Anchor Trust v Jersey Financial Services Commiss

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	27 October 2005
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Text

[2005] JRC 148

ROYAL COURT

(Samedi Division)

Before:

M. C. St. J. Birt, **Esq., Deputy** Bailiff **with** Jurats Le Cornu **and** Morgan

Between
Anchor Trust Company Limited
Appellant
and
Jersey Financial Services Commission
Respondent

Advocate C. J. Scholefield **for the Appellant**.

Advocate J. D. Kelleher **for the Respondent**.

Authorities

Financial Services (Jersey) Law 1998.

Interface Management Limited v Jersey Financial Services Commission (2003) JLR 254.

Island Development Committee v Fairview Farm Limited (1996) JLR 306 CAS.

Taylor v Island Development Committee 1969 JJ 167.

In Fairview Farm the Court of Appeal p.306.

Token Limited v Planning and Environment Committee (2001) JLR 698 p.9.

Planning and Environment Committee v Le Maistre (2002) JLR 389.

Trump Holding Limited v Planning and Environment Committee (2004) JLR 232.

Trump Holding Limited v Planning and Environment Committee [2004] JRC 011

Associated Provincial Picture Houses v Wednesbury Corporation (1948) 1 KB 223

Walters v States Housing Authority (1997) Guernsey Law Journal 39.

Drug Trafficking (Jersey) Law 1998.

Proceeds of Crime (Jersey) Law 1999.

Money Laundering (Jersey) Order 1999.

Re v Home Secretary (1994) 1 AC at 560.

Trust Company Business Codes of Practice issued in 2001.

Porter v Magill (2002) 2 AC 357 at 494.

R (on the application of Bewry) v Norwich City Council 2001 EWHC Admin 657.

Costain Limited v Strathclyde Builders Limited (2004) SCLR 707.

Stoop v Royal Borough of Kensington & Chelsea (1992) 1 PLR 58.

R v Birmingham City Council Ex p Quietlynn Limited (1985) 83 LG R 46.

Re Poyser and Mills Arbitration

(*Blenheim Trust Company Limited v Morgan* Jersey Unreported 8th October 2004).

Abacha.

R v Secretary of State for the Home Department ex parte Doody [1994] 1 AC 560.

Index

Bailiff DEPUTY

1 This is an appeal by Anchor Trust Company Limited ("Anchor") against the decision of the Jersey Financial Services Commission refusing to register Anchor to carry on trust business pursuant to Article 9 Financial Services (Jersey) Law 1998 ("the 1998 Law"). We propose to use the numbering in the Revised Edition of the Law.

A. The statutory framework

2 Under the provisions of Article 7 of the 1998 Law it is now unlawful for a Jersey incorporated company to carry on trust business unless registered by the Commission under the 1998 Law. The Commission is the body responsible for financial regulation in the Island. It consists of a Board of Commissioners, all of whom are appointed by the States. Three of the present Board are persons from outside the Island with particular expertise in financial regulation; the remainder are from within the Island.

3 Anchor is a trust company which has been carrying on business in the Island. In accordance with the requirements of the 1998 Law, it submitted an application for registration in 2001. Under the transitional provisions of the Law, it was allowed to carry on such business pending a decision on its application.

4 Article 9(3) of the 1998 Law sets out the grounds upon which the Commission may refuse registration of a trust company:–

> ***"(3) The Commission may refuse to register a person on one or more of the following grounds, namely that –***
>
> ***(a) having regard to the information before the Commission as***

to the –

(i) integrity, competence, financial standing, structure and organisation of the applicant,

(ii) persons employed by or associated with the applicant for the purposes of the applicant's business or who are principal persons in relation to the applicant,

(iii) description of business which the applicant proposes to carry on,

the Commission is not satisfied that the applicant is a fit and proper person to be registered;

(b) the applicant has at any time and whether or not in relation to the application, in any case where information was required under this Law in any connection –

(i) failed to provide any such information, or

(ii) provided to the Commission information which was untrue or misleading in any material particular;

(c) .....

(d) the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business has been convicted –

(i) of an offence under this Law, or

(ii) of any offence involving dishonesty;

(e) it appears to the Commission, as a result of information provided in pursuance of requirements of or under Article 8, or information otherwise obtained, that –

(i) in the best interest of persons who may transact investment business with the applicant or, if the applicant intends to carry on trust company business, persons who may enter into agreements for the provision of services to be provided by the applicant when carrying on trust company business or persons who may receive the benefit of services to be provided or arranged by the applicant when carrying on trust company business,

(ii) in order to protect the reputation and integrity of

Jersey in financial and commercial matters, or

(iii) in the best economic interest of Jersey,

the applicant should not be registered; or

(f) the Commission has reason to believe that at any time there has been a failure on the part of the applicant to follow a Code of Practice issued under Article 19."

5 The 1998 Law provides a right of appeal against the decision of the Commission at Article 11(3) as follows:–

> ***"Any person aggrieved by such refusal ….*** may appeal to the Court …. within one month from the date on which notice in writing has been given to the person under Article 9(5) …… on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case."

B. Dispute as to the test on appeal

6 In *Interface Management Limited v Jersey Financial Services Commission* (2003) JLR 254 the Court reviewed the position on appeal in the light of the decision of the Court of Appeal in *Island Development Committee v Fairview Farm Limited* (1996) JLR 306 and summarised the position at paragraph 35 as follows:–

> ***"It follows that, adapting the test in Taylor, the Court will look at three aspects on an appeal.*** First, it will consider whether the decision was one which the decision-maker was empowered to make i.e. was the decision ultra vires? Secondly, it will look at the correctness and fairness of the procedure in order to decide whether the proceedings of the decision-maker were in general sufficient and satisfactory. Thirdly, it will look at the merits of the decision and decide whether it considers that the decision was unreasonable."

In his written submissions Mr Kelleher submitted that the Court in *Interface* had not set out the position accurately and we must therefore address the position briefly.

7 Historically the test applied by the Royal Court in administrative appeals was threefold. The Court had to satisfy itself that:–

(i) the proceedings of the Committee were in general sufficient and satisfactory;

(ii) the decision was one which the law empowered the Committee to make; and

(iii) the decision reached by the Committee was one to which it could reasonably

have come having regard to all the circumstance of the case. See *Taylor v Island Development Committee* 1969 JJ 167.

8 In *Fairview Farm* the Court of Appeal held at 306 that the test at (iii) adopted by the Royal Court was the test established in England for judicial review and known as ' *Wednesbury*unreasonableness' or, more recently, 'irrationality'. The Court of Appeal held that the Royal Court had fallen into error in this respect; it was sitting on appeal from an administrative body, not hearing an application for judicial review. The Court of Appeal held at 317:–

> ***"In our judgment, therefore, the above statement of the Royal Court in Taylor was wrong.*** The duty of the Court on appeal under Article 21 is not merely to consider whether any reasonable body could have reached the decision which the Committee did reach, but to decide whether the Court considers that that decision was, in its view, unreasonable."

9 The Court of Appeal did not elaborate on the difference between a finding that a decision was unreasonable and a finding that a decision was one which no reasonable body could have reached (*Wednesbury* unreasonableness) but it is clear from the judgment that it considered that there was a difference; otherwise there was no point in substituting one test for the other.

10 The meaning of 'unreasonable' was helpfully elaborated by Bailhache, Bailiff in the case of *Token Limited v Planning and Environment Committee* (2001) JLR 698 at para 9:–

> ***"The Solicitor General submitted that the decision in Fairview Farm did not entitle the court to find that the Committee's decision was reasonable but quash it because the court had reached an equally reasonable but different decision.*** We agree. The court might think that a Committee's decision is mistaken, but that does not of itself entitle the court to substitute its own decision. The court must form its own view of the merits, but it must reach the conclusion that the Committee's decision is not only mistaken but also unreasonable before it can intervene. There is an element of semantics here but there is, nonetheless a qualitative difference between finding that a decision is unreasonable, rather than simply mistaken. To put it another way, there is a margin of appreciation before a decision which the court thinks to be mistaken becomes so wrong that it is, in the view of the court, unreasonable."

That statement has subsequently been approved by the Court of Appeal in *Planning and Environment Committee v Le Maistre* (2002) JLR 389 and *Trump Holding Limited v Planning and Environment Committee* (2004) JLR 232.

11 Mr Kelleher submitted that the Court of Appeal in *Fairview Farm* had fallen into error in considering that there was a difference between unreasonableness and *Wednesbury* unreasonableness. He accepted that, where there was an unfettered right of appeal, the

Court's role on appeal was far wider than in judicial review proceedings. However, he contended that, where a statute only allowed the Court to intervene on appeal on the ground that the decision was unreasonable, there was no difference between the exercise of the appellate function and the exercise of a judicial review function. The test to be applied in deciding whether to allow the appeal or quash a decision subject to judicial review was the same.

12 We reject Mr Kelleher's submission. In our judgment there is a difference of degree between unreasonableness and *Wednesbury* unreasonableness. We so conclude for the following reasons:–

The comments of Beloff J A are inconsistent with Mr Kelleher's submission.

(i) We are bound by the decision of the Court of Appeal in *Fairview Farm* as approved in subsequent cases. It is clear that, in that case, the Court of Appeal considered there to be a difference between the test on appeal and that on judicial review. It specifically disapproved of the formulation in *Taylor* which articulated the test of *Wednesbury* unreasonableness as the test on appeal.

(ii) In the *Wednesbury* case itself (*Associated Provincial Picture Houses v Wednesbury Corporation* (1948) 1 KB 223) a clear distinction was drawn between *Wednesbury* unreasonableness (necessary for judicial review) and the court considering a decision to be unreasonable in the ordinary sense of the word. Thus, in a passage specifically relied upon by the Court of Appeal in *Fairview Farm* at 317, Lord Greene, MR said this at 230:–

> ***"[I]f a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere ….***. I think Mr Gallop in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether."

(iii) The decision of the Guernsey Court of Appeal in *Walters v States Housing Authority* (1997) Guernsey Law Journal 39 is to like effect. The case involved an appeal from the Housing Authority, which lay on the grounds that the decision was *ultra vires* or was an unreasonable exercise of the Authority's powers. The issue before the Court of Appeal was whether a finding by the Royal Court that the Authority's decision was unreasonable was a finding of fact or a finding of law. This was relevant because it would determine whether there was a further appeal to the Court of Appeal. The Court of Appeal held that it was a finding of fact and therefore a matter for the Jurats, not the Bailiff. But in passing the Court — in a judgment delivered by Beloff J A, a judge with particular expertise in administrative law — cited with approval from *Fairview Farm* and made it clear that there was a difference between a decision which was *Wednesbury* unreasonable (which was a matter of law

for the Bailiff) and one which was merely unreasonable (which was a matter of fact for the Jurats). Thus at 46 Beloff J A said this:–

> ***"It seems to us that there are at any rate five possible views which may be taken on appeal by the Royal Court against an exercise of power by the Housing Authority:–***
>
> > ***(1) That it is the Bailiff's view that the power was exercised ultra vires, in a way other than*** *Wednesbury* ***unreasonably or irrationally.*** In such a case the Bailiff would withdraw the matter from the Jurats since, as a matter of vires, that it is to say, law, it would fall within his exclusive province. The Court would in consequence allow the appeal.
> >
> > ***(2) That it is the Bailiff's view that the decision was*** *Wednesbury* ***unreasonable or irrational.*** The same procedural consequences would ensue as in (1).
> >
> > ***(3) That it is not in the Bailiff's view an ultra vires (including*** *Wednesbury* ***unreasonable) exercise of power, in which case the Bailiff would direct the Jurats that it was for them to determine whether the decision was unreasonable, which, in our view, he should emphasise means something other than that they themselves would have come to a different decision had they been the Authority.*** In the case of Re W to which I have referred above, Lord Hailsham L C said at p700 between letters D & E:–
> >
> > > ***"Not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable.*** There is a band of decision within which no court should seek to replace the individual's judgment with his own ……."
> >
> > ***Mutatis mutandis, it seems to us that this is the approach that the Jurats should be directed to adopt towards the decision of the Authority insofar as they are free to consider such decision.*** If the Jurats then consider, having weighed up all the evidence, that the decision reached by the Authority was unreasonable, they should so say and the Court would in consequence allow the appeal.
> >
> > ***(4) If, upon such direction by the Bailiff, the Jurats merely consider that they themselves would have come to a different decision but that the Authority's decision under appeal is not unreasonable, the appeal must be dismissed.***

(5) If, upon such direction by the Bailiff, the Jurats consider that the Authority's decision was right, equally the appeal must be dismissed."

13 In our judgment these authorities confirm that there are at least three possible degrees of 'wrongness' which the Court may find in respect of a decision under appeal. In ascending order of 'wrongness' they are as follows:–

(i) The decision was wrong in the sense that it is not the decision which the Jurats would themselves have reached.

(ii) The decision was wrong to such an extent that the Jurats would categorise it as unreasonable.

(iii) The decision was wrong to such an extent that it goes beyond merely being unreasonable and becomes a decision to which no reasonable decision-maker could have come i.e. ' *Wednesbury* unreasonable' or 'irrational'.

14 On an appeal under the 1998 Law (and any similarly worded Law) the Jurats should dismiss the appeal if their conclusion falls within (i) of the preceding paragraph but should allow the appeal if it falls within (ii). Contrary to Mr Kelleher's submissions, the decision does not have to be categorised as falling within (iii) before an appeal can be successful.

15 On a final note we should mention that Mr Kelleher criticised the introduction in the comments of Bailhache, Bailiff in *Token* and my own comments in *Interface* of a reference to looking at the merits of the case. We have carefully considered that submission but in our view the Court must undoubtedly review the merits of the decision under appeal in order to decide whether, in the Court's view, the decision was right, was wrong or was unreasonable. As Beloff J A stated in the passage referred to above, the Jurats must weigh up all the evidence before they can decide whether a decision was unreasonable. They must therefore assess the merits of the decision. That does not mean that they may substitute their own decision on the merits for that of the decision-maker; as already mentioned they may only intervene if their assessment of the merits leads them to the conclusion that the decision was unreasonable.

C. The procedural history of the application

16 As in *Interface* we shall refer to the executive team of the Commission under the Director General as the Executive and we shall refer to the members of the Board of Commissioners (other than the Director General) as the Board. All companies conducting trust business had to apply for registration under the 1998 Law by 2 nd February 2001. Under the transitional provisions all applicants were permitted to carry on business pending the grant or refusal of their application. Given the large number of applications (over 200 according to the affidavit of the Deputy Director General of the Commission) applicants were divided into

categories according to the Executive's view of the risk attaching to them. Those categorised as 'higher risk' were left over until the others had been dealt with. Anchor was apparently placed in the higher risk category.

17 In early 2002 the Executive was informed by the Jersey Financial Crimes Unit ("JFCU") that they had served production orders under the Drug Trafficking (Jersey) Law 1998 in respect of certain clients of Anchor. These related particularly to a Mr Adderson who in 2001 had been arrested in England for conspiracy to import controlled drugs.

18 In May 2002 the Executive carried out a pre-authorisation visit to Anchor in order to assess its suitability for registration. Following the visit a report was prepared which highlighted several areas of concern to the Executive. Thereafter there were exchanges between Anchor and the Executive about these concerns. The Executive decided that it should review in detail the files which had been the subject of the production orders served by the JFCU. It decided to do so through an Inspector and on 14 th November 2002 appointed Mr Stephen Platt as an Inspector under Article 33 of the 1998 Law. At that stage he had fairly limited terms of reference; his scoping letter stated that he was to review the files which had been the subject of a production order with a view to evaluating the extent of Anchor's compliance with the Proceeds of Crime (Jersey) Law 1999 and the Codes of Practice issued by the Commission.

19 The Inspector produced a report on 14 th February 2003 ("the February Report"). It raised a number of concerns about Anchor and the Executive accordingly issued a second scoping letter dated 14 th March 2003 which extended the scope of the Inspector's review. In particular it allowed him to interview past and present employees of Anchor. According to the Executive, the primary purpose of the extended scoping was to see if the shortcomings identified by the February Report in relation to the limited number of files which had been inspected were more widespread or whether they could be attributed solely to the actions of a former director, Mr Marshall. The February Report was not delivered to Anchor at that stage and we will revert to this in due course.

20 In July 2003, following a review of Anchor's audited accounts for the year ended 30 th April 2002, the Executive requested Anchor to appoint Deloitte & Touche under Article 32 of the 1998 Law to review Anchor's financial accounting procedures and management reporting framework. Their report was issued on 23 rd January 2004.

21 Difficulties were encountered in connection with the interview of witnesses by the Inspector. In particular, a dispute arose as to whether it was appropriate for Advocate Scholefield, who represented Anchor, to be present at the interviews and to represent the employees who were being interviewed by the Inspector. These difficulties were eventually resolved and the Inspector finally produced a draft Report in June 2004. He initially only sent the draft to the Executive. According to her affidavit, the Deputy Director General, Mrs Hatton, asked him to re-format his Report in order specifically to deal with the matters

raised in the scoping letter. The Inspector made a number of changes to the draft. The amended draft, together with the original draft and the February Report were sent to Anchor for their comment.

22 On 30 th July 2004 Anchor sent detailed comments (some 88 pages) on the draft to the Inspector. It is fair to categorise the response as extremely critical. Thus in the introductory page Anchor described the draft Report as a 'malicious perversion of the truth' and asserted that the Inspector had shown 'a complete lack of integrity, competence and rationality'. On 9 th August the Inspector produced a 20-page response to Anchor's criticisms and he issued his final Report on 12 th August ("the August Report"). The February Report was included as an annexe. The August Report was very damning of Anchor. Thus the summary read as follows:–

> *"(i) Barry Shelton, the managing director and principal shareholder of Anchor Trust is a dominant individual whose influence within the business appears to be largely negative from a compliance and risk management perspective.*
>
> *(ii) Compliance with client take-on procedures is deficient.* This is evidenced through the take-on of clients as recently as January 2004.
>
> *(ii) Certain individuals employed by Anchor Trust as directors, senior trust administrators and administrators do not appear to have sufficient competence to discharge their functions in a manner that adequately protects Anchor from the risk of money laundering and a range of other related risks.*
>
> *(iv) Murray appears to be the only director who showed any signs of a willingness to follow sensible risk management practices.* However, even she displayed lack of comprehension of the correct manner in which fiduciary duties should be discharged by trustees.
>
> *(v) The arrangements for the handling of internal suspicious transaction reports by the MLRO are inadequate.*
>
> *vi) A number of internal suspicion reports have been handled in- appropriately.* Some have been dismissed without proper consideration.
>
> *(vii) The level of anti-money laundering awareness amongst directors and staff at Anchor is inadequate.*
>
> *(viii) There is insufficient evidence of effective management of the business by the board of Anchor.*
>
> *(ix) Certain client relationships have been formed by Anchor since July 1999 in potential breach of the provisions of the Money Laundering (Jersey) Order 1999.*
>
> *(x) There are a number of relationships at Anchor that appear to have no legitimate commercial rationale.*

(xi) Marshall, a former director and shareholder of Anchor, engaged in highly suspect and potentially illegal activity prior to his departure from Anchor.

(xii) Anchor reacted inadequately to the revelation that its client Lee Adderson had been convicted and imprisoned for conspiracy to import drugs into the United Kingdom, by failing to review other relationships with individuals who were connected and associated with him.

(xiii) Anchor reacted inadequately to the risks that were posed by the relationships that were formerly managed by Marshall following his departure despite being fully aware that he had been engaged in suspicious practices.

(xiv) The weaknesses in the provision of financial services that were identified in the draft Report were evident in other relationships at Anchor.

(xv) Since employing the services of an external compliance adviser in October 2003, Anchor's internal compliance procedures have improved. However, they remain deficient in certain respects.

(xvi) Anchor appears to have facilitated the provision of financial services business by DFM Consultants and/or Dimsey in breach of the Financial Services (Jersey) Law following the purchase of the DFM book of business by Anchor in 1998.

(xvii) Anchor may have facilitated through the incompetent provision of financial services, the laundering of property connected to a convicted drug trafficker and persons with whom he is associated.

4.1 ……..

4.2 I am acutely aware of the negative impression conveyed by the points I have outlined above. I regret to say however that very little of what I have seen of Anchor and the way in which it provides financial services has enabled me to reach positive conclusions about the organisation."

23 On 13 th September 2004 Mr Carse, the Director General, sent a letter to Anchor stating that he was minded to recommend to the Board that it refuse to register Anchor as a trust company business. His letter contained as Appendix A a 49-page memorandum describing the Executive's reasons for their view. This was in turn accompanied by voluminous documents which were relied upon. For convenience we shall refer to Appendix A as "the Minded to Refuse Letter" and references to paragraphs of the Minded to Refuse Letter are references to those paragraphs in Appendix A.

24 On 29 th October Anchor sent an 80-page response to the Minded to Refuse Letter seeking to rebut the concerns expressed by the Executive. The Executive then prepared a 29-page memorandum responding to the points raised by Anchor ("the Reply Memorandum").

25 On 17 th November 2004 the Director General submitted a memorandum to the Board recommending refusal of Anchor's application ("the Director General's Memorandum"). All the papers to which we have referred were attached. The Memorandum and enclosures were sent to Anchor at the same time as to the Board. At a meeting of the Board on 12 th January 2005 the Director General addressed the Board on his reasons for recommending refusal. His speaking note was made available to Anchor. Anchor began to make its response through its consultant Mr Shepherd but a difficulty arose over additional documents which Anchor wished to produce to the Board. The matter was adjourned for a month in order for the documents to be supplied to the Executive.

26 The Board re-convened on 2 nd February 2005 at which time Anchor addressed the Board through Mr Gidley, a director of Compliance Solutions Limited, who had been appointed external compliance consultants by Anchor in 2003. The Director General replied briefly and Anchor then responded. The Board reserved its decision. There were subsequently written exchanges between the Chairman of the Board, Mr Colin Powell, and Anchor whereby the Board informed Anchor that it was taking legal advice. The Board re-convened on 3 rd March at which time it formally reached a decision to refuse Anchor's application. A letter to this effect was sent on 4 th March. A 44-page letter purporting to set out the reasons for the Board's decision was sent to Advocate Scholefield on 23 rd March ("the Letter of Reasons").

27 We were informed by Advocate Scholefield that, since then, Anchor had terminated the contracts of employment with most of its staff, was in the process of vacating its premises and had found new service providers to administer most of the trusts and companies previously looked after by Anchor. The Court was informed at an interim hearing in connection with the appeal that the majority had gone to a trust company in Guernsey owned by Mr Barby, one of the shareholders in Anchor.

D. The Executive's concerns

28 The matters covered by the Inspector's Reports, the Minded to Refuse Letter, the Director General's Memorandum and Anchor's responses to these documents range far and wide. Inevitably they also descend into great detail. In order to keep what will inevitably be a fairly lengthy judgment within manageable proportions, we propose to outline those matters reflected in the Minded to Refuse Letter which subsequently formed the basis of the main grounds relied upon by the Board in deciding to refuse Anchor's application. We have however carefully considered all the matters raised in the documents before us.

29 At the time the matter came before the Board, Anchor was owned by two of its directors. Mr Barry Shelton owned 58% and Mr Roger Barby 42%. Mr Barby is a resident of Guernsey and was therefore a non-executive director. The other directors of Anchor are (we will use the present tense even though the position may have changed since the Board's decision) Ms Margaret Murray and Mr Walter Callander. Mr Ben Bryant was appointed a director on

11 th June 2004. There was a proposal that Mr Shelton should transfer 10% of the shares to Mr Bryant, who would also be appointed managing director in place of Mr Shelton; but this change in shareholding had not come to fruition by the date of the Board's decision. As well as being managing director at the material time, Mr Shelton was also Compliance Officer (CO) and Money Laundering Reporting Officer (MLRO).

(i) Conduct in relation to the prevention of money laundering

30 Lee Adderson was introduced as a client of Anchor in 1998. The introducing client Mr Bernard Paul was in turn a client of an English solicitor named Mark Gawor. In 2001 Mr Adderson was arrested in possession of 180 kilos of cannabis resin and, together with a number of other people, was charged with conspiracy to import controlled drugs. The Jersey police were informed by the National Crime Squad that the proceeds of a sale of property by one of the accused persons had arrived in Jersey at a bank account controlled by Anchor. On 30 th January 2002 police officers visited Mr Callander at Anchor and disclosed a list of individuals, companies and trusts that were of interest to the police. It was agreed that Anchor would compare the list with their client list and make a formal disclosure to the police of any names that matched. Subsequently, on 7 th February, there was a further meeting between the police and Mr Callander and Mr Shelton who were asking for further advice on how to proceed with their disclosure. The police advised that any dealings with any of the names on the list should be treated with the utmost suspicion. Shortly thereafter Anchor made a Suspicious Transaction Report (which the police considered to be deficient in both format and content). Thereafter the police served a production order relating to four entities, Mullen Investments Limited, Commercial Trust, Cucamonga Holdings Limited and Marchant Investments Limited. The examination of these documents by the police revealed a number of high value transactions and led to a number of further production orders. The director responsible for Mr Adderson and the related entities was Mr John Marshall, who was a director and majority shareholder in Anchor until he departed in 2002.

31 The Inspector found that there had been no due diligence and no proper checks had been carried out as to the source of the funds for these various entities. Furthermore, Mr Marshall had facilitated the use of cash by his clients. This was effected by receiving cash from or on behalf of Mr Adderson. Mr Marshall would then distribute that cash amongst a number of his other clients. He then arranged for matching bank transfers to be made from the entities of the other clients who had received the cash to entities of Mr Adderson, in particular Mullen Investments Limited. The effect therefore was to disguise what had occurred. The recipients of the cash had received money without any record of the transaction, whilst Mr Adderson had obtained a credit to his entities in the form of a bank transfer rather than cash. This avoided Suspicious Transaction Reports being generated by the banks which would otherwise have processed the cash transactions. Although these transactions took place before the introduction of the Proceeds of Crime (Jersey) Law 1999 and the Money Laundering (Jersey) Order 1999, the Drug Trafficking Offences (Jersey) Law 1988 had of course been in existence for many years.

32 Anchor contended that the failures in relation to Mr Adderson were entirely the fault of Mr Marshall and that the position had been addressed and changed after he had left. The Executive however did not accept this and relied *inter alia* on the following:–

(i) Mr Shelton had been a director of two of the relevant entities namely Mullen Investments Limited and Cucamunga Holdings Limited and had also attended meetings of the trustee of the Commercial Trust. Yet he told the Inspector that he had had no involvement in the Adderson entities and had not been aware that Mr Marshall had been applying cash in this way until after the police visit. Mr Callander claimed not to have regarded the cash activity relating to Mullen as suspicious.

(ii) The response of Anchor — and Mr Shelton in particular — to the discovery of Mr Adderson's criminal activity had been of considerable concern. Far from acknowledging that things had gone wrong and looking to see what lessons could be learned, Mr Shelton had adopted a combative attitude. He asserted that Anchor could not have been dealing with the proceeds of drug trafficking because Mr Adderson was only convicted of conspiracy to import drugs and therefore there could not have been any proceeds of drug trafficking. He also relied upon the statement made by the police at the time of the trial in July 2003 that the drugs recovered (valued at several million pounds) had been the first consignment of the planned operation.

(iii) The Executive regarded that attitude as very worrying. They noted a letter from Acting Inspector Troy of the JFCU who wrote a letter to the Executive dated 1 st September 2004 which contained the following passage:–

> *"18. Shelton has maintained a combative and vituperative attitude towards this enquiry. His clients live luxury lifestyles, without any apparent means of financial income. None of the large and complex transactions appear to have been questioned at any time. Instead of a healthy suspicion concerning these clients and their transactions, and reviewing their files in that vein, there appears to have been a mindset of justification and unquestioning compliance with clients' instructions.*
>
> *19. The attitude of Shelton has confounded the police officers both in Jersey and the United Kingdom. At the early stages of the enquiry he appeared to have not the least awareness of money laundering methods or his firm's vulnerability to it. It would not be an exaggeration to say that the officers were staggered to receive an e-mail from Shelton in August 2003, stating that since the charges were of conspiracy, and the drugs were seized "clearly there could have been no benefit to Adderson".*
>
> *20. The investigating officers find it difficult to believe that anyone could be so naïve. In such a large and complex drugs operation, conspiracy is an appropriate charge which covers the actual importations as well. The High Court in England clearly disagreed with Mr Shelton's interpretation, and served Restraints on the assets of Adderson and others."*

Mr Shelton is also quoted as having said to the police during the course of the enquiry that the transactions represented property sales and “well, it's hardly as if drug dealers invest in property”.

(iv) Following the discovery of Mr Marshall's activities in relation to the Adderson entities, Anchor did not carry out any thorough review of Mr Marshall's other files following his departure. Mr Shelton said to the Inspector that he had looked at Mr Marshall's file ‘briefly’ and that ‘they all looked reasonably good’. Despite this, in November 2003, Anchor subsequently made an STR in relation to the Westlake Trust indicating that Mr Marshall had made cash distributions to the beneficiary of other trusts administered by Mr Marshall, re- payment of which was effected by the transfer of funds from the recipient trusts to Westlake; in other words the same sort of cash dealing as had taken place in relation to Mr Adderson's entities. The Executive considered that this indicated a lack of competence on Mr Shelton's part in reviewing Mr Marshall's files.

(v) Anchor continued to act for individuals with whom Mr Adderson had been connected including Mr Paul, who had introduced him, and Mr Gawor, the English solicitor to a number of the associated individuals. Anchor appeared to have carried out no enhanced monitoring or scrutiny of these files and Mr Shelton said merely that he had telephoned Mr Gawor as to whether there was a problem with any of the other clients and was satisfied by the oral assurance he received from Mr Gawor. In March 2004 a Suspicious Transaction Report was made to the police in respect of one of these files.

(vi) The Executive also referred to the findings in the August Report concerning more recent incidents in relation to certain other entities which indicated that the appropriate anti money laundering procedures were still not being properly complied with.

(ii) Conduct in relation to STR's

33 Between 1 st September 2003 and 17 th October 2003 the CO and MLRO at Anchor was a Dr Bevis. During the last day or two of her time at Anchor fifteen STR's were filed with her by two employees of Anchor. These were regarded as spurious by Mr Shelton who believed that Dr Bevis had procured them maliciously. He and Mr Gidley, the external compliance consultant who had been employed by Anchor since 2003, decided that none of them required any further action. They were not even put in the STR file. Yet, unknown to Mr Shelton, one of the files had already been the subject of an STR to the police by a fellow director Ms Murray in 2002. On reviewing the STR's the Inspector considered that a number of them at least required further investigation in order to decide whether they needed to be disclosed to the police and it was inappropriate to have dismissed them out of hand. Following Dr Bevis' departure, Mr Shelton became CO and MLRO as well as managing director although Mr Gidley's firm was appointed to advise on compliance matters.

(iii) Conduct in relation to Mr Dermot Dimsey

34 Mr Dimsey is a man who has twice been convicted of offences of dishonesty in England and imprisoned. In 1980 he was convicted of conspiracy to defraud and in 1997 of conspiracy to cheat the Inland Revenue. In about 1998 Anchor agreed to purchase the business of Mr Dimsey's company DFM Consultants Limited ("DFM"), which not surprisingly did not apply to be registered as a trust company under the 1998 Law. Under the terms of the agreement Mr Dimsey was to be a consultant and the consideration was payable over a period.

35 In November 2003 the Executive received a phone call from Mr Gidley to say that he was looking into Mr Dimsey's role at Anchor. Mr Gidley had concerns that Mr Dimsey might be conducting unauthorised trust company business within Anchor. Mr Gidley went on to say that he had raised this issue at an Anchor board meeting and that the possible unauthorised activity had now stopped. On 12 th December 2003 Mr Gidley delivered a report on this matter to the Executive. The report dealt with a number of matters and highlighted the fact that some clients of Anchor were under the impression that Mr Dimsey was linked with Anchor and that he was still actively involved in the administration of their trust business. It also stated that the transfer of clients from DFM to Anchor had not yet been completed.

36 The Inspector investigated the position. He established that, on several occasions, Mr Dimsey had signed letters typed on Anchor letterhead as well as the letterhead of client companies administered by Anchor. He found a copy of a minute of a directors' meeting of an English company where Mr Dimsey was named as a co-director with Mr Shelton. He also established that Mr Dimsey had approved fees, had unimpeded access to Anchor client files, used the Anchor computer system and was on the Anchor internal telephone system. He had an office in Anchor's office and was said by some of those interviewed to be the prime point of contact with certain clients. The evidence from a number of directors and employees of Anchor named in Section 7 of the August Report was that the transfer of DFM clients had not been completed until late in 2003. Mr Shelton, on the other hand, asserted that the transfers had been completed in 2001.

37 The application form for registration as a trust company includes a question which reads (omitting the irrelevant parts) "…….. is there any other information about the Affiliation Leader and/or Participating Member(s) or any employee or associate of the Affiliation Leader and/or Participating Member(s)…….. which may have a bearing on the Commission's decision in determining this application". Anchor made no mention of Mr Dimsey in answer to this question.

(iv) Provision of information to the Commission

38 Question 19 of the long form personal questionnaire submitted by Mr Shelton in connection with Anchor's application *read* "Have you any time in the last ten years had your property declared en désastre, or been subject to bankruptcy proceedings anywhere in the world or

entered into any compromise with creditors?" Mr Shelton answered *"No"*. In fact, on 30 th March 1999 Mr Shelton had been declared en désastre but the désastre had been recalled on the same day.

39 When the Executive raised this with Mr Shelton as part of its pre-authorisation visit Report, Mr Shelton responded as follows:–

> *"I had intended no inaccuracy on the form.* My lawyer had informed me that the recall on the same day meant that it was as if the désastre had never happened …… Article 7(3) of the Bankruptcy (Jersey) Law 1990 reinforces his opinion. Clearly it would be futile to hide a matter of public record and it would not be my intention to do so."

(v) Corporate governance

40 The Deloitte & Touche Report noted that there was no formal agenda for board meetings and little evidence in the minutes of what had been discussed. The Compliance Manual listed what should be discussed at board meetings but this did not appear to have been complied with. There was little evidence of the MLRO or CO's Report being discussed at board meetings prior to August 2003. Management accounts and budgets were not prepared and discussed at board meetings. Mr Shelton told Deloitte & Touche that this was because he knew what the financial position of the company was. Similar points had been made by the auditors in their management letters of February and September 2003 but no changes appeared to have been made by Anchor prior to the visit by Deloitte & Touche. In the view of the Inspector, the Risk Management Committee had begun to operate as the *de facto* board of Anchor, perhaps because it had similar membership.

41 The Executive endorsed the view of the Inspector that Mr Shelton is the dominant influence at Anchor and that the ultimate decision-making power is in his hands. The other directors' views appear to be discarded when Mr Shelton does not share those views. The apparent lack of involvement of the other directors in the management and regulatory supervision at Anchor was a concern to the Executive.

(vi) The nub of the matter according to the Executive

42 Numerous other matters were raised by the Inspector and the Executive but we do not think it is necessary to rehearse these at this stage. In his speaking note to the Board, the Director General summarised the essence of the Executive's concerns. He said the following:–

> *"The Executive has carefully considered the issue of whether Anchor, notwithstanding the problems of the past, can be said to have done enough to rehabilitate itself, so that the Commission could be satisfied that it could*

reasonably be licensed.

Regretfully, we have concluded that the Executive cannot be so satisfied. This is because the Executive does not believe that lessons have been learned and the culture of the firm has really changed. This is the crux of the Executive's concern about Anchor. It is evident, among other things, from Anchor's responses to the Inspector's Report and the Minded to Refuse Letter, where the firm fails to recognise that its past standards and conduct have been inadequate. Rather, the firm attempts to justify past acts or omissions.

This manifests itself most clearly in the matters relating to Lee Adderson and John Marshall, a former director, the internal STR's and Mr Dimsey."

After going on to discuss the Executive's particular concerns in relation to those three matters the Director General went on to say this:–

"All three of these cases illustrate the same concerns:

- *Lack of competence;*
- *a failure to acknowledge past mistakes;*
- *a failure to take account of lessons learned;*
- *a failure to be open with the Commission.*

This, and the other concerns set out in the Minded to Refuse Letter, has led the Executive to believe that, whatever procedural improvements have been made, the underlying culture of the firm has not really changed and lessons have not been learned. This is the fundamental reason why we cannot be satisfied that it is fit and proper to be licensed.

Underlying this is the poor corporate governance of the firm. In general, the Executive is not satisfied that the board of directors is capable of providing effective management and control of the business. Much of this can be traced to the dominant influence of Mr Shelton, which we feel is negative in terms of ensuring compliance with the Law and the Codes and a good working relationship with the Commission.

In arriving at this view, we have taken account of factors such as:

- *our own dealings with Mr Shelton, including the omission of material information from his personal questionnaire;*
- *his lack of co-operation with the Inspector, as shown for example in the transcript of his second interview with the Inspector;*
- *his attitude towards the police enquiries into Adderson, which 'confounded police officers both in Jersey and the United Kingdom' and which the Jersey police regarded as 'combative and vituperative';*

• his lack of candour in the Varma case where he was criticised by the presiding judge and which appeared to indicate a failure to have regard to the best interests of a beneficiary;

• his overriding of other directors in allowing payment of a 'commission' to be made by Browham Trading to a high risk jurisdiction without clear rationale or adequate documentation.

……

It can be argued that the delay has actually been to Anchor's advantage. Despite a declaration made by Anchor in August 2001 about its compliance with the Codes, it was clearly not in a fit state to be licensed at that time. Anchor has been given more time than most other applicants to come into compliance, and it has subsequently made an effort, albeit belated, to improve its systems and controls.

But we believe, as stated earlier, that it is a case of 'too little, too late'. We are not convinced that the culture of the firm has really changed. The failure to recognise that past standards have been inadequate does not give the Executive sufficient comfort as to the claimed improvements.

This lies at the heart of the Executive's concerns about Anchor and underpins our recommendation that Anchor's application to be allowed to conduct trust company business should be refused."

E. The Board's decision

43 The Letter of Reasons dated 23 rd March 2005 explaining the Board's decision runs to 44 pages. The structure of the letter is that in Paragraphs 1–5 the Board sets out its findings of fact under the following headings (we have amended the numbering of Articles to those in the Revised Edition):–

(i) Whether Anchor is a fit and proper person (Article 9(3)(a))

(ii) Whether there has been a failure to provide information or provision of untrue or misleading information (Article 9(3)(b)(i) and (ii))

(iii) Whether a person employed by or associated with Anchor has been convicted of an offence of dishonesty (Article 9(3)(d)(ii))

(iv) Whether Anchor should not be registered in order to protect the reputation and integrity of the Island in financial and commercial matters (Article 9(3)(e)(ii))

(v) Whether there has been a failure on the part of Anchor to follow a Code of Practice issued under Article 9 (Article 9(3)(f))

44 It is not necessary to rehearse the whole letter. But, in order to appreciate the submissions made by Mr Scholefield, it is necessary for us to set out the Board's findings in some detail. For convenience we shall do that using the numbering contained in the letter.

Paragraph 1 Fit and proper person

45 Paragraph 1 deals with whether the applicant is a fit and proper person and the Board considered that under seven headings

1.1. Anchor's conduct in relation to the administration of its trust and company structures

46 The Board considered sixteen entities of which the first twelve were linked to the Adderson enquiry and had been considered by the Inspector in the February Report. It made adverse findings in respect of Anchor's approach to the prevention and detection of money laundering in relation to ten of those entities. These findings were clearly based upon the February Report. The Board also made findings in relation to four additional entities which were not linked to the Adderson enquiry and were only considered by the Inspector in the August Report. We would mention only the Board's finding in relation to a company called Browham Trading Limited. According to the August Report this was a company which had recently been formed and where the beneficial owner, in May 2004, asked that a payment be made to Moscow. This was described as a finder's fee. According to their evidence to the Inspector, Ms Breeze, Ms Murray and Mr Gidley all considered that there was insufficient information available to Anchor about the nature of this payment and a request was made of the beneficial owner to provide more details. It is clear that the beneficial owner did not take kindly to this and demanded that the payment be made in any event. The upshot was that Mr Shelton overrode his colleagues and directed that the payment should be made, which it was. The Board found, *inter alia*, at 1.1.13 of the Letter of Reasons that the transfer of funds to Moscow was made without any documentation in support of the transfer other than an e-mail invoice; that Mr Shelton authorised the transfer of funds to Moscow despite strong objections made by both Ms Murray and Mr Gidley and, in doing so, “rode roughshod” over Anchor's due diligence procedures; and that the facts surrounding the circumstances in which the transfer came to be made demonstrated that neither Mr Gidley nor the Risk Management Committee are able to prevent Mr Shelton from enforcing his will and Anchor employees are therefore precluded from exercising independent judgment because of the influence of Mr Shelton. The Board's essential finding in relation to the administration of these various entities was that it showed that Anchor was giving inadequate attention to the detection and prevention of money laundering and financial crime and a lack of effective management and control. The Board also concluded that it accepted the Inspector's opinion that Mr Shelton was clearly not competent to discharge his role as CO and MRLO.

1.2 Anchor's reaction on discovering that one of its clients was being investigated for

serious drug offences

47 The letter states as follows at page 17:–

> *"The Board finds that:*
>
> > *(a) Mr Shelton remains convinced that Anchor's relationship with Mr Adderson could not, under any circumstances, have exposed Anchor to criminal property.* Mr Shelton finds support for this view from the fact that Mr Adderson was convicted for conspiracy to import drugs (from which Mr Shelton deduces that Mr Adderson did not actually import drugs) and from the fact that the events which led to Mr Adderson's conviction took place in 2001/2002 and were therefore subsequent to Mr Marshall's cash handling activities;
> >
> > *(b) Mr Shelton has therefore failed to take into account the possibility that Mr Adderson might have been involved in drug trafficking prior to 2001;*
> >
> > *(c) the only step taken by Mr Shelton to review Anchor's relationship with other individuals connected with Mr Adderson was to accept an assurance from Mark Gawor that he could vouch for them.* Mr Gawor was the lawyer who introduced Mr Adderson to Mr Marshall and who also acted for Bernard Paul;
> >
> > *(d) None of Anchor's relationships with individuals connected with Mr Adderson had been subject to enhanced monitoring or scrutiny even though a production order dated 29th April 2004 was served on Anchor in relation to, inter alia, Mr Paul and the Lydia Thomas Trust.*
>
> *The Board finds that Anchor's reaction upon learning that Mr Adderson was under investigation was wholly inadequate.* The Board is satisfied that this demonstrates a lack of competence on the part of Anchor. Furthermore, Mr Shelton's failure to appreciate the possibility that Mr Adderson might have been involved in drugs trafficking before 2001 is so inexplicable as to amount to incompetence."

1.3 Anchor's failure to conduct an adequate review of clients associated with John Marshall, following the latter's departure from Anchor

48 The Board found that the knowledge that the directors of Anchor had about the suspicious working practices employed by Mr Marshall warranted a prioritised review of his former clients and that the review carried out by Mr Shelton was wholly inadequate. The Board therefore found that Anchor reacted inadequately to the risks posed by the relationships formerly managed by Mr Marshall and that this demonstrated a serious lack of competence.

1.4 Anchor's delay in transferring a book of clients from DFM Consultants

49 The Board found that Anchor acquired DFM's book of business at the end of 1998 or early 1999, that clients and the active administration of clients were still being transferred until at least the autumn of 2003; and that accordingly there was an unacceptable delay by Anchor in procuring the transfer of the clients.

1.5 Anchor's dealing with Suspicious Transaction Reports

50 The letter records at page 19:–

> *"The Board finds that*
>
> > *(a) Mr Shelton and Mr Callander sought to mislead the Inspector with regard to the 15 internal Reports ("the 15 Reports") that had been made to Inda Bevis by Sean Rabaste, and failed to deal with the Inspector in an open and co-operative manner in regard thereto.*
> >
> > *(b) Either Ms Murray misled the Inspector as to her informing Mr Callander and Mr Shelton of her filing of an STR with the police in 2002 or they misled the Inspector in claiming that they knew nothing about it, or one or more of these individuals has poor recollection.* The Board finds that Mr Callander and Mr Shelton misled the Inspector in this regard and is influenced in this decision by its other findings recorded in this letter that Mr Shelton and Mr Callander sought to mislead the Inspector and by Anchor's unacceptable argument that the reason 'the directors' (presumably excluding Murray) did not recall this STR was because they were misled that it concerned the Table Trust.
> >
> > *(c) There is general uncertainty and confusion as to the history of STR's at Anchor.*
> >
> > *(d) There is no effective system in place to disseminate information relating to STR's.*
> >
> > *(e) There is a failure to institute satisfactory procedures of internal control and communication appropriate to the purpose of forestalling and preventing money laundering as required under the 1999 Order.*
> >
> > *(f) The manner in which the 15 reports were handled was unsatisfactory:–*
> >
> > > *(a) They do not appear on the STR file held at Anchor.*
> > >
> > > *(b) There was no consistency between Mr Shelton, Mr Gidley and Ms Murray as to the status of the 15 reports.*

(c) Mr Shelton behaved in such a way as if to minimise the impact of STR's on Anchor's business.

(d) It is not at all clear what examination of the 15 reports was undertaken by Mr Gidley. However what he says that he did is contradictory and he did not record the results of any enquiries he did make in writing. The Board finds that they were not properly examined.

(e) Mr Shelton and Mr Gidley were improperly dismissive of the 15 reports without giving them due and proper consideration.

(f) The cursory reviews undertaken by the Inspector of the STR's relating to the Libby Trust, the Trix Trust, the Weasel Trust and Aquafiltration Limited reveal at the least that these STR's should have been properly examined.

(g) The dismissal of the 15 reports as 'spurious' and the disparaging remarks made about Dr Bevis reveal a culture at Anchor which is neither healthy nor risk averse."

The Board then went on to make detailed findings in relation to the four entities referred to at (f) and concluded that the findings demonstrated a lack of competence on the part of Anchor and three of its directors, Mr Shelton, Mr Callander and Ms Murray in not subjecting them to a thorough review.

1.6 Corporate governance

51 At page 21 the letter records the Board's findings as follows:–

"The Board finds that:

(a) During the period of Mr Marshall's involvement with Anchor, there was a lack of effective action on the part of his fellow directors to limit his activities. The Board accepts that Mr Shelton took steps to put an end to Mr Marshall's cash handling activities in 1999, but that he had been aware of such activities since 1996.

(b) Prior to Mr Marshall's departure, there was inadequate monitoring and control of Anchor's business, including the relationships for which Mr Marshall was responsible.

(c) There is no formal agenda for meetings of the Anchor board and there is little evidence in the minutes as to what has been discussed.

(d) Those minutes which do exist reveal that the Anchor board deals only with administrative issues and the Compliance Manual is therefore not complied with.

(e) There is no mechanism for receipt of information from the Risk Management Committee.

(f) Anchor's board does not therefore operate effectively in controlling and managing Anchor's business.

(g) The Risk Management Committee does not have set agreed items which are examined at every meeting.

(h) Mr Shelton is the controlling force in the organisation and the concentration of power rests with him.

(i) Mr Shelton's dominance at management level is not conducive to effective corporate governance or risk control. His influence within the business is negative from a compliance and risk management perspective.

(j) The relationship between the individuals who currently form the span of control at Anchor is not such as to ensure that they can all exercise independent judgment without duress or undue inference from one another."

1.7 Anchor's failure to accept that standards have been inadequate in the past and unwillingness to implement recommendations of its professional advisers.

52 The letter records at page 22:

"(1) The Board finds that:

(a) Anchor has failed to acknowledge that its standards have previously been wholly inadequate.

(b) Anchor has continued to take a naïve view of the investigation into Mr Adderson.

(c) Anchor has maintained that it has conducted an adequate review of the files of those clients associated with Mr Adderson despite the fact that this is clearly not the case.

(d) Despite Anchor having admitted that it failed adequately to supervise and monitor Mr Marshall's files Mr Shelton only conducted a brief and wholly inadequate review of those files after Mr Marshall's departure.

(e) Anchor have failed to recognise that it was inappropriate to associate themselves with Mr Dimsey.

(f) Some of the recommendations made in the pre-authorisation Report of July 2002 and the auditor's management letter of February and September 2003 were not implemented by Anchor in a timely way."

Paragraph 2 Failure to provide information and provision of untrue or misleading information.

2.1 Failure to provide information in relation to Mr Dimsey.

53 The letter records at page 23:–

"The Board finds that:

(a) Anchor acquired the book of business of DFM Consultants Limited and/or Westminster Trustees at the end of 1998 or in early 1999.

(b) Mr Dimsey was convicted in England in 1980 for conspiracy to defraud and in 1997 for conspiring to cheat the public revenue.

(c) Mr Dimsey was responsible for at least some of the former clients of DFM and/or Westminster Trust until the autumn of 2003. Mr Dimsey dealt with clients, used the Anchor computing system, had access to Anchor files and was included in the Anchor internal telephone lists;

(d) Up until the autumn of 2003 Mr Dimsey was involved in the administration of corporate entities and that his correspondence in this connection bore the address of Anchor or was on Anchor letterhead.

(e) Mr Dimsey was either running his own client base from within Anchor or was carrying out administrative services for Anchor clients.

(f) Mr Dimsey was either employed by Anchor or he was associated with Anchor.

(g) Both Part A and Part B of the application form for registration under Article 8 of the Law include a question which reads "With relation to Part A [Part B] of this Application Form and having regard to Article 8 of the Law, is there any other information about the Affiliation Leader and/or Participating Member(s), or any employee or associate of the Affiliation Leader and/or Participating Member(s),

or any person who is a principal person in relation to the Affiliation Leader and/or Participating Member(s), which may have a bearing on the Commission's decision in determining this Application";

(h) The Executive records that the application form submitted by Anchor in January 2001 entered no comment against these questions. Anchor does not deny this.

(i) The Board concludes that Anchor should have referred to Mr Dimsey's involvement with Anchor in its answer to these questions.

Based on the above findings the Board concludes that Anchor failed to provide information required under the Law. The Board also finds that the failure to provide this information is a breach of Article 25(2) of the Law."

2.2 Providing information that was untrue or misleading in a material particular in Mr Shelton's questionnaire.

54 The Board found that in answer to the question 'Have you at any time in the last 10 years had your property declared en désastre …' Mr Shelton had answered 'no'. The property of Mr Shelton had been declared en désastre on 30 th March 1995 although it was recalled the same day. The Board found that Mr Shelton provided information which was untrue or misleading in a material particular.

Paragraph 3 A person employed by or associated with Anchor has been convicted of an offence including dishonesty

55 The Board found that Mr Shelton failed to deal with the presence of Mr Dimsey in Anchor's offices prior to 2003 despite the protestations of Ms Murray and Mr Callander and that a person (Mr Dimsey) employed by or associated with Anchor had been convicted of an offence involving dishonesty.

Paragraph 4 Protection of the reputation and integrity of the Island in financial and commercial matters

56 The letter records at page 26:

"The Board is satisfied that the activities of certain of Anchor's clients (including those identified at paragraph 1 above) have been of such a nature that they could pose a threat to the reputation and integrity of the Island. The Board considers that Anchor's failure to learn the lessons of the past, and the continued dominance and influence of Mr Shelton at Anchor's management level, leads to a substantial risk that if Anchor were to be granted a licence its activities would pose a threat to the reputation and integrity of the Island in

financial and commercial matters."

Paragraph 5 Failure on the part of the applicant to follow a code of practice

57 In Paragraph 5 the Board rehearses a substantial number of matters which it finds to have amounted to breaches of various provisions of the Trust Company Business Codes of Practice issued in 2001 ("the Trust Codes"). We do not think it necessary to refer to these in detail. Many of the underlying facts are the same as those referred to earlier and there are some additional ones. The Board itself in its conclusions says that it pays particular attention to the breaches of principle 3 and principle 6. We propose to summarise the Board's findings in relation to principle 6 which states:–

> ***"A registered person is expected to deal with the Commission and other authorities of the Bailiwick in an open and co-operative manner."***

The letter dealt with the breaches of principle 6 at Paragraph 5.3 under the following headings.

5.3.1. Failure of Mr Shelton to record in his long form questionnaire that his property had been declared en désastre

58 The Board's finding in this respect has been referred to earlier.

5.3.4. Non co-operation by Mr Shelton during interviews with the Inspector

59 The Board found that Mr Shelton sought to mislead the Inspector in regard to the 15 reports, and as to whether Ms Murray had informed him about the filing of an STR in 2002. It also concluded that Mr Shelton failed to co-operate and be candid with the Inspector in relation to Aquafiltration Limited and that he did not co-operate in relation to the questions asked of him by the Inspector on 19 th May 2004 in relation to the transfer of DFM's clients. In addition the Board found that Mr Shelton did not co-operate at various other points during his interview by the Inspector on 19 th May 2004 (which the Board specified in the letter). The Board concluded that those parts of the transcript showed Mr Shelton as being sarcastic, gratuitously offensive and obstructive.

5.3.5. Non co-operation by Ms Breese during interviews with the Inspector

60 The Board concluded that Ms Breese sought to mislead the Inspector with regard to the timing of the transfer of funds in connection with Browham Trading Limited.

5.3.6. Non co-operation by Mr Callander

61 The Board found that Mr Callander had sought to mislead the Inspector in relation to the 15 reports.

5.3.7. Anchor's non co-operation with the States of Jersey Police during the Adderson enquiry.

62 The Board found that Anchor did not fully co-operate with the police in the Adderson enquiry having regard to the letter dated 1 st September 2004 from the JFCU and an e-mail dated 6 th December 2002 from Mr Shelton to Inspector Minty of the JFCU.

5.3.8. Anchor's non co-operation in response to the complaint by Mrs Varma in October 2002

63 The Board found that, in relation to the Commission's handling of a complaint by a Mrs Varma against Anchor, the response from Mr Shelton dated 1 st November 2002 was unnecessarily rude and non co-operative. The Board accepted that in certain circumstances it may be appropriate for the recipient of a letter such as that from the Commission to question its justification and/or its terms but Mr Shelton's letter went beyond that.

Paragraph 6 Conclusions

64 Having dealt with its findings of fact the Board set out its conclusions at page 41:–

> *"6.1 That Anchor is not a fit and proper person for registration having regard to information before the Commission as to Anchor's competence, structure and organisation (Article 9(3)(a)(i)) and having regard to information before the Commission as to persons employed by or associated with Anchor for the purpose of Anchor's business or who are principal persons in relation to Anchor (Article 9(3)(a)(ii));*
>
> *6.2 That Anchor has failed to provide information (Article 9(3)(b)(i)) and has provided to the Commission information which was untrue or misleading in a material particular (Article 9(3)(b)(ii));*
>
> *6.3 That a person employed by or associated with Anchor has been convicted of an offence involving dishonesty (Article 9(3)(d)(ii));*
>
> *6.4 That Anchor should not be registered in order to protect the reputation and integrity of the Island in financial and commercial matters (Article 9(3)(e)(ii));*
>
> *6.5 That there has been a failure on the part of Anchor to follow Codes of Practice issued under Article 19 of the Law (Article 9(3)(f));*

The reasons for the Board's decision in relation to each of these grounds are set out below:–

Anchor not "fit and proper"

In exercising its discretion to refuse registration on this ground, the Board has attached particular weight to the following facts:

> *(a) Anchor's failure to acknowledge that its standards have previously been inadequate;*
>
> *(b) Anchor's association with Mr Dimsey, and the failure to acknowledge that such association was unwise (see paragraph 1.7e) and paragraph (3) above;*
>
> *(c) Mr Shelton's dominance at management level and his negative influence on Anchor's business from a compliance and risk management perspective (see paragraph 1.6 h) i) and j) above.*

Insofar as concerns the Board's other findings under this head, the Board takes the view that, whilst some of these matters (taken in isolation) are less serious than others, taken as a whole they clearly demonstrate a lack of fitness and properness on the part of Anchor.

Anchor has claimed that the Executive has focussed on past events and has failed to take account of the further improvements which Anchor says it has made and that, to this extent, the Inspector's findings should have no bearing on Anchor's application. The Board has rejected this argument for the following reason:

> *(a) The Commission has twice offered Anchor the opportunity for the Commission to carry out a short, focussed compliance visit, but Anchor has declined this request.* There is therefore no evidence before the Board to substantiate Anchor's claim that there have been substantial further improvements in its systems and controls;
>
> *(b) The Board's findings in relation to Anchor's dealings with Browham Trading Limited, Air Sofia Europe Limited and Tectra Trading Limited demonstrate serious shortcomings in relation to Anchor's current procedures relating to the prevention of money laundering and financial crime, management and control of client structures and record keeping.*
>
> *(c) The August Report contains clear evidence of continuing defects in Anchor's corporate governance more than three years after the relevant provisions of the Law came into force;*
>
> *(d) The fact that Anchor has failed to acknowledge how seriously inadequate its systems were leads to the conclusion that there can*

have been no meaningful attempt to improve standards;

(e) Any improvements made in Anchor's procedures are likely to be rendered ineffective by reason of Mr Shelton's influence within Anchor and his attitude towards compliance and risk management.

6.2 Failure to provide information/provision of misleading information

The Board has set out its findings under this heading at paragraph 2 above. In light of these facts, the Board concludes that the application should be refused on this ground also.

Anchor's association with Mr Dimsey

The Board has set out its findings under this heading at paragraph 3 above. Mr Dimsey's convictions are not in dispute. On the evidence available to the Board, it is satisfied that there was an association between Anchor and Mr Dimsey. The Board considers that this association was extremely unwise and therefore concludes that the application should be refused on this ground also.

Protection of reputation and integrity of the Island

As set out in paragraph 4 above, the Board is satisfied that the activities of certain of Anchor's clients have been of such a nature that they could pose a threat to the reputation and integrity of the Island. The Board considers that Anchor's failure to learn the lessons of the past, and the continued dominance and influence of Mr Shelton at Anchor's management level leads to a substantial risk that if Anchor were to be granted a licence, its activities would pose a threat to the reputation and integrity of the Island in financial and commercial matters. For these reasons, the Board concludes that the application should be refused on this ground also.

Breaches of Code

The Board has set out its findings under this heading at paragraph 5 above. In concluding that a licence should be refused on this ground, the Board has attached particular weight to Anchor's breaches of Principle 3 and Principle 6. In the view of the Board, the existence and operation of adequate risk management systems, and the requirement to deal with the Commission and other authorities in the Bailiwick in an open and co-operative manner, are principles of the Codes of Practice to which particular importance must be attached.

Insofar as concerns the other breaches of the Codes, the Board takes the view that, whilst some of these matters if taken in isolation are less serious than others, taken as a whole (and together with the breaches referred to above) they are sufficiently serious to refuse registration on this ground. This is particularly the case given the aggravating nature of the breaches of Principle 6.

> *For the reasons set out above, the Board therefore refuses Anchor's application for registration to carry on a trust company business pursuant to Article 7 of the Law.* In exercising its discretion in this matter, the Board has also had regard to the guiding principles set out at Article 7 of the Financial Services Commission (Jersey) law 1998".

F. This appeal

65 As discussed earlier an appellant in an administrative appeal may seek to challenge the procedures followed by the decision-maker or he may challenge the merits of the decision without attacking the procedure. In this case Anchor criticises both the procedures followed and the decision reached. Mr Scholefield divided his submissions into those which went to procedure and those which went to the merits of the Board's decision and we shall do likewise although inevitably some points stray into both areas.

G. Procedural grounds of appeal

66 Mr Kelleher did not dispute that the Commission must act fairly. We would adopt the formulation at paragraph 11 of *Interface* –

> ***"We are in no doubt that the Commission is under a duty to act fairly towards an applicant for registration under the 1998 Law.*** Any decision reached in circumstances in which the Commission has acted unfairly is liable to be quashed. In particular, the applicant is entitled to know the general nature of the case against him i.e. the matters relied upon by the Executive to ***suggest that he should be refused registration and to have an adequate opportunity of responding to those matters.*** It is the fairness of the procedures as a whole which fall to be considered but clearly what is required by way of fairness by the Executive (in its investigating and recommending role) is not exactly the same as that required by the Board (in its quasi-judicial role). Nevertheless both must act fairly in their respective roles and the Commission as a whole must act fairly throughout the overall process."

We would add that the requirements of fairness vary according to the decision under review — see the comments of Lord Mustill in *Re v Home Secretary* (1994) 1 AC at 560 cited at para 10 of *Interface*.

67 Anchor claims that, in their respective roles, the Inspector, the Executive and the Board have all acted unfairly. We will consider these in turn shortly. However, as a preliminary matter, Anchor submits that the decision making process adopted by the Commission is structurally unfair and the decision should be quashed on that ground alone. We shall consider that criticism first.

(i) Structural unfairness

68 In order to carry out its function under the 1998 Law in respect of trust companies, the Commission has in effect divided itself into two parts. The Executive under the Director General investigates the applications and in due course makes a recommendation to the Board. Although the Director General is a member of the Board he does not participate in any decision of the Board in this respect. The process which the Commission has developed envisages the Executive, after carrying out its enquiries, writing a formal warning letter indicating that it is minded to recommend the refusal of registration. That letter to the applicants sets out the Executive's concerns and invites the applicant to respond to and comment on those concerns prior to the Executive deciding whether it will in fact recommend refusal. Thus, the applicant has an opportunity at this stage of persuading the Executive not to proceed as it was originally minded to. Assuming that, having considered the representations of the applicant, the Executive remains of the view that it should recommend refusal, the Executive then prepares a draft of the material which it will place before the Board. That draft is supplied to the applicant, who is invited to comment on it. The Executive recommendations and the response of the applicant are then placed before the Board. At the hearing itself, both the Executive and the applicant are given the opportunity of making oral submissions to the Board. Following these submissions, the Executive (including the Director General) and the applicant withdraw and the Board then reaches its decision.

69 In *Interface* the Court expressed the view (see para 13) that, taken in the abstract, the procedure described above was compatible with the legal requirements of fairness although whether the requirements of fairness were actually met in a particular case would of course depend on how the system was put into operation. Mr Scholefield submitted that, whilst this may have been so in a comparatively straightforward factual case like *Interface*, the procedure adopted did not fulfil the requirements of fairness in a complex factual case such as the present one.

70 He referred to the test of apparent bias formulated by the House of Lords in *Porter v Magill* (2002) 2 AC 357 at 494, namely whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal is biased. He drew our attention to the comments of Lord Hope at paragraphs 89 and 90 of his judgment (where he referred to the fact that the English statute which governed the position in that case imposed on the auditor the roles of investigator, prosecutor and judge which might be thought an almost impossible burden) and submitted that the different roles of the Commission in terms of investigating and deciding upon an application posed similar problems.

71 However those observations of Lord Hope were made in relation to the question of whether Lady Porter's right to a fair trial under Article 6 of the European Convention on Human Rights had been breached in the sense that her rights had not been determined by an independent and impartial tribunal. Lord Hope went on to hold that her rights had not been breached because there was a right of appeal to the Divisional Court against the decision of the auditor.

72 Lord Hope did go on to consider the linked question of apparent bias on the part of the auditor but he did not suggest that the several roles of the auditor in themselves led to a concern about apparent bias. On the contrary, having considered the particular facts of the case, the House of Lord held that there were no grounds for a finding of apparent bias in that case even though the auditor had to act as investigator, prosecutor and judge. We do not think therefore that the case supports Mr Scholefield's argument.

73 Mr Scholefield also referred to the case of *R (on the application of Bewry) v Norwich City Council* 2001 EWHC Admin 657. That case involved the payment of housing benefit by the Norwich local authority. The primary legislation provided that Regulations to be made by the Secretary of State should make provision for reviews of determination by authorities. Those Regulations were duly promulgated and provided that the review should be conducted by a Review Board appointed by the appropriate authority and that, in the case of a local authority, the composition of the Review Board should be the councillors of the authority. Thus, in the case in question, the Review Board consisted of councillors of Norwich City Council, which was of course the authority whose determination to refuse housing benefit was being challenged before the Review Board.

74 The Secretary of State argued that the common law did not require any particular forum for the resolution of disputes which determine civil rights provided that the tribunal operated in a procedurally fair manner without any real danger of bias; its decision could not be impugned on the grounds of a 'structural lack of independence'. Moses J disagreed. He held at paragraph 27:–

> ***"The primary legislation in s63 provides for adjudication of the statutory right to housing benefit.*** Such adjudication must, under the common law, in the absence of an express specific provision in primary legislation, be an adjudication by an independent and impartial decision-maker." [Emphasis added]

He went on to hold that the Review Board in that case was not objectively independent and impartial.

75 Mr Scholefield put his case firmly on the basis of apparent bias (breach of the rule of natural justice ' *nemo judex in causa sua*'). He did not specifically raise the question of an independent and impartial tribunal. However the two matters are clearly very closely linked and we propose to consider whether the decision to refuse Anchor's application should be quashed for either reason or indeed for any other unfairness. Mr Scholefield pointed to a number of factors. He said that there was a real risk that the quasi-judicial arm of the Commission (namely the Board) would be encumbered by an underlying pre-disposition in favour of its colleagues in the investigatory arm. He pointed to the fact that the Board was the governing body of the Commission as a whole and therefore had ultimate responsibility for the actions of the Executive; the Director General was the Chief Executive Officer, was a member of the Board and sat with the members to decide upon other matters; the chairman

of the Board had a permanent office and secretary at the Executive's premises and indeed the Board sat in and conducted its business from the same premises as the Executive; the Board's secretary was a senior member of the Executive; and the e-mail systems for the Board and Executive were compatible and accordingly there might not be effective segregation of communications.

76 It seems to us that the answer to Mr Scholefield's submissions is two-fold:–

> (i) Whether the case is put on the requirement for fairness and an absence of apparent bias or on the need for an independent and impartial tribunal in the determination of a civil right, the fact remains that the 1998 Law is primary legislation and it provides that the Commission shall determine matters of this nature. It is clear from Article 8 and other provisions of the Law that the inquiries into an application are to be carried out by the same body which decides the application i.e. the Commission. The common law is therefore abrogated to the extent that it is necessarily inconsistent with the statute. Mr Scholefield submitted that, although the Board itself must take the decision on an application such as Anchor's, the investigative and recommending role could be undertaken by somebody wholly independent of the Executive such as an inspector. We do not think that that is consistent with the statute. Furthermore, on Mr Scholefield's analysis, an Inspector could make a recommendation to the Board with which the Executive arm of the Commission wholly disagreed and which they considered to be quite contrary to the various matters which the Commission is directed to consider in the statute (e.g. protection of the reputation of the Island). Yet, according to Mr Scholefield, the Executive would be powerless to say anything or express any view to the Board on the matter. In our judgment, given that the statute itself provides that these various roles are to be undertaken by the Commission, the procedure which the Commission has developed is a reasonable and proper step to have taken with a view to reconciling as far as possible the requirements of fairness with the terms of the statute.
>
> (ii) There is in any event an appeal from the decision of the Commission to this Court and, for the reasons given by Lord Hope in Porter, this cures any perceived structural lack of independence and impartiality on the part of the Board.

77 We therefore reject Mr Scholefield's submission that the decision of the Board should be quashed on the basis of a structural lack of independence and impartiality or possibility of bias.

(ii) Unfairness by the Inspector

78 Mr Scholefield submits that the Inspector's reports are tainted by unfairness on a number of grounds. First he refers to the fact that, prior to his appointment on 14 th November 2002, the Inspector attended a meeting on 11 th October 2002 between members of the Executive

and the JFCU in order to be briefed on the background to the investigation which he was being asked to undertake by the Executive. Mr Scholefield submits that this was unfair in two respects. First, the Inspector did not have the required authority to receive information from the Executive about Anchor's affairs and the disclosure to him was therefore in breach of Article 37 of the 1998 Law. Secondly, he says that the meeting poisoned the mind of the Inspector against Anchor and led to the production of his highly critical reports. The Inspector did not proceed in a spirit of open-minded interest in Anchor's compliance with the law and other obligations upon it; he had displayed an inappropriate zeal for identifying breaches, whether serious or not, with which to justify the Executive's hostility towards Anchor which had arisen as a result of the interest of the States of Jersey Police in the affairs of certain of Anchor's clients.

79 Secondly, Mr Scholefield submits that the Inspector mis-stated the caution at the beginning of the interviews of Anchor management and staff and that this was unfair. The caution which the Inspector gave was in the following terms:–

> *"You have been requested to attend today at this location after having been issued with a notice under Article [33] of the Financial Services (Jersey) Law and therefore I am now entitled by that Law to require you to answer questions.* I must warn you that you may be prosecuted if without reasonable excuse you fail to answer such questions or if you provide false or misleading information. I repeat here again that the content of this interview, and in particular, any statements made or answers provided by you, may be given in evidence should proceedings be brought against you or any entity or business with which you are concerned or associated. Further, the content of this interview may be considered by the Commission in arriving at any decision in relation to the exercise of any of its regulatory powers."

It is submitted that this is inaccurate in that, by reason of Article 33(12) a statement made by a person pursuant to a requirement imposed under Article 33 may not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under Article 33(7) (which deals with failure to answer questions or obstructing the Inspector) or Article 28 (which deals with the provision of false or misleading information). The caution suggests that what is said during the interview could be admissible in any criminal proceedings.

80 Thirdly, Mr Scholefield submits that the Inspector was unfair in that he conducted the interviews as a hostile cross-examination at which interviewees, without prior warning of the topics to be covered, were questioned closely on matters of detail and reservations were expressed about their or Anchor's competence if they were unable to furnish detailed answers to questions put.

81 Our decision on these submissions is as follows:–

(i) In her affidavit the Deputy Director General stated that the Inspector was engaged

as a consultant by the Executive on 20 th August 2001 and that engagement continued on 11 th October 2002. The written letter of engagement has been produced to us. We accept therefore that the Inspector was a person to whom information about Anchor could properly be disclosed pursuant to Article 38 and there is no infraction of Article 37.

(ii) We see no grounds for criticising the Executive for bringing the Inspector to the meeting with the JFCU as a form of briefing for him in respect of the task which he was going to undertake, namely an inspection of the files which had been made the subject of a production order by JFCU. We have seen the note of the meeting annexed to the Deputy Director General's affidavit and we find nothing in that note to be a cause for concern.

(iii) In any event we see no evidence that the Inspector was prejudiced as a result of that meeting or any other matter. Anchor has not produced any evidence in support of that assertion other than that the Inspector's reports were very critical of Anchor. In relation to Anchor's criticism of the way in which the Inspector carried out the interviews as set out in para 80 above, we have only been shown the transcript of the second interview with Mr Shelton and the transcript of the interview with Ms Breese of Anchor on 25 th May 2004. We have also seen extracts from certain other interviews as set out in the August Report. On the basis of the material put before us we see no grounds for criticising the Inspector's approach. The job of an Inspector is to establish the facts and this may require him to be persistent in his questioning; indeed he may have to move towards a form of cross-examination if he feels that he has not been given an accurate or full picture by the interviewee. We note that the experienced former police officer, Mr Watkins, who accompanied Ms Breese in her interview, described it as *"a very fair interview"* and we have no reason to differ. Generally speaking we have not found anything in the Reports themselves or in the other material which has been put before us which suggests that the Inspector was not open minded or displayed an inappropriate zeal or was prejudiced against Anchor.

(iv) As to the caution, the evidence from the Deputy Director General's affidavit was that this was the standard wording used in all the Commission's investigations and the wording had been approved by their legal advisers. However, we think that there is force in the point made by Mr Scholefield. The caution asserts that answers by the interviewee may be given in evidence should 'proceedings' be brought against that person. This could well be understood to mean any criminal proceedings. In fact, as outlined above, the answers could only be introduced in evidence should the criminal proceedings in question be proceedings pursuant to Article 33(7) or Article 28 i.e. failing to answer or giving misleading information. In relation to any other criminal proceedings, Article 33(12) makes it clear that answers may not be used in evidence against the person. We recommend that the Commission discuss the matter with its legal advisers in order to consider how the wording might be amended to reflect the legal position more accurately. However we do not see that this has led to any unfairness. Article 33 requires the interviewee to answer the Inspector's questions failing which he may be prosecuted. That is spelt out clearly in the caution. The fact that the interviewee was not specifically alerted to the fact that answers given could

not be produced in evidence in any other criminal proceedings does not, it seems to us, affect the fairness of the proceedings at all. There is no reason to think that interviewees were misled into making statements which they would not otherwise have made or that their answers are somehow unreliable because of the error in the caution.

82 Fourthly, Anchor submits that the February Report reached preliminary conclusions before Anchor was given an opportunity to comment. It is true that there was considerable delay in supplying a draft of the February Report to Anchor. Mr Scholefield referred to the withholding of the February Report under the heading of unfairness by the Inspector but we think it preferable to deal with it under the heading of unfairness on the part of the Executive (see paras 91–93 below). However the February Report was supplied along with the two drafts of the final Report in June 2004. The February Report was enclosed as an appendix and paragraph 6.1 of the draft final Report (which dealt with Anchor's relationship with Lee Adderson) said specifically that that section of the Report should be read in conjunction with and following a review of the draft February Report. In our judgment Anchor had ample opportunity to comment on the February Report prior to its being finalised by the Inspector as part of the August Report.

83 Fifthly Anchor refers to the fact that the first draft of what became the August Report was sent to Mrs Hatton and, following a request from her, the draft was amended. In his affidavit Mr Shelton alleges that the revised draft contained an additional twenty two pages critical of Anchor; that both Reports were only delivered to Anchor when Mr Carse, the Director General returned from leave and that he believed that, but for Mr Carse's intervention, neither a copy nor the existence of the first draft Report would have been disclosed to Anchor; and that Mrs Hatton encouraged the Inspector to ‘sex up’ his Report in an attempt to justify her critical view of Anchor.

84 Mr Shelton does not produce any evidence in support of these beliefs. In her affidavit Mrs Hatton has sworn that she asked the Inspector to amend the draft Report so that areas of concern identified in the initial scoping letter were expressly and clearly addressed so that Anchor could respond to them. In this way, it would be clear (a) what the Executive's initial concerns were, (b) what the Inspector's findings on these concerns were and (c) what Anchor's comments on these findings were. She was concerned to ensure that all the areas set out in the scoping letter were specifically identified and addressed. She denied specifically asking the Inspector to amend any of his findings of fact. She furthermore asserts that the decision to release both versions of the draft Report was made prior to Mr Carse's return from holiday and it was not necessary for him to intervene.

85 We find no unfairness in what occurred. In particular the fact that both versions of the draft Report were sent to Anchor ensured that there was complete transparency and that Anchor had an opportunity of commenting not only on the final version of the draft Report but also on any differences between it and the previous draft. Mr Shelton has not produced any evidence which would cause us to doubt the assertions contained in Mrs Hatton's affidavit.

86 Sixthly Anchor complains that its 88-page commentary upon the draft Report was almost completely ignored in the preparation of the Inspector's August Report. We do not accept this as a fair criticism. By letter dated 9 th August the Inspector responded on a point by point basis in a 20-page letter. Mr Shelton commented on the Inspector's response in a letter dated 16 th August and all of these were made available to the Board. It is true that the Inspector did not accept the vast majority of the points which Anchor had made but we do not draw the conclusion from this that he ignored them. We find from the correspondence that he considered them but did not accept them. Accordingly we find no unfairness in this respect in the procedure followed by the Inspector.

87 Lastly Anchor challenges the experience and qualifications of the Inspector and submits that these challenges have been ignored. We deal with that under the heading of 'Unfairness by the the Executive', to which we now turn.

(iii) Unfairness by the Executive

88 Anchor contends that the Executive has been guilty of unfairness in a number of respects in its role as investigating and recommending arm of the Commission.

89 First it is submitted that the Executive has not provided Anchor with assistance in adapting to the new regulatory environment in spite of its professed readiness to do so. Mr Scholefield compared this to the position in *Interface* where, at para 40(iii) of the judgment, some examples of assistance apparently given by the Executive to Interface are listed. In his second affidavit (where the paragraphs are unfortunately not numbered) Mr Shelton, when commenting on paragraph 54 of Mrs Hatton's affidavit, says that Anchor was never given a list of changes or improvements which it had to make in order to become compliant.

90 One would of course hope and expect that a good financial regulator would offer a reasonable degree of guidance and assistance to those whom it regulates. But the primary duty to be compliant with the required standards falls upon the management of the relevant company. Anchor has had over three years in which to become compliant and during that time there has been considerable contact between Anchor and the Executive. There was the pre-authorisation report, and meetings and discussions thereafter; there was the Deloitte & Touche Report and there were the Inspector's Reports as well as the Minded to Refuse Letter. In our judgment this point does not assist Anchor.

91 Secondly Anchor is very critical of the fact that the February Report was withheld from it for some fifteen months after it had been received by the Executive. According to Mrs Hatton in her affidavit, the fact that the February Report related to files in respect of which there was an ongoing criminal investigation meant that the Executive felt that they could not disclose the draft Report without the prior consent of the JFCU and she asserts that this was not forthcoming. She states that, once such consent was given, the February Report was

disclosed at the same time as the draft final Report. Anchor points out that Mr Adderson was convicted in July 2003 and that in October 2003 the police wrote to Mr Shelton informing him that there would be no further investigations into his conduct. Whilst not accepting that there was any good reason for withholding the Report at an earlier stage, Anchor submits that it should have been released in October 2003 at the very latest.

92 We have read the February Report. It is not clear to us why it could not be distributed immediately to Anchor. It has also to be recalled that it was a Report into files which came from Anchor in the first place. Nevertheless there was an ongoing criminal investigation not only into Mr Adderson and others but also into whether any of the officers or employees of Anchor had been guilty of the criminal offence of money laundering. In the circumstances, without the benefit of hearing from the police, we do not feel able to make a definitive finding that it was unreasonable for the Executive to withhold the Report prior to October 2003. However we see no justification for withholding it thereafter. Mrs Hatton does not say when the police authorised its release but we consider that the Executive should have taken the initiative in procuring the release of the Report once it was clear that any original reason for withholding it had disappeared. Anchor should therefore have seen the February Report by October 2003 at the latest.

93 However we cannot see that Anchor has suffered any material prejudice as a result of this delay. The fact remains that the February Report was supplied to Anchor in June and Anchor was given a full opportunity of commenting on it before the Inspector finalised his Reports. Mr Scholefield submits that Anchor did not appreciate the significance of the February Report given the fact that it was produced merely as an annexe to the final Report; but we cannot see why that should be so. The final Report made it clear, in the passage to which we have already referred, that that part of the final Report which dealt with the Adderson related files should be read with the February Report. Thus, while we find that Anchor ought to have been supplied with the February Report by October 2003 rather than June 2004, we do not find that this delay has led to any unfairness.

94 Thirdly, Anchor submits that the Executive, having insisted that Anchor procure the Deloitte & Touche Report, then disregarded any favourable observations in their Report. We see no evidence to suggest this. In the Minded to Refuse Letter at paragraph 6.10 the Executive summarised the position by saying:–

> *"In summary, D&T noted that significant progress had been made by Anchor in a number of areas.* However, the Commission continues to have concerns arising from the Report in relation to the declarations required by the order, complaints handling, corporate governance and conflicts of interest."

Similar remarks concerning the improvement noted by Deloitte & Touche were made in the Director General's Memorandum and his speaking note.

95 Fourthly, Anchor contends that the Executive solicited the letter dated 1 st September 2004 from Acting Detective Inspector Troy of the JFCU but did nothing to put the damaging

observations about Anchor in context or to prevent the JFCU from presenting a distorted view of Anchor. In her affidavit Mrs Hatton explains how the letter came about. She states that, during the drafting of the Minded to Refuse Letter, she realised that one area which the Executive had not probed was whether Mr Shelton's defence regarding the Adderson affair (namely that no proceeds of crime could have arisen because Adderson was only charged with conspiracy) was reasonable. She therefore spoke to the JFCU and ADI Troy said that he would consider the matter and reply. A week or so later the letter of 1 st September arrived.

96 Although pointing out that the request was not made in writing Anchor has not sought to challenge Mrs Hatton's evidence on this point and we find no unfairness on the part of the Executive in connection with the procuring of the JFCU letter. We think that the reason for asking for it was entirely reasonable. The content of the letter was a matter for the JFCU and it was not up to the Executive to challenge or otherwise prevent the JFCU from expressing those views. On the contrary, the views of the police on Anchor's conduct (and Mr Shelton's in particular) was something which, in our judgment, the Executive was entitled to take into account as one of the pieces of the evidence when considering what its recommendations should be. The Executive supplied the letter to Anchor so that comment could be made upon it; and indeed Mr Shelton complained to the Chief Officer of Police about the letter but his complaint was dismissed. We have read his e-mail dated 28 th September 2004 to the Chief Officer. In summary, we see nothing in this point.

97 Fifthly, Anchor contended that the Executive acted unfairly in that it criticised Mr Shelton for having lunch with Mr Dimsey. It submits that this is evidence of a hostile attitude towards Anchor both on the part of the Inspector (who apparently informed Mrs Hatton of the matter) and on the part of Mrs Hatton (who saw fit to mention it rather than ignoring it altogether). The only evidence in relation to this matter comes from Mrs Hatton's affidavit. She says that the remark was made at a meeting held on 1 st November 2004 at which the Director General, she and another member of the Commission met with Mr Bryant and Mr Gidley on behalf of Anchor. The purpose was for Mr Bryant to meet representatives of the Commission as he had only recently been appointed. The meeting took place after the Minded to Refuse Letter and Anchor's response to that letter and Anchor was well aware of the Executive's concern about the association with Mr Dimsey. At the meeting Mr Gidley represented to the Commission that the connection with Mr Dimsey was now very minor and that he had not in fact seen Mr Dimsey in the office for six months. It was at that point that Mrs Hatton referred to the fact that she had been told that Mr Shelton and Mr Dimsey had been seen having lunch together. Mr Shelton subsequently complained to the Director General about this remark and the correspondence in that respect is annexed to Mrs Hatton's affidavit.

98 We think that nothing turns on this. Whilst it might have been preferable for Mrs Hatton to have said nothing about the lunch, we can understand why she did so in the context of the Executive's concern about the relationship between Anchor and Mr Dimsey (and his continuing relationship with Mr Shelton's associated accountancy practice Shelton & Co) and the assertion by Mr Gidley that it was now very minor. We certainly do not see Mrs

Hatton's remark as any evidence of hostility on her part, nor do we think that the fact that the Inspector mentioned it to her is evidence of hostility on his part.

99 Sixthly, Anchor submits that the Executive failed to consider properly Anchor's response to the Inspector's draft final report (which became the August Report) and failed properly to address Anchor's response to the Minded to Refuse Letter when formulating its recommendation to the Board. Mr Scholefield referred us to a schedule entitled 'Example observations of the Executive's decision-making process' which was annexed to Anchor's first written submissions for this appeal. We have considered the material before us in this respect. Inevitably not every point raised by Anchor in its very detailed two responses is addressed specifically or at length by the Executive. That would be an unreasonably onerous task. We have asked ourselves whether we are left with the impression that the Executive had a closed mind and did not consider the responses genuinely and openly or whether it was simply that, having considered the submissions, the Executive did not accept most of the points made. We have no hesitation in concluding that the latter is the position. In this respect we note the contents of the Reply Memorandum. We do not interpret that Memorandum as having been written by someone who had not considered the points made by Anchor. On the contrary we think that the position is accurately summarised on page 28 of that Memorandum where it is stated:–

> *"Commission not considered Anchor's responses.*
>
> *This is simply not correct.* Very careful consideration has been made and clarification sought where appropriate. A number of matters have been dropped from the Commission's remaining concerns as a result of careful consideration of Anchor's explanation. Where Anchor challenged fact or opinion, the Commission has sought specific clarification from the Inspector or police on a number of occasions."

100 Seventhly, Anchor criticises the choice of the Inspector and argues that he had insufficient expertise and experience. According to the Executive the Inspector is an English barrister, has a great deal of experience in regulatory matters and has been advising the trust industry in Jersey for seven to eight years. In our judgment the choice of Inspector is ultimately a matter for the Executive and we see no grounds for concluding that the Inspector was not qualified for the task.

101 In summary, we do not find that the Executive has acted unfairly.

(iv) Unfairness by the Board

(a) Failure to disclose the Board's legal advice

102 As mentioned at para 26 there were exchanges between the Chairman of the Board Mr Powell and Anchor following the hearing on 2 nd February 2005 in the course of which Mr

Powell said that the Board was taking legal advice. Anchor asked to see that legal advice but the Board did not disclose it. In its grounds of appeal and written submissions Anchor submitted that this was unfair and breached the principle of ' *audi alterem partem*' in that Anchor had had no opportunity to consider or comment on the legal advice given to the Board.

103 At the beginning of the hearing of the appeal and in the absence of the Jurats, Mr Kelleher applied for leave to file a third affidavit by Mr Powell. The key assertion in this affidavit was that the purpose of the legal advice was to see whether the decision which the Board had taken to refuse Anchor a licence would be open to challenge on appeal. Mr Scholefield objected to the admissibility of the affidavit. He pointed out that the communications between Mr Powell and Anchor at the time appeared to be inconsistent with the affidavit. Thus Mr Powell had said in those exchanges that the Board was considering a number of options and also that it wished to take legal advice before making its decision. I granted leave for the affidavit to be filed but on terms that Mr Scholefield should be entitled to cross-examine Mr Powell if he so wished. He elected to do so and accordingly Mr Powell gave evidence before the Jurats.

104 During the course of that evidence the Board elected to disclose the minutes of the meetings of 2 nd February and 3 rd March 2005 although redacted to eliminate details of the legal advice received. We would expect the minutes of a decision under appeal normally to be disclosed — we received them in *Interface* and habitually see the Act of the Committee in planning appeals. In his evidence Mr Powell stated that the Board had reached a clear decision to reject Anchor's application at its meeting on 2 nd February but that, before confirming the decision, the Board wished to take legal advice on whether its decision would be likely to be upheld by the Court as being lawful and reasonable. He accepted that the communications with Anchor were not very happily phrased in that they suggested that the legal advice was being obtained before the decision but he explained that he was reluctant to suggest to Anchor that a decision had been taken prior to receipt of legal advice. He also accepted that the minutes did not reflect that a clear decision to reject the application had been taken on 2 nd February. Following Mr Powell's evidence, the Board, whilst asserting forcefully that it had no obligation to disclose the legal advice, opted to do so. Mr Kelleher said that he did not wish a minor matter, which could easily be resolved, to assume undue importance in the conduct of the appeal. The Court and Anchor have therefore seen the legal advice dated 28 th February 2005 from Mr Kelleher to the Board.

105 Before turning to consider the legal arguments raised by Mr Scholefield on this point, the Court should record its findings of fact. Having seen and heard Mr Powell give evidence and taking into account the terms of the correspondence, the minutes and the legal advice, the Court accepts that, at its meeting on 2 nd February, the Board reached a decision in principle to refuse Anchor's application. That was its preferred option. However it wished to be satisfied as to the prospects of such a decision withstanding an appeal and therefore deferred a final decision until receipt of legal advice. A draft letter containing the reasons for refusal was prepared and sent to the legal advisers. As to the firmness of that decision, we

think that this is a subjective matter and suspect that if you had asked each member of the Board at the time how firm the decision was, you would have received a number of different answers. We accept that Mr Powell himself believed the decision to be firm as he said in evidence. However, as a matter of strict procedure, it would clearly have been open to the Board to have changed its mind at its next meeting even if the legal advice had been supportive of a refusal of Anchor's application. We note, for example, that the minutes of the meeting of 3 rd March record one of the Commissioners (who was unable to be present but had been present at the hearings) as having contacted Mr Powell and communicated his view that Anchor should be granted a licence but on condition that Mr Shelton withdrew completely from the firm and a corrective action plan was agreed and implemented; so clearly that Commissioner did not believe that a decision had been taken on 2 nd February which could only be changed if the legal advice was adverse.

106 Ultimately, we do not think that the question of exactly when a firm decision was reached is what matters. What is important is the nature of the legal advice which the Board sought. In this respect there is no doubt. Mr Kelleher's letter of 28 th February begins by saying:–

> *"The Board of Commissioners seeks my advice on whether, if it was inclined to adopt the option of refusing the application for registration by Anchor, the reasons for this decision could be expected to be viewed by a court as both lawful and reasonable in the circumstances.* The reasons (albeit not detailed reasons) for the decision are those set out in a draft letter from the Board to Anchor."

The content of the letter of advice from Mr Kelleher is entirely consistent with that stated purpose.

107 Mr Scholefield relies on *Costain Limited v Strathclyde Builders Limited* (2004) SCLR 707. In that case, after an adjudicator in a building dispute had received the submissions of the parties, he wrote seeking an extension of time for the issue of his decision on the grounds that he wished to discuss a point with his appointed legal adviser. Neither party sought or was given details of the terms of that discussion. The court held that an adjudication in a building dispute was a form of arbitration and that accordingly the rules of natural justice applied. The parties had to be given an opportunity of commenting on all the material which was before the adjudicator and therefore the adjudicator should have disclosed the legal advice to both parties and invited their comments. The judge rejected the argument that there was no evidence of any prejudice by saying that, without information about the matters discussed by the adjudicator with his legal adviser and the advice tendered by the legal adviser, it was impossible to know whether the breach of the principles of natural justice was substantial and relevant and whether there had been any prejudice. The risk of prejudice was sufficient. He went on to say at paragraph 25:–

> ***"In either event, there is a possibility of prejudice to the parties.*** It is possible, of course, that no new matters were covered in either the request for advice or the advice itself and that there was accordingly no actual prejudice to either party. Nevertheless, on the basis of the principle discussed in the last

> paragraph, I am of the opinion that it is immaterial that no actual prejudice has been demonstrated; the mere possibility of prejudice is sufficient. Of course, if there is no actual prejudice, the adjudicator can easily put matters right by disclosing the matter on which he sought his legal adviser's advice and the terms of that advice and until those matters are disclosed, however, I must conclude that the defender has set out a relevant case that would, if proved, justify reduction of the adjudicator's decision."

108 Mr Kelleher submitted that the position of an arbitrator, who is undoubtedly a judicial figure, was very different to a regulatory body exercising a statutory discretion to grant or refuse licences for the protection of the public. He referred to *Stoop v Royal Borough of Kensington & Chelsea* (1992) 1 PLR 58. That case involved a planning decision. The planning committee sat in public. It decided in public session that it was minded to refuse the planning application to which Mr Stoop had objected. The committee then went into closed session in order to receive legal advice which was to the effect that, in view of the history of the matter, the prospects of a refusal to grant planning permission surviving an appeal were remote. Following this advice, still in closed session, the committee resolved to reverse its decision and to grant planning permission. Mr Stoop applied for judicial review of the grant of the permission on the grounds that there had been a breach of natural justice on the part of the committee in receiving the legal advice in private. It is right to say that there was a statutory provision which allowed the committee to go into closed session in respect of certain matters and the judge held that that provision covered the facts of this case. However he expressed himself more widely. Thus at page 18 of the judgment he said:–

> ***"I have already indicated that the committee were entitled to (1) receive the advice of their officers (2) on the matters they addressed and (3) in private.*** In principle there can be no obligation upon a local planning authority to expose in public for comment by the applicant or the objectors the legal advice on their prospects (1) on appeal, if they were to refuse planning permission or (2) of success in judicial review proceedings, if they were to give permission. This is particularly so where the matter is expressly covered by statute as here, as I have found, by virtue of para 12 of Schedule 12A."

Later on the same page, having considered the question of fairness, Otton J went on to say that he had to consider whether in all the circumstances Mr Stoop had received a 'fair crack of the whip'. In this respect he said:–

> ***"In my judgment, the duty of fairness did not require the committee either (1) to adjourn the closed session, return into public session and repeat the advice they had received and permit further representations from either the objector or the applicant or to invite further written representations or (2) to adjourn the private session, inform the parties of the advice in writing and invite further representations in writing or orally in a later public session before reaching their decision."***

109 As stated at para 66 above, there is high authority for the proposition that the requirements of fairness vary according to the nature of the decision under review. An adjudicator of the type referred to in *Costain* is fulfilling a purely judicial role whereas the Board is performing an administrative role conferred by statute which involves acting in the public interest whilst having regard to the need to be fair to individual applicants. The application of the rules of fairness or natural justice are not the same in these two situations and therefore we find the decision in *Costain* of limited assistance. We appreciate that in *Interface* the Court described the Board's role in applications of this nature as quasi judicial, but that has to be read in the context of the duties and obligations imposed upon the Commission by the 1998 Law. We think it entirely reasonable and in the public interest that the Board should be able to take legal advice on the performance of its duties and that, as with all persons who seek legal advice, it should be able to do so in a free and confidential manner. Having said that, we are not to be taken as saying that there could never be any circumstances in which it would be unfair for the Board to take legal advice which it did not disclose. One can envisage some situations in which it might be unfair. But we do not need to discuss the matter in general and abstract terms. We need only to consider the facts of this particular case. In that regard we are quite satisfied that there has been no unfairness for two reasons, the first more general than the second;

> (i) For the reasons expressed by Otton J in *Stoop*, we do not think that there is any obligation on the Board to expose in public for comment by the applicant legal advice on the prospects of an appeal against a decision which the Board has it in mind to make. Firstly we think it in the public interest that the Board should be able to take such advice. Secondly such advice amounts merely to the opinion of a particular lawyer on what the Court might decide. Such an opinion is completely irrelevant for the applicant and the fact that the applicant does not know what that particular lawyer happens to think about the merits of the Board's proposed decision cannot possibly cause any unfairness to the applicant. Even without having seen the advice, the Court was quite satisfied from the evidence before it that this was the general nature of the advice sought in this case and therefore it would have dismissed this ground of complaint even without seeing the legal advice.
>
> (ii) However the Court and Anchor have now seen the advice. As the court in *Costain* made clear, any perceived unfairness could be remedied by disclosing the advice. Having now seen the advice in full we are quite satisfied that Anchor suffered no prejudice by not seeing the advice earlier. Indeed Mr Scholefield did not refer to any part of the advice to suggest otherwise.

110 For these reasons we hold that the Board's failure to disclose its legal advice did not cause any unfairness to Anchor.

(b) Inadequacy of the Board's reasons

111 Mr Scholefield submitted that the Board did not fulfil the duty imposed on it both by Article 11(2) and the requirements of fairness to give adequate reasons. He referred to *R v*

Birmingham City Council Ex p Quietlynn Limited (1985) 83 LG R46. That case involved the decision of a local authority to refuse a licence for a sex shop. On an application for judicial review a question arose as to the level of reasons which the authority was required to give. The Council referred to the dicta of Megaw J in *Re Poyser and Mills Arbitration* where he said:–

> ***"Parliament provided that reasons shall be given, and in my view that must be read as meaning that proper, adequate reasons must be given.*** The reasons that are set out must be reasons which will not only be intelligible, but deal with the substantial points which have been raised."

The court in *Quietlynn* distinguished the sort of case which Megaw J had in mind (where there was a *lis inter partes* where the equivalent of a reasoned judgment is to be expected) from the sort of decision with which it was dealing. The court said at 490:–

> ***"I do not consider, for reasons I have already discussed, that the line of authority starting with*** *Re Poyser & Mills* ***is any guide in this part of this legislation.*** All that is required, it seems to me, is that the local authority should give an intelligible reason for its conclusion that it was appropriate to refuse on the ground chosen. Such reasons need not be long or detailed but they should carry sufficient information to enable the applicant to understand why it is that his application has been refused. For instance, it is not sufficient to say that a grant would be inappropriate having regard to the character of the relevant locality, without telling the applicant what is the relevant locality and what it is about its character that makes it an inappropriate location for a sex shop."

112 The level of reasoning required will vary substantially according to the nature of the decision under review and we accept that a decision to refuse registration of a trust company under the 1998 Law is likely to require a greater level of detail than a decision to refuse a sex shop. However the essential test remains the same, namely that the reasons should carry sufficient information to enable the applicant to understand why he has failed.

113 Mr Scholefield submits that the Letter of Reasons explains how the Board has reached its decision but not why. He argues that it is silent as to why the Board preferred the views of the Executive and the Inspector to those of Anchor. In our judgment this submission requires too much. The Board is not sitting as a judge to give a reasoned judgment. We consider that the reasons set out in the Board's letter fulfil the requirements imposed by Article 11(2) and those of fairness. Anyone reading that letter can understand exactly why Anchor has been refused registration. The Board states the findings of fact which it has made and explains the material upon which it has reached that finding (e.g. which passage in the Inspector's Report). It then goes on to relate those findings of fact to the criteria for refusal specified in Article 9(3) of the 1998 Law. We do not think that an administrative body such as the Commission is under a duty to descend into the level of detail suggested by Mr Scholefield and explain in relation to each finding of fact exactly why it has chosen the view of the Executive or the Inspector rather than that of Anchor. As we say, one must stand back, look at the letter and ask whether the recipient of the letter would know why the Board

refused the application. In our judgment the letter explains why very clearly.

114 Anchor raises one minor supplementary point in connection with reasons. Article 11(2) of the Law provides (omitting irrelevant wording):–

> ***"Where the Commission …….*** refuses to register a person ….. the applicant ….. may require the Commission to furnish him within 14 days of a statement in writing of its reasons for that decision."

By e-mail dated 3 rd March 2005 (before Anchor was informed of the Board's decision by letter dated 4 th March) Mr Shelton requested that any refusal of Anchor's application be accompanied by a full explanation of the Board's reasons as required under Article 11. Mr Scholefield argues that, in the light of that e-mail, the 14-day period began to run from 4 th March because, by that date, there had been a decision and a request for reasons. The Board therefore ought to have delivered its reasons by 18 th March whereas in fact they were not issued until 23 rd March. In its written submissions, Anchor questioned whether a Board which shows such zeal in identifying shortcomings on Anchor's part should be able with impunity to break its own statutory rules of procedure. Mr Kelleher, on the other hand, submits that the reference in Article 11(2) to ' *within 14 days*' can only in context be a reference to within 14 days of the request. It cannot mean within 14 days of the decision as otherwise the Board could in theory have to supply reasons on short or no notice.

115 In our judgment one must have regard to the substance of the provision. Clearly the legislature was providing that the Board should have 14 days in which to prepare and issue its reasons. Assuming immediate notification of a decision, a request could be made by return e-mail with the result that the Board would in fact have only 14 days from the date of its decision. Does it make any difference that the request was made before the decision was communicated? In our judgment it should not. Looking at the substance of the matter, if an applicant, in anticipation of a refusal, makes a formal request for reasons pursuant to Article 11(3), the Board is not prejudiced in any way by ruling that the 14-day period will in such circumstances begin to run from the date of the decision, being the date upon which the request shall be deemed to take effect.

116 However we can understand the Board having taken a different view and in any event Mr Scholefield very realistically accepted that no prejudice had been caused to Anchor by reason of the delay of a few days in providing the reasons. Accordingly we need say nothing further about this point.

(c) Apparent bias or unfairness on the part of the Board

117 Anchor has raised a number of specific matters which, it submits, amounts to unfairness or apparent bias.

(i) In its response to Anchor's comments on the Minded to Refuse Letter the Executive referred to its concerns as those of the Commission, thus negating the appearance of an impartial quasi-judicial Board.

(ii) The chairman of the Board previously publicly stated his faith in the absolute integrity of the Director General.

(iii) At the oral hearing the chairman of the Board addressed the Director General by his first name but addressed Anchor's representatives by their formal titles.

(iv) Four members of the Board are associated with professional firms which are or have been instructed by the Executive.

118 We remind ourselves that the test is whether the procedure adopted is unfair. In the particular context relied upon by Mr Scholefield the test is whether the fair minded and informed observer, having considered the relevant facts, would conclude that there was a real possibility that the Board was biased. We would comment as follows on the four points raised:–

(i) We regard it as inconceivable that anyone would think that the members of the Board would be biased simply because the Executive had described its concerns as being those of the Commission. After all it forms part of the Commission.

(ii) The fact that the chairman of the Board regards the Director General as a man of integrity is irrelevant. Court of Appeal judges no doubt consider first instance judges to be persons of integrity but this does not prevent them from deciding that the decision of a first instance judge was wrong. Similarly the Royal Court itself often declares decisions of a Committee to be erroneous without in anyway impugning the integrity of the Committee members. Indeed in everyday life we are all familiar with political opponents who regard each other as persons of integrity but consider that the other is wrong in almost every political opinion that he expresses. The issue for the Board in this case was whether the Executive, led by the Director General, was correct in its view that Anchor was not fit to be registered as a trust company. The Director General's integrity was quite irrelevant to this; what was relevant was his judgment. It would not occur to the well informed observer that the chairman's opinion that the Director General was a man of integrity could in any way prevent or inhibit him from concluding that he did not agree with the Director General's recommendation in the case.

(iii) It is important that parties before a tribunal should feel that they are being treated equally. A tribunal should not therefore address one party in a more informal manner than another. The chairman should not therefore have addressed the Director General by his first name unless he did the same in relation to Anchor, which he did not. However we do not think that the informed observer would conclude from this minor matter that there was a real possibility that the chairman was biased.

(iv) Mr Scholefield did not develop the fourth point in his oral submissions. However

we do not consider that the mere fact that members of the Board may be associated with firms which are instructed by the Executive on other matters would lead the fair minded and informed observer to conclude that there was a real possibility that those members of the Board would be biased in favour of the Executive. Indeed Article 3 of the Financial Services Commission (Jersey) Law 1998 specifically envisages that some of the Commissioners would be persons with experience of the type of financial services supervised by the Commission. Clearly the position would be different where the firm has advised on the particular matter and in this case we think that Commissioner Richomme was correct to recuse herself on the basis that her firm had advised at some stage in relation to Anchor's application.

(d) Failure to listen

119 Finally, under the heading of unfairness, Mr Scholefield submits that the Board has paid lip service to the requirement of *audi alterem partem* but no more. Anchor has been heard but not listened to. Very little of what it has said in its numerous detailed responses and in its oral submissions to the Board has influenced the Board. This was a very general submission by Mr Scholefield which he did not flesh out. We think that the best way of dealing with it is to revert to it when we review the merits of the Board's decision.

H. Was the Board's decision unreasonable?

120 We propose to deal in this section with the points which Mr Scholefield has made under the heading of unreasonableness. It may be thought that some of the points could equally be put as procedural criticisms and we have considered them in that light as well.

(i) Grounds of appeal relating to the Board's findings concerning Anchor's conduct in relation to the administration of certain of its trust and company structures.

121 It is to be recalled that the Board dealt first with whether Anchor was a fit and proper person to be registered and considered this under seven headings. The first heading related to Anchor's conduct in the administration of certain of its trusts and company structures. The Board mentioned sixteen structures in this respect. The first twelve were considered by the Inspector in his February report and arose from his consideration of the files which he had inspected following the production orders; the last four entities were dealt with in the August report and arose as a result of his investigations for the preparation of that report. In relation to the first twelve entities, the Board made no finding in respect of two of them but expressed criticism of Anchor in relation to the other ten as well in relation to the four additional entities. That criticism was to the effect that Anchor had shown inadequate attention to the detection and prevention of money laundering and financial crime.

122 A substantial number of Anchor's grounds of appeal related to the Board's findings in

relation to these entities and we now turn to consider those grounds.

(a) Use of the February report

123 We have already touched upon this in paragraph 82 but Mr Scholefield submits that the issue is also relevant to the reasonableness of the Board's decision. He submits that it came as a considerable surprise to Anchor to find that the Board had relied upon the February report in respect of the original twelve entities. The February report had been prepared by the Inspector simply from the files inspected at the JFCU and he had not interviewed any Anchor staff prior to preparing the February report; indeed the report itself stated at page 11 that the opportunity to question key individuals was essential. He also relies upon the fact that the Director General, when responding in an e-mail dated 13 th January 2005 to an enquiry from Mr Bryant of Anchor concerning the matters which the Executive would expect Anchor to address at the forthcoming meeting of the Board on 2 nd February 2005, did not identify the February report as a 'key document' which Anchor ought to deal with in its oral presentation to the Board. As a result of these matters, submits Mr Scholefield, Anchor had not commented upon the February report even though it was in a position to show that some of the conclusions drawn by the Inspector and relied upon by the Board were erroneous. Mr Shelton dealt with these matters in some detail in his first affidavit (dated 11 th May 2005) and Mr Powell responded in his second affidavit (dated 1 st June 2005).

124 As we have already indicated, we consider that Anchor had ample opportunity to comment on the February report and should have done so if it took issue with its contents. The February report was supplied to Anchor as an annexe to the draft final report (which became the August report) in June 2004. The draft August report expressly stated at para 6.1 that that section of the report (which dealt with Anchor's relationship with Lee Adderson) should be read in conjunction with and following a review of the February report. Furthermore, para 3.9 of the Minded to Refuse Letter makes it quite clear that the Executive is relying upon the February report as well as the August report in respect of its criticisms of Anchor. Anchor therefore had ample opportunity to respond to the contents of the February report both in its observations to the Inspector and in its observations to the Executive in respect of the Minded to Refuse Letter.

125 The next step was when the Director General submitted his memorandum dated 17 th November 2004 to the Board recommending refusal. In this he again specifically referred to the February report. In his affidavit Mr Shelton refers to the Director General's failure to identify the February report as a key document as one of the reasons why it is unfair for the Board to rely upon the February report in reaching its decision. However Mr Shelton, at paragraph 25 of his affidavit, quotes somewhat selectively from the Director General's e-mail. We set out the material passage from the e-mail and have underlined relevant parts of the passage which were omitted by Mr Shelton in his quotation:–

"The form and structure of Anchor's response must of course be a matter for you.

> All the documents in the bundle tabled with the Commissioners and copied to you are relevant. But my understanding is that the Commissioners would expect you in your oral submission at the next meeting on 2 nd February to focus particularly on the key documents which set out the Executive's case. These are: the Minded to Refuse Letter of 13 th September 2004; the memo to the Board of Commissioners of 17 th November 2004, which takes account of Anchor's representations on the Minded to Refuse Letter and sets out the Executive recommendations on the application; and the speaking notes which set out the oral submission which I made to the Commissioners yesterday."

126 We do not consider that this e-mail was misleading. The Director General made it clear that it was ultimately for Anchor to decide what matters to deal with and he emphasised that all the documents supplied to the Board (which included the February report) were relevant. The fact that he sought to be helpful by pointing to three particular documents cannot be held against the Executive or the Board. In summary we do not find it unfair or unreasonable for the Board to have relied upon the February Report.

127 The result of Anchor's approach to the February report has been that, in his affidavit for this appeal, Mr Shelton has, in some cases, produced documents or made assertions that, he says, show that the February report and the Board's conclusions based thereon were wrong. The Board contends that it is not open to an applicant to produce new evidence on appeal which it ought to have produced before the Board. The Court agrees that, as a general principle, the Court will not agree to an applicant seeking to produce evidence before the Court on appeal which ought to have been produced before the decision-maker (see *Trump Holdings Limited v Planning and Environment Committee* before the Royal Court (2004) JLR 16 at paras 18 and 19 and before the Court of Appeal (2004) JLR 232 at para 20). However the Court has a discretion which, on rare occasions, may be exercised in favour of an appellant and, on this occasion, we decided to consider the various material and assertions made by Mr Shelton in his two affidavits.

(b) Going beyond the Executive's case

128 Mr Scholefield submits that it is unfair and unreasonable for the Board to make a finding which goes beyond the criticisms put forward by the Executive. Mr Kelleher, on the other hand, submits that there is nothing to prevent the Board from making a finding which goes beyond or differs from a finding of the Executive because it is the Board which has to reach its own conclusion on the evidence before it. We agree that it is ultimately for the Board to reach a decision and to make its own finding. However there is an element of fairness here. Suppose the Executive were to state specifically in its submission to the Board that, on a particular aspect, it was satisfied with the conduct of the applicant, it would hardly be surprising if the applicant did not take any time to address that matter in its submissions to the Board. In those circumstances it would unfair for the Board, out of the blue, to make an adverse finding on that aspect without having given the applicant an opportunity to deal with the matter. It follows that, if the Board is minded to make a finding on a matter not

raised by the Executive or which is inconsistent with the view of the Executive, the Board ought to draw this possibility to the attention of the applicant and give him an opportunity to address the Board's concerns. We will consider whether this has happened on this occasion when turning to the specific cases raised in the grounds of appeal.

(c) Commercial Trust

129 This was a trust of which Mr Adderson was the settlor. The Board found at paragraph 1.1.1 of the Letter of Reasons that, in relation to this trust, Anchor's files contained no information relating to due diligence or verification of identity, nor as to the source of funds or commercial rationale; and Anchor failed to discharge its fiduciary duty as trustee by reason, in particular, of its failure to give consideration to or to question any of the transactions which took place in relation to the trust assets between August 2000 and June 2001. The Board concluded that this demonstrated inadequate attention on the part of Anchor to the detection and prevention of money laundering and financial crime and a lack of effective management control. Furthermore the failure to verify the identity of the settlors of property into the trust constitute an offence under the Proceeds of Crime (Jersey) Law 1999. This lead the Board to conclude that Anchor's conduct in relation to the administration of the trust showed a lack of competence in the exercise of its role as trustee.

130 Based upon Mr Shelton's affidavit, Anchor submits that the first finding (that there was no information in the file relating to due diligence or identification) was not a concern raised by the Executive either in its Minded to Refuse Letter or its memorandum of 17 th November 2004 to the Board. We reject this assertion. It is not incumbent upon the Executive, when it is relying upon matters contained in documents which form part of the materials supplied to the parties, to repeat every last allegation contained in those documents. It is necessary only to make it sufficiently clear what in those documents has been relied upon by the Executive. The Minded to Refuse Letter contained the detailed nature of the Executive's case and made it clear at paragraph 3.5 that the Executive was relying upon the contents of the February report. The Executive summarised its concerns arising from the February report concluding at 3.5.2 that:

> *"Anchor had insufficient and inadequate operable anti-money laundering procedures"*.

This clearly encompasses matters of due diligence and identity as well as the source of funds. In his memorandum to the Board, the Director General quite reasonably did not repeat everything which had been set out in the Minded to Refuse Letter or the Inspector's reports but at 3.1.1 he referred to Anchor's lack of competence as evidenced by its "Inadequate attention to the prevention of money laundering and financial crime". Indeed any reading of the Minded to Refuse Letter, the Director General's Memorandum and the Director General's speaking note makes it crystal clear that, at the heart of the Executive's concerns lies a concern about Anchor's attitude towards the detection and prevention of money laundering. We are satisfied therefore that the Board did not go beyond anything asserted by the Executive.

131 Secondly Anchor submits that the finding of the Board (based upon the February report) that there was no evidence of identification in the files was incorrect. Mr Shelton exhibited to his affidavit a certified copy of Mr Adderson's passport and a reference on him from Mr Gawor dated 1 st March 2001. He also asserts that there was satisfactory evidence as to the source of the funds that were contributed.

132 As to the finding by the Board that Anchor failed properly to fulfil its fiduciary duties as trustee Mr Shelton states at paragraph 31(c) of his affidavit:–

> *"Anchor acted in accordance with the wishes of the principal beneficiary who was also the settlor.* In so doing it cannot have been in breach of its fiduciary duties." **[Emphasis supplied]**

In our judgment the emphasised passage provides powerful support for the Board's finding as to Mr Shelton's competence. It is elementary trust law that a trustee may well be in breach of its fiduciary duties when acting in accordance with the wishes of the principal beneficiary or settlor. A trustee must exercise his own discretion having regard to the interests of the beneficiaries as a whole. He may of course take account of the wishes of a beneficiary but to assert that, because Anchor acted in accordance with the wishes of the principal beneficiary, it cannot have been in breach of its fiduciary duties, is to show a worrying ignorance of the duties of a trustee.

133 The Court is willing to assume that, had it been shown the evidence of verification of identity referred to above, the Board would not have made its finding concerning the lack of identification. Furthermore Mr Powell accepted that, in view of the fact that the trust was established in 1998, the failure to verify identity at that time did not amount to a breach of the Proceeds of Crime (Jersey) Law 1999.

134 However, the Court is of the clear view that, even allowing for these two matters, the remaining material contained in the February report relied upon by the Board fully justifies the Board's finding that Anchor's conduct in relation to the Commercial Trust demonstrated inadequate attention to the detection and prevention of money laundering and financial crime and a lack of effective management and control.

(d) Mullen Investments Limited

135 This is the company in respect of which Mr Marshall collected cash from Mr Adderson, distributed it to other Anchor clients and then arranged for those clients' entities to make bank transfers to Mullen. Mr Shelton was a director of Mullen at the material time. The inaugural board meeting was dated 26 th March 1998 whereas there is in the file a fax from Anchor to the BVI agent dated 9 th April 1998 seeking to purchase Mullen. The Inspector concluded that this suggested that the minutes had been backdated. The Board found that they had been. The Board also found that, having regard to certain of the interviews by the

Inspector with Anchor staff, Mr Shelton must have been aware of Mr Marshall's practice of collecting cash, depositing it with other clients of Anchor and then arranging for internal transfers.

136 In its grounds of appeal Anchor attacks both of these findings. Mr Shelton, in his affidavit, argues that the incorrect date on the minutes could well have been the result of a simple typographical error as there was no logical motive for the minutes to be deliberately backdated. As to his knowledge of Mr Marshall's cash activities, Mr Shelton points out that, in his interview with the Inspector, Mr Marshall had said that Ms Breese and Mr Callander were the only people at Anchor who were likely to have known of his cash activities. This contradicted the evidence of Ms Breese and Mr Callander to the effect that all the directors were aware of Mr Marshall's cash activities.

137 We see no grounds for criticising the Board's finding that Mr Shelton must have been aware of Mr Marshall's activities having regard to the evidence given by Ms Breese and Mr Callander in their interviews with the Inspector. As to whether the minutes were backdated, it is right to note that, at the time the Board made its decision, Anchor had not contradicted the suggestion of backdating. Even in his affidavit for this appeal, Mr Shelton does not assert as a fact that the minutes were not backdated; he merely raises the possibility that the incorrect date could have been the result of a typographical error because there was no logical motive deliberately to backdate the minute. Even if one were to accept that the minute had not been deliberately backdated, that is a very minor aspect of the Board's finding in this matter. In our judgment it would not affect in any way the reasonableness of the Board's conclusion that the manner in which Mullen was administered demonstrated inadequate attention on the part of Anchor to the detention and prevention of money laundering and financial crime and a lack of effective management and control and that this in turn showed a lack of competence.

(e) Premont Holdings Limited

138 In the February report the Inspector accepted that Premont was established prior to the introduction of the Money Laundering (Jersey) Order 1999. However, even allowing for this, the Inspector considered that, from a due diligence/risk management perspective, the files were wholly inadequate. The Board endorsed this finding although noting that the incorporation of Premont occurred prior to the coming into force of the 1999 Order. Anchor attacks the Board's finding and submits that it disregards the fact that the Inspector had recognised that, at the time, there was no legal requirement to obtain KYC information. In his affidavit Mr Shelton stated that Anchor had subsequently obtained KYC information and, in any event, Mr Marshall had known the settlor of the trust which owned Premont for many years. Mr Shelton asserted that the Board's use of the Premont file to justify its finding provided particularly strong evidence of its prejudice against Anchor.

139 The Board was of course not aware of the matters now relied upon by Mr Shelton because Anchor had not placed any of the material in Mr Shelton's affidavit before the

Board, nor had it commented on the Inspector's findings. In the circumstances the Court does not agree that the Board's findings suggests prejudice on its part. Those findings were perfectly reasonable on the basis of the material before the Board. But for the purposes of its consideration of this appeal, the Court is willing to assume that, as asserted by Mr Shelton, Mr Marshall had known the settlor since the 1980's and Anchor did obtain KYC information on him.

(f) Macreanor Investments Limited

140 The February report shows that this was a company of which the Wharf Trust was shown as the beneficial owner. In order to fund the purchase of real property by the company, the Wharf Trust loaned money to the company; of this sum £43,000 was obtained by way of loan from the Oakdale Trust to the Wharf Trust for on-lending to Macreanor. Based upon the findings of the Inspector, the Board found that it was not possible to ascertain from the information held in Anchor's files the nature of the relationship, if any, between Macreanor and Oakdale Trust. Based upon the assertion of Mr Shelton in his affidavit, the written submissions and grounds of appeal of Anchor state that the Board has made a finding against Anchor for not recording the nature of a relationship which did not exist. In his affidavit Mr Shelton asserted that there was no direct relationship between Oakdale Trust and Macreanor.

141 In our judgment the Board was not criticising Anchor for not recording a relationship which did not exist. That is a distorted reading of the Board's finding. What the Board was saying was that there was no information to explain why the Oakdale Trust should lend money to the Wharf Trust. It might be because there was in fact a relationship between the two trusts and this would explain why the loan had been made; if so it should have been recorded. Alternatively it might have been an arm's length transaction in which case that should have been spelt out. Good practice, even in 2000, required that the files should contain sufficient detail to explain the nature and rationale for financial transactions. The Board was entitled to find that the files failed to contain the necessary information in respect of Macreanor.

(g) Browham Trading Limited

142 At paragraph 1.1.13(a) of the Letter of Reasons the Board found that Anchor formed Browham, opened a bank account for the company and received funds into that account all prior to verification of the identity of the beneficial owner. It is accepted that the beneficial owner had previously been a client of Anchor but that that relationship had ceased some time prior to the establishment of Browham. On re-establishment of the relationship Anchor requested fresh identification documentation but, according to the Inspector, proceeded to open the bank account which received funds prior to receipt of that updated documentation. In its response to the Inspector's draft report, Anchor emphasised that it did have KYC information from the previous relationship. This response was relied upon in Anchor's response to the Minded to Refuse Letter. In the Reply Memorandum the Executive stated at

para 3.18 that Anchor appeared to have fulfilled their duty to verify the beneficial owner's identity in relation to Browham.

143 Anchor submits that the Board's finding in relation to the obtaining of KYC documentation is inconsistent with that of the Executive and that accordingly it is not open to the Board to make such a finding. The Board, through Mr Powell in his affidavit, argues that, under the provisions of the Money Laundering Order, Anchor was obliged to obtain fresh evidence of identity when the relationship was re-established. We have already stated that, if the Board was minded to make a finding which was inconsistent with the view put forward by the Executive, it should have indicated as much to Anchor so as to give Anchor an opportunity of commenting upon the Board's concerns. We agree therefore that it was unfair for the Board to make this particular finding without having given Anchor an opportunity to comment on the matter. However this was only one very minor aspect of the Board's concerns about Anchor's conduct in relation to Browham. The serious aspect was that Anchor did not have any reasonable knowledge of the activities of Browham and that Mr Shelton authorised the transfer of funds on behalf of the company to Moscow despite strong objections by colleagues and, in doing so, rode roughshod over his colleagues and Anchor's due diligence procedures.

(h) Lydia Thomas Trust

144 The Board found at 1.1.14(a) of the Letter of Reasons that there was insufficient record made of reasons for decisions which ‘suggests’ that Anchor merely acted on the instructions of those behind the structures without exercising independent judgment or discretion. The Inspector had concluded from his review of the documents of this trust that Anchor was ‘vulnerable’ to this suggestion.

145 Anchor submits that the Board's finding was made on the basis of conjecture, which could not be reconciled with its assertion (in correspondence before the hearing) that the burden of proof lay upon the Executive. We do not think that the Board can be criticised for the view which it expressed having regard to other instances in the material before the Board which indicated that Anchor was inclined simply to follow the instructions of the person behind the structure (see for example Browham Trading Limited). Interestingly the Board's concerns in this respect might be said (after the event) to have been vindicated by Mr Shelton's assertion as set out in para 132 above.

(i) Air Sofia Europe Limited

146 At 1.1.15(c) the Board found that Anchor had failed to demonstrate that it had taken reasonable care to have knowledge of the activities of the company. This finding was based upon para 13.23 of the August Report which read:–

“There is insufficient information on file to explain the rationale for the existence

of and the activities of this company. The activities that are evident do not appear to be consistent with the reasons given for the existence of the company. This again suggests to me that Anchor is not able to demonstrate that it has taken reasonable care to have knowledge of the activities of a company for which its acts, in breach of Section 3.1.9.2 of the JFSC Trust Company Codes of Practice."

147 Anchor submits that the Inspector's conclusion is only tentative whereas that of the Board is firm. We do not agree that the Inspector's conclusion was only tentative. When read in context it is clear that the Inspector is expressing the opinion that Anchor had not taken reasonable care to have knowledge of the company's activities. Anchor also submits that the Executive did not make it clear that it was maintaining this viewpoint and had rejected Anchor's explanations. Again, we do not agree. In paras 10.7 and 10.8 of the Minded to Refuse Letter, the Executive referred to the August report in this connection and it commented again on the position at the similarly numbered paragraphs of its Reply Memorandum.

(j) Other matters raised by Mr Shelton

148 We have sought to address all the arguments raised by Anchor in its grounds of appeal and written and oral submissions which relate to the particular heading with which we are now concerned, namely the Board's findings in relation to Anchor's administration of the twelve entities referred to in the February report and the four additional entities referred to in the August report. It has not been entirely straightforward because Mr Scholefield failed to number his grounds of appeal and written submissions and also omitted in the majority of cases to relate the complaint to a specific entity. Nevertheless, with the assistance of the oral submissions, we believe that we have been able to relate the criticisms to the appropriate entity.

149 However, in his affidavit, Mr Shelton raised a number of additional matters under this heading which have not found their way into the grounds of appeal or written or oral submissions. We have nevertheless carefully considered the contents of Mr Shelton's affidavits. Suffice it to say that we do not find that his criticisms lead us to differ from the Board's findings save in respect of the following matters:–

(i) In a few cases, he has produced some KYC documentation which the Inspector had not seen and which the Board therefore concluded did not exist. The Board cannot be criticised for its findings made on the material available at the time but we accept that, in these cases, some KYC documentation did exist.

(ii) In one or two instances, now that Anchor has produced additional information, conduct which the Board believed had taken place after the introduction of the Money Laundering Order (and therefore amounted to a breach of that Order) may in fact have taken place prior to the introduction of the Order. Nevertheless, the Board has

expressed the view (e.g. Mullen Investments Limited) that the practices adopted by Anchor fell far below the standards which generally existed among trust companies at the relevant time. In reaching this conclusion the Board has relied upon its collective experience of the standards which existed at the time. Mr Scholefield submits that the Board was not entitled to rely upon its own knowledge and experience in this way. He referred to the *Costain* case (see para 107 above) where the court commented that if an adjudicator obtains material from sources other than the parties, including his own knowledge and experience, he must give the parties a reasonable opportunity to comment on that material. That case related to an arbitration where the adjudicator was clearly fulfilling an entirely judicial role. That is not the role of the Commission. The Commission is a regulatory body and a number of its members are appointed for their experience and expertise. It would be nonsensical if the members of the Board were not able to apply that experience when deciding whether to grant an application for a licence by a trust company. We accept that, in some circumstances, it might be unfair not to give an indication of some matter where the Board was going to apply its experience if such could not be reasonably anticipated but we do not consider that to be the case here.

(iii) In the light of information which has now been produced by Anchor in relation to Holleyberry Holdings Limited, we accept that the Board's finding at para 1.1.12(a) in relation to the Rivington Hotel may not be relied upon.

(iv) To the extent that, in its findings in relation to the Lydia Thomas Trust, the Board concluded that a loan by a 100% beneficial owner to his company has to be evidenced by formal loan documentation, we would not agree. In our judgment the opinion of Advocate Pettit obtained by Anchor and annexed to Mr Shelton's affidavit is a fair summary of the position. The records of the lending beneficial owner and the borrowing company must record the exact terms of the loan and the purposes for which it is made but we do not consider that there has necessarily to be formal loan documentation.

150 However, even if all the matters in the previous paragraph are determined in Anchor's favour, we do not consider that this affects the validity of the Board's conclusion in relation to these various entities. Essentially the Board found that Anchor's conduct in relation to the administration of these entities disclosed inadequate attention to the detection and prevention of money laundering and financial crime and a lack of effective management and control. This in turn led to a finding of lack of competence. Even if one takes away the matters in the previous paragraph and the other matters where we have differed from the Board, there was ample material before the Board to justify this finding. The Board's decision on this aspect cannot possibly be categorised as unreasonable. We therefore turn to consider the other grounds of appeal relied upon by Anchor.

(ii) The STR's

151 Paragraph 1.5 of the Letter of Reasons deals with how Anchor had dealt with certain

STR's. The Board concluded at 1.5(f)g that the dismissal of the 15 reports as spurious and the disparaging remarks made about Dr Bevis revealed a culture at Anchor which was neither healthy nor risk averse.

152 Mr Shelton took exception to this and asserted in his affidavit that, if the Inspector really thought that the STR's were suspicious, he was under a duty to report them to the Commission and they would in turn have been under a duty to report them to the police. It was significant that the Inspector had not done so. Anchor should not be criticised for something which the Inspector and the Commission had been equally guilty of. However this is to misread what the Inspector actually said. He did not find in Section 8 of the August Report that Anchor should definitely have passed on the 15 STR's to the police. What he was critical of was Anchor's dismissive approach to the reports. He goes into some detail and concludes that, in relation to at least four entities, namely the Libby Trust, the Trix Trust, the Weasel Trust and Aquafiltration Limited, there was sufficient in the files to justify a thorough review in the light of the STR's in order to see whether the matter needed to be passed on to the police. In those circumstances there can be no question of the Inspector having been in a state of mind which required him to pass the matter on to the police. We do not therefore accept the validity of Mr Shelton's criticism of the Inspector or the Executive.

(iii) The Board's findings in relation to Mr Dimsey

153 The Board was critical of Anchor in a number of respects in connection with its relationship with Mr Dimsey. First, the Board concluded at para 1.7(e) of the Letters of Reasons that Anchor had failed to recognise that it was inappropriate to associate themselves with Mr Dimsey. Secondly, at paragraph 3, the Board concluded that a person employed by or associated with Anchor (Mr Dimsey) had been convicted of an offence involving dishonesty.

154 On these points Mr Scholefield, developing a point originally made by Mr Shelton in his affidavit, questioned the Board's hostility to Mr Dimsey. He submitted that Mr Dimsey had paid his debt to society and that Anchor was merely seeking to deal with him in a humane yet responsible manner. He contrasted the approach of the Board with that of the Royal Court in (*Blenheim Trust Company Limited v Morgan* Jersey Unreported 8th October 2004) where the Court had allowed the recovery upon taxation of the fees of a former solicitor who had committed serious offences and, as a result, had been struck off the roll of solicitors. Mr Scholefield referred in particular to a passage at paragraph 18 of the judgment where the Court had said:–

> ***"He has now paid his debt to society and he retains the legal knowledge and experience built up over a period of years."***

155 In our judgment there is no comparison between the situation being considered by the Royal Court in *Blenheim* and the matter before the Board in this case. The Royal Court

held simply that a private litigant was entitled to employ a former solicitor to carry out work which would otherwise have to be done by a solicitor and could recover the costs of so doing. The Board in this case had to consider whether a trust company, which looks after client monies, should be registered having regard to the fact that it had for a considerable period chosen to be associated with a person who had twice been convicted of offences involving dishonesty and served sentences of imprisonment. The Court has no hesitation in agreeing with the Board that, on the evidence before it, Mr Dimsey was associated with Anchor, that this was an undesirable and inappropriate association and that Anchor's failure to recognise this was a material factor in deciding whether Anchor was a fit and proper person.

156 Thirdly, the Board concluded that Anchor had failed to provide information to the Commission which was required under the law by not mentioning the existence of its relationship with Mr Dimsey in its application form. Anchor submitted that it was under no obligation to refer to this relationship because Mr Dimsey was not an employee or an 'associate' (as defined in Article 1 of the 1998 Law).

157 Article 9(3)(a)(ii) of the Law provides that the Commission may refuse an application for registration where it is not satisfied that the applicant is a fit and proper person having regard to information as to "Persons …… associated with the applicant for the purposes of the applicant's business ……" Article 9(3)(d) provides that the Commission may similarly reject an application on the grounds that "Any person …… associated with the applicant for the purpose of the applicant's business has been convicted …… (ii) of any offence involving dishonesty".

158 The questionnaire to be completed by an applicant includes a question in the terms set out in paragraph 53(g) of this judgment. We agree that, given the narrowness of the definition of 'associate' in Article 1 of the Law, Mr Dimsey did not fall within that definition. However the question is not limited in this way. It asks for any information about the applicant which may have a bearing on the Commission's decision. There is an obligation upon an applicant of maximum disclosure and openness towards the Commission. It is somewhat akin to the duty of a person seeking insurance. The obligation is upon the applicant to disclose any information which may have a bearing on the Commission's decision in determining the application.

159 In our judgment it should have been obvious that the presence of Mr Dimsey carrying out the sort of activities disclosed in the August Report and Mr Gidley's report was something which might have a bearing on the Commission's decision, given the provisions of Article 9(3)(a)(ii) and Article 9(3)(d) of the Law as referred to above. If Mr Shelton did not appreciate this, he most certainly should have done. The Court accordingly agrees with the Board's finding that Anchor should have disclosed the existence of its relationship with Mr Dimsey and its failure to do so was a breach of Article 9(3)(d).

(iv) Failure to mention Mr Shelton's désastre

160 As set out at para 54 above, the Board found that Mr Shelton had provided untrue or misleading information by answering 'No' to a question 'Have you at any time during the last 10 years had your property declared en désastre…..?' when his property had in fact been declared en désastre in 1995, although it had been recalled the same day. When this point was raised with him, Mr Shelton stated (in his response to the pre-authorisation visit report):–

> *"I had intended no inaccuracy in the forms.* My lawyer had informed me that the recall on the same day meant that it was if the désastre had never happened …… Article 7(3) of the Bankruptcy (Jersey) Law 1990 reinforces his opinion. Clearly it would be futile to hide a matter of local public record and it would not be my intention to do so."

161 In its grounds of appeal Anchor contended that, in making this finding, the Board had gone beyond the position of the Executive. Mr Shelton explained what was meant by this in his affidavit. He pointed out that this matter had been raised in the pre-authorisation report and that he had explained the matter as stated in the preceding paragraph. He submitted that, at the time, namely 2002, the Executive accepted his explanation. He referred to the fact that on 17 th July 2002 the Executive had suggested that an independent review be undertaken under Article 7(5) of the Law and had gone on to say:–

> *"That, unless there are satisfactory explanations for the shortfalls identified, such a report is necessary to properly assess the application made".*

He relies upon the fact that, after discussions with Anchor, no such review was in fact insisted upon by the Executive. From this he asserts that the Executive were satisfied with his explanation for not referring to his désastre.

162 We have some difficulty in following this argument. The review proposed by the Executive in its letter was intended to deal with matters such as money laundering safeguards, procedures etc. The draft scoping letter for the review, which accompanied the Executive's letter, made no mention of the answer in the questionnaire. We cannot see therefore how one can infer from the decision not to proceed with the review that the Executive had accepted Mr Shelton's explanation for failing to disclose his désastre.

163 Mr Shelton's submission becomes even more difficult to accept when one considers what the Executive said subsequently. At paras 2.1.11 and 14.4.2 of the Minded to Refuse Letter, the Executive made it clear that it considered the failure to disclose the désastre to amount to the provision of untrue or misleading information. This was repeated at para 3.3.1. of the Director General's Memorandum and was referred to again specifically by the Director General in his oral presentation to the Board (see the first page of his speaking note). It must therefore have been crystal clear to Mr Shelton and Anchor that, far from being satisfied with Mr Shelton's explanation, the Executive considered that he had provided untrue or misleading material by reason of his answer in the questionnaire. We therefore

cannot accept Anchor's suggestion that the Board went beyond the position of the Executive in making its finding in this respect.

164 Furthermore, bearing in mind the important duty of openness imposed upon financial institutions in their dealings with the Commission, we agree entirely with the Board's (and the Executive's) view. It should have been obvious to any applicant that, if one had been declared en désastre (even for a day) the true answer to the question (have you ever been declared en désastre?) is “Yes, but it was recalled the same day”. To answer simply “No” is both untrue and misleading. Even where a désastre has been recalled the same day, we could well understand the Board wishing to make some inquiry into the circumstances of the declaration of désastre in order to see if there was anything untoward which might influence its decision upon the suitability of the person in question to be involved in trust company business.

(v) Loans to clients

165 In its pre-authorisation report in July 2002 the Executive raised the issue of Anchor's practice of lending money to client companies and indicated that such practice breached the Trust Codes because of the potential conflict of interest and the fact that the transactions did not appear to be properly documented. In its response to the pre-authorisation report Anchor recognised that there could be a conflict of interest although asserting that it had acted in the best interests of the clients in making the loans. The letter from Mr Shelton went on to say:–

> *“If such a type of loan were to be made in the future, it would require full and proper board consideration together with detailed documentation to ensure that such conflict did not occur.* Given the amount of work necessarily required it seems unlikely that Anchor will be making further loans.”

166 In fact Anchor did make a further two loans which showed up in the accounts ending 30 th April 2003. The auditor's management letter to those accounts recommended that such loans should not be made. The concern of the Executive (as expressed in the Reply Memorandum) was that there was no evidence of the detailed consideration and documentation in relation to these two loans that had been referred to by Mr Shelton.

167 At para 5.1.2 of the Letter of Reasons, having set out the facts (with which Anchor does not take exception) the Board concluded that Anchor should not have made loans to its clients because there was an intrinsic conflict of interest in such a transaction and such conduct was not acceptable in the modern regulatory environment. It went on to say that Anchor's letters were intended to re-assure the Executive that it was unlikely that loans would be made in the future and that therefore there was one less issue for the Executive to be concerned about regarding Anchor's compliance issues and that Anchor had then made further loans. The Board found Anchor to be in breach of Principle 2 and Section 2.4 of the Trust Codes.

168 In his affidavit Mr Shelton asserts that the two loans were made in the best interests of his clients. They were short-term loans, one to pay legal fees and another to pay Jersey income tax when the client was away. He asserts therefore that Anchor was acting in accordance with its duty to have the highest regard for the interests of its customers as required by another provision of the Trust Codes.

169 At the end of the day it is clear that this is a criticism by the Board of limited significance in the context of the case as a whole but, given Anchor's reassurance of the Executive in its response, we do not consider the Board's finding to be unreasonable.

(vi) Delays in financial statements

170 There does not seem to be any dispute between the parties that, at the time of the pre-authorisation visit in May 2002, Anchor was seriously in arrears with the preparation of financial statements for the client entities which it administered. That was a breach of Principle 3 of the Trust Codes. There is also no dispute that the position improved substantially thereafter and this was acknowledged by the Executive. At para 5.2.3 of the Letter of Reasons the Board recorded a finding to the effect that, in May 2002, Anchor had been seriously in arrears with the preparation of financial statements for clients and this was a breach of Principle 3. Anchor submits that this was unreasonable and disregarded the fact that the position had improved.

171 We do not read the Board's finding as carrying any implication that the position had not improved. It simply records that, in May 2002, there was a breach of Principle 3 by reason of the failure to prepare financial statements for the clients. That finding as such is not challenged and accordingly we do not accept that it was unreasonable.

(vii) Non co-operation by Mr Shelton during interviews with the Inspector and the Police

172 In its grounds of appeal Anchor states that the Board made a finding against Anchor on the basis of conduct variously described as naïve or combative, thereby misinterpreting the obligation to be co-operative. Mr Scholefield developed the submission orally by saying that one can be discourteous but at the same time be co-operative.

173 In relation to Mr Shelton's interviews with the Inspector, the Board found Mr Shelton had been unco-operative in a number of specific respects. It went on to refer to a number of passages in the transcript before concluding:–

> *"These parts of the transcript show Mr Shelton being sarcastic, gratuitously offensive and obstructive."*

The Board therefore went on to find that Mr Shelton had breached the obligation under the Trust Codes to deal with the Commission and other authorities in the Bailiwick in an open and co-operative manner.

174 In his affidavit Mr Shelton asserts that a finding that he had been sarcastic, gratuitously offensive and obstructive could not 'ground a finding of a refusal to co-operate', particularly given the atmosphere engendered by the Inspector. He said that this atmosphere was engendered by the erroneous caution given by the Inspector at the commencement of the interview (see para 79 above) and by the aggressive nature of his questioning, his approach being shown by his own reference to employees being 'subjected' to questioning.

175 The Court has read the transcript in question. The Court has no hesitation in concluding that it shows Mr Shelton to be unco-operative as well as being offensive and sarcastic. The approach of the Inspector did not begin to justify his attitude.

176 The Board also found at para 5.3.7 that Anchor did not fully co-operate with the police in the Adderson investigation. Again, Mr Scholefield submitted that, although some of the e-mail exchanges may have shown Mr Shelton being discourteous, they did not show Anchor being unco-operative. We have read the e-mails to which Mr Scholefield referred us but conclude that it was eminently reasonable for the Board to find that there had been a lack of co-operation.

(viii) Criticism of the Inspector

177 Anchor criticises the Board for relying upon the conclusions of the Inspector without addressing Anchor's challenge to his experience and methods to which, say Anchor, the Executive has offered no reply. It is true that, in its oral presentation to the Board, Anchor made a number of criticisms of the Inspector and that there was no response to these specific criticisms by the Executive. But the Inspector's qualifications and approach had been the subject of earlier criticism by Anchor and the Executive had made it clear in the Director General's Memorandum that it had considered these criticisms but had rejected them for the reasons which it gave. The Executive made it clear that it was satisfied with the Inspector's experience and qualifications and that the Board was entitled to form its own views of the reliability of the Inspector's reports on the material before it. We have read all the transcripts which have been produced to us and we see no grounds for concluding that the Inspector was biased, hostile or not competent. Some of his questioning was persistent but, as we have said earlier, that is the nature of the function which he had to undertake. Indeed, it is hardly surprising in view of the attitude shown by Mr Shelton at the very beginning of the interview on 19 th May 2004 when he accused the Inspector of being on a 'witch hunt'. All in all we see no reason for concluding that the Board could not have regard to the Inspector's Reports and accept them where it considered it appropriate.

(ix) Proportionality

178 Mr Scholefield submitted — and we accept — that a decision of the Board must be proportionate to the alleged misconduct. Thus, taking an extreme example, a minor one-off infraction of a Code of Practice should not lead to the revocation of a licence. Clearly such a decision would be disproportionate and therefore unreasonable.

179 Under this heading Mr Scholefield argued that the Board has been disproportionately severe by refusing Anchor a licence whereas it has allowed other entities to continue to be licensed notwithstanding what he would contend is more serious misconduct. Another way of putting this might be that there is a duty upon the Board to have regard to the importance of consistency as a factor in its decisions. The Royal Court and the Court of Appeal made observations on this topic in *Trump v Planning and Environment Committee* (2004) JLR 16 and 232.

180 First he referred to four cases which have been the subject of some publicity in the Island and which are mentioned at paragraph 38 of Mr Shelton's affidavit. For example Mr Shelton refers to the *Abacha* case which involved the laundering of very substantial sums by the former President of Nigeria.

181 Unfortunately, it is impossible from the three lines or so which Mr Shelton gives about each of the four cases in question to know anything about the conduct of the institutions which were involved. It is important to appreciate that Anchor is not being refused registration because it happened to have a drug trafficker as a client. Inevitably, as in all financial centres, there will be some criminal proceeds in Jersey held in banks or by trust companies. Thus it would be quite unreasonable for the Commission to refuse or revoke a licence merely on the grounds that criminal proceeds were held by a particular financial institution. The important thing is the attitude of the financial institution towards the detection and prevention of money laundering. What procedures does it have to minimise the risk of money laundering? How were they applied in a particular case? What is its attitude towards the problem? It is thus a hopeless exercise simply to refer to one or more other cases where it is said that criminal proceeds have found their way into Jersey institutions and then submit that, because the sums involved were large, those institutions have been dealt with more leniently than Anchor. Neither the Court nor Anchor knows anything about the circumstances in which the institutions in the four cases mentioned came to be involved, their attitude towards the problem once it arose etc. The Court cannot therefore place any weight on these cases. The issue for the Court is whether, on the facts established in this case, it was unreasonable for the Board to take the view that Anchor should not be licensed.

182 Secondly Mr Scholefield submits that the Board has been inconsistent or disproportionate in the way it has dealt with Anchor having regard to Mr Marshall. He was the person responsible for the conduct of Anchor in relation to the Adderson entities and yet he is apparently now employed by a trust company which is registered by the Commission.

Again, the Court has no information about the position of Mr Marshall in that trust company and the procedures and protections which that trust company has in place. In the absence of such information the Court can make no assessment of whether the Board has been unreasonable in licensing the trust company in question.

183 Thus, whilst we agree that the decision of the Board must be proportionate having regard to Anchor's conduct, we find that Anchor's sketchy references to other cases and to Mr Marshall's current position do not begin to suggest that the Board's decision in this case was disproportionate.

(x) The overall position

184 We have dealt so far with specific criticisms of the Board raised by Anchor in its grounds of appeal and written submissions. Many of these descended into great detail. But, having dealt with these matters, Mr Scholefield asks the Court to stand back and look at the broad picture in order to decide whether the Board's decision was unreasonable. In this context he submitted that the Board had really adopted uncritically the views of the Inspector and the Executive. The Board had not balanced these against and given proper consideration to the views of others. In this respect it had not complied with what the Board itself had said about the burden and standard of proof in Mr Powell's letter of 26 th January 2005 to Anchor where Mr Powell had accepted that the burden rested on the Executive to establish its case in respect of each of the issues which it raised and that the standard of proof required should be significantly higher than the balance of probabilities test. Thus, Mr Gidley, on behalf of Anchor had made the oral presentation before the Board and had put forward powerful criticisms of the views of the Executive and Inspector; Anchor themselves had provided detailed responses to the Inspector and the Minded to Refuse Letter; the Deloitte & Touche Report had painted a much more positive picture than the Inspector and had made it clear that there had been significant progress; and so had Anchor's auditors. The Board appeared to have given scant regard to these views or to those of Mr Gidley.

185 Furthermore the Board had placed too much weight on past events. The position had changed substantially. Procedures had been improved and Anchor had complied with the recommendations of the pre-authorisation report, its auditors and Deloitte & Touche. Indeed Mr Gidley stated in his oral presentation that Mr Radford, a partner in Anchor's auditors, had said that Anchor was now in the top quartile of trust companies in matters of compliance. The Board had criticised Mr Shelton but he was the one who had been responsible for introducing these changes as managing director. Considerable sums of money have been spent on compliance under his leadership. It was wrong therefore to say that lessons had not been learned. The Board's attitude in relation to Mr Dimsey was unreasonable because it had not shown that he had been an employee or associate of Anchor; even if he had, this was, as Mr Shelton put it in his affidavit, ‘of negligible relevance’. As to the STR's Mr Gidley, an independent consultant, had asserted that they had been carefully considered and the Board should have accepted this assertion. In short, the Executive and the Board had unreasonably concluded that Mr Shelton was a bad influence. He was not and the

historical difficulties had now been put behind the company. In its modern form there was no good reason to deny Anchor registration as a trust company.

186 The Court is satisfied that the Board did not simply adopt the views of the Executive and the Inspector. Nor did it 'hear but not listen to' Anchor's submissions as submitted by Mr Scholefield at para 119 above. It exercised its own independent judgment as indeed was its duty. This is evidenced by the fact that the Board did not accept a number of matters relied upon by the Executive. We would just mention just three examples:–

We also see no reason to conclude that the Board did not comply with the guidelines which it had set itself about the burden and standard of proof in Mr Powell's letter of 26 th January 2005.

(i) In the Minded to Refuse Letter and the Director General's Memorandum the Executive asserted that Anchor had provided untrue or misleading information in the annual directors' declarations required to be lodged with the Commission in omitting to refer to certain comments made by the auditors in their management letter for the years ended April 2002, 2003 and 2004. The Board did not so find.

(ii) In the Director General's Memorandum the Executive was critical of Anchor over its conduct in relation to a website started by one of its employees. The Board did not so find.

(iii) In the Minded to Refuse Letter the Executive had referred to comments made by a judge in the Family Division in England in the case of *Varma v Varma* which had been critical of Mr Shelton, who had given evidence before him. The Executive contended that these criticisms showed a lack of competence on Mr Shelton's part and that Anchor had not been sufficiently open with the Commission (as required by the Trust Codes) by not disclosing these criticisms to the Commission. The Board did not adopt the Executive's views on either of these criticisms.

187 However, accepting that the Board reached its own independent decision, the Court must of course decide whether that decision was unreasonable. The Board made numerous findings of fact but made it clear that some criticisms were comparatively minor whereas others were more serious. It seems to us that the gravamen of the Board's findings against Anchor can be summarised as follows:–

(i) There was wholly unacceptable conduct in relation to the administration of the entities associated with Mr Adderson who was later charged with drug trafficking. Although Mr Marshall was primarily responsible for such administration at Anchor, Mr Shelton had been a director of two of Mr Adderson's entities and was aware of Mr Marshall's cash handling activities. There were also deficiencies in relation to other related entities which suggested a generally unsatisfactory approach towards the prevention and detection of money laundering and financial crime.

(ii) When Mr Adderson was charged with the drug trafficking, the attitude of Mr Shelton was inappropriate. He emphasised (and continues to emphasise) that Mr Adderson was only charged with conspiracy and that this was said to be his first attempt to import drugs. It follows, argues Mr Shelton, that the monies looked after by Anchor could not possibly have been the proceeds of drug trafficking. His attitude was described by the JFCU as being one which 'confounded' the police, a comment which we can well understand. The Board found that Mr Shelton's failure to appreciate the possibility that Mr Adderson might have been involved in drug trafficking before 2001 was so inexplicable as to amount to incompetence. The Court entirely agrees. The finding is not affected by the fact that Mr Adderson's conviction was quashed on appeal. The Board was informed that the conviction had been quashed on the grounds of a misdirection by the judge and a re-trial had been ordered.

(iii) Once Mr Adderson had been charged with drug trafficking, Anchor showed no real concern over continuing to act for other clients who had been introduced by the same or a connected source. All that Mr Shelton did was to telephone Mr Gawor, the English solicitor who acted for a number of the associated clients, and accept his oral assurance that there was no problem with the other clients. The Court agrees with the Board that this showed an unacceptable lack of concern about the risks of money laundering associated with the other clients.

(iv) When Mr Marshall left, Anchor knew of his unacceptable cash handling activities. Yet, on Mr Shelton's own admission, all that he did in relation to Mr Marshall's other client files was to look at them 'briefly' before concluding that they all looked reasonably good. In fact, Anchor later made an STR in relation to one of those files where Mr Marshall had been carrying on similar cash transactions to those which he had undertaken for Mr Adderson. The Board was therefore perfectly entitled to conclude that Anchor's review of Mr Marshall's files was deficient and that this showed an unacceptable attitude towards the risks of money laundering.

(v) In October 2003 15 internal STR's were made to the then CO and MLRO Ms Bevis. In our judgment the Board was perfectly entitled to find that these were treated in a very dismissive manner by Anchor. This too showed an unacceptable attitude towards the problem of money laundering. In our judgment the Board was also entitled to conclude that at least four of the STR's called for a proper review. By way of example one of these related to a company called Aquafiltration Limited where, on inspection of the files by the Inspector, it transpired that the company had been receiving royalties in respect of patents pursuant to an agreement signed by the directors provided by Anchor, yet there was no evidence that the company owned these patents and it transpired that it did not. There was therefore no explanation for the receipt of income. This was why the internal STR had been made and yet Anchor did not think that the matter merited further investigation.

(vi) Anchor chose to be associated with Mr Dimsey, a man twice convicted of offences of dishonesty for which he had been imprisoned. The Board was clearly entitled to find that Mr Dimsey undertook the activities described in paragraphs 35 and 36 above. The Court entirely agrees with the Board that this was a relationship which

should have been disclosed on the application form in the appropriate spirit of openness. Furthermore, whilst it is true that Mr Dimsey is no longer associated with Anchor (although he remains connected with Shelton & Co) the fact that Anchor thought it appropriate to have such a relationship and that Mr Shelton still sees nothing wrong with it is a matter of concern.

(vii) The Court accepts the Board's assessment that Mr Shelton is the dominant personality and controlling force of Anchor. An example of this is his conduct in relation to Browham Trading Limited (see para 46 above) where he insisted upon the transfer of funds to Moscow despite strong and valid objections from Ms Murray and Mr Gidley and, in doing so, rode roughshod over the due diligence procedures. Similarly, Mr Dimsey's continued presence in Anchor's offices until November 2003 despite the protestations of Ms Murray and Mr Callendar was attributable to Mr Shelton. The Court notes the view of the auditors but, on the evidence before it, concludes that the Board was perfectly entitled to find that Mr Shelton was and remained the dominant influence and that his influence was negative from a compliance and risk management perspective.

(viii) Anchor argued that many of these events occurred some time ago and that things had changed. The Anchor of today should be licensed. These arguments were specifically considered both by the Executive in the Director General's Memorandum and speaking note and by the Board at paragraph 6.1 of the Letter of Reasons. It is true that Anchor had accepted that many of its procedures and practices were deficient and, following advice from the pre-authorisation report and Deloitte & Touche had taken steps to improve matters. But the Court concludes that the Board was perfectly entitled to find that Anchor's failure to recognise its errors in a number of respects leads to a lack of confidence that the underlying culture of the company has changed. In this respect the Board was entitled to rely upon the refusal by Mr Shelton to accept that Mr Adderson's funds could have been the proceeds of drug trafficking, that the checks on the associated clients simply by telephoning Mr Gawor were inadequate, and that the checks of Mr Marshall's files upon his departure were inadequate and that the relationship with Mr Dimsey was inappropriate.

(ix) Furthermore, the Board was entitled to find that there was evidence that the attitude towards due diligence in the detection and prevention of money laundering had not changed sufficiently (e.g. the conduct in respect of recent files such as Browham Trading Limited). We have of course considered the Deloitte & Touche report but that was concerned mostly with questions of accounting procedures and standards. It is true that it stated that there had been considerable improvement in due diligence procedures but the Board was entitled to balance that against the other evidence before it where recent conduct was found to be deficient in practice. We have also not ignored Mr Scholefield's point concerning Mr Radford's alleged comment. However that was entirely hearsay made at an oral presentation by Mr Gidley. We were informed at the hearing by counsel for the Board that Mr Radford has since denied making this remark. Of course, that is not evidence and we make no finding on the point but it is hardly surprising that the Board felt unable to place great weight upon a hearsay comment made in an oral presentation. When considering the submission that things had changed, the Board was entitled to take into account the

fact that the Executive had twice offered Anchor a short focused compliance visit in order to assess the current position but this had been refused by Anchor.

(x) In our judgment the Board was also fully entitled to take into account Mr Shelton's unco-operative attitude towards the Commission and the police. Mr Shelton states that the police criticism of him, as reflected in the letter from the JFCU is not justified but the fact remains that the JFCU felt it appropriate to write in extremely critical terms of Mr Shelton's attitude towards their investigation describing it as 'combative and vituperative'. Mr Shelton was certainly vituperative about the Inspector's report (see para 22) and it is clear from the transcript of his interview with the Inspector that he was not co-operative. Mr Scholefield argues that a person who feels that a Commission or a police officer is in error is entitled to say so. This is of course absolutely true. If a regulated entity feels that the regulator is making a bad point, it is entirely open to the entity to query the criticism. The same goes for the police or an Inspector. Regulators have considerable powers conferred upon them but along with these powers goes great responsibility in their application. But a regulator is entitled to openness and co-operation from those whom it regulates and such differences of opinion should be handled in a measured, reasonable and factual manner. When an Inspector is appointed, the duty to co-operate includes a duty to respond to the Inspector's questions in a reasonably courteous manner and to provide him with all possible assistance in relation to his enquiry. In our judgment the approach adopted by Mr Shelton and Anchor was not acceptable. It did not show the necessary degree of openness and co-operation as required by Principle 6 of the Trust Codes. Furthermore the failure to mention Mr Dimsey and the denial of any désastre by Mr Shelton not only breached that principle but amounted (in the latter case) to the provision of untrue or misleading information. A lack of openness and co-operation and the provision of untrue or misleading information are serious findings because the effectiveness of regulation by the Commission inevitably depends to a substantial degree upon honesty, openness and co-operation from those being regulated.

I Conclusion

188 The Commission will often face a very difficult decision in deciding whether to register a trust company, particularly where that company has been carrying on business prior to the introduction of the requirement for registration. On the one hand, the Commission must act to protect the interests of actual or potential clients and the reputation and integrity of the Island; on the other hand, a decision to refuse registration is likely to have very serious consequences for an applicant who may have been carrying on and building up a business over many years. It is clear to us that both the Executive and Board are fully conscious of this difficult balance and gave the matter very careful attention

189 It is of vital importance for the well being of the finance sector in Jersey that those who practice within it have an appropriate attitude towards the problem of money laundering. The Commission is charged to protect the reputation and integrity of Jersey in financial matters and this requires that practitioners join the Island authorities in endeavouring, so far as practicable, to prevent the Island from being used by criminals for money laundering

purposes. At the heart of the Board's decision in this case lies its opinion that Mr Shelton has shown and continues to show an unacceptable attitude towards the importance of the detection and prevention of money laundering and financial crime.

190 At the end of the day the Court has to stand back, consider all the material placed before it, and decide whether Anchor has been treated unfairly or whether the decision reached by the Board was unreasonable. For the reasons given, the Court does not find that Anchor has been treated unfairly or that there are any procedural grounds for quashing the Board's decision. As to whether the decision of the Board was unreasonable, the Court concludes that, save for the minor matters referred to earlier in this judgment, the findings of fact made by the Board as recorded in the Letter of Reasons were reasonable and that it was also reasonable for the Board to conclude as a result that Anchor's application should be refused on the grounds set out in paragraphs 5 and 6 of the Letter of Reasons. Indeed the Jurats (whose responsibility it is to determine whether a decision was unreasonable) would go further and say that they have concluded that, far from the Board's decision being unreasonable, it is the decision which they themselves would have reached.

191 The Court has considered the suggestion made by Mr Scholefield that, even if it was not willing to license Anchor as long as Mr Shelton was in a position of control, the Board should have granted a licence conditionally upon the proposed shareholding changes taking place so that Mr Shelton would no longer be a controlling shareholder. Indeed, as we have seen at para 105 above, one of the Commissioners who was not present thought that Anchor might be granted a licence on condition that Mr Shelton withdrew completely from the firm. In our judgment the Board was entitled to consider the application by Anchor on the basis of the structure of the company as it was at the time. It was also entitled to conclude that, even if Mr Shelton's shareholding were to be reduced marginally below 50% as suggested, he would in practice remain the dominant influence of the company with the result that the company would have remained unsuitable for registration. In the circumstances we do not think that point avails Mr Scholefield.

192 The Court cannot leave this case without commenting on the question of delay. We do not consider that the delay has prejudiced Anchor because it has simply provided a longer period during which Anchor has had the opportunity of rectifying matters and bringing itself into compliance with the required standards. However, as a matter of general principle, we regard the delay in bringing this matter to a conclusion as unsatisfactory. We accept that the Commission was faced with an enormous number of applications and that some delay was therefore inevitable. We make no criticism before May 2002. However we note that the Executive had turned its attention to Anchor by the time of the pre-authorisation visit in May 2002. Despite this, it took over 2 $^{1}/_{2}$ years before a decision was reached in March 2005. The major part of the delay seems to have occurred in the preparation of the Inspector's August Report. We fully appreciate some of the difficulties which arose concerning Advocate Scholefield's position but this was resolved; yet the Report was not finally made available until August 2004. In our judgment it is incumbent upon the Executive, where it appoints a third party as an Inspector or as a reporting accountant, to exert the necessary pressure to ensure that matters are concluded with reasonable despatch. We appreciate

that we have not heard a full explanation for the delays in this case but, on the face of it, the matter took too long. An applicant is in a position of some stress not knowing whether its application will be successful, whether it will be allowed to continue to employ its staff, whether it should try and expand its business etc. A decision should be taken one way or the other as soon as reasonably practicable.

193 For the reasons we have given, the Court dismisses the appeal.