



Neutral Citation Number: [2019] EWHC 3450 (Admin)

Case No: CO/66/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 12/12/2019

**Before :**

**MR JUSTICE DOVE**

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**Between :**

**Tomasz Celczynski**  
**- and -**  
**Polish Judicial Authority**

**Appellant**

**Respondent**

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**Mr Martin Henley** (instructed by **AM International**) for the **Appellant**  
**Mr Ben Joyes** (instructed by **The Crown Prosecution Service**) for the **Respondent**

Hearing dates: 10th October 2019  
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**Approved Judgment**

**Mr Justice Dove :**

Introduction

1. These proceedings have been brought as an appeal under section 26 of the Extradition Act 2003 against the order of Deputy Senior District Judge Ikram on the 26<sup>th</sup> December 2018, ordering the extradition of the Appellant pursuant to an EAW dated 1<sup>st</sup> February 2017 and certified on the 16<sup>th</sup> February 2017. The EAW relates to a judgment dated the 13<sup>th</sup> June 2014 requiring the Appellant to serve a sentence of 10 months imprisonment following his conviction for domestic violence and harassment arising out of incidents with his former wife between October 2011 and May 2012 and May 2013 and October 2013. Submissions are made as to whether or not the EAW satisfies the necessary legal requirements which are set out below. At this stage it is sensible to record that the type of decision which is identified in the EAW is described as follows:

“B. Decision on which the warrant is based:

1. Type of decision:

...

- Enforceable judgment:

Issued by the court: Sad Rejonowy in Skarzysko-Kamienna dated on 10 March 2014, it was ordered to execute the sentence with conditional suspension on the basis of the judgement issued by the court: Sad Rejonowy in Skarzysko-Kamienna dated on 13 June 2014.”

2. The EAW describes the nature of the sentence as follows:

“C. Information on the length of sentence:

...

2. Length of the custodial sentence or detention order imposed:

The ten-month imprisonment

3. Remaining Sentence to be served:

The ten-month imprisonment.”

3. At the hearing objections were taken on both sides to the submission of evidence and the form in which evidence had been lodged. Rather than resolve that as a preliminary issue it was agreed that all of this material should be received without prejudice to its admissibility, and that the issue of whether or not it should be accepted should be resolved as part of the ultimate decision of the court. That is the approach which has been taken in this judgment which commences by setting out the factual circumstances in relation to the proceedings before the District Judge and resolving

the factual issues arising. Thereafter the relevant law is set out and conclusions are reached on the submissions which were made on both sides of the argument.

The proceedings

4. The Appellant was arrested pursuant to the EAW on the 24<sup>th</sup> December 2018 and he was produced before the District Judge on the 26<sup>th</sup> December 2018. Pursuant to the duty solicitor scheme Mr Green was identified to represent him at court. There are various accounts before the court as to what happened at the initial hearing. The account provided by the Appellant in his proof of evidence for the appeal is as follows:

“5. On 26<sup>th</sup> December 2018 I was seen by the duty solicitor Mr Green who advised me in conference. I then appeared in court before Deputy Senior District Judge Ikram. I had the benefit of a Polish interpreter and Mr Green as duty solicitor.

6. I refused to consent to my extradition. Mr Green then made a bail application on my behalf that was refused by the Judge. The Judge then told me that it would be difficult for me to win the case.

7. I remember that initially a hearing date of 21 January 2019 was proposed. There was then some discussion between the Judge and the lawyers and I cannot now recall much of that detail. I was then taken back to the cell to reconsider my position with regard to consent and the Judge directed Mr Green to give me further advice in the cells.

8. As around 12.00 noon I was brought back into court. Mr Green was not present, and the Polish interpreter told me that he had left court as he had other urgent matters to attend to.

9. The Judge through the interpreter then asked me if I would agree to be extradited to Poland. I did not know what to say. I was looking for advice from my lawyer, however, there was no one to advise me. I was very confused by the question being asked because I had already refused consent to extradition. I know that there was some discussion between the Judge and the Prosecutor, but I cannot remember what was said.”

5. As part of the preparation for the appeal the Appellant’s solicitors contacted Mr Green to obtain his recollection of events on the 26<sup>th</sup> December 2018. In an email on the 11<sup>th</sup> January 2019 included in the appeal bundle Mr Green provided his recollection in the following terms:

“I recall this case. As you say I was Duty Solicitor on Boxing day.

The Requested Person refused to consent (as he is entitled to).

The Judge on being informed put pressure on him to change his decision and commented that he had no chance of avoiding extradition. He refused to list it for a final hearing on a future date and decided to put the matter back for me to give further advice and told the RP directly that his opposition to extradition was hopeless or words to that effect – I do not have a note of the words used.

I asked that the case be adjourned to the following day as I had a domestic crisis. I pointed out that I was going to be at the Court again as Duty Solicitor for the Extradition court the Judge agreed so I left.

The following day the RP was not in the cells and I was unable to establish what had happened.”

6. In support of the Respondent’s case Mr Nethercott Barnard has provided a witness statement. He is a reviewing lawyer within the Extradition Unit of the Crown Prosecution Service. Whilst he has conduct of the extradition request of the Appellant he did not attend the hearing on the 26<sup>th</sup> December 2018 to represent the Respondent. A Mr Chaudri, who has since left the Extradition Unit, represented the prosecution at the hearing on the 26<sup>th</sup> December 2018 and Mr Chaudri’s Extradition Hearing Record sheet is produced by Mr Nethercott Barnard as further evidence of what occurred before the District Judge. An Extradition Record Hearing Sheet (the “Record Sheet”) records the next hearing date as an adjournment to the 27<sup>th</sup> December 2018. In the section of the record sheet that is described as “Outcomes” it records as follows:

“RPAR ic

No issues s.4/7

Consent put – not given

Proceedings opened

Issues – Article 8 (disputes he is a fugitive he was travelling back and forth – Poles were notified of UK address)

Bail opposed – conviction – DA and call out today was ‘domestic incident’, history of convictions of violence, fugitive on face of EAW

Bail app: domestic incident is with new partner’s son, attended court in Poland, works in construction has an address which is rented with partner living there for 2 yrs+ one bed flat, subject to residence condition, elec monitored tag 1am-5am, reporting Wembley PS 7pm-10pm, mobile phone number, other usual conditions, no security – no savings, ID card unclear make it a pre-release conditions.

DJ offers RP some views as to prospects of success under Art.8.

Put back for RP to reflect. Mr Green has a personal matter and has to leave.

RP states wishes to consent. DJ goes through EAW and confirms RP does not wish to seek legal advice.

DJ – no issues raised s.4/7, identified offence and sentence to be served of 10M, satisfied provisions of 2003 Act complied with, initially raised Art. 8 argument but RP has committed offences in this country since arriving, relationship but no children, no bars to extradition, satisfied no arguments on ECHR, satisfied that no issues being raised necessary and proportionate to order extradition.

Extradition ordered. Appeal rights outlined – permission needs to be sought within 7 days. Otherwise will be returned to Poland.

RIC.”

7. The Record Sheet goes on to record directions having been given for future conduct of the matter including a proof of evidence from the Appellant and further information from the CPS in relation to sentence activation and fugitive status. Mr Chaudri had noted that “DJ considers we are on notice of fugitive status being considered FI and it would assist court to have IJA’s information.”
8. Following the hearing on the 26<sup>th</sup> December 2018 the Appellant was remanded to HMP Wandsworth where, notwithstanding initial communication difficulties, he was able to lodge this appeal on the 4<sup>th</sup> January 2019. In addition to the evidence which he has provided in relation to what occurred at the hearing the Appellant has provided a further proof of evidence dealing with matters concerning the application of Article 8 of the ECHR to his case. In that proof of evidence he explains that he first came to the UK in 2008 and at that time regularly returned to Poland in order to see his former wife and children. He would go every 2-3 months and was keen for his family to join him and settle in the UK. They came in 2009 for 6 months and then 2010 for 10 months. The third occasion they came in 2011 they stayed for around 3 months and problems emerged in their marriage. His wife filed for divorce and it was after that the courts became involved and she reported his behaviour to the police leading to his conviction. He pleaded guilty at court to the allegations against him and received a 10 month suspended sentence. He left Poland to come to the UK on the same day. He was not aware either of any conditions attached this suspended sentence or why that suspended sentence was activated. He accepts in the statement that he has convictions in the UK (having previously said in his first statement that he has none as a result of a misunderstanding). He met his current partner 6 years ago and they have been together in the UK throughout that time. His current partner provides a further proof of evidence in support of the appeal explaining that she is a divorced person and currently enjoys a loving, stable and supportive relationship with the Appellant. She explains that the detention of the Appellant had a significant impact on her mental

wellbeing and that the present proceedings have caused her considerable anxiety. As a result of a previous spinal injury she has significant limitations on the work that she is able to undertake.

### Submissions

9. On behalf of the Appellant Mr Martin Henley, advances the appeal on the basis, firstly, that the EAW is not valid pursuant to the provisions of section 2 of the 2003 Act which is set out below. He submits that the requirement of section 2(5)(b) of the 2003 Act (which are set out below) are not satisfied by the wording of the EAW which did not provide clearly that the Appellant was required to serve a sentence of imprisonment. In that that requirement was not satisfied his extradition could not be lawfully upheld.
10. Turning to the circumstances of the hearing Mr Henley submitted both that the Judge exhibited apparent bias and also that the proceedings were an abuse of process on the basis that the Judge failed to afford the Appellant any opportunity to adduce any evidence and for the merits of his appeal to be explored. He contended that the documentation demonstrated that initially the District Judge had accepted the need for the case to be put back to the following day so as to enable Mr Green to provide further advice in respect of the future conduct of the appeal. What then, he submits, appears to have happened is that Mr Green having been called away to a domestic crisis, and the Appellant, having been brought back up from the cells unrepresented failed to understand what was occurring in the proceedings and through that misunderstanding ended up having his deportation confirmed. Mr Henley submitted that the District Judge failed in his statutory duty to undertake a proper inquiry in relation to the merits of the Appellant's case, and that the District Judge failed in his duty to ensure both that the Appellant was in receipt of proper legal advice, and that any decision he thought that the Appellant had made was fully and properly informed and also failed to fulfil the legitimate expectation that the Appellant had that his case would be heard the following day when he would have the benefit of Mr Green's further legal advice as to how the proceedings were to be progressed and examined. Mr Henley submits that the Judge acted improperly in that having promised that the matter would be adjourned to the following day he then pressured the Appellant into a course of action which he had not been advised upon by his solicitor and acted improperly by pressing on with the proceedings and pressuring the Appellant to consent to extradition. Further, Mr Henley contends that in the light of the injudicious behaviour of the Judge it was clear that the Respondent took a tactical advantage and sought to profit from the prejudice being caused to the Appellant, and that as such the behaviour of the Respondent amounted to an abuse of process. It was incumbent upon the representative of the Prosecution to step in to prevent the Judge from acting in the way in which he did.
11. Mr Henley went on to submit that the evidence demonstrated that, firstly, given the doubts as to the validity of the EAW and the course the proceedings had taken it was incumbent upon the Judge to adjourn the matter to enable these issues to be fully and properly explored, rather than pressing on and ordering the Appellant's extradition in the manner in which he did. Furthermore, when the evidence which would have been available to the Applicant is examined Mr Henley submits that on the Article 8 issues the balance clearly favours the discharge of the Appellant. Against the background of these submissions Mr Henley submits that section 27(3) of the 2003 Act is engaged in

that the Judge ought to have provided the question before him as to whether or not the proceedings should be adjourned differently and in the circumstances the court is, he submits, properly seized of the appeal.

12. In response to these contentions Mr Joyes submits on behalf of the Respondent that the contents of box B and box C of the EAW clearly establish that the Appellant was required to return to Poland in order to serve a 10 month term of imprisonment. Thus, he contends that the requirements of section 2(5)(a) of the 2003 Act are clearly satisfied. So far as the case presented under Article 8 is concerned Mr Joyes submits that extradition of the Appellant would be a proportional interference with his rights under Article 8 on the basis that firstly the sentence which he is required to serve is not one which is insignificant and is founded upon serious domestic violence towards his ex-wife. Mr Joyes points out that the Appellant accepts that he has been convicted in the UK of two further offences, one involving assault occasioning actual bodily harm. Further information obtained by the Respondent shows that the Appellant has 14 previous convictions in Poland for a variety of matters including perverting the cause of justice and dishonesty as well as violence. The Appellant is not the sole carer for a child and has no contact with his ex-wife and children. There has been no delay and in the circumstances the weighty consideration of public interest in upholding the UK's Treaties Obligations in respect of extradition demonstrate that in the overall balance extradition should be ordered.
13. Mr Joyes refutes the contention that there has been any abuse of the extradition process and submits that on the basis of the note of the proceedings produced by Mr Chaudri that he acted entirely professionally and objectively as an officer of the court throughout the proceedings.
14. During the course of his oral submissions Mr Joyes drew attention to the decision of the Divisional Court in the case of Olah v Regional Court in Plzen Czech Republic [2008] EWHC 2701 (Admin). In that case the District Judge refused an adjournment in circumstances which the court concluded was plainly wrong and unlawful. There was, in the view of the court, no basis for the refusal of the adjournment application. The court observed the limitations of the jurisdiction of the court under sections 26 and 27 of the 2003 Act and concluded that it had no power to send the matter back to the District Judge and thus there was no remedy for the complaint raised by the Appellant pursuant to the 2003 Act. Nevertheless, the court concluded that it would in the circumstances be proper to treat the appeal as an application for judicial review, grant permission to the Appellant to bring proceedings for judicial review and grant that judicial review in relation to the decision to refuse the adjournment, thereafter granting relief in the form of a quashing of that decision and a remission back to the Magistrates Court for the matter to be reconsidered. Mr Joyes submitted that if there was any substance in the Appellant's complaints about the failure of the District Judge to adjourn the matter to the following day then that was a decision which could not be remedied under the 2003 Act, but which could only be addressed on the basis, like Olah, that these proceedings were treated as a judicial review and consideration be given to the lawfulness of that decision on public law grounds.

The law

15. Under section 2(5)(b) of the 2003 Act a warrant considered under part 1 of the 2003 Act must contain a statement that it "is issued with a view to [the requested person's]

arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence”. The failure to comply with this requirement is capable of leading to the discharge of the requested person.

16. The jurisdiction of this court to consider an appeal against an extradition order is conferred by section 26(1) of the 2003 Act. By section 26(2), section 26(1) does not apply if the extradition order is made pursuant to sections 46 or 48 of the 2003 Act. For present purposes it is only section 46 that is material. Section 46(1) provides that section 46 will apply “if a person consents to his extradition under section 45”. Section 45 in turn provides as follows:

“45 Consent to extradition

(1) A person arrested under a Part 1 warrant may consent to his extradition to the category 1 territory in which the warrant was issued.

(2) A person arrested under section 5 may consent to his extradition to the category 1 territory referred to in subsection (1) of that section.

...

(5) A person may not give his consent under this section unless- (a) he is legally represented before the appropriate Judge at the time he gives consent, or

(b) he is a person to whom subsection (6) applies.

...

(8) For the purposes of subsection (5) a person is to be treated as legally represented before the appropriate Judge if (and only if) he has the assistance of counsel or a solicitor to represent him in the proceedings before the appropriate judge.”

17. The powers of the High Court in relation to an appeal which is properly brought are contained within section 27 of the 2003 Act which provides as follows:

“27 Court’s powers on appeal under section 26

(1) On an appeal under section 26 the High Court may –

(a) allow the appeal;

(b) dismiss the appeal.

(2) The Court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that –



(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

(4) The conditions are that-

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him and the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge.

(5) If the court allows the appeal it must-

(a) order the person's discharge;

(b) quash the order for his extradition."

18. As set out above, the case of Olah provides an example to demonstrate that where a decision which is not within the powers provided by section 27 arises, it is possible for the court to convert the appeal proceedings brought under the 2003 Act into an application for judicial review and for relief to be granted, if such is the appropriate course.

19. In relation to the question of legal representation this issue was addressed by the Divisional Court in Stopyra v District Court of Lublin [2012] EWHC 1787. Whilst this case was heard with other cases, and considered broad issues in relation to the provision of legal assistance in EAW cases in part 1 of the 2003 Act, the court observed as follows in respect of the right to legal representation:

“(i) The requirements of Article 17 of the Framework Decision

30. Article 17 of the Framework Decision, to which District Judge Evans referred in his judgment in Stopyra, requires an EAW to be dealt with and executed as a matter of urgency. A final decision should be taken within 60 days after the arrest of the requested person; if the decision is not made within that timescale, then the executing judicial authority must inform the issuing judicial authority and give the reasons for the delay. The time limit is then extended by a further 30 days. If the time limits cannot be observed, then Eurojust must be informed.

31. Although this Article was not given direct effect in the 2003 Act, it is clear that a UK court should interpret the 2003 Act so

far as is possible consistently with the Framework Decision: see *Assange v Swedish Prosecution Authority* [2012] UKSC 22 at para 10. The time limits specific in the 2003 Act should, therefore, be read in the context of that obligation. Furthermore in view of the presumption that the domestic law of the UK should accord with its international obligations, a court as part of the judicial branch of the state should so far as possible discharge its functions under the 2003 Act so as to fulfil the obligations of the state undertaken under the Framework Decision.

(ii) The right to legal representation

32. The Framework Decision provides by Article 11(2):

“A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.”

33. In view of the presumption to which we have referred in paragraph 31, it should follow, in our view, that a person arrested must be afforded legal representation in sufficient time to enable the court, as the executing authority, to comply with its obligations under Article 17.

34. As there is the right to legal assistance, it is difficult to see how it can be just for a requested person to decide to consent to extradition or to decide not to contest extradition or for the extradition hearing to proceed beyond its formal opening, unless and until he has had a proper opportunity to take legal advice. In many cases the duty solicitor scheme, if properly funded and administered to provide enough time to give the necessary advice will provide sufficient assistance for a person to consent to or not to contest the extradition.”

## Conclusions

20. The first issue which needs to be resolved is the question of what in fact happened at the hearing and what the substance of the District Judge’s decision was. Whilst, as I have set out above, objections were raised by the Respondent the introduction of the material from Mr Green on the basis that it was not in the form of a proper witness statement and on behalf of the Appellant to the evidence adduced by Mr Nethercott Barnard on the basis that Mr Chaudri’s record sheet was not a document to which Mr Chaudri properly attested, ultimately in my view all of this documentary material needs to be evaluated along with the Appellant’s proof of evidence to seek to establish what in fact occurred at the hearing. Some aspects of the hearing are not in dispute. Firstly, it appears from all three sources that there was an initial phase of the hearing where Mr Green was present and representing the Appellant before the District Judge at which the Appellant refused to consent to extradition. It would seem from the Record Sheet (and this is a reference relied upon by the Appellant) that directions

were set at that stage for a future hearing and the question of whether or not the Appellant was a fugitive was identified as an issue which would require resolution at that future hearing. The information recorded in the record sheet in relation to the bail application made by Mr Green reflects, to the extent that it provides any detail at all, some of the material contained within the Appellant's evidence. It further appears from both Mr Green's note and the Record Sheet that the District Judge offered views on the merits of the appeal, and I have no doubt that Mr Green was correct in recording in his email that the District Judge's view was that the prospects of success under Article 8 were low or some such equivalent assessment.

21. It is at this point that the sources start to diverge. Whilst all of the sources record in slightly differing ways that Mr Green was called away by other urgent matters which intruded upon his ability to remain at court, there is an issue as to whether or not the District Judge agreed for the matter to be put back to the following day. For the purposes of my assessment I am prepared to accept Mr Green's observation that he had asked for the case to be adjourned to the following day and the Judge had agreed to do so. It appears from both the Appellant's proof of evidence and also the Prosecutor's Record Sheet that the Appellant was then brought back into court later on in the day for mention, prior to a remand in custody. I am sure that, as the Appellant indicates, the Judge then asked whether or not he would consent to his extradition. I am equally sure, based in particular on the Record Sheet kept by Mr Chaudri, the Appellant then indicated that he did consent to being extradited. My reasons for reaching that conclusion and being sure that that is the case are firstly, that the Judge would not have proceeded as he did to deal with the hearing as in effect a "no issues" hearing and, secondly, there would be no other reason for Mr Chaudri to have noted clearly and unambiguously that the Appellant stated that he wished to consent. I am also sure that, as Mr Chaudri's Record Sheet reflects, the District Judge sought confirmation that the Appellant did not wish to seek legal advice. Not only would this have been the natural and obvious course for the Judge to have adopted, but also there would be no reason for Mr Chaudri to specifically note this if it had not been the case. The District Judge, having been satisfied that the Appellant consented to extradition, then undertook his own review of the EAW and the Article 8 issues as he understood them and ordered extradition.
22. Prior to turning to the procedural issues raised in the case it is necessary to consider the arguments raised by the Appellant in relation to whether or not the requirements of section 2 of the 2003 Act, and in particular section 2(5)(b), have not been satisfied, in that it is suggested that the provisions of the EAW set out above do not clearly specify that the Appellant is required to serve a sentence of imprisonment. That is a contention that I am simply unable to accept. In my judgment the provisions of the EAW which have been set out above clearly specify when read as a whole that the Appellant is being required to return to serve a 10 month term of imprisonment. The provisions of section 2(5)(b) are satisfied by the terms of the warrant and this ground of appeal must be dismissed.
23. It is then necessary to turn to the procedural grounds which are raised in the case. The first question which then arises is whether or not the Appellant gave legally effective or valid consent to his extradition. In my view the provisions of section 45 of the 2003 Act are clear, and in particular section 45(5) requires that the Appellant "is legally represented before the appropriate Judge at the time he gives consent". At the time

that the Appellant in the present case gave his consent to the court he was not legally represented, or assisted by counsel or solicitor, as required section 45(5) and (8). It follows that the Appellant did not validly give consent in accordance with the requirements of the statutory provisions at the time when he was produced before the court after Mr Green had left. The District Judge was not, therefore, entitled to proceed to a “no issues” hearing on the basis that the Appellant had lawfully consented to his extradition.

24. The next question which arises is whether or not this error of law is one which falls within the jurisdiction of the court pursuant to section 26 of the 2003 Act. As set out above, the nature and extent of the jurisdiction is described by the provisions of section 27 of the 2003 Act. The issue in the present case does not fall within either section 27(3) or 27(4). The reason for this conclusion is that, taking the question or issue for the purpose of these subsections as whether or not the Appellant validly consented to his extradition, if the District Judge had decided this question lawfully and concluded that consent had not been validly given that would not have required the Appellant be discharged. Whilst it is not possible to be definitive, the overwhelming likelihood is that it would have led to the hearing being adjourned, and thereafter either proceeding to the giving of consent when the Appellant was appropriately represented or, alternatively, proceeding to a full hearing of the merits. It follows that the issue in this case is not one which falls within the jurisdiction on an extradition appeal granted by sections 26 and 27 of the 2003 Act.
25. Whilst I am satisfied that there is no jurisdiction in this case for an appeal under the 2003 Act to consider the procedural question of whether the Appellant validly gave his consent to his own extradition that does not bring my consideration of the Appellant’s case to a close, for the reasons set out above. It is open to the court, in circumstances of this kind, to convert the appeal proceedings into an application for judicial review, and deal with the case as, in effect, a “rolled up” hearing. Both parties before the court made submissions on the basis that this was a procedural course open to the court and did not suggest that it would be inappropriate or unjust to do so. Given that, for the reasons I have set out above, I am satisfied that the Appellant did not lawfully consent to his extradition, the District Judge could not thereafter lawfully proceed to order his extradition on the basis of that invalid consent. In the circumstances I propose to grant permission to apply for judicial review and allow the application in substance, quashing the District Judge’s order for extradition of the Appellant, given my conclusion that it was based on an error of law as to whether or not the Appellant had given valid consent to his extradition. The appropriate remedy is that the matter should be sent back to the Magistrates Court to be reheard by a District Judge other than Deputy Senior District Judge Ikram. I do not consider that this is a suitable case in which to withhold relief on the basis that the outcome would be highly likely to be the same if that legal error had not been made. Further, the reality is that the Appellant has not had a hearing of his case in which he would have the opportunity to give evidence and have submissions made on his behalf in the light of that evidence, which adds to the conclusion that the discretion not to grant relief ought not to be exercised in this case.
26. There are other aspects of the Appellant’s submissions which I should also consider for the sake of completeness, related to legitimate expectation, bias and abuse of process. It will be recalled that Mr Henley on behalf of the Appellant made a number

of submissions as to the legality of the District Judge's approach. He submitted that the Appellant had a legitimate expectation, following from the initial phase of the hearing, that the Appellant's case would not be considered until the following day when he would be represented by Mr Green. He further submitted that the District Judge exhibited bias and behaved improperly in securing the consent of the Appellant to his extradition. Further, Mr Henley contended that the Prosecution had been responsible for an abuse of process in failing to prevent the District Judge from proceeding in the manner in which he did.

27. Having considered the submissions made by Mr Henley I am not satisfied that there is anything of substance in these submissions and, indeed, I do not consider that they are properly arguable. Whilst it is clear that following the initial phase of the hearing of the 26<sup>th</sup> December 2018 it was contemplated that the Appellant's case would be returned to on the following day, I am unable to accept that that was the kind of unequivocal promise as to the procedure to be followed which could properly give rise to a binding legitimate expectation. I further do not consider that there is any evidence that the District Judge showed apparent bias towards the Appellant. In my judgment he acted without actual or apparent bias in his approach to the case, but fell into error when he accepted the consent to extradition offered to him by the Appellant in the absence of his legal representative.
28. I do not accept that the suggestion of abuse of process could properly arise as submitted on behalf of the Appellant. Whilst the District Judge did fall into error, the failure of Mr Chaudri to identify the problem and point it out does not substantiate an allegation of abuse of process against him. The appropriate remedy in the present case is the one which has been set out above.
29. For all of these reasons I am satisfied that the Appellant's appeal under the 2003 Act case must be dismissed in relation to the ground related to the provisions of the EAW and the requirements of section 2 of the 2003 Act. The issue which arises as to whether or not the Appellant validly gave consent to extradition is properly addressed as an application for judicial review. For the reasons set out above, that application for judicial review succeeds and the order for extradition must be quashed and the matter sent back to the Magistrates Court to be heard by a District Judge other than Deputy Senior District Judge Ikram.