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The Viscount v Price Waterhouse Coopers

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	28 March 2002
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Text

[2002] JRC 71A

ROYAL COURT

(Samedi Division)

Before:

M.C. St. J. Birt, Deputy Bailiff, **and** Jurats Le Ruez **and** Georgelin

Between
The Viscount
First Representor
and
Price Waterhouse Coopers
Second Representor

and

HM Attorney General

Respondent

Advocate B. H. Lacey **for the First and Second Representors**.

Advocate A. J. Belhomme **for the Attorney General**.

Authorities.

Investigation of Fraud (Jersey) Law 1991: Article 2.

Financial Services (Appointment of a Manager) (Jersey) Order 2000: Article 2.

Acturus Properties Limited v Attorney General (2001) JLR 43.

Re Arrows Limited (No 4) (1994) 3 All ER 814.

Criminal Justice Act 1987: s.2(3).

Bankruptcy (Désastre) (Jersey) Law 1990.

Insolvency Rules 1986: Rule 9.5(4).

Rumasa S.A. v W & H Trademarks (Jersey) Limited (1985–86) JLR 308.

Application by the First and Second Representors for judicial review of a decision by the Attorney General to issue notices under Article 2 of the Investigation of Fraud (Jersey) Law 1991.

Deputy Bailiff

THE

1 This is an application by the Viscount and PriceWaterhouseCoopers (PWC) for judicial review of a decision by the Attorney General to issue notices under Article 2 of the Investigation of Fraud (Jersey) Law 1991 ("1991 Law").

The factual background

2 On 12th July 2001, pursuant to Article 2 of the Financial Services (Appointment of a Manager) (Jersey) Order 2000 ("the 2000 Order") the Court, on the application of the Jersey Financial Services Commission ("JFSC"), appointed two partners of PWC as managers of Chimel Trustee Company (Jersey) Limited ("Chimel") and two of its associated companies. All three companies carried on the business of trust and company administration. The basis for the application was that a criminal investigation was being carried on into the affairs of

Mr Peter Michel and others and the Attorney General had obtained warrants under the 1991 Law to seize all the files and documents held by Chimel. Mr Michel is the proprietor of Chimel and the two associated companies.

3 Following their appointment the managers discovered that, in many cases, appropriate due diligence, as required by the various JFSC guidelines and the anti money laundering legislation, had not been carried out. Accordingly they entered into correspondence and held meetings with various clients of Chimel in order to establish such things as the provenance of the funds under administration, the purpose of the trust or corporate structure in question etc.

4 On 4th October 2001, upon the application of the managers, Chimel and its two associated companies were declared en désastre. Since that date, because of the complexity of the matter and their detailed knowledge acquired whilst acting as managers, the Viscount has employed PWC as his agents to assist him in administering the désastres. The Viscount is not in a position to administer client companies and trusts of Chimel and accordingly applications have been made by various clients of Chimel for the transfer of their company and trust structures to new financial services providers. This has required PWC, acting in its capacity as agent of the Viscount, to continue to correspond and meet with clients in order to obtain all the necessary information from them concerning the companies and trusts in question. The need for this has been caused by the paucity of records in Chimel and the lack of due diligence enquiries carried out by Chimel when under the control of Mr Michel.

5 On 14th December 2001 the Attorney General issued notices under Article 2 of the 1991 Law addressed to the Viscount and PWC respectively. The notice addressed to the Viscount simply did not make sense. It required production of documents obtained or created:—“in your capacity as manager of Mr Michel's businesses and as agent for the Viscount.” On this being pointed out to the Attorney General's department, the notice was withdrawn and replaced by a new notice dated 20th December 2001.

6 Each of the two notices lists a number of clients of “Mr Michel and/or his businesses”. The notice addressed to PWC goes on to specify the documents required to be delivered to the Attorney General in the following manner:-

> *“6 The documents referred to are documents obtained or created by you, your partners, associates, employees or agents, in your capacity as manager of Mr Michel's businesses and as agent for the Viscount.* The documents sought are (a) all memoranda, reports and other material created by PriceWaterhouseCoopers concerning the above clients, (b) all correspondence between PriceWaterhouseCoopers and the above clients or agents of the same and (c) all correspondence between Mourant du Feu & Jeune and the above clients or agents (including legal advisors) of the same.”

The notice to the Viscount was in similar terms.

7 The Viscount and PWC now seek to challenge these two notices.

The nature of the proceedings

8 The representation was framed in terms which suggested that the Viscount and PWC were seeking the directions of the Court. However, in the course of her oral submissions, Miss Lacey accepted that what was being sought was in effect a judicial review of the decision of the Attorney General to issue the notices. Accordingly she accepted that, in order to succeed, she had to show that the decision of the Attorney General was liable to be quashed on one of the conventional grounds of judicial review, namely illegality, irrationality or procedural impropriety (see *Acturus Properties Limited v Attorney General* (2001) JLR 43 at 61, para 33).

The initial complaints.

9 The representation raised a number of complaints.

(i) The first issue was whether, as a matter of principle, the notices should have been issued at all bearing in mind the fact that the Viscount is an officer of the Court and that there are strong public interest factors in preserving the confidentiality of communications both with managers appointed under the 2000 Order and the Viscount acting in the administration of a désastre. The public interest, it was contended, applied both to communications from persons such as Mr Michel, who had administered the company in question, and to communications from clients of that company. It was not clear, said the Viscount and PWC, that the Attorney General had considered such public interest factors before issuing the notices.

(ii) The representation also raised a number of subsidiary issues if the Court were to be against the representors on the first issue. These were:-

(a) The wording of the notice to PWC was wide enough to encompass their own internal working papers such as file notes on their responsibilities as managers or agents of the Viscount, the issues and concerns which may have been troubling them and how they should address them and many other matters.

(b) Many of the documents (an example was the interim report of the managers to the Royal Court following their appointment) referred both to clients listed in the notices and to other clients not so listed. The representors wished to be able to edit such documents so as to remove references to non-listed clients and other extraneous matters.

(c) The notice to the Viscount did not appear to add anything to the notice addressed to PWC as the documents listed for production by the Viscount were confined to the documents listed in the PWC notice.

(d) Each of the notices required the recipient to attend a meeting with the Crown Advocate who had signed the notice on a date to be determined in order to be questioned about Mr Michel's businesses. The Court was informed that it had apparently been suggested by a representative of the Attorney General's chambers that questions at such a hearing would be very open-ended. Thus it was said that the Viscount and PWC might be asked whether they had concerns or suspicions about any other clients or former clients of Chimel apart from those listed in the notice. The representors submitted that this was an unacceptably wide question of a "fishing" nature which should not be permitted.

Matters resolved during the course of the hearing

10 All the matters listed at paragraph 9 (ii) above were resolved during the course of the hearing before the Court.

(i) The Attorney General agreed to insert the following words in the notice to PWC as a continuation of (a) of paragraph 6 of the notice, quoted above, namely:-

"…… save insofar as such memoranda reports and other material record:-

(i) discussions between members of PWC as to their responsibilities as managers pursuant to their appointment by Order of the Royal Court dated 12th July 2001;

(ii) discussions between and decisions of such persons and the Viscount relating to their administration of the relevant désastre ……"

In other words working papers were not to be produced save to the extent that they dealt with matters other than those listed in the above amendment.

(ii) The Attorney General agreed that PWC could edit documents by redaction so as to remove references to other clients or to extraneous matters. However, if the Attorney General's Department had concerns about the editing of any document, PWC undertook to let a Crown Advocate personally inspect the full document so that he could satisfy himself that the editing was fair and had not excluded material relating to the listed clients.

(iii) Having considered the matter further, the Attorney General agreed to withdraw the notice addressed to the Viscount, thus leaving only the notice addressed to PWC.

(iv) Mr Belhomme confirmed that the Attorney General would not ask a question of the nature described at 9(ii)(d) above upon any examination of PWC partners or employees.

The remaining issues

11 We return therefore to the main issue described earlier. The representors argue that there

is a strong public interest in preserving the confidentiality of communications with the Viscount in connection with a désastre and with managers appointed under the 2000 Order. Miss Lacey took as a starting point the comments of Lord Browne-Wilkinson in *Re Arrows Limited (No 4)* (1994) 3 All ER 814. The background to that case is that s235 of the Insolvency Act 1986 of the United Kingdom imposes a general duty on officers or employees of a company to co-operate with the liquidator by giving him any information which he may reasonably request and attending upon him when he reasonably requires. s236 of the same Act is a much more formal provision. The liquidator may ask the court to summon any officer of the company or other person to give evidence before the court in connection with the affairs of the company. The point at issue in *Re Arrows Limited (No 4)* was whether the court should refuse to allow the transcript of an examination conducted with a director under s236 to be produced by the liquidator in response to a notice served upon him by the director of the Serious Fraud Office pursuant to s2(3) of the Criminal Justice Act 1987 (equivalent to Article 2(3) of the 1991 Law). Lord Browne-Wilkinson had this to say at 826:-

> ***"Before dealing with Mr Kaye's second argument (as to the reassurance of persons giving information to liquidators) I must draw a distinction between information obtained by liquidators under s235 and that obtained under a s236 examination.*** The evidence in this and earlier cases shows that all the leading insolvency practitioners attach much greater importance to the confidentiality of information obtained under s235 than they do to information obtained under a formal examination under s236. The reason is obvious. When a liquidator or other 'office holder' (s234) is appointed he normally has little information about the affairs of the company and, in case of suspected fraud, the documentation is frequently deficient or unreliable. He is therefore largely dependent on information obtained from those who have been concerned with the running of the company. For the purpose of protecting the company's assets (including the recovery of its assets which have been plundered by the fraud) he needs to ***obtain speedy and reliable information from those who have been concerned with the company.*** They will include not only those centrally involved with the alleged fraud but also those in an equivocal position (who may feel themselves at risk) and those apparently not implicated in any wrongdoing. Ultimately the liquidators' right to require such informal provision of information depends on the duty imposed on such person by s235 to give him the necessary information. Therefore if, as he will, the liquidator keeps records of what he is told and if the Serious Fraud Office is entitled to obtain such records of informal unprepared statements by means of a notice under s2(3) of the 1987 Act, the insolvency practitioners say, and I agree, there will be severe impairment of their ability to obtain the necessary information. It can be argued (although I express no view on the point) that such information informally asked for and recorded is provided 'in pursuance' of a requirement imposed by the 1986 Act and is therefore admissible in evidence under s433 .
>
> ***Quite different considerations apply to information obtained under s236.*** The evidence shows that liquidators do not normally have recourse to the formal procedures under s236 unless a witness has proved unco-operative. The

examination takes place before a judge or registrar. The witness is entitled to legal representation. He is entitled to advance notice, in general terms, of the topics on which he is to be examined: *Re Norton WarburgHoldings Ltd and Norton Warburg Investment Management Ltd* [1983] BCLC 235 ***and*** *Re Arrows Ltd (No 2)* [1992] BCLC 1176. ***The record of such examinations is not part of the liquidator's private records but is subjected to special statutory provisions relating to its custody and release***.

I am therefore not prepared, as were the Court of Appeal, to equate the right (if any) of the Serious Fraud Office to obtain the liquidator's records of informal answers given under s235 with its right to obtain records of formal examination under s236. This case is concerned only with the record of an examination under s236; I express no views on records of information obtained under s235 beyond saying that the public interest in ensuring the free flow of such informally obtained information is much greater than it is in relation to transcripts of s236 examinations .

12 Miss Lacey accepts that the House of Lords left the matter open, but she suggests that it is clear that Lord Browne-Wilkinson accepted the arguments in favour of the need to preserve the confidentiality of informal communications with a liquidator under s.235. She argues that similar considerations apply here. Thus, in relation to a désastre, Article 18(1) of the Bankruptcy (Désastre) (Jersey) Law 1990 imposes a general duty on the debtor to assist the Viscount in providing information about his property and to attend on the Viscount when called upon to do so. This duty is clearly applicable, in the case of a corporate debtor, to its officers. She argues that the general nature of the obligation under Article 18 (1) is very similar to that under s235 of the Insolvency Act 1986. She argues that, for the reasons articulated by Lord Browne-Wilkinson, it is in the public interest to encourage the debtor, or in the case of the company, those who managed its affairs, to assist the Viscount so far as possible. If it was thought that information so supplied would be turned over to the Attorney General for the purposes of criminal investigations, voluntary co-operation would be reduced.

13 She then argued that similar considerations applied in the case of managers appointed under the 2000 Order. We were referred to Article 23 (4) of the Financial Services (Jersey) Law 1998 which imposes a duty upon a person registered under the Law to co-operate with a person appointed under Article 23(3) to hold the assets of a registered person. However it does not seem to us that that provision has any application in this case. No one has been appointed under Article 23(3). PWC were appointed as managers under the 2000 Order which in turn was made pursuant to Article 10A of the Financial Services (Jersey) Law 1998. There is no statutory provision either under that Law or the 2000 Order requiring the registered person to co-operate with the managers appointed by the Court.

14 But Article 10A(3) provides that the Court may appoint managers of a registered person on such terms as it considers appropriate. In this case, by its Act dated 12th July 2001, the Court ordered the directors of Chimel and the two associated companies fully to co-operate

with and assist the managers in the discharge of their duties. The Act went on to specify the assistance required to be given in more specific terms. We consider that, as a result, the directors came under a duty to assist the managers in a manner which is broadly consistent with that imposed by Article 18(1) of the Bankruptcy (Désastre) Jersey Law 1990 in the case of a désastre.

15 Miss Lacey submitted that there was a strong public interest in ensuring confidentiality of information given either to the Viscount or the managers. She submitted that, at the very least, the Attorney General must carefully consider whether the need to obtain information for the purposes of a criminal investigation outweighed the public interest in preserving the confidentiality of such communications and material. She argued that there was nothing to suggest that the Attorney General had in fact carried out this balancing operation in the present case.

16 Mr Belhomme argued that the public interest factors relied upon by the Viscount and PWC only applied to information and documents supplied by those who were concerned in managing the company prior to the appointment of the relevant official. It is their co-operation which is needed so as to enable the Viscount or the managers, as the case may be, to find out about the business and affairs of the company as quickly as possible in order to fulfill their respective duties either to manage the company's business or to gather in the assets for the benefit of creditors. These considerations did not apply to information obtained from third parties: in this case the beneficial owners of companies and the settlors and beneficiaries of trusts administered by Chimel. Such persons were not included in those covered by s235 of the Insolvency Act, Article 18(1) of the Bankruptcy (Désastre) (Jersey) Law 1990 or the Act of the Court appointing the managers. The considerations raised by Lord Browne-Wilkinson were therefore of no application to such persons.

17 In response to this submission, Miss Lacey accepted that the public interest factors identified by Lord Browne-Wilkinson were only directly applicable to information and documents obtained from those who managed the company, but she submitted that there was still a public interest in encouraging the co-operation of clients of a trust company. The managers or the Viscount, as the case may be, had to gather as much information as quickly as possible in order to undertake their respective functions. Often this information could best be obtained from clients. It was therefore in the public interest that clients should be encouraged to be as forthcoming as possible with the Viscount or the managers. The knowledge that anything which they wrote or said could be obtained by the Attorney General under the 1991 Law would discourage such openness.

18 As matters have turned out, we do not need to resolve the issue concerning the provision of information and documents by those involved in managing the company. Mr Belhomme made it clear that the object of the notice in this case was to obtain the information supplied by clients rather than that supplied by Mr Michel or his associates. Accordingly, during the course of the hearing, the Attorney General, through his advocate, stated that he would undertake to confine the information required under the notice served on PWC. That undertaking was confirmed and supplemented in writing following the oral hearing in the

following manner:-

> *"Her Majesty's Attorney General for Jersey undertakes, that in securing compliance with the above Notice, he will not require PWC or its representatives to answer questions, or subject to paragraph (ii), produce documents which disclose communications relating to the affairs of those companies made to PWC either while acting as manager pursuant to the order of the Court dated 12th July 2001, or in the course and for the purposes of its administration of the désastres by:*
>
> *(i) Mr Michel;*
>
> *(ii) employees of Michel & Co; or*
>
> *(iii) the directors of the companies en désastre*.
>
> There is a proviso in (ii) which deals with documents which cover such communications as well as other matters.

19 It follows that anything we have to say on this aspect of the matter is obiter. In particular Mr Belhomme made it clear that the Attorney General did not accept that such material enjoyed any form of immunity from disclosure. Nevertheless, we think it right to say that, as at present advised, we would be of the opinion that, for the reasons given by Lord Browne-Wilkinson, there is a public interest in ensuring the free flow of informally obtained information from those who have managed the affairs of the company to the Viscount, (in the case of a désastre) and to the managers (in the case of an appointment under the 2000 Order). That public interest is something that the Attorney General should take into consideration in deciding whether to issue a notice under the 1991 Law to the Viscount or to managers so appointed. It is relevant to note in this connection that, if the Attorney General requires information from those who have been managing a company, he has the power to serve a notice under the 1991 Law directly on such persons. He can thus obtain the information himself rather than through the Viscount or the managers.

20 The only live issue left for resolution by the Court therefore is whether we should quash the notice to PWC as it now has effect. The consequence of the various amendments and undertakings listed above is that the notice now relates only to information and documents supplied to PWC (whether in their capacity as managers or as agents for the Viscount) from clients of Chimel. The documents and information relate to the affairs of the companies and trusts administered by Chimel which are listed in the notice and relate to matters such as the provenance of funds and the nature of the activities being carried out by such companies and trusts. The information is required for the purposes of the criminal investigation as to whether any offences of money laundering have been committed.

21 The first issue which we must consider is whether there is a special or specific public interest in respecting the confidentiality of communications between clients of a trust company and the Viscount or managers of that trust company (as the case may be). In our

judgment, the public interest in respecting the confidentiality of such communications is no more and no less than that which exists in communications between such clients and the directors of the trust company before it is placed under management or en désastre. A trust company owes a duty of confidentiality to its clients in respect of their affairs. Thus a settlor or a beneficiary of a trust or a beneficial owner of a company who communicates with the trust company which administers his structure is entitled to expect that the trust company will not disclose such communications voluntarily. The duty is akin to the duty of confidentiality owed by a banker.

22 But the 1991 Law enables information to be obtained compulsorily from trust companies and any other person where serious or complex fraud is being investigated. The information being sought in this case is information which Chimel should have obtained in the first place. It is information which is necessary for the due diligence requirements to be met. If Chimel had obtained this information, as it should have done, such information would have been available to the Attorney General had he issued a notice against Chimel in the ordinary way. The managers merely stepped into the shoes of the directors of Chimel. They obtained the information which should already have been in the possession of Chimel. The information did not concern the affairs of Chimel itself: it concerned the affairs of the clients of Chimel. It was in the clients' interest to produce the relevant information at the request of managers because, if they did not, the affairs of their trust or company would not be administered because of fears on the part of the managers that, in the absence of proper due diligence, they would run the risk of committing money laundering offences themselves. The situation is therefore not analogous to the provision of information about a company to the Viscount or to managers by those responsible for managing it.

23 The same holds good for the position after the désastre although there is no longer any question of Chimel (through the managers) administering the clients' structures. Those structures cannot be transferred to a new service provider until the information required for due diligence is obtained. Accordingly, if the client wishes to obtain a transfer of the administration of his affairs from Chimel to another service provider, he will have to provide the information. The information is therefore not provided voluntarily in order to assist the Viscount; it is provided out of self-interest in order that the client may obtain the transfer of his affairs to a new service provider.

24 It follows that there is no special public interest in confidentiality which arises because it now happens to be the Viscount or the managers who are asking the client for information rather than Chimel through its directors. The notice issued to PWC must therefore be considered in exactly the same way as if it had been a notice issued against Chimel at a time when it was still under the control of its directors.

25 There is a public interest in preserving the privacy of confidential relationships and the Attorney General must give due weight to the confidential nature of any documents and information which he seeks. Thus Article 2(9) of the 1991 Law gives special recognition to the obligation of confidence owed by a banker and provides that this may only be

overridden by the personal decision of the Attorney General. The fact that special recognition is given to banking confidentiality does not mean that the Attorney General can ignore confidentiality arising from any other relationship (see *Re Arrows Limited* (1992) Ch 545 at 551 per Hoffman, J.). Whether the information he seeks is information held subject to a duty of confidentiality is always a relevant matter for the Attorney General to consider when issuing a notice. However, for the reasons given earlier, when considering information of the nature of this case supplied by clients of a trust company in relation to their affairs, the weight to be given to the confidential nature of the information is not affected by the fact that it is given to managers appointed under the 2000 Order or the Viscount in a désastre rather than to the directors.

26 Are there any grounds upon which the Court may quash the notice to PWC in this case? In *Acturus Properties* the Court stated that there was a presumption of regularity in such matters. It is for the applicant to produce evidence of facts which cannot be reconciled with there being reasonable grounds for the Attorney General's belief that he should issue the notice. Miss Lacey has not been able to point to any such evidence. She was only able to submit that there was no evidence that he had in fact considered the confidential nature of the documents and information in question. For the reasons given in *Acturus Properties* that is insufficient to justify the Court quashing the notice and accordingly we decline to do so.

27 It follows that PWC must comply with the single remaining notice subject to the amendment and undertakings agreed and given by the Attorney General during the course of the hearing.

An alternative jurisdiction?

28 As already mentioned, this application proceeded as a judicial review of the Attorney General's decision to issue the notice. The Court was therefore concerned exclusively with the validity of the notice and could only intervene if one of the usual grounds for judicial review were made out. There was no question of the Court undertaking its own balancing exercise between any public interest in confidentiality and the public interest in the investigation of fraud. That exercise was to be undertaken by the Attorney General.

29 But the Court did raise during the hearing the question of whether there was an alternative jurisdiction in the Court in a case such as this. Although it does not arise for resolution we consider that it is appropriate to touch upon the point.

30 In *Re Arrows Limited* (1992) Ch 545, the liquidators of a company sought a declaration from the Chancery Division of the High Court that they should not disclose the transcript of an examination of the managing director of the company under s236 of the Insolvency Act 1986 to the Serious Fraud Office in the event of the SFO serving a notice under s.2 of the Criminal Justice Act 1987 (equivalent to Article 2 of the 1991 Law). The SFO contended that there was no power in the court to make such a declaration and that all obligations of

confidentiality were overridden by such a notice. This contention was rejected by Hoffman, J. He pointed out that, in a prosecution for failing to comply with a requirement of the SFO under s2, it would be a defence for the person concerned to show that he had a "reasonable excuse" for not complying. He held that the expression "reasonable excuse" could include any case in which a person was required or entitled under some other rule of law to withhold the information. The liquidators, as officers of the court, were entitled to seek the assistance of the court as to whether they should comply with any notice from the SFO. It would be wrong to offer no guidance leaving them to take their chances on making out the defence of "reasonable excuse" upon a prosecution. Accordingly, he went on to carry out the balancing exercise between the requirements of confidentiality on the part of liquidators and the need to assist the investigation of serious fraud and came down in favour of prohibiting disclosure by the liquidators to the SFO. The existence of that order would provide a "reasonable excuse" to the liquidators.

31 His approach was upheld by Lord Browne-Wilkinson in *Re Arrows (No 4)*. In particular Lord Browne-Wilkinson, at page 825, approved the following passage of the judgment of Hoffman, J. (reported at 552):-

> ***"Section 3(3) deals with statutory obligations of secrecy but not, in my judgment, the heads of public policy which may justify non-disclosure.*** When one considers the various heads of policy, such as national security, diplomatic relations and the administration of central government, which have been held to justify non-disclosure even for the purposes of justice, I find it impossible to suppose that the only public interest which Parliament thought capable of taking precedence over the investigation of fraud was the efficient collection of the revenue. The reason, in my judgment, why s3(3) overrides most statutory obligations of secrecy is that these are expressed in absolute terms, or at any rate in terms which permit no exception for the needs of the SFO. But the doctrine of public policy, which may well underly some of the statutory provisions, permits a balance to be struck between the public interest in preserving secrecy and the public interest in the investigation of fraud. There was no reason why these heads of public policy should have to be excluded from the concept of a "reasonable excuse" and in my judgment s3(3) does not have this effect."

32 It is true that Rule 9.5(4) of the Insolvency Rules 1986 confers a specific power on the High Court to control the custody and publication of examinations under s236. There is no equivalent provision in the désastre rules in Jersey. It will therefore be for consideration on another occasion as to whether this difference is significant and leads to the conclusion that the Royal Court does not have the jurisdiction assumed by the Chancery Court. What is clear is that, if there were to be such a jurisdiction, it could only be exercised at the request of those entitled to seek the directions of the Court, such as the Viscount and managers appointed by the Court under the 2000 Order.

33 If there were held to be such a jurisdiction, the Court would of course be carrying out a very

different function to that of judicial review. It would not be considering the validity of the decision of the Attorney General to issue the notice. The validity of the notice would be accepted but the Court would be considering whether countervailing public interest factors in favour of preserving confidentiality outweighed the public interest in investigating that particular fraud by means of that particular notice. The Court would have to carry out the sort of balancing exercise referred to by Hoffman, J.

34 Whether such a jurisdiction exists, and if so, the principles upon which it should be exercised are matters for another day. In the event of any future application of this nature being brought, the representor (whether the Viscount or some other Court appointed official) would need to make clear the nature of the proceedings. As has been pointed out above, the Court's role would be very different depending upon whether it was a judicial review of the issue of the notices or an application for directions as to whether the recipient of the notice had a ‘reasonable excuse’ not to comply. The representors' skeleton agreement in this case veered between these two approaches in a somewhat uncertain manner before Miss Lacey eventually nailed her colours to the mast of judicial review.

Costs of implementation

35 Finally Miss Lacey argued that, if the notice were upheld, the costs of compliance should be borne by the Attorney General. She argued that such costs were not “….. merely one of the inevitable expenses of [the Viscount's] position as an officer of the court which he was expected to bear”. See *Rumasa S.A. v W & H Trademarks (Jersey) Limited* (1985–86) JLR 308.

36 There is no provision for payment of costs in the 1991 Law. The invariable practice is that the costs of complying with a notice are borne by the recipient. Thus banks and trust companies often incur quite substantial costs in complying with a notice. We see no reason why the Viscount or managers appointed by the Court should be in a special position. In any event such an order would merely result in one department of government rather than another bearing the costs. They will ultimately all fall upon the taxpayer.

37 Accordingly we hold that the Attorney General does not have to contribute towards the cost of the managers in complying with the notice.