

# IN PRACTICE

The London Disputes Newsletter

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## UK-US Extradition: The Extra-Special Relationship?

In one of several recent high profile extradition cases, UK citizen Christopher Tappin was extradited to the US for alleged arms dealing offences, where he now awaits trial in Texas. This case provides a cautionary tale for any UK persons engaging in business in the US.

UK-US extradition is a fiercely contentious issue, which has been fuelled by several recent high profile cases, including cases concerning UK-based internet piracy and the extradition earlier this year of Christopher Tappin, a 65-year-old UK citizen and former director of Surrey-based shipping company Brooklands International Freight Services. The Tappin case provides a cautionary tale for any persons in the UK engaging in business in the US.

The allegations against Tappin stem from a US Department of Homeland Security, Immigration and Customs Enforcement operation, in which it set up the shell company Mercury Global Enterprises (MGE) to investigate the export of licensable technology. Tappin was introduced to MGE by a business acquaintance and allegedly agreed to arrange for the shipping of batteries for Hawk surface-to-air missiles from the US to Iran in violation of US export controls. In February 2007, a Texas grand jury indicted Tappin (in absentia) and two others (who were subsequently sentenced to two years' and 20 months' imprisonment) for offences relating to conspiracy to export the batteries in breach of US sanctions.

Nearly three years later, the US government submitted an extradition request for Tappin, who was arrested in May 2010. The initial ruling of the UK district court judge, who had found that there was ample evidence to justify the extradition, was appealed by Tappin. On 13 January 2012, High Court judges Lord Justice Hooper and Mr Justice Cranston dismissed the appeal, finding the request to be valid and rejecting Tappin's claims of entrapment and that extradition would be oppressive and a breach of his human rights due to the three-year delay or the illness of his wife. Tappin was also denied further appeal to the Supreme Court and his last attempt to block the extradition failed when the European Court of Human Rights rejected his application. Having been extradited to the US, Tappin was initially deemed a flight risk and denied bail in a Texas court. This was overturned on 23 April 2012 by a Texas District Judge, who granted bail subject

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to a US\$1 million bond and strict limitations on Tappin's travel. Tappin currently awaits trial in Texas, in which he faces up to 35 years' imprisonment.

UK-US extradition operates within the framework of the 2003 UK-US Extradition Treaty and the Extradition Act 2003. Subject to certain conditions, the Extradition Act permits extradition for offences punishable under the laws in both States by at least one year's imprisonment, or for related offences including conspiracy. The 2003 Treaty states that an extradition request to the US must be supported by "such information as would provide a reasonable basis to believe that the person sought committed the offence for which extradition is requested", which reflects the "probable cause" provision of the Fourth Amendment to the US Constitution. There is no such requirement for an extradition request to the UK, in relation to which the Extradition Act states that a UK judge "may issue an arrest warrant if there are reasonable grounds for believing that ... there is information that would justify the issue of a warrant for the arrest".

A 2011 independent review led by former judge Sir Scott Baker described the differences between these "probable cause" and "reasonable suspicion" tests as merely semantic. However, a Home Affairs Committee report published on 30 March 2012, which acknowledged the body of respectable legal opinion suggesting that there is little or no distinction between the tests, noted that US citizens may challenge the information establishing "probable cause", whereas UK citizens are granted no corresponding right.

The Home Affairs Committee also recommended the introduction of an evidence test and adoption of the "forum amendment", which would allow a UK court to block extradition if a significant part of the alleged conduct took place in the UK and it would not be in the interests of justice for the person to be tried in the requesting country. The Home Affairs Committee noted that the forum determination is currently made by prosecutors and it is very easy to engage the jurisdiction of the US courts without ever entering the country, for example via the use of US-based servers, online communications or banking systems.

In light of current UK-US extradition arrangements, it is vital that any persons located in the UK engaging in business in the US are aware of potential liability for offences that may be prosecuted in the US by US authorities. This is due not least to the ability of US prosecutors to establish jurisdiction on the basis of tenuous connections with the US, which need not include physical presence in the US, and the restrictions placed upon UK citizens to challenge extradition.

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