

**Judgment 5/2012**

**The Chairman of the Guernsey Financial  
Services Commission and Roger Walter  
Francis Taylor - Royal Court  
7<sup>th</sup> February 2012**

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**The Companies (Guernsey) Law 1994 s.67A – application for a Disqualification order –  
application granted, respondent disqualified from being a company director for 13 years.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 7th day of March, 2012 before Sir Geoffrey Rowland, Bailiff; sitting alone.

In the action of THE CHAIRMAN OF THE  
GUERNSEY FINANCIAL SERVICES COMMISSION (“the Commission”) against ROGER  
WALTER FRANCIS TAYLOR (“the Defendant”) in the terms attached hereto;

WHEREAS on the 7<sup>th</sup> day of February, 2012 the  
Court, comprising the Bailiff sitting with three Jurats, heard Advocate L. Evans for the Commission  
and Advocate R. Ashton for the Defendant and ORDERED under Section 67A of the Companies  
(Guernsey) Law, 1994 that the Defendant be prohibited, without leave of the Court, from being the  
director or officer of any company or from participating in, or being in any way concerned in, directly  
or indirectly, the management, formation or promotion of any company for a period of thirteen years  
from the date hereof, it being in the public interest to do so on the basis of the facts and matters set out  
in the cause.

AND WHEREAS on the said 7<sup>th</sup> day of February,  
2012 the Court ADJOURNED the matter for Judgment to be handed down in due course.

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**

**ORDINARY DIVISION**

**The 7<sup>th</sup> day of February 2012**

**The Bailiff and Jurats Ferguson, Le Pelley and Helyar-Wilkinson**

**THE CHAIRMAN OF THE GUERSEY FINANCIAL SERVICES COMMISSION**

**(“the Applicant”)**

**and**

**ROGER FRANCIS WALTER TAYLOR**

**(“the Respondent”)**

Advocate L Evans for the Plaintiff  
Advocate R Ashton for the Respondent

1. On 7<sup>th</sup> February 2012 the Court granted the application brought by the Applicant and ordered that the Respondent be disqualified for a period of 13 years from being, without the leave of the Court, a director of a Company or in any way concerned or taking part in the promotion, formation or management of a company.

The decision of the Court was unanimous. The Court indicated that it would hand down its reasons for the period of disqualification.

2. The indictment on which the Respondent was tried contained nine counts. The first count alleged that on or about 1<sup>st</sup> 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 2<sup>nd</sup> October 2002 and 17<sup>th</sup> 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 24<sup>th</sup> April 2003 in the sum of £15,000. Counts 2-9 were pleaded contrary to Section 39(1)(a) of the same Law. At the end of the trial in November 2010 the Appellant was found guilty on all counts and on 18<sup>th</sup> January 2011 he was sentenced to two and a half years imprisonment.
3. The Chairman of the Guernsey Financial Services Commission applied to the Court under Section 67A of the Companies (Guernsey) Law, 1994, for a Disqualification Order.

The Cause set out the basis of the application referring to certain facts and matters. The application was not brought under section 427 of the Companies (Guernsey) Law, 1998 as the requisite conduct took place before 1<sup>st</sup> July 2008. It had been made clear in the Applicant’s response to the Respondent’s written submission before trial that the reference to a period of ten years was an error and the Cause should read 15 years being the maximum which the Court could order under the Law and the application proceeded and was argued on that basis.

4. The material part of Section 67A of the Law provides as follows:  
*“Disqualification Orders*

67A(1) *Where the court considers that, by reason of a person’s conduct in relation to any body corporate or otherwise, that person is unfit to be concerned in the management of a company, the court may, if satisfied that it is desirable in the public interest to do so, make and subsequently renew (on one or more occasions) an order against him (a “disqualification order ”) prohibiting him, without the leave of the Court*

*(a) from being a director or other officer of any company or any specified company;*

*(b) from participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any company or any specified company.*

(2) *A disqualification order and any renewal thereof shall have effect for such period not exceeding 15 years as shall be specified therein.*

(3) *A disqualification order and any renewal thereof may contain such incidental and ancillary terms and conditions as the court thinks fit.*

(4) *An application for a disqualification order or for a renewal thereof may be made by the Committee, by the Commission, by Her Majesty’s Procureur, by any body corporate of which the person in question is, or has been, an officer, by an liquidator, member or creditor of such a body corporate or, with the leave of the Court, by any other interested party.*

.....  
 (11) *for the removal of doubt, a disqualification order or renewal thereof, or an application under subsection (9) for the revocation of a disqualification order or renewal, may, with the agreement of the parties, and in the Court’s absolute discretion, be granted by consent.”*

5. The Court had been concerned in the past with disqualification applications brought either by the Applicant or by the Commerce and Employment Department and on one occasion by Her Majesty’s Procureur. In the majority of these proceedings the respondents had conceded that as a result of their conduct the requisite grounds for the making of an Order under Section 67A of the Law had been met and furthermore had indicated their consent to the making of an order under Section 67 (11) of the Law. The parties in the majority of these cases had also agreed the appropriate duration of the disqualification pursuant to section 67(7) and Schedule 3 of the Law, subject always to Court approval.

There had been one case under Section 427 of the Companies (Guernsey) Law, 2008, as amended.

The orders which had been made under Section 67A, unless otherwise indicated, were as follows:

<b>Date</b>	<b>Applicant</b>	<b>Respondent</b>	<b>Disqualification period</b>
11.10.07.	Financial Services Commission	Joseph Richard Frank Coutts	11 years
26.6.09.	Commerce and Employment Department	Colin McLatchie	5 years
02.11.09.	Commerce and Employment Department	Alan John Jackson	8 years
21.04.11.	H M Procureur	Paul Nigel Curson	14 years

			(section 427)
12.07.11.	Commerce and Employment Department	Howard Holland	7 years
16.09.11.	Financial Services Commission	Justin Krzystof Josef Nicpon	15 years
09.12.11.	Commerce and Employment Department	Michael John Newsom	7 years
09.12.11.	Commerce and Employment Department	Victoria Marlane Dutot	4 years

6. Advocate Ashton for the Respondent had conceded before the hearing that the grounds for making a disqualification order under Section 67A of the Companies (Guernsey) Law, 1994 (“the Law”) in this case had been made out. He reaffirmed this in Court and consented on behalf of the Defendant to the making of an Order. It was for the Court determine whether an order should be made and then to determine the period of disqualification. There was no dispute as to the factual background. The facts were set out in the Prosecution Outline at the sentence hearing held on 18<sup>th</sup> January 2011. The factual background is also summarised at paras 5-32 of the judgment of the Guernsey Court of Appeal (Criminal Appeal No. 412 – 13<sup>th</sup> May 2011).
7. In the cases referred to in paragraph 5 in the absence of any principles laid down by the Royal Court the Court noted the principles set out in two cases in England which have been cited and followed in subsequent cases in the Court of Appeal in England and Wales.
  - (i) Secretary of State for Trade and Industry v Griffiths Ors. Re Westmid Packing Services Ltd No.3 (1998) 2 All ER 124

Lord Woolf MR at page 843 at H, delivering the judgement of the Court and dealing with unfitness had said this -

*“the period of disqualification must reflect the gravity of the offence. It must contain deterrent elements. That is what sentencing is all about and that is what fixing the appropriate period of disqualification is all about. What Vinelott J in (Re Pamstock Ltd [1994] BCC 264 at p 282 D.) called ‘tunnel vision’ i.e. concentration on the facts of the offence, is necessary when considering whether a director is unfit. In relation to the period of disqualification the facts of the offence are still obviously important but many other factors ought (and in reality do) come into play ....”*

The length of disqualification is one for the discretion of the Court.

8. Dillon LJ in Re Sevenoaks Stationers Retail Ltd BCC 264 at p282D, (1991) 3 All ER 578 dealing with the period of disqualification had said this –
  - (i) *“the top bracket of disqualification for periods over 10 years should be reserved for particularly serious cases. These may include cases where a director who had already had one period of disqualification imposed on him falls to be disqualified yet again.*
  - (ii) *“The minimum bracket of two to five years’ disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not serious.*
  - (iii) *“The middle bracket of disqualification for from six to 10 years should apply for serious cases which do not merit the top bracket.”*
9. Advocate Evans argued that Westmid re-states the overriding principle that the purpose of such legislation in England and Wales is to protect the public against future conduct of

directors. As a consequence, the Court's approach must reflect the gravity of the offence and must contain deterrent elements. She submitted that this consideration has the same standing in the Bailiwick but of equal importance in considering what is desirable in the public interest the reputation of the Bailiwick as an international centre of properly regulated financial services business is important.

Advocate Evans contended that the bracket to which the Court should have regard in this case should be the top bracket (10-15 years) because this case was a particularly serious case.

Advocate Ashton accepted that the Court ought to take into account the principles of Westmid and Sevenoaks including the disqualification brackets in Sevenoaks. He focussed on the disqualification period and contended that the Respondent's conduct was within the middle bracket of seriousness (6-10 years). He submitted that the Court should conclude that the period of disqualification in this case should be no more than 6-8 years that is to say at the lower end of the middle bracket.

10. The Court had, before the hearing, carefully pre-read the submissions of Counsel in skeleton arguments and supplemented orally before us. The Court also found the cases of Westmid and Sevenoaks to be helpful in light of the submissions made by Counsel.
11. The Court also drew to the attention of Counsel the judgement of the Guernsey Court of Appeal. It succinctly reviews the seriousness of the Respondent's criminal conduct and the importance of the financial services sector to Guernsey's economy. The Court of Appeal at paragraphs 15-18 referred to the warning received by the Respondent from the Guernsey Police concerning Mr Summers, whose criminal interests the Respondent was furthering and at paragraph 20-24 referred to how the Respondent had acted in defiance of the both written and oral warnings.

Sir John Nutting Bt QC JA at para 193 and 194 said this:

193. *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 2002/2003 only served to underline the closeness of his links to Summers and his determination to further Summers' interest.*
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 Taylor 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 those who work in that sector to maintain Guernsey's 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."*

12. This Court adopts without hesitation or reservation the Guernsey Court of Appeal's view on the seriousness of the Respondent's criminal conduct and that Court's recognition of the importance of financial services to the community, something which would have been well known to the Respondent.

Since the 1990's the States of Guernsey have adopted a robust stance in causing anti-money laundering legislation to be enacted and active steps have been taken to deter criminals from using Guernsey to launder the proceeds of crime. Furthermore, the Law Officers of the Crown have actively co-operated with foreign law enforcement agencies pursuing the proceeds of crime in the knowledge that there is no place in a globalised economy for non-cooperating jurisdictions. As a result Guernsey should be no safe haven for the laundering of the proceeds of crime, for tax evasion, insider dealing, financing of terrorism or for corruption.

This Court concluded that the Respondent was unfit to be a director and considered that it is appropriate, in recognition of the public interest factor, to order a disqualification period as the Respondent is unfit to be a director at this time. The Court concluded that the disqualification period should be very severe for the protection of the public and should be of such length that it sends out a loud and clear deterrent message. There may be, amongst criminals outside this jurisdiction, a wholly erroneous perception that a jurisdiction such as Guernsey which is often styled pejoratively as an "offshore" financial centre has a legal and regulatory regime less strict than that of major onshore financial centres. That is not the case as numerous international reviews have concluded. The Royal Court will not hesitate to impose deterrent periods of disqualification in such cases as may be appropriate. This is such a case given the blatant criminal conduct of the Respondent. The Respondent would have been fully aware as a local resident engaged in financial services business of the stance of the States of Guernsey, the Law Officers of the Crown and the Guernsey Financial Services Commission. The Respondent cannot, and did not, proclaim that he was unaware of Guernsey's tough stance on criminal conduct and particularly its efforts to ensure that Guernsey is not used as a jurisdiction for the laundering of the proceeds of crime.

13. As the Respondent's conduct was not a case of dereliction of duty, gross incompetence or negligence but involved most serious criminal conduct, the Court concluded that it was at the upper end of seriousness and as a consequence concluded that the 10-15 bracket was appropriate because of the Respondent's blatant conduct committed notwithstanding that clear warnings from an officer of Guernsey Police were conveyed to the Respondent both orally and in writing.
14. The Court considered that there was some force in Advocate Ashton's submission that the Royal Court's sentence of 2 ½ years imprisonment imposed on the Respondent after a not guilty plea trial suggested that the Royal Court when sentencing did not consider it to be the most serious case that the Royal Court might have to deal with. However, the Court accepted Advocate Evans' submission that the read across between an appropriate sentence of imprisonment and a disqualification period under the Section 67A of the Law is limited. The factors to be taken into account in a criminal case are substantially different from those to be taken into account in a disqualification cases.
15. When considering the appropriate period of disqualification within the 10-15 year band the Court considered that there might be conduct more serious than that of the Respondent. An example would be the conduct of the principal perpetrator of a fraud who might also have acted in a blatantly cavalier criminal way despite warnings.
16. The period for which the Respondent had been in jeopardy of disqualification was of his own making given his plea of not guilty in the Royal Court and his pursuit of an unmeritorious appeal to the Court of Appeal so little weight was attached by the Court to that. He had remained a director of companies. In the circumstances the Court considered that the appropriate period of disqualification should be 13 years, even after taking into consideration

the age of the Respondent, to which the Court attached some limited weight. There was little other mitigation.

The Court is grateful to Counsel.

Recoverable Costs

The Court considered that submissions inviting the Court to focus on the bracket 6-10 years were unrealistic in this case and that costs should follow the event. A Consent Order agreed by Counsel, records that the Respondent will pay the Applicant's costs.

G R Rowland