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Case No: AC-2023-LON-002449
Case No: AC-2024-LON-002508

IN THE HIGH COURT OF JUSTICE
DIVISIONAL COURT
ON APPEAL FROM THE WESTMINSTER MAGISTRATES' COURT
SENIOR DISTRICT JUDGE GOLDSPRING

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 January 2025

Before:

LORD JUSTICE LEWIS
and
MR JUSTICE JOHNSON

- -

Between:

GOVERNMENT OF JAPAN	**Appellant**
- and –	
(1) JOE ANTHONY CHAPPELL **(2) KAINE LEE WRIGHT**	**Respondents**

- -
- -

Ben Keith and Georgia Beatty (instructed by the **Crown Prosecution Service**) for the **Appellant**
Mark Summers KC and George Hepburne-Scott (instructed by **Foxes Solicitors)** for the **First Respondent**
Edward Fitzgerald KC and **Sam Blom-Cooper** (instructed by **Russell Cooke LLP)** for the **Second Respondent**

Hearing dates: 14, 15 and 20 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 29 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE LEWIS:

1. This is the judgment of the court.

INTRODUCTION

2. These are two appeals by the Government of Japan in connection with their request that the respondents, Joe Anthony Chappell and Kaine Wright, be extradited to Japan for prosecution for an offence of robbery in Japan. The Senior District Judge ("the judge") ordered the discharge of each of the two respondents.

3. In the case of Mr Chappell, the judge decided on 11 February 2022 that there was no *prima facie* case for him to answer on the evidence presented to the court as required by section 84 of the Extradition Act 2003 ("the Act") and ordered his discharge on that date.

4. The judge also considered whether extradition of both respondents would be compatible with their rights under the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") as required by section 87 of the Act. Both respondents contended that, if they were extradited, there was a real risk that they would be treated in a way which breached Articles 3, 4, 5 and 6 of the Convention.

5. In summary, the procedure that would usually be followed in Japan when an individual is arrested is as follows. On arrest, the individual is detained in a police station for up to 48 hours and may be questioned by police during that period. The matter must be referred during that period to a public prosecutor who will decide whether to release the individual or refer the matter to a judge and seek a further period of detention. The public prosecutor must make such a decision within 24 hours. The person remains in police detention and may be questioned during that further 24 hour period. A judge may order detention for a 10 day period and that may be extended for a further 10 days. That will provide for a 23 day period when the individual is detained and may be questioned. An arrested person is entitled to access to a lawyer, but the lawyer is not permitted to attend the interviews or interrogations by the police and the individual may be questioned before he sees a lawyer. At the end of the 23 day period, if indicted, the individual may be held in detention pending trial. If convicted and sentenced to imprisonment, the individual will be imprisoned and will be required to undertake compulsory labour amounting to 40 hours a week (8 hours a day for 5 days a week).

6. The judge first dealt with the Convention issues at the second hearing concerning Mr Chappell. In summary, in his second judgment dated 27 February 2023, he found that, if Mr Chappell were extradited to Japan, there was a real risk that he would be subjected to ill-treatment contrary to Article 3 of the Convention during the 23 day period of detention prior to indictment, and during detention pending trial (and post-trial if convicted). He held that the requirement to undertake compulsory labour for 40 hours a week, if convicted, amounted to a breach of Article 4 of the Convention. He held that the fact that Mr Chappell could not apply for bail during the 23 day period prior to indictment would result in a breach of Article 5 of the Convention. He also found, amongst other things, that the length of and treatment during interrogations, the absence of video recordings of interrogations, the absence of any right to a lawyer and the exclusion of lawyers from the interviews or interrogations, and the fact that Mr Chappell would not be told that he was entitled to remain silent would result in a breach

of Article 6 of the Convention. He, therefore, requested assurances from Japan. Assurances were provided under cover of a letter dated 22 May 2023.

7. The judge considered those assurances at a third hearing and decided that they were insufficient to overcome the risk of violations of Articles 3, 4, 5 and 6 as appears from his third judgment dated 11 August 2023. He, therefore, ordered the discharge of Mr Chappell pursuant to section 87(2) of the Act.

8. The judge dealt at a later date with the request that Mr Wright be extradited. He considered that, on the evidence then before him in relation to Mr Wright, there was a *prima facie* case for Mr Wright to answer. He considered, in the light of the evidence and findings in relation to Mr Chappell, that Mr Wright also faced a real risk of treatment contrary to Articles 3, 4, 5 and 6 of the Convention. He had received further assurances from the Government of Japan dated 13 March 2024 and considered those. He found that the March 2024 assurances were still inadequate to overcome the risk of a violation of Articles 3, 4, 5 and 6 for the reasons explained in his fourth judgment (the only one dealing with Mr Wright) dated 18 July 2024. He, therefore, ordered that Mr Wright be discharged pursuant to section 87(2) of the Act.

9. The Government of Japan appeals against (1) the decision that there was no case to answer in relation to Mr Chappell and (2) the decision that extradition of the two respondents would not be compatible with Articles 3, 4, 5 and 6 of the Convention.

THE LEGAL FRAMEWORK

10. The United Kingdom does not have a permanent extradition treaty with Japan. However, the two countries made special arrangements, set out in a memorandum of co-operation signed on 6 July 2021, for the purposes of the surrender to Japan of Mr Chappell, Mr Wright and a third man, Daniel Lee Kelly. Following that, the Secretary of State granted a certificate on 2 August 2021 pursuant to section 194(2) of the Act. The effect of that certificate was that Part 2 of the Act "applies in respect of the person's extradition … as if the territory were a category 2 territory" save for certain specified sections (see section 194(3) and (4) of the Act).

11. Section 70 of the Act provides for the Secretary of State to issue a certificate if he receives a valid request for the extradition of a person. Section 71 provides for the issuing of an arrest warrant by an appropriate judge (in England and Wales that is a district judge). The person, once arrested, must then be brought before the appropriate judge as soon as practicable. That judge "must fix a date on which the extradition hearing is to begin" (section 75(1) of the Act).

12. Section 78 provides that if a person is brought before the appropriate judge at the extradition hearing, that judge must be satisfied that he has been provided with certain documents, of the person's identity and that the offence specified is an extradition offence. If the answers are in the affirmative, the appropriate judge will proceed to consider whether extradition is barred by reason of one of the matters listed in section 79(1) of the Act, none of which are relevant to these appeals.

13. Section 84 requires the appropriate judge, in effect, to be satisfied that there is evidence which amounts to a *prima facie* case against the person whose extradition is sought. Section 84 provides, so far as material, that:

"**84 Case where person has not been convicted**

(1) 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 the summary trial of an information against him.

(2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if—

(a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and

(b) direct oral evidence by the person of the fact would be admissible.

(3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard—

(a) to the nature and source of the document;

(b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;

(c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;

(d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);

(e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.

(4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).

(5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(6) If the judge decides that question in the affirmative he must proceed under section 87...".

14. Section 202 of the Act deals with documentary evidence. It provides:

> "**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 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."

15. Section 87 of the Act deals with human rights and provides:

> "**87 Human rights**
>
> (1) If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998.
>
> (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
>
> (3) If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be extradited."

16. Section 105 of the Act provides that if the judge orders a person's discharge, an appeal may be brought to the High Court on behalf of the country which made the request for extradition. The court's powers on appeal are set out at section 106 of the Act.

THE FACTUAL BACKGROUND

17. The appellant seeks the extradition of the two respondents, and a third man, Mr Kelly, for the purpose of prosecuting them for robbery. The allegation is that at about 8.15 p.m. on 20 November 2015 the three men entered a jewellery shop in Tokyo in Japan. It is alleged that a security guard was punched several times causing him injuries. It is said that the three men then smashed an octagonal glass showcase in the shop and stole 46 items of jewellery valued at an amount equivalent to £679,000.

18. Requests were made by the appellant for the extradition of the two respondents and Mr Kelly. These were certified by the Secretary of State pursuant to section 70 of the Act on 4 August 2021. Arrest warrants were issued.

19. On 22 September 2021, Mr Chappell was arrested. There was an initial hearing before the judge on 23 September 2021 and Mr Chappell was remanded in custody. On 22 October 2021, Mr Wright was arrested and an initial hearing held. Extradition in his case was stayed under section 76A of the Act pending the conclusion of proceedings concerning an alleged offence that he was said to have committed in the United Kingdom.

20. On 6 January 2022, the extradition hearing in Mr Chappell's case began and dealt only with the question of whether there was evidence of a *prima facie* case against Mr Chappell.

THE JUDGMENTS

The First Judgment – Whether there was a prima facie case against Mr Chappell

21. The requesting state relied upon a range of evidence which they said demonstrated that Mr Chappell, in the company of two others, travelled to Tokyo and stayed at a particular location, "the Elm Share House". It also relied upon a summary from Chief Inspector Suzuki setting out a record of the investigation which indicated that Mr Chappell and others took taxis to the jewellery sthop, that goggles were left at the shop and a jacket was left on the route the robbers took to flee from the scene. That report also referred to obtaining fingerprints from the goggles, comparing those with an image of fingerprints sent by Interpol and said to be images of Mr Wright's fingerprints, and finding that there was a match. That report also referred to DNA being taken from the jacket and a comparison carried out with a record of DNA taken, it was said, from Mr Chappell and there was a match. The report also referred to expert evidence that glass shards found at the property where the three lodged matched the glass in the display case at the jewellery shop. The report also referred to expert evidence that compared (a) photographs of Mr Chappell taken on the Biometric Identification and Immigration Clearance System ("BICS") at the international airport in Tokyo, (b) CCTV images of a man in the arrivals area of the airport, and (c) CCTV taken in the jewellery shop that showed the robbers. The expert concluded that the possibility that the images were of the same man was extremely high.

22. Counsel for Mr Chappell submitted to the judge that the report of Chief Inspector Suzuki was inadmissible as it was not a summary of statements made to the police within the meaning of section 84(4) of the Act. He submitted that the fingerprint and

DNA evidence was inadmissible. He submitted that, without that evidence, the other evidence was insufficient to establish a *prima facie* case for Mr Chappell to answer.

23. The judge directed himself as to the law. In terms of the evidence, he accepted that there was admissible evidence that Mr Chappell, along with Mr Wright and the third accused, Mr Kelly, stayed at the Elm Share House in Tokyo from 18 November 2015. He considered that did not establish a *prima facie* case as it did not link Mr Chappell to the robbery. He considered that the report of Chief Inspector Suzuki was not admissible under section 84(4) of the Act as it did not speak of events within his knowledge and did not summarise evidence of others that were capable of being admitted in evidence. He considered that the fingerprint evidence and the DNA evidence were not admissible because, among other reasons, there was no evidence demonstrating continuity, that is that the samples taken were compared with ones that came from the suspects and also, in any event, that comparisons with samples taken from a database were inadmissible. He therefore held that there was no *prima facie* case against Mr Chappell and ordered his discharge. He was, however, required to consider the Convention issues that arose and, consequently, Mr Chappell was not released until those were dealt with.

The Second Judgment – Whether extradition compatible with Convention rights

24. The judge first dealt with the Convention issues in his second judgment in the case of Chappell. Dealing first with the requirements of Article 3 of the Convention and the period of police detention prior to indictment, the judge found that the overall evidence "demonstrated a clear risk" of ill-treatment arising from constant surveillance, including when in the toilet, deliberate under heating of cells, deprivation of exercise, constant light, limited contact with family and legal counsel and he referred to examples of solitary confinement. The judge also found that excessive and unregulated restraint techniques were used on those in custody. He further found that there were misleading practices during interrogations, oppressively long interrogations sometimes for hours often without a break, lack of access to a lawyer and no video recordings of interviews. Furthermore, the judge noted there was limited access to lawyers during the first 72 hours after arrest. The judge also found that an accused person was not allowed to be accompanied by a lawyer during interrogations. The judge said that the concerns of the court were appropriately reflected in the following summary, which he cited taken from a document prepared in April 2019 by Human Rights Watch:

> "Japan's criminal justice practices have long been described as hostage justice…The code of Criminal Procedure of Japan allows suspects to be detained up to 23 days before indictment. The authorities interpret the code to oblige detainees to face interrogations throughout this period. Exercise of the right to remain silent does not stop the questioning and investigators continue pressuring suspects to answer questions and confess to their alleged crimes. It is not uncommon for suspects to be yelled at from close range. Furthermore, suspects are not allowed to have lawyers present during the questioning.
>
> Most suspects are detained in cells located inside police stations and placed under constant police surveillance including during mealtimes or in toilets. …

> Detainees are not allowed to request bail while in pre-indictment detention.
>
> Japan's criminal justice practices – stretching suspects' detention until they confess, forcing detainees to face investigators' questions without the presence of lawyers and stripping them of their right to remain silent and coercing them to confess including false confessions – have long been called "hostage justice" and a cause of wrongful convictions".

25. The judge further found that Japanese law did not allow a detainee to apply for bail during the initial interrogation period. He considered that the extradition of Mr Chappell to Japan in those circumstances would be incompatible with Article 5 of the Convention.

26. The judge found that detainees did not have access to a lawyer prior to interrogation or during interrogation and there was a discretion not to video record interrogations. The judge found that the return of Mr Chappell to Japan in those circumstances would give rise to a risk of a flagrant denial of justice and would be incompatible with Article 6 of the Convention. The judge also found that the prosecution were not obliged to provide exculpatory evidence; the courts were reluctant to apply international human rights treaties; the conviction rate was over 99% and was primarily based on confessions; and the accused faced double jeopardy as an acquittal could be overturned on appeal.

27. The judge also considered the position following indictment and prior to trial was incompatible with Article 3 of the Convention. He referred to evidence that the conditions were unbearable due to heat in the summer and cold in the winter, concerns about the adequacy of medical care and food, the prohibition on unwarranted use of water, lights being kept on in cells all night, and exercise being limited to 30 minutes a day, visits being controlled, no telephones provided and talking allowed only at certain times. The judge was satisfied that the concerns over "discipline, solitary confinement, no real access to lawyers, censorship of correspondence, lack of visits, inadequate exercise" were evidentially made good. The concern over solitary confinement included concerns that it was used for a prolonged period without time limit and there were concerns over the criteria used for the imposition of solitary confinement. The judge concluded in relation to pre-trial detention that there were deficiencies in the system.

28. The judge considered the system of compulsory labour for those found guilty and detained in prison. Prisoners were required to work for 8 hours a day 5 days a week on very low pay, they were moved in what was described as a military style march from cell to factory, and there was evidence dating from 2012 that in 11 prisons in western Japan prisoners were subject to strip searches. He considered that that system was not compatible with Article 4 of the Convention.

29. Having found that there was a real risk that those matters would give rise to a violation of Convention rights, the judge requested the Japanese authorities to provide further information and give assurances in respect of certain identified matters. These concerned, amongst other things, the period of 23 day detention prior to indictment and the subsequent period of detention prior to trial. The requests were set out in an annex to the second judgment.

The Third Judgment – Whether assurances sufficient

30. The Japanese authorities provided assurances and further information by a document dated 22 May 2023. Those assurances were signed by four people, two from the Japanese Ministry of Justice and two from the National Police Agency.

31. The judge assessed the adequacy of the assurances in his third judgment. He noted that the court would first assess the quality of the assurances and secondly whether in light of the state's practices they could be relied upon. He set out the relevant paragraphs of the decision of the European Court of Human Rights ("the European Court") in *Othman v United Kingdom* (2012) 55 EHRR 1 identifying the proper approach to the assessment of assurances. The judge considered that the assurances did not, in fact, provided adequate guarantees to prevent the occurrence of the potential violations of Convention rights that he had identified in his second judgment. He was particularly concerned that the Japanese authorities relied upon the wording of the Code of Criminal Practice as demonstrating that something was, or was not, permissible whereas his concern was that the evidence had demonstrated what would, in fact, happen.

32. The judge found, in relation to Article 3, that the assurances were insufficient in relation to ill-treatment in police cells, the misuse of restraints, lack of access to a lawyer, the risk of interrogations which would be oppressive in length, the use of oppressive interview techniques, the absence of a lawyer during interrogations and the absence of an assurance that interrogations would be video recorded, the failure to name the institution where Mr Chappell would be detained after indictment and pending trial, with the consequence that the assurances were insufficient to address the concerns of the court as to the risk of exposure to unbearable heat in summer and cold in winter, lights kept on at night, a prohibition on unwarranted use of water. The judge further found that the assurances were inadequate in relation to the provision of adequate medical care, exercise, visits, lack of privacy so far as correspondence was concerned, unavailability of telephone calls, talking only being permitted at certain times such as exercise periods and breaks and no real access to lawyers. The judge also had concerns that the 23 day period of detention might be manipulated to become much longer, but it is accepted that that is no longer an issue on appeal and the maximum period of detention prior to an indictment would be 23 days.

33. The judge also held that the assurances did not address his concerns in relation to Article 5 of the Convention because of an inability to apply for bail. He further held that the lack of access to lawyers during the initial 72 hour period of detention and subsequently during investigation had not been addressed. The judge also considered that the assurances did not sufficiently address the risk of a trial in which the voluntariness of a confession would not be examined in any meaningful way, and nor had there been any assurance in relation to a prosecution appeal against an acquittal. There remained, therefore, a risk of flagrant injustice contrary to Article 6 of the Convention. The judge also found that the assurances were inadequate in relation to his concerns about Article 4. He also considered that the assurances in relation to monitoring were inadequate.

34. The judge concluded by saying that the finding of a real risk that extradition would expose Mr Chappell to violations of Articles 3, 4, 5 and 6 of the Convention meant that the burden passed to Japan to discount the existence of a real risk. Applying the criteria in *Othman*, he considered that the assurances were vague and generic, and were not case specific. He accepted that they were given by persons able to bind Japan and there

was no reason to doubt that the relevant authorities could be expected to abide by them. He concluded that Japan had not discharged the burden. He therefore ordered the discharge of Mr Chappell pursuant to, amongst other provisions, section 87(2) of the Act.

The Fourth Judgment – Mr Wright's case and the March 2024 Assurances

35. In May 2024, the Japanese Government provided further assurances dated 13 March 2024, signed by seven persons, two from the Ministry of Justice, three from the National Police Agency, one from the Tokyo District Public Prosecutors Office, and one from the Tokyo Metropolitan Police Department. The assurances are reproduced in the appendix to this judgment (with the signatures omitted). This judgment should be read together with that appendix.

36. In July 2024, the judge gave judgment in relation to the second respondent, Kaine Wright. During the extradition hearing, he had heard further evidence, including evidence from Nassir Mohammed. Mr Mohammed is a British national who was convicted of drug trafficking before the Tokyo District Court. In his statement, he said that he had flown to Japan on 7 February 2018 at the direction of others carrying 2.5 kilogrammes of methamphetamine in his luggage. He was questioned by the police about the drugs in his luggage without having spoken to, or seen, a lawyer. He did not speak to a lawyer until the second evening following his arrest. He was not told that he had a right to remain silent. He was questioned over the two weeks that followed, usually for 1½ to 2 hours at a time. He was not permitted to have a lawyer with him. He said that the police officer was aggressive and would scream and shout at him. He was not given access to a doctor for the first three days of his detention and shared a cell with four others. The judge accepted his evidence of how he had been treated.

37. The judge also had the March 2024 assurances at the extradition hearing for Mr Wright. He noted counsel's submission that the assurances were permeated by language capable of subjective interpretation using terms such as "adequate", "appropriate" or "necessary" and that those would be interpreted in accordance with Japan's established customs and practices which the court had found gave rise to the risk of violations of Convention rights. The judge appeared to accept that submission and said that the assurances did not meet the first criterion in *Othman,* as they were not specific but general and vague (see paragraph 69 of the fourth judgment). The judge then went on to make findings on certain assurances as follows.

38. The judge found that the assurance relating to the use of restraints permitted use "when a detainee shouts or makes noise" and found it suffered from the same flaw as he had found in relation to the 2023 assurances. In relation to the length of interviews, he again found that assurances were qualified by reference to the rules in place in Japan but his concern was that in practice oppressively lengthy interrogations did take place. The opportunity for breaks was at the subjective discretion of the police. At paragraph 76, the judge said that the assurances seemed to allow oppressive interrogation techniques with the supervisor having a discretion as to use. The judge also concluded that judicial authorisation of detention was no answer to the inability to apply for bail during the period of 23 days prior to indictment and did not guard against a breach of Article 5 of the Convention.

39. The judge found that there was no provision for a lawyer during the first 72 hours following arrest (described as the opportunity to explain stage) and lawyers were excluded from interrogations themselves. The judge concluded that there was a real risk of a breach of Article 6 of the Convention. That was reinforced by the fact that the police were not required to give a suspect advance notice of the right to remain silent.

40. The judge held the assurances did not guarantee that there would be no cumulative ill-treatment in detention saying that:

> "79. The assurance does not, in my view, remove the risk by reason of material conditions; deliberate ill-treatment; inadequate food; inadequate medical care; and the oppressive regime generally. The prohibition on phone calls remains, restrictions on talking remain, since talking is only permitted "as long as there is no risk of hindering either maintaining discipline and order or the management and administration of the institution", that is simply a repeat of the regulations/law, it does not grapple with the practical reality of it being inhuman or degrading treatment.
>
> 80. The assurance relating that medical care will be given where "necessary and reasonable" is generalised and insufficient to dislodge the findings already made."

41. At paragraph 81, the judge noted that coerced evidence was much less likely if a lawyer was present. He also referred to the fact that the police are not required to give a suspect notice of his right to remain silent. At paragraph 84, the judge concluded that the assurance appeared "to permit solitary confinement for as much as 90 days". There was no system of supervision or monitoring. The assurance did not overcome the risk of a violation of Article 3 of the Convention in that regard. Further, the judge did not consider that the assurances on forced labour would prevent a violation of Article 4 if Mr Wright were extradited to Japan and convicted. In that regard, he considered the decision of the European Court in *Stummer v Austria* (2012) 54 EHRR 11 and the European Prison Rules. He considered that the system did not treat prisoners in as dignified a manner as possible, did not afford them some element of choice and did not involve a system which was as close as possible to employment in a civil society. The judge therefore found that the May 2024 assurances were not adequate to ensure that there would not be a real risk of a violation of Articles 3, 4, 5 and 6 of the Convention if Mr Wright were extradited to Japan.

Assurances following the first hearing in the Divisional Court

42. This case was initially heard in October 2024. It was not possible to give judgment due to the ill-health of one of the members of the constitution following the hearing and the matter was re-listed for a new hearing in January 2025. During the first hearing in the Divisional Court, an issue arose about the assurance that "the Government of Japan guarantees that all interviews/interrogations of Daniel Lee Kelly, Kaine Lee Wright and Joe Anthony Chappell will be video recorded". The suggestion was that this assurance did not apply to any form of questioning that occurred during the first 72 hours following arrest and only applied in the remainder of the 23 day period of detention prior to indictment. The Divisional Court also raised concerns as to whether the

respondents would be told they could have a lawyer, and be told that they did not have to answer any questions, at the very start of the process, that is following arrest.

43. On 25 October 2024, the Japanese government gave a further assurance in this respect, which is also set out in the appendix to this judgment (with the signatures omitted).

THE GROUNDS OF APPEAL

44. There are six grounds of appeal. Ground 1 is that the judge "was wrong to find that [the Government of Japan] had not established a *prima facie* case against the First Respondent".

45. The remaining five grounds relate to Convention issues. Ground 2 is that the judge:

> "erred in finding that the assurances provided by the [Government of Japan] were insufficient to allay concerns regarding the protection of the Respondent's Convention rights"

46. Grounds 3 to 6 are that the Judge erred in finding that there was a real risk of a violation of Articles 3, 4, 5, and 6 respectively.

47. For the purpose of this appeal, it is sensible first to consider ground 1 in relation to Mr Chappell. Then it is sensible to consider ground 2 in relation to the claims concerning violations of Article 3, then Article 6. Then it is appropriate to consider ground 4 in relation to Article 4 of the Convention. Finally, it will be necessary to deal shortly with Article 5 although the respondents accept that the judge erred in relation to Article 5 and that, therefore, this ground of appeal succeeds.

48. The issues under the Convention, and the judge's findings, in relation to both Chappell and Wright are materially identical. The March 2024 assurances were not available at the time of the hearing in relation to Mr Chappell but Swift J. granted the appellant's application to rely on the March 2024 assurances in this appeal. The judge did have those assurances available at the extradition hearing in Mr Wright's case. The appeal in his case would only succeed if we were satisfied the judge was wrong in concluding that the assurances did not remove any real risk of treatment contrary to a relevant provision of the Convention. Similarly, in practice, unless we considered that his ruling on the March 2024 assurances in the Wright case was wrong, we would not intervene on his assessment of the position in relation to Mr Chappell.

GROUND 1 – WHETHER THERE WAS A *PRIMA FACIE* CASE AGAINST THE FIRST RESPONDENT

Submissions

49. Mr Keith and Ms Beatty on behalf of the Government of Japan made extensive written and oral submissions as to why there was a *prima facie* case against Mr Chappell. The written submissions included an annex setting out a summary of evidence said to establish a *prima facie* case. Ms Beatty also made oral submissions on the issue. They submitted that the statements of the owner of the jewellery shop and the security guard were evidence that there had been a robbery at the shop on 20 November 2015 and a glass display unit was broken and jewellery stolen. The statement of the manager of the Elm Share House established that Mr Chappell, Mr Wright and Mr Kelly stayed there

between 18 and 22 November 2015. They submitted that the report of Chief Inspector Suzuki was admissible under section 84(4) as it was a summary of the action taken. In any event, they relied upon a statement of Sergeant Chiba describing the suspects' escape route and an Armani jacket found on that route. They submitted that the evidence relating to DNA found on that jacket showing a comparison with DNA said to be on a UK police database and having been taken from Mr Chappell was admissible. They also relied on expert evidence comparing photographs recorded on the BICS with CCTV images of persons at Tokyo airport and comparison of the later photographs with CCTV stills taken at the jewellery shop. Alternatively, they submitted that evidence establishing continuity between the samples of fingerprints and DNA tested for comparison had been produced by the time of the second court hearing in Mr Chappell's case. As there was only one extradition hearing, albeit different issues were considered at each one, the judge should have re-opened the question of whether there was a *prima facie* case to consider that evidence or, alternatively, that the Divisional Court ought now to admit the evidence on appeal.

50. Mr Summers KC, with Mr Hepburne-Scott, for the first respondent made extensive written and oral submissions on this issue. In the written submissions, it is accepted that the judge was correct to hold that the admissible evidence showed no more than that the first respondent was in Japan and staying in accommodation in Tokyo on the day the robbery occurred and that was not sufficient to establish a *prima facie* case. However, in oral submissions, Mr Summers submitted that it was still for the appellant to adduce admissible evidence that Mr Chappell was in Japan and staying at accommodation in Tokyo at the material time and they had not done so.

51. Mr Summers submitted that the report of Chief Inspector Suzuki was not a summary within the meaning of section 84(4) of the Act. It did not summarise statements made by a witness to a police officer of facts of which the witness could give direct oral evidence. Further, it was not possible to separate out the chief inspector's own narrative from a summary. The evidence showed that an Armani jacket was discarded by one of the robbers as they fled the jewellery shop but there was no evidence establishing that any DNA sample from that jacket was compared with DNA from Mr Chappell. Nor was comparison with a sample from the police database in the United Kingdom admissible, relying on the decision in *Prendi v Albania* [2015] EWHC 1809 (Admin). There was no evidence in the form of admissible statements confirming that taxi drivers took Mr Chappell and the others from the shared accommodation to the jewellery shop. Mr Summers accepted that parts of the chief inspector's report might be admissible. But the evidence relating to the glass did not include admissible evidence that glass shards had been retrieved from the jewellery shop and the Elm Share House or that those samples were the ones that had been compared. Further that part of the report, even if admissible, showed only that there might be a connection with someone staying in the accommodation, not a connection with Mr Chappell. Mr Summers submitted that the terms of the expert report which considered the comparison of photographs did not sufficiently establish the links that the police asserted. He submitted that although the extradition hearing had taken place in stages, once the judge had decided that there was not a *prima facie* case, the judge was entitled in his discretion to decline to re-open that issue. He submitted it was not appropriate to admit the new evidence on appeal. The appellant had had the opportunity to adduce relevant evidence before the judge at the extradition hearing and had failed to do so.

Discussion

52. Section 84(1) of the Act provides that the judge must decide whether there is evidence that would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him. It is common ground that, on an appeal, this court should form its own assessment of whether a *prima facie* case has been made out (see *Shankaran v Government of the State of India* [2014] EWHC 957 (Admin) *per* Sir Brian Leveson P at paragraph 18 of his judgment, with which Blake J agreed). The correct approach to the evidence is also common ground. As it was put by the Divisional Court in *Devani v Kenya* [2015] EWHC 3535 (Admin) at paragraph 49:

> "In our view, the correct way to put the matter is to say that the DJ who has to decide whether there is a case to answer for the purposes of section 84(1) must determine whether, on one possible view of the facts, he is satisfied that there is evidence upon which the requested person could be convicted at a summary trial of an information against him, upon the basis of the notional English charges. In other words, the DJ must apply the test referred to at the end of the celebrated passage in Lord Lane's judgment in *Galbraith* at 1042, but with the additional gloss that, in deciding whether there is a case to answer, the DJ should consider all the admissible evidence before him, including evidence called on behalf of the requested person."

53. That approach was followed by the Divisional Court in *Mallya v Government of India* [2020] EWHC 924 (Admin) where the Divisional Court said at paragraph 29:

> "The role of an extradition court considering this question is to consider whether a tribunal of fact, properly directed, could reasonably and properly convict on the basis of the evidence. The extradition court is, emphatically, not required itself to be sure of guilt in order to send the case to the Home Secretary. The extradition court must conclude that a tribunal of fact, properly directed and considering all the relevant evidence, could reasonably be sure of guilt."

54. Section 84 of the Act deals with the admissibility of certain types of hearsay evidence. Section 84(2) provides that the judge may admit as evidence of a fact a statement made by a person to a police officer where direct oral evidence from that person of that fact would be admissible. Section 84(3) sets out relevant matters that must be considered in deciding whether to admit the statement. Section 84(4) provides that a summary of such a statement (as opposed to the statement itself) must be treated in the same way as the statement. Thus, if a person has given a written statement to the police, the police officer concerned, or another police officer, could summarise that written statement and that summary is to be treated as a statement under section 84(2) and thus admissible. We would not accept Ms Beatty's submission that a summary of a record of the actions taken by different people during the course of an investigation would, without more, satisfy the requirements of section 84(4) of the Act. The summary would need to be a summary of a statement made by a person who could give direct oral evidence of a fact.

55. There may also be evidence, such as photographic evidence, which would be admissible. That evidence would need to be authenticated in accordance with section 202 of the Act if it were to be received in evidence. If authenticated, and if admissible, it can, together with other evidence be relied upon in deciding whether there was a *prima facie* case within the meaning of section 84(1) of the Act. That is of particular relevance here as there is a photograph of a person who entered Japan via Tokyo International Airport on 18 November 2015, using the name Joe Anthony Chappell with a date of birth of 9 June 1986. The photograph was provided by the chief officer of the Bureau of Immigration Control Services ("BICS") from the airport's records. There are, similarly, photographs of two other persons who entered Japan via the same airport on the same day, one using the name Kaine Lee Wright, and one using the name Daniel Lee Kelly.

56. Mr Summers submits that there is a difference between a document being receivable under section 202 of the Act and being admissible. He submits that the document containing a copy of the photograph is receivable as it has been duly authenticated but is only admissible if there is a statement complying with the requirements of section 84(2) explaining how the photograph came into existence. As there was no such statement, the photograph was inadmissible. We disagree. The photograph is admissible as evidence. The evidence is receivable as it has been duly authenticated as it has been certified by the relevant authority within the meaning of section 202 of the Act. As such, the photograph is admissible as a photograph taken at BICS of a person who entered Japan on 18 November 2015. We consider that conclusion is consistent with the decision of this court in *R v Governor of Pentonville Prison, ex p. Voets* [1986] 1 WLR 470 dealing with the provisions of the predecessor to the Act. Further, it is a reasonable inference, in considering whether there is a case to answer, that, as the name used by the person in the photograph was Joe Anthony Chappell, and as the date of birth given by that person was the same as the first respondent's date of birth, then the person in the photograph is the first respondent. Similarly, the BICS photographs of the other two men who entered Japan are admissible and it is reasonable to infer for the purposes of deciding if there is a case to answer that the persons in the other photographs are the second respondent and Lee Kelly.

57. We turn then to the other evidence. In the present case, there is a witness statement made on 26 November 2015 to a police officer by Mr Nakanishi. In that statement, Mr Nakashini gives evidence that he was working at the jewellery shop in Tokyo on 20 November 2015. He saw three men, who looked like foreigners, barge into the shop and he was punched in the face. One of the men broke the upper-toughened glass of a showcase in the salon with a hammer and the men took a number of items of jewellery. Mr Nakashini made a further statement to police on 24 December 2015, which exhibited and described still photographs from CCTV footage including events within the jewellery shop (there is also a statement by Inspector Katsumi exhibiting CCTV photographs taken by the cameras at the shop). The owner of the shop, Mr Watanabe, has made a statement confirming that 46 items of jewellery were missing from the shop. Those statements are admissible and establish a *prima facie* case that a robbery took place at the jewellery shop on the evening of 20 November 2015. The issue is whether there is sufficient admissible evidence to establish a *prima facie* case that Mr Chappell was one of the robbers.

58. First, there is the written statement made to the police by Ms Kojima. That is admissible under section 84(2) of the Act. At the material time she lived at the Elm Share House. She states that from 18 November 2015, a group of three males spent a few nights there. She gave a description and explained how she was shown a video line up of 60 males. She identified the photographs of the three foreign males that stayed at the house. One of the photographs she identified bears a striking similarity to the BICS image of the person using the name Joe Anthony Chappell. A tribunal of fact would be entitled to conclude, to the criminal standard, that the person she identified is the person depicted in the BICS image who entered Japan on 18 November 2015 using the name Joe Anthony Chappell. Similarly, a tribunal would be entitled to conclude that the two persons in the other photographs Ms Kojima identified were the same as the two persons in the BICS photographs who entered Japan on 18 November 2015 using the names Kaine Wright and Daniel Kelly. We note that the judge considered that there was admissible evidence from which it could be inferred that Mr Chappell, along with Mr Kelly and Mr Wright, stayed at the Elm Share House in Tokyo from 18 November 2015. We agree. As the judge below said, the key question was whether Mr Chappell could be linked to the robbery.

59. In that regard, there is expert evidence, summarised in the report of Chief Inspector Suzuki, from Professor Masatsugu Hashimoto of the Department of Forensic Odontology and Anthropology of the Tokyo Dental College. He compared the BICS photograph of Mr Chappell (and of Mr Kelly and Mr Wright) with CCTV still photographs of three men at Narita Airport and compared those CCTV still photographs with CCTV still photographs of the three men at the jewellery shop. Part of Chief Inspector Suzuki's report contains a quote from Professor Hashimoto's expert report that "the possibility that two (or three) persons in the relevant comparison are the same is extremely high". The reference to two or three persons refers to the fact that sometimes Professor Hashimoto was comparing two persons, sometimes three persons.

60. In respect of the comparison between the photographs of the men at the airport and the men in the jewellery shop, there was before the judge, and before us, Professor Hashimoto's report itself. That deals with the comparison between the CCTV photographs of persons at the airport and the CCTV photographs of the three persons in the jewellery shop (the two sets of photographs are exhibited to Professor Hashimoto's report). We were not provided with other reports prepared by Professor Hashimoto. Again, he says that there is an extremely high possibility that the persons in the two sets of photographs are the same persons. In reaching this conclusion, Professor Hashimoto draws attention to common features which could be observed from the two images. These include the shape of the apex of the nose, which protrudes forward; the area of the dorsum of the nose directly above the apex of the nose, which is horizontally narrow; the beard below the apex of the nose; the shape of the cheekbones, which bulge slightly; the lower edge of the ala of the nose which is thick around the nostrils and the lack of any inconsistency between the indentations where the ala of the nose meets the facial skin.

61. We understand that it is accepted that the expert report of Professor Hashimoto is admissible evidence. We also regard that part of Chief Inspector Suzuki's report which summarises the opinion of Professor Hashimoto on the comparison of the BICS photographs with the Narita Airport photographs as admissible as a summary of a statement made by a person who could give direct evidence of his expert opinion

pursuant to section 84(4) of the Act. Much of the Chief Inspector's report is not admissible (because, for example, it does not summarise statements made by a person capable of giving direct oral evidence, or is a narrative or states what the Chief Inspector thinks and so does not satisfy the requirements of section 84 as explained at paragraphs 12 and 13 of *Government of India v Rajarathinam* [2006] EWHC 2919 (Admin) [2007] 1 WLR 1593). However, that does not prevent other parts of the report being admissible. Where, as in relation to Professor Hashimoto, part of it clearly summarises that person's expert opinion, it is admissible. Mr Summers says it is unfair to rely on this summary of Professor Hashimoto's evidence, such that it should not be treated as admissible evidence of a fact for the purposes of section 84(3)(e) of the Act. We disagree. Section 84(3) requires the court to have regard "to any risk that the admission… of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings." Here, the statement in question amounts to an expert comparison of certain images. The images remain in existence and have been disclosed to Mr Chappell. He is able, if he chooses, to instruct his own expert. The admission of the statement does not cause any unfairness to him.

62. Mr Summers also submitted that Professor Hashimoto's evidence does not, on a proper reading, establish a sufficiently strong case that the person in the photograph taken inside the airport is the same as the person in the jewellery shop. In his explanation of his methodology for the comparison of two facial images, Professor Hashimoto says that he first seeks to prove a hypothesis that two images are of different people. If he is unable to prove that hypothesis, he then considers the similarities between the two images. If there are common features which are "highly unique to the individual" or if there are several common features which are rarely found within a group, then he concludes that there is an extremely high possibility that the two are the same person. In the former case, that is so even if the number of common features or the definition of the images is low.

63. Professor Hashimoto then says:

> "However, if there are many matching features but those features are comparatively common within a group, or there is no apparent difference which would lead to the inevitable conclusion that the two are different individuals, or there is no inconsistency between the compared and collated features but it is impossible to draw a conclusion, the conclusion would be that there is an extremely high possibility, or a high possibility that the two are the same individual. The expression "there is a high possibility" has the same meaning as "there is a possibility".

64. Mr Summers relies on this passage to advance a submission that Professor Hashimoto uses the phrases "possibility", "high possibility" and "extremely high possibility" interchangeably. This means that his conclusion that there is an extremely high possibility that two images depict the same individual is equivalent to a conclusion that it is merely possible, and that this is insufficient to satisfy the criminal standard of proof. That argument might be correct as a matter of semantics, but it does not do justice to the detailed and reasoned analysis that Professor Hashimoto undertakes to match one of the robbers to a man shown on the airport CCTV imagery who is said to be Mr

Chappell. When his report is analysed as a whole it is clear that it is not merely possible that they are the same man, but that a tribunal of fact could safely conclude to the criminal standard of proof that they are the same man.

65. The summary of the evidence of Professor Hashimoto (contained in the report of Chief Inspector Suzuki), and Professor Hashimoto's report comparing the men at the airport with the men in the jewellery shop are, in our judgment, admissible. They provide sufficient evidence to establish a *prima facie* case that the man in the photograph who entered Japan on 18 November 2015 using the name Joe Anthony Chappell was the man in the airport on that day and was one of the three robbers at the jewellery shop.

66. Standing back from the details, therefore, we consider that the position is this. There is evidence that a person was photographed on arrival in Japan on 18 November 2015 using the name of Joe Anthony Chappell and giving the same date of birth as the first respondent. There is evidence that the person in that photograph, together with two other persons photographed on arrival in Japan on that day, stayed at the Elm Share House in Tokyo for a few days from 18 November 2015. They were, therefore, present in Tokyo on 20 November 2015 when there is evidence that three men carried out a robbery at a jewellery shop in Tokyo. There is evidence that the person in the photograph using the name Joe Anthony Chappell was one of the three people who was at the jewellery shop on 20 November 2015 and was involved in the robbery and also that the other two people photographed on arrival in Japan and who stayed at the Elm Share House were also present at the jewellery shop and involved in the robbery. We regard that as sufficient to raise a case against Mr Chappell requiring an answer. For those reasons, we would allow the appeal on ground 1.

67. Mr Summers submitted that the other material on which the appellant seeks to rely – including the material about the taxi journeys taken by the men who stayed at the Elm Share House, the DNA found on the jacket discarded at the scene, the fingerprint on the goggles (said to be from Mr Wright) and the glass shards said to be taken from the jewellery shop and from the Elm Share House and then compared - was inadmissible for one reason or another. Even assuming that that submission is correct, we consider there is sufficient other admissible evidence to establish a *prima facie* case.

68. In the circumstances, therefore, it is not necessary to reach a decision on the admissibility of the other evidence available at the first hearing before judge. Nor is it necessary to consider whether the judge could have re-opened the decision on the question of whether there was a *prima facie* case when considering the question of Convention rights at a later hearing and if so, whether he was wrong not to do so. Nor is it necessary to consider whether, alternatively, the material on which the appellant seeks to rely to establish a *prima facie* case forms part of the material which this court can consider, or which it should admit as fresh evidence on this appeal.

69. We would, however, make this observation. Extradition to category 2 territories, or countries such as Japan which are treated as category 2 territories, are governed by Part 2 of the Act. Section 84(1) requires that "there is evidence" which would be sufficient to make a case requiring an answer (unless the category 2 territory in question has been designated for the purposes of section 84(7) by the Secretary of State). Those seeking to extradite persons in such circumstances need to identify what facts it is necessary to prove to establish a *prima facie* case and to ensure that admissible evidence of each of those facts is adduced. It appears to us that many of the difficulties that have arisen in

this case in relation to Mr Chappell could have been avoided if those seeking his extradition had first identified each of the facts that they were seeking to rely upon as establishing Mr Chappell's presence in Japan at the material time or as linking him to the robbery, and secondly identified how those facts were to be proved by admissible evidence of those facts. It was not enough to rely upon a report summarising the actions of those who were involved in the police investigations when that summary did not meet the requirements of section 84 of the Act. Nor was it sufficient to rely on forensic evidence such as DNA samples, fingerprint comparisons or similarities between glass at the scene and glass found at other locations without addressing the need to provide admissible evidence that the samples compared were ones that came from the alleged person or location.

GROUNDS 2 AND 3: ARTICLE 3 OF THE CONVENTION

Submissions

70. Mr Keith submits in relation to Article 3 that the judge erred in finding that there was a real risk, if the respondents were extradited, that they would suffer ill-treatment in police detention, or detention pending trial or post-conviction contrary to Article 3 of the Convention. Even if the judge were entitled to reach that finding, the assurances given by the Government of Japan were sufficient to remove any real risk of ill-treatment, applying the criteria identified by the European Court in *Othman*. The assurances were given by senior civil servants, responsible for the matters in question, on behalf of the Government of Japan. The assurances were given in good faith and could be expected to be followed in Japan. They were specific and addressed the matters identified by the judge as being of concern.

71. Further, Mr Keith submitted that the judge had, wrongly, approached the assurances on the basis of whether there was a potential linguistic loophole which could enable ill-treatment to occur without breaching the strict and narrow meaning of the assurances. In the case of a friendly government, such as the Government of Japan, that is not the approach to take, as appears from the observations of the Divisional Court in *Giese v Government of the United States of America* [2018] EWHC 1480 (Admin), [2018] 4 WLR 103, especially at paragraph 38, *The Government of India v Chawla* [2018] EWHC 3096 (Admin), at paragraph 14, and *Snowden v Republic of Ghana* [2018] EWHC 198 (Admin) at paragraphs 25 and 32 to 33. Mr Keith took the court through the particular paragraphs of the assurances which, he submitted, demonstrated that they removed any real risk of ill-treatment.

72. Mr Summers submitted that the judge had found that there was a practice of manipulating the conditions of police detention to prepare the subject for interrogation with a view to obtaining a confession. That evidence demonstrated a lack of privacy, cell temperature being manipulated to being extremely hot or cold, constant light, the absence of contact with family and solitary confinement. There was the use of restraints, including handcuffs and ropes.

73. He submitted that the problem was that the nature of Japanese law was not sufficiently precise to outlaw or prevent such conduct. The problem was that, as a matter of practical reality, police officers did systematically manipulate conditions in a way intended to put pressure on those detained to confess. Assurances which in substance simply repeated the words of the Japanese rules would not remove the real risk, found by the

judge, of violation of Article 3 in relation to what actually occurred in police detention. The assurances simply failed to grapple with the practicality of the problems that had been found to exist in police detention in Japan. Mr Summers accepted that the assurances had been given in good faith. But the difficulty lay not in the lack of good faith on the part of the Japanese government, but the fact that the assurances did not address the practical problems giving rise to a real risk of ill-treatment contrary to Article 3. Mr Summers relied, by analogy, on *R (AAA) v Secretary of State for the Home Department* [2023] UKSC 42, [2023] 1 WLR 4433, especially at paragraphs 102 to 105. Mr Summers submitted that the assurances did not adequately deal with the evidence relating to police officers' behaviour during interrogation (pulling of hair, shouting, kicking and threats), and lengthy interrogations without breaks. He submitted that the video recording of interviews or interrogations would be ineffective to prevent such behaviour and queried whether the assurance in relation to video recording applied on its terms to the first period of 72 hours detention.

74. Mr Summers further submitted that the evidence accepted by the judge showed that conditions in pre-trial detention demonstrated unbearable heat or freezing, lack of access to bathing water, lack of light and ventilation in cells, inadequate food, lack of adequate medical care, too little exercise, correspondence was read by the authorities, lack of telephone contact and the fact that those in detention were not allowed to talk. Further, there was no guarantee that the first respondent would be sent to Tokyo Detention Centre during the pre-trial detention. Neither the May 2023 nor the March 2024 assurances, read individually or together, demonstrated that the real risk of ill-treatment found by the judge had been removed.

75. Mr Fitzgerald KC, with Mr Sam Blom-Cooper, for the second respondent, Mr Wright, adopted the submissions made on behalf of the first respondent. He submitted that the assurances were high level assurances, using subjective language, and which were not specific, and left open the real possibility that the ill-treatment found to occur in Japanese police and pre- and post-trial detention would occur if the second respondent were extradited to Japan. Mr Fitzgerald submitted in addition that there were specific problems with the assurances in relation to solitary confinement as they did not provide an undertaking that there would be no resort to segregation (and would not be used for more than 90 days). They did not provide that solitary confinement would not be used for trivial matters, or for no longer than 15 days.

Discussion and Conclusion

76. Article 3 of the Convention provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". The principles governing Article 3 in cases such as the present are well established and can be stated shortly. Article 3 imposes an obligation on a state not to remove a person to a country where there are substantial grounds for believing that the person would face a real risk of being subject to ill-treatment contrary to Article 3 in that country. In order to come within Article 3, the ill-treatment must attain a minimum level of severity, which depends upon all the circumstances of the case including the duration of the treatment, its physical and mental effects and, in appropriate cases, the sex, age and health of the person concerned. A court will need to consider if there is objective, reliable, specific and up to date evidence that there are substantial grounds for believing that there is a real risk of ill-treatment in the state concerned and that the particular individual will be exposed to that risk. Furthermore, a court may seek further information or assurances and the court

will "examine whether assurances provide in their practical application a sufficient guarantee that the applicant will be protected against the risk of ill-treatment" (see paragraph 187 of the judgment of the European Court in *Othman*).

77. The approach to assessing assurances is conveniently set out in paragraph 189 of the judgment in *Othman.* The European Court said, references omitted:

> "More usually, the Court will assess first, the quality of assurances given and, second, whether, in light of the receiving state's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors:
>
> (1) whether the terms of the assurances have been disclosed to the Court;
>
> (2) whether the assurances are specific or are general and vague;
>
> (3) who has given the assurances and whether that person can bind the receiving state;
>
> (4) if the assurances have been issued by the central government of the receiving state, whether local authorities can be expected to abide by them;
>
> (5) whether the assurances concerns treatment which is legal or illegal in the receiving state;
>
> (6) whether they have been given by a Contracting State;
>
> (7) the length and strength of bilateral relations between the sending and receiving states, including the receiving state's record in abiding by similar assurances;
>
> (8) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers;
>
> (9) whether there is an effective system of protection against torture in the receiving state, including whether it is willing to co-operate with international monitoring mechanisms (including international human-rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible;
>
> (10) whether the applicant has previously been ill-treated in the receiving state; and
>
> (11) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State."

78. The assurances in this case have been given by a number of officials in different departments and agencies in Japan. They are capable of giving assurances on behalf of the Government of Japan and (like the judge below) we have no reason to doubt that

the relevant authorities could be expected to abide by the assurances (at that stage, the judge was dealing with the May 2023 assurances, but the same assessment applies to the March 2024 and October 2024 assurances). Those are factors which make compliance with the letter and spirit of the assurances more likely (see by analogy, the observations at paragraph 195 of *Othman*).

79. Furthermore, we also bear in mind the observations of Lord Burnett CJ, with whose judgment Dingemans J agreed, at paragraph 38 of his judgment in *Giese* where he said:

> "… The overarching question is whether the assurance is such as to mitigate the relevant risks sufficiently. That requires an assessment of the practical as well as the legal effect of the assurance in the context of the nature and reliability of the officials and country giving it. Whilst there may be states whose assurances should be viewed through the lens of a technical analysis of the words used and suspicion that they will do everything possible to wriggle out of them, that is not appropriate when dealing with friendly foreign governments of states governed by the rule of law where the expectation is that promises given will be kept. The principles identified in *Othman* , which are not a check list, have been applied to assurances in extradition cases in this jurisdiction. A court is ordinarily entitled to assume that the state concerned is acting in good faith in providing an assurance and that the relevant authorities will make every effort to comply with the undertakings, see *Lord Advocate v Dean* [2017] UKSC 44; [2017] 1 WLR 2721, para 36."

80. As the judge said in his third judgment, in connection with the May 2023 assurance, this is not a case where it was submitted that "any assurances will be 'wriggled out of'" (paragraph 10). Rather, the judge was concerned that the May 2023 assurances were "vague and generic" and "the assurances are not specific to the risks identified."

81. The focus of argument in this appeal was on whether the March 2024 assurances were sufficient in their practical application to provide a sufficient guarantee that the respondents would be protected against the kind of risks that the judge had found existed. As was observed in *Giese*, that involves consideration of the practical as well as the legal effects of the assurances. Questions that arise include whether the March 2024 assurances are specific or whether they are vague and general, and whether they simply reflect the wording of the Japanese rules but without any appreciation that the practices in Japan had, in fact, been found to involve conduct which did give rise to a real risk of ill-treatment contrary to Article 3 (whether because the conduct was permitted under the rules as a matter of discretion and systematically undertaken, or because such conduct, even if unlawful, was in fact undertaken). Similarly, consideration has to be given as to whether the wording of the assurances is such that they provide a subjective discretion, rather than a particular guarantee that particular conduct would not be engaged in. Furthermore, the findings of the judge on particular aspects of the assurances need to be assessed. Consideration of those, amongst other issues, will assist in determining whether or not the judge was wrong in finding that the March 2024 assurances governing treatment in police detention and pre-trial detention (and post-trial detention, if convicted) were insufficient to remove any risk of ill-

treatment contrary to Article 3 or a risk of flagrant injustice contrary to Article 6, applying the criterion in *Othman* and other case law. Consideration also has to be given to the October 2024 assurances which were not before the judge.

82. We deal with particular aspects of the assurances first. We start with the assurances relating to the use of restraints. The judge found at paragraph 71 of his fourth judgment that the March 2024 assurances were essentially setting out Japanese law which, on the facts, he had found to be inadequate to guarantee that there would be no misuse of restraints in a way that would involve a breach of Article 3.

83. It is correct that paragraph 10 of the March 2024 assurances states that the Government of Japan will comply with Japanese law which strictly controls the use of restraining devices. But the assurances then go on to guarantee how that law will be applied to the respondents in the period of police detention. It says that the Government of Japan guarantees in relation to the three accused "that restraints will not be used unless necessary (and only for as long as necessary) to prevent escape, to prevent injury to others or self-inflicted injury, or to prevent damage to the facilities or property of the detention facility" and "in particular will never be used as an interrogation technique or punishment". Similar guarantees are given in respect of the period of pre-trial detention. The judge was wrong to find therefore that the assurances in this respect simply reflect Japanese law.

84. It is also inaccurate and potentially misleading to state that the assurances permit the use of restraints "when a detainee shouts or makes noise" as the judge observed at paragraph 71 of his fourth judgment. That is a reference to the May 2023 assurances which indicated the general position that there are four sets of circumstances in which a detainee might be placed in a protection cell and might be subjected to restraints, and they include situations where a detainee ignored orders from an officer by shouting or making a noise, that is where the individual is engaged in defying the instructions of an officer. The position is, however, made clear in relation to these respondents in the March 2024 assurances which go beyond that and provide clear, specific assurances about the use of restraints in respect of the respondents. The assurances are sufficient to guard against the risk of this ill-treatment.

85. The judge found that the assurances relating to the length of interviews were qualified by the reference to the rules in place in Japan and considered that they did not address his essential concern which was that, while the rules did not permit oppression, the evidence was that it had occurred and the rules had not stopped interviews of up to 173 hours (over a period of 23 days) in other cases. The judge also refers to the evidence in Mr Mohammed's case. There, however, the questioning occurred for 1½ to 2 hours at a time, a length of time that would not, itself, be considered oppressive. Against that background, he considered the assurances could result in the respondents being interviewed for 16 hours a day, or every part of the waking day.

86. The assurances state that all interviews and interrogations "will not be oppressive in length, either individually or cumulatively" and more specifically "will not take place between 10 p.m. and 5 a.m.", that the respondents would be given "a break of at least 8 hours overnight to ensure a sufficient period of undisturbed sleep" and "regular breaks will be provided". Those assurances, read fairly, do guarantee that the respondents will not be subjected to questioning which, by its length, would amount to a breach of Article 3. The views of the judge appear to reflect a "technical analysis of the words

used and suspicion that they will do everything possible to wriggle out of the guarantees" which *Giese* indicates is an inappropriate approach in this case. Furthermore, it needs to be borne in mind that other assurances have been given, namely that the interviews and interrogations will be video recorded and provided to the respondents' lawyers, and that the respondents will be allowed to consult with their lawyers during questioning. Those assurances should also contribute to ensuring that questioning is not done in a way, or for a period, that would amount to ill-treatment contrary to Article 3 of the Convention.

87. The judge further considered, at paragraph 76 of his fourth judgment, that the assurances seemed to allow oppressive interrogation techniques "with the supervisor, a police officer, having a discretion as to use" and that was not an assurance that they would not be used. That is a simple misreading of the assurances. The assurances guarantee that there will be no use of oppressive behaviour, ill-treatment or coercion, and at paragraph 28 of the assurances, that the interrogations conducted by police officers "will be monitored by a supervising officer, which is independent of the investigation, and who has the power to stop the questioning immediately if any oppressive behaviour takes place". The supervising officer is there to stop oppressive behaviour not, as the judge appeared to think at paragraph 76 of his judgment, to authorise such behaviour. Further, the assurances that all interviews and interrogations will be video recorded and provided to the respondents' lawyers and could be reviewed by the Japanese courts to assess if any confession was voluntary, further contribute to ensuring that there are sufficient guarantees to prevent ill-treatment in the form of oppressive interrogation techniques.

88. The assurances do not explicitly guarantee that misleading questions will not be asked during interrogations. However, the assurances do refer to the judge's findings and guarantee, in response to those findings, that "there will be no use of oppressive behaviour, ill-treatment or coercion of any kind." Moreover, the fact that the interrogations will be video recorded means that if questions are put on a misleading basis this will be apparent to the court. In any event, a risk that some questions might be misleading is not a sufficient basis for a finding that extradition is incompatible with article 3 or article 6.

89. At paragraph 79 of his fourth judgment, the judge considered that the assurances did not remove, amongst other things, the risk of inadequate food or inadequate medical care. He also says that the assurance relating to medical care where "necessary and reasonable" was generalised and insufficient. There is no proper basis upon which the judge could reach those conclusions. The assurances confirm that the respondents will be provided with sufficient food and their "meals will be assessed by a qualified dietician to ensure that their meals are sufficient to maintain good health and nutritionally balanced". They guarantee that the respondents "will be provided with all necessary and reasonable medical care", that "standard treatment will be provided by doctors and other medical professionals" and "if specialist care is required" then the respondents "will be treated at medical prisons or outside hospitals as necessary". Contrary to the finding of the judge, those are sufficient guarantees to guard against any risk of inadequate food or lack of medical care.

90. At paragraph 79 of his fourth judgment, the judge also says that the prohibition on phone calls remains and restrictions on talking remain as that is permitted only as long as there is no risk of hindering discipline or order. He considered that simply repeated

the law and did not grapple with the practical reality. That again reflects a failure to read and assess the assurances in their entirety and is indicative of an approach which analyses the technical words used on the assumption that if there is any linguistic scope left for particular conduct to occur, then the authorities will use that to engage in conduct contrary to Article 3. What the assurances actually say is that during the 23 day period of initial detention, the respondents will be provided with books and newspapers free of charge, and will be able to listen to radio programmes and music. Their activities "will not be restricted as long as their activities do not disturb the peace or other detainees or violate the purpose of their detainment". In pre-trial detention, the assurances state that the respondents "will be permitted to speak to other inmates at any time" – i.e. it starts with a positive assurance that they have the right to do that – and then recognises that that may be limited in specified circumstances, i.e. if that would involve hindering discipline or order. Those assurances will ensure that these matters will not give rise to treatment of a nature or severity that would amount to a breach of Article 3 of the Convention.

91. The assurances further confirm that the respondents will not have telephone contact with friends or family during the period of pre-trial detention – but, if convicted, the respondents will be able to have telephone contact with family and friends. During the period of pre-trial detention, the respondents will be able to communicate through written correspondence and "the correspondence will not be censored if it is deemed that there is no risk of causing either the disruption of discipline and order in the penal institution or destruction of evidence". In other words, correspondence will not be read routinely, but only where there is a risk of one of two specific and justified sets of circumstances arising. Further, the assurances confirm that correspondence between the respondents and their defence lawyers "will not be read". Read as a whole, those assurances do provide sufficient guarantee that there will be no ill-treatment in these regards which amounts to conduct reaching the severity required to constitute a violation of Article 3. The fact that, if extradited, the respondents will not have access to telephone calls during the period of pre-trial detention, and the possibility that their activities may be restricted, or correspondence read, in limited circumstances to ensure discipline within the detention facility do not begin to amount to conduct sufficiently severe to amount to a breach of Article 3 of the Convention.

92. Concerns were raised about other matters relating to conditions in detention. The assurances deal with those. They provide that the cells where the respondents will be detained "will be maintained at a comfortable temperature for 24 hours a day by using cooling and heating systems", that the cells will have "adequate natural light and ventilation", that "lighting will be dimmed at night to a level which does not interfere with sleep" and that clean bedclothes will be provided and replaced regularly (those refer to the initial period of detention and similar guarantees are given in relation to pre-trial detention as requested by the judge following his second judgment). The assurances confirm that the respondents will have privacy in their cells, that they will be provided with sufficient water for personal care including bathing and washing their hair ("at least three times per week") and for drinking. The assurances, as requested, confirm that the respondents will have more than 30 minutes exercise per day.

93. In paragraphs 72 to 75 of his second judgment, the judge noted concerns over solitary confinement. He referred to prisoners being placed in isolation and also to some being placed in solitary confinement when they did not meet the criteria for isolation. He said

that the only difference between that treatment and isolation was that in the former there was the possibility of bathing and exercise with other inmates and that they could have contact with other inmates twice a month and that there was evidence that prisoners routinely spent 24 hours a day without exercise. He therefore requested precise confirmation of the circumstances in which solitary confinement could be used. At paragraph 84 and following of his fourth judgment, the judge considered the assurances and found that, if a person is convicted and detained, the "assurances appear to permit solitary confinement for as much as 90 days and that is inhuman".

94. Again, it is necessary to read the assurances in full to see what is guaranteed. The assurances distinguish between what it describes as category 4 detention and isolation (the latter being the closest to what was understood to be solitary confinement). In category 4 detention, the respondents would not be isolated from other inmates or the outside world and would be permitted to socialise and receive visits and letters. The judge does not suggest that that assurance is insufficient to ensure that category 4 detention would not involve conferment in circumstances which would constitute a violation of Article 3. In relation to isolation the assurances state that "*isolation* will only be used when strictly necessary, and a last resort, for the protection of the inmate themselves or the protection of other inmates". Further "any period may not exceed 3 months" and "it will be brought to an end immediately once the necessity for isolation ceases to exist". The assurances further state that isolation will be kept under strict review and the respondents will be able to communicate with their defence counsel throughout. In those circumstances, the judge was wrong to focus on one part of the assurance (the outer limit of 3 months or 90 days in relation to isolation) and assume that isolation for that period was permitted. A more accurate assessment is that isolation can only be imposed in limited circumstances, and only while those circumstances exist and, in addition, there is a limit of 3 months beyond which it cannot continue. Viewed in that light, the assurances do provide a sufficient guarantee that the respondents, if extradited, will be not subject to treatment in the form of isolation or solitary confinement in circumstances that would amount to a violation of Article 3 of the Convention. We do not consider it necessary to make further findings of fact relating to the placement of the respondents in circumstances amounting to solitary confinement as Mr Fitzgerald invited us to do at the end of the second day of the hearing.

95. Complaint was made that there was no guarantee that the first respondent would be sent to the Tokyo Detention Centre if detained pending trial. Paragraph 33 of the March 2024 assurances state that after the indictment is lodged the respondents will be transferred to detention. The location will be determined by a judge but the assurances state that "the prosecutor will apply for the Requested Person to be detained at the Tokyo Detention House and there are no forceful reasons for this application to be denied." That guarantee is adequate to ensure that the respondents will, if indicted, be lodged at the Tokyo Detention Centre unless a judge determines otherwise. In the longer term, if the accused are convicted and given custodial sentences, those sentences will be served at Fuchu Prison, Yokohama Prison, or Osaka prison as those who have difficulty communicating in Japanese are held in those specific facilities. The guarantees given in relation to the conditions of post-conviction detention apply to those locations. There is no reasonable basis for assuming that the location of post-conviction detention in one of those three facilities would, of itself, give rise to substantial grounds for believing that there was a real risk of a breach of Article 3 of the Convention.

96. Finally, concerns were raised as to the monitoring of assurances. The starting point is that, in agreement with the judge below, the assurances are given by persons able to bind the Government of Japan and will be abided by. Dealing with the concerns relating to pre-trial detention, the respondents will be able freely to speak to their lawyers without an official being present. So far as interrogations are concerned, they will be recorded and copies provided to the lawyers. Ill-treatment resulting in a confession which is said not to be voluntary will therefore be capable of being identified by the respondents' lawyers who can raise that with the court. More generally, in relation to conditions during pre- and post-trial detention, the assurances confirm that the British consulate will be allowed access to the requested persons and concerns about their conditions and compliance with these guarantees can therefore be raised with them. We are satisfied that the guarantees relating to the detention prior to any conviction, and the assurances relating to conditions afterwards, will be adequately monitored.

97. It is also fair to note that following the second judgment, the judge specifically asked for confirmation as to what effective monitoring of conditions would be in place. At paragraph 83 of his third judgment, the judge noted that the May 2023 assurances referred to the prison visiting committees but the judge found that these were inadequate and lacked independence. The March 2024 assurances address this point specifically. These state that the Detention Facilities Visiting Committees are made up of third parties that are independent of the police and penal institutions and include lawyers, medical professionals, public service officials and others. They inspect facilities by conducting visits and interviewing detainees. An annual report is published by the Ministry of Justice which details the findings of the Visiting Committees and actions taken in response by the penal institutions. The judge did not consider these assurances in his fourth judgment. Whilst our decision is not dependent on the existence of the Visiting Committees, that provides a further degree of reassurance.

98. The assurances read as a whole, therefore, do provide a sufficient guarantee that the respondents, if extradited, will not in practice be subject to treatment that would constitute a violation of Article 3. We have borne in mind the need to assess whether, in practice, those guarantees will be sufficient. We bear in mind the findings of the judge as to conduct that had in practice been occurring (whether because the conduct was permitted under Japanese rules or the rules were not applied) and that that conduct would amount to a violation to Article 3 of the Convention. We do not accept the criticisms that the assurances simply repeat the Japanese rules, or that they do not address the practical reality of the conduct the judge found might otherwise occur if the respondents were extradited to Japan. We do not accept that they are vague, or general, or use subjective language such as fails to make it clear what conduct must, or must not, occur. We bear in mind the submissions in relation to *AAA*. There the Supreme Court observed, in the context of assurances about the operation of the asylum system in Rwanda, that the problem was not the lack of good faith on the part of the Government of Rwanda, but its practical ability to fulfil its assurances, at least in the short term, in light of deficiencies in the Rwandan asylum system, the past and continuing practice of refoulment (that is, returning asylum seekers to countries where they claimed they faced a risk of persecution), and the scale of the changes in procedure, understanding and culture which was required. Given the findings of the judge in this case, we proceed on the basis that there is or has been cultural acceptance of behaviour which would constitute a violation of Article 3. However, these assurances specifically address the changes that need to be made. They do not involve changes of the nature or

on the scale that the Supreme Court considered would be required in relation to the Rwandan asylum system.

99. We are satisfied, therefore, that the judge was wrong to conclude that the assurances were inadequate in relation to Article 3 of the Convention. We are satisfied that the assurances in their practical application do provide sufficient guarantees that the respondents will be protected from ill-treatment while in initial custody, pre-trial detention and, if convicted, in custody. We find that ground 2 of the grounds of appeal succeeds in relation to Article 3 of the Convention.

100. In those circumstances, it is not necessary to consider ground 3, namely whether the judge was wrong to find that there were substantial grounds for believing that there was a real risk that, if extradited, the respondents would face treatment contrary to Article 3. The judge did identify the relevant test – substantial grounds of a real risk of being subjected to inhuman or degrading treatment. He did not, however, specifically remind himself that such treatment must attain a minimum level of severity which depends upon all the circumstances of the case. We doubt that some of the conduct identified by the judge was of sufficient severity to amount to ill-treatment contrary to Article 3. That is particularly so in the light of the case law of the European Court in cases such as *Ahmad v United Kingdom* (2013) 56 EHRR 1. It is not, however, necessary to reach a conclusion on that issue given that, in any event, the assurances in their practical application do provide a sufficient guarantee that the respondents will be protected against the risk of ill-treatment.

GROUNDS 2 AND 6: ARTICLE 6 OF THE CONVENTION

Submissions

101. Mr Keith accepted that lawyers were not permitted to be present with their clients during interviews or interrogations in the period of initial detention for 23 days up to indictment. He submitted, however, that the respondents would be told when arrested that they could have a lawyer and could ask to consult a lawyer. He accepted that the questioning of the respondents could continue until the lawyer arrived and was allowed to speak to the respondent. He submitted that the respondents would be told when arrested that they had a right of silence in that they did not have to answer questions. Furthermore, questioning would be video recorded and the recordings supplied to the respondents' lawyers. The Japanese courts would have to assess whether any confession was voluntary and if not would exclude it from evidence. Mr Keith submitted that, in the light of the decision of the European Court in *Doyle v Ireland* (Application no. 51979/17, judgment of 23 August 2019) that was sufficient to meet the requirements of Article 6 of the Convention.

102. Mr Summers submitted that the core problem was the absence of a lawyer present at the interview during the initial 72 hour period or at any interrogation during the remainder of the 23 day period following arrest and prior to indictment. That, he submitted, was a breach of Article 6 as was recognised by the European Court in *Salduz v Turkey* (2009) 49 EHRR 19. It was not clear that the respondents would be told on arrest and before questioning that they could request a lawyer. Nor was it clear that they would be informed that they had a right of silence. If they were told, and requested a lawyer, the questioning could continue until the lawyer arrived and would be allowed to see the respondents. The situation was materially different from that in *Doyle* where

the individual was allowed access to a lawyer before he was interviewed by police albeit that the lawyer was not allowed to be present during the interview itself. Further it was not clear that interviews during the first 72 hour stage would be video recorded. Mr Summers submitted that, in the circumstances, the lack of access to a lawyer would result in a flagrant denial of justice and nullify the very essence of the right to a fair trial.

103. Mr Fitzgerald adopted those submissions for the second respondent. He submitted that there was a very real risk of a confession being obtained during the initial 72 hour detention period without the respondents being informed of their right to silence or having access to a lawyer. Further, if that happened, there was a very real risk that the confession would be admitted. That would nullify the right to a fair trial. Furthermore, Mr Fitzgerald submitted that there would be no entitlement to a lawyer during the remainder of the first 23 day period of detention and that the mode and length of questioning led to the risk that confessions would be obtained involuntarily.

Discussion

104. Article 6(3)(c) of the Convention provides that:

> "(3) Everyone charged with a criminal offence has the following minimum rights:
>
> …
>
> (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…"

105. The European Court has accepted that an issue under Article 6 might, exceptionally, arise in circumstances where a person is to be extradited and risked suffering a flagrant denial of justice in the requesting country. What is required is a breach of the principles of a fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification or destruction of the very essence of the right to a fair trial guaranteed by Article 6: see *Othman* at paragraphs 258 to 260.

106. In *Salduz,* the European Court recognised that the guarantee in Article 6(3)(c) of the Convention may be relevant at the investigation stage if the fairness of the trial was likely to be seriously prejudiced by a failure to comply with the provisions of Article 6. It noted that Article 6 normally required the accused to benefit from the assistance of a lawyer at the initial stages of police interrogation and found that, in the case of Mr Salduz, that had not happened when he made statements to the police following arrest without being allowed to consult a lawyer beforehand or to have the assistance of a lawyer at the interview with the police. That resulted in a violation of Article 6 in that case. In *Doyle*, the individual was not allowed to have a lawyer present with him during police questioning but he had had access to a lawyer before what was described as the crucial first police interview and he was able to request, and was granted, an opportunity to consult with his lawyers during interviews. Furthermore, interviews were not excessively long, included breaks, the individual was not subjected to police pressure and the interviews were video recorded, and the individual had the opportunity to

challenge the admissibility of the confessions in the courts. In all the circumstances of that case, the European Court found no breach of Article 6 of the Convention.

107. The Government of Japan provided further information and assurances in October 2024 as explained above. We, therefore, have more information available than was before the judge.

108. The position is that the respondents will be informed on arrest, and prior to any questioning, that they have a right to silence, that is, they do not have to answer questions and no adverse inferences will be drawn against them if they do not answer questions. They will also be told at the beginning of the first phase of questioning (the 72 hour period called the opportunity for explanation) that they have the right to appoint a lawyer. It is correct that the lawyer cannot be present during interviews or interrogations. If, however, either or both of the respondents request to see a lawyer, the lawyers will immediately be informed of that. The March 2024 assurances guarantee that "the investigative authorities will give the suspect an earliest possible opportunity to consult with his defence counsel, which will be during the nearest meal or break time at the latest". We accept that the respondents may still be questioned in the period after requesting to speak to a lawyer. But they will know that they do not have to answer any questions, and no adverse inferences will be drawn if they do not do so. They will know that they are able simply to wait to speak to a lawyer before answering any further questions.

109. Furthermore, as indicated above, we are satisfied that the assurances will in practice be sufficient to prevent any oppressive techniques of interrogation, or excessively long interrogations. In addition, it is now clear that interviews during the initial 72 hour period and the remainder of the 23 day period will be video recorded and the recordings provided to the respondents' lawyers. Furthermore, the lawyers can apply to the Japanese court for confessions to be excluded from the admissible evidence if they were not obtained voluntarily.

110. Certain other concerns were expressed in paragraphs 84 to 91 of the second judgment but they do not appear to have been the basis of the concerns in the third and fourth judgment which led to the orders for discharge. In any event, in relation to the non-disclosure of exculpatory evidence, paragraph 83 of the assurances guarantees that all reasonably obtainable evidence in the case of the respondents, including exculpatory evidence will be collected and a list provided to the respondents' lawyers on request. The respondents will be able to request that they be provided with further evidence by the prosecution. They can ask a court to review a prosecutor's decision to fail to disclose evidence and the court can order disclosure of that evidence. In relation to the fact that the conviction rate was over 99%, the further information at paragraphs 88 and 89 of the March 2024 assurances indicates that only 33% of cases result in a prosecution and only 46% of cases adjudicated by the Saiban-system (the system that will apply here) involve a confession. So far as it was said that the courts will be reluctant to apply international human rights treaties, we see no basis on which it could reasonably be concluded that the courts, in the light of the assurances given, will act in a way which would result in a breach of Convention rights in respect of these two respondents. The judge also referred to double jeopardy and the prospect of an appeal against an acquittal. We do not see the basis for considering that the prospect of an appeal would involve of itself a breach of a Convention right. We see no proper basis for concluding that there is any risk of double jeopardy such that there could in these cases be any real risk of a

breach of a Convention right. It is right to note that these concerns do not feature in the fourth judgment as a reason for considering that there would be a breach of a Convention right if Mr Wright were extradited. We do not consider that these concerns justify a conclusion that there would be a breach of either respondent's Convention rights if extradited.

111. In all those circumstances, we are satisfied that the assurances in the present case will provide in practice a sufficient guarantee that the respondents, if extradited, will not face a risk of a flagrant denial of justice contrary to Article 6 of the Convention. We therefore allow ground 2 of the appeal in relation to Article 6.

112. It is not necessary to deal with ground 6. We would observe, however, that questions may well arise as to whether, depending on all the circumstances, there is a risk of a flagrant denial of justice if individuals were extradited to Japan, where lawyers are not allowed to be present at interview, and if they were not told before the first interview with investigating officers that they could have access to lawyers or that they did not have to answer questions. Given the assurances in the present case, that is not what would happen in relation to these two respondents.

GROUND 4: ARTICLE 4 OF THE CONVENTION

113. Mr Keith submitted that the judge was wrong to find that there was a real risk that the system of compulsory work in prison in Japan would violate the respondents' rights pursuant to Article 4 of the Convention. He submitted that a system of compulsory work for those in detention fell outside the concept of forced labour, relying on *Stummer v Austria* (2012) 54 EHRR 11 and *Meier v Switzerland* (Application no. 10109/14, judgment on 9 May 2016).

114. Mr Fitzgerald submitted that the question of whether compulsory labour fell within Article 4 required consideration of the aim, nature, extent and manner of the work, as explained in paragraph 72 of *Meier*. Further, he submitted that Article 4 required consideration of the standards contained in the European Prison Rules to which the European Court had itself referred in its judgment in *Meier*. Key elements were that "the organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community, so as to prepare prisoners for the conditions of normal occupational life". The work was compulsory, the prisoner had no element of choice, the remuneration was not equitable, prisoners were marched in a military fashion. He submitted that although the appellant had stated that strip searching had stopped in 2016, there was evidence from Ms Tagusari that strip searching had continued at Osaka prison. Those conditions meant that the work was not work done in the ordinary course of detention and was prohibited. Mr Summers adopted Mr Fitzgerald's submissions.

Discussion

115. Article 4 of the Convention provides, so far as material, that:

> "(2) No one shall be required to perform forced or compulsory labour.

> (3) For the purposes of this Article the term "forced or compulsory labour" shall not include:
>
> (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention…"

116. It is clear from the evidence and the information and assurances provided in March 2024 that, if convicted and sentenced to imprisonment, the respondents will be obliged to work and may face punishment if they refuse. The work is carried out for 8 hours a day for 5 days a week, and is not required to be done on Saturdays, Sundays or public holidays. The assurances state that the work is intended to encourage persons to acquire useful vocational skills. Those working are able to talk about work matters while working and can only talk about other matters during breaks. The work is to be done in safe conditions with precautions to prevent accidents in line with the standards that apply to private companies. The work is remunerated at a rate of about $1 a day (see paragraph 80 of the second judgment).

117. In *Stummer*, the issue concerned the fact that prisoners in Austria were required to work but were not affiliated to the old-age pension system and were deprived of a pension. The European Court referred to a number of sources of information about prison conditions in European states and also referred to the European Prison Rules. They are a set of rules established by the Committee of the Council of Europe. The European Court found that there was no unlawful discrimination contrary to Article 14 of the Convention. In relation to Article 4, it noted that the applicant was obliged to work and it was an offence not to do so. It noted that the applicant was arguing that European standards had changed to such an extent that prison work without affiliation to the old-age pension system could no longer be treated as "work required to be done in the ordinary course of detention" and so did not fall within the scope of Article 4(3)(a) and, therefore, constituted forced labour prohibited by Article 4(2) (see paragraph 129 of its judgment). It noted that the European Prison Rules provided for the normalisation of prison work and that as far as possible prisoners should be included in national social security systems. Nonetheless, the European Court dismissed the claim of a violation of Article 4(2). It considered that there was insufficient consensus amongst states on the affiliation of prisoners to the old-age pension systems and the European Prison Rules could not be translated into an obligation under Article 4. Consequently, the compulsory prison labour remained work performed in the ordinary course of detention and so was not prohibited (see paragraphs 130 to 133).

118. The question in *Meier* was whether it was a violation of Article 4 to require a prisoner above the normal retirement age to work. The European Court again referred to the European Prison Rules, in particular, the provision which stated that sentenced prisoners who have not reached the retirement age may be required to work. It said that the question of the applicability of Article 4(3)(a) "should be examined in the light of the aim of the work imposed, its nature, its extent and the manner in which it has to be performed" (see paragraph 72 of its judgment) and did so in relation to the facts of that case. The European Court noted that the European Prison Rules did not have binding legal force but that it had always attributed considerable importance to them in its case law (see paragraph 78). Nonetheless, and notwithstanding the provisions of the European Prison Rules, the European Court concluded that no absolute prohibition on

requiring prisoners to work after normal retirement age could be inferred from Article 4 of the Convention. It therefore dismissed the claim.

119. Applying the principles to the present case, we are satisfied that Article 4 of the Convention permits compulsory labour for those serving sentences of imprisonment. That is inherent in the wording of Article 4(3) and the decisions of the European Court in *Stummer* and *Meier*. The aim of the imposition of compulsory labour in Japan is, as appears from the March 2024 assurances, concerned with encouraging sentenced persons to work and help them acquire vocational skills and knowledge. Both are acceptable aims. It is legitimate and desirable to encourage prisoners to acquire the habit of regular work, so as to develop, maintain or promote the ability of prisoners to begin or resume working life after completion of their sentences. It is legitimate to use compulsory labour to promote the acquisition of skills that will be useful to prisoners following their release. There is no evidence of anything objectionable about the nature of the work that sentenced prisoners may be required to carry out. There is nothing to indicate that the nature of work means it is not work done during the ordinary course of detention. So far as the extent of the work is concerned, there is nothing which could reasonably justify a conclusion that a forty-hour week, done over five days, with no work on weekends, or public holidays, falls outside the scope of work done in the ordinary course of detention. We bear in mind the provisions of the European Prison Rules and the principle that the organisation and methods of work shall resemble as closely as possible those of similar work outside prisons. We do not consider, however, that they can be translated into an obligation derived from Article 4 that if a person is given no choice about what work he wishes to do, then the work is not done in the ordinary course of detention and therefore falls outside Article 4(3) and within the prohibition in Article 4(2). Furthermore, and in any event, the evidence does not establish that there is anything about the way that the work is actually organised, or the methods of that work, which could take the work outside the scope of work done in the ordinary course of detention.

120. We note that levels of pay are low (as, in fact, they are in this country). But we do not regard that as establishing a breach of the rule that remuneration should be equitable. Nor, more significantly, even if the remuneration were to be regarded as inequitable would we regard that as capable of being translated into breach of an obligation derived from Article 4, or to mean that the work itself fell outside the scope of work carried out in the ordinary course of detention.

121. There are two further matters referred to by the judge and mentioned in submissions. The first is that the second judgment indicated that prisoners are made to march in what was described as military style to and from prison. We do not regard that as meaning the work falls outside the scope of Article 4(3)(a) of the Convention and so results in the compulsory labour constituting a breach of Article 4 (and it was not submitted that that could involve a breach of any other Convention right nor, for completeness, would we regard it as attaining the level of severity necessary to constitute a breach of Article 3 of the Convention).

122. The second is a reference by the judge to prisoners in 11 prisons in the western part of Japan having to strip naked in order to be searched when going to and from work. That was a reference to evidence dating back to 2012. The appellant contends that strip searching was stopped and prisoners are allowed to wear undergarments when being searched. Before us, Mr Fitzgerald submitted that, although it was said that strip

searching had stopped in 2016, there was evidence from Ms Tagusari that it continued in Osaka prison. That prison is one of the three prisons in which the respondents might, if convicted, serve their sentence. The evidence in paragraph 76 of Ms Tagusari's report needs to be read as a whole. She is dealing there with what is said to be one of the characteristics of Japanese prisons which is that prison rules are strict and difficult to understand, mainly because prison authorities are motivated to treat prisoners uniformly rather than paying attention to individual prisoners' various needs. She gives examples, one of which is prisoners having to be searched and, in Osaka, prisoners were strip searched when going to factories. She said that Osaka had not terminated such practices as was recommended in 2021. This matter was raised briefly in the examination-in-chief of Ms Tagusari. She was asked by counsel for Mr Chappell if it was "right that he will be required to march military style to and from work, and potentially be strip searched?". She answered "I think so".

123. The judge did not refer to the evidence of Ms Tagusari about the continuation of strip searching in Osaka prison. Furthermore, the judge did not seek any assurances or further information in relation to strip searches after his second judgment but only sought assurances that, during work, behaviour such as marching, looking straight ahead, and limited talking will not be used, that work would have a meaningful reward, be voluntary and failure to do so will not be punished and that remuneration will be equitable. In his fourth judgment, the judge did not specifically refer to strip searches. He referred to parts of the European Prison Rules dealing with the nature of the work. He did refer to the need to treat prisoners required to work in as dignified a manner as possible, to afford them some element of choice and to institute a system which is as close as possible to employment in civil society.

124. Having considered the judgments of the judge carefully, we do not consider that the judge made a finding that there is at present a practice of strip searching at Osaka prison. That was not the basis for his finding that the system of forced labour would of itself lead to a breach of Article 4 of the Convention. If there had been a finding to this effect, we would have had to consider carefully whether that finding, and the possibility of prisoners being strip searched when going to and from work, meant that the work fell outside the scope of work done in the ordinary course of detention and so the work was prohibited by Article 4 of the Convention (no other breach of any other Convention right being alleged in relation to this matter). If we had concluded that the possibility of strip searching at Osaka prison led to a potential violation of Article 4, we would have sought assurances that the respondents would not be held at that prison or that they would not be strip searched if held there.

125. We therefore conclude that the judge was wrong to treat the lack of any choice about what work to do as resulting in the work falling within Article 4(2) and prohibited. Similarly, we conclude that he was wrong to treat his concerns as to remuneration, marching on the journey to and from cells to work, or searches, as meaning that the work was not work carried out in the ordinary course of detention under Article 4(3) and therefore a breach of Article 4(2), or otherwise a breach of any obligation in Article 4. We would therefore allow ground 4 of the appeal. It is not necessary to consider ground 2 and whether the assurances would provide a sufficient practical guarantee that there would be no risk of a breach of Article 4 as the matters identified by the judge do not involve a breach of Article 4 of the Convention.

GROUND 5: ARTICLE 5 OF THE CONVENTION

126. We can deal with this ground shortly as the respondents accept that the judge erred in relation to Article 5 and this ground must succeed. Article 5 of the Convention provides so far as material that:

> "…
>
> (3) Everyone arrested or detained in accordance with the provisions of paragraph 1(c) shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> (4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

127. The system in Japan is that a person who is arrested must be brought before a prosecutor within 48 hours of arrest. The prosecutor must decide within a further 24 hours whether to release the suspect. If not, he must refer the matter to a judge who will decide whether to authorise detention for a period of 10 days (and may order detention for a further period of 10 days). The judge found that there was no right to apply for bail during the initial interrogation (see paragraph 53 of his second Judgement). The position is that extradition of a person will only be incompatible with Article 5 if there is a real risk of a flagrant breach of Article 5 but a period of up to 50 days has not been found to be such a flagrant breach: see *Othman* at paragraphs 233 to 234. The respondents accepted that if there were a breach of Article 5 during the initial interrogation, it fell far short of the 50 days in *Othman* and accordingly could not amount to a flagrant breach. For that reason, the respondents concede, we consider rightly, that the judge was simply wrong to find that the extradition of the respondents would result in a breach of Article 5. We do not need to consider any wider questions concerning whether or not the facts of this case (if, for example, the case had involved a purely domestic situation, not extradition) would involve a breach of Article 5. We therefore find that ground 5 of the grounds of appeal is upheld.

ANCILLARY MATTERS

128. This judgment addresses the principal submissions made on behalf of the respondents in relation to whether there is a *prima facie* case in relation to Mr Chappell and our conclusions, and reasons, on the issues that it was necessary to decide to deal with that issue. It also addresses the principal submissions of the respondents in relation to the Convention issues, and explains our conclusions, and reasons, in relation to Articles 3, 4, 5 and 6. The parties referred to many documents and raised many points in their written and oral submissions. It would be disproportionate to deal with each and every document or point raised and to do so would lengthen this already lengthy judgment to the point where it would cease to explain clearly and comprehensibly the conclusions and reasons on the real issues in this case. The parties can be assured that we have considered the documents relied upon in their written and oral submissions, and

considered all the submissions made in writing and orally, and we have considered the authorities to which we were referred in written submissions and oral argument, whether or not those documents, arguments or authorities are referred to specifically in this judgment.

CONCLUSION

129. We allow the appeal on ground 1. There was a *prima facie* case for the first respondent to answer. We also allow the appeal against the decision to order the discharge of the respondents pursuant to section 87 of the Act. We allow the appeal on ground 2 to the extent that the assurances are in practice sufficient to guarantee that the respondents if extradited would not face a real risk of ill-treatment contrary to Article 3 or a flagrant denial of justice contrary to Article 6 of the Convention. We uphold grounds 4 and 5 as the judge was wrong to find that extradition would involve a breach of Articles 4 and 5 of the Convention.

Appendix: The assurances

The assurances dated 13 March 2024

The Government of Japan presents its compliments to the Government of the United Kingdom and hopes that the long-standing diplomatic cooperation between our two countries will continue.

Further to its previous letter of 22 May 2023, the Government of Japan hereby provides additional assurances in respect of the extradition requests issued for Daniel Lee KELLY, Kaine Lee WRIGHT, Joe Anthony CHAPPELL ('the Requested Persons'). The Government of Japan assures the Government of the United Kingdom that it will honour the solemn assurances set out both in the present document, and in the previous assurance letter dated 22 May 2023.

These further assurances are given as a result of the request of the Honourable Senior District Judge in the judgment dated 27 February 2023 in relation to the extradition requests made on behalf of the Government of Japan for the extradition of Daniel Lee KELLY, Kaine Lee WRIGHT, Joe Anthony CHAPPELL ("the Requested Persons").

In preparing this additional assurance document, the Government of Japan has carefully considered:

a) The judgment of the Senior District Judge dated 27 February 2023, requesting assurances from the Government of Japan.

b) Annex A to the judgment dated 27 February 2023.

c) The judgment of the Senior District Judge dated 11 August 2023, refusing the extradition request in respect of Joe Anthony CHAPPELL.

SECTION 1: SUBSTITUTE DETENTION ('DAIYO KANGOKU') AND ARTICLES 3 AND 6 ECHR

A. Time spent in the substitute detention system:

1. In relation to the length of the substitute detention period, the Government of Japan has considered the findings of the Senior District Judge at paragraphs 37 - 39 of his judgment dated 27 February 2023, the related question set out in Annex A to that judgment assurance (at point 1. under the heading 'Daiyo Kangoku'), and his further findings at paragraph 21 of his judgment dated 11 August 2023.

2. In its previous letter dated 22 May 2023, the Government of Japan explained that the two offences of a) robbery causing injury and b) breaking into a building amount to a 'connected crime' under Article 54(1) of the Japanese Penal Code and will legally be dealt with as a single alleged fact of crime. The substitute detention period before the indictment for a legally single alleged fact of crime is limited to a maximum of 23 days.

3. The Government of Japan maintains that the statement of the law in its letter of 22 May 2023 is accurate and maintains its assurance that this legal rule will apply in the cases against the Requested Persons.

4. Accordingly, in relation to this specific case, the Government of Japan guarantees that the two charges of a) robbery causing injury and b) intrusion upon a building set out in the extradition request for the Requested Persons will be treated by the investigating and prosecuting authorities as one single offence. Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will therefore be detained in the substitute detention system for a single period of 23 days at the maximum before the indictment. The Government of Japan further guarantees that there will be no manipulation of the charges to extend this period.

B. Treatment of suspects during the substitute detention system:

5. In relation to the treatment of suspects during the substitute detention period, the Government of Japan has considered the findings of the Senior District Judge at paragraphs 40, 41 and 43 - 45 of his judgment dated 27 February 2023 and his further findings at paragraph 22 of his judgment dated 11 August 2023.

6. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will not be subjected to ill-treatment of any kind while detained in a police station during the substitute detention period.

7. In its letter dated 22 May 2023, the Government of Japan set out at section 1.9 the mechanisms in place to ensure that suspects in detention facilities are treated appropriately. The Government of Japan reaffirms that the mechanisms set out in that section will also apply to these Requested Persons.

8. In particular, in accordance with the summarised at section 9 of the letter dated 22 May 2023, the Government of Japan assures that the following guarantees will apply during the substitute detention period:

a. Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will receive privacy while in their cells and while using the sanitary facilities;

b. The cells in which Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL are detained will be maintained at a comfortable temperature for 24 hours per day by using cooling and heating systems;

c. Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be detained in cells with adequate natural light and ventilation. The artificial lighting will be dimmed at night to a level which does not interfere with sleep.

d. Clean bedclothes will be provided to Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL and will be regularly replaced and sterilised.

e. The activities of Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will not be restricted, so long as their activities do not disturb the peace of other detainees or violate the purpose of their detainment. Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be provided with books and newspapers free of charge. They will also be able to listen to radio programs and music.

f. Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will receive sufficient food which has been checked by qualified dieticians to ensure that it is nutritionally balanced.

g. Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will receive health check-ups twice a month, in addition, should they become ill or injured, they will receive proper medical care at public expense including immediate treatment at an external hospital if necessary.

C. Use of restraints in the substitute detention system:

9. hr relation to the use of restraints during the substitute detention period, the Government of Japan has considered the findings of the Senior District Judge at paragraph 42 of his judgment dated 27 February 2023, the related questions set out in Annex A to that judgment (at point 2. under the heading 'Daiyo Kangoku'), and further findings at paragraphs 23 and 24 of his judgment dated 11 August 2023.

10. In its letter dated 22 May 2023, the Government of Japan set out at section 1.2. the applicable Japanese laws which strictly control the use of restraining devices. The Government of Japan reaffirms that the safeguards and restrictions set out in that section will also apply to these Requested Persons.

11. The Government of Japan therefore guarantees in respect of Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL that restraints will not be used unless necessary (and only for as long as is necessary) to prevent escape, to prevent injury to others or self-inflicted injury, or to prevent damage to the facilities or property of the detention facility.

12. The Government of Japan assures that restraints will not be misused against Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL, and in particular will never be used as an interrogation technique or punishment.

D. Access to a lawyer in the substitute detention system:

13. In relation to access to legal advice and representation during the substitute detention period, the Government of Japan has considered the findings of the Senior District Judge at paragraphs 43, 47 and 48 of his judgment dated 27 February 2023, the related questions set out in Annex A to that judgment (at point 5. under the heading 'Daiyo Kangoku' and his further findings at paragraphs 25, 26 and 32 - 33 of his judgment dated 11 August 2023.

14. At section 1.5. of its letter dated 22 May 2023, the Government of Japan explained that all accused persons have the right to appoint defence counsel at any time, in accordance with Article 30(1) of the Code of Criminal Procedure. Should an accused person be unable to appoint their own defence counsel due to indigence or any other grounds they will be provided with a lawyer, paid for by legal aid, once a detention warrant has been issued. This right is guaranteed by Article 37-2(1) of the Code of Criminal Procedure. The Government of Japan guarantees that these rights will also apply to Daniel Lee KELLY, Kaine Lee WR1GHT and Joe Anthony CHAPPELL.

15. Additionally, in accordance with the information set out at section 5 of the letter dated 22 May 2023, the Government of Japan guarantees that if Daniel Lee KELLY, Kaine Lee WRIGHT or Joe Anthony CHAPPELL appoint defence counsel to represent them, the defence counsel in question will be immediately notified by the investigating officer.

16. As explained in the evidence provided by the Government of Japan during the first instance proceedings in respect of Mr Chappell, under the current Japanese law, the Requested Persons

do not have a right to have their legal representative present with them during interrogations. However, Government of Japan guarantees that, in accordance with Japanese Law, even when the suspect is under interview at the time of the request, investigative authority will give the suspect an earliest possible opportunity to consult with defence counsel, which will be during the nearest meal or break time at the latest. Therefore Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will have access to legal advice during the interrogations. This is also true for paragraph 18 and 19.

17. In particular, the Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL may have conferences with their defence counsel or prospective defence counsel both before and during interrogations without any official being present, in accordance with Articles 39-1 and 81 of the Code of Criminal Procedure,

18. The Government of Japan also guarantees that the Requested Persons may ask to consult with their lawyers at any stage during an interview. The Requested Persons will then be able to have a privileged consultation with their lawyer.

19. The Government of Japan further assures that any request made by the Requested Persons for an opportunity to consult with their lawyers will be granted.

20. Finally, the Government of Japan assures that an appropriately qualified English interpreter will be provided for all interviews.

E. Length of interviews during the substitute detention system:

21. In relation to the length of interviews during the substitute detention period, the Government of Japan has considered the findings of the Senior District Judge at paragraphs 43 and 46 of his judgment dated 27 February 2023, the related questions set out in Annex A to that judgment (at point 4. under the heading 'Daiyo Kangoku'), and his further findings at paragraphs 27 and 28 of his judgment dated 11 August 2023.

22. At section 1.4. of its letter dated 22 May 2023, the Government of Japan set out the rules in place which strictly control the length of interviews/interrogations. The Government of Japan reaffirms its previous guarantee that these rules will apply to Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL.

23. The Government of Japan also reaffirms its guarantee that all interviews/ interrogations of Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will not be oppressive in length, either individually or cumulatively.

24. More specifically, the Government of Japan guarantees that:

a. Interrogations/interviews will not take place between the hours of 10pm and 5am.

b. The Requested Persons will be given a break of at least 8 hours overnight to ensure a sufficient period of undisturbed sleep.

c. Regular breaks will be provided during interrogations/interviews.

F. Interview techniques during the substitute detention system:

25. In relation to interview techniques used during the substitute detention period, the Government of Japan has considered the findings of the Senior District Judge at paragraphs 43 - 46 of his judgment dated 27 February 2023, the related questions set out in Annex A to that judgment (at point 3. under the heading 'Daiyo Kangoku'), and his further findings at paragraphs 29-31 of his judgment dated 11 August 2023.

26. At section 1.3. of its letter dated 22 May 2023, the Government of Japan explained the various legal mechanisms in place - including Articles of the Constitution, Rules of Criminal Investigation, the Code of Criminal Procedure, decisions of the National Public Safety Commission and guidelines of the National Police Agency - to ensure that no oppressive behaviour, ill-treatment or coercion of any kind occurs during interrogations of suspects, The Government of Japan reaffirms its previous assurance that these safeguards will apply to any and all interviews conducted with the Requested Persons.

27. The Government of Japan therefore guarantees that all interviews/interrogations of Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be carried out in manner which respects international standards of fairness and that there will be no use of oppressive behaviour, ill-treatment or coercion of any kind.

28. The Government of Japan also guarantees that the propriety of interrogation practices during interrogations conducted by police officers will be monitored by a supervising officer, who is independent of the investigation and who has the power to stop the questioning immediately if any oppressive behaviours take place.

29. In relation to interrogations conducted by prosecutors, the propriety of interrogation practices will be monitored via the video and audio recordings that will be made of each of the interviews conducted with each of the Requested Persons. These recording can be reviewed by the Requested Persons' defence lawyers and by the Japanese court. This will be discussed further in the next section.

G. Video recording of interviews in the substitute detention system:

30. In relation to the video recording of interviews during the substitute detention period, the Government of Japan has considered the findings of the Senior District Judge at paragraphs 49 and 50 of his judgment dated 27 February 2023, the related question set out in Annex A to that judgment (at point 6. under the heading 'Daiyo Kangoku'), and his further findings at paragraph 33 of his judgment dated 11 August 2023.

31. In this particular case, the Government of Japan guarantees that all interviews/interrogations of Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be video and audio recorded.

32. The Government of Japan further guarantees that these interview recordings will then be made available to the defence lawyers of the Requested Persons during the disclosure process.

SECTION 2 – PRE-TRIAL DETENTION AND ARTICLE 3 ECHR

A. Location of pre-trial detention:

33. In accordance with the evidence given by the Government of Japan during the first instance proceedings in respect of Joe Anthony CHAPPELL, the Government of Japan guarantees that after the indictment is lodged, Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be promptly transferred to a detention house. The question of which detention house the Requested Persons are transferred to will ultimately be decided by a judge. However, the prosecutor will apply for the Requested Persons to be detained at the Tokyo Detention House and there are no forceful reasons for this application to be denied.

B. Conditions of pre-trial detention:

34. In relation to the conditions of pre-trial detention, the Government of Japan has considered the findings of the Senior District Judge at paragraphs 60 – 77 of his judgment dated 27 February 2023, the related questions set out in Annex A to that judgment (at points a. – t. under the heading 'Detention'), and his further findings at paragraphs 36 – 39 of his judgment dated 11 August 2023.

35. In its previous letter dated 22 May 2023, the Government of Japan set out at section II. the legal and practical safeguards in place to ensure adequate conditions of detention in Japanese penal institutions**.** The Government of Japan reaffirms that the guarantees provided in that document will apply to Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL.

36. For the avoidance of doubt, in response to the guarantees requested by the Senior District Judge in Annex A (as reiterated in his judgment dated 11 August 2023), the Government of Japan provides the following further assurances.

a. *'A heat exchange system is installed and working, providing heat in the winter and AC in the summer.'*

37. The Government of Japan guarantees that both heating and air conditioning is installed at the Tokyo Detention House and will be working in the cells in which Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be detained pending trial.

b. *'That the system will in fact be used when required and not just available.'*

38. The Government of Japan guarantees that the heating and air conditioning systems referred to above will be used as required to maintain a comfortable temperature.

c. *'The [Requested Persons] will be provided with privacy and dignity when in his cell and using bathing or toilet facilities.'*

39. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be provided with privacy and dignity when in their cells and when using bathing or toilet facilities.

40. The Government of Japan confirms that there are no cameras installed in cells nor sanitary facilities where general inmates including foreigners are housed at the Tokyo Detention House. In cases where there is a need to closely monitor the inmate's abnormal

behaviour, such as in cases of suicide or self-harm, the inmate may be kept in a cell equipped with a camera.

41. Each detention cells within police stations, detention houses and prisons is furnished with an opaque board so that the detainee cannot always be seen by detention officers. The Government of Japan guarantees that these mechanisms for ensuring privacy will be provided to Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL during any period of detention.

d. 'Provided with sufficient access to water for personal care needs, such as bathing, washing hair and drinking.'

42. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will have sufficient access to water for personal care needs including bathing, washing hair and drinking.

43. In particular, the Government of Japan guarantees that the Requested Persons will be able to bathe and wash their hair at least three times per week.

44. In relation to drinking water, the Government of Japan guarantees that the tap water available in all places of detention in Japan is drinkable and safe. The Government of Japan further guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be permitted to drink water from the tap in their cell at any time.

e. 'Be provided with adequate food.'

45. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be provided with sufficient food. The Requested Persons' meals will be assessed by a qualified dietician to ensure that their meals are sufficient to maintain good health and nutritionally balanced. The Government of Japan will accommodate dietary needs such as for therapeutic, religious, or cultural reasons as necessary.

f. 'Permitted adequate exercise, that is more than 30 mins per day.'

46. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will have more than 30 minutes of exercise per day.

g. '[The Requested Persons'] personal correspondence is not routinely censored and only is when strictly necessary and correspondence with his legal advisers is not read.'

47. The Government of Japan guarantees that the Requested Persons' personal correspondence will not be censored if it is deemed that there is risk of causing neither disruption of discipline and order in the penal institution nor destruction of evidence.

48. The Government of Japan further guarantees that the content of correspondence from their defence counsels to Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will not be read.

49. The Government of Japan guarantees that the Requested Persons will be able to have visits with family, their defence counsels or British Embassy staff on request. They may also receive documents or articles from visitors. Visits of family will only be refused upon decision by the judge that there is a probable cause to suspect that the Requested Persons may flee or conceal or destroy evidence taking advantage of such visits. Visits of their defence counsels or British consuls will not be refused.

50. Regarding legal visits, the Requested Persons will be able to meet with their defence counsels without the presence of an official at any time and for unlimited duration, save for where administrative difficulties within the facility make this impossible.

h. 'The use of Restraints is limited in the same way as [the parallel assurance requested for the substitute detention period].'

51. As stated in response to point 2 above, the Government of Japan guarantees that restraints will not be used unless necessary (and only for as long as is necessary) to prevent escape, to prevent injury to others or self-inflicted injury, or to prevent damage to the facilities or property of the penal institution. The Government of Japan assures that restraints will never be used as an interrogation technique or punishment.

i. 'What effective monitoring of conditions will be put in place?'

52. Monitoring of conditions in respect of all places of detention is addressed in detail in Section 7 below.

j. 'Please provide a written assurance to the United Kingdom court to confirm that all necessary and reasonable medical care will be provided to the defendant throughout any period All reasonable steps will be taken to ensure the defendant has access to medical care and medical facilities; adequate and clean bed and bedding; access to proper sanitation facilities; adequate light and ventilation; proper access to clean drinking water and food.'

53. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be provided with all necessary and reasonable medical care. As a responsibility of the Japanese government, standard treatment will be provided by doctors and other medical professionals. If specialist care is required, the Requested Persons will be treated at medical prisons or outside hospitals as necessary.

54. The Government of Japan further guarantees that it will adhere to international norms and provide the Requested Persons with:

a. a bed and clean bedding;
b. access to proper sanitation facilities;
c. adequate light and ventilation; and
d. proper access to clean drinking water and food.

k. 'Please confirm that there is a mechanism through which the defendant can make any complaints about the conditions of his detention and how any such complaints are administered.'

55. The Government of Japan guarantees that there are mechanisms through which Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL can make complaints about conditions or treatment in detention, and that any complaints made will be appropriately processed in accordance with the law.

56. Under the Penal and Detention Facilities Act, three systems have been set up for submitting appeals relating to detention facilities: petition for review about a certain disposition, report of a case of physical violence against a detainee, and filing of complaints concerning general treatment. The Government of Japan guarantees that the Requested Persons will be able to make use of all of these mechanisms whenever necessary. When the persons are applying for them, necessary measures will be taken to keep the details confidential from the staff of penal institutions

l. '[Please confirm] the exact circumstances in which the authorities will be permitted to use solitary confinement.'

57. The Government of Japan wishes to highlight the distinction between *isolation*, which is the form of detention closest to 'solitary confinement' as the English court would understand it, and *Category 4 detention*, which is the strictest regime of general detention:

a. The Government of Japan guarantees that for any period of time spent in *Category 4 detention*, Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will not be isolated either from other inmates or from the outside world. Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be permitted to socialise with other inmates while taking educational programs and during exercise. They will also be able to receive visits and letters from friends and family.

b. The Government of Japan further guarantees in relation to Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL that *isolation* will only be used when strictly necessary, and as a last resort, for the protection of the inmate themselves or for the protection of other inmates. Any period of isolation may not exceed 3 months in principle. Any period of isolation will be brought to an end immediately once the necessity for isolation ceases to exist. The Government of Japan further guarantees that any period of isolation will be kept under strict review and that the Requested Persons will be able to communicate freely with their defence counsels throughout.

m. 'Provision to use the telephone for contact with family and friends.'

58. Inmates in pre-trial detention do not have access to a telephone for contact with family and friends. Instead, the Requested Persons will be able to communicate with friends and relatives through written correspondence during any period of pre-trial detention.

59. However, prisoners who have been convicted and sentenced to imprisonment are permitted to have access to a telephone. The Government of Japan guarantees that the Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will have access to a telephone to speak to family and friends pursuant to the law, while serving any custodial sentence that may be imposed.

n. 'The use of physical abuse will not be permitted.'

60. The use of physical abuse against inmates is strictly prohibited under Japanese law. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will not be subjected to torture or any other kind of physical abuse while in custody in Japan.

o. 'The cell will be capable of being in darkness if desired.'

61. The Government of Japan guarantees that the lights used during the day are turned off during the night in cells where Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL are detained while for security reasons, only the minimum necessary lighting is turned on.

p. 'During work oppressive behaviours such as marching, looking only straight ahead and limited talking will not be used.'

62. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will not be required to work during any period of pre-trial detention, as compulsory work only applies to sentenced prisoners.

63. Further guarantees pertaining to the conditions of prison work are addressed in detail below.

q. 'A proper monitoring mechanism, including allowing embassy visits are put in place.'

64. Monitoring of conditions in respect of all places of detention is addressed in detail in Section 7 below.

r. 'Work will have a meaningful reward, be voluntary and failure to do so will not be punished.'

65. As stated above, the Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will not be required to work during any period of pre-trial detention, as compulsory work only applies to sentenced prisoners.

66. Further guarantees pertaining to the conditions of prison work are addressed in detail below.

s. 'Remuneration will be equitable.'

67. As stated above, the Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will not be required to work during any period of pre-trial detention, as compulsory work only applies to sentenced prisoners.

68. Further guarantees pertaining to the conditions of prison work are addressed in detail below.

C. Rules and discipline in pre-trial detention:

69. In relation to rules and discipline in pre-trial detention, the Government of Japan has considered the findings of the Senior District Judge at paragraph 71-73 of his judgment dated 27 February 2023 and his further findings at paragraph 49 of his judgment dated 11 August 2023.

70. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be permitted to speak with other inmates at any time, as long as there is no risk of hindering either maintaining discipline and order or the management and administration of the institution.

SECTION 3 – SUBSTITUTE DETENTION AND ARTICLE 5 ECHR

A. Bail during the substitute detention period

71. In relation to availability of bail during the substitute detention period, the Government of Japan has considered the findings of the Senior District Judge at paragraphs 53 – 55 of his judgment dated 27 February 2023, the related questions set out in Annex A to that judgment (at point 7. under the heading 'Daiyo Kangoku'), and his further findings at paragraph 58 of his judgment dated 11 August 2023.

72. As explained in the evidence given by the Government of Japan during the first instance proceedings in respect of Mr Chappell, and in the previous assurance dated 22 May 2023, there is no system of pre-indictment 'bail' in Japan. However, detention during the Substitute Detention phase is supervised by the judiciary. During the Substitute Detention period, the choice for the judge is to either authorise detention or not. If detention is not authorised, then the accused is released.

73. The Japanese Government guarantees that the detention of the Requested Persons will firstly be considered by a court within 72 hours of arrival, as required by Article 203(1), 205(1) and (2) of the Code of Criminal Procedure. When deciding whether to authorise detention, the judge will hear submissions made on behalf of the Requested Persons (Article 207(1), 60 and 61 of the said Code).

74. If detention is authorised, the Requested persons may only be detained for 10 days initially. 10 days after the first court hearing, the detention decision will be reviewed again. According to Article 208(2) of the Code of Criminal Procedure, a further 10-day period of detention at maximum may be authorised by the judge, but only if the judge deems that unavoidable circumstances exist. There can be no further extension thereafter. After this stage, the case will proceed to the trial phase or be discharged.

75. The Government of Japan guarantees that the Requested Persons will have a right to appeal each judicial decision to authorise or extend detention, pursuant to Article 429(1) of the Code of Criminal Procedure.

76. In summary, the Government of Japan guarantees that the appropriateness of the detention of Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be reviewed at the following points during the Substitute Detention period:

a. by the police immediately upon arrest;
b. by the prosecutor, within 48 hours of arrest;
c. by a judge, within 72 hours of arrest;
d. by a judge, following an appeal against the decision to authorise detention (if lodged);
e. by a judge, 10 days after the initial judge's decision to authorise detention; and
f. by a judge, following an appeal against the decision to extend detention (if lodged).

77. After the indictment has been lodged (which will be done within 23 days at an absolute maximum) the Requested Persons will be able to apply for bail.

SECTION 4 –THE TRIAL PROCESS AND ARTICLE 6 ECHR

A. Access to a lawyer during the substitute detention period:

78. As set out above, the Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will have access to appropriate legal representation throughout the substitute detention period.

B. Video recording of interviews:

79. As set out above, the Government of Japan guarantees that all interrogations/interviews with Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be video and audio recorded in full.

C. Disclosure of evidence:

80. In relation to disclosure of evidence, the Government of Japan has considered the findings of the Senior District Judge at paragraph 85 of his judgment dated 27 February 2023.

81. As set out above, the Government of Japan guarantees that all recordings of all interrogations/interviews with Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be provided to their defence counsel through the disclosure process.

82. The Government of Japan further notes that:

a. The 'Principles of Prosecution', established by the Supreme Public Prosecutor's Office in 2011, requires prosecutors to 'collect all relevant evidence, both incriminating and exculpatory, aggravating and mitigating…'
b. Following reforms introduced in 2016, the scope of evidence to be disclosed has been significantly expanded. The prosecution 'must enable the defendant's counsel to review the statements or physical evidence to be used and disclose information on the witnesses who will be summoned'. The defence are also entitled to receive a list of all the evidence in the prosecution's possession upon request.
c. Defence counsel are entitled to request further evidence from the prosecution. Since the 2016 reforms, the categories of evidence that the defence may request has been expanded.

d. A defendant can request that the Court review a prosecutor's decision to fail to disclose evidence. If the court finds that the prosecutor has failed to disclose evidence which ought to have been disclosed under the Code of Criminal Procedure, it must order the disclosure of that evidence.

83. The Government of Japan therefore guarantees that all reasonably obtainable evidence in the case concerning Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL, including exculpatory evidence, will be collected by the investigating authorities. A list of all evidence in the prosecution's possession will be provided to the Requested Persons' lawyers upon request.

D. Application of International Human Rights Treaties:

84. In relation to disclosure of application of international human rights treaties as judicial norms, the Government of Japan has considered the findings of the Senior District Judge at paragraph 86 of his judgment dated 27 February 2023.

85. It is noted that Japan is a party to a number of international human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, and is bound by those treaties.

86. The Government of Japan guarantees that it will follow its international obligations arising from the international human rights treaties to which it is a party in respect of Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL.

E. Conviction rate:

87. In relation to the conviction rate, the Government of Japan has considered the findings of the Senior District Judge at paragraph 88 of his judgment dated 27 February 2023 and his further findings at paragraph 65 of his judgment dated 11 August 2023.

88. The Government of Japan notes that only 33% of cases end in a prosecution, due to the very high evidential threshold applied by prosecutors when making charging decisions. In addition, only 46% of trials adjudicated by the Saiban-In system (i.e. serious cases such as the present case) involve a confession.

89. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will only be tried if the high evidential threshold applied by prosecutors is found to be met. If tried, they will only be convicted if the court determines that the prosecution has proven their guilt beyond reasonable doubt.

F. Exclusion of involuntary confessions and prevention of wrongful convictions:

90. In relation to the exclusion of confessions obtained involuntarily and the prevention of wrongful convictions, the Government of Japan has considered the findings of the Senior District Judge at paragraph 89 of his judgment dated 27 February 2023, the related question set out in Annex A to that judgment (the sole question under the heading 'Trial'), and his further findings at paragraphs 63 – 65 of his judgment dated 11 August 2023.

91. Firstly, as explained above, the Government of Japan guarantees that the Requested Persons' interviews will be audio and video recorded, and that these recordings will be provided to the Requested Persons' lawyers during the disclosure process.

92. Secondly, the Government of Japan explained the legal mechanisms in place to ensure the credibility of confessions at section III of its previous letter dated 22 May 2023. In summary, Japanese law prohibits improperly obtained confessions from being admitted as evidence during the trial. If an accused person asserts that a confession was improperly obtained, the Court will examine the circumstances in which the confession was made and will exclude the confession from evidence if there is any doubt that the confession was voluntary. There is a presumption of innocence and the prosecution must prove that any confession is properly obtained.

93. Article 38 of the Constitution of Japan states that 'no person shall be convicted or punished in cases where the only proof against him is his own confession', and as such, the prosecution is required to prove its case even when a confession has been made. Unlike English law, there is no system of guilty plea under Japanese law so every indicted case will proceed to trial, regardless of whether the accused person contests the allegations.

94. The Government of Japan assures that the constitutional guarantees described above will be upheld in relation to Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL.

95. The Government of Japan cannot bind decisions of the judiciary in specific cases in relation to specific sets of facts, as the judiciary is independent of the Government. However, the Government of Japan can and does guarantee that any complaints of involuntary confessions or other unfair evidence made by Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be carefully and comprehensively considered by the trial court, and that the evidence in question will be excluded from the trial if the trial court concludes that the relevant legal test is met.

G. Double jeopardy:

96. In relation to the principle of double jeopardy, the Government of Japan has considered the findings of the Senior District Judge at paragraph 91 of his judgment dated 27 February 2023 and his further findings at paragraph 66 of his judgment dated 11 August 2023. The principle of ne bis in idem or double jeopardy is respected under Japanese law.

SECTION 5 – WORK IN PRISON AND ARTICLE 4 ECHR

97. In relation to work conducted during any custodial sentence, the Government of Japan has considered the findings of the Senior District Judge at paragraphs 78 – 83 of his judgment dated 27 February 2023, the related questions set out in Annex A to that judgment (at points q., s. and t. under the heading 'Detention'), and his further findings at paragraphs 73 – 80 of his judgment dated 11 August 2023.

98. If a prisoner is sentenced to imprisonment with work, that prisoner is obligated to work.

99. In relation to punishment for non-compliance, the Government of Japan guarantees that if Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL are reluctant to engage in work, the Prison Service will aim to persuade them cooperate with the work regime in the first instance. Punitive action will only be used as a last resort, and any punitive action taken will be proportionate.

100. In relation to working conditions, the Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL:

a. will be given guidance for reforms and be supported for their reintegration into society, and their work is to, as much as is possible, be implemented in a way as to encourage sentenced persons to work and help them acquire vocationally-useful knowledge and skills.;
b. will not be required to work for more than 8 hours per day (unless designated for household work such as cooking or laundry) and will be given appropriate breaks during the working day;
c. will not be required to work on Saturdays, Sundays or public holidays;
d. will work in safe conditions, where adequate measures are taken to prevent accidents in line with the same standards which govern private companies.

101. In relation to rules at work, the Government of Japan guarantees that behaviour limiting measures will only be applied to the extent necessary to ensure safety on the job and to secure the custody of the inmates. The Government of Japan further notes that conversations relating to work are permitted during working hours, and talking about other topics is permitted during breaks.

102. As incentive remuneration, the Government of Japan guarantees that the amount calculated in accordance with prescribed standards and taking into consideration work performance etc. is paid to Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL upon release, for the purpose of encouraging their work and providing them with funds for rehabilitation after being released from the penal institution.

SECTION 6 – POST-CONVICTION DETENTION AND ARTICLE 3 ECHR

A. Location of post-conviction detention:

103. In accordance with the evidence given by the Government of Japan during the first instance proceedings in respect of Joe Anthony CHAPPELL, the Government of Japan guarantees that if Daniel Lee KELLY, Kaine Lee WRIGHT and/or Joe Anthony CHAPPELL are convicted of the offences set out in the extradition request and receive custodial sentences, these sentences will be served at either Fuchu Prison, Yokohama Prison or Osaka Prison. In Japan, those who have particular difficulty communicating in Japanese are housed in these specific facilities to alleviate the difficulties of prison life as much as possible and to ensure the smooth life. For example, the facility communicates the rules of prison life to them in languages they can understand.

B. Conditions of post-conviction detention:

104. The Government of Japan guarantees that all of the assurances provided at Section 2 above in relation to pre-trial detention will also apply to Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL for the duration of any custodial sentence they may be required to serve post-conviction, save for in respect of the following differences between the pre-trial and post-conviction regimes:

a. As explained above, convicted prisoners are permitted to use the telephone. The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be granted access to a telephone for communication with family and friends while serving any sentence of imprisonment, pursuant to the law.

b. In relation to visits, convicted prisoners are permitted to receive visits from their relatives, from any person whose visit is necessary to carry out business of important personal, legal or occupational concern to the prisoner (such as marital relations, pursuance of a lawsuit or maintenance of a business), and from any person whose visit is instrumental to the reform and rehabilitation of the prisoner (such as rehabilitation services or prospective employers). The Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be permitted to receive visits from any individual falling into any of the aforementioned categories.

SECTION 7 – MONITORING

105. In relation to effective monitoring of conditions of detention, the Government of Japan has considered the related questions set out in Annex A to the judgment of 27 February 2023 (at points j. and r. under the heading 'Detention'), and the Senior District Judge's further findings at paragraphs 81 – 84 of his judgment dated 11 August 2023.

106. The Government of Japan reiterates the information on monitoring provided at sections I. 9. and II.9. of its previous letter dated 22 May 2023. Monitoring of police detention facilities is conducted by the Detention Facilities Visiting Committee within the relevant prefecture. Monitoring of prisons is conducted by the Penal Institutions Visiting Committee established in each penal institution.

107. These Visiting Committees are made up of third parties that are independent of the police/penal institutions, including lawyers, medical professionals and public service officials, among others. The Committees inspect the facilities by conducting visits to detention facilities/penal institutions, holding interviews with detainees and by other means. Each year, the Ministry of Justice publishes a report which details the findings of the Visiting Committees and the measures that the penal institutions have taken in response.

108. In addition, as set out above, the Government of Japan guarantees that Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL will be able to freely speak to their lawyers without an official being present, which provides a further layer of oversight of the conditions of their detention. The British Consulate will also be allowed access to the Requested Persons in order to monitor conditions as requested.

The Japanese Government humbly submits these solemn assurances to the United Kingdom Government and will honour the assurances provided. If the United Kingdom Government requires any further information or clarification the Japanese Government stands ready to assist.

These assurances are given on behalf of the Government by officials of Japan who are responsible for respective matters at the Ministry of Justice, the National Police Agency, the Tokyo District Public Prosecutors Office and the Tokyo Metropolitan Police Department.

March 13, 2024

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Director of Public Security Division, Criminal Affairs Bureau, Ministry of Justice

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MORITA Yuichiro

Director of Prison Service Division, Correction Bureau, Ministry of Justice

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HATAKAYAMA Masahide

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Public Prosecutor, Tokyo District Public Prosecutors Office

NAGASAKA Yuta

Director General of Organized Crime Control Bureau,

Tokyo Metropolitan Police Department

The assurances dated 25 October 2024

The Government of Japan presents its compliments to the Government of the United Kingdom and hopes that the long-standing diplomatic cooperation between our two countries will continue.

Further to its previous letters of 22 May 2023 and 13 March 2024, the Government of Japan hereby provides additional assurances in respect of the extradition requests issued for Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL. The Government of Japan assures the Government of the United Kingdom that it will honour the solemn assurances set out both in the present document, and in the previous assurance letters dated 22 May 2023 and 13 March 2024.

These further assurances are given as a result of a request made by the Honourable High Court Judge at the appeals court held on 17 October 2024 in relation to the extradition requests made on behalf of the Government of Japan for the extradition of Daniel Lee KELLY, Kaine Lee WRIGHT and Joe Anthony CHAPPELL.

1. The Government of Japan confirms that the assurances concerning the video recording of all interrogations/interviews of Joe Anthony Chappell, Kaine Lee Wright and Daniel Lee Kelly will include the opportunity for explanation phase in the first 72 hours, and will also include any other form of questioning in the 72 hours period immediately following arrest.

2. The Government of Japan guarantees that Joe Anthony Chappell, Kaine Lee Wright and Daniel Lee Kelly will be informed of their right to silence, before the opportunity for explanation and before any interview, interrogation or other questioning takes place. Specifically, they will be informed that they have a right not to answer questions and that there will be no adverse inferences drawn at trial should they invoke this right.

3. The right to remain silent shall be guaranteed to Joe Anthony Chappell, Kaine Lee Wright and Daniel Lee Kelly (collectively "the suspects") during all interrogations/ interviews, including the opportunity for explanation. The suspects, if they so wish, shall be allowed to remain silent until they have a first consultation with a lawyer in private.

The suspects will also be guaranteed the right to appoint a lawyer and they will be informed that they have the right at the beginning of the opportunity for explanation. If the suspects wish to see their lawyers, police officers and a public prosecutor will immediately inform their lawyers of the suspect's request, including during the opportunity for explanation.

Please note that the opportunity for explanation is a procedure that gives the suspect an opportunity to explain his/her story on the alleged crime, and Article 203, Paragraph 1 of the Code of Criminal Procedure requires that it must be conducted "immediately after the suspect's arrest.

The Japanese Government humbly submits these solemn assurances to the United Kingdom Government and will honour the assurances provided. If the United Kingdom Government requires any further information or clarification the Japanese Government stands ready to assist.

These assurances are given on behalf of the Government by officials of Japan who are responsible for respective matters at the Ministry of Justice, the National Police Agency, the Tokyo District Public Prosecutors Office and the Tokyo Metropolitan Police Department.

October 25, 2024

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YASUEDA Ryo

Director of International Investigative Operations Division,

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