

Natasha Draycott & Louisa Collins write for Solicitors Journal | The UK-US Extradition Debate: Implications for Sovereignty and Trade

18 JULY 2023

Louisa Collins & Natasha Draycott



Louisa Collins and ***Natasha Draycott*** writes for *Solicitors Journal*, published 10 July 2023. Click [*here*](#) to view the article on the *Solicitors Journal Website*.

Mike Lynch, once a celebrated entrepreneur coined the 'British Bill Gates,' now faces up to 25

years in jail if found guilty of what prosecutors in the US describe as 'one of the largest frauds ever prosecuted by the United States Department of Justice.' His extradition to the US took place in May, following a four year battle before the English courts.

Lynch is the co-founder and former CEO of UK software group, Autonomy, which was taken over by US company, Hewlett-Packard, in 2011. In 2012, Hewlett-Packard wrote off nearly \$9 billion related to the acquisition and accused Autonomy of deliberately inflating the value of the company. Mr Lynch owned a substantial number of Autonomy's shares and is alleged to have benefited personally from the fraud.

The arguments on appeal against extradition centred on what is known as the 'forum bar'. The forum bar was inserted into the Extradition Act 2003 in 2013 (as section 83A) and enables the courts to stop extraditions if it decides that a substantial measure of the alleged criminal activity took place in the UK, and it would be in the interests of justice for the extradition not to take place. The purpose of the forum bar is in part to prevent over-zealous extra-territorial prosecutions and to prevent extradition where cases can fairly and effectively be tried in the UK.

Forum bar

It has operated to successfully prevent extradition to the US in a handful of cases including Lauri Love and Stuart Scott. There is no equivalent bar under the extradition law applicable in the US. If Mr Lynch was facing an extradition request to the UK from the US, he would not be able to challenge his removal on an argument premised on the appropriate forum for the trial to be heard.

In extradition practice, where crimes have a cross-border element to them, it is not uncommon for those accused to ask 'why can't I face trial here, instead of the US?' There are obvious benefits to being prosecuted in the UK, particularly if, like Lynch, a person's home and work lives is rooted here. US sentencing laws tend to be harsher than for a similar offence in the UK, particularly if convicted after trial rather than on a plea.

If it succeeds, a significant benefit of the forum bar is that the UK authorities may decide not to

prosecute you. There is no requirement to bring criminal proceedings in the UK following a failed extradition request based on forum.

Lynch sought to argue that successful claims against him in UK civil proceedings demonstrated that enough of the conduct and harm occurred here. The High Court disagreed and found that whilst some of the harm related to the inflation of the share price occurred in the UK, most of it was felt in the US. Another nail in the coffin for Lynch's challenge was the view of the SFO that the US was the most appropriate jurisdiction for any prosecution to take place.

Lynch also sought to argue that that the District Judge should have examined the prosecutor's reasons and "decided for himself whether they were right or wrong". Efforts to persuade the court to examine the SFO's findings on jurisdiction were futile. Lewis LJ and Knowles J decided that the court was not required to form its own 'belief' and that Lynch's arguments were variously described as "misconceived", "unrealistic" and "hopeless". This confirmed the established view that English Courts defer to the decisions of independent prosecutors.

Sovereignty

Following the decision of the High Court, a spokesperson for Lynch said that "The United States' legal overreach into the UK is a threat to the rights of all British citizens and the sovereignty of the UK." However, it is evident that whatever view one takes of the decision, the forum bar is not in place protect sovereignty. While the court and the Applicant may wish to have their say, it seems the decision is ultimately one influenced by the prosecutors based on where the evidence can be found.

Having now spent a large proportion of the last decade before the UK courts, either unsuccessfully defending civil fraud claims made by HP that Lynch 'artificially inflated Autonomy's reported revenues, revenue growth and gross margins' or before the extradition courts, Lynch finally exhausted his appeal routes in April this year and was flown to California in May to face criminal proceedings there.

The HP claim gave rise to the largest civil fraud trial to come before the High Court in this

country. It panned out as a rehearsal to the criminal trial in the States. The fraud was perpetrated by bringing forward revenues, false accounting and bringing in revenues from transactions which should never have been taken place.

The list of Autonomy's clients were notable: the Ministry of Defence, (perhaps ironically) the Serious Fraud Office, the Bank of America, the BBC and football club Tottenham Hotspur. Lynch were under the spotlight for what was described as bullying and controlling the executives at Autonomy, including his Chief Financial Officer, Sushovan Hussain. Hussain was convicted in the US for his role in the fraud in 2018 and sentenced to 5 years' imprisonment, a fine of \$4m and forfeiture of \$6m. Despite the success of HP in the fraud claim, it is important to note that the standard of proof required in the civil courts is 'on the balance of probabilities', not the higher test of 'beyond reasonable doubt'.

The sheer magnitude of the monies involved in the fraud has drawn significant attention to the case. The extradition decision has prompted renewed concerns about the imbalance of the extra-territorial reach of US and UK law, particularly in relation to financial crime. Critics say that it will hold back the development of high-tech and other businesses in the UK amid concerns of entrepreneurs that they could be drawn into US lawsuits. Others argue that it possibly reflects an increased motivation by the US over the UK to take on these types of cases.

Either way Lynch's extradition has caused dissatisfaction in the UK which seems to have bled into foreign policy matters which some view as a further impediment in trade discussions. A group of prominent business figures signed a letter to Prime Minister Rishi Sunak complaining about the 'unreasonable' use of the extradition treaty and a former cabinet minister and has said that any trade deal must re-examine what he called the "asymmetric, ineffective and fundamentally unfair" extradition treaty.

While Lynch is now far from our shores and is under 24 hour house arrest in California, the debate over the UK-US extradition relationship seems less likely to be similarly confined.

Louisa Collins is a barrister specialising in extradition, international crime and human rights

law. Louisa has been ranked in Chambers and Partners and the Legal 500 as a leader in the field of extradition at the London Bar.

Natasha Draycott is a leading extradition barrister who acts for both foreign governments and requested persons. Natasha is ranked in Chambers and Partners and the Legal 500 for her Extradition work.