



De Kock v Law Officers of the Crown
Court of Appeal
21st July 2017

JUDGMENT
33/2016

Appeal against conviction of corruption contrary to Section 1 of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003.

IN THE COURT OF APPEAL OF GUERNSEY

CRIMINAL DIVISION – APPEAL NO. 478

21st July 2017

Before: **Sir Richard Collas, Bailiff**
Robert Logan Martin QC
David Anderson QC

Between: **DANIEL HERCULES DE KOCK** **Appellant**

-and-

THE LAW OFFICERS OF THE CROWN **Respondent**

Advocate A Merrien for the Appellant
Advocate R Calderwood for the Respondent

This is the Judgment of the Court

1. On 28th October 2016, the Appellant was convicted in the Royal Court by a majority of 6:2 on an indictment containing a single count of corruption, contrary to Section 1 of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003, as amended. At the time of commission of the offence he was an employee of SG Hambros Private Bank (“the Bank”). The particulars of the offence were:

“Daniel Hercules De Kock, being an agent of SG Hambros Private Bank, on or about the 4th day of June 2013, did corruptly accept or obtain for himself a Jaguar motorcar from Sam Alaia as an inducement to, or reward for, or otherwise on account of, doing an act in relation to his principal’s affairs, namely for facilitating the application of the said Sam Alaia for a loan of £975,000 by the said SG Hambros Private Bank.”

2. On 9th December 2016, the Royal Court (Deputy Bailiff and eight Jurats), sentenced the Appellant to 180 hours of unpaid work under a Community Service Order as a direct alternative to 12 months’ imprisonment.

3. The Appellant lodged notice of appeal against the conviction but has not sought leave to appeal the sentence imposed on him. The Notice of Appeal dated 7th November 2016 contained six paragraphs of grounds of appeal and a number of sub-paragraphs. In his written and oral submissions, the Appellant has not pursued sub-paragraphs 3.1, 4.2, 4.4 and 5 of the Grounds of Appeal. The Grounds of Appeal allege errors in law by the Deputy Bailiff, including as to the exercise by him of discretion in a number of instances; that he misdirected the Jurats in a number of respects; and that there was insufficient evidence on which the Jurats could have convicted. We deal with each of the Grounds of Appeal separately in this judgment.

The Powers of the Court of Appeal

4. Section 24(1) of the Court of Appeal (Guernsey) Law, 1961, as amended, provides for an appeal against conviction “*on any ground of appeal which involves a question of law alone*”. Section 25 (1) sets out the basis on which an appeal against conviction may be allowed:

“Powers of the Court

25 (1) *The Court of Appeal on any such appeal against conviction shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:*

PROVIDED that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

5. In relation to matters of law, the function of this Court is to determine whether the Royal Court decision was incorrect as a matter of law. In the present case where there had been a number of preliminary applications heard by the Deputy Bailiff alone, several of the grounds of appeal allege that he exercised his discretion in a manner that no reasonable judge could properly have done, akin to Wednesbury unreasonableness.
6. The Court’s jurisdiction to allow an appeal on factual grounds has been considered in a number of cases. We adopt the guidance followed by this Court in Pinto v Law Officers of the Crown (Court of Appeal 24th May 2013) where the Court held:

“Accordingly we consider it appropriate to follow the guidance given in Taylor v Law Officers of the Crown (2007–08) GLR 207 by Beloff JA as to the approach of the Court of Appeal in Guernsey to grounds of appeal based upon the rationality of factual conclusions reached by Jurats. The guidance may be distilled into four principles:-

[1] The jurisdiction of this Court is defined by the 1961 Law and the powers of Court are more limited than those enjoyed by the Court of Appeal (Criminal Division) in England and Wales which incorporates the concept of an 'unsafe' verdict, and, by judicial gloss, that of a lurking doubt.

[2] In assessing the rightness or wrongness of the verdict, the Court of Appeal must at all times bear in mind that the function of fact finding has been left to the lower court and that, particularly where credibility is in issue, the lower

court, notoriously, has the advantage, denied to the Court of Appeal, of seeing and hearing the witnesses including, most importantly, the defendants.

[3] The verdict of Jurats is to be treated with particular deference since, as Le Quesne, J.A. observed in Tilley v Law Officers C.A., November 27th, 1973, unreported (Guernsey C.A. Judgments 1964–1989, 88), “the Jurats are holders of judicial office and are far more experienced in the affairs of law and legal procedure than the normal jurymen in the United Kingdom.” A challenge to their verdict as unreasonable is especially difficult to make good.

[4] The verdict of Jurats does not normally disclose the reasons upon which the verdict is based, thus: “If the summing up is sound the court may well not be able to interfere unless the verdict is obviously wrong” (Guest v The Law Officers; (2003) GLR N-7).”

Procedural history

7. The Appellant first appeared in the Magistrate’s Court on the 26th March 2015 on an indictment containing one count to which he pleaded not guilty. Just over one year later, on 6th April 2016, in the Royal Court, the Deputy Bailiff granted an application to revise the original count. Thereafter on 12th May 2016, again before the Deputy Bailiff, the Appellant pleaded not guilty to the revised indictment. At some of the initial Court hearings, the Appellant represented himself before he instructed Advocate Fooks who appeared on behalf of the Appellant in all the Royal Court hearings with which we are concerned. Advocate Merrien represented the Appellant in this Court. Advocate Calderwood has appeared for the Law Officers of the Crown at all times.
8. On the 8th and 10th March 2016, the Deputy Bailiff heard an application dated 29th February by Advocate Fooks to have excluded from the evidence: (i) the record of an interview that took place on 10th June 2014 between the Appellant and his then colleagues at the Bank; (ii) the questions and answers in police interviews of 18th June and 23rd October 2014; and the Appellant’s answers to questions posed by staff of the Bank in November 2013, May 2014 and June 2014. In a judgment handed down on 15th March, the Deputy Bailiff dismissed the application, but left open the possibility of the admissibility of certain aspects of the interviews to be pursued at the trial. During the hearing, described as a *voir dire*, the Deputy Bailiff heard oral evidence from Camilla Le Maitre (“Ms Le Maitre”) who at the material time in 2014 was Deputy Group Head of Human Resources at the Bank; other evidence was given by way of written materials, including a number of witness statements. The Deputy Bailiff’s decision on the application forms the subject of Ground 1 of the Appellant’s Grounds of Appeal.
9. In a further preliminary hearing on 24th March 2016, the Deputy Bailiff heard Counsels’ submissions on the question of whether certain documents in the proposed trial bundles supplied by the prosecution should be admitted for use at the trial or whether, on the grounds advanced by Advocate Fooks, any should be ruled as inadmissible. His decision was delivered in a written judgment dated 6th April 2016.
10. In a written judgment dated 23rd May 2016, handed down when the trial was expected to commence the following Tuesday, the Deputy Bailiff rejected an application made on behalf of the Appellant that an interpreter in the language of his native tongue, Afrikaans, be provided for him during the trial. The Deputy Bailiff, however, indicated that if during the course of the trial he reached the conclusion that the Appellant’s ability to understand and to communicate in English was deteriorating to a level where a fair trial could only be afforded by him having an interpreter, the Deputy Bailiff would have no hesitation in stopping the proceedings until such time as an interpreter was available.
11. Following a hearing on the 13th and 14th September 2016, the Deputy Bailiff handed down a written judgment on 16th September in which he rejected an application to have the trial

stayed permanently on the basis that it would be an abuse of process for the trial to continue. The application dealt with three matters:

- 1) The prosecution's failure to secure the attendance or evidence of Sam Alaia, on whose complaint the prosecution is founded;
- 2) An allegation that the prosecution had not complied with a Disclosure Order made by the Royal Court on the 28th July 2016; and
- 3) That the conduct of the investigators and prosecution amounted to an abuse of process in so far as dealings with disclosure and presentation of the case generally lacked the necessary objectivity.

The Deputy Bailiff dismissed the application on the ground that he was satisfied it was possible to conduct a fair trial.

12. The trial opened on 18th October 2016. Before the Jurats entered, Advocate Fooks made an oral application that at the outset of the trial the Deputy Bailiff should forewarn the Jurats that the Appellant's first language is not English and that his first language is Afrikaans. The application was dismissed by the Deputy Bailiff who did not consider it necessary to give such a direction at the outset of the trial but left open the possibility of doing so during the course of the hearing, especially if the Appellant were to give evidence.
13. Oral evidence was given by 7 witnesses on behalf of the prosecution: Mark Radford, Tracy Ann Bisson, John Stanley Langdon, Mark Trenchard, Joseph Castellino, Sean Bougourd and Colin Gervaise-Brazier. In addition, Advocate Calderwood read the evidence of PC Ian Wright, who had been the investigating officer during most of the investigation but who was unfortunately unable by reason of illness to attend court. A large part of his evidence concerned documents obtained from the Bank pursuant to a Production Order and was therefore largely formal. However, his evidence was not tested in cross-examination and an appropriate direction was given by the Deputy Bailiff to the Jurats when reminding them that PC Wright's evidence was not agreed by the defence. He directed that the evidence had a different status to the evidence of those witnesses whose statements had been agreed by the defence and read to the Court, namely those of Simon O'Mahoney, Amanda Sutton, Mark Pizzey and Bruno Kay-Mouat.
14. On the morning of Monday 24th October, after the close of the prosecution case, Advocate Fooks made a submission of no case to answer which was dismissed by the Deputy Bailiff. The trial therefore continued. The Appellant did not give evidence on his own behalf but called two witnesses, Dr Stefan Cloete and Timothy Nicholas Chesney. Both gave evidence of the Appellant's good character and the former also gave evidence relevant to the events surrounding the commission of the offence.
15. Counsel delivered their closing submissions on Wednesday 26th October. The Deputy Bailiff commenced his summing up the following day and concluded on the morning of Friday 28th October. After six hours of deliberation, the Jurats returned with their verdict of guilty by a majority of 6 to 2.

Ingredients or Elements of the Offence

16. The offence with which the Appellant was charged and on which he was found guilty was one of corruption contrary to Section 1 of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 as Amended ("the 2003 Law"). Section 1(1) creates the offence of corruption on the part of an agent:

*"1(1) An agent or other person who corruptly –
(a) accepts or obtains, or
(b) agrees to accept or attempts to obtain,*

for himself, or for any other person, any gift, any consideration or advantage as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his office or position or his principal's affairs or business shall be guilty of an offence."

Subsection 1(2) creates a similar offence that would be committed by a person who offers or gives a gift, consideration or advantage to an agent or other person. The person who was alleged to have given the Jaguar to the Appellant, Sam Alaia, did not give evidence at the trial as it is understood he now lives in Australia and the Law Officers of the Crown took a decision not to investigate the possibility of securing his attendance. Had he appeared, it was made clear to us that it would have been on the basis that he would have been a co-defendant.

17. The statutory definition of the offence is very broad and creates a number of ways in which it could be committed. The elements of the offence the Law Officers had to prove against the Appellant are as set out in the Particulars of Offence quoted in the opening paragraph of this judgment.
18. It was not disputed that the Appellant was an agent of the Bank; Section 2(1)(a) of the 2003 Law defines an agent as including "*any person employed by or acting for another*". It was not disputed that for the purposes of the offence, the Bank was the Appellant's principal although whether he was acting in that capacity was not admitted.
19. The case for the prosecution was that the Jaguar motorcar was given to the Appellant on or about the 4th June 2013, being the date when Mr Alaia brought the car to Guernsey. The prosecution had no direct evidence of the gift but sought to establish that from circumstantial evidence. The prosecution had to prove either that the gift was made by way of inducement for something that was to be done or as a reward for something that had been done, or otherwise on account of an act in relation to the Bank's affairs. The focus of the prosecution was that it was either an inducement or a reward. The defence pressed the prosecution to specify which of those scenarios they were alleging but the Law Officers declined to plump for one or other of them. We return to this issue later in this judgment in relation to Ground of Appeal 4.3.
20. The act performed or to be performed by the Appellant in respect of which the reward or inducement was offered was to facilitate an application by Mr Alaia to the Bank for a loan of £975,000. Mr Alaia's application for a loan was, in due course, declined by the Bank. However, the success or otherwise of the loan application was not material as the prosecution's case was that the reward or inducement was offered to **facilitate** the application. The Deputy Bailiff's directions to the Jurats on the elements of the offence are considered below in relation to paragraph 6 of the Grounds of Appeal.

Summary of the factual background

21. Mr Alaia had become known to the Bank together with a Mr Philip Carruthers with whom he had operated a business account in the name of Petrocomm. The Bank had terminated the Petrocomm relationship some time previously for a number of reasons including that a forged bankers draft had been presented to the Bank on behalf of Petrocomm. However, Mr Alaia remained in contact with the Appellant and sought a personal relationship with the Bank for which the Appellant had no direct responsibility as his managerial duties were in respect of the African continent. Mr Alaia applied to the Bank for a mortgage in the sum of £975,000 to be secured against his property in Devon. The application met with some initial approvals and a meeting was arranged at the Bank with Mr Alaia to finalise his mortgage application. Mr Alaia, who was not a resident of Guernsey, travelled to the Island on the 4th June 2013 to attend the meeting. He arrived by ferry with the Jaguar E-Type and was questioned by Customs officers on his departure later that day (we consider their questioning of him later in this judgment). The Appellant met Mr Alaia at the harbour on the morning of the 4th June. The prosecution case was that the Appellant took possession and ownership of the car on that

day. The Appellant did not make payment for the car. The prosecution case was that the car was given to him and was given corruptly. We interrupt the chronology to say that when questioned subsequently about the car by fellow employees of the Bank, the Appellant gave conflicting explanations. Initially he claimed that the car was his but in later interviews, his explanation was that he was considering buying the car or if he decided not to buy it, he would sell it as a favour to Mr Alaia and on behalf of Mr Alaia. Later on the 4th June, Mr Alaia attended a meeting at the Bank premises to discuss the mortgage application. The Appellant was not responsible for approving the loan but he was present as he had helped set up the deal. During the course of the meeting, Mr Alaia made disparaging remarks about Mr Carruthers as a result of which the Bank decided to sever their relationship with Mr Alaia. A suspicious activity report (“SAR”) in relation to Mr Alaia (and separately about Mr Carruthers) was made by the Bank to the Financial Intelligence Service (“FIS”) where it was seen by Paul Yabsley who was employed in the FIS at that time. In order to avoid raising suspicions, the Bank was not permitted to close the relationship with Mr Alaia immediately but Mr Alaia was advised that his application for a mortgage was declined.

22. The Appellant continued to assist Mr Alaia in making applications to other banks for a similar mortgage. He also took certain actions in respect of the car which, the prosecution alleged, were consistent with the allegation that ownership of the vehicle had passed from Mr Alaia to the Appellant. They included writing his own name on the registration book, spending his own money on repairs to the vehicle, spending time researching how to comply with import and export regulations and stating to others that he was the owner of the vehicle.
23. On 3rd October 2013, the Appellant parked the car in the office car park where the appearance of a bright yellow classic Jaguar E-Type was noticed by others. When questioned informally at the time, the Appellant said he had owned the car for many years and had parked it there before taking it to the ferry for shipment to Jersey where it was to be serviced.
24. By 12th November 2013, Mr Alaia had been unsuccessful in obtaining a mortgage elsewhere and asked the Appellant in an e-mail: “*Can we sort something out with the car?*”. On the 15th November 2013, Sean Bougourd, the Appellant’s line manager at the Bank, asked the Appellant about the car as the Bank had not known about it until it had appeared in the car park. Initially the Appellant said he had owned it for some time but later in the day he told Mr Bougourd that he had intended to buy it from a Mr John Langdon but had changed his mind when he became aware of defects and the repairs that were needed.
25. The prosecution case was that on and from 12th November, the Appellant started to tell others, including the garage who had worked on the car, that Mr Alaia was the owner and, it was alleged, he effectively then gave up on the ownership of it. The car was subsequently sold and the proceeds of sale paid to an account in the name of Mr Alaia’s wife, on Mr Alaia’s instructions. The Appellant was subsequently interviewed, initially by staff at the bank and subsequently by the Police.

First Ground of Appeal – the Admissibility of the Interviews

26. The first Ground of Appeal is:

“1. That the Learned Deputy Bailiff erred in Law in that he refused the Appellant’s Application to exclude:-

1.1 The HR interview at SG Hambros which was an interview conducted by staff at SG Hambros as it was in the nature of an interview under PPACE (Bailiwick of Guernsey) Law 2003 the conditions of which were breached by those interviewing the Appellant and/or that the Interview constituted a confession.

1.2 The Police Interviews being a continuation of the HR Interview “fruit of the poisoned tree”.

1.3 Alternatively, that the Interviews (HR and Police) should have been excluded under Sections 76 and/or 78 PPACE (Bailiwick of Guernsey) Law 2003 and/or their prejudicial effect outweighed their probative value.”

The Evidence

27. The Appellant’s application to have the employment interviews and the Police interviews excluded from the evidence presented to the Jurats was the subject of the judgment delivered by the Deputy Bailiff on the 15th March 2016.
28. The contention in paragraph 1.1 of the Grounds of Appeal that the interview at the Bank was in the nature of an interview under PPACE was made in the context of the communications between the Bank and the FIS. The background to the interview and the record of the interview are set out in considerable detail in the Deputy Bailiff’s judgment of the 15th March 2016 at paragraphs 5 to 47. The Appellant has raised no issue with the factual findings of the Deputy Bailiff.
29. The FIS were taking an interest in Mr Alaia’s affairs and there was a ‘ports alert’ in place in relation to him as early as May 2013. On the 5th June 2013, Mr Yabsley spoke to Ms Bisson at the Bank to advise her that Mr Alaia had been stopped at the harbour the previous day when he had said that the purpose of his visit to Guernsey was to deliver the Jaguar that was going to be given to the Appellant. Mr Yabsley said that he may have suspected that the car had been gifted to the Appellant as a reward for the finance arrangement, but he informed Ms Bisson there was no need for the Bank to enquire whether that was so. Ms Bisson discussed the matter with Sean Bougourd and they resolved to monitor the position for developments as they did not wish to fall foul of the prohibition on tipping-off.
30. Ms Le Maitre was aware that there was an issue about the Jaguar motor car and at 09:45 am on 3rd October 2013, she advised Ms Bisson that there was a yellow E-Type Jaguar sitting in the bank’s garage. Mr Bougourd had also noticed the car in the Appellant’s parking space and discussed the matter with Ms Le Maitre. Following a discussion with Mr Yabsley, the latter advised that he considered the Bank had grounds to ask the Appellant where the car came from, suggesting that if the Appellant was able to provide proof of ownership, everything might be resolved. Mr Bougourd then had the discussion with the Appellant on 15th November 2013 described above, following which he resolved to draw a line under the matter, but because of concerns regarding the Appellant’s integrity, Mr Bougourd decided that the Appellant would not be receiving a pay rise and would receive a reduced bonus payment.
31. The Bank became concerned again following the receipt of a complaint from Mr Alaia on 20th May 2014 which included reference to the Jaguar. Mr Alaia produced to the Bank a copy of a V5 Form, which is a United Kingdom document relating to the registration of the Jaguar, purporting to show the transfer of the registered keeper of the vehicle from a Michael John Langdon to the Appellant on 4th June 2013. As a result, Ms Bisson, Mr Bougourd and Ms Le Maitre met with Mr Yabsley at the Bank on the 29th May 2014. Ms Le Maitre recalled Mr Yabsley explaining to them that there appeared to be clear intent on the part of the Appellant taking receipt of the gift in exchange for doing something. The following day, 30th May, Mr Bougourd and Ms Le Maitre met with the Appellant to advise him that an allegation had been made concerning the Jaguar. The Appellant denied that the Jaguar had been a gift. He was advised that there would be an investigation in accordance with the Bank’s disciplinary policy and whilst it was carried out, he was to be suspended. The Appellant was handed a letter written by Ms Le Maitre on 30th May 2014 and signed by the Chief Executive Officer of the Bank, advising him of the allegation made by Mr Alaia; that the Bank was concerned he had received a gift from Mr Alaia which he had failed to declare; and notifying him that he would be required to attend an investigatory meeting in due course. The letter stated that *“it should be stressed that this is a fact finding exercise only and no disciplinary action will be taken at this meeting”*. The Bank’s disciplinary policy provides for investigatory interviews to take

place for the purpose of fact finding and advises the employee of the right to bring a companion, namely a work colleague or trade union representative, to any hearing. Ms Le Maitre explained the Bank's policy including that there is no requirement to be accompanied by a legally qualified person. Ms Le Maitre advised the Appellant that she could not say what the Bank might share with Bailiwick of Guernsey Law Enforcement ("Law Enforcement") as she was focused on the 'fact finding' exercise in accordance with the disciplinary policy.

32. Over the next ten days, Ms Le Maitre conducted investigations during the course of which she contacted Joe Castellino at Le Riche Automobile Restorers CI Limited, in Jersey, to whom the Appellant had sent the Jaguar in October 2013 for some repairs, a fact of which the Bank was aware because of information supplied by the Appellant. Ms Bisson informed Mr Yabsley of the Bank's enquiries in Jersey and was aware that Mr Yabsley was making his own enquiries in Jersey. Mr Yabsley also advised Ms Bisson to ensure that the recordings of conversations with Mr Alaia were retained although Ms Bisson did not ask Ms Le Maitre to preserve what she was generating at that time through her investigation.
33. At 09:40 am on 10th June 2014, Ms Le Maitre and Mr Bougourd conducted their investigatory interview with the Appellant which was recorded. The interview lasted a little over 2 hours and a 27 page transcript was prepared. Ms Le Maitre's explanation for recording it was that she had prior experience that when matters proceeded to the Employment and Discrimination Tribunal, it was important to have kept an accurate record.
34. Later that afternoon Ms Le Maitre met with Mr Yabsley but not much was discussed and no record was kept of the meeting. Mr Bougourd said his understanding was that Mr Yabsley had asked the bank to continue its own internal process.
35. On 11th June 2014, Ms Le Maitre wrote to the Appellant requesting him to attend a second investigatory interview the following afternoon. That meeting did not in fact take place because the following morning the Appellant met with Ms Le Maitre to advise that he would be resigning which he did later that evening. The following morning, Ms Le Maitre informed Mr Yabsley that the Appellant had resigned. Mr Yabsley enquired how he might be able to obtain evidence held by the Bank, whether on a voluntary basis or through a Production Order. He was told that a Production Order would be required. Eventually, on the 11th September 2014, a Production Order was made, pursuant to Section 45 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. The Order was promptly complied with by the Bank. The Appellant was arrested on the morning of 18th June 2014, interviewed that day at the police station under caution and then bailed. He was further interviewed on 23rd October 2014 and subsequently with an Advocate in attendance.
36. The Deputy Bailiff reviewed the record of the investigatory interview held with the Appellant at the Bank on 10th June and found that it proceeded largely as a conversation between the three persons present, namely Mr Bougourd, Ms Le Maitre and the Appellant. The interview focused on a list of some 30 questions that Ms Le Maitre had prepared in advance. At the conclusion of the interview Ms Le Maitre explained to the Appellant that she and Mr Bougourd would consider the material they had gathered to decide whether there was a need for a further meeting *"and whether there is any need for any disciplinary action or whether the matter can be resolved and put to bed"*.

Deputy Bailiff's Judgment of 15th March 2016

37. The basis of the Appellant's application to exclude the record of the interviews is that they were in the nature of investigatory interviews to assist the Police with their enquiries and as such they had not been conducted in accordance with the requirements of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 ("PPACE") and the Codes of Practice issued thereunder. The obligation to have regard to the Codes of Practice arises from Section 74(8) of PPACE:

(8) *Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of such a code.*

(9) *A failure on the part - ...*

(b) *of any person other than a police officer who is charged with the duty of investigating offences or charging offenders to have regard to any relevant provision of such a code in the discharge of that duty,*

shall not of itself render him liable to any criminal or civil proceedings.”

38. The Deputy Bailiff, at paragraph 49 of his judgment of 15th March 2016, stated:

“These sub-sections have been derived from like provision in Section 67 of the Police and Criminal Evidence Act 1984. As confirmed in para. D1.3 of Blackstones Criminal Practice 2016, “Whether a person is charged with such a duty is a question of fact in each case”. Advocate Fooks has relied in particular on R v Welcher [2007] EWCA Crim 480 and R v Thwaites (1990) 92 Cr App R 106. Both of these cases involve questioning of employees.”

39. The Deputy Bailiff reviewed both of those cases in some detail before concluding at paragraph 52:

“These cases may be regarded as examples of where the line may be drawn as to whether or not a person is charged with the duty of investigating offences. Ultimately, though, it is a question of fact.”

40. Further, at paragraph 55, he stated: *“In my judgment, the key word in that sub-section [74(8)] is “duty”.*” Having reviewed carefully and in detail the interaction between the Bank and Mr Yabsley of the FIS and the factual background to the employment interview of 10th June, the Deputy Bailiff concluded at paragraph 56:

“Although Advocate Fooks has effectively invited me to infer that the Bank was performing the requisite duty, when coupled with all the circumstances surrounding what was going on, albeit that I appreciate that it is a borderline case, I cannot find that the bank staff were charged by anyone, e.g. Mr Yabsley, with the duty of investigating offences.”

Counsels’ submissions on appeal

41. In paragraph 1.1 of the Appellant’s Grounds of Appeal, it is contended that the Deputy Bailiff erred in law in concluding that the interview conducted by staff at the Bank was not an interview under PPACE. The Appellant’s contention is that the Deputy Bailiff was wrong to have considered the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, section 39 of which deals with assisting another person to retain the proceeds of criminal conduct and provides in sub-section (3):

“That a person disclosing to a Police Officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or

discloses to a Police Officer any matter on which a suspicion or belief is based does not commit an offence under Section 39 if various other criteria are met.”

A similar provision exists under Section 40 dealing with the acquisition, possession or use of proceeds of criminal conduct.

42. On appeal, Advocate Merrien submitted that the relevant law regarding disclosure between Law Enforcement and a financial services business is the Disclosure (Bailiwick of Guernsey) Law, 2007 (as amended) (“the Disclosure Law”) not the Law of 1999. The Disclosure Law was not cited before the Deputy Bailiff and hence the submission was that his decision was wrong as a matter of law. Section 1 of the Disclosure Law imposes an obligation on a person to make a disclosure as soon as possible if he knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering or that certain property was derived from the proceeds of criminal conduct and the information on which his knowledge or suspicion is based or which gives reasonable grounds for such knowledge or suspicion came to him in the course of the business of a financial services business.

43. Subsections 8(1) and 8(2) of the Disclosure Law provide:

“8 (1) *Subject to subsection (4), information obtained by [Her Majesty’s Procureur or] a police officer –*

- (a) under this Law or any other enactment, or*
- (b) in connection with the carrying out of any of the officer’s functions,*

may be disclosed to any other person if the disclosure is for any purposes set out in sub-section (2).

(2) *The purposes are any of the following –*

- (a) the prevention, detection, investigation or prosecution of criminal offences within the Bailiwick or elsewhere,*
- (b) the prevention, detection or investigation of conduct, for which penalties other than criminal penalties are provided under the law of any part of the Bailiwick or of any country or territory outside the Bailiwick,*
- (c) the carrying out –*
 - (i) by the Commission; or*
 - (ii) by a body in another country or territory which carries out any similar function to the Commission,*

of its functions;

(d) the carrying out of any functions of any intelligence service...”

44. The submission was that the information disclosed by the FIS to the Bank must have been pursuant to sub-section (a) and therefore involved the prevention, detection, investigation or prosecution of criminal offences. As it was the prosecution’s case that, on the facts, a criminal offence had already occurred prior to the interview by the Bank of the Appellant, the information disclosed to the Bank was not for the purposes of prevention of crime, nor for the purposes of detection. It was therefore for the purposes of the investigation of criminal offences.

45. The Deputy Bailiff had held that the disclosure by the Bank was no more than the Bank complying with its duties to report suspicious transactions and to seek appropriate comfort

that it was not straying into or falling foul of the tipping-off provisions. Section 12 of The Criminal Justice (Proceeds of Crime) (Financial Services Business) (Bailiwick of Guernsey) Regulations, 2007, as amended, provides that a financial services business shall nominate an individual to receive disclosures within its organisation, ensure that reports are made to the Money Laundering Reporting Officer or a nominated officer, and ensure that access to information is given to the Money Laundering Reporting Officer or nominated officer and ensure that the business establishes and maintains such other appropriate and effective procedures and controls as are necessary to ensure compliance with requirements to make disclosures under Part 1 of the Disclosure Law and Sections 15 and 15A of the Terrorism Law. The regulations enacted under the Criminal Justice (Proceeds of Crime) Law therefore refer back to the Disclosure Law. Advocate Merrien submitted that having regard to the circumstances in which disclosure might be made by Law Enforcement and the rules with regard to disclosure by the Bank, the FIS must have been making disclosure for the purposes of a criminal investigation, and consequently, officers of the Bank must have been aware in conducting an interview with the Appellant on 10th June that they were acting in furtherance of the investigation for the purposes of a potential prosecution.

46. By the time the Appellant attended the employment interview on 10th June 2014, the Bank and Law Enforcement were working together in a joint investigation as evidenced by the exchanges of information and the communications between them. The Deputy Bailiff erred in law in concluding that the Bank regarded their duty in terms of disclosure and further erred with regard to his decision as to whether or not the Bank was simply acting pursuant to its duty to disclose and ensuring that it did not fall foul of the law regarding tip-off. On that basis, the Deputy Bailiff was wrong to conclude there were no breaches of the Codes of Practice made under PPACE and therefore that the Police interviews conducted thereafter were “*fruit of the poisoned tree*” and should have been excluded.
47. When pressed by the Court to identify the information which he alleged had been disclosed to the Bank under the provisions of section 8(1) of the Disclosure Law, that is to say information which had been obtained “*under this Law or any other enactment*”, Advocate Merrien referred to the disclosure that Mr Alaia was stopped by a Customs Officer at St Peter Port harbour on 4th June 2013. In Mr Yabsley’s witness statement dated 19th February 2016 he said, at paragraph 3, that he first became aware of intelligence concerning Mr Alaia in May 2013 and asked port officers to keep an eye out for him visiting the island. Executive Customs Officer Thomas Smart said that he stopped Mr Alaia and another individual at the harbour on 4th June before boarding the fast ferry to Poole. He took them to the customs search area where he asked some questions. He said:

“Both didn’t have any baggage on them and had only been to Guernsey for the day to drop off a Jaguar car, the yellow Jaguar had been taken to Poole on a trailer and driven onto the ferry. The car was being imported as part of a re mortgage deal with SG Hambros.”

The submission was that it was a targeted search carried out following Mr Yabsley’s alert and was carried out in exercise of statutory powers to stop and detain an individual. Advocate Merrien referred to the much criticised “stop and search” powers. Mr Smart recorded the approximate amount of cash each man was carrying but there was no evidence that either of the individuals was searched by Customs. Mr Yabsley disclosed the information obtained from Mr Alaia to the Bank which, he said, was already aware of the FIS interest in him. In a conversation with Ms Bisson on 5th June, he told her that the information was that the car “*was going to be given to Niel de Kock*”. Mr Yabsley did not take the matter any further at that time, other than to ask the Bank (through Ms Bisson) to keep a look out for the vehicle.

48. Advocate Calderwood’s response to the Appellant’s contentions was that it is wrong to equate a duty to disclose information that comes to light in the course of a business with a duty to investigate sensitive matters with a view to charging offenders under PPACE. Disclosing and

investigating are two different concepts. The information disclosed by Mr Yabsley to the Bank did not impose on the latter a “duty” to investigate a possible criminal offence; if the Bank had done nothing upon receipt of the information, it could not have been said to be in breach of any duty. It is apparent that, as the Deputy Bailiff held, the tone and content of the interview with the Appellant was informal and for the purpose of internal disciplinary purposes. Asking for the Bank to look out for the motorcar was nothing more than seeking the Bank’s cooperation - cooperation which should always be encouraged and in relation to which the Bank was acting responsibly, as would be expected of such a business. As at the 10th June 2014, the Police had not initiated any criminal investigation and neither had they asked the Bank to assist with an investigation. The Bank had all the information required from its own sources and was not reliant upon disclosure from Law Enforcement. In relation to the alleged exercise by Executive Customs Officer Smart of statutory powers to stop and question Mr Alaia, Advocate Calderwood submitted that it did not amount to a formal interview.

Discussion

49. In the Deputy Bailiff’s careful and detailed analysis of the facts and the law, he was correct to identify that the key word in section 74(8) of PPACE is “duty”. On his analysis he concluded that there was no duty imposed on the Bank’s employees to conduct the interview with the Appellant on 10th June 2014 as a criminal investigation. No issue is taken by the Appellant as to his reasoning on the submissions made to him. The issue on this appeal is that the provisions of the Disclosure Law were not drawn to his attention so he did not consider them.

50. Section 8(1) provides that information obtained by a police officer (which will include a customs officer) “under this Law or any other enactment” “may” (emphasis added) be disclosed to another person for the purpose, inter alia, of investigation of criminal offences. Subsections 8(3) and (4) provide that:

“(3) *A disclosure under this section does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.*

(4) *Nothing in this section authorises –*
(a) a disclosure in contravention of any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001 of personal data which are not exempt from those provisions,
(b) a disclosure which is prohibited by Part I of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, or
(c) a disclosure in contravention of section 9(5).”

Section 9(5) is concerned with disclosure by Income Tax which may only be made by the Director of Income Tax and has no application in the present case.

51. Subsection 8(1) permits, but does not oblige, disclosure of information other than that described in subsection (4) by a police officer for the purposes set out in subsection (2). Where such disclosure is made, the police officer (or H M Procureur) is relieved from any obligation of confidentiality. That is perhaps the main purpose of section 8 as it enables confidential information disclosed to the Police to be disclosed to another person where it will assist Law Enforcement for any of the purposes provided in subsection (2). Where information is disclosed under these provisions, it is to be expected that the police officer making the disclosure will inform the recipient of the information of the purpose or purposes for which it is disclosed both to ensure that the recipient does not misuse the information and to ensure that confidentiality is preserved as far as possible. Where the police hold information which is not confidential, they are free to disclose it to members of the public.

52. The contention that Mr Yabsley disclosed information to the Bank to which section 8 applies requires careful consideration. The only such information which it is said had been obtained by Law Enforcement pursuant to an enactment is the report of what Mr Alaia said to Executive Customs Officer Smart when he was stopped at the harbour prior to leaving the island on 4th June 2013. Many people have been stopped by Border Agency officers when entering or leaving the island and asked questions or even asked to open luggage (or the boot of a car) to enable it to be searched and in the course of doing so people may step aside or move to a different area. Such voluntary cooperation with the authorities is generally expected and is willingly given. It is only when voluntary cooperation is refused that the officer may have to invoke statutory powers to detain, search or question the member of the public.
53. There is no suggestion in the statement of Executive Customs Officer Smart that Mr Alaia refused to cooperate voluntarily. If he had not cooperated and it had been necessary to use his statutory powers, Mr Smart would have been expected to record the fact in his notebook and in his statement. He did not do so. There is nothing to suggest that the information disclosed to the Bank was confidential. Consequently, disclosure of it to the Bank did not require the protection offered under subsection 8(4). Furthermore, Mr Yabsley did not inform the Bank that the information was being disclosed for the purpose of a criminal investigation to be carried out by the Bank. He knew that the Bank was making its own enquiries for disciplinary purposes and he asked to be kept informed but he did not request it to assist with any police investigation. The two sets of enquiries continued in parallel but we are satisfied that at no time was the Bank placed under a duty to investigate a possible criminal offence. Consequently, the Bank was not required to comply with the requirements of section 74(8) of PPACE or the Codes of Practice issued in relation to it.

Paragraphs 1.2 and 1.3 of the Grounds of Appeal

54. Having decided that the interview on 10th June 2014 did not breach the provisions of section 74(8) of PPACE or the Codes of Practice, Paragraph 1.2 of the Grounds of Appeal falls away. The Police were free to use what they had been told by the Bank about the interview in their own initial interviews with the Appellant and were entitled to use the transcript in later interviews after it had been supplied pursuant to the Production Order served on the Bank.
55. Paragraph 1.3 alleges that the record of the interviews conducted both by the Bank and by the Police should have been excluded from evidence by the Deputy Bailiff under section 76 and/or section 78 of PPACE. Section 76 concerns confessions and section 78 deals with unfair evidence; the contention is that the prejudicial effect of the interviews outweighed their probative value. The application to have the evidence excluded was carefully considered by the Deputy Bailiff in his judgment of 15th March referred to above.
56. In the Royal Court, Advocate Fooks had challenged the admissibility of the employment interview record as a business document for the purposes of section 2 of the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002. On appeal, Advocate Merrien accepted the Deputy Bailiff's ruling that it was a business document. Whether or not it is a business document, it falls to be considered under both section 76 and section 78 of PPACE.
57. Advocate Merrien accepted that the Deputy Bailiff had regard to the correct legal principles and correctly recognised that he had a discretion to exercise but submits that the manner in which it was exercised was unreasonable. The purpose for which the prosecution adduced the interviews was to show that the Appellant had lied and although the Deputy Bailiff gave the Jurats the appropriate direction concerning lies, Advocate Merrien said that did not overcome the prejudice of the Jurats having received the evidence.

58. In his submissions, both in writing and orally, Advocate Merrien’s principal objection to the interview was that it was not conducted under section 74(8) of PPACE and he made no specific criticism of the Deputy Bailiff’s analysis of sections 76 and 78 of PPACE. The Deputy Bailiff referred to the general summary of the position regarding “mixed statements” in England and Wales as set out in Blackstone’s Criminal Practice at para 17.93 which he correctly said was equally applicable in Guernsey. He followed the approach to the admissibility of a confession set out in Law Officers of the Crown v Correia (unreported 17 August, 2015) referring to R v Barry (1991) 95 Cr App R 384 which identified three questions: “(i) was there anything said or done? (ii) if so, was this likely in the circumstances to render “any confession” unreliable, which may have been made as a consequence? (iii) if so, did the thing said or done actually cause the defendant to make his particular confession?” As Advocate Calderwood submitted, the Appellant was not cajoled into making a confession. Even if a caution were required, which we agree it was not, he submitted there is no suggestion that the Appellant would have acted differently.
59. We have considered the content of the records of all the interviews conducted with the Appellant, both by his employer and by the Police. We agree that they amount to “mixed statements” in the sense that they contain material which is in part admissions and in part exculpatory or self-serving. In the absence of any specific criticism of the Deputy Bailiff’s approach (other than in respect of the 10th June employment interview, whether or not it amounted to an investigatory interview for the purposes of PPACE and the subsequent use of it in the Police interviews dealt with above) we can find no fault with the decision of the Deputy Bailiff.
60. The objection to the admission of the interviews under section 78 of PPACE is considered by the Deputy Bailiff, again carefully and in detail, at paragraphs 77 to 83 of the judgment. Advocate Calderwood confirmed that the prosecution sought the admission of the interviews as evidence of the Appellant’s inconsistencies and noted that the 10th June 2014 interview with the Bank is the most consistent with the later police interviews. It was preferable to have the interview records admitted in their entirety in order to lay the “complete picture” before the Jurats.
61. The Deputy Bailiff accepted that it was best to lay the complete picture before the Jurats and that the probative value of the full contents of the interviews outweighed the prejudice to the Appellant from the confessions made in the interviews. However, he did leave open the possibility of revisiting parts of the interviews at trial if the Appellant were to make a further application to have specific parts excluded.
62. Having carefully reviewed the Deputy Bailiff’s analysis and approach to the issue and in the absence of any specific criticisms from Advocate Merrien (other than those dealt with above), we dismiss paragraph 1.3 of the Grounds of Appeal for the reasons we have given.

Paragraph 2 of the Grounds of Appeal

63. Paragraph 2:

“2. *That the Learned Deputy Bailiff erred in Law in that he:-*

2.1 *Categorised a number of hearsay emails and, in particular, those between Sam Alaia and Joe Castellino, the Joe Castellino emails (page 409ss of the Trial Bundle and, in particular, that dated 15.01.14) (page 499 of the Trial Bundle) as business documents when they did not satisfy the test under Section 2(b) of the Criminal Evidence and Miscellaneous Provisions (Bailiwick) Law 2002 as amended of reliability (see Horncastle (2010) 2 WLR 47).*

- 2.2 *Did not, having so categorised them exclude them under Section 3 of the Criminal Evidence and Miscellaneous Provisions (Bailiwick) Law 2002 as amended on the basis that they should not be admitted.*
- 2.3 *Rejected the Appellant's Application to exclude the Joe Castellino emails and other emails from Sam Alaia and specifically that dated 28th October, 2013 (page 396 of the Trial Bundle) under Section 78 of PPACE (Bailiwick of Guernsey) Law 2003 and/or on the grounds that their prejudicial effect outweighed their probative value.*
- 2.4 *Determined wrongly that the issue could be addressed by direction."*

64. The first pages of the specific documents whose admissibility was challenged by Advocate Merrien are (the page numbers are to pages in the trial bundle):

Page 171 – an email from Mark Trenchard, an employee of the Bank, to the Appellant forwarded by the latter to Mr Alaia, dated 14th May 2013, enclosing a questionnaire to enable an account to be opened with the London based team of the Bank as the property over which the proposed mortgage was to be secured was located in the UK. Mr Trenchard also advised that *“As you know we have been working in the credit facility for you and this has been approved.”*

Page 176 – an email from the Appellant to Mr Alaia dated 15th May 2013, with no message but enclosing a document entitled *“Mortgage Planning Questionnaire”*. The purpose of adducing it was, according to Advocate Calderwood, to show the Appellant's involvement with the loan application.

Page 193 – an exchange of emails between the Appellant and a valuer appointed by the Bank to value Mr Alaia's residential property and an email from the Appellant to Mr Alaia dated 28th May 2013 forwarding the exchange to him. Again the purpose of adducing it was to show the Appellant's involvement.

Page 256 – several emails, mainly between the Appellant and Stefan Cloete dated 4th June 2013, including one from a mechanic employed at Jackson's Garage in Guernsey, all with information about Jaguar E-types. Mr Cloete was a witness at the hearing, called by the Appellant.

Page 493 – ten pages of correspondence between the Appellant, Mr Alaia and Joe Castellino of Le Riche Automobile Restorers (CI) Limited in Jersey, mainly in connection with the Jaguar.

65. Where documents were adduced to prove the truth of their contents, Advocate Calderwood accepted they were hearsay but a number of them were not admitted for that purpose, instead they were to show that communication had taken place between the Appellant and Mr Alaia. Where they were hearsay, the exception to the hearsay rule on which he placed reliance was that governing the use of business documents under section 2 of the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002 which provides:

“(1) Subject to subsections (3) and (4) a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible, if the following conditions are satisfied -

- (a) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office, and*

(b) *the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.*

(2) *Subsection (1) applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it –*

(a) *in the course of a trade, business, profession or other occupation, or*

(b) *as the holder of a paid or unpaid office.*

(3) *Subsection (1) does not render admissible a confession made by an accused person that would not otherwise be admissible.*

(4) *A statement prepared otherwise than in accordance with section 3 of the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 or under section 9 or 10, for the purposes –*

(a) *of pending or contemplated criminal proceedings, or*

(b) *of a criminal investigation,*

shall not be admissible by virtue of subsection (1) unless –

(i) *the requirements of one of the paragraphs of subsection (2) of section 1 are satisfied, or*

(ii) *the requirements of subsection (3) of that section are satisfied, or*

(iii) *the person who made the statement cannot reasonably be expected (having regard to the time which has elapsed since he made the statement and to all the circumstances) to have any recollection of the matters dealt with in the statement."*

66. The Deputy Bailiff correctly rejected Advocate Fooks' submission that the exception for business documents is intended to cover only those documents created for administrative purposes. Advocate Merrien did not seek to challenge that they were business documents. Section 2 of the 2002 Law creates a broad exception to the hearsay rule. However the potential injustice that might be caused is mitigated by section 3 of the 2002 Law which sets out the principles to be followed by the court when deciding whether to admit a document under section 2. The same principles apply to the admission of first hand hearsay by a witness who is unable to attend court, such as the evidence of PC Wright which was admitted under section 1 of the Law. Section 3 provides:

"3. (1) If having regard to all the circumstances the court is of the opinion that in the interests of justice a statement which is admissible by virtue of section 1 or 2 nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.

(2) Without prejudice to the generality of subsection (1), it shall be the duty of the court to have regard –

(a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic,

(b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available,

(c) to the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings, and

(d) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them."

67. The 2002 Law was considered by the Deputy Bailiff in his judgment of 15th March 2016 in relation to the issue of whether the employment interview transcript could be admitted as a business document. At that hearing, Advocate Fooks also referred to the need for a business document to be reliable as explained in para. 16.25 of *Blackstone's Criminal Practice*:

"Business records are made admissible ... because, in the ordinary way, they are compiled by people who are disinterested and, in the ordinary course of events, such statements are likely to be accurate; they are therefore admissible as evidence because prima facie they are reliable' (the Court of Appeal in Horncastle [2010] 2 AC 373, in a judgment endorsed and regarded as complementary to the subsequent decision of the Supreme Court)."

Advocate Merrien submitted that reliability is one of the factors to which the court will have regard. He was correct. Whilst the reliability of the record is not one of the principles set out in section 3, it is within the scope of the principles that the court is directed to consider, in particular *"having regard to its nature and source and to any other circumstances that appear to the court to be relevant"* to the admissibility of a document.

68. After handing down his judgment of 15th March 2016, the Deputy Bailiff held a further hearing on 24th March to consider the admissibility of certain specific documents to which objection was taken by Advocate Fooks. His decision was delivered in a judgment dated 24th March 2016 in which he ruled against admitting some of the documents, but allowed others to be adduced in evidence.
69. On appeal, it is accepted that the documents under consideration can be treated as business documents for the purposes of Section 2 of the 2002 Law. The documents emanating from Joe Castellino were created and received in connection with his business. He was engaged to repair the Jaguar and, later, to sell it.
70. Whilst the Grounds of Appeal challenged the admissibility of all the documents referred to above, no specific objection was raised by Advocate Merrien in his oral submissions to the documents which were admitted purely for the purposes of showing communication between the Appellant and Mr Alaia in order to establish his participation and involvement with the loan application.
71. Strong objections were taken to those documents admitted for the probative value of the contents of the document where it was contended that the prejudicial effect outweighed the probative value of the document. The most prejudicial of the documents is an e-mail dated

15th January 2014 at 09:43 from Mr Alaia to Joe Castellino (at pages 499 and 500 of the trial bundle). The e-mail reads as follows:

“Hi Joe

I have just received your email.

The story with the e-type is, i purchased the car from Peter Jarvis around three years ago i was introduced to Niel De Knock by a friend and Niel arranged a large morgage for me, i paid all the fees and recieved confirmation that the deal had been done also he agreed to finance a large property deal with some friends of mine , for doing all the above i agreed to give Niel the e-type ,i took the car over to gernusey and gave him all the documents. I went to his office and signed all the paperwork re the loans , i then left England to live in Australia about a month later Niel rang me to tell me he could not arrange the loans he had promised. He told me he still would like to keep the car and would sort something out, i then got a call from Niel telling me that he had put the car with a friend in Jersey to sell and forward the money onto me and it would be around 25,000 pounds he also told me he had paid to have all the works needed to sell the car done . I have tried many times to contact Neil with no success, i hope you can get on and sell the car, i am not responsible for the work Neil had done but i am happy for you to take it from the sale. Maybe you might have something we can have a deal with, i intend to return to the uk once i get clearance from my doctor ,i had a bad fall on a building site and puntured my lungs. Hope this sorts things out regards who owns the car. Best regards SAM ALAIA”

72. That e-mail and the other e-mails appearing in the same chain are referred to in paragraph 17 of the Deputy Bailiff’s judgment of 6th April 2016. The Deputy Bailiff assessed the probative value of the e-mails to the prosecution in supporting the case that the vehicle was gifted to the Appellant as a reward for what the Appellant had done for Mr Alaia, explaining why Mr Castellino was looking to the Appellant for payment of the invoice associated with the works undertaken to the vehicle and explaining why the proceeds of the sale were remitted to Mr Alaia’s order and not to the Appellant. He said, *“It is clearly important to the defendant that the court understands that he did not benefit financially from the transaction relating to the Jaguar and I accept Advocate Calderwood’s submission that it is difficult to appreciate what was taking place if there are gaps in the narrative to be derived from this documentation.”*
73. He then considered the prejudice to the Appellant of not being able to cross-examine Mr Alaia on what he had written. He said:

“In relation to the explanation about the problem that the vehicle contained in Mr Alaia’s message of 15th January 2014, the Defendant accepts that he took possession of the Jaguar when it was brought to Guernsey and that he was given the documentation associated with the vehicle by Mr Alaia. What he does not accept is that Mr Alaia asserts that the vehicle was a gift to him. That is the foundation of the prosecution case. I do not consider that this document provides the only evidence of this issue and so the case does not appear to me to stand or fall on the admissibility of this one message. The Defendant’s response on 17th January 2014 explains his involvement. That response cannot, in my view, be properly understood unless the material to which it is responding is seen by the Jurats. Accordingly, any prejudice to the Defendant is less than the probative value of the material contained, when read as a whole, in this sequence of messages.”

74. In the Appellant’s reply of 17th January to which he referred, addressed to Mr Alaia and Joe Castellino, the Appellant set out his version of the situation in which he concluded, *“I am also*

sorry to say Joe that under NO circumstances did I offer to pay for repairs. Not sure why Sam would tell a lie like that?”.

75. Then in an e-mail dated 10th February 2014, Mr Alaia wrote:

*“Hi Joe,
Many thanks for your help. This affair with Niel has been a drama. If you are able to complete the sale I would like the funds sent to my wife’s account in the UK.”*

He then gave the details of his wife’s bank account. The Deputy Bailiff held that the reference in the email to “*a drama*” was a neutral statement which was not prejudicial to the Appellant. There was no allegation that the Appellant was a criminal and because the outcome was that Joe Castellino accepted Mr Alaia as his client, the email might be of some assistance to the Appellant rather than prejudice. He concluded: *“For these reasons, I reject the Defendant’s argument that the two messages on which I have concentrated should be excluded under Section 78 of the 2003 Law.”*

76. The Appellant’s contention on appeal is that the Deputy Bailiff’s decision amounted to an unreasonable exercise of his discretion. We do not agree. The Deputy Bailiff’s analysis is carefully explained in the judgment. He carefully weighed the prejudicial effect of the evidence against the probative value. He accepted the submission that it was important to place the full story before the Jurats. He did not do so unreasonably. In our conclusion, we reject paragraph 2 of the Grounds of Appeal.

Paragraph 3 of the Grounds of Appeal:

77. Paragraph 3.1 has not been pursued. Paragraph 3.2 reads:

“That the Learned Deputy Bailiff erred in Law in that he:-

...

3.2 *Rejected the Appellant’s Application that the File Note of Sean Bougourd “dated” 15th November, 2013 (page 408 of the Trial Bundle) should be redacted as it contained evidence emanating from a witness on whom the prosecution did not rely at trial namely Colin Penney and which note was shown in cross-examination not to be contemporaneous and which it is submitted was not reliable and which, therefore, should have not been admitted as a business document.”*

78. The file note was prepared by Sean Bougourd, the line manager of the Appellant, as a record of the conversation he had with the Appellant when they met on 15th November 2013 to discuss the Jaguar car which had been parked in the Bank’s garage on 3rd October. The note records that the Appellant initially said that he had owned the car for some time, but after an adjournment to allow the Appellant to reflect, he said later in the day that he did not in fact own the car but had intended to buy it from “*an individual by the name of John Langdon in the UK*”.

79. The first challenge to the file note was whether it was contemporaneous. In the Deputy Bailiff’s judgment of the 15th March, at paragraph 12, he said that, “*although the file note is dated 15th November 2013, Mr Bougourd clarified a few details with others on 10th December 2013.*” It is therefore not clear when the note was finalised. The second objection to the note is that it might contain information supplied by a person, Colin Penney, who might have been a prosecution witness but following a decision made by the prosecution during the course of the trial, he was not called to give evidence.

80. The purpose for which the file note was adduced by the prosecution was to show that the Appellant had lied to his employer. It was admissible as a business document and even if input had been added with information from Mr Penney, another employee of the Bank, it remained a business document. Mr Bougourd gave evidence at the trial and was not asked about Mr Penney so there was no evidence that the latter in fact contributed to the file note. At page 448H of the transcript, Mr Bougourd was asked about the file note in cross-examination. He confirmed that it had not been seen or approved by the Appellant at the time. He was asked, *“I think your recollection was that you had prepared that pretty much contemporaneously?”* To which he replied, *“correct”*. He was referred to e-mails dated 10th December in which he sought clarification of the date on which the car had been seen in the garage and confirmed that at that date he was *“tidying up the file”*. He was asked, *“Is it possible that your note of the 15th November was actually drafted as part of that tidying up exercise as well?”* He replied, *“My recollection was that I would have drafted the note earlier, however, having seen the later note it would appear that it would have been at least tidied up later on prior to putting a line under the matter.”*
81. It is thus clear that the file note was largely contemporaneous. The reliability of the contents was a factor for the Court to consider under Section 3 of the 2002 Law, as we said above. There is no reason to believe that the note was unreliable. We are satisfied that it was admissible in evidence as a business document. Even if it had not been admissible, Mr Bougourd gave first hand evidence at the trial of his meeting with the Appellant on 15th November without reference to the file note which was produced to him only after he had recalled their conversation.

Paragraph 4.1 of the Grounds of Appeal

82. Paragraph 4.1 pleads that the Deputy Bailiff erred in law in that he wrongly rejected the Appellant’s application dated 1st September 2016 to stay the prosecution, *“especially in circumstances where the person from whom the allegation emanated and on whose evidence the prosecution relied, namely Sam Alaia was not present at trial.”*
83. The application to stay the proceedings was refused by the Deputy Bailiff in his judgment of 16th September 2016. Before him, a stay had been sought on three grounds. First, the failure by the prosecution to secure the attendance or evidence of Mr Alaia at the trial. Secondly, an allegation that the prosecution had failed to discharge its duties in relation to disclosure and specifically in not complying with an Order of the Court of the 28th July 2016. Thirdly, that the conduct of the investigators and prosecution amounted to an abuse of process. In his oral submissions on appeal, Advocate Merrien said the second ground was not being pursued at any length.
84. Mr Alaia is a key figure in the whole case, being the person who allegedly gave the vehicle to the Appellant. He moved from England to Australia shortly after making the alleged gift. He has apparently remained in Australia, save possibly for a brief visit to England. The prosecution did not take steps to see whether he could be extradited or otherwise brought before the Court. They did not consider it in the public interest to do so. That is a decision they are entitled to take, as the Deputy Bailiff held in his judgment of the 16th September 2016, following the guidance offered by Stuart-Smith LJ in R v Haringey Justices, ex p DPP [1995] QB 351. The Deputy Bailiff said at paragraph 23:

“23. In my judgment, there are a number of principles that can be extracted from this case to apply in Guernsey to the present proceedings. The first is that the prosecution has an unfettered discretion to choose not to call someone as a witness. Further, the court cannot compel the Crown to call someone as a witness. It follows, therefore, that it cannot be said that the Law Officers in this case have any duty to secure any evidence from Mr Alaia. As soon as the position is stated in this manner, it is quite evident that the principles from the

Ebrahim case (supra) are not satisfied because if there was no duty to obtain the material, then there can be no question of the subsequent trial of the Defendant being unfair on this ground.”

85. The Deputy Bailiff went on to consider what he referred to as a second principle:

“That the Court must be alive to the options available before concluding that a fair trial is impossible. It is very much a remedy of last resort. The possibility of the Defendant approaching Mr Alaia was canvassed at the hearing but not fully resolved. However, Advocate Calderwood outlined the limited circumstances in which Advocate Fooks would get the opportunity to cross-examine Mr Alaia which is the stated purpose underpinning why it is said in the Revised Application the Defendant cannot have a fair trial if Mr Alaia is absent.”

86. The Deputy Bailiff then referred to the fact that Advocate Calderwood had said that if Mr Alaia were to attend at the instance of the Law Officers, he would appear as a co-defendant. If he were to plead guilty the Law Officers would have an unfettered discretion whether to call him as a witness and might be concerned that he would prove to be unreliable. If he pleaded not guilty, he could retain his right to silence and not be available for cross-examination. If he pleaded guilty, it would only be if he was called by the prosecution that the Appellant would have had an opportunity to cross-examine him. If he pleaded not guilty, he could only be cross-examined if he chose to give evidence about which the Deputy Bailiff said, *“In those circumstances, it seems highly probable to me that the evidence given by Mr Alaia in his own defence would be exculpatory of the Defendant as well. Accordingly, the Defendant’s position is unaffected from what it is if he chose to engage with Mr Alaia as a witness on his own behalf.”* He concluded that the absence of Mr Alaia as a witness for the prosecution would not render the trial of the Appellant unfair.

87. On appeal, Advocate Merrien focused not only on the prosecution’s failure to call Mr Alaia as a witness, but also an alleged failure to secure evidence from him. As Advocate Calderwood submitted, Advocate Merrien has not, on appeal, specified what steps could have been taken but were not taken by the prosecution to secure evidence from Mr Alaia. The contention in the Royal Court appeared to focus on the possibility that Mr Alaia had returned briefly to the United Kingdom for a time in May and/or June 2014. Although it was not clear whether he had done so, the Deputy Bailiff accepted (in paragraph 19 of his judgment) that it was more likely than not that he was in the United Kingdom at that time. He added that the question of whether Law Enforcement in Guernsey knew that Mr Alaia was in the United Kingdom at that time was more finely balanced and, even if Guernsey Law Enforcement had been aware, they would not have been in a position to deal with him directly and would have had to have seek some form of mutual legal assistance. If they had successfully sought his arrest under a warrant, he would have had to be brought before a court immediately without being questioned.

88. Once again, the Deputy Bailiff’s analysis of the submissions is thorough and detailed and cannot in our view be faulted. There is no suggestion that he failed to apply the correct legal test in the comprehensive review of the legal authorities contained in paragraphs 4 to 12 of his judgment.

Paragraph 4.3 of the Grounds of Appeal

89. Paragraph 4.3 of the Grounds of Appeal alleges that the Deputy Bailiff erred in law in wrongly rejecting the Appellant’s application to direct the prosecution to elect whether the case was based on reward or inducement.

90. Advocate Fooks had pressed hard for a direction that the prosecution be required to make clear, in advance of the trial, whether they were alleging that the gift of the vehicle was a reward for an act already done or an inducement to carry out an act. The Particulars of Offence with which the Appellant was charged alleged that the gift was “*an inducement to, or reward for, or otherwise on account of doing an act in relation to his principal’s affairs*”. Those words were taken directly from section 1 of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 and are considered below in relation to the Appellant’s contentions regarding the elements of the offence in paragraph 6 of the Grounds of Appeal.

Paragraph 4.5 of the Grounds of Appeal

91. Paragraph 4.5 of the Grounds of Appeal pleads that the Deputy Bailiff erred in law in that he wrongly rejected the Appellant’s application:

“4.5 *that he direct the Jurats informing them that the Appellant’s first language is not English*”.

92. Initially, the Appellant had applied to be assisted by an Afrikaans interpreter at the trial. That application was rejected by the Deputy Bailiff in his judgment handed down on the 23rd May 2016. The Appellant has not sought to appeal that decision or to claim that the trial should not have proceeded. However, at the start of the trial, Advocate Fooks, on behalf of the Appellant, asked the Deputy Bailiff to issue a direction to the Jurats advising them that the Appellant’s first language was not English. The Deputy Bailiff ruled that the appropriate time to give such a direction would be at the conclusion of the trial prior to the Jurats considering their verdict “*if it has been led in evidence or come out in the evidence that the Defendant’s first language is not English*” (page 3G of the transcript).

93. In the event, the Appellant did not give evidence himself and nor did he lead any evidence as to his first language or as to the fluency of his command of English. Consequently, in his summing-up to the Jurats, the Deputy Bailiff made no reference to the Appellant’s Afrikaans speaking and gave no direction to the Jurats as to his command of English.

94. The contention of the Appellant in this appeal is that the failure to direct the Jurats in relation to this matter was an error of law and that the failure to do so, when taken with the other points raised on the appeal, is such as to render the conviction unsafe.

95. The Appellant’s application to be granted an interpreter was considered during the *voir dire* hearing and the Deputy Bailiff’s decision on the matter was delivered in his written judgment handed down on 23rd May 2016. At paragraph 2 thereof the Deputy Bailiff ruled:

“*As a matter of Guernsey law, the starting point is the Human Rights (Bailiwick of Guernsey) Law, 2000, which gives domestic effect to, in particular, Article 6, paragraph (3)(e) of the European Convention on Human Rights. That subparagraph provides-*

“*Everyone charged with a criminal offence has the following minimum rights:*

(e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in Court.*”

The principal language used in this Court is English. The question therefore is whether or not Mr. de Kock has surmounted the hurdle of establishing for the purposes of Article 6(3)(e) that he cannot understand or speak the language of English.”

96. At paragraphs 4 to 6 of the Judgment, the Deputy Bailiff adopted the decision of the European Court of Human Rights in Cuscani v UK (2003) 36 EHRR 11 in which reference was made to R v Lee Kun (1916) 11 Cr App R 293. The statement of principle in that case has been confirmed more recently by the Judicial Committee of the Privy Council in Kunnath v the State where the Court held at paragraph 39 “*the ultimate guardian of the fairness of the proceedings was the trial judge who had been clearly apprised of the real difficulties which the absence of interpretation might create for the applicant*”. Thus it is the judge who has the ultimate responsibility of ensuring that the Defendant is able to be tried fairly. The Deputy Bailiff said that he adopted the framework set out at page 979 in Kunnath:

“First, it must be clear that the accused was actually in need of interpreter assistance - i.e., that he or she did not understand or speak the language being used in court. Although the ultimate burden of proof in establishing the required level of need rests, of course, on the party asserting that he or she has suffered a violation of his or her s. 14 rights, it is important to appreciate that the right to interpreter assistance is not one which must necessarily have been invoked or asserted in order to be enjoyed. As part of their control over their own proceedings, courts have an independent responsibility to ensure that those who are not conversant in the language being used in Court understand and are understood. Accordingly, unless the issue of interpretation is only being raised for the first time on appeal and/or there is some question as to whether the right is being asserted in bad faith, establishing “need” will not normally be an onerous step.”

97. At paragraph 10 of the judgment, the Deputy Bailiff summarised the legal principle that he had extracted in the following terms:

“there needs to be an assessment of understanding and capability of expressing oneself in English.”

He had conducted an enquiry of the Appellant by asking him in English about his life history. The Deputy Bailiff had also briefly questioned Ms Le Maitre about the Appellant’s understanding of English and, more importantly, he had heard from the Appellant himself both during the *voir dire* and at earlier hearings in Court where the Appellant had addressed him in English.

98. The Deputy Bailiff found that whilst the Appellant had been born in South Africa and spoke Afrikaans during his childhood and continued to speak Afrikaans with his wife in the family home, he had studied an MBA in the English language and worked in the finance sector in South Africa until about 2000 when he moved with his wife to the USA. He had also studied in English for a doctorate and had undertaken an oral examination in connection with it in the English language. Apart from a six month stay back in South Africa he had lived in the United States, southern England and Guernsey ever since. Consequently, the Deputy Bailiff was satisfied that the Appellant did not require an interpreter at the outset of the trial but held that “*if I reach the conclusion during the trial that [the Appellant’s] ability to understand and communicate in English was deteriorating to a level where a fair trial could only be afforded by him having an interpreter, then I have no hesitation in saying that I would stop the proceedings at that point until such time as an interpreter is available.*” The Deputy Bailiff’s approach was undoubtedly correct and, quite rightly, the Appellant has not sought to appeal that decision.
99. The suggestion that the Deputy Bailiff could and should have directed the Jurats that the Appellant’s first language was Afrikaans and he was not a native English speaker has at least two fundamental flaws. First of all, as the issue had not been raised in evidence, the Deputy Bailiff would himself have had to give evidence to the Jurats to explain that the Appellant’s first language was Afrikaans, not English. Secondly, the fact that he was an Afrikaans speaker would have meant nothing to the Jurats without knowing to what extent he was able

to understand and express himself in English. There would have been plenty of opportunity for the Appellant to have led evidence on this issue if he had wished to do so. Without giving evidence himself, his Advocate could, in cross examination, have asked his work colleagues to say whether the Appellant was able to understand the questions he was asked during the employment interview. Or, his Advocate could have asked his own character witnesses to give whatever evidence he wished the Jurats to hear.

100. The suggestion that the failure to give a direction on this issue rendered the conviction unsafe either on its own or when considered together with the other issues raised on the appeal, does not stand up to scrutiny and is therefore dismissed.

Paragraph 4.6 of the Grounds of Appeal

101. Paragraph 4.6 of the Grounds of Appeal alleges that the Deputy Bailiff erred in law and that he wrongly rejected the Appellant's application that he direct that the Jurats should ignore parts of the evidence of J. Langdon as he had apparently been influenced by reading the Guernsey Press.
102. Mr Langdon was called as a prosecution witness. He gave evidence that the Appellant had contacted him about the motor vehicle in 2013. He had asked him about the provenance of the vehicle and the Appellant had replied that, "*he had been given the car by a grateful client of his*". Advocate Fooks cross-examined him because she had been advised by the prosecution that Mr Langdon had informed them that he had read a Guernsey Press article about the case prior to giving his evidence.

She asked, "Mr Langdon, is it not the case that the evidence you have given today about the loan of the bank comes because you have seen this press report?"

He replied: "No, because at the time Mr De Kock explained his position and what his job was and that was it. I mean that was the assumption that I made then, not now."

Question: "That is not correct, is it, Mr Langdon, you have been influenced by this press report?"

Answer: "Well, obviously, I saw the paper because it was given to me but prior to seeing the paper for the last three years I have had in my own mind exactly what the grateful client had done."

103. At page 630E of the transcript, the Deputy Bailiff did give a direction to the Jurats. He referred to the newspaper article stating that witnesses should avoid accessing newspapers in which reports of cases, in which they would give evidence, may appear. He added, "*You may accept what they have said is true but before doing so you must consider whether this is a factor that affects the weight you give to each of these witnesses' evidence.*"
104. It is apparent from the transcript that, if the Jurats accepted Mr Langdon's evidence, they would have accepted that he was not influenced by the press article he had read. If they did not accept his evidence, the issue does not arise, but if it did, the direction given by the Deputy Bailiff was sufficient to deal with any prejudice to the Appellant.

Paragraph 6 of the Grounds of Appeal

105. Paragraph 6 of the Grounds of Appeal alleges:

"That there was insufficient evidence and/or that the Jurats were not properly directed on the elements of the offence and especially:-

- 6.1 *the acceptance of the vehicle in terms of gift and legal ownership*
- 6.2 *the alleged “gift back” in November, 2013.*
- 6.3 *the “act in relation to his principal’s affairs” as per the Indictment.*
- 6.4 *the necessary “meeting of minds” required between Sam Alaia and the Appellant”*

106. Advocate Merrien did not confine his oral submissions to the specific matters pleaded in paragraph 6. He criticised the directions given on a number of the elements of the offence, including whether the gift was a reward, inducement or otherwise on account of an act; the meaning of the word ‘corruptly’; whether the Appellant was acting on behalf of his principal; whether there was a “meeting of minds” between the Appellant and Mr Alaia; and the precise nature of the act performed or to be performed. The Deputy Bailiff’s directions on the indictment and the ingredients of the offence are to be found at pages 611B to 614B of the transcript.
107. The Appellant took issue with the fact that the Deputy Bailiff left the case to the Jurats on the basis either of a gift being a reward for an act already done or an inducement for an act which was ongoing or still to be completed, and that he included the element of “or otherwise”. Before the trial started, the Deputy Bailiff had rejected the Appellant’s application to require the prosecution to present the case either on the basis of a reward or an inducement and therefore he had to put the alternatives to the Jurats. It was necessary for him to explain the different scenarios to the Jurats which he did by saying, at page 613B, that the timing was particularly relevant. He directed that if the Jurats were sure that everything in relation to the loan application was complete, they could consider the Jaguar as a reward. If they were not sure of that, they could consider whether it was an inducement for facilitating the loan application. Alternatively, the final consideration was whether it was otherwise on account of that act. He directed the Jurats to consider first the primary prosecution case which was that the Jaguar was offered by way of reward for an act already completed. Failing that, they had to consider whether it was an inducement.
108. The case had been put by the prosecution on the ground that it was either a reward or an inducement. We agree with the submission by Advocate Calderwood that it cannot be wrong to plead the alternatives because there may be instances where the alleged act in connection with which the corrupt gift is made could be ongoing and it will be impossible for the prosecution to know whether it is either a reward or an inducement. If the charge was put on one basis and not the other, a defendant who had committed an offence could be acquitted purely on the technicality that the wrong particulars of the offence had been charged.
109. Neither counsel had addressed the Court as to whether the gift might have been “otherwise on account of” the loan application. However, it cannot have been wrong for the Deputy Bailiff to refer to it when those words were included in the Particulars of Offence on the Indictment being derived from the description of the offence in section 1(1) of the 2003 Law. Indeed, he correctly reminded the Jurats that no one had offered any example of what is covered by those words. We consider it was not necessary for him to say any more. The words could be given their ordinary meaning and did not require further explanation.
110. In his oral submissions, Advocate Merrien submitted that the Deputy Bailiff had erred in law in the manner in which he directed the Jurats on the meaning of the word “corruptly”. The Deputy Bailiff began his directions on the matter by saying (at page 611C):

“The offence is one of corruption. Unlike most criminal offences, this offence is highly culture-specific. Whether any given conduct is categorised as corrupt will depend in part on both the perspective from which it is viewed and the environment in which it occurs.”

It is to be inferred that he was directing the Jurats to consider whether the Appellant's conduct should be viewed as corrupt from a Guernsey perspective having regard to the environment (e.g. the financial services industry) in which it occurred. Such a direction may not be wholly necessary but it is not inappropriate to give to fact-finders and is a matter which the Jurats are well-placed to consider. That is especially so where, as the Deputy Bailiff pointed out, the offence was a new offence for Guernsey which had been created only in the 2003 Law and had not been charged before.

111. Advocate Merrien criticised the Deputy Bailiff for giving two definitions of what can amount to corruption. At page 611F, the Deputy Bailiff said: *"The essence of corruption is that the purpose of offering or giving a bribe is to undermine the agent's loyalty to his principal and to persuade him to abandon his duty"*. At page 611G he said: *"What matters is whether the circumstances in which the gift was given was such that it had a tendency to corrupt."* The two separate definitions are taken from two English cases, Cooper v Slade (1857) 6 HL Cas 746 and Lindley [1957] Crim LR 321.

112. In England and Wales, the Law Commission has examined the law of corruption and produced a report entitled "Legislating the Criminal Code: Corruption". The Commission concluded that the law was in an unsatisfactory state as it suffered from numerous defects. One of the issues considered in the Report, at paragraphs 5.63 to 5.66, was whether it was necessary to have a statutory definition of the word "corruptly". The Commission had consulted widely on the issue and acknowledged that they had found little consensus. The Report stated:

"The clear implication is that we were right to identify in the consultation paper the uncertainty of the meaning of the word 'corruptly' as one of the most important defects in the present law. We take the view that this defect can only be remedied by a more precise description of the kind of conduct that falls within the offence, and we conclude that a definition is required."

113. The Law Commission's Report was published on 3rd March 1998 and therefore pre-dates the Law of 2003 under which the Appellant was charged. The 2003 Law is largely similar to Section 1 of the Prevention of Corruption Act of 1906 but does not copy that Law directly. It is to be concluded that the Guernsey legislature considered it necessary to have a specific Guernsey Law. In legislating for the same, they chose not to incorporate any definition of the word "corruptly" despite the Report of the Law Commission recommending that such a definition be adopted in the Law of England and Wales (we have not been addressed as to whether the States of Deliberation's attention was drawn to the Law Commission's Report when legislating).

114. In the absence of a statutory definition in the 2003 Law of the word "corruptly", the word is to be given its normal meaning in the ordinary course of language. The Deputy Bailiff so directed the Jurats: *"the word is a simple English adverb and I am not going to explain it to you in detail except to say that it does not mean 'dishonestly'"*. (The reference to not meaning dishonestly is taken from Cooper v Slade). He also made reference to the two definitions given in the earlier English cases. That was by way of illustration and may or may not have assisted the Jurats. On the facts of the present case, neither of those illustrations was unhelpful, they would not have led to confusion and cannot be said to amount to a misdirection or error of law.

115. Linked to the submissions made by Advocate Merrien on the meaning of the word "corruptly" was his submission that there needs to be a "meeting of minds" between the giver of the gift and the recipient. The submission is a reference to the English Court of Appeal decision in R v Mills (1979) 68 Cr App R 154 in which the appellant had been convicted of an offence under the Prevention of Corruption Act 1916. The Court of Appeal held:

“It is enough that the recipient takes a gift knowing that it is intended as a bribe. By accepting it as a bribe and intending to keep it, he enters into a bargain despite the fact that he may make to himself a mental reservation to the effect that he is not going to carry out his side of the bargain. The bargain remains a corrupt bargain even though he may not be intending to carry out his intended corrupt act.”

116. The Deputy Bailiff must have had that decision in his mind at paragraph 611H when he said:

“Moreover, and repeating something to which I have already referred, a person who accepts a gift knowing that it is intended as a bribe, enters into a corrupt bargain even if he makes a private mental reservation not to carry out his side of the bargain. In that regard, it is possible that something intended by the giver as a corrupt gift could be received innocently by the recipient, for example, without him understanding it to be a reward or inducement where the giver only would be guilty of corruption.”

Although the Deputy Bailiff did not say so, the offence of which the giver would be convicted would be under Section 1(2) of the 2003 Law.

117. Advocate Merrien’s submission was that the Deputy Bailiff failed to direct the Jurats to consider any intention on the part of Mr Alaia and therefore failed to direct them as to the need for a meeting of minds as between the Appellant and Mr Alaia. A direction in those express terms was not necessary on the facts of this case where the allegation by the prosecution was that the vehicle was offered as a gift by way of reward or inducement in connection with the facilitation of the loan agreement and accepted by the Appellant as such. It was sufficient that the Deputy Bailiff directed the Jurats to consider the purpose for which the gift was offered by Mr Alaia and in particular whether, if they were satisfied that the car was a gift, it was given in respect of the loan application, or whether there might be some other reason for it passing from Mr Alaia to the Appellant (see for example page 637G).

118. In connection with the same issue, Advocate Merrien submitted that there was an error in law in the failure to direct the Jurats as to whether the gift was made for the purposes of facilitating a loan, or as a reward for having secured the loan. In other words, what was the act for which the gift was given and for which it was received by the Defendant and was that act as pleaded in the Particulars of Offence, namely for *“facilitating the loan application”*?

119. The prosecution case was based upon a broad definition of *“facilitating the loan application”* which was broad enough to encompass both the scenario of the loan application still being considered by the Bank and one where the loan application had been approved. The onus was on the prosecution to prove that there was a link between the gift and the *“facilitation”*. However, as the offence would be complete as soon as the gift was accepted, there was no need to prove that the Appellant had carried out any act. The offence was committed by accepting the gift. As we have held earlier, there was no requirement for the prosecution to specify whether their case was based on a reward for something done or an act for something to be done. The statutory definition of the offence permits it to be committed on either basis which, as Advocate Calderwood submitted, is essential where the prosecution may not know whether the act to which it relates has been completed or is still in progress.

120. The further submission of Advocate Merrien that the prosecution failed to prove that the Appellant was acting as agent on behalf of his principal is not made out. He submitted that the Appellant was merely acting in the normal course of his business doing what he would ordinarily do. The Deputy Bailiff directed that,

“It is only unlawful if there is a link between the gift and him doing something in pursuance of his employment or duty. The reward must relate to something done in respect of a matter in which his principal is concerned. As soon as the agent accepts

a reward for doing that, he may find himself guilty of corruption. The offence lies not in doing the act or showing favour to the applicant but in accepting a reward for doing so.”

Such direction was adequate and sufficient.

121. Advocate Merrien criticised the Deputy Bailiff’s directions with regard to the requirements for both a gift of the car to the Appellant and a gift back in November 2013 to Mr Alaia. At page 612B the Deputy Bailiff directed that: *“You must be sure that ownership of the car changed hands at that point. This element of the offence is disputed.”* He then went on to explain that being the registered keeper of a vehicle is distinguishable from being the legal owner of it as the two do not always coincide. Whilst the Appellant had not been the registered keeper of the Jaguar, it did not follow that he did not own it. He said again that, *“Ownership of the Jaguar depends on legal title having been transferred. If you are not sure that legal title transferred to the Defendant on or about the 4th June 2013, the prosecution will have failed to prove this element of the offence and you must acquit the Defendant.”*
122. He then explained that a gift may be made by oral agreement without a written contract and without evidence of payment of the purchase price and he invited the Jurats to compare the lack of paperwork at the time of the alleged gift with the documentation relating to the subsequent sale of the Jaguar through Le Riche Automobile Restorers to the ultimate owner. He went on to summarise the relevant evidence and left it to the Jurats to decide on their verdict but it can be inferred that they were satisfied legal ownership had transferred to the Appellant and back again.
123. We are not persuaded that any of the specific criticisms made of the Deputy Bailiff’s summing-up to the Jurats are made out. We have also considered the summing-up in the round and we are satisfied that there was no error in law on the part of the Deputy Bailiff in his directions to the Jurats that would render the verdict unsafe.

Conclusion

124. This was the first prosecution for an offence of corruption under the 2003 Law. The Appellant, who was previously of good character, strongly resisted the charge as he was entitled to do. He took every point available to him both at first instance and on appeal and in that respect he has been well served by both counsel who appeared for him. There was an unusual number of preliminary applications heard by the Deputy Bailiff. In relation to each of them he delivered a detailed written judgment setting out both the legal principles and the factual background to be considered. On each occasion he gave careful consideration both to every discretion to be exercised by him and to every decision to be made, explaining carefully how he was exercising his discretion. The appeal has largely been concerned with questions of whether those decisions were made reasonably. In each instance, we have found that the detailed and careful reasoning of the Deputy Bailiff cannot be disturbed on appeal.
125. We also considered carefully the Deputy Bailiff’s summing-up to the Jurats both in relation to the specific issues raised and in the round and we are satisfied that there was no error of law and that there was sufficient evidence on which the Jurats, properly directed as they were, could reach a verdict of guilty.
126. The appeal against conviction is therefore dismissed. We are grateful to both counsel who appeared before us for the manner in which they presented their submissions.