SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2017] SC EDIN 77

B692/17

JUDGMENT OF SHERIFF T WELSH QC

under the Extradition Act 2003

In the cause

THE LORD ADVOCATE (FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES), CROWN OFFICE, EDINBURGH, EH7 4AU

Applicant

Against

GARNET DOUGLAS BLACK

Respondent

Applicant: Crosbie T; Crown Office, Edinburgh
Respondent: McCluskey; Ludgate Dunn, Solicitors, Edinburgh

The Issue

[1] This case is about the rule of law and access to justice. The applicant seeks the extradition of the respondent to the United Arab Emirates (UAE) to serve a sentence of 12 months imprisonment imposed following his conviction, in Dubai, for certain crimes of dishonesty. The respondent resists the extradition request on the basis of an alleged flaw in the preliminary extradition procedure. Separately, he argues that extradition is barred by reason of extraneous considerations, such as these are defined by s 81 of the Extradition Act 2003 (the Act). He also challenges extradition because he says he will be denied certain procedural rights, which Parliament has guaranteed by writing them into the Act, including a right to legal aid if re-tried, should he be extradited to the UAE. Finally, he asserts that, if granted, extradition will be incompatible with his human rights. The human rights in

question are those set out in article 3, article 5 and article 6 of the European Convention on Human Rights, as incorporated into United Kingdom domestic legislation by the Human Rights Act 1998.

The Applicant

[2] The applicant is the Lord Advocate, acting on behalf of the UAE. The UAE is a federation of seven emirates, and was established on 2 December 1971. The constituent emirates are Abu Dhabi (which serves as the capital), Ajman, Dubai, Fujairah, Ras al-Khaimah, Sharjah and Umm al-Quwain. Each emirate is governed by an absolute monarch; together, they jointly form the Federal Supreme Council of the UAE. One of the monarchs (traditionally always the Emir of Abu Dhabi) is selected as the President of the United Arab Emirates. Islam is the official religion of the UAE and Arabic is the official language. The ruler of Dubai is HH Sheikh Mohammad Bin Rashid Al Maktoum. For the purposes of Part 2 of the Act, the UAE is designated a category 2 territory by the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003/3334; as amended, from June 2008, by the Extradition Act 2003 (Amendment to Designations) Order 2008/1589 art.2. In the Designation of Part 2 Territories Order, the UAE has not been designated for the purposes of certain sections of the Act with the result that the UAE has to furnish evidence of a *prima facie* case against a requested person in terms of s86 of the Act [see paras 53 to 55 below].

The Respondent

[3] The respondent is Garnet Douglas Black (dob 13/2/53), who was formerly a resident of Dubai, where he worked in a senior position, as a cargo controller/managing director with M&M Militzer & Münch LLC (M&M), formerly known as M&M Emirates Logistics, an

international freight distribution, shipping and logistics company, based at Dubai Airport Free Zone Area (DAFZA). He resided in the UAE between October 2006 and October 2010. He presently works as a bus driver in Scotland.

The Extradition Request

[4] The extradition request dated 16 July 2013 is in Arabic. The English translation asserts *inter alia* that on 26 October 2010, the day the respondent left the UAE, he embezzled $250,000, (USD) in 'Breach of Trust', from the bank account of M&M and misappropriated 2 cheque books of that company, one of which he used to embezzle a further $95,000 (USD) on 27 October 2010 when he was in Hong Kong, both of which acts are contrary to Article 121/1 and Article 404/1 of the UAE Federal Criminal Code No 3 1987, as amended. It is also said the respondent 'escaped' from the UAE on 26 October 2010 and once out of the country closed all his mobile phones and has been uncontactable ever since. The alleged crimes were reported to the local police by Mabrouk Mabrouk Mohamed Najjar, an attorney for M&M, on 3 November 2010. Saeed Abdullah Saeed Abdullah Al-Muhairi, a director of M&M, gave a statement in support of the complaint, to the local Dubai police, on 23 May 2011. [This witness is the former son-in-law of the respondent. The spelling of his surname is not uniform throughout the request and supporting documents]. The request indicates he stated to the police that the respondent misused powers he had as a director of M&M and illegally withdrew the missing money for his personal benefit. On 30 June 2011, the local Public Prosecutor referred the case to the court in Dubai for prosecution. At that time, the whereabouts of the respondent was unknown to the UAE authorities; accordingly, in terms of Article 159 of the UAE Penal Procedure Code he was notionally cited at the General Department of Airport Security, Dubai, on 8 March 2012 and summoned to appear at the

Court of Misdemeanors (*sic*) on 28 March 2012. On 30 April 2012, in the Dubai Misdemeanor Court, (case 20274/2011), the respondent was convicted and sentenced *in absentia* to 12 months imprisonment for embezzlement of $250,000 and $95,000 and ordered to pay M&M the sum of AED 21,000, as temporary civil compensation, plus expenses. The request is supported by statements from witnesses vouching the respondent's company position, his financial authority to intromit with funds on behalf of the company, his unexplained and sudden departure from the country and a report from the Al-Muheri Auditing Firm, Chartered Accountants, which concludes that the respondent dishonestly withdrew sums equivalent to AED 1.163.910.73 from M&M's bank accounts before he left the UAE and while in Hong Kong. The request is signed by Ismail Ali Madani, Senior Chief prosecutor and Head of the International Judicial Co-operation Unit. It also has attached to it two post-conviction arrest warrants for the respondent dated 1 May 2012 and 16 July 2013 (the latter in implementation of the judgment).

[5] A certificate under s.70 of the Act certifying the validity of the request was issued by the Scottish Ministers on 5 March 2014. An arrest warrant, from this court, for the respondent, was issued on 7 March 2014. On 13 March 2014 the respondent first appeared in the extradition court. He was granted bail pending a full hearing of his case.

Procedure

[6] There has been considerable procedural delay. The respondent changed agents. Despite many requests for legal aid this was repeatedly refused and only granted in 2016 after the present counsel and agent prepared detailed notes of argument for the Scottish Legal Aid Board (SLAB). After the grant, agents required time to prepare the respondent's case, which is not without difficulty and complexity. A full hearing, set down for March

2017, had to be adjourned because of serious illness affecting an essential witness and an accidental injury suffered by the respondent's expert witness, which events rendered both these witnesses unavailable. I heard evidence and submissions over various days in March 2017 and August 2017.

The Evidence

Garnet Douglas Black

[7] The respondent gave evidence. He is 64 years old. He is married with one daughter. He has a granddaughter. He was the managing director of M&M in 2010. The company specialises in international transport distribution and logistics, globally, with a presence in the Middle East. The company is also a specialist military transport contractor. The company was used by US and UK military to transport bulk supplies within the region, including to Afghanistan and Iraq. He joined the company in April 2009. For most of his working life the witness has been in the international transport distribution and logistics business. He worked in the UAE with Kuehne & Nagel, another international transport company, between 2006 and April 2009. His daughter also lived and worked in the UAE. She was in a relationship with a local Emirati citizen, Saeed Abdullah Saeed Abdullah Al Muheri. I was told Saeed Abdullah Saeed Abdullah Al Muheri is head of airport security at Dubai Airport. [In the police statement of Saeed Abdullah Saeed Abdullah Al Muhairi given on 23 May 2011 he states his occupation as Director of Aviation Security of Etihad Airways based at Dubai Airport Free Zone Area. He is also described as the 'local partner' of M&M]. The witness said his daughter married in August 2008. His granddaughter was born in May 2009.

[8] I was told M&M have a Swiss parent company. The CEO of that company, Ewald Kaiser, invited the respondent to join M&M. The witness explained that UAE law requires that every foreign trading entity must have a local Emirati sponsor or partner. This individual is paid a fee/salary by the foreign trading entity. The witness invited his then son-in-law, Saeed Abdullah Saeed Abdullah Al Muheri, to fulfil that role for M&M. He said his former son-in-law comes from a powerful and influential Emirati family.

[9] The witness said he was contracted to grow the M&M business in the region but after he joined it was obvious the company was not doing well. There was a local business culture of corruption which he did not approve of or engage in. The witness said his daughter's marriage was in difficulty. It emerged that his former son-in-law was an abusive husband with a serious drink problem. He was violent to his wife. He borrowed from the respondent. The respondent was told there was nothing that could be done about the abuse as an Emirati husband is entitled to chastise his wife, in any way he sees fit. I was told Saeed Abdullah Saeed Abdullah Al Muheri comes from a successful UAE family. His brother is the chief prosecutor in Abu Dhabi. I was told the former son-in-law enjoyed considerable influence with the local police and on one occasion managed to secure the release of a foreign doctor from police custody through personal contacts in the police. The witness said the situation for his daughter was becoming increasingly more intolerable and he and his wife resolved to get her and their granddaughter out of the UAE and back to Scotland. As an Emirati wife, she required her husband's written consent to leave the country with her child. The witness said his then son-in-law was told that Scottish relatives were keen to see the new baby and a scheme was hatched by the respondent to get written permission from the son-in-law and return his daughter and granddaughter with his wife to Scotland, ostensibly for a short family visit. This was done by November 2009. In fact, his daughter had no

intention of returning to the UAE although his wife did, after his daughter and granddaughter were settled in suitable accommodation in Scotland. Although the respondent's wife did return to the UAE, I was told Saeed Abdullah Saeed Abdullah Al Muheri was suspicious that the respondent was involved in the permanent removal of his wife and child from the jurisdiction. The respondent said his phone was monitored by his former son-in-law. Friends of his daughter said their phones were bugged as well. The respondent had to use Skype *via* a UK IP address to communicate with his daughter, safely, as he feared his former son-in-law could intercept his calls. He said Saeed Abdullah Saeed Abdullah Al Muheri searched his home, without permission, looking for information about his wife. The Al Muheri family were very well connected and intrusive surveillance by powerful people could be arranged in the UAE. The Al Muheri family were also very well connected in business, politics and in the legal world. To get his own wife permanently out of Dubai and back to the UK, the respondent said he told his former son-in-law that his wife needed to return to Scotland to persuade his daughter to return to the UAE with the child. The witness said he too was desperate to get out of the UAE. In October 2010, he told Saeed Abdullah Saeed Abdullah Al Muheri that he was going on a trip to the Far East. On 26 October 2010, the witness said he withdrew $250,000 from the company account and gave it to Saeed Abdullah Saeed Abdullah Al Muheri, the company sponsor/partner, as surety, to guarantee his own return to Dubai. The respondent said he had legal authority to withdraw the money. The money was in cash, in a suitcase. The respondent said he was cutting his losses by leaving Dubai and that he lost everything he made in the UAE but he wanted out. The respondent said he was very concerned that his former son-in-law would stop and detain him at the airport, if he suspected the respondent was leaving permanently. Giving

him the money as a guarantee that he would return was intended to prevent this. The respondent stated he went to Hong Kong then Manilla and back to Scotland *via* Amsterdam.

[10] The respondent went on to explain that the Al Muheri family were imbued with what he called '*wasta*', which is an Arabic term denoting power and influence. In Emirati culture the concept of '*wasta*' reflects how well connected an individual or family is. It is only high ranking Emirati families and individuals who have this status imbued with *wasta* in the Emirati culture. With it, a person has significant influence over the business community and the legal system. It was suggested that those with such influence had access to Royalty and the Emirati ruling elite and could open doors and secure outcomes in business, politics, police investigations and court cases which would be impossible for ordinary Emiratis, non-Muslims or foreigners.

[11] Once back in Scotland, the respondent said his daughter thought it was wrong to deny Saeed Abdullah Saeed Abdullah Al Muheri all contact with his own daughter. He was informed he was welcome to come and visit his daughter in Scotland. However, the couple are now divorced. I was also told there is an interdict in place prohibiting removal of the child from the UK. Saeed Abdullah Saeed Abdullah Al Muheri visited Scotland in May 2011 and tried to persuade the respondent's daughter to return to the UAE. She declined. The respondent said he thought his former son-in-law harboured hopes of a reconciliation. He came to Scotland again in 2012 to have contact with his daughter and asked for her Emirati passport. He was informed the child is now a British citizen and has a UK passport. That news was described as 'traumatic' for him. The respondent said his relationship with his former son-in-law is cold but he respects his daughter's wishes. If she wants to see him when he visits to have contact with his child that is a matter for her. The respondent said the allegation of embezzlement/breach of trust is totally false and the real reason he is wanted in

the UAE is as a bargaining chip to secure the return of his granddaughter to the UAE. The respondent said that Saeed Abdullah Saeed Abdullah Al Muheri told him he would be executed if he did not get his daughter back. He also threatened the respondent and said he will be stabbed to death in jail, if returned to the UAE. The respondent said that Saeed Abdullah Saeed Abdullah Al Muheri has initiated these proceedings to keep his options open and put pressure on his former wife to return to the UAE with his child.

[12] When asked about the alleged embezzlement, the respondent said it would be stupid to go through international airports with a suitcase, with $250,000 in cash. If opened he would immediately be suspected of drug trafficking or terrorism. He said if he had taken the money, for himself, it would have been easier and more sensible to bank transfer the money electronically, or, take the money as a banker's draft, if he intended to embezzle company funds. According to the respondent, this case is being pursued because Saeed Abdullah Saeed Abdullah Al Muheri is enraged that his former wife and daughter have not returned to the UAE. He also said the assistant public prosecutor named in the UAE 'Minutes of Session' lodged with the request, Eissa Juma Obaid Bin Abid Al Muhairi, is the brother-in-law of Saeed Abdullah Saeed Abdullah Al Muheri. The respondent said he is concerned about being discriminated against if extradited because he is not a Muslim or an Emirati. He is also concerned about possible torture in custody if extradited. The respondent said on one occasion he went with his former son-in-law to the central jail in Abu Dhabi where he witnessed him secure the release of an Australian doctor, who was a family friend, who had been detained by the police, using his police contacts. On another occasion he said his former son-in-law had beaten up an Asian taxi driver who was apparently trying to extort a larger fare for a trip. The son-in-law phoned the police and the taxi driver was arrested. The son-in-law said 'He will be in jail for a long time'. The respondent said that within Emirati

culture race and religion are very important. Non-Muslims and Non-Arabs are discriminated against.

[13] On his return to Scotland from the UAE the respondent said he retired, initially. He had a good pension but got bored. He took a job as a bus driver. However, his health has not been good. He had a heart attack in 2012. He had heart surgery in 2013. The respondent said he has arthritis and takes opiate based pain relief. If extradited this medicine would not be allowed in a UAE prison. Physically, he cannot tolerate non-steroidal based pain relief like ibuprofen. The respondent said his wife is 66 and depends on him. His daughter works as an agency nurse.

[14] The respondent said his former lawyers represented him at the start of the case when he was first arrested in 2013, after he returned home from hospital following his heart attack, in 2012. He was visited by CID officers from Hamilton Police station and taken to appear at Hamilton sheriff court. That was in March 2013. There was some mistake with the first extradition request and he received an apology. He was paying privately. He ran out of money and then represented himself for a period of time. He instructed Mr Dunne in mid/late 2015. He had a long fight to get legal aid. He was refused legal aid both for this case and also in a separate application he made to enable him to raise an action for judicial review of the initial decision to refuse him legal aid. The Sheriff Principal refused him legal aid to review SLAB's decision in the extradition case. He cannot pay privately. He tried to sell his own home to pay for legal representation but after a year on the market there were no offers. If returned to the UAE he would seek a retrial but he has no money to pay for a lawyer there. He does not speak Arabic and would need access to the case against him in English translation. He cannot afford to pay for his own translation either from or into Arabic. He fears that if he were returned and convicted he will be incarcerated indefinitely

because, in the UAE, he said that after the criminal sentence is served a person can be detained, if convicted, until the sum found to be embezzled is repaid.

[15] Mr Crosbie cross examined the respondent and put it to him that by giving Saeed Abdullah Saeed Abdullah Al Muheri the $250,000 he was committing a criminal act. The witness denied this. He said it was a business transaction. As far as he was concerned he allowed the legitimate business sponsor/partner to hold the company's money. It was never taken out of the UAE. He said that his former son-in-law was paid $30,000 per annum to act as sponsor/partner for M&M. He insisted the extradition request was bogus and designed to apply pressure to secure the return to the UAE of his daughter and granddaughter.

[16] After re-examination the respondent explained that the author of the financial report which is included in the request papers, from Ali Al Muhairi Auditing is also related to Saeed Abdullah Saeed Abdullah Al Muheri. The witness said he met Ali Al Muhairi in Dubai at family barbeques, two or three times. He also met the assistant public prosecutor Eissa Juma Obaid Bin Abid Al Muhairi four or five times at family gatherings.

David Haigh

[17] David Lawrence Haigh (aged 40) gave evidence. He is a non-practicing solicitor who studied law at Southampton University. His relevance to this case is that he has direct experience of being arrested, prosecuted, detained by police and imprisoned in Dubai. He maintains his innocence of any criminal conduct there and alleges he was set-up by his former employers GFH Capital Limited, a Dubai based private equity and wealth management company. Before me, he stated he was lured to Dubai on false pretences by executives of GFH Capital Limited. Once there he was falsely arrested, charged, imprisoned and prosecuted for an alleged $5 million embezzlement which he did not commit. He was

arrested in Dubai on 18 May 2014. He was convicted of breach of trust in August 2015 and sentenced to 2 years custody, backdated. He was remanded in a detention centre in Bur Dubai police station (except for a few days when he was transferred to the Central Jail in Dubai) from his arrest until his conviction when he was transferred to the Central Jail in Dubai. He appealed against his conviction but the conviction was sustained. He was due for release, after remission, in November 2015 but on the eve of his planned deportation from the country, fresh allegations of 'cyber slander' were made against him. He said these were brought by his former employers. He said these were intended to ensure his continued detention in Dubai and to subject him to further pressure to settle an outstanding civil claim with his former employers. As a consequence of the new allegations he was then returned to Bur Dubai police detention centre until December 2015 and was finally deported from the UAE in March 2016 after he was acquitted of cyber slander by a court in Dubai. Although competent so to do, he did not appeal his breach of trust/embezzlement conviction to the UAE Supreme Court as he was informed that he would have to remain in custody during that process, which he said he was advised, could take 3 to 4 years. Since his return to the UK he has suffered post traumatic stress disorder following his experiences in UAE custody and is now a voluntary worker and activist for persons detained in Dubai. He informed me that in November 2016, while he was in hospital in England, an undefended 'immediate'/summary judgment passed against him in his civil case in the Dubai International Financial Centre Courts (DIFCC). This civil action was initiated while he was detained in custody in Dubai. He has since sought and been granted leave to defend that action, late. He also informed me that civil decrees taken in the DIFCC can be enforced through the criminal courts in Dubai. He stated it is a common business tactic by Emirati businessmen in civil dispute against foreigners to take civil decree for breach of contract/

breach of trust and then make a criminal complaint against them to force settlement. He believes such a tactic was employed by GFH Capital Limited against him and that is why he was invited to Dubai in May 2014, so that he would be within the jurisdiction and vulnerable to the criminalisation of a civil process against him.

[18] He said he had experience working in corporate law and private client finance in the Middle East. He worked as an in-house lawyer at Barclays Bank and as deputy CEO of GFH Capital Limited. He also worked for the law firm DLA Piper. He first worked in Dubai in 2006 buying and selling limited liability companies. In 2011 he decided to redirect his principal business focus to the UK. He worked between Dubai and the UK, from 2011 until 2014. In 2013, he established a base in Leeds and said that by 2014 he had effectively returned to working in the UK. In 2012 he became a director and then managing Director of Leeds United Football Club. He is an ambassador for the Make a Wish Foundation and has raised money for that charity and others. He said he has never been in trouble with the police. He was once questioned by the police in Leeds over the use of cameras in the Leeds United boardroom but there was no prosecution. He spent a total of 22 months in custody in Dubai from May 2014 until March 2016.

[19] In 2013 the witness said he was in a complicated financial dispute with his employers GFH Capital Limited, which is based in Bahrain, while he was still managing director at Leeds United FC. At that time GFH Capital Limited owned Leeds United. However, the present judgment is not concerned with the merits of GFH Capital Limited's civil litigation against David Haigh. References to it are present only to set what he said was the context for his travel to Dubai in May 2014. The witness indicated that in 2013/2014 he formed a consortium with other interested parties to try to buy-out GFH Capital Limited's interest in Leeds United Football Club. The financial position at Leeds United FC became increasingly

difficult and the buyout failed. He resigned as managing director of Leeds United FC in April 2014. However, he said senior executives of GFH Capital Limited remained in correspondence with him despite the civil dispute and invited him to a meeting in Bahrain to discuss a completely separate private equity investment project they wanted him to head up in London. He was funded a plane ticket and provided a visa for entry to the UAE and Bahrain. In early May he had abdominal surgery in the UK. He travelled to Dubai (against medical advice) for negotiations with GFH Capital Limited. He said he owned property in Dubai where he had lived for 7 years and intended staying there *en route* to Bahrain. He said he was invited to and agreed to attend an important meeting in Dubai with a new senior executive from GFH Capital Limited, who he was told had strong UAE Government connections.

[20] On 18 May 2014 the witness said he arrived at the offices of GFH Capital Limited in Dubai for the meeting. He was met by someone he now believes to be a junior CID police officer. The senior executive was not present. He was instructed to go with the officer. He was not cautioned or charged with any offence but taken to Bur Dubai police station. He had a mobile phone and contacted officials from GFH Capital Limited because he was concerned about missing the scheduled meeting. He was taken to an interview area in the Bur Dubai police station. There were lots of armed police. He was interviewed by a police officer who initially told him he was there because of a 'bounced cheque' worth approximately £1200. The witness stated he offered to pay the sum said to be due. The officer indicated he would have to go to court. There was no translator and the officer's English was poor. The witness said he does not speak Arabic fluently. The witness said he was interviewed aggressively. There was no water provided to him. A written statement in Arabic was produced which he did not understand. The witness was told he had to sign this or the matter was going to

court. The witness indicated he was recently discharged from hospital. He was also jet lagged. He said he was physically stressed and exhausted by the pressures surrounding the failed Leeds United FC buyout. He refused to sign the statement. He still had his phone at this time. He was not overly concerned as he knew how the Dubai banking system worked. He thought the issue related to a possible signature discrepancy on a cheque signed by him which the bank had not honoured. He was detained for an hour and then taken to a different room where he was interviewed by a different police officer, whom he took to be CID. There was still no translator. The witness said he was in pain from his surgical wound. The officer accused him of taking money from his employer. This was the first mention of what later became the charges he faced. The witness said he was on a liquid diet and heavy pain killers at the time because of his operation. Behind an observation window in the wall the witness said he saw a local Emirati lawyer whom he recognised as one used by GFH Capital Limited, speaking to someone he took to be a senior police officer. This Emirati lawyer was very well connected and had influence. The witness said he had instructed him in the past on GFH Capital Limited business. He described him as 'a local bulldog'. The witness then explained how the informal system of influence operated in the UAE.

[21] The witness said born Emiratis from powerful families have significant influence over the police and the legal system. He said the lawyer pointed directly at him from behind the glass window while speaking to the man whom he took to be a senior police officer. He thought this strange. He was further detained and after an hour he was taken to a different room where he was further questioned. He was told to stand and sit repeatedly which he did. He had no water. He was told to face the wall. There were between 4 and 6 armed police officers in the room. He was struck on the back of the head with an object. He screamed in pain. He was told not to turn round. The witness said he was then Tasered by

the police. He was beaten up by these police officers for about an hour. His knee was severely damaged and required corrective surgery on his return to the UK. Four teeth were broken. He was repeatedly asked where the money was. The witness said it was a horrific experience. He was sat on a chair and a statement in Arabic placed before him. The witness said he thought he would sign the document and deal with the consequences later. After about an hour the witness said he was taken to the detention centre within the police station. The witness said this area is designed to hold about 100 prisoners but regularly had 500 prisoners there during the period he occupied it. He was fingerprinted but never charged. He was beaten up again and asked where the money was. He was struck about the head feet and knees but not on the face. He still has residual knee damage from the beatings. He said his stomach was bleeding from a surgical wound. He was strip searched and denied any medication. He was taken to the cell area.

[22] The witness said there were 3 cell blocks, one for drug offenders, one for alleged financial offenders where local Emiratis charged with serious offences like rape or murder were housed, if they could arrange to get in there. Another block housed those there for immigration and general offences. The witness said each block was designed to house 32 persons. There were 4 sleeping cells. The toilet was a hole in the ground and there was one shower which did not work. There was an enclosed compound outside the cell block where prisoners could sit. The witness said he spent approximately 15 months in this detention area. He said the accommodation was a temporary holding area attached to Bur Dubai police station. He said this was the best of the police jail cells. To begin with he was kept there for 2 days without appearing in court. After a day or so he was taken to be interviewed by a public prosecutor in a small room outside the cell block area. He said a policeman was there and he translated from Arabic into English. He was informed he had

been accused of taking money from his employer. He denied the allegation. The interview was very short. He asked for water. None was provided. After the third or fourth day of detention he was interviewed again for 15 minutes by a prosecutor. He had no lawyer and there was no translator. British Embassy officials came to the jail but he had no private meeting with them and was unable to speak candidly about what had happened in front of police guards. Instead he was interviewed in the presence of the police head of the detention centre and 4 police officers. The witness said in these circumstances it was not possible to criticise the conditions or treatment he had received, for fear of repercussions. The witness was detained for a further 2 weeks in these conditions. He said he believes the purpose of his detention and abuse by the local police was to put him under pressure to settle the civil dispute he had with his former employers, GFH Capital Limited.

[23] The witness said his personal bank accounts in the UAE were frozen by court order. However, a friend organised access to a lawyer. He saw the lawyer for 5 minutes in the presence of police officers. He signed a power of attorney in favour of the lawyer. He was informed the cost of representing him would be $500,000. There is no publicly funded legal aid for criminal representation in the UAE, apart from murder cases, he said. He obtained other quotes for legal fees for representation, which ranged from $200,000 to $500,000, all to be paid in advance. He said the local court can appoint experts like forensic accountants but the accused has to pay for them. Any defence documents or reports used in a case must be translated into Arabic. This too is expensive. To access the case against him he needed Arabic documents translated to English. This too is also expensive.

[24] He said that within the cell block he was housed in there was a phone. The police controlled access to this and prisoners had to pay for access. He said he also had to pay for blankets and a mattress in the cell. Local prisoners run the jails. He was told by the British

Embassy that financial investigations in alleged fraud and embezzlement cases take up to 2 years and that he would not get bail. The Embassy advised him it would be better to try to get into the main Dubai prison, the Central Jail. With the help of his lawyer he was transferred to the drug section of the Central Jail but returned to Bur Dubai police station within a few days because it was too dangerous. In the main prison he was put in the remand wing of the drug section. The cell blocks were larger but overcrowded. He described the Central Jail as better than the holding facility in the Bur Dubai police station. There was no gym but prisoners could jog in an exercise yard. There was a market where prisoners could buy clothes, tea and coffee. There was no education facility. He was not beaten in the Central Jail.

[25] The witness said he attended court hearings which he described as 'a farce'. These were custody extension hearings. He was granted bail, on appeal, which was set at £4.5M plus surrender of passport. With his assets frozen this was unrealistic and unattainable. Again, he suspected GFH Capital Limited's influence. The witness said the courts were crowded. There were no translators. The hearings lasted only a few minutes. The judges were foreign, sometimes Egyptian. These custody review hearings occurred every 4 to 6 weeks. The witness said there was no point in attending them. The witness said his first appearance in court for trial was after 2 to 3 months of detention in Bur Dubai police station. He pled not guilty and the case was continued. He had 4-5 trial court appearances in 15 months. Sometimes the appearance was for less than a minute. He was repeatedly told to keep quiet if he tried to speak. The conditions in the court were chaotic. He changed his lawyers and got a local Emirati lawyer to represent him. At the first formal hearing he was charged with breach of trust. He was not allowed to speak to the judge. There was a translator. The hearing was over in 5 minutes. The second hearing was postponed. At the

third hearing he was late arriving from the detention centre and he was not allowed in. This was the judgment hearing. An accounting expert witness was appointed by the court. The witness never met him. He reported in Arabic. The witness never saw the report. The witness was not permitted to give evidence or cross examine witnesses against him. He said the court conducts the inquiry. The witness said his own lawyer suggested he should consider bribing the expert. At a further sentencing hearing in August 2015 he was sentenced to 2 years custody backdated to include time served. He was returned to the detention centre at Bur Dubai police station and then taken to the Central Jail in Dubai to serve his sentence which was due to end in November 2015, taking account of remission. However, instead of being deported which had been arranged, he was again taken to Bur Dubai police station, after cyber slander allegations were made against him. He remained there until late December 2015 when he was again returned to the Central Jail in Dubai to be housed in the short term prisoner accommodation section, before his eventual deportation in March 2016 after he was acquitted of the cyber abuse charges. These Twitter abuse charges arose from defence press releases issued on his behalf in London by a PR company to publicise his predicament, which were critical of his former Emirati employers. These statements the witness believes were used to trump up cyber slander charges against him while in custody in Dubai and exert further pressure on him to settle the civil dispute. He said collateral civil proceedings were simultaneously issued against him in the Dubai International Financial Centre Court (DIFCC) which is an international dispute resolution facility presided over by many, retired, senior common law judges. The witness believes it was his former employer's intention to take civil decree against him in that forum and then criminalise the case under UAE national law to exert further pressure to settle. However

before this could occur he was acquitted of the cyber abuse allegations and deported in March 2016.

[26] The witness described the prison regime and conditions he experienced in the UAE. He said the food in the Bur Dubai police detention centre was poor. Eventually he was able to have soup brought in. He was suffering from internal bleeding and had to wait 4-5 weeks to get a hospital appointment. There were no dental facilities to treat his broken teeth. The witness said he finally resorted to applying pressure on the authorities *via* the British media to get proper treatment and conditions, despite being advised by British Embassy officials not to do that. The witness said he lost 56 kilos in weight in 6 months. He said the living conditions were filthy and infested. There were no cleaning utensils provided. Washing powder was used to clean dishes. There was no bleach for the toilet. 100 men had to use 2 cubicles with hole in the ground toilets, with no toilet paper or flush. The shower did not work. There were always queues for the toilet. Tap water was contaminated. You needed money to buy bottled water. He was in significant pain but was never allowed painkillers.

[27] The witness described beatings he received at the hands of police officers in Bur Dubai police station detention block. He said one night he was sexually assaulted by police officers in the car park of the cell block. He was held over the bonnet of a car by several officers and sexually assaulted. He was raped. A glass bottle was forcibly inserted into his back passage. On another occasion he said he was attacked by local Emirati inmates and an attempt was made to sexually assault him because it became known he was homosexual. He was assaulted by Emirati inmates who tried to sexually assault him. He was rescued by other Western prisoners. He also described being present when the police guards viciously assaulted a young Pakistani inmate with weapons. The witness said seeing the ferocity and horror of this sustained attack has had a lasting and destructive psychological impact on

him. The victim was severely beaten with sticks and kicked about the head and body on the ground, despite having lost consciousness. Routinely, he said, the guards did not interfere if foreign prisoners were assaulted by Emirati inmates. He witnessed one young prisoner being sexually abused by an older inmate who was serving a sentence for rape. The guards did not intervene.

[28] The witness described the living conditions in the police detention block. He said there were 2 bunk beds in the cell which was built to house 4 people. In fact, there could be as many as 10 in the cell. The cell was less than 3 metres wide and slightly more than 3 metres in length. It was about 3 metres high. The lights were off most of the time. There was smoking most of the time. The witness said he was not a smoker. The mattresses were lice ridden. A local Emirati prisoner was the block foreman. He allocated prisoners to cells and bunks. No personal possessions were allowed. No legal papers were allowed. Within the prison culture there was a strict power hierarchy based on race. Emirati prisoners were at the top followed by Arabs, then Westerners. At the bottom were Bangladeshis, Pakistanis and Filipinos. Those at the bottom were treated like animals. This treatment was officially sanctioned. The police guards did not interfere if there was violence used against prisoners.

[29] The witness said there were no exercise facilities. Prisoners could sit outside in a yard. In the hot summer this was not possible. In the evenings and at night as many as 100 prisoners would be in the yard which was overcrowded. The cell block was built to house 32 prisoners. Between May and September, it was too hot to sit outside during the day. Prisoners sat up during the night and slept during the day. There were no educational facilities.

[30] Between August 2015 and November 2015 the witness said he was housed in the Central Jail in Dubai. The prison blocks were L shaped. Each had 4 phone booths and 10

sleeping cells which were slightly larger than at Bur Dubai police station. Each cell had 3 bunk beds. Typically, there were 6 beds and 2 prisoners sleeping on the floor. There was smoking inside all the time. Some blocks were very dirty. Local Emiratis got the best cells. The cells were infested with lice, cockroaches, spiders and lizards. The ceilings were about 4.5 metres high. The lighting was kept on all night on occasions as a punishment. Air conditioning was on constantly. The blocks were extremely cold. The Central Jail food was better than the food at the police station. There was no gym but prisoners could jog in the yard outside. There were 2 showers per block which housed up to 100 men in each block. There was a weekly market in the jail where soap, washing powder and basic provisions could be purchased. Books were permitted. There were no educational or work facilities for the prisoners. There were no beatings from the guards but it was a violent place. There were regular knife fights and stabbings. The prisoners were mixed. There were violent offenders mixing with those convicted of financial crimes. The witness said there were supporters of ISIS and Daesh there who hated Westerners and who used radical speech. The witness said the blocks were designed to house 60 prisoners but the numbers fluctuated daily. Access to medical facilities was better than in Bur Dubai police station. Access to Embassy officials was more regular but never in private. It was always in the presence of a guard. It was not possible to be critical of the regime for fear of reprisals. The witness said within 9 days of his conviction in August 2015 he was offered a Royal Pardon if he agreed to drop his appeal and go home. The witness said he appealed his conviction and refused the pardon.

[31] Between January and March 2016 the witness said he was housed in short term prisoner and young offender accommodation in the Central Jail, Dubai. This comprised a single large room with as many as 100 bunk beds in it. There were 3 toilets and 3 showers. There was constant smoking. There were locals with connections here and young prisoners.

The conditions were generally better. There were radios and board games. The witness got books and a Monopoly board game to play. The food was the same. The guards hit the youths a lot but nothing serious.

[32] The witness said he used the media to draw attention to his situation. He indicated the media was supportive. The British Embassy was ineffective. He stated trade with the UAE is more important than torture and prison conditions. On his return to the UK the witness saw a junior Foreign Office Minister, Tobias Elwood. The advice again was to go to the Government and not the press.

[33] With regard to the Twitter abuse claim the witness said the complainer was his former employer. In his opinion the new complaints were filed to buy time to allow the complainant to obtain civil judgments against him from DIFCC while he was incarcerated in Dubai. The Twitter abuse case was adjourned 8 times he said as a stalling tactic to buy more time to obtain the civil judgment which the witness said he believed would have been enforced against him in Dubai if it could have been obtained. He was acquitted and deported before that could happen. The witness said that after the second adjournment of the Twitter case he was advised that if he chose to appeal his embezzlement conviction to the UAE Supreme Court he could remain in custody in Dubai for up to 4 more years. He decided to abandon his Supreme Court appeal.

[34] The witness was asked about independent prison inspections in the prison he was in. He said that every few months in the prison an inspection occured. The prison is cleaned up before the inspectors arrive. The overcrowding is lessened by transporting prisoners to other facilities. Inspectors see the best wings of the prison. New mattresses and blankets are put out and the inspected areas are cleaned. The witness said any criticism of the prison regime or conditions to consular authorities resulted in punishment. Prisoners who complained to

inspectors or consular officials were taken to the prison yard, chained and suspended by the wrists from poles, for hours, in the sun. The witness said local Emiratis were treated better than foreigners. The witness also said he appeared in these proceedings as a witness to fact, not an expert witness. He had no financial interest in the outcome of the case and received no fee for his attendance.

Radha Stirling

[35] Radha Stirling (aged 38) gave evidence. She was called as an expert witness. Mr Crosbie objected to her status as expert. I heard argument on this matter at a diet in March 2017. I decided to hear her evidence under reservation and I deal with that question below [see paras 63 to 66 below].

[36] The witness prepared a written report dated 2 October 2016 which was disclosed to the applicant well in advance of her evidence. The witness said she is a director of a charity called Detained in Dubai and a director of a consultancy firm Stirling Haigh which she runs with David Haigh, the last witness. She assists foreign nationals who are detained in Dubai. She described her nationality as British, Australian and American. She lives between the UK, Spain and Australia. She commenced but did not complete a law degree in Australia when she was 19. She came to the UK and provided consultancy services in IT for 2 years then went to the USA for 4 years doing the same job. She returned to the UK and opened a social media and digital consultancy firm. In 2007 she founded Detained in Dubai. She worked with Nasser Hashem & partners, a criminal law specialist legal partnership in Dubai. She retains many legal contacts in the UAE and the region. In her report she states:

“Radha Stirling has received private training from a number of UAE Criminal Advocates, including one former High Court Judge & Prosecutor, as well as private intelligence and criminal process training from UAE based foreign military. On average, Stirling has represented approximately 600 individuals every year in a variety of criminal and civil matters.

The organisation has worked with the Foreign & Commonwealth Office and British Embassy. We maintain close relationships with foreign governments and consular representatives in order to continually expand our knowledge and expertise. We have addressed and advised Australian Parliament respecting their proposal to enter an Extradition Treaty with the UAE, including recommendations for protective wording to include in the Treaty.

Ms. Stirling works directly with every client Detained in Dubai helps. She has been personally involved in resolving approximately 6,000 cases since founding the organisation.
Ms Stirling has been regularly featured across television (Al Jazeera, BBC News, Channel 5 News, ITV News) radio (LBC, BBC etc.) & news print media and is considered an authority by news producers in the UAE who frequently share information, request her to investigate or assist and seek comment.

Ms Stirling has provided written testimony in UAE extradition cases in the UK, Spain & Italy; and she has been invited to address an upcoming United Nations Human Rights Summit in Geneva in 2017.

Within the past 12 months, Ms Stirling has provided testimony in the following hearings:

- UAE v. Saujani (Oral Testimony) - Westminster Magistrates Court (Extradition denied) Allegations of misrepresentation and fraud in a real estate transaction.
- UAE v. Halliday - Westminster Magistrates Court (Extradition denied) Allegations of theft of cash that was held on employer's premises.
- UAE v. Afsar - Westminster Magistrates Court (Extradition denied) Allegations of Blackmail
- UAE v. Devlin - High Court, Spain (In Progress) Allegations of theft of gold.
- UAE v. Client (under NDA) - High Court, Italy (Extradition denied) Client was suing a UAE Ruler of an Emirate in the civil courts after they had allegedly stolen his business. The Emirati respondent in the matter then threatened criminal action in retaliation for fraud so the client fled in fear. His partner in business was apprehended and was held incommunicado in a secret military detention centre.
- UAE v Khan - Westminster Magistrates Court (In progress) Allegations of fraud resulting from bounced cheques.”

[37] The witness said she had never been to the UAE. She is an activist on behalf of people who are detained or who need advice on which lawyers to instruct in UAE. She advises on the best and most effective strategy people should adopt if detained in Dubai. She lobbies and briefs the media on behalf of clients who are detained. She said she is *persona non grata* in the UAE and the Government there has advised the local media not to report what she says. She advises on civil and criminal cases and explained that financial civil cases can become criminal cases in Dubai if civil decree is taken against an individual and passed to the criminal courts for enforcement. Over 10 years she has handled and advised on about 6000 cases. She has 5 staff. She is based in London. She said she advises people who have done business in the UAE about what she termed the misuse of INTERPOL Red Notices which may exist against them arising from what, in fact, is a civil dispute rather than criminal conduct on their part. These Red Notices may result in the arrest of persons in transit. She said she has written about the UAE and been published in the Law Gazette, The New York Times and the BBC website. The Law Society and all major international broadcasters list her organization's information. She has appeared on TV many times as an expert in relation to detained persons in Dubai. She has prepared expert reports which have been considered in courts in the USA, Spain and England. She said in one case in the Magistrates Court she had been asked by the extradition judge if she had access to the prison system in Dubai. She said that had been denied to her and she believed that Prisoners Abroad, Amnesty International and Human Rights Watch have also all been denied access to the prison system in Dubai. She said that in addition to the 6000 clients she had direct contact with over 10 years, she had spoken to at least 6000 more people who had either been detained or had relatives or friends detained in Dubai. David Haigh was not a client. He had

his own PR firm during his detention in Dubai. She did consult lightly with that firm. In her report she states:

> "5. The main goal of Detained in Dubai is to prevent foreigners being detained in the UAE in the first place. This involves raising awareness and providing advice and negotiation assistance at the preliminary stages, as often detention is the result of a business, landlord and tenant, or other civil dispute. Once someone has been detained, we assist by providing legal representation, advice, campaign management and support across all areas, including assisting people post-release from detention with counselling and re-assimilation into society.
>
> 6. Our organisation assists people from the moment they contact us right through to their safe return home. We deal with most legal issues, ranging from airport arrests and public decency offences (kissing, alcohol etc.) to debt, bounced cheques, employment disputes, fraud accusations, cybercrime law breaches, business partner disputes and other civil offences that are considered indictable in the UAE and often lead to lengthy prison sentences.
> 7. As a result of our casework, I have extensive experience of the judicial system in the UAE. It is on the basis of that experience that I have regularly observed judicial failings and abuses. It is therefore my view that extradition to the UAE presents a real risk of torture, and grossly unfair trials.
>
> 8. The organisation has employed volunteers, legal consultants and general staff in Dubai to engage in research, attendance at hearings and assessment of conditions in prisons and police stations, as much as the UAE's policies will allow. Where direct access has been denied, evidence is gained from interviews with inmates."

[38] In her evidence and report Ms Stirling made many criticisms of the UAE legal system in general. She indicated at one stage that a British Consular representative in Dubai had told her that UK business interests in the UAE are more important than individual prisoners' rights. I summarize other criticisms she made which have direct relevance to this case:

i. Under reference to the Report of the Special Rapporteur on the independence of judges and lawyers, in the UAE, Gabriela Knaul, dated 5 May 2015, Ms Stirling said in her experience the prosecution and judiciary are not independent and the evidence she has gathered over 10 years indicates that the conclusions reached by the Special Rapporteur are well founded.

ii. Ms Stirling also stated she has been directly involved in cases where bribery of judges and prosecutors has occurred, both in civil and criminal proceedings. In her report she stated “One important feature of bribery and corruption in the UAE is "Wasta", an Arabic term that loosely translates to "clout", "influence" and ”power". Anyone who lives in the UAE will have heard the term. If as an expat, you have contacts with Wasta, this can help achieve goals that would otherwise be difficult or impossible. At the same time, if you offend someone with Wasta, the ramification can be more severe and can result in a prison sentence, where otherwise the result may be a fine or less. The influence of Wasta is apparent in UAE society and residents are aware that their influence can easily extend through the authorities and to the Judiciary. Various experienced expats on a number of occasions have telephoned me to advise of legal issues have simple said that there is nothing they can do because in Court, they will lose due to the opponent's Wasta. If they are the defendants and the complainant has Watsa, most experienced residents either simply pay what is being requested or leave the country, knowing that they stand no chance to defend themselves.”

iii. In relation to pre-trial detention and police malpractice Ms Stirling said in her report which she amplified in evidence before me, “In Dubai (or other Emirates), if you are accused by anyone of an offence, regardless of the nature of the offence, the police are likely to detain you without evidence in inhumane conditions at the police station or another detention centre. This detention can last for several days, weeks or even longer. During this time we regularly receive reports of:

Forced Confessions & coerced confessions;

Forced signing of un-translated documents;

Forced or coerced agreements to plead guilty under a 'promise' to be freed;

Deprivation of access to legal representation for lengthy periods of time;

Violence from other inmates due to shared cell arrangements;

Falsification of evidence by authorities; and

Bribery being possible on both sides in a dispute."

iv. With regard to access to justice, Ms Stirling said in her report, which she amplified before me, "A further problem facing defendants in the UAE is that access to legal representation is frequently impossible. There is no effective right to legal representation available in criminal cases. Unlike in Europe, the cost of engaging locally-registered lawyers is usually prohibitive. Most effective and reputable representation will demand payment immediately and up front for the entire process, typically exceeding US$50,000. In many cases, the client will rarely be involved in the case preparations, and lawyers are known to not turn up to hearings. Once payment has been received, their interest fades and assurances are made, but representation is not forthcoming. Lawyers who charge $10,000 or less will simply turn up to a hearing (if you are lucky) and ask for the most lenient sentence. A lawyer's presence in court at this price rarely impacts the outcome of the case. In fact, we are swiftly coming to the view that unless you can afford a '$100,000 lawyer', you might as well have no lawyer at all. The fact is that most foreigners detained cannot afford effective legal

representation and are therefore doomed to be convicted due to lack of representation."

v. Ms Stirling acknowledged that the respondent having been tried, convicted and sentenced *in absentia* has under UAE national law a legal right to a re-trial if extradited. However she said in her report, "….we have never had a client granted a new full trial after an absentia conviction, except in cases where the prosecution wishes to change or include additional charges. The issue is that in the absence of costly employed legal representation, most individuals can not push their rights under the procedures law……In other cases where our clients have been convicted in absentia, they have been immediately detained and unable to appeal their cases, due to the expense of instructing legal representation and the lack of legal aid provisions in the UAE."

vi. Ms Stirling also stated with regard to the physical wellbeing of the respondent, were he to be extradited, that in her opinion "…..there are risks to the physical safety of Mr Black. As I have detailed in this report, police brutality, abuse of detainees, and torture, continue to be serious concerns in the UAE, and appear to be endemic practices. According to my interviews with detainees, inmates who do not experience some type of abuse at the hands of the police or prison guards are the exception, not the rule. Beatings, denial of food and sleep, and verbal abuse are routine, both during the investigation process and during detention after sentencing. There is a clear threat to his safety posed by the authorities themselves; but there is also a considerable risk from other inmates as well."

vii. Ms Stirling also expressed concern about the length of sentence the respondent would be subject to if he was retried and convicted, or if he were returned and

served the sentence imposed. She said in her report, "Furthermore, in financial cases, no jail term is actually definitive in the UAE, as the accused is obliged to repay any claimed debt or monetary damages before he is released, regardless of whether or not he has completed his prison sentence. If an inmate is unable to pay, he will remain in prison until he is able to do so. According to my interviews with inmates, there have been cases of detainees forced to remain in prison for sometimes five times longer than their actual sentences required, simply because they were unable to collect the necessary funds to pay back the financial claims against them."

viii. Ms Stirling also expressed concerns about the medical treatment which would be available to the respondent. She said in her report, "Mr. Black suffers from asbestosis, a condition which requires constant monitoring and treatment, and regular medication. In prison, he is very unlikely to have access to the type of medical attention his illness requires; and indeed, the over-crowded and unhygienic conditions in prison are very likely to aggravate the disease. Regular monitoring of his condition will not be provided and prescriptions and medication denied. In the event that he suffers from pneumonia or other related illnesses, he will need emergency attention which will either not be provided or will be provided too late. He will not be provided with flu vaccinations or other recommended preventative measures that can be life saving for Mr Black."

Medical Evidence

[39] The parties agreed the medical evidence in this case which constitute a report from Mehrdad Malekian, a Consultant Cardiologist, dated 12 October 2016 and a report from

Dr KM Skwarski MD MRCP(UK), a Consultant Respiratory Physician, dated 20 September 2016. These confirm the respondent had myocardial infarction in 2012 and underwent angioplasty with insertion of two coronary artery stents in 2013. He has angina which is now controlled by oral medication with Aspirin (once daily), Statins (once daily), Ramipril (once daily), Atenolol (once daily), Lansoprazole (once daily), Co-codamol (once daily) for arthritic pain, Tabphyn for urinary frequency and uses a Glyceryl trinitrate spray (GTN). Non-steroidal anti-inflammatory drugs do not physically agree with him and he requires Co-codamol instead for pain relief. He also has extensive, bilateral calcified pleural plaques due to previous occupational asbestos exposure with small pleural thickening - but not diffuse pleural thickening. He has a diagnosis of early asbestosis. At this time asbestosis is in an early stage and does not cause any symptoms. However, this condition might progress and Mr. Black will then require a lot of medical attention to support him and to help his breathing - he could become very breathless requiring treatment with steroids and Oxygen supplements. The respondent has Chronic Obstructive Pulmonary Disease (COPD). He was diagnosed with COPD in 2006 and since then has been taking Salbutamol and Becotide inhalers. His symptoms then were shortness of breath on exertion, particularly when walking fast or climbing stairs or during chest infections. These symptoms were worse when he was working abroad in the United Arab Emirates. The respondent suffers from Ischemic Heart Disease (IHD) and gets angina pains when he exerts himself. He has a Glyceryl trinitrate (GTN) spray to help him to deal with acute angina pain. The respondent has to use his medication for IHD and COPD regularly. He cannot stop or run out of the prescribed medication, that would be detrimental to his health and could even result in sudden death. Moreover, he requires regular respiratory and cardio-vascular follow up. This should be

performed on average every 4 months. From a respiratory point of view, he needs regular follow up with Chest X-rays, CT chest every year and annual pulmonary function testing. Furthermore, in order to keep his health condition stable, his doctor is of the view he should live in a clean habitat and must not be exposed to any dust, cigarette smoke and other environmental hazards. He should receive Flu vaccination annually. He should avoid recurrent chest infections - and should he develop one, that needs to be treated promptly with antibiotics and possibly with courses of oral steroids.

Applicant's Evidence

[40] Mr Crosbie, for the applicant, indicated he would refer to a number of letters received from the requesting state and tendered in evidence a witness statement made by Lord David Ramsbotham GCB CBE, a former HM Chief Inspector of Prisons for England and Wales 1995-2001, dated 13 March 2011 and used by the CPS in England in relation to the extradition case of *Constantine Florin Tudor* v *UAE* [2012] EWHC 1098 (Admin). This statement I was told addresses the issue of prison conditions in UAE prisons. *Tudor* is a case in which the requested person challenged the sufficiency of the alleged *prima facie* case against him under s 84 of the Act and is reported on the narrow issue of hearsay and the competency of the use of a statement made by a co-accused against another accused under English law. That evidential issue does not concern me. However, the judgment does state:

> "[7] The grounds of appeal initially raised two grounds. The first relating to the ECHR is no longer pursued, and the only ground relied upon now is that the appellant's extradition is barred under Section 84 of the Act."

It appears therefore that Lord Ramsbotham's statement was used in this case to counter the suggestion that prison conditions in the UAE were not ECHR compliant. That issue was not pursued on appeal. Counsel for the respondent objected to the admissibility of the statement

on the basis that it does not conform to the evidential rules laid down in *Kapri* v *Lord Advocate* 2015 J.C. 30. I allowed the statement under reservation which I deal with below [see paras 57 to 62].

Lord Ramsbotham's Statement

[41] The statement is in the following terms:

> "STATEMENT OF WITNESS (Criminal Justice Act 1967; M.C.Rules 1981; Magistrates Court Act 19980.s 102)
>
> Statement of: Lord David Ramsbotham GCB CBE Age of Witness: (DOB 6.11.34) Occupation: Independent crossbench member of House of Lords; Her Majesty's Chief Inspector of Prisons 1995-2001
>
> This statement, consisting of five (5) pages, each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.
>
> Dated this day: 13th March 2011
> I was commissioned into the Regular Army in 1957, on coming down from Cambridge University where I gained a BA in history. I retired from the Army in 1993, in the rank of General, having served in Germany, Kenya, Hong Kong, Borneo, Gibraltar and Northern Ireland as well as England. I had commanded at every level from platoon to Army and also served in the Ministry of Defence as Military Assistant (Chief of Staff) to the Chief of the General Staff (Head of the Army) and Director of Public Relations (Army) during the 1982 Falklands War. My final appointment was as Adjutant General (Personnel Director), in which capacity I was responsible for discipline including the Military Corrective Training Centre, effectively the Army prison. Two and a half years later, during which time I chaired an acute hospital trust, and worked with the United Nations and World Bank on post conflict reconstruction, I was appointed HM Chief Inspector of Prisons in December 1995.
>
> The Chief Inspector is required, by law, to monitor and influence the treatment of and conditions for all prisoners in England, Wales and Northern Ireland and report on them to Parliament through the Secretary of State responsible for Justice. This is done by inspecting every prison every five years, supplemented by unannounced inspections as many times during the interim as the Chief Inspector may decide. He - or she - is also required to inspect Immigration Detention Centres and the prisons in the Overseas Territories with the same frequency. Inside a prison the Chief Inspector and members of inspection teams can go anywhere they wish.

I was then taken into the immensely impressive medical centre, which was the best and most up to date that I have seen anywhere in the world. I spoke with a Scottish prisoner, who was with the psychiatrist, noting that he was handcuffed during the process. I was told that this was usual practice during such sessions, to prevent any attack on the practitioner. The prisoner, who was clearly depressed by being in prison, made no complaints about his treatment, accepted that he had broken UAE law and would be deported at the end of his sentence. I also spoke with the pharmacist and one of the nurses responsible for taking a trolley around the prison, twice per day, to dispense medication. I was also shown the state of the art facility for scanned images to be passed on line to consultants in Dubai, thus obviating the need for prisoners to be taken to an outside hospital. Drug testing had taken place in police stations before a prisoner arrived at the prison, because presence of drugs in the body is a criminal offence. Any prisoner who had been found to be abusing substances was immediately put on supervised withdrawal in the prison.

Prisoners were then issued with personal clothing and bedding. Their shirts are marked with different coloured bands, denoting their length of sentence, so that everyone knows at once in which group they are. Carrying this, and their bedding, they were then moved to their allocated accommodation.

The whole complex can hold 4000 prisoners, but on the day of my visit, I was told that there were only 2500. Accommodation in the Adult Male Section is in square blocks, each with two landings, around a central, open, exercise area. A prison officer controls access to each landing, through a locked, grilled door, but, once inside, that is the end of locking. There are standard size cells off every landing, each holding 6 prisoners, on three double tier bunks. There are half walls on each side of the back of the cell behind which is a lavatory and a wash hand basin. The cells are large and airy, with good lighting, and an alarm bell behind each door, connected to the accommodation block staff office, where there is electronic equipment capable of locking and unlocking every cell door if necessary.

All prisoners are allowed 24 hour access to showers, telephones and a recreational area where controlled TV is shown. With the exception of the officer controlling access to the landing, and an officer in the block control room, prison staff do not normally go on to landings. As a result the atmosphere is very relaxed, which was appreciated by the prisoners I spoke to, in different blocks, from England, Ireland, India, Bangladesh, Egypt, Morocco, The Philippines and Iran. I was concerned at the number of potential ligature points, such as bars on windows and the frame of bunks. However I was told that both suicide and self-harm were rare, put down largely to the companionship that prisoners enjoyed - a sentiment I recognise when compared with high rates in regimes based on solitary confinement.
I was very impressed with the arrangements made for deportation. These begin the moment that a prisoner, sentenced to deportation, arrives in the prison, and include the settlement of his affairs, including the sale of accommodation and property, in advance of that event, through contact with relatives and friends. This means that, at the end of sentence, a prisoner is taken straight to the airport, to special facilities, and

then on to the relevant flight. This is the best practice that I have seen anywhere, and I commend it to other nations to follow.

During my visit I stopped and spoke with a number of prisoners, from a variety of nations, none of whom had any complaints to make to me about their treatment or the conditions. I had a particularly interesting talk with a South African prisoner, who admitted that he had been in a number of prisons in other parts of the world, but said that he could not fault the attitude of the staff in Dubai. I then discovered that every prisoner had the telephone number of the Director, and could telephone him, personally, at any time of the day or night, if they had any complaints. In sum I did not find the atmosphere in the prison in any way oppressive, or anything in the attitude of the prisoners that suggested that they were being maltreated. None of the warning signs that I have seen elsewhere were present.

I have seen Sir Ronald Flanagan's written evidence of the visit he paid to the prison, and agree with every word. Although I have not seen the evidence provided by Dr Christopher Davidson, I do not recognise the state of affairs in the prison that I understand that he has described. I have also seen the assurances given by the UAE Ministries of the Interior, Justice and Foreign Affairs, to Sir Ronald Flanagan that, if Constantine Florin Tudor were to be extradited to the UAE, any period that he was required to spend in police custody would be at the General Department of Correctional Institutions in Dubai, which I have described in this statement.

I make this statement for the purpose of attempting to assist the Court in its deliberation. I have spent much of the past fifteen years assessing the treatment of and conditions for prisoners, in many parts of the world, and in promoting the human rights approach to the management of prisons. I consider that there is nothing in the way in which prisoners are held and treated in the Adult Male Section of the General Department of Correctional Institutions in Dubai, that calls the extradition of a prisoner from the United Kingdom into question."

Discussion and Decision

[42] Counsel adopted the terms of the case and argument lodged supplemented by additional oral argument. I intend to address the issues raised in the order they appear in the case and argument.

The Initial Procedure Section 78 Argument

[43] Section 78 imposes a duty on the extradition judge to decide that the documents sent by the Scottish Ministers to the extradition court are conform to the legislative requirement and consist of (or include):

> "(a) the documents referred to in section 70(9);
> (b) particulars of the person whose extradition is requested;
> (c) particulars of the offence specified in the request;
> (d) in the case of a person accused of an offence, a warrant for his arrest issued in the category 2 territory;
> (e) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the category 2 territory of the conviction and (if he has been sentenced) of the sentence."

Section 70 (8) and (9) of the Act provide:

> "(8) A certificate under this section must—
> (a) certify that the request is made in the approved way, and
> (b) identify the order by which the territory in question is designated as a category 2 territory.
> (9) If a certificate is issued under this section the Secretary of State must send the request and the certificate to the appropriate judge."

If these documents, which consist of or include the request itself, a certificate from the Scottish Ministers certifying that the applicant is a category 2 territory and (b) to (e) above are not produced, the requested person must be discharged. If the documents are in order the sheriff is obliged to decide if the person brought before the court is the requested person, whether the offence specified in the request is an extradition offence and whether the requested person has been served with copies of the documents sent to the court.

[44] Counsel argued it was for the applicant to demonstrate this. Mr Crosbie argued this had all been done. Having reviewed the documents and heard the respondent in evidence I am satisfied that with regard to the present request all necessary formalities have been complied with. I specifically asked the respondent at a time when he was unrepresented by lawyers in 2016 whether he had copies of the extradition request and he indicated he had.

The request contains a warrant for the arrest of a person convicted for 12 months named as Garnet Black, aged 55, date of birth specified, passport number specified, for 'breach of trust', which I am satisfied on a reading of the request constitutes conduct which is the equivalent of embezzlement in Scotland and therefore is an extraditable offence. It has never been suggested the respondent is not the person named in the warrant. I am satisfied there is no technical basis relating to defective process upon which I could discharge the respondent. The certificate signed on behalf of the Scottish Ministers on 5 March 2014 is valid. Counsel has failed to demonstrate how the initial procedure has not been complied with.

Bars to Extradition s79

[45] Having decided that there was no initial obstacle to extradition I required to consider the questions posed by s79 of the Act to determine whether there are any statutory bars to extradition. This section provides *inter alia*:

> "(1) If the judge is required to proceed under this section he must decide whether the person's extradition to the category 2 territory is barred by reason of—
> (a) the rule against double jeopardy;
> (b) extraneous considerations;
> (c) the passage of time;
> (d) hostage-taking considerations."

Counsel identified only one bar to extradition which he said applied in this case and upon that basis the respondent should be discharged. He stated that on the evidence, s79(1)(b) applied and that if the respondent were returned to the UAE he would be subject to discrimination on the basis of his race, religion and nationality. No other statutory bar was stated. Section 81 defines what is meant by extraneous considerations in the context of extradition thus:

> "A person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that—

> (a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or
> (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions."

I was not referred to any specific authority on the meaning of s81 or the test to be applied. Counsel relied on the evidence of the quality of treatment in detention and custody received by David Haigh and the testimony of the respondent and Radha Stirling with regard to racism in the UAE manifesting in lighter sentences being given to Emiratis as compared to non-Emiratis for the same crimes, in support of his argument that this bar is relevant.

[46] However, I am not persuaded that s81 is relevant to this case. In *The Government of Turkey* v *Necmi Ozbek* [2014] EWHC 3469 (Admin) the meaning of the sub section was examined. Importantly, there was no evidence before me that the request for extradition was motivated by an ulterior purpose of prosecuting or punishing the respondent on the grounds of race, religion, nationality, gender, sexual orientation or political opinions. This is specifically stated to be a ground for refusal of extradition in article 4(1)(a) of the Treaty for Extradition between the UK and the UAE [Treaty Series No. 6 (2008) Cm 7382]. In *Necmi Ozbek* the court said:

> "15. The wording of section 81(b) means that a bar to extradition only occurs if, on return, the person might be subject to mistreatment by reason of the extraneous circumstances specified: race, religion, nationality, gender, sexual orientation and political opinions. That mistreatment must occur in one of four ways set out in the subsection, namely, prejudice at trial, punishment, detention, and restriction of personal liberty. These four ways are alternatives. The only context in which prejudice is relevant relates to the person's trial, not to any punishment, detention or restriction in personal liberty to which the person might be subject (see *Zadvornovs v Riga City Suburb Court, Latvia* [2011] EWHC 1257 (Admin), paragraph 5, per Collins J). In my view "detention" refers to the fact of detention by reason of the extraneous circumstances listed, not to its quality.

> 20 Thus the test for considering whether extradition is barred because of mistreatment by reason of the factors set out in section 81(b) is whether there is a "reasonable chance", "substantial grounds for thinking" or "a serious possibility" of this occurring. This test is less demanding than that in Article 3 of the Convention, where those resisting extradition must show strong grounds for believing that, if returned, they will face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment, or the test in Article 6 , where it must be shown that a person has suffered or risks suffering a flagrant denial of a fair trial (*Ulah v Special Adjudication [2004] 2 AC 323* , paragraph 24 per Lord Bingham)."

I consider this interpretation of s 18(b) of the Act to be highly persuasive (*cf Lodhi* v *Secretary of State for the Home Department* [2010] EWHC 567 (Admin) decided under very similar provisions contained in s6 of the Extradition Act 1989 which did extend the extradition bar to include the quality of UAE detention). However, I am persuaded by the reasoning in *Necmi Ozbec* and applying it to the circumstances of the present case I concluded there was a considerable body of evidence led before me that in the UAE prisoners are routinely discriminated against on the basis of race, religion, nationality and sexuality within the prison system and by the police. However, there was no evidence led that the purpose of the punishment or detention imposed was to mistreat prisoners by reason of race, religion, nationality, gender, sexual orientation or political opinions. There was evidence from Radha Stirling that, in her opinion, local Emiratis are sentenced by judges in the UAE more leniently than foreigners for the same offence but it does not follow from that mere opinion alone that the respondent has established, as a matter of fact, that foreigners are punished or detained by reason of their race or any other extraneous personal characteristic rather than for the offence they have been convicted of. There was no direct evidence as distinct from mere opinion evidence which, in my judgment, was sufficiently compelling to support the contention that there exists, as a matter of fact, a "reasonable chance", or "substantial grounds for thinking" or "a serious possibility" that the respondent in this case might be prejudiced at trial, punished or detained or restricted in his personal liberty because of his

race, religion, nationality, gender, sexual orientation or political opinions, if extradited. In my opinion any evidence or argument relating to prison or detention conditions in the UAE is relevant to s 87 of the Act and article 3 of the ECHR. Thus I am not persuaded to discharge the respondent on this ground.

The Conviction in Absence, s85

[47] The respondent was not present in Dubai when he was convicted on 30 April 2012. The request narrates he had left the country before a complaint was made and a prosecution commenced. I required to consider in terms of s85 of the Act whether he was convicted in his presence and if not, what consequences flow from that fact. Counsel argued that the respondent was unaware of the prosecution. Counsel argued that the respondent was not convicted in his presence and did not deliberately absent himself from the jurisdiction to avoid prosecution. The request narrates he was summoned at a local police station in Dubai, which I took to be equivalent of edictal citation, lawful under UAE national law (Article 159 of the Penal Procedure Code). The respondent gave evidence he was unaware of the proceedings until he was arrested by police in 2013 and taken to Hamilton Sheriff Court on the first attempt to extradite him. Mr Crosbie did not dispute that s 85 applied and did not suggest the respondent was a fugitive from justice who deliberately absented himself from the UAE proceedings and went on the lam. In these circumstances the Act requires that I consider a number of ancillary questions. Section 85 provides that before extradition can be ordered the sheriff:

> "(5) ……..must decide whether the person would be
> entitled to a retrial or (on appeal) to a review amounting to a retrial.
> (6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 86.

> (7) If the judge decides that question in the negative he must order the person's discharge.
> (8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights—
>
> (a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;
> (b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

[48] Counsel argued that the respondent did not have a right to an ECHR compliant appeal amounting to a review or retrial because the UAE has no system of legal aid and the respondent cannot afford to pay for a local Emirati lawyer. David Haigh gave direct evidence that he did instruct lawyers to represent him and he explained how expensive that was for him, para [23] above. Radha Stirling gave evidence that her organisation had never represented anyone who, in practice, could afford a retrial because of the cost of legal representation, para [38iv] above, although she did recognise the right to retrial of persons convicted *in absentia* is recognised in the UAE. Counsel submitted it was her opinion that there was a real risk the respondent would not receive a retrial if extradited. For reasons I articulate at para [64] below I do not consider the mere opinion of an expert witness to be sufficient alone to determine an ultimate issue in this case. The potential ultimate issue at this stage is whether UAE law provides that any retrial or (on appeal) any review amounting to a retrial would guarantee the procedural rights referred to in s85(8)(a) and (b) of the Act. It is for the applicant to satisfy me as a matter of fact that the law of the UAE provides these guarantees before I can extradite. Mr Crosbie referred me to correspondence from the UAE Ministry of Foreign Affairs dated 20 February 2014 and 6 February 2017 which confirms a right of retrial is guaranteed by articles 229, 230 and 224 of the Federal law No (35) of 1992 of the UAE.

[49] With regard to the law which applies, I found some guidance in two cases. In *Cupi* v *Albania* [2016] EWHC 3288 (Admin) the High Court said:

> "In so far as the proper approach to section 85(5) is concerned in *Da An Chen v Government of Romania* [2006] EWHC 1752 (Admin), Mitting J with whom Maurice Kay LJ agreed, stated, '8. Section 85(5) requires the judge to decide whether a convicted person who has not deliberately absented himself from his trial would be entitled to a retrial et cetera in which he would have the rights specified in section 85(8). "Entitled" as a matter of ordinary language must mean "has the right under law". It is the law of the requesting state which either confers or does not confer that right. It is a right which must be conferred, not merely the possibility of asking the court to exercise a discretion. Free of authority, I would hold that it is neither necessary nor right to examine what a requesting state does in practice. Its law will either provide clearly for the relevant entitlement or it will not.'"

In the case of *R. (on the application of Mucelli)* v *Secretary of State for the Home Department* [2012] EWHC 95 (Admin).) the High Court said:

> "Section 85 of the Extradition Act 2003 is engaged. It sets out a three-stage procedure for dealing with extradition requests in cases where convictions are recorded in absentia: first, the judge must decide whether the defendant was absent from his trial: s. 85(1); second, whether he deliberately absented himself: s. 85(3); and third (if the judge finds the defendant did not deliberately absent himself from his trial) whether under the law of the requesting state the defendant 'would be entitled to a re-trial or (on appeal) a review amounting to a retrial': s. 85(5). The retrial or review must be such that the person would have the rights conferred under Article 6(3)(c) and (d) of the Convention. In *Bohm v Romanian Judicial Authority* [2011] EWHC 2671, Irwin J held that in relation to the third issue, if the answer was 'no' or 'perhaps' or 'in certain circumstances', that would not be enough to meet the statutory test and the defendant in those circumstances must be discharged: [5]. In other words, we must be sure that the right to a retrial or a review on appeal exists."

Section 85(8)(a) and (b) of the Act specifically embeds Article 6(3)(c) and (d) of the ECHR into the Act as a guaranteed protection for requested persons convicted in their absence, notwithstanding the general human rights protection afforded by s 87. I concluded that the requesting state must guarantee as a matter of law in the requesting state, before the requested person can be returned, that he is entitled to a retrial or (on appeal) to a review amounting to a retrial, which includes the right to free legal aid if he has insufficient means to pay and the interests of justice require legal representation and separately the right to

confrontation in a way which is ECHR compliant. Unless there is evidence that the requested state guarantees these procedural rights on retrial or (on appeal) to a review amounting to a retrial, I cannot order extradition. The Extradition Treaty with the UAE makes no reference to these guaranteed procedural rights, at Article 4(1)(f) stating only that extradition shall not be granted under the treaty if the requested person has been convicted in absentia, 'unless an assurance is provided that the person will be entitled to a retrial or appeal amounting to retrial under the domestic law of the Requesting Party'. Notwithstanding what is said in the treaty, which is silent on the question of legal aid, the Act in s85(8)(a) and s85(8)(b) makes it clear that all part 2 designated countries must guarantee these procedural rights according to law in the requesting state before extradition can be granted. The Treaty has no direct effect in UK domestic law save for the extent to which its content is transposed into UK domestic law by legislation. In my opinion the law I must apply is contained in the Act, not in the Treaty.

Legal Aid

[50] Mr Crosbie indicated this matter had been canvassed with the requesting state in correspondence. The requesting state had been sent a copy of the case and answer as well as a copy of Radha Stirling's report and David Haigh's statement. Mr Crosbie was not in a position to confirm that assurances had been given by the requesting state that legal aid would be available if the requested person had insufficient means to pay for a lawyer and it was in the interests of justice. In a Memorandum of reply by the UAE Public Prosecutor lodged by the applicant which is attached to an e mail dated 21 February 2017 sent to Crown Office for the attention of Mr Crosbie the author states "……the local authorities (UAE) consider the appointment of a lawyer only in case the charges against him is the punishment

up to the death sentence or life in prison or if the case will be transferred to the Federal Supreme Court in Abu Dhabi (serious cases such as national security)." In a separate Interpretation Document lodged by the applicant dated 15 October 2015 (on page 6 of 13) in answer to the question 'Can he get free and independent legal consultations irrespective of the crime?' The document translated from Arabic states the following:

> 'There are no free legal consultations, however the wanted accused may enquire from the investigating prosecutor about procedures followed pursuant to the law, same is the case if the crime is misdemeanor according to the criminal law. The constitution and the law guarantee this right of defense as the article (28) of the constitution stipulates that the accused is entitled to appoint an able-bodied person to defend him during the trial and the laws specifies the situations wherein it is must the presence of the accused's lawyer.'

I took this to amount to a right to representation but not a right to free legal representation if the requested person has insufficient means to pay and the interests of justice require him to be represented. The letter from the UAE authorities to Crown office dated 6 February 2017 states:

> "The accused is always entitled of rights pursuant to the article (28) of the Permanent Constitution of the United Arab Emirates and article No. (100) of Federal Law No. (35) of 1992 concerning Criminal Procedure Law and its amendment, the accused is entitled to appoint an able person so as to defend him during the trial, and the attorney of the accused can attend the investigation session with him and go through the investigation papers unless the prosecutor opines the otherwise for the interest of the investigation."

The applicant also lodged an information pack issued by the British Embassy in Dubai for guidance of UK nationals detained in Dubai. It includes the following question and answer:

> "What kind of legal assistance is available?
> There is no legal aid in the United Arab Emirates. If you cannot afford a lawyer, you will have to represent yourself. We understand that the local authorities will only consider appointing a lawyer if the charges you are facing attract the death penalty or life imprisonment, or if the case is referred to the Federal Court in Abu Dhabi (e.g. serious national security matters
>
> In most cases it is advisable to have legal representation. Lawyers usually require an advance payment before accepting a case. In cases involving money the lawyer may

> ask for a percentage of the final settlement if the case is successful. Lawyers will usually submit a written defence statement for the judge to consider. Lawyers can discuss cases with the Public Prosecutor before they reach court. Consular staff cannot give legal advice, but they can provide you with a list of lawyers who speak English."

The Right to Confrontation

[51] With regard to the right to confrontation mentioned in s85(8)(b) of the Act, in the Interpretation Document, lodged by the applicant, the following extract, translated from Arabic, appears in answer to the question: 'Does the person wanted have the axiomatic right to cross- examine the affirmative witnesses?':

> "Article (90) of the same law [The Criminal Procedure Law No (35) of 1992] stipulates that "the prosecutor may hear each witness separately or he may make them confront each other".
>
> -Article (166) of the same law stipulates that "After hearing the witnesses to the prosecution the court shall listen to the witnesses by itself or upon the request of the accused person so as decide that there is no case against the accused and rule his innocence, otherwise it continued in investigation to listen the statement of the accused if he desired so, the prosecution may discuss with him and then the court will hear the defense
> witnesses who shall be questioned first by the accused, then by the responsible for the damages, the public prosecution, and the person claiming damages. The accused and the responsible for the damages shall address to the mentioned witnesses other questions in order to clarify the facts for which they testified in their answers to the questions addressed to them.
> Each of the parties may ask the rehearing of the mentioned witnesses in order to clarify or investigate the facts for which they testified, or ask to hear other witnesses for this purpose."

Mr Crosbie repeatedly throughout his submissions to me indicated the UAE authorities had been asked for specific information but the letters and documents lodged were all he had available to support the request. The translations from Arabic make difficult reading. However, I am satisfied, as a matter of fact, on the basis of this document that the accused,

under article (166) of The Criminal Procedure Law No (35) of 1992 of the UAE law, has a right to examine and cross-examine witnesses for and against him.

Conclusion with Regard to s85

[52] I am satisfied the respondent was convicted in absence and that he did not deliberately absent himself from the proceedings. He was unaware of the proceedings against him until 2013. I am also satisfied and it was not disputed that if extradited then in accordance with UAE law (articles 229, 230, 244 of the UAE Federal Law No (35) of 1992 promulgating the Code of criminal procedure, as amended) that the respondent would be entitled to a retrial or (on appeal) to a review amounting to a retrial which complies with s85(5) of the Act. However, the matter does not end there. The retrial or (on appeal) to a review amounting to a retrial must comply with s85(8)(a) of the Act before extradition can be ordered. I am not satisfied an essential statutory pre-requisite to extradition has been established by the applicant with regard to the legal aid guarantee contained in s85(8)(a) of the Act. It is for the applicant to demonstrate that free legal aid is guaranteed in the UAE to those convicted in absence if they have insufficient means to pay for legal representation and it is in the interests of justice to do so, before extradition can be ordered. I believed the respondent when he told me that he has insufficient funds to pay for his defence in the UAE and that he intends to contest the case against him, if extradited. He receives state funded legal aid in Scotland. I also believed and accepted the direct evidence of David Haigh at para [23] above and the opinion evidence of Radha Stirling at para [38iv] about the very expensive cost of privately funded legal representation in the UAE. Accordingly, in the absence of proof that a minimum procedural right to legal aid exists and is guaranteed, in Dubai, under UAE law, to those convicted of a misdemeanour, in their absence, I answer the

question posed in s85(5) in the negative, as a consequence of which I am bound to discharge the respondent in terms of s85(7).

The Prima Facie Case Provision in s 86

[53] Had I not discharged the respondent I would have been obliged to proceed under s86. Because the UAE has not been designated for the purposes of article 3 of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003/3334, I require to be satisfied that a *prima facie* case exists against the respondent. Counsel addressed me at some length in relation to this. I have examined the request in some detail. In the case and answer it is suggested the dispute between the respondent and M&M is of a civil not a criminal nature and extradition should be refused for that reason. In oral argument, Counsel stated that contained within the documents submitted in support of the request is a report from Al Muhairi Auditing, Chartered Accountants. This document he argued is problematic because it does not appear *ex facie* to tally with the sums allegedly embezzled. The currency described in the report is a mixture of US dollars, Euros and UAE dirhams, which is confusing. He also argued that the alleged offences relating to Hong Kong were not extraditable offences, for want of UAE jurisdiction.

[54] Section 86(1) provides:

> "If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient)".

Accordingly, corroboration is not required. I do have some sympathy with the criticism of the Al Muhairi (sometimes spelt Al-Muheri) report because it is difficult to follow and appears to be an audit on a wider scope than the request for extradition which relates to

embezzlement of US $ 250,000.00 in 'Breach of Trust', from the bank account of M&M and the misappropriation of 2 cheque books, one of which was used to embezzle a further US $95,000 on 27 October 2010 when it is said the respondent was in Hong Kong. However, looking at the request I am satisfied it contains statements from officials from M&M namely, Mabrouk Mabrouk Mohamed Najjar ,the company lawyer; Saeed Abdullah Saeed Abdullah Al-Muhairi, a director of the company; Sheik Ibrahim Abdul Rahman, a manager of the company; who all speak to the position of the respondent within the company, his authority to intromit with company funds, his unexplained disappearance on 26 October 2010, the unauthorised transfer of the money and the fact his phones were turned off after that day and the fact that he has been uncontactable since then. In addition there is the report of the Al Muhairi Auditing, Chartered Accountants which confirms the money is missing and shows an audit trail so far as can be demonstrated in relation to the money. In addition there are documents vouching the legal personality and ownership of the complainer company according to Dubai company law. A copy of the memorandum of association of the company is contained in the request detailing the objects of the company and the share split among its owners. The contract of employment of the respondent with the company is included. A company bank statement with Citibank for a specified account showing a debit of USD 250,000.00 on 26 October 2010 is also lodged with the request. As is a bank statement from HSBC which shows that on 26 October 2010 the sum of 95,000.00 (currency unspecified) was debited from the company's specified account using a customer reference which is identical to one of the numbered cheques mentioned in the internal memo from Melva Ordiz mentioned below. Documentation demonstrating the bank signing authority of the respondent accompanies the request. Also an internal memo of the company dated 26 October from its accountant Melva Ordiz alerting the owners to the absence of 2 numbered

cheques, one of which was used to draw down UAE 95,000.00. Another memo dated 27 October 2010 gives further details and indicates attempts have been made to contact 'Mr Gary' but his mobile is switched off. There is also a report from HLB Hamt Chartered Accountants dated 4 November 2010 which concludes *inter alia* that the respondent withdrew $252,000.00 from the company's City Bank USD account on 26 October 2010. There is also a departure certificate indicating the respondent left Dubai International Airport on 26 October 2016 at 11.26 bound for Hong Kong, on Flight 0746.

[55] In these circumstances I have no hesitation in concluding there is a case to answer by the respondent. In reaching this conclusion I did not take into account the evidence given by him to me which may be capable of amounting to an admission that he withdrew $250,000.00 on 26 October 2010 in Dubai, (although he denies any criminal intent in so doing) because it is for the applicant to demonstrate a case to answer is contained in the request and supporting documents, irrespective of what the respondent may say before me. I acknowledge there are discrepancies among the papers, in that the request indicates the 95,000.00 debited from the company's HSBC account on 26 October 2010 is in dollar denomination whereas the company's internal memo indicates this is actually UAE 95,000.00. Also, both accountants' reports make reference to apparent defalcations beyond the two principal sums mentioned in the request. With regard to the question of extra territorial jurisdiction raised by counsel I did not consider this as an obstacle to extradition. That issue went to the scope of the alleged fraud. The company's HSBC account was in the UAE. The fact that the money was allegedly withdrawn from that account in Hong Kong did not strike me as material nor from an examination of the request and supporting papers was I persuaded the UAE did not have jurisdiction to hear such a case. If there is some rule of UAE domestic law which excludes extra territorial jurisdiction in these circumstances the

respondent would require to lead evidence of that fact before me before I could take it into account but did not. A letter from the UAE authorities to Crown office dated 6 February 2017 states:

> "Regarding the matter of a contradiction in the extradition request on the cheque worth value of (95,000) U.S. dollars that shows in the judicial report (The consultation report issued from Ali Al muhairi, Accounts auditing and legal accountants Office) it shows that the cheque were in cashed in the United Arab Emirates, whereas the witness states that the cheque was cashed in Hong Kong.
>
> The Public Prosecution believed what is mentioned in the report of (The consultation report issued from Ali Al muhairi, Accounts auditing and legal accountants Office) as the report was issued from legally certified office, specialized in legal accounting, The report was prepare after meeting with the concerned persons and looking through the papers and documents submitted to them, as well as to the report was issued afterward. After taking the statements of the witness, Therefore the Public Prosecution believed that the cheque worth value (95,000) U.S. dollars were in cashed in the United Arab Emirates before the escaping the accused to Hong Kong"

I concluded, taking all this material at its highest, that there is a *prima facie* case to answer.

Human Rights Considerations s 87 of the Act

[56] Had I not already discharged the respondent in terms of s 85 I would have been obliged to proceed under s 87 to determine whether his extradition would be compatible with his Convention rights within the meaning of the Human Rights Act 1998. Before I could do that I would have required to rule on two anterior questions in dispute between the parties. These are (1) the evidential status and value of the Lord Ramsbotham document and (2) the status of Radha Stirling as an expert witness.

The Lord Ramsbotham Document

[57] Counsel objected to the admission of the document which he said was a statement and not a report. The statement was not an expert report envisaged by the rules laid down

in *Kapri* v *HM Advocate* [2014] HCJAC 33; 2015 J.C. 30. Counsel argued the statement was irrelevant. The document was not the best evidence and it was unfair to admit it as its contents could not be properly scrutinised and its author cross-examined. It was 6 years out of date. It related to a different case. If admitted I should attach little weight to it and prefer the direct evidence of David Haigh in relation to prison conditions in the UAE and the expert testimony of Radha Stirling in that regard.

[58] Mr Crosbie indicated the document which he called a report was admissible in terms of s202 of the Act.

[59] Section 202 of the Act provides as follows:

> **"202 Receivable documents**
> (1) A Part 1 warrant may be received in evidence in proceedings under this Act.
> (2) Any other document issued in a category 1 territory may be received in evidence in proceedings under this Act if it is duly authenticated.
> (3) A document issued in a category 2 territory may be received in evidence in proceedings under this Act if it is duly authenticated.
> (4) A document issued in a category 1 or category 2 territory is duly authenticated if (and only if) one of these applies—
> (a) it purports to be signed by a judge, magistrate or **[** officer **] 1** of the territory;
> **(**aa) it purports to be certified, whether by seal or otherwise, by the Ministry or Department
> of the territory responsible for justice or for foreign affairs;
> (b) it purports to be authenticated by the oath or affirmation of a witness.
> (5) Subsections (2) and (3) do not prevent a document that is not duly authenticated from being received in evidence in proceedings under this Act."

[60] The Lord Ramsbotham document was prepared in connection with the extradition case of Constantine Florin Tudor (*Tudor* v *United Arab Emirates* [2012] EWHC 1098 (Admin)). I asked Mr Crosbie if Lord Ramsbotham's consent had been obtained for its use in these proceedings. He indicated it had not and it was not intended to call Lord Ramsbotham to speak to the contents of the document. Mr Crosbie said the document had been sent to

Crown Office by the requesting state. He said it was authenticated by Lord Ramsbotham and was admissible.

[61] The evidential rules governing extradition proceedings are set down in *Kapri.* At para 127 the following appears:

> "There are many official documents which can be relied upon without their content having been spoken to in the oral testimony of a witness (*Davidson*, *Evidence*, paras 6.02 *et seq*; Walker and Walker, *The Law of Evidence in Scotland*, Ch 19); notably authenticated documents emanating from UK or Scottish government departments (Criminal Procedure (Scotland) Act 1995 (cap 46), sec 279A) and, where an Order in Council has been made, from certain overseas countries (Evidence (Foreign, Dominion and Colonial Documents) Act 1933 (23 & 24 Geo 5 cap 4), sec 1). There are specific provisions regarding the proof of documents emanating from extraditing states under the 2003 Act (sec 202). However, there is no general provision which allows the court to hold as proof of fact, merely by their production, the content of reports or other papers emanating from foreign governments, international governmental or non-governmental bodies, or academic or research institutions".

It seems to me that by merely tendering the document in this way the applicant invites the court to hold, as fact established, the content of the document. I am not persuaded that is competent. The meaning and purpose of s202 of the Act was explained in *Hanif Mohammed Umerji Patel* v *The Government of India, The Secretary of State for the Home Department* [2013] EWHC 819 (Admin) 2013 WL 1563074. The court stated:

> "33 However, as Mr Knowles QC submitted on behalf of the Government of India, this ground of challenge rests upon a fundamental misappreciation of long and well established principles governing the reception of evidence in extradition proceedings. Section 14 of the Extradition Act 1870 long ago provided:
> "Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act.
>
> 34 There is now a much simpler provision in section 202(3) of the EA 2003:
>
> > "A document issued in a category 2 territory may be received in evidence in proceedings under this Act if it is duly authenticated."
>
> 35 Section 202(4) sets out how a document may be authenticated.

> 36 The effect of authenticating statements is that they can be received by the Court as evidence of what the makers of the statements would say if they gave oral evidence in the extradition proceedings. In *Douse v Governor of Pentonville Prison [1983] 2 AC 464* at 470, Lord Diplock explained the position as follows:
>
> > "Section 14 of the Extradition Act where it speaks of 'affirmations' and 'depositions' and 'statements on oath' is dealing with documentary evidence. It makes admissible in evidence in extradition proceedings written statements of fact which fall within any of those descriptions and are duly authenticated in manner provided for in s15, notwithstanding that under English laws of evidence what appears in the statement would only be admissible in the form of oral testimony given on oath by the maker of the statement. The manifest purpose of the section, as has frequently been stated, is to obviate the necessity of bringing witnesses from one country that is a party to an extradition treaty to give oral evidence in the other…."
>
> 38 In short, the process of authenticating witness evidence in extradition proceedings allows statements taken abroad to be submitted as evidence in place of the witness giving live evidence against the subject of the extradition request."

[62] Lord Ramsbotham's document narrates his experience of a one day visit to the General Department of Correctional Institutions in Dubai on 22 February 2011. It appears to have been authenticated by him in connection with English extradition proceedings. It does not appear to have been taken or issued in the UAE. I think it more likely it was prepared and issued by Lord Ramsbotham after his visit to Dubai when he returned to the UK. It was sent to the Crown Office by the authorities of the requesting state. No explanation was tendered to me, as to why Lord Ramsbotham himself was not available to give evidence. I have no idea if the document continues to represent the views of Lord Ramsbotham about prison conditions in Dubai and is therefore reliable in that regard in respect of the respondent's case. In these circumstances I did not consider the document was issued by or emanated from the requesting state in a manner which s202 was intended to govern. Further, I considered it unfair to admit this document and treat its contents as evidence without the respondent's counsel having a fair opportunity to test the content of the document and the views expressed therein in cross examination, against the background of

the direct evidence of prison conditions in the UAE given by David Haigh, who spent almost 2 years in custody in Dubai in 4 different custodial settings (Bur Dubai Police detention centre; the main section of the Central Jail Dubai; the pre-sentence drug offender section of the Central Jail and the short term section of the Central Jail Dubai); between 2014 and 2016. In my opinion the document is inadmissible in these proceedings. If I was wrong in that regard and the document is admissible I deal below at para [71] with how I would have assessed it against the direct evidence given by David Haigh about prison conditions in Dubai.

The Status of Radha Stirling as an Expert Witness

[63] Mr Crosbie objected to the evidence of Radha Stirling on the basis that she is not an expert and did not possess a technical area of expertise. There was no established standard to which she could be held accountable. He said she could only recount in evidence what she had heard from others. He also said she was not impartial. She was an activist with an axe to grind. He said she simply adopted parts of public domain documents put to her by counsel. On the other hand, counsel argued she did have expertise which she gained over many years of experience dealing with alleged human rights abuses in the UAE. He said she was not a perfect witness. She has no law degree but she has considerable practical knowledge of the legal system within the UAE. She was described as 'an experiential expert' witness akin to a police officer who has built up years of practical experience of drug dealing who gives opinion evidence in drug trials. She has practical knowledge of what happens on the ground in the UAE when individuals are in custody. She knows how the legal system operates in fact and advises on strategies. She does not have a scientific methodology she

follows but her evidence is more than mere anecdotage. Counsel said she could put the facts asserted by a witness like David Haigh into context.

The Legal Test

[64] The threshold admissibility test for expert witnesses was extensively analysed and discussed in *Kennedy* v *Cordia (Services) LLP* [2016] UKSC 6 [2016] 1 W.L.R. 597. There is no need to repeat what was said there other than to remind myself of the Scottish iteration of what is known as the ultimate issue rule, articulated by Lord President Cooper, in *Davie* v *Magistrates of Edinburgh* 1953 S.C. 34 at 40:

> "Expert witnesses, however skilled or eminent, can give no more than evidence. They cannot usurp the functions of the jury or Judge sitting as a jury, …..Their duty is to furnish the Judge or jury with the necessary….. criteria for testing the accuracy of their conclusions, so as to enable the Judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence. The …..opinion evidence, if intelligible, convincing and tested, becomes a factor (and often an important factor) for consideration along with the whole other evidence in the case, but the decision is for the Judge or jury. In particular the bare *ipse dixit* of [an expert], however eminent, upon the issue in controversy, will normally carry little weight, for it cannot be tested by cross-examination nor independently appraised, and the parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert."

The ultimate issue of whether to grant extradition in this case is for me not for an expert. Applying the principles stated in *Kennedy* I am satisfied the respondent has raised the issue of human rights violations in the UAE in his defence to this application. The applicant does not concede this issue. As, factually, the court knows nothing of these matters it is necessary to lead evidence on them to resolve the dispute. I consider that Radha Stirling has an expertise in advising and managing cases where individuals in the UAE allege they have been subjected to human rights abuses. I consider she is in the same category of skilled expert witness as was referred to in *Kennedy* at para [41] where the court stated 'An expert in

the social and political conditions in a foreign country who gives evidence to an immigration judge also gives skilled evidence of fact.' The same applies in my view to extradition proceedings. Radha Stirling has given evidence as an expert in other extradition proceedings, notably in Westminster Magistrates' Court in *UAE* v *Bhatesh Kumar Gordhandas Saujani* (unreported). In his judgment of 5 August 2016 District Judge Purdy referred to and relied on her evidence. In her CV she specifies other cases she has testified or submitted reports in. I do not consider her to be an expert in UAE national law and procedure, or Sharia law, nor does she profess to be. However, she does have significant experience of dealing with the practical aspects of the UAE legal system and because of the volume of cases she has dealt with over a decade she is in a position to collate factual information coming from many clients which may be capable, if accepted and convincing, of indicating trends and supporting allegations of systemic abuses which may enable me to calibrate the likelihood of risk that these may also occur in the respondent's case, were he to be extradited. I do not consider, as a matter of generality, that the mere opinion of an expert witness is sufficient to determine the ultimate issue in this case. The ultimate issue, at this stage (had I not already decided to discharged the respondent) is whether there are established, substantial grounds to believe there is a real risk that if extradited the respondent will be subjected to human rights violations and hence his extradition is not permitted by the Act. In those areas where the respondent leads direct evidence of human rights violations, then provided that evidence is accepted by me as credible and reliable, I consider Radha Stirling's opinion evidence is admissible and if also found credible and reliable, relevant to add wider context to the incidence of human rights violations, if they are established. Her opinion evidence, if accepted, may enable me to calibrate the real risk of equivalent human rights violation happening to the respondent, if he were to be extradited.

Where the respondent leads no such direct evidence of human rights violation or inadequate evidence of such, I do not consider the mere opinion of an expert or for that matter the content of public domain documents such as UN reports on Human Rights and the like, could ever be determinative of the ultimate issue in question before me, namely, whether substantial grounds are actually established for believing that in his particular case there exists a real risk that the respondent will be subjected to human rights violations in the UAE and accordingly extradition is incompatible with his human rights as these are incorporated into UK domestic legislation by the Human Rights Act 1998.

[65] I do not consider that Radha Stirling is biased against the UAE but I shall take into account the fact that she is a human rights activist when assessing the significance of the evidence she gives. I note that she said in evidence that she wants to work with the UAE to address human rights violations where these occur in that state. She also stated that she and her organisation in the past have given credit to the UAE with regard to human rights achievements when legal reforms are introduced. She mentioned the programme to reform the bankruptcy laws. I also take into account the fact she was on oath before me to tell the truth and in her report declares:

> "This statement, consisting of 17 pages, each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.
>
> "I understand that my duty is to help the Court to achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within my expertise. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty."

[66] Counsel in the revised case and answer and in submission identified 3 specific articles of the ECHR which he said on the evidence would be breached. The parties were in

agreement on the terms of the tests to be applied. Counsel said articles 3, 5 and 6 of the Convention were engaged. Mr Crosbie did not dispute these articles were engaged.

Article 3 of the ECHR – No torture, Inhuman or Degrading Treatment

[67] Counsel argued that there are substantial grounds to believe the respondent will be subjected to torture or inhuman and degrading treatment or punishment if extradited. He adopted and elaborated in submissions on the terms of the case and answer. It states:

> "i) There is a real risk that Black's Article 3 convention rights will be breached. Police and prison guard brutality, abuse of detainees and torture are endemic practices in the UAE. Also those such as Black alleged to have committed financial offences are vulnerable to attacks in custody by violent offenders. In addition police stations, detention centres and prisons have conditions which are inhumane.
>
> ii) Black's accusers have extensive connections with the government, industry and media. This type of social power is known as *wasta* in the UAE. Judges, prosecutors, private lawyers and even prison officials will be aware of the accuser's *wasta* and this will impact on how Black's case is dealt with and on how he is dealt with in custody.
>
> iii) Various medical conditions have been described concerning Black in medical reports produced by Dr. Skwarski and Dr. Malekian. In custody there is a real risk that he will not have access to the type of medical attention his conditions require. This also co-relates Article 3 and Article 8 of the ECHR. In light of this in terms of Section 91 of the Extradition Act 2003 the physical condition of Black is such that it would be unjust or oppressive to extradite him. The requesting state have failed to address medical concerns raised by Black and have provided no evidence to detail how they will provide appropriate medical care to Black whilst in custody.
>
> iv) There are risks to the physical safety of Black. Police brutality, abuse of detainees and torture are endemic practices in the UAE."

[68] Mr Crosbie candidly stated he had only the letters from the UAE authorities previously referred to, extracts from UAE laws and parts of the UAE Constitution, to rely on. He doubted the letters amount to specific assurances as to how the respondent will be treated in custody, as a matter of fact, should he be returned. He stated the UAE authorities

were sent copies of the case and answer and the statements of David Haigh and Radha Stirling. The letter from the UAE of 6 February 2017 states:

> "The Permanent Constitution of the United Arab Emirates emphasis on human rights with high priority in accordance with international human rights standards, and the United Arab Emirates also committed to continuous improvement of its own laws and practices consistent with religious values and cultural heritage of the country and the Permanent Constitution clearly prohibits the torture and humiliating treatment (that's what it says in the book and as well the opinion of Ms. Hina Ray - extradition unit on 17/8/2016, when considering the extradition request of the accused lady (Samantha Elizabeth) and it supported by the certificate of Lord- David Ramsbotham, He has describe what he saw himself in prison of Dubai, it was clear to him that the prison facilities in Dubai were exceptional and the prisoners were treated with respect, and allows them to access to all the available facilities of health care center to more than have a meal."

[69] The test for the application of Article 3 was stated in *Lodhi* v *Secretary of State for the Home Department* [2010] EWHC 567 (Admin); 2010 WL 889441, a case which also involved the UAE. The court stated:

> "10 The question which has to be answered applying ECtHR jurisprudence, is whether there are substantial grounds for believing that there would be a real risk in the UAE that Mr Lodhi would be subjected to torture or other treatment which reached the high threshold necessary to constitute inhuman or degrading treatment or punishment. A real risk is more than a mere possibility but is less than a greater probability than not that an event would occur."

The onus is on the respondent to demonstrate a real risk exists. Whether the respondent has succeeded depends in large measure on the conclusions I reach with regard to the direct evidence led before me. Accordingly, I require to state my factual conclusions in relation to the evidence led.

[70] I found the respondent to be credible and reliable. I observed him over many months and listened carefully to his evidence as he gave it and as he was cross examined. I consider he gave his evidence with candour. He is obviously an intelligent man who worked at a senior level in an interesting and rewarding job in the Middle East. He enjoyed working in the Middle East. The reason for his departure was the alleged domestic violence suffered by

his daughter at the hands of his former son-in-law. I believed the respondent when he explained at considerable length the steps he took to extract himself, his wife, daughter and granddaughter from Dubai. I found him particularly compelling in his evidence about the status of his former son-in-law's family. I believed his evidence that his former son-in-law has influence with the local police. I also believed him in his evidence about the threats made against him by his former son-in-law, were he to be returned to Dubai and imprisoned. I have no reason to reject the evidence given that in UAE society non-Emiratis are discriminated against to varying extents in commerce, by the legal system, the police and the prison system. I accepted the respondent's evidence that Emiratis of high status enjoy privileges and have influence and preferment which non-Emiratis, non-Arabs, Westerners and Asians do not enjoy. I thought the respondent has conducted himself throughout the entire process before me with stoic patience and fortitude. I am not prepared to reject, as fanciful, his account of what happened to the $250,000, out of hand. I am conscious I have only heard his side of the story. As presently advised, I believed him that he did not act with criminal intent and if returned he intends to defend himself. I am also satisfied he does not have access to the funds necessary to engage a criminal lawyer privately in the UAE. Accordingly, I conclude that if extradited, he would have to defend himself.

[71] David Haigh struck me as an honest intelligent witness who gave his evidence with calm dignity. He was obviously a man who had been significantly physically and psychologically damaged by his ordeal in the UAE and was in the process of what I consider will be a long recovery. I cannot reach any conclusion about the merits of the commercial dispute he has with his former employers because I have only heard his side of the story and the present case is not about that. The focus of his evidence before me related to why he was in Dubai in May 2014 and what happened to him, in police detention, during the trial

process there and in prison custody after his conviction. With regard to these matters, I believed him when he said he was lured to Dubai. I believed his evidence when he indicated that high ranking Emiratis have influence over and access to the police and other aspects of civil society. I have no doubt he was telling the truth about seeing a civilian lawyer who acted for his former employers, in Bur Dubai Police Station in the company of a police officer pointing at him, before being questioned and beaten by police. The clear inference that that civilian lawyer had influence as to how he was badly treated and abused by the police, is irresistible. I fully accept he was repeatedly seriously assaulted by Dubai police officers and Tasered while detained at Bur Dubai Police Station. I accept he was interrogated and forced to sign a document in Arabic the content of which he could not understand. Thereafter, I believed the account he gave of squalid, overcrowded and insanitary detention conditions in Bur Dubai Police Station. I further believe he was sexually assaulted and raped in the car park of that Police station during his detention. I am also satisfied that the evidence he gave about poor consular access and no consular protection while in custody is true. In addition I believed him when he said the police authorities were both actively engaged in institutionalised racism against non-Muslims and non-Emiratis within the detention block and complicit in the racial abuse administered to non-Muslims by local prisoners within the detention centre. Albeit, I held Lord Rowbotham's document inadmissible in evidence, if I had to judge between its content based upon a single day's observation in one detention centre/prison in Dubai and the sustained ordeal endured by David Haigh who was held in 4 different custodial settings in Dubai over almost two years, I would have had little hesitation in preferring the direct tested evidence of David Haigh over the untested and limited narrative in the Lord Rowbotham document.

[72] With regard to Radha Stirling I found her to be an impressive witness. She was clearly very knowledgeable about the social and political conditions that pertain in Dubai. She gave evidence which I accepted about the social hierarchy in the UAE. She explained how influence (*wasta*) permeates throughout civil society, commerce, the law and politics. She explained how native born Emiratis have privileged access to power and authority which non-Emiratis are denied by virtue of birth. She explained that society and social attitudes there are strictly graded according to race. She gave evidence that high placed locals have access to and influence over criminal investigation and prosecution which is considered alien in this country. She explained that civil disputes can be criminalised under UAE law. She gave evidence that in Dubai there is no legal aid funded by the state and that legal representation for a fraud trial is extremely expensive, so much so that she has never known of a case of a person returned after conviction in absence who could afford to run a trial. She stated that in her opinion it was certain that if returned to Dubai, the respondent would be detained in Bur Dubai Police Station pending trial.

[73] In deliberating on my decision I read very carefully the facts and circumstances set out in *Lodhi* [2010] which are echoed in the present case. For example:

> "70 We are unable to accept the factual submissions on behalf of the Secretary of State. We recognise that the UAE has not had the opportunity to respond to all of the evidence, and, at the more general background level, it might well not suffice on its own to show that a real risk existed. But it has to be assessed in the light of other evidence that what happens in Dubai detention is very little observed and reported, and that a clearly independent judiciary, other democratic institutions, NGOs, a moderately free press, and academics, do not exist in the UAE or in Dubai, in a way which would normally bring abuses to attention and sanction. The general values which underlie Article 3 of the ECHR, while reflected in the Constitution and some other legislation, are not reinforced in practice by the type of check and balance which is commonly of value…..
>
> 71 The general picture is however supplemented by first and second hand evidence of the personal experiences of those who were not UAE nationals but were in detention before and after trial. This includes evidence about how Pakistanis and

> other sub-continental nationals were treated because of their nationality and race. There is no reason not to accept what is said at face value."

Equally, I read with care the facts and circumstances set out in *Saujani* [2016] which in part is a carbon copy of the litany of allegations of human rights abuse stated before me. For example, District Judge Purdy found it established that:

> "The culture of the U.A.E. is biased and indifferent if not actually actively hostile to those of Asian appearance irrespective of actual nationality. Islam is strictly the only faith which can be openly observed for those in police/prison custody. ….. Police and prison staff strongly reflect society's view of Asians. Further those detained are frequently kept in sparse inhuman police conditions. Violence to extract confessions are common place and access to lawyer/interpreter sporadic. Prison conditions are overcrowded, unhygienic and unhealthy with woefully inadequate health provision. Violence between prisoners is commonplace with no intervention by staff."

[74] I was concerned by the apparent lack of engagement by the requesting state which is also a factor which features both in *Lodhi* and *Saujani*. I do not consider the letters referred to by Mr Crosbie amount to UAE Government assurances that relate specifically to how the respondent will be treated medically if he is extradited nor do they address any of the concerns raised about detention conditions and police treatment specifically in Bur Dubai Police Station and also in the Central Jail Dubai. Specifically, the letter dated 6 February 2017 purports to address this issue but fails to in my judgement. The author of the letter refers to the Treaty between the UK and the UAE and suggests the negotiators of the Treaty would not have entered into it unless satisfied about human rights issues in the two countries. The letter states:

> "It is understood that if the concern representatives and negotiator from United Kingdom side were not convinced that the accused will be able to access the rights contained in international human rights documents in the United Arab Emirates, they would not sign the agreement, as it approved by the Government of United Kingdom."

The author then refers to and relies on what is called the Lord Ramsbotham 'certificate' and what may be a number of other cases in answer to concerns raised about prison conditions

and prisoner welfare. In my opinion the author of the letter misses the point. The convictions and understandings of the Treaty negotiators are irrelevant. The Treaty has no direct effect in UK domestic law save for the extent to which its content is transposed by legislation into UK domestic law. The Treaty specifically states, at article 4(1)(e), that extradition is barred "Where extradition would breach the person's human rights in accordance with the domestic law of the Requested Party". As a matter of international law the UK Government and the UAE are bound by the Treaty but the extradition judge is bound by the Act which provides at s87 that extradition must be compatible with the requested person's Convention rights or it cannot be granted. Because I am bound by the law contained in the Act, the concerns raised by the respondent about his human rights must be addressed before extradition can be ordered.

[75] Mr Crosbie in his submission said he considered he faced 'something of an uphill struggle'. I agree. Given the agreed evidence about the respondent's health, his IHD and COPD, his dependence on medication and the importance of living in an uncontaminated environment, I consider there are substantial grounds to believe that if extradited the respondent will be at real risk of an article 3 violation by reason of inadequate medical provision and treatment if he is housed in the squalid, unhygienic and overcrowded conditions of Bur Dubai Police Station detention centre which I accept is highly likely, pre-trial. I also consider that given the degree of influence high ranking Emiratis have over the local police, there are substantial grounds to believe that a real risk exists that if he is returned he will be subjected to torture or inhuman and degrading treatment or punishment in Bur Dubai Police Station instigated by his former son-in-law who is the sponsor of the complainer company and who has an obvious motive to apply pressure on the respondent to secure the return of his own daughter to Dubai or direct revenge against him for his part

in her departure and permanent removal from the UAE. For these reasons, had I not already done so in respect of s85(5) and s85(7), I would answer the question in s87(2) in the negative and discharge the respondent.

Article 5 of the ECHR – Right to Liberty and Security

[76] Counsel referred to the relevant parts of the case and argument which provides:

> "There is a real risk that Black's imprisonment will be indeterminate. Police powers to detain for indefinite periods without charge - Article 5. The excessive length of detention at all stages of criminal proceedings in UAE means there is a real risk of a breach of Article 5 ECHR. Incommunicado detention - Article 5."

Counsel argued that the legal system in the UAE gave the police powers to detain prisoners for lengthy periods of time without appropriate judicial oversight. He also said there was a real risk that the respondent would be detained indefinitely because even if he was retried and convicted and sentenced Sharia law provides that if the sum defrauded is not repaid the debtor can be detained until it is.

[77] Mr Crosbie's position was that he had no more than the documents already referred to to rely on. The letter from the UAE authorities to Crown Office dated 6 February 2017 states:

> "At the beginning the Public Prosecution wishes to clarify what was stated in section (2) that Mr. Garnet Douglas Black, would be subject to be detained under Sharia law pending settlement of money and the fact is that the above mentioned will be punished according to the criminal law, not Sharia law as mentioned, That is the Federal Penal Code (3) of 1987"

[78] David Haigh gave evidence that he was informed in Bur Dubai Police station that he was accused of taking money from his employer. He did appear before a judge after he was arrested. Bail was set on appeal but at an unrealistic level which he could not secure because his assets in Dubai had been frozen. He said he was taken every 4-6 weeks for bail review.

He said the hearings only lasted minutes in chaotic conditions sometimes without translators. For the crime he was convicted of, he was sentenced to two years custody (a determinate sentence) in August 2015 which was backdated and with remission he was scheduled for release and deportation in November 2015 which was before the Twitter allegations emerged. The new allegations meant he was further detained until these were dismissed in March 2016, after which he was deported from the UAE.

[79] I am not satisfied that the evidence of this experience, distressing as it was for David Haigh, meets the high threshold necessary to establish that there are substantial grounds to believe that there is a real risk that the respondent's article 5 rights will be violated should he be extradited to the UAE and he will be likely to be detained indefinitely. Further, no evidence of Sharia law was led before me. Foreign law is a matter of fact and I would need to hear evidence before I could reach any conclusion that, under Sharia law, an embezzler incurs civil liability for the money stolen and if convicted and punished by imprisonment he can be detained in prison indefinitely until the money taken is repaid. The letter of 6 February 2017 from the UAE authorities indicates that if punished the respondent will not be punished according to Sharia law. Accordingly, I would not discharge the respondent on this basis.

Article 6 – Right to a fair trial

[80] Counsel referred to the case and answer and stated in argument that the evidence disclosed that there are substantial grounds to believe that if extradited there is a real risk the respondent will not be guaranteed a fair trial which is in breach of article 6 of the ECHR. The case and argument states, so far as is relevant:

> "d) Systemic issues

i) Lack of Judicial Independence - Article 6(1)
ii) Bribery and corruption - Article 6(1)
iii) Lack of opportunity to challenge prosecution case - Article 6(3)(d)
iv) Chronic inconsistency in judicial decision making - Article 6(1)
v) Inadequate or no access to legal representation - Article 6(3)(c)
vi) Lack of provision of interpreters - Article 6(3)(a) and (e)
vii) Chronic inequality of arms - Article 6(3)(d)
viii) Chronic lack of disclosure - Article 6(3)(d)
ix) Inadequate time to prepare defence - Article 6(3)(b)
x) Chronic bias in legal system towards prosecution case with inadequate testing of prosecution evidence - Article 6(1) and (3)(d)
xi) Failure to have criminal proceedings and deliver judgements in public
xii) Failure to provide adequate reasons for decision - Article 6(1).
xiii) Inadequate trial and appeal process - Article 6(1)
xiv) Inadequate opportunity for accused/appellant to participate in court process - Article 6 and lack of genuine evidential analysis
xv) Article 6(3)(c) - Black will be unable to defend himself through legal assistance of his own choosing as he lacks the requisite funds. Also there is no effective legal aid system in the UAE so he will not be given legal assistance free."

[81] Mr Crosbie could do no more than refer me to the documents lodged. He was critical of the evidence given by Radha Stirling in relation to the trial process in the UAE. He said some of it was simply referring to public domain documents like the UN Special Rapporteur's report by Gabriela Knaul dated 5 May 2015. This practice was criticised in *Kapri.* During Radha Stirling's evidence I stopped counsel from doing this and I agree it adds nothing to the case. Public domain documents like the UN Special Rapporteur's report and the US State Dept 'United Arab Emirates 2015 Human Rights Report' are written at such a level of generality that I did not consider them determinative of any issue before me. With regard to the fair trial guarantee contained within the ECHR I considered the general evidence of criticism about the UAE trial process given by Radha Stirling was not determinative either.

[82] David Haigh gave evidence that he did have lawyers who were paid for by friends. His complaint was that he had inadequate access to his lawyer and the hearings he attended

were so short as to be meaningless. He gave evidence that translators were not always present and he was not allowed to speak to the judge. He also said the proceedings took place in chaotic conditions in crowded courts. He was not allowed to keep court papers while in custody.

[83] On the evidence led, I am not persuaded that there are substantial grounds established that would enable me to conclude that there is a real risk of an article 6 violation if the respondent were extradited on the basis of systemic issues such as:

i. Lack of judicial independence albeit I acknowledge public domain documents recognise such complaints and Radha Stirling spoke to this.

ii. Bribery and corruption.

iii. Lack of opportunity to challenge the prosecution case. There was only counsel's assertion that there was no disclosure under UAE national law.

iv. Chronic inconsistency in judicial decision making. Again there was only counsel's assertion this is true.

v. Inadequate time to prepare defence. Again there was insufficient evidence to support this basis.

vi. Chronic bias in legal system towards prosecution case with inadequate testing of prosecution evidence. Again there was insufficient evidence to support this basis.

vii. Failure to have criminal proceedings and deliver judgements in public. Again there was insufficient evidence to support this basis.

viii. Failure to provide adequate reasons for decision. Again there was insufficient evidence to support this basis.

ix. Inadequate trial and appeal process. In fact, David Haigh gave evidence that he did appeal his conviction to the criminal appeal court and would have taken the

case to the cassation court but did not, for fear of being further detained in the jurisdiction pending the outcome of the case. Further, he gave evidence which I accepted that the Twitter allegations against him were actually dismissed by the trial court 6 months after they were levelled against him, which fact militates against this basis to find substantial grounds to support a finding of a real risk of a fair trial guarantee violation, should the respondent be extradited.

x. Inadequate opportunity for accused/appellant to participate in the court process and lack of genuine evidential analysis. Again, there was insufficient evidence to support this basis.

[84] Having heard the evidence of the respondent I am satisfied as a matter of fact that if he were extradited he would be unable to afford a criminal lawyer to represent him in any prosecution. That would mean he would be forced to defend himself against complicated charges in a tribunal conducted entirely in Arabic with limited translation into English. The extradition request contains a *prima facie* case which is translated in to English. However any further documents relied upon by the prosecution at trial will be in Arabic. The cost of translation will have to be borne by the respondent, which he cannot afford. Article 6 of the ECHR provides *inter alia* that 'everyone' has the following 'minimum rights' which include the right:

> '(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.'

This is one of the minimum rights guaranteed by the Convention and the Human Rights Act 1998 to '*everyone*' who enjoys the protection of the Convention which includes a requested person**.** This minimum guarantee is a component of a fair trial because, without it, no one would be guaranteed access to justice. Every day in Scotland trials are conducted in courts

where translators are present and guaranteed and those who cannot afford to represent themselves have access to a publicly funded legal aid lawyer if they qualify under the legal aid scheme. A highly skilled, professional and properly regulated cadre of experienced lawyers do this kind of work for Government legal aid rates, in the public interest. Access to this kind of representation is not a privilege; it is a basic human right.

[85] I consider that if the respondent were to be extradited to the UAE and detained in custody pending trial, which I consider he would likely be and there has been no assurance he would not be, in his physical condition, there to defend himself, in Arabic, which he cannot speak, without the guarantee of free legal representation, if the interests of justice so require, then that would constitute a breach of his article 6 right to a fair trial. I consider there are substantial grounds to believe that there is a real risk that the respondent in this case if extradited would as a matter of fact be put in that position. No assurance has been received that he would be bailed but even if it were, I would still consider that without a guarantee of free legal aid if he has insufficient means to pay for legal assistance, if the interests of justice so require then a real risk of an article 6 violation is established. Had I not already decided to discharge the respondent on the basis of s85(5) because the applicant has failed to show his retrial or appeal would be ECHR compliant, I would have discharged him on this basis as well. Accordingly, I would answer the question posed in s87(2) in the negative.

Postscript

[86] I thank counsel, Mr Dunn and Mr Crosbie for their submissions. On a number of occasions when the respondent was unrepresented and could not obtain legal aid, despite many attempts so to do, I repeatedly warned him, in keeping with the neo-managerial

culture that sheriffs and summary sheriffs operate within, that this case would proceed and he would need to represent himself. If he had represented himself I think there is a real possibility he would have been extradited because he would not have been able to articulate the legal basis of his defence and marshal the human rights case finally presented in the way his defence team has so effectively accomplished. In so acting, with persistence and determination for their client, counsel and Mr Dunn have acted in the highest tradition of the Scottish legal system. I must also thank Mr Crosbie for his thorough, fair minded, well balanced and sanguine presentation of the applicant's case. I also recognise the fact that SLAB did eventually review its decision and rightly grant legal aid in this case.