Extradition is undoubtedly an important tool in the fight against international crime but at the same time is also, rightly recognised as amounting to a breach of a person's Article 8 ECHR right to a private and family life.

The legitimate aim of extradition law in the UK is to uphold and honour the UK Government’s obligations pursuant to European-wide agreements and International treaties between the UK and countries outside of Europe, whilst scrutinising the legality of the extradition request and considering carefully the balancing act of deciding whether or not the undoubted breach to a person’s human rights would be disproportionate to the legitimate aim of extradition.

The legitimate aim of extradition law is to achieve justice for victims of crime and to ensure that the ease at which a human being can travel the world does not allow impunity. It is submitted that it is not a legitimate aim of extradition to be in itself part of a punishment in advance, a plea bargaining tool, a threat, or punitive post-conviction. Extradition’s legitimate aim is achieving international justice.

In this sense, it is submitted that there are fundamental flaws to the UK’s Extradition system both legally and procedurally and furthermore it is submitted that there are remedies, perfectly viable remedies, that the UK Government and Court system could implement in order to reduce the impact of extradition in relation to human rights' breaches, make the system fairer, and the outcome less draconian. It is submitted that these remedies are not only conceivable, but they are implementable and that other Countries have proven that these safeguards are accepted by other States in order to operate a functional and fit for purpose extradition system.

In summary, the recommendations are as follows:

**Accusation Extradition Requests:**

a. European Investigation Orders  
b. European Supervision Orders  
c. Mutual Legal Assistance Requests  
d. Pre-Trial hearings via Video Link  
e. Dual Representation by both a UK Extradition Lawyer and a state funded Defence Lawyer in the Requesting State  
f. Introduction of likely sentence, or sentence range, taken at the Prosecution’s highest case rather than reliance on maximum sentence available.  
g. Evidential test implementation.  
h. UK financial support for those extradited to be bailed to a UK funded address should the criteria for bail in the Requesting State be met.  
i. Assurances that resisting extradition cannot and will not be used to demonstrate flight risk potential and / or lack of respect for the Court in
the Requesting State at any part of the proceedings, in particular in relation to bail.

j. Guaranteed immunity from any evidence submitted in the UK Extradition Proceedings being used by the prosecution in the Requesting State.

k. Guaranteed Repatriation to serve sentences in the UK for UK nationals on conviction abroad following extradition on Accusation Extradition Requests.

Conviction Extradition Requests:

l. No extradition for UK Nationals in relation to sentences imposed abroad but for UK Nationals to serve their sentence in the UK in relation to Conviction Extradition Requests.

Extradition Requests in General

m. Removal of an absolute irrefutable (in practical terms) presumption in favour of EU Member States.

n. Removal of blind acceptance of Government to Government Assurances in favour of a requirement for practical evidence of real change in the Requesting State not just in law, but in practice and procedure as well.

o. Right to equal and free medical treatment in Requesting State

p. Removal of the Westminster Magistrates' Court policy on ordering Costs against Requested Person’s in extradition proceedings as a general rule.

General

q. Serious and fundamental revision to the “Forum Bar” to extradition to make it a realistic and practically possible alternative to extradition.

r. Removal of the possibility of a “permission” stage to the Statutory Extradition Appeal process.

s. Change in law to allow those subject to UK Domestic Prison Sentences, who are eligible for the National Offender Management Service’s Early Removal Scheme to their home nation and who are also facing extradition to the same Requesting State, to be extradited at the point that they are eligible to be removed under the scheme rather than forced to remain until the end of the UK Domestic Sentence due to the extradition proceedings continuing (which cannot proceed until the end of the custodial element of the UK Domestic Sentence.

General

Does the UK’s extradition law provide just outcomes?

- Is the UK’s extradition law too complex? If so, what is the impact of this complexity on those whose extradition is sought?
1. The submission here is that yes it can provide just outcomes but equally it can provide unjust outcomes. It is very much Judge dependant and not uniform. The same argument put before two different District Judges could result in completely different outcomes. The decisions of the High Court on appeal tend more towards a uniform approach which is why the right of appeal must be preserved in full and automatically without exception.

**Is extradition law fit for purpose in an era of increasingly multi-jurisdictional crime?**

2. It is submitted that the broad brush approach of the “one size fits all” EAW simply does not work. Extradition Courts in the UK end up attempting to consider what the penalty or perceived seriousness of accusations or convictions and sentences would be under the law of England & Wales without knowledge of the legal, procedural, and cultural norms of the Issuing Judicial Authorities legal systems. There is no criticism of the UK Courts in this regard as they cannot be expected to have this knowledge but the EAW in its form, tends to suggest that all legal systems are the same and perception of offences are the same.

**To what extent is extradition used as a first resort when prosecuting a crime committed in another jurisdiction? Should greater use be made of other remedies?**

3. This is a serious problem with extradition requests by way of the European Arrest Warrant with an almost automatic, factory line methodology used in generating EAWs by certain Member States. The law means that there is absolutely no financial implication for issuing an EAW. There are many other tools that Member States and Requesting States could use in order to investigate and prepare their cases and an EAW or Extradition Request is often used as a first option rather than a last resort.

**European Arrest Warrant**

**On balance, has the European Arrest Warrant (EAW) improved extradition arrangements between EU Member States?**

- How should the wording or implementation of the EAW be reformed?

4. There should be more detail required in the European Arrest Warrant in relation to the conduct description and the evidence against the Requested Person. In addition there should be not just a maximum sentence requirement but a likely sentence requirement. EAWs are issued for, for example, very minor shoplifting and the only sentence indication in the EAW is the maximum possible sentence in the Country for the crime in general, which could, for example, be 7 years. This then allows the EAW to meet the statutory criteria but in reality it may be that the sentencing range and likely sentence would be well below
the extradition offence criteria which would impact greatly on consideration of bars to extradition and proportionality arguments under Article 8 ECHR.

5. The IJA should be made to specify the exact stage that they are at in the case procedurally and what the next stages are.

6. The EAW should only be issued by an actual Judge who has carefully considered the case and the evidence against the Requested Person once they have assured themselves that no other measure or tool is a more proportionate way forward.

- Are standards of justice across the EU similar enough to make the EAW an effective and just process for extradition?

7. No. Each Member State has its own laws, procedures, sentencing policies, cultural norms, societal views on crime and punishment and so one crime in one jurisdiction could be considered and dealt with in a totally different way to another Country. There is no harmonisation of sentencing policy either.

- How will post-Lisbon Treaty arrangements change the EAW scheme once the UK opts back in to it?

Prima Facie Case

In circumstances where a prima facie case is not required, do existing statutory bars (the human rights bar, for instance) provide sufficient protection for requested people?

- Are there territories that ought to be designated as not requiring a prima facie case to be made before extradition? What rationale should govern such designation? What parliamentary oversight of such designation ought there to be?

8. An evidential test should be required in all cases outside of Europe regardless of the nature of the relationship between Governments. No person should face the terror of extradition with the possibility of never returning to their home nation without being able to examine and consider the case and the evidence against them and no Court or Government body should be capable of making such a decision or order on the basis of a perceived trust.

9. Extradition Requests come through Prosecutors, Elected Officials, Government Departments and Judges and each of these are capable of bias, and abuse of office. A uniform and unchallenged belief that mistakes cannot be made and bad faith would not exist should not exist.

10. In practice, a Person can be detained and then extradited to a different continent and then be faced with a choice of accepting a plea bargain
deal which allows them to return home to their home nation, or risking a life in jail abroad without the possibility of repatriation to serve the sentence in a UK prison if convicted at trial, and all before they have seen the full case against them. It would not happen in the UK and the fact of extradition should not be in itself a punitive or prosecutorial leverage tool.

**UK/US Extradition**

*Are the UK’s extradition arrangements with the US comparable to other territories that do not need to show a prima facie case? If so, should the US nonetheless be required to provide a prima facie case, and why?*

- Sir Scott Baker’s 2011 ‘Review of the United Kingdom’s Extradition Arrangements’, among other reviews, concluded that the evidentiary requirements in the UK-US Treaty were broadly the same. However, are there other factors which support the argument that the UK’s extradition arrangements with the US are unbalanced?

11. The US/UK arrangements are not equal in practice. From a practitioner’s point of view, it feels like the Courts consider that there should be little resistance to a US Extradition Request as opposed to a request from another Part 2 territory such as Brazil or Argentina for example. It should be noted however that the arrangements between other Part 2 Extradition Act 2003 territories and the UK (in cases where the territories are also designated territories) face similar issues and challenges in relation to evidence.

12. Another feature of US extradition that should be revised is the threat of draconian sentences and refusal of repatriation in order to force a guilty plea to a lesser crime with a reduced sentence and guaranteed repatriation. This is an example of the fact of extradition being used as coercive tool for a prosecutor to gain an advantage over a suspect that would not exist if the suspect was in their own Country facing their own justice system.

**Political and Policy Implications of Extradition**

*What effect has the removal of the Home Secretary’s role in many aspects of the extradition process had on extradition from the UK?*

- To what extent is it beneficial to have a political actor in the extradition process, in order to take account of any diplomatic consequences of judicial decisions?

13. The Home Secretary has attempted to remove herself from the Extradition Process and from challenges being made to her in relation to Human Rights considerations. She claims to have removed her power to consider Human Rights considerations in Part 2 cases despite her duties as a public body pursuant to the Human Rights Act.
To what extent are decisions of where to prosecute certain crimes and whether to extradite influenced by broader political, diplomatic or security considerations?

14. The Forum Bar, it is submitted, is a bar that has no teeth. The Forum Bar needs to be redrafted in a way that actually allows for proper consideration of the most appropriate venue for prosecution and removes the possibility of any political or diplomatic considerations.

Human Rights Bar and Assurances

Is the human rights bar as worded in the Extradition Act 2003, and as implemented by the courts, sufficient to protect requested people’s human rights?

15. It is submitted that in general, it is possible that extradition is barred on Human Rights grounds and practically this does occur not infrequently. In our experience there are greater chances of discharge on appeal in the High Court than at first instance in the Magistrates’ Court.

Is the practice of accepting assurances from requesting states to offset human rights concerns sufficiently robust to ensure that requested people’s rights are protected?

- What factors should the courts take into account when considering assurances?
- Do these factors receive adequate consideration at the moment?
- To what extent is the implementation of assurances monitored? Who is or should be responsible for such monitoring? What actions should be taken in cases where assurances are not honoured?

16. It is our submission that the practice is absolutely not sufficiently robust to ensure the protection of a Requested Person’s Human Rights. Where the risk of, or actual systemic and fundamental human rights’ breaches have been proven to a UK Court, an assurance from a Requesting State would tend to override any concerns raised on the basis of mutual trust and diplomatic relations between States. Instead, every time the same issue is raised, for example Argentinean prison conditions and Article 3 ECHR breaches that would arise, the case has to be re-proven on the individual circumstances of each Requested Person so as not to set precedent in relation to that State and could be defeated easily by a Government Assurance that no breach would occur without any mention of the practical procedures that would be put in place to prevent the breach nor any mention of how, in practice, the procedures would be monitored independently. Cultural norms, and practices and procedures in Countries do not simply change overnight with a letter from a Government Minister in one Country assuring a Government Minister in another Country that all will be fine.

Other Bars to Extradition
What will be the impact of the forum bar brought into force under the Crime and Courts Act 2013?

17. See above

What will be the impact of the proportionality bar in relation to European Arrest Warrant applications recently brought into force under the Anti-social Behaviour, Crime and Policing Act 2014?

18. This in principle should codify some of the existing Article 8 ECHR High Court authorities.

Right to Appeal and Legal Aid

To what extent have changes to the availability of legal aid affected extradition practice, and the provision of specialist legal advice to requested persons?

19. Extradition is a niche and specialist area of law that should not in any circumstances be dealt with on a first appearance at Court, and should not be considered without specialist legal representation. In our submission, the means test for legal aid should be removed and the use of Counsel in the lower Court should be increased. This in turn would, in our view, reduce the number of effective Extradition Appeals as it would ensure that right outcome was achieved, following full consideration and argument by skilled advocates, in the first instance and that appeals would then only follow in more limited and justified circumstances

- What has been the impact of the removal of the automatic right to appeal extradition?

20. As above, this would be a grave mistake and would amount to many serious miscarriages of justice in the present system

12 September 2014