Judgment 37/2010

Roger Walter Francis Taylor
-Royal Court (Criminal Indictment 10 of 2010)
- 8th November 2010 and 16th November 2010

(i) Criminal trial on indictment – money laundering offences – defendant's pre-trial application for disclosure by prosecution of investigation materials – factors of materiality and public interest – application refused

(ii) Defendant's pre-trial application for adjournment – allegation of abuse of process by prosecution – burden of proof on the defendant on the civil standard of the balance of probabilities – defendant sought to call witnesses in support of the abuse of process allegation – nature of abuse of process – English and Guernsey authorities reviewed – reliance on grounds of delay and misconduct by the prosecuting authorities – need for a Practice Direction on the making of abuse of process applications – application dismissed (see Judgment 38/2010)

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 8th day of November, 2010 before John Russell Finch, Esquire, Judge of the Royal Court, sitting alone.

2010 No.7

In the action of THE LAW OFFICERS OF THE CROWN against ROGER WALTER FRANCIS TAYLOR and in the matter of an Application for Disclosure made on behalf of the said accused;

WHEREAS on the 25th day of October, 2010 the Court heard Advocate J.P. Greenfield for the accused and Crown Advocate F. Russell on the said application;

THE COURT this day handed down Judgment in the attached terms.

S M SIMMONDS
Her Majesty's Deputy Greffier

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 16th day of November, 2010 before John Russell Finch, Esquire, Judge of the Royal Court.

In the action of THE LAW OFFICERS OF THE CROWN against ROGER WALTER FRANCIS TAYLOR and in the matter of an application by the Defence regarding abuse of process;

WHEREAS on the 8th November, 2011 THE COURT heard Advocate J.P. Greenfield for the accused and Crown Advocate F. Russell on the said application;

THE COURT this day handed down Judgment in the attached terms.

S M SIMMONDS
Her Majesty's Deputy Greffier

IN THE ROYAL COURT OF GUERNSEY

Between: **LAW OFFICERS OF THE CROWN**

and

Roger Walter Francis TAYLOR

Application by the Defence for disclosure

Case heard on: 25th October 2010

Decision handed down on: 8th November 2010

Before: John Russell Finch, Esq., Judge of the Royal Court

Advocate J P Greenfield for the Defendant:

Crown Advocate F M Russell for the Law Officers

Cases and Materials referred to:

Bach v Law Officers [2007-8] GLR 354

R v H and C [2004] 2 AC 134

R v Keane (1994) 99 Cr. App. R. 1

R v Melvin & Dingle (1993) Unreported

The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended, Section 45

The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 Section 78

Article 6 of the European Convention on Human Rights

The Attorney General's Guidelines on Disclosure, paragraphs 8, 10 and 11

Protocol for the Control and Management of Unused Material in the Court Room, paragraphs 3, 4 and 38

Application for Disclosure

1. This is the first part of a pre-trial attack mounted on behalf of Mr Taylor (hereafter "D") who faces trial in the Royal Court commencing 11th November, 2010 on nine "*money-laundering*" counts, which relate to alleged transactions carried out via companies owned or controlled by him between 1st October, 2002 and 24th April, 2003. These transactions were allegedly on behalf of Michael John Summers, a convicted fraudster, found guilty in England on 28th April, 2006 of 33 offences of deception, involving around US$4.3 million.

2. The scope of the disclosure sought is found in D's application dated 13th October, 2010. In summary what is requested is:

    (a) all communications, including advice, between the Law Officers, Police and Guernsey Financial Services Commission ("GFSC"), regarding D, including a copy of the advice referred to by Mr Graham of the GFSC in a letter to D of 25th July, 2007;

    (b) all communications passing between the Law Officers/Police and a Mr Burtonwood, formerly of the SFO, now of Grant Thornton, relating to D; and

    (c) all communications, including attendance notes and notes of meetings between the Law Officers/Police and SFO and internally regarding D, including documents evidencing the state of knowledge of the Prosecution in 2001-2, why the Prosecution was not pursued earlier and the decision to prosecute D in February 2008.

3. This is resisted by the Prosecution. I am dealing with this as speedily as possible in order not to put the trial slot in peril, as dates available for criminal trials are very limited and, should the trial proceed, there are the needs of witnesses to be considered. I bear in mind that a further application needs to be determined as soon as possible before the trial date, giving both sides as much time as possible to make any necessary arrangements.

4. It is accepted that the basic test is to be found in the English case of R v Keane (1994) 99 Cr. App. R. 1. The Prosecution are under a duty to assess the materiality of documents in their possession. They should do this by applying the test set out by Jowitt J in R v Melvin and Dingle (Unreported, 1993), namely sensible appraisal of documents which are considered:

    "*(a) to be relevant or possibly relevant to an issue in the case;*

> *(b) to raise or possibly raise a new issue, the existence of which is not apparent from the evidence the Prosecution propose to use; and*
>
> *(c) to hold out a real (as opposed to fanciful) prospect of providing a lead on evidence which goes to the criteria above."*

5. The Attorney-General's Guidelines on Disclosure develop this further. Paragraph 8 indicates that:

> *"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."*

6. Material can fulfil the disclosure test "*by its capacity to support submissions that could lead to ……..a stay of proceedings"* (para 10(b)(ii)). Paragraph 11 specifies:

> *"In deciding whether material may fall to be disclosed, under paragraph 10, especially (b)(ii), prosecutors must consider whether disclosure is required in order for a proper application to be made. The purpose of this paragraph is not to allow enquiries to support speculative arguments or for the manufacture of defences."*

7. It is to be noted that the Guidelines refer to Article 6 of ECHR, observing that fair disclosure to the accused is "*an inseparable part"* of a fair trial, and that disclosure which fails to ensure timely preparation and presentation of the defence case "*risks preventing a fair trial taking place".*

8. Further assistance can be derived, in my judgment, from the English Protocol for the Control and Management of Unused Material in the Crown Court, drafted under Fulford and Openshaw JJ. under the auspices of the Court of Appeal – and found conveniently in appendix 4 to Blackstone, at page 2832 onwards. After quoting the observations of the House of Lords in R v H and C [2004] 2 AC 134 at 147 on the "*golden rule"* of disclosure, paragraph 3 goes on to say:

> *"However, it is also essential that the trial process is not overburdened or diverted by erroneous and inappropriate disclosure of unused prosecution material, or by misconceived applications in relation to such material."*

9. Paragraph 4 adds:

> "*The overarching principle is therefore that unused prosecution material will fall to be disclosed if, and only if, it satisfies the test for disclosure applicable to the proceedings in question, subject to any overriding public interest considerations."*

10. Paragraph 38 cites the observations in the House of Lords in R v H and C (supra), at 155:

> *"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."*

11. I have not lost sight of the fact that the ultimate argument in this application will be in relation to abuse of process, the leading Guernsey authority being Bach v Law Officers [2007-8] GLR 354. Also the 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. In addition, of course, Guernsey Courts must conform to the requirements of Article 6 of ECHR, which broadly speaking, amount to affording accused persons a "*fair trial"* in all respects.

12. The high-point of D's submissions is to be found in the Guernsey Police Log/Case History Record disclosed to the defence, at page 17 of D's first large bundle. The entry for "*08/8/08"* refers to a meeting at the GFSC with two of their senior staff and the investigating officers. The record concludes:

> *"It was agreed that the GFSC will provide all their evidence to Police for use in the criminal case against RT and others and this to be given to a team of forensic accountants for full investigation."*

13. It was submitted on behalf of D that the function of the GFSC was to supervise D's insurance business and the whole thing depicted in this note looks like a scheme agreed in advance in which the Prosecution participated, tainting the Prosecution whether the material is used at the trial or not. The Prosecution submitted that it would have been very surprising had there not been a dialogue between the investigators and the regulators. The GFSC had exercised its powers under Section 45 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 as amended. The Inspectors appointed under this legislation performed their task a considerable time after the time periods covered in the alleged offences. D is presumably well aware of what he told them. Reference was made to the terms of Section 45(10). This provides that a statement made by a person in response to a requirement imposed by an order under Section 45, may not be used in evidence against him except for an insurance type offence under Sections 45(9) or 64(1) of the law or: "*In proceedings for some other offence where in giving evidence he makes a statement inconsistent with it"*. It was suggested that this clearly anticipates that information can be

shared. In addition, the evidence from the GFSC (Mr Richings) is narrow and limited in scope and that is the only evidence adduced. D, it was repeated, is not charged with insurance offences. The GFSC was not responsible for the institution of the present proceedings.

14. The defence specified a letter from Mr Graham of the GFSC to D dated 25th July, 2007, in which it was indicated that the statutory investigation into D's insurance business would be, in effect, held on hold until "*confidential and privileged legal advice"* was obtained from the Law Officers. Why did the investigation stop? Why was it re-opened in August 2008 after the "*deal*" made on 8th August 2008, referred to earlier? The short answer from the Prosecution is that disclosure of correspondence with the GFSC and advice is likely to be highly prejudicial material and the trial is not concerned with how D was conducting his insurance business. It was the "*fundamental point*" of the Prosecution's submissions that any liaison with the GFSC does not take D's case any further and does not undermine the Prosecution case either. The defence also refer to the activities of a Mr Burtonwood, who swapped roles during the life of this case. He was an employee of the SFO when the fraudster, Summers was prosecuted, he then moved over to Grant Thornton, who were the Receivers appointed to enforce the Confiscation Order made by the Crown Court in relation to Summers' ill-gotten gains. He is a Prosecution witness in the present case and the committal files show a substantial amount of evidence that he may give. The defence submit that the Police log reveals the Prosecution were in regular contact with Mr Burtonwood when he was acting in "*private litigation"* against D and appears to have been co-ordinating its case with him. The litigation in question involved D paying £120,000 to Grant Thornton in their capacity as Receivers. Mr Burtonwood was also named in the search warrants executed in respect of D, but did not attend when this took place. The Prosecution submit that any perceived bias or impropriety can be tested in cross-examination at the trial and evaluated accordingly.

15. Disclosure is sought generally in relation to the *"delay"* point, which is a substantial plank of the abuse of process application that falls to be considered later. It is inextricably linked to that point and it therefore follows that observations made on it will be paralleled in the later decision, subject to any further submissions that are made then. It should once more be noted in this context, that the time-line of the alleged offences is October 2002 to April 2003. Summers was convicted on 28th April, 2006, his confiscation case concluded on 15th March, 2007 and an appeal in relation to that failed on 5th March, 2008. It was suggested on behalf of D that the overwhelming view on the facts is that pretty much all was known about the transfers which are the subject of the charges for many years before the warrants were executed in December, 2009, at the latest 2004 to 2005. There is therefore a proper ground to require the Prosecution to explain what was going on for all those years. All the Defence have is the limited Police log, covering only a small period. The Prosecution response is that it was necessary to prove Summers' monies were the proceeds of crime and for the determination of the confiscation proceedings in case something had emerged. The process could not realistically start until April 2006. The e-mails disclosed show there were issues of delay, especially in obtaining evidence from other jurisdictions. All this does not impact on the fairness of the Prosecution. D can still, according to the decided cases, have a fair trial.

16. There was also discussion on the Information laid before the learned Deputy Bailiff in respect of what Advocate Greenfield somewhat graphically described as the "*dawn raid"* when the warrants were executed. It is the Prosecution's position that again issues of Public Interest Immunity are being trespassed upon and that if something emerges in the course of the trial, the Information can be produced. Indeed, the request is depicted by the Prosecution as a "*fishing expedition"* by the defence (paragraph 38 of the Prosecution's skeleton argument). In order for the warrant to be granted, the statutory criteria had to be met.

Conclusions

17. It is important to go back to the leading case of Keane (supra). Lord Taylor CJ said (at 752, D-F):

> *"We also wish, in passing, to endorse the observations of the 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 the 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."*

18. 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 (2010) at paragraph F9.8:

> *"Public interest immunity also attaches to police communications relating to the investigation of crime, such as documents, or information upon the strength of which search warrants have been obtained."*

Reports sent to the DPP have also attracted immunity.

19. The Prosecution's observation that prosecutors and investigators should fully discuss matters relating to the bringing of the prosecution frankly, secretly and in private is a rational one. They are also correct to suggest that one must avoid becoming completely bogged down in satellite litigation. In the absence of bad faith public confidence would be lost if sensitive issues discussed in relation to individuals were disclosed.

20. There is also force in the simple submission made more than once by the Prosecution to the effect that the purest mode of proceeding is to test the evidence as it emerges and that the starting-point has to be the charges and the evidence set out to support them in the committal bundles. None of the issues impact upon D's defence to this case and go towards

undermining the Prosecution case. There is no obligation to disclose. This is consistent with the English authorities and guidelines referred to earlier.

21. I accept the submissions of the Prosecution in respect of the role of the GFSC and the application of Section 45 of the Law. These are money-laundering charges within a restricted time period, not insurance offences. Nor do I find, in the material available to me, anything sinister in the dual role of Mr Burtonwood, this can be dealt with in the course of his oral evidence. I have not forgotten that disclosure is ongoing and that the trial judge must keep it under review, and I also mention the applicability of Section 78 of PPACE, which can be evoked to exclude evidence in appropriate circumstances. However, I have seen very little to concern me on the question of disclosure which would adversely affect the fairness of the trial. Hence, in all the circumstances, the application fails and is refused.

22. Application refused.

IN THE ROYAL COURT OF GUERNSEY

Between: **LAW OFFICERS OF THE CROWN**

and

Roger Walter Francis TAYLOR

Application by the Defence regarding abuse of process

Case heard on: 8th November 2010

Decision handed down on: 16th November 2010

Before: John Russell Finch, Esq., Judge of the Royal Court

Advocate J P Greenfield for the Defendant

Crown Advocate F M Russell for the Law Officers

Cases referred to:

Bach v Law Officers [2007-8 GLR 354]

DPP v Humphrey [1977] AC1

R v Beckford [1996] 1 Cr. App. R. 94

R v Bow Street Stipendiary Magistrate ex parte South Coast Shipping Company Limited [1993] QB 645

R v Buzalek [1991] Crim. L.R. 948

R v Clerkenwell Stipendiary Magistrate ex parte Bell (1991) 159 JP 669

R v Grant [2006] QB 60

R v Horseferry Road Magistrates' Court ex parte Bennett [1994] 1 AC 42

R v Keane [1994] 99 Cr. App. R. 1

R v Latif [1996] 1 WLR 104

R v R [1994] Crim. L.R. 948

R v Telford Justices ex parte Badham [1991] 2 QB78

R v S (SP) [2006] 2 Cr. App. R 341

Spiers v Ruddy [2008] 1 AC 873

Other materials referred to:

Practice Direction [2000] 2 Cr. App. R 179

Criminal Procedure and Investigations Act, 1996

The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 Section 78

Blackstone (2011 edition) paras D3.54, D3.55 and D3.57

Archbold (2010 edition) para 4-67

Article 6 of the European Convention on Human Rights

Background

1. This is the second part of the pre-trial attack referred to in my earlier judgment handed down on 8th November 2010. The earlier judgment related to disclosure and this one deals with abuse of process. To an extent, the points are intertwined and some of the arguments and authorities common. It is helpful to set out the sequence of events: the general background to the case is found at paragraph 1 of the earlier judgment; a further oral hearing took place on 8th November, 2010. As is my custom, the earlier judgment was sent to counsel by e-mail in draft with a view to correcting typographical errors and similar slips. Two "typo's" duly emerged and were eliminated. Advocate Greenfield took the opportunity to send out a document entitled "*Submissions Arising from the Judgment of the Court on Disclosure"* dated 5th November 2010, the gist of which was that the judgment was wrong in most respects. A further hearing on abuse of process was fixed for 8th November, 2010 and Advocate Greenfield produced another document entitled "*Further Defence Submissions on Abuse of Process"*. The Defence now seek to adjourn the trial in order to obtain further information which they regard as essential to their application. At this later hearing, I declined to vacate the long-fixed trial date and indicated that I would rely upon the earlier written submissions and oral arguments plus anything else put forward at that hearing. This did not leave me with much time to come to a reasonable decision, but every effort has been made. A lot of the pressure stems from a late change of counsel for Mr Taylor and Advocate Greenfield needing to familiarize himself with an area of the law he has not encountered for many years.

Burden and Standard of Proof

2. It is familiar territory that he who asserts the abuse of process must prove it on the civil standard of the balance of probabilities, see R v Telford Justices ex parte Badham [1991] 2 QB 78. Another case which is useful is R v S (SP) [2006] 2 Cr. App. R 341. In the words of Blackstone (2011 edition) at para D3.57:

> *"….the Court of Appeal observed that the discretionary decision whether or not to grant a stay by reason of delay is an exercise in judicial assessment dependent on judgment, rather than on any conclusion as to fact based on evidence. It is, therefore, potentially misleading to use the language of burden and standard of proof which is more apt to an evidence-based fact-finding process (per Rose LJ at [20]). It may well be that this comment should be taken as applying to abuse of process applications generally (i.e. it is not limited to those where delay is an issue) since the balancing of competing interests is at the heart of all abuse claims. It is doubtful, however, that the Court of Appeal intended to signal a new approach to abuse cases: it is likely to remain the case that there is, effectively, a presumption that the trial should go ahead unless there is a compelling reason for stopping the trial from taking place."*

3. Advocate Greenfield wishes to call witnesses to give evidence relating to the alleged abuse of process. I have never heard of this being done in relation to trials of indictment in England or Guernsey, though it occurs in summary proceedings (R v Clerkenwell Stipendiary Magistrate ex parte Bell (1991) 159 JP 669). In relation to the Royal Court of Guernsey, I take the view

that it is *"an exercise in judicial assessment"* based on legal submissions, rather than a fact-finding exercise. Accordingly, I do not propose to hear witnesses in this application.

The Nature of Abuse of Process

4. In R v Beckford [1996] 1 Cr App R 94 Neill LJ deduced two main strands in the relevant authorities:

> *"(a) cases where the court concludes that the accused cannot receive a fair trial; and*
>
> *(b) cases where the court concludes that it would be unfair for the accused to be tried."*

5. Blackstone D3.54 comments that *"the former focuses on the trial process; the latter is applicable where the accused should not be standing trial at all (irrespective of the fairness of the actual trial)"*.

6. The scope of abuse of process seems, from the English authorities, to be as follows:

> (a) where the prosecution have manipulated or abused the process of the court, so as to deprive the defendant of a protection provided by the law or to take unfair advantage of a technicality; or
> (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution which is unjustifiable; or
> (c) where the Court refuses to countenance behaviour that threatens either basic human rights or the rule of law (R v Horseferry Road Magistrates' Court ex parte Bennett [1994] 1 AC 42, per Lord Griffiths).

7. These points are well summarized by Lord Salmon in DPP v Humphrey [1977] AC 1, who stated that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene (at 46).

8. Blackstone at para D3.55 considers that:

> *"Two key questions run through many of the authorities: (1) to what extent is the accused prejudiced? (2) To what degree are the rule of law and the administration of justice undermined by the behaviour of the investigators or the prosecution?"*

9. Blackstone then observes that there is no definitive list of complaints capable of amounting to abuse of process, but the decided cases refer to "*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."

10. The basis of Advocate Greenfield's application would seem to be (following his application of 22nd September, 2010, which was partially considered for the purposes of the earlier judgment on disclosure):

    (i) delay; and
    (ii) misconduct (which covers the role of the Guernsey Financial Services Commission (GFSC), misuse of information, Mr Taylor's arrest for questioning, the search warrant, disclosure and the decision to charge).

11. There is, as observed in the earlier judgment, binding Court of Appeal authority on delay and abuse of process. It is reported as Bach v Law Officers [2007-08 GLR 354]. Under the heading "*Abuse of Process"* Beloff JA stated at 25:

> *"The principle which can be distilled from the English cases, which we consider to be reflected in the laws 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"."*

12. Beloff JA continued (at 26) to indicate that regard must be had to the nature of the case, there being obvious differences between cases where factual resolution turns on documents and those where it turns on eye-witness accounts. He added (at 27):

> *Prejudice to a fair trial, in short, 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, so that it is unfair to try the defendant even if his trial itself could be fairly conducted."*

13. Beloff JA cited the Bennett case (supra) in support of that observation.

Delay

14. I have already alluded to this aspect of the case in paragraph 15 of the earlier judgment, which I do not repeat here. The applicable legal principles are familiar territory and well set-out in R v S (SP) [2006] 2 Cr. App. R 341:

    (i) even where a delay is unjustifiable, a permanent stay should be the exception rather than the rule;
    (ii) 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;
    (iii) no stay should be granted in the absence of serious prejudice to the defence so that no fair trial can be held; and
    (iv) on the issue of possible serious prejudice, there is a power to regulate the admissibility of evidence and the trial process itself should ensure that all relevant factual issues arising from the delay will be placed before the jury for their consideration in accordance with appropriate directions. If, having considered all these factors, a judge's assessment is that a fair trial will be possible, a stay should not be granted.

15. It is also worthy of note that, according to Archbold, at para 4-67, the "*requirements for a stay of the proceedings due to delay are similar whether the court is asked to consider common law principles or Article 6"* (of ECHR). This, with respect, is consistent with the Bach judgment already referred to, especially at paragraphs 39 and 43. The Privy Council considered the question of delay in Spiers v Ruddy [2008] 1 AC 873, and emphasized that a stay of proceedings is a last resort. Lord Bingham indicated that delay in the conduct of proceedings that breaches a party's right to trial within a reasonable time, but where the fairness of the trial has not been compromised does not give rise to a continuing breach which cannot be cured "*save by a discontinuation of the proceedings, it gives rise to a breach which can be cured, even where it cannot be prevented, by expedition, reduction of sentence or compensation, provided always that the breach, where it occurs, is publicly acknowledged and addressed"*.

16. Finally, some assistance can be derived from R v Buzalek [1991] Crim LR 115, where a case which turned largely on documentary evidence and therefore where witnesses could refresh their memory from the papers, did not involve prejudicial delay to the accused. This echoes paragraphs 26 and 28 of the Bach appeal (supra), where Buzalek was cited.

17. On the facts of this case, especially considering the need of the investigators and prosecution to see that the English proceedings in relation to the fraudster Summers were concluded (see paragraphs 11 and 12 of the Crown`s skeleton argument), I cannot see any impropriety or negligence in the alleged "*delay"*. In the words of paragraph 15 of the Crown's skeleton:

    "*It is submitted that until the fraud investigations and proceedings were finally 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."*

18. The prejudice occasioned to Mr Taylor, in my judgment, is minimised by the fact that this case turns very much on documentary evidence and his observations have been recorded on paper right up to his interviews under caution. This aspect of the case, depending how the evidence turns out at trial, can, if necessary, be dealt with fairly by an appropriate direction to the Jurats. The Prosecution witnesses will also be subject to the same handicap and also assisted by the comprehensive paperwork.

Misconduct

19. Reference has already been made to this part of the application at paragraphs 19-21 of the earlier judgment on disclosure. The question to consider overall is whether the conduct of the police or other law enforcement agency, or, indeed, the prosecution is so seriously improper as to bring the administration of justice into disrepute. Another way of putting it is have the prosecuting authorities "*knowingly abused their executive power?"* (R v Redmond [2009] 1 Cr App R 335, per Beatson J at [26]). Upon looking at the reported cases they seem to be of a different character (where abuse was found) than the present matter, even if the present allegations were established: see e.g. R v Grant [2006] QB 60 and the Bennett case (supra). Some useful guidance may be found in the speech of Lord Steyn in R v Latif [1996] 1 WLR 104 at 112: whether proceedings should be stayed in that case, (which was a mile away from the present case, involving an undercover customs officer in a large drug importation) was a matter for the discretion of the judge, who had to decide whether the matters alleged to amount to an abuse of process, amounted to "*an affront to the public conscience"*. This required the judge to balance the public interest in ensuring that persons charged with serious crimes should be tried against the competing public interest in not conveying the impression that the end justifies any means. Perhaps the strongest case in alleged being justice into disrepute is R v Bow Street Stipendiary Magistrate ex parte South Coast Shipping Company Limited [1993] QB 645, where it was held that the mere presence of an indirect or improper motive in launching a prosecution did not necessarily vitiate it, and the court would be slow to halt such a prosecution unless the conduct of the prosecution was truly oppressive. The clear impression left by the cases collected under the headings of abuse of executive power and bringing justice into disrepute is that the facts were difficult for the authorities to justify in those cases where the higher courts intervened and those courts are very reluctant to grant a stay in the absence of seriously improper and outrageous misconduct.

20. Various other complaints have been raised, which at this stage do not call for a detailed examination. Allegations about Mr Taylor's arrest, treatment and questioning are appropriate for the trial, and, if merited, the application of Section 78 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003. The Custody Record was property disclosed earlier. Reference was made to the Information laid in support of the warrant, but it was the view of the Prosecution that this was simply a fishing-expedition and it does not assist the defence. Accordingly, I have considered the Court's copy of the Information and concur in this assessment. Nevertheless, it is my duty to keep this aspect of this case under review during the trial and I will do so. The Information in support of an earlier Production Order copied by the defence in their core bundle at pages 22-29 is very similar. The decision to charge is another matter that can be ventilated at the trial, although mere assertion allied to speculation would not be of much use.

21. It is not intended to go over the disclosure point again, despite Advocate Greenfield's detailed and forthright critiques submitted after I circulated that judgment in draft. However, for the avoidance of doubt, I repeat that the situation is still governed by R v Keane [1994] 99 Cr.

App. R 1. Furthermore, I should emphasize here, that the Guidelines on Disclosure and Protocol for the Control and Management of Unused Material set out, in effect, the common-law position, prior to the enactment of the Criminal Procedure and Investigations Act, 1996. That statute does not, in my judgment, alter that general position.

22. The time seems ripe for a Practice Direction on the making of abuse of process applications to be considered by the Royal Court. This could conveniently be based on the Practice Direction at [2000] 2 Cr. App. R 179 and would avoid the churning-out of judgments (as well as submissions from the parties) under the very heavy and unacceptable time-pressure experienced in the present case.

23. Application dismissed.

