or above average) range and with no history of language delay in childhood. Christopher would under this older terminology be said to have Asperger Syndrome but today this is simply called autism.

Autism Spectrum Quotient: Consistent with him having autism is his score on the Autism Spectrum Quotient (AQ), a screening instrument with considerable research evidence behind it. It is a scale from 0 to 50, with each point reflecting one autistic trait. Christopher scored 43 out of 50, which is an extremely high score. 80% of adults with autism score 32 or above out of 50, whilst only 2% of the general population do so. See Baron-Cohen, S, & Wheelwright, S, Skinner, R, Martin, J, & Clubley, E, (2001) The Autism Spectrum Quotient (AQ): evidence from Asperger Syndrome/high-functioning autism, males and females, scientists, and mathematicians. Journal of Autism and Developmental Disorders, 31, 517."

86. Professor Baron Cohen gave additional oral testimony in which he expanded upon the method he used to make the diagnosis of autism. He explained that he created the system for diagnosing autism in adults and that it is a two-step process. Step one is a screening questionnaire. Only if a sufficiently high score is recorded is Step 2 in the process triggered. Step 2 is a clinical interview.

87. He explained that he has used this process for over 20 years, at that it differs to method of diagnosis of autism in children. In the case of children, the assessment wouldn't focus solely on the patient, but would involve consultation with the school, with parents whereas in adults the available witnesses are more limited - for example the adult parents will often not be alive and access to school records may be difficult.

88. He described the features that caused him to diagnose autism in RP. On the Step 1 assessment he found RP to be 7 levels above the general population. He described that questionnaire as being used in hundreds of scientific studies which was evidence of its reliability. He described his diagnosis of autism in RP as "very clear cut".

89. He agreed there was no prior history of autism, and that the first suggestion of autism had come from RP's solicitor who had other clients in the past who were autistic. Professor Baron Cohen said that he worked with adults in a clinic where autism had previously been overlooked and was first identified only in adulthood.

90. He agreed that his assessment was "a simple cross-sectional assessment"- he saw RP once, and did not interview anyone but RP. He did not review RP's school reports although he did request his educational records, and he had reviewed a full folder of RP's medical notes. He accepted he found nothing in those to support his diagnosis.

91. He agreed he was familiar with the NICE assessment recommendations - he chaired the committee which wrote that guidance. He accepted that guidance recommended a team-based assessment but he suggested that was particularly true in respect of children. He said that with adults it is much more limited and normally one to one assessment.

92. He was referred to two standard diagnostic tools. The first, he suggested, misses about 50% of autistic people and lacks sensitivity. The second he suggested was designed to be used with parents when assessing their child. He said it was not a widely used tool. He said that both methods are very time consuming. He said that the understanding an assessment of autism in adults is a specialist skill and may not be picked up by generalists. He suggested that research he has published shows those with autism are at an elevated risk of suicide compared to those without and that the standard methods for evaluating suicide in adults are not appropriate when dealing with an autistic adult.

93. The significance of autism in respect of RP is that RP, in common with others who are autistic, relies on a very small social world. Being separated from his wife would exacerbate the very clear depression RP suffers. American prisons can be overwhelming in terms of noise and overcrowding, and this might be unbearable and overwhelm RP's poor mental health. Professor Baron Cohen accepted the assessment of Dr's Furtado and Qurashi in respect of RP's risk of suicide and concluded that being separated from his wife and being placed in an unfamiliar American prison would place RP at high risk of suicide.

94. Asked to comment on the joint expert report of Dr's Furtado and Qurashi's conclusion that–

> *"We agree, notwithstanding Professor Baron-Cohen's assessment which we agree comprised a screening assessment and was limited; Christopher Taylor very likely does not have autism/autistic spectrum disorder."*

95. He noted that he agreed with their diagnosis of clinical depression. He observed that Dr. Furtado is a specialist in old age psychiatry, and he commented that he would not try to assess a patient for dementia. He observed that Dr. Qurashi is a forensic psychiatrist and as such deals with personality disorders. Autism, he commented, is developmental and starts in childhood. He suggested that a discussion on autism should take place between "appropriate experts". He noted that both Dr's Furtado & Qurashi assessed for potential psychosis and ruled that out. He said that he was not aware that they had been asked to comment on the assessment of autism, and he said he did not see any testing in their reports on the hypothesis of autism. He commented *"I am sad we were not asked to discuss this between us before today".*

96. Dr. Qurashi's observations on autism, and professor Baron Cohen's diagnosis of it, were these. Professor Baron Cohen said that he carried out a single cross-sectional tool assessment. Whilst recognising Professor Baron Cohen's expertise in autism, Dr. Qurashi observed that-

> *"I am a psychiatrist in clinical practise. I started diagnosis in 1999, I have been a consultant since 2005, I work in hospital. The psychologist in my team will carry out a series of interviews in a process that takes months. Autism is a developmental disorder carried from pregnancy and displayed during childhood and I have some reservations on Professor Baron-Cohen's diagnosis of it. I'm not convinced about the observation on obsessionality. We all have obsessional traits but they do not pervade across time - for example I may have presentational difficulties when I am nervous but not all of the time. Professor Baron-Cohen has not interviewed family members, he has not commented on a review of medical records or educational records and he did not conduct any further interview with Mr Taylor."*

97. He was clearly of the view that Professor Baron-Cohens assessment fell short of the requirements of the NICE guidance. He noted that Professor Baron-Cohen chaired the group which prepared that guidance. Dr. Qurashi noted that the NICE guidance is in fact explicit - if an individual scores an elevated score on the screening tool, they should then go on to have a multi-disciplinary comprehensive assessment using a validated assessment measure such as ADOS or DISCO.

98. He added-

> *"If I was to receive Professor Baron-Cohen's report, I would politely write back saying thank you for your assessment, Professor, but these are the following observations that I have. You have not undertaken a series of interviews. You have not interviewed his*

family members. You have not appeared to have even accessed his GP records. I was a bit unclear about whether his educational records had been reviewed. I would point out he had not done a diagnostic interview using a multi-disciplinary assessment and I would write back to Professor Cohen saying I cannot accept your diagnosis based on the quality of the assessment undertaken.

.....it is not a light diagnosis to make. Diagnosing somebody with a pervasive developmental disorder which is autism, you are essentially saying, which Professor Baron-Cohen said, that the individual has fundamental social and communication difficulties. So, I was not certain what steps Professor Baron-Cohen had taken to share that information with the General Practitioner or what steps had been taken to make sure that where possible further assessments were undertaken.."

99. Dr. Furtado's observations on Professor Baron-Cohen's diagnosis with these - he recognised the Professor's expertise on the subject of autism and had no doubts about that expertise. Dr. Furtado did not himself carry out any structured autism assessment of RP. His experience of diagnosing autism started with his training in child psychiatry more than a decade ago. Dr. Furtado now works on a long-stay secure psychiatric ward, and the main reason people stay on that ward is due to previously undiagnosed autism. He agreed it was fair to say that he has a fairly full experience in the diagnosis and treatment of autism but he acknowledged his experience was not as great as that of Professor Baron-Cohen. Nonetheless, Dr. Furtado stood by his assessment that RP could not be confirmed as autistic.

Autism – my findings

100. My conclusions on the issue of autism a made with considerable difficulty. Professor Baron-Cohen is clearly a leading expert, if not the leading expert, on the diagnosis of autism in adults. He literally wrote the diagnostic manual for adults with autism in the guise of the NICE guidance. I was not taken to that guidance. However, the impression I have overall is that a diagnosis of a developmental disorder (as autism is) cannot be easily reached and requires a thorough, evidenced, assessment. I was particularly persuaded by Dr. Qurashi's observations on this. He has extensive experience in the course of his psychiatric practise in the assessment of autism and its diagnosis. He fully recognised, as did Dr. Furtado, Professor Baron Cohen's specialism. His qualms were not with Professor Baron-Cohen's knowledge and experience - rather that a diagnosis of a development disorder was made on the basis of a single

questionnaire followed by a single interview with RP alone – and not in accordance with the recognised methodology.

101. Dr Qurashi's own lengthy experience in clinical psychiatry, which has involved relatively regular diagnosis of autism in adults, confirms that what is required is more than a single questionnaire and single interview with the patient. For want of a better expression, it appears the Professor Baron-Cohen may have cut corners in reaching what he believes to be a justified diagnosis. His diagnosis may be correct. But without seeing the detailed "working out" on which his conclusion is based, the other medical experts, Dr's Qurashi and Furtado, cannot accept the soundness of his diagnosis. Again, recognising it may be correct, I feel unable to reject their concerns. For example, with RP's wife, her sister, their three adult children, and RP's GP all available to obtain evidence from in order to assist a diagnosis, it seems (based on what Dr's Furtado and Qurashi told me) that Professor Baron-Cohen did indeed reach a conclusion on an inadequate evidence base. Accordingly, I do not accept Professor Baron-Cohens diagnosis, contradicted as it is by each of the psychiatrists from whom I heard – one of them instructed by RP and one by RS.

Suicide

RP

102. Dr Furtado, consultant forensic psychiatrist, and Dr Inti Qurashi were instructed on RP's and RS's behalf respectively. Their remit was to assess RP (and Wendy Taylor) for any diagnosable mental illness, and to consider the respective risk of suicide.

103. Following a telephone conference on 16th October 2020 Dr's Qurashi and Furtado prepared a final joint report setting out areas of agreement and disagreement. The salient matters were –

> *Diagnosis –*
>
> *"We agree Mr Taylor is presently experiencing a depressive illness of at least a moderate severity (ICD-10 classification F32.1). Dr Furtado is of the view it is a severe depressive illness (ICD-10 classification F32.2) and Dr Qurashi accepts this is in the range of reasonable opinion. We agree there is no evidence of past or current psychotic symptoms and no evidence of a disordered personality. We agree, notwithstanding Professor Baron-Cohen's assessment which we agree comprised a screening*

assessment and was limited; Christopher Taylor very likely does not have autism/autistic spectrum disorder. We agree the depressive illness is treatable and that the major precipitating and perpetuating factor is the extradition hearing. We also agree that his depressive illness is likely to worsen if the decision be made to extradite Christopher Taylor."

Risk of suicide

"We agree the risk of suicide is increased for Christopher Taylor compared to the general population although this risk is very difficult to quantify, will fluctuate and is dependent on the outcome of his extradition hearing. We agree the risk of suicide would be increased if a decision is made to extradite him. Dr Furtado quantifies this risk to be very high. Dr Qurashi does not agree it would be very high as it would require an assessment at that time. We agree the risk of suicide can be minimised once Mr Taylor is placed under the supervision of USA authorities in terms of transfer and whilst in detention in USA penal facilities. We agree that the treatment he would receive in USA penal facilities is of at least an equivalent level to that Mr Taylor would receive in a UK prison based on the documents provided. We agree, if a decision is made to extradite, the main suicide risk period is in the period before Mr Taylor is placed under the care of USA authorities and were he to remain in the community. In terms of suicide risk mitigation, if a decision is made to extradite Mr Taylor, we agree Mr Taylor is kept observed pending an urgent Mental Health Act assessment undertaken as soon as possible after he is informed. We anticipate the relevant mental health services that cover Westminster Magistrates Court would be involved."

104. As to the difference of opinion on the level of severity of RP's depression Dr. Qurashi noted that RP was able to care for his wife, and continued to meet with a friend on a regular basis. He suggested a good indicator of a higher level of severity is whether the disorder is being managed at primary or secondary level. RP was referred for secondary treatment but was discharged in May 2020 – although the reason for discharge was unconfirmed.

105. Asked by Mr Sternberg what was the cause of the significant stress upon RP, Dr. Qurashi said it was specifically the prospect of being extradited rather than being imprisoned - but that RP is very anxious about serving a sentence of imprisonment in America.

106. Dr. Qurashi made it clear that suicide risk prediction is imprecise and that the individuals risk could change at literally the moment they walk out of the room following an assessment.

It was put to him that RP is experiencing *"personal terror"* at the prospect of being separated from his wife and his family and then being taken to a foreign jurisdiction. He agreed *"I fully see that, absolutely. Yes"*

107. He agreed that he could foresee a scenario where RP's risk of suicide would increase and he assessed that as at the date of the hearing before me the risk of suicide was an elevated risk which could move to one that would be very high.

108. In answer to my question that once I made a decision, if that were the decision, to extradite RP would the risk of suicide stray into the very high, he said that it would be speculation to reach that conclusion.

109. What would be required, if that were my decision and given RP's elevated risk of suicide as of now, would be a contemporaneous assessment – that is, contemporaneous with the delivery of my judgement - to assess whether the suicide risk would move to the very high. if it did, RP would be at a very high risk of suicide and might, at that stage, need to be admitted for immediate care. He added –

> *"Most times we will be wrong, so clinicians err on the side of caution because we have to, because the outcomes are terrible if we get it wrong. So, we will err on the side of caution and we will say take pre-emptive steps to bring somebody in because we would much rather be wrong but have a safety net than under-emphasise risk. So, in this particular case, just to reiterate, I think with Mr Taylor I can see a scenario where he would make an attempt on his life. I can see that. Whether he would or he would not requires an examination nearer the time."*

110. Questioned as to the adequacy of the provision of safeguarding measures both during his transit to the United States and once admitted to a prison there, Dr. Qurashi was satisfied on his review of the materials provided by RS that RP would be adequately safeguarded against the risk of suicide - albeit he acknowledged the evidence he had heard from Ms. Baird which was less rosy.

111. Pressed on whether it was advisable to place mentally ill prisoners in segregation, he observed that many patients in segregation are at high risk of suicide and that the risk of suicide has to be managed within that setting. He agreed it was not advisable to place such a prisoner in segregation, but my impression of his evidence was there may sometimes be no alternative.

112. Dr Furtado provided two reports in respect of Mr Taylor - one on the 6th of February 2020 and the other on the 21st of October 2020.

113. On the theme of suicide, I don't propose to set out at great length Dr. Furtado's findings. I have already recited the terms of the joint expert report which he co-authored with Dr. Qurashi. The primary difference between them was that Dr Furtado found Mr Taylor to be suffering a severe depressive illness whereas Dr Qurashi diagnosed a moderate Depressive illness (severity being graded as mild, moderate or severe). However, in their joint report Dr. Qurashi accepted that Dr. Furtado's diagnosis was within the reasonable range of professional opinion - perhaps an acknowledgement by Dr. Qurashi the Dr. Furtado carried out a second assessment of RP on the 27th of October 2020 in which he noted a deterioration in both RP's physical and mental presentation.

114. At that examination Dr. Furtado observed that RP was dishevelled and appeared much older than his chronological age. RP was tearful throughout, his self care was poor, as was his eye contact. Speech rate rhythm and tone were all reduced, as was spontaneity. Dr. Furtado noted a reduction in RP's speed of response to questions in comparison to the earlier February 2020 examination.

115. In terms of mood he found RP to be subjectively and objectively depressed. Dr. Furtado recorded a severe degree of anxiety and a severe degree of depression. He concluded that RP's mental health appeared to have deteriorated since the earlier meeting and that RP now showed a number of symptoms of anxiety which were previously absent.

116. Like Dr. Qurashi, Dr. Furtado noted that suicide risk assessment is imprecise but given specific factors that exist in this case he concluded that the clinical risk of RP committing suicide should his extradition be ordered would very high. Dr. Furtado also noted that RP would, unless detained, have access to the means to commit suicide. He added-

> *"there is a real risk that he could go through an attempt to kill himself following a decision to extradite him to the US as this would amplify his feelings of hopelessness. This increase in risk, although perpetuated by the decision to extradite him, would occur significantly due to his severe depressive disorder which would affect his ability to think through his actions. It would be the nihilism and hopelessness associated with his depressive disorder [that] drives his suicide attempt."*

Suicide – my findings as to RP's risk

117. What are my conclusions as to RP's risk of suicide? Even though I have conducted this hearing via live link, which I do feel masks human interaction considerably, I could see and sense the hopelessness in RP. Added to that, I have the evidence of his wife and children all of whom have seen a physical and mental decline in RP since the active extradition phase of the case against him began. On top of that, I have the benefit of Dr. Furtado's 2 assessments - eight months apart- in which he has observed both physical and psychiatric declines in RP's condition.

118. Dr. Furtado and Dr. Qurashi both expressed significant concern that, if I order RP's extradition, he will make a serious attempt at suicide. It appears to me that is a real and highly likely risk. It is a risk born from hopelessness on RP's part at the prospect of his extradition, which would entail his complete separation from his home, his family, and the UK. It is not a hopelessness born of a fear of imprisonment as a result of his wrongdoing if he were prosecuted in the UK.

119. If I order RP's extradition then I conclude that he will, unless detained to prevent him from doing so, make a concerted attempt to commit suicide and will continue to do so until he succeeds.

Wendy Taylor

120. In their joint report, Dr's. Qurashi and Furtado note:

> *"We agree Wendy Taylor is presently experiencing a depressive illness. Dr Qurashi is of the view this is of a mild severity (ICD-10 classification F32.0) and Dr Furtado is of the opinion this is of moderate severity. Dr Qurashi agrees this is within the range of reasonable opinion.*
>
> *We agree there is no immediate requirement for inpatient psychiatric admission.*
>
> *We agree there is no past history of attempted suicide.*
>
> *We agree the risk of suicide would increase if a decision is made to expedite Mr Taylor.*
>
> *Dr Furtado is in agreement with Dr Qurashi's observations as set out in paragraph 5.11.2 of report dated 28th September 2020.*

We agree that suicide risk assessment, mitigation and management strategies can be put in place ahead of the extradition hearing involving local mental health services."

121. Dr Qurashi's paragraph 5.11.2 of his 28 September 2020 Report notes:

"The sharing of information with her general practitioner would be an important part of longer-term risk suicide risk assessment as the court case progresses. I would suggest her general practitioner consider a referral to secondary mental health services for specialist assessment and advice re: suicide risk management strategies. This would allow for repeated assessments from specialist mental health clinicians experienced in the assessment and management of risk of suicide, particularly in fluctuating personal and social circumstances. It would provide a framework to monitor and mitigate her risk of suicide during the court case and beyond if necessary."

122. He further noted at his paragraph 5.11.3:

"If a decision is made to extradite Mr Taylor I anticipate there would be a pre-agreed and deliverable plan to expeditiously assess Mrs Taylor as to the requirement for voluntary/involuntary in-patient admission to minimise her risk of suicide."

123. In his evidence before me he confirmed his diagnosis off a mild depressive illness. He noted she was housebound and had pre existing depression but that there appeared to have been a change in that since she found out about her husbands risk of extradition. He felt her needs were being met buy her GP and there was no current need for inpatient admission.

124. He noted that she alluded to a suicide pact and that he tried to explore that in more detail with her - but she was reluctant. Although noting she provided little information or detail, Dr. Qurashi said *"one has to sit up and give it due credence".* He noted she had not had a Mental Health Act assessment, she did not have a history of suicide or self harm but he observed that if her husband was to be extradited he would recommend her immediate assessment - including as to the potential to treat her as an impatient in the event of there being then found to be a high risk of her attempting suicide.

125. In cross examination, when asked could he imagine the situation for her where "her soul mate, lifelong sole-carer, provider of her every daily physical need" was extradited he replied:

"I can, and I note the dependent nature of the relationship. She will find loss and separation very difficult. The process of suicide needs the thought, the plan and then to

act on those. That can take minutes or hours. It is very difficult to speculate - she will need an assessment at that time. What she has hinted at - an overdose of insulin- would take a matter of minutes. But we cannot do more than speculate at what she would do- we can only assess the risk at that time."

126. Dr. Furtado similarly noted that RP is his wife's sole carer. He noted that in RP's absence external carers would attend upon her four times per day. He noted that she is clear that she does not want that. If RP could no longer provide the support to her then her dependence on others, being something she doesn't want, would be a significant risk factor in her decision to end her life. He said:

"I would think the risk would be quite high. They have been married for decades. That relationship is of interdependency. She will have no social contact with anyone."

127. In cross examination Dr. Furtado reiterated that there was no immediate requirement for inpatient admission and no history of suicide attempts but that Wendy Taylor had access to the means to commit suicide and that if extradition was ordered then she would need to be assessed.

Suicide - my findings as to Wendy Taylor's risk

128. Based on this evidence, it appears to me that there is a high risk that Wendy Taylor will kill herself if her husbands extradition is ordered. Noting Dr. Qurashi's observations that suicide by the readily available means of an insulin overdose would take a matter of minutes, I have real fears that an attempt would succeed. I find the situation horribly chicken and egg. In the case of both RP and his wife, the suicide risk in the event of extradition being ordered appears to be very high. But unless and until each kill's themselves the Dr's regard the matter as speculation.

129. I conclude that if the Dr's are in agreement (as they are) that such is the risk of each of RP and his wife committing suicide if extradition is ordered that both must be capable of immediate assessment and if necessary admission for in-patient treatment at the time my decision to extradite is given, then the risk of suicide in the event of extradition is very high and very real.

130. So far as Mrs Taylor is concerned, the risk mitigation strategy is to have a team available to immediately assess her and if necessary admit her for treatment at that time. But that does not guarantee longer term oversight. She has a history of depression and whilst there have not been previous suicide attempts, nor has she over the last 30 years had to depend on anyone

other than RP. Such would be the change in her day to day life that I cannot see anything other than a very bleak and lonely existence for her.

131. Her depression pre-dates the issue of extradition. She expresses fear of her husbands ability to cope in an American prison. She has very readily available means to kill herself. As I suggested to Dr. Qurashi, she injects herself any number of times per day with insulin. To kill herself, she simply draws up a higher dose of insulin and injects that. She does not have to ponder the method of suicide, and fear the pain associated with other methods of suicide because she doesn't have to. She has already concluded that she has the means to kill herself promptly and effectively via an insulin overdose.

132. The mechanics of her method of suicide, which she is at very high risk of putting into execution, is something she is already accustomed to. I am sure she is at or close to the tipping point. She may or may not kill herself if I order her husbands extradition but it is enough that the two psychiatrists agree that the risk that she will is very high. I find it to be unacceptably high.

Suicide prevention – arrangements for safeguarding in transit to US – my findings

133. As already noted, both psychiatrists recommend that should I order his extradition, my decision should be given to RP in the presence of a medical team capable of assessing his suicide risk at that moment in order that he might be admitted as an impatient for treatment if required.

134. Thereafter he would need to be transferred to the United States. I have a declaration from Steven Panepinto. He is employed by the United States marshals service. In that declaration, he confirms he has read the psychiatric evidence in respect of RP. He confirms that RP will be escorted and monitored throughout his transfer. If necessary he will be accompanied by a medic. Mr Panepinto notes that the marshal service routinely transports prisoners with issues including those at risk of suicide. He states his belief that the marshal service can safely transport RP to the United States.

135. Mr Coopers submissions do not undermine these arrangements. I do not find these plans to be inadequate nor that they would fail to safeguard RP during his passage to the United States should extradition be ordered. I can be satisfied that he will be safeguarded throughout his journey to the US if extradition is ordered.

Suicide prevention - arrangements for safeguarding in US custody

136. Dr. Yeh Provided a declaration in his capacity as the Bureau of prisons ("BOP") chief of health programmes. His evidence relates to the provision of medical care to sentenced prisoners.

137. He notes that the vast majority of the 168 thousand inmates in US prisons are held in BOP institutions - every one of which maintains a health services unit. He notes that because of the extensive provision of medical services, a defendants medical condition will not generally preclude a custodial sentence to a BOP institution. He describes four healthcare levels. Amongst those who would receive the highest level of care (level 4) are those with acute psychiatric illness requiring inpatient treatment and care. Where the care level cannot be met in a BOP institution then the inmate can be transferred to a local hospital or to a BOP medical referral centre, of which there are six.

138. In respect of RP, Dr Yeh comments that COPD is commonly encountered and can be readily managed in a prison population. He observes that depression and anxiety are common in incarcerated populations and that prisons have extensive experience in managing these conditions, with access to psychologists medication and psychiatric care all provided for as appropriate.

139. As to suicide risk, Dr Yeh observes that the BOP has a robust suicide prevention programme.

140. David Brewer is an acting senior assistant director at the BOP. Whilst he cannot confirm where RP would be held once sentenced, he confirmed that RP would be subject to screening on arrival at that institution. Screening includes the detainees self reported concerns and an assessment of any other material provided to the BOP. He confirmed the existence of special housing units which can be used as protective custody if needs be. At-risk inmates are identified and special measures taken to protect them. Such inmates include those whose incarceration generates public notoriety, a category that would include sex offenders - a category other inmates might consider RP to fall within. Mr Brewer concluded that BOP can safely house RP.

141. Steven Wolf is also a doctor and employed by the US Marshal Service. That service is responsible for the transport and custody of pre-trial prisoners. RP would make an initial court appearance at which a decision would be made as to whether he would be held in pre-trial custody. If detained pre-trial, the Marshal Service would decide in which of 1800 local gaols

RP would be held. Given that RP is to be prosecuted in the Northern District of Georgia then Mr. Wolf concluded that he will be held at the Deyton detention facility, operated by a private group as distinct from the BOP.

142. The Marshal Service screens prisoners and assesses their medical needs. That assessment includes assessing suicidal ideations or serious mental health issues. That information is provided to the receiving prison. A further assessment of the prisoner takes place when admitted to the detention facility. It is Dr Wolf's understanding that those detained at Deyton are screened within 24 hours of arrival for their medical and psychological history and those with pre existing issues and or suicidal history are identified for regular follow up.

143. That is through an individualised treatment plan prepared by a psychologist and, where necessary, a psychiatrist will also see the detainee. There is a specific plan for dealing with suicidal detainees and provision is made for direct one to one supervision when necessary. Deyton has a psychiatrist, two psychologists and a licenced mental health professional. The health service there is staffed 24 hours a day for urgent care needs. The facility utilises community hospitals' for crisis stabilisation for serious mental health issues. Being aware of RP's mental health situation Dr. Wolf believes that Deyton can provide adequate medical care for RP.

144. Maureen Baird gave evidence on RP's behalf. She is a former employee of BOP from 1989 to 2016 – serving as a warden and a senior warden in 3 different prisons from 2009 to the date she retired. In those roles, she was responsible for the overall operation of each prison. She is fully knowledgeable of the operational policies of the BOP.

145. Since her retirement Ms. Baird has maintained contact with her former colleagues and has worked as an independent prison consultant providing evidence as an expert witness in a variety of courts including Westminster magistrates Court. She is contracted to three US federal defenders offices to provide reports regarding conditions of confinement in federal prisons. She provided an overview on the conditions of all federal prisons and the healthcare available to inmates within them. She was asked to comment on prospective violations of RP's Article 3 rights should he be extradited to a US prison.

146. In her opinion RP will not be bailed in the pre trial phase of proceedings in the US. I don't doubt that she is right about that. She identified two potential places of detention pre trial - one being the Deyton facility referred to by Mr Wolf as the pre trial detention facility at which RP will be held.

147. She speculated on whether the facility would be a "contract" (i.e. privately run) detention centre or a BOP centre. Either way, she suggested RP would be held in a low security unit, and she gave an unremarkable description of the daily routine to which he would be subject. She opined that other prisoners would discern that RP was being held on a sexual offence, and that they would in turn assume it was a child sexual offence. As a result, she suggested RP would be ostracized and harassed continually. As a result, he was likely to be placed in "special housing" – and subject to 23-24 hour per day detention. He would have one hour of exercise per day and be permitted one phone call per month. He would receive medical visits twice per day and, if required, be visited by a psychiatrist once per day – who would merely ask RP if he was "OK".

148. She conceded that there is some excellent psychiatric provision in BOP prisons, and that a "suicide watch" might be effective for so long as it was in place. She made the observation that if someone resolves to kill themselves then they find the means to succeed.

149. She commented on Covid in prisons, and suggested it is affecting US prisons very significantly. She also commented that trials were being affected (as they are in the UK).

150. Cross examined, she agreed she had no personal experience of the prisons in Georgia at which RP was likely to be held. She agreed she was unaware of any specific staff shortages in Georgia prisons. She could not cite an instance of a Georgia facility being found to be unconstitutional. She agreed RP would receive the appropriate level of mental health care he was deemed to need. She agreed that COPD and depression are not unusual in prisoners. She agreed that prison staff were trained in identifying suicide risk assessment and prevention. In closing her evidence, she agreed that the BOP can safely house RP and provide care to him. She expressed her concern that RP is suicidal *"and he could slip through the cracks….. if the [psychiatric reports] go with him that will definitely assist but certainly does not provide any guarantees."*

151. Dr. Kaufmann, an assistant professor in law at New York University, and educated at Yale and Oxford Universities also gave evidence on RP's behalf. She suggested that post conviction, RP will be held in a "criminal alien requirement" (CAR) prison – places designated solely to hold non-US citizens after conviction. Privately run, she recited that such prisons are "stripped down institutions" with harsh conditions of confinement and fewer services than US citizen-holding prisons. She referred to CAR prisons as having unusually poor health care, being

overcrowded, having higher rates of the use of solitary confinement and higher rates of deaths in custody when compared to BOP Prisons.

152. She gave specific examples of outbreaks of violence in such prions in 2012 and 2015. She noted that more than half of all foreign national prisoners held post-conviction in the US are detained in CAR facilities. She recited instances of avoidable deaths in CAR facilities, and to the extreme isolation prisoners detained in them can suffer – with confinement of up to 23 hours per day possible. Like Ms. Baird, Dr Kaufman suggested that if identified as a sex offender, RP would be at a higher risk of violence, and thus at a higher risk of being placed in protective custody than a non-sex offender. Protective custody would attract the restricted regime and increase isolation.

153. She gave evidence that RP would not be entitled to participate in programs which would entitle him (were he a US citizen) to achieve an earlier release from his sentence. She gave evidence that non-US citizens are more likely to receive prisons sentences that US citizens, and that such sentences are longer than for US citizens.

154. Cross examined, she agreed that the statistics to which she referred did not differentiate between Latin-American prisoners and Europeans and so it was not possible to say which (if either) group would suffer greater discrimination than an American citizen. She accepted that the trial judge is responsible for ensuring a fair trial, that RP would have a right to representation, and the time to prepare his defence. She agreed that there are constitutional safeguards in place in trial Courts in the US, although she was not sure she could agree that those safeguards were always met for non-US defendants.

Suicide prevention - arrangements for safeguarding RP in US custody – my findings

155. My findings on prison safety for RP are these. As Dr Qurashi observed, this is an extradition request to a first world country with a developed prison system which includes appropropriate provision for those with mental, and other, health concerns. As Ms. Baird observed, there is a trained staff at every detention facility and access to psychiatric services and psychological services every day as required. There is a suicide prevention programme in place.

156. There are facilities in which a vulnerable (in the sense of vulnerable to intimidation by other inmates) detainee can be safely held. Whilst less than ideal to be held for up to 23 hours per day, sometimes that may be (and may is the word in RP's case) be preferable to intimidation

and harassment that a notorious prisoner may be subjected to by other detainees. RP otherwise has conditions with which prison staff are well familiar.

157. There is a mature health care system in place in any facility at which RP is likely to be held. The "declarations" provided on RS's part offer a guarantee that RP's particular needs will be attended to during his pre and post trial detention in a US prison – whether that is run by the state or a private company. In fact, therefore, I am satisfied that RP will receive appropriate levels of care, treatment, protection and accommodation whilst detained in the US if his extradition is ordered.

158. That said, I am concerned that the extent of his contact with his family will be limited to a single phone-call per month. That is something I will factor into my Article 8 considerations. As to Article 3 – I will factor my factual findings on US detention conditions into my assessment under that heading below.

Delay in the trial process – my findings

159. Ms Baird suggested that Covid is delaying the trial process in the US. As observed, that is the situation in the UK too. Otherwise, she accepted that the "Speedy Trial Act" guaranteed RP a right to trial within 70 days. I don't see that the suggestion of delay can be a significant factor in RP's case. I accept that in fact, trials in Georgia have been paused as a result of Covid (as is the situation in the UK.) But the statutory safeguard is in place (again, comparing it to the UK, it is akin to the custody time limit regime in place in the criminal courts of England & Wales.) There is no risk that RP will be arbitrarily detained without limitation of time.

Initial Matters – s.78 EA 2003

s.78(2)EA 2003

160. None of these matters are challenged. Having considered each of them, I am satisfied that I have received from the Secretary of State:

- those documents required by s.70(9) EA 2003, namely the request for extradition and the certificate issued by the Secretary of State;
- particulars of the person whose extradition is requested;
- particulars of the offence specified in the request;
- a warrant for, or a judicial document authorising, RP's arrest issued in the requesting state.

s.78(4) EA 2003

161. Again, none of these matters are challenged, and having considered each of them, I am satisfied that:

- RP is, on the balance of probabilities, the person whose extradition is requested;
- the offences specified in the request are extradition offences;
- copies of the documents sent to me by the Secretary of State have been served on RP.

Bars to Extradition – s.79 EA 2003

Double Jeopardy

162. There is no challenge under this ground, and I am satisfied it does not arise.

Extraneous considerations

163. There is no challenge under this ground, and I am satisfied none arise.

Passage of time

164. There is no challenge under this ground, and I am satisfied it does not arise.

Hostage-taking considerations

165. There is no certificate issued by the Secretary of State that RS is a party to the Hostage-taking Convention and there is no challenge under this ground. I am satisfied it does not arise.

Forum

166. The "Forum Bar" provisions were introduced into Parts 1 and 2 of the EA 2003 by s.50 and Schedule 20 of the Crime and Courts Act 2013. The provisions came into effect on 14 October 2013. So far as Part 2 EA 2003 requests are concerned, s.83A of the EA provides:

> *"83A Forum*
>
> *(1) The extradition of a person ("D") to a category 2 territory is barred by reason of forum if the extradition would not be in the interests of justice.*
>
> *(2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—*

(a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and

(b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.

(3) These are the specified matters relating to the interests of justice—

(a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;

(b) the interests of any victims of the extradition offence;

(c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;

(d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;

(e) any delay that might result from proceeding in one jurisdiction rather than another;

(f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—

(i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and

(ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;

(g) D's connections with the United Kingdom.

(4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 2 territory concerned.

(5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition

offence, the judge must make that prosecutor a party to the proceedings on the question of whether D's extradition is barred by reason of forum.

(6) In this section "D's relevant activity" means activity which is material to the commission of the extradition offence and is alleged to have been performed by D."

167. In *Shaw v USA [2014] EWHC 4654 (Admin)* a divisional court (Aikens LJ, Nicol, J) approved the dicta of Simon J in *Dibden v Tribunal de Grande Instance de Lille, France [2014] EWHC 3074 (Admin):*

""Five initial points may be noted:

First, the ultimate test is whether the extradition would not be in the interests of justice (see section 19(B)(1).

Secondly, there is a threshold or qualifying condition that a substantial measure of a defendant's relevant activity was performed in the United Kingdom (see section 19B(2)(a)).

Thirdly, the section is not concerned with a case where a defendant has been charged with an offence in the United Kingdom. That situation is covered by section 22 of the Act which requires the adjournment of an extradition hearing, as happened in the case of Joseph Harrison. Section 19B is concerned with a case where there is a possibility of a prosecution in this country.

Fourthly, where the court finds that the threshold or qualifying condition is satisfied, the court must go on to consider the six specified matters which relate to the interests of justice, which are set out in sub-section 3(a) to (g) and 'only those matters' see (2)(b).

Fifthly, the terms of section 19B contain no further guidance as to the weight to be given to the specified matters which should be taken into account. The relative importance of each matter will vary from case to case, and the weight to be accorded to the specified matters may also vary. The court will be engaged in a fact-specific exercise in order to determine whether the particular extradition would not be in the interests of justice."[37]

168. The divisional court continued –

"It is, in my view, important to remember two things in connection with the section 83A(3) factors.

First, the words "having regard" in section 83A(2)(b) is an important expression. It means that the judge has to bear in mind each of the specified matters (and not any others). However, it may be that in the particular case being considered, one factor is irrelevant, or not present, or of little weight, or alternatively of great importance.

That is for the appropriate judge to decide in the first place.

Nonetheless, the judge must, in my view, have regard, i.e. bear in mind, each of the specified matters individually, because only in that way can it be said that he will have properly done what the statute says must be done before making the decision on whether it is in the interests of justice that the extradition should not take place.

Secondly, the test is not, as Mr Brandon appeared to suggest at one point in his submissions, whether the appellant should be tried in the requesting state or in the United Kingdom. The question is whether, in the interests of justice, there should not be an extradition to the requesting state. That is an entirely different test."[40, 41]

169. A divisional court looked at the provisions again in *Araskevic v Lithuania [2015] EWHC 131 (Admin)(Aikens LJ, Nicola Davies, J)* finessed the test promulgated in *Shaw* –

"the judge must "have regard" to each of the factors. The weight to be given to each of the specified matters set out in section 19B(3) is for the "appropriate judge",ie. having had regard to, the judge at the extradition hearing, to decide on the facts of the case before him. There is no ranking of importance of the various factors. Finally, the appropriate judge has to make a value judgment overall on whether the extradition of the requested person would "not be in the interests of justice," but only to, the factors set out in section 19B(3). We believe this analysis is entirely consistent of that of Simon J at [18] of Dibden v Tribunal de Grande Instance de Lille, France [2014] EWHC 3074 (Admin) with which Pitchford LJ agreed." 14]

170. The court went on –

"The exercise that the DJ has to go through to reach a value-judgment on a forum-bar issue under section 19B(2) and (3) is, in this respect, very similar in kind to the exercise undertaken on a "proportionality" issue when it is established that extradition would interfere with the Article 8 rights of a requested person and/or his family." [32]

171. It considered the meaning in s.83A(2) of "having regard" to the specified factors –

"The "appropriate judge" does have to "have regard" to all the identified factors in section 19B(3), but it is important to emphasise that this means that in relation to each one the judge has to ask, first of all, whether that particular factor is present on the facts of the case before him. On the assumption that the factor is present, the judge then has to weigh the relevant evidence and reach a conclusion in relation to that factor. But if the factor is not present, the only "regard" the judge can have to it is to note that it is not present on the facts of the case before him."[36]

172. With regard to s.83A(3)(c) ("prosecutors belief) –

"The "prosecutor" in question here is a domestic prosecutor, that is someone in the domestic CPS. Such a prosecutor may or may not have formed any such belief at the time of the extradition hearing. If none has been formed or expressed, the statutory wording does not require that any party or the court should demand that a prosecutor must then take steps to create a "belief" on the part of the prosecutor. The initiative to declare "a belief" or not lies with the domestic CPS. There is no statutory mechanism that enables the court to compel further investigation by the CPS so as to put it in a position to have a "belief"…….The result of all of this is, as a matter of construction [of the section] is that if the prosecutor does not declare a belief about the appropriateness of the UK and does not apply to be joined to the proceedings, then that is where the matter must rest."[37; 39]

173. In *Love v USA [2018] EWHC 172 (Admin),* a divisional court presided over by Burnett, LCJ, noted –

"In our judgment, section 83A is clearly intended to provide a safeguard for requested persons, not distinctly to be found in any of the other bars to extradition or grounds for discharge, including section 87 and the wide scope of article 8 ECHR. The safeguard is not confined to British nationals, but it is to be borne in mind that the United Kingdom is one of those countries which is prepared to extradite its own nationals. Its underlying aim is to prevent extradition where the offences can be fairly and effectively tried here, and it is not in the interests of justice that the requested person should be extradited. But close attention has to be paid to the wording of the statute rather than to short summaries of its purpose or to general Parliamentary statements. The forum bar only arises if extradition would not be in the interests of justice; section 83A(1). The matters relevant to an evaluation of "the interests of justice" for these purposes are found in

section 83A(2)(b). They do not leave to the court the task of some vague or broader evaluation of what is just. Nor is the bar a general provision requiring the court to form a view directly on which is the more suitable forum, let alone having regard to sentencing policy or the potential for prisoner transfer, save to the extent that one of the listed factors might in any particular case require consideration of it."

174. Applying the *dicta* from the caselaw it had reviewed, the following are pertinent matters to which an appropriate judge will have regard in respect of each of the "checklist" features of s.83A(c) –

"(a) The place where most of the loss or harm took place – Love at [28] indicated that this will usually be "a very weighty factor". [37]

(b) The interests of any victims of the extradition offence – "Convenience of witnesses is one element to be considered in determining where the interests of any victims lie. However, that is only a relevant element when the question is whether the trial should take place in the requesting state or in this country. When, as is this case, "the practical reality is that no investigation or prosecution is likely in this jurisdiction", the relative convenience for witnesses can be of no more than hypothetical interest. It carries no real weight." [42]……If the choice is between a trial in one jurisdiction and no trial in the other jurisdiction, the interests of victims are likely to favour trial in the jurisdiction where a trial will take place.[43]

(c) Any belief of a prosecutor that the United Kingdom … is not the most appropriate jurisdiction – [where] that there is no relevant statement of belief that the United Kingdom is not the most appropriate jurisdiction for a prosecution and that is the end of the matter for these purposes.[47]

(d) … whether evidence … is or could be made available in the United Kingdom - When the practical reality is that there will be no trial in this country it is hard to see that this factor has any part to play in determining where the interests of justice lie pursuant to section 83A. Any comparison could only be hypothetical.[50]

(e) delay - The paragraph requires a comparison between a trial in this country and in the requesting state, in circumstances where in fact there will be no trial here.[52]…..The judge found that a prosecution here would inevitably involve a substantial delay as no investigation has even begun, while in the United States the case

was ready for trial. However, when there is unlikely to be any such investigation here, let alone a prosecution, that is an artificial comparison. In this case, this point adds nothing of substance to the conclusion that the interests of victims point on balance towards a trial; and if there is to be a trial it will be in New York.

(f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction - In a case where there is more than one defendant, it is desirable when practicable for prosecution to take place in a single trial. …… However, the position is less weighty when, even if the prosecutions take place in the same jurisdiction, separate trials are inevitable. [55]

(g) D's connections with the United Kingdom - The judge correctly stated that the appellant "is a UK national with very strong connections to the UK". There was little discussion of the appellant's circumstances. The conclusion, while true, understates the position….This was, therefore, an important factor against extradition. [57][58]

175. Generally, The court noted that there were –

"two powerful factors against extradition, namely the fact that most of the harm took place in this jurisdiction and the appellant's strong connection with the United Kingdom and absence of any significant connection with the United States. As we have explained, the judge carried over his finding that there was relevant conduct in the United States and did not consider separately where the majority of the harm took place. Moreover, the treatment of the appellant's connections with United Kingdom, the personal family details which we have outlined above, do not appear to have carried much weight below. Conversely, those factors which told in favour of extradition were of significantly less weight.[60]

176. In *USA v McDaid [2020] EWHC 1527 (Admin)*, a divisional court (Holroyde, LJ, William Davis, J) commented on s.83A(3)(g) and its treatment by the court in *Love* –

"the concept of connections with the UK went beyond the fact of citizenship or right of residence. Without attempting an exhaustive definition of "connection", the court said at [40] that

"It would cover family ties, their nature and strength, employment and studies, property, duration and status of residence, and nationality. It would not usually cover health conditions or medical treatment, unless there was something particular about

the nature of the medical condition or the treatment it required, that connected the individual to treatment in the United Kingdom."

And at [41]:

"The risk of suicide upon extradition, or serious deterioration in health, would not of itself create a connection to the United Kingdom. But they would be relevant if they were the consequences of breaking a separate connection, because that would evidence its nature and strength."

177. The court went on –

"section 83A does not require a court to decide in a general way, as between the UK and the state requesting extradition, which of the two is the more suitable, or preferable, forum. Assuming that a substantial measure of the requested person's relevant activity was performed in the UK (as was undoubtedly the case here), it requires an evaluation of the specified matters in order to decide whether extradition would not be in the interests of justice and should not take place. That evaluation is necessarily fact-specific, because the importance of each of the matters specified in subsection (3), and the weight to be given to each of them, will vary according to the circumstances of the case." [43]

178. And –

"the phrase "balancing exercise" does not accurately or sufficiently describe the necessary evaluative process……Where the forum bar is raised in opposition to an extradition request, the court will generally work through each of the specified matters in turn, as the judge did here. In our view, her use of the phrase "balancing exercise" was an imprecise reference to that process [44]

Forum – my evaluation of the specified matters

179. Applying all of this to RP's case, considering each s.83A factors in turn, but then applying an overall evaluation to the whole -

s.83A(2)(a) - was a substantial measure of the relevant activity performed in the UK

180. Ms. Pfister's second affidavit shows the following –

- RP had photos of at least 722 victims on the laptop seized from his home in Wigan, UK.

- IP addresses were found associated to 39 countries

- no one country had more than 52 victims

- there were approximately 52 victims in the UK

- at least 52 IP addresses resolved to US based victims

181. She notes that *"Taylor acted in the UK, likely using his home computer, most of his targets were outside the UK."*

182. In his opening skeleton argument on behalf of RP, Mr. Cooper notes that *"the entirety of the activity for which Mr Taylor is charged, was carried out in Mr Taylor's home in Wigan, England."*

183. In his skeleton argument on behalf of RS, Mr Sternberg concedes that *"the Court must be satisfied that a substantial measure of the relevant activity occurred in the UK as a threshold condition under section 83A(2)(a). That appears to be satisfied in this case."*

184. RP's relevant activity involved him –

- operating his computer within his home address in the UK
- connecting that computer to the internet
- obtaining malware from the internet which he then "packaged" as apparently legitimate software
- placing that manipulated software on the internet so that others could download it and enable a "back-door" through which RP could insert "Cammy" software via which he could control his victims webcams, and observe his victims activities
- Saving (albeit I note RP claims this was an automatic feature of the software on his computer rather than something he deliberately did) images of his victims in states of undress and engaged in sexual activity

185. Accordingly, and the point not being in issue, I am satisfied that a substantial measure (indeed all) of RP's relevant activity occurred in the UK. The "forum bar" is in play and I must consider whether the interests of justice dictate that RP's extradition should not take place – judging the "interest of justice" solely by reference to the specified matters at s.83A(3).

s.83A(3)(a) - the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;

186. As indicated in *Love,* this will usually be a very weighty factor. Mr. Sternberg submitted on behalf of RS that, as set out in the second affidavit of Laura Pfister, the US is the place where much of the harm from the offences occurred. On Ms. Pfister's calculations, approximately 7% of the victims are located in the US, with roughly the same proportion in the UK and the rest spread across the remaining 37 countries identified by the FBI.

187. Mr. Cooper missed the point somewhat in submitting that *"the harm or loss is also not substantial given that Mr Taylor did not intend any harm, sexual or financial gratification from the images: nor is he charged as such. It is submitted that this is a factor in favour of extradition not being in the interests of justice."* That is not an to answer the question posed by s.83(3)(a).

188. Georgia Tech incurred costs of $5000 to counter the malware sourced from RP. That is a quantifiable loss. No other loss has been identified.

189. 7% of the victims whose privacy was invaded by RP are located in the US. 7% are in the UK and the balance of 86% are spread over 37 other jurisdictions.

190. I do not conclude that because 7% of the identified victims were based in the US then "most" of the harm from RP's offending occurred there.

191. As to "loss" – whilst the only identified loss is that sustained by Georgia Tech, the absence of identified loss sustained elsewhere is not conclusive evidence that "most" of the loss in this case was sustained in the US. Taken as a whole, the phrase "the place where most of the loss or harm" was sustained was not in the US. It cannot be said that the US was the place where most of the loss or harm was intended to occur. Again, the fact that the vast majority of identifiable victims (93%) were not based in the US substantiates that conclusion.

192. Accordingly, I resolve this "very weighty factor" as pointing away from extradition.

s.83A(3)(b) - the interests of any victims of the extradition offence

193. Mr. Sternbergs submissions on behalf of RS, summarised, were –

- The victims' interests favour trial in the USA, under local laws

- Georgia Tech suffered great financial loss in responding to and repairing the malware on their network

- The victims suffered immense invasion of privacy, the spying was done without their knowledge

- the interests of the victims located in the USA where all of the investigation has been carried out, save for the interview of Mr. Taylor, favour trial in that jurisdiction.

194. In responses. Mr. Cooper submitted –

- It is no more in the interests of the 772 worldwide victims to conduct the trial in the US than in the UK.

- There are no significant practical advantages to holding the trial in the US

- Given the grave risk of RP and Mrs Taylor succeeding in respective suicide attempts, then there are very real disadvantages to all concerned.

195. Drawing from a near identical scenario in *Love* I note the following which are as applicable in RP's case as in *Love* –

- there is likely to be a greater degree of inconvenience to individual witnesses from the US in a trial in the United Kingdom, either through travelling here or in scheduling video link appearances in a different time zone.

- There may be an interest in those who are victims of crime having the case tried according to their own local laws and procedures and, if there is a conviction, punishment following according to the values of their own legal system.

- their interest in having a trial at all is the more important.

- that there might not be a trial if RP might commit suicide beforehand is clearly not in any one's interest

196. I note that in this case, there has been no belief expressed by a prosecutor that the United Kingdom is not the most appropriate jurisdiction in which to prosecute. I will shortly treat that as a neutral factor. However, it is important to note that no decision has been taken not to prosecute the matter in the UK. In the absence of that decision, I presume that a prosecution in the UK remains a viable alternative given the duel-criminality issue clearly shows RP's conduct falls within recognisable UK offences. I am not comparing a situation where a trial could and will (if extradition is ordered) take place in the US against a certainty, or even a high probability that a trial will NOT take place in the UK (as was the situation in *Scott).*

197. In this case, RP has been interviewed in the UK and made admissions as to his offending. His computer was seized and evidence obtained from it. The case against him appears strong. It is capable (so far as the voyeurism offence at least is concerned) of being as readily proved in a court in England as in the US.

198. The offences date back 5 to 8 years. Whilst not required, I am unaware of what specific interests the 52 victims in the US have expressed about RP's prosecution there as opposed to in the UK. I imagine they would want him prosecuted and punished, but I do not see that they would necessarily require that be done in the US as opposed to the UK. They must recognise that they constitute only a small constituency of RP's victims. Indeed Ms. Pfister refers to a witness based in India. I would not have thought the location of any trial in either the US or the UK would be more or less convenient to that witness.

199. We have moved significantly towards video-conferenced trials as a result of the pandemic. I conducted much of this hearing via live link to RP and to the witnesses. Many extradition hearings involve witnesses from overseas giving evidence by live link. In practical terms, on the facts of this case, I do not see a distinct advantage to the victims in this case in a trial taking place in the US as opposed to the UK.

200. RP will in all probability try to kill himself if extradition is ordered. Despite the best efforts of the authorities to safe guard him from that risk, he may succeed in that endeavour. Again I see less benefit to the victims (individual or corporate) in seeking to pursue RP to trial In the US rather than in the UK – where the imperative upon RP to commit suicide will be removed.

201. Accordingly, the interests of the victims does not drive the conclusion that trial in the US is required as opposed to marginally preferable – and then not preferable at all of RP is successful in committing suicide before he can be tried in the US. I resolve this factor as pointing away from extradition.

s.83A(3)(c) - ***any belief of a prosecutor that the United Kingdom….. is not the most appropriate jurisdiction in which to prosecute***

202.ss.83B-83E make particular provisions as to how the prosecutors "belief" is to be expressed and the limitation to the challenges that might be made in respect of that belief. As there is no "belief" expressed by a prosecutor in this case, consideration of those provisions unnecessary.

203. In *Love* the absence of a prosecutors "belief" was taken to be *"'a factor which albeit modestly, favoured' the operation of the bar to extradition."* Revisiting that in *Scott*, Burnett LCJ concluded that *"[s.]83A(3)(c) is only in point if the prosecutor has expressed the relevant belief."[31]*. For the purpose of s.83A(3)(c), that is the end of the matter – and I must conclude that the absence of any expressed domestic prosecutors belief is neutral.

83A(3)(d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom

204. Mr Sternberg submitted –

- Some physical evidence is in the UK. However, the majority of the evidence in the case that has been prepared for trial is in the USA. Mr. Taylor's computer has been downloaded and sent to the USA. If the case were to be prepared for a prosecution decision in this jurisdiction this evidence would have to be downloaded and analysed again by a UK prosecutor.
- It is correct that the requested person was interviewed in this jurisdiction and his computers seized, however, no investigation was ever begun in the UK. The extent of Mr. Taylor's interference with computers and his admissions were, of course, not known until his computer had been seized and downloaded and his interview had taken place, by which time the US investigation had already started. In any case, the US hold the video record of the voluntary interview which was conducted and provided to the US authorities. That is not located in the UK and would have to be returned. The search and seizure of the requested person's computer was carried out pursuant to a request for Mutual Legal Assistance. None of this evidence is currently located in the UK.
- The corporate witness is in the US and may be reluctant to travel to the UK, the US authorities have reviewed the evidence appliable to this case.
- Section 83A(3)(d) does not distinguish between documentary and oral evidence. Whether or not there would in fact be a trial is not relevant to the Court's assessment of this factor. Therefore this factor tells in favour of extradition, at worst it is a neutral factor.

205. The evidence could be made available to the CPS in this jurisdiction. The interview, and confession within it, was took place in England. The computer was seized here. The analysis from it can be provided to a prosecutor here. The very nature of RP's crimes – trans-national

computer based offending – is as capable of being proved in a UK court as it could be in a US court. The evidence will stem primarily from an analysis of his computer, coupled with his admissions in interview. Some witnesses may be required to give some evidence. It may be less convenient to any witness who may have to give live evidence to have to do so to an English Court. But I cannot think whey they would be compelled to travel to England in order to give their evidence. The use of live links from overseas is not only permissible but is becoming common-place.

206. Whilst the use of that method of giving evidence has been forced (to a degree) on the courts by the pandemic, that does not devalue the quality of it. It is a new normal. In an appropriate case, as RP's would be, the use of a live link would minmise the impact on a witness of participation in a trial in this jurisdiction.

207. Whilst Mr. Sternberg suggests that at the least, this is a neutral factor, I don't see why it should be. Where a permissible method for the presentation of evidence in this jurisdiction exists such as means that evidence would be available, that should count against extradition and I conclude that in this case it does.

83A(3)(e) - any delay that might result from proceeding in one jurisdiction rather than another;

208. Mr. Sternbergs submissions on this point can be summarised very briefly. The US authorities are ready to try RP now. He is guaranteed a speedy trial there – within 70 days of his first appearance before a Georgian court (although RP can waive the right to a speedy trial). There is no prosecution on foot in the UK at this time. Even if one were promptly initiated, then the trial backlog in the UK is notoriously large. It was before the pandemic, and things are far worse now as a result of it.

209. Against that risk of delay, Mr. Cooper points to the delay by the US authorities in seeking to bring RP to trial. As noted, the offending occurred between 2012 and 2015. In February 2016 RP was interviewed in the UK by Greater Manchester Police and made admissions in respect of his offending. The US waited three years before initiating extradition proceedings against RP.

210. I'm not sure that past delay is instructive on the issue of future delay. RP could be tried in the US now. There would be inevitable delay in the transfer of evidence to the UK, its review by a UK police force, the subsequent referral of that the CPS for a charging decision followed

by the initiation of court proceedings. There will be a delay in a trial in the UK *if* there were a decision to try RP in the UK. On the issue of delay, taken alone, the balance appears to favour extradition.

83A(3)(f) - the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—

> ***(i) the jurisdictions in which witnesses, co—defendants and other suspects are located, and***
>
> ***(ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;***

211. RP's case is not tied to ongoing proceedings involving other defendants. For example, his is not a trial involving numerous co-accused split across a number of trials in the interests of trial management. His is a single, standalone case in which RS intends to call witnesses from Georgia and a single witness from India. I have made observation on the ability to call witnesses from overseas to give evidence via a live link to courts in the UK. I am not sure it can be simply asserted, without more, that it is that it is more practicable to call witnesses to give evidence in the US than it would be in the UK. I see this as a neutral factor – there will be one trial only, and the issue is whether that should be in the US or the UK.

83A(3)(g) - D's connections with the United Kingdom.

212. There was no evidence before me of any connections between RP and the US – nor indeed of any territory other than the United Kingdom.

213. It appears to me RP's whole being is inextricably linked to the United Kingdom – and more specifically to the small circle of family with whom he has maintained links in that area of Lancashire in which he has resided for his whole life. I set out the extensive evidence he, his wife and his three children gave to the court, and the impact the severance of his link to his wife by reason of extradition would have on him, her and each of the children.

214. In *Love,* the court gave consideration to this factor –

> *"In our judgment, "connection" goes rather wider than that, without being so elastic that it replicates the full scope of article 8 ECHR. No exhaustive definition can be attempted judicially, but "connection" is closer to the notion of ties for the purposes of bail decisions. It would cover family ties, their nature and strength, employment and*

studies, property, duration and status of residence, and nationality. It would not usually cover health conditions or medical treatment, unless there was something particular about the nature of the medical condition or the treatment it required, that connected the individual to treatment in the United Kingdom. The approach of the judge was correct."

215. The Court went on –

"The risk of suicide upon extradition, or serious deterioration in health, would not of itself create a connection to the United Kingdom. But they would be relevant if they were the consequences of breaking a separate connection, because that would evidence its nature and strength."

216. At risk of repetition, RP's whole existence revolves around the daily care he provides to his wife of 38 years. Her life is inextricably bound up with his and vice versa. Such is the degree of care she requires that the standard level of provision available from external carers (4 sessions per day) would be inadequate to meet her physical needs. As to her emotional needs, RP appears to be the constant in her life. Again, I risk repetition by noting that RP gave up full time work 30 years ago so as to better care for his wife.

217. I note in particular the comments of Drs. Furtado and Qurashi –

- *"I note the dependent nature of the relationship. She will find loss and separation very difficult"* - Dr Quarashi of Wendy Taylor
- *"That relationship is of interdependency. She will have no social contact with anyone.*" - Dr Furtado of Wendy Taylor

218. The connection to the UK, as a result of the intense strength of the necessary bond between him and his wife, would be destroyed by extradition – not least because in that circumstance, both RP and his wife would pose such a high risk of suicide that a crisis team would need to be on hand at the moment judgement to that effect was delivered.

219. I regard RP's intense emotional bond to his wife, and her reliance upon him, as a most weighty factor in considering his connections to the UK. He has no other connections. This factor weighs against extradition.

Forum – my conclusions

220. I have looked at each relevant factor and attributed to each a conclusion as to whether it falls for or against extradition. As cautioned against by Holroyd LJ in *McDaid*, I must avoid conducting a balancing in exercise – rather, I should undertake an evaluative process. In that way, I give effect to what in *Shaw* was called the "ultimate test" – namely whether (having regard only to the s.83A(3) factors) extradition would not be in the interests of justice.

221. Applied in this case, I find that RP is a 58 year old man who will kill himself (given the chance) to avoid extradition to the US, but who would submit to trial in the UK in respect of conduct by him carried out entirely from within his own home, the evidence for which can be made available to a prosecutor in the UK, and in respect of which the means exist for witnesses, wherever they are, to give evidence in the UK. He has no connection to the US, which is a place in which a small fraction of the harm caused by his offending occurred. This is not a case in which the binary choice is between a trial in the US and none in the UK. There is nothing to indicate that there will be no trial in the UK if extradition is refused. The "forum bar" exists for a reason. It is to prevent the extradition of suspects where the interests of justice do not militate against a trial in the UK.

222. Considering all of these factors, weighing their respective values individually, but then standing back and, evaluating only those factors en-masse and in the round, I find that extradition of RP would not be in the interests of justice.

Prima Facie Case – RP not convicted (s.84 EA 2003)

223. RS being one of those territories designated in Article 3 *Extradition Act 2003 (Designation of Part 2 Territories) Order 2003/3334*, I am not required to find a prima facie case to answer.

S.87 EA 2003

224. I must decide whether RP's extradition would be compatible with RP's Convention Rights within the meaning of the Human Rights Act 1998. The Convention Rights specifically asserted as in RP's case are Articles 3 & 8.

Article 3 - prison conditions

225. Mr Cooper submitted that the combination of RP's identified health risks and the very high risk of suicide (should extradition be ordered), three factors put RP at a real risk from being subject to inhuman and degrading treatment –

i. RP's access to educational, recreational, or early-release programs for rehabilitation will be highly restricted or denied.
ii. RP is likely to be subject to solitary confinement which his mental illness is wholly unsuited to withstand.
iii. RP faces a real risk of being deprived of adequate food supplies, basic hygiene tools and subject to mistreatment from correctional officers if detained in a CAR prison.

226. In his response, Mr Sternberg submitted that

i. A decision by a Contracting State to extradite a fugitive may give rise to an issue under Art. 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country: *Soering v UK 11 EHRR 439*.
ii. Where the direct responsibility for the infliction of harm does not lie with the Contracting State, "a very strong case" *(R(Ullah) v Special Adjudicator [2004] UKHL 26, [2004] 2 AC 323* at para 24) is required to make good a violation of Art 3. The test is a "stringent test which is not easy to satisfy": *AS and DD (Libya) v SSHD [2008] EWCA Civ 289* at para 65, and requires strong or substantial grounds, or serious reasons to believe in the risk of ill-treatment: para 67.
iii. In cases where the mistreatment alleged would be at the hands of 'non-state agents' the defendant must show that the requesting Judicial Authority does not provide a reasonable level of protection against the harm (see *R (Bagdanavicius v SSHD [2005] 2 WLR 1359* and *Horvath v SSHD [2000] 3WLR 279* by way of example).

227. Article 3 of the ECHR states:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

228. Article 3 is an absolute prohibition.

229. Key principles defining the application and scope of Article 3 include:

- a decision to extradite a person engages the responsibility of the UK under Article 3 where substantial grounds have been shown for believing that the person concerned, if extradited, faces a "real risk of exposure to inhuman or degrading treatment or punishment" if extradited to the requesting state (*Soering v United Kingdom (1989) 11 EHRR 439*);
- the treatment alleged must attain a minimum level of severity if it is to fall within its scope;
- a 'real risk' is one that is more than merely fanciful and more than a mere possibility. It does not mean proof on the balance of probabilities, or more likely than not, and may be established by something less than proof of a 51% probability;
- once a risk of ill treatment is established to the requisite degree of likelihood and severity, the responsibility of the UK is engaged; it is for the requesting state to dispel the finding of real risk;

230. I reached conclusions on the evidence in my analysis of that evidence above. I was satisfied that there are protective measures in place from the point of transfer to the US to the final place of incarceration such as would to prevent RP's suicide.

231. RP will not be arbitrarily detained in solitary confinement. If he is the subject of the ire of other prisoners as Ms. Baird and Professor Kaufmann believe he will be, then that protective custody will be in place to safeguard him from the risk of harm his notoriety for his type of offending might attract for so long as is necessary. It is not a breach of his Article 3 rights to use protective detention for that purpose – even if it is not possible to say for how long that protective regime would remain in place.

232. If RP is denied access to educational, recreational or early release programmes, that does not engage Article 3.

233. Whilst there may be better prisons elsewhere in the US when compared to the CAR facilities at which RP has a 46% chance of being held post sentence, I find the weight of the

evidence is that the conditions and regime in those prisons would not constitute a breach of RP's Article 3 Rights.

234. RS has in fact provided "declarations" as to the method of conveying RP to the US, the conditions in which he will be held pre-trial, and the conditions in which he would be held post conviction.

235. There is nothing in the evidence of Ms. Baird or Professor Kaufman which causes me to disregard or sufficiently doubt the evidence from RS as to the standards of care and accommodation which will apply to RP on being detained in the US.

Article 3 – my conlusions

236. I do not conclude that RP, if extradited, will be held in the sort of prison conditions which would put him at real risk of exposure to inhuman or degrading treatment or punishment.

237. I do not find that there is a real risk that RP faces detention in conditions which would put him at risk of a breach of his Article 3 rights – either by reason the general detention conditions in which he will be held, or by reason of the specifics of his case, taking into account the nature of the allegations he faces, the reaction of other prisoners to him as a result of learning of the nature of the charges, or by reason of his physical and psychiatric ill health. In addition, RS has provided declarations which offers further reassurance to me of the specific measures which are in place and will be adopted to safeguard RP.

Article 8

238. The principles governing a suggested violation of the article 8 rights of the requested person and family were comprehensively explained in *HH v Deputy Prosecutor of the Italian Republic Genoa [2013] 1 AC 338* following *Norris v Government of the United States (No 2) [2010] 2 AC 487.* The appropriate judge must examine the way in which extradition will interfere with family life with the question being whether the interference was outweighed by the public interest in extradition.

239. There is a constant and strong public interest in extradition and that the United Kingdom should honour its treaty obligations. Those accused of crime should be brought to trial (and those convicted should serve their sentences). There should be no "safe havens" for fugitives. The weight of these interests might vary according to the seriousness of the crimes in question.

The public interest in extradition would outweigh the article 8 rights of the family unless the consequences of the interference were exceptionally severe, albeit that the interests of a child were a primary consideration.

240. In *Celinski and others v Slovakian Judicial Authority (2015) EWHC 1274 (Admin),* clear guidance was given to Appropriate Judges on how to approach Article 8 issues – in particular (but not exclusively) where children were likely to suffer an impact should a (or both) parent be extradited. *Celinski* requires that the Appropriate Judge conduct a balancing exercise – weighing those factors in favour of extradition against those against.

241. Notwithstanding the it was the first of the triumvirate of cases on Article 8, it is instructive to look at *Norris*. It is a Supreme Court decision concerning extradition requests to non-EU states (unlike the latter two cases). As in the case of RP, it did not concern children and their Article 8 rights at all. Key principles include –

- ….there can be no absolute rule that any interference with article 8 rights as a consequence of extradition will be proportionate. The public interest in extradition nonetheless weighs very heavily indeed. [51]
- It is of critical importance in the prevention of disorder and crime that those
- reasonably suspected of crime are prosecuted and, if found guilty, duly sentenced. Extradition is part of the process for ensuring that this occurs, on a basis of international
- reciprocity.[52]
- There is an analogy between the coercion involved in extradition and that involved in remanding in custody a prisoner reasonably suspected of wishing to abscond. In either case the coercion is necessary to ensure that the suspect stands his trial. Each is likely to involve a serious interference with article 8 rights. The dislocation of family life that will frequently follow extradition will not necessarily be more significant, or even as significant, as the dislocation of family life of the defendant who is remanded in custody. It seems to me that, until recently, it has also been treated as axiomatic that the dislocation to family life that normally follows extradition as a matter of course is proportionate.[54]
- the interference with human rights will have to be extremely serious if the public interest is to be outweighed.[55]
- The reality is that only if some quite exceptionally compelling feature, or combination of features, is present that interference with family life consequent upon extradition will

be other than proportionate to the objective that extradition serves…….Instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful, to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition.[56]

- Rejecting an extradition request may mean that a criminal never stands trial for his crime. The significance of this will depend upon the gravity of the offence.[63]
- the effect of extradition on innocent members of the extraditee's family might well be a particularly cogent consideration. If extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, this combination of circumstances might well lead a judge to discharge the extraditee under section 87 of the 2003 Act.[65]
- The preferable course is, in my view, to approach the exercise required by article 8 by (a) identifying the relevant facts and on that basis assessing the force of, and then weighing against each other, the considerations pointing in the particular case for and against extradition, and (b) when addressing the nature of the considerations which might outweigh the general public interest in extradition to face trial for a serious offence, doing so in terms which relate to the exceptional seriousness of the consequences which would have to flow from the anticipated interference with private and family life in the particular case.[114]

242. In *Celinski,* Thomas LCJ reviewed these principles, and those addressed by the Supreme Court in *HH* –

- In HH Baroness Hale summarised the effect of the decision in Norris at paragraph 8; in subparagraphs (3) (4) and (5), she made clear that the question raised under Article 8 was whether the interference with private and family life of the person whose extradition was sought was outweighed by the public interest in extradition. There was a constant and weighty public interest in extradition that those accused of crimes should be brought to trial; that those convicted of crimes should serve their sentences; that the UK should honour its international obligations and the UK should not become a safe haven. That public interest would always carry great weight, but the weight varied according to the nature and seriousness of the crime involved. This was again emphasised by Baroness Hale at paragraph 31, by Lord Judge at paragraph 111 (where

he set out a number of passages to this effect from Norris) and at paragraph 121, Lord Kerr at paragraph 141; Lord Wilson at paragraphs 161-2 and 167.[6]

- ….the public interest in ensuring that extradition arrangements are honoured is very high. So too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice.[9]
- We would therefore hope that the judge would list the factors that favoured extradition and then the factors that militated against extradition. The judge would then, on the basis of the identification of the relevant factors, set out his/her conclusion as the result of balancing those factors with reasoning to support that conclusion.[17]

Article 8 – the "balance sheet"

Relevant factors indicating extradition in RP's case

243. The offences for which RP is sought to stand trial are serious. The offence which involved the violation of the privacy of the victims in states of dress and undress and engaged in private sexual activity without their consent or knowledge is certainly the most serious of them.

244. This is not a case where a court in this jurisdiction would be likely to impose a non-custodial penalty.

245. There has been no delay of any significance. The offences occurred between 2012 and 2015 and RP was interviewed in early 2016. Extradition was authorised by the US Attorney General in 2018, and these proceedings commenced in 2019.

246. There is a Treaty governing extradition between the US and the UK. Honouring international Treaties in criminal proceedings is a matter of importance.

247. Were RP to be tried in the UK, the prospect of imprisonment, and thus an impact upon his and his wife's Article 8 Rights, would be significant but unlikely to be seen as disproportionate.

Relevant factors against extradition in RP's case

248. RP is 58 and in poor general health. The same is true, but far more so, of his wife of 38 years.

249. He has no previous convictions in any jurisdiction.

250. Counterbalancing the arguments as to the seriousness of the offence –

- The financial harm to Georgia Tech was in reality low. $5,000 is approximately £3,700.
- If characterised as criminal damage (in a UK court), that would be a summary offence carrying a maximum sentence of 3months imprisonment.
- Characterised as loss as a result of fraud (albeit that loss was ancillary to RP's criminal purpose – which was to spy on people via their webcams) it would fall into category B5 of the Fraud Sentencing Guideline – carrying a starting point of a community penalty with a range up to 26 weeks imprisonment.
- I don't think this was a sophisticated fraud, computer based though it was. RP may have enticed people to download malware, but in his utilisation of that he made no attempt to obfuscate his IP address, thereby making his apprehension a simple matter. If I am wrong and RP's "sophisticated" offending warranted elevation of his culpability to level A, the starting point would still only be 36 weeks imprisonment – with the range being up to a maximum of 1 year. The fraud/computer misuse offences cannot be categorised as serious of themselves. Confirmation for that can be found in the table of cases submitted by Mr Cooper which gives an indication of the level of sentences imposed in the more typical of such offences (attached to this judgment at Appendix 1).
- Focusing on the real mischief, voyeurism, this was higher culpability and higher harm offending – and a single count would attract a starting point of 12 months (with the range up to 18 months). Given there were more than 700 victims, then the prospect of consecutive terms of some considerable length would arise – even with regard to totality.

251. RP is effectively the sole carer for his disabled wife – and has been for 30 years. In his absence, the assessment of her care needs reveals a short-fall between that which would be provided by external carers, and her needs.

252. Insofar as it has not been adequately addressed elsewhere in this judgment, RP is at an elevated risk of suicide now – which will rise (perhaps critically) in the event of his extradition being ordered. Such is the level of risk that at the moment my decision is announced – if it were to order his extradition - he must be accompanied by a crisis team capable of assessing the risk as it would be at that time in order that if needs be, he could be admitted as a patient under the Mental Health Act 1983 for treatment and suicide risk mitigation.

253. RP's wife is at an elevated risk of suicide now and has a stated intention to carry through with that threat of RP is extradited. Again, such is the level of risk that were an adverse decision given, she must be accompanied by a crisis team capable of assessing the risk as it would be at that time in order that if needs be, she too could be admitted for treatment.

Article 8 – my conclusions

"Interference with private and family life is a sad, but justified, consequence of many extradition cases. Exceptionally serious aspects or consequences of such interference may however outweigh the force of the public interest in extradition in a particular case."

254. Every person who faces the prospect of pre-trial detention, and the threat of imprisonment if convicted of offences with which they are accused has their Article 8 rights interfered with – but in a way that is tolerated by society as a price to be paid for the preservation of law and order. That is the situation RP is in. Were he not in a long-term and committed relationship with his wife, who is unusually and heavily dependent upon him in her day to day life, then I could not conclude that the consequence of the interference with his Article 8 rights was exceptionally serious and such as could outweigh the importance of extradition in his case.

255. As a matter of record, I note that there is no suggestion that he is a fugitive – his offending conduct took place in his own home – albeit the effects of it have been felt beyond the UK and certainly in the US. He is under no obligation to surrender himself to the US for the purpose of prosecution.

256. Equally, he must expect the UK to honour its treaty obligations – those accused of crimes should expect to stand trial for them and, if convicted, be punished for them. That the UK-US Extradition Treaty must ordinarily be honoured is a significant factor and weighty factor against RP.

257. If RP is extradited, his wife's fears for him are such that she will, to a high degree of probability, commit suicide. That is her stated position and (given the psychiatric evidence) I believe her – as do her family. Even if the means to prevent RP's suicide are in place, her intention to kill herself would not change. Being blunt, and adopting the evidence of two of their children, if he goes (to the US), then she goes (by way of suicide).

258. Whilst Dr's Furtado and Qurashi cannot say for certain that Mrs. Taylor will kill herself, they insist on a risk averse process to protect her at the point a decision to extradite RP is given.

I worry that the temporary solution (of having the crisis team in place at that time) will prove, if I order RP's extradition, to be just that – temporary.

259. Mrs. Taylors existence now is tolerable to her because she has RP's daily, essential and intimate support. If that was not there, then that absence, when coupled with her belief that RP will not survive incarceration in a US prison, will increase the existing (and diagnosed) elevated risk of her committing suicide to a very high risk of committing suicide.

260. If RP's extradition is ordered, then there will be a significant period for which RP will be absent from her life post-extradition. If safeguarded from an immediate attempt at suicide, then there must be a significant risk that, in that lengthy period which will follow RP's extradition until his eventual return (if, indeed he survives incarceration), Mrs Taylor will, in low mood, over-inject a dose of insulin – so readily to hand that method of suicide is for her. I note that the psychiatrists observations –

- *"I note the dependent nature of the relationship. She will find loss and separation very difficult"* - Dr Quarashi of Wendy Taylor
- *"That relationship is of interdependency. She will have no social contact with anyone."*
- Dr Furtado of Wendy Taylor

261. I accept that the psychiatrists say that knowing what she will do is speculation. I also note Dr. Qurashi's comments to the effect that psychiatrists prefer to err on the side of caution in estimating the risk of suicide as, if they err the wrong way, then the patient is dead.

262. It seems to me that the only way to know whether Mrs. Taylor will or will not kill herself is to order RP's extradition. If she then commits suicide, the consequences of the interference with her Article 8 rights would be exceptionally serious and such as would outweigh the importance of his extradition in this case.

263. I have already made my finding of fact (so far as it is possible to do so) on the risk that Mrs. Taylor will commit suicide if RP's extradition is ordered. It is too high as to be proportionate RP's extradition. The consequences of interference with Mrs. Taylors Article 8 rights would be exceptionally serious and would outweigh the importance of RP's extradition. I could ponder the alternative scenario – that Mrs. Taylor does not carry through with her suicide threat in the shorter term. What that reveals is, for her, a life so bereft of human interaction that it would, for Mrs. Taylor, be truly intolerable. Again, that returns me to the inevitable conclusion that she will make good her threat to kill herself.

264. That RP would, indirectly, be responsible for his wife's suicide should he be extradited is a burden upon him that would, too, be exceptionally serious. Again, if Mrs. Taylor were to kill herself consequent upon RP's extradition, the interference with his Article 8 Rights (even constrained as they would be by his incarceration) to an ongoing relationship with his wife of 38 years would be of such a degree as to outweigh the importance of extradition. If she kills herself, then his relationship will have been severed for good – and the fault for that would be his.

265. In the alternative, his relationship with his wife of 38 years would be reduced to a single phone call once per month. Whatever the difficulties there might be in his wife being able to visit him in a UK prison, his phone contact from a UK prison would certainly be greater than that, and the proxy-contact with her via his children might be some comfort to both of them. Where trial and punishment in the UK is a possibility (it not having been ruled out, and as an alternative to extradition, not being without the interests of justice) I find it difficult to conclude that RP's Article 8 rights would be permissibly interfered with if extradition is ordered.

266. To be clear, so far as the risk of suicide he poses goes, he can be safeguarded from the moment of an adverse decision, throughout the period of his transfer to the US, throughout his pre-trial phase there, and during any subsequent sentence of imprisonment. I have the declarations to that effect, and I could arrange for a crisis team to be in place at the moment this judgment is given. So, solely on the issue of the suicide risk he poses to himself, that alone is not sufficient to find an impermissible breach of Article 8 because it can be prevented.

267. Were his wife not so dependent upon him (and to a lesser degree vice-versa) and at such a risk of suicide as I have found, then RP could not avail himself of Article 8 at all. As it is, he can. The consequences of extradition for him, should his wife kill herself in consequence of his extradition, would also outweigh the importance of extradition. As the prospect of her suicide is so high as to be probable, then in simple terms, ordering his extradition creates a risk that is simply disproportionate to the usual imperative.

RP's physical or mental condition - s.91 EA 2003

268. *"Physical or mental condition*

(1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.

(2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.

(3) The judge must—

(a) order the person's discharge, or

(b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

RP's physical condition and autism – my conclusions

269. On RP's behalf, it is submitted that his depressive illness, autism, suicide risk, and COPD render it both unjust and oppressive to extradite him to the US.

270. I ruled at the outset that the attempt to deploy very late served evidence as to the impact of COVID-19 on those with COPD was something I would not permit. I reject, as evidentially without basis, the suggestion that the combination of COPD and COVID-19 can meet the threshold of s.91(2) EA 2003.

271. Likewise, I have already found as a fact that there is an insufficient evidential base for concluding that RP is autistic. Again, I respectfully reject as evidentially deficient the suggestion from Professor Baron-Cohen that RP is autistic and able to avail himself, by reason of claimed autism, of the safeguard of s.91 EA 2003.

272. I have already accepted that RP has a depressive illness, is already at an elevated risk of suicide, the risk of which will rise to very high if his extradition is ordered.

273. In *Turner v USA [2012] EWHC 2426 (Admin)*, a Divisional Court reviewed a number of authorities concerned with s.91 EA 2003. The Court noted –

"28. There have been a number of cases in which the courts have considered what has to be established under section 91 of the Act (or the equivalent section in respect of an application for surrender under Part 1 of the Act, which is section 25) in order that a court may be satisfied that it would be unjust or oppressive to return a person to the state requesting extradition, because of the risk of suicide if the order to return were made."

274. It went on to examine the review of the case law conducted by Bean, J in *Marius Wrobel v Poland [2011] EWHC 374*, which (the Court observed) established the following propositions –

> *(1) the court has to form an overall judgment on the facts of the particular case: United States v Tollman [2008] 3 All ER 150 at [50] per Moses LJ.*
>
> *(2) A high threshold has to be reached in order to satisfy the court that a requested person's physical or mental condition is such that it would be unjust or oppressive to extradite him: Howes v HM's Advocate [2009] SCL 341 and the cases there cited by Lord Reed in a judgment of the Inner House.*
>
> *(3) The court must assess the mental condition of the person threatened with extradition and determine if it is linked to a risk of a suicide attempt if the extradition order were to be made. There has to be a "substantial risk that [the appellant] will commit suicide". The question is whether, on the evidence the risk of the appellant succeeding in committing suicide, whatever steps are taken is sufficiently great to result in a finding of oppression: see Jansons v Latvia [2009] EWHC 1845 at [24] and [29].*
>
> *(4) The mental condition of the person must be such that it removes his capacity to resist the impulse to commit suicide, otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying and if that is the case there is no oppression in ordering extradition: Rot v District Court of Lubin, Poland [2010] EWHC 1820 at [13] per Mitting J.*
>
> *(5) On the evidence, is the risk that the person will succeed in committing suicide, whatever steps are taken, sufficiently great to result in a finding of oppression: ibid.*
>
> *(6) Are there appropriate arrangements in place in the prison system of the country to which extradition is sought so that those authorities can cope properly with the person's mental condition and the risk of suicide: ibid at [26].*
>
> *(7) There is a public interest in giving effect to treaty obligations and this is an important factor to have in mind: Norris v Government of the USA (No 2) [2010] 2 AC 487."*

275. The Court specifically noted the following –

"(60) A high threshold has to be reached to satisfy the court that a person's mental condition is such that it would be oppressive to make an order for extradition. The risk of suicide could make it oppressive. As to that issue, the relationship between the mental condition of the person to be extradited and the impulse to commit suicide needs to be considered. In paragraphs 24, 26 and 29 of Jansons v Latvia [2009] EWHC 1845 the President of the Queen's Bench Division referred to the link between the mental condition and the risk of suicide. In paragraph 13 of Rot v District Court of Lubin, Poland [2010] EWHC 1820 , Mitting J put it as follows:

> *"Until and unless the reasoning in Jansons is disproved, the risk of suicide must be accepted to be a relevant risk for the purpose of section 25. The question must therefore be addressed and answered in such a case: would the mental condition of the person to be extradited make it oppressive to extradite him? Logically, the answer to that question in a suicide risk case must be no unless the mental condition of the person is such as to remove his capacity to resist the impulse to commit suicide, otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying, and therefore may make it oppressive to extradite him."*

276. It went on, in the context of a suicide attempt, –

"(70)….. even if ……. it was a genuine and serious attempt, in my judgment the attempt was the consequence of a rational choice to take the tablets to avoid extradition and it was not her mental condition that removed from her the capacity to resist the impulse to take the tablets.

"(71)….Her stated intention to commit suicide in the future remains "adamant", but in my judgment that remains a matter of choice and not because her mental condition is such as to remove her capacity to resist the impulse to commit suicide."

RP's mental condition & suicide – my conclusions

277. Mr Sternberg correctly summarised the evidence of both Dr. Qurashi and Dr. Furtado in his closing note, which was that Mr. Taylor's risk of suicide can be adequately and properly managed at the point when a decision to order his extradition is made.

278. Addressing the issue of whether RP lacks the capacity to resist the impulse to commit suicide, as opposed to being a position to make the rational decision to kill himself rather than face extradition, the answer must be the latter. RP is not assessed as requiring inpatient treatment now. He has not attempted suicide. He is not at an immediate risk of suicide, although the evidence is that he will be if extradition is ordered. He does not lack capacity. He was fit to participate in the proceedings before me.

279. The evidence of the psychiatrists is not clear as to whether his choice would then be the willed alternative to extradition as opposed to a loss of capacity to resist the impulse. But it cannot be that he is currently in that state. Were that the case, he would be an inpatient now, and he is not.

280. Looking forward to what the position would be if extradition was ordered - I have already concluded that the declarations provided to me on behalf of RS (and as already summarised in this judgement) guarantee that RP will be accompanied and monitored in his transit to the US by trained staff such as would minmise the risk of an attempt by RP to commit suicide.

281. Likewise, I have already concluded that the conditions, both pre and post trial, in which RP would be detained will specifically cater for and guard against RP's adjudged risk of suicide. At every stage of his detention, his mental health will be monitored. There is provision to transfer seriously unwell mental health patients to specialist facilities as and if required. He will be overseen by psychologists and psychiatrists as required.

282. Whilst Ms. Baird expressed concerns over the ability of the prison system to safeguard RP, ultimately her fear was that RP might "fall through the cracks." The management of all processes involves the assessment of risk, and the application of appropriates measures to guard against that risk. There is always a risk of failure in any system which involves human oversight – which the provision of mental health (and indeed any) medical care necessarily involves. But the US authorities are clearly alive to the risk – hence the declarations – and can be assumed to be competent to manage the risk. RP's psychiatric assessments can be provided to JS, and I can expect to be able to rely on JS to ensure that those reports are in the hands of those charged with the custody of RP for the duration of his transfer and detention in the US. The risk that RP might "fall through the cracks" is an identified risk that will be managed. As such, it is a low risk.

283. Accordingly, forming an overall judgment of the case and noting that a high threshold has to be reached in order to be satisfied that RP's mental condition is such that it would be unjust or oppressive to extradite him, then dealing with the further observation in *Turner* –

- There is a substantial risk that RP will commit suicide if extradition is ordered. But that risk is ameliorated significantly by the provisions that will be in place to monitor RP with a view to preventing his suicide. The risk of him being able to achieve suicide is sufficiently reduced that extradition would not be oppressive.

- Further, I am not persuaded that RP's mental condition is such that it removes his capacity to resist the impulse to commit suicide, as opposed to it being his willed voluntary act in order to avoid the consequences of extradition. Quite where that fine line is, I find difficult to discern. I note again Dr. Furtado's observation that *"it would be the nihilism and hopelessness associated with his depressive disorder [that] drives his suicide attempt"*. But that falls short of asserting that RP will act as an automaton – and that his decision to die would not be a willed act. As I say, it is a fine line. As it is, I conclude, just, that it is not his mental condition but his own voluntary act which puts him at risk of dying and if that is the case there is no oppression in ordering RP's extradition.

- I am satisfied on the evidence before me that the risk that RP will succeed in committing suicide is not, as a result of the steps that will be taken in transit to and during his detention in the US, sufficiently great to result in my finding that it would be oppressive to order his extradition.

- there are appropriate arrangements in place in the US prison system such that the authorities there can cope properly with RP's mental condition and his risk of suicide.

- There is a public interest in giving effect to treaty obligations and this is an important factor that I have had in mind.

284. The question is whether, on the evidence, the risk of the appellant succeeding in committing suicide, whatever steps are taken, is sufficiently great to result in a finding of oppression. The provisions are in place to prevent RP from succeeding in a suicide attempt. I do not conclude, under s.91 EA 2003, that RP's physical or mental condition is such that it would be unjust or oppressive to extradite him.

My conclusions summmarised & my decision

285. I have considered all the live and documentary evidence placed before me, along with the submissions made on behalf of both parties.

286. I am satisfied to the necessary standard that RP's extradition is barred by reason of s.83A EA 2003.

287. I am satisfied that RP's extradition would impermissibly interfere with his Convention Rights under Article 8.

288. I am satisfied that RP's extradition would impermissibly interfere with Wendy Taylors Article 8 Convention Rights.

289. I do not find, under s.91 EA 2003, that RP's physical or mental condition is such that it would be unjust or oppressive to extradite him.

290. Accordingly, but subject to RS's right of appeal, I order RP's discharge from this extradition request.

Appropriate Judge DJMC Michael Fanning

7 December 2020