Neutral Citation Number: [2022] EWHC 83 (Admin)

Case No: CO/3867/2021

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

Royal Courts of Justice

Strand, London, WC2A 2LL

18th January 2022

Before :

MR JUSTICE FORDHAM

- -

Between :

THE QUEEN (MARC DAN SALLY SALOMON)	**Cla**
- and -	
WESTMINSTER MAGISTRATES' COURT	**Defe**
- and -	
(1) COURT OF FIRST INSTANCE, BRUSSELS (BELGIUM)	**Interested P**
(2) NATIONAL CRIME AGENCY	

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- -

Mark Summers QC and Benjamin Seifert (instructed by Sonn Macmillan Walker Solicitors) for the **Claimant**

James Hines QC and Stefan Hyman (instructed by Crown Prosecution Service) for the **First Interested Party**

The **Defendant** and the **Second Interested Party** did not appear and were not represented

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Hearing date: 16/12/21

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Approved Judgment

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

....

THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM :

Introduction

1.

This is an application for permission for judicial review in an extradition case, which Jay J directed (by Order 3 November 2021) be determined at an oral hearing. The hearing was in-person (provision for a hybrid hearing was not, in the event, needed). The issue for me is whether the claim is arguable with a realistic prospect of success. The Claimant is wanted for extradition to Belgium. That is in conjunction with an accusation European Arrest Warrant ("the EAW") issued by the First Interested Party ("the Requesting State") on 4 November 2020 and certified by the Second Interested Party ("NCA") on 15 September 2021. The EAW states that the Claimant is sought to stand trial in respect of index offending of "fraud" and "money laundering" in 2017, relating to €582,506 received by a Belgian company purportedly for purposes of investment in diamonds. Given the date of the Claimant's arrest on the EAW, it is treated as an Arrest Warrant as if issued under the surrender provisions of the EU-UK Trade and Cooperation Agreement ("TCA") Part III Title VII.

2.

Having been arrested on the EAW on 19 October 2021 the Claimant was produced at the Defendant ("WMC") the following day. The Claimant was advised and represented by a US law firm ("the Firm") and by a member of the Bar of England and Wales ("Counsel"). There were no issues pursuant to sections 4 or 7 of the Extradition Act 2003 ("the Act"). The Claimant gave his "consent" to his extradition (s.45) and DJ Bristow ordered his extradition (s.46(6)). Bail was refused and the Claimant was remanded in custody. A further, unsuccessful, bail application was made on 25 October 2021. On 29 October 2021 the Claimant appointed new lawyers ("the New Firm") and DJ Robinson granted conditional bail. On Monday 1 November 2021 the New Firm asked for the case to be listed on 2 November 2021 at WMC, for consideration of an application to re-open the question of the "consent". On 2 November 2021 the Claimant was notified of his removal on 4 November 2021. Also on 2 November 2021, DJ Tempia at WMC adjourned the application to re-open consent to the following day. On 3 November 2021 DJ Callaway ("the District Judge") heard submissions based on Ballan (§7 below) but dismissed the application, declining to conduct an inquiry as to the advice which the Claimant had received from Counsel and the Firm. On the evening of 3 November 2021, Jay J considered and granted an application to stay the Claimant's removal set for the following day, directing that the application for permission for judicial review ("PJR") of the District Judge's decision be lodged by 4pm on 9 November 2021. The Claimant has waived privilege in relation to the advice received from Counsel and the Firm. PJR is resisted by the Requesting State. WMC and NCA have not participated in the judicial review proceedings.

3.

The claim for judicial review is framed as a challenge – as its sole target – to the decision of the District Judge (3.11.21). The nature of the claim can be seen from these passages taken from the Grounds for Judicial Review:

When [the Claimant] was consulted in the cells at [WMC] he was not given appropriate advice. As he describes in his witness statement he had neither slept nor eaten and he plainly needed to give instructions about extremely important matters which directly concerned his liberty both in the UK and in Belgium. He made it clear to his lawyers that he wished to establish his innocence as soon as possible and so it was highly likely that he would follow the advice given. However a desire to establish innocence was not contrary to the prospect of challenging extradition. The advice he received was deficient to the point where his decision was not taken on a properly informed basis and on an understanding of the legal position which was incorrect: (a) He was never informed that the warrant was void ab initio on the basis of Bob-Dogi [2016] 1 WLR 4583. (b) He was never informed that there could have been a challenge in relation to section 12A. (c) He was never informed of the opportunity to request to be interviewed by the Belgian authorities. (d) An application was made for bail with a pre-release security of £30,000 when [the Claimant] was initially able to provide at least £60,000. This was in the context of a warrant which alleged offending to the sum of more than €500,000…

The District Judge's decision was irrational for the following reasons: (a) Ballan was the most persuasive authority which was before the court. It has never been found to be bad law and the Court ought to have followed it. (b) The District Judge said that he had no jurisdiction to consider the application but the authority of the Northern Irish Court granted him precisely that jurisdiction. (c) The District Judge had jurisdiction to conduct an inquiry and failed to do so without any explanation. (d) Such a decision disclosed a clear error of public law.

Consent: key provisions

4.
The Act contains a legislative framework including provisions relating to the extradition procedure, and other provisions relating to various bases on which extradition can be resisted. So far as concerns "consent" by the requested person, key provisions of the Act are these:

The initial hearing

…

8. Remand etc.

(1) If the judge is required to proceed under this section he must – (a) fix a date on which the extradition hearing is to begin; (b) inform the person of the contents of the Part 1 warrant; (c) give the person the required information about consent; (d) remand the person in custody or on bail.

…

(3) The required information about consent is – (a) that the person may consent to his extradition to the category 1 territory in which the Part 1 warrant was issued; (b) an explanation of the effect of consent and the procedure that will apply if he gives consent; (c) that consent must be given before the judge and is irrevocable.

…

Consent to extradition

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.

...

(4) Consent under this section – (a) must be given before the appropriate judge; (b) must be recorded in writing; (c) is irrevocable.

(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.

(6) This subsection applies to a person if – (a) he has been informed of his right to apply for legal aid and has had the opportunity to apply for legal aid, but he has refused or failed to apply; (b) he has applied for legal aid but his application has been refused; (c) he was granted legal aid but the legal aid was withdrawn.

...

(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.

46. Extradition order following consent.

(1) This section applies if a person consents to his extradition under section 45.

...

(6) The judge must within the period of 10 days starting with the day on which consent is given order the person's extradition to the category 1 territory.

...

5.
Further key provisions relating to consent to extradition are found within Article 13 of the EU Framework Decision 2002/584/JHA (now found in TCA Article 611), to which a principle of "conforming interpretation" of the Act applies. They are:

Article 13 Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent ... shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent ... shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent … may be revoked, in accordance with the rules applicable under its domestic law…

It is common ground that the UK has not provided for revocation of consent (Article 13(4)).

Celczynski

6.
Celczynski v Poland [2019] EWHC 3450 (Admin) [2020] 4 WLR 21 is authority for the proposition that judicial review is available where "consent" is vitiated in law, by reason of the non-fulfilment of a statutory precondition. In that case, the requested person was not legally represented before the appropriate judge at the time he gave "consent" (s.45(5)(a)), nor did the alternative statutory limb (s. 45(5)(b)) apply. The non-fulfilment of the statutory condition meant the requested person could not give his consent under section 45. Judicial review was the appropriate remedy. The order for extradition was quashed and the case remitted to WMC.

Ballan

7.
Ballan [2008] NIQB 140 is a decision of the High Court of Northern Ireland (Lord Kerr CJ and Sir Anthony Campbell) delivered on 8 December 2008. In that case, the Court granted judicial review. The claim was thus not only arguable; it succeeded. The context and circumstances were as follows:

i)
Mr Ballan 'consented' at a hearing before Judge Burgess ("the Recorder") to his extradition to Lithuania to face trial for fraud. An order for extradition was made by the Recorder. Prior to that, Mr Ballan had spoken to his solicitor (Mr McKeague). At the hearing, Mr McKeague told the Recorder that Mr Ballan "accepts that he will have to go to Lithuania to deal with this matter and therefore in those circumstances he would be consenting to an extradition order" (§3). Asked by the Recorder "You have taken him through his rights in relation to this?", Mr McKeague said: "I have …" (§3). The Recorder then drew Mr Ballan's attention to the EAW and Mr Ballan then confirmed, when put to him by the Recorder in turn, that he understood all of the following: "You understand that you are entitled to make representations … challenging the warrant or challenging the request to extradite you?"; "And that indeed if I made a decision to extradite you, you have a right of appeal against that?"; "And once I would ask for your consent, it would have to be in writing and once you've given me your consent in writing, that's irrevocable, you can't change your mind. You understand all of this?" In those circumstances, consent was given, and extradition was ordered.

ii)
Subsequently, Mr Ballan changed his legal representation. His new solicitors identified three ECHR grounds for resisting extradition: Articles 2, 5 and 6 (§6). That was based (§§5-6): on Mr Ballan's instructions regarding a threat to his life given the corruption of his former business partner (as to Article 2); and on the "nature of the legal and prison system in Lithuania" (as to Articles 5 and 6). They applied "to withdraw his consent", which application was rejected by the Recorder (§4). A claim for judicial review was brought.

iii)
Mr Ballan's evidence in the judicial review proceedings was that he had been informed by Mr McKeague that he "had no chance of fighting the extradition warrant and that it was in [his] best interest to consent" (§5). Mr McKeague's evidence denied saying that (§8). Mr McKeague's evidence

was that Mr Ballan had said that he wanted to clear his name in Lithuania and wished to return to defend the accusations there; and that, in those circumstances, Mr McKeague did not advise Mr Ballan regarding any grounds for contesting the extradition (§2). In his evidence, Mr McKeague accepted that he had not advised Mr Ballan as to any impediment; and accepted that Mr Ballan might not have consented to extradition had he been informed of these potential grounds for challenge (§8).

8.
In its judgment in Ballan, the Court (Lord Kerr CJ) discussed the facts (§§2-8), the Framework Decision (§§9-15) and the Act (§§16-20). Lord Kerr CJ then identified these three principal issues (§21):

The first is concerned with the nature of the requirements of the Framework Decision relating to the giving of consent to surrender. The second issue involves the approach to be taken to the interpretation of the relevant provisions of the Extradition Act. Can it be interpreted so as to give effect to the requirements of the Framework Decision? Finally, it is necessary to consider whether the decision of the Recorder to refuse to examine the circumstances in which the consent of the applicant was given is consistent with the obligation contained in section 6 of the Human Rights Act 1998.

For the purposes of my judgment in the present case, I do not need to set out the passage within the judgment (§26) in which the Court referred to authorities on the duty of 'conforming interpretation'. Nor do I need to set out the passages addressing the third issue (§§30-31): that issue was held not to arise because, although it had been "mooted" that ECHR rights were "at play", it had not been "shown" that these would be violated by Mr Ballan's extradition (§31). Putting those passages to one side, the Court's substantive analysis was at §§22-25 and 27-29 and 32. I will set those out in full:

Consent to surrender

22. The two explicit and central requirements for consent to surrender are that it must be voluntary and that it must be made in full awareness of the consequences. The stipulations that the person consenting should have the benefit of legal advice; that the consent should be given before the executing judicial authority; and that it be recorded in writing are obviously ancillary to the two overarching requirements of voluntariness and knowledge of the consequences.

23. What then is involved in the notion of voluntariness in this context? Clearly, consent should involve the deliberate agreement or acquiescence by a person of full age, with requisite mental capacity who is not under duress or coercion. In my judgment it must also involve a decision taken on a properly informed basis. If a person consents to surrender when he has been caused to believe that he has no option but to do so and where there are, in fact, grounds on which legitimate objection could be made, his consent cannot be described as voluntary in any true sense.

24. This does not mean that a person deciding whether to consent must be made aware of every possible ground, however arcane or esoteric, on which he might withhold consent. But if he gives his consent on an understanding of the facts or legal position which is incorrect and if, had he been in possession of the accurate information, he would not have done so, then I do not consider that his consent can be said to be voluntary.

25. Full knowledge of the consequences of the decision to consent obviously involves being aware that this will lead to the consenting person's extradition to the requesting state. But

it must also entail an understanding of the legal consequences such as those that are prescribed in the Extradition Act. Therefore, it is necessary, for example, that it be appreciated that the consent, once given on a voluntary and properly informed basis, cannot be revoked; that there can be no appeal against a decision to extradite founded on the consent; that there will be no examination of the possible bars to extradition under section 11; and that the judge will not be bound to "decide whether the person's extradition would be compatible with the Convention rights" under section 21.

The approach to the interpretation of the Extradition Act

[discussion of the authorities on the duty of conforming interpretation]

27. It follows clearly from the reasoning in [the authorities], with which I am in respectful agreement, that the concept of consent to surrender and the requirements of voluntariness and full knowledge of the consequences (as those are to be deduced from the Framework Decision) should be imported, if possible, into the interpretation of the relevant provisions of the 2003 Act. There is no impediment, in my view, to this. 'Consent' for the purposes of section 45 et seq can and should be taken to mean a consent which has the qualities of voluntariness that I have earlier described in paragraphs 23 and 24 above. The person consenting must be free from duress or coercion. He should be of sufficient age and mental capacity to give his mind freely to the course chosen with sufficient comprehension of the nature of the decision to be taken. He should not be under any misapprehension as to the factual or legal basis on which the decision is taken.

28. When it was drawn to his attention that the applicant was challenging the voluntariness of the consent that he had given and his lack of understanding of the consequences of that decision, the Recorder ought to have inquired into those claims, in my opinion. He was not precluded from doing so by the circumstance that he had already made an order. If the applicant's claims were correct, he had not given a legal consent. The judge's order, based as it was on the consent's fulfilment of the requirements of the 2003 Act, could not be well-founded if the consent was void. The question of irrevocability is incidental. If the consent was not valid, the question of it being revoked did not arise. It could not be acted upon because it was not an effective consent.

29. The inquiry that the Recorder was required to conduct need not have been an elaborate one. He had already asked a number of questions of Mr Ballan on 26 September 2007 that went some way to dealing with the issue. But he had not inquired into the question of whether Mr Ballan had been given to understand that he had no option but to consent to the extradition. Nor had there been any investigation of whether the applicant had appreciated that consent meant that there would be no investigation of possible bars to extradition or of whether his extradition would be compatible with his Convention rights.

[discussion of the third issue]

Conclusions

32. For the reasons given, I consider that the Recorder was obliged to investigate whether the applicant had provided a valid consent for the purposes of section 45 of the Extradition Act 2003. I would therefore make an order of certiorari quashing his refusal to do so. It will

now be necessary for him to conduct the inquiry that this judgment has indicated is required.

Evidence in this case

9.
The Claimant's witness statement evidence in these proceedings includes the following:

12. I met with [Counsel] on three occasions on [the day of the hearing]. [Counsel] told me I needed to decide whether to contest or consent to the warrant. [Counsel] informed me that if I contested the warrant the whole process could take 2-3 months during which time I might possibly be in prison. [Counsel] said that if I consented to the warrant the process would take a maximum of 10 days, before I would be removed to Belgium. [Counsel] did not advise me whether I would be likely to receive bail in Belgium. I did not feel that [Counsel] gave me any direction or guidance. I was desperate and did not know what was happening to me. [Counsel] said that I might spend 2 months in prison if I contested the warrant and did not make me feel confident about any grounds to challenge the warrant.

13. We did not speak about the detail of the warrant. I accept that if the notes of [Counsel] and [the Firm] say that I was told that the warrant could be challenged because of insufficient detail and unspecified conduct, then that is what happened, but I do not recall hearing this. Although much of what I was told went over my head because of the state I was in and because English is very much a second/third language for me, I definitely did not feel as though I was being advised that there were strong grounds to challenge… the warrant or that it was a seriously defective document. I definitely was not told that the reference, at Box B, to an 'international arrest warrant' had the potential for the warrant to be completely discharged.

14. When [Counsel] discussed with me consenting to the warrant, she advised me that once I consented I could not change my mind and that I would be removed to Belgium within 10 days….

10.
There are contemporaneous documents in this case. Counsel's contemporaneous Attendance Note, dated 20 October 2021, includes the following:

2. In conference with [the Claimant], he was advised that the EAW was poorly drafted and that there were grounds for resisting extradition to Belgium on the face of it, namely that it didn't disclose the relevant particulars of the offences or the conduct in his regard. He was advised, however, that contesting extradition would take some months and that it was unlikely that he would have a hearing date before December this year, at the earliest. He was further advised that he could consent to his extradition, which means that the order would be made today, and that he could expect to be removed to Belgium within 10 days. He was advised that consent was irrevocable and that he would have no right of appeal. He was advised that the 10-day removal period could be extended if, for example, there were logistical issues (as has happened in the past with Covid).

3. [The Claimant] indicated that he strenuously denied the allegations, that he wished to contest the matter in front of the Belgian judges and wanted to resolve this there as quickly

as possible. He said that he did not see the point in spending several months in the United Kingdom when he would ultimately have to resolve this with the Belgians in any event.

…

8. [At the hearing] consent was put and [the Claimant] consented to his extradition to Belgium.

…

11.
The Firm's contemporaneous Attendance Note, dated 20 October 2021, includes the following:

6. Counsel explained that, on an initial reading of the EAW, there were sufficient grounds to challenge the extradition. Counsel explained that any challenge would be based on whether there is sufficient detail in the EAW to understand what criminal offences are alleged by the Belgian prosecutor. Counsel explained that she did not think there was sufficient information in the EAW to explain the alleged offences and [the Claimant]'s alleged role.

7. Counsel advised that, while it was possible to challenge the extradition, there was a risk that the English Court would ask the Belgian authorities for more information. Counsel explained that it would be at least six weeks before a hearing date would be set to challenge the extradition and, if bail was refused, [the Claimant] could spend this time in custody pending the outcome of the hearing.

8. Counsel explained that another option available to [the Claimant] would be to consent to his extradition to Belgium, which would take place within 10 days (unless extended on application by the prosecutor). Counsel explained that consenting to the extradition did not mean [the Claimant] would be suggesting he was guilty of the alleged offences. Rather, [the Claimant] would be agreeing to be extradited to Belgium, where he would mount his defence against the charges alleged against him.

9. Counsel explained that if [the Claimant] wanted to challenge the EAW, he would need to instruct Belgian lawyers. [The Claimant] responded that his French Counsel would be able to deal with this.

10. Counsel also explained that another option available to [the Claimant] if he challenged the EAW, and bail was refused, was to consent to his extradition at this point in time – which may avoid two months in custody in England. Counsel explained that [the Claimant] could not change his mind once he had consented to the EAW and his extradition, but could consent at any time.

11. [The Claimant]'s view was that he would like to defend himself against the charges in Belgium and to be extradited as soon as possible and therefore consented to his extradition. He explained that he would like to prove his innocence and did not see any point in delaying proceedings in the UK as he would eventually need to go to Belgium to address the charges. This view was relayed to the prosecutor, [the Claimant]'s family and his French Counsel. French Counsel said that it would be better for [the Claimant] to be extradited now so he could focus on proving his innocence.

12. Counsel confirmed she would ask [the Claimant] to consent to having the EAW shared with French Counsel,… which he did. [The Firm] subsequently shared the documents with

French Counsel. [The Claimant's wife] also agreed with [the Claimant] consenting to the extradition.

…

27. [At the hearing] Counsel explained how [the Claimant] was visiting the UK with [his wife] on a family holiday. She relayed that [the Claimant] was denying the allegations, but wanted to consent to the extradition as he wanted to be able to prove his innocence.

…

12.
There is also an email, timed at 17:48 on 21 October 2021 from the Firm to the Claimant's French lawyers, which stated:

I understand [the Claimant]'s French/Belgian lawyers might have raised some hopes about a technical argument on the warrant. Please see the notes from [the Claimant]'s specialist extradition barrister… below. Can I add that [the Claimant] was very clear that he did not want to stay in the UK, especially if he was in custody, to mount a challenge to contest his extradition with very limited chances of success…

Claimant's key submissions

13.
In submitting that the Claimant has an arguable claim for judicial review with a realistic prospect of success, Mr Summers QC appearing with Mr Seifert advanced submissions whose essence, as I saw it, involved the following three steps:

14.
Step one (jurisdiction). It is at least arguable that there is jurisdiction to revisit the question of "consent", on the basis that it was not a "valid consent", because it was not expressed "voluntarily" or alternatively was not expressed "in full awareness of the consequences". Those are the two "overarching requirements" of Article 13(2) of the Framework Decision (see Ballan §22), which the 'conforming interpretation' requires must be read-into the word "consent" within the Act, in particular where the word "consent" appears in sections 45 and 46 (see Ballan §27). In a case where an overarching requirement of consent is said not to have been met, there is jurisdiction in WMC to revisit the question of consent with an appropriate judicial enquiry (cf. Ballan §§28-29, 32). That is because if the consent was not a "valid consent" this has a vitiating and nullifying consequence in relation to the appropriate judge's decision to order extradition (section 46(6)). That means, in law, the appropriate judge is still seized of the matter. In the alternative, WMC has an "inherent jurisdiction" to conduct an appropriate enquiry into the validity of the consent. In circumstances where such a question is engaged, and where WMC has concluded (as the District Judge did here) that there is no jurisdiction, and declines to conduct the enquiry, there has been an error of law from which judicial review lies as the appropriate remedy. Even if all of that is wrong, if WMC is 'functus officio' in relation to the consent or the order for extradition, and insofar as WMC does not have jurisdiction to revisit the question of consent in such circumstances, there is still jurisdiction: in those circumstances, it is the High Court on judicial review which has jurisdiction. A legally invalid consent by virtue of the absence of one of the two overarching requirements would justify judicial review to quash the decision ordering extradition, just as does the absence of a statutory precondition: Celczynski. In fact, the statutory precondition in Celczynski itself reflected an Article 13(2)

precondition of consent: the “right to legal counsel”. If the jurisdiction is that of the judicial review Court, and if it lies against the decision of DJ Bristow (20.10.21) rather than the pleaded ‘target’ decision of the District Judge (3.11.21), then the interests of justice support the Claimant having permission to amend the grounds for judicial review to include this ‘alternative target’ decision. The substance of the point is clear and should not be shut out, on a pleading technicality causative of no possible prejudice to any other party. The correctness of the jurisdictional point can be illustrated by taking as an example a case where the requested person gave “consent” but was under “duress or coercion” (see Ballan §§23, 27). In such a case, the overarching requirement of voluntariness would have been absent. There needs to be room to demonstrate, by external evidence after the event, that consent was indeed given under duress or coercion. So, there must be jurisdiction to revisit the question of consent, and to recognise the vitiating effect of the duress or coercion, and the vitiating effect on the order for extradition, so that consent is revisited and that the order for extradition can be revoked or quashed.

15.

Step two (vitiation). It is at least arguable that the jurisdiction to address the vitiation of “consent” – however that jurisdiction arises – is engaged by the question whether the requested person gave consent “on a properly informed basis” in relation to “grounds on which legitimate objection could be made” (Ballan §23); or alternatively gave consent “on an understanding of the facts or legal position which [was] incorrect” (Ballan §24), such as having “been caused to believe that he has no option but to do so… where there are, in fact, grounds on which legitimate objection could be made” (Ballan §§23, 29). In such a situation, the question will be whether “had he been in possession of the accurate information, he would not have” consented (Ballan §24). If so, the consent will not have been “voluntary” (Ballan §§23-24); or alternatively he will have had a “lack of understanding of the consequences of [his] decision” (Ballan §28). The “overarching requirements” of Article 13(2) (“voluntarily and in full awareness of the consequences”) – applicable through the ‘conforming interpretation’ of “consent” (Ballan §27) – will have been absent, and the consent vitiated. The consequence of this legal logic is that a requested person – in giving consent – is entitled to “accurate legal advice”, and the “safety valve” of the jurisdiction to revisit consent arises in a case where that basic entitlement was not met. This basic entitlement to accurate legal advice entails three features as to the understanding of each of those (non-arcane or eccentric: Ballan §24) grounds on which legitimate objection to extradition can be made (Ballan §23). The three features are: (a) the nature of the ground of objection; (b) its viability and strength; and (c) the practical consequences of it being well-founded. It is true that questions of consent are addressed at short hearings where the appropriate judge is dealing with a busy list. But it does not follow from any of this that the appropriate judge, dealing with an initial hearing (s.8 of the Act), and dealing with the question of consent at a hearing (ss.45-46 of the Act), needs to undertake a contemporaneous enquiry into the accuracy of legal advice. There would only be a need for inquiry if there were some indicator of the absence of voluntariness or of full awareness of the consequences. The judge would not need to question a legal representative. Moreover, no enquiry would arise in a case where there was a clear waiver by the requested person of the basic entitlement to accurate legal advice, as where the requested person confirms that they are simply ‘uninterested’ in questions relating to grounds on which legitimate objection could be made. This explains why consent may validly be given even before a requested person has sight of an EAW: see section 204 of the Act. This analysis is strongly supported by Ballan, which must – at the very least – be highly persuasive and sufficient for the arguability threshold on permission for judicial review.

16.

Step three (application). It is at least arguable that consent has been vitiated on the basis of incorrect legal advice, on the evidence, in the present case. Both the Firm and Counsel recorded in their attendance notes that they recognised, as the Claimant's understanding, that he would "ultimately", and "eventually", have to resolve these matters with the Belgians in any event (Counsel's Attendance Note §3; the Firm's Attendance Note §11). That demonstrates that the Claimant had been "caused to believe that he [had] no option but to [surrender]", whereas the correct legal position was that "there [were], in fact, grounds on which legitimate objection could be made" (Ballan §23). This means that his decision to consent was not "taken on a properly informed basis" (Ballan §23). It means he gave consent "on an understanding of the facts or legal position which [was] incorrect and … had he been in possession of the accurate information, he would not have done so" (Ballan §24). It means the consent was not voluntary (Ballan §§23-20), alternatively he had a "lack of understanding of the consequences of [the] decision" (Ballan §28). The misunderstanding, or alternatively his not being "properly informed", arose because of inaccurate legal advice from Counsel. Most strikingly, although Counsel identified that there were grounds for resisting extradition on the face of the EAW, namely that it did not disclose the relevant particulars of the offences or of the conduct (Counsel's Attendance Note §2; the Firm's Attendance Note §6), and although Counsel identified a ground which she considered viable ("she did not think there was sufficient information in the EAW to explain the alleged offences and [the Claimant's] alleged role": the Firm's Attendance Note §6), she described that as being a curable deficiency, given that the Belgian authorities could be asked for more information (the Firm's Attendance Note §7). What Counsel missed was that the EAW (itself issued on 4 November 2020) said this at Box B:

Decision on which the warrant is based:

1.
Arrest warrant or judicial decision having the same effect:

Type: International arrest warrant [dated] 4 November 2020.

The reference to the same date as the EAW itself, and the word "international", are very striking. They indicate a fundamental defect, potentially incapable of cure. The principle in Bob-Dogi (Case C-241/15) [2016] 1 WLR 4583 is that there needs to have been a separate and distinct, prior and underlying, domestic arrest warrant, absent which the EAW is not valid and the extradition court must refuse to give effect to it. The coincidence of the dates, and the word "international", are strongly suggestive of the absence of any separate, prior, and domestic warrant. Such an absence would vitiate the EAW and the defect in the EAW would not be curable. Although in those circumstances there might be curative action in a different sense – through the issue of a new, distinct domestic warrant and then the issue of a new and subsequent EAW, on which the Claimant could then be sought to be arrested, that would not change his entitlement to be discharged on the existing EAW. Moreover, once discharged, he could not be held pending a further curative domestic arrest warrant or EAW. What he did on discharge (including any release) would be a matter for him. However, he was never advised by Counsel or the Firm as to the nature, viability or consequences of this important ground for resisting extradition, which arose on the face of the EAW. Although this is the strongest point, there are others. In relation to those grounds which Counsel did identify in her advice, as recorded in the contemporaneous documents, "most extradition practitioners would not have been as sanguine" as Counsel was in this case, as to the ability and willingness of the Requesting State to cure defects such as in the particulars of conduct, of the applicable domestic law, or as to the sentence which may be imposed. There were also potential grounds arising from section 12A and whether the requisite prosecutor (with institutional competence for doing so) had made a decision to try the Claimant; and

the possibility of less coercive measures through a section 21B request. In these circumstances, the "consent" was vitiated by the incorrectness and incompleteness of the legal advice.

Discussion

17.

I start by recognising that this is the permission stage. The applicable threshold is arguability, with a realistic prospect of success. I also recognise – as I raised with both Counsel – that this is a 'criminal cause or matter' which means it would stand to be conclusively determined if permission for judicial review is refused. In circumstances where Jay J directed that permission be considered directly at an oral hearing, it also means that I am the only judge considering the issue of permission for judicial review. In the context of a criminal cause or matter, where a judge on the papers is contemplating certification as "totally without merit", it has been explained that that judge should be "particularly chary" because of the prospect that the claim will be "conclusively determined by way of only one stage of judicial decision-making" (see Thakrar v CPS [2019] EWCA Civ 874 [2019] 1 WLR 5241 at §46). Although I am considering the position after an oral hearing, rather than on the papers, caution and circumspection are in my judgment clearly appropriate. But, having said all of this, it remains my responsibility to ensure that I am satisfied that the case is arguable with a realistic prospect of success.

Step one (jurisdiction)

18.

I accept that Mr Summers QC's submissions in relation to Step one are arguable with a realistic prospect of success. There was, in my judgment, no 'knockout blow' in the contentions on this part of the case by Mr Hines QC who appeared with Mr Hyman for the Requesting State. They accept, in principle, that the jurisdiction seen in Celczynski on judicial review of the decision to order extradition, could be engaged by a question as to whether consent can be shown to have been the consequence of "duress or coercion" and, for that reason, not given "voluntarily". They submit that WMC is 'functus officio' so far as the question of consent and the ordering of extradition are concerned, that there is no 'extant proceeding' before WMC in relation to those aspects, and no inherent jurisdiction to revisit those matters. As to a Celczynski-type judicial review jurisdiction, they submit that this is not open to the Claimant: there is no currently pleaded claim impugning the order of extradition of DJ Bristow (20.10.21), the Claimant's representatives having taken their stand against the 'target' of the subsequent decision of the District Judge (3.11.21), based on Ballan which they submit is wrong in its analysis of the relevant jurisdiction. In my judgment, if the claim for judicial review is arguable in relation to steps two and three, I am quite satisfied that the grant of permission for judicial review would be appropriate on the basis that step one is at least arguable. Indeed, I would go further. In my judgment, Step one must be right. If incorrect legal advice can vitiate consent (Step two) and if it has done (Step three), there must be jurisdiction – in the case of a requested person who raises the issue before surrender – to revisit it notwithstanding the extradition order (Step one). The only controversial question, in my judgment, is whether the inquiry is in WMC or in this Court. Moreover, if granting permission for judicial review, I would grant permission to the Claimant (sought orally by Mr Summers QC) to amend the grounds for judicial review to challenge – as an alternative 'target' decision – the order for extradition of DJ Bristow (20.10.21). The substance of the challenge is crystal clear, there is no possible prejudice, and shutting the claim out on a 'wrong target' basis would not be in the interests of justice or the public interest. The Court would be able, at the substantive hearing in this case, to consider the arguments in relation to which jurisdiction does arise as to revisit consent which is non-voluntary or does not involve full awareness of the

consequences. It is, in my judgment, plainly arguable that such jurisdiction exists by at least one of the various routes identified.

Step three (application)

19.
I will put to one side for now Step two, and turn to consider Step three. I do so on the basis that Steps one and two are arguable. Indeed, I adopt as a premise that both of those steps are well-founded. On that basis, is Step three arguable, with a realistic prospect of success? In my judgment, the answer is 'no'. Step three is unarguable; it has no realistic prospect of success.

20.
The starting point is that Mr Summers QC was able to identify, as being his strongest point regarding Counsel's 'incorrect legal advice' to the Claimant in this case, the Bob-Dogi point. I am satisfied that he was right about that and that, if the Bob-Dogi point is incapable of sustaining the argument that there was incorrect legal advice vitiating the consent, none of the other points raised could do so. The Bob-Dogi point is the point arising out of the contents of Box B of the EAW – with its identical date and use of the word "international" – indicating a basis on which the Claimant would stand to be discharged on the EAW. In the pleaded grounds for judicial review, this is described as "the 'knockout point'". It is described as: "[t]he fundamental point upon which [the Claimant] ought to have been advised …" And it is this point which has the consequence which has been identified by the Claimant's new representatives, as being a viable ground of opposition to the EAW "which may have automatically led to the discharge of the warrant". The Bob-Dogi point involves two possibilities. One is that there was a distinct, pre-existing domestic warrant, and the Requesting State would discover upon investigation that it was able to point to this. The second is that there was no distinct, pre-existing domestic warrant, and the Requesting State would discover upon investigation that it was unable to point to one. In the first situation, if the date had been an error or if the word "international" had been an error, the Requesting State would in principle be able to 'cure' the problem directly, through further information. In the second situation, if the date and the word "international" had been referring to the EAW itself, with no distinct and prior domestic warrant, the Requesting State would in principle be able to 'cure' the problem, but only indirectly: ie. if it could secure the issuing of a domestic warrant and then the issuing and certification of a fresh EAW (TCA Arrest Warrant), on which it then sought to have the Claimant arrested. As it was put in the Requesting State's skeleton argument, there would be an ability to cure:

… through requests for further information… or, even, the provision of a completely new [TCA] Arrest Warrant.

It is not suggested that the Bob-Dogi point was of a nature which would lead to an automatic discharge at an initial hearing. It would be a matter for consideration at the extradition hearing. Moreover, since the EAW could at most be said to be ambiguous, or raise a concern needing to be addressed, it was a point – however and whenever raised – which would have led to an opportunity for the Requesting State to enquire into the matter, and an opportunity to provide further information. The point was one – however and whenever raised or recognised – whose nature would lead to enquiry by the Requesting State, with time to consider the fruits of that enquiry and to consider any course that could be taken in the light of it. And it is not argued that a new Arrest Warrant, or proceedings based on it, would itself then necessarily stand to be discharged as an abuse of process. These are the practicalities. And in my judgment, positing the Claimant being 'correctly advised'

about the Bob-Dogi point must involve positing correct advice as to the “practical consequences”. That, after all, is the third feature (c) of correct advice (see §18 above).

21.
This position now needs to be put alongside the evidence in the case. The contemporaneous documentation – which the Claimant, rightly, accepts (witness statement §13) must be taken accurately to reflect the advice – records that Counsel advised the Claimant that there was a defect on the face of the EAW which was not only viable but which was in her view, and as things stood, well-founded. The Firm’s Attendance Note clearly records the view she expressed: “Counsel explained that she did not think there was sufficient information in the EAW to explain the alleged offences and [the Claimant’s] alleged role”. That Attendance Note records that Counsel dealt with the practical implications of that defect and the question of curative action. Counsel told the Claimant about the “risk” that more information would be sought. She was clearly identifying a basis on which extradition could be resisted, if the Claimant wished to do so. She focused on the practical implications. The Claimant focused on what he saw as the ultimate outcome. The contemporaneous documents make clear that what mattered to the Claimant was the position “ultimately”, and “eventually”. In my judgment, and beyond argument, the Bob-Dogi point was not in the context of this evidence a ‘game-changer’, if complete and practical advice had been given in relation to it. In light of the clear contemporaneous documents, it is not in my judgment arguable – with any realistic prospect of success – that ‘correct legal advice’ in relation to the nature, viability and practical consequences of the Bob-Dogi point would have led the Claimant not to consent to his extradition, so that “had he been in possession of the accurate information, he would not have done so” (Ballan §24). I can see no realistic prospect of this Court accepting that that was the position on the contemporaneous documents in this case, put alongside the Claimant’s evidence. And the position is, in my judgment, ‘a fortiori’ for the other grounds on which it is said that incorrect or incomplete legal advice was given. It follows, in my judgment, that there was no arguable material error of law in the District Judge declining to conduct an enquiry, and that there is no arguable material vitiation of the consent on which to base the quashing of the extradition order. Since Step three (application) is a necessary step in the argument which, beyond argument, fails, it follows that the claim is not arguable with a realistic prospect of success and the grant of permission for judicial review is inappropriate.

Step two (vitiation)

22.
So far, I have assumed as a premise – in the Claimant’s favour – that the position adopted on Step two is arguable and with a realistic prospect of success. In Ballan, a Divisional Court (of very great distinction) sitting in the High Court of Northern Ireland, dealing with materially identical statutory provisions, concluded that this point was not only arguable but was legally correct. There is no case or commentary which I was shown which doubts Ballan. Having said that, it is common ground that Ballan is not binding on this Court. And I was shown no case or commentary which discusses Ballan and its implications, favourably or unfavourably. Mr Summers QC showed me the mention of Ballan by Burnett J in Patraucean v Romania [2013] EWHC 2799 (Admin) at §23 (referring to Ballan as a case which “concerned consent which was, on the findings of the High Court in Northern Ireland, no consent at all, and thus invalid.”) Mr Hines QC submits that Ballan was wrongly decided, or alternatively that it is distinguishable on the basis that it turned on the requested person having been “caused to believe that he [had] no option but to” consent to surrender (Ballan §§23, 29).

23.

In my judgment, there are very real problems with the approach, to vitiation of consent and legal advice, which persuaded the Northern Ireland High Court in Ballan. I will explain why.

24.
In the first place, there are the two “overarching requirements” in Article 13(2) of the Framework Decision, namely:

… consent … expressed … voluntarily and in full awareness of the consequences.

There is, in my judgment, no difficulty in seeing how “duress or coercion” would go to the first of these: “voluntarily”. But the questions about appreciation and understanding of the nature, viability and consequences of grounds on which legitimate objection could be made to extradition would seem to me to be far more closely associated with the second overarching requirement (“full awareness of the consequences”) rather than the first (“voluntarily”). The court in Ballan located the questions about ‘appreciation of the grounds on which legitimate objection could be made to extradition’ within the concept of ‘voluntariness’ (§§23-24). There was one reference (Ballan §28) to Mr Ballan’s “lack of understanding the consequences of [the] decision” but, read in context, this seems to link to the question of whether Mr Ballan “appreciated that consent meant that there would be no investigation of possible bars to extradition or of whether his extradition would be compatible with his Convention rights” (§29). That point does not arise in the present case. If “consent” really means “consent given with a legally correct appreciation of the grounds on which legitimate objection to extradition could be made”, or put another way if it means “consent not given with a legally incorrect appreciation of the grounds on which legitimate objection to extradition could be made”, this would as it seems to me surely be part of the ‘awareness’ limb (“in full awareness of the consequences”). That is because the appreciation of the grounds of legitimate objection would be an appreciation of what the requested person will be ‘giving up’ by giving consent to extradition. Given that there is a distinct limb which relates to appreciation of the implications of the giving of consent, and given that limb’s use of the word “full”, if a correct (or a non-incorrect) appreciation of the grounds for objecting to extradition is integral to “consent”, surely that is where it would be located.

25.
Secondly, so far as the “full awareness of the consequences” limb is concerned, the substantive content of this overarching requirement is surely convincingly delineated in Ballan at §25. In that passage, the Court described the need for ‘awareness’: that the consequence would be extradition to the requesting state; that consent could not be revoked; that there could be no appeal against a decision to extradite founded on consent; and that there would be no examination of the possible statutory bars to extradition and compatibility with Convention rights. These do not include awareness which extends to a correct (or a non-incorrect) appreciation as to possible grounds for legitimate objection to extradition.

26.
Thirdly, the question of the “full awareness of the consequences” limb is plainly engaged and addressed in the Act itself, through section 8. By section 8(1)(b) Parliament required the judge at the initial hearing to inform the requested person of the contents of the warrant. Then, by section 8(1)(c) and (5) of the Act, Parliament required the judge to give the requested person “the required information about consent”, thus informing them that they may consent to extradition, and thus explaining to them “the effect of consent” and “the procedure that will apply” if they give consent; explaining “that consent must be given before the judge” and that it is “irrevocable” (see §4 above). If correct (or non-incorrect) appreciation of the grounds of possible objection is a necessary part of

"consent" then, just as it would be expected to fit within "full awareness of the consequences", it would surely be expected to fit within "an explanation of the effect of consent" (section 8(3)(b)). If consent means having a correct understanding of the grounds of legitimate objection, then surely the judge – in informing the requested person of the contents of the Warrant (section 8(1)(b)) – should also be explaining the grounds of possible objection (being given up) as part of the "effect of consent" (section 8(3)(b)). I pause to note that section 8 was not discussed in the passage in Ballan where the provisions of the Act are addressed (Ballan §§16-20).

27.
Fourthly, Mr Summers QC accepts – and in my judgment he must be right to accept – that a judge would not be required, when informing the requested person of the contents of the warrant (s.8(1)(b)) and when explaining "the effect of consent" (s.8(3)(b)), to ensure that the requested person has an understanding of the facts and legal position in relation to the grounds on which legitimate objection could be made to extradition, comprising the three elements of nature, viability and consequences. Mr Summers QC also accepts that there may be a situation of valid consent from a requested person who does not have legal representation (s.45(5)(6)), not because of non-application for legal aid (s.45(6)(a)), but rather because it has been refused or withdrawn (s.45(6)(b)(c)). It was common ground before me that the judge does not, even in that situation, have to give an explanation which ensures an understanding of the possible grounds of objection: their nature, viability and consequences. But once it is recognised that the s.8(1)(b) and s.8(3)(b) mandatory judicial explanation of "the contents of the … warrant" and "explanation of the effect of consent" do not – on a 'conforming interpretation' of the Act to give effect to Article 13(2) – extend to this kind of explanation, it becomes very difficult, in my judgment, to accept that the two overarching requirements of Article 13(2), or either of them, are absent because there is no 'correct appreciation of the grounds on which objection to extradition could be raised'.

28.
Fifthly, Mr Summers QC – again, in my judgment, surely rightly – similarly disavows any suggestion that the extradition judge would ever need to 'delve into' the grounds on which legitimate objection could be made to the extradition or, whether the requested person is properly informed (or misinformed) as to an understanding of the factual legal position, including as to the nature, viability and consequences of grounds of legitimate objection. But once that is recognised as being right, it makes it very difficult, in my judgment, to accept that a correct (or non-incorrect) appreciation in these respects is an integral part of Article 13(2) "consent". Mr Summers QC says that a correct (or non-incorrect) appreciation of grounds of possible legitimate objection to extradition operates as what he called a "safety-valve": there is a duty to enquire, after the event, if some fact or circumstance suggests an absence of correct appreciation. But that flows into the next problem.

29.
Sixthly, and in light of these points, it is necessary in my judgment to confront the structure of the two overarching requirements in Article 13(2). The Framework Decision has a very specific structure and focus. It places a proactive, positive obligation on the extraditing state. It provides:

Each Member State shall adopt the measures necessary to ensure that consent … [is] established in such a way as to show that the person concerned has expressed [it] voluntarily and in full awareness of the consequences …

The two overarching requirements are aspects of a mandatory, proactive duty on the extraditing court. The key words are "shall", "ensure", "established", "show that" and "has". I can quite

understand how “duress and coercion”, for example, are an aspect of “voluntarily” and might only come to be indicated after the event. I can see, similarly, that “incapacity” may only come to be indicated after the event. I can see that, in these respects, absent a specific ‘red flag’, the proactive duty will have been discharged. But if “consent” – through either of the two limbs – carries the question of correct (and not incorrect) appreciation of the grounds on which extradition could legitimately be objected to, how can the proactive duty be other than engaged during the process and at the time? Take the position of the (specialist) extradition judge who has the warrant and is explaining its contents to the requested person. Now posit that judge reading Article 13(2) and being told that the Article 13(2) overarching requirements of “consent” extend to a correct (and not incorrect) appreciation of the grounds of possible objection to extradition. I cannot see – if that is what “consent” means under Article 13(2) – how that judge could do (and be required to do) other than proactively explain, and “delve”. All of which, in my judgment, indicates that Article 13(2) does not extend to a correct (or non-incorrect) appreciation of the grounds on which objection could be raised to extradition. A classic example of that would be the situation where the requested person does not have a legal representative. But even if the individual does have a legal representative, the extradition judge is put into the following position. The judge knows that extradition can only be ordered if there is consent. The judge knows that consent has to be valid. The judge knows that valid consent is to be read in conformity with the duty to ensure voluntariness in full awareness of the consequences. The judge can be forgiven for not being able to take proactive steps, absent some indicator, to investigate duress, coercion or lack of capacity. But the ‘grounds of legitimate objection to extradition on the warrant’ are well within the province of the extradition judge. The extradition judge would be able to address with the requested person the potential grounds on which legitimate objection could be made to extradition, as to their nature, viability and consequences. If – as Mr Summers QC accepts – this is not what Article 13(2) requires of the judge, that is a very strong indication of what Article 13(2) does not require at all.

30.
Seventhly, leaving aside questions relating to the two limbs of Article 13(2) and the interrelationship with section 8, and leaving aside questions relating to the structure of Article 13(2) and the role of the judge, there remain the implications of Mr Summers QC’s suggested “safety valve”. If Mr Summers QC is right, what it means is that the question of whether a requested person received accurate and complete legal advice (or inaccurate or incomplete legal advice), in relation to some ground of opposition to extradition, becomes in principle a challengeable question through the reopening of consent. The question of accuracy or completeness may relate to the factual position or to the legal position. It may relate to the nature, or to the viability, or to the consequences of the ground on which objection to extradition could be raised. Such a question having been raised, it will engage a jurisdiction of the WMC, or of the judicial review Court, or both, The present case is a working illustration of those logical consequences. As Mr Hines QC convincingly points out, the consequences are satellite applications arguing the factual and legal merits of grounds for resisting extradition, through the prism of second-guessing the legal advice which was given. It opens up the prospect of post-consent second-opinions, areas of disagreement as to advice that was given, and as to its expression, and as to their materiality in light of the requested person’s state of mind. And whenever such a point is raised, there would need to be judicial consideration to evaluate the nature and strength of the argument, whether in the WMC or in this Court or in both. The present case is illustrative: there were a raft of criticisms of the advice which was given; there were an array of authorities relevant to possible objections to extradition. Mr Summers QC is entitled to say that, if that is the logic of Ballan, it was a logic at which the distinguished court giving judgment in that case did not baulk. He is also entitled to say that ‘the sky has not fallen in’ since Ballan was decided.

Nevertheless, the logic and consequences do in my judgment need to be confronted. It is one thing to make express provision for legal counsel (Article 13(2)) and legal representation (section 45(5)). It is another to have made the accuracy and completeness of legal advice a component of valid (and otherwise irrevocable) consent, within a speedy and streamlined process, and to have done so without saying so expressly, when that would have been easy to say.

31.
In the light of these points, I have very strong reservations about Mr Summers QC's Step two; and as to whether Ballan was correctly decided. I have said why. But I should be equally transparent about this. Had I concluded that Step three was arguable with a realistic prospect of success, I would have granted permission for judicial review in this case. I would not have rejected, as unarguable, a point of law which a Northern Ireland Divisional Court, and so distinguished a Court, thought was not only arguable but was legally correct.

Conclusion

32.
For the reasons which I have explained, Step three – which is a case-specific point turning on practical consequences and on contemporaneously recorded evidence – is not, in my judgment, arguable with a realistic prospect of success. It is not arguable that the District Judge materially erred in law in not conducting an enquiry; nor is it arguable that DJ Bristow ordered extradition of the Claimant in the absence of a valid "consent". Step three is an essential step, without which the claim cannot succeed. Accordingly, in my judgment, there is no realistic prospect that this Court would grant judicial review. Permission for judicial review is therefore refused.

Extension of time for removal (s.47)

33.
Following circulation of this judgment in confidential draft, there was disagreement about two aspects of the Court's Order. The first concerns this agreed recital: "Acknowledging that any application to re-fix the required period for the Claimant's removal to the Kingdom of Belgium must be made to an appropriate judge in accordance with the requirements of s.47(3) of the Extradition Act 2003". The First Interested Party wanted to add these words: "… and that the Second Interested Party will require a short amount of time to make new removal arrangements with the competent authority in the Kingdom of Belgium". It is common ground that managing and extending time for surrender is the sole province of the district judge under s.47. The Claimant says the additional words – including "will require" – constitute an inapt "steer". The First Interested Party says the additional wording was "simply" to "make all parties aware that we will make an application for an extension of time for removal to the appropriate court". In my judgment, the additional words are inapt and unnecessary.

Costs

34.
The second aspect on which there was disagreement is costs. The Claimant accepted, in principle, an Order that he "pay the First Interested Party's reasonable costs in the preparation of its Acknowledgment of Service, to be summarily assessed if not agreed costs in the sum of £x", provided that "£x" was supported by a clearly specified costs breakdown. The First Interested Party, which did not supply £x, maintained that the Court should Order the Claimant to pay its "reasonable costs summarily assessed in the sum of £4,109", that being the "entire sum" of the costs of the judicial review including Leading and Junior Counsel's time in respect of the oral hearing directed by Jay J. In

my judgment, the First Interested Party should have its costs of filing the AOS and its associated documents, which I will summarily assess at £1,200, to be paid within 7 days. There is no reason to depart from the Mount Cook default position. Jay J did not direct the First Interested Party to attend the oral hearing (CPR PD54A §7.4). Junior counsel settled detailed 21-page, 50-paragraph summary grounds accompanying the AOS (16.11.21). For the oral hearing a month later, the First Interested Party instructed Leading as well as Junior Counsel. No breakdown of costs has been provided. In my judgment, £1,200 paid promptly is the appropriate costs order. I feel able to be confident that this sum does not exceed a portion of costs referable to reasonable costs of preparing and filing the AOS and associated documents. To the extent that this sum is less than those costs, the First Interested Party – by not providing the Court with the required breakdown – is the author of its own misfortune.