Michel v AG

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	13 December 2007
Neutral Citation:	[2007] JCA 239
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Court:	Court of Appeal
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Text

[2007] JCA 239

COURT OF APPEAL

Before:

M. C. St. J. Birt, **Esq.**, Deputy Bailiff, **President;** D. A. J. Vaughan, **Esq.**, C.B.E., **Q.C., and;** G. C. Vos, **Esq., Q.C**.

Peter Wilson Michel
and
The Attorney General

Advocate D. F. Le Quesne **for the Appellant**

Crown Advocate C. E. Whelan **for the Attorney General**

Authorities

Proceeds of Crime (Jersey) Law 1999.

R v Tuegel [2000] 2 Cr. App. R 361.

R v Hulusi [1973] 58 Cr. App. R 378.

R v Hamilton [1969] Unreported.

R v Gunning [1994] 98 Cr. App. R. 303.

R v Matthews [1983] 78 Cr. App. R. 23.

(*R v Moore* unreported 10th February 1998).

R v Clewer [1953] 37 Cr. App. R. 37.

R v Adams [2003] EWCA Crim. 3620.

(*R v Wiggan* Times Law Reports 22nd March 1999).

(*AG v McFarlane* Jersey Unreported 3rd July 1999)

MacKenzie v AG [1995] JLR 9.

Court of Appeal (Jersey) Law 1961.

Bayliss v AG [2004] JLR 409.

Human Rights Act 1998.

R v Togher [2001] 1 Cr. App. R. 33.

CG v United Kingdom [2002] 34 EHRR 31.

Randall v R (Cayman Islands) [2002] UKPC 19.

AG v Edmond-O'Brien [2006] JLR 133.

Snooks v United Kingdom [2002] JLR 475.

Snooks v AG [1997] JLR 253.

Michel v AG [2006] JCA 152.

R v Hopkins-Husson [1949] 34 Cr. App. R. 47.

Application for leave to appeal against the conviction by the Inferior Number of the Royal Court on 14 th May, 2007 following not guilty pleas to:

9 counts of: Assisting another to retain the benefits of criminal conduct, contrary to Article 32(1) (a) of the Proceeds of Crime (Jersey) Law, 1999.

Deputy Bailiff

1 This is the judgment of the Court in relation to an application by Mr Michel for leave to appeal against conviction.

2 The prosecution of Mr Michel has a somewhat involved history. He was charged, together with Mrs Simone Gallichan, with 10 counts of assisting another to retain the benefit of criminal conduct contrary to Article 32(1) of the Proceeds of Crime (Jersey) Law 1999 ("the Law"). They both pleaded not guilty to all counts. The trial on all 10 counts began in July 2006 before the Inferior Number presided over by Sir Richard Tucker, Commissioner. On the fifth day, the Commissioner decided that the trial should proceed in respect of only one count at that stage. Both defendants were subsequently convicted of that count and their applications for leave to appeal were refused by the Court of Appeal in September 2006.

3 The trial against both defendants on the remaining counts recommenced before the Inferior Number on 22nd January 2007, this time with Sir Geoffrey Nice QC, Commissioner, presiding. On 14th May 2007, after a thirty day trial, the Jurats acquitted Mrs Gallichan but convicted Mr Michel on all nine counts.

4 No criticism is made of the Commissioner's summing up but Mr Le Quesne applies for leave to appeal on three grounds:

(i) He submits that the number and nature of the Commissioner's interventions during the course of the evidence means that Mr Michel did not receive a fair trial. If successful, this ground would of course result in the convictions on all the counts being quashed;

(ii) He contends that, in relation to count 1 on the indictment, Mr Michel and Mrs Gallichan stood or fell together. It was not open to the Jurats on the evidence and having regard to the directions given by the Commissioner to convict Mr Michel if (as they did) they found Mrs Gallichan not guilty on that count;

(iii) He contended that in relation to counts 1, 4, 6, 7 and 8 the verdict was unreasonable/could not be supported having regard to the evidence. No complaint on this ground is made in respect of Mr Michel's convictions on the remaining four counts.

Background

5 Mr Michel is a chartered accountant. For many years he was the sole principal of Michel & Co, which carried on business in Jersey. It was both an accountancy practice for Jersey residents and businesses and a financial services business offering company and trust

administration services to clients in other jurisdictions. Mrs Gallichan was his employee for many years. She had no qualifications in the financial field but through experience she came to be his personal assistant in the financial services business. The firm was a small one with not more than three employees at any one time in addition to Mr Michel and Mrs Gallichan.

6 The prosecution case was that, for many years, Mr Michel had offered a money laundering service. He set up and administered trusts and companies on behalf of clients who had been guilty of criminal conduct, particularly tax evasion. He took in substantial quantities of cash and also delivered cash to clients.

7 The relevant part of Article 32(1) of the Law provides as follows:-

> ***"..... if a person enters into or is otherwise concerned in an arrangement whereby:-***
>
> ***(a) the retention or control by or on behalf of another (in this Article referred to as "A") of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or***
>
> ***(b) "A's" proceeds of criminal conduct;***
>
> ***(i) are used to secure that funds are placed at A's disposal.....***
>
> ***knowing or suspecting that "A" is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he or she is guilty of an offence"*** .

8 Count 6 charged an offence under Article 32(1)(b)(i); all the other counts were under Article 32(1)(a).

9 It can be seen that in order to succeed, the prosecution must prove three things:

> (i) that the defendant has entered or been otherwise concerned in an arrangement whereby retention or control of property on behalf of another is facilitated (Article 32(1)(a)), or property is used to secure that funds are placed at another's disposal (Article 32(1)(b)(i));
>
> (ii) that property must be the other's proceeds of criminal conduct; and
>
> (iii) the defendant must know or suspect that the other is or has been engaged in criminal conduct.

10 Much of the evidence in Mr Michel's case consisted of expert accountancy evidence based

upon the books and financial records, including bank statements, of Michel & Co and various companies which the firm had administered. For the most part, these were not disputed at the trial. Accordingly, save in relation to count 1 (to which we shall refer shortly) Mr Michel did not dispute that the first of the three elements referred to in the preceding paragraph was satisfied. The case therefore turned on the second and third elements. In relation to all counts, Mr Michel contended that he did not know or suspect that the client was a person who was engaged in criminal conduct and whilst, in relation to some of the counts he did not really dispute that the prosecution had shown that the funds were the proceeds of criminal conduct, in others it was said that this had not been proved.

The Individual Counts

(i) Count 1

11 The particulars of count 1 were as follows:-

> *"Peter Wilson Michel and Simone Ann Gallichan between 1st July, 1999 and 8th July, 2001, in the island of Jersey, knowing or suspecting that clients of Michel & Co were persons engaged in criminal conduct, namely fraud and/or fraudulent conversion, were concerned together and with others in an arrangement whereby the retention or control on behalf of such persons of their proceeds of criminal conduct, namely stolen funds or funds chargeable to tax which were transferred to accounts at banks in Jersey in a manner calculated to conceal that they were so chargeable, was facilitated, by the delivery to such persons in England of cash amounts broadly corresponding to such transfers."*

12 We would add at this stage that there is a difference between count 1 and the remaining counts. In counts 2-9 a particular person is named as having been engaged in criminal conduct and Mr Michel is charged with having facilitated the retention or control of the proceeds of that client's criminal conduct. Count 1 is different. It does not refer to a specific client, although particulars were subsequently provided of the clients to be relied upon in support of the count. What is said in relation to count 1 is that there was a standing arrangement within Michel & Co that enabled the proceeds of crime to be returned to clients in cash. It was an arrangement open to any client of Michel & Co who wished to use it.

13 As one would expect the firm operated many bank accounts held in the names of particular trusts or companies administered by the firm. These were referred to during the trial as 'designated accounts'. The firm also ran at least six pooled accounts designated either in the name of Michel & Co or Chimel Trust Co, one of Mr Michel's in house trustee companies. These were said to be a mix of office and client accounts ("the pooled accounts"). There were also a number of accounts in the name of the Williams Settlement which were treated as Mr Michel's personal property.

14 There was undisputed evidence to show that between January 1993 and July 2001 £5.6

million in cash was made available to 52 clients. Of this sum, £1.5 million was made available after 1 st July 1999, when the Law came into force. Of the £1.5 million, the sum of £1.2 million was hand delivered by Mr Michel in England by taking the money over in person.

15 The cash delivered to clients in this way was funded from three sources. First, Michel & Co received cash from certain local residents in exchange for which they were repaid from one of the pooled accounts. Secondly, cash was received from other clients. The total received from these two sources between January 1993 and July 2001 was £2.6 million of which £456,000 was received after 1 st July 1999 when the Law came into force. The cash was never banked. It was simply kept in a pot to be used as and when needed to make deliveries to other clients who wanted cash.

16 The third source was the banks. The cash was drawn almost entirely from the pooled accounts. Nearly £3 million was withdrawn in cash over the years with more than half of this amount, namely £1.6 million, drawn in sums of £9,950.

17 In respect of clients who had transferred cash to Michel & Co, the designated account of their trust or company would subsequently be credited with a matching sum from one of the pooled accounts. However their cash would not of course have gone into that pooled account or indeed into any of the pooled accounts. Their cash would have been retained in the cash pot for subsequent distribution in cash to other clients as and when needed.

18 In the case of clients who received cash, the designated account of their trust or company would be debited with an equivalent amount which would be transferred to one of the pooled accounts. Where a pooled account was itself debited with cash obtained from the bank, any subsequent transfer from the designated account of the relevant client would not necessarily be paid to that particular pooled account. It would simply be transferred to one of the pooled accounts.

19 The upshot of all this was that those who wanted to get rid of their cash received reimbursement to the designated account of their trust or company or as they might otherwise instruct, from pooled accounts wholly unrelated to them. Those who wanted that cash paid for it by apparently unrelated transfers from the designated accounts of their companies to the pooled accounts. The link between the supply of cash and its provision to other clients was impossible to establish without access to various notes and reconciliations which were seized from the premises of Michel & Co during the investigation.

20 None of the essential facts described above was in dispute. What was in issue was whether there was a single standing arrangement as opposed to a number of *ad-hoc* arrangements with individual clients, whether the funds concerned were the proceeds of crime and whether Mr Michel and Mrs Gallichan knew or suspected that the clients to whom

cash was delivered were engaged in criminal conduct.

(ii) Count 4

21 Count 4 relates to the criminal activities of one Gerald Smith. Smith was at the relevant time employed by another trust company in the island. He had primary responsibility for a trust structure which owned a BVI company called Clearwater International Limited. Between 1996 and 2000 Smith stole some £900,000 from Clearwater in instalments. In April 2004 he was convicted of 13 counts of fraudulent conversion in respect of these activities and sentenced to 5 years' imprisonment.

22 Prior to these events Smith had asked Mr Michel to incorporate a BVI company called Bryland Holdings Limited. After incorporation Smith administered Bryland. Subsequently, on 10 occasions when he stole funds from Clearwater, he transferred the money to one of the Michel & Co pooled accounts. The money remained there for a few days before being transferred by Michel & Co to Bryland, from where Smith was able to use the monies for his own purposes. In short, the Michel & Co pooled account was interposed between Clearwater and Bryland. For allowing its account to be used in this way, Michel & Co charged aggregate fees over the period of some £18,000.

23 In relation to this count there was no dispute before the Royal Court that there had been an arrangement and that the money going into and then out of the pooled account was the proceeds of crime, namely Smith's fraudulent conversion. The sole issue was whether Mr Michel and Mrs Gallichan knew or suspected that Smith was engaged in criminal conduct.

(iii) Counts 6 and 7

24 Counts 6 and 7 related to the activities of a Barry Bhandal. Count 6 charged an offence under Article 32(1)(b)(i) whereas count 7 was under Article 32(1)(a). The particulars of each count were as follows:-

> "Count 6
>
> *Peter Wilson Michel and Simone Ann Gallichan on or about the 3rd August, 2000 in the island of Jersey knowing or suspecting that Barry Bhandal was a person who was or had been engaged in or had benefited from criminal conduct, namely the fraudulent evasion of duty payable on alcohol and money laundering, entered into an arrangement whereby Bhandal's proceeds of such criminal conduct, namely the property Updown Court, were used to secure that funds, namely advances totalling £13,650,000, from Irish Nationwide, were placed at Bhandal's disposal*.
>
> Count 7

Peter Wilson Michel and Simone Ann Gallichan between 1st July 1999 and 8th July, 2001, in the island of Jersey, knowing or suspecting that Barry Bhandal and Anthony Pearce were persons who were or had been engaged in or had benefited from criminal conduct, namely the fraudulent evasion of duty payable on alcohol, money laundering, and obtaining property by deception, were concerned in an arrangement whereby the retention by them of their proceeds of criminal conduct was facilitated by paying:

(a) (from Gladstar Limited) £3,825,122, in varying instalments, to Anthony Pearce;

(b) (from Irish Nationwide Limited) £5,013,030, to Gladstar Limited in discharge of their loans secured on Updown Court;

(c) (from Irish Nationwide Limited) £7,855,504 in varying instalments, through solicitors to Anthony Pearce."

25 Bhandal became a client of Michel & Co in September 1996. Michel & Co formed a number of companies for him including Wynchleigh Limited and Heatherside Property Holdings Limited. At that time Bhandal was on bail awaiting trial for conspiracy to defraud and evasion of customs duty at Snaresbrook Crown Court in England. The trial ran from January to May 1997 but the jury could not agree on their verdict. Bhandal was bailed for re-trial in March 1998 but absconded in February 1998. He moved initially to Monte Carlo and thereafter to the United States. Immediately upon Bhandal becoming a client, Wynchleigh purchased a house in the United Kingdom called Hillfield House in Surrey. In July 1997 Hillfield House was sold by Wynchleigh for a total of £2 million and Heatherside purchased in its place a substantial but somewhat dilapidated house known as Updown Court for the sum of £1.55 million. Most of the purchase price for Updown Court came from the sale proceeds of Hillfield House.

26 Substantial sums were then spent on a massive and extravagant project to turn Updown Court into a modern, palatial residence. In due course it became necessary for Heatherside to borrow money in order continue with the development. After many attempts to borrow from banks, a loan was eventually obtained at a very high rate of interest from a privately owned company called Gladstar Limited. A total of £3.8 million was drawn down pursuant to that loan and spent substantially on the refurbishment of Updown Court. According to the prosecution, false statements were made to Gladstar in order to induce it to loan money to Heatherside; hence the reference in Count 7 to the offence of obtaining property by deception.

27 The prosecution case in relation to counts 6 and 7 depended on proving that Updown Court had been purchased with the proceeds of crime. Updown Court had been purchased with the proceeds of sale of Hillfield House, which meant that the prosecution had in turn to show that the purchase price for the latter property was the proceeds of crime.

28 Although the funds for the purchase of Hillfield House came from a Barclays bank draft provided to Michel & Co, there was no dispute that the monies for this draft came from an account in the name of Avtar Kelley trading as ASK Distribution at the Walton-on-Thames branch of Barclays Bank. ASK was involved in the wholesale distribution of wines and spirits. The account of ASK ran for only a few months from June 1996 to February 1997 during which time some £21.5 million passed through the account. During this period, in addition to the sum of £836,000 for the purchase price of Hillfield House, sums totalling £5.6 million were telegraphically transferred from the ASK account to one of the Michel & Co pooled accounts. The funds received were held by Mr Michel for the benefit of Bhandal and in March 1997 the sum of £5.8 million was paid to Clariden Bank in Zurich.

29 From December 1996 to December 1997 there was an account in the name of Samarjit Singh Sihra trading as UK Supplies at the same Walton-on-Thames branch of Barclays. UK Supplies too ran a wholesale wine and spirit business and, during the period the account was active, some £15.6 million passed through the account. During this time, a total of £1.8 million was transferred to Michel & Co from the UK Supplies account, albeit that £1.1 million of this sum was transferred via an account in England called 'Kings Wines'. The £1.8 million was held by Michel & Co for the Bhandal companies. Thus, in total, in the short period between June 1996 and October 1997, some £8.2 million was received by Michel & Co for the benefit of Bhandal from ASK and then UK Supplies.

30 The prosecution case was that the income of ASK and UK Supplies derived from a customs duty and VAT fraud. They contended further that both businesses were in truth the businesses of Bhandal. We shall return to this in more detail later when considering the factual grounds of appeal in relation to these counts.

31 The issue in relation to these two counts therefore was whether the monies in question were the proceeds of criminal conduct on the part of Bhandal and, if so, whether Mr Michel and Mrs Gallichan knew or suspected that Bhandal was engaged in criminal conduct.

(iv) Count 8

32 Count 8 concerns a Mr Gerry Krejzl who resided in England and became a client of Michel & Co in the early 1990s. His assets were held in the Rose Settlement and two companies called Birtle Holdings Limited and Goldleaf Holdings Limited. It was admitted in the trial that between 1993 and 1997 Krejzl paid some £618,000 in cash to Mr Michel. He paid a further £48,000 in cash in February 2001 making £666,000 in all. This cash was not banked; it was retained in the cash pot and redistributed to other clients of Michel & Co. The Rose Settlement accounts were credited with funds equivalent to the cash which had been delivered to Mr Michel. Those transfers were made from the pooled accounts.

33 A further sum of £266,000 was transferred from the pooled accounts to the designated accounts of the Rose Settlement and Birtle between 1993 and 1997 but the source of these

payments was not established and they were not included in the cash amounts.

34 As well as cash receipts, money was received for the benefit of Krejzl from a company in England called Li Lo Leisure Limited by which Krejzl was employed. At the request of Krejzl and in accordance with draft invoices prepared by him and sent to Michel & Co, invoices were submitted to Li Lo for *"inspection and quality control"* of the shipment of goods. These invoices were issued by Rroyds Trust Co Limited, one of Mr Michel's in house trust companies. There was no suggestion that Rroyds had in fact carried out any such inspection or quality control activities. They were false invoices. The total amount extracted from Li Lo by means of these invoices between July 1997 and July 1999 was £159,488. After a commission of 1.5% was paid to Mr Michel, the remaining balance was transferred from the pooled accounts to the designated accounts of Krejzl's entities.

35 Between 1998 and 2000 Krejzl received cash from Michel & Co. £74,000 was delivered to Krejzl by Mr Michel, of which the sum of £30,000 was delivered after 1 st July, 1999.

36 In 2000 and 2001 Michel & Co received a total sum of £151,158 from a company called Lasertek Limited. These sums were transferred from the pooled accounts to those of the Rose Settlement and Birtle. There was no apparent explanation for the receipt of these sums.

37 There was no dispute that the transactions referred to above took place. The prosecution case was that the cash received, the proceeds of the false Rroyd invoices and the various sums received from Lasertek were all the proceeds of crime, most probably tax evasion.

38 The issue for the Jurats in relation to this count was whether the prosecution had proved that the monies received and dealt with by Mr Michel on behalf of Krejzl were the proceeds of criminal conduct and, if so, whether Mr Michel and Mrs Gallichan knew or suspected that Krejzl was engaged in such conduct.

(v) The remaining counts

39 No appeal is brought specifically in relation to counts 2, 3, 5 and 9. It is accepted that there was evidence upon which the Jurats could properly find the case proved in respect of these counts. Accordingly, if ground 1 of the appeal (the Commissioner's interventions) fails, Mr Michel's conviction on these four counts will remain. In the circumstances it is not necessary to describe them in any detail but it may be helpful to outline them very briefly:-

(i) Count 2 involved the administration by Michel & Co of a BVI company which was owned by two of the directors and shareholders of a construction company in England. The BVI company submitted false invoices for fictional work, thereby reducing the profits of the English company and evading tax. The monies received by

the BVI company were made available to the clients.

(ii) Count 3 was similar. The clients were the owners of an English heating and air conditioning company who established a BVI company administered by Michel & Co. The latter company submitted false invoices for fictional services, thereby reducing the profits of the English company and evading tax. Again, the proceeds received in Jersey were made available to the clients.

(iii) Count 5 involved two UK resident clients who were in the music business. They procured that a company formed on their behalf by Michel & Co received various royalties. These monies were then made available to them. Mr Michel delivered £820,000 in cash over the period to one of them. The underlying criminality was tax evasion (fraud under Jersey Law).

(iv) Count 9 involved the establishment of three companies in Jersey by Michel & Co owned by the owner of an art dealing business in London. The fraud in this case was that the alleged activities of the three Jersey companies were in fact all undertaken by the beneficial owner in the United Kingdom; yet large sums were paid to the Jersey companies for services supposedly undertaken by them. The proceeds were made available to the beneficial owner. Again the underlying crime was that of tax evasion.

40 In all of these cases the principal line of defence was that Mr Michel did not know or suspect that the clients were engaged in criminal conduct. By their verdict the Jurats found that he did.

Grounds of Appeal

41 We turn now to consider in turn each of the three grounds of appeal set out in paragraph 4.

Ground 1

(i) The interventions.

42 Mr Le Quesne submits that the trial was rendered unfair by the number and nature of interventions by the Commissioner during the course of the evidence. Although examples of interventions in relation to prosecution witnesses were included as an annex to the applicant's written contentions, those contentions focused on the interventions during the course of Mr Michel's evidence.

43 Mr Michel gave evidence over approximately 8 $^{1}/_{2}$ days. In broad terms he spent 4 $^{1}/_{4}$ days giving evidence-in-chief, 3 $^{3}/_{4}$ days being cross-examined by counsel for Mrs Gallichan and the prosecution and $^{1}/_{2}$ a day in re-examination. The judge intervened 273 times with substantive questions and most of those interventions contained a number of questions. Of

the interventions, 138 were during evidence-in-chief, 124 during cross-examination, and 11 (of which no complaint is made) in re-examination. During the course of the appeal, Mr Le Quesne produced a schedule calculating the percentage of each page of the transcript of Mr Michel's evidence occupied by questions from the Commissioner and Mr Michel's answers to those questions. It is clearly a somewhat approximate exercise and the prosecution did not carry out a similar exercise. Nevertheless, the schedule produced by Mr Le Quesne suggests that, taking the whole of the applicant's evidence, some 18.24% of his time in the witness box was taken up with the 273 interventions of the judge.

44 Turning to the nature of the interventions, Mr Le Quesne submits that, whilst many were unobjectionable, in that they sought clarification or elaboration of what a witness was saying, a very significant proportion involved cross-examination, sometimes hostile in tone. On many occasions the interventions amounted to a raising of the judicial eyebrow or to an expression of incredulity at the answer. Although there were interventions which the prosecution considered unhelpful to their case, the majority were against the defence case.

45 Although he disagreed with Mr Le Quesne about the seriousness or nature of some of the interventions, Mr Whelan accepted that, whilst the Commissioner's interventions included questioning designed to clarify, or to explore the workings of an unfamiliar financial community or even simply to satisfy his own curiosity, a significant part amounted to cross-examination, sometimes apparently hostile or incredulous in tone. He also conceded that the interventions were much too frequent, especially during examination-in-chief of the applicant.

46 All of the 273 interventions were helpfully set out in a schedule which Mr Le Quesne annexed to his written contentions. We have read them all and were taken through many of them during the hearing of the appeal. We do not think it necessary to refer to them in detail. We would however mention a few, simply to illustrate the nature of Mr Le Quesne's submissions.

(i) During the first day of his evidence-in-chief, while giving evidence about the fact that he had on many occasions taken large quantities of cash in his briefcase to London, Mr Michel stated that many other senior people in trust companies in Jersey were doing the same thing in those days. The Commissioner intervened to press him to name some of these other people. In response to this pressure, Mr Michel named a number of leading accountancy practitioners including Mr John de Veulle (now a Jurat). Later in his evidence Mr Michel explained that he had no direct evidence concerning Mr de Veulle and was relying on what he had been told by Mr Smith, one of the defence witnesses. This correction of his evidence was, said Mr Le Quesne, damaging to Mr Michel's credibility and it had come about solely as a result of the Commissioner asking questions which were more properly for the prosecution, if they wished to pursue the point.

(ii) In relation to a number of persons mentioned by Mr Michel during his evidence, the Commissioner asked questions apparently aimed at showing that there was no

reason why such persons should not be able to attend to give evidence at the trial on Mr Michel's behalf. This was damaging, said Mr Le Quesne, and wrongly conveyed the impression that adverse inferences might be drawn against Mr Michel through his failure to call such witnesses. The effect of this was, said Mr Le Quesne, not undone by the judge's subsequent direction to the Jurats in the summing up that they must decide the case only on the evidence that they had heard and that a failure to call a particular witness provided no evidence either way.

(iii) On several occasions the judge put to Mr Michel the point that if, as he said, he was being hoodwinked by his clients, in that he was not aware of the criminal source of the funds which they were asking him to deal with on their behalf, those clients were running a considerable risk that Mr Michel might at any stage discover the deception and report them to the authorities. Mr Le Quesne submitted that this was a point for cross-examination by the Crown, not by the judge.

(iv) On the first day of his evidence-in-chief, Mr Michel had been explaining that many large trust companies in Jersey used BVI companies rather than Jersey companies because, in the case of the former, one did not have to disclose to the authorities who the beneficial owner of the company was. He went on to say that he thought there would be up to 500,000 BVI companies in total. The judge then intervened:-

> *"Sir Geoffrey Nice: The sole reason for wanting this complete confidentiality and anonymity was...?*
>
> *A: Confidentiality.* That was what clients want.
>
> *Sir Geoffrey Nice: Really?*
>
> *A: Yes*.
>
> *Sir Geoffrey Nice: Nothing to do with being free from exposure to tax?*
>
> *A: Well, I do not think so.* I mean...
>
> *Sir Geoffrey Nice: 30,000 people shy of publicity?*
>
> *A: 500,000 people*.
>
> *Sir Geoffrey Nice: 500,000, I am so sorry, shy of publicity*.
>
> *A: The big scandals that we have had here have not been centred on tax, with these companies, so I do not think it is just a tax thing at all.* I mean, they may be abused or used for tax evasion but I do not think that is the main thrust of them. *And so what happened was, and there is a firm called Mossack Fonseca which actually set its offices up here because there was such a demand for BVI companies.* And interestingly in the new Companies Law which is coming out next year the Jersey authorities are no longer going to require to know who the owner of these companies is. They are taking it out of the law."

Mr Le Quesne correctly pointed to this as an example of sceptical questioning amounting to cross-examination by the judge.

47 During the hearing Mr Le Quesne also referred us to interventions in the evidence of some of the prosecution witnesses. He submitted that the judge had asked questions of some of the witnesses which amounted to cross-examination (which the prosecution could not do in respect of their own witnesses) and that such questions had put matters or extracted answers which were unhelpful to the defence. Mr Whelan accepted that the judge had asked inappropriate questions but contended that the matters raised were either irrelevant or were of peripheral importance and that the defence had not thereby been prejudiced.

48 It was also accepted by both sides that the Commissioner asked a number of questions of prosecution witnesses which seemed to be designed to support his apparent hypothesis that Jersey, before the introduction of the Law in 1999, was a financially lawless community (he referred to 'Dodge City') where no questions were asked by financial practitioners about tax evasion or other crimes (other than drug trafficking). Neither side had sought to call any evidence in support of such a hypothesis. The prosecution did not like the line of questioning because they feared that, if the Jurats were to accept the Commissioner's hypothesis, they might conclude that Mr Michel's conduct, so far from demonstrating his individual criminality, simply reflected the industry norm. The defence, on the other hand, did not like the questions for fear that the Jurats might conclude that, if everyone else in the financial community in Jersey was knowingly acting for criminals, it was more likely that Mr Michel was doing the same thing. Both sides agreed therefore that these were inappropriate questions for the judge to have asked.

(ii) Authorities

49 We were referred to a number of cases on the subject of judicial intervention during the course of a trial.

50 Mr Le Quesne took us first to *R v Tuegel* [2000] 2 Cr. App. R 361. In that case the defendant had given evidence over a period of ten days during which the judge intervened to ask a total of 56 questions. He had also interrupted defence counsel's closing speech 7 times. Rose LJ said at 381:-

> ***"So far as interventions during Tuegel's evidence are concerned, it is or course trite law that a judge's role is to hold the ring fairly between prosecution and defence and this cannot be done properly if a judge enters into the arena by appearing to take one side or the other.*** Questioning which might suggest this should, therefore, be avoided. Often the best course will be for a judge to remain silent until counsel have had the opportunity to deal with the matter. But it is not only permissible for a judge, it is his duty to ask questions which clarify ambiguities in answers previously given or which identify the nature of the defence, if this is unclear. Such questions,

particularly in a very long case, are most likely to help the jury and everyone else if they are asked at, or close to, the time when the ambiguity is first apparent. If a witness is in the box for many days, it would be contrary to good sense and the proper conduct of the trial to require the judge to save his questions until the end of the witness's evidence. In the present case, the appellant Tuegel gave evidence which spanned 10 days. The judge asked a number of questions, the terms of which are, for the most part, if not entirely, uncriticised. During the 10 hours of evidence in chief, he asked 14 questions; during 24 hours of cross-examination he asked 24; he also asked 10 during re-examination; and 8 at the end. In our judgment, neither the number nor the nature of the questions asked afford any basis whatever for suggesting that the judge entered into the arena or otherwise abandoned his proper judicial role. This ground therefore fails."

51 In *R v Hulusi* [1973] 58 Cr. App. R 378, the Court of Appeal found that the judge had wrongly criticised defence counsel constantly during the evidence and in his summing up such that the jury might well have been led to think that the defendant's counsel was in some way behaving in a tricky manner, the object of which was to mislead them. The judge had also cross-examined the defendant and the defendant's witnesses to such an extent that the defence's counsel "who was doing his best to keep to the line of examination which he had decided to follow was driven off course by the judge's interventions" (Lawton LJ at 386). The Crown did not oppose the appeal which was accordingly allowed. The importance of the case is that the Court of Appeal expressly adopted a statement of principle made by Lord Parker CJ in the unreported case of *R v Hamilton* in 1969. As quoted in *Hulusi*, Lord Parker said this:-

> ***"The second and the real ground for the appeal in the present case concerns these interventions.*** Of course it has been recognised always that it is wrong for a judge to descend into the arena and give the impression of ***acting as advocate.*** Not only is it wrong but often a judge can do more harm than leaving it to experienced counsel. Whether his interventions in any case give ground for quashing a conviction is not only a matter of degree, but depends to what the interventions are directed and what their effect may be. Interventions to clear up ambiguities, interventions to enable the judge to make certain that he is making an accurate note, are of course perfectly justified. But the interventions which give rise to the quashing of a conviction are really three-fold; those which invite the jury to disbelieve the evidence for the defence which is put to the jury in such strong terms that it cannot be cured by the common formula that the facts are for the jury and that you, the members of the jury, must disregard anything that I, the judge, may have said with which you disagree. The second ground giving rise to a quashing of a conviction is where the interventions have made it really impossible for counsel for the defence to do his or her duty in properly presenting the defence, and thirdly, cases where the interventions have had the effect of preventing the prisoner himself from doing himself justice and telling the story in his own way."

These three grounds have been considered and applied in a number of the cases and we

shall refer to them where appropriate as the 'Hamilton grounds'. We would also cite a further extract from the judgment of Lawton LJ at 385:-

> ***"It is a fundamental principle of an English trial that, if an accused gives evidence, he must be allowed to do so without being badgered and interrupted.*** Judges should remember that most people go into the witness-box, whether they be witnesses for the Crown or the defence, in a state of nervousness. They are anxious to do their best. They expect to receive a courteous hearing, and when they find, almost as soon as they get into the witness-box and are starting to tell their story, that the judge of all people is intervening in a hostile way, then, human nature being what it is, they are liable to become confused and not to do as well as they would have done had they not been badgered and interrupted."

52 In *R v Gunning* [1994] 98 Cr. App. R. 303 (although decided in 1980) the appellant's evidence-in-chief lasted two hours. The judge intervened to such an extent that he asked 50% of the questions during that time. He also intervened, although to a lesser extent, during cross-examination. Although the questions were not hostile and did not amount to cross-examination, they were such as, at one stage, to result in defence counsel being unable to ask a question for a quarter of an hour. The Court of Appeal held 'with some hesitation' that the interventions of the judge were on such a scale and of such a character that he had prevented the appellant from giving his evidence-in-chief in the way that he should have been allowed to give it because defence counsel had not been given a fair chance. The appellant had not had the chance that the adversarial system was designed to afford him of developing his evidence under the lead and guidance of defending counsel. Mr Le Quesne referred us to the following passage in particular at 306:-

> ***"The judge is not an advocate.*** Under the English and Welsh system of criminal trials he is much more like the umpire at a cricket match. He is certainly not the bowler, whose business it is to get the batsman out. If a judge, without any conscious intention to be unfair, descends into the forum and asks great numbers of pointed questions of the accused when he is giving his evidence-in-chief, the jury may very well get the impression that the judge does not believe a word that the witness is saying and by putting these pointed questions, to which there is sometimes only a lame answer, blows the evidence out of the water during the stage that counsel ought to be having the opportunity to bring the evidence of the accused to the attention of the jury in its most impressive pattern and shape. The importance of counsel having that opportunity is not diminished - indeed it is enhanced - if the evidence emerging-in-chief is a story that takes a bit of swallowing. If the judge, when the witness is skating over thin ice, asks pointed questions so that the ice seems to crack, the jury may well get the impression, however perfectly the judge may later sum up the case, that the judge has seen through the evidence-in-chief so the jury do not take it very seriously either."

53 In *R v Matthews* [1983] 78 Cr. App. R. 23, the two appellants relied upon the second and

third of the *Hamilton* grounds. The judge had intervened to a very considerable extent. For example, during cross examination of an important prosecution witness, counsel for one appellant had asked the witness 422 questions and the judge 163 and during cross-examination by counsel for the other appellant there were very few pages of the transcript without interventions from the judge. When the first appellant came to give evidence-in-chief 798 questions were asked by his counsel and 757 by the judge. During the 117 pages of transcript, there were no pages without intervention. In the case of the second appellant giving his evidence-in-chief, his counsel asked 538 questions and the judge 524. Although of less significance, the pattern of intervention by the judge continued during cross-examination. The questions, however, for the most part did not amount to cross-examination and were not put in a hostile manner. The Court of Appeal held that the interventions were excessive and the court could not approve of the way the judge had handled the matter. Nevertheless, the court considered that the judge had not committed the cardinal sin of diverting counsel from the line of the topic of his questions into other channels and that, in spite of the exceptional number of interventions, the court had no reason to think the convictions were unsafe. The appeals were therefore dismissed.

54 The details of the judge's interventions in (*R v Moore* unreported 10th February 1998) are not recorded in the judgment but it would appear that the judge intervened inappropriately on a number of occasions, including by way of cross-examination of the appellant on some occasions in a sarcastic manner. It was contended that his adverse views might have influenced the jury. The court agreed that the judicial interruptions had been a good deal more than was necessary or desirable. Having been referred, *inter alia*, to *Hulusi* and *Matthews* the court said this on page 7 of the transcript:-

> ***"We have particularly borne in mind that the critical aspect of this Court's investigation is to consider the quality of the interventions as they relate to the attitude of the judge as the jury might observe it, as well as the effect that the interventions had on the orderly, proper and lucid deployment of the appellant's case by his advocate.*** We bear in mind that, in analysing the overall effect of the interventions neither quantity nor quality can be considered in isolation. The ultimate question to be posed is whether the court is satisfied that the case for the appellant as presented to the jury over the trial as a whole, including the adducing and testing of evidence, the submissions of counsel and the summing up of the judge, was so affected as to render the jury's verdict unsafe."

The court went on to hold that the judge's interventions had not led the court so to conclude and further that any adverse impression the judge's questions might have made upon the jury would have been dispelled by the usual direction in the summing up that they must proceed according to their view of the facts, not on the basis of any view which the judge might appear to hold. The appeal was therefore dismissed.

55 In *R v Clewer* [1953] 37 Cr. App. R. 37 the judge clearly behaved very improperly. He interrupted frequently during the examination and cross-examination of witnesses, wrongly accusing defence counsel of setting up various bogus defences. During the closing speech

of defence counsel he intervened in a manner which was extremely critical of the defence and, as the Court of Appeal found, in effect said in the presence of the jury that counsel for the defence was raising false issues, that there was nothing in the defence being put forward, and that he intended to tell the jury so in his summing up. Not surprisingly the court allowed the appeal.

56 In *R v Adams* [2003] EWCA Crim. 3620 the appellant appears to have spent some three days in the witness box and to have been asked a total of 190 questions by the judge, equating to one question every 4.66 minutes of his evidence. Although many were for the purposes of clarification or of trivial importance the Court of Appeal held that "a very large number of the questions asked by the judge were in the nature of hostile cross-examination". The court held that the judge had misconducted himself but concluded by saying " ***but in the end, it being our duty to took back over the whole case, we do not consider that the appellant was deprived of a fair trial, nor that he was prevented from presenting his case to the jury***."

57 The final English case to which we were referred was (*R v Wiggan* Times Law Reports 22nd March 1999) where, at the end of the appellant's re-examination, the trial judge had proceeded to ask 64 questions going to the critical issue in the case. The questions were of a testing nature which suggested scepticism of the defendant's evidence and were in the nature of a searching cross-examination. They were found by the Court of Appeal to be improper in their entirety. Nevertheless, the Court held that the appeal should be dismissed on the grounds that the conviction could not be said to be unsafe.

58 The issue of interruptions by the trial judge has come before the courts in Jersey on two previous occasions. In (*AG v McFarlane* Jersey Unreported 3rd July 1999) the appellant complained that the Bailiff had intervened excessively and that some interventions had interrupted the smooth flow of the appellant's case, including his evidence-in-chief, that others had indicated that the Bailiff had formed an adverse view of the strength of the defendant's case and thirdly that on occasions he had asked questions which could only be described as cross-examination of the appellant. The Court of Appeal (Collins, O'Neill and Kentridge JJA) adopted the principles established in *Hulusi* and *Matthews* (including specifically the *Hamilton* grounds) and went on to hold that it was troubled in particular by the specific instances of interventions which could only be described as cross-examination and which had been conceded by the prosecution in most cases to be undesirable and unfortunate. Nevertheless the Court came to the conclusion that, when the conduct of the case and the nature of the evidence was looked at overall, the Bailiff's interruptions did not go so far as to indicate such a strong view as was required by the English authorities and that his interruptions did not in fact prevent the appellant's counsel from properly pursuing his case. They were not such as to be incapable of being corrected by the proper warning of the Bailiff in his summing up to the jury. The appeal was therefore dismissed.

59 Finally, we refer to *MacKenzie v AG* [1995] JLR 9. This was a Newton hearing before the Superior Number i.e. a court comprised of the Bailiff and Jurats. During an adjournment whilst the main prosecution witness was being cross-examined the Bailiff called counsel

into his chambers. There, in the presence of the Jurats, the Bailiff indicated that he believed the evidence of the witness and did not consider cross-examination would be useful since she had been believed by the Court on previous occasions. He also expressed disbelief in the evidence put forward by the defence. Thereafter, when the hearing resumed, he apparently made a number of interventions during the examination and cross-examination of the witness, although no details of the nature and extent of these appear from the report. The Court of Appeal (Le Quesne, Blom-Cooper and Frossard JJA) held that the Bailiff's interruptions were not sufficient to establish any of the *Hamilton* grounds. As to what he had said in chambers, the Court held that the opinions of the Bailiff could not influence the Jurats if they were approaching their decision fairly, as they were, and it was relevant that they were experienced and aware of their function. Furthermore the interventions had not so strongly invited the Jurats to disbelieve the defence evidence that they had outweighed his subsequent direction that they must decide on the facts themselves. The appeal was therefore dismissed.

60 Mr Whelan pointed out that, despite the fact that in all but one of the cases, the judge had been found to have intervened excessively or improperly, in only three of them had the conviction been overturned. In each of those three cases, he submitted, the judge's conduct had been far worse than in the present case. In *Clewer* the judge had clearly behaved extremely badly in a biased and inappropriate manner such that the Crown had not felt able to oppose the appeal. In *Hulusi* the judge had been critical of defence counsel throughout (including in the summing up) and had cross-examined the appellant to such an extent that his counsel was driven off course in evidence-in-chief; again the Crown did not feel able to oppose the appeal. In *Gunning*, although there had been no hostile questioning, the level of interventions had been such that, during the two hour examination-in-chief of the appellant, the judge had asked 50% of the questions and had at one stage prevented defence counsel from asking any questions for a quarter of an hour. It was not surprising therefore, submitted Mr Whelan, that the Court of Appeal had found (although only with some hesitation) that the appellant had not been given the chance which the adversarial system was designed to afford him of developing his evidence under the lead and guidance of his counsel.

61 We note the point which Mr Whelan makes but we were, of course, not referred to all the cases where a trial judge has intervened excessively or inappropriately. A reference to *Archbold* shows that there are other cases. In some the appeal was allowed; in others it was not. Ultimately each case must depend upon its own facts.

(iii) The test on appeal

62 Article 26(1) of the Court of Appeal (Jersey) Law 1961 provides (so far as material) as follows:-

> ***"...on any appeal against conviction, the Court of Appeal shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or***

that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal:

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

As has been said by this Court on a number of occasions (see for example para 23 of the judgment of Southwell JA in *Bayliss v AG* [2004] JLR 409) the test in Jersey is not the same as that in England and Wales, where the relevant test since 1968 has been whether the conviction is ***"unsafe or unsatisfactory"*** and since 1995, whether the conviction is ***"unsafe"***.

63 The Human Rights Act 1998 incorporated the European Convention on Human Rights ("the Convention") into English law. Article 6(1) of the Convention provides (so far as relevant):-

"in the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...."

64 It has been held in England and Wales that a conviction which results from an unfair trial is 'unsafe' regardless of the strength of the case against the defendant. Thus in *R v Togher* [2001] 1 Cr. App. R. 33, Lord Woolf CJ said at para 30:-

"As a matter of first principles, we do not consider either the use of the word "unsafe" in the legislation or the previous cases compel an approach which does not correspond with the requirement of the ECHR. The requirement of fairness in the criminal process has always been a common law tenet of the greatest importance. The common law approach has been enhanced by legislation and in particular, the Police and Criminal Evidence Act 1984 and the Codes of Practice made thereunder (sections 66 and 67). Fairness in both jurisdictions is not an abstract concept. Fairness is not concerned with technicalities. If a defendant has not had a fair trial and as a result of that injustice has occurred, it would be extremely unsatisfactory if the powers of this Court were not wide enough to rectify that injustice. If, contrary to our expectations, that has not previously been the position, then it seems to us that this is a defect in our procedures which is now capable of rectification under section 3 of the Human Rights Act 1998 ("the 1998 Act"). The 1998 Act requires primary legislation and subordinate legislation to be read and given ***effect to in a way which is compatible with Convention rights.*** Section 6(1) of the 1998 Act makes it unlawful for a public authority to act in a way which is incompatible with a Convention right and a court is a public authority for the purposes of

section 6 (section 6(3)). The 1998 Act emphasises the desirability of taking a broader rather than a narrower approach as to what constitutes an unsafe conviction."

65 In this connection we note that the above approach is consistent with that of the European Court of Human Rights ("the European Court"). Thus, although this case was not cited to us, in *CG v United Kingdom* [2002] 34 EHRR 31, the European Court made it clear that, pursuant to Article 6 of the Convention, a conviction should be quashed if the Court of Appeal is satisfied that the trial proceedings, taken as a whole, are unfair notwithstanding that the evidence against a defendant may be strong. Relevantly, the case concerned interventions by a trial judge and it is worth quoting paragraphs 40-42 of the judgment of the European Court:-

> ***"40. The Court accordingly agrees with the Court of Appeal that there is substance in the applicant's criticisms of the trial judge's conduct of the proceedings. The question however remains whether this conduct - in particular, the nature and frequency of the judicial interventions - was such as to render the trial, viewed as a whole, unfair*** .
>
> ***41. The Court observes in the first place that, although the evidence of S and of the applicant herself in which the interventions occurred was doubtless the most important oral evidence given in the trial, it made up only a part of the trial proceedings which occupied three days. Further, while certain of these interventions of the trial judge were found by the Court of Appeal to be without justification, others were found to be justified. While the Court accepts the assessment of the Court of Appeal that the applicant's counsel found himself incommoded and disconcerted by these interruptions, it also agrees with the Court of Appeal, from its own examination of the transcript of the evidence, that the applicant's counsel was never prevented from continuing with the line of defence that he was attempting to develop either in cross-examination or through his own witness. In addition, the Court attaches importance to the fact that the applicant's counsel was able to address the jury in a final speech which lasted for 45 minutes without interruption, apart from a brief intervention which was found to be justified, and that the substance of the applicant's defence was reiterated in the trial judge's summing-up, albeit in a very abbreviated form*** .
>
> ***42. In these circumstances, the Court does not find that the judicial interventions in the present case, although excessive and undesirable, rendered the trial proceedings as a whole unfair."***

66 Although it was not cited to us, further support for Mr Le Quesne's submission that fairness is the critical issue is to be found in the important observation of Lord Bingham of Cornhill in the Privy Council in the case of *Randall v R (Cayman Islands)* [2002] UKPC 19, where he said at paragraph 28:-

> ***"28. While reference has been made above to some of the rules which should be observed in a well-conducted trial to safeguard the fairness of the proceedings, it is not every departure from good practice which renders a trial unfair. Inevitably, in the course of a long trial, things are done or said which should not be done or said. Most occurrences of that kind do not undermine the integrity of the trial, particularly if they are isolated and particularly if, where appropriate, they are the subject of a clear judicial direction. It would emasculate the trial process, and undermine public confidence in the administration of criminal justice, if a standard of perfection were imposed that was incapable of attainment in practice. But the right of a criminal defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for a defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial."***

67 The Human Rights (Jersey) Law 2000 came into effect in December 2006 with the consequence that Article 6 of the Convention now forms part of the law of Jersey. Accordingly, we hold that where the irregularities during a trial are of such a nature or extent as to lead the Court to conclude that a defendant's trial has been unfair, this will amount to a substantial miscarriage of justice for the purposes of the proviso to Article 26(1) and the appeal must be allowed regardless of the strength of the case against the defendant.

68 On the authority of *McFarlane*, we accept that the approach which this Court should follow when considering an appeal on the grounds of excessive or improper interventions by the trial judge is that to be extracted from the cases to which we have referred, including in particular the *Hamilton* grounds. Adapting what was said in *Matthews* and *Moore* in the light of the preceding paragraphs, it seems to us that the ultimate question for the Court therefore is whether, taking the trial as a whole including the adducing and testing of evidence, the submissions of counsel and the summing up of the judge, the proceedings were so affected by the judge's interventions as to render the applicant's trial unfair.

(iv) Conclusion

69 Mr Le Quesne submitted strongly that they were so affected. He contended that the Commissioner had descended into the arena to such an extent that he had distorted the trial process. It had not been the adversarial process to which Mr Michel was entitled; it had become inquisitorial. The number of interruptions to Mr Michel's evidence-in-chief had significantly impeded his right and ability to put his case to the Jurats as he thought best. Furthermore, the nature of the questions had had the same effect. They tended to

undermine the credibility or impact of Mr Michel's evidence. Mr Michel would make what might be seen as a good point, only for the judge to question him so as to counter that effect. A large proportion of the questions were in the nature of cross-examination which, if put at all, should have been put by the prosecution. In an adversarial system, it was unfair to a defendant for the judge to usurp the role of the prosecution. Questions asked and points made by the judge suggested disbelief of Mr Michel's evidence or a preference for the prosecution case. The number and nature of the judge's interruptions was such that they may well have affected the evidence as it was put before the Jurats and the Jurats' consideration of that evidence. The *Hamilton* grounds were made out. In addition his questions of prosecution witnesses had adversely affected the proceedings.

70 As already stated, the Crown accepted that the Commissioner intervened too frequently and that a substantial proportion of his interventions were inappropriate and amounted to cross-examination. However Mr Whelan submitted that the trial had not thereby been rendered unfair. In relation to the first of the *Hamilton* grounds, it was significant that this was a trial by Jurats (rather than a jury) who had been correctly directed in the summing up to ignore any views of the Commissioner unless they agreed with such views. Accordingly, the fact that certain views of the Commissioner may have emerged in the course of his interventions had not lead to any unfairness. As to the second *Hamilton* ground, there was no evidence that defence counsel had been prevented from properly presenting the defence. As to the third *Hamilton* ground, it was conceded that the Commissioner had intervened too frequently and in an inappropriate manner, but the question was whether Mr Michel had been able to tell his story in his own way. He had spent some 8 $^{1}/_{2}$ days in the witness box of which approximately half had been spent giving evidence-in-chief. A careful perusal of the transcript showed that the defence emerged clearly and satisfactorily from his evidence and neither he nor his counsel were diverted to any material extent from the task. As to the questions asked of the prosecution witnesses, they had related to issues which were either irrelevant or of such peripheral importance that they could not have had any material effect on the trial.

71 The Court has found it very surprising that the Commissioner should have intervened to the extent which he did. The Court has no hesitation in agreeing with both counsel that the nature and extent of the Commissioner's interventions were improper. He asked far too many questions and, although many were perfectly proper, a significant proportion were in the nature of cross-examination designed to test the evidence, particularly that of or favourable to the applicant. It is perfectly proper - indeed it is his duty - for a judge to intervene for the purposes described by Rose LJ in *Tuegel* at the passage cited at paragraph 50 above. But it is not proper for a judge to descend into the arena to the extent that the Commissioner did in this case.

72 However, the mere fact that a judge intervenes excessively or inappropriately does not necessarily lead to a conviction being quashed. The decision for the Court is whether the nature and extent of the interventions have resulted in the applicant's trial becoming unfair.

73 In reaching our decision we have taken account of the following matters:

(i) This was a trial by Jurats, not a jury. In *AG v Edmond-O'Brien* [2006] JLR 133, the Privy Council at paragraph 23 of the judgment delivered by Lord Hoffmann pointed out that, unlike a jury, Jurats are not chosen at random and quoted with approval the passage in the judgment of the European Court of Human Rights in *Snooks v United Kingdom* [2002] JLR 475 at 484:-

> ***"Jurats are ... elected by a special electoral college whose members include the bailiff, the jurats, advocates and solicitors of the Royal Court and members of Jersey's legislature, the States Assembly.*** Jurats do not necessarily have a legal qualification, but are usually individuals with a known history of sound judgment and integrity, which has been consistently demonstrated throughout a lengthy professional, business or civic life."

This distinction is reflected, for example, in the fact that the requirements for summing up in a case tried by Jurats are not the same as those for a case tried by a jury (see *Snooks v AG* [1997] JLR 253).

(ii) This was a case where there was little dispute about the underlying facts i.e. the activities that Mr Michel had undertaken in relation to his various clients. The issue in a few cases was whether the Jurats could properly infer that the relevant client had engaged in criminal conduct but the main issue in relation to all the counts was whether Mr Michel, when he carried out these activities, knew or suspected that the relevant client had engaged in criminal conduct; i.e. what was his state of mind at the time? The case therefore depended to a very large extent on the Jurats' assessment of the applicant when he gave evidence.

(iii) Mr Michel spent some 8 $^{1}/_{2}$ days in the witness box being examined-in-chief and cross-examined and then re-examined. This gave ample opportunity for the Jurats to assess his credibility when he said that he did not know or suspect that the clients in question had been engaged in criminal conduct. Assuming that the defence are correct in their assertion that approximately 18.24% of the time spent by Mr Michel in the witness box was taken up with questioning by the judge, this amounts to fractionally over one and a half days. This means that Mr Michel spent an aggregate total of just under seven days when he was being questioned by his own counsel or by counsel for the other parties and not by the judge. This case is therefore very different from some of the cases to which we were referred where, during a comparatively short time in the witness box, the defendant spent a substantial proportion of that time answering questions from the judge, thereby leaving little time for the jury to form an impression as a result of questions from his own counsel.

(iv) Advocate Le Quesne and Advocate Whelan are both very experienced and respected advocates. Advocate Whelan was assisted by a team which included leading and junior English counsel, both experienced criminal practitioners. Advocate Le Quesne was assisted by English junior counsel, also experienced in criminal

matters. Apart from one occasion when Mr Le Quesne protested that a question asked by the judge amounted to cross-examination, neither side at any stage complained about the interventions by the judge. This is not to be critical of counsel and it is in any event not in any way decisive. If the interventions resulted in the trial becoming unfair, the fact that counsel had not objected at the time would be irrelevant. Nevertheless, as Mr Whelan put it, the Court is being asked to judge the matter purely from a reading of the transcripts which cannot give the exact flavour of the trial as it appeared to those participating in it at the time. He asserted that, although he and his team considered that the judge was interrupting too much and in an inappropriate way, it never occurred to any of them that the result was that Mr Michel was not getting a fair trial; hence their lack of objection. Mr Le Quesne conceded very fairly that he believed now that he should have objected during the trial but that he had now had the benefit of reading the transcripts.

(v) Many of the questions posed by the judge, although they should have been asked by others rather than him, were nevertheless questions that were bound to arise some time. They were issues which any tribunal of fact deciding the case would wish to have explored. Many of the questions no doubt reflected matters which were in the Jurats' minds. The judge's interventions frequently gave Mr Michel the opportunity of dealing specifically with such points.

(vi) In this connection, it is clear from the transcript that Mr Michel is an intelligent and articulate man. In almost every intervention he had a ready and plausible answer to the judge's questions. This was not the case envisaged by Cumming-Bruce LJ in *Gunning* (see para 52 above) where the defendant is skating over thin ice and the judge asks pointed questions so that the ice seems to crack. We have read the transcript of Mr Michel's evidence. It seems to us that he dealt very well with almost all of the judge's interventions.

(vii) In this case, as well as the usual closing speeches, the prosecution and the defence also put in detailed written closing submissions. We have read both of these documents carefully, together with the 'composite grid submission' which was a further document supplied to the Jurats setting out the essence of the rival submissions in relation to each count. The written closing submissions for the defence came to 63 pages and set out the defence case in considerable detail and with clarity and vigour.

74 As Mr Le Quesne conceded, this was a case where the documentary evidence suggested a strong *prima facie* case against the applicant. It is therefore all the more important to ensure that he had the proper opportunity of putting forward his explanation of the evidence against him in a manner which was not adversely affected by the interventions of the Commissioner. Each member of the Court, on reading the applicant's written contentions, was initially concerned at the level and nature of the interventions. We have therefore considered the transcripts with particular care in order to decide whether, by his interventions, the judge caused the trial to become unfair.

75 We propose to refer to the three grounds listed in *Hamilton*. The first is whether the judge's interventions were such as to invite the Jurats to disbelieve the evidence for the applicant in such strong terms that it could not be cured by his direction to the Jurats that they should disregard his views if they disagreed with them. We agree that many of the judge's questions suggested a scepticism of some of the matters put forward by the defence. However, he gave an impeccable direction in his summing up to the effect that, if he appeared to have a view of the evidence or the facts or of issues that were significant with which the Jurats did not agree, they were to reject his view. Such indication of his view as may have emerged from his interventions comes nowhere near the level in the case of *Mackenzie*, where the Bailiff stated in chambers in the presence of the Jurats that he believed the evidence of the prosecution witness and that the defendant's version of events was not to be believed. Yet in that case the Court of Appeal held that the Jurats could nevertheless be relied upon to reach their own decision. That approach was endorsed by the Court of Appeal in Mr Michel's first appeal [2006] JCA 152 - see the judgment of Smith JA at para 22.

76 In our judgment this is not a case where the judge's interventions in effect invited the Jurats to disbelieve the defence in such strong terms that it could not be cured by the direction in the summing up. Furthermore, Jurats are permanent members of the Court with the qualities and characteristics referred to in *Edmond-O'Brien*. They are familiar with their role as fact finders and can be expected loyally and conscientiously to fulfil that role. Interestingly, in this particular case, it is clear that, as one would expect, they were indeed wholly independent of the Commissioner's views. In relation to count 1 he indicated to them in his summing up that, although it was technically possible for them to convict Mr Michel if they acquitted Mrs Gallichan, it might, as a matter of fact and common sense, be very hard to do so. He queried how, on the evidence, Mr Michel could be offering the arrangement without her active and knowing involvement. Despite this strong indication of the Commissioner's views in relation to count 1, the Jurats exercised their own judgment and reached their own decision by convicting Mr Michel and acquitting Mrs Gallichan.

77 In all the circumstances we are satisfied that the emergence of the Commissioner's views did not result in unfairness and that the Jurats could be relied upon to reach their own conclusion on the facts irrespective of any views of the Commissioner, consistently with the direction to that effect which he had given them in the summing up.

78 The second ground in *Hamilton* is where the interventions have made it impossible for counsel for the defence to do his or her duty in properly presenting the defence. Mr Le Quesne did not press this argument and we think he was right not to do so. He did not suggest that he was unable to pursue a particular line of cross-examination or that he was prevented from adducing any evidence from the defence witnesses; nor was he interrupted in his oral closing submissions. In addition, carefully structured and detailed written closing submissions were provided to the Jurats as well as the composite grid document setting out in brief form the rival submissions in relation to each count. Our perusal of the transcript satisfies us that he was not prevented from properly presenting the defence.

79 The third ground in *Hamilton* is where the interruptions have had the effect of preventing the defendant from doing himself justice and telling his story in his own way. We have carefully considered this aspect. There is no doubt that the Commissioner intervened a great deal whilst the applicant was giving evidence. We have considered with particular care the interventions during his evidence in chief because that is the opportunity for a defendant to present his own evidence in the way that he and his counsel want that evidence to be presented.

80 In this connection, it is important to consider the interventions in the context of the applicant's evidence as a whole. Simply to read the passages where the judge has intervened may give a misleading impression. We have therefore read the whole of the applicant's evidence. Having done so, we are satisfied that, despite the interventions, the defence case emerged from the evidence in chief with clarity and with the general structure required by the defence. Whilst the Commissioner's questions may have interrupted the flow on occasions and have resulted in Mr Michel facing questions which he would not normally have faced until cross-examination by prosecuting counsel, Mr Michel was not put off by these interventions and gave his evidence in a clear and articulate manner. He spent over 4 days in giving evidence in chief and we are satisfied that, viewed overall, he was not deflected from telling his story in his own way by the judge's interventions.

81 We turn next to the additional ground raised by Mr Le Quesne, namely that the judge's interventions in relation to some of the prosecution witnesses affected the trial process in that he asked questions of prosecution witnesses that neither the prosecution nor the defence had asked and in particular, cross-examined certain prosecution witnesses in a way the prosecution could not have and the defence did not wish to.

82 We agree that there are examples of this: e.g. Mark Allan and Jamie Fielder. Thus, in the case of Mr Allan, he was one of the owners of a company in England called Travco where false invoices were presented by the company administered by Mr Michel. Mr Michel was convicted of the count in relation to Mr Allan and Travco in the first trial and his appeal against that conviction was dismissed. Nevertheless, the prosecution adduced evidence of the Travco matter again in the second trial by way of similar fact evidence and Mr Allan gave evidence to the effect that, on the advice of a Mr Fass, he and his fellow directors had established the company in Jersey administered by Michel & Co which presented false invoices to Travco for services which had not been provided. £1.3 million was extracted from Travco using these invoices over an 8 year period. He gave evidence that fake chasing letters in respect of the invoices were sent by Michel & Co to give apparent substance to these false invoices and that the money paid to the Jersey company was returned to Mr Allan and his fellow directors in the form of cash and by transfers to Swiss bank accounts. He said that these sums were not declared to the Inland Revenue. He further said that Mr Michel was aware that the invoices were false. In cross-examination by Mr Le Quesne he said that, despite all this and although he now knew better, he had thought that the scheme was legal at the time that it was established. He was then questioned by the Commissioner as to whether he really held that belief but maintained his position.

83 Given that, in his evidence-in-chief, Mr Allan had admitted participating in a scheme which, on any view, was patently dishonest, we do not consider that any Jurats could have thought it either credible or indeed relevant that, in answer to a question from Mr Le Quesne, he had said that he nevertheless thought the scheme was legal. Accordingly, although the Commissioner should not have asked the questions which he did, we consider that they made no difference and did not lead to unfairness.

84 Mr Fielder was the bookkeeper at Travco which had paid the invoices; so he too was giving evidence in relation to the matters of which Mr Michel had been convicted in the first trial. He said that he was instructed to pay the invoices by Mr Allan. He said that he was not initially suspicious of the invoices but gradually became suspicious. He was asked few questions in cross-examination by Mr Le Quesne but was thereafter questioned by the Commissioner as to whether, as an intelligent man, he would have regarded the acts in question (i.e. payment of bogus invoices) as legal, to which he replied that he would not. We accept that these questions on the part of the Commissioner were improper. They distorted the trial process by adducing evidence which the prosecution could not properly adduce and which the defence did not wish to have adduced. However, in our judgement, the evidence was extremely peripheral. In the first place it did not relate to a count before the Jurats; but more importantly the opinion of the bookkeeper of Travco, many years after the event, as to the legality of what was done seems to us to be of little or no significance in relation to the issue which the Jurats had to consider, namely whether, at the time, Mr Michel, as the man responsible for administering the company which submitted the false invoices, did or did not know or suspect that he was dealing with the proceeds of crime i.e. fraud through tax evasion. Accordingly, although improper, the Commissioner's interventions were not of such significance as to render the trial unfair.

85 Mr Le Quesne referred us to other questions asked by the Commissioner of other prosecution witnesses and submitted that they were inappropriate. We do not propose to lengthen this judgment by referring to them in detail. Suffice it to say that we have carefully considered all the examples relied upon by Mr Le Quesne. We accept that some of the questions were inappropriate but we do not consider that the questions or the answers of the witnesses were of sufficient significance as to render the trial unfair.

86 Finally, as agreed by both counsel, we have stood back and looked at the case as a whole. In particular, despite our view that the individual aspects referred to above have not resulted in an unfair trial, we have considered whether the Commissioner's interventions when taken as a whole were such as to lead to an unfair trial. We have carefully considered all of Mr Le Quesne's submissions but, having considered the matter in the round, have concluded that the Commissioner's interventions did not prevent or inhibit Mr Michel and his advocate from testing the prosecution evidence, from adducing their own evidence and from putting forward the defence in the manner which they chose, and having their case considered impartially and independently by the Jurats. In our judgment, despite the imperfections caused by the Commissioner's interventions, Mr Michel had a fair trial.

Ground 2

87 Mr Le Quesne's second ground of appeal relates to count 1, which is set out at paragraph 11 above. Further particulars were given by the Crown before trial as follows:-

> *"1. The arrangement is a single arrangement between the defendants and others within Michel & Co, that is the staff, made on behalf of a number of clients of Michel & Co. The charge relates to the operation of a system at Michel & Co whereby the proceeds of crime would be returned to clients of Michel & Co in cash.*
>
> *2. The role of the members of staff of Michel & Co is evidenced by the witness statements of members of staff and the cash report of Robson Rhodes. The fact that other members of staff participated in this arrangement does not mean that they did so with the requisite knowledge or suspicion that they were assisting persons who had been engaged in, or had benefited from, criminal conduct.*
>
> *3. The clients are those clients who have been identified as receiving cash in the cash report of Robson Rhodes. The Attorney General does not have to prove that each such client was being assisted to retain the benefit of his criminal conduct to obtain a conviction on count 1. The prosecution intends to focus on certain client relationships by way of example. These clients are identified, and their predicate offences elucidated, in the case statement.*
>
> *4. The predicate offences referred to in count 1 are fraud and theft. The fraud relates to the evasion of tax. The theft relates to theft from companies associated with the relevant clients. In Jersey such conduct would probably be charged as fraudulent conversion."*

It is clear therefore that count 1 did not relate to an arrangement with clients. The essence of the allegation was that Mr Michel and Mrs Gallichan operated a standing arrangement within Michel & Co that enabled the proceeds of crime to be secretly returned to clients in cash. The arrangement was open to any client of the firm who wished to use it.

88 In his summing up, having given the usual direction about considering the case against each defendant separately, the Commissioner said this in relation to count 1:-

> *"Second, must they prove that both defendants were involved in this standing arrangement in order to secure any conviction on count 1?* Technically, no. ... *Although count 1 may be a little unhappily drafted I would not instruct you that it would be wrong to find an arrangement of the kind particularised against Mr Michel and others, not including Mrs Gallichan.* And it is open to you to make such a determination in accordance with those parts of the prosecution closing argument that do not depart from their assertion of a single arrangement. But, and as a matter of fact and common sense, it might be very hard although not impossible to find against him alone guilt on count 1 if you were not also satisfied of guilt against Mrs Gallichan. How, on the evidence, including the

evidence of the open nature of the office and the involvement of Mrs Gallichan in many aspects of the business, could he be offering such an arrangement without the active and knowing involvement of at least one (and maybe others) of his staff? This is ultimately a matter for you."

89 Mr Le Quesne made two submissions. First he said that the Jurats should have complied with the direction of the Commissioner. Secondly, he submitted that, on the evidence, it was perverse to find Mr Michel guilty but Mrs Gallichan not guilty. We shall deal with these in turn.

90 The first submission can be dealt with very briefly. The observation of the Commissioner was not a direction of law which the Jurats were obliged to follow. In a trial before the Inferior Number, it is the Jurats who are the fact finding tribunal. Whether Mr Michel and/or Mrs Gallichan were guilty or not guilty was a question of fact and therefore for decision by the Jurats. It is always open to a judge in an appropriate case, having directed a jury (or Jurats) that they must consider the case against each defendant separately, to then go on to say that, on the particular facts of the case, they might think that it would be difficult to return particular verdicts. Thus the Commissioner had done this earlier in his summing up when indicating that, although it was a matter for them, the Jurats might find it difficult to convict Mrs Gallichan on any count where they acquitted Mr Michel because there was little or no evidence on any count to suggest her involvement was other than supportive of his actions and subordinate to him. However, the important point is that this can be no more than an expression of opinion by the judge; it is not a direction in law. A jury or Jurats are most certainly not under any obligation to follow any such indication of view. As they are directed in the summing up, the facts are entirely for them. It cannot therefore possibly be a ground of appeal that the Jurats did not follow a view of the facts expressed by the judge in his summing up.

91 The real basis of this second ground of appeal is that the decision of the Jurats to convict Mr Michel was unreasonable once they decided to acquit Mrs Gallichan. There was no dispute that both Mr Michel and Mrs Gallichan had participated in an arrangement to distribute cash to clients. For the purposes of considering this second ground, it must also be accepted that the arrangement concerned the proceeds of crime. However, in order to obtain a conviction, the prosecution had to show that Mr Michel or Mrs Gallichan (as the case may be) participated in the arrangement knowing or suspecting that the clients had been engaged in criminal conduct. An arrangement is not the same as a conspiracy. It is perfectly possible for a person with the requisite knowledge or suspicion to enter into arrangement with a person who does not have that knowledge or suspicion. In such an event the first person is guilty and the second person is not guilty.

92 Mrs Gallichan's defence was that she did not have the requisite knowledge or suspicion. This was also Mr Michel's defence. Mr Le Quesne argued that, given the small size of the office, the fact that it was an open office and Mrs Gallichan had access to all of the files, and given the level of her involvement in the transmission of cash, it was unreasonable for the Jurats to conclude that Mr Michel had the requisite knowledge or suspicion but that she did

not. However this was entirely a matter for the Jurats. On any view the roles of the two defendants were very different. Mr Michel was the sole principal. As the Commissioner pointed out, it was clear that Mrs Gallichan was subordinate to him and that her involvement was simply supportive of his actions. In our judgment it was entirely open to the Jurats to find that Mrs Gallichan did not have the requisite knowledge or suspicion whereas Mr Michel did. This ground of appeal has no merit.

Ground 3

93 Mr Le Quesne's third ground of appeal is that, in relation to counts 1, 4, 6, 7 and 8 the verdict of the Jurats was unreasonable or could not be supported having regard to the evidence. We will turn to each count shortly but we will begin by reminding ourselves of our role.

94 In *Edmond-O'Brien*, to which we have already referred, the Privy Council made it clear that this Court must be careful not to usurp the function of the Jurats. Lord Hoffmann quoted with apparent approval the passage in the judgment of Lord Goddard CJ in *R v Hopkins-Husson* [1949] 34 Cr. App. R. 47 at 49, in which he said:-

> ***"The fact that some members or all the members of [this] court think that they themselves would have returned a different verdict is ... no ground for refusing to accept the verdict of the jury, which is the constitutional method of trial in this country.*** If there is evidence to go to the jury, and there has been no misdirection, and it cannot be said that the verdict is one which a reasonable jury could not arrive at, this Court will not set aside the verdict of guilty which has been found by the Jury."

At paragraph 13 of the judgment Lord Hoffmann emphasised that questions of credibility were a matter for the Jurats and it was not the function of this Court to say that the evidence of the accused should have been accepted.

95 It is against that background that we turn to the submissions made on behalf of Mr Michel, not to approach the matter as if we were the Jurats trying the case, but in order to see whether there was sufficient evidence to support the convictions or whether any of the verdicts could be said to have been unreasonable.

(i) Count 1

96 As already mentioned, count 1 involved an allegation on the part of the prosecution of a single arrangement within Michel & Co to launder funds for clients by returning the proceeds of criminal conduct in cash. It was a standing arrangement open to any client who wished to use the service.

97 Mr Le Quesne submitted that there was insufficient evidence of such a standing arrangement to justify a conviction. The evidence showed at most a series of *ad hoc* arrangements with individual clients. He pointed out that there was no evidence of underlying criminality in relation to a substantial proportion of the clients referred to by the prosecution in relation to count 1. He submitted further that, in many cases, there was no evidence of the proportion of the activities of the particular client which related to cash; where there was evidence, in many cases the percentage was only in the order of 50-70%. In short there was insufficient evidence for the Jurats to find that, beyond the individual arrangements with clients which were the subject of specific counts in the Indictment, there was this standing arrangement open to any client.

98 Mr Whelan submitted that there was ample evidence upon which the Jurats could properly conclude that there was a standing arrangement of the type alleged by the Crown. Significant factors were the number of clients who received cash, the amount of cash delivered, the standard system of charging for this service, the systematic and extraordinary way in which the cash was raised to meet these deliveries, and the convoluted manner by which clients who received cash repaid Michel & Co. All this was designed to disguise the scale of the cash dealings at Michel & Co and the identity of those clients who received cash.

99 The Crown submitted that evidence in support of the standing arrangement could be found, inter alia, in the following matters:-

(i) From January 1993 to July 2001 £5.6 million was made available in cash to clients. Of that sum £1.5 million was made available after 1 st July 1999 when the Law came into force; and of that sum £1.2 million was delivered to the United Kingdom personally by Mr Michel.

(ii) The clients who received cash paid substantial fees and expenses (e.g. the cost of the plane trip to London) in order to receive money in cash. The standard fee charged by Michel & Co was at the rate of 95p per £100 of cash delivered. It would have been far cheaper for money to have been transferred from the designated bank of the client's entity in Jersey by telegraphic transfer to an account in England, from which cash could have been drawn.

(iii) Even if the cash were to be transferred in person, the obvious thing would have been to have obtained cash from the particular client's designated account. However this was not done.

(iv) On the contrary, cash was raised from a number of sources to create a cash pot. Cash in the pot was used as and when needed to meet demands for deliveries from clients.

(v) As already indicated, between January 1993 and July 2001 Michel & Co raised £2.6 million either from clients or from trusted local friends of Mr Michel. Of this sum £456,000 was received after 1 st July, 1999. The cash was never banked, it was put

into the cash pot and delivered to other clients.

(vi) The shortfall between cash receipts and delivery was made up with withdrawals from the banks. However the cash withdrawn from a bank was not taken from the designated account of the client who received the cash. Cash was raised by repeatedly withdrawing it in sums of £9,950 from different pooled accounts which had no apparent connection with the transaction.

(vii) Clients paid for cash deliveries by bank transfers from the designated account of the client to the pooled accounts. However the transfers were not necessarily to the same pooled account as had been debited in respect of any cash withdrawals from the bank.

(viii) The Williams Settlement accounts were used as a float to fund cash deliveries. Thus these accounts rectified deficits and surpluses that arose on the pooled accounts as a result of the mismatch between cash withdrawals and reimbursements.

(ix) The systematic raising of cash and reimbursement of Michel & Co was planned by Mr Michel upon working sheets that dealt with the cash to be raised and repaid for a number of unrelated clients in single calculations. Examples of theses working sheets were produced to the Jurats.

(x) There was no satisfactory innocent explanation for the convoluted and devious manner in which the cash paid out and the receipts from clients were dealt with. The only true explanation was that the system was designed to obscure the source and disposal of funds; it was designed for money-laundering.

(xi) Of the sum of £1.2 million delivered by Mr Michel in the UK after the commencement of the Law, the prosecution adduced evidence about the provenance of £886,000 of that sum. Seven different clients received this aggregate sum of cash, of whom two (Mr Mason and Mr Krejzl) were the subject of specific counts in this trial and one (Mr Allen) had been the subject of conviction on the specific count in the first trial. The remaining four were not the subject of specific charges.

100 The Commissioner directed the Jurats specifically that, before they could convict on count 1, they must be satisfied that there was a single standing arrangement of the type alleged by the prosecution rather than a series of *ad hoc* arrangements with individual clients. No criticism is made of that summing up.

101 In our judgment, there was ample evidence upon which the Jurats, who had the opportunity of seeing and hearing not only the prosecution witnesses but also Mr Michel's explanation of these matters, could properly conclude that the prosecution had proved the existence of this single standing arrangement i.e. that Mr Michel was running a service to provide cash for those engaged in criminal conduct and that this service could be made available to any client. The fact that, as Mr Le Quesne stated, it was not proved that all of the money contributed by a particular criminal client was returned to that client in cash is beside the point. The standing arrangement was to return such part of the proceeds as the

client wished to have returned to him in cash. If he wished some of the proceeds of his criminal conduct to be retained in Jersey or invested in some way, that did not detract from the existence of a standing arrangement to return cash as required by the client. Although the indictment referred to the returning of cash "in amounts broadly corresponding to such transfers", the Commissioner held that that was not a material particular and no appeal is brought against that ruling, which was clearly correct. Similarly, the fact that the prosecution did not bring evidence to prove in the case of each and every one of the clients who received cash that that client had been guilty of criminal conduct is not significant. The question for the Jurats was whether they were satisfied that this standing arrangement existed. We are quite satisfied that, on the evidence produced to them, it was open to them to so find and such a decision cannot be categorised as unreasonable or not supportable having regard to the evidence.

(ii) Count 4

102 As described earlier, count 4 related to the activities of a Gerald Smith who stole some £900,000 from a company (Clearwater) which was administered by the trust company of which he was a senior employee. Ten instalments were transferred by Smith from the Clearwater account to one of the pooled accounts of Michel & Co. After a matter of days, Michel & Co then returned the relevant instalment to an account in the name of Bryland, which was a company which Michel & Co had formed for Smith. Michel & Co charged an aggregate of £18,000 by way of fees for this service. There was accordingly no dispute that Mr Michel had entered into an arrangement with Smith and that the arrangement dealt with the proceeds of criminal conduct on the part of Smith. The sole issue for the Jurats was whether Mr Michel knew or suspected that Smith was engaged in criminal conduct.

103 The prosecution submitted that there was strong circumstantial evidence to suggest that Mr Michel knew or suspected that Smith was engaged in criminal conduct. For example:-

(i) What conceivable reason could there have been for passing these large sums through the Michel & Co pooled account other than to hide the connection between the Clearwater account and the Bryland account?

(ii) Why would Smith agree to pay such large fees for such a simple service? Although Smith and Mr Michel said that some of the fees had been rebated to Smith, Smith still accepted that the fees were 'chunky'.

104 Mr Michel's defence was that he had known Smith for a long time and had no reason to think that he was stealing money from a client. Smith had given Mr Michel an explanation as to the reason for the first transaction (which did not form part of the theft by Smith) carried out through Bryland, namely that it was to enable the client behind Clearwater to continue to assist his son in a business venture without the son knowing that such assistance was coming from the father. As to the level of fees charged, these were not as large as might at first appear because some of them had been rebated to Smith.

105 Smith gave evidence in support of Mr Michel. He said that he had indeed given the above explanation to Mr Michel at the time of the first transaction and that he had never told Mr Michel that the subsequent payments were the proceeds of theft on his part. He said that the explanation was indeed the reason for the original transaction and he also asserted that there had been some sharing of fees. It is fair to say that Smith was cross-examined to some effect. A few of the matters which emerged are as follows:-

(i) It transpired that he had told the police when interviewed that the reason for the original transaction involving Bryland was to enable the client behind Clearwater to evade Guernsey tax. Smith was forced to concede that this was indeed the main reason although he said that the purpose concerning the son was also a purpose.

(ii) He was unable to explain why there appeared to be no record of any sharing of fees in respect of the subsequent transactions i.e. those involving the proceeds of his theft.

(iii) He confirmed that he had said during his police interview that he would not have dreamed of ringing up Pricewaterhouse Coopers in relation to the Bryland transactions because they would probably have asked questions that he would not wish to answer.

(iv) In relation to what questions Mr Michel had asked in relation to the Bryland transactions he said this:-

"Q. And Peter Michel agreed to help you hide the origin of the money sent to the Chilcott structure, in return for what you described as a "chunky fee" is that right?

A. Yes.

Q. Without asking any questions other than, "It is not nasty, it is not arms or drug running"; that is all he asked, is it not?

A. Yes."

106 As Lord Hoffmann made clear in *Edmond-O'Brien*, it was entirely a matter for the Jurats as to whether they accepted the explanations put forward on behalf of Mr Michel. It was for them to assess the credibility of what they heard. There was, in our judgment, ample evidence upon which they could properly conclude that Mr Michel knew or suspected that the monies being parked temporarily in Michel & Co were the proceeds of criminal conduct, even if he did not know the exact nature of that criminal conduct.

(iii) Counts 6 and 7

107 The only issue in relation to these counts was whether the money paid to Michel & Co

from ASK was Bhandal's proceeds of criminal conduct and, if so, whether Mr Michel knew or suspected that Bhandal was engaged in criminal conduct.

108 As to the first issue the Crown's case was circumstantial but detailed. We do not propose to refer to all of it. Its key essentials could perhaps be summarised as follows:-

The prosecution submitted that this provided ample evidence to show that UK Supplies was Mr Bhandal's business, that it had been engaged in criminal conduct and that the proceeds had been transferred to Michel & Co.

(i) The prosecution produced a book which was referred to as Wood B1. They also called evidence to show that the book was the record of trading of UK Supplies and showed that UK Supplies had been engaged in an illegal trade in alcohol, evading VAT and excise duty.

(ii) There was evidence that Wood B1 had been found in Bhandal's briefcase in his business premises in Monte Carlo and had also been seen in Bhandal's Chelsea flat before he had absconded and fled to Monte Carlo.

(iii) There was evidence that Bhandal had used the alias Mark Baker when he fled to Monaco. It was evident from an examination of Wood B1 that someone had practiced the signature Mark Baker several times on the front cover.

(iv) Between December 1996 and October 1997 a total of £1.8 million was transferred from UK Supplies to Michel & Co for the benefit of the Bhandal companies.

109 However, as mentioned in paragraph 27, the prosecution had to show for the purposes of counts 6 and 7 that Hillfield House had been purchased with the proceeds of Bhandal's criminal conduct. There was no dispute that the money for that purchase had come from ASK. The prosecution case was that ASK was the immediate predecessor to UK Supplies, that it had been carrying on exactly the same illicit business as UK Supplies and that it was also Bhandal's business. They referred to the following matters amongst others in support of this allegation:-

(i) Both ASK and UK Supplies were not declaring their true income or paying anything like the correct rate of VAT.

(ii) Forensic analysis proved that the trading patterns of ASK and UK Supplies were nearly identical. They had the same principal suppliers and customers.

(iii) When ASK stopped trading, UK Supplies started to trade

(iv) Both ASK and UK Supplies held bank accounts at the same Waltham-on-Thames branch of Barclays bank. The purported account holders (Mr Sihra and Mr Kelley) denied all knowledge of the bank accounts.

(v) The bank records stated that the holder of the ASK bank account had introduced the beneficial owner of UK Supplies to the bank. The passport of Mr Kelley relied upon had previously been reported to the passport office as lost by Mr Kelley.

(vi) Both ASK and UK Supplies used the same mail box and accommodation address.

(vii) Most significantly, during its short business life of approximately 8 months from June 1996 to February 1997, some £21.5 million passed through the ASK account of which, in addition to the sum of £836,000 transferred for the purchase of Hillfield House, a total of some £5.6 million was transferred to the Michel & Co pooled accounts for the benefit of Bhandal's entities. Indeed in his formal written admissions, Mr Michel admitted that he knew that Bhandal had provided the money for the acquisition of Hillfield House.

110 Mr Le Quesne submitted that there was insufficient evidence to prove that Wood B1 was owned by Bhandal. Even if, contrary to that submission, there was adequate evidence that Wood B1 was recording transactions conducted by Bhandal in the name of UK Supplies, he submitted that it related to transactions which post-dated the purchase of Hillfield House and therefore there was insufficient evidence that Hillfield House was purchased with the proceeds of criminal conduct.

111 In our judgment there was ample evidence upon which the Jurats could conclude that Hillfield House was purchased with the proceeds of Bhandal's criminal conduct. If Bhandal had nothing to do with ASK, why should ASK transfer in the space of a few months some £6.4 million to Bhandal's companies in Jersey? Mr Michel himself believed that Bhandal had provided the funds for the purchase of Hillfield House and it is now known that these funds came from ASK. Furthermore, there is ample evidence upon which the Jurats could properly conclude that the income earned by ASK was the proceeds of criminal conduct. It was not seriously challenged that UK Supplies was engaged in criminal conduct and it was open to the Jurats to infer that ASK was engaged in similar conduct.

112 As to the issue of whether Mr Michel knew or suspected that Bhandal was engaged in criminal conduct, the prosecution pointed to the following matters (amongst others) in support of their case:-

(i) False information as to the identity of the beneficial owner of Wynchleigh was given at the time it was set up. Although Mr Michel knew that the beneficial owner was Bhandal the relevant form to the Jersey authorities stated that the beneficial owner was a Brian Edward Wynchleigh.

(ii) The sum required for the purchase of Hillfield House was provided by way of a bankers draft payable to Michel & Co. The draft was sent by Bhandal's solicitors who asked that Michel & Co then telegraphically transfer the equivalent sum back to the solicitor's client account for use in the purchase of the property. The first bankers draft

mis-spelt the name of Michel & Co and could not therefore be cashed. Despite the fact that the purchase was by now time critical, the solicitors sent a further bankers draft following which Michel & Co telegraphically transferred the relevant sum back to the solicitors.

(iii) This source of funds was clearly to be concealed from scrutiny. The solicitors sent two letters to Michel & Co. The first ("Dear Peter") explained what was required in terms of sending the bank draft and then telegraphically transferring the sum back to the solicitor. The second 'official' letter for the file ("Dear Sirs") was silent about the draft and simply referred to the telegraphic transfer.

(iv) Mr Michel told several untruths to Jersey banks about Bhandal's background.

(v) Mr Michel wrote dishonest letters to financial institutions about the ownership and historical funding of Updown Court.

113 Mr Michel gave explanations for these various matters and the other matters relied upon by the prosecution. Mr Le Quesne submits that these should have been accepted. Furthermore he points out that various solicitors and bankers were all involved in the transactions involving the two properties; yet Mr Michel is the only one who is deemed to have committed a crime by having the necessary knowledge or suspicion that Bhandal was engaged in criminal conduct.

114 These were all matters for consideration by the Jurats when deciding whether the explanations put forward by Mr Michel were credible, and whether they led the Jurats to have any doubt as to whether Mr Michel had the requisite knowledge or suspicion. In our judgment there was ample evidence on which the Jurats could properly find that counts 6 and 7 were proved.

(iv) Count 8

115 The issue in relation to this count was whether the prosecution had proved that the monies in question were the proceeds of criminal conduct on the part of Krejzl and, if so, whether Mr Michel knew or suspected that Krejzl had been engaged in such conduct.

116 The prosecution relied upon a number of factors including the following:-

(i) Krejzl had engaged in a false invoicing fraud. Mr Michel had agreed to his own trust company, Rroyds, issuing false invoices for services which had clearly not been provided. After a commission for permitting his trust company to be used in this way, the rest of the monies received as a result of the invoices were credited ultimately to Krejzl's entities.

(ii) Krejzl's entities were credited with £931,785 in unexplained income. The

prosecution could prove that £665,785 originated in cash given by Krejzl to Mr Michel. As always, the cash was not banked but was redistributed to other clients who required cash. The pooled accounts eventually provided the relevant funds to credit Krejzl's entities with an equivalent amount.

(iii) One of Krejzl's entities was the Rose Settlement. This was said to be established for the benefit of a Mr Roger Rose of Hong Kong. Birtle was said to be owned by the Jenkins Settlement established by a Mr Jenkins. In fact both entities were held for the benefit of Krejzl.

(iv) When Pricewaterhouse Coopers took over the administration of various entities after Michel & Co was closed down in 2001, Krejzl wrote to PWC to claim the trust and company. PWC asked Krejzl to explain the provenance of the funds. He initially claimed that the money came from one of his friends who wanted to help him but he did not know who. He later said that it was Roger Rose of Hong Kong, but that Mr Rose had sadly died. PWC asked more questions of Krejzl, who walked away from the trust and the company, which still held assets of some £250,000, rather than provide PWC with a full explanation.

117 Mr Michel gave his explanation about these various matters when giving evidence. In particular he said that he was informed that the cash had come from the sale of Christmas decorations. Mr Le Quesne submitted that the prosecution had failed to show that this count involved the proceeds of crime, not least because no specific criminal conduct had been identified.

118 However, in our judgment there was ample evidence upon which the Jurats could properly conclude that the monies received as a result of the false invoices and the large amounts of cash paid in were the proceeds of crime, for example tax evasion. It is not necessary for the Jurats to have identified with certainty the particular crime; the statute simply requires them to be satisfied that the property is the proceeds of criminal conduct. Similarly, having heard Mr Michel give evidence, it was open to the Jurats to disbelieve his explanations and to find that he did indeed have the requisite knowledge or suspicion.

119 In summary, we find against the applicant on ground 3 in relation to each of counts 1, 4, 6, 7 and 8.

Summary

120 Although we would not have granted leave to appeal on grounds 2 and 3, ground 1 was, in our view, clearly arguable. We therefore grant leave to appeal but, for the reasons given, dismiss the appeal.