THE COURT OF APPEAL

Birmingham J
Mahon J
Edwards J.

No: 169/11

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

V

JOHN JOE SYNNOTT

Appellant

Judgment of the Court delivered 11th of October 2016 by Mr. Justice Edwards

Introduction
1. This judgment is concerned with an appeal by the appellant against his conviction by the unanimous decision of a jury at Wexford Circuit Criminal Court on the 14th of April, 2011, on three counts, as follows:

Count No. 1:

Statement of Offence
Causing loss by deception contrary to provisions of Section 6(1) of the Criminal Justice (Theft & Fraud Offences) Act, 2001.

Particulars of Offence
John J Synnott, between 9th September, 2007 and 7th November, 2007 did dishonestly, with the intention of making a gain for himself or another, by deception, induce AXA Insurance Co Ltd to pay financial compensation in respect of an alleged road traffic accident at Newtown Road, Wexford, on the 9th of September, 2007 thereby causing another loss.

Count No. 2:

Statement of Offence
Corruption in office contrary to the provisions of Section 8(1) of the Prevention of Corruption (Amendment) Act, 2001.

Particulars of Offence
John J Synnott between the 9th of September, 2007 and the 7th of November, 2007, both dates inclusive, within the State and as a member of An Garda Síochána did acts to wit falsely represented that a road traffic accident had occurred at Newtown Road, Wexford on the 9th of September, 2007 and provided false information for official record purposes for the purpose of advantage to himself or another.

Count No. 3

Statement of Offence
Knowingly as an agent and a member of an Garda Síochána using a document containing a false statement in which a principal is interested with intent to deceive and mislead contrary to section 1(3) of the Prevention of Corruption Act, 1906 as amended by the substitution of section 2 of the Prevention of Corruption (Amendment) Act, 2001

Particulars of Offence
John J Synnott, acting as an agent and a member of an Garda Síochána between the 9th of September, 2007 and 27th of September, 2007, both dates inclusive, within the State, with intent to deceive his principal, namely An Garda Siochána, knowingly used a document in which his principal was interested, to wit, the report of a road traffic accident said to have occurred at Newtown Road, Wexford on the 9th of September, 2007 which was false, knowing the same to be false.

Relevant Circumstances
2. At the centre of this case was an alleged road traffic accident, causing material damage only, which was said to have occurred at Newtown Road, Wexford on the 9th of September, 2007 and wherein an Audi A4 saloon motor car, registration no. 02 KK 2877, said to have been owned and driven by one Beverly Redmond, allegedly collided with a parked and unattended Subaru Impreza saloon motor car, registration no. YN 54 ONZ, said to have been owned by one Lorraine Quinlan.

3. The prosecution case was that there was no such accident, and that the claim that there was one was to be the basis of a fraudulent insurance claim. The jury heard that both vehicle owners made claims against the relevant insurance companies (AXA and Hibernian, respectively) and both received sums in compensation for damage allegedly caused: €9,910 in the case of Beverly Redmond and €13,422 in the case of Lorraine Quinlan. The ultimate payer was AXA Insurance Co Ltd in circumstances where their insured, Beverly Redmond, was clearly going to be held liable if her vehicle had indeed struck Lorraine Quinlan's parked car.

4. The appellant was at all material times a member of An Garda Síochána stationed at Wexford Garda Station. The jury heard that the appellant was indirectly connected to both vehicle owners in the following circumstances. The appellant was a lifelong friend of

one Joe Redmond, alias Danny Lynch, having known him since he was a child. They were both long standing members of Wexford Motor Club. Joe Redmond's wife, from whom he was separated, was Beverly Redmond, the owner and alleged driver of the Audi vehicle. Joe Redmond's girlfriend was Lorraine Quinlan, the owner of the Subaru vehicle.

5. The jury heard evidence from retired Superintendent Thomas Saunderson that Joe Redmond was known to the Gardaí in New Ross as a local criminal. The prosecution case was that appellant was aware of this and, indeed, that the appellant had in the past intervened with a Garda colleague concerning Joe Redmond, following upon Joe Redmond becoming a person of interest to that Garda.

6. In that regard, the jury heard evidence concerning an incident on the 10th of November, 2004 when Detective Garda Pat O'Brien and Detective Garda John Sheehy were on duty at Rosslare Europort and stopped and searched a van as it disembarked from a car ferry. The driver of the van gave his name as Joe Redmond and the front seat passenger gave her name as Lorraine Quinlan. Detective Garda O'Brien told the jury that, as he was speaking to Mr Redmond, he (the Detective Garda) received a telephone call from the appellant, details of which he noted in his notebook. The appellant asked the Detective Garda if he was going to "hang on to him". Detective Garda O'Brien said that he didn't know. The appellant had then inquired about how much wine Redmond had with him, and stated that Redmond was just after ringing him. Detective Garda O'Brien told the appellant that he would speak to him later. That evening at around 11 p.m. the appellant rang Detective Garda O'Brien again. The Detective Garda gave evidence that the appellant told him that he didn't want to be involved with Redmond and that he wasn't involved with him. He just knew him. The appellant told the Detective Garda that Redmond was dangerous and that Detective Garda John Sheehy had "pissed Redmond off" but that he, Detective Garda O'Brien, was okay. He urged Detective Garda O'Brien to "be very careful." He also asked Detective Garda O'Brien if he himself was suspect for talking to Redmond. Detective Garda O'Brien told him "No", but stated that he and others were aware that the appellant knew Redmond. Detective Garda O'Brien then asked the appellant whether someone of higher rank had been speaking to him about Redmond. The appellant responded that he had met someone a few times and had spoken to this person about Redmond. The appellant added that his own phone number "will probably pop up in the phone records".

7. Returning to the events of September 2007, the jury heard from Ms Dearbhla Carey, a civilian operator employed by the garda information service, who told them that at 11.04am on the 11th of September, 2007 she was at work and took a call from a man purporting to be the appellant. A formal admission was later made by defence counsel that it was in fact the appellant. Ms Carey told the jury that the appellant, purporting to be the investigating Garda, reported the aforementioned road traffic accident to her and requested her to create a PULSE incident record in respect of it. She did this as the appellant provided the details to her over the phone concerning the parties and vehicles allegedly involved, together with a narrative of the circumstances as they had allegedly been reported to him. A recording of her conversation with the appellant was played to the jury, and the details of the incident as she had recorded them were reflected in a PULSE Incident record printout which was also produced to the jury.

8. The jury also had produced to them a written Traffic Accident Preliminary Report (T.A.P.R.), prepared on a standard form by the appellant, signed by him, and dated the 9th of September, 2007, which he had submitted to the sergeant in charge at Wexford Garda Station, a Sergeant Terence Kenny who also gave evidence, and who in turn, as was standard procedure, had forwarded it to his Superintendent's office. The evidence was that once a T.A.P.R. is received in a Superintendent's office, it is used by staff there for dealing with any queries that might be received from insurance companies or other interested parties concerning the accident in question.

9. The T.A.P.R prepared and submitted by the appellant recorded the particulars of both vehicles and their owners/drivers and asserted, *inter alia*, that the appellant had received an anonymous report of the accident, that he had attended and investigated at the scene, that it was a single vehicle collision with a parked car, and that it was vehicle no. 1 (the Audi) which, while travelling towards New Ross from Wexford, had collided with vehicle no. 2 (the Subaru). The T.A.P.R. further represented that the accident had occurred during the day, in good visibility, in dry weather and with dry surface conditions.

10. Evidence was given about what the appellant was doing at work on the 9th of September, 2007 and what his duties had involved. They had not involved attendance at a road traffic accident at Newtown Road in Wexford. An admission was made on behalf of the appellant on day one of the trial that he had not in fact attended the scene of any road traffic accident on the 9th of September, 2007.

11. It was also formally admitted on behalf of the appellant at the trial that there had been contact between him and Joe Redmond around the time of the 9th – 11th of September, 2007, the relevant dates in these proceedings. Apart from this admission, evidence was given of a considerable degree of phone contact between the appellant's phone and a phone believed to belong to Joe Redmond, involving some 81 calls in all, during the course of the month of September and into the month of October 2007. Moreover, there was evidence as to the storage of a phone number on the appellant's phone that was ascribed to Joe Redmond, and which was proved to belong to Joe Redmond, and which number was used and/or provided in the course of certain transactions relevant to this case.

12. The jury also heard extensive evidence concerning the history of the two cars allegedly involved in the non-existent accident. They heard that the blue Subaru Impreza (an import from Cyprus) was bought by a Mr. David Ewart in the UK about March or April 2006. Mr. Ewart was in a head on collision with the car on 29th October, 2006. The car was written off as a total loss because of the heavy damage.

13. The evidence was that on 15th November, 2006, it was taken to Simpsons Salvage Yard in Yorkshire. It was then advertised for sale in Autotrader magazine and sold for Stg£4,000 on 28th August, 2007 to a person who gave his details as Danny Lynch of 59 Hollybrook Avenue, Ranelagh, Dublin 6. Photographs taken at the time of the 2006 accident showed that the car had suffered significant frontal damage. On the 8th of April, 2008 a blue Subaru Impreza was examined by Detective Garda Kealy at Cushinstown, Wexford at a property belonging to Joe Redmond. He gave evidence that this vehicle had suffered a serious head on collision, and that both airbags had deployed.

14. Detective Garda Kealy further told the jury that a driving licence had been seized during an (unrelated) search in Wexford Town on 29th February, 2008. The licence was in the name of Danny Lynch, but evidence was given that the photograph on the licence was of Joe Redmond.

15. The jury also heard that a blue Audi A4, registration 02KK2877 had been burnt out in an incident in Graignamanagh on 1st November, 2004. It had belonged to a Martina Brennan. It was collected from Graignamanagh on 1st November, 2004 by Brian Kelly of 24 Hours Recovery Service at Borris, County Carlow. It was taken from their yard on 3rd November, 2004 by Patrick Donohoe Salvage in Enniscorthy. In 2005, the car was brought to Wexford Car Dismantlers in Gorey. A corresponding blue Audi A4, registration 02KK2877 was examined at Murphys Dismantlers in Gorey on 3rd April, 2008 by Detective Garda Kealy, i.e. after the alleged accident. Detective Garda Kealy told the jury that when he saw this car it was clear that it had been burnt out and there was no evidence of any serious traffic accident. Detective Garda Kealy, a forensic scenes of crime examiner, told the jury that he was satisfied from an

inspection of the chassis and vehicle identification numbers that this was genuinely the vehicle that had been registered with the motor tax office as 02KK2877.

16. Following the alleged accident, the blue Subaru Impreza was brought to Doyles Autobody repairs in Bunclody on 12th September, 2007, having been booked in by Joe Redmond. A full inspection was carried out by David Doyle who gave evidence before the jury on day two of the trial, and he deemed it beyond economic repair.

17. David Doyle also told the jury that one or two days later, a severely accident damaged blue Audi A4, with no registration plates but with a valid tax disc, was also brought to Doyle's Autobody Repairs, having been booked in by Joe Redmond. It was represented to Mr Doyle by Mr Redmond that this was the vehicle that had been involved in the accident with the Subaru. David Doyle carried out an estimate on the Audi car which came to €15,563.65. In the course of doing so, he inspected the vehicle identification number plate, though not the engraved vehicle identification number or chassis number, and it appeared to be correct for the car. Mr Doyle's evidence was that a vehicle identification number plate, which was simply riveted on, could in principle be removed, unlike a number which was engraved into the chassis. The repairs to the car were carried out on the premises and it was picked up by Joe Redmond in December 2007.

18. The prosecution case was that the blue Audi A4 repaired at Doyle's Autobody Repairs was not the vehicle that was registered with the motor taxation office as 02KK2877 and inspected by Detective Garda Kealy

19. Both cars presented to Doyle's Autobody Repairs for estimation of the cost of repairs were inspected by Tom Hennessy, of Cyril Jacobs Motor Assessors, on 21st September, 2007 who furnished reports to AXA. Following the inspection, Tom Hennessy contacted "Danny Lynch" and agreed a valuation with him for the Subaru Impreza. He also contacted Beverly Redmond and agreed a valuation for the Audi A4. In evidence, Tom Hennessy said that he now saw that the cars could not possibly have been in a collision as described, but that he had acted in good faith at the time. Although he inspected the vehicle identification number plate on the Audi, from which he recorded both vehicle identification and chassis numbers, he did not in this instance follow his usual practice of also checking the engraved numbers on the chassis.

20. The prosecution case as presented to the jury was that the appellant consciously and deliberately assisted Beverly Redmond, Lorraine Quinlan and Joe Redmond in the perpetration of a fraud by procuring the creation of a PULSE incident report in respect of the non existent accident by means of his phone call to Ms Dearbhla Carey on the 11th of September 2007; and by his completion and submission of a T.A.P.R containing manifest and admitted falsehoods, again in respect of the non-existent accident. These, the prosecution contended, were intended to provide a paper trail in the event of one or both of the insurers concerned seeking to verify that an accident had in fact been reported. As it happened, no request for verification or other enquiry concerning the alleged accident was received from the insurers concerned by the relevant Superintendent's office before the claims were paid.

21. The evidence given in that regard came from AXA Insurance Co Ltd staff who told the jury that the decisions to pay were based on the telephone calls they had with the claimants and the report by Tom Hennessy, motor assessor. At no stage did they seek or obtain any Garda report in relation to the alleged accident.

Grounds of Appeal

22. The appellant has filed a Notice of Appeal pleading five grounds of appeal as follows:

> (a) The trial judge erred in law and in fact in failing to grant a direction in respect of count no. 1 on the indictment;
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> (b) The trial judge erred in law and in fact in failing to grant a direction in respect of count no. 2 on the indictment;
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> (c) The trial judge erred in law and in fact in failing to grant a direction in respect of count no. 3 on the indictment;
>
> (d) The trial judge erred in law and in fact in failing properly to charge the jury in respect of the correct interpretation of count no. 1 on the indictment;
>
> (e) The trial judge erred in law and in fact in failing to charge the jury that they might only return a verdict of "guilty" if each element of each offence was proved beyond reasonable doubt, and in failing to direct them as to the relevant parts of each offence.

23. The Notice of Appeal as filed sets out in respect of each complaint the detailed basis on which it is made.

24. In addition, the appellant has filed a Notice of Motion, almost five years after the trial, seeking the leave of this Court to add two additional grounds of appeal, namely that:

> (f) The trial judge erred in law and in fact by introducing into her charge a direction concerning the liability of any person who aids, abets, counsels or procures the commission of an indictable offence to be indicted, tried and punished as a principal offender;
>
> (g) The trial judge erred in failing to adequately put the defence case to the jury.

25. The only explanation put forward for the failure to plead these grounds in the first instance is that they were inadvertently "missed", as counsel for the appellant put it. In that regard, the application was grounded on an affidavit of Tristan Lynas, Solicitor, sworn on the 23rd of December, 2015 in which he states: *"I say that when the said notice of appeal was filed the transcripts of the trial were not in our possession. I say that the transcripts were made available and as Counsel drafted submissions, it became apparent that two further grounds of appeal ought to be included."* Counsel for the appellant concedes that there is no satisfactory explanation for not initially pleading these grounds but has suggested that notwithstanding this the fundamental justice of the case required that the appellant should be allowed to rely on these additional grounds.

26. The application is opposed on the grounds of the absence of a satisfactory explanation, transcript trawling in excess of four years after the event, and inordinate and inexcusable delay. In support of her objection, the respondent has referred this Court to passages from *The People (Director of Public Prosecutions) v Cronin (No 2)* (2003) IR 377; *The People (Director of Public Prosecutions) v. George Redmond* (2001) 3 I.R. 390 and *The People (Director of Public Prosecutions) v. Griffin* [2008] IECCA 112.

27. The Court permitted the appellant to proceed to make his substantive arguments on the proposed additional grounds de bene esse and said that it would rule later on whether the appellant could in fact rely upon them, and ultimately reserved its judgment on

all issues including this issue.

Relevant statutory provisions
28. It will be of assistance in the consideration of many of the issues raised on this appeal to set out at this point a number of relevant statutory provisions.

29. Count no. 1 charges an offence contrary to s.6(1) of Criminal Justice (Theft & Fraud Offences) Act, 2001 (the Act of 2001). That provision states:

> "A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induces another to do or refrain from doing an act is guilty of an offence."

30. Count no. 2 charges an offence contrary to s. 8(1) of the Prevention of Corruption (Amendment) Act, 2001. Section 8 provides:

> "(1) A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence and shall be liable—
>
> (a) on summary conviction, to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or
>
> (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both.
>
> (2) In this section—
>
> "consideration" includes valuable consideration of any kind;
>
> "public official" means a person referred to in subsection (5)(b) of section 1 (inserted by section 2 of this Act) of the Act of 1906."

31. Count no. 3 charges an offence contrary to s. 1(3) of the Prevention of Corruption Act, 1906 as substituted by s. 2 of the Prevention of Corruption (Amendment) Act, 2001. The substituted provision states:

> "A person who knowingly gives to any agent, or an agent who knowingly uses with intent to deceive his or her principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge is intended to mislead the principal shall be guilty of an offence."

32. Section 4(1) of the Criminal Justice Administration Act of 1924 provides:

> "Every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge."

33. Finally, s. 7(1) of the Criminal Law Act 1997 states:

> "Any person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender."

Decisions on the Motion
34. Although counsel for the appellant sought to argue that the first additional ground that his client was seeking to rely upon (ground (f)) had potential implications for all three of the counts on foot of which his client was convicted, we are satisfied that in respect of the convictions on count no. 2 and count no. 3, respectively, it can have no relevance and any suggestion to the contrary is untenable. In the case of count no. 2 and count no. 3, respectively, the conduct forming the *actus reus* of these offences was in this instance personally attributable to the appellant in his capacity as a member of An Garda Siochána, and was not therefore capable of being committed in an accessorial capacity to a principal who was not also a member of An Garda Síochána. That very point was made by counsel for the accused in a submission to the trial judge at the requisitions stage on day 8 of the trial when he stated:

> *"…your lordship outlined the terms of section 7 [of the Criminal Law Act of 1997(the Act of 1997)] in general terms but, in my submission, Judge, the jury has to be directed to the fact that, in fact, section 7 can only apply to count No. 1, and it cannot apply to counts 2 or 3 because nobody else could have carried out the acts relevant to count 2 and 3 because they're specific to John J Synnott as a member of An Garda Síochána."*

35. The trial judge acceded to that application and readdressed the jury to tell them, after reading out again the terms of s.7 of the Act of 1997, that *"… aiding only refers to count no 1. It does not refer to count no. 2 or 3"*. Accordingly, the trial judge did exactly what she was asked to do by defence counsel and no further or follow up requisition was raised. In these circumstances, the appellant cannot now be allowed to argue the polar opposite to the position taken by his legal team at trial, namely that s. 7 of the Act of 1997 was in fact in some way potentially relevant to counts no's 2 & 3, such that he should now be allowed to rely upon ground (f) in support of his appeal against his convictions on those counts. For this reason alone the Court will not allow ground (f) to be relied upon in respect of counts no's 2 & 3 respectively.

36. In respect of count 1, the position is more complicated. The indictment against the appellant, in so far as count no. 1 is concerned, was undoubtedly framed as though he was a principal offender. In the pre-Act of 1997 days his participation, as alleged in the indictment which makes absolutely no reference to any co-offenders or accessories, would have been characterised as that of a principal in the first degree. He claims in this appeal to have had an unanswerable defence in respect of any potential criminal liability as a principal in the first degree, in circumstances where the prosecution did not offer, and had never been in a position to offer, any evidence that AXA Insurance Co Ltd was induced by his deception to do anything. His first point, therefore, is that the trial judge was wrong, in the teeth of that evidential deficit, to have refused him a direction on count no. 1.

37. While it was, and remains, open to the appellant to seek to make that case on foot of his original grounds of appeal, he faces the following difficulty. Arguably, the case against him was never in reality that he was a principal in the first degree, notwithstanding the terms of the indictment, but rather that his criminal liability was derivative. Certainly, that was the basis on foot of which a direction was refused, and it was also the basis on foot of which the case was allowed to go to the jury. If the case was properly allowed to go to the jury on the basis that he was potentially liable to be convicted either on the basis of being party to a common design, or as an accessory, notwithstanding the manner in which the indictment was framed, then there can be no substance to his complaint that he was wrongly convicted in the teeth of a manifest evidential deficit. If it was sufficient for the prosecution to have proved that AXA Insurance Co Ltd was induced by a deception on the part of a group of persons with whom the appellant was acting in common design, or alternatively to whom the appellant had rendered some form of relevant assistance, then the alleged evidential deficit simply did not exist.

38. Because he recognises this difficulty the appellant's second point, which is not covered by his original grounds of appeal but which he now seeks to be allowed to make, is that the trial judge erred in "*introducing into her charge a direction concerning the liability of any person who aids, abets, counsels or procures the commission of an indictable offence to be indicted, tried and punished as a principal offender*". In effect, he is seeking to be allowed to argue that he came to court prepared to meet one case i.e., that his liability was as a principal (a principal in the first degree in pre Act of 1997 terms), and found himself in fact being required to meet another i.e., that his liability was derivative (he was either a principal in the second degree or an accessory before the fact, in pre Act of 1997 terms).

39. An immediate difficulty for the appellant in seeking to make this case is that at no stage did his counsel seek a discharge of the jury and an adjournment of the trial on the basis that he found himself embarrassed or taken by surprise in terms of the case he was required to meet, nor indeed was the judge asked not to permit the case to go to the jury on the basis of derivative liability. Moreover, the only relevant requisition was confined, as has already been pointed out, to asking the judge to tell the jury that accessorial liability could only arise in respect of count no. 1, but that it could have no relevance to counts no's 2 and 3, and that requisition was acceded to. Prima facie, in these circumstances, the Court should lean against allowing the first additional ground (ground (f)) to be pursued, unless the failure to do so would result in a fundamental injustice.

40. In so far as the fundamental justice of the case is concerned, it seems to us that it is necessary for this Court to critically analyse whether the appellant was in fact embarrassed or taken by surprise in terms of how his trial on count no. 1 unfolded, and as to whether there was a serious unfairness in how that trial was conducted, as the appellant now seeks to suggest there was, such as would justify this Court in allowing the appellant to rely upon his additional ground (f) in this appeal, notwithstanding the lateness with which it is being put forward and the failure to offer any cogent explanation either (a) for the gross delay in doing so, or (b) for why the point now sought to be relied upon was not raised at the trial itself.

41. The appropriate starting point is the indictment. Count no. 1 on the indictment is undoubtedly framed as though the appellant was himself the sole offender and participant. As already stated, there is no mention of there having been any other participant(s) with whom the appellant might have been complicit either in terms of having acted in concert with, or of assisting, or of being assisted by, such person(s).

42. An indictment performs a number of functions. It is a public record of the formal charge or charges preferred against an accused, and in respect of which the accused will be required to answer by pleading either "guilty" or "not guilty" upon arraignment. It is also the formal notification to the accused of the charges or charges that he/she faces, and in that respect in part fulfils the fundamental natural justice requirement of *audi alteram partem* which is an integral part of due process. An accused is entitled to know the case that he or she has to meet and as one aspect of that is entitled to expect that he or she will be informed in advance of the trial, and with some precision, of the charge(s) to be preferred against him or her. The indictment provides, or should provide, that information. It is for this reason that s. 4(1) of the Criminal Justice (Administration) Act, 1924 requires that an indictment should contain *"a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge"*.

43. Another important function of the indictment is that it provides a template for the drafting of the issue paper to be given to the jury at the end of the trial. The issue for the jury's decision on each count is always framed with reference to the indictment, with the wording of the charge being taken verbatim from the indictment in each instance.

44. Where a person is considered to have derivative liability for a crime with which they have been charged the indictment does not necessarily have to contain any statement to that effect. The law provides, in s. 7 of the Act of 1997, that a person "*who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender".*

45. Accordingly the statement of offence in the indictment may simply specify the offence being alleged as though the accused were a principal offender, rather than pleading that the offence was committed on the basis of secondary participation. To take the example of count no. 1 in the present case, the statement of offence could have pleaded, as indeed it was pleaded, that the offence was one of "Causing loss by deception, contrary to Section 6(1) of the Criminal Justice (Theft & Fraud Offences) Act, 2001.". Equally, however, it might have been pleaded as one of "Aiding and abetting the causing of loss by deception, contrary to Section 6(1) of the Criminal Justice (Theft & Fraud Offences) Act, 2001."

46. In so far as particularisation is concerned, it is also not mandatory that the "particulars of offence" should specify that it was committed by secondary participation. In discussing the analogous provision to s. 7 of the Act of 1997 in the neighbouring jurisdiction, *Blackstone's Criminal Practice* (2000 edition) states, at para D9.12, that:

> "When indicting a secondary party to an offence (i.e. an aider, abettor, counsellor or procurer), there is no need to indicate, either in the statement of offence or particulars, his role. This convenient rule flows from the Accessories and Abettors Act 1861, s.8, which provides that: 'Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, *indicted*, and punished as a principal offender' (emphasis added). The usual practice is to take advantage of the 1861 Act and employ the same form of words in indicting a secondary party as would be used against a principal offender. There is, however, no objection to an express allegation of aiding and abetting, and it may be preferable so to draft if the circumstances are such that the accused could not possibly have been guilty as a principal offender (e.g., when the allegation is that a woman aided and abetted a man to commit rape; or that one entitled to drive aided and abetted another to drive while disqualified). In such cases, the precedent for a count against a principal offender may be adapted by prefixing the statement of offence with the words 'Aiding and abetting' and by inserting in the particulars 'aided and abetted [name of principal offender] to … '. Where the prosecution are unsure of the precise

role played by the accused it is permissible to allege aiding, abetting, counselling or procuring in the alternative in one count (*Ferguson v Weaving* [1951] 1 KB 814)."

47. These views are echoed in Archbold on *Criminal Pleading, Evidence and Practice,* (2014 edition) which states, at para 18.32, that:

> "It is usual to indict secondary parties, within the Accessories and Abettors Act 1861, s.8, as principals. No objection could be taken to an indictment in such form, but it is desirable that the particulars should bear some relation to the realities, making it clear, if it be the case, that the defendant is alleged to be an accessory: see *DPP for Northern Ireland v. Maxwell*, 68 Cr.App.R. 128 (per Viscount Dilhorne, at p. 143; per Lord Hailsham, at p. 147; per Lord Edmund Davies, at p. 150); *R. v. Gauglian,* 155 J.P. 235, CA; and *R. v. Taylor*, *Harrison and Taylor* [1998] Crim.L.R. 582, CA. But there is nothing to prevent the indictment alleging participation as a principal where the prosecution case is advanced on alternative bases of participation as a principal or as an accessory: *Gaughan, ante."*

48. We are satisfied that while count no. 1 on the indictment, as preferred, was technically compliant with the rules of pleading it would have been preferable if the particulars thereto had in fact made clear the basis on which the prosecution was seeking to have criminal liability attributed to the appellant.

49. We recognise however that this might not have been particularly easy in that the prosecution wished to present the case to the jury on the basis that they could convict in one of two alternative ways.

50. As they conceived it, it was open to a jury on the evidence to regard the appellant as being a primary offender i.e., party to a common design with Beverley Redmond, Lorraine Quinlan and Joe Redmond to cause loss by deception, and to convict the appellant by application of the normal rules relating to joint enterprise.

51. However, the case was also being put forward on the alternative basis that it was open to a jury on the evidence to take the view that even if they could not be satisfied beyond reasonable doubt that the appellant was a party to the tacit agreement between Beverley Redmond, Lorraine Quinlan and Joe Redmond underpinning what was clearly a common design on their part, he had nevertheless aided and abetted those parties by providing material assistance to them in carrying out their common design.

52. A more satisfactory indictment, accommodating the alternative bases on which the case was being advanced, might have looked like this:

Statement of Offence

Causing loss by deception, contrary to the provisions of s. 6(1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001

Particulars of Offence

John J Synnott between the 9th of September, 2007 and the 7th of November, 2007 (both dates inclusive), within the State, while acting in common design with Beverley Redmond, Lorraine Quinlan and Joe Redmond, dishonestly, and with the intention of making a gain for himself or another or others, and by deception, induced AXA Insurance Co Ltd to pay financial compensation in respect of an alleged road traffic accident at Newtown Road, Wexford on the 9th of September, 2007 thereby causing loss to the said Axa Insurance Co Ltd; alternatively aided and abetted the said Beverley Redmond, Lorraine Quinlan and Joe Redmond in the carrying out of a common design on their part to do so.

53. Our view therefore is that the indictment actually preferred, though not bad per se, was suboptimal in terms of its function of communicating to the accused the nature of the case that he was required to meet.

54. However, the contents of any indictment are not to be considered entirely in a vacuum. Rather, for any accused facing trial on indictment to appreciate the full implications of the charge(s) laid against him, it is necessary for him to consider the indictment in the context of the Book of Evidence also served on him in advance of the trial. The Book of Evidence outlines the evidence that the prosecution intends to adduce in support of its case and in that way informs the accused, either expressly or by necessary implication, of the precise manner and means by which the prosecution will seek to prove that he committed the crime(s) with which he has been charged.

55. In the present case, the evidence presented in the Book of Evidence was only ever consistent with derivative criminal liability in so far as count no. 1 was concerned. It never contained anything to suggest that AXA Insurance Co Ltd had actually been induced by the appellant's personal acts of deception i.e., the procuring of the creation of a false PULSE incident report and the submission of a false T.A.P.R., to do something that had resulted in loss to them. On the contrary, the Book of Evidence had heavily emphasised the value of the appellant's acts of deception as potential supporting evidence for the false insurance claims made by Beverly Redmond and Lorraine Quinlan, respectively, in the event of the insurer concerned seeking verification of the fact of the accident. It also disclosed the happenstance that no such enquiry was in fact made, and that therefore the false supporting evidence created by the appellant did not need to be availed of. We are therefore strongly of the view that, notwithstanding the terms of the indictment, the defence would have had good reason to anticipate that the case to be answered would be based upon derivative liability.

56. It is then necessary to consider the actual run of the case, starting with counsel for the prosecution's opening speech. Regrettably, there was no attempt by prosecuting counsel in his opening speech to the jury to explain the legal basis on foot of which criminal liability was to be attributed to the appellant on account of his actions. There was no mention of either of common design or of s.7 of the Act of 1997. However, by the same token, the case was not presented to the jury on the basis that the appellant's actions had to be viewed on a stand alone basis in so far as count no. 1 was concerned, i.e., as though he were a principal in the first degree. Rather, counsel had simply outlined to the jury the evidence that the prosecution intended to adduce, and had commented, *inter alia*, that:

> *"…ultimately the essence of the case that you have to concentrate on is the evidence that links Garda Synnott to this inappropriate behaviour and as I say it's not always obvious in a primary way, the way I outlined to you earlier, that that is so. But when you -- when you get into the evidence and when you examine it, and I invite you to do so, you'll see that when the strands come together they come together very tightly and they indicate a connection between Mr Synnott and these fraudulent activities that, in my submission to you, could be established beyond a reasonable doubt."*

57. There was no objection to the opening by counsel for the defence, or indeed any indication that a problem in meeting the case was perceived at that stage.

58. The evidence adduced by the prosecution was then duly led, and cross-examined upon, in accordance with the Book of Evidence, and at various times in this phase of the trial, in between witnesses, defence counsel made the several formal admissions on behalf of his client alluded to earlier in this judgment.

59. Then at the end of the prosecution case, counsel for the defendant applied for a direction on all counts. In so far as count no. 1 was concerned he referred to the indictment, and alleged an evidential deficit with respect to an essential proof on the basis that there was no evidence before the jury that AXA Insurance Co Ltd had been induced to act to their detriment by any deception perpetrated by his client.

60. In response to this, counsel for the prosecution made the following submission:

"MR McDERMOTT: … Clearly the prosecution has identified the main perpetrators - I can call them that - as Joseph Redmond, otherwise known as Danny Lynch, Beverley Redmond, Lorraine Quinlan, and I submit in that regard that Joseph Mr Synnott's involvement can be looked at from two perspectives: either as a person who is fully involved in the offence, primary offender ...

JUDGE: Mm-hmm?

MR McDERMOTT: Or a person who, pursuant to section 7 of the Criminal Law Act of 1997, is a person who aids and abets the commission of an indictable offence, and of course under section 7 of the Criminal Law Act of 1997 any person who 'aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender'."

61. If it had been in some way unclear up to that point on what legal basis the prosecution were seeking to attribute criminal liability to the appellant, the position was entirely clear once this submission was made.

62. Despite this, and crucially in this Court's view, there was no protest from counsel for the defence that he was taken by surprise, or embarrassed in the conduct of his client's defence. On the contrary, his only rejoinder was to suggest that the evidence, such as it was, did not support the prosecution's contentions of complicity on the part of his client. He never suggested a failure on his part to appreciate that a case based on complicity, and potentially giving rise to derivative liability, was being made all along. Moreover, when he was refused a direction on count no. 1, and the trial judge indicated that she was going to allow the matter to go to the jury in circumstances where she believed that s.7 of the Act of 1997 was relevant, he did not object or seek either a discharge of the jury, or even an adjournment, on the grounds of professional embarrassment or being taken by surprise. Rather, his only application was for 20 minutes to take instructions concerning whether or not his client wished to go into evidence. In the event his client did not give evidence.

63. The trial then proceeded into the speeches and charge phase. In the course of the closing speech on behalf of the prosecution the jury were expressly told, at different points, that *"the prosecution allege that JJ Synnott aided and abetted Mr Redmond and his cohorts in the commission of a deception against AXA which we all know occurred" and that "it's the prosecution case that, rolling all the strands of the evidence together, it becomes very clear that Mr Synnott was involved in the deception upon AXA and rendered that deception material assistance in the formation and delivery of false reports upon which the insurance company it would be known would be placing reliance upon*."

64. While this speech does not expressly concede the abandonment by the prosecution at this point of a case based upon common design (indeed it was very unlikely that they would do so as the speech had immediately followed on from the direction application in which it had been expressly submitted that on one view of the evidence a finding of common design was potentially open), it clearly indicates the prosecution considered that the evidence more readily suggested that the accused had acted in an accessorial capacity rather than as a principal who was party to a common design.

65. The prosecution's closing speech was followed by the closing speech on behalf of the defence. The defence speech concentrated on the charge as framed in the indictment and, as the following passages indicate, it sought to persuade the jury that there was an evidential deficit in the prosecution case:

> *"So, Joseph Redmond, Beverly Redmond, Lorraine Quinlan and, if he is a person other than different to Joe Redmond, if a Danny Lynch exists, all of them were involved in trying to perpetrate a fraud on AXA, and AXA accepted what they say without question and paid out and they paid out to Lorraine Quinlan and Beverly Redmond or Beverly Redmond and Joseph Redmond in fact the cheque was made out. And it is quite clear that they did so, and the evidence is absolutely clear, they did so totally relying on what was told them by those three people over the telephone. They did not rely on anything else. They didn't concern themselves with anything else. They did not ever check with the guards as to whether such an accident occurred. They never made a phone call to the guards. There was never an enquiry of any kind from the guards. They just took what they were told by Joseph and Beverly Redmond and Lorraine Quinlan and on the basis of that they paid out the two cheques.*
>
> *Now, what that means is that JJ Synnott did not feature in this in any way. Anything he did, any report he put in had no bearing at all on anything that AXA did, no bearing at all because both the PULSE report was just made, it was recorded and that was it. It was never called up again. The accident report, that just was put away. Now, had a call come in to the garda station and had either of those reports been looked up and had JJ Synnott had been called in and said what do you know about this, and had he come up with some kind of a cock and bull story about it, then of course he would have been taken some part and maybe have had some effect in what subsequently happened, the payout, but nothing remotely like that ever happened and we have the clearest evidence that you could ask for straight from the mouth of the various AXA representatives that they paid out in good faith based on what they were told over the telephone by these three people. We have further evidence that at no stage did AXA make any check of any kind with the guards in relation to this accident. They relied totally on what was said to them. So, nothing, they weren't even aware of the existence of JJ Synnott or of any reports, and they in no way placed any reliance on anything that he may have done, and therefore the existence or nonexistence of a report had absolutely nothing to do with their decision to pay out the sums that they paid out to these three fraudsters."*
>
> *…*
>
> *"Now, if we look at the individual charges, the extent of just how far the prosecution are reaching, and I say overreaching in this case, starts to become very clear. The statement of offence number 1, the particulars of the offence: "John J Synnott, between the 9th of September 2007 and the 7th of November 2007, within the state, did dishonestly, with the intention of making a gain for yourself or another by deception, induce AXA Insurance to pay*

financial compensation in respect of an alleged road traffic accident at Newtown Road, Wexford, on the 9th of September 2007, thereby causing another loss." Now, has the word "induce" lost all its normal meaning? I always thought the word induce meant that I do something that causes somebody else to do something. In this case AXA, and it's their evidence, have made it as clear as day that they paid out on that fraudulent claim based entirely on the phone calls they had with Joseph Redmond, Beverly Redmond and Lorraine Quinlan. They have also said clearly they never checked it. They never made any approach to the guards about this accident to check it out. They were totally unaware of any reports that had ever been put in and they most certainly did not rely on any such reports. How then could they be induced to pay out by reports of whose existence they were totally unaware? It doesn't make sense in simple English, that first charge. They were not induced by anything JJ Synnott did to do anything. They were unaware of the man's existence, not to mind any report. They paid out purely on the basis of what they were told by those three fraudsters."

66. While the passages just quoted make clear that the main focus of the defence speech was on the claimed evidential deficit, it is noteworthy that it did engage to a limited degree with the suggestion of derivative liability, as the following further passage illustrates:

"And what I am saying to you here is you have a block of evidence about three frauds, and we have heard them on tape. We have seen the transcript. We have seen how they did it. We have seen how they got the money. And on the other hand you have two reports put in by JJ Synnott, and they were never acted on. They never had any effect on AXA or on anyone else. They were never used until this case came up. And there is an attempt to somehow connect JJ Synnott with this obvious fraud just on the basis that he had known Joseph Redmond over the years and that there was continuing phone messages between them. Now, I would submit to you, ladies and gentlemen, that if ever there was a complete lack of evidence to draw such a connection, it is there. That evidence could have been supplied by incriminating texts, emails, things that JJ Synnott admitted, anything like that, or if there had been others said anything about him. But there isn't a scrap of evidence. This is a creation of somebody who decided to connect JJ with this fraud but purely on the basis that he had put in this report which was never acted on."

67. Counsels' closing speeches were then followed, as is always the case, by the trial judge's charge. In the course of that charge the jury were, *inter alia*, given an explanation of the ingredients of each offence and were then told:

"Ladies and gentlemen, you will be given an issue paper with these charges on it so you will be able to peruse them. Now, ladies -- ladies and gentlemen, any person who knowingly aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried, and punished as a principal offender. So, if you knowingly aid, abet, counsel, or procure the commission of an indictable offence then you will be treated as the same as the person who actually performed the -- the -- the offence. So, you -- he'll be tried and punished as a principal offender."

68. As previously stated, no objection was raised to this direction at the requisitions stage, save for a request that the trial judge should re-address the jury to tell them that in so far as s.7 of the Act of 1997 might have a relevance, it could only be potentially relevant in the case of count no. 1. It was never suggested that the trial judge had been wrong to tell the jury about s. 7 of the Act of 1997, or that she had been wrong in allowing the jury to consider if the evidence justified the attribution to the appellant of derivative criminal liability, and specifically liability as an accessory.

69. Having considered all aspects of this case, including the pleadings, the likely evidence flagged in advance of the trial, the evidence actually adduced, the submissions made by counsel on both sides at various points in the trial, the trial judge's various rulings, and the overall run of the case, we are completely satisfied that any suggestion that defence counsel might have been embarrassed or taken by surprise in having to meet a case based on derivative criminal liability is untenable. We are therefore of the view that the interests of justice do not require that the appellant should be allowed to rely on the first additional ground (ground (f)) that he now seeks leave to advance on foot of his motion. Rather, having regard to his gross and inordinate delay in seeking to raise this issue as a ground of appeal, coupled with his failure to raise it at the trial, we are not disposed to allow him to do so, and refuse to grant the leave sought.

70. In so far as the second additional ground (ground (g)) is concerned, counsel for the appellant acknowledged that it was difficult for him to seek to advance the complaint now made in circumstances where no complaint had been made in requisitions that the trial judge had failed to adequately put the defence case to the jury, and the point was being raised for the first time nearly five years after the trial. Counsel stated that he was only seeking to press the point with respect to count no. 1 and in so far as the defence had been contending that their was an evidential deficit with respect to the required ingredient of inducement. He conceded in the course of an exchange with the Court at the appeal hearing that if he was right that there was an evidential deficit with respect to the inducement requirement he should have succeeded in his application for a direction, a matter covered by the original grounds of appeal, whereas if he was wrong then he had no valid basis on which to complain about the trial judge's charge. In circumstances where that is so, and in circumstances where no cogent explanation has been put forward as to why the complaint now sought to be made was not included in the original grounds of appeal, or even raised in requisitions, we do not consider it appropriate to allow this proposed additional ground to now be relied upon. We are satisfied that refusal of the leave sought in respect of ground (g) will not result in a fundamental injustice in the circumstances of the case.

71. We will now, therefore, proceed to address the grounds of appeal that were originally lodged. In doing we propose grouping grounds (a) (b) and (c) together under the heading "complaints based on the refusal of directions", and grounds (d) and (e) together under the heading "complaints in respect of the trial judge's charge."

Grounds (a), (b) and (c) - Complaints based on the refusal to grant directions.

72. In so far as the failure to grant a direction on count no 1 is concerned, we are required by the appellant to address an number of specific assertions. First, he suggests that there was no evidence before the court that AXA Insurance Co Ltd had been induced by any act or omission of the accused to pay financial compensation to anybody. In our view this argument is misconceived. To make it at all is to miss the point, or perhaps to deliberately ignore it, that the case against the appellant was at all times based upon derivative liability, either on the basis that he had acted in common design with Beverly Redmond, Lorraine Quinlan and Joe Redmond, alternatively had assisted or encouraged them in their common design. If, as was the case, it was open to the jury on the evidence to regard the appellant either as having participated in a common design to cause loss by deception, or alternatively as having provided assistance or encouragement to others who were acting in concert to that end, then once there was evidence that AXA Insurance Co Ltd had been induced by a deception committed by any participant in the common design to pay financial compensation to anybody, it was sufficient to allow the matter to go to the jury. There was such evidence.

73. It was also contended that there was no evidence before the court of any dishonesty on the part of the accused. However,

there manifestly was the basis for an inference of dishonesty in that the appellant had expressly admitted submitting reports (both oral and in writing) that he knew to be false in respect of an alleged accident, and having regard to the evidence as to the relationship, and recent contacts, between him and Joe Redmond who was in turn connected to both parties involved in the alleged accident and who had received insurance payouts.

74. It was also submitted that there was no evidence before the court that the accused had engaged in deception or that AXA had been deceived by the accused. Once again these submissions are simply untenable where the case made against the appellant was at all times based upon derivative liability and there was at least some evidence to support possible involvement in a joint enterprise to cause loss by deception, alternatively the aiding and abetting of others acting in concert to that end.

75. It was submitted that there was no evidence of fraudulent intent on the part of the accused. Once again, while it was a circumstantial case, the available evidence, viewed at its height, manifestly was capable of supporting an inference of fraudulent intent.

76. It was further submitted that there was no evidence that the accused had aided, abetted, counselled or procured any person to induce AXA to pay financial compensation to anybody. While s. 7 of the Act of 1997 still uses the old language of aiding, abetting, counselling or procuring it is beyond peradventure that it is sufficient to establish accessorial liability in respect of acts committed before the fact if assistance or encouragement has been rendered to a principal offender. There was clear basis for inference on the evidence adduced by the prosecution that the appellant's actions were intended to create a paper trail that could provide supporting evidence for the false insurance claims made by Beverly Redmond and Lorraine Quinlan, respectively, in the event of the insurer concerned seeking verification of the fact of the accident. The fact that the insurers concerned did not in fact query the validity of the claim, and the false supporting evidence created by the appellant was not availed, is neither here nor there.

77. We are satisfied in the circumstances that count no. 1 was properly allowed to go to the jury and that the trial judge was correct to refuse the application for a direction in respect of it.

78. In so far as the failure to grant a direction on count no. 2 is concerned, the appellant firstly complains that there was no evidence before the court that the accused knew that any representation made by him was false or that the information provided by him for official record purposes was false. These contentions can be readily rejected in circumstances in which there was evidence that the appellant himself had prepared and submitted the T.A.P.R., in respect of the alleged accident on the 9th of September, 2007, which document had expressly asserted that he had attended at the scene, and where in the course of the trial a formal admission was subsequently made on his behalf that he had not in fact attended the scene of any road traffic accident on the date in question.

79. It is further complained that there was no evidence before the court that any representation made by him, or information provided by him, was for the purpose of advantage of himself or another. Again, while the case was based on circumstantial evidence, there was nevertheless a possible basis for inferring that what was done was done for the purpose of advantage to himself or another. Specifically, it was the prosecution's case that the false reports were intended to create a paper trail that could provide supporting evidence for the false insurance claims in the event of the insurer concerned seeking verification of the fact of the accident.

80. We are satisfied in the circumstances that the trial judge was also correct to allow count no. 2 to go to the jury, and to refuse a direction in respect of it.

81. In so far as the failure to grant a direction on count no. 3 is concerned, the appellant complains that there was no evidence before the court that the accused had intended to deceive or mislead his principal or any other person, or that he knew that the report of a road traffic accident was false. Once again, we are completely satisfied following a consideration of all of the evidence adduced before the jury that there was an adequate basis on foot of which an intent to deceive might have been inferred. Moreover the reference to "a report of a road traffic accident" in the particulars of offence pleaded with respect to count no. 3 relates to the "document" referred to in the immediately preceding clause and therefore refers to the appellants own report, i.e., the T.A.P.R., rather than the anonymous telephone report of the accident that he claimed to have received. As previously noted, it was falsely asserted within the T.A.P.R., which the appellant himself had prepared, that he had attended at the scene, yet a formal admission was subsequently made on his behalf at the trial that he had not in fact attended at the scene. In the circumstances the contention that there was no evidence that he "knew" that his report was false must inevitably be rejected.

82. We are satisfied in the circumstances that count no. 3 was properly allowed to go to the jury and that the trial judge was correct to refuse the application for a direction in respect of it.

Grounds (d) and (e) – Complaints in respect of the judge's charge

83. In support of ground (d) which alleges that the trial judge failed to properly charge the jury in respect of the correct interpretation of count no. 1 on the indictment the basic complaint appears to be that no explanation was given of what it means to "induce" a party to do something to their detriment. It is specifically complained that the term "induce" has a meaning at law that was not explained to the jury adequately or at all. The suggested meaning, as appears from a requisition raised by the defence, is that which applies in contract law in the context of a misrepresentation, namely that the party concerned was caused to rely upon the misrepresentation to their detriment, and that for the existence of an inducement to be proven there has to be evidence of reliance on the statement at issue.

84. We have considered in detail the terms of s.6(1) of the Act of 2001 and are completely satisfied that the word "induces" as it appears is not a term of art. There is no special statutory definition of it, nor is there anything to suggest that it has any different meaning to its natural and ordinary meaning. It is the active voice of the present tense of "to induce" which in turn means in ordinary usage to persuade, influence or lead a person to do something. The rules of statutory construction require that words should be afforded their natural and ordinary meaning unless the contrary is expressly indicated. There is no such indication here. Be that as it may, we do not in any event consider that that is much different from the meaning suggested by counsel.

85. In circumstances where the word "induce" was to be afforded its natural and ordinary meaning, and it is indeed a common enough word, it begs the question as to whether much explanation at all of it was required by the trial judge in the course of her charge. Beyond reading s.6(1) of the Act of 2001 to the jury she initially provided little explanation of the provision at all, stating that;

> "It means as it reads, ladies and gentlemen; there's nothing strange about that charge. You can -- if you've any difficulty understanding it come back to me but it is quite plain what is required. The accused is required to have acted dishonestly with -- with intention of making a gain for himself or another by deception of -- of AXA and in -- and thereby inducing AXA to make a payment."

86. It was following on from this that the trial judge was requisitioned by both sides to provide some further explanation of certain of the words or phrases used in the subsection at issue, and in the case of the defence, specifically in relation to the meaning of the word "induced". The judge was not opposed in principle to giving some degree of further explanation of the ingredients of the offence created by the subsection, and indeed did provide further explanation of "deception", but did not do so in respect of the word "induced". The reason for this is clear from the transcript. Defence counsel's application was not so much that the word "induced" required specific explanation, although he did ask for that, *inter alia*. However the main focus of his requisition was that because of his belief that the concept of inducement had to be approached in the same way as it is in contract law, he wanted the trial judge to specifically tell the jury that they had to disregard any evidence from the witnesses from AXA Insurance Co Ltd as to that company's decision to pay out on the claims of Beverly Redmond and Lorraine Quinlan in circumstances where there had been unequivocal evidence that AXA Insurance Co Ltd were completely unaware of any statements/reports made or created by the appellant. The trial judge was firmly opposed to doing that and stated, correctly in our view, that:

> *"JUDGE: I don't think -- I don't think I can do that. I think I'm interfering with the jury's function if I do that."*

87. The evidence of the AXA witnesses would not have been relevant had the jury been confined to considering the case against the appellant on the basis that he was a principal in the first degree. However, they were not so confined, and were at liberty to consider possible criminal liability on the part of the appellant on a derivative basis. In those circumstances the evidence from the AXA witnesses, being otherwise admissible, was indeed relevant and potentially probative and it would not have been correct of the trial judge to tell the jury that they were obliged to disregard that evidence.

88. Having so ruled, the trial judge ultimately elected not to give any further explanation to the jury of the word "induced", indicating that she believed that it was not required. She stated in that regard:

> *"JUDGE: I -- I think I'll leave it at that and because I think the -- the word "induced" is a commonly used word and can be understood by the jury. I'm going to leave it at that …"*

89. We are satisfied that the trial judge gave the matter due consideration, and that the decision that she made was within the scope of her legitimate discretion. We are not convinced that any further explanation was in fact called for.

90. There is a further complaint made in support of ground (d) that "the standard of proof in respect of a criminal charge is higher than in respect of a civil matter, and the jury were not so charged in respect of the accusation that the accused "induced" AXA to pay out financial compensation". We regard this complaint as completely without foundation. The jury were never led to believe at any stage that anything other than the criminal standard of proof applied to each and every ingredient of the s.6(1) offence.

91. Finally, in relation to ground (e) which alleges that the trial judge failed to charge the jury that they might only return a verdict of "guilty" if each element of each offence was proved beyond reasonable doubt, and failed to direct them as to the relevant parts of each offence, we are satisfied that these complaints are not borne out by the transcript. The judge charged the jury clearly, carefully and correctly in general terms both as to the onus and standard of proof in a criminal case. She also read out the statutory ingredients of each offence identifying the relevant components and, having done so, towards the end of her charge further instructed the jury as follows:

> *"Now, ladies and gentlemen, all criminal offences have two necessary and essential elements. One, there is the crime itself, that's the act that has been done which is the case of the actual in this -- the actual robbery or carrying a firearm or in this case, as is alleged, cause loss by deception, the actual causing -- the -- the act of the causing contrary to the provisions of section 3(1) being corrupt in office and using a document containing a false statement in which a principal is interested. They are the acts. That's -- that's the first part of a criminal offence but the second essential element is the criminal intent and that is the intention to do that is the intention in order to carry out and it's called mens rea. Both of these elements must be present; so the act of doing the offence and the -- also the intention to do the -- the -- the crime. You must be satisfied there that a person accused of a criminal offence not only committed the criminal act but at the time he committed it he had the necessary criminal intention to do so. Intent is present where the purpose of the accused is to engage in the conduct -- conduct to which he regarded it's not always easy to see what a person intended. You can't get inside a person's mind. Where a person is presumed to have intended the natural and probable consequences of his actions the onus of establishing intent beyond reasonable doubt is vested to the prosecution."*

92. We are satisfied from all of this that the jury would have fully understood how to analyse the evidence with respect to each charge, and that they would have clearly understood that each ingredient, comprising either the *actus reus* or the *mens rea* of the offence, required to be established by the prosecution to the standard of beyond reasonable doubt.

93. In the circumstances we are not disposed to uphold ground (e).

Conclusion

94. In circumstances where this Court has found itself unable to uphold any of the appellant's grounds of appeal against his conviction, that appeal is dismissed.