[2025]GRC033

IN THE ROYAL COURT OF GUERNSEY
(CRIMINAL DIVISION)

Between:

THE LAW OFFICERS OF THE CROWN **Prosecution**

-and-

CHRISTINE ANN PEET **Defendant**

Ruling on Plea/Newton Hearing

Case heard on: 10th and 11th April 2025
Decision and first draft judgment handed down on: 11th April 2025
Final Judgment handed down on: 23rd May 2025

Before: Catherine Maureen Fooks, Judge of the Royal Court

Counsel for the Prosecution: Crown Advocate C G Dunford
Counsel for the Defendant: Advocate N Newell

Legislation, texts and cases referred to in Decision:
The Fraud (Bailiwick of Guernsey) Law, 2009
AG v Massey 11-oct-2022

Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67
R v Ghosh [1982] QB 1053
R v Underwood [2004] EWCA Crim 2256
R v Barton and another [2020] EWCA Crim 575

Blackstone's Criminal Practice 2025
Archbold Criminal Pleading Evidence and Practice 2025

Introduction

1. This judgment is concerned with the need or otherwise for a Newton hearing in the above matter. That decision requires close attention to the issue of plea/basis of plea which, in this case, raises its own issues so I will set out the background in a little detail.

2. The Defendant ("D"), represented by Advocate Newell, faces one count of fraud by abuse of position contrary to sections 1 and 4 of the Fraud (Bailiwick of Guernsey) Law 2009. The Particulars allege that, between certain dates, she, dishonestly and intending thereby to make a gain for herself or another, abused her position as Guardian for her mother, a position in which she was expected to safeguard, or not to act against, the financial interests of her mother, namely by withdrawing, transferring and making payments of money from the bank accounts of her mother, and using that money for her own benefit, or the benefit of a person or persons, other than her mother.

3. D initially pleaded not guilty and a trial was set for later this month, commencing on 22nd or 23rd April. There was, and is, no dispute that D did apply a substantial sum of her mother's

money (in excess of £200,000 - £270,000) to D and others i.e. not for the benefit of her mother and that this has left her mother with insufficient money to meet the costs of her care. The defence, according to her Defence Case Statement, was that D had not acted dishonestly as, in terms, she was carrying out the express wishes of her mother.

4. Recently D indicated that she would change her plea and I was asked by Counsel to indicate a view on whether a Newton hearing might be necessary which I declined to do before the plea had been changed and a proper written basis of plea and response filed by on behalf of the Law Officers of the Crown represented by Crown Advocate Dunford ("P"). On 8th April, Judge Davies sat to take that guilty plea. A written "agreed basis of plea" had been filed, paragraph 1 of which reads:

> *"1. The Defendant intends to change her plea to the extent set out below. Essentially, she maintains that in her own mind, throughout the period in which she used her mother's money for matters not intended directly to benefit her mother, she genuinely believed that her mother (through her words and/or actions) wanted her to do so. The Defendant now realises that she did not properly understand her role as Guardian and that she acted naïvely."*

In the rest of the document, Advocate Newell set out that D accepts that she is dishonest according with the test laid out in the English Supreme Court decision in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67, at para 74, (set out below), summarised the P case, made various points of mitigation and summarised D's position as to the need for a Newton or reverse Newton hearing. There were further submissions filed by email together with an extract from Blackstone's Criminal Practice 2025.

5. Crown Advocate Dunford for the Law Officers, ("P") filed a document entitled "summary of issues to consider at review" (in which he confirmed that the basis of plea was agreed subject to what is said below) together with some authorities and he also supplemented his submissions by email in particular in response to my request that counsel look at section 8-6 in the Crown Court Compendium which covers dishonesty and includes reference to the English Court of Appeal case of R v Barton and another [2020] EWCA Crim 575

6. I heard oral submissions from both counsel on 10th April. There was a need for a speedy decision in this matter if the hearing dates later in the month were to be effective. I made it clear that I had been considering the matter since it was first raised and have carefully considered all that has been submitted even though time did not permit me to refer to everything. I also record that there was a further short hearing on 11th April after I had issued the first draft of this judgment to counsel. I have incorporated the points from that hearing into this judgment. It is to be noted that there is an ongoing application in another case in relation to a Newton hearing. My consideration of that matter has enabled me to refine, but not change, my thinking in this matter. There will be a judgment from that matter.

The Change of Plea

7. I wish to start with the change of plea as I can see that Judge Davies had some concern and required reassurance that it was not equivocal, a concern I shared and I re-visited that topic on 10th April. It is of course necessary to understand the basis of plea in order to consider the question of a Newton hearing.

8. In terms, D is saying in paragraph 1 of the basis of plea as set out above that she believes in her mind that she was not dishonest in that she genuinely believed that she was allowed to spend her mother's money as she did but accepts that her behaviour is dishonest by the standards of ordinary decent people, in view of D's role as her mother's guardian. Further at paragraph 10 of the basis of plea it is said:

> *"10. The Defendant and her mother always enjoyed and continue to enjoy an extremely close relationship. However, the Defendant concedes that it was naïve of her to follow her mother's stated wishes when a Guardianship Order was in place as her mother's wishes should not, objectively viewed, have been acted on without reference to the Family Council."*

9. This seems a surprising basis for a guilty plea until one considers the test for dishonesty in the case of Ivey above (a civil case), which the Court of Appeal confirmed in Barton to be the appropriate test in England for dishonesty in criminal cases, replacing the familiar test in R v Ghosh [1982] QB 1053. The Ivey test is as follows:

> *"The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes : see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."*

10. Although I can see that Ivey has been applied in a number of Guernsey cases mainly involving financial services and lack of probity, I am not aware that it has been applied in any criminal Court. Crown Advocate Dunford submitted that, as the Guernsey Court has always followed Ghosh and the Supreme Court in Ivey and the Court of Appeal (Criminal Division) in Barton had replaced the test in Ghosh with that in Ivey, indeed stating that Ghosh had always been wrong, the Guernsey Court should logically apply the Ivey test in criminal cases. I accept that submission without hesitation.

11. There are various references within Ivey and Barton which make it clear that, even if the stated belief of a defendant that s/he has done nothing wrong is found to be a genuinely held belief, it matters not, as the standard against which conduct is measured is the objective standard, not the subjective standards of a defendant who has different standards from ordinary decent people. That being so, the aspect of the guilty plea of D based on her acceptance that she is dishonest on the objective standard is not rendered equivocal by her stated genuine belief in her own mind that she has not acted dishonestly.

12. Before leaving the topic of plea, I record that I asked defence counsel to confirm that each and every element of the offence was accepted as I was concerned that there had been too much emphasis on the question of dishonesty. Advocate Newell confirmed that all elements were accepted as proven and specifically (1) intending thereby to make a gain for herself or another, and (2) abuse of her position as Guardian. Whilst I harbour some doubt intellectually as to whether there is an inconsistency between D's stated belief and the acceptance of these two elements, I consider that the issues have been aired adequately and counsel has reassured me that the plea is not equivocal.

What remains in dispute between P and D

13. I have the benefit of a P case summary filed last December. The P case is that D was appointed her mother's guardian on 10th December 2020 by the Royal Court on application by D with the support of a Family Council made up of D's husband and D's mother's brother in law and sister in law. Medical evidence was filed by a medical practitioner to the effect that D's mother no

longer had capacity to manage her own affairs. Accordingly, D took control of her mother's finances. She sought, and was later granted by the Court, (supported by the Family Council), permission to sell her mother's home. D accepts that she made numerous payments from her mother's funds which were not for her mother's benefit.

14. Although it is said that P accepts the basis of plea, this does not appear to be the case. Of course I am not bound to accept it even if it is agreed. First, there is an issue in relation to the correct sum of money misapplied. I was told on 10th April that the difference between P and D is around £10,000 and, in the first draft of this judgment, I confirmed my expressed view that this is not a difference which is material to sentence. Crown Advocate Dunford had indicated that he might wish to cross-examine D as to her credibility on the figures, were she to give evidence at any Newton hearing. Following discussions between counsel after the hearing on 10 April, it became apparent that the extent of the difference between them as to the exact sum of money may be greater than thought and may be a Newton issue which will have to be resolved once the position is clearer. I mention here my view that, insofar as it is said somewhere in the papers that D was unable to make any gifts on her mother's behalf, that was wrong as it is accepted that it is in a person's best interests, broadly construed, to continue to make small gifts to close family for events such as Christmas and birthdays.

15. Secondly, and importantly, it appears to me that, whilst P may say that P cannot gainsay what is in D's mind and specifically her stated genuine belief that she did nothing wrong based on conversations with her mother (who lacked capacity), P does not appear to accept this and has listed (to be found in D's basis of plea but confirmed as correct by Crown Advocate Dunford) no fewer than 8 points which contradict D's assertion of that actual belief including her appointment to the role, her mother's incapacity, her duty to act in her mother's best interests, the need to liaise with the Family Council, (which she did not do), that she should not take at face value any apparent wishes expressed by her mother as to payments and the need to prioritise payment of her mother's care fees. Whilst Crown Advocate Dunford has put forward those assertions by way of points of challenge to D were she to give evidence, it must not be forgotten that they represent the positive case P was going to advance at trial. State of mind is, of course, an issue which P can only prove in a case like this by inviting the Court to draw inferences from the circumstances but that does not diminish P's case in any way.

The Applicable Legal Principles

16. The legal principles which are, by custom and in practice, applied in Guernsey to issues of Newton hearings are those applicable in England. Counsel both referred to the 2025 edition of Blackstone's. Following the hearing on 10 April I looked at the relevant passages in Archbold Criminal Pleading, Evidence and Practice at 5A-339ff which I found helpful. As ever, care must be taken in considering the position in England where there are legislative provisions, in this case a Criminal Practice Direction 2023 9.3.3 (set out in Blackstone's) which has no direct equivalent in Guernsey. There are important differences in the constitution of the criminal Courts in the two jurisdictions which, in this case, are significant as sentencing in Guernsey is a carried out by a collegiate bench of Judge and Jurats not a Judge alone as in England. That said, the general principles to be applied remain applicable and, in terms of procedure, I have required a written basis of plea and a written response from P for this hearing in accordance with English practice. Written bases of plea are uncommon in Guernsey but this is a case where it is essential to have one.

17. A Newton hearing in England is one where a Judge sits alone to hear evidence to determine a factual dispute (rather than placing the matter before a jury or dealing with the matter on submissions only). In Guernsey a Newton hearing is conducted with Jurats who will usually then go on with the Judge to sentence the defendant. The principles to be applied here are primarily those relating to a Newton hearing before Judge alone in England. As set out in Blackstone's D20.8ff, the question of the need for a Newton hearing arises where a D pleads

guilty to an offence but on a limited version of the allegations made by P. The issue for a Newton hearing is one of fact not mitigation. This difference was the topic of some discussion at the hearing. In Blackstone's, at paragraph D20.85 (see later), the difference is explained as factual "*where the dispute is about the immediate circumstances of the offence*" which is a "*true Newton*" situation and "*disputes about extraneous matters about which the prosecution witnesses are unlikely to have any knowledge*" which is a "*reverse Newton*" situation (an issue of mitigation).

18. At paragraph 5A-340, Archbold sets out concisely the circumstances in which a Newton hearing is not necessary (1) where the difference in the two versions of the facts is immaterial to sentence – in which case the judge should sentence on the defence version and (2) where the defence version is manifestly absurd so that no evidence need be heard and (3) where the matters put forward by the defendant do not amount to a contradiction of the prosecution case, but rather to extraneous mitigation explaining the background of the offence or other circumstances which may lessen the sentence. This third exception is a reverse Newton situation to which I shall return. I find the Archbold definition of a Newton situation as where the D version contradicts the P case more helpful than the Blackstone's definition which refers to the immediate circumstances of the case.

19. The overriding consideration and the issue which the Judge is required to resolve is that a Defendant is sentenced on a basis which is true and proper even if that means rejecting an agreed basis of plea. It is clear from the above that the first task for the Judge is to identify whether the difference between the prosecution and defence versions amounts to a dispute of fact i.e. that a defendant's version contradicts the prosecution case or whether what a defendant is raising is by way of mitigation. It is axiomatic that the Judge must be fully appraised of the Prosecution's case in order to tell the difference.

20. It is explained in paragraph D20.11 of Blackstone's that the CPD to which I have referred above is derived from the English case of R v Underwood [2004] EWCA Crim 2256. I was not provided with that case but have read it in preparing this judgment and I found paragraphs 5 to 9 (which relate to a dispute on the facts) especially helpful in the case before me:

> *"[5] The third, and most difficult, situation arises when the Crown may lack the evidence positively to dispute the defendant's account. In many cases an issue raised by the defence is outside the knowledge of the prosecution. The prosecution's position may well be that they had no evidence to contradict the defence assertions. That does not mean that the truth of matters outside their own knowledge should be agreed. In these circumstances, particularly if the facts relied on by defendant arise from his personal knowledge and depend on his own account of the facts, the Crown should not normally agreed the defendant's account unless it is supported by other material. There is, therefore, an important distinction between assertions about the facts which the Crown is prepared to agree, and its possible agreement to facts about which, in truth, the prosecution is ignorant. Neither the prosecution nor the judge is bound to agree facts merely because, in the word currently in vogue, the prosecution cannot "gainsay" the defendant's account. Again, the court should be notified at the outset in writing of the points in issue and the Crown's responses. We need not address those cases where the Crown occupies a position which straddles two, or even all three, of these alternatives.*
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> *[6] After submissions from the advocates the judge should decide how to proceed. If not already decided, he will address the question whether he should approve the Crown's acceptance of pleas. Then he will address the proposed basis of plea. We emphasise that whether or not the basis of plea is "agreed", the judge is not bound by any such agreement and is entitled of his own motion to insist that any evidence relevant to the facts in dispute should be called before him. No doubt, before doing so,*

he will examine any agreement reached by the advocates, paying appropriate regard to it, and any reasons which the Crown, in particular, may advance to justify him proceeding immediately to sentence. At the risk of stating the obvious, the judge is responsible for the sentencing decision and he may therefore order a Newton hearing and to ascertain the truth about disputed facts.

[7] The prosecuting advocate should assist him by calling any appropriate evidence and testing the evidence advanced by the defence. The defence advocate should similarly call any relevant evidence and, in particular, where the issue arises from facts which are within the exclusive knowledge of the defendant and the defendant is willing to give evidence in support of his case, be prepared to call him. If he is not, and subject to any explanation which may be proffered, the judge may draw such inferences he thinks fit from that fact. An adjournment for these purposes is often unnecessary. If the plea is tendered late when the case is due to be tried the relevant witnesses for the Crown are likely to be available. The Newton hearing should proceed immediately. In every case, or virtually so, the defendant will be present. It may be sufficient for the judge's purpose to hear the defendant. If so, again, unless it is impracticable for some exceptional reason, the hearing should proceed immediately.

[8] The judge must then make up his mind about the facts in dispute. He may, of course, reject evidence called by the prosecution. It is sometimes overlooked that he may equally reject assertions advanced by the defendant, or his witnesses, even if the Crown does not offer positive contradictory evidence.

[9] The judge must, of course, direct himself in accordance with ordinary principles, such as, for example, the burden and standard of proof. In short, his self-directions should reflect the relevant directions he would have given to the jury. Having reached his conclusions, he should explain them in a judgment."

21. Thus, it is no obstacle to a Newton hearing that the issues are outside the prosecution's knowledge. Paragraph [7] requires the prosecuting advocate to call <u>any</u> (my emphasis) appropriate evidence from which it is clear that there may be no evidence for the prosecution to call. The evidence may be from a defendant alone but the prosecution must test it nonetheless.

22. In Guernsey the practice is that the decision as to whether there is a Newton hearing or not is made by the Judge alone and counsel in this case agreed with me that this means that, if the Judge decides that a Newton hearing is unnecessary because the dispute is immaterial then a defendant should be sentenced on his version and the Jurats will have to abide by that decision. The same may be true of a decision made by the Judge that a Newton hearing is unnecessary because a defendant's version is absurd and no evidence is required but that is not something I need to decide as I will not take that course in this case. I observe that this scenario may require more thought when there is a collegiate sentencing bench than when a Judge is deciding how to proceed in a case in England where s/he sits alone to sentence.

23. As in England, if there is a Newton hearing, the burden is on the Prosecution to the criminal standard to establish the facts. In Guernsey, the Judge directs the Jurats as s/he would for a trial. At my request, Crown Advocate Dunford enquired of a Crown Advocate colleague in Jersey as to what happens there as they also have a collegiate sentencing bench. The answer came back that a Newton hearing was a hearing like any other (criminal) hearing with Jurats with directions in open court. She helpfully supplied a link to the case of <u>AG v Massey</u> 11-oct-2022 which was heard before the Bailiff of Jersey and 5 Jersey Jurats. That case concerned a dispute during sentencing over the defendant's role in an offence of being knowingly concerned in the importation of drugs. He was asserting personal use. The Prosecution contended that this was not material to sentence. The Court disagreed and offered the defendant

an immediate Newton hearing. He declined to participate and there was a warning about adverse inferences. The Court rejected the claim of personal use. The wording of the judgment suggested that the decision that a Newton hearing was required was a collegiate one, which was confirmed subsequently by my own enquiries in Jersey. It is to be noted that the role of Jurats in Jersey is more extensive in the hearings leading up to trial and sentencing so they are more likely to be involved in preliminary hearings.

24. It is clear from all sources that, in England Newton, hearings can happen as part of the sentencing hearing but also that there may be a standalone Newton hearing (see references in Underwood). It may be that they are more likely to be separate in this jurisdiction. I consider it preferable for such issues to be raised in advance, as happened here, so that they can be properly considered and the case managed. As will be seen below, there has been some debate about whether the Social Enquiry Report should be ordered before the outcome of the Newton hearing which will have to be resolved. If the issue of a Newton hearing were to arise in the course of a sentencing hearing (and I am not aware that this has ever happened), the presiding judge will have to decide how to proceed and there can be argument as to whether the Jurats should be involved in the decision about the need for a Newton hearing. I deliberately leave this issue open.

25. Counsel were initially agreed that a failure by D to give evidence at a Newton hearing would leave her open to an adverse inference (as in England). On reflection, Crown Advocate Dunford then did question whether, in Guernsey, there could ever be any adverse inference from a failure to give evidence. I have been unable to establish what the position was in England prior to the change to the right to silence in 1994 by virtue of the Criminal Justice and Public Order Act. On the basis that drawing an adverse inference from silence would be contrary to the position in Guernsey, it seems appropriate to me that, in a Newton hearing, a direction be given to the Jurats in terms similar to that given when a defendant does not give evidence at trial. The direction would be along the lines of "the fact that the defendant has not given evidence is not, of itself, proof of the facts alleged by the Prosecution. On the other hand, it means that there is no evidence from the defendant to undermine, contradict or explain the evidence put before you by the Prosecution (it may be appropriate to add "or support the points raised by the defence"). However, you still have to decide whether, on the Prosecution's evidence, you are sure of the Prosecution's case". Counsel were agreed that, were D to give evidence and be disbelieved after a Newton hearing, this would expose her to a loss of credit.

26. Finally I turn to reverse Newton hearings or, put another way, the requirement to prove mitigation which is set out, including the principles applicable in England, at Blackstone's D20.85 ff and as the third exception as set out in Archbold 5A-340 ff. It is only where the issue is one of mitigation rather than fact that consideration of a reverse Newton situation applies. I had originally included my views on the applicable principles and procedure in this judgment but, in view of my decision below that we are in a Newton situation, not a reverse Newton situation, I do not need to include that material in this judgment. It is covered in the judgment The Law Officers of the Crown v Johnson.

Counsel's submissions

27. Advocate Newell's submission was that no Newton hearing is required, the issue being one of mitigation. D can, if necessary, give evidence to the sentencing Court as part of mitigation and it will decide if it accepts or rejects it. She relied on Crown Advocate Dunford's submission that he had no evidence to call and rather would be relying on inference to disprove D's claimed belief that she was not dishonest. She indicated that the only of evidence which D could call would be from D herself.

28. Crown Advocate Dunford accepted that the change of plea had left unresolved the subjective part of the Ivey test. The issue being raised by D is that of her subjective belief. He submitted

that D's state of mind is a question of fact but he did not concede that this rendered it a Newton issue as opposed to a reverse Newton issue. That, he submitted, is determined by whether it is within D's knowledge. He relied on the passage about "extraneous" matters at paragraph D 20.85 to identify the issue as one which is a reverse Newton especially the assertion as to conversations between D and her mother. He did not particularly dispute that there were such conversations. His point was that D should not have acted on any instructions given or wishes expressed as her mother had lost capacity and D was her guardian. He had the points set out in response to the agreed basis of plea which could be put to her to rebut her claim but they would require the Court to draw an inference rather than being direct evidence. There might be some direct evidence on the figures with which to challenge her credibility.

29. In oral submissions Crown Advocate Dunford said that he was questioning whether he could, were the burden on P at a Newton hearing, properly adduce evidence of D's state of mind, which was confirming his view that this was not a Newton situation but a reverse Newton situation with the burden on D. He revised this position in his email after the hearing to acknowledge that if there is material evidence on the point to be adduced, P can properly do so.

30. In terms of procedure, his submission was that greater preparation is required in terms of papers, issues and questions because of the presence of Jurats. He made the point that there is no known previous example of a reverse Newton in the Royal Court and the procedure would need to be determined.

31. Neither counsel argued that the issue of D's belief was not significant to sentence. Crown Advocate Dunford submitted that it goes to the level of her culpability and, if she is believed, then the position is akin to strict liability but, if she is not believed, then it could make a "massive difference" to sentence.

32. Turning to the question for determination if there were a Newton hearing, Counsel proposed a joint question *"Have the Prosecution proven to the criminal standard of proof, meaning so that you are sure, that the Defendant did not genuinely believe her actions were honest when she took the amounts of money from her mother as set out in the admissions."*

Discussion/Application of Legal Principles to the Facts

33. The first question I need to answer is whether the issue in dispute (i.e. whether D genuinely believed that she was able to spend her mother's money as she did for the reasons she has given) is an issue of fact so a Newton falls to be considered or an issue of mitigation in which case the issue is one of reverse Newton.

34. Crown Advocate Dunford submitted that the disputed issue being D's state of mind is an issue of fact but he disagreed that this led to its resolution by way of a Newton hearing because D's state of mind is known only to D and is therefore extraneous to P's knowledge which places it into the category of mitigation/reverse Newton for D to prove. Advocate Newell also contended that the issue was not one of fact but mitigation.

35. In my judgment, the distinction between fact and mitigation is not always cleanly drawn but it is important to start with the prosecution case to determine whether what is being advanced contradicts it or is extraneous to that case. It must be remembered that factual issues can be mitigation in the sense of mitigating factors relating to the offence as opposed to personal mitigation such as a D's good character (in the broad sense), mental health struggles, losses or background. In my judgment, too much emphasis has been placed by Crown Advocate Dunford on the word "extraneous" where it appears in Blackstone's paragraph D20.85 in the context of a reverse Newton. Just because certain matters may be outside P's knowledge does not place those matters automatically into the reverse Newton situation. Here the fact that ultimately only D knows what her state of mind was and only she can evidence any conversations with

her mother does not change what Crown Advocate Dunford rightly identified as the factual issue of D's state of mind into one of mitigation. Her state of mind is part of the elements of the offence as it forms part of dishonesty and intention is also an element. The situation where the prosecution lacks evidence positively to dispute a defendant's account and the issue being outside the prosecution's knowledge are still squarely within the scope of a Newton hearing (see paragraph [5] of Underwood above (and paragraph g. of the CPD derived from it). In this case P would have gone to trial ready to prove D's dishonesty under both limbs of Ivey with the evidence referred to above (the 8 points) from which P would have invited the Court to determine D's actual belief before applying the objective test. The Court might have decided that D was not subjectively dishonest and that would not have been fatal because of the second objective limb of Ivey which D properly concedes is satisfied but that is irrelevant. The fact that the evidence P would lead as to state of mind is by way of inference does not matter. It is still evidence of a positive nature. Paragraph [7] of Underwood is clear that the prosecution may not have any evidence to call at all in a Newton hearing. That is not the situation here. There is evidence to call and Crown Advocate Dunford is even considering challenges to D's credibility. In my judgment therefore this is clearly a Newton situation not a reverse Newton one.

36. The next point to consider is whether the dispute is of sufficient significance to justify having a Newton hearing. This I answer without hesitation in the affirmative. This is a serious breach of trust against a vulnerable person. In my judgment, the Court's decision on D's actual state of mind could make a material difference to sentence.

Decision

37. My decision is that there is an issue of fact, that it is material to sentence and that there should be a Newton hearing in this case on 23rd April with a bundle to be lodged for me at least no later than the previous Friday.

38. I turn now to the question to be posed to the Jurats. We agreed at the hearing on 11th April that this can be resolved by further discussion between now and the hearing. It is important that the question does not suggest that the burden is on D. It may be that the Jurats should be presented with a summary of the two versions and be asked if they are sure that P has proved its version to the criminal standard.

39. I note the renewed submission of Crown Advocate Dunford that there should be no SER ordered until after any hearing. I will be asking Advocate Newell to contact Probation.

40. At the very end of the hearing on 10th April, in response to my concerns about the presentation of D, Advocate Newell disclosed that D has medical issues which may impact on her ability to give evidence. From what was said on 11th April, this remains a live issue, so I repeat my encouragement to her to file promptly any medical evidence and applications for Special Measures. I will deal with applications on the papers if I have P's response and counsel's agreement so to do. On 11th April we also discussed the bundle and the issue of the Jurats reading it in advance and I await counsel's views. If the bundle is not to be read in advance, time for reading will be required. In view of the uncertainty of the scope of the hearing and specifically whether there is going to be an issue on the figures, I have directed that we retain the two day slot. This can be reviewed. Advocate Newell needs to secure instructions from D as a matter of urgency on the figures and following my decision above.

Catherine Maureen Fooks
Judge of the Royal Court

23rd May 2025