



Neutral Citation Number: [2022] EWHC 142 (Admin)

Case No: CO/4080/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/01/2022

Before

MR JUSTICE SWIFT

Between

THE QUEEN

on the application of

MICHAEL RICHARD LYNCH

- and -

WESTMINSTER MAGISTRATES' COURT

-and-

(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT

(2) GOVERNMENT OF THE UNITED STATES OF AMERICA

Interested Parties

Alex Bailin QC & Aaron Watkins (instructed by **Clifford Chance Solicitors**)

for the **Claimant**

Mark Summers QC & Rachel Barnes (instructed by **CPS**) for the **Second Interested Party**

Hearing date: 18 January 2022

Approved Judgment

MR JUSTICE SWIFT

A. Introduction

1. This is Michael Lynch's application for a judicial review of a decision of District Judge Snow made on 25 November 2021 refusing the Secretary of State for the Home Department's application under

[section 99\(4\) of the Extradition Act 2003](#) to extend the time permitted for her to decide whether or not to order Dr Lynch's extradition to the United States of America. Dr Lynch's submission in these proceedings is that the Judge applied the wrong test when deciding the outcome of that application and/or reached a conclusion that was irrational.

2. Until 2012 Dr Lynch was Chief Executive Officer of Autonomy Corporation plc, an enterprise software company. He had founded the company in 1996. In October 2011 Autonomy was taken over by Hewlett Packard, a US company, in a deal that valued Autonomy at a sum then equivalent to £7.4bn. On 17 September 2019 the Government of the United States of America made a request for Dr Lynch's extradition to face charges arising out of the Hewlett Packard takeover.

3. In his judgment dated 22 July 2021, following the extradition hearing, the Judge summarised the charges as follows (at paragraph 1):

"... The Defendant is accused in the US of conduct between January 2009 and November 2018, particularised in a Superseding Indictment containing 17 counts constituting: (i) conspiracy to commit wire fraud (count 1); (ii) wire fraud and aiding and abetting wire fraud (counts 2-15); securities fraud and aiding and abetting securities fraud (count 16); and a conspiracy to conceal the above (count 17). ..."

4. Between paragraphs 19 and 21 the Judge explained the context for these charges:

"19. The central allegation is that prior to the sale, between January 2009 and October 2011, to deceive purchasers and sellers of Autonomy Securities about the true performance of Autonomy's business, its financial performance and condition, the nature and composition of its products, revenue and expenses, and its prospects for growth. It is alleged that the Defendant was the leader of the corporate conspiracy to fraudulently inflate the reported revenue, earnings and value of Autonomy, in order to make the company more attractive to potential purchasers HP.

20. It is alleged that a consequence of the conspirators' fraudulent activity, HP was persuaded to purchase the shares in Autonomy at a significant overvalue ...

21. Subsequently, between October 2011 and November 2018, the Defendant is further alleged to have conspired with others to conceal the fraudulent nature of the accounting at Autonomy, and to obstruct investigations into the fraud, through conduct including the making of false and misleading statements to HP's General Counsel, the theft and destruction of documents, and the payment of "hush money" to former Autonomy employees to influence, delay and prevent their testimony."

5. The extradition request falls to be considered under [Part 2](#) of the [Extradition Act 2003](#) ("[the 2003 Act](#)"). At the extradition hearing it was submitted for Dr Lynch that extradition was barred for four reasons. The Judge summarised the submission for Dr Lynch as follows, at paragraph 5 of his judgment.

"The Defendant indicated in a Skeleton Argument dated 24 December 2020 that he intended to argue four issues in opposition to extradition:

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Dual Criminality Section 78(4)(b) and Section 137: the alleged conduct did not occur 'within the United States' for the purposes of section 137(3)(a); and 'the conduct alleged, if properly transposed as required by section 137, would [not] yield any offence triable in the UK' under section 137(3)(b);

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Passage of time Section 79(1)(c) and Section 82: the conduct dates back to 2009, the (first) indictment was not issued until 2018 and the extradition request was not made until 2019; extradition would be both oppressive and unjust in these circumstances;

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Forum Section 79(1)(e) and Sections 83A-E: the Defendant is a British citizen with lifelong links to the UK; the alleged conduct concerns the takeover of a UK company that which applied UK accounting standards and was audited by a UK auditor; 'this is a factual matrix, par excellence, which should engage the protection of the forum bar';

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Article 3 ECHR Section 87: extradition would expose the defendant to detention in substandard prison conditions; the impact of those conditions is to be considered by reference to the Defendant's 'specific health needs' and 'his ability to prepare for trial';

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Abuse of process: a 'number of interlinked issues' are to be raised 'the core of which is that the Government has presented and relies upon a significantly distorted picture, including inter alia: (i) misleading content, (ii) material omissions and (iii) jurisdiction'. The alleged abuse appears to be of the type identified in **Zakrzewski v Regional Court in Lodz, Poland** [2013] 1 WLR 324."

The Judge rejected these submissions, and in accordance with [Part 2](#) of [the 2003 Act](#) sent the case to the Secretary of State for her consideration.

6. The Secretary of State's functions are set out at [section 93](#) of [the 2003 Act](#). The Secretary of State must decide whether extradition is prohibited for any of the following reasons: (a) because the person concerned could be sentenced to death for the offence concerned; (b) because there are no specialty arrangements with the relevant Category 2 country; (c) that the person concerned has previously been extradited to the United Kingdom, that the consent of the extraditing territory is required in respect of any further extradition, and that consent has not been given by the extraditing territory; or (d) the person was transferred to the United Kingdom to serve a sentence imposed by the International Criminal Court, that the consent of the Presidency of the Court is required before any further extradition, and such consent has not yet been given. If the Secretary of State decides that any of these prohibitions applies she must order the person's discharge: see [section 93\(3\)](#) of [the 2003 Act](#).

7. The Secretary of State is required to take her decision within the time specified by [section 99](#) of [the 2003 Act](#). This is referred to as the "required period". On the facts of this case, the required period was two months starting with the day on which the case was sent by the Judge to the Secretary of State. The required period may be extended by order of a District Judge. [Section 99\(4\)](#) provides as follows:

"If before the required period ends the Secretary of State applies to the appropriate judge for it to be extended the judge may make an order accordingly; and this subsection may apply more than once."

8. When a case is sent to the Secretary of State, [section 93](#) provides an opportunity for representations to be made to her. If representations are made within what is referred to as the "permitted period" (in this case the period of four weeks from the date on which the Judge sent the case to the Secretary of State) the Secretary of State must consider representations. She has a discretion whether or not to consider representations made outside the permitted period.

9. In this case Dr Lynch's solicitors (Clifford Chance) sent representations on his behalf on 17 August 2021. The representations included a request that the Secretary of State delay her decision whether to make an extradition order until she had the chance to consider the judgment in proceedings in the Chancery Division brought by Autonomy against Dr Lynch and Sushovan Hussain, who had been Autonomy's Chief Financial Officer ("the Chancery proceedings"). Those proceedings were commenced in 2015. In very short summary, in those proceedings it is alleged that Dr Lynch and Mr Hussain breached fiduciary obligations owed to Autonomy by publishing accounts that artificially inflated the company's revenues. It is also alleged they acted contrary to obligations in [Schedule 10A to the Financial Services and Markets Act 2000](#). Further, Autonomy also pursues claims under [section 2\(1\) of the Misrepresentation Act 1967](#). Dr Lynch has counter-claimed in those proceedings. The trial took place before Mr Justice Hildyard and ended in January 2020, after a hearing that lasted 93 days. Judgment was reserved.

10. On 20 September 2021, Clifford Chance wrote again to the Secretary of State informing her that Hildyard J did not now expect to circulate the draft of his judgment until late October or early November 2021. They invited the Secretary of State to make an application to the court under [section 99\(4\)](#). The last day of the two-month period permitted by [section 99\(3\) of the 2003 Act](#) was 21 September 2021. By letter dated 21 September 2021 the Secretary of State made her application. She sought an extension of 7 days. The letter said this (emphasis in the original):

"On 17 August 2021, the Requested Person served detailed representations in relation to the bars to extradition that the Secretary of State must consider under [the 2003 Act](#). The Secretary of State has considered those representations but in light of the complex nature of the background to this case and the need for the Secretary of State to give full consideration to all the relevant issues that have been raised before her, a short extension of seven days is sought pursuant to [section 99\(4\) of the 2003 Act](#)."

This application was considered at an ex parte hearing, and was granted.

11. On 28 September 2021 the Secretary of State wrote to the court making a second application for an extension of time. This time, the Secretary of State asked for an extension to 29 November 2021. The letter of application concluded with the following:

"The extension sought is until Monday 29 November 2021, in order to enable the Secretary of State to fully consider all of the matters raised in representations made on behalf of Mr Lynch which include submissions in relation to the potential relevance of the ongoing civil proceedings before Mr Justice Hildyard.

Mr Justice Hildyard has indicated that a draft judgment in that case will be circulated to the parties in late October, early November, with the final public judgment therefore due around two weeks thereafter. As such the extension sought in this matter is until 2 weeks after the expected date of the judgment in the civil proceedings, in order to give the Secretary of State time to consider the same."

That application too, was granted following a short ex parte hearing.

12. On 18 November 2021 the Secretary of State wrote to Clifford Chance requesting either any further representations arising out of Hildyard J's judgment or, if the judgment had not been handed down, an update on when it was expected the judgment would be available. On 22 November 2021 Clifford Chance replied saying that the latest update from Hildyard J was that he expected to circulate a draft judgment at the end of Michaelmas term. Clifford Chance explained they did not know for how long the draft judgment might be subject to the usual embargo; they anticipated the judgment might

be handed-down in January 2022. Clifford Chance requested the Secretary of State seek a further extension of time from the court until the end of January 2022.

13. On 23 November 2021, the Secretary of State made a third application to the court under [section 99\(4\) of the 2003 Act](#). The letter of application stated:

“On 17 August 2021, the requested person sent detailed representations to the Secretary of State in relation to specialty and the reasons why he submitted that the judgment of Hildyard J was likely to be relevant to her decision.”

Under the heading “Application” the letter concluded with the following paragraphs:

“As noted, the purpose of the last application for an extension of time, as granted by the court, was to allow the Secretary of State to consider the requested person’s representations with respect to specialty in light of the judgment of Hildyard J upon which the requested person places heavy reliance. The Secretary of State has reached no view herself as to the relevance or otherwise of any findings made by Hildyard J to the statutory questions that she must decide but, in the unusual circumstances of this case, considers it appropriate to await the hand-down of the judgment to enable her to consider the submissions made by the requested person in their full context.

The Secretary of State is mindful of the purpose of the statutory time-limits in [the 2003 Act](#) and the need to ensure that extradition requests are considered expeditiously but notes that, to her knowledge, the delay in the hand-down of the civil judgment has not been caused by any party to the extradition proceedings.

In those circumstances, while the additional delay to the extradition process is regrettable, she applies for a further extension until 14 March 2022 to allow her to consider all the matters raised before her as relevant considerations in order to reach her own view as to their relevance to the statutory questions that she must decide. The proposed extension period assumes that judgment will be handed-down by 21 January 2022, and allows the requested person three weeks to make representations followed by four weeks for the Secretary of State to make her decision. Whilst we realise this is a request for a considerable extension, we are keen to avoid having to revert to the court with multiple further requests as we consider this time frame provides a realistic view of the time it will take to consider this matter once the civil judgment is handed down.”

14. The application was heard by District Judge Snow on 25 November 2021. The Secretary of State and the Government of the United States of America were represented by counsel, Dr Lynch by leading counsel. Dr Lynch supported the application; the Government of the United States of America was neutral, neither supporting nor opposing. The application was made on the basis that the judgment in the Chancery proceedings might include matters relevant to Dr Lynch’s representations on specialty. The application, as made, was refused. But the Judge did extend the required period for three weeks: i.e. to 16 December 2021.

15. The Judge has provided a note of his reasons given orally at the end of the hearing. The material part of those reasons is at paragraphs 7 – 9:

“7. One of the difficulties I face, is that having heard a number of applications on the same basis previously, I cannot have any great confidence – and this is not a criticism – that the judgment will be handed down by 21 December.

8. Alongside that it is extremely difficult to see how a judgment given in a civil case is likely to lead to the conclusion that there is a real risk of the American prosecutors laying further charges against Dr Lynch. I have not been given any detail as to why it is asserted that there is a real risk; I am just told that the representations have been made and the Secretary of State wants to consider them.

9. Frankly, given the delay in this matter, and given the further delay which I am asked to endorse, I am not satisfied on a purely speculative basis that it is appropriate to grant the application as sought. Parliament did not give the Secretary of State an unfettered discretion; Parliament gave her a discretion fettered by time and fettered by having to make further applications to the court. I am afraid it cannot be enough simply to say that the Secretary of State wants to consider further matters and the court must rubber stamp what she requires. If further time is required, the reasons for the application have to be clearly set out and I am afraid that has not been done in sufficient detail for my purposes today. I am not prepared to grant the application in its current form. I am prepared to grant a short period of three weeks until 16 December 2021."

16. The judicial review proceedings were commenced on 29 November 2021. Permission to apply for judicial review was granted by Thornton J on 3 December 2021. On 16 December 2021 Chamberlain J granted interim relief directing the Defendant to extend time until the conclusion of the judicial review proceedings. Later that day, the Judge ordered that the required period would be extended until midnight on the second working day following the determination of the claim for judicial review.

B. Decision

17. The Claimant raises four grounds of challenge. Ground 1 is that the Judge's conclusion on the [section 99](#) application was irrational. Ground 2 is that the Judge took an irrelevant matter into account, namely his own opinion of whether there might be matters in the judgment in the Chancery proceedings relevant to the Secretary of State's decision on the specialty representation. Ground 3 is that the Judge failed to give sufficient weight to the Secretary of State's opinion that she wanted the opportunity to consider the judgment in the Chancery proceedings. Ground 4 is that the Judge applied the wrong test in reaching his decision because he took account of the overall history of the extradition proceedings. The Claimant submits this amounted to application of an "interests of justice test", and that the only history capable of being relevant to whether or not to extend the required period is limited to what has happened since the date of the order sending the case to the Secretary of State.

18. These grounds of challenge give rise to two questions: first, what is the test the Judge should have applied (this is the question explicit in Ground 4 and implicit in Grounds 2 and 3); second, what were his reasons for refusing the Secretary of State's application to extend the required period until March 2022 (this will be the premise of any answer to the Ground 1 rationality challenge)?

(1) What is the test the Judge should have applied?

19. The Claimant's submission is that the outcome of a [section 99\(4\)](#) application should depend on two matters: has the application been made by the Secretary of State for a purpose that would facilitate the exercise of her functions under [section 93](#) of [the 2003 Act](#); and was the application made a permissible (i.e. rational) step for the Secretary of State to take? If the answer to each of these questions is yes, the judge must grant the application. Any other conclusion, submits the Claimant, would give the judge control over what the Secretary of State could or could not take account of, running against the purpose of [section 93](#) of [the 2003 Act](#) and the provisions that follow. Those provisions require the Secretary of State to have full control over what to consider when deciding the

issues reserved to her. In the present case, by applying the wrong test the Claimant submits the Judge deprived the Secretary of State of the opportunity to consider the judgment in the Chancery proceedings or, putting the same point in a different way, has substituted his own view of the potential relevance of that judgment for that of the Secretary of State.

20. I do not accept the Claimant's submission. The natural meaning of the language used in [section 99\(4\)](#) does not suggest the review-based standard the Claimant contends for. As formulated, the subsection provides "the judge may make an order... [to extend the required period]". On an ordinary approach, the meaning of these words is that it is for the judge to decide as primary decision-maker, whether a sufficient reason has been given for the extension requested.

21. This approach to [section 99](#) of [the 2003 Act](#) fits with one general objective of that Act which is to require extradition requests to be dealt with promptly. This objective is clearly apparent in Part 1 of the Act, and it is also present in [Part 2. Sections 75 and 76](#) of [the 2003 Act](#) are examples in point. Where a person has been arrested for the purposes of an extradition request the extradition hearing is required to commence within two months. This period can be extended (the judge can fix a later date if he considers it to be "in the interests of justice" see for example, [section 75\(3\)](#)), but the material point is that the Act sets a timetable. [Section 99](#) comes from the same mould. The primary requirement under the section, read as a whole, is that the Secretary of State make her decision within the two-month required period. If she does not, the person to be extradited may apply to the court to be discharged and the court "must" order discharge: see [section 99\(2\)](#). [Section 99\(4\)](#) is by way of derogation from the general rule. There is no obvious reason why this derogation, formulated as it is, should be construed to give the Secretary of State a wide margin to decide whether or not to keep within the required period. The test the Claimant says should apply (a form of rationality testing) would give the Secretary of State substantial control over the actual length of the required period. That state of affairs would be at odds with one of the general objectives of [the 2003 Act](#), and both the express premise and specific purpose of [section 99](#).

22. The Claimant's counter is that if it is for a judge to decide for himself whether there is sufficient reason to extend the required period that puts him in charge of deciding what matters the Secretary of State may consider for the purposes of a [section 99](#) decision. If, as in this case, the Secretary of State cannot have the time she considers necessary to take her decision she will be prevented from considering matters she wants to consider and under the provisions of [the 2003 Act](#), is entitled to consider.

23. This submission rests on a false premise. While it is for the Secretary of State to decide which matters she wishes to take account of when deciding if any of the barriers to extradition in [section 93](#) of [the 2003 Act](#) are present, the Act does impose the practical limitation that her decision be taken within the required period. All other matters being equal, the required period is two months. Thus, the provisions in [the 2003 Act](#) which appear under the heading "Secretary of State's functions" (i.e. [sections 93](#) to 102) reflect concurrent objectives - that there are certain matters that are decisions for the Secretary of State, and that her decisions on those matters must be taken in good time. If a judge refuses an application to extend the required period he does not usurp the function of the Secretary of State. Under [section 99](#) the default position is that the time available to the Secretary of State is constrained. If a judge refuses an application under [section 99\(4\)](#), having concluded no sufficient reason has been given to permit the Secretary of State to delay her decision, that decision gives effect to an objective pursued by the Act.

24. The Judge's decision in this case came nowhere near usurping any function of the Secretary of State. The application failed because the Judge concluded the Secretary of State had failed sufficiently to explain why she wanted to wait to consider the judgment in the Chancery proceedings. That does not come close to telling the Secretary of State what matters she could or could not take account of. Moreover, the Judge's reasons (see his paragraph 9, the penultimate and pre-penultimate sentences) make clear that the extension to the required period that he did allow, gave the Secretary of State the opportunity to come back and try again with a better formulated application. (For the avoidance of doubt, the Judge did not need to grant the extension that he did just because the application to extend the required period was made shortly before the extension granted in September 2021 was due to expire. The timing of the application was a matter for the Secretary of State.)

25. Drawing these points together by reference to the Claimant's Ground 2 and Ground 3, the Judge properly decided the Secretary of State's application on its own merits. I do not consider it is correct to characterise what he did as forming his own opinion on whether there might be matters in the judgment in the Chancery proceedings that would be relevant to the Secretary of State's decision on whether specialty was a bar to extradition. Fairly read, his decision was that in circumstances in which it was not immediately apparent why findings in the judgment in the Chancery proceedings might say anything relevant to specialty (i.e. to whether specialty arrangements existed in the United States – see [section 95 of the 2003 Act](#)), the Secretary of State had failed sufficiently to explain the reasons why she wanted an extension to the required period. Ground 3 fails because it was for the Judge to assess for himself whether the reasons the Secretary of State relied on in support of her application, were sufficient reasons. The Claimant's submission is that the Judge failed to give proper weight to the Secretary of State's view because he went beyond asking whether that view was one rationally open to her. That submission fails for the reasons I have already given.

26. The Claimant's Ground 4 is that the Judge was wrong to refer to the passage of time since the extradition proceedings had commenced, and by having regard to this point he applied an "interests of justice" test. I reject this submission for a number of reasons.

27. First, the reference to the passage of time is no more than a passing reference. Passage of time since the start of the extradition proceedings was not the substantial explanation why the Secretary of State's application failed.

28. Second, the distinction the Claimant seeks to draw between the language of [section 99\(4\)](#) and the language of provisions such as [section 75\(3\)](#), which allows a judge to change the date for commencement of the extradition hearing if he "believes it to be in the interests of justice to do so", is a distinction that leads nowhere. The Claimant's submission is that words such as "in the interests of justice" permit a judge to take account of the passage of time since the extradition proceedings commenced but since that phrase is not present in [section 99\(4\)](#), any passage of time must be irrelevant (unless it post-dates when the matter was sent to the Secretary of State). I do not understand why that should be so; I do not attach significance to the absence of these words in [section 99\(4\)](#). Criteria such as "in the interests of justice" are regularly attached to the exercise of discretions on procedural matters arising in the course of litigation. The formulation gives the court significant latitude to consider the circumstances bearing upon the situation before it, although the essence of the phrase is that the discretion should be exercised with a view to ensuring the proceedings are conducted fairly. This will include but not be limited to, the need to start and finish the proceedings in good time. The absence of these words in [section 99\(4\)](#) reflects nothing more than the fact that the power to extend the required period is not one that touches upon proceedings in court. I do not consider the absence of these words within [section 99\(4\)](#) requires either that some

matters must never be considered or that others must always be considered. I accept as a general proposition that, on application to extend the required period, if the passage of time is material at all, what has happened since the case has been sent to the Secretary of State is likely to be to the fore. But I can see no reason why things happening before that date must always or necessarily be disregarded. Whether that is so must depend on what has happened to the case in hand.

(2) What were the Judge's reasons for refusing the Secretary of State's application?

29. The Claimant's submission on rationality is as follows. First, the Judge was told in the Secretary of State's letter of application that Dr Lynch had made representations to the Secretary of State to the effect that the judgment in the Chancery proceedings might contain material relevant to what he wanted to say on specialty; and the Judge was told that the Secretary of State wanted to consider Dr Lynch's representations with the benefit of the judgment. Second, in submissions at the hearing on 25 November 2021 counsel for the Secretary of State said that the representation made by Dr Lynch to the Secretary of State was: that some of those who would be witnesses in any criminal proceedings had been witnesses in the Chancery proceedings; that the allegations concerning Dr Lynch's conduct made in each set of proceedings overlapped; and that "there is a real risk that the US prosecutor will seek to bring new charges or substantially alter the charges on the basis of the evidence that comes out of the trial" (see the attendance note prepared by Dr Lynch's solicitors, agreed to be an accurate summary). All this being so, the reason for the application had been sufficiently explained and it was irrational not to extend the required period until the end of March 2022, as requested.

30. As I have said above, it was for the Judge to decide whether there was sufficient reason to grant the extension requested. I have already set out the material part of the Judge's reasons (see above at paragraph 15). He described the application as "speculative". He refused the application because he did not consider that the reason for waiting for the judgment in the Chancery proceedings had been sufficiently explained. I am entirely satisfied this was a conclusion he was entitled to reach.

31. The Secretary of State was asking for a significant extension of time (approximately three and a half months) on top of the two-month extension she had obtained in September 2021. The Judge was entitled to expect a clear explanation of the reasons why that extension was needed. No such explanation is immediately apparent from the reasons relied on by the Secretary of State. Neither the existence of a factual overlap between the Chancery proceedings and the criminal prosecution, nor the fact that there were witnesses common to both, readily provides the basis for representations that specialty would be a barrier to extradition. The issue on specialty for the Secretary of State is whether appropriate arrangements exist – i.e. whether under US law or in the extradition arrangements made between the United Kingdom and the United States, there is provision that would prevent Dr Lynch being dealt with for any offence other than those for which he is extradited or offences arising out of the same facts without first having the opportunity to leave the United States. The Judge was entitled to conclude that further explanation was required. Having reached that conclusion, the decision he did take to extend the required period to 16 December 2021, was conspicuously rational. It provided the Secretary of State ample opportunity to assemble a better-supported application and return to court.

32. Further, even assuming the Claimant's submission that the Judge should only have enquired whether the Secretary of State's request was rational is correct, the conclusion reached by the Judge was a conclusion lawfully available to him. There was no obvious connection between what might be contained in the judgment in the Chancery proceedings and the possibility that specialty might provide a barrier to Dr Lynch's extradition. The 2003 Extradition Treaty between the United Kingdom

and the United States contains provisions (at article 18) to meet the requirement at [section 95 of the 2003 Act](#). There is nothing to suggest that the United States had failed to meet the obligations under article 18 on any previous occasion. Thus, on any basis, it was permissible for the Judge to require a better explanation be provided and, in the meantime, refuse the Secretary of State's application.

33. A further point canvassed in the Claimant's Skeleton Argument was to the effect that the Judge's decision to refuse the application made on 25 November 2021 was inconsistent with his previous decision to allow the [section 99\(4\)](#) application made in late September 2021, and for that reason was not a decision lawfully open to him. There was no inconsistency. In November the Judge was being asked, for a second time, to allow a significant extension to the required period. It was hardly surprising that on that occasion he wanted to understand why the Secretary of State thought she needed to consider the contents of the judgment in the Chancery proceedings in order to decide whether specialty was a barrier to extradition.

C. Disposal

34. For these reasons the application for judicial review is dismissed.
