Bryce-Richards v A.G.

Jurisdiction:	Jersey
Judge:	Sir John Nutting, P. D. Smith, D. A. J. Vaughan
Judgment Date:	24 January 2006
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Text

[2006] JCA 10

COURT OF APPEAL

Before:

Sir John Nutting, **Bt., Q.C., President;** P. D. Smith, **Esq., Q.C.; and** D. A. J. Vaughan, **Esq., C.B.E., Q.C.**

Christine Bryce-Richards
and
The Attorney General

Advocate A. J. D. Winchester **for the Appellant**

S. M. Baker, **Esq., Crown Advocate**

Authorities

Police Procedures and Criminal Evidence (Jersey) Law 2003.

Clarkin v AG [1991] JLR 232.

AG v Buckley, Croke, Crook and Breen [2002] JLR 42.

R v Dickens [2005] EWCA Crim. 2017.

R v C [2005] EWCA Crim. 2170.

R v Patrick Bryant [2005] EWCA Crim. 2079.

R v Nelson [1997] Crim L.R. 234 C.A.

R v Barrick [1985] 81 Cr App R 78 CA.

Young -v- AG [1999] JCA 013.

Application for leave to appeal against the conviction by the Assize Court on 26 th July, 2005, the sentence passed by the Superior Number of the Royal Court on 4 th October, 2005 and the confiscation order passed by the Superior Number of the Royal Court on 5 th October, 2005.

1 count of: Fraudulent Conversion

Application to be placed directly before the plenary Court without first being considered by a single judge.

THE PRESIDENT:

The Indictment

1 Between 11 and 26 July 2005, the applicant was tried at the Assize Court before the Commissioner Sir Richard Tucker and a Jury on an indictment consisting of a single count of Fraudulent Conversion. The count alleged that she and her husband Ryan Bryce-Richards, having been entrusted with certain property (so that such property or their proceeds should be retained for the legitimate purposes of the Collette Trust and the Ocean Trust) between 14 October and 31 December 2001 fraudulently converted the property to their own benefit by settling it, or purporting to settle it, into the Ballad Trust, thereby enabling the applicant to benefit from the Trust during the lifetime of Joan Edmunds, the widow of the original settlor of the Collette and Ocean Trusts.

2 The applicant was convicted, and on 4 October 2005 she was sentenced by the Commissioner and Jurats sitting as the Superior Number of the Royal Court to serve 7 years' imprisonment. She was also ordered to pay sums in compensation and by way of

confiscation, and ordered to serve an additional sentence of 7 years in default of payment of the confiscation order.

3 She applies to this Court for the leave to appeal both the conviction and sentence.

The Crown's case at trial

4 The allegations made by the Crown in this case concerned the relationship between an elderly English couple, Robert and Joan Edmonds, and the applicant and her husband.

5 Mr Edmonds made in excess of £3,000,000 during his business life. His fortune consisted of £2,200,000 in cash, an interest both in an industrial estate at Lightwater and in a garden nursery at Chertsey both in Surrey, a flat in Teddington, London, and a house in Alderney. Mr and Mrs Edmonds had no children and, it seems, no close relatives. In the mid 1980s they retired to Alderney.

6 In 1997 they met the applicant and her husband at a time when the Edmonds were in their late seventies. The two couples became friends. The applicant had worked for many years in the trust industry and had acted as a professional trustee for a long time. She and her husband had, they claimed in documents asserting their expertise, no fewer than fifty three years' experience in the trust industry between them. The applicant soon became Mr Edmonds' friend and financial confident and began to advise to him how best to protect his assets during his life and that of his wife. Indeed so attached did Mr and Mrs Edmonds become to the applicant that they determined to pass to her after they had both died what remained of their fortune.

7 But Mr Edmonds' principal preoccupation was the financial security of his wife should he pre-decease her. She was unversed in matters of money and had left him to make all decisions relating to their financial future.

8 The case for the Crown was that after Robert Edmonds died in October 1999, the applicant anticipated Mrs Edmonds' death by abusing the trust placed in her and so manipulated the Edmonds' fortune that she and her husband benefited significantly from it when Mrs Edmonds was still alive contrary to Mr Edmonds' wishes at the time of his death.

9 The two main issues for the Jury were firstly whether or not it had been Robert Edmonds' intention at the time of his death that his widow should be the beneficiary of his money for the rest of her life and that the Bryce-Richards should benefit only thereafter; and secondly whether or not the applicant had acted honestly in her dealings with Mrs Edmonds and the Edmonds' money. The Crown were at pains from the outset to reassure the Jury that it was not necessary for them to understand laws relating to trusts, but rather simply to assess, by reference to her conduct, whether the applicant had acted honestly or not in her dealings

with Mrs Edmonds.

10 The Crown relied on a number of matters – the applicant's proven knowledge of what was Robert Edmonds' intention in establishing the trusts, the position and power over the Edmonds' assets which she deliberately engineered (notwithstanding obvious conflicts of interests), the way in which she ignored well-intentioned and manifestly correct advice as to how to rectify those conflicts, the way in which she and her husband applied nearly half the value of the assets to their own benefit, and the lies and half truths she told to conceal the true position when enquiries were made by other parties.

11 The evidence called by the Crown revealed that in the spring of 1998 the applicant advised Mr Edmonds to put his assets into two offshore trusts which subsequently became the Collette Trust and the Ocean Trust. As part of this process the applicant caused the money, assets and properties to become individually owned by separate companies. The cash, in the form of bonds, became the property of Forecast Investments Ltd and Pure Investments Ltd: Forecast was put into the Ocean Trust and Pure into Collette. The interests in Lightwater Industrial Estate and Chertsey Nurseries became the property of Determination Properties Ltd and Gallant Properties Ltd; and the flat at Teddington and the house in Alderney became the property of Joval Holdings Ltd and Refine Investments Ltd, respectively: Determination, Gallant, Joval and Refine were all put into the Ocean Trust. It was clear from the letter of wishes which Mr Edmonds signed that after the death of himself and his wife, a company Westphail Ltd, belonging to the applicant, would " *become a beneficiary of the Trusts"*.

12 By early 1999 the applicant had created for herself a position of unassailable power and influence over the Edmonds' financial affairs. She was their principal adviser, a trustee of both the Collette and Ocean Trusts and a director of the Crystal Trust Company which was the corporate trustee of these two trusts. She was also a director of all the companies created to own the assets which Robert Edmonds had put into the trusts, and, as owner of Westphail Ltd, a potential beneficiary of the Edmonds' fortune when both Robert and Joan Edmonds died.

13 The conflict of interest which the applicant had created in relation to the Edmonds' affairs was, the Crown suggested, obvious and manifestly improper.

14 There was, in addition, evidence before the Jury that the applicant had concealed from others associated with the Crystal Trust Company that she was a potential beneficiary of the Collette and Ocean Trusts and when this fact was discovered, the Crown alleged, she lied by claiming that Advocates Begg and Janet Kenny had advised her to use Westphail Ltd as a means of permitting her to be both trustee and beneficiary.

15 In the spring of 1999 Robert Edmonds became ill and had to be moved to Jersey to take advantage of the medical facilities available here but not on Alderney. The difficulty with

this move was that neither Mr nor Mrs Edmonds possessed the necessary housing qualifications to buy property here.

16 Since the applicant did possess the appropriate residential status, her solution to the problem was to buy a property in St Helier in her own name and to convert it into two flats, one for the Edmonds, and one for herself and her husband. She found a suitable house called Cherry Garth: the asking price was £600,000. The applicant was not in a financial position herself to contribute to the purchase price, so the full amount was paid by the Edmonds, half the sum being advanced to the applicant out of the Collette and Ocean Trusts. The Crown asserted that the sole object of this purchase was to enable the Edmonds to take advantage of the better medical facilities here in Jersey than existed in Alderney and, only incidentally, to benefit the applicant and her husband.

17 It was in August 1999 that Advocate Begg, a co-director with the applicant of the Crystal Trust Company, became aware of some of the conflicts of interest described above. He made it clear to her that he regarded the position which the applicant had created for herself as " *unprofessional"* and he took her to task both for the way in which she had concealed the true position from him and for allowing herself to become so conflicted in her interests. She sought to reassure him by suggesting, disingenuously, that she would not become one of the ultimate beneficiaries in the event of the death of Mr and Mrs Edmonds, at best a half truth since she owned Westphail Ltd.

18 In October 1999 Mr Edmonds died. His death only served to increase Advocate Begg's anxieties about the applicant's hold over the Edmonds' money and the vulnerability of Mrs Edmonds. His concern was exacerbated when the applicant reported to him that Mrs Edmonds wished to make her the principal beneficiary of her will. But when he saw Mrs Edmonds himself, she contradicted this intention and later reported to him that she was not happy with the way the applicant had been handling her affairs. Contemporaneous letters written in the autumn of 1999 recorded these events and Advocate Begg's misgivings.

19 Mr Begg advised Mrs Edmonds that the applicant should resign her position of influence vis-à-vis the trusts, to replace her with an independent trustee, to set up a new trust and to bring into existence proper documentation recording the loan to the applicant of the purchase of Cherry Garth, and also to record appropriately another loan of either £80,000 or £90,000 which Mr Edmonds had made to the applicant during his lifetime and about which there was inadequate evidence. Finally he advised Mrs Edmonds to make a will and to leave what remained of her husband's fortune after her death to whomsoever she wished, uninfluenced by others.

20 The applicant learned of this advice when she returned from a trip to the United States and at once accused Advocate Begg of meddling in Mrs Edmonds' affairs and putting words into the widow's mouth. She suggested to Mr Begg that Mrs Edmonds was angry and resentful at his intervention. On 19 November 1999 she wrote a long letter of explanation to Brian Frith who had been suggested by Advocate Begg as an appropriate adviser for the

new trust. Another Jersey lawyer, Advocate Habin, had also become involved in Mrs Edmonds' affairs a propos the proposed new trust. He was sufficiently concerned about what he learned of the Collette and Ocean Trusts to advise that an application be made to the Royal Court to obtain approval and directions for the establishment of the replacement trust which would avoid the conflicts of interest which the applicant's activities had created.

21 The Crown case was that notwithstanding Advocate Begg's imprecations that the applicant should withdraw from her conflicted position vis-à-vis the Edmonds' fortune and permit Mrs Edmonds to have independent legal advice, the applicant had determined to prevent it. Crown Advocate Baker said in opening the case to the Jury.

> *"They weren't prepared to let an independent lawyer interfere with the control of property they were beginning to consider their own.* Bob Edmonds was dead and this presented the Bryce-Richards with an opportunity. Joan Edmonds, to put it mildly, was not proving easy to deal with. She had already shown herself capable of making allegations against Mrs Bryce-Richards. Such allegations would obviously have been seized upon by a lawyer acting for Mrs Edmonds and they would have made sure that there were no problems arising. And the Prosecution case is that they feared losing control and this is what motivated events which now happened."

22 In justification of this allegation the Crown called evidence that on 17 February 2000, soon after these events, the applicant made arrangements for Mrs Edmonds to sign a Power of Attorney granting to the applicant authority to deal with " *all of her* (i.e. Mrs Edmonds') *worldwide assets and all aspects of her financial and personal affairs"* both during Mrs Edmonds' lifetime and after her death. The Power was similar to one which Robert Edmonds had signed on 10 July 1998 in favour of the applicant.

23 On 21 March 2000 the applicant made arrangements for Mrs Edmonds to see a Jersey attorney and to make a will. The will was drawn up and signed within three weeks leaving legacies to certain individuals and the residue to the applicant.

24 The Crown contrasted the way in which the applicant permitted Mrs Edmonds to have access to legal advice for the purpose of making dispositions after her death, and the fashion in which the applicant treated the bulk of the Edmonds' trust assets during Mrs Edmonds' lifetime including the peremptory way in which she dealt with these assets herself, i.e. without recourse to Mrs Edmonds and without allowing Mrs Edmonds' access to legal advice in advance of those dealings.

25 Those dealings concerned, in particular, the Ballad Trust, to the details of which we must now turn.

26 The date of the Power of Attorney was a mere three weeks before the date of the establishment of this trust, formed in Liechtenstein, which became the successor to the

Collette and Ocean Trusts. The creation of this trust which came into existence on 4 March 2000 was, according to the Crown, a defining date in the events of the history of the relationship between the applicant and Mrs Edmonds because it was the date on which the applicant's dishonest intentions qua Mrs Edmonds " *crystallised*".

27 The background to the creation of the Ballad Trust was as follows. The move from Alderney to Jersey had created tax problems for the Edmonds because under the terms of the Collette and Ocean Trusts no beneficiary of these Trusts could be a Jersey resident. However, as the Crown claimed, that problem did not require the solution which the applicant adopted to solve it. Moreover the trust vehicle which the applicant formed to replace the Collette and Ocean Trusts re-created and compounded all the conflicts of interests between the applicant and the Edmonds' fortune about which Advocate Begg, Brian Frith and Advocate Habin had been so concerned.

28 In December 1999 the applicant approached a Liechtenstein trust company called Lexadmin with a view to forming a trust based in that principality to hold the assets of the Collette and Ocean Trusts. The Crown suggested there was a positive disadvantage for Mrs Edmonds in having her trust based in Liechtenstein whose trustees would necessarily be more remote from her particularly in relation to her requirements, her medical bills etc. However such a move involved a significant advantage for the applicant who intended to control this replacement off shore trust far away from Jersey. The prosecution case was that the applicant was determined to isolate Mrs Edmonds and, prior to the move to Liechtenstein, obtained her consent to dismiss Brian Frith from further involvement in her affairs, and drafted a letter which Mrs Edmonds signed also sacking Advocate Habin.

29 By virtue of her control over the companies which owned the assets under the umbrella of the Collette and Ocean Trusts, the applicant was, or purported to be, the settlor of the Ballad Trust. On 3 March 2000 she drafted a letter of wishes which she sent in her capacity as settlor to Lexadmin stating:

> *"My reason for creating this Trust is to ensure that the trust fund will be preserved for my benefit and the benefit of Joan Helen Edmonds during the remainder of our lifetime.* Following my demise I would wish the trust fund to be used for the future care and well being of Joan Helen Edmonds during the remainder of her lifetime, and for the benefit of Ryan Edward Bryce-Richards during the remainder of his lifetime."

30 The Crown suggested at trial that this letter of wishes was, to the applicant's knowledge, contrary to what Robert Edmonds had contemplated and stipulated for his assets during his lifetime, and that it effectively turned his wishes on their head.

31 But the applicant also asserted her authority over the Edmonds' assets in this new trust by insisting that she be made its protector. The deed stipulated that she, as protector, had " *overall say in any matter concerning the trust's assets and the administration and*

distribution thereof". The deed also contemplated that in the event of the death of the applicant, Mr Bryce-Richards should be appointed protector in her place. Thus, in relation to this new trust, the applicant was settlor, protector, and lifetime beneficiary.

32 Her powers as protector included the power to remove the trustees and to appoint additional trustees, the power to instruct the trustees to distribute trust asset income to one or more of the beneficiaries as " *the Protector deems appropriate"* and the power to prevent the trustees from exercising any power without her written consent. Her control over the assets was increased, too, by the fact that she was the signatory on the various company bank accounts which owned the Edmonds' assets.

33 Fortified by this evidence, the Crown asserted that the applicant ignored the careful, sensible and manifestly correct advice from Jersey lawyers in November 1999 that the Bryce-Richards, and specifically the applicant, should take steps to avoid conflicts of interests into which they had allowed themselves to be enmeshed in their dealings with Mr and Mrs Edmonds; and further that, far from paying heed to that advice, the applicant had so arranged matters between November 1999 and March 2000 that the Edmonds' assets became even more encoiled in her control by removing ownership and control away from Jersey to Liechtenstein.

34 It is unnecessary to lengthen this judgment with a detailed analysis of the way in which the applicant dealt with the assets of the Ballad Trust between March 2000 and May 2001. Suffice to say that there was evidence before the Royal Court that even by November 2000 she and her husband had converted £715,000 of the assets to their joint use and benefit.

35 The applicant and her husband had left Jersey for Spain in April 2001. Thereafter they withdrew £20,000 from Pure Investments Ltd, the company which had originally held nearly £1,400,000 of Robert Edmonds' fortune. Later, in June, they withdrew nearly £273,000 in cash from the same source. Later still that year, they purchased an apartment in Majorca for £230,000 using Pure Investment monies, and converted the ownership of the Teddington flat worth £220,000 from Joval Holdings Ltd to their own benefit. Pure and Joval, once the property of the Collette and Ocean Trusts respectively had of course been transferred in March 2000 into the Ballad Trust, and it was by virtue of her position as director of Pure and Joval that the applicant was able to deal in the assets of those companies.

36 In summary, by November 2001, the Crown led evidence to demonstrate that the applicant and her husband had converted £1,650,000 of the Edmonds' assets to their own use. In the same period Mrs Edmonds had had the benefit of approximately £60,000 to pay her living expenses.

37 In April 2002, the applicant asserted to the in-house lawyer of Lexadmin that it had not been Robert Edmonds' intention that his widow should be a full beneficiary of his trusts but rather what she described as a " *qualified beneficiary"*, i.e. a beneficiary limited in her

enjoyment of the assets to what was necessary merely to secure her " *care and well-being*". The applicant insisted that Robert Edmonds had told her that she, and she alone, was to be the principal beneficiary.

38 It is a truism that one of the features of human relationships is that occasionally the closest and most affectionate associations, both within families and among friends, become strained sometimes to breaking point. The difficulties in the relationship between the applicant and Mrs Edmonds, which had surfaced in October and November 1999 for whatever reason in the aftermath of Robert Edmonds' death, re-surfaced in the early spring of 2001. It may be that one of the reasons for this new breakdown was partly due to a tax claim for £300,000 by the Guernsey authorities on Mr Edmonds' income when he was resident in Alderney. The matter was of such concern to Mrs Edmonds that she consulted a Jersey lawyer, Advocate Michel, in late March 2001; and from then on most of the communication between Mrs Edmonds and the applicant seems to have taken place through lawyers. It was in the following month that the applicant and her husband moved to Spain.

39 During the ensuing months it became plain that one of the issues between the parties was that Mrs Edmonds claimed that she was ignorant of the whereabouts of the Edmonds' assets and, importantly and specifically, that she was ignorant of the fact that the ultimate ownership of these assets had been transferred to the Ballad Trust in Liechtenstein. It was apparent from an affidavit which the applicant swore in proceedings in Ireland, (to which we shall refer later) that she claimed that she had informed Mrs Edmonds in the winter of 2000 that the transfer was to be made, and had obtained Mrs Edmonds' consent and support for the move. An important issue for the Jury was therefore which of the two ladies was correct and which of them had told the truth.

40 It was the Crown's case that it was not only Mrs Edmonds who was unaware of what had transpired around March 2000. The trustees of the Ballad Trust were also ignorant of the disposal of assets prior to November 2001. An English lawyer, Miss Kristina Phelan, employed by Lexadmin, gave evidence at the trial of the dealings between the applicant and Lexadmin and the correspondence for which, as the in-house lawyer she was responsible, between Lexadmin and Advocate Michel. She also detailed the applicant's attempts when Advocate Michel's enquiries became pressing to remove Mrs Edmonds as a beneficiary of the trust and to transfer what remained of the assets in the Ballad Trust to the Cook Islands.

41 The Crown claimed that from March 2001 the applicant did her best through the lawyers she instructed, initially Advocate Sinel of Jersey and later Mr Peter Davies solicitor from Cardiff, to prevent the truth about the Ballad Trust and the way she had disposed of its assets, from being revealed. The Crown led evidence showing that the applicant caused her lawyers to prevaricate and to assert facts which she knew to be untrue in an attempt to throw the lawyers acting for the Ballad Trust and those acting for Mrs Edmonds off the scent.

Grounds of application re conviction .

42 We now turn to the grounds of appeal. The applicant's grounds of appeal may be conveniently summarised thus. Advocate Winchester criticises:

We must deal with these points in turn.

Ground 1 The failure to grant an adjournment

(i) The Commissioner's decision to refuse to grant an adjournment of the trial;

(ii) his failure to exclude the evidence of Mrs Joan Edmonds;

(iii) his lack of impartiality in the way he summed up the evidence;

(iv) his omission adequately to put the defence case to the Jury and other specific omissions of fact and law; and

(v) the unreasonableness of the verdict which, it is said, no fair minded Jury could have reached.

43 On June 16 June 2005, just under a month prior to the trial which began on 11 July 2005, Advocate Winchester applied to adjourn the case on the grounds that he had had insufficient time to prepare the defence properly having regard to the financial material on which the Crown sought to rely. The Commissioner refused the application. Advocate Winchester has repeated the basis of that submission to us. The relevant dates are as follows:

August 2003	The applicant's Cardiff solicitors were served with a copy of proposed charges.
20 November 2003	The applicant was arrested in Cardiff and made an application for Habeas Corpus and for an interim injunction preventing Jersey Police taking her to Jersey. Jersey Police filed an affidavit in the Administrative Court setting out the substance of the case against the applicant.
19 December 2003	The Administrative Court dismissed the application for the writ of Habeas Corpus. The applicant gave immediate notice of her intention to appeal to the House of Lords and was released on bail.
October 2004	The House of Lords refused leave to appeal.
26 October	The applicant was returned to Jersey.

2004	
27 October 2004	The applicant appeared before the Magistrate's Court in St Helier.
2 December 2004	Committal bundles were served on Jenners & Co whom the applicant had engaged as her lawyers in Jersey.
13 December 2004	The forensic accountancy report was served on Jenners & Co.
17 December 2004	Jenners & Co were served with a copy of the Case Outline and the case was set down for committal on 18 April 2005.
January 2005	In view of the length of time since the applicant's arrest, and notwithstanding that she had not then been committed for trial, a provisional date for trial was fixed for 11 July 2005.
17 March 2005	Legal aid was extended to provide for the services of QC from Cardiff to assist the defence advocate.
24 March 2005	A pre-trial review was held in the Magistrate's Court, at which the date for committal was vacated and the case was set down for an old style committal on 11 May 2005.
25 April 2005	The applicant agreed to a paper committal.
11 May 2005	The applicant was committed for trial at the Royal Court.
23 May 2005	A pre-trial review at the Royal Court took place before the Commissioner, Sir Richard Tucker. The applicant entered a not guilty plea. The provisional date for trial, 11 July 2005, was confirmed.
13 June 2005	Jenners & Co requested the Crown to agree to an adjournment of two months, a request which the Crown declined.
16 June 2005	An application for adjournment was made to Sir Richard Tucker who refused it.
11 July 2005	The trial commenced before Royal Court.

44 Advocate Winchester submitted to us that there was a “large” amount of material disclosed by the Crown; but he did not condescend to specify how much, or indeed why, despite the fact that his firm had been instructed seven months in advance of the trial, it had been impossible for him properly to prepare the case.

45 Crown Advocate Baker in his written submissions to this Court pointed out that the financial aspects of the case were within the applicant's personal knowledge, having been herself involved in the significant majority, if not all, the transactions. He claimed that the applicant had had the advantage of a forensic accountant's report which succinctly described her dealing in the assets and which had been served on her seven months before trial. He demonstrated that those dealings had been summarised in the draft admissions which had been provided to the applicant prior to the trial, and that during the trial, when agreement to those draft admissions was sought, no application for further time to consider them had been made by Advocate Winchester.

46 Finally, submitted Advocate Baker, no specific prejudice has been claimed, such as had befallen the applicant as a result of the refusal of an adjournment, notwithstanding that manifestly by now Advocate Winchester has had an opportunity to study all the material and would, certainly by now, have been able to identify any prejudice had such existed.

47 In the absence of proof of such prejudice, we cannot conclude that the Commissioner was wrong to refuse the application for an adjournment.

Ground 2: The failure to exclude the evidence of Joan Edmonds

48 On 11 July 2005, on the first day of the trial, Advocate Winchester sought to exclude the statements and affidavit which Mrs Edmonds had signed and sworn prior to her death in January 2003. Mrs Edmonds had been interviewed by Detective Sergeant Troy and Detective Constable De la Cour, respectively on 4 December 2001 and 30 January 2002, on which dates she had made statements to the officers. She had also sworn an affidavit in proceedings in the Irish High Court which had been brought by the applicant concerning the assets of Pure Investments Ltd and Forecast Investments Ltd, these assets having been frozen in Dublin as the proceeds of crime.

49 The Crown had stated they wished to read these three documents at the trial by virtue of Articles 64 & 67 of the Police Procedures and Criminal Evidence (Jersey) Law 2003. We confine the quotations from the statute to the relevant provisions:

> “Article 64 First-hand hearsay
>
> ***(1) ……a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence***

by the person would be admissible if –

> ***(a) the requirements of one of the sub-paragraphs of paragraph (2) are satisfied; or…….***

(2) The requirements mentioned in paragraph (1)(a) are –

that the person who made the statement is dead …

Article 67 Statements in documents that appear to have been prepared for purposes of criminal proceedings or investigations

(1) Where a statement which is admissible in criminal proceedings by virtue of Article 64 … appears to the court to have been prepared … for the purposes of pending or contemplated criminal proceedings or of a criminal investigation, the statement shall not be given in evidence in any criminal proceedings without the leave of the court, and the court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interests of justice.

(2) In considering whether its admission would be in the interests of justice, the court shall have regard to

> ***(a) the contents of the statement;***
>
> ***(b) any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused; and***
>
> ***(c) any other circumstances that appear to the court to be relevant."***

50 The basis for the exclusion of this evidence, as submitted to the Commissioner and before us, was that certain passages in the statements, particularly that of 4 December 2001, are not in language which Mrs Edmonds would have used and would appear therefore to have been words put into her mouth by the officers.

51 Advocate Winchester submitted that having no opportunity to cross-examine Mrs Edmonds on these matters, and generally, and in view of the importance of her evidence in the case, the Commissioner, following *Clarkin v AG* [1991] JLR 232 and *AG v Buckley, Croke, Crook and Breen* [2002] JLR 42, should have exercised his discretion to exclude the evidence in its entirety including the question and answer affidavit in the Irish proceedings.

52 In his response the Crown Advocate asserted in his written submissions that the Commissioner had been correct to admit the evidence because:

(i) the statements and affidavit of Joan Edmonds were important evidence in the case and without it the Jury would have been at a disadvantage in terms of understanding the case;

(ii) fairness to the prosecution to enable it properly to present its case demanded the admission of the evidence;

(iii) one of the main issues in the case was the intention of Mrs Edmonds;

(iv) although Advocate Winchester had been unable to cross-examine Mrs Edmonds, he had been in a position to controvert what was set out in her statements by calling the applicant to give evidence herself and/or calling witnesses to support her account;

(v) Mr Winchester was able to address the Jury in his closing speech on his inability to cross-examine Mrs Edmonds;

(vi) the Commissioner gave an appropriately worded direction to the Jury which highlighted the potential disadvantage that the applicant faced as a result of being unable to subject the witness to cross examination;

(vii) as to the suggestion that Mrs Edmonds' evidence might have influenced by the officer taking the statements, both D.S. Troy and D.C. De la Cour gave evidence as live witnesses and were cross-examined on this point;

(viii) in the circumstances the admission of the evidence had not resulted in unfairness to the accused.

53 We have carefully analysed the passages in the statement of 4 December 2001 to which Advocate Winchester drew our attention and upon which he relies to demonstrate that words may have been put into Mrs Edmonds' mouth. We have also looked at the passage in the transcripts recording the cross-examination at the trial of D.C. De la Cour. None of the language can be described as “police language” whatever that may be. Mrs Edmonds expresses herself in the documents clearly and definitely on matters within her own knowledge and is appropriately hesitant on matters which were more the concern of her husband when he was alive. We can find no warrant for the suggestion that anyone put words into her mouth or ideas into her head or that what is recorded was anything other than her own evidence.

54 In addition, in admitting the evidence of Mrs Edmonds and in relation to Article 67(2)(c) *supra* the Commissioner was entitled to take into account that Mrs Edmonds' evidence did not stand alone. Some of the allegations which she had made were supported by evidence given before the Jury by, for example, Mrs Webster, the secretary at Cherry Garth, who reported that she had been told by the applicant not to disclose anything to Mrs Edmonds. Moreover there were other witnesses whose evidence also gave support to Mrs Edmonds' claim, *inter alia*, that the applicant had concealed matters from her, and that this was all part of a pattern of secrecy which the applicant had used to enable her to retain plenipotentiary

powers over the Edmonds' trust assets.

55 We acknowledge that it is apparent from Mrs Edmonds' evidence that her memory was incomplete, for example whether the loan to the applicant was £80,000 or £90,000, and at fault, for example her failure to recollect that she had in fact signed the Power of Attorney dated 17 February 2000. But these were all matters which could have been prayed in aid by Advocate Winchester in questioning the accuracy of Mrs Edmonds' testimony and none of them should have caused the Commissioner to refuse to admit the evidence of an important witness whose evidence was in significant respects corroborated by others.

56 Nothing that has been raised before us would cause us, or indeed allow us, to conclude that the Commissioner in the exercise of his undoubted discretion, failed to take into account any matter which he should have taken into account, or wrongly took into account any matter to which he should not have given weight, or that he exercised his discretion unreasonably.

Ground 3 The lack of impartiality in the summing up

57 Advocate Winchester has suggested that the Commissioner manifested a partiality to the Crown case so as to render the trial unfair and that by his presentation of the summing up he so prejudiced the Jury against the applicant that the conviction cannot stand.

58 Mr Winchester cited three recent cases in the Court of Appeal (Criminal Division) where that Court was constrained to quash convictions because of the behaviour of the trial Judges, *R v Dickens* [2005] EWCA Crim. 2017; *R v C* [2005] EWCA Crim. 2170 and *R v Patrick Bryant* [2005] EWCA Crim. 2079. We have read these authorities with care. We are bound to say that we have struggled in vain to find any factual features which bear comparison between those cases and this; nor, save in relation to one passage of the judgment at p. 66 of the report of *R v Dickens*, have we been able to distil from those cases any principle of law relevant to the way in which the Commissioner summed up this case to the Jury.

59 We would deplore any want of resolution in Counsel whose client has a genuine grievance about a trial Judge's behaviour. Boldness is the handmaiden of advocacy. Certainly this Court would be forward in censuring any judge whose conduct bore comparison to the behaviour of the judges in the cases cited to us.

60 Equally, however, we would discourage advocates in this jurisdiction from citing cases whose facts, and the principle of law to be derived from those facts, are so at variance with the issues in the case under appeal so as to have no relevance to any matters which can fairly or properly be said to arise therefrom.

61 But Advocate Winchester has not resiled before us from pursuing the allegations he made

in his written submissions. Any allegation of bias or partiality by a Judge during the course of a criminal trial, and especially during a summing up, is a matter which this court must carefully explore. We have done so.

62 The first point Advocate Winchester raised was that the partiality shown by the Commissioner was manifested in advance of the summing up when during a discussion in the Jury's absence, the Commissioner " *allowed himself to be persuaded by the Crown"* to change the way in which he proposed to direct the Jury as to the time when the applicant formed her intention to commit the offence in the indictment. The evidence revealed that the applicant initiated plans to move assets in the Collette and Ocean trusts to Liechtenstein in the winter of 1999/2000 prior to the establishment of the Ballad Trust on 4 March 2000.

63 The whole object of the discussion which took place in advance of this summing up was to clarify matters of law so that Counsel could know how the Commissioner intended to direct the Jury and to tailor their speeches accordingly. The transcript reveals that the Commissioner took great care to obtain the agreement of Counsel for his directions and indeed secured it. Advocate Winchester having asked for, and been granted, time for mature reflection on the final draft of the directions, returned to Court to give his support to what the Commissioner proposed to say in particular about the formation of the applicant's intention. That direction materialised in the summing up in the summary of the issues on page 3:

> "Do not concern yourselves about the precise dates. The dividing line of 14 October 1999 is in fact the date of Robert Edmonds' death. Therefore, it is the Prosecution's case that the offence was committed during the lifetime of Joan Edmonds, after her husband's death, at the time of setting up the Ballad Trust on 3 (sic) March 2000. The Prosecution say that the criminal intent crystallised at that time, as evidenced by the Defendant's letter of wishes and subsequent conduct."

64 In our judgment that direction aptly and accurately reflected the evidence and a common sense interpretation of the events leading up to 4 March 2000. The Commissioner's use of the verb " *crystallise"* was particularly appropriate in this context because the creation of the Ballad Trust was, if the Crown case was correct, the product of several weeks' work by the applicant to transmit the Edmonds' assets out of Jersey to Liechtenstein.

65 The way Advocate Winchester put the matter to the Jury in his speech was of course a matter for him. We have examined the relevant passage of that speech:

> *"Members of the Jury, it is very important when you come to consider your verdict that you understand clearly, as I am sure you do, that the Crown case is that there was no dishonest intention on the part of my client until the time of the establishment of the Ballad Trust.* That was 4 th March 2000. …
>
> *But I would like to suggest to you that the crucial period for you to consider,*

given what the case against my client is, is the period between October 1999 and the date of the establishment of the Ballad Trust. …

… the Crown's case specifically suggests that criminal intention was born at the time that the Ballad Trust was established.

66 We do not criticise Advocate Winchester for attempting to delay the allegation of dishonesty until 4 March 2000. Although his client denied dishonesty, it was in her interests, Advocate Winchester plainly believed, to limit the period of dishonesty to as short a period as possible. No doubt that was why he chose to use the word " *born"* rather than " *crystallised"*. But we have to say, having regard to the evidence of planning, inevitable in the creation of such a trust, that the notion of a continuing intention in the winter of 1999/2000 crystallising on 4 March (as the Crown expressed it) was a better and more common sense based reflection of the evidence than an intention which was "born" on that date.

67 We have looked in vain for any indication that the Commissioner directed the Jury in the way he did because of an instinctive partiality to the Crown despite the evidence, rather than out of a wish (supported at the relevant time by both Counsel) accurately to reflect the evidence in what he said to the Jury.

68 Indeed far from exhibiting bias, the passages to which we were referred by Advocate Winchester, in our judgment, only served to underline the wisdom of the practice of sorting out directions in advance of speeches, a practice now adopted by almost every judge in England who has to preside at a criminal trial.

69 Advocate Winchester makes a further point in relation to passages which occur on page 12, 16 and 19 of the summing up where the Commissioner reminded the Jury of the evidence of three prosecution witnesses all of whom attested to the proposition, important to the issues in the case, that it was Mr Edmonds' intention that the applicant should benefit from his fortune only after the death of himself and his wife. Advocate Winchester complained that at the end of each passage referred to above, the Commissioner identified the witnesses as the first, second, then third witness to give evidence of these matters.

70 We have to state plainly that we regard Advocate Winchester's criticism as trivial. There is no reason whatsoever why a judge should not keep a tally of confirmatory evidence so that a Jury can assess whether the evidence is more likely to be accurate if three persons say the same thing rather than just one person.

71 Next Advocate Winchester complains of two specific passages in the summing up which he claims show the Commissioner's partiality. The first, relating to the flat at Teddington, occurs on page 11:

"There was a flat at Teddington. It seems that the Defendant bought it, did it up

> and said it was going to be rented out, but this was not done with Joan Edmond's knowledge, she said. Joan Edmonds said she had no money from the sale or renting of these properties and received no funds or distribution from the trust at all, nor was she told what was happening to it. Do you find support for this account from the documents and from the evidence of live witnesses?"

The second passage, relating to a draft trust deed prepared by Advocate Banks in the autumn of 1999, occurs at page 60:

> *"Advocate Winchester points to the second draft deed as prepared by Advocate Banks and discussed by him with Mr Frith.* True, that deed described the Defendant in one of the schedules as a beneficiary, but, as I reminded you earlier, she never told Mr Frith that she was to be the principal beneficiary; quite the reverse, and it was only a draft deed, it was never executed. But Advocate Winchester relies on it as being an indication of what the Edmonds intended. Pay such attention to that as you think fit."

72 In relation to these two passages, we are wholly unconvinced that either betrays bias or partiality. The passage on page 11 constitutes the last few sentences of a section in the summing up dealing with the evidence of Mrs Edmonds. Since she was one of the main witnesses whose testimony necessarily implicated the applicant we are at a loss to understand why the Commissioner should not ask the Jury whether they had found support for the account of this witness, whom the Jury had neither seen nor heard, among evidence in documents which they had seen and in respect of witnesses from whom they had heard.

73 In relation to the passage at page 60 we are also unable to find any basis for criticising the Commissioner. On this occasion, again and for good reason, as it seems to us, he emphasised the submissions of both sides and invited the Jury to pay such attention to the draft trust deed as they thought fit.

74 Advocate Winchester also suggested that the way in which the Commissioner summarised the defence case, such as it was since the applicant did not give evidence or call witnesses, demonstrated partiality. In particular he complains of the Commissioner's treatment of the conflict between the evidence in the applicant's affidavit in the Irish proceedings and the evidence of the prosecution witnesses. The Commissioner reminded the Jury of the conflicts between them. The relevant passages occur in the summing up at pages 50–52. The affidavit was relied on by the applicant as the truth, but it was also relied on by the Crown as constituting a series of lies which, the Crown suggested, had been contradicted by the evidence called at trial.

75 The problem posed by the affidavit and the contrasting claims of its value by each side was solved by the Commissioner by reading the whole document to the Jury. He reminded them at the outset that it was relied on by the defence, and also pointed out those matters on which the prosecution claimed the applicant was lying. Far from criticising the Commissioner for this approach we believe that he chose the most sensible and the most

appropriate way of summarising the document in the round, and of highlighting for the Jury some of the issues relating to the central question of the applicant's honesty and fair dealing with Mr and Mrs Edmonds' assets.

76 Lastly, Advocate Winchester complains that the amount of space devoted by the Commissioner to summarising the evidence of the witnesses for the Crown compared to that which he spent summarising the defence case rendered the summing up unbalanced.

77 Having presented no evidence at the trial the applicant effectively put the Crown to proof of its case. Advocate Winchester did not ask many questions in cross-examination and he relied on the applicant's affidavit in the Irish proceedings as representing his case. Such a situation created the problem that the summing up would inevitably focus on the prosecution evidence and on the questions asked in chief. An offender who chooses to call no evidence can hardly complain if the summing up consists of evidence called by the Crown. In a criminal trial the Judge is obliged to summarise the evidence. If the evidence consists of only that called by the prosecution the Judge has no choice but to summarise only that evidence, as Lord Brown of Eaton-under-Heywood emphasised in the case we cite below.

78 In the context of the allegations made by Advocate Winchester it is useful to bear certain matters in mind. First it is often impossible in a summing up, to prevent a Jury speculating that a phrase, a remark or a comment, betrays an attitude of mind which the Judge may well to possess. The most scrupulous attempt to prevent giving a particular impression may well fail. The most determined effort to be neutral may well not succeed. That is why a prudent judge emphasises at the outset of the summing up that his view of the facts, if he has one or is perceived to have one, is irrelevant. So it was with the Commissioner in this summing up. In the second sentence he said:

> *"You must accept what I tell you about the law and act upon it, but you are the sole judges of the facts.* It is for you to decide what evidence you accept and what evidence you reject of which you are unsure. If I appear to have a view of the evidence or of the facts with which you do not agree, reject my view. If I mention or emphasise evidence which you regard as unimportant, disregard that evidence. If I do not mention evidence that you regard as important, follow your own view and take that evidence into account."

79 The second matter to which we desire to refer is the guidance given to Judges by (Simon) Brown L.J. (as he then was) in *R -v- Nelson* [1997] Crim L.R. 234 C.A. In discussing the Judge's role and duty in summing up a case to a Jury, he said:

> ***"Every defendant, we repeat, has the right to have his defence whatever it may be, faithfully and accurately placed before the Jury.*** But that is not to say that he is entitled to have it rehearsed blandly and uncritically in the summing up. No defendant has the right to demand that a Judge shall conceal from the Jury such difficulties and deficiencies as are apparent in this case. Of

> course the Judge must remain impartial but if common sense and reason demonstrate that a given defence is riddled with implausibilities, inconsistencies and illogicalities, there is no reason for the Judge to withhold from the Jury the benefit of his own powers of logic and analysis. Why should pointing out those matters be thought to smack of partiality? To play a case straight down the middle requires only that a Judge gives full weight to the evidence and arguments of each side. The Judge is not required to top up the case for one side so as to correct any substantial imbalance. He has no duty to cloud the merits either by obscuring the strengths of one side or the weakness of the other. Impartiality means no more and no less than that the Judge shall fairly state and analyse the case for both sides. Justice moreover requires that he assists the Jury to reach a logical and reasoned conclusion on evidence."

80 The third and final matter which we have borne in mind in our assessment of the significance of Advocate Winchester's criticisms is that before the summing up the Commissioner gave both Counsel a verbatim account of his proposed summing up, consisting of nearly 60 pages, taking it to the point near to what transpired to be its end where he started to summarise the defence case. Some of the passages which Advocate Winchester has cited by way of complaint were contained in that draft. Advocate Winchester was asked before the summing up and indeed at its end whether he wished the Commissioner to add anything. On both occasions he declined the Commissioner's invitation.

Ground 4 The omission adequately to put the defence case to the Jury and other specific omissions of fact and law in the summing up

81 Advocate Winchester makes a number of detailed criticisms of the summing up, and generally of a failure by the Commissioner to put the defence case properly to the Jury. We have already observed that where a defendant elects not to give evidence it is inevitable that a summing up will focus on evidence called by the prosecution and on the essential question whether that evidence proves guilt.

82 In the context of this ground it is also pertinent to repeat that notwithstanding the invitation at the end of the summing up, Advocate Winchester did not ask the Commissioner to add anything to what he had already said about the defence case.

83 We now turn to the details of this ground and deal first with the general allegation of a failure to put the defence case. We conclude that Advocate Winchester has not substantiated this limb of the ground. At the beginning of the summing up the Commissioner outlined separately and shortly the cases for the prosecution and for the defence. On page 5 he emphasised the applicant's good character, gave appropriate directions in law as to how the Jury should utilise that good character, and added:

> *"Having regard to what you know about the Defendant you may think she is entitled to ask you to give considerable weight to her good character when*

deciding whether the Prosecution has satisfied you of her guilt."

84 In relation to the dispute between Mrs Edmonds and the applicant, and after the Commissioner had reported Mrs Webster's evidence that the applicant had told her not to disclose anything to Mrs Edmonds, he summarised the issues thus:

> *"Was this a recurring theme which you have heard throughout the evidence given by a number of other witnesses when they spoke of their inability to obtain any information or any sufficient information from the Defendant?* You will have to consider whether this was because the Defendant wanted people to know what she was doing but was prevented by circumstances beyond her control from providing information and documents, or is it established that she wanted to keep matters to herself and refused to provide information on various pretexts? If the latter, you will ask why she did not want people to know."

85 Moreover, it was part of the applicant's case that the function of Westphail Ltd was to be a vehicle designed to distance her from the Collette and Ocean Trusts and that it was on the advice of Jersey lawyers, and specifically Janet Kenny, that this British Virgin Islands company was purchased by the applicant to achieve that object. Mrs Kenny refuted the suggestion. The Commissioner reminded the Jury in clear terms of the allegation and, necessarily, of Mrs Kenny's denial.

86 He also reminded the Jury of the limitations of the Crown case in relation to the time when the applicant's conduct became dishonest, as alleged, and the limitations of that dishonesty. As we have already observed in another context, he clearly pointed to the significance of the date on which the Ballad Trust was established and the crystallisation of the applicant's intention at that time, as alleged by the Crown.

87 Later in describing the circumstances surrounding Mrs Edmonds' will and the fact that she apparently wished to leave the residue of her property to the applicant, the Commissioner said:

> *"Please note that the Prosecution make no complaint about that or about the fact that under the trust provisions the Defendant was to benefit following Joan Edmonds' death.* It is important that you bear in mind throughout that the nub of the Prosecution case is that the Defendant dishonestly benefited herself during Joan Edmonds' lifetime, despite what the Prosecution contend was the clearly expressed wishes of Robert and Joan Edmonds."

88 Later, again in the context of the fact that the applicant did not give evidence, he reminded the Jury, as already demonstrated, that Advocate Winchester had relied on the Irish affidavit as representing her case. This affidavit contained significant assertions, for example concerning the applicant's knowledge of Robert Edmonds' intention in relation to his fortune, the circumstances in which she alleged Westphail Ltd had been formed, the

problems over the stipulation that a Jersey resident could not benefit from the trusts, the move to Liechtenstein with the knowledge and support, as she alleged, of Mrs Edmonds, and the fact, as she insisted, that the Ballad Trust deed complied with Robert Edmonds' letter of wishes signed in 1998. The extent of the Commissioner's analysis of the affidavit extends to in excess of three pages.

89 The Commissioner also went on to refer the Jury to the contents of one of the documents found at Cherry Garth by the police after August 2001 which the applicant had left at the house when she departed for Spain. The document was headed “Background Information regarding Trusts settled by Robert Charles Edmonds” and contained a detailed account of her association with the Edmonds.

90 Finally at the end of his summing up he summarised Advocate Winchester's speech to the Jury and the points which he had made, including the “extremely close” relationship which existed between the Bryce-Richards and the Edmonds, the references by the latter to the applicant as their adopted daughter, the extent to which with the Edmonds' consent, the applicant had benefited from their generosity during the Edmonds' lifetimes (including the loan of £80,000 or £90,000 and the loan of the half share of the purchase price of Cherry Garth), the fact that Robert Edmonds had ignored Advocate Begg's insistence that he should seek independent legal advice in making those loans to the person who was also his financial adviser, and the use by the applicant and Robert Edmonds' use in the letter of wishes concerning the Collette and Ocean Trusts, of the phrase “ *future care and well being of my wife”*, (the idea of the “qualified beneficiary” which the applicant had explained to Miss Phelan was the reason for Mrs Edmonds' limited inclusion as beneficiary in the Ballad Trust Deed).

91 We have carefully considered the summing up against the background of Advocate Winchester's submission that the Commissioner failed to remind the Jury of the defence case. We conclude that his argument is unsustainable.

92 The second limb of Ground 4 relates to some matters of fact and law which, Advocate Winchester contends, were wrongly omitted from the summing up. If we do not condescend to list these matters and deal with each in turn, it is because individually or cumulatively they are not of sufficient significance to cause this Court without more, to allow the application still less the appeal, and also because, upon analysis in this Court, it became apparent that they were of little, if any, consequence.

Ground 5: the unreasonableness of the verdict

93 The final ground of appeal against conviction advanced by Advocate Winchester relates to the verdict itself which, he submitted, cannot stand because no reasonable Jury could have convicted the applicant on the available evidence. He claims there are five aspects of the evidence which should have caused the Jury to acquit and which, in view of the conviction, makes the Jury's verdict untenable. The five reasons are as follows:

(i) The applicant genuinely had a close relationship with Mrs Edmonds. This was confirmed by the evidence of Brian Frith who acknowledged that Mr and Mrs Edmonds treated her like a daughter, that they wanted her to be the ultimate beneficiary of their wills and considered her to be their heir. He also cited Advocate Habin and Dr Hughes's evidence to this effect.

(ii) The applicant did benefit financially from Mr and Mrs Edmonds during their lifetimes, not least through the purchase of Cherry Garth in her name, with the consent of Mr and Mrs Edmonds.

(iii) The existence of the Power of Attorney executed by Mr Edmonds on 10 July 1998 in favour of the applicant, which Advocate Winchester claimed, is further evidence of the fact that Mr Edmonds thought highly of the applicant and trusted her.

(iv) The fact that Advocate Banks was instructed to look after the interests of Mrs Edmonds and that he produced a trust deed with the proposed beneficiaries as Robert Edmonds, Mrs Edmonds and the applicant. The applicant was a discretionary beneficiary and it was not provided in the deed that she would only benefit after the death of Mr and Mrs Edmonds.

(v) *The applicant benefited from an £80,000 or £90,000 loan from Robert Edmonds from his own property.* After the death of Mr Edmonds, a further draft trust deed was produced in which the applicant was named as a beneficiary.

94 It is noteworthy that all these points were made by Advocate Winchester in his final speech. The mere fact that a Jury reject points made in a defence speech in a criminal trial is no ground for asserting that a resultant verdict of guilty is one which the Jury were not entitled reasonably to reach.

95 Advocate Winchester's submission on this ground is bold and, we are bound to say, unconvincing. It is relevant that at the close of the prosecution case, he did not make a submission of no case to answer. Thereafter he called no evidence. It is perhaps surprising that evidence on which a submission of no case could not apparently be made, and in answer to which no evidence was called, can become a case on which no reasonable Jury could convict.

96 It will be apparent from our recital of the evidence above that there was in fact powerful evidence to cause a Jury to accept the Crown's case that the applicant had fraudulently converted a significant amount of the fortune built by Robert Edmonds to her use by settling it into the Ballad Trust during Mrs Edmonds' lifetime.

97 By agreement with Crown Advocate Baker and Advocate Winchester, the Commissioner refined the Jury's task by suggesting that they answer the following questions:

(i) Are you sure that Mrs Bryce Richards was entrusted with the property of Robert and/or Joan Edmonds?

(ii) Was it or may it have been Robert Edmonds' intention that Christine Bryce-Richards should benefit from the trust during the lifetime of Joan Edmonds?

(iii) Was it or may it have been Joan Edmonds' intention that Christine Bryce-Richards should benefit from the trust during the lifetime of Joan Edmonds?

(iv) Are you sure that Mrs Bryce-Richards used trust property during the lifetime of Joan Edmonds for her own benefit or that of her husband?

(v) Are you sure Christine Bryce-Richards behaved dishonestly?

98 Since the answer to the first question was not in dispute the Jury should have answered it in the affirmative and gone on to consider the second question. The evidence contradicting the assertion that it was or may have been Robert Edmonds' intention that the applicant should benefit from the trust during the lifetime of Mrs Edmonds came from a number of different sources; from the applicant herself in a letter dated 10 July 1998, “I have been advising Bob and Joan in connection with their affairs in order to protect their assets for their benefit during the remainder of their lifetime”; in the letter of wishes signed by Robert Edmonds on 16 July 1998 concerning the Collette and Ocean Trusts, “My reason for creating the Trust is to ensure that the Trust fund will be preserved for my benefit and the benefit of my wife, Joan Helen Edmonds, during the remainder of her lifetime”; and in a letter from the applicant dated 4 August 1999 in which she explained to Advocate Begg, that Robert Edmonds' object in creating the trusts was “ *principally taking care of himself and Joan and, following their demise, he wanted me to benefit bearing in mind my relationship to them*”.

99 Furthermore the evidence of Janet Kenny, Advocate Begg, Advocate Habin and Brian Frith corroborated these assertions. It is perhaps necessary only to quote from the cross-examination of the last mentioned witness who, when taxed with the possibility that it was Robert Edmonds' intention that the applicant should benefit from the Edmunds' assets during their lifetimes said “ *It doesn't come out at all for the Defendant to benefit during their lifetimes.* She was already benefiting from an expensive home. She didn't need helping out.”

100 We have already rehearsed the circumstances in which the Edmonds required to move to Jersey, the need to make use of the applicant's residential status in Jersey, the imperative of supplying her with the money to purchase a house in her name and the significant though incidental benefit which accrued to the applicant. But the Crown case was that this was the limit of any benefit which the applicant was intended to enjoy during the lifetime of Mr or Mrs Edmonds.

101 To suggest, as Advocate Winchester is driven to do, that the Jury were bound to ignore all

this evidence in their assessment of Robert Edmonds' intention, is wholly implausible.

102 It follows that, in our judgment the Jury, were entitled to answer no to the second question. In this event they were bound next to explore what the evidence revealed about Joan Edmonds' intentions qua the applicant during her life.

103 Evidence that she did not intend that the applicant should benefit until her death was contained in her statements of December 2001 and January 2002 and included the evidence of Brian Frith and Advocate Habin that she had never suggested to them that the applicant should benefit and indeed positively that the applicant should not. Also relevant to this question was the fact that Mrs Edmonds was apparently unaware of the whereabouts of the assets after late 1999, a fact which sat uneasily with the notion of confidence in the applicant and a desire that she should share in the assets. Finally, in this context, the Crown relied on the absence of any documentation asserting such a wish or intention by Mrs Edmonds and the inconceivability that any honest or prudent adviser would fail to protect their own position by bringing such a document into existence.

104 We are satisfied that the Jury were entitled to answer the third question in the negative which would have caused them to pass to question 4. The issue whether or not the applicant had used trust property for her own benefit prior to Mrs Edmonds' death in January 2003 was not an issue in the case and accordingly having answered the first four questions with evidential justification, the Jury would have passed to the final question relating to the applicant's dishonesty.

105 It is not necessary to analyse all of the evidence which would have entitled the Jury to be satisfied that the applicant's conduct towards Mrs Edmonds, and specifically in relation to the Edmonds' assets, was not honest. The Jury plainly could have found proved that the applicant had ignored the advice of Jersey lawyers relating to her conflicted interests, that she had failed to inform Mrs Edmonds in a timely fashion of the proposed move to Liechtenstein, that she had failed to undertake her responsibilities vis-à-vis Lexadmin, that she had converted assets from the Ballad Trust to her own benefit, that she had lied in her affidavit in the Irish proceedings, and that she had caused her lawyers to prevaricate and obfuscate legitimate enquiries made by those instructed on behalf of Mrs Edmonds and the in-house lawyer employed by Lexadmin.

106 In this context it is important to refer finally to a document found by police at Cherry Garth when they searched those premises in August 2001. Entitled " *Points for discussion with Joan"*, the applicant had written under a heading " *Present situation"*, the following words: " *the potential situation if not finalised, the risk of criminal charges, the technical breach of trust"*. Within a month contemplating that she might be prosecuted criminally in Jersey, the applicant moved, or purported to move, the assets which would have been the subject of that prosecution from Jersey to Liechtenstein. The Jury would have been entitled to conclude that this document was a pointer to guilt.

107 We have concluded in the light of the evidence called by the Crown, that the Jury would have been entitled to answer the last question in the affirmative and accordingly to have convicted the applicant.

Conclusion

108 None of the submissions in this application for leave to appeal against conviction have any substance and accordingly we refuse leave to appeal.

Application for leave to appeal against sentence.

109 Finally, we turn to the application for leave to appeal against sentence. The sentence which was imposed in this case was one of 7 years' imprisonment, a compensation order of £125,000 in favour of Jacqueline Holmes, and three sums of £8,333.33 in favour of Amanda Maria Fountain, Alexia Michele Fountain and Lloyd Thomas Fountain; and a confiscation order in the sum of £2.055 million. The Royal Court ordered that there should be a further 7 year sentence of imprisonment in default of payment of the confiscation order.

110 Sentencing in cases such as this must begin with a consideration of the seminal case of *R -v- Barrick* [1985] 81 Cr. App. R. 78. That was a case in which a distinguished criminal Court consisting of Lane L.C.J., Farquheson and Tudor Price JJ., considered guidelines as to the appropriate level of sentence to be imposed in cases involving breach of trust. The head note reads relevantly for our purposes:—

> ***"In determining sentence in breach of trust cases, the Court should have regard to the following matters:***
>
> ***(i) the quality and degree of trust reposed in the offender;***
>
> ***(ii) the period over which the fraud or the thefts have been perpetrated;***
>
> ***(iii) the use to which the money or property dishonestly taken was put;***
>
> ***(iv) the effect upon the victim;***
>
> ***(v) the impact of the offences on the public and public confidence;***
>
> ***(vi) ….***
>
> ***(vii) the effect upon the offender himself;***
>
> ***(viii) his own history; and***
>
> ***(vx) …finally, any help given by him to the police."***

111 Mindful of these considerations the Royal Court considered the sentence to be imposed in this case. The Court clearly felt that custody was inevitable, contrary to the submission of

Advocate Winchester. The justification for that conclusion included the facts that this was a case of dishonesty by a professional trustee and that there was a need to protect the reputation of Jersey as a financial centre.

112 In relation to the latter consideration we take the view that the Royal Court was entitled, indeed bound, to have in mind the reputation of this Bailiwick. It is often appropriate for deterrent sentences to be passed for specific offences for particular geographical areas or particular jurisdictions and an appellate court will not lightly interfere where a deterrent sentence has been passed for good reason. The Commissioner emphasised in his sentencing remarks that the sentence which would be passed was intended to deter others " *minded to breach the trust reposed in them".* The approach of the Court was an echo of what was said in the *Young -v- AG* [1999] JCA 013 where this Court held that any sentencing court must [our emphasis] have regard to the effect of the offences on the reputation of Jersey as a financial centre.

113 In the light of the conclusion that only a custodial sentence was appropriate, it is clear that the Royal Court went on to consider the aggravating features of this offence. Those aggravating features can be understood from the sentencing remarks as including:

> *"the fact that the appellant persisted in her denial of guilt and refused to acknowledge or recognise that she had done any wrong, the fact that she had failed in any way to assist in the recovery of the unlawful proceeds of crime and most important that the offence constituted, as the Royal Court held, not only a breach of trust in the strict legal sense but of the trust, friendship and confidence of the two elderly people reposed in view."*

114 We do not think that it is possible to criticise the Royal Court for their assessment of those features. Indeed we consider that the fact that the sum of money converted to the applicant's benefit was in excess of £1.5 million was also itself an aggravating feature.

115 Having considered the aggravating features, the Royal Court then considered what features mitigated the offence and it is plain that the Court took into account the fact that, most importantly, the applicant was of previous good character and that as a woman aged 44 years, her good character particularly stood to her credit. The Court also bore in mind, as conceded by the Crown, that the applicant was the ultimate beneficiary of the Edmonds' trusts after the death of both of them. The Court finally considered that it was a mitigating feature that she had lost her professional career and that she would clearly never again be able to practise in the financial services industry.

116 We bear in mind, too, that the sums of money, although considerable, did not result in the complete impoverishment of Mrs Edmonds, and also that, though it is clear that Mrs Edmonds was worried about the situation that developed in the latter part of 1999 onwards, nonetheless this was not a case where the level of anxiety suffered was of the most serious kind.

117 We also bear in mind that it is, (and we are pleased and relieved to hear it) now, at last, the intention of the applicant to assist the police to recover the money. It is plainly in her interests to do so because otherwise she will serve a lengthy period of imprisonment in default.

118 The Royal Court thereafter went on to consider the starting point. The Crown had moved for a period of 10 years. The Court, rightly in our view, considered that that was too long. They bore in mind that in this case there was only one victim and that the offence was committed over a period of time which did not significantly aggravate the nature of this offence. In the circumstances therefore the Court took the view that the appropriate starting point was 9 years.

119 In the light of the starting point, the Royal Court considered to what extent those mitigating features should cause them to discount the sentence of 9 years' imprisonment. The Commissioner described the mitigation as “limited”. We have to say that we agree with that description. In the light of that fact, the Royal Court decided that the appropriate deduction should be two years and accordingly imposed a sentence of 7 years' imprisonment.

120 The question for this Court is firstly whether the figure of 9 years was a starting point within the discretion of the Royal Court and secondly, whether having regard to the limited mitigation the two year allowance was appropriate. It is true that there was little guidance in this jurisdiction available to the Royal Court and certainly no case of an offender whose circumstances were factually similar and whose sentence had received endorsement from this Court.

121 In these circumstances we have carefully considered whether the Royal Court's figures for the starting point and reduction were appropriate. We have come to the conclusion that we cannot fault the choice by the Royal Court of 9 years as the starting point nor the 2 year reduction for the limited mitigation. In our view the sentence was clearly neither wrong in principle nor manifestly excessive and the application for leave to appeal against sentence is refused.

Application by the Respondent

122 We finally deal with an application by the Crown to increase the period of imprisonment in default from 7 years to 10 years. We accept that it may be that a period of 10 years for sums of this nature is the more usual tariff sentence in default. Nonetheless the Royal Court clearly considered the matter with care and decided that the appropriate sentence in default should be one of 7 years. We are not minded to alter that decision and in the circumstances we therefore refuse the Crown's application.