Application for the recusal of LB Finch from hearing the appellant's appeal was refused; no sufficient grounds of actual or apparent bias were established, as reliance on the applicant's recollection of prior judicial remarks was inadequate and unsupported by evidence.

[2025]GRC075

IN THE ROYAL COURT OF GUERNSEY

Between:

JOHN FLINT — **Appellant ("A")**

v

THE LAW OFFICERS OF THE CROWN — **Respondents ("R")**

Application for Judicial Recusal ("Recusation")

Date of hearing: 26 September, 2025

Decision handed down on: 16 October, 2025

Before: John Russell Finch, Esq, OBE, Lieutenant Bailiff

Counsel for the Appellant ("A"): Advocate S Maindonald

Counsel for the Respondent ("R"): Advocate J McVeigh

Cases referred to in judgment:

Le Huray v Law Officers [2024] GCA 008

Ablyazov v JSC BTA Bank [2013] EWCA Civ 1551;
Locobail v Bayfield [2000] QB 451;
Porter v Magill [2001] UKHL 67;
R(S) v Camberwell Green Youth Court [2004] EWHC 1043;
Shaw v Kovac [2017] EWCA Civ 1028;
Triodos Bank NV v Dobbs [2001] EWCA Civ 468

DECISION

Introduction

1. On 4 September 2025, A pleaded guilty to an offence of harassment under section 2 of the Protection From Harassment (Bailiwick of Guernsey) Law, 2005. The Judge of the Magistrate's Court sentenced him to 6 months' imprisonment, plus a 2 year Probation Order and a Restraining Order, the terms of which were not resisted. By Notice of Appeal dated the same day, A contends that the sentence (in effect the period of imprisonment) as manifestly excessive and/or insufficient credit was given for A's guilty plea and mitigation. Advocate Maindonald, who appeared for A in the Court below continues to act for him.

2. The Appeal Against Sentence is due to be dealt with by myself and a Bench of at least 7 Jurats. The present application is to recuse myself from the position of presiding Judge for the Appeal. Written Skeletons were provided by both sides and an oral hearing took place on 26 September, 2025, where submissions were made in accordance with the Skeleton Arguments that had been lodged.

Grounds for the Application

3. Two limbs were addressed by Advocate Maindonald, which can be summarized as, firstly, impartiality, and secondly the perception of bias. The background would appear to be as follows; the nub of A's case being found in paragraphs 2 and 3 of the Skeleton Argument:

> *"2. This application is made on the basis there is a real perception of bias given that Judge Finch (as he was then) sat as the sole Judge in the Magistrate's Court on three earlier occasions when the Appellant has been convicted; and two of those three occasions involved like offending.*
>
> *Background*
>
> *3. The then Judge Finch sat as the Judge in the Magistrate's Court in respect of the Appellant's convictions on the 17th June, 2004, the 15th August, 2005, and the 3rd September, 2010. The Appellant's previous offending of 2004 and 2010 related to offences against women and in respect of which he was sent to Prison. The Appellant specifically recalls the then Judge Finch, in his sentencing remarks, making negative comments about him, indicating his prejudice against offending against women."*

The Test for Recusal

4. There is a helpful recent Guernsey authority to consider and follow. In Le Huray v Law Officers [2024] GCA 008, Montgomery JA stated that (in an appeal alleging the real possibility of bias by a Jurat), the test in Porter v Magill [2008] UKHL 67, already expressly adopted in Guernsey, should be applied. Would a fair-minded and informed observer conclude that there was a real possibility, or real danger (the two being the same) that the tribunal was biased? Montgomery JA added, at paragraph 20 that: "*the test for apparent bias is not an atavistic one but must be founded on reason."*

5. In considering such an application, the cautionary words of Chadwick LJ (a Judge well-known in Guernsey) should be carefully noted - in that a recusal application should not be allowed simply because the judge considers it preferable not to hear the case. In Triodos Bank NV v Dobbs [2001] EWCA Civ 468, Chadwick LJ made the following points:

> *(i) It is always tempting for a judge against whom criticisms are made to say that they would prefer not to hear further proceedings in which the critic is involved. This is tempting because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against them.*
> *(ii) Rightly or wrongly, a litigant who does not have confidence in the judge who hears their case will feel that, if they lose, they have in some way been discriminated against. But it is important for a judge to resist the temptation to recuse themselves simply because it would be more comfortable to do so.*
> *(iii) If judges were to recuse themselves whenever a litigant (whether it be a represented litigant or a litigant in person) criticised them (which sometimes happens not infrequently), a position would soon be reached in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases."*

A's Reasons for the Application

6. I stated at the oral hearing that I had absolutely no recollection of A and the cases I dealt with him as Defendant. Since 2010 I have dealt with a large number of cases, criminal, civil and family, principally in the Royal Court and occasionally called to assist, in the Magistrate's Court. A's Skeleton refers to my "*prejudice against offending against women*" (paragraph 3) and also my "*prejudices against his offending"* (paragraph 14). A "*fears that if [I] am to hear his appeal, he will never have the fair trial that is guaranteed to him in law"* (paragraph 14). In oral submissions, Advocate Maindonald encapsulated this as a "*bias against him offending against women"*. R responds that there are no transcripts put forward of what was apparently said and only A's memory is relied upon. A and R also referred to the case of R(S) v Camberwell Green Youth Court [2004] EWHC 1043, where Moses J observed, in a somewhat different context from the present case that:

> *"the mere fact that a justice is aware of a previous conviction is not sufficient to disqualify that justice from trying the case of an accused of whose previous convictions the justice is aware."*

Observations

7. Although not directly concerned with the present factual situation, it is worthy of note that where a judge has previously (whether in the same case or another case), found the evidence of one of the parties to be unreliable, this is not of itself sufficient to give rise to apparent bias on the part of the judge. Examples from English cases include Locobail v Bayfield [2000] QB 451, which includes the observation that:

> *"The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection."*

So, in Shaw v Kovac [2017] EWCA Civ 1028, the Court of Appeal held that the fact that the appellant did not wish to have two of the judges sitting on her appeal who had previously been involved in decisions that were adverse to her could not, without more, result in recusal (paragraph 25). Finally, as there are a number of cases to the same effect, in Ablyazov v JSC BTA Bank [2013] EWCA Civ 1551, the Court of Appeal rejected an argument of apparent bias based on the trial judge having heard, before the trial, a committal application in which he found a number of complaints proved and sentenced one of the parties to 22 months' imprisonment.

8. It is accepted that these were civil cases, but they are wholly consistent with the observations of Moses J in the Camberwell Green case cited earlier. Perhaps it is also worth observing that the circumstances of these cases are all somewhat starker than those in the present application. The problem in this case is the nebulous nature of the facts behind A's contentions.

Merits

9. I observed during the course of the oral submissions, that the fact a judge expresses disapproval in sentencing for offences against women is in the same category as like expressions when dealing e.g. with a public house glassing or serious sexual offences. This does not exactly equate to the word "bias" and, censuring offenders in these types of matters is (where such sentiments are expressed) hardly an unusual, still less improper characteristic. It is the word "bias" which is inappropriate, in the absence of remarks that would (improperly) show real personal animus. The word should not be construed as an alternative to "disapproval", or "castigation". These observations apply both to alleged actual or perceived bias.

10. But there is a far more fundamental problem that A's application faces. As R argued, at paragraph 3 of their Skeleton case and indeed orally, there is no transcript of any of the remarks made in sentencing A on the three occasions I have apparently dealt with him – 17 June 2005, 15 August 2005 and 3 September 2010. Reliance on A's memory of these events is not good enough. As P suggests, he "*may not have been able to differentiate judicial comment from what he might have perceived as personal attack"*. Hence, the assessment of any comments made is not possible on what has been put forward. These submissions by R are manifestly well-founded. R also refers to the nature of appeal proceedings before the Royal Court. As mentioned in paragraph 2 above, the constitution of the Court will be a judge plus at least 7 Jurats. It is not a trial, no evidence is received on an appeal against sentence (in the absence of the most wholly exceptional circumstances, which do not arise in the present case). The judge will guide and assist the Jurats when considering the appeal, but does not decide it.

Conclusion

11. The recusation application is without merit and no grounds have been put forward that can properly support it, so it fails. The question of what would apply where there was a contested trial in the Magistrate's Court is another matter, but it is likely that the same principles and authorities will be relevant.

12. Application Refused.

J R Finch OBE
Lieutenant Bailiff

16 October, 2025