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REVIEW OF EXTRADITION

We, the designated extradition judges at the City of Westminster Magistrates' Court, offer the following representations for your consideration.

General Background

1. Only designated extradition judges are authorised to hear extradition cases and all such cases are heard at one central London Magistrates' Court. Historically, the rationale behind these arrangements was a recognition that extradition cases were often extremely technical and difficult and occasionally highly sensitive, politically or otherwise. Only by having a relatively small cadre of judges, who over time gain confidence and develop expertise, and by having legal advisers trained in extradition procedures, is it possible to undertake the work competently, effectively and efficiently and provide consistency of approach. Further, solicitors and barristers who undertake this work tend to be local to the extradition court and acquire similar expertise and knowledge of the fairly extensive extradition jurisprudence. All this is of material benefit both to the court, the advocates and those facing extradition.

2. It will therefore be apparent to the review team that we have a particular interest in any changes that might be recommended following the review which, if implemented, might impact on our work practices and affect the course of extradition hearings (EHs). The Extradition Act 2003 has now been in operation for about 7 years. During that time there have been many challenges to the proper interpretation of the Act, some of them very ingenious. These various challenges have necessarily delayed the process significantly while the same point is taken on many different occasions before eventually being resolved by the higher courts. About 10 cases involving a considerable number of different points have been resolved by the House of Lords / Supreme Court. In our view the law is much clearer than it was until comparatively recently. Robust and clear decisions have been taken that enable us to deal with most cases far more speedily than has hitherto been the case. As judges we appreciate settled law. This enables us to undertake our task with confidence. We would ask, and ask strongly, that there is no change to the legislation unless it is absolutely genuinely necessary. Any change, however small, is bound to engage the ingenuity of the lawyers and in turn result in lengthy litigation while the new law is examined and tested.

3. The review is not just limited to "the operation of the Extradition Act – and the US/UK extradition treaty – to make sure it is even handed," but also covers the operation of EAWs. We set out our representations under each of the five areas upon which the review proposes to focus.

Breadth of Secretary of State's discretion in an extradition case;

4. In part 2 cases, when cases are sent to the S of S for her decision as to whether the person is

to be extradited [s.87(3)], we are aware that she has to consider the case as directed by s.93. The questions posed in s.93(2) are factual and capable of being answered in the negative in 99% of cases within 5 minutes. Answering those questions does not require the exercise of any discretion. The 2003 Act makes no provision for the exercise of any S of S discretion. We are never informed, and the extradition court is never a party, or privy to any representations that might be made to the S of S. It seems to us rather strange that the S of S should have any discretion, unless the scope of such discretion has been clearly defined within statute. We note the requesting state can appeal against the S of S's order for discharge [s.110(1)] as can the requested person appeal against an extradition order [s.108].

5. The 2003 Act does not envisage a case returning to the S of S after the appeal court hearings have been completed. There are however a number of cases where that has happened. Two American requests immediately come to mind, Tajik and McKinnon, and precisely what is causing the delay is unknown. Such delays can lead to a public perception that 'political' considerations are affecting what should be a quasi-judicial decision.

The operation of the European Arrest Warrant, including the way in which those of its safeguards which are optional have been transposed into UK law;

6. This is a big topic. The EAW has now been with us for 6/7 years. It is perhaps instructive to note the numbers that are being dealt with by the extradition court. There are accurate recently compiled figures as a result of a written question by Caroline Flint, see *Hansard* 9 Nov 2010: column 190W.

YEAR	Surrenders to the UK	Surrenders from the UK
2004 (*calendar year*)	19	24
2005 (*calendar year*)	63	77
2006-07 (*business year*)	84	178
2007-08 (*business year*)	107	415
2008-09 (*business year*)	88	516
2009-10 (*business year*)	71	699

The numbers for surrenders from the UK next year 2010-11(*business year*) will show a similar exponential rise. It is also interesting to note the EU states to which most requested persons were sent in 2009-10

Poland	425
Lithuania	55
Czech Republic	34
Germany	21
France	19
Ireland	19
The Netherlands	18
Romania	18
Spain	16
Latvia	15
Italy	10
Hungary	8
Estonia	7

Slovakia	7
Belgium	6
Sweden	6
Cyprus	4
Portugal	3
Malta	2

One person was sent to each of Austria, Bulgaria, Finland, Greece, Luxembourg and Slovenia. [Total 699]

7. Such is the volume of this work that we have two court rooms undertaking extradition work each day. We have between 2 and 8 new cases daily, say an average over the 6 days (we sit on Saturdays) of 4 / 5 per day. That is about 25 - 30 a week and the numbers are increasing. The City of Westminster Magistrates' Court in Horseferry Road SW1 is closing down in August 2011 and the new **Westminster Magistrates' Court** (on the site of the old Marylebone Magistrates' Court on the Marylebone Road) will become the extradition court. It is intended that 3 of the 10 court rooms will be devoted to extradition work. You will understand that there is a great volume of this work and with the need, in all contested cases, for extradition judges to record their findings in writing, considerable pressure on their time.

8. A large proportion of those wanted for extradition would rather not be extradited. That perhaps is stating the obvious. A requested person remanded in custody who is facing return to serve a sentence of imprisonment often perceives that HMP Wandsworth offers much more comfortable accommodation and better food than his home prison. There is absolutely no incentive for him to cooperate with the extradition process. Indeed the longer he can draw out the proceedings the better he perceives his position to be. With or without the assistance of his lawyer he can raise any number of arguments and if eventually his extradition is ordered he can appeal. There is an unfettered right to appeal which is frequently invoked regardless of merit. Typically what he is hoping for is to serve out as much of his time here in the UK. He knows the requesting state is required to give him credit for all such time served in the UK [Article 26 FD].

9. There are many challenges to extradition requests when the jurisprudence has established that the point raised is unarguable. Some requested persons put forward what is later established to be completely untruthful accounts, seemingly as a delaying tactic or as a desperate attempt to frustrate the extradition. Even when such false evidence has been exposed as a lie, they continue to maintain their position and appeal. Any appeal delays the process for on average another four months. We are concerned about the number of 'expert reports' being obtained at considerable public expense in cases where the jurisprudence indicates the point raised is either without merit or irrelevant to the decision making process.

10. Whatever the motives for those seeking to contest or delay the extradition process, it would be helpful to have positive incentives to encourage cooperation and disincentives for those who do not. One approach would be to restructure the LA fees in a way that discouraged protracted litigation – perhaps a fixed fee. The 2003 Act allows for costs to be awarded [sections 60/133]. At the moment costs are never applied for if extradition is ordered. Many requested persons are able to find significant cash securities to meet bail conditions. Many want to return to this country in due course. In our view those who unsuccessfully challenge extradition proceedings should normally be asked to contribute to the legal costs. Where there is a cash security such contribution could quickly and simply be deducted from the security, as whoever actually put up the money it is deemed is to be the requested person's security see **Stevens v Truro Magistrates' Court [2001] EWHC Admin 558** and **Jodka v Kent Crown Court [1997] EWHC Admin 346.** However, that might mean not renewing

bail when extradition is ordered in some cases if it were considered that there would no longer be a sufficient security to secure compliance with the surrender arrangements.

11. Given the terms of article 26 of the FD, it is probably not feasible to alter our extradition law so as to allow the Administrative Court to direct that certain periods of remand in custody should not count in the requesting state. In domestic criminal cases where leave to appeal has been refused by the single judge, for convicted defendants who persist in pursuing unmeritorious appeals before the full court, the court can direct that periods already spent in custody shall not count towards the sentence.

12. As can be seen from the statistics above, the volume of work is increasing and something has to be done to quicken up the whole process. This will minimise any advantage, real or perceived, gained by delay. So reducing the time from arrest to final hearing **must** be achieved and the time taken for each hearing **must** be shortened.

The ways to achieve these objectives are:-

(1) **LA must be immediately available at the first appearance at court**. THIS IS THE MOST IMPORTANT CHANGE REQUIRED. It always was so available under the 1989 Act, and the way the current arrangements operate results in many requested persons being unrepresented at their EH. The problems we encounter over LA are many and various; they cause serious delays and add appreciably to the costs of the whole process. Every requested person immediately qualifies under the 'interests of justice' criteria for LA. However, all applications currently have to be means-tested and therein lies the problem. For example, a person who has been arrested and remanded in custody often finds it difficult to obtain the necessary documentation, and his difficulties are often exacerbated if he does not speak English and is unable to contact friends or family. The number of remands and the costs incurred (prison accommodation, interpreters, court time, CPS etc.,) whilst waiting for LA to be arranged, are considerable. The requested person's solicitor of choice understandably does not wish to incur costs until the LA has been granted so there are long periods when absolutely nothing happens. The robust approach of telling the requested person that the EH is going ahead, with him being unrepresented, has all too regularly to be employed, but it is very worrying and does not in any practical sense satisfy Article 11.2 of the FD that he "shall have a right to be assisted by legal counsel..." True he has a right, but it is not one he can exercise because of all the hurdles put in his way. What is so obvious to us is that if LA were granted immediately, without the necessity of means-testing, there would undoubtedly be a very considerable net saving of public money. The burden on the LSC might, but not necessarily, be increased, but the savings elsewhere would more than adequately compensate. The problem needs to be looked at holistically. If only s.184(1) "The appropriate judge may grant free legal aid to a person in connection with the proceedings under Part 1 or Part 2 before the judge or the High Court" was not limited to Northern Ireland but was extended to England! The fixed fee idea canvassed in paragraph 10 above might be offered in those cases where the requested person was to be remanded in custody on first appearance. In order to save some money it would be possible to prohibit the issue of the so-called "certificate for counsel" unless the requested person was first means-tested. The sort of cases that require such a certificate usually need a little time for preparation, and should not therefore give rise to any delay whilst any means-testing is being undertaken.

(2) Realistically, it is only with a legally represented requested person that the court can make firm and enforceable case management directions. The extradition court needs to identify the issues at an early stage (difficult to achieve with the unrepresented) and,

where necessary, to indicate that the court will not entertain particular submissions and will not permit any evidence in support of such submissions to be given at the EH. Quite how robust the court can be will be governed by the support or lack of it from the Administrative Court.

(3) Currently those subject to an extradition order have an unfettered absolute right of appeal. The Administrative Court has indicated that other than in 'no issues taken' cases the extradition judge should record his findings and explain the basis for his decision in writing. If the law were changed so that it became necessary first to make a paper application to obtain the leave of a single judge to appeal, with no right to appeal a refusal to grant leave, the Administrative Court's extradition work would be halved or better at a stroke. Any application for leave to appeal could be served on the CPS as well as on the Administrative Court. The CPS could be given say 7 days to make representations and 'single judges' would have before them (i) the application for leave, (ii) CPS's representations and (iii) the extradition judge's written reasons, and then s/he could determine whether leave should be granted; perhaps that could be done within a week or ten days of any CPS response. The actual mechanics could quite easily be decided upon following a short period of consultation. Not only would such changes dramatically reduce the workload in the Administrative Court in extradition appeals, it would also quicken the whole process. However we recognise, this would be unlikely to satisfy the requirement that "a final decision on the execution of the EAW should be taken within a period of 60 days after the arrest of the requested person" see Article 17.3 FD.

(4) If point (1) above were put into effect the appeal court would no longer have to deal with so many 'appellants –in - person' and that might be regarded by the appeal court as a desirable outcome.

"including the way in which those of its safeguards which are optional have been transposed into UK law"

13. The grounds for optional non-execution of EAWs are as set out in Article 4 of the FD and they are:-

1. Lack of reciprocity of non- 'framework list' tax offences
2. Where the requested person is already being prosecuted in the UK
3. Where the UK considered prosecuting but decided against
4. Where the offence could have been prosecuted in the UK but is statute barred (but as the UK does not have limitation periods this does not apply in the UK).
5. Where the requested person has already been finally judged in a third state and where there has been a sentence and that sentence has been served ...i.e. double jeopardy.
6. Where the requested person is a UK national or ordinarily resident in the UK and is wanted to serve a sentence in the requesting state, and there is a power (not currently available) to allow him to serve that sentence here.
7. Where the offence was committed in whole or in part within the UK or outside the territory of the issuing member state in circumstances where the UK would not exercise extra-territorial jurisdiction in similar circumstances – (dealt with by our definitions of extradition offences).

14. Those of these optional safeguards that have been incorporated as bars within sections 11 to19, e.g. double jeopardy, have not proved troublesome, and nor have the definitions of extradition offence and the application of sections 64 and 65 proved difficult.

15. The introduction of the 'passage of time' bar has proved particularly troublesome. The FD makes no mention of passage of time. Requesting states, who follow the FD and draft their EAWs in accordance with it, will never offer any explanation or detail relating to delay. They of course are aware of the ECHR obligations of article 6 'rights to a fair trial' and the need to provide defendants with a trial 'within a reasonable time'. It must have been quite deliberate to exclude passage of time considerations from the EAW scheme and rely on the issuing member state to ensure compliance with article 6. However, as the 2003 Act has included section 14, when this bar is raised it almost always becomes necessary to seek further information from IJAs. This inevitably results in delay and increased costs. Furthermore IJAs get irritated having to supply information which, from their perspective, is unnecessary as it is neither relevant nor required under the FD.

16. Equally section 20 is often troublesome. As far as we are aware, every category 1 territory, although interestingly not England & Wales, has statutory provisions for retrials following convictions in absence. All the member states are signatories to the ECHR and are aware of the article 6 fair trial provisions and of the decision in the ECtHR in **Sedjdovik**. A defendant, on return to the requesting country, is notified of his conviction in absence and his right to apply for a retrial. The domestic law provisions entitle him, as of right, to such a retrial unless it is established in the requesting state (our emphasis) that he waived of his own free will, either expressly or tacitly, his right to a fair hearing. It should be noted that such provisions provide an entitlement, and it is not a question of some judicial discretion. Any such provision in those terms or similar would, we suggest, be an adequate guarantee, in terms of Article 5 of the FD, and should satisfy section 20(5) without the necessity of the extradition court making findings as required by section 20.

17. The exercise the extradition judge is required to undertake in section 20 will most often necessitate seeking further information from the IJA. That causes delay and increased costs. The whole exercise, whatever the decision made by the judge in the UK, can be re-litigated afresh once the requested person has been extradited. In borderline cases, the judge is forced into making a decision on limited sub-standard information, and the enquiry he is required to undertake would be so much better conducted in the requesting state where all the information and evidence is to hand. For example, the issue is whether the requested person deliberately absented himself from his trial. The information supplied by the IJA is inadequate to allow the extradition judge to conclude, beyond reasonable doubt, (even though it is suspected) that he absconded. The judge then has to go on to decide whether there is an entitlement to a retrial which will be article 6 ECHR compliant. That whole exercise may in fact be completely artificial or academic as when the requested person is surrendered the requesting state may conclude, on the basis of the better evidence available there, that he in fact did abscond and so is not entitled to retrial. In such a case there has been delay and increased costs incurred by the extradition court undertaking a pointless exercise. The IJA is not interested and will have no regard to any finding made under our section 20. If the UK courts determine the requested person did not abscond and 'deserves' a retrial that cannot and would not bind the requesting state who will make their own determination on the issue in accordance with **Sedjdovik.**

18. We consider the 2003 Act is unnecessarily prescriptive when it states in many sections that if such and such does not happen the requested person must be discharged. Why deny judicial discretion? For example see sections 4(5) and 46(8). Why on earth should a person who has

consented to his extradition who has not been returned within the 10 days but whose flight has been fixed for the 12th day have the right to seek discharge on the 11th day and the appropriate judge be obliged to discharge him? Worse still is section 76(5) if, because of an oversight, say not appreciating when the date was fixed that it was a bank holiday, the hearing does not begin 'on or before the date fixed' but starts a day late. Is it not totally absurd that the judge must order his discharge, whatever the extenuating circumstances and regardless of the wishes of the requested person? Presumably the rationale behind such provisions is to ensure compliance with the FD timescales. We think it odd that a requested person can so easily escape extradition when the particular 'failing' is fairly inconsequential. Such provisions are at odds with the CPRs which espouse an objective of convicting the guilty and acquitting the innocent and discourage sharp lawyer and/or technical points. What such provisions are mostly likely to achieve is to provide the opportunity for a requested person to go into hiding whilst a new request is being prepared.

Possible ways of reducing the volume of EAWs that otherwise inevitably lead to an EH.

19. We would like to see greater flexibility in the extradition process with the courts being allowed to deal with appropriate requested persons in a quite different way. Many requested persons are wanted for 'trivial' offences (but see paragraph 23 below) often committed many years ago. If extradited they may have to wait for a long time before their trial is heard, and if convicted may not receive a custodial sentence. We have considerable sympathy with their situation.

20. We are not united in the following approach, (which we recognise would immediately fall foul of the strict time limits set by the FD) but something along these lines might alleviate the stress on the volume of cases. Where requested persons have e.g. settled in the UK, kept out of trouble whilst here, held down good jobs and have partners and children attending school and a settled home life, and are persons the court would be prepared to bail, then consideration should be given for the police/ SOCA / the court to –

    1. Allow them to retain their passports
    2. Require them to contact the JA and make arrangements to surrender voluntarily at their own expense within an agreed time frame
    3. Perhaps take a cash security to encourage compliance
    4. Then defer or adjourn the EAW for say 4 months during which time if they have complied the JA will have withdrawn the EAW. If not they will have to surrender to the extradition court or be re-arrested.

    There are many who fall within the category of persons who would, we feel, cooperate with such a process. For such persons extradition is extremely disruptive for them and their families. Such a scheme as is proposed here could very substantially reduce the number of extradition hearings and save a great deal of time and money. As those subject to such a process would have been arrested by the police, their identities would have been established (photo, fingerprints and DNA taken) and if they did decide to go underground they might find that not particularly easy. However the scheme operates, we would envisage it being very precise in setting out what was to happen. Maybe the IJA would send a summons to the requested person with a copy to the extradition court. The mechanics would have to be worked out. As it is, at present, a number of persons become aware of the existence of an EAW and before their arrest they return to their country and try to sort out their difficulties. Rather depressingly there are a number who are picked up at Dover or even Calais, who were

on their way to meet, by appointment, the prosecutor, but were stopped at the border and then subjected to the EAW extradition process. Those who are arrested often seek to delay their extradition, maybe for bogus reasons, when in truth what they are trying to do is to compromise the warrant. They instruct lawyers 'at home' who apply to have the EAW withdrawn and this is achieved in a number of cases. Successes of this kind rather undermine the EAW scheme. Once it is known that the EAWs can in some circumstances be compromised then everyone wants to be given the chance, and if that is permitted it causes delay and increased costs.

21. It might be possible to refer back to the IJA along the lines as suggested by Thomas LJ in **Hoffman v Circuit Court of Zielona Gora [2010] EWHC 3314 (Admin)** at paragraph 7.

22. There needs to be increased diplomatic and/or government pressure brought to bear on member states not to use the EAW surrender arrangements other than for suitable cases. What is 'suitable' we will leave to others to define. We acknowledge 'suitable' is a weasel word but we do not want to say trivial. At present there are many cases that are, we think, not suitable for extradition under the EAW scheme. In "accusation" cases the EAW is not suitable unless there is a strong probability that in the event of conviction an immediate prison sentence is likely to be imposed. Any such assessment should have regard to the age of the case and the current circumstances of the requested person if known.

23. We have heard mutterings that some would welcome the introduction of "a triviality bar." Such a bar was available under the 1989 Extradition Act, but that was only in the High Court and not in the extradition court (at Bow Street). Under section 11(3)(a) of the 1989 Act the High Court could order the applicant's discharge "by reason of the trivial nature of the offence." We would very much welcome not having to deal with 'trivial cases,' but the last thing we want is a triviality bar. Such a bar will open up interminable submissions, and frankly what one person regards as trivial another takes the contrary view. There already is a triviality bar built into the FD as only those cases that attract the minimum sentences specified qualify as extradition offences. Although we recognise it fails to take into account the practical realities of sentencing. In this country if someone steals a bar of chocolate there is a theoretical maximum penalty of 7 years' imprisonment. There must be an argument that any convicted person sentenced to imprisonment is facing extradition for something non-trivial. The fact that the underlying offence is either non-imprisonable in our jurisdiction, or regarded by us as trivial should not prevent surrender. By way of example extradition was recently ordered in respect of a man sentenced to six months imprisonment for not having a driving licence in his home country. From our perspective an extraordinarily severe punishment. But we know nothing of his antecedent history or the particular facts of the case. If he had been driving e.g. a coach load of school children on a hazardous mountain road without a licence that would put a different complexion on the seriousness of the case. The point is there would be submissions on triviality in many cases and almost always it would be necessary to seek further information from the IJA. That creates delay and adds to the costs. Furthermore it introduces a basis for refusing extradition which was not envisaged by, and would be contrary to that which was agreed in the FD.

24. It will be apparent from the above that there is a recurring theme to our representations, namely that all too often it is necessary to refer back to the IJA for further information. Each time that happens it creates delay and adds to the costs. The FD envisaged a quick and simple procedure with all the relevant information contained in the *pro forma* EAW. The FD was agreed to by Ministers and is based on mutual trust between member states. The UK Parliament in enacting the 2003 Act did not apparently comprehensively share that mutual trust and added 'safeguards' about which the extradition court has to be satisfied. Many of

these safeguards require the seeking of further information much to the annoyance and irritation of IJAs. Any changes to our law that might require further information being sought should be avoided.

25. When the UK finally joins the *Schengen Information System* [SIS2] there will be a likely explosion of new cases. It is important that our judicial systems are fully prepared, and have in place procedures for the speedy despatch of this new source of work.

Whether the forum bar to extradition should be commenced;

26. This refers to s.83A which was inserted by the Police and Justice Act 2006, Schedule 13 and has not yet been brought into force.

> "(1) A person's extradition to a category 2 territory ("the requesting territory") is barred by reason of forum if (and only if) it appears that –
>
> (a) a significant part of the conduct alleged to constitute the extradition offence is conduct in the United Kingdom, and
>
> (b) in view of that and all the other circumstances, it would not be in the interests of justice for the person to be tried for the offence in the requesting territory.
>
> (2) For the purposes of subsection (1)(b) the judge must take into account whether the relevant prosecution authorities in the United Kingdom have decided not to take proceedings against the person in respect of the conduct in question.
>
> (3) This section does not apply if the person is alleged to be unlawfully at large after conviction of the extradition offence."

27. This section was introduced following considerable public concern (perhaps generated by PR companies and press pressure) following the decisions in **Bermingham** (the Nat West 3), **Norris** (obstruction of justice) and **McKinnon** (Pentagon computer hacker), all extradition requests from the USA. The facts of those cases will be all too familiar to the review team. We think if s.83A had been in force at the time those cases were before the extradition court, the cases would (i) have taken days longer to resolve and (ii) the decision would have been that each person ought to face trial in the USA. We cannot think of any case, already decided under the 2003 Act, in which it would have been in the interests of justice for it to have been prosecuted in the UK rather than in the requesting Category 2 territory.

28. If this section is brought into force, it will generate extra hours of litigation and as it is so widely drawn it will be very difficult to control the evidence called in support of the party seeking to resist extradition. This is a highly contentious and political issue and perhaps we should not contribute to the debate other than to express the view that if introduced there will be inevitable delay in extradition hearings. Of course, we accept that that alone is not a good enough reason for it not to be introduced. Where it is necessary to find out the attitude of the UK prosecutors, there will inevitably be delays, and perhaps in borderline cases a lack of willingness or reluctance by the CPS to announce a decision not to take proceedings lest extradition is refused when a prosecution might then be an option. The forum submission will be employed not only in those cases where there is an obviously arguable issue, but in many other less promising situations. We will have to decide (i) what is significant, (ii) what other circumstances are relevant and (iii) why it might not be in the interests of justice etc.,

Whether the US-UK Extradition Treaty is unbalanced;

29. We understand that since the introduction of the 2003 Act no UK request has been refused by the USA, whereas the UK has refused a handful of their requests although always in fully reasoned and publicly announced decisions. The UK and the USA have enjoyed extradition law treaty arrangements for some 150 years without serious, if any, complaint on either side. In accusation cases there is a need for the American request to establish in the UK a 'case to answer' based on a description of the conduct, whereas in America the test is slightly different namely showing 'probable cause'. We think, in practical terms, that is a distinction without a difference. We think if either test is made out the likelihood would be that the other test would also be made out. The difference is academic and semantic and is not unlike trying to explain the difference between a '*prima facie* case' and a 'case to answer'.

Whether requesting states should be required to provide prima facie evidence.

30. This is essentially a political decision. We do not imagine anyone is suggesting that the Category 1 territories (EAWs) should in the future be so required as that would mean withdrawing from the FD or persuading all the signatories to agree amendments. At present the UK has designated some Category 2 territories as not being required to provide evidence to establish a 'case to answer'. Those arrangements work tolerably well. Any state currently designated would regard it, at the very least, as a slight on their integrity if such designation were to be removed. We do not know the process undertaken for deciding which Category 2 territories should or should not be designated. As far as we know there has never been a case of a state once designated losing that designation.

31. The trend must be for there to be greater mutual trust between states and essentially, in an ideal world, every state would be designated as not being required to provide evidence. That time may be some way off but to reverse the position now would effectively put the clock back and diminish the effectiveness of cross border criminal justice enforcement.

32. We say nothing about whether any particular state deserves designation or even to be an extradition partner. Those decisions are of crucial importance but are essentially political. Once made the courts have to assume a high level of mutual trust exists between extradition partners.

33. Those are our representations. If the review body would like any further thoughts on any aspect of the review we would be very happy to oblige.

The Extradition Designated District Judges of the City of Westminster Magistrates' Court 30Th December 2010.