

Judgment 13/2011

**Roger Walter Francis Taylor – Court of
Appeal (Criminal Appeal 412) – 13th May
2011**

Criminal appeal – (i) appeal from conviction and application for leave to appeal from sentence – Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 – appeal based on criticism of pre-trial ruling - application for stay of proceedings on grounds of unreasonable delay by the prosecution – application for disclosure of prosecution material – trial judge’s reference to Public Interest Immunity – whether search warrant was unlawful – appeal against conviction dismissed (ii) application for leave to appeal against sentence dismissed – importance of Guernsey’s finance sector and its reputation for probity and integrity.

IN THE COURT OF APPEAL OF GUERNSEY

The 13th day of May, 2011 before Sir John Nutting Bt QC, James Walker McNeill QC and Michael Cameron St John Birt, Bailiff of Jersey

ROGER WALTER FRANCIS TAYLOR

(Appellant)

v

THE LAW OFFICERS OF THE CROWN

In the matter of the appeal by the above Appellant from his conviction by the Royal Court on the 23rd November, 2010 and his application for leave to appeal from the sentences imposed on him by that Court on 18th January, 2011 and for legal aid;

WHEREAS, on the 16th March, 2011, THE COURT, having heard Advocate John Greenfield for the Appellant and Crown Advocate Fiona Russell thereon, DISMISSED the appeal against conviction, REFUSED leave to appeal against sentence and REFUSED legal aid;

THE COURT this day ISSUED JUDGMENT in the terms attached hereto.

K H TOUGH
Registrar of the Court of Appeal

**IN THE COURT OF APPEAL OF THE ISLAND
OF GUERNSEY**

CRIMINAL APPEAL NO 412

14th & 15th March 2011

Before: **Sir John Nutting Bt QC**
James Walker McNeill QC
Michael Cameron St John Birt, Bailiff of Jersey

Judges of Appeal

Between: **ROGER WALTER FRANCIS TAYLOR** (Appellant)
v
LAW OFFICERS OF THE CROWN

Advocate J P Greenfield appeared for the Appellant
Crown Advocate F M Russell appeared for the Crown

This is the Judgment of the Court

Authorities & Texts referred to: -

Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law 1999 as amended
Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003 ("PPACE")

Blackstone

R v Norwich Crown Court ex parte Belsham [1992] Cr. App. R. 382.

R v S [2006] 170 JP 434

Bach v The Law Officers [2007-2008] GLR 354, paragraphs 25 and 27

R v Telford JJ ex parte Badhan [1993] Cr. App. R. 171

R v Buzalek and Schiffer [1991] Crim.L.R. 115 (CA)

Criminal Procedure and Investigations Act 1996 (CPIA)

English Attorney General's Guidelines

R v H and others [2004] 2 AC 134

R v Keane [1994] 1 WLR 746

R v Ward [1993] 1 WLR 619

R v Melvin and Dingle (20 December 1993 Unreported)

European Convention of Human Rights

Regulation of Investigatory Powers Act 2000

R v Chief Constable of the West Midlands Police ex parte Wiley [1995] 1 AC 274 (HL)

Taylor v Anderson (Police Complaints Authority Intervening) [1995] 1 W.L.R. 447

Auten v Raynor [1958] 1 WLR 1300

Auten v Raynor (No.2) [1960] 1 QB 669

Evans v Chief Constable of Surrey [1988] QB 588

Court of Appeal (Guernsey) Law 1961

Sir John Nutting, JA

INTRODUCTION

1. The Appellant, Roger Taylor, was arrested on 15th December 2009. He was charged with offences of money laundering the following day and later committed for trial. His trial took place in the Royal Court between 12th and 23rd November 2010 before Judge Finch and Jurats.
2. The indictment on which he was tried contained nine counts. The first count alleged that on or about 1st October 2002 he had taken possession of the sum of US\$11,991.75 for his own use knowing that the sum represented, wholly or in part, the proceeds of crime of Michael Summers; contrary to Section 40 (1) Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law 1999 as amended. Counts 2-8 alleged that on various dates between 2nd October 2002 and 17th March 2003 he had assisted Michael Summers to retain the proceeds of his (Summers') criminal conduct by arranging to pay sums totalling \$60,331.36 to Michael Summers knowing or suspecting that Michael Summers had been engaged in criminal conduct. The last count related to the same activity concerning Michael Summers on or about 24th April 2003 in the sum of £15,000. Counts 2-9 were pleaded contrary to Section 39(1)(a) of the same Law.
3. At the end of the trial the Appellant was found guilty on all counts and on 18th January 2011 he was sentenced to two and a half years imprisonment. In the meanwhile, on 3rd December 2010 he filed a Notice of Appeal; and on 5th January 2011 he submitted lengthy grounds of appeal against conviction drafted by Advocate Greenfield, only some of which were pursued before us. Later he applied for leave to appeal against sentence, and for legal aid in respect of the appeal hearing.
4. We heard these appeals, as well the application for leave in relation to sentence *de bene esse*, on 14th and 15th March 2010, and on 16th March we dismissed the appeal against conviction, declined to give leave to appeal the sentence and refused to grant legal aid for the appeal hearing. We now give reasons for these decisions.

THE FACTUAL BACKGROUND

5. The Appellant is 61 years of age. He came to Guernsey in 1984. He is a business man with significant experience of the insurance industry. At the material time he was a director of several companies including some registered locally, Sartor Resources Ltd ("Sartor"), European Management Ltd ("EML"), Quantum Resources Ltd ("Quantum") and Legend S.A. ("Legend").
6. He had been introduced to Michael Summers ("Summers") in the late 1990s by a mutual friend called Paul Sutherland. Summers was a con man who operated a "Ponzi" fraud over several years involving a sum well in excess of twelve million dollars. He created a number of so called investment schemes through which he succeeded systematically in defrauding members of the public in England and across the Atlantic of individual sums, some small and some involving more than a hundred thousand dollars.
7. One of these schemes constituted a bogus investment scam by means of a "secure investment programme agreement" or SIPA. Investors were assured that their money was being retained in "bank trading programmes." They were promised returns of up to 60% of the sum invested. In fact the sums were used to fund the lifestyles of Summers and his associates. The first phase of the fraud involved the use of banks based in Switzerland. In the second and third phases, the services of banks in the Channel islands were deployed.
8. The investigation into the activities of these men began in 1999 and was instituted by the Devon and Cornwall Police because of a complaint by the solicitors of an elderly victim who had invested all her savings with Summers and who lived in a care home in Torquay. When the size of the fraud became apparent the investigation was taken over by the Serious Fraud Office ("SFO") in London.

9. It was discovered during enquiries into the money trail that some of the funds of the investors had been channelled through the Quantum and Legend accounts at the Butterfield Bank in Guernsey. In November 2001 the bank was notified that monies passing to these accounts might well be the proceeds of fraud and the bank closely monitored the accounts thereafter. On 12th April 2002 the bank decided to freeze them and notified the Appellant who was the signatory on both accounts.
10. On 16th May 2002 an investigator from the SFO and a detective from the Devon and Cornwall police came to Guernsey to talk to the Appellant. They wanted to find out how funds which they believed to be fraudulent had come to be routed via two of his companies. At the interview during which, in accordance with international protocols, an officer of the Guernsey Police, DC Goude, was present, the Appellant said that he knew nothing of Summers' fraudulent activities and insisted that he believed that the money paid into the accounts constituted commission payments honestly earned by Summers from property deals and that the money which he had paid out of these accounts on Summers' instructions were sub commission payments to colleagues of Summers.
11. In relation to his earlier association with Summers, he said that Paul Sutherland had suggested that the three of them should undertake some property ventures together, none of which had in fact materialised, and that Summers had insisted that Quantum, which the Appellant acknowledged to be a dormant company at the time, would be a suitable investment vehicle for this purpose.
12. He claimed, in addition, that Summers had made a request to make use of both the Quantum and Legend accounts at the Butterfield Bank for the purpose of crediting those accounts with sums of money which he, Summers, was earning as commissions on other deals, notwithstanding that both these accounts were and remained under the control of the Appellant, who was also Managing Director and beneficial owner of both companies. The Appellant also suggested to the investigators that it had been intended that Summers should become a director and co-beneficial owner of both companies but that this had never happened.
13. He insisted that he had received no benefit or payment for these services although he acknowledged that some of the money in the Quantum account constituted what he called "an open term interest free loan" from Summers. This sum was later identified as an amount of about \$450,000 which had been paid to the Appellant in 2001/2002, according to the evidence which he gave at his trial. He also admitted in a police interview, prior to his trial, that despite some complicated conditions attaching to the loan which he explained to police, no paperwork had ever been brought into existence to evidence it. He was asked whether he knew other men into whose activities the SFO were also making enquiries, Shinder Gangar, Alan White and Terence Dowdell. He denied ever having heard of them.
14. When he was shown one of the SIPA documents used in the fraud, which showed Quantum as the "facilitator" of the contract and Summers as an agent for Quantum whose bank account was reported on the agreement to be the account to which the "investor's" money would be credited, the Appellant registered astonishment, claimed never to have seen such a document before and insisted that Summers had no authority to represent himself as agent for Quantum. The investigators accepted his account of events and invited him to make a witness statement in the proceedings against Summers.
15. The meeting ended with the officers telling the Appellant that Summers was being investigated for serious criminal offences, advising him in clear terms not to further Summers' interests in the future in any way lest, unwittingly, he should become involved in the fraud. They advised him that in their view Summers was a crook. The Appellant admitted in evidence that something to this effect had been said although he denied that the investigators had expressed themselves in such trenchant terms.
16. Following the meeting, the Appellant made a witness statement on 17th June 2002 which was forwarded by DC Goude to the SFO in London.

17. On 3rd September 2002, Mr Goude wrote a letter to the Appellant which he delivered by hand to the Appellant's address that same day. The letter was headed "Re Michael Summers, Quantum Resources Ltd, Legend S.A.,..." The letter warned the Appellant that an application would soon be made for the repatriation to the UK of the money in the accounts, which had remained frozen. The last paragraph of the letter read *"May I repeat the advice provided to you following your interview in that as these funds are deemed to be the proceeds of crime and to avoid any allegations of money laundering on your part, you must not make any attempt to move them to other accounts or pay them away to a third party."*
18. The Appellant claimed in evidence at his trial that the letter had remained unopened and unread until March 2003. The claim was inherently implausible but was rendered more so by the fact that he made this claim for the first time in the witness box at his trial in November 2010. He had made no such suggestion in any of the interviews which he gave as a witness during the course of the SFO enquiries into Summers and his associates between 2002 and 2006, nor during the lengthy interviews conducted by the Guernsey police on the day of his arrest in December 2009.
19. On 4th September 2002, the day following the delivery of the letter to the Appellant's home address, the Appellant made efforts to open a bank account for Legend in Switzerland with Summers as the signatory.
20. Within one month of the date of DC Goude's letter, and in defiance of it, the Appellant commenced the series of transactions which were the subject matter of the indictment against him. The first, Count 1, was a payment to himself of \$11,991 on 1st October 2002 and the second, the next day, a payment to Summers of \$7,941. These payments were made by the Appellant from another bank account of Legend which he had opened in the spring of 2002 at the Standard Chartered Bank in Jersey as a direct consequence, as he admitted in his police interview, of the freezing of the Butterfield Bank Legend account in Guernsey.
21. The subsequent payments to Summers from the same Legend account, Counts 3-7, occurred during the next four months. They constituted on each occasion sums either a little in excess of, or a little less than, ten thousand dollars.
22. Moreover during this period, on 21st December 2002, he sent to Summers a fax enclosing a letter dated 9th October 2002 addressed to Quantum from an aggrieved investor complaining that he had not been paid interest on his investment. Attached to the fax is a "post it" in the Appellant's handwriting and signed by him. Addressing himself to Summers, and plainly referring to the investment, the Appellant says *"...I don't think it's an old one. Will be on mobile. Happy Christmas!"*
23. In the early months of the following year, the Appellant made more payments from accounts under his control to Summers. The last two counts (Counts 8 and 9) represented sums paid to Summers of just over \$8,000 and £15,000 which were made, respectively, on 17th March and 24th April 2003. These payments were made from the Appellant's company, EML, out of its Royal Bank of Scotland account in Guernsey.
24. The Appellant was still furthering Summers' interests in September 2003. On that date he contacted the compliance officer of the Butterfield Bank in an attempt to persuade him to unfreeze the Quantum account to enable Summers, to whom the Appellant said he had recently spoken, to make payments from this account, activity (in relation to Quantum) which he had been discouraged, or perhaps it would be more accurate to say forbidden, to undertake by DC Goude in the letter he had written almost exactly a year before.
25. Summers was arrested with two of his associates in February 2004. In anticipation of Summers' trial, the Appellant made another statement on 24th December 2004 dealing with further SIPA documentation, and a deposition on 16th March 2005 amalgamating both earlier statements.

26. It should be noted that all these witness statements were taken at the behest of the SFO in London for use in the prosecution of Summers. In fact when the SFO discovered in about June 2002, a month after their first visit, that the Appellant had opened the Legend account at the Standard Chartered Bank in Jersey, they became more wary of him but, having taken advice from Queen's Counsel in London, decided to continue to treat him as a witness because of his value to them in the prosecution of Summers.
27. In February 2006, Summers pleaded guilty at Bristol Crown Court to 33 counts of criminal deception reflecting fraudulent activity between December 1997 and October 2004. He was sentenced to 4 years imprisonment.
28. Two of his associates, Mary Mills and Bruce Mead, faced trial in the same indictment. Both pleaded not guilty. During their trial a Commission Rogatoire was held in Guernsey to enable counsel for these two defendants to question the Appellant. The object of the cross examination was to demonstrate that the Appellant had been taken in by Summers in a fashion similar to that by which these two defendants claimed to have been duped.
29. A number of faxes and emails sent to the Appellant by Summers, instructing him to make payments in 2001 and 2002 from the bank accounts referred to above, were produced to the Appellant in the Commission Rogatoire by counsel for the two defendants. He was invited to say that he carried out each transfer, often to Summers' bank account or for his benefit elsewhere, without the least suspecting that Summers was conducting a fraudulent business, a proposition to which in respect of each payment the Appellant was very ready to agree.
30. Later the Guernsey Police began to investigate the Appellant's conduct in relation to Summers. It will be necessary subsequently in this judgment to explore events between 2006 and 2009 in more detail. Suffice at this juncture to say that the Appellant was arrested on 15th December 2009 and interviewed that afternoon and evening.
31. During his police interviews, and in relation to the transactions later reflected in the indictment, the Appellant claimed that the payment to himself (Count 1) out of the Legend account of the Standard Chartered Bank in Jersey was made to reimburse him for expenses which he had incurred on Summers' behalf, that the payments to Summers during the rest of 2002 (Counts 2-7) from the same account were made at Summers' request, and that the payments to Summers in March and April 2003 from the EML account at the Royal Bank of Scotland in Guernsey (counts 8 and 9) had been made at his own instigation to start the process of reimbursing Summers for the loan of \$450,000.
32. He insisted that these payments/repayments were made in all innocence and at first he stuck to his story that he believed that the credits into both accounts, which enabled him to make these disbursements, far from being "investments" made by the victims of Summers' fraud, were commission payments honestly earned by Summers. However in the light of the evidence in the possession of the police which was put to him in interview, his denials became increasingly difficult to sustain and towards the end of the interviews he admitted that he had suspected that Summers was conducting a fraud at the relevant time.

FURTHER BACKGROUND INFORMATION RELEVANT TO THE APPEAL

Gary Burtonwood

33. The SFO officer who came to Guernsey to interview the Appellant in May 2002 was Gary Burtonwood. He was extensively involved in the prosecution of Summers. Indeed, as he acknowledged at the Appellant's trial, during his time in the SFO he worked on little else other than the investigation into Summers' fraudulent activity and those associated with him.
34. After Summers' plea of guilty at the Bristol Crown Court, Grant Thornton were appointed as receivers to enforce the Confiscation Order. Summers contested these proceedings which became protracted and were not finally terminated until an appellate hearing in London in March 2008.

Mr Burtonwood had continued to work on the case of Summers up to the time when the confiscation proceedings returned to the Crown Court in March 2007. In early 2009 he moved to Grant Thornton (whose task in recovering assets continued after the appeal), where no doubt his knowledge of the methods used by Summers in the fraud proved useful to the firm.

35. In that connection he returned to Guernsey with the receiver on 16th November 2009 in order to obtain the Appellant's signature to an arrangement for the repayment of the \$450,000 loan. Negotiations had been progressing slowly between Grant Thornton and the Appellant prior to this date.
36. Mr Burtonwood was thus a witness in the Appellant's trial in two contexts, the visit in May 2002 wearing his SFO hat and the visit in November 2009 in the company of the Bristol Crown Court appointed receiver.
37. When officers from the Border Agency, who took over the prosecution of the Appellant from the Guernsey Police in the summer of 2009, swore out a warrant on 26th November 2009 Mr Burtonwood's name appeared as one of those who, it was anticipated, would attend the Appellant's premises for the purposes of the search. In the event Mr Burtonwood did not do so. During a voir dire held on issues of admissibility just before the Appellant's trial, a senior officer of the Agency, Gary Hardill, explained that he had hoped that Mr Burtonwood would be present at the search to assist his officers. They had been investigating the matter for a matter of months whereas Mr Burtonwood, albeit he had recently moved from the SFO to Grant Thornton, had an unrivalled knowledge of the fraud.
38. Much was sought to be made in argument before this Court as to the two roles which Mr Burtonwood performed in this case. In so far as any evidence given by Mr Burtonwood or any documentation he produced was inadmissible, that was plainly a matter for the trial judge to rule on if invited to do so. In so far as there was a suggestion of bias by the witness against the Appellant or criticism of the different hats Mr Burtonwood wore during the course of this case, these were all matters for the Jurats who tried the case, not for this Court. Despite the criticism made about Mr Burtonwood, no argument was advanced to this Court as to any evidence adduced by the prosecution from Mr Burtonwood which was said to be inadmissible or whose introduction had impacted on the fairness of the Appellant's trial.
39. However there is one aspect of Mr Burtonwood's evidence to which this Court must refer. In circumstances which constituted a free standing ground in the Grounds of Appeal dated 5th January 2011 (the "Grounds") but which was not pursued before this Court, the prosecution produced a statement made by Mr Burtonwood in relation to the confiscation proceedings of Summers which had not been disclosed to the Appellant prior to his trial. The statement had been taken at the instigation of the SFO. Its existence was not referred to in the lengthy Schedule of Disclosable material containing 240 items which was sent to the lawyers acting for the Appellant at an early stage in the proceedings.
40. We enquired of Mrs Russell why this should have been the case and we were told that the statement had been supplied by the SFO on a confidential basis as it had been made by a witness in criminal proceedings in respect of another defendant in a different jurisdiction. We understand the position but nonetheless we consider that steps should have been taken by the authorities here to cause the SFO to release them from the condition of confidentiality. The prosecution of this Appellant was intimately connected with that of Summers, and it would have been preferable if this statement of Mr Burtonwood, however uncontroversial and however irrelevant to the case of this Appellant, had appeared on the Schedule of Disclosable material since he was a witness in proceedings against this Appellant.

The Prosecution Log of Events

41. Served by the prosecution with the undisclosed material, was a ten page Log of Events. The document is prefaced with a docket reference and the date "08/08/2007. The second paragraph reads *"Following convictions of Michael Summers in UK... and Terence Dowdell in*

USA....department is now able to consider investigating Taylor for money laundering with regard to the funds that passed through the Butterfield Bank in SPP and Standard Chartered Grindlays in Jersey." The Log continues "Resource Implications: Request to be sent to SFO (Glyn Powell) to allow access to Confiscation Report compiled by Gary Burtonwood..."

42. Under a separate paragraph headed "Case History" there follows a log of events. The first date is 5th February 2008 with an entry recording that an email has been sent to Gary Burtonwood seeking an update on the confiscation proceedings against Summers. The email, from DC Goude, began *"Morning Gary. We have finally been allowed to pursue Taylor for money laundering! Can you please provide me with a brief update..."*
43. In evidence at trial DC Goude expanded on the start of the investigation in respect of the Appellant: *"The UK authorities wanted Mr Taylor as a witness and it was agreed, both with myself and Crown Advocate Wilkins, that we could not take any formal action against Mr Taylor or commence a proper investigation until such time as, certainly, Mr Summers had been convicted and then we could safely say 'well that money then, that's come through here, is definitely the proceeds of crime because the fraudster's been convicted.'" (Trial Transcript p.142).*
44. The same log entry for 5th February 2008 continues with a reference to an email sent from Guernsey to the Leicestershire Constabulary Fraud Squad requesting an update on the trial of Shinder Gangar and his associates.
45. DC Goude emphasised in evidence the relevance of the trials of other associates of Summers, including Shinder Gangar, and pointed to the fact that, although the prosecution in the Bailiwick were aware of documentation prior to Summers' plea of guilty which was relevant to a prosecution of this Appellant, nonetheless *"We couldn't use it by the way it had been obtained for the other investigation. So we had to start from scratch and then arrange for fresh orders to be issued for the bank and for them to copy the material all over again for our investigation purposes"* (Transcript p.142). The officer acknowledged in cross examination that when he learned that the Appellant had maintained a business relationship with Summers after the SFO visit in May 2002, the Guernsey authorities appreciated that he was more involved with Summers than the Appellant *"first wished us to believe."* (Idem p.142).
46. The log then describes the progress of the inquiry into the Appellant's money laundering activities. It is clear from the entries that during the early months of 2008 the investigation and the collection of the necessary evidence proceeded steadily. Enquiries were made at the Butterfield Bank in Guernsey and at the Standard Chartered Bank in Jersey. On 31st March the investigating officers had a meeting with Crown Advocate Russell, who had inherited the brief from Crown Advocate Wilkins, and with the Law Officers. By early May 2008 the Butterfield Bank had provided copies of the relevant accounts.
47. A note of frustration creeps into the narrative in June and again in July at the slowness of the Jersey Bank to produce the material requested. By the end of July however five folders of documents had arrived from the relevant bank albeit without any accompanying witness statement.
48. In August 2008, the log reveals numerous enquiries being made with some of those who became witnesses at the trial including officers of the Guernsey Financial Services Commission (GFSC). During the autumn the enquiry continued but seems to have stalled in the early part of 2009 in part because there was a change of investigating officer due to the retirement of DC Goude. In the meanwhile the investigators were still seeking assistance from the Jersey authorities.
49. From the spring of 2009 onward the log is not so regularly maintained. Mrs Russell was engaged on other criminal business and the last entry, on 11th June 2009, records her preoccupation with another case and a message that she is aware that the investigating officers are seeking a meeting.

50. In August 2009 the Border Agency took over the investigation from the police and that month the newly appointed investigating officer, Mr Hardill, as he said in evidence, received several box files of paper accumulated by the police during their enquiries. The Appellant was arrested four months later.
51. Since one of the main points of appeal relates to the delay in bringing proceedings we must consider the log, later, in that connection.

The involvement of the Guernsey Financial Services Commission

52. Many years ago the GFSC had granted a license to the Appellant's insurance business, Sartor. As part of its supervisory role, the insurance division of GFSC had monitored Sartor's company procedures. In March 2001, David Richings of that division, went to the Appellant's business premises to carry out an audit of the company's policies and procedures for compliance purposes.
53. At the Appellant's trial the prosecution called Mr Richings to give evidence of the visit and the subsequent advice, recommendations and warnings given to the directors of the company, including the Appellant, on topics, among others, specifically relating to money laundering and "Know your Client" procedures. There was a second inspection in February 2003.
54. Unsurprisingly in view of its general regulatory role, according to Mr Richings' evidence at trial, in February 2002 the GFSC was alerted to the use which Summers had made of bank accounts in Guernsey at the time of the freezing of the Quantum and Legend accounts at the Butterfield Bank. He attended the Commission Rogatoire hearing at which the Appellant gave evidence in February 2006 and was regularly updated by Guernsey Police once the enquiries began into the Appellant's business activities with Summers.
55. Meanwhile, in the middle of 2007, the insurance division of the GFSC decided to enquire whether the Appellant could still be regarded as a fit and proper person to be a director of Sartor. As is customary, apparently, they took advice from a private firm on this question and an inspector from Deloitte was eventually appointed in August 2008. Mr Richings said in evidence that the GFSC decided to progress this enquiry separately, of course, from the criminal investigation, because the latter seemed to be progressing slowly (Transcript p. 263).
56. According to written submissions of Advocate Greenfield dated 13th October 2010 and headed "Disclosure Application and Supplementary Abuse of Process Submissions", the Appellant had received a letter in July 2007 notifying him that the inspector's inquiry would be delayed because of "confidential advice from the Law Officers." Advocate Greenfield's submission continues: *"The GFSC inquiry involved not only the inspection of documents but obtained answers under compulsion from Mr Taylor. The fact that the GFSC did this while concealing from Mr Taylor this secret agenda may properly be described as a trick, and one in which the prosecution was a willing partner. It is the type of conduct that may properly be described as an abuse of the process of the court."*
57. The log reveals that on 8th August 2008 it was agreed that the GFSC would show the police the results of their parallel investigation. Mr Richings was asked in cross examination at the trial whether the sharing of information between the Police/Border Agency was usual. He replied *"usual and appropriate"*. (Transcript p. 264). DC Goude when cross examined made the same point (idem p.162/163).
58. We see nothing surprising in such cooperation and nothing to criticise in the approach of the two agencies, especially in cases such as this where there is an almost inevitable overlap between their responsibilities, the one concerned with an individual's fitness to serve as a director, the other concerned with possible fraudulent activity by that same individual.
59. The remedy which a defendant possesses in circumstances where he believes that evidence has been unfairly obtained is to ensure that it is excluded from the tribunal which tries him. Whether, in this case, the results of the GFSC investigation were admissible or inadmissible was a matter

appropriately left to the discretion of the trial judge to regulate the admission of evidence in his obligation to secure a fair trial for the Appellant. No objection was taken to any evidence adduced by or on behalf of the GFSC at the Appellant's trial.

60. We do not agree that the activities conducted by GFSC into the Appellant's activities during the relevant period constituted a trick, or an abuse of the processes of the court.

The Search Warrant of 26th November 2009

61. By late November 2009 officers of the Border Agency, no doubt in consultation with the Crown Advocate, decided that they had a sufficient case against the Appellant under the money laundering provisions of the Law to arrest him. On the morning of 26th November, they attended before the Deputy Bailiff to request the grant of a search warrant in respect of the Appellant's home and business premises. The Information in support of the warrant apparently requested that the warrant should be granted under Article 8 Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003 ("PPACE").
62. Having considered the Information, the Deputy Bailiff granted the request and the warrant was executed on 15th December 2009 once the Appellant had returned home from a trip abroad. During the voir dire preliminary to the trial, Advocate Greenfield submitted to Judge Finch that the warrant should have been granted under Section 9 (the "special material" section), not Section 8 (the more general section), and in view of the grant under the wrong section, he claimed that the officer must have misled the Deputy Bailiff or failed to acquaint the Deputy Bailiff with material facts.
63. Before the Royal Court, the Appellant's advocate sought disclosure of material concerning the 26th November 2009 hearing including the Information itself.
64. Relevant to the issues, raised both before the Royal Court and before this Court, is the evidence given during the voir dire on 11th November 2010 by the officer, Guy Hardill, who swore the Information.
65. In summary Mr Hardill said that he had requested a search warrant to ensure that no question should arise subsequently of the legality of the officers' presence at the Appellant's home or business premises. He said that the search was aimed essentially at material linking the Appellant to Summers, with particular reference to the Appellant's state of mind during the time when he had had a business relationship with Summers.
66. Mr Hardill eschewed the practicality of issuing a Production Order instead of obtaining a search warrant because the former would have required notice to be given to the Appellant and the officer was concerned about the risk of the removal or destruction of documents.
67. Mr Hardill acknowledged that he had recognised in advance of 26th November 2009 the possibility of the presence of both special material at one or more of the addresses as well as legally professionally privileged material ("LPP") and gave instructions to the search officers how to deal with both. Richard Halliday, a financial investigations officer with the Border Agency, who also gave evidence in the voir dire, confirmed that the search officers had been given clear warnings in advance about both such material.

THE GROUNDS OF APPEAL TO THIS COURT

68. No criticism is made of the summing up or of the judge's decisions in relation to the admission of evidence nor is the verdict of the Jurats said not to be supported by the evidence. The grounds of appeal are confined to criticism of certain rulings which Judge Finch made in two pre-trial hearings, to which we shall refer shortly, concerning the appellant's application to stay the proceedings as an abuse of process.

69. First, Advocate Greenfield raised the question of the delay between the commission of the offences of money laundering and the Appellant's arrest in December 2009, a period which, he said, called for an explanation by the prosecution which had not been forthcoming. ("The Delay Point").
70. He claimed that for the purposes of delay this Court should regard the starting point as running from the time when the last offence was committed. He said that the Guernsey authorities had been aware of the Appellant's association with the Legend bank account at the Standard Chartered Bank in Jersey (from which the monies relating to Counts 1-7 had been paid) since the summer of 2002, and that they had made a deliberate decision to conceal from the Appellant the fact that they intended to prosecute him.
71. Their purpose in doing so, submitted Advocate Greenfield, was to ensure that the Appellant cooperated with the SFO in England and that this deception amounted to a trick which led him to act to his prejudice in providing witness statements to the SFO which he would have declined to provide had he known that he would later be prosecuted.
72. Secondly, Advocate Greenfield submitted to this Court that, during the hearings prior to trial, the Appellant had been denied a reasonable opportunity to put forward his case on the issue of delay in the best light, because, in summary, he submitted that:
 - (i) Re Disclosure: ("The Disclosure Point; 'Wrong Test'"):

in his judgment on disclosure, Judge Finch had applied a test for disclosure applicable in England but inapplicable in this jurisdiction.
 - (ii) Re Disclosure: ("The Disclosure Point; Duties"):

the prosecution had failed to carry out their duties of disclosure in relation the abuse of process hearing;

they had failed to obtain evidence from witnesses who might be able to give evidence relevant to that issue;

the Judge had failed to compel the prosecution to make such disclosure or to direct them to obtain such evidence; and the Judge had refused to grant witness summonses in respect of such witnesses at the Appellant's behest and had refused to hear such evidence.
 - (iii) Re Public Interest Immunity: ("The PII Point"):

the Judge had upheld a claim to PII in respect of the documents which Advocate Greenfield had identified as relevant to his application for disclosure, notwithstanding that no application for PII had been made by the prosecution, and that the judge had failed to follow procedures necessary for the making of such a ruling.
 - (iv) Re the Search Warrant granted by the Deputy Bailiff: ("The Warrant Point"):

the Judge had failed to address the Appellant's submission that the warrant for search and seizure had been obtained illegally and had failed to grant the Appellant disclosure of material relevant to the issue of the warrant, including the Information which was sworn in support of the warrant which the trial judge had apparently examined privately without informing the parties.
73. The Grounds contained other submissions which were not pursued at the hearing before this Court, so it is unnecessary to detail them.

THE PROCEEDINGS PRIOR TO TRIAL

74. In order to make an adjudication on the grounds, it is relevant to understand what were the submissions to the trial judge and the proceeding before him in the Royal Court.
75. On 22nd September 2010 Advocate Greenfield filed an application with the Royal Court to "stay/strike out the Indictment as an abuse of the process of the Court." And in an undated

document headed "Pre Trial Submissions on behalf of the Defendant; Application to Stay the Indictment as an Abuse of the Process of the Court" (but which on the known chronology must have been written soon after 22nd September 2010), Advocate Greenfield identified a number of matters in respect of which he was seeking disclosure.

76. These matters included some of those identified above and also included disclosure concerning the justification for the failure to bring proceedings soon after the offences were committed, the role which the GFSC and Mr Burtonwood had played in the period leading to the arrest of the Appellant and the circumstances of the grant of the search warrant.
77. The Crown Advocate responded to these submissions in a document dated 30th September 2010. In relation to delay she asserted that in the light of the need to demonstrate in any prosecution for money laundering that the money concerned was the proceeds of crime, "*...it was not until April 2006 at the earliest when Summers was convicted in the UK that the prosecuting authorities in Guernsey were in a position to even start to consider whether any offence should be investigated in this jurisdiction.*" (Mrs Russell's reference to the month of April rather than February is occasioned by the fact that although Summers pleaded guilty at the beginning of the trial in February, the trial of his co defendants lasted until April).
78. Advocate Russell added that the fact that confiscation proceedings against Summers had continued until March 2007 was relevant in this context. She expanded on this assertion before this Court by pointing out that Summers' affairs were so complex, and the tentacles of his fraud so widespread, that it was not until the completion of the confiscation investigation that the precise parameters of the involvement of all those associated with Summers' fraudulent activities, and the activities themselves, could be comprehensively defined.
79. She also made reference to other defendants including those whose identities were put to the Appellant when he was questioned by the SFO investigator in May 2002 and whose trials had not finally terminated until April 2008. She concluded: "*It is submitted that until the fraud investigations and proceedings were completed in the UK (and elsewhere), at which time the scope and extent of the criminality involved was clear, it would not have been practical or indeed possible to commence a prosecution against this defendant.*"
80. Concerning the defence point about the GFSC, Advocate Russell asserted that its responsibilities were entirely separate from the Guernsey police and related to the supervision and regulation of financial services in Guernsey; but that, in any event, a representative from the GFSC would be a witness at the Appellant's trial to prove, as a result of visits to the Appellant's offices (in March 2001 and February 2003) concerning Sartor, that the Appellant had been made aware at that time of his responsibilities in connection with money laundering.
81. As a result of Advocate Russell's response, and consistent with his stated intention, on 13th October 2010 Advocate Greenfield served on the Law Officers and on the Court a request for disclosure of all communications, notes of meetings etc, passing between the Police/Law Officers and the GFSC regarding the Appellant as well as all similar communications passing between the Police/Law Officers and the SFO, and Gary Burtonwood in particular.
82. It is clear that by the time when the dispute between the parties came before Judge Finch on 25th October 2010 as a preliminary issue, Advocate Russell had also declined to provide disclosure of the material sought, although it is clear, as we shall see, that she gave an assurance during the hearing that there was nothing in the documents sought which assisted the defence. Judge Finch reserved his decision and on 1st November 2010 he provided the parties with a copy of his draft judgment on the disclosure point.
83. In a document headed "Further Defence Submissions on Abuse of Process", Advocate Greenfield pursued the topic and, forecasting the need to serve a witness summons on the Crown Advocate, he submitted: "*As a matter of fact no evidence has been disclosed and in so far as prosecution counsel is speaking as a witness to the facts she has not made herself available for cross examination.*" (See para.12(c) idem)

84. On 5th November 2010 Advocate Greenfield drafted a "Submission arising from the Judgment of the Court on Disclosure." In relation to the warrant he submitted that a consideration of how it came to be issued was relevant in two ways first as to the admissibility of material seized under it; the second, suggested Advocate Greenfield, related *"to the abuse of process application and the submission that the prosecution have acted in a deliberately unlawful and oppressive manner so as to deprive the defendant of protections to which he was entitled."*
85. He continued with the assertion that *"the only course open to the Defence is to treat the DB (Deputy Bailiff) and prosecution counsel as witnesses, which indeed they are. Any possible compromise on the basis that the warrant was wrongly issued and the possibility that the court was not properly appraised of the relevant facts has gone."* (para.4(e)).
86. He concluded: *"In addition to being witnesses both the DB and prosecution counsel now have a personal interest in the case. Someone is seriously at fault over the issuance of the warrant. That fault may lie with the prosecution or the Judge or both. Neither could now be seen to be impartial,"* (para.4(e)). For reasons which we will develop below, in the view of this Court such criticisms are wholly misconceived.
87. On 8th November 2010 Judge Finch gave judgment on the disclosure issue and the parties attended Court. The only document which reveals what was said at the hearing that day consists of a note prepared subsequently by Advocate Greenfield. The note reveals that he applied for an adjournment of the trial date so that he could arrange for the attendance of witnesses to further his application for abuse on the grounds of delay. He insisted to the judge that he required to call, among others, the Law Officers in order to explore the state of mind of the prosecuting authorities between 2002 and 2009. He also told the Court that, qua abuse, the delay spoke for itself and that the prosecution had not justified it satisfactorily.
88. Judge Finch indicated that he was not minded to vacate the trial date and, after some further discussion, said that he would deal with the matter on the basis of the documents before him and would give a further judgment later.
89. On 9th November Advocate Greenfield asked for leave to serve summonses on a number of individuals including the Deputy Bailiff, the Crown Advocate as well as five witnesses who were due to give evidence in person at the trial. He served a skeleton argument in support of his application and again requested an adjournment of the date of trial so that the witness summonses could be served and to allow time for him to prepare for a further abuse of process hearing with witnesses giving evidence.
90. On 10th November 2010 Judge Finch circulated a draft of his judgment on the issue of abuse which included an email containing a refusal to issue the witness summonses which Advocate Greenfield had requested.
91. In this judgment on abuse which he delivered on 16th November 2010, Judge Finch referred to the submission of Advocate Greenfield that the prosecution had not disclosed the Information laid before the Deputy Bailiff in respect of the search warrant. It is clear that the information had been filed among the case papers and that he had consulted the document before giving his ruling. He indicated that there was nothing in the document which assisted the Appellant in his submissions in relation to the warrant.
92. In the meanwhile, Advocate Greenfield had sought judicially to review the ruling which Judge Finch had made in relation to disclosure. The application was heard on 10th November 2010 and was refused by the Lieutenant Bailiff, Sir de Vic Carey.
93. On 12th November 2010 the Appellant's trial began with an application by Advocate Greenfield to exclude certain evidence including the police interviews of the Appellant. The judge decided to allow them to be admitted into evidence and no appeal is made to this Court in respect of that decision.

94. On the same date, Advocate Greenfield also renewed his complaints to the judge about the search warrant in order to exclude a limited number of documents seized from the Appellant's home address. And although no appeal lies to this Court in respect of the Judge's decision to admit the documents, Advocate Greenfield complained that the fact that the warrant was issued, as he submits, under the wrong section of the 2003 Law, assisted his abuse of process application because it demonstrates that *"the prosecution had no proper regard for its obligations and for the rights of the Defendant."* (see para 3.4(e) of the Grounds)

CONCLUSIONS:

The DELAY point

95. In his submission entitled "Appellant's Reply and Skeleton Argument" dated 7th March 2011, Advocate Greenfield complained that the prosecution had offered no credible explanation for the seven year delay. He says at para 13: *"The application was not however based solely upon mere delay or upon the prejudice that is inherent in such lengthy delay."* He continues: *"There was an evidential basis to assert, and it was a proper and reasonable inference to draw, that the prosecution had either taken a decision to delay the defendant's prosecution and/or had caused delay through a failure to investigate in a timely and reasonable manner."*
96. He then identifies the bases of the assertion including the state of knowledge of the prosecution of the Appellant's activities qua the Legend account in Guernsey in 2002, the absence of any reason for delay after the conclusion of Summers' trial in February 2006, the lack of credibility in the prosecution's claim that they had decided to delay prosecution until the end of the trials of other defendants (in particular that of Shinder Gangar and others) and the role of the GFSC and their use of compulsory powers to investigate the Appellant after 2007.
97. When the Crown Advocate had identified reasons to justify the delay, Advocate Greenfield had joined issue with the explanation put forward. Judge Finch had accepted the prosecution's explanation; see para 17 of his judgment on abuse delivered on 16th November 2010. He agreed that the period of delay should run, not from 2002 as Advocate Greenfield had suggested but from early 2008.
98. In the view of this Court he was entitled so to do. We are persuaded that 2008 was the relevant period from which delay should be calculated by reason of a number of matters including the evidence of the log, the sworn testimony of relevant witnesses at the trial, as well as the assertions made in the Royal Court by Mrs Russell. These reveal initially that the prosecution authorities made a decision that no investigation would start unless, and until, Summers had been convicted.
99. In the view of this Court that was a reasonable decision and one which bore the hallmark of common sense. It was after all, an essential ingredient of the proof of any prosecution of this Appellant that monies credited to the Legend and other accounts, which it was alleged were used for money laundering purposes by the Appellant, constituted the proceeds of Summers' fraud. And, although it might have been possible to prove the fraud by calling relevant investors at a trial in this jurisdiction, two difficulties immediately present themselves. The first is of ensuring that the relevant defrauded witnesses, none of whom were residents here, would be willing to travel to the Bailiwick to testify. The second is the possibility of inconsistent verdicts at a trial of the Appellant here and Summers in the UK; and in particular the problems posed by a conviction of this Appellant and an acquittal of Summers.
100. We can therefore understand why the Guernsey authorities decided the best and safest course was to await the outcome of proceedings against Summers before beginning an investigation of the Appellant in this jurisdiction. Nor do we consider, in so far as it constituted a motive for forbearing to commence the investigation, that the consideration that the Appellant was a witness against Summers was an improper motive for that forbearance.

101. The Royal Court was also told by the Crown Advocate, and the point was repeated to this Court, that the authorities here subsequently decided to await the outcome of the contested Summers confiscation proceedings and the investigations and trials of other defendants linked to Summers in case those proceedings investigations and trials revealed hitherto unknown lines of enquiry relevant to a prosecution of this appellant. In our judgment, this, too, was a reasonable decision. Although this increased the delay, it would indeed have been unfortunate if a prosecution of this appellant had been launched on the basis of evidence available in 2006 if, subsequently, enquires in other proceedings had revealed matters unknown at the relevant time which cast a different light on his involvement.
102. Since nothing new, so far as we know, resulted from either the confiscation proceedings or the investigations and trials of other defendants, it may fairly be said, with the benefit of hindsight, that the Guernsey authorities unnecessarily delayed the beginning of their investigation beyond February 2006. But this Court has found no reason to question the bona fides of that decision which was made, of course, without the benefit of hindsight.
103. If, as we have concluded, it is appropriate to consider that the relevant period runs from early 2008, it is incumbent on this Court to examine the delay of nearly two years between early 2008, when the investigation in fact began, and late 2009, when the Appellant was arrested. The fact that we do not find fault with the trial judge for declining to accept the relevant period as running from 2002, does not absolve this Court from exploring the relevant period to ascertain why it took two years to investigate this offence. Contrary to the prosecution claim, we do not consider that the evidence was unduly complex: the trial before the Jurats lasted only eight working days, excluding the sentencing hearing.
104. In order to understand what happened it is necessary to return to the log. We have already described some of the salient entries. In summary, the log reveals reasonable progress during the course of approximately the first nine months of 2008. That said, despite the justified frustration at the delay in obtaining information from Jersey, it is difficult to avoid the suspicion that there was a deceleration of pace during the first half of 2009 even allowing for the fact that DC Goude retired and had to be replaced as senior investigating officer. The entries become less plentiful after the turn of the year and it is not clear whether that reflects a lack of activity or simply a lack of recording the activity which in fact took place. No doubt, too, the transfer of responsibility for the inquiry from the Guernsey Police to the Border Agency in August 2009 caused an hiatus.
105. By mid 2008, however, the facts which gave rise to the potential charges had occurred between 5 and 6 years before and, making due allowance for the finite nature of the prosecuting resources in a jurisdiction such as this, we are not satisfied that the investigation proceeded with the speed appropriate to such an "old" case during the first half of 2009.
106. What impact does our anxiety have on the question of delay? Blackstone (para. D3.55) culls from authority the sort of complaints capable of amounting to abuse of process. Judge Finch cited the relevant passage in his judgment of 16th November 2010. The list is plainly not closed but includes *"lengthy delay which causes prejudice to the accused; failure to honour an undertaking given to the accused; failing to secure evidence or destroying evidence; tactical manipulation or misuse of procedures in order to deprive the accused of some protection provided by the law, or taking unfair advantage of a technicality; entrapment; abuse of executive power."*
107. It is clear from the authorities that in the absence of bad faith or oppressive conduct of the kind described, the essential test, notwithstanding the delay, is whether the accused had a fair trial. The passage of time between the occurrence of the offence and arrest and prosecution, per se, is insufficient to justify a stay; nor should a stay be granted to express judicial disapproval in order to discipline the police or the prosecuting authority; see R v Norwich Crown Court ex parte Belsham [1992] Cr. App. R. 382.
108. The Vice President, Rose LJ, summarised the position in R v S [2006] 170 JP 434 thus: *"In the light of the authorities, the correct approach for a Judge to whom an application for a stay for abuse of process on the ground of delay is made, is to bear in mind the following principles:*

(1) Even where delay is unjustifiable, a permanent stay should be the exception rather than the rule;

(2) Where there is no fault on the part of the complainant or the prosecution, it will be very rare for a stay to be granted;

(3) No stay should be granted in the absence of serious prejudice to the defence so that no fair trial can be held;

(4) When assessing possible serious prejudice, the Judge should bear in mind his or her power to regulate the admissibility of evidence and that the trial process itself should ensure that all relevant factual issues arising from delay will be placed before the jury for their consideration in accordance with appropriate direction from the Judge;

(5) If, having considered all these factors, a Judge's assessment is that a fair trial will be possible, a stay should not be granted."

109. The application to this jurisdiction of the principles relating to a stay on the grounds of delay were considered in Bach v The Law Officers [2007-2008] GLR 354. at para 25 Beloff JA said: *"The principle which can be distilled from the English cases, which we consider to be reflected in the law in Guernsey, is exemplified in R v R where the Court of Appeal stated, according to the note of the case in the Criminal Law Review (1994) Crim. L.R. at 948, that: 'No stay of proceedings should be imposed unless the defendant shows on the balance of probabilities that owing to the delay he will suffer serious prejudice to the extent that no fair trial can be held, i.e. that the continuance of the prosecution amounts to a misuse of the process of the court.' "*
110. Beloff JA later observes, at para 27, that prejudice is *"intrinsic to the concept of abuse of process save where the prosecution behaviour has been (unusually) in some way so oppressive or unconscionable to amount to a serious abuse of executive power..."*
111. No evidence has been put before us upon which any finding of "oppressive or unconscionable" behaviour "amounting to a serious abuse of executive power" could be made. Nor was any argument addressed to us to suggest that the impact of delay had had any seriously prejudicial effect in this case. The one witness whom the Appellant might have wished to call in his defence, Paul Sutherland, the mutual friend of Summers and the Appellant, died in August 2003 before any prosecution against the Appellant could reasonably have been initiated.
112. We have already referred to our conclusion that the interplay between the GFSC and the Guernsey Police, so far as the Appellant's activities are concerned, which attracts criticism from Advocate Greenfield, is not a criticism shared by this Court. Since Advocate Greenfield repeated his complaint about the parallel enquiries of the two agencies in his perfected grounds dated 7th March 2011, it is relevant to say that his remedy was an application to the trial judge to exclude evidence called on behalf of the GFSC in accordance with the first limb of point (4) of Rose LJ's summary of the "correct approach" cited above.
113. Furthermore, the assertion in Advocate Greenfield's undated "Pre Trial Submissions..." document (drafted in late September 2010), that the Appellant was tricked by the SFO, aided by the authorities here, into acting to his detriment and prejudice by making witness statements in the prosecution of Summers, which he would not have made if he had known that he would later himself be prosecuted, is nullified by the fact that no objection was taken at the trial to the introduction into evidence of those witness statements.
114. This was a case, the essential proof of which consisted of documents. It is well established that regard must be given to the nature of the case in which the delay is alleged. Plainly it is more difficult to demonstrate prejudice, such that a fair trial after a significant lapse of time cannot take place, if the case is essentially dependant on contemporary documents rather than one which has involved a delayed complaint about a single incident which was alleged to have taken place

many years before. See R v Telford JJ ex parte Badhan [1993] Cr. App. R. 171 and R v Buzalek and Schiffer [1991] Crim.L.R. 115 (CA).

115. As we have already observed there is no doubt, as summarised above in point (4) of the factors identified by Rose LJ, that trial judges are encouraged to use their power to regulate the admission of evidence through the statutory discretion to exclude evidence rather than to impose a stay. In this jurisdiction this power is granted by Section 78 PPACE. It is relevant to note that the only evidence to which objection was taken at trial consisted of certain correspondence between the Appellant and a Mr Neil Gray (as to which see the Warrant point below) and the police interviews. As stated the latter objection was not pursued in the appeal to this Court.

116. We reject the Appellant's submissions on the Delay point.

The DISCLOSURE point; "WRONG TEST."

117. In his judgment, Judge Finch observed "*...English authorities and guidance cited relate to a regime governed by statute and, whilst highly persuasive, are not strictly binding in Guernsey. However, they represent a considerable degree of experience of disclosure matters at a complex level and it is intended to apply them.*"

118. Advocate Greenfield submitted that the judge had applied the wrong test in his judgment on the matter (see Grounds para 3.2). He asserted that the judge had used the statutory test in the Criminal Procedure and Investigations Act 1996 (CPIA) and that, by citing with approval from the up to date English Attorney General's Guidelines and from a recent Protocol drafted by two High Court judges as well as from R v H and others [2004] 2 AC 134, all of which post date the introduction of the CPIA, Judge Finch failed to root his decision in the law applicable to the Bailiwick which consisted, essentially, of the authority of R v Keane [1994] 1 WLR 746 (see his Grounds para 3.2(a))

119. Thus Advocate Greenfield takes the judge to task for quoting the following passage from para 8 of the current Attorney General's Guidelines and using it in support of his judgment "*Disclosure refers to providing the defence with copies of, or access to, any material which might reasonably be considered capable of undermining the case for the Prosecution against the accused, or of assisting the case for the accused and which has not previously been disclosed*". He suggests that test is too narrow.

120. This submission requires us to consider briefly the history of disclosure at English law, which was conveniently summarised by Lord Bingham at paragraphs 15 – 17 giving the opinion of the Committee in R v H and others. Historically, the prosecution's duty of disclosure was simply to make available to the defence witnesses whom the prosecution did not intend to call, and earlier inconsistent statements of witnesses whom the prosecution were to call. In 1981 the English Attorney General issued guidelines but laid down no test other than one of relevance.

121. In R v Ward [1993] 1 WLR 619 the English Court of Appeal had to consider for the first time the extent of the prosecution's duty of disclosure and held that the limited approach to disclosure referred to above was inadequate. At 674 the Court of Appeal said this:-

"An incident of a defendant's right to a fair trial is a right to timely disclosure by the prosecution of all material matters which affect the scientific case relied on by the prosecution, that is whether such matters strengthen or weaken the prosecution case or assist the defence case. This duty exists whether or not a specific request for disclosure of details of scientific evidence is made by the defence."

122. In this passage the Court appears to suggest that even information which may strengthen the prosecution case is material for the purposes of disclosure. However, that is to be contrasted with a passage later in the judgment at 676 where the Court said this:-

"The new rules are helpful. But it is a misconception to regard them as exhaustive; they do not in any way supplant or detract from the prosecution's general duty of disclosure in respect of scientific evidence. That duty exists irrespective of any request by the defence. It is also not limited to documentation on which the opinion or findings of an expert is based. It extends to anything which may arguably assist the defence. It is therefore wider in scope than the rule".
(emphasis added)

123. In R v Keane at 752 the Court of Appeal made clear that the prosecution's duty of disclosure was not limited to scientific evidence and went on to define what was "material" for the purposes of disclosure in the following terms, adopting the test suggested by Jowitt J in R v Melvin and Dingle (20 December 1993 Unreported):-

"I would judge to be material in the realm of disclosure that which can be seen on a sensible appraisal by the prosecution: (1) to be relevant or possibly relevant to an issue in the case; (2) to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; (3) to hold out a real (as opposed to fanciful) prospect of providing a lead on evidence which goes to (1) or (2)."

124. What was understood to be the prosecution's duty of disclosure as laid down in Ward and Keane led to practical difficulties and in 1996 Parliament intervened to enact the CPIA. This made provision for a two stage process of disclosure by the prosecution. In accordance with section 3(1)(a) as amended, primary disclosure is undertaken of any previously undisclosed material "which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused". Secondary disclosure is made pursuant to section 7(2)(a), following delivery of a defence case statement under section 5, of previously undisclosed material which might reasonably be expected to assist the accused's defence.

125. As Advocate Greenfield correctly pointed out, R v H and others was heard after the enactment of CPIA and Lord Bingham acknowledged at paragraph 17 of his speech that the Act had changed the test for the prosecution's duty of disclosure as compared with that established at common law in Ward and Keane. However, he made two observations of general importance which are relevant for our purposes in determining the appropriate level of the duty of disclosure in Guernsey. At para 14 he said this:-

"Fairness ordinarily requires that any material held by the prosecution which weakens its case or strengthens that of the defendant, if not relied upon as part of its formal case against the defendant, should be disclosed to the defence. Bitter experience has shown that miscarriages of justice may occur where such material is withheld from disclosure. The golden rule is that full disclosure of such material should be made."

126. Later, at para 17, when commenting on the provisions of CPIA, he said this:-

"Whether in its amended or unamended form, s3 does not require disclosure of material which is either neutral in its effect or which is adverse to the defendant, whether because it strengthens the prosecution or weakens the defence. This rule was not criticised by the appellants' counsel, unsurprisingly since a defendant cannot complain that the defence (and the judge and jury) are not alerted to the existence of material which, if revealed, would lessen his chance of acquittal."
(emphasis added)

127. Disclosure is a concept which went through rapid change towards the end of the twentieth century as a result of the exposure of several miscarriages of justice. In Ward and Keane the English courts developed new rules as to what had to be disclosed in order to prevent further miscarriages. Experience suggested that they had perhaps expressed themselves in unduly wide terms and the CPIA established a slightly changed test for deciding what was material and therefore had been to be disclosed by the prosecution (subject of course to any public interest immunity claim).

128. We have not been referred to any previous decision as to the applicable test for disclosure in this jurisdiction. We must therefore determine what that test should be.
129. The overriding obligation is of course to ensure a fair trial. However, for the reasons so powerfully stated by Lord Bingham in the two passages we have cited from R v H and others, the test for disclosure which is currently applicable in England and Wales fully meets the requirements of fairness. The law of Guernsey is different from that of England and Wales and this Court is not obliged to follow the twists and turns of English common law. Our task is to state the applicable test having taken advantage of experience gained elsewhere since the problems of non-disclosure became apparent.
130. In our judgment it would be highly undesirable to set the test at the level required by Ward and Keane which proved to be unsatisfactory and was replaced by a test which the House of Lords has found fully meets the requirements of a fair trial and which should be more than sufficient to ensure that defendants are not wrongly convicted because of non-disclosure by the prosecution of material which might have assisted them.
131. We hold therefore that the duty of the prosecution in Guernsey is to disclose any material which might reasonably be considered capable of undermining or weakening the case for the prosecution or of assisting the case for the accused. The judge therefore applied the correct test.

The DISCLOSURE point; DUTIES

132. A basic premise of the law on disclosure is that the duty falls on the prosecution to assess the material gathered in the course of an investigation for the purpose of disclosure. The fact that the primary duty falls on the prosecution rather than on the court was emphasised by Lord Taylor LCJ in Keane at 752:-

"We also wish, in passing, to indorse the observations of the learned judge in that case as to the scope of the Crown's duty. It would be an abdication of that duty for the prosecution, out of an over-abundance of caution, simply to dump all its unused material into the court's lap and leave it to the judge to sort through it all regardless of its materiality to the issues present or potential. The prosecution must identify the documents and information which are material according to the criteria set out above. Having identified what is material, the prosecution should disclose it unless they wish to maintain that public interest immunity or other sensitivity justifies withholding some or all of it. Only that part which is both material in the estimation of the prosecution and sought to be withheld should be put before the court for its decision. If in an exceptional case the prosecution are in doubt about the materiality of some documents or information, the court may be asked to rule on that issue."

133. The point was emphasised by Lord Bingham in R v H and others at para 35 in the following terms:-

"If material does not weaken the prosecution case or strengthen that of the defendant, there is no requirement to disclose it. For this purpose the parties' respective cases should not be restrictively analysed. But they must be carefully analysed, to ascertain the specific facts the prosecution seeks to establish and the specific grounds on which the charges are resisted. The trial process is not well served if the defence are permitted to make general and unspecified allegations and then seek far-reaching disclosure in the hope that material may turn up to make them good. Neutral material or material damaging to the defendant need not be disclosed and should not be brought to the attention of the court. Only in truly borderline cases should the prosecution seek a judicial ruling on the disclosability of material in its hands." (emphasis added)

134. Advocate Greenfield criticised the judge for quoting with approval in his judgment from the recently published English Protocol for the Control and Management of Unused Material in the Crown Court (drafted by Fulford and Openshaw JJ) which states *"However it is essential that the trial process is not over burdened or diverted by erroneous and inappropriate disclosure of*

unused prosecution material or by misconceived applications in relation to such material." In our judgment this advice is entirely consistent with the observations of Lord Taylor and Lord Bingham and the judge was perfectly entitled to refer to it.

135. The whole purpose of disclosure is to support the essential requirement that any trial must be fair. It is *"axiomatic that a person charged with having committed a criminal offence should receive a fair trial and that, if he cannot be tried fairly for that offence, he should not be tried for it at all."* (Attorney-General's Reference (No 2 of 2001) (2004) 2 AC 72 at paragraph 13). Furthermore the operation of the rules of disclosure must accord with Article 6 of the European Convention of Human Rights, which requires that the trial process viewed as a whole must be fair.
136. Lord Bingham in R v H and others emphasised the responsibility of prosecuting counsel in this passage: *"The duty of prosecuting counsel recently considered by the Judicial Committee of the Privy Council in Randall v the Queen (2002) 1 W.L.R. 2237, para 10, is not to obtain a conviction at all costs but to act as a minister of justice"* (para 13)
137. He goes on to quote a passage from the judgment of Rand J in The Supreme Court of Canada in the case of Boucher v The Queen (1995) SCR 16 at 23- 24 *"Counsel have a duty to see that all available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength but it must also be done fairly"*.
138. When further particularised on the 13th October 2010, the Appellant's application for disclosure included *"(a) all communications, including any letters, or attendance notes of any meetings or conversations, and letters of instruction or advice passing between the Police/Law Officers and the GFSC regarding Roger Taylor...; (b) all communications, including any letters, or attendance notes of any meetings or conversations passing between the Police/Law Officers and Mr Burtonwood (of the SFO/Grant Thornton) regarding Roger Taylor; (c) all communications, including any letters of attendance notes of any meetings or conversations passing between the Police/Law Officers and the Serious Fraud Office or internally within the prosecution regarding Roger Taylor, including documents evidencing (a) the state of knowledge of the prosecution during the period 2001/2002; (b) why the prosecution of Mr Taylor was not pursued earlier; and (c) the decision to prosecute Mr Taylor in or about February 2008."*
139. We must consider later the status to be applied to such material. Suffice it to say that it is likely to be regarded as PII material.
140. In both R v Keane and R v H and others, the material concerned was PII material in that it consisted of material relating to the identity and activities of an informant in R v Keane, and of observation logs, including authorisations under the Regulation of Investigatory Powers Act 2000, in R v H and others.
141. In both cases, too, the prosecution had served a considerable quantity of material on the respective trial judges with a view to them performing the balancing exercise summarised in R v Keane: *"When the court is seized of the material, the judge has to perform the balancing exercise by having regard on the one hand to the weight of public interest in non-disclosure. On the other hand he must consider the importance of the documents to the issues of interest to the defence, present and potential, so far as they have been disclosed to him or he can foresee them"* (page 752). This test was expanded by Lord Bingham in R v H and others at paragraph 36.
142. The instant case was different. It is plain, as we shall see, that the Crown Advocate undertook the duty of examining the relevant material in order to apply principles of disclosure and that, having done so, she concluded that there was no requirement to disclose any of the material or to serve any of it on the Royal Court to enable the court to perform a balancing exercise.
143. The first submission of Advocate Greenfield's appeal on this ground constituted a criticism of the Crown Advocate for failing to make disclosure in accordance with his request dated 13th October 2010. And he criticised the trial judge for failing to compel her to do so and for refusing to allow her to be summonsed as a witness, together with the professional officers of the GFSC,

Gary Burtonwood (of SFO and Grant Thornton) as well as the Deputy Bailiff, in accordance with his Application to Serve Witness Summonses dated 9th November 2010, so that he could cross examine them.

144. In our judgment these criticisms are misconceived. As is clear from the summary of the law which we have described above, the common law imposes certain obligations on prosecution counsel. In the absence of clear indications to the contrary, counsel in England and Crown Advocates here must be expected, and trusted, to carry out their task fairly and conscientiously.
145. The evidence points to the conclusion that Mrs Russell did so. In our judgment there is every reason to believe that she was aware of the nature of her responsibilities. In her letter to Mourant Ozannes on 12th August 2010, in response to the request for disclosure contained in their letter of the 11th August, she said *"I am of course fully aware of the prosecution obligation to disclose any relevant information obtained during the course of a criminal investigation which does not form part of the prosecution case, in accordance with the test for materiality in R v Keane (1994). I'm doing my best to conscientiously discharge that duty..."*.
146. On 30th September 2010 in her Response to the Appellant's undated "Pre-Trial Submissions ...etc" document, she wrote (in relation to the specific disclosure request concerning the warrant and the Information supporting it), *"There is nothing which the prosecution consider assists the defence case (in so far as it is known) or which undermines the prosecution in that information."* She later added: *"The prosecution in criminal proceedings has an obligation to disclose automatically any document or information which undermines the prosecution case or which may reasonably be expected to assist the defence case in accordance with the test in R v Keane (1994). That duty continues throughout the trial."* This summary of the law, though referenced by Advocate Russell to R v Keane, should have been referenced to R v H and others.
147. By the time of the hearing on 25th October 2010 when Judge Finch heard argument on the Appellant's application for disclosure and other matters, it is clear that Advocate Russell had completed her task of examining all the material relevant to the Appellant's disclosure request (not limited to matters relating to the warrant) and as we have seen, Advocate Greenfield acknowledged in his note of that hearing entitled "Further Defence Submissions on Abuse of Process" at para 11(f), *"...prosecution counsel has assured the Court that there is nothing of any relevance in any of the documents, whatever they are.."*
148. Mrs Russell is a Crown Advocate of considerable experience. We are confident that had she found any disclosable matter in her trawl through the relevant material she would have taken steps to disclose it, either on her own initiative in whole, or redacted (see Attorney General's Guidelines referred to above and R v H and others at para 35), or having consulted the Procureur (see R v Chief Constable of the West Midlands Police ex parte Wiley [1995] 1 AC 274 (HL), or, if there was a requirement to claim PII, to serve the material on the Court and seek a ruling in accordance with the balancing exercise referred to in R v Keane and refined in R v H and others.
149. In relation to his criticisms of the trial judge, we have to say that Advocate Greenfield's submission lacks any kind of hinterland. We know of no case in which prosecuting Counsel has been summonsed as a witness to support on oath in the witness box an assurance that he/she has performed the obligations of disclosure for the purpose of being cross examined on the matter, as envisaged by Advocate Greenfield. It would be a bold Court which absolutely precluded such a scenario but we see good reason why Judge Finch should have declined to allow this case to be the forum for such a novel procedure.
150. Moreover, making due allowance for forensic hyperbole and for Advocate Greenfield's disappointment at Judge Finch's draft ruling on disclosure (sent in advance to the parties), we express some dismay that Advocate Greenfield should have thought fit to allege in the document dated 5th November 2010 (headed "Submissions arising from the Judgment of the Court on Disclosure") that *"the DB and prosecution counsel have a personal interest in the case.....Neither can now be seen to be impartial."* He continues: *"Authority on bias and a personal interest and*

the importance that justice must be seen to be done is not set out in this note but the defence would be pleased to assist in this regard if it (sic) the court requires." (para 4(g)).

151. We have no hesitation in saying that these allegations should not have been made. There is not a shred of evidence to support them. In relation to Mrs Russell they are based on a misunderstanding of the duties and responsibilities of prosecution counsel in a criminal trial; and in so far as the actions of the Deputy Bailiff on 26th November 2009 are concerned, they are based on an equally fundamental misunderstanding of the inter-relationship between sections 8 and 9 of PPACE which we outline below under the Warrant point.
152. It is perhaps notable that no application was made by Advocate Greenfield to Judge Finch for the judge himself to examine the material described in the Application of 13th October 2010 in order to verify the position notwithstanding the assurance of the Crown Advocate. In any event, in the light of Mrs Russell's assurance, in our judgment, the trial judge was entitled to act on **it** and we see nothing to criticise in his refusal to second guess that assurance and to order disclosure of material which he had not seen.
153. Moreover, if it is correct that the judge was entitled to rely on the assurance, he was plainly right to refuse to accede to a request for the summoning of witnesses so that Advocate Greenfield could embark on cross examination in respect of his somewhat speculative allegations.
154. In short, there was nothing whatever before Judge Finch to suggest that the prosecution had not conscientiously discharged its duty of disclosure and Advocate Greenfield's application was nothing more than a fishing expedition in the hope that something might turn up. Such applications were deprecated by Lord Bingham at para 35 in R v H and others in the passage referred to earlier.
155. We reject the appellant's submissions on both Disclosure points.

The PII point

156. Another criticism which Advocate Greenfield made in relation to disclosure was that Judge Finch wrongly ruled that the documentation sought in the 13th October 2010 request was protected from disclosure by PII, that he was not entitled to make such a ruling in the absence of a formal claim to PII by the prosecution, and that no such documents had been shown to him to enable him to carry out the necessary balancing exercise, etc (see Grounds 3.3(c)).
157. The documentation requested to be disclosed, as we have seen, consisted of communications, including notes of meetings etc passing between police/Law Officers and the GFSC, and SFO and, in particular (in relation to the latter) Gary Burtonwood (of SFO/Grant Thornton), concerning the activities of the Appellant.
158. It has to be acknowledged that such documentation would not usually fall for disclosure in a criminal trial. Nor would it be likely to be mentioned on any disclosure or non-disclosure schedule. In the experience of this Court such documents are assumed to exist, particularly police reports to the prosecuting authority and notes of conferences with prosecuting counsel, but neither the defence nor the court would expect to them to be identified on any schedule.
159. Advocate Greenfield conceded in para 3.8 of the document headed "Pre Trial Submissions" etc, that much of the material which he sought fell under "*the general heading of confidential but such confidentiality must give way to relevance under the principles in Keane.*"
160. Advocate Greenfield's concession is well made. In Taylor v Anderson (Police Complaints Authority Intervening) [1995] 1 W.L.R. 447, Sir Thomas Bingham MR held that police reports to prosecuting authorities constituted a class of document prima facie attracting PII (see 465). PII has also been claimed successfully for the purpose of safeguarding the integrity of a criminal investigation, including reports relating to the decision to prosecute and the evidence in support, communications between the investigating authority and the prosecuting authority, and internal

police communications such as management minutes; (see Auten v Raynor [1958] 1 WLR 1300; Auten v Raynor (No.2) [1960] 1 QB 669; and Evans v Chief Constable of Surrey [1988] QB 588. The principles underlying the immunity claimed successfully in the cases mentioned would apply, in our judgment, to the documentation particularised by Advocate Greenfield in his application for disclosure dated 13th October 2010, quoted above.

161. The matter arose in Judge Finch's ruling of 8th November 2010 in this way. In a paragraph towards the end of his judgment headed "Conclusions", Judge Finch referred to the passage from Lord Taylor's judgment in R v Keane in which the Lord Chief Justice defined prosecuting counsel's duty, deplored the "dumping" of unsifted material in the court's lap and asserted the desirability of the prosecution serving disclosable material on the defence *"unless they (the prosecution) wish to maintain that public interest immunity, or other sensitivity, justifies withholding some or all of it."*
162. Judge Finch then said: *"This stresses the important point of materiality which must not be lost sight of. In addition there is guidance on police investigation materials in Blackstone..."* and he then quoted a passage in the 2010 Edition at F 9.8 asserting that PII attaches to police reports on the investigation of crime; and comments himself that reports sent to the DPP have also attracted PII.
163. Although this passage of the judgment could have been better phrased, we do not agree with Advocate Greenfield's submission that the judge was asserting, still less upholding, a claim to PII of the documents defined in 13th October 2010 request.
164. Disclosure is a three stage process. The first compels the prosecution to sort through the unused material to assess whether any of it is "material" in accordance with the common law principles we have described above. This process does not concern the Judge. In the event that the prosecution identify disclosable material which is also prima facie PII material, if they cannot disclose the material in a redacted or other form, they are obliged to place the material before the judge for his consideration. This constitutes the second stage.
165. The third stage compels the judge, once he has considered the material and heard submissions inter partes, or from the prosecution ex parte, to perform the balancing exercise referred to in R v Keane and refined in R v H and others.
166. Since, in this case, the prosecution apparently completed the first stage, in relation to the material requested for disclosure, without identifying any material which undermined the prosecution case or assisted the defence case, they were not obliged to consider making any claim to PII and therefore did not place any documents before the court. And so the second stage never occurred and the Judge was not required to embark on the third stage.
167. Judge Finch is a judge with considerable experience of criminal law and procedure. We cannot interpret what he said as meaning that, absent the second and third stages of proceedings, he was asserting a claim of PII to an uncertain quantity of documentation which had not been put before him, which he had not read, on which he had heard no argument and in respect to which he had performed no balancing exercise.
168. We reject Advocate Greenfield's submissions on the PII point.

The WARRANT point

169. The procedure for seeking the warrant to search the Appellant's home and business premises on 26th November 2009 under Article 8 PPAC and its grant, was flawed, in the submission of Advocate Greenfield, because the officers were aware of the possible presence of special material, either at the home of the Appellant, but more probably at his business premises. It is said that since the warrant was unlawful, the Appellant was entitled to disclosure of all material relating to proceedings before the Deputy Bailiff and that, since such disclosure was not

forthcoming, the Appellant was not able to advance his arguments to best advantage and accordingly that he has been denied a fair trial.

170. In the view of this Court the submission is unsound. It depends on the premise that because of the officer's admitted suspicion that there might be special material present at premises which were the subject of the warrant, the application should have been made under Section 9 rather than Section 8.

171. Section 8, relevantly is, in these terms:

"(1) If on an application made by a police officer, the Bailiff or the appropriate judicial officer is satisfied that there are reasonable grounds for believing:

- (a) that a serious arrestable offence has been committed*
- (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and*
- (c) that the material is likely to be relevant evidence, and*
- (d) that it does not consist of or include items subject to legal professional privilege, or special material, and*
- (e),
he may issue a warrant authorising a police officer to enter and search the premises.*

(2) A police officer may seize and retain anything for which a search has been authorized under subsection (1)."

172. In the view of this Court, on a proper construction, this section should be utilised by police if the "material on premises.....which is likely to be of substantial value.....to the investigation" does not include special material. But the use of the section is not excluded if there may be special material on premises which is not being sought as part of the investigation.

173. This construction is reinforced by the language of Section 9 which is in the following terms:
"(1) A police officer may obtain access to special material for the purposes of a criminal investigation by making an application under Schedule 1 and in accordance with that Schedule"

174. We emphasise the words "for the purposes of a criminal investigation." In the view of this Court, in the instant case, if any of the material for which the police wished to search "for the purposes of (their) criminal investigation" had to their knowledge included special material, then a Section 9 warrant would indeed have been appropriate. But as Mr Hardill made clear during the voir dire on 12th November 2010, the material being sought related to documentation linking the Appellant and Summers and revealing the Appellant's state of mind at the relevant time (see Transcript p.21), which, a fortiori, was not expected to fall into that category.

175. The fact that the officers found documentation dated February 2007 which transpired to be relevant to the prosecution case and which, for the purposes of an argument on admissibility the trial judge was content to assume may have been special material (see below), does not invalidate the point that the officers believed on 26th November 2009 that any special material found would be likely to be linked, for the reason given in evidence (see also below), to a business of the appellant, Alternative Risk Management, unconnected with their enquiry.

176. In cross examination Mr Hardill was pressed about the possible presence of special material. Referring to such special material he maintained *"...there was a risk that, you know, obviously there could be information on site at any of the premises, certainly the business premises, that*

could have no bearing on our case and again officers were guided by the schedule they had in their possession." (Transcript p.32).

177. He also said that he was aware of the risk of the presence of LPP material at one or more of the premises. He said that this too was considered at the briefing prior to the search and that the search officers were told how to deal with such material. His colleague Richard Halliday confirmed that clear instructions were given to the search officers about all such material should any be found.
178. At one point during the voir dire (see Transcript p. 32 etc), Mr Hardill was asked what was said to the Deputy Bailiff on 26th November 2010 about special material. To this question Mr Hardill requested permission to refresh his memory from the Information which was in the case file in court. Having done so, and with specific reference to para 27 of that document, he gave evidence that the matter had indeed been raised with the Deputy Bailiff and that the police had considered in advance the possibility of the presence of special material relating to a company called Alternative Risk Management to which the Appellant was linked, part of whose business was to manage a "large portfolio of client business." Mr Hardill emphasised that those portfolios were of no interest or relevance to the criminal investigation. So far as this Court is aware this company had no connection with the fraudulent activities of the Appellant and Summers.
179. This passage negates the points made in the Grounds as to what was said, or not said, to the Deputy Bailiff on 26th November 2010. Ground 3.4 (d) asserts "*The only proper inference to draw is that the court which issued the warrant was not informed that it was intended to see special procedure material nor found that material subject to legal professional privilege would be present on the premises.*" The point was raised in furtherance of the argument that "*the prosecution had no proper regard for its obligations and for the rights of the Defendant*" (See Grounds of Appeal para. 3.4 (e)).
180. The mention of the Information is a convenient place to deal with the complaint pursued before this Court that the judge should not have privately consulted the Information prior to giving his judgment in respect of abuse of process on 16th November 2010 to confirm that there was nothing in the document which would assist the Appellant on the issues raised. Advocate Greenfield submitted that the judge should have warned the parties of his intention.
181. It will be apparent from Advocate Greenfield's submissions that the Information had not been disclosed and, although its existence was plainly known, it had been put on the sensitive disclosure schedule because, according to the Crown Advocate, Informations are habitually treated in that way in this jurisdiction. The reason for this, apparently, consists in the possibility that the Information might contain sensitive material from an informant. We did not hear argument on the point in any detail, but we express the hope that whether an Information is disclosed or not will in future be considered on a case by case basis and that the practice of treating Informations as a class which habitually are not disclosed will cease.
182. It is clear from the passage in the transcript which we have cited above that the Information was kept, as we would expect, in the Court file and was certainly readily available when Mr Hardill requested permission to consult it to remind himself of certain paragraphs in it. Since the witness had looked at it, it would have been open to Advocate Greenfield, who was on his feet at the time, to ask to see it to verify the witness' answer. It is relevant to point out that had he done so he would have been able to satisfy himself, as the Crown Advocate and the judge did, that there was nothing in the document to assist his case.
183. As to Advocate Greenfield's point that the judge should not have consulted the document without notice, we are not inclined to censure the judge on this score. Since it was in the case file, it was also readily available to him. Having read it he was able to make an independent assessment of Mrs Russell's assurance that its contents did not assist the Appellant's case. Moreover, as he pointed out in his judgment, he was in a better position thereafter to exercise the judicial duty during the trial, independently of the Crown Advocate, to keep its non disclosure under review.

184. We have said that in the opinion of this Court the warrant dated 26th November 2009 was properly granted under Section 8 and that the evidence discloses that the Deputy Bailiff was properly warned of the possible presence of special material relating to the business dealings of the Appellant, not associated with his criminal association with Summers. In these circumstances the two principal points made by Advocate Greenfield, namely that the seizures under the warrant were illegal and that the proceedings before the Deputy Bailiff ran roughshod over the Appellant's rights are not sustainable.
185. We must revert to Advocate Greenfield's assertion in his submission to the trial judge dated 5th November 2010 that the proceedings of 26th November 2009 and their aftermath showed that the Deputy Bailiff had "*a personal interest in the case*", that neither he nor the Crown Advocate "*could now (5th November 2010) be seen to be impartial*," and that "*someone is seriously at fault over the issuance of this warrant*." And as we have seen the next paragraph in the submission goes on to talk of bias.
186. In the judgment of this Court, no one was at fault over the issue of the warrant. It was a lawful document issued by the Deputy Bailiff after due consideration of an Information sworn by investigation officers who had taken trouble in advance to brief the search officers and who acquainted the Deputy Bailiff with the relevant facts. In the circumstances we consider the allegations made against the Deputy Bailiff in paras 4(e)-(g) of this document to be wholly unsustainable. They should not have been made.
187. In the Royal Court Advocate Greenfield advanced the argument that certain documents which had been seized under the warrant were inadmissible, not as we understand the argument advanced on p.90 of the Transcript, because they caused any special prejudice to the Appellant but because, as special material, they were inadmissible per se having been obtained under section 8 rather than under section 9. In that sense Advocate Greenfield appears to have been using them as examples of the unlawful nature of the warrant rather than appealing to the trial judge's discretion to exclude them under section 78 PPACE, as both the Crown Advocate and the judge assumed.
188. It is fair to point out, however, that in his reply to Mrs Russell's submission during the voir dire, Advocate Greenfield laid greater stress on the submission that the documents were not admissible (notwithstanding they had been found in the Appellant's possession) because the prosecution was not calling the author.
189. The documents (Tab 25 of the Crown Exhibits) dated from February 2007, long after the commission of the offences. They consisted of correspondence between an investor who was a victim of Summers' fraudulent schemes, Neil Gray, and the Appellant. Mr Gray claimed the return of certain deposits placed with Legend. The correspondence was headed "Without Prejudice".
190. Since we have concluded that the warrant under which these documents were seized was lawful, the documents were prima facie admissible, if relevant. In justification of the relevance of the documentation, the prosecution asserted that the correspondence represented, as indeed it did, a tacit acknowledgement by the Appellant that the monies invested in Legend by/on behalf of Mr Gray had been fraudulently solicited by Summers and were, therefore, the proceeds of Summers' fraud (although the Appellant maintained at trial his ignorance of that fact at the relevant time). Since proof of the fraudulent nature of the monies was one of the elements of the offence, this recognition by the Appellant was plainly relevant.
191. However, the trial judge was content to assume for the purposes of his ruling, in the Appellant's favour, that the documentation was special material. And he treated the admissibility of the material as one for his residual discretion under section 78. We have explored the way in which he exercised that discretion. He took overnight to consider the matter and delivered his ruling on 12th November. It is plain that he did further research and cited cases in his judgment to which he had not been referred in argument. We have considered his ruling with care and can find no fault in the reasoning which Judge Finch deployed to admit the documentation under section 78.

192. We reject the Appellant's submissions on the Warrant point.

THE APPLICATION FOR LEAVE TO APPEAL THE SENTENCE

193. At the adjourned hearing to determine sentence on 18th January 2011, the Royal Court had the benefit of a long and detailed Probation Report as well as testimonials from the Appellant's wife and a number of his friends and business associates. The fact that the Appellant is now in his early 60s having built up a reputation for himself in the insurance industry, and having never been in trouble with the law before, serves only to underline the sadness of his current position and the extent of his fall. The evidence presented by the prosecution in this case was overwhelming and it is a matter of regret that the Appellant did not take the advantage in sentence which a plea of guilty would have gained for him. This was a blatant series of offences, committed by the Appellant despite clear warnings of the peril in which he would stand if he paid money out to Summers from accounts containing funds which, he had been warned twice, were the product of fraud. The way in which he bestirred himself in other ways on Summers' behalf during 2002/3 only served to underline the closeness of his links to Summers and his determination to further Summers' interests.

194. Judge Finch rightly said in his sentencing remarks that money laundering is to fraud what receiving stolen property is to theft. Fraudsmen like Summers depend on people like the Appellant to facilitate their criminal conduct by providing otherwise respectable company bank accounts through which the defrauded money can be washed. The particular mischief perpetrated by this Appellant was that, at a time when Summers was under investigation, he caused tens of thousands of dollars to be paid to Summers to enable him to continue fraudulently to fund his lifestyle. Nor were the benefits which accrued to the Appellant insignificant. They included, as we have seen, a very substantial interest free loan and a relatively large sum of cash.

195. We considered carefully the sentence of two and a half years imprisonment imposed in this case and read with attention the sentencing remarks of the trial judge. We have to say that we could find no fault with the nature of the sentence passed or its length. Financial services are the lifeblood of this island community and the future of Guernsey's finance sector depends in no small measure on the ability of the those who work in that sector to maintain Guernsey's reputation for probity and integrity. Those who launder the proceeds of crime imperil that reputation and nullify the efforts of those who endeavour to protect it. This Court and the Royal Court will deal severely with those who commit crimes of this kind and in the absence of special considerations money launderers must expect to be sent to prison.

196. In all the circumstances, this Court had no hesitation in refusing to give leave to appeal this sentence of imprisonment.

THE APPLICATION FOR LEGAL AID

197. The Appellant also made an application to this Court for the grant of legal aid to cover the costs of his appeal. We considered a report dated 26th January 2011 prepared for Sir de Vic Carey who was seized of the matter at an earlier hearing, the Appellant having been refused legal aid by the Administrator. Sir de Vic, having heard argument, decided, in accordance with Section 40 Court of Appeal (Guernsey) Law 1961, to reserve the matter for this Court to determine at the end of the appellate proceedings.

198. We must lose no further time in recording our gratitude to Mrs Hayley Cooper who prepared the report and who agreed to allow this Court to disclose it to the Advocates in this appeal so that this Court could make use of it lest it should be of assistance in a determination of this application.

199. The grant of legal aid is currently circumscribed by "Circular 2011-1 Assessment of Financial Means of Applicants for Legal Aid." If an applicant for legal aid is married, Article 3(a) of Part 1 of these Regulations makes provision for the aggregation of the income and capital resources of

applicant and wife/partner. The Appellant is married to a lady who brought to the marriage substantial assets.

200. Article 2 of the Regulations defines eligibility for legal aid. Subject to certain exceptions, if the aggregated assets i.e. savings, properties, land, shares, cars, jewellery etc of the applicant and wife/partner exceeds £20,000, the applicant is not eligible for legal aid. In relation to income, under Article 4(b) there is a presumption against the grant of legal aid if the joint assessed residual income of the applicant and his spouse exceeds £200.01 per week. The Article provides for a discretion vested in the Administrator to ignore this limit if the interests of justice require it.
201. On 19th January 2011, after the trial and in advance of the appeal to this Court, the Appellant completed a Form 1F in pursuit of his application for legal aid for this hearing. He disclosed his own assets and those of his wife as well as details of their joint income. It is clear that the matrimonial home is in the name of the Appellant and, in accordance with Section 11 of Part 3 of the Regulations, the value of the home is ignored for the purposes of the assessment.
202. Submitted with the Form 1F was a pre nuptial agreement dated 17th September 2009 between the Appellant and his wife recording that the Appellant agreed to make no claim at any time on his future wife's capital assets which remained her property. Such an agreement plainly cannot defeat these Regulations. The fact that the Appellant in this case can make no legal claim against his wife's fortune in settlement of any debts that he may incur has no bearing on the requirement that for the assessment to any entitlement to legal aid, the assets of a married couple must be aggregated.
203. It is unnecessary to detail the amounts disclosed on the Appellant's Form. Suffice for the purposes of the decision of this Court to relate that the total capital assets of the Appellant and his wife, excluding their matrimonial home, amount to a figure well in excess of £20,000. And their joint assessable residual income is also very significantly above the eligible limit.
204. In the light of the substantial difference between the limits imposed on levels of capital and income by the Regulations and the figures disclosed in the Form submitted by the Appellant, we regret that we could see no reason to make so significant exception in this case. Accordingly we refused the application.