Neutral Citation Number: [2025] EWHC 1511 (Ch)

Claim No: BL-2022-001713

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

18th June 2025

Before :

MR JUSTICE EDWIN JOHNSON

- -

Between :

BALJIT SINGH BHANDAL

Claimant

and

(1) HIS MAJESTY'S REVENUE & CUSTOMS
(2) STEPHEN FREDERICK BROAD

Defendants

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- -

Christopher Newman (instructed by direct access) for the Claimant
Michael Kent KC and Jack Macaulay (instructed by the General Counsel and Solicitor to His Majesty's Revenue & Customs) for the Defendants

Hearing dates: 19th, 20th, 21st, 24th, 25th, 26th and 27th February 2025
(further written submissions 18th, 21st and 24th March 2025)

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JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10.30am on Wednesday, 18th June 2025 by circulation to the parties and their representatives by email and by release to the National Archives.

Mr Justice Edwin Johnson:

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Introduction

1. In these proceedings the Claimant, Mr Bhandal, seeks to have set aside certain judgments and orders of the court made in two previous sets of proceedings commenced by the Claimant, on the basis that they were procured by fraud.

2. In the first set of proceedings, commenced in the Chancery Division of the High Court by claim form issued on 17th July 2007, the Claimant sought a variety of relief against a number of Defendants, who included the First and Second Defendants in the current proceedings; that is to say His Majesty's Revenue & Customs and Mr Stephen Broad. Those proceedings were stayed by an order of Master Moncaster made on 1st May 2008, and were subsequently struck out by an order of His Honour Judge Jarman QC, sitting as a Judge of the High Court, made in February 2018.

3. In the second set of proceedings, commenced in the Administrative Court of the Queen's Bench Division (as it then was) of the High Court by application notice dated 4th March 2011, the Claimant sought statutory compensation against the First Defendant pursuant to Section 89 of the Criminal Justice Act 1988. Those proceedings came to trial before Collins J in January 2015. For the reasons set out in a judgment handed down on 11th March 2015, Collins J dismissed the claim for statutory compensation.

4. The Claimant commenced the current proceedings by claim form issued on 3rd October 2022. So far as the Claimant's allegations of fraud are concerned, the central question which arises is whether or not a warrant of arrest in the first instance was issued out of the Uxbridge Magistrates' Court, for the arrest of the Claimant, on 18th July 2001.

5. The Claimant alleges that no such warrant was issued. His case is that the copy of the warrant which has been produced by the First Defendant is a forgery, as is the information which is said to have been laid before the Uxbridge Magistrates' Court on 18th July 2001 for the purposes of obtaining the warrant. The Claimant alleges that both documents were created as forgeries, at some stage between 2001 and 2008, either by the Second Defendant or with the complicity of the Second Defendant. The Claimant alleges that the First Defendant, acting by the Second Defendant and by others, and the Second Defendant, in his own capacity, repeatedly and fraudulently represented to the Claimant and to the court that the information had been laid before the Magistrates Court, and warrant issued, when they knew that no such information had been laid and no such warrant had been issued.

6. On this basis the Claimant says that the orders made, respectively, by Master Moncaster, Judge Jarman and Collins J were all procured by fraud, and should be set aside, so that the Claimant can either resume his pursuit of the proceedings commenced in the Chancery Division in 2007 or, so it is said, pursue some other claim based upon the fraud.

7. The Defendants deny that there has been any forgery or fraud. They maintain that the information was laid before the Uxbridge Magistrates' Court by the Second Defendant on 18th July 2001, and that the warrant was issued on that day, pursuant to the laying of the information. As such, the Defendants say that the claims in these proceedings fall away, and must be dismissed.

8. The Defendants also say that these proceedings are an abuse of process. The proceedings under Section 89 of the Criminal Justice Act 1988 could only have been pursued if criminal proceedings had been commenced against the Claimant, on 18th July 2001, by the issue of the warrant. It was on that basis that the proceedings under Section 89 were pursued to trial. The Defendants say that the Claimant elected to pursue his claim for statutory compensation pursuant to Section 89 notwithstanding that the Claimant was questioning the authenticity of the warrant and the information from the time, in 2008, when they were first disclosed to him. In these circumstances the Defendants say that it is an abuse of process for the Claimant now to be permitted to challenge the authenticity of the warrant and the information.

9. The Defendants also say that if, which they deny, there was fraud, it had no operative effect upon the decision of Collins J to dismiss the proceedings under Section 89. They say that the Claimant would still have lost before Collins J, because the existence or otherwise of the warrant played no part in the judge's decision. As such, the Defendants say that the alleged fraud, even if established, does not entitle the Claimant to have the relevant orders set aside.

10. At the trial of these proceedings the Claimant was represented by Mr Christopher Newman, counsel. The Defendants were represented by Mr Michael Kent KC and Mr Jack Macaulay, counsel. I am grateful to all counsel for their assistance, by their written and oral submissions, at the trial. Without in any way downgrading the hard work done

by the Defendants' counsel and legal team for this trial, and the assistance thereby rendered to me, particular mention should be made of Mr Newman who appeared, without fee and without the support of a legal team, thereby ensuring that Mr Bhandal had representation in the trial. Mr Bhandal has good reason to be grateful to Mr Newman for his determined and articulate presentation of Mr Bhandal's case.

11. The trial itself concluded, in court, on 27th February 2025. There was however one issue which arose, in relation to the records of the Uxbridge Magistrates' Court, which required further written submissions from the parties. I received the final round of these further written submissions on 24th March 2025.

The parties

12. Given the long and complex history of this case, it is convenient to refer to the parties by their actual names. In the remainder of this judgment, I will refer to the Claimant as **"Mr Bhandal"**, to the First Defendant as **"HMRC"** (subject to what I say in my next paragraph), and to the Second Defendant as **"Mr Broad"**.

13. HMRC was established by the Commissioners for Revenue and Customs Act 2005. Pursuant to that Act, and as from 7th April 2005, HMRC assumed responsibility for certain functions previously vested in the Board of Customs and Excise, which I shall refer to as **"HMCE"**. HMCE was itself established by the Management of Customs and Excise Act 1979. Prior to 7th April 2005 HMCE carried out both the investigation and prosecution of crime related to excise duty and VAT. Where I am referring to events prior to 7th April 2005, I will refer to HMCE.

14. Turning to the Second Defendant, Mr Broad was an officer of HMCE and the person who, on the Defendants' case, obtained the warrant for the arrest of Mr Bhandal from the Uxbridge Magistrates Court on 18th July 2001.

The conventions of this judgment

15. I shall refer to the warrant of arrest in the first instance, the authenticity of which is challenged by Mr Bhandal, as **"the Warrant"**. I shall refer to the information which is said to have been laid before the Uxbridge Magistrates' Court, for the purposes of obtaining the Warrant, as **"the Information"**. It will be appreciated that these expressions are adopted for convenience only, and carry no implications in relation to the question of the authenticity of these documents. I shall refer to the Uxbridge Magistrates' Court as **"the Court"**.

16. Other definitions are as established in the course of this judgment. Italics have been added to quotations. Judges and counsel are referred to, where relevant, as QC or KC, depending upon the context of the reference. Where specific times of day are given, I have used a 24-hour clock. There is a transcript available of the evidence given at the trial, for which I am grateful to the parties, and which I have found to be immensely helpful in the preparation of this judgment and in reminding me of the detail of the evidence. References to the transcript are given by day, internal page number and line number, in square brackets and bold print. **[T1/1/4]** thus refers to day one of the trial (in court), internal page 1 of the pdf of the transcript, and line 4 on page 1.

17. So far as the legal position is relevant to what I have to decide, in relation to the factual issue of what did or did not occur on 18th July 2001, I am principally concerned with the

law as it stood in 2001. For this reason, references to statutory provisions are, unless the context otherwise requires, references to those statutory provisions as they stood in 2001.

18. I shall be making extensive reference in this judgment to the provisions of the Criminal Justice Act 1988. References to Sections are, unless otherwise indicated, references to the Sections of the Criminal Justice Act 1988, as they were in 2001 and, where relevant, thereafter.

Narrative – introduction

19. Preparation of the narrative sections of this judgment has been a particular challenge, for two principal reasons.

20. First, the bundles of documents for the trial, which were prepared by Mr Bhandal, were not organised in a way which made it easy to find documents or to navigate between documents. There was no chronological run of documents, and many of the important documents in the proceedings were scattered between different bundles. The Defendants' solicitors sought to improve the position with a core bundle and a supplemental bundle of documents, but neither bundle could alleviate the problems with the trial bundles. In identifying this problem I am not criticising Mr Bhandal, who was acting in person and had clearly put a lot of hard work into the preparation of the bundles. My purpose is simply to identify this problem, which in turn contributed to the difficulties in preparing the narrative sections of this judgment.

21. Second, the complicated chain of events which has given rise to these proceedings goes back some 25 years or more, to the late 1990s. The documents for the trial ran to thousands of pages, recording the history of this case, in all its detail, for a period of over quarter of a century. It is simply not feasible, nor necessary, in this judgment, to chronicle in detail all of these events.

22. Further to these challenges, there are four important points to be made at the outset of this judgment and at the outset of the narrative sections of this judgment:
    (1) I have kept my account of the history as short as possible. What follows in the narrative sections of this judgment is only a summary of the far more complicated history which emerged from the evidence before me at the trial.
    (2) Despite these best efforts, the narrative sections of the judgment are still of regrettable length.
    (3) I have endeavoured to state the history in as neutral terms as possible. While it is sometimes necessary to make reference to the evidence at the trial, my findings in relation to the key factual issues in the trial are dealt with later in this judgment, when I come to the issues to be determined.
    (4) Finally, and perhaps of most importance, it is all too easy, in dealing with the detail of the evidence and submissions in these proceedings, to lose sight of the central, and relatively simple question in this case, which is whether Mr Bhandal has proved his case that the Warrant was forged by or with the complicity of Mr Broad. There were a number of points in the trial, in the complexity of both the evidence and the submissions, where it seemed to me that this central question was in danger of disappearing from view.

Narrative – 1998-2002

23. In the late 1990s HMCE was investigating VAT and excise duty fraud relating to the improper removal of large quantities of alcoholic drink from two bonded warehouses in London and the sale of the drink without accounting for VAT. This form of fraud is sometimes referred as diversion fraud. A number of prosecutions were initiated, and some convictions were obtained, some on the basis of guilty pleas. However, in the course of an appeal against one of the convictions, in November 2001, it was disclosed that one of HMCE's sources of information was an employee at one of the warehouses, a Mr Allington. It became apparent that his activities as an informant, and associated activities of an HMCE employee called Mr Small, were matters which ought to have been disclosed to the defence in the various prosecutions but which were not. As a result, a number of appeals from convictions were allowed and a number of other prosecutions were not proceeded with. In late 2001 Butterfield J was asked to prepare a report about how these matters came about and to make recommendations as to the future organisation of such things. Butterfield J duly reported in 2003. He found misconduct, and his findings were accepted by HMCE. A more detailed account of these prosecutions, the activities of Mr Allington, the successful appeals and the losses of revenue incurred by HMCE in relation to the alcohol diversion fraud, which HMCE had allowed to continue by the activities of Mr Allington, can be found in the judgment of Collins J.

24. In this period, one of the individuals whose activities came under scrutiny by HMCE was Mr Bhandal. Mr Bhandal was not however in the country. In February 1998 Mr Bhandal was on bail awaiting retrial for his alleged involvement in a long firm fraud. It is relevant to note that the offence with which Mr Bhandal was charged was one prosecuted by the Fraud Office and the Crown Prosecution Service, not HMCE. In breach of his bail Mr Bhandal left the country, using a false passport, and eventually ended up in Los Angeles. On 13th February 1998 a warrant for the arrest of Mr Bhandal was issued by Snaresbrook Crown Court, on the basis of his failure to surrender to the custody of the Crown Court. I will refer to this warrant, as it was referred to during the trial, as **"the Kegco Warrant"**.

25. HMCE's investigation into the alleged criminal activities in which Mr Bhandal was alleged to have been involved was known as Operation Kitsch. By 2001 the decision had been taken by HMCE to prosecute Mr Bhandal for money laundering, excise duty evasion and VAT offences. The team assembled to deal with the prosecution included Mr Broad, who is now retired but who was, as I have said, an officer of HMCE. Mr Broad was then working with the Financial Investigation Team of HMCE, dealing with the smuggling of drugs through Heathrow Airport and, by 2001, working as part of a team taking on what he described in his evidence as full-scale money laundering cases. Other members of the team dealing with the prosecution of Mr Bhandal were Mr Paul Webb, an officer of HMCE and Mr Broad's line manager, Mr Brian Robertson, a Senior Investigation Officer and Mr Coussey, a lawyer at the Solicitor's Office of HMCE who had been assigned to the case. External legal advice on the intended prosecution was obtained from Andrew Mitchell QC. It is apparent that Mr Mitchell provided advice on a number of occasions and that considerable preparation work was done prior to 18th July 2001, both in relation to the formulation of the charges to be brought against Mr Bhandal and in relation to the confiscation of the assets which were alleged to represent the proceeds of the diversion frauds in which Mr Bhandal was alleged to have been involved. Mr Bhandal was known to be in the United States of America, and it was intended that the charges should be relied upon for the purposes of trying to secure the extradition of Mr Bhandal to the United Kingdom.

26. The evidence of Mr Broad was that he attended a consultation with Mr Mitchell on the afternoon of 10th July 2001, together with Mr Webb, Mr Robertson and Mr Coussey at which it was agreed that a restraint order should be obtained against Mr Bhandal and that a warrant for the arrest of Mr Bhandal should be obtained.

27. On 17th July 2001 Mr Mitchell produced a written Advice on Proceedings, which provides a useful record of where matters had got to by that date. As I understand the position no privilege is maintained in this Advice. In paragraphs 1 and 2 of the Advice, Mr Mitchell summarised the position in the following terms:

> *"1. I am asked to advise the Solicitor for HM Customs and Excise in relation to an investigation known as Operation Kitsch. I am instructed that the target for the operation is the confiscation of assets that .are said to be the proceeds of diversion frauds carried out principally by Baljit Singh Bhandal (BSB) who is now believed to be living in Los Angeles. His financial affairs in. the country are said to be under the control of an Anthony William Pearce (AWP). The advice that I am instructed to give is whether there is enough evidence to charge the aforementioned and if there is to suggest appropriate charges· that might be brought.*
>
> *2. I have had a number of consultations with the investigation team accompanied by my instructing solicitors legal representative. During these consultations we have had presentations as to the state of the evidence and the anticipated developments in the case."*

28. Mr Mitchell then reviewed the background to the case and stated that he was satisfied, following the series of consultations which had taken place, that there was evidence which properly justified seeking the extradition of Mr Bhandal for offences relating to the evasion of VAT and the diversion of non-duty paid dutiable goods into the domestic market. Mr Mitchell stated that he was also of the opinion that the evidence thus far obtained or which (so he had been informed) could be obtained in the near future supported a strong case against Mr Bhandal for entering into arrangements in relation to the proceeds of criminal conduct.

29. Mr Mitchell then went on to advise on the terms of the charges to be brought against Mr Bhandal. Mr Mitchell then concluded the Advice by stating that his advice should be read in conjunction with the two witness statements which he had prepared in the course of the previous few days with the officers of HMCE *"as they summarise the detail of the evidence as it currently exists to support the restraint and receivership orders which are to be applied for on the 18th July 2001."*. In cross examination Mr Broad accepted that the reference in the Advice was to two witness statements because HMCE was intending to seek restraint and receivership orders against both Mr Bhandal and against Mr Pearce, who was referred to in the Advice as the person alleged to have control of Mr Bhandal's financial affairs in the UK.

30. The evidence of Mr Broad was that he attended a consultation with Mr Mitchell, at his Chambers, on 17th July 2001. Mr Broad's evidence was that the restraint order was prepared at this consultation and that he also prepared, at Mr Mitchell's Chambers that evening, the draft of the Information and the draft of the Warrant which were to be used for the obtaining of the Warrant. The intended date for obtaining the restraining order and obtaining the issue of the Warrant was the next day; 18th July 2001.

31. The evidence of Mr Broad was that he attended at the Court on 18th July 2001 and made the application, as set out in the Information, to Ms Margaret Buckeldee, a Justice of the Peace sitting at the Court, for the issue of a warrant for the arrest of Mr Bhandal. Ms Buckeldee has, sadly, now died. It is however not disputed that Ms Buckeldeee did sit as a magistrate at the Court, and that 18th July 2001 was her last day of sitting before retirement. The evidence of Mr Broad was that he was present when Ms Buckeldee authorised and signed the Warrant, and that he received the signed Warrant from Ms Buckeldee's clerk.

32. The charges contained in the Warrant (**"the Charges"**) comprised six alleged offences. Of the Charges it is only necessary, at this stage, to make reference to the sixth and final charge (**"the VAT Charge"**), which alleged conduct involving the commission of offences under Section 72(1) of the Value Added Tax 1994, contrary to Section 72(8) of the Value Added Tax Act 1994. So far as the remaining content of the Warrant is concerned, I will need to come back to that content in greater detail later in this judgment. For present purposes I need only record two matters. The Warrant identified the accused as Baljit Singh Bhandal, but also gave the names of six alleged aliases of Mr Bhandal. The Warrant bore what purported to be the signature of Ms Buckeldee, described as a Justice of the Peace for the Uxbridge Magistrates' Court (which I am referring to as the Court). The Warrant bears the date 18th July 2001, written in manuscript and using numbers (*"18 07 01"*).

33. On the same day, 18th July 2001, HMCE applied to Newman J for the restraint order against Mr Bhandal. The application was made on a without notice basis. The application was supported by a first witness statement of Mr Broad which was dated 18th July 2001. In paragraph 20 of that witness statement Mr Broad stated as follows:

> *"20. The defendant is currently residing in the USA. It is intended to have a warrant issued for his arrest and to seek his extradition within 7 days. The allegations in respect of which his extradition will be sought will relate to his involvement in the fraudulent evasion of duty and VAT and the money laundering of the proceeds thereof."*

34. The restraint order (**"the Restraint Order"**) was granted by Newman J on 18th July 2001. The Restraint Order prevented Mr Bhandal from dealing with any of his assets and appointed joint receivers of his assets (**"the CJA Receivers"**). In terms of those assets, Mr Bhandal's case is that his most valuable asset at the time was a property known as Updown Court, Chertsey Road, Windlesham, Surrey GU18 5LD (**"the Property"**). The Property was owned by a company registered in the British Virgin Islands known as Heatherside Property Holdings Limited (**"Heatherside"**). It is Mr Bhandal's case that he had the beneficial interest in the Property and the beneficial interest in Heatherside.

35. I will refer to the proceedings in which the Restraint Order was made, which had the case number CJA No. 118 of 2001, as **"the Restraint Proceedings"**. I should make it clear that, in using this expression, I am not prejudging the question of whether the Restraint Proceedings were properly constituted. The Restraint Order was made in the Queen's Bench Division of the High Court, as it then was, but the Restraint Order could only be made where a set of criminal proceedings were instituted, in respect of which the Restraint Order would operate to secure Mr Bhandal's assets. In the present case it is said that the required criminal proceedings were instituted by the issue of the Warrant. This assumes however that the Warrant was issued out of the Court on 18th July 2001.

Mr Bhandal says that it was not and that the Warrant is a forgery. Whether Mr Bhandal has proved that case is the central question I have to decide, which I do not prejudge in my references to the Restraint Proceedings or, as I have already stressed, in my references to the Warrant and the Information.

36. The permission of the Commissioners of Customs and Excise was required for the bringing of the Charges, pursuant to Section 145 of the Customs and Excise Management Act 1979. This permission was given in respect of all the Charges save for the VAT Charge, by an order of the Commissioners dated 18th July 2001 (**"the First Permission Order"**). Permission for the VAT Charge was given by an order of the Commissioners dated 20th July 2001 (**"the Second Permission Order"**). The First Permission Order was sent by fax at 14:43, on 18th July 2001. As noted, the First Permission Order was missing the VAT Charge. The First and Second Permission Orders were sent by fax, marked for the attention of Mr Broad, at 14:38 on 20th July 2001.

37. On 19th July 2001 HMCE took control of the Property, by the CJA Receivers. Mr Bhandal characterises this event as a raid on the Property which, he alleges, was highly publicised and tainted the Property, by association, with allegations of criminality. It is Mr Bhandal's case that the Property had been worth about £80 million, but that its value was substantially diminished as a result of the Restraint Order and the *"raid"*. The characterisation of the CJA Receivers taking control of the Property as a *"raid"* is disputed by the Defendants. Strictly speaking, what occurred in relation to the Property on 19th July 2001 was the execution of the Restraint Order. I will therefore refer to this event as **"the Execution Event"**.

38. On 11th September 2001 the Irish Nationwide Building Society (**"the IBNS"**), which held a second charge over the Property in respect of funds loaned for the redevelopment of the Property, appointed an administrative receiver over the Property. The CJA Receivers were discharged by an order of Ouseley J dated 6th June 2002. On 24th October 2002 the administrative receiver sold the Property for £14,290,000, in circumstances where Mr Bhandal says that the true value of the Property, but for the Restraint Order and the Execution Event, should have been about £80 million.

<u>Narrative – 2003-2006</u>

39. While Mr Bhandal was outside the United Kingdom, those other defendants who were accused of being involved in the alcohol diversion fraud, to which the Charges related were being brought to trial. These other defendants included Mr Pearce. Mr Pearce and the other four defendants were due to appear in Leicester Crown Court in the summer of 2003. The other four defendants were directors of a company called Bosworth Beverages, which was alleged to have been used as a means of laundering the proceeds of the alcohol diversion fraud by Mr Bhandal by the purchase of a yacht in Hong Kong.

40. In June 2003 the decision was taken by HMCE not to proceed with the prosecution of these defendants. This was as a result of the problems which had come to light in relation to the activities of Mr Allington and Mr Small, which resulted in a number of convictions being overturned and rendered unviable a number of prosecutions, including the prosecution of those accused with Mr Bhandal.

41. In theory, this meant that the criminal proceedings commenced against Mr Bhandal by the issue of the Warrant, assuming that the Warrant had been issued, could not be

proceeded with. There is however no evidence that steps were taken at that stage to bring the criminal proceedings against Mr Bhandal to an end, if they had been validly commenced.

42. Mr Broad gave evidence that he returned the Warrant to the court office at the Court. In cross examination he explained that his understanding was that this had the effect of cancelling the Warrant, which had not been executed and in respect of which there were the difficulties with proceeding which I have described above. Mr Broad's evidence was that he was instructed to do this by Mr Webb. Mr Broad said that he was, by this time, working in Central London. He said that he made his way to the Staines office, where the Warrant was located, collected the Warrant, and returned it to the court office at the Court. Mr Broad could not recall when he performed this task. He moved from the Staines office of HMCE to the Central London office in 2003.

43. Mr Bhandal returned to the United Kingdom on 1st February 2005, flying in through Heathrow Airport. Mr Bhandal was not arrested or stopped at Heathrow. Mr Bhandal's evidence was that he came through Heathrow using a false passport, in the name of Shaukat Ali, one of the aliases named on the Warrant. Mr Bhandal was however then arrested and remanded in custody, I believe on 22nd June 2005, in relation to different offences. The chronology is not entirely clear here, but my understanding of the evidence is that Mr Bhandal pleaded guilty, in September 2005, to breaching his bail. As explained above, in February 1998 Mr Bhandal had been on bail awaiting retrial for his alleged involvement in a long firm fraud and, in breach of his bail, left the country for the United States of America. Mr Bhandal's evidence was that he had absconded because he feared for his safety. Mr Bhandal was sentenced to 10 months imprisonment for breaching his bail. Mr Bhandal also faced however a charge of conspiracy to kidnap. The date of the alleged offence was 22nd June 2005. Mr Bhandal was tried for this offence of kidnap in the early part of 2006. Mr Bhandal was convicted of the kidnap offence in April 2006 and, in September 2006, was sentenced to 8 years imprisonment. Pursuant to his conviction and sentencing for the two offences of breaching bail and kidnap (I believe the sentences ran consecutively), Mr Bhandal remained in prison until November 2009.

44. While Mr Bhandal was in Los Angeles and on his return to this country and while in prison, he continued to instruct solicitors to act for him in this jurisdiction. On 28th March 2006 Mr Bhandal applied to vary the Restraint Order, in order to permit funds to be made available to him for the purposes of applying for a discharge of the Restraint Order. By that time however HMRC had decided to apply for the discharge of the Restraint Order, rendering Mr Bhandal's proposed application redundant. HMRC therefore responded to Mr Bhandal's application by saying that it would be applying to discharge the Restraint Order. The Restraint Order was discharged by an order of Burton J made on 6th April 2006. My understanding is that the order was made on Mr Bhandal's application for discharge. At that hearing there was some discussion about a possible claim for compensation by Mr Bhandal. By his order (**"the Burton Order"**), Burton J directed that any application made by Mr Bhandal for compensation, arising out of the imposition of the Restraint Order, be filed and served, together with supporting evidence, by 5th June 2006.

<u>Narrative – 2007-2008 - the commencement of the Chancery Proceedings and the Moncaster Judgment</u>

45. Mr Bhandal did not meet the deadline in the Burton Order for making an application for compensation pursuant to Section 89. At that stage, Mr Bhandal did not commence any proceedings for compensation pursuant to Section 89. Instead, by claim form issued in the Chancery Division on 17th July 2007 (Case Number: HC07C01904) Mr Bhandal commenced proceedings (**"the Chancery Proceedings"**) against some 21 defendants, of whom the first three were HMRC, Mr Broad and the INBS.

46. Between 2005 and 2010, according to Mr Bhandal's evidence, the solicitor who was acting for him was Mr Roche of Roche & Co. The Chancery Proceedings were issued by Roche & Co, as solicitors for Mr Bhandal. The statement of truth in the claim form was signed by Mr Roche.

47. For reasons which will become apparent, the statements of case in the Chancery Proceedings did not get beyond Particulars of Claim. The Particulars of Claim were prepared and signed by Mr Roche. The Particulars of Claim are lengthy. It is not necessary to set out their content in any detail. For present purposes it is relevant to note the following features of the Particulars of Claim, as they pleaded the claims against HMRC and Mr Broad:
    (1) Paragraphs 42-70 of the Particulars of Claim pleaded a series of complaints as to the conduct of HMRC by its officers, and in particular by Mr Broad, in relation to the conduct of the investigations and prosecutions involving Mr Allington. In particular, HMRC and Mr Broad were accused of misleading Newman J in the obtaining of the Restraint Order. The Particulars of Claim suggested that there might be *"good evidence that HMRC proceeded against the Claimant in a way calculated to mislead the High Court and that their entire application for a Restraint Order was underpinned by the most serious misrepresentations."*.
    (2) Paragraphs 71-80 pleaded the case that if HMRC had complied with its duties, the Restraint Order would not have been made and the Property would not have been sold, but would instead have been preserved in the beneficial ownership of Mr Bhandal, who would have been able to raise funds in Jersey to discharge the mortgage debt owed to the IBNS.
    (3) Paragraph 81 of the Particulars of Claim alleged that the Restraint Order was obtained dishonestly and executed unlawfully and/or in bad faith and/or negligently, and that Mr Bhandal thereby suffered foreseeable economic loss. It was also alleged that the HMRC failed to comply with undertakings and/or assurances given to the court upon which the Restraint Order was said to have been conditional.
    (4) Paragraph 82 of the Particulars of Claim alleged that Mr Broad dishonestly misled the High Court on the application for the Restraint Order, as a result of which Mr Bhandal suffered economic loss.
    (5) The prayer to the Particulars of Claim sought relief by way of various claims for restitution (including restitution of the Property), various claims for damages, and accounts, enquiries and directions. A claim for compensation against HMRC and/or Mr Broad *"as provided for by statute in the Criminal Justice Act 1988 in relation to improperly brought and subsequently discharged Restraint proceedings"* was also included.
    (6) The allegations in the Particulars of Claim of dishonesty and other tortious and unlawful conduct against HMRC and Mr Broad did not include any allegation that the Warrant was forged. The events on 18th July and 19th July 2001 which were relied upon were the obtaining of the Restraint Order and the Execution Event.

48. On 28th January 2008 Mr Bhandal made an application in the Chancery Proceedings for what appears to have been specific disclosure against HMRC of certain categories of documents. This application was heard by Deputy Master Behrens on 11th February 2008, when an order for specific disclosure was made. The categories of documents sought did not extend to documents relating to any issue as to whether criminal proceedings had properly been commenced against Mr Bhandal.

49. In February 2008 HMRC and Mr Broad made an application to strike out the Chancery Proceedings or for summary judgment or for a stay, so far as the Chancery Proceedings were brought against them.

50. The details of the chronology and the relevant evidence are not entirely clear at this stage, but it appears that in January or early February 2008 Mr Webb was asked to conduct a search for documents. The Defendants' case, on the evidence, is that Mr Webb went through 15 boxes of documents relating to the prosecution of Mr Pearce and others. The Defendants' case is that in these boxes Mr Webb found a draft version of the Warrant, the Information (as signed), and a copy of the Warrant (as signed). This is partially confirmed by an email which I have seen, sent by Marilyn Howson to Cheryl Hugill and Jeana Murray, and copied to Chris Geraghty. Ms Howson's role within HMRC was described, in the heading to her email, as *"CrimInv, Lon, CAB Strategy & Planning"*. Ms Hugill and Ms Murray were lawyers in the HMRC Solicitor's Office. Mr Geraghty's role was described in the email as *"CrimInv CAB Strategy & Planning"*. Ms Murray had conduct of the Chancery Proceedings on behalf of HMRC and Mr Broad. Ms Howson sent this email on 22nd February 2008, and reported that Mr Webb had been into the office that day and had sifted through 15 boxes of *"sensitive material"*, in which he had located a number of items. These items were listed by Ms Howson in her email. They included, at Item 9, a *"Warrant of arrest for Bhandal 18/7/01 signed (copy)"*.

51. On 26th February 2008 Ms Murray emailed Mr Kent QC, who was instructed to appear for HMRC and Mr Broad at the hearing of the strike out application. In this email, sent at 16:38, Ms Murray said that she was having *"the arrest warrant re Bhandal"* faxed through to her and would fax it through to Mr Kent's Chambers as soon as possible. The documents show that two faxes were sent that day, one between 16:36 and 16:42 and the second at 16:43. The Defendants' case is that the first fax contained the draft version of the Warrant and the Information (as signed). The second fax contained the copy of the Warrant (as signed). It appears that it was by these faxes that these documents were provided to Ms Murray.

52. A version of the Warrant was then forwarded by fax to the Chambers of Mr Kent. The position is not entirely clear, but there is evidence that this version of the Warrant was faxed twice, on 27th February 2008 and 30th April 2008. The relevant point however is that the version of the Warrant which was forwarded to the Chambers appears to have been a draft version of the Warrant. The Warrant, as signed, comprises three pages, of which the last page is the signature page. The faxed version of the Warrant sent on 30th April 2008 comprises only two pages. There is no signature page and only five aliases are given for Mr Bhandal, as opposed to the six aliases on the signed three-page version of the Warrant.

53. As mentioned above, the solicitor acting for Mr Bhandal at this time was Mr Roche, of Roche & Co. By the time of the hearing of the strike out application, Roche & Co. had raised their own queries on whether the relevant criminal proceedings, on which were based what I am referring to as the Restraint Proceedings, had actually been initiated. Mr Roche represented Mr Bhandal at the hearing for the strike out application. In his skeleton argument for the hearing, Mr Roche set out Section 89 and complained that HMRC had never confirmed or denied that the Restraint Proceedings were ever actually instituted against Mr Bhandal. Mr Roche said that HMRC had refused to confirm or deny this as recently as 17th April 2008, when they were asked by letter of 15th April 2008 to clarify the position. Mr Roche made the point that if no criminal proceedings were instituted, then no claim for statutory compensation pursuant to Section 89 was possible. The essential point being made by Mr Roche, in the relevant part of his skeleton argument, was that if no criminal proceedings had ever been instituted against Mr Bhandal by HMCE, the Chancery Proceedings were not an abuse of process, because a claim for statutory compensation under Section 89 was not possible.

54. I have not been able to identify the date when Roche & Co, on behalf of Mr Bhandal, first raised the question of whether criminal proceedings had been commenced against Mr Bhandal by HMCE. Mr Roche's skeleton argument makes express reference only to the letter of 15th April 2008. What seems clear is that the version of the Warrant sent to the Chambers of Mr Kent was sent for the purposes of Mr Kent being able to demonstrate, at the hearing of the strike out application, that criminal proceedings had been commenced against Mr Bhandal.

55. On 1st May 2008 the strike out application came on for hearing before Master Moncaster. Prior to the commencement of the hearing, and outside the Master's room, Mr Kent handed to Mr Roche, who appeared on behalf of Mr Bhandal, a copy of the draft version of the Warrant which had been sent to Mr Kent's Chambers. As I have explained, the Warrant, as signed, comprises three pages, of which the last page is the signature page, and with six aliases given for Mr Bhandal. The copy of the draft Warrant which was handed to Mr Roche comprised only two pages with five aliases. The third page (the signature page) was missing. As I have also explained, the draft version of the Warrant which I have seen is the one which was sent by fax on 30th April 2008, which comprises only the first two pages. What is not entirely clear from the evidence is whether the missing third page was absent from the draft version of the Warrant said to have been discovered by Mr Webb, assuming that it was discovered by Mr Webb, or whether the third page went missing at some stage in its subsequent transmission.

56. The hearing then proceeded, and the Master gave judgment on the strike out application. This judgment (**"the Moncaster Judgment"**) is dated 1st May 2008 and was, I assume, delivered at the conclusion of the hearing. In the Moncaster Judgment, the Master identified what he regarded as the key argument of HMRC as the argument that the Chancery Proceedings were an abuse of process, because the claims for compensation made against HMRC in the Chancery Proceedings could and should have been made by way of a claim under Section 89, which provided a route to compensation in a case of this kind. As such, so the Master reasoned, Section 89 was exhaustive, in terms of Mr Bhandal's ability to claim compensation arising out of the Restraint Order.

57. For the reasons set out in the Moncaster Judgment, the Master concluded that it was, at least at that stage of the Chancery Proceedings, an abuse of process for Mr Bhandal to

have abandoned his claim for compensation under Section 89 and instead to have brought the Chancery Proceedings under the general law. The Master did not see that the claim against HMRC in the Chancery Proceedings was any claim which was different from a claim for compensation under Section 89. The questions of whether there was any such difference and, if so, with what implications, were, in the view of the Master, matters which should appropriately be considered by a judge in the Administrative Court, in the context of a claim under Section 89.

58. The conclusion reached by the Master in the Moncaster Judgment, at [13], was that the Chancery Proceedings should be stayed, as against HMRC and Mr Broad:

> *"Therefore, what seems to me to be the proper thing to be done here is for the present proceedings to be stayed to enable Mr Bhandal to go back to the Administrative Court and to seek an extension of time for making a claim under section 89 and, if that extension is given, for making that claim under section 89, and, if that extension is given, for making that claim the judge will then be able to decide what is proper to be done in relation to compensation."*

59. Master Moncaster therefore made an order on 1st May 2008 (**"the Moncaster Order"**) staying the Chancery Proceedings against HMRC and Mr Broad *"until after the decision of the Administration* [Administrative] *Court on the Claimant's Application under section 89 of the Criminal Justice Act 1988."*.

60. So far as the Warrant was concerned, the Master made reference to the Warrant, in paragraph 2 of the Moncaster Judgment, in the following terms:

> *"On the same day as the restraint order was made an arrest warrant was issued against the claimant, but so far as is known nothing further happened in relation to that arrest warrant; certainly it was never executed because the claimant was at that stage in the United States of America. Again, so far as it known to the claimant, no extradition steps were taken, though there is no evidence from the Customs as to whether that is so or not."*

61. As I have explained, in his skeleton argument for the hearing Mr Roche had raised the issue of whether the Restraint Proceedings had been properly commenced by the issue of a warrant and, on that basis, whether any jurisdiction existed under Section 89 to award compensation. As is apparent from paragraph 2 of the Moncaster Judgment, the Master was satisfied that an arrest warrant had been issued. I assume that this was on the basis that a copy of the Warrant had been produced for the hearing.

62. Following the hearing however, Mr Roche raised questions with Ms Murray on the copy of the draft Warrant which had been handed to him at the hearing. I do not have copies of the initial correspondence in this respect, so I do not know the precise nature of the queries raised, but I have seen a copy of Ms Murray's letter to Mr Roche of 7th May 2008, which was expressed to be written in response to a letter from Mr Roche & Co dated 6th May 2008. A copy of the letter of 6th May 2008 has not been found. In her letter of 7th May 2008 Ms Murray criticised the stance of Mr Bhandal in attempting to argue that the proceedings had not been properly commenced so as to give jurisdiction to the Administrative Court under Section 89. Ms Murray put her criticism, which went back to steps taken pursuant to the Burton Order, in the following terms:

> *"We had no obligation to give disclosure of any documents before the hearing. However in your skeleton argument, handed to us minutes before the hearing*

before the Master began on 1st May, you raised an issue as to whether proceedings had not been commenced so as to give jurisdiction to the Administrative Court under s 89 of the CJA 1988.This was of course directly contrary to your previous stance which had been, following the Order made by Mr Justice Burton dated 6th April 2006 and pursuant to paragraph 2 of the Order, to submit a series of questions in a document dated 27 April 2006. That was answered. You then served a Part 18 Request dated 5 June 2006. That was answered on 15th June 2006. These requests were only consistent with the Administrative Court having jurisdiction to deal with your client's application for compensation under section 89. Your client's attempt to seek an extension of time for applying under that section must also have been predicated on the Administrative Court having such jurisdiction.

You did not seek information in either Request about the commencement of criminal proceedings against your client. As far as I can see this point was first foreshadowed in your letter of 15th April where however you also stated that "a claim for statutory compensation within High Court Queen's Bench Division Administrative Court proceedings CJA118 of 2001 is extant". Contrary to the assertion contained in that letter my clients were not required, under the order made by Mr Justice Burton (or any other order of the Administrative Court), to demonstrate that relevant proceedings had been instituted".”

63. Ms Murray did however conclude her letter in the following terms:

“We find your assertion that the proceedings had not been started surprising as we believed that we had supplied you with a copy of the Warrant signed by a Justice of the Peace. We believe also that the Master was told that the Warrant had been signed. It appears however that you must have been given an unsigned copy. For the avoidance of doubt we send herewith copies of the Information signed by Mr Broad and endorsed by the Justice together with the Warrant itself signed by the Justice. You might have saved yourself the trouble of making enquiries of Uxbridge Magistrates Court by asking us for sight of the signed Warrant.”

64. Mr Roche was therefore provided with a copy of the signed version of the Warrant, under cover of the letter of 7th May 2008. In the meantime, Mr Roche had instituted his own inquiries into the question of the authenticity of the Warrant. Amongst the documents in the trial bundles is a witness statement of Zena Haddad dated 6th May 2008. Ms Haddad was not called to give oral evidence at the trial, but her witness statement was put in evidence by Mr Bhandal as hearsay evidence. In summary, the evidence in the witness statement of Ms Haddad is to the following effect.

65. At the time of the witness statement Ms Haddad was a solicitor with Roche & Co. On his return from the hearing before Master Moncaster, Mr Roche expressed his concerns to Ms Haddad that the copy of the Warrant which he had been handed outside the Master’s room had not been signed, sealed or stamped by the Court. The relevant evidence of Ms Haddad is in the following terms:

“2. Mr Roche told me that he had been handed the copy unsigned warrant moments before a hearing before Master Moncaster on 1st May 2008 by Mr Michael Kent of Counsel who was acting on behalf of HMRC.

3. When he returned from the hearing before Master Moncaster, Mr Roche explained to me in detail the basis for his concern that the warrant did not appear to have been issued, and explained the relevant provisions of Section 89 and Section 102(11) of The Criminal Justice Act 1988 to me so that I

would understand the significance of whether or not the warrant had in fact been issued by the Magistrates Court pursuant to section 1 of the Magistrates Courts Act 1980.

4. *I told Mr Roche I would not be able to attend the Magistrates Court on 1st May 2008 because the Court would be closed by the time I got there and it was already 4.00pm by the time Mr Roche had researched the point and identified the legal and evidential issues."*

66. Ms Haddad agreed that she would attend at the Court to investigate whether the Warrant had in fact been issued. This visit took place on 6th May 2008. At the Court Ms Haddad spoke to a member of the court staff (referred to as Debbie) who checked the court register, in the Court archives, and reported to Ms Haddad that there was no entry recording the Warrant or recording any matter relating to Mr Bhandal on 18th July 2001. Debbie confirmed that all warrants had to be recorded in the court register. At the request of Ms Haddad, Debbie made a further check of the court register for the surrounding dates. This further check, which covered the period from 15th to 21st July 2001, also drew a blank. Ms Haddad then reported to Mr Roche by telephone. Mr Roche faxed through to Ms Haddad, at the Court, the copy of the Warrant handed to him at the hearing, which Ms Haddad provided to Debbie. Debbie said that she would need to speak to one of her colleagues in relation to this document. On her return, Debbie confirmed to Ms Haddad that she had spoken to someone, described as *"Joe"* from *"Customs"*, who had told her that the case had been transferred to Northampton Crown Court and Leicester Crown Court.

67. Ms Haddad then attended on Joe, who was also based at the Court. Ms Haddad's evidence of the conversation is in the following terms:

"31. I personally attended on "Joe" of Customs who was in Court 3.

32. I introduced myself and asked how he was able to provide Debbie with the information that the case had been transferred to Northampton Crown Court or Leicester Crown Court.

33. He said that he had contacted RCPO (Revenue and Customs Prosecutions Office) by telephone and given them the name of Baljit Singh Bhandal, which they had typed into their computer system.

34. Joe was told the name did appear on the system showing that a warrant had been issued and "presumably proceedings were instituted".

35. I remember noting that he had used the word instituted.

36. He said the case had then been transferred to Northampton Crown Court and Leicester Crown Court.

37. He added again that he presumed that this is what happened but that he was not certain"

68. Ms Haddad then received a telephone call from Mr Roche advising her to return to the office, bringing with her a compliment slip on which Debbie had confirmed that there was no record of the Warrant at the Court. Mr Roche stated that he intended to write to HMRC and ask them for an explanation. I assume that Mr Roche did write and send this letter on 6th May 2008, because Ms Murray's letter of 7th May 2008, referred to above, was sent in response to the letter from Roche & Co dated 6th May 2008, a copy of which is not available.

69. Ms Haddad's witness statement is dated 6th May 2008. I assume that it was made and signed when Ms Haddad returned to the offices of Roche & Co from the Court. The witness statement was not however sent to HMRC at that time. The witness statement was disclosed to HMRC some five years later, in June 2013.

Narrative – 2011-2016 - the Section 89 Application and the Collins Judgment

70. The stay of the Chancery Proceedings imposed by the Moncaster Order (**"the Stay"**) did not result in Mr Bhandal making an immediate claim for compensation. Instead, in terms of court proceedings, there was something of a hiatus, until March 2011, when Mr Bhandal initiated further applications.

71. In the meantime, however, Mr Bhandal did initiate further inquiries of HMRC and the Court, both on the question of whether the Warrant had been issued on 18th July 2001 and, if so, whether it had ever been withdrawn. The inquiries were initiated by letters from Needleman Treon, the solicitors then instructed by Mr Bhandal, dated 15th November 2010. The letter to the Court enclosed copies of the Warrant and the Information. The correspondence which I have seen, in relation to these inquiries, continued until February 2011. So far as the Court was concerned, it confirmed, by reference to the Warrant, that the Warrant had been issued on 18th July 2001 and that the JP who had signed the Warrant was a *"Margaret Buckledge who is now retired"*. The Court also said that no trace could be found of the warrant being withdrawn by the court. In response to this information Needleman Treon wrote further, regretting that there was no independent record of the issue of the Warrant and confirming that the Court had agreed that it would attempt to locate the Court Clerk's diary for 18th July 2001, to see if there was any record of the Warrant. The response of the Court was however that there were no further records available. So far as HMRC was concerned, the correspondence appears to have come to an end, inconclusively, with HMRC taking the stance that it did not understand why the issue of the Warrant had any bearing on the Restraint Proceedings or the ability to claim compensation under Section 89.

72. On 1st March 2011 Mr Bhandal applied in the Chancery Proceedings to lift the Stay. The application was advanced on the basis that there was a question mark over whether the criminal proceedings against Mr Bhandal had ever been withdrawn, so that the criminal proceedings might still be live, with the result that a claim for compensation pursuant to Section 89 could not be made. The underlying criminal proceedings were identified as comprising the Warrant. The application to lift the Stay was withdrawn before it was heard.

73. On 4th March 2011 Mr Bhandal made a claim for compensation, pursuant to Section 89, by an application notice issued on 4th March 2011 in the Administrative Court of the Queen's Bench Division (as it then was) of the High Court. By this application (**"the Section 89 Application"**), Mr Bhandal sought statutory compensation against HMRC pursuant to Section 89. The Section 89 Application was made by an application notice issued under CPR Part 23 in the Restraint Proceedings. The Section 89 Application was not made by a form of originating process. In the Administrative Court the Section 89 Application proceeded under the same case number as the Restraint Proceedings (CJA No. 118 of 2001).

74. Mr Bhandal also made an application for an extension of time for making the Section 89 Application; I assume on the basis that he had not observed the time limit in the Burton

Order. This application came before Hickinbottom J (as he then was) on 8th November 2011. The judgment of Hickinbottom J on the application is dated 18th November 2011 (**"the Hickinbottom Judgment"**). The application turned out to raise some difficult questions in relation to what time limits applied to the Section 89 Application, in relation to whether or not those time limits had been breached, and in relation to whether the Section 89 Application could proceed.

75. For present purposes, it is not necessary to get into the detail of the interesting questions which Hickinbottom J had to consider, both in terms of limitation and in terms of the question of the exercise of his discretion to extend the time limit in the Burton Order. For present purposes, the most relevant features of the Hickinbottom Judgment are as follows:
    (1) In setting out the factual background to the claim the judge recorded, at paragraph 10 of the Hickinbottom Judgment, that the Information had been laid before the Court on 18th July 2001 and that the Warrant had been issued by the Court the same day.
    (2) So far as limitation was concerned, the judge concluded that the limitation period applicable to the Section 89 Application was the period of six years running from the date when the Warrant was cancelled. As the judge recorded, there were evidential difficulties with identifying this date. After reviewing the evidence in relation to the issue of cancellation, which included the evidence of Mr Broad, the Judge concluded that he could not be satisfied, on the evidence before him, that Mr Bhandal had no real prospect of satisfying the court, at trial, that HMRC was unable, on the evidence, to discharge the burden of proof on it to demonstrate that the Warrant was cancelled before March 2005; being over six years prior to the date of the making of the Section 89 Application. The judge therefore left the question of limitation for determination at trial.
    (3) So far as the judge's discretion to extend the time limit imposed by the Burton Order was concerned, the judge concluded that he should extend this time limit to 4th March 2011.
    (4) The application was therefore successful, in that the judge extended the time limit in the Burton Order.

76. Mr Bhandal served a witness statement in the Section 89 Application which was dated 26th June 2013. The witness statement contained a section in which Mr Bhandal set out his reasons for saying that the Warrant, a copy of which had been provided by HMRC following the hearing before Master Moncaster, was not a genuine document. This section of the witness statement also exhibited the witness statement of Ms Haddad. HMRC applied to strike out this section of the witness statement. The application was heard by King J, who made an order, on 13th May 2014, striking out the relevant paragraphs of the witness statement, including the reference to the witness statement of Ms Haddad. The basis of the application, and the basis of the decision by King J to strike out the relevant paragraphs, appear to have been that the content of the relevant paragraphs did not relate to any issue in the Section 89 Application, did not relate to matters of which Mr Bhandal could himself give evidence, and ran contrary to the way in which the case had been put before Hickinbottom J; where the argument had proceeded on the basis that the Warrant had been issued, thereby providing the necessary jurisdictional foundation for the Restraint Order and the Section 89 Application.

77. On 9th October 2014 Mr Bhandal amended his Points of Claim in the Section 89 Application in order to plead, in paragraph 6 of the Points of Claim, that the Warrant was obtained from the Court on 18th July 2001 and that the application for the Warrant was supported by the Information, as sworn by Mr Broad on 18th July 2001. The claim for compensation was focussed on the Restraint Order and the alleged serious default of officers of HMCE, but the amendments firmly anchored the claim on the pleaded fact that the relevant criminal proceedings had been commenced by the issue of the Warrant.

78. The Section 89 Application came to trial before Collins J, over five days, in January 2015. The judgment of Collins J on the trial (**"the Collins Judgment"**) is dated 11th March 2015. For the reasons set out in the Collins Judgment, the Judge dismissed the Section 89 Application. The Judge dismissed the Section 89 Application on what were, essentially, two grounds. First, the Judge found that no officer involved in the investigation or prosecution of the operation of which the Restraint Proceedings had been part had been guilty of any default, let alone any serious default, within the meaning Section 89. The Judge also found that if there had been default, the prosecution of Mr Bhandal would still have proceeded. As such, Mr Bhandal did not satisfy the conditions for an award of compensation pursuant to Section 89. Second, the Judge was satisfied, to the criminal standard of proof, that Mr Bhandal had been guilty of the criminal conduct alleged against him and that the Property had been acquired using the proceeds of crime. For those further reasons the Section 89 Application fell to be dismissed.

79. Mr Bhandal and Mr Broad both gave evidence at the trial before Collins J. The Judge found Mr Broad to have been entirely honest in the evidence he gave; see the Collins Judgment at [52]. The Judge regarded Mr Bhandal as a thoroughly unsatisfactory witness; see the Collins Judgment at [73].

80. Pursuant to the Collins Judgment, Collins J made an order dismissing the Section 89 Application (**"the Collins Order"**). The Collins Order was made on 11th March 2015.

81. The Collins Judgment proceeded on the basis, as recorded in paragraph 1 of the Collins Judgment, that the Section 89 Application related to a prosecution of Mr Bhandal *"which was commenced by an arrest warrant on 18 July 2001"*. As I understand the position, it was not argued or suggested, at the trial before Collins J, that the Warrant had not in fact been issued at all.

82. Mr Bhandal applied for permission to appeal against the Collins Order on the basis of grounds of appeal which included alleged bias on the part of Collins J. The application for permission to appeal was refused, on the papers, by Lewison LJ.

83. Following this refusal, on 16th May 2016, Mr Bhandal instructed an inquiry agent, Mr Pickles of BGP Global Services Limited, to trace the magistrate who was said to have signed the Warrant and to have counter-signed the Information; that is to say Ms Buckeldee. Mr Pickles was successful in tracing Ms Buckeldee, and visited her on 23rd May 2016. Mr Pickles was accompanied by a solicitor, Ms Debbie Rodaway of IBB Law, who had also been instructed by Mr Bhandal to assist with the inquiries. Mr Pickles and Ms Rodaway obtained a witness statement from Ms Buckeldee. The witness statement was written in manuscript, was signed by Ms Buckeldee, and was dated 23rd May 2016. The point is not material, but I should mention that it was not clear to me whether the content of the witness statement was written out, in manuscript, by Ms

Buckeldee herself or by Mr Pickles. The evidence of Mr Pickles, in a witness statement dated 20th June 2016, was that he *"took"* the witness statement from Ms Buckeldee. I take this to mean that Mr Pickles wrote out the witness statement, from the information provided by Ms Buckeldee and confirmed by her signature on the witness statement. In the witness statement Ms Buckeldee confirmed that she had sat as a Justice of the Peace for 27 years at the Court (Uxbridge Magistrates Court), and that the only other Magistrates Court at which she had sat had been Feltham. After recording the visit of the inquiry agent and the solicitor and recording that she had been shown copies of the Warrant and Information, Ms Buckeldee provided the following evidence in relation to the copy documents (the original writing is, as I have said, in manuscript, and I have omitted a couple of crossed out words and the initials by which Ms Buckeldee confirmed these corrections);

> *"The warrant was dated the 18th July 2001 from Uxbridge Magistrates Court. Both documents were photocopies and not original documents. The warrant and date resembles my handwriting.*
> *In relation to the information supplied I have looked at the document and although the signature resembles my signature I can only say that the way the date is written is not my handwriting. There is a crossing out of the month that has not been initialled as I would do as this would have also been checked by the clerk of the court. I have also noticed that the information says Staines Magistrates Court. Again I would have signed this document as a Justice of the Peace for Staines Magistrates and I would have crossed this out. I can definitely say that the "J" in the word July that follows the crossing out of a typed date is not the way I write "J". This is fifteen years ago I do not remember whether I issued these specific warrant and information or not. I can say some of the handwriting is not mine and also the errors described I would not do. I have written the date 18th July 2001 on blank paper and produce this."*

84. Further to the obtaining of this witness statement, Mr Pickles tasked Ms Rodaway with making inquiries of the staff at the Court in order to see if any records for 2001 remained in existence, specifically in relation to the question of whether the Warrant had been issued. I have seen copies of email exchanges between the Court and Ms Rodaway in relation to these inquiries. The emails run from 25th May 2016 to 8th June 2016. The final response to these inquiries from the Court which I have seen was an email from Ms Suzanne Germain, Legal Team Manager, sent on 8th June 2016. In that email Ms Germain provided the following information:

> *"Hi Debbie - I understand that Michele has explained that she has checked both historical indexes and nothing is showing for this defendant and also she has checked on the off chance that the warrant may have been filed in*
> *Back in 2001 these warrants were logged in the warrant book (which has now been destroyed) and signed out by the officer who was applying for the warrant.*
> *The last thing we could do is look at the date when the proceedings were first in - do you have that info?"*

85. Returning to Mr Bhandal's application for permission to appeal against the Collins Order, and following the refusal of permission to appeal on the papers, Mr Bhandal exercised his right (as it then existed) to renew his application for permission to appeal at an oral hearing. Mr Bhandal also made an application for permission to amend his grounds of appeal and adduce fresh evidence. The fresh evidence was said to have been evidence that the Warrant and the Information had both been forged by Mr Broad, with the

consequence that, in the absence of any properly commenced criminal proceedings against Mr Bhandal, there had been no jurisdictional basis for the Restraint Order to be made.

86. These applications were heard by Longmore LJ on 18th October 2016. The applications were refused. Longmore LJ noted that Mr Bhandal wished to rely on the witness statement of Ms Buckeldee. He also noted that an unsigned version of the Warrant had been produced at the hearing before Master Moncaster, and that Mr Bhandal had produced his witness statement in the Section 89 Application, in 2013, in which he had alleged that the Warrant was a forgery. He also noted that these allegations in this witness statement had been struck out by King J. Longmore LJ went on to observe that it was only when permission to appeal against the Collins Order was refused on the papers that any further steps had been taken by Mr Bhandal to investigate the authenticity of the Warrant and the Information, by making inquiries of Ms Buckeldee. Longmore LJ summarised the position in the following terms:

> *"So the position is that it has taken from May 2008, eight years until 2016 for the matter to be pursued. There is no reason why that could not have been pursued well before the hearing before Collins J and the first limb of Ladd v Marshall, which requires evidence from an applicant that the material could not have been produced with due diligence for the trial is not fulfilled. It would be quite wrong for me now to make an order to adduce that additional evidence."*

Narrative – 2018 - the Jarman Judgment

87. It is now necessary to return to the Chancery Proceedings, which had been stayed by the Moncaster Order since 2008. Mr Bhandal made an application for the Stay to be lifted and for permission to amend his Particulars of Claim in the Chancery Proceedings in order to claim that the Warrant was a forgery created by Mr Broad as part of a conspiracy with HMCE and to abandon the claim for compensation under Section 89, while continuing with the remaining claims for compensation in the Chancery Proceedings. For their part, HMRC and Mr Broad applied to strike out the Chancery Proceedings on the basis that they were an abuse of process, combined with a claim for summary judgment on the basis that the claims in the Chancery Proceedings had no real prospect of success.

88. These various applications came before His Honour Judge Jarman QC (sitting as a judge of the High Court) on 14th February 2018. Judge Jarman handed down his judgment (**"the Jarman Judgment"**) on the applications on 16th February 2018. For the reasons set out in the Jarman Judgment, Judge Jarman concluded that the continuation of the Chancery Proceedings was an abuse of process. The essential reasoning of Judge Jarman was that Mr Bhandal had elected to proceed with the Section 89 Application in circumstances where he had, by his advisers, obtained evidence which cast doubt upon the authenticity of the Warrant. Judge Jarman summarised the position in the following terms in the Jarman Judgment, at [30]-[33]:

> *"30. However, the question remains as to whether such a claim amounts to an abuse. In my judgment, it does. The Administrative Court was competent to hear the section 89 application, because the application was put on the basis, as it had to be, that proceedings had been instituted against Mr Bhandal. As Mr Knox realistically accepted, by the time that application had been made, Mr Bhandal's advisors were well aware that there was evidence to suggest that the warrant had not been issued in the Uxbridge Magistrates Court on*

the date appearing on it. Such evidence included the statement dated 6 May 2008 (which was not disclosed to HMRC until 2013) of a solicitor in the firm then instructed by Mr Bhandal who attended the court office and was shown the register of warrants by an officer which did not, as it should have done, contain details of the disputed warrant on the date which appeared on its face.

31. It is true that in May and June 2016 further evidence to cast doubt on the validity of the warrant and information was obtained on behalf of Mr Bhandal, including the statement from the magistrate who purportedly signed them, who had retired 15 years previously on the 19 July 2001, the day after her purported signature. In that statement, she said that the signature and date on the warrant resembled her handwriting, as did the signature on the information. However, the date on the information was not in her handwriting and she would not have signed it because it bore the name of Staines Magistrates Court, whereas she sat at Uxbridge.

32. As Longmore LJ observed, this evidence could and should have been obtained in or shortly after 2008, when Mr Bhandal's solicitors had evidence that the warrant had not been issued on the date which it bore. The fresh evidence does not entirely change the aspect of the case. I do not accept that he was misled by HMCE into making the section 89 application on the basis that the warrant and information were valid. It is true that that is what HMCE have always said and HMRC maintains. But Mr Bhandal's advisors had evidence to the contrary. He faced a choice, whether to proceed on the basis that proceedings had been instituted against him and to invoke a statuary procedure to apply for compensation on the basis of serious default on the part of the investigating officers, or to proceed on the basis which he now seeks to rely upon that the warrant and information had been created by Mr Broad later on.

33. He elected the former. In my judgment it is an abuse, after the application which he chose to make was dismissed as were his attempts to appeal that dismissal (including ultimately on the grounds of the forgery of the warrant and information), for him now to seek to pursue common law claims on the grounds of forgery which is the antithesis of the basis on which he pursued his section 89 application."

89. Judge Jarman expressed his conclusion in the following terms, at [36]:

"36. The case of forgery could not have been raised in the Administrative Court proceedings, because the basis of those proceedings was that proceedings had been instituted against Mr Bhandal. However, Mr Bhandal made an election, in full knowledge of evidence that the warrant had not been issued as it purported on its face. In my judgment, it would be oppressive for HMRC and Mr Broad to face these further proceedings. Looking broadly at the merits, the claim should be struck out on the basis that it is an abuse of process, whether as currently formulated or as proposed to be amended. It follows that the other applications are dismissed."

90. Judge Jarman made an order on 26th February 2018 (**"the Jarman Order"**) striking out the Chancery Proceedings, as against the Defendants, and refusing Mr Bhandal's application to lift the Stay and amend his Particulars of Claim.

91. Mr Bhandal sought permission to appeal against the Jarman Order. The application was refused on the papers by David Richards LJ (as he then was) on 14th August 2018, on the basis that the appeal had no real prospect of success. In giving his reasons for refusing permission to appeal, David Richards LJ first noted that many of the issues of fact were the same, as between the Section 89 Application and the Chancery Proceedings, that those issues of fact had been decided against Mr Bhandal by Collins J after a full trial, and that those issues of facts would have to be overturned in the Chancery Proceedings. David Richards LJ then went on to make these points:

> *"By the time that the Chancery proceedings were stayed the applicant had given serious consideration to alleging that a warrant for his arrest had not been issued on the basis of material then in his possession. Longmore LJ held, when refusing permission to appeal against the dismissal of the CJA claim, that with reasonable diligence he could have obtained the further material on which he relied before Longmore LJ.*
>
> *Notwithstanding the availability of this material, the applicant pursued the CJA claim. Having in these circumstances pursued the CJA claim he cannot now launch a collateral attack on the findings made by Collins J on the basis of an allegation that, by virtue of such material, he is not bound by those findings because there was no basis for the CJA claim. As the judge said, he chose to pursue that claim despite having, or being able with due diligence to obtain the material on which he now relies.*
>
> *It was open to him to pursue alternative claims: the CJA claim on the basis that a warrant had been issued and other claims on the basis that a warrant had not been issued.*
>
> *In all these circumstances, it would be an abuse of process to proceed with the Chancery action."*

Narrative – 2019-2022 - the attempted private prosecution and the Questionnaire

92. In February 2019 Mr Bhandal instructed Withers LLP to conduct an investigation with a view considering whether there was sufficient evidence for Mr Bhandal to bring a private prosecution for forgery and/or perverting the court of justice against Mr Broad. In the course of that investigation Withers wrote to the Chief Clerk to the Court on 17th April 2019, seeking an interview with the Chief Clerk and raising a series of inquiries in relation to the procedures and records of the Court in 2001. There is also an internal attendance note of a telephone call made by Ms Gautama from the Court to Mr Lyndon-Skeggs at Withers on 2nd May 2019, apparently in response to the letter of 17th April 2019. In that telephone call Ms Gautama explained that they had checked the register, I assume meaning the Court register, and had found nothing, I assume meaning that they had found no record of the Warrant having been issued. Ms Gautama also raised the question of whether there might be aliases which should be checked against the Court register. Mr Lyndon-Skeggs agreed that there were aliases to be checked and agreed to email over further details. Mr Lyndon Skeggs also said that, ideally speaking, what Withers wanted to do was to meet with one of Ms Gautama's team and take a formal statement. Ms Gautama said that that could be done but raised the difficulty of the event being so long ago. Ms Lyndon-Skeggs explained that his firm had a duty under the Draft Code for Private Prosecutors to retrace steps and assess the evidence. Ms Gautama concluded the call by saying that the Court would check the Court register first, against all the information, and then go from there.

93. On 18th July 2019 Withers wrote to Mr Broad explaining their role, inviting Mr Broad to attend a voluntary interview and setting out a lengthy list of the questions Mr Broad would be asked at the interview. On the same date Withers wrote to Mr Hartnett of the Solicitor's Office of HMRC, explaining the investigation and asking HMRC to co-operate with the investigation and provide certain evidence.

94. During this period, someone approached Ms Suzanne Germain at the Court with a series of questions concerning the procedures (both current and historic) and records of the Court in relation to the issuing of warrants. As mentioned earlier in this judgment, Ms Germain had also been involved in the inquiries made by Ms Rodaway on behalf of Mr Bhandal, in May/June 2016. In 2019 Ms Germain was the Deputy Justices Clerk for Central North West and West London and was based at the Court. The questions were put to Ms Germain in the form of a typed questionnaire. Ms Germain typed her answers into the questionnaire. The questionnaire has no manuscript signature, but *"S. Germain"* is typed into the signature line of the first page of the questionnaire, with the date given as 24th July 2019. Ms Germain gave evidence at the trial, and it is not in dispute that she completed the questionnaire. I will refer to the completed questionnaire, meaning the questionnaire with Ms Germain's answers, as **"the Questionnaire"**.

95. I will need to come back the Questionnaire later in this judgment, but for present purposes it is relevant to make reference to the following answers given by Ms Germain in the Questionnaire:
    (1) As at 18th July 2001 when a warrant was issued, the warrant was recorded in a book which constituted the only record of the issue of the warrant.
    (2) Those books no longer existed, so that there was no record of warrants issued in June or July 2001. Any records would have been destroyed owing to the length of time which had passed.
    (3) There were no records of the cancellation of any warrant between 2002 and 2005.
    (4) The Court register showed that Ms Buckeldee sat in Court 1 of the Court on 18th July 2001.

96. In his submissions at the trial, Mr Newman put in issue the question of who procured the Questionnaire from Ms Germain. He did not accept that it was Withers who had been responsible for obtaining this evidence.

97. So far as the private prosecution was concerned, it did not proceed. In November 2021 an application for a criminal summons, settled by leading counsel, was filed with the Westminster Magistrates Court, alleging forgery by Mr Broad, amongst other matters. On 15th February 2022 District Judge Annabel Pilling, sitting at Westminster Magistrates Court, refused Mr Bhandal permission to issue the criminal summons against Mr Broad.

98. Mr Bhandal commenced these proceedings by claim form issued 3rd October 2022.

<u>Mr Bhandal's claims in these proceedings</u>

99. Mr Bhandal's case is pleaded in the Amended Particulars of Claim. Paragraphs 5-7 plead a summary of the case in the following terms:

> *"5. It is Mr Bhandal's case that from at least 2008 onwards HMRC (acting by Mr Broad at least) and Mr Broad fraudulently misrepresented (including by the forgery of important documents) that it had commenced criminal*

proceedings against Mr Bhandal by causing an arrest warrant to be issued in July 2001 when, in fact, it had not.

6. *As particularised below, that fraudulent conduct on the part of HMRC and Mr Broad caused various orders and judgments to be made by various Judges which would not have been made but for that conduct.*
7. *By these proceedings, Mr Bhandal claims relief in the form of an order or orders, pursuant to the inherent jurisdiction of the High Court and/or in equity providing for the setting aside of the following orders (together with all consequential orders, including costs orders) on the basis that they were procured by the fraud of HMRC and Mr Broad:*
   - *7.1 The order of Master Moncaster dated 1 May 2008 in the Chancery Proceedings (as defined below) ("the Order of Master Moncaster")*
   - *7.2 The order of the Honourable Mr Justice Collins of 11 March 2015 in the Section 89 Proceedings (as defined below) ("the Order of Collins J").*
   - *7.3 The order of His Honour Judge Jarman QC (sitting as a Deputy High Court Judge) of 26 February 2018 in the Chancery Proceedings ("the Order of HHJ Jarman")."*

100. The factual and procedural background are then pleaded, including the allegation that, by the letter of 7th May 2008, HMRC sent to Roche & Co forgeries, in the form of the Information and the Warrant. The following case is then pleaded against HMRC and Mr Bhandal, at paragraph 39:

"39. As will be further particularised below, it is Mr Bhandal's case that:

- *39.1 The Forged Warrant of Arrest and the Forged Information are forgeries and/or not genuine documents in the sense that they were not made on the dates indicated, signed as alleged and/or deployed as alleged and no relevant warrant of arrest was ever, in fact, issued.*
- *39.2 HMRC (by the knowledge of at least Mr Broad who was responsible for and/or complicit in the said forgery) and Mr Broad knew that the said documents were forgeries and/or not genuine and that no warrant of arrest had, in fact, been applied for or obtained but have continued to rely on the said documents and to maintain the false representation that a relevant warrant of arrest was in fact applied for and obtained on 18 July 2001.*
- *39.3 Mr Broad's responsibility for and/or complicity in (and thereby knowledge of) the said forgery is to be inferred from, in particular, the fact that Mr Broad was the officer who would have been responsible for obtaining the warrant of arrest had it been obtained and who must have known that no such warrant was, in fact, obtained and yet held out the Forged Warrant of Arrest and the Forged Information (which he signed) as demonstrating that such a warrant had been obtained and, at all material times, has continued to maintain that he obtained the warrant of arrest.*
- *39.4 Further, the Incomplete Warrant of Arrest was falsely deployed before Master Moncaster in order to show that criminal proceedings had, in fact, been commenced against Mr Bhandal in that at least Mr Broad (and thereby also HMRC) were aware that it did not demonstrate that such criminal proceedings had been commenced."*

101. Paragraphs 48-50 of the Amended Particulars of Claim then plead the alleged fraud against HMRC and Mr Broad, in the following terms:

> *"48. As set out above, since at least April 2008, HMRC (acting by Mr Broad and others) and Mr Broad repeatedly represented to (amongst others) Mr Bhandal and the Court that relevant criminal proceedings had been commenced against Mr Bhandal by the laying of an information and the issue of a warrant of arrest on or about 18 July 2001, knowing that was not true.*
>
> *49. Those representations were false and made fraudulently in that HMRC (by the knowledge of (at least) Mr Broad) and Mr Broad knew that:*
>
> *49.1 No such information had been laid.*
>
> *49.2 No such warrant had been issued.*
>
> *49.3 The Forged Warrant of Arrest and the Forged Information were forgeries and/or not genuine documents in the sense set out in paragraph 39.1 above and no relevant warrant of arrest had ever been applied for or obtained.*
>
> *50. As particularised in paragraph 39.3 above, Mr Broad had the said knowledge because he was responsible for and/or complicit in creating the Forged Warrant of Arrest and the Forged Information."*

102. Paragraph 51 pleads what are described as particulars of the forgery/fraud, principally by reference to an Appendix 1 to the Amended Particulars of Claim. These particulars are not however particulars of when or how it is alleged that Mr Broad or some other person, with the complicity of Mr Broad, forged the Information and the Warrant. Paragraph 51 and, in more detail, Appendix 1 set out the reasons why it is said that the Information and the Warrant were forged.

103. The consequence of the alleged fraudulent conduct of HMRC and Mr Broad is alleged to have been that the Moncaster Order, the Collins Order and the Jarman Order (together **"the Orders"**) are all said to have been procured by fraud, and would not have been made, but for that fraud. On this basis Mr Bhandal seeks to have these Orders set aside, and claims relief in the following terms, at paragraph 57 of the Amended Particulars of Claim:

> *"57. In the premises, Mr Bhandal seeks:*
>
> *57.1 ~~A declaration that the Order of Collins J is a nullity~~. A declaration that Collins J had no jurisdiction to make the Order of Collins J which accordingly must or should be set aside.*
>
> *57.2 Declarations that the orders set out in paragraph 7 above were procured by the fraud of HMRC and/or Mr Broad.*
>
> *57.3 Orders setting the said orders aside.*
>
> *57.4 Such orders and/or directions as are necessary for the future conduct of the Chancery Proceedings.*
>
> *57.5 Restitution of all sums paid out by Mr Bhandal as a result of the said fraud and orders providing for the payment by HMRC and/or Mr Broad of Mr Bhandal's costs of the proceedings in which such orders were made.*
>
> *57.6 Compound interest on such sums as the Court finds are due to Mr Bhandal at such rate and for such period as the Court thinks fit."*

104. As I read the Amended Particulars of Claim, at least part of the relief sought in these proceedings is the revival of the Chancery Proceedings. The position was however left

more opaque than this in Mr Newman's written closing submissions at the trial, which concluded in the following terms:

> *"138. If C is successful in this case, and the three judgments are set aside, then it will be a matter for him whether he chooses to progress the 2007 claim or some different claim based* [on] *his understanding of what happened many years later. If the Ds to any such action feel that they can defend it on the basis of obiter comments from Collins J, in a judgment that has been set aside, and in light of the above princip*[l]*es, and where C has never been questioned by HMRC about any offence, that will be a matter for them following legal advice."*

105. On reading the Amended Particulars of Claim I had some difficulty in understanding what Mr Bhandal's case was, in terms of who is alleged to have forged the Information and the Warrant, and when, and in what way. I put this question to Mr Newman in opening at the trial. Mr Newman explained that Mr Bhandal's case is that at some point between 18th July 2001 and 7th May 2008 it is to be inferred that Mr Broad, or someone at his instigation, must have forged the Information and the Warrant, because the events that they purport to reflect did not happen. The end date of 7th May 2008 is the date of HMRC's letter to Roche & Co., following the hearing before Master Moncaster, under cover of which copies of the Information, with the purported counter-signature of Ms Buckeldee, and the Warrant, with the purported signature of Ms Buckeldee, were provided.

106. The alleged fraudulent misrepresentations are not particularised beyond the repeated representations alleged in paragraphs 48 and 49. The other persons who are alleged to have made these representations are not identified.

107. In the remainder of this judgment, I will use the expression **"the Forgery Case"** to refer to the case of forgery, fraud and misrepresentation pleaded in the Amended Particulars of Claim. It will be appreciated that, although I am using this expression to refer generally to Mr Bhandal's case of forgery, fraud and misrepresentation, the essential allegation and the essential case is that the Warrant, and with it the Information, were forged by Mr Broad or by some other person acting at the instigation of Mr Broad.

<u>The defence to the claims</u>

108. A substantial part of the Defence filed by HMRC and Mr Broad is devoted to the contention that these proceedings are an abuse of the process of the court. The Defendants' argument is that Mr Bhandal made an election to seek compensation pursuant to Section 89, by the Section 89 Application. Mr Bhandal is now seeking to resile from that election because the Section 89 Application failed. At the time when Mr Bhandal commenced the Section 89 Application, so it is argued, he had the material before him on which he now relies to pursue the Forgery Case. Mr Bhandal elected to pursue the Section 89 Application, which necessarily relied on the proposition, asserted as a fact by Mr Bhandal in his Amended Points of Claim in the Section 89 Application, that criminal proceedings had been commenced against Mr Bhandal by the issue of the Warrant. The Defendants' case is that Mr Bhandal made a clear election, from which he should not now be permitted to resile by the pursuit of these proceedings, given that these proceedings depend upon the Forgery Case.

109. On much the same basis as the abuse argument, the Defence also pleads that the claims in the proceedings are barred by the equitable doctrines of abandonment, election and/or acquiescence.

110. The Defence then proceeds to respond to the procedural and factual background, as pleaded in the Amended Particulars of Claim. It is not necessary to go into the detail of this part of the Defence. The relevant point for present purposes is that the Forgery Case is denied in its entirety. The Defendants' case in response to paragraphs 48-50 of the Amended Particulars of Claim is in the following terms, at paragraphs 45 and 46 of the Defence:

> *"45. Paragraph 48 is denied. Proceedings had indeed been commenced in that an information had been laid and warrant of arrest issued on 18 July 2001. Further, there was no need to repeatedly represent that criminal proceedings had been commenced, because that was never at issue in the earlier Chancery action or section 89 proceedings.*
>
> *46. Paragraphs 49 and 50 are denied. The information was laid by the Second Defendant acting on behalf of the predecessor of the First and sworn at Uxbridge Magistrate's Court on 18 July 2001. The arrest warrant was issued by Uxbridge Magistrate's Court the same day. Neither document was forged. The arrest warrant was subsequently transmitted to the USA via Interpol in an attempt to secure the extradition of the Claimant."*

111. So far as the claim to have the Orders set aside on the basis of fraud is concerned, the Defendant's case is that if, which is denied, the alleged fraud and/or forgery occurred, the same were not material to the making of any of the Orders, with the consequence that none of the Orders should be set aside even if fraud or forgery is established.

112. The Defence also asserts what is described as a clean hands defence, which is put in the following terms, at paragraph 54 of the Defence:

> *"54. The Claimant seeks equitable relief but does not come to the Court with clean hands: he seeks such relief in order to further a claim which is founded on purported losses flowing from his inability to realise his profits from an asset subject to the RO when such assets represented the proceeds of his crimes as found by Collins J. That is a further reason why his claim must be dismissed."*

113. Further defences of limitation and laches are pleaded in the Defence. In their skeleton argument for the trial however, the Defendants' counsel indicated that the Defendants were content that matters should not be unduly complicated by pressing the issue of delay. Accordingly, these defences were not pursued.

<u>The issues for determination</u>

114. I have lists of issues prepared, respectively, by Mr Bhandal and the Defendants earlier in the proceedings. There was no agreed list of issues for the trial.

115. In broad terms however, the principal issues which I have to determine can be summarised as follows:
    (1) Has Mr Bhandal proved the Forgery Case?
    (2) If so, was the relevant fraud and/or forgery material to the making of the Orders or any of them?
    (3) Are the claims in the proceedings an abuse of process?

(4) Are the claims in the proceedings barred by the doctrines of abandonment, election and acquiescence or any of them?
(5) Should Mr Bhandal be denied relief on the basis, as alleged, that he does not come to court with clean hands?

116. Mr Bhandal did not adduce evidence at the trial in support of the claims for financial relief pleaded in the Amended Particulars of Claim. As I understood Mr Newman's submissions, Mr Bhandal's position was that questions of this kind should be dealt with separately, after the issues summarised above have been determined and assuming an outcome of the trial in Mr Bhandal's favour.

117. It is convenient at this point to mention one other particular issue which arises in relation to the Defendants' case that these proceedings are an abuse of process. On 2nd December 2022 the Defendants applied to strike out the proceedings, on the basis that they were an abuse of process. The essential argument in support of the application was that these proceedings constitute a second attempt to litigate matters which had already been decided in the Collins Judgment and the Jarman Judgment, and which Mr Bhandal should not be permitted to litigate again. The application came before Sir Anthony Mann, who handed down his judgment on the application on 21st June 2023. For the reasons set out in this judgment (**"the Mann Judgment"**), Sir Anthony concluded that he should make no order on the application. Sir Anthony considered that the issue of abuse of process, as he identified that issue in the Mann Judgment, would benefit from being determined as a preliminary issue. In the event there was no preliminary issue, and the abuse of process argument is maintained by the Defendants. The particular issue which arises in this context is whether Mr Bhandal is right to contend, as he has in his Reply in these proceedings, that the Defendants' case on abuse has already been decided against the Defendants by the Mann Judgment, and cannot now be pursued.

The evidence – the records of the Court

118. As is apparent from the narrative set out above, Mr Bhandal has, over the years, conducted various inquiries into the records of the Court. As matters ultimately turned out, some records of the Court were in evidence at and after the trial. Prior to analysis of this evidence, it is necessary to explain, in summary, what records are available and how they came to be obtained.

119. It is not in dispute that, in 2001, the Court maintained a court register. The past inquiries made by Mr Bhandal over the years have also disclosed that the Warrant does not appear in the court register for 18th July 2001, either in Mr Bhandal's name or in any of the names listed as aliases for Mr Bhandal in the Warrant. I will refer to this court register as **"the Court Register"**. There is also the evidence of Ms Germain that the Court maintained a separate register in 2001, also in book form, in which warrants were recorded. I will refer to this separate register as **"the Warrant Book"**.

120. So far as the Court Register is concerned, historic copies of the Court Register can be obtained from the National Archives. As a result, Mr Bhandal visited the National Archives on two occasions in January 2025, and was able to inspect the latest available parts of the Court Register in the National Archives, dating from 1986/1987. The relevant parts of the Court Register are contained in red leather bound books, with each book covering a period of days. Mr Bhandal was able to take photographs of extracts

from the Court Register, for the period from 1st to 24th January 1986 and for 22nd and 23rd December 1986 (**"the 1986 Records"**), which were put in evidence at the trial.

121. The question of the availability of the relevant Court records from 2001 was raised at the pre-trial review, which was heard by Thompsell J on 14th January 2025. With a view to assisting the parties, Thompsell J made a request to the Court for copies of the Court Register and the Warrant Book for certain periods. I have not seen a copy of this request, so I do not know the precise terms in which it was made. There appear to have been problems with complying with this request, as a result of lack of court staff at the Court. In these circumstances Thompsell J asked his clerk to attend at the Court to check what records were available. The clerk attended at the Court, I believe on 5th February 2025, and was able to inspect the Court Register for the period from 18th June 2001 to 18th August 2001. The clerk was also able to take photographs of the Warrant Book for the period from 8th October 2002 to 6th December 2004 (**"the Warrant Book Records"**). The clerk reported to Mr Bhandal, by an email sent on 7th February 2025, that there was no record of Mr Bhandal or of any of the aliases specified in the Warrant in the Court Register for the period from 18th June 2001 to 18th August 2001. The clerk also stated that the Warrant Book was not available for this period, but that it had been possible to take the photographs, which I am referring to as the Warrant Book Records, for the later period from 2002-2004.

122. There was an initial question mark, raised not by the parties but by a communication from the Court, over whether the Warrant Book Records were part of a public record which could be released to the parties. In the course of the trial, and after investigating the position further, I concluded that there was no reason why the Warrant Book Records could not be released to the parties. Accordingly, the Warrant Book Records were also released to the parties and were put into the evidence at the trial. I indicated that I would give a formal explanation of my reasons for releasing the Warrant Book Records to the parties in this judgment, but I can do so very quickly. It seemed to me that the Warrant Book Records were clearly public records, within the meaning of the Public Records Act 1958. Both parties were of the view that the Warrant Book Records could and should be released to them. No argument was identified to me as to why the Warrant Book Records, which had already been obtained from the Court by the clerk to Thompsell J, could not be released to the parties. It seemed to me that it would have been within my jurisdiction, had this been required, to make an order which, by direct or indirect means, would have required the production of the Warrant Book Records to the parties. I had also concluded that the Warrant Book Records were, at least potentially, relevant evidence at the trial. Putting all of this together I could see no reason for withholding the Warrant Book Records from the parties. Indeed, it seemed to me that it would have been wrong for me to have taken this course.

123. Although it was common ground that the issue of the Warrant did not appear in the Court Register, Mr Bhandal still wished to inspect the Court Register for 18th July 2001, essentially for two reasons. First, it was his case that the Court Register would show what business Ms Buckeldee had been dealing with in the Court on that day, which might in turn throw light on whether she would have had time to deal with an application for the issue of a warrant by Mr Broad. Second, it was his case that the Court Register would demonstrate whether warrants of arrest in the first instance were recorded in the Court Register at that time. To this end Mr Bhandal made an application for an urgent order for inspection of the Court Register, which was also described as an application for third

party disclosure. It is not necessary to chart the history of this application. Ultimately, the matter was resolved by the Court providing the parties with access to the archives of the Court, for the purposes of inspecting and taking copies of the Court Register for 17th and 18th July 2001. A joint visit to the Court by Mr Bhandal and the Defendants' solicitor duly took place, and copies were taken of the Court Register for these two days (**"the 2001 Records"**). The joint visit took place after the conclusion of the trial itself. I therefore gave permission for the parties to make further written submissions (in the form of submissions from Mr Bhandal, submissions in response from the Defendants, and submissions in reply from Mr Bhandal) on the 2001 Records. This further round of submissions was completed on 24th March 2025, and the 2001 Records were put into the evidence.

124. The upshot of all this, in terms of the actual records of the Court, was that the available evidence comprised the 1986 Records, the Warrant Book Records and the 2001 Records. Although the process of obtaining the Warrant Book Records and the 2001 Records was not entirely smooth, I should record my gratitude to the Court for their co-operation in making available those records of the Court which were said to be required for the trial.

The evidence – Mr Bhandal's witnesses

125. There were four witnesses for Mr Bhandal who gave oral evidence. They were Mr Bhandal himself, Maurine Lewin, Malcolm Pickles and Suzanne Germain. The evidence of Ms Lewin and Mr Pickles was very short.

126. Ms Lewin worked as a court clerk/legal adviser in Magistrates' Courts between 1984 and 2000, and thereafter worked in what she described as a family court until (according to her oral evidence) 2008. Her witness statement in these proceedings exhibited an earlier witness statement dated 8th October 2020. This earlier witness statement contained a short commentary on Magistrates' Court procedure and on the Warrant. The courts in which Ms Lewin worked did not include the Court. Ms Lewin was therefore unable to give any direct evidence of practice or procedures at the Court. While I am sure that Ms Lewin was honest in her evidence, it seemed to me that her evidence was largely inadmissible commentary which, to the extent (if at all) that it was admissible, was of little assistance to me.

127. Mr Pickles was the inquiry agent who traced Ms Buckeldee and, accompanied by Ms Rodaway, obtained the witness statement from Ms Buckeldee which is dated 23rd May 2016. His witness statement in these proceedings exhibited an earlier witness statement dated 20th May 2016 in which Mr Pickles, a former Detective Inspector with 31 years of service in the Metropolitan Police (retired in 2006) described his instruction by Mr Bhandal and his visit to Ms Buckeldee. The statement includes some commentary on the Warrant, which itself includes an inadmissible expression of opinion. Subject to this point, Mr Bhandal's account of the visit which he and Ms Rodaway made to Ms Buckeldee does provide background context to the witness statement obtained from Ms Buckeldee. The witness statement of Ms Buckeldee is itself an important piece of evidence in these proceedings.

128. The position in relation to Ms Germain was more complicated. Ms Germain has already been referred to, in the relevant narrative sections of this judgment, as the person who provided the answers in the Questionnaire, which was dated 24th July 2019, and as the person who responded to earlier inquiries made on behalf of Mr Bhandal. In September

2023 the Court was approached by HMRC with inquiries about the Court records. An email exchange ensued between Aron Bolton, a Senior Investigation Officer with HMRC Fraud Investigation Service, and Ms Germain, in the course of which Ms Germain provided certain information in response to Mr Bolton's inquiries. Following this email exchange Ms Germain was asked by Rebecca Taylor, the Defendants' solicitor, to provide a witness statement. Ms Germain declined to do this, on the basis that none of the information she was able to provide was within her own knowledge, that the information provided in her emails had been provided by others, that the keeping of records was an administrative function in the magistrates' courts and not a legal one, and that she had not checked any of the records personally.

129. There matters rested until 4th February 2025 when Mr Bhandal issued a witness summons requiring the attendance of Ms Germain at the trial. No witness statement or witness summary had been provided for Ms Germain. It appeared at one point that Ms Germain intended to make an application to set aside the witness summons. Ms Germain did produce a draft application notice seeking the setting aside of the witness summons, but so far as I am aware, the application notice was not issued. In the event, and following my varying the date for Ms Germain's attendance at the trial to a date convenient to Ms Germain, Ms Germain did attend the trial. The next question which arose was whether Mr Bhandal should be permitted to call Ms Germain in circumstances where no witness statement or witness summary had been served by Mr Bhandal in respect of her evidence. Mr Kent objected to Ms Germain being called. For the reasons which I set out in a judgment delivered on the relevant day of the trial, I concluded, with considerable reservations, that Mr Bhandal should be permitted to call Ms Germain. Ms Germain was then called, and was examined in chief by Mr Newman and cross examined by Mr Kent.

130. At the time when she provided the Questionnaire Ms Germain was Deputy Justices' Clerk for Central North, West and West London and was based at the Court. Thereafter Ms Germain became a Senior Legal Manager (People Central and West) London Central, West & North West Local Justices Areas, I believe still based at the Court. In her evidence Ms Germain, who is a qualified solicitor, explained that she became a Senior Legal Manager following the abolition of justices' clerks and their replacement by legal advisers. She explained that she had worked, and continued to work in a legal capacity, as opposed to an administrative capacity.

131. I will need to come back to Ms Germain's evidence in my analysis of the Forgery Case. In terms of overall impression, Ms Germain was professional, straightforward and helpful in her evidence. She did however confirm in her evidence what she had already stated in the draft application notice to set aside the witness summons, and in her earlier email communication with Ms Taylor. This was that the information contained in the Questionnaire was not within her personal knowledge, but had been obtained from the administrative staff at the Court. The only exception to this was that Ms Germain had herself checked the Court Register for 18th July 2001, in the archives of the Court, and had confirmed that Ms Buckeldee was sitting that day. Ms Germain also confirmed that she had not been working at the Court in 2001, but had been at Thames Valley Magistrates' Court.

132. There is one other part of Ms Germain's evidence to which I should make specific reference. I have explained above that, in September 2023, Ms Germain provided certain information in relation to the Court records to HMRC, in response to Mr Bolton's

inquiries. The responses were provided by Ms Germain typing in her responses to the emails from Mr Bolton. Ms Germain was asked about these responses in cross examination. I will refer to Ms Germain's responses in the email exchange with Mr Bolton as **"the Germain Replies"**. The Germain Replies included a copy of a record retention and disposal policy published by HMCTS, which Ms Germain attached to one of her emails.

133. In addition to the evidence of the above witnesses, Mr Bhandal served a notice stating his intention to rely on hearsay evidence. The notice in question was sent by Mr Bhandal to Ms Taylor, the Defendants' solicitor, on 19th July 2024. The notice identified six witness statements which were to be adduced by Mr Bhandal as hearsay evidence and various other materials which were also to be relied upon by Mr Bhandal as hearsay evidence. Of these materials the most relevant, in terms of the evidence to which direct reference was made in the trial, were the witness statements of Ms Buckeldee and Ms Haddad.

The evidence – Mr Bhandal's own evidence

134. Mr Bhandal gave evidence himself at the trial. There was extensive written evidence from Mr Bhandal, in the form of witness statements. Mr Bhandal was also cross examined for the best part of a day. In terms of witness statements Mr Bhandal adduced, as his evidence in chief at the trial, his sixth, seventh and ninth witness statements in these proceedings. There were also three witness statements made by Mr Bhandal in connection with the application for inspection of the Court Register, mentioned above, and in connection with the evidence of Ms Germain (who provided the Questionnaire and the Germain Replies), also as mentioned above. I will need to come back to specific elements of Mr Bhandal's evidence later in this judgment. My overall impressions of Mr Bhandal were however as follows.

135. First, and this is not a criticism, Mr Bhandal is not the key witness in relation to the Forgery Case. I accept the submission of Mr Newman that, in a case of alleged forgery, the claimant is unlikely, either by themselves or by another witness, to be able to give direct evidence of exactly how and when the alleged forgery occurred. The present case is no exception to this general rule. As a result, and although Mr Bhandal was able to give plenty of evidence in relation to the history of this case, he was not in a position to give direct evidence of forgery or fraudulent conduct on the part of the Defendants. By contrast, parts of Mr Bhandal's evidence were directly relevant to the Defendants' case on election and abuse of process. This was because the Defendants' case engaged the questions of what, if any election Mr Bhandal had made, and with what knowledge.

136. Second, Mr Bhandal has an impressive knowledge of the history of the case. He also, very clearly, holds a passionate belief that he has been the victim of a fraudulent conspiracy and/or fraudulent conduct on the part of HMRC and Mr Broad personally. This belief ran through his evidence.

137. Third, and no doubt by way of reflection of what I have just said, large parts of Mr Bhandal's written evidence, and parts of his oral evidence comprised commentary and what were, effectively, submissions in support of the Forgery Case. I was obliged to intervene at one point in the cross examination, to prevent the cross examination degenerating into an argument. This was not the fault of Mr Kent but of Mr Bhandal, who had started to use Mr Kent's questions as a platform to get across what he wanted

to highlight to the court. Mr Bhandal's trial witness statements were not expressed to have been prepared in compliance with the requirements of CPR PD57AC and the Appendix thereto, and had clearly not been prepared in accordance with those requirements. No doubt bearing in mind that Mr Bhandal was acting in person when he prepared the witness statements, the Defendants did not seek the exclusion of these witness statements or other sanction. The Defendants simply made the point that much of the written evidence comprised inadmissible commentary. While this was a sensible approach for the Defendants to adopt, in the circumstances of this particular case, the problems with Mr Bhandal's evidence, in this respect, did demonstrate the need for the regime in CPR PD57AC.

138. Fourth, Mr Bhandal has, over the past 25 years or so, instructed a series of solicitors and counsel to act for him. Mr Bhandal had solicitors acting for him in these proceedings until April 2024. Mr Bhandal made criticisms of a number of these lawyers. These criticisms had two particular features in common. The first was that, as a general rule, there was no other evidence to corroborate the criticisms. The criticisms depended upon Mr Bhandal's word. The second was that these criticisms were relied upon by Mr Bhandal in order to deal with matters in the evidence which, it was quite clear, he perceived as unhelpful to his cause.

139. A good example of this was the evidence given by Mr Bhandal, in cross examination, in relation to the application made in the Chancery Proceedings, on 1st March 2011, for the Stay to be lifted. This application was made by his then solicitors, a firm called Ralli Solicitors LLP. The application notice itself was in evidence. The court stamp on the application notice shows that the application for the Stay to be lifted, and for Mr Bhandal to be given permission to amend his Particulars of Claim in the Chancery Proceedings was issued on 1st March 2011. The grounds of the application, set out in section 10 of the application notice, took the point that it was unclear whether the court could award compensation pursuant to Section 89 because the underlying criminal proceedings, consisted only of the Warrant, and it was unclear whether the Warrant had been withdrawn. It was said that attempts to clarify the position with the Court and HMRC had been unsuccessful. Copies of the relevant correspondence which preceded this application, were attached to the application notice. I assume that the relevant correspondence comprised the inquiries made by Mr Bhandal's previous solicitors, Needleman Treon, between November 2010 and February 2011, referred to earlier in this judgment.

140. In cross examination Mr Bhandal claimed that he had had no knowledge of this application, when it was made, and only became aware of it on 2nd December 2022, when it was part of the materials relied upon by the Defendants in making the strike out application in these proceedings which came before Sir Anthony Mann. I found this an extraordinary claim, for which there was no corroborating evidence. The application notice had clearly been issued, and I assume that a fee would have had to be paid. Beyond this, and leaving aside the inherent unlikelihood of any firm of solicitors launching an application on behalf of a client without that client's knowledge or authority, it is important to keep in mind that the grounds of the application made reference to what had happened before Master Moncaster, and to the problems for a claim under Section 89 created by the uncertainties over the Warrant. The grounds of the application also made reference to the attempts by Mr Bhandal's solicitors to clarify the position with the Court and HMRC. As I have just said, I assume that those inquiries would have been the

inquiries referred to earlier in this judgment, which were conducted by Needleman Treon in late 2010 and early 2011. It appears therefore that Ralli Solicitors LLP had only just begun to act for Mr Bhandal, when the application was made on 1st March 2011. It follows that the information set out in the grounds of the application must have been obtained by taking instructions from Mr Bhandal. There is no reason to think that Ralli Solicitors possessed this information without the need to speak to Mr Bhandal. Putting all of this together, it defies belief that the solicitors went out on a limb and made the application of their own accord, without reference to Mr Bhandal.

141. The chronology is important here. The Section 89 Application was launched on 4th March 2011, while the application of 1st March 2011 was subsequently withdrawn. It was obvious that this sequence of events, involving the abandonment of the application for a lifting of the Stay and the decision to pursue the claim for compensation under Section 89, was relevant to the Defendants' case on election and, at the least, capable of being unhelpful to Mr Bhandal. It was quite obvious to me in hearing the cross examination, and I so find, that Mr Bhandal had appreciated this, and sought to disclaim the application to lift the Stay by claiming no knowledge of the application. I found Mr Bhandal's claim that he had no knowledge of this application to be incredible, and not one which I could accept. It was quite clear to me, and I so find, that this application was made with the knowledge and authority and on the instructions of Mr Bhandal. I also reiterate that this was one of a number of examples of Mr Bhandal seeking to blame his former lawyers for matters which he perceived to be unhelpful to his cause.

142. Fifth, Mr Bhandal also made claims, in terms of what he had been told by others, which were not substantiated either by documents or by the alleged source of the information. One example of this involved Mr Mitchell QC, leading counsel who acted for HMCE in relation to the preparations for commencing criminal proceedings against Mr Bhandal and in relation to the obtaining of the Restraint Order. Some years after these events, in 2010/2011 Mr Mitchell accepted instructions to act for Mr Bhandal. This appears to have been as a result of a failure on someone's part to identify that Mr Mitchell had previously acted against Mr Bhandal. The conflict did however come to light after some months, and Mr Mitchell withdrew from acting for Mr Bhandal, returning fees charged to Mr Bhandal. In his sixth witness statement in these proceedings, Mr Bhandal gave evidence that he had been told by Mr Mitchell, at a wedding in December 2010, that HMRC had never had a first instance warrant. Mr Bhandal had previously made the same claim in an email, sent on 7th November 2017, to a different leading counsel.

143. In the relevant passage in his sixth witness statement, where this claim is made, Mr Bhandal did not mention an email exchange which he had had with Mr Mitchell in June 2024. Mr Bhandal's sixth witness statement is dated 19th July 2024. On 18th June 2024 Mr Bhandal had emailed Mr Mitchell, putting to him a number of matters including the alleged conversation at the wedding. Mr Mitchell was invited to provide a witness statement voluntarily, failing which Mr Bhandal said that he would serve a witness summary, I assume with a view to subsequently serving a witness summons in order to compel the attendance of Mr Mitchell to give evidence at the trial of these proceedings. Mr Mitchell responded by email on 19th June 2024, substantially disputing what Mr Bhandal had put to him, including in relation to the alleged content of the conversation at the wedding, and stating that he did not believe that he could assist. In the event Mr Mitchell was not called to give evidence. There was much argument over why Mr Mitchell had not been available to give evidence, but I could identify no convincing

reason why Mr Bhandal could not have compelled the attendance of Mr Mitchell as a witness, if he had wanted to and in accordance with the intention stated in his email of 18th June 2024. I should mention that the notice of intention to rely upon hearsay evidence which was served by Mr Bhandal did include reference to statements made by Mr Mitchell. The statements in question comprised parts of a statement of case settled by Mr Mitchell when he was acting for Mr Bhandal and a statement Mr Mitchell is recorded as having made in the minutes of a consultation held on 28th June 2001. This hearsay evidence, as it was described, did not extend to the alleged conversation at the wedding. Even if it had, the reason advanced in the notice as a reason for Mr Mitchell not being called to give evidence was not one which I would have been willing to accept as constituting a good reason for adducing evidence, in the form of hearsay, of what Mr Mitchell was alleged to have said at the wedding.

144. In the absence of any direct evidence from Mr Mitchell, I am not prepared to treat Mr Bhandal's account of the conversation at the wedding as reliable. Nor am I prepared to treat a statement made by Mr Bhandal some seven years later as evidence corroborating Mr Bhandal's account of this alleged conversation. To my mind this was an example of Mr Bhandal making claims about what he had been told by others, which were not substantiated and should not be accepted.

145. Sixth, and on a related topic, Mr Bhandal was also willing to make allegations which were either not supported or were not pursued. In support of the strike out application in these proceedings Ms Jemima Robin, a solicitor at HMRC with conduct of the proceedings, made a first witness statement dated 2nd December 2022. Ms Robin exhibited to that witness statement an email sent on 19th December 2001 by Simon Regis of HMCE's Solicitor's Office, to Mr Coussey, mentioned earlier in this judgment as a member of the team assembled to deal with the prosecution of Mr Bhandal. The email was concerned with the problems which had come to light in relation to the intended extradition of Mr Bhandal from the United States. The email referred to the procedure which would have to be adopted, and explained that *"This procedure would have had to have been adopted even if Bhandal was arrested on the warrant back in July"*. Ms Robin also exhibited an email sent on 16th January 2002 by Rajka Vlahovic of the Solicitor's Office to Mr Coussey, which contained further discussion of the extradition problems which had come to light.

146. In his second witness statement in the proceedings, made in response to Ms Robin's second witness statement, Mr Bhandal subjected these emails to extensive forensic analysis, and highlighted what he claimed were discrepancies and inconsistencies in the forms of these emails which had been produced. Mr Bhandal concluded in the following terms, at paragraphs 31 and 32 of this witness statement:

> *"31. In the absence of a very credible explanation about the serious discrepancies in the emails that I have referred to above, the Court must conclude that the emails are or at least one of them is a false document, possibly created for the Section 89 Proceedings.*
>
> ***Conclusion***
>
> *32. The above adds considerable weight to the already overwhelming evidence of fraud by the Defendants, which the Defendants have refused to engage in (as observed by Master Brightwell), and I respectfully ask the Court to dismiss the Defendants' application to strike out the Claim."*

147. In response, Ms Robin provided a full explanation of how the apparent discrepancies and inconsistencies had come about, in her fourth witness statement which was dated 9th May 2023. Essentially, her evidence was that there was an innocent explanation, relating to the way the formatting and layout of old emails behaved when processed and printed, for the discrepancies and inconsistencies. In cross examination at the trial Mr Bhandal was asked whether he was pursuing his allegation that these emails had been forged. Mr Bhandal said that he was not pursuing this allegation, prior to launching into the following justification of his position **[T2/100/17-101/2]**:

> *"A. I don't dispute what that email says and the content of that email. What I dispute is the fact that those emails from those authors had never seen an arrest warrant. They'd been told that an arrest warrant had been issued. There's a difference there, right? They've never exhibited -- no one has ever exhibited this warrant to any form of a witness statement, ever. No one seems to have seen it in the HMRC solicitor's office or HMCE solicitor's office. The only person that ever knew of this warrant, of its existence, was Mr Broad."*

148. It was clear, and I so find, that Mr Bhandal made the allegation of suggested forgery (or concoction) of these emails because the emails comprised evidence which he perceived to be unhelpful to the Forgery Case. When push came to shove, at the trial, Mr Bhandal was not able to substantiate the allegation of dishonest conduct, and had to drop it, seeking to justify his position in the answer I have set out above.

149. Seventh, and finally, Mr Bhandal had a tendency to trim his evidence when under pressure, particularly when dealing with his historical understanding of what claims were open to him at particular times. By way of example, it was put to Mr Bhandal in cross examination that Judge Jarman had been right to say that Mr Bhandal had faced a choice on whether to proceed on the basis that criminal proceedings had been instituted against him and to claim statutory compensation on that basis, or to proceed on the basis that the Warrant had never been issued. It was put to Mr Bhandal that he had made an election to pursue the former course. Mr Bhandal sought to deny this, which resulted in the following exchange **[T2/87/20-89/6]**:

> *"And so I didn't understand the legislation as such, that whether I had -- whether I should abandon it and just go and try and lift the stay on a discrete application about the warrant. I understood that I had to go through the section 89 process before I could go back to the Chancery.*
> *Q. Yes.*
> *A. That's what I was led to believe.*
> *MR JUSTICE EDWIN JOHNSON: But you said a few moments ago that you were advised that you'd have no claim whatsoever.*
> *A. Yes.*
> *MR JUSTICE EDWIN JOHNSON: Because of the stay?*
> *A. Yes.*
> *MR JUSTICE EDWIN JOHNSON: When did you receive that advice?*
> *A. That was sometime in 2014, sir.*
> *MR KENT: So before it was too late to stop the case in front of -- in the administrative court?*
> *A. Yes.*
> *Q. Well, I suggest that that's not correct. You can't have been -- received that advice.*
> *A. That's what I was told.*

Q. Right.
MR JUSTICE EDWIN JOHNSON: But if you were advised you had no claim whatsoever because of the stay --
A. Yes.
MR JUSTICE EDWIN JOHNSON: -- then you didn't have the option of going back to the Chancery proceedings.
A. No I didn't. They said that I had no claim at that time. (Pause)
MR JUSTICE EDWIN JOHNSON: But I understood your more recent answers to mean that you thought you did have that option of going back to the Chancery proceedings?
A. At that time, I didn't understand my position, my Lord. But as time went on, I started to understand after the Jarman hearing, which was in February 2018, as to what my position was."

150. I found this part of Mr Bhandal's evidence difficult to follow. My impression was, and I so find, that Mr Bhandal was trying to trim his evidence, in order to meet the claim that he had made the election described by Judge Jarman.

151. In overall terms my assessment of Mr Bhandal was that while he had an impressive knowledge of the history of this case, and clearly held a passionate belief that he had been the victim of a fraudulent conspiracy by HMRC and Mr Broad, his evidence was not reliable on those matters which he perceived to be important to this case. I therefore approach Mr Bhandal's evidence with caution, in terms of the factual issues where Mr Bhandal is able to give direct evidence and where that evidence is not corroborated by the documents or by other credible evidence. I exercise the same caution in weeding out those parts of Mr Bhandal's evidence which essentially comprise commentary on the evidence and issues in this case.

<u>The evidence – the Defendants' witnesses</u>

152. The Defendants' principal witness, and the key witness at the trial, so far as the Forgery Case was concerned, was Mr Broad. Given that the credibility of Mr Broad as a witness is central to the Forgery Case, I will not, at this stage, set out my general assessment of Mr Broad as a witness. Instead, I will reserve this task to my analysis of the Forgery Case. For present purposes I set out the following summary of Mr Broad's roles with HMCE and HMRC.

153. Between 1982 and September 2002 Mr Broad was an officer first of HMCE and then, as from 7th April 2005, of HMRC. Between 1982 to 1994 Mr Broad worked on the investigation of international heroin trafficking and heroin importations into the UK. In 1994 he became a Financial Investigator assisting in identifying and locating assets of persons convicted of drug trafficking. In 1996 Mr Broad transferred to Heathrow Airport where he served in a Commercial Fraud Team, dealing with excise and VAT frauds. In 2000 Mr Broad moved to the Financial Investigation Team, initially dealing with people smuggling large quantities of drugs out of Heathrow. In 2001 his team started to take on what he described as full-scale money laundering cases. Between 2003 and 2010 Mr Broad was based in Central London, involved in the enforcement of unsatisfied confiscation orders made in the Crown Courts. From 2010 until his retirement Mr Broad continued as a Financial Investigator, based first in Staines and then in Reading.

154. Mr Broad explained in cross examination that while he was working at Heathrow, he was based first in an HMCE building at Harmondsworth, adjacent to the airport, and then at Staines. In July 2001 Mr Broad was still based at Harmondsworth.

155. The Defendants' remaining witnesses were Paul Webb, John Pini, Jonathan Huxtable, Rebecca Taylor and Jemima Robin. I set out, briefly, my overall assessment of the evidence of each these witnesses.

156. I have already referred to Mr Webb as a member of the team involved in Operation Kitsch; the investigation of the alleged criminal activities in which Mr Bhandal was alleged to have been involved. Mr Webb was an officer of HMRC and, prior to that, HMCE, retiring in 2018. In 2001 Mr Webb was in an immediately superior position to Mr Broad, as an investigating officer, and was Mr Broad's line manager. Mr Webb was able to give helpful evidence in relation to a number of documents relevant to the Forgery Case. It was also apparent from his evidence that he was admirably conscientious in making notes of meetings he attended. It is important to keep in mind in this case that Mr Webb, along with a number of the other witnesses, was being asked about matters from over 20 years ago. As such, it is more than usually important to bear in mind what evidence can and cannot be corroborated from those contemporaneous documents which are available. Subject to that caveat, I am satisfied that Mr Webb was an honest witness, who did his best to assist the court with his evidence, to the limits of his recollection.

157. Mr Pini was formerly a barrister and, from 2014, a Circuit Judge. Mr Pini retired in 2022. In 2001 (Mr Pini became a QC in 2006) Mr Pini was junior counsel to Mr Mitchell in relation to Operation Kitsch. Mr Pini's witness statement was principally concerned with explaining the circumstances in which he came to be involved in these proceedings, which I should briefly explain. In April 2024 the clerks at Mr Pini's former Chambers forwarded to him a letter from an investigative journalist, Mr Wilkinson of Hunt & Gather. The letter made reference to a case summary prepared by Mr Pini in 2001, in relation to the prosecution of Mr Pearce and others, and quoted a short extract from that case summary. The letter made reference to the Kegco Warrant, and went on to make the point that the case summary did not refer to any second warrant issued in 2001. The letter also made the point that there was no reference to any second warrant issued at Uxbridge in 2001, at a hearing in the prosecution of Mr Pearce and others in the Leicester Crown Court on 15th October 2001, when Mr Mitchell made reference, at that hearing, to the alleged role of Mr Bhandal. In a draft response to this letter, which was sent to Hunt & Gather, Mr Pini said, amongst other matters, that he had no recollection of any second warrant, and that a second warrant would have been *"totally superfluous"*, given that the arrest warrant for Mr Bhandal in 1998, namely the Kegco Warrant, had not been executed.

158. The next communication which arrived for Mr Pini, via the senior clerk at Mr Mitchell's Chambers, was from Mr Bhandal. Mr Bhandal sent an email to the senior clerk, attaching a letter to Mr Pini, with an instruction to the clerk that the letter should not be sent to Mr Mitchell, so as to avoid *"contamination of evidence"*. In this letter Mr Bhandal referred to Mr Pini's exchange with Hunt & Gather and highlighted Mr Pini's statement that a second warrant would have been *"totally superfluous"*. The letter concluded by asking whether Mr Pini was willing to assist voluntarily, by providing a witness statement. The letter made reference to the need for Mr Bhandal to serve a witness summary, in the absence of the provision of a witness statement. It was only at this point that Mr Pini

realised that Mr Bhandal had been working in concert with Hunt & Gather, who had described themselves to Mr Pini as investigative independent journalists. On further investigation of the position Mr Pini also realised that Hunt & Gather had elided the Kegco Warrant and the Warrant, each of which (assuming that the Warrant had been issued) had been issued for different purposes and were intended to serve different purposes. Mr Pini's unhappiness at what had happened was further increased when he was informed that Mr Bhandal was quoting from his reply to Hunt & Gather in correspondence with the First Permanent Secretary and Chief Executive of HMRC, in support of his case that no warrant was issued in 2001 and that the Warrant was a forgery. In fact, Mr Pini had sent an immediate response to Mr Bhandal's letter, through the clerk to Mr Mitchell, making it clear that the fact that he, Mr Pini, had no recollection of a second warrant did not mean that there had not been a second warrant.

159. By reason of these events Mr Pini's witness statement was principally concerned with putting the record straight, both in terms of how he came to provide his original response to Hunt & Gather and in terms of explaining the differences between the Kegco Warrant and the Warrant. In cross examination Mr Newman, sensibly in my view, did not revisit the events summarised above, which in my judgment do not reflect much credit on either Hunt & Gather or Mr Bhandal. Instead, Mr Newman sought the assistance of Mr Pini with various contemporaneous documents to which Mr Pini could speak, with the benefit of his legal and judicial experience. The assistance which Mr Pini was able to provide was not extensive, but the evidence which Mr Pini did give was precise, helpful and clearly honest.

160. Mr Huxtable is an officer of HMRC's Fraud Investigation Service, working as a Senior Forensic Practitioner within the Cyber and Digital Forensics team. Mr Huxtable was asked to perform forensic analysis on five documents held on the HMRC SharePoint system, for the purposes of determining when these files were created. Mr Huxtable exhibited to his first witness statement a table of the metadata information in relation to the five documents. The five documents included unsigned documents corresponding to the Information and the Warrant. Mr Huxtable was only briefly cross examined. The importance of his evidence lay in the table of the metadata information. As I understood the position, the information in the table was not disputed. What was in dispute, but was a matter more for submissions than the evidence of Mr Huxtable, was what conclusions could be drawn from the metadata information. Subject to this, I am satisfied that Mr Huxtable was honest in the evidence which he gave.

161. This leaves Ms Taylor and Ms Robin, both of whom have been mentioned above as solicitors in the employment of HMRC (Solicitor's Office & Legal Services) who have had conduct of these proceedings on the behalf of the Defendants. As I understand the position, Ms Taylor is Ms Robin's manager and, in that capacity, has had general oversight of the proceedings throughout. Day to day conduct of the proceedings was in the hands of Ms Robin until May 2023, when Ms Robin went on maternity leave and Ms Taylor took over day to day conduct of the proceedings. Both Ms Taylor and Ms Robin were helpful and honest witnesses, but their evidence was necessarily limited; being essentially concerned with relevant procedural history and the introduction of documents. Ms Robin did not make any witness statement for the trial itself, but had made four witness statements in relation to the application to strike out which came before Sir Anthony Mann. In examination in chief of Ms Robin, Mr Kent identified specified parts

of Ms Robin's first, second and fourth witness statements upon which the Defendants wished to rely.

162. Finally, in relation to the Defendants' evidence, I should mention a witness statement of Mr Hartnett, dated 5th February 2018. Mr Hartnett is a solicitor who was employed by HMRC and had conduct of the Chancery Proceedings at the time when (i) Mr Bhandal made his application to lift the Stay which came before Judge Jarman, and (ii) the Defendants made their application to strike out the claims against them in the Chancery Proceedings, which also came before Judge Jarman. Mr Hartnett made his witness statement in connection with those applications. The content of the witness statement is principally relevant because Mr Hartnett addressed himself to the question of how a draft version of the Warrant came to be handed to Mr Roche outside Master Moncaster's room on 1st May 2008, just prior to the hearing of the Defendants' strike out application. Mr Hartnett was not called to give evidence, but the Defendants sought to rely on the witness statement as hearsay evidence. On 19th July 2024 Ms Taylor, on behalf of the Defendants, gave notice to Mr Bhandal that the Defendants *"may also refer"* to this witness statement.

The hearsay evidence

163. Both parties sought to rely on hearsay evidence at the trial. This included not only witness statements made by persons who were not called to give evidence, but also hearsay evidence in other forms. One example of this was Ms Germain's evidence of the practice of the Court, in terms of record keeping, in 2001. As Ms Germain acknowledged, this evidence was not within her own personal knowledge, but was derived from the administrative staff of the Court, some years after 2001. Given the reliance of the parties upon hearsay evidence, and given the seriousness of the allegations within the Forgery Case, I should set out a brief summary of my approach to the hearsay evidence.

164. The starting point is Section 2(1) of the Civil Evidence Act 1995 (**"the 1995 Act"**), which imposes the following requirement where a party proposes to adduce hearsay evidence in civil proceedings:

> *"(1) A party proposing to adduce hearsay evidence in civil proceedings shall, subject to the following provisions of this section, give to the other party or parties to the proceedings—*
>
> *(a) such notice (if any) of the fact, and*
>
> *(b) on request, such particulars of or relating to the evidence, as is reasonable and practicable in the circumstances for the purpose of enabling him or them to deal with any matters arising from its being hearsay."*

165. Section 2(2) of the 1995 Act provides that provision may be made by the rules of court for the following purposes:

> *"(2) Provision may be made by rules of court—*
>
> *(a) specifying classes of proceedings or evidence in relation to which subsection (1) does not apply, and*
>
> *(b) as to the manner in which (including the time within which) the duties imposed by that subsection are to be complied with in the cases where it does apply."*

166. In terms of a failure to comply with the requirements of subsection (1) or rules of court made pursuant to subsection (2), Section 2(4) provides as follows:

> *"(4) A failure to comply with subsection (1), or with rules under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the court—*
>
> *(a) in considering the exercise of its powers with respect to the course of proceedings and costs, and*
>
> *(b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 4."*

167. This brings me to Section 4 of the 1995 Act, which sets out a series of matters to which the court is entitled to have regard, in weighing hearsay evidence:

> *"(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.*
>
> *(2) Regard may be had, in particular, to the following—*
>
> *(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;*
>
> *(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;*
>
> *(c) whether the evidence involves multiple hearsay;*
>
> *(d) whether any person involved had any motive to conceal or misrepresent matters;*
>
> *(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;*
>
> *(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."*

168. In terms of rules of court made pursuant to Section 2(2) of the 1995 Act, CPR 33.2 imposes (subject to exceptions in CPR 33.3 which do not apply in the present case) the following requirements on a party who wishes to rely upon hearsay evidence:

> *"(1) Where a party intends to rely on hearsay evidence at trial and either—*
>
> *(a) that evidence is to be given by a witness giving oral evidence; or*
>
> *(b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence;*
>
> *that party complies with section 2(1)(a) of the Civil Evidence Act 1995 by serving a witness statement on the other parties in accordance with the court's order.*
>
> *(2) Where paragraph 1(b) applies, the party intending to rely on the hearsay evidence must, when he serves the witness statement—*
>
> *(a) inform the other parties that the witness is not being called to give oral evidence; and*
>
> *(b) give the reason why the witness will not be called.*
>
> *(3) In all other cases where a party intends to rely on hearsay evidence at trial, that party complies with section 2(1)(a) of the Civil Evidence Act 1995 by serving a notice on the other parties which—*
>
> *(a) identifies the hearsay evidence;*

(b) states that the party serving the notice proposes to rely on the hearsay evidence at trial; and

(c) gives the reason why the witness will not be called.

(4) The party proposing to rely on the hearsay evidence must—

(a) serve the notice no later than the latest date for serving witness statements; and

(b) if the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so."

169. As Section 2(4) of the 1995 Act makes clear, a failure to comply with the provisions of CPR 33.2 does not render the hearsay evidence inadmissible, but may have an adverse effect upon the weight to be given to that evidence.

170. Mr Bhandal, as I have mentioned earlier in this judgment, gave notice to the Defendants, by an email sent on 19th July 2024, that he intended to rely on various items of hearsay evidence. I believe that 19th July 2024 was the date when witness statements were exchanged in the proceedings. Mr Bhandal's email is fairly lengthy and was clearly drafted by Mr Bhandal with the requirements of CPR 33.2 in mind. For the Defendants, as I have also mentioned earlier in this judgment, Ms Taylor sent an email to Mr Bhandal on 19th July 2024, giving notice that the Defendants maintained their reliance on Ms Robin's four witness statements in the proceedings. The email went on to state that the Defendants might *"also refer"* to Mr Hartnett's witness statement. This email does not appear to have been drafted with the requirements of CPR 33.2 in mind and did not, in my view, satisfy the requirements of CPR 33.2.

171. With the above provisions of the 1995 Act and CPR 33.2 in mind, my general approach to the hearsay evidence in this trial can be summarised as follows:

(1) In weighing the hearsay evidence in this case, I am entitled to have regard, in particular, to the matters set out in Section 4(2) of the 1995 Act, where they are relevant.

(2) It is important to consider each relevant item of hearsay evidence on its own merits, while bearing in mind that it is hearsay evidence and may be less reliable than direct evidence for that reason.

(3) Where there is a good reason why the relevant witness could not have been called to give direct evidence of what has been presented as hearsay evidence, I should give some weight to that fact, in assessing the hearsay evidence. The most obvious and important example of such evidence is the evidence contained in Ms Buckeldee's witness statement. Ms Buckeldee is now, sadly, deceased. In this context I should also mention the evidence contained in Ms Haddad's witness statement. Mr Bhandal's email of 19th July 2024 explained that Ms Haddad could not be called because she was in the Middle East and *"not in touch"* with Mr Bhandal. This explanation was not challenged, and I accept the explanation as providing a legitimate reason for Ms Haddad not being called to give evidence.

(4) Where there is no apparent reason why the relevant witness could not have been called to give direct evidence of what has been presented as hearsay evidence, I should give some weight to that fact, in assessing the hearsay evidence. I have already given an example of such evidence; namely what is alleged to have been said by Mr Mitchell QC at the wedding in December 2010.

(5) I should be particularly careful with hearsay evidence derived from an unknown person or persons or from a person whose knowledge was not necessarily

contemporaneous to the relevant time. I have already mentioned the evidence of Ms Germain in this context. Ms Germain's evidence included evidence of the practices of the Court which had been derived from inquiries made of court staff. In her oral evidence at the trial Ms Germain was only able to identify two members of the administrative staff to whom she had spoken. In addition to this limited identification of the staff to whom Ms Germain had spoken, there was no evidence that any of the administrative staff to whom Ms Germain had spoken were working in the Court in 2001. Another example of the same difficulties with the hearsay evidence at the trial can be found in the witness statement of Ms Haddad. While Ms Haddad did identify the person to whom she had spoken at the Court during her visit on 6th May 2008, namely *"Debbie"*, there is no way of knowing whether Debbie was working in the Court in 2001 or when Debbie began working in the Court.

The burden and standard of proof

172. I do not regard it as necessary to set out the position, in terms of the burden and standard of proof, in relation to all of the claims and defences in the proceedings. The usual legal principles apply, and were not in dispute. I do consider it important, if only briefly, to set out the position, in terms of the burden and standard of proof, in relation to the Forgery Case. The relevant legal principles were not in dispute between the parties, but it seems to me that there is a danger of losing sight of these principles, in the thickets of the evidence and the submissions in relation to the Forgery Case.

173. The burden of proof is upon Mr Bhandal to prove the Forgery Case. The burden of proof may shift in relation to particular issues, but in overall terms, the burden is upon Mr Bhandal to prove the allegations of forgery, fraud and fraudulent misrepresentation which comprise the Forgery Case.

174. The standard of proof is the civil standard; that is to say the balance of probabilities. What this standard entails was explained by Lord Nicholls in his speech in *Re H and Others (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, at 586E-F:

> *"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had nonconsensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation."*

175. Lord Nicholls went on to make the point that the standard of proof does not become a higher standard of proof simply because a serious allegation is in issue. As he explained, at 586G-H:

> *"Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that*

the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungoed-Thomas J. expressed this neatly in In re Dellow's Will Trusts [1964] 1 W.L.R. 451, 455: "The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it."

176. The law in this respect was more recently summarised by Lord Lloyd-Jones JSC in *Birmingham City Council v Jones* [2023] UKSC 27 [2024] AC 168. After reviewing the relevant case law, Lord Lloyd-Jones summarised the position in the following terms, at [51]:

> *"51 I pause at this point to take stock of these developments.*
>
> *(1) It is now established that there is only one civil standard of proof at common law and that is proof on the balance of probabilities.*
>
> *(2) Nevertheless, the inherent improbability of an event having occurred will, as a matter of common sense, be a relevant factor when deciding whether it did in fact occur. As a result, proof of an improbable event may require more cogent evidence than might otherwise be required.*
>
> *(3) However, the seriousness of an allegation, or of the consequences which would follow for a defendant if an allegation is proved, does not necessarily affect the likelihood of its being true. As a result, there cannot be a general rule that the seriousness of an allegation or of the consequences of upholding an allegation justifies a requirement of more cogent evidence where the civil standard is applied. I would therefore respectfully disagree with the contrary statement by Richards LJ in N (cited at para 49 above) and with the statements of Lord Carswell (at para 28) and Lord Brown (at paras 43 and 47) in In re D [2008] 1 WLR 1499, to the extent that they may be read as supporting that statement of Richards LJ in N."*

177. It follows that the standard of proof remains the balance of probabilities in relation to the Forgery Case, notwithstanding that the allegations of forgery and fraud within the Forgery Case are very serious. That said, there is the inbuilt flexibility within this standard, in terms of the strength of the evidence required to prove the relevant allegations to the civil standard of proof. In this context, and as explained by Lord Lloyd-Jones, a relevant factor is my assessment of the inherent probability or improbability of the acts of forgery and fraud alleged to have been committed by Mr Broad and/or others.

<u>Setting aside an order of the court on the basis of fraud – the law</u>

178. An application to set aside an order and/or judgment of a court by one party, on the basis that it was obtained by the fraud of another party, is not a procedural application but a cause of action. The cause of action to set aside the order and/or judgment in the earlier proceedings is independent of the cause of action asserted in the earlier proceedings. The cause of action relates to the earlier proceedings, and not to the underlying dispute; see the judgment of Lord Sumption JSC in *Takhar v Gracefield Developments Ltd* [2019] UKSC 13 [2020] AC 450, at [60] and [61].

179. In *Takhar* the Supreme Court approved the following statement of the legal principles to be applied, where a claim to set aside a judgment on the basis of fraud is made, from the judgment of Aikens LJ in *Royal Bank of Scotland Plc v Highland Financial Partners LP* [2013] EWCA Civ 328 at [106] (omitting footnotes):

> *"106.* ***The legal framework:*** *There was no dispute between counsel before us on the legal principles to be applied if one party alleges that a judgment must be set aside because it was obtained by the fraud of another party. The principles are, briefly: first, there has to be a "conscious and deliberate dishonesty" in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be "material". "Material" means that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision. Thus the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence."*

180. In *Tinkler v Esken Ltd (formerly Stobart Group Ltd)* [2023] EWCA Civ 655 [2023] Ch 451 the Court of Appeal further considered the correct approach to a claim to set aside a judgment allegedly obtained by fraud. The second ground of appeal in the case was that the judge at first instance had adopted the wrong test of materiality, by wrongly following the test of materiality stated by Aikens LJ in *Highland Financial Partners*, at [106]. The argument of the appellant, Mr Tinkler, was that the judge ought to have applied the test adumbrated by Lord Phillips of Worth Matravers MR in *Hamilton v Al Fayed (No 2)* [2001] EMLR 15 at [26] and [34], to the effect that it had to be shown that there was a real danger that the dishonest conduct had affected the outcome. This argument was rejected. As Sir Geoffrey Vos MR (with whose judgment Popplewell and Snowden LJJ agreed) explained, at [20]:

> *"20 On the second ground of appeal, I have concluded that the judge was justified in preferring the formulations of the materiality test enunciated in Highland [2013] 1 CLC 596 over that in Hamilton [2001] EMLR 15. The preponderance of decided cases support what was said in Highland, and the cases that express a preference for Hamilton were obiter. Moreover, the hurdle of materiality which enables a party to defeat a final judgment must be set high (see The Ampthill Peerage [1977] AC 547 per Lord Wilberforce at p 569D—E). Even if the judge was right to think that in this case there was no practical difference between the formulations (which I consider below at paras 52—53), the judge expressly considered both tests. Finally, even if Mr Tinkler were right to submit that the judge ought to have asked the materiality questions on the premise that he was wrong about the fraud, that has no effect on the outcome, now that this court has upheld the judge's findings that no fraud was proved."*

181. In the present case therefore the first question is whether there has been conscious and deliberate dishonesty in relation to (i) the case presented by the Defendants at the hearing before Master Moncaster, (ii) the case presented by HMRC at the hearing before Collins J, and (iii) the case presented by the Defendants at the hearing before Judge Jarman. This depends, primarily and in relation to all three hearings, upon whether the forgery and fraud alleged in the Forgery Case are established. If the forgery and fraud are established, it must then be shown that they were related to the case or some part of the case presented to, respectively, Master Moncaster, Collins J and Judge Jarman, in the sense that each such case or a part of each such case was presented with conscious and deliberate dishonesty. If this can be established, the question which I then have to ask myself, in relation to each of the hearings, is whether the case or the relevant part of the case presented with this conscious and deliberate dishonesty was material to the outcome of the relevant hearing, in the sense of materiality as explained by Aikens LJ in *Highland Financial Partners*.

182. One other point to note is that the authorities make reference to setting aside a judgment on the basis that it was obtained by fraud. Strictly speaking, it seems to me that it is the order made consequential upon the relevant judgment which is the object of the application to set aside on the basis of fraud. The situation seems to me to be analogous to an appeal, where the appeal is formally made against the order of the first instance court, as opposed to the judgment of the first instance court. In the present case the primary relief sought by Mr Bhandal, assuming that the Forgery Case is established, is the setting aside of the Orders. Strictly speaking, this seems to me to be the correct approach. That said, I do not think that this point matters. Each of the Orders was made, respectively, pursuant to the Moncaster Judgment, the Collins Judgment and the Jarman Judgment (together **"the Judgments"**) and, in considering the claim to set aside the Orders, it is necessary to consider whether the Judgments were obtained by fraud, applying the principles set out in *Highland Financial Partners*.

The Forgery Case – analysis

(i) Analysis of the Forgery Case – methodology

183. In my analysis of the Forgery Case I will adopt the following methodology. I will first go through the principal areas of the evidence, and the principal arguments addressed to me on that evidence. When I have completed that process, I will then stand back, consider the evidence and the arguments as a whole and then, on the basis of my analysis, state my determination in relation to the Forgery Case.

184. I should also repeat a point made at the outset of this judgment. As will be apparent from the length of the narrative sections of this judgment, which are themselves only a summary of the events which have given rise to these proceedings, the history of this case is complicated and dates back over 25 years.

185. This was reflected both in the arguments of the parties in relation to the evidence relevant to the Forgery Case and in the breadth of the references to the evidence in those arguments. I do not regard it as necessary or desirable, in this analysis, to deal expressly with every item of evidence referred to, or to deal expressly with every argument directed to that evidence. All of the arguments on the evidence have been taken into account in my analysis of the Forgery Case, whether expressly referred to in my analysis or not.

The same applies to all of the evidence to which reference has been made in or in relation to those arguments.

(ii) Analysis of the Forgery Case – the evidence of the Court records

186. I start my analysis with the evidence of the Court records, so far as they are available. I start with the Court records because they were at the centre of Mr Newman's submissions and because, at least in theory, the Court records were the most obvious port of call in relation to the question of whether the Warrant was or was not issued out of the Court on 18th July 2001.

187. The starting point for this part of the analysis is the relevant legal framework governing the Court records, which was explained to me by Mr Newman and on which Mr Newman laid particular stress. It is probably as well, at this point, to repeat a point made earlier in this judgment; namely that references to statutory provisions are, unless the context otherwise requires, references to those statutory provisions as they stood in 2001.

188. The starting point is Section 115 of the Magistrates' Courts Act 1980, which defined the register in a magistrates' court to mean *"the register of proceedings before a magistrates' court required by the rules to be kept by the clerk of the court;"*.

189. Rule 66(1) and (2) of the Magistrates' Courts Rules 1981 required the Court to keep the register, recording the following information:

> *"(1) The justices' chief executive for every magistrates' court shall keep a register in which there shall be entered—*
>
> *(a) a minute or memorandum of every adjudication of the court;*
>
> *(b) a minute or memorandum of every other proceeding or thing required by these rules or any other enactment to be so entered.*
>
> *(2) The register shall be in the prescribed form, and entries in the register shall include, where relevant, such particulars as are provided for in the said form."*

190. The remaining sub-paragraphs of Rule 66 set out further requirements in relation to the court register which a magistrates' court was required to maintain. Rule 68 of the Magistrates' Courts Rules 1981 provided for the admissibility in evidence of the register of a magistrates' court, in the following terms:

> *"The register of a magistrates' court, or any document purporting to be an extract from the register and to be certified by the justices' chief executive as a true extract, shall be admissible in any legal proceedings as evidence of the proceedings of the court entered in the register."*

191. Section 15(2) of the Prosecution of Offences Act 1985 set out the following methods of commencing criminal proceedings:

> *"(2) For the purposes of this Part, proceedings in relation to an offence are instituted—*
>
> *(a) where a justice of the peace issues a summons under section 1 of the Magistrates' Courts Act 1980, when the information for the offence is laid before him;*

(b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the information for the offence is laid before him;

(c) where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge;

(d) where a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section, when the bill of indictment is preferred before the court;

and where the application of this subsection would result in there being more than one time for the institution of the proceedings, they shall be taken to have been instituted at the earliest of those times."

192. If the Warrant was issued it would, as a warrant of arrest in the first instance, have fallen within paragraph (b) of Section 15(2), and would thereby have had the effect of commencing criminal proceedings against Mr Bhandal. Mr Newman also submitted that criminal proceedings, once commenced, could only be terminated by a public formal act. He submitted that there was no such process as cancelling a warrant of arrest in the first instance by returning it to the magistrates' court out of which it had been issued. Mr Newman compared this to attempting to bring civil proceedings to an end by returning the claim form to the court out of which it had been issued. Mr Newman identified the public acts, by which criminal proceedings commenced by the issue of a warrant of arrest in the first instance could be terminated as (i) withdrawal under Section 125 of the Magistrates Court Act 1981 (ii) a notice of discontinuance under Section 23 of the Prosecution of Offences Act 1985, or (iii) an acquittal by operation of law pursuant to section 17 of the Criminal Justice Act 1967.

193. Mr Newman's submission was that the issue of a warrant of arrest in the first instance constituted an adjudication of the relevant magistrates' court, within the meaning of Rule 66(1)(a), which was legally required to be recorded in the court register. This was not accepted by the Defendants, but for present purposes I find it convenient to proceed on the basis that Mr Newman was right in this submission. I will come back to the question of whether the issue of such a warrant did qualify as an adjudication later in this part of my analysis.

194. Before I come specifically to the Court records which are available, I need to deal with the question of the evidential status of the Court records in relation to the Forgery Case.

195. Mr Newman submitted that the evidence of the Court Register was decisive. The Court had been legally obliged, in 2001, to maintain a single register of adjudications of the Court, and those adjudications included (which I am assuming to be correct for present purposes) the issue of warrants of arrest in the first instance. Mr Newman submitted that it should be assumed that the Court staff complied with these legal obligations in 2001. The consequence of this was that, if the Warrant was not recorded in the Court Register, I was bound to find that the Warrant was never issued.

196. In my judgment this submission overstates the position, for two related reasons.

197. First, it seems to me that Rule 68 and the textbooks and case law relied upon by Mr Newman in this context are concerned with what is recorded in the records of a particular court. At the risk of over-simplifying the legal position, which I do not need to set out in detail for present purposes, the records of the court are presumed to be conclusive, in terms of what they record. I do not read Rule 68 or the authorities relied upon by Mr Newman as meaning that the Court Register should be taken to be conclusive, in terms of what it does not record. If the Warrant was legally required to be recorded in the Court Register on 18th July 2001, if it was issued on that day, the absence of a record of the issue of the Warrant on that day is obviously material, it may be said highly material to the factual question of whether the Warrant was issued on that day. I do not accept that such absence is decisive of that factual question. There may be other explanations for such absence, including evidence of the practice of the Court at the relevant time or simple administrative failure.

198. Second, I accept the submission of the Defendants' counsel that the question for the court is not directly what the law was, in terms of the record keeping of the Court, at the relevant time. Rather, the question is what the practice of the Court was at the relevant time, in terms of record keeping. If, and to the extent that this can be established, this allows the court to determine what one would have expected to see recorded on the Court Register for 18th July 2001, if the Warrant was issued on that day. If one would have expected to see the Warrant recorded, this would plainly be important to the question of whether the Warrant was in fact issued.

199. A further point which follows from what I have said above is that arguments about what the relevant legal requirements were in 2001 may be of limited value. The obvious example of this is the question of whether the issue of a warrant of arrest at first instance, of the same type as the Warrant, qualified as an adjudication of the Court, within the meaning of Rule 66(1). The answer to this question, as a matter of law, does not necessarily determine how the relevant staff of the Court interpreted and applied Rule 66 in 2001. The answer to this latter evidential question requires evidence of the practice of the Court in 2001. The evidential question is not answered by my own construction of the reference to an adjudication in Rule 66(1).

200. Turning then to the Court records which are available, I start with the 1986 Records. As I have explained, the 1986 Records are contained in leather bound books. The 1986 Records do record the issue of warrants of arrest, but they all relate to cases where there was a non-appearance by the accused. There is no instance, over the periods covered by the 1986 Records, of a warrant of arrest in the first instance being issued. Nor is there any record, at least in express terms, of a summons being issued. There is a record of a warrant being withdrawn. It seems to me that the 1986 Records are not particularly helpful, in terms of what one would expect to see recorded in the Court Register as at 18th July 2001. I say this for two reasons. First, the 1986 Records predate the relevant date (18th July 2001) by some 15 years. Second, and even if this first point is put to one side, I do not feel able to conclude, from the 1986 Records, that the practice of the Court as at 18th July 2001 was to record the issue of all warrants of arrest at first instance.

201. I turn next to the 2001 Records and, in particular, the further submissions of the parties following the trial. In his submissions Mr Newman identified three types of warrants of arrest which could have been issued by the Court in 2001. The first type comprised warrants issued pursuant to Section 1 of the Magistrates' Courts Act 1980. These appear

to have been warrants of arrest in the first instance, of which the Warrant (if it was issued) would have been an example. The second type comprised warrants issued pursuant to Section 13 of the Magistrates' Courts Act 1980. Warrants of this type would have been issued following the non-appearance of the accused at court. The third type comprised warrants issued pursuant to Section 7(1) of the Bail Act 1976, when a person failed to surrender to their bail. Examples of all three types of warrant can, so Mr Newman submitted, be found in the Warrant Book Records.

202. So far as the 2001 Records are concerned, there are 23 instances of warrants being issued by the Court for 17th and 18th July 2001. 20 of those instances relate to warrants which are said by Mr Newman to have been issued pursuant to Section 13 of the Magistrates' Courts Act 1980. Two appear to relate to warrants issued pursuant to Section 7(1) of the Bail Act 1976. There is one instance, on 17th July 2001, of a warrant described as a warrant in first instance. The wording of the entry in the Court Register for this warrant, which I shall refer to as **"the Youth Warrant"**, is as follows:

> *"On 22.05.2001 a Supervision Order was imposed for the period of 6 months at Uxbridge Youth Court. Hillington YOT state that you being the defendant has failed to comply with the Order in that you failed to attend the YOT office on 05.06.01, 08.06.01, 15.06.01, 22.06.01."*
>
> *"Defendant was not present and not represented. Defendant does not appear. Warrant in first instance issued without bail. Adjourned to 25.12.2001. Court code 202"."*

203. On this basis Mr Newman submitted that it clearly was the practice of the Court in 2001 to record the issue of warrant of arrest in the first instance in the Court Register, from which it followed, so Mr Newman submitted, that the Warrant cannot be genuine because there is no record of the issue of the Warrant in the Court Register for 18th July 2001. This was also said to confirm what Ms Haddad, according to her witness statement, was told by the member of the court staff (Debbie) on 6th May 2008; namely that if the Warrant had been issued on 18th July 2001, it would necessarily have been recorded in the Court Register.

204. In my judgment the position is nowhere near as clear as this. There are a number of features of the evidence in the 2001 Records which need to be noted:
    (1) There does not appear to be any record of a warrant being issued where the issue of the warrant would have commenced the proceedings, in the same way as the Warrant would have done in the present case, if it was issued.
    (2) There is no record of any summons being issued pursuant to Section 1 of the Magistrates' Court 1980. The 2001 Records cover only two days of business in the Court, but they are voluminous, running to almost 300 pages. In what was clearly a busy magistrates' court, it seems odd that there is no record of the issue of any summons.
    (3) There is no record of any types of warrants being issued other than the types of warrant which I have listed above. This also seems odd. In cross examination Mr Germain gave evidence that there would have been a whole range of warrants issued by the Court, such as utility warrants, mental health warrants and search warrants. Given Ms Germain's experience of working in magistrates' courts, which went back to 2001, I accept this evidence and treat it as applicable to the business of the Court in 2001.

(4) The warrants which are shown as having been issued appear to relate to cases where the defendant was summoned or bailed to appear, but did not surrender to their bail, or where the case was one which had been adjourned from a previous date. In their submissions the Defendants' counsel pointed to a number of cases on 17th July 2001, involving disqualification from driving, where the case had previously been adjourned, to give the defendant an opportunity to attend the Court. The defendant did not attend the Court, and was disqualified in their absence, with a warrant for their arrest being issued. As the Defendants' counsel also pointed out, it is questionable whether these warrants are correctly described as having been issued pursuant to Section 13 of the Magistrates' Court Act 1980, as they do not appear to be cases where a warrant for the defendant's arrest was issued *"where the court, instead of proceeding in the absence of the accused, adjourns or further adjourns the trial"*. Nor could any of these warrants have fallen within the terms of Section 1 of the Magistrates' Court Act 1980, which is the relevant Section so far as the Warrant is concerned.

205. Perhaps inevitably, the most detailed argument in the further submissions on the 2001 Records was devoted to the Youth Warrant. Detailed argument was advanced by the Defendants' counsel to the effect that the Youth Warrant was of a different type or fell into a different category to the Warrant. Mr Newman advanced detailed argument in response, effectively seeking to demonstrate that if the Youth Warrant was recorded in the 2001 Records, the Warrant should have been there too, if it had been issued. The problem for Mr Bhandal's case, in this respect, is that I can see differences, or at least potential differences, between the Youth Warrant and the Warrant. As with the warrants involving driving disqualification cases, this was a case where the defendant failed to appear when their case was being dealt with by the Court. The defendant's case was then adjourned for further hearing. So much can be discerned from the entry in the 2001 Records for the Youth Warrant. What is not clear is whether the defendant had been notified or required in some way to appear before the Court. The wording of the entry may be said to suggest that the defendant was expected or required to attend, but the position is opaque. What is clear is that this was not a case involving a single hearing, where the prosecuting body appeared at the Court, on a without notice basis, to obtain the issue of a warrant for the arrest of an accused person, with no requirement for a further hearing.

206. In these circumstances I do not regard the evidence of the 2001 Records as being sufficiently clear to demonstrate that a warrant of the same type as the Warrant would have been recorded in the Court Register for 18th July 2001. In my judgment, and for the reasons which I have given, the evidence of 2001 Records is too opaque to demonstrate this.

207. This conclusion seems to me to be supported by the Warrant Book Records, which I have yet to deal with. The Warrant Book Records contain, as one would expect, copious records of the issue of warrants of arrest. The Warrant Book Records did not feature a great deal in the closing submissions, but in my view, they are a significant piece of evidence. While I accept Mr Newman's submission that Rule 66 contemplates a single register which records every adjudication of the relevant magistrates' court, the Warrant Book Records demonstrate that the practice of the Court, at least between 2002 and 2004 and whether technically correct or not, was to maintain the separate Warrant Book. It seems to me a reasonable inference, and I so find, that the Warrant Book was also

maintained for 2001, although it is unclear why the Warrant Book from 2001 is not available. In this instance it seems to me appropriate to give some weight to Ms Germain's evidence, both in the Questionnaire and the Germain Replies, that in 2001 there was a book where first instance warrants were recorded. It is true that this is not evidence which was within Ms Germain's personal knowledge, and it is also true that the source of this information is not identified, save that the information was supplied by someone on the administrative staff of the Court. The evidence is however consistent with the evidence of the Warrant Book Records and, for that reason, I am prepared to give it some weight, notwithstanding its hearsay status.

208. As I have said, it is something of a mystery as to why the Warrant Book from 2001 is not available. There is available a copy of a record retention and disposal policy published by HMCTS, mentioned earlier in this judgment, which Ms Germain provided as part of the Germain Replies. The policy states that the original version of the policy was published in July 1999, and that the policy was subsequently amended in September 2012 and March 2013. It appears therefore that the original version of the policy would have existed in 2001. So far as I can see, the policy does not deal in terms with the Warrant Book, but there is reference to arrest warrants, in specified circumstances, being destroyed after three years. This would be consistent with the information provided by Ms Germain that the Warrant Book from 2001 would have been destroyed. This however begs the question of why the Warrant Book Records, covering the period from 2002 to 2004, are available. One would have expected them to have been destroyed as well, given the lapse of time. I do not know the answer to the question of why the Warrant Book Records are available, when the Warrant Book for 2001 is not. I do not think that this gap in the evidence particularly matters. The relevant point, as I have found, is that the Warrant Book was maintained in 2001.

209. If, as I have found, warrants of arrest were recorded in the Warrant Book in 2001 this gives rise to the obvious question of whether and, if so, why one would necessarily expect to find a warrant of arrest at first instance recorded in the Court Register in 2001. The opacity of the evidence of the records of the Court is further brought out by the presence of the warrants of arrest which can be found in the 2001 Records. Why was there a separate Warrant Book, if warrants of arrest were being recorded in the Court Register? There is no answer, or at least no clear answer to this question. One is obliged to speculate; a point which is brought out by the increasingly complex submissions advanced by the parties in relation to the records of the Court which are available. All this in turn further undermines the argument that those warrants which can be found recorded in the 2001 Records, or for that matter in the 1986 Records demonstrate that one would have expected to find the issue of the Warrant recorded in the Court Register for 18th July 2001.

210. The evidential position might have been different, or at least might have been improved if there had been evidence available as to the practice of the Court, in relation to the recording of warrants in the Court Register in 2001, from a person or persons who were working in the Court in 2001. Such evidence is not however available. While Ms Germain's evidence was derived from administrative staff of the Court, there is no evidence that the relevant administrative staff were in place in 2001. Ms Germain, in her examination in chief by Mr Newman, was not able to say that any of the administrative staff she had spoken to were working the Court in 2001. The same applies to the person (Debbie), to whom Ms Haddad spoke in 2008. In any event, in both cases the evidence

presented by Ms Germain and Ms Haddad is hearsay evidence, as opposed to evidence within their own knowledge. As indicated above, I am prepared to treat Ms Germain's evidence as reliable in certain respects. I also have no reason to doubt the account given by Ms Haddad of what she said and did, and of what was said to her, on her visit to the Court on 6th May 2008. As a general rule however, and with the exception of the use of the Warrant Book to record warrants, I do not think that the evidence of either Ms Germain or Ms Haddad can be treated as reliable, in terms of the practice of the Court in 2001 in relation to the recording of warrants in the Court Register. In particular, I am not prepared to accept as reliable what Ms Haddad said that she was told by Debbie; to the effect that no warrant concerning Mr Bhandal could have been issued on 18th July 2001, because *"all warrants had to be recorded"*.

211. In my analysis set out above I have so far proceeded on the basis that Mr Newman is right in his submission that the issue of the Warrant would have qualified as an adjudication, within the meaning of Rule 66(1)(a), and was required to be entered into the Court Register. As such, so Mr Newman submitted, I should assume that the Warrant, if it was issued, would have been entered on the Court Register. I have already explained the fallacy in that argument. It assumes that the practice of the Court, in relation to the recording of warrants in 2001, precisely reflected what Mr Newman submitted to be the legal requirements. For the reasons which I have explained, the evidence is too opaque for this assumption to be made.

212. This in itself assumes that Mr Newman was right to characterise the issue of a warrant of arrest in the first instance as an adjudication of the Court, within the meaning of Rule 66(1)(a). I did not find the submissions on this question to be of much assistance to me. Somewhat to my surprise, counsel were not able to point me to any authority on this question. Mr Newman referred me to the dictionary definition of an adjudication, which seemed to me to support his case that the issue of the Warrant would have qualified as an adjudication. Applying my own judgment to this question, I am inclined to think that the issue of the Warrant, if it was issued, would have qualified as an adjudication within the meaning of Rule 66(1)(a). The process of obtaining a warrant of this kind required the applicant to attend at court and lay the relevant information before the magistrate. The magistrate then had to make a formal decision on whether the warrant would be issued. I find it hard to see how the making of this decision did not qualify as an adjudication.

213. I have however come to the conclusion that it is neither necessary nor desirable for me to make my own formal decision on this question. I have heard only limited argument on this question. I am concerned as to whether I should make a formal decision on this question, which may cause problems in another case where the question is directly in point and important to the outcome of that case. In the present case, for the reasons which I have explained, I do not consider the question to be directly relevant to what I have to decide. In these circumstances I make no formal decision on this question. I also reiterate that my analysis of the evidence of the available records of the Court has proceeded, as I have said, on the basis that Mr Newman was right to submit that the issue of the Warrant would have qualified as an adjudication, within the meaning of Rule 66(1)(a).

214. There is one further argument, in the context of the evidence of the records of the Court, with which I should deal before I come to my conclusions on the evidence of the Court records. In his submissions in reply on the 2001 Records Mr Newman sought to raise a

pleading point against the Defendants. As I understood this point, it relied upon one of the answers given by the Defendants in their response to Appendix 1 to the Amended Particulars of Claim. These answers were given pursuant to an order of Deputy Master Linwood made on 18th January 2024. The relevant allegation in Appendix 1 made reference to the evidence of Ms Haddad, to which the Defendants responded as follows:

> *"Ms Haddad's witness statement is noted. However it is not correct that applications for the issuing of warrants would have been recorded in the court register. It is understood that there would have been a separate warrants file, entries in which for July 2001 would have been routinely destroyed before Ms Haddad attended Uxbridge (hence the statement of Debbie in 2008 that only files from 2002 onwards were available). Ms Haddad's statement therefore provides no support for a case that a warrant naming the Claimant was not in fact issued at Uxbridge Magistrates' Court on 18 July 2001."*

215. Mr Newman submitted that, in the absence of amendment of the Defence, it was not open to the Defendants to contend that some warrants were recorded in the Court Register, but that the Warrant fell into a category of warrants which were not recorded in the Court Register; see paragraphs 1-9 of Mr Newman's reply submissions on the 2001 Records. The relevant answer of the Defendants to the allegations in Appendix 1, which I have quoted above, was a response to the evidence of Ms Haddad. The answer makes reference to a separate warrants file, namely the Warrant Book, which is known to have existed. What happened to the Warrant Book for 2001 remains a mystery. The Defendants' case that it was the subject of routine destruction may or may not be correct. The answer also states the Defendants' case that it is not correct that applications for the issuing of warrants would have been recorded in the Court Register. As I understand the Defendants' case, this answer is still relied upon, so far as a warrant such as the Warrant was concerned. The Defendants maintain their case that an application for a warrant such as the Warrant would not have been recorded in the Court Register for 2001. I see no reason why the answer given by the Defendants to the relevant allegation in Appendix 1 requires amendment in the light of the evidence which has emerged from the 2001 Records. Still less can I see any reason why the Defendants should now be prevented from maintaining their pleaded case, so far as the Warrant is concerned.

216. It is also important to remember where the burden of proof lies on this issue. It is for Mr Bhandal to prove that one would expect to see the issue of the Warrant recorded on the Court Register. This is an evidential question. It strikes me as wrong that the Defendants' submissions on the evidential question of whether Mr Bhandal has discharged this burden of proof, by reference to the new evidence in the 2001 Records, should be treated as confined by their responses to Appendix 1 even if, which I do not consider to be the case, the Defendants' submissions on 2001 Records do go beyond their pleaded case in response to Appendix 1.

217. In support of his argument on the pleading point Mr Newman referred me to the decision of Cotter J in *Charles Russell Speechlys LLP v Beneficial House (Birmingham) Regeneration LLP* [2021] EWHC 3458 (QB). The facts of that case could not have been further from the present case. In that case the defendant/appellant was appealing against a decision of the judge at first instance that the claimant/respondent, a firm of solicitors, was entitled to be paid fees pursuant to an implied contractual retainer found by the judge. The complaint of the appellant was that the implied contractual retainer had not been pleaded, so that judgment had been granted on an unpleaded cause of action. The appeal

succeeded on the basis that the trial had been procedurally unfair by reason of the fact that the implied contractual retainer had not been pleaded. The present case seems to me to bear no relation to the *Charles Russell* case. Equally, the emphasis on the importance of statements of case in the judgment of Cotter J, with which I entirely agree, does not seem to me to be applicable to the pleading point taken by Mr Newman.

218. In conclusion, and drawing together all of the above analysis, the evidence of the Court records, so far as they are available, seems to me to be equivocal. The available Court records do not demonstrate that the Warrant was issued on 18th July 2001. In my judgment the available Court records fall well short of demonstrating that the Warrant could not have been issued and/or was not issued on 18th July 2001.

(iii) Analysis of the Forgery Case – the evidence of Ms Buckeldee

219. It is common ground that Ms Buckeldee was sitting in the Court, in Court 1, on 18th July 2001. There is also what is said by the Defendants to be a copy of the Warrant, as issued. Both the Warrant and the Information bears a signature which is said to be the signature of Ms Buckeldee. In the case of the Information, the Information is signed by Mr Broad and counter-signed with a signature which is said to be the signature of Ms Buckeldee. Ms Buckeldee is, sadly, deceased, but I have the benefit of her witness statement dated 23rd May 2016.

220. So far as the Warrant is concerned, Ms Buckeldee stated in her witness statement that *"The Warrant and date resembles my handwriting"*. I take this to mean that the signature on the Warrant resembles the handwriting of Ms Buckeldee. So far as I can see, the only items of handwriting on the Warrant are the signature and the date. Turning to the Information Ms Buckeldee said that the signature, by which the Information is said to have been counter-signed by Ms Buckeldee, resembled her signature. Ms Buckeldee said that the date on the Information was not in her handwriting.

221. This is therefore evidence from Ms Buckeldee that both the signature on the Warrant and the counter-signature on the Information resemble her signature. A comparison of Ms Buckeldee's signature on the last page of her witness statement with the signature on the Warrant and the counter-signature on the Information confirms Ms Buckeldee's evidence. In each case the resemblance is a strong one. I am not of course an expert on handwriting. In cases where it is alleged that a signature has been forged, the evidence of a handwriting expert is often adduced, to assist in establishing whether the questioned signature is genuine or not. It seems to me that this could have been done in the present case. There is a signature on Ms Buckeldee's witness statement which, it is not disputed, is her signature. I assume therefore that a handwriting expert would have been able to make a comparison between the signature on Ms Buckeldee's witness statement and the signature on the Warrant and the counter-signature on the Information. The same exercise could also have been carried out in relation to the date written in manuscript on the Warrant, which was said by Ms Buckeldee to resemble her handwriting. The expert evidence of a handwriting expert was not however called at the trial nor, so far as I am aware, was any application made in these proceedings to adduce the evidence of a handwriting expert.

222. It seems clear that the date written in the Information was not written by Ms Buckeldee, for the reasons given in her witness statement. In his witness statement Mr Broad has

explained that he wrote in the date on the Information, before submitting the same to the Court.

223. There is also the reference to Staines Magistrates' Court on the last page of the Information, just below the signature and above the date. In his witness statement Mr Broad has explained that he used a template to create the Information, and omitted to change the name of the magistrates' court. In this respect Ms Buckeldee has said in her witness statement that she would not have signed the Information as a Justice of the Peace for Staines Magistrates' Court, and would have crossed this out.

224. I will need to come back to the evidence of Ms Buckeldee in order to make the bulk of my findings on that evidence. In my view those findings should be deferred until I have considered the position further, in terms of the evidence, and after I have made my general assessment of the credibility of Mr Broad's evidence. For present purposes, however, and subject to the findings which I have deferred, I should record the following findings on the evidence of Ms Buckeldee:
    (1) The witness statement of Ms Buckeldee is, to my mind, one of the most important pieces of evidence in the case, because it is the evidence of the magistrate who was sitting in the Court on 18th July 2001 and who is recorded, at least on the face of the Warrant and if the signature is genuine, as having signed the Warrant.
    (2) The evidence of Ms Buckeldee, so far as it relates to the signature on the Warrant and the counter-signature on the Information, offers no support for the allegation that the signatures are forgeries.
    (3) The evidence of Ms Buckeldee, so far as it relates to the signature on the Warrant and the counter-signature on the Information, tends to support the hypothesis that they are genuine signatures.

(iv) Analysis of the Forgery Case - the evidence of the metadata

225. The metadata information obtained by Mr Huxtable is set out in a table exhibited to his witness statement. The table shows that the document corresponding to the Information (in draft form) was created at 12.20 on 18th July 2001, was last printed at 16:47 on 18th July 2001, and was last saved at 16:54 on 18th July 2001. The table shows that the document corresponding to the Warrant (in draft form) was created at 16.33 on 18th July 2001, was last printed at 16:48 on 18th July 2001, and was last saved at 16:48 on 18th July 2001. In each case the author is shown as Mr Broad.

226. The evidence of Mr Broad, in his witness statement, was that he attended at the Court, to apply for the issue of the Warrant, on the morning of 18th July 2001. In cross examination Mr Broad gave evidence that he went from his home in north-west London to the office where he was then working, in Harmondsworth, adjacent to Heathrow Airport, and from there on to the Court. In cross examination Mr Broad accepted that he had no direct recollection of the time at which he went to the Court. He suggested that it might have been as late as lunch time or even in the afternoon, although he did not think that the visit was as late as that. Whatever the precise timing of the visit to the Court, assuming that it was made, there is an apparent inconsistency with the evidence of the metadata information. If the document corresponding to the Warrant was only created, for the first time, at 16:33 on 18th July 2001, Mr Broad could not have attended at the Court and obtained the issue of the Warrant on the same day. The document corresponding to the Warrant could not, I assume, have been created at the Court. If it was taken from a template, as Mr Broad said, it would most likely have been created in an office of HMCE.

As for the Court, I assume that it would either have been closed or would have been in the process of being closed at 16:33. In cross examination Mr Broad had no explanation for these timings.

227. The apparent inconsistency which I have identified above depends however on the proposition that the draft versions of the Warrant and the Information could not have existed prior to, respectively, 16:33 on 18th July 2001 and 12.20 on 18th July 2001. There is however no evidence to establish this. The Defendants applied for permission to serve a second witness statement of Mr Huxtable, shortly before the trial. This was not opposed, and I granted permission for this second witness statement. In this second witness statement Mr Huxtable explained how the date and time on which a particular electronic file is recorded as having been created may change if the file is copied or moved to a different area of digital storage, such as a different hard drive or an external storage device such as a disk or memory stick. Equally, when a file is printed from an external storage device, a temporary version of the file is saved on the computer which is being used to print the file. The file is usually then deleted, but this may not occur.

228. It seems to me that I would require much more evidence in relation to the metadata information than was available at the trial, before I could safely conclude that the Warrant could not have been created prior to 16:33 on 18th July 2001. It also seems to me that such evidence would need to include expert evidence, in order to investigate the possibilities referred to by Mr Huxtable in his second witness statement.

229. In these circumstances my finding on the evidence of the metadata information is that it does not establish that Mr Broad could not have visited the Court on 18th July 2001 with the Information and the Warrant. In this respect, the evidence seems to me to be inconclusive. It seems to me however that the metadata information is helpful in this respect. The metadata information does show that documents corresponding to the Warrant and the Information were in existence, in electronic form, on 18th July 2001. If Mr Broad did not visit the Court on 18th July 2001, and if Mr Broad or someone acting at his instigation, forged the signature of Ms Buckeldee on the Information and the Warrant, this was done using documents which were already in existence on 18th July 2001. This in turn raises the question of why it would be perceived as necessary to forge these documents, as opposed to going to the Court and securing the issue of the Warrant, in circumstances where someone had gone to the trouble of creating the documents by 18th July 2001.

(v) <u>Analysis of the Forgery Case – the evidence of the finding and production of the Warrant in 2008</u>

230. I have already described the circumstances in which Mr Roche was provided with a draft version of the Warrant just prior to the hearing before Master Moncaster on 1st May 2008. It is clear that the signed version of the Warrant was provided to Mr Roche under cover of Ms Murray's letter of 7th May 2008.

231. In his witness statement, at paragraph 10, Mr Webb gives the following evidence in relation to the finding of the Warrant:

> *"10. I have been shown item number 147 an email dated 22/02/08 from Marilyn Howson of Strategy and Planning to Cheryl Hugill of Solicitors Office. I recall at this time in 2008 there was contact made by Mr Bhandal to the Department. To assist Solicitors Office I arranged the transfer of boxes of*

Opn Kitsch material from deep storage to Marilyn Howson, Strategy and Planning. Following a request I attended and assisted Strategy and Planning in the examination of material relevant to assist them in this inquiry. This resulted in the list provided by Marilyn Howson in the email to Cheryl Hugill. I cannot be any more specific about the material beyond the headings in this list."

232. This part of Mr Webb's evidence was not the subject of specific challenge in cross examination and was not elaborated upon. It is however clear from Ms Howson's email to Ms Hugill and Ms Murray, sent on 22nd February 2008, that Mr Webb had been into the office that day, and had sifted through 15 boxes of sensitive material and had located, amongst other documents and as *"Item 9"*, the *"Warrant of arrest for Bhandal 18/7/01 (copy)"*. It is also clear from the documents and from Mr Webb's evidence in examination in chief that the document found by Mr Webb had the reference Item 9 because the copy of the Warrant was numbered Item 9 in a schedule of sensitive unused material in relation to the prosecution of Mr Pearce. Further corroboration exists in the form of a note prepared by Bridget Molyneux, who was head of the Asset Forfeiture Unit, which records a conversation between Ms Molyneux and Mr Webb on 25th January 2008 in which Mr Webb stated that he retained the schedule of unused sensitive material in relation to Mr Pearce. It is also clear that what Mr Webb found was a copy of the Warrant. It is so described in Ms Howson's email and was so described in the schedule of unused sensitive material.

233. It is also clear, from the evidence of the faxes to which I have made reference in the relevant narrative section of this judgment, that the documents which were located at that time and provided to Ms Murray included (i) the copy of the Warrant, as signed, subsequently provided to Mr Roche under cover of the letter of 7th May 2008, (ii) the two page draft version of the Warrant, handed to Mr Roche outside Master Moncaster's room, and (iii) the signed version of the Information, also provided to Mr Roche under cover of the letter of 7th May 2008.

234. There is no evidence that Mr Broad had any involvement with the relevant sequence of events between February 2008 and May 2008. By this time, Mr Broad was based in Central London, and had been since 2003, dealing with the enforcement of unsatisfied confiscation orders made in the Crown Courts.

235. There is also no evidence that Roche & Co, as Mr Bhandal's solicitors, raised any question with HMRC as to whether criminal proceedings had been instituted against Mr Bhandal in 2001, prior to the letter of 15th April 2008 referred to in Mr Roche's skeleton argument for the hearing before Master Moncaster. This was after Mr Webb had been asked to conduct the search for documents which resulted in his going through the 15 boxes of documents referred to in Ms Howson's email of 22nd February 2008, and after Mr Webb found a copy of the Warrant. Prior to 15th April 2008 there is no evidence of earlier inquiry. I note that Mr Webb makes reference, in paragraph 10 of his witness statement, to a contact made by Mr Bhandal, but what that contact was or when it was made are questions which have not, to my knowledge, been explained.

236. I make the following findings in relation to the production of the Warrant in 2008:
    (1) Mr Webb found a copy of the Warrant, in going through the 15 boxes of sensitive material on 22nd February 2008.

(2) Also found at that time were the draft two page version of the Warrant handed to Mr Roche on 1st May 2008, and the signed version of the Information (either the original or a copy). It is not clear precisely when or how these two documents were found. Although this was not confirmed by Mr Webb himself, the obvious inference is that they were also documents found by Mr Webb, and I so find.

(3) These three documents were all found in relation to a search for documents in connection with disclosure in the Chancery Proceedings and in connection with the strike out application made in February 2008. None of the documents were searched for or found in response to a request from Mr Bhandal's solicitors for their production, or in response to a challenge from Mr Bhandal's solicitors as to whether criminal proceedings had actually been instituted against Mr Bhandal in 2001, or in response to a challenge to the jurisdictional basis of the Restraint Proceedings.

(4) As a result of an innocent error on someone's part, what was handed to Mr Roche outside Master Moncaster's room was the draft version of the Warrant, rather than the copy of the Warrant as signed.

(5) The error was corrected by Ms Murray's letter of 7th May 2008, which provided to Mr Roche (strictly speaking by further copies of the same) the copy of the signed version of the Warrant and the signed version of the Information (either the original or a copy).

(6) Mr Broad had no involvement with the process of finding these documents or with the subsequent chain of events up to and including Ms Murray's letter of 7th May 2008.

237. Mr Bhandal's case is that at some point between 18th July 2001 and 7th May 2008 it is to be inferred that Mr Broad, or someone acting at his instigation, must have forged the Information and the Warrant. In my view the findings which I have made in relation to the sequence of events in 2008 effectively rule out 2008 as a time when the forgeries could have been perpetrated. If the Warrant and the Information were forgeries, it is difficult to see how the forgery could have occurred in 2008. There is no suggestion that any of the persons involved with the sequence of events in 2008 which culminated in the transmission of the copy Warrant and the Information to Mr Roche were themselves involved in forgery of these documents. Mr Broad was not involved in this sequence of events. If Mr Broad, or someone acting at his instigation, forged the Warrant and the Information, I find that this could not have occurred in 2008.

238. What I have said above leads on to a further point in this context. If the forgery occurred prior to 2008 Mr Broad, or someone acting at his instigation, would have had to ensure, at some earlier date, that a copy of the forged Warrant and the original or a copy of the forged Information were already in the location where they were found in 2008.

(vi) <u>Analysis of the Forgery Case – the evidence of references and non-references to the Warrant</u>

239. I have already set out my analysis of the Court records. Beyond the Court records, both parties devoted considerable time, at the trial, to identifying instances of references or non-references to the Warrant, and to argument consequential upon those references and non-references.

240. For their part, the Defendants identified what they submitted were numerous references to the Warrant, or what was said to be the Warrant, which demonstrated both that the

Warrant had been issued on 18th July 2001 and that the Warrant had been issued with the intention of seeking the extradition of Mr Bhandal from the USA. The Defendants assembled these references into what was described as a Digest of References.

241. For his part Mr Bhandal pointed to a large number of instances where, in his submission, there was no reference to the Warrant in circumstances where, if the Warrant had been issued by the Court on 18th July 2001, one would have expected to see reference to the Warrant. Mr Bhandal also submitted, on the evidence, that HMCE had never in fact intended to seek his extradition from the USA because, for HMCE's own particular reasons, it suited HMCE to have Mr Bhandal out of the country.

242. It is not necessary for me to go through all of this evidence in detail, although I will make some specific reference to it. Instead, I can come directly to my overall assessment of this evidence, which is as follows:
    (1) The evidence discloses numerous instances, some of them contemporaneous, where the Warrant is referred to, directly or indirectly.
    (2) It is clear from the evidence, and I so find, that, at the time when the Warrant is said to have been issued, it was the intention of the HMCE team to try to secure the extradition of Mr Bhandal from the USA. This intention was not a sham. I find that it was a genuine intention.
    (3) The evidence does disclose instances, some of them contemporaneous, where the Warrant is not referred to, in circumstances where one would or might have expected to see reference to the Warrant.
    (4) The instances of non-reference to the Warrant do not provide any real support for the Forgery Case. I say this for two reasons. First, instances of non-reference do not necessarily mean that the Warrant must have been forged. Second, the overall picture presented by the relevant evidence in this context points both ways. There are references and non-references. The fact that there are references to the Warrant seems to me seriously to undermine the Forgery Case. Given this position, it seems to me that the relevant evidence is simply not capable of supporting or justifying the findings of forgery and fraud required to establish the Forgery Case. Rather, the relevant evidence seems to me to undermine the Forgery Case.
    (5) In relation to the Digest of References, Mr Newman was forced to resort to an argument that references to the Warrant after 18th July 2001 were the product of Mr Broad misleading others that he had obtained the issue of the Warrant. As such, so Mr Newman submitted, these references were equivalent to a person's previous statements tendered by that person to support their own evidence. Mr Newman cited authorities which indicate the wariness of the courts in dealing with this kind of evidence; given the obvious risk of such previous statements being themselves fabricated. In the case of the Digest of References, however, I did not find this argument convincing. The references are too widespread and too varied to be classified as previous consistent statements, procured by the systematic misleading of all and sundry on the part of Mr Broad.

243. As I have said, it is not necessary to go through the evidence in detail in this context, or the arguments on that evidence. The following limited references to the evidence will serve to illustrate, by way of examples, the basis of the findings set out in my previous paragraph.

244. There is an Interpol Diffusion Telex which was prepared for sending out on 20th July 2001 at 16:00. As the name suggests, the purpose of the telex was to request the provisional arrest of Mr Bhandal in other countries, pending his extradition, if Mr Bhandal was located in any of the countries to which the telex was directed. The telex identified that Mr Bhandal was wanted on an arrest warrant issued by the Court on 18th July 2001 for the offences specified in the telex, which correspond with the Charges. The magistrate who is identified as having issued the arrest warrant is Ms Buckeldee. It is difficult to understand how this document came into existence, with this information, if Mr Broad had not visited the Court and obtained the issue of the Warrant on 18th July 2001. On this hypothesis Mr Broad, or someone acting on fraudulent information provided by Mr Broad, must have prepared the telex with this fraudulent information. It was not put to Mr Broad that he had supplied false information for this purpose, and it is difficult to accept that this occurred. Amongst other problems with this hypothesis, how could Mr Broad or anyone else have known that Ms Buckeldee was sitting in the Court on 18th July 2001, if Mr Broad did not visit the Court on 18th July 2001? The more obvious conclusion is that the content of the telex reflected that which had actually happened on 18th July 2001; namely the issue of the Warrant by Ms Buckeldee.

245. On the other side of the scale, there is an information prepared by Mr Webb, in support of an application in the Isleworth Crown Court, for a production order against Mr Bhandal, Mr Pearce and two other individuals. The information is not dated, but was made at some point after 19th July 2001; the day of the Execution Event. The Kegco Warrant is referred to in this information, but not the Warrant. There is however a witness statement made in the name of Mr Webb, in relation to proceedings against Mr Pearce. The witness statement is unsigned and undated, but the typed date on the first page of the witness statement is 18th November 2001. At paragraph 4 of this witness statement Mr Webb does make reference to the Warrant. In re-examination on this document Mr Webb confirmed that the document was his witness statement and expressed the view that he would have written the witness statement not long before 18th November 2001. I accept this evidence of Mr Webb. I find that the witness statement was a witness statement which he wrote, either on or before 18th November 2001.

246. In addition to this, there is an information prepared by Mr Webb in support of an application in the Nottingham Crown Court, for production orders against Mr Bhandal, Mr Pearce and another individual. The information is signed by Mr Webb and dated 5th August 2002. The information makes reference to *"an arrest warrant"* which was said to have been issued against Mr Bhandal who *"is believed to be in the United States"*. It is interesting to note that the *"Background"* section of this information is in the same terms as the Isleworth information, including reference to the Kegco Warrant. For present purposes the relevant difference between the two informations is that the Nottingham information has the additional and separate reference to *"an arrest warrant"* for Mr Bhandal. Mr Webb confirmed in re-examination that the identity in the relevant block of text in the two informations was the result of copying and pasting on his part, as between different informations. Mr Webb explained the situation in the following terms, at **[T4/100/20-101/1]**:

> *"A. Well, can I just explain, my Lord, there were so many applications, so case summary and background for the applications, there was a tendency to use the same each way through the case, from when we were applying for production orders, rather than rewriting it all; it would all be there, and you can cut and paste to the next order, if you understand what I mean, my Lord."*

247. So far as the additional reference to the arrest warrant in the Nottingham information was concerned, Mr Webb said in re-examination that he *"would have to say that it related to the warrant we had obtained on Mr Bhandal, not the police one"*, but that he could not be 100% sure **[T4/104/15-19]**. It seems clear to me, and I so find, that the reference in the Nottingham information to the arrest warrant can only have been a reference to the Warrant.

248. So far as the Forgery Case is concerned, the overall effect of this evidence is, at best, equivocal. The Warrant is not mentioned in the Isleworth information. The Warrant is mentioned in the Nottingham information and in the witness statement of Mr Webb which bears the date of 18th November 2001. Unless one accepts that Mr Broad bolstered the forgery of the Warrant which he had perpetrated or instigated, by supplying false information to Mr Webb, which I do not find plausible, this evidence provides no real support for the Forgery Case. Rather, this evidence points against the Forgery Case.

249. Some time at the trial was spent on another document dating from 2002. The document in question is a note of a conference with counsel in Furnival Chambers held on 1st May 2002, which was attended by Mr Coussey, Mr Robertson and Mr Webb, but not by Mr Broad. The situation concerning Mr Bhandal was, according to the note, discussed at some length in this conference. One of the matters discussed was the difficulties which had been encountered in securing the extradition of Mr Bhandal from the USA. In this context the following exchange is recorded in the note of the conference:

> *"AM [Andrew Mitchell QC] asked Candrew [Cedric Andrew] if possible to extradite if the Senate would be meeting in October + if this is retrospective we have this all ready and put before Bow St and papers passed to US for arrest to be made.*
>
> *Consider we should put together an extradition bundle. BR [Brian Robertson] mentioned we have problem filinf* [filing] *out of statute limitations. We do already have a warrant drawn up for Bhandal."*

250. Mr Newman, in his closing submissions, stressed the reference to a warrant having been *"drawn up"*. His point was that a warrant which had been issued would not have been referred to in these terms. The reference to a warrant having been drawn up was therefore a reference to the Warrant which demonstrated that the Warrant had been drawn up, but had not been issued.

251. Mr Newman also made the point that two judges had asked for an explanation of this piece of evidence. The first was Recorder Gasztowicz, who heard an application for summary judgment by Mr Bhandal in these proceedings. The application, which was unsuccessful, was heard by the Recorder on 11th December 2024. The transcript of that hearing records the following exchange between the Recorder and Mr Macaulay, who appeared for the Defendants at that hearing:

> *"My Lord, the next documents are in the A bundle. If I can invite you to turn to page 307 of that. Conference on 1 May 2002, again discussing the extradition problems that have arisen and Andrew Mitchell QC advises -- this is about two thirds of the way down the page:*
>
> > *"Consider we should put together an extradition bundle. BR [Brian Robertson] mentioned we have problem (something) out of statute of limitations. We do already have a warrant drawn up for Bhandal."*

Now that cannot be a reference to the Kedco warrant which is the only other warrant that has been at issue in this case because that has got nothing to do with the case and it cannot be a reference to the draft warrant either because a draft could be prepared very simply and typed up.
MR RECORDER GASZTOWICZ: Well it does say, "Warrant drawn up," not "Warrant issued," does it not."

252. The second judge was myself. In the course of cross examination of Mr Broad, Mr Newman put the above extract from the conference note to Mr Broad. This resulted in the following exchange **[T3/108/10-109/1]**:

"Q. Nobody would use the words "drawn up" about an arrest warrant if an arrest warrant had already been issued by a court, would you agree with me about that?
A. Sorry, can you just ask the question again, please?
Q. Yes, I'm just putting to you that nobody would say, "We have a warrant drawn up for Bhandal", if, in fact, a warrant had already been issued by a court.
A. Well, to me, that could read one of two ways, in a way, but --
Q. Okay. Thank you.
MR JUSTICE EDWIN JOHNSON: I think the question is this, Mr Broad: if there'd been a warrant issued on 18 July 2001 -- appreciating that you weren't at this conference -- are you able to give us any assistance with why the reference is to a warrant "drawn up"?
A. No, not truly, my Lord. I'm still totally adamant that I obtained that warrant in 2001."

253. Mr Newman's argument was that the reference to the Warrant having been drawn up was a revealing reference, which was demonstrated by the judicial interest shown in this piece of evidence, both by myself and Recorder Gasztowicz. For their part, the Defendants' counsel submitted that this was either a reference to the Warrant, as issued, or a reference to a fresh draft warrant containing alternative Theft Act charges which were being discussed as extraditable offences.

254. It seems to me that the submission of Mr Newman overstates the position, and seeks to impose upon this piece of evidence a weight which it is not capable of bearing, either individually or in concert with other evidence. While I cannot speak for the Recorder, my own intervention at this point in Mr Broad's cross examination was simply to ensure that I had understood what, if anything, Mr Broad had to say in relation to this piece of evidence, bearing in mind that he had not been present at the conference. In fact, on revisiting the transcript, I note that Mr Broad had, prior to my intervention, already made the obvious point about the reference to the Warrant being drawn up; namely that this was a reference which could be read two ways. While this was not strictly evidence, but rather comment from Mr Broad, it seems to me that Mr Broad was right in this comment. If it was the Warrant which was being referred to in the note of the conference, the reference to the Warrant having been drawn up might have been a reference to an understanding on the part of Mr Robertson that the Warrant had only been drawn up, as opposed to being issued. Alternatively, the reference might have been Mr Robertson's way of referring to the Warrant as a warrant which had been issued. Both readings are perfectly possible. One might say that the former reading is the more natural reading, but the latter reading is still a possible reading. Alternatively, and although this is speculation, there might have been a different warrant drawn up, but not issued, as

suggested by the Defendants' counsel. Ultimately, one is left to speculate on the language used in this note of the conference.

255. I have made specific reference to this piece of evidence for two reasons. First, this piece of evidence seems to me to be a good example of evidence relied upon by Mr Bhandal, in the contemporaneous and near contemporaneous documents, which was too equivocal to bear the weight which Mr Bhandal sought to place upon it. Second, and if it is assumed that the reference in the note of the conference was to the Warrant, this piece of evidence seems to me to be a good example of evidence relied upon by Mr Bhandal which, if Mr Bhandal's interpretation of that evidence was correct, sat very oddly with the bigger picture on which the Forgery Case relied. Mr Bhandal's case was that Mr Broad not only forged or procured the forgery of the Warrant, but also misrepresented to others that he had issued the Warrant. The issue of the Warrant was supposed to have commenced the criminal proceedings upon which the prosecution of Mr Bhandal, the freezing of his assets and the efforts to extradite Mr Bhandal from the USA depended. If, in the conference on 1st May 2002, Mr Robertson and the other persons attending the conference were aware that the Warrant had not been issued, but had only been drawn up in draft, one would have expected that situation to cause some concern, which one would expect, in turn, to have been reflected in the note of the conference. There is however no record of any such concern expressed in the conference. This, in turn, suggests that the understanding of those attending the conference was that the Warrant had been issued, and that this was what Mr Robertson meant to convey, by his reference to the Warrant.

256. Moving forward in time, another significant piece of evidence in the category of references and non-references to the Warrant can be found in the witness statement of Ms Haddad. In this witness statement Ms Haddad reports on a conversation she had with *"Joe of Customs who was in Court 3"*, when Ms Haddad attended at the Court on 6th May 2008. For ease of reference, I repeat Ms Haddad's evidence of her conversation with Joe:

> *"31. I personally attended on "Joe" of Customs who was in Court 3.*
> *32. I introduced myself and asked how he was able to provide Debbie with the information that the case had been transferred to Northampton Crown Court or Leicester Crown Court.*
> *33. He said that he had contacted RCPO (Revenue and Customs Prosecutions Office) by telephone and given them the name of Baljit Singh Bhandal, which they had typed into their computer system.*
> *34. Joe was told the name did appear on the system showing that a warrant had been issued and "presumably proceedings were instituted".*
> *35. I remember noting that he had used the word instituted.*
> *36. He said the case had then been transferred to Northampton Crown Court and Leicester Crown Court.*
> *37. He added again that he presumed that this is what happened but that he was not certain"*

257. While this is hearsay evidence, there is an important difference between this evidence and the evidence of Ms Haddad's conversation with Debbie at the Court on the same visit. I accept that Ms Haddad was told by Debbie that she, Debbie, had checked the Court Register and had found no record of any entry relating to Mr Bhandal on 18th July 2001. I also accept that this information provided by Debbie was accurate. The same

information is available from other sources, and has been confirmed by the 2001 Records. I am however reluctant to place any weight on the following evidence, in paragraph 17 of Ms Haddad's witness statement:

> *"I asked her if that meant that no warrant could have been issued on that date concerning Mr Bhandal and she confirmed that that was indeed the position as all warrants had to be recorded."*

258. The reason for this is that I have no means of knowing whether this information was a reliable account of the practice of the Court in 2001, in circumstances where Ms Haddad's question was posed in 2008. Independent of this, and even if this information was accurate, it does not follow that the Warrant could not have been issued on 18th July 2001, for the reasons which I have set out in my analysis of the Court records.

259. By contrast, the information provided to Ms Haddad by Joe was the result of his making inquiries, I assume then and there, of the Revenue and Customs Prosecutions Office, who confirmed that Mr Bhandal's name did appear on the system showing that a warrant had been issued against Mr Bhandal, in relation to a case which was then transferred to Northampton Crown Court and Leicester Crown Court. The warrant was not identified more specifically by Joe, but the terms of the inquiry made by Joe are not inconsistent with the warrant being the Warrant itself. So far as the Forgery Case is concerned, this evidence is, at best, inconclusive. On any view of the matter, this evidence provides no real support for the Forgery Case. In my judgment the same is true of the remainder of Ms Haddad's evidence in her witness statement.

260. Moving to a different point, Mr Bhandal made a subject access request to ACRO Criminal Records Office for disclosure of the information, relating to Mr Bhandal, held on the Police National Computer. The Criminal Records Office replied by letter dated 13th May 2019, attaching this information. There is no record in this information of the Warrant. Mr Newman submitted that one would have expected the Warrant to be recorded on the Police National Computer, for the purposes of ensuring the arrest of Mr Bhandal if he returned to the jurisdiction. The Defendants' counsel submitted that it would not be surprising to find no mention of the Warrant on the Police National Computer in 2019, because warrants do not stay on the Police National Computer after they have been withdrawn or executed. It will be recalled that the evidence of Mr Broad was that he had, at some point by 2005, procured what he understood to be the cancellation of the Warrant by returning the same to the Court. I consider the factual question of whether Mr Broad did return the Warrant to the Court in the next section of my analysis of the Forgery Case. For present purposes however, and assuming that the Warrant was returned to the Court, it was not satisfactorily explained to me how or why the taking of this step would necessarily have resulted in the Warrant being removed from the Police National Computer, assuming that it had previously been recorded on the Police National Computer. I heard no evidence which explained satisfactorily how or why this would have happened, consequential on the Warrant being returned to the Court.

261. If Mr Newman was right in his submission, there is an apparent inconsistency between the absence of the Warrant from the Police National Computer and the following evidence given by Mr Broad in paragraph 10 of his witness statement for trial:

> *"b) I believe it was in 2005, during my attachment to the Confiscation Enforcement Task Force in Central London, that I was telephoned by the Metropolitan Police (DC or DS Children) and advised that Mr Bhandal had*

been arrested by them in relation to a 'Conspiracy to kidnap' investigation, involving a flat in Shepherds Bush where walls and furniture had been covered in plastic wrapping. The reason that the Police phoned me was that they had run the Bhandal name through the PNC system and the Arrest Warrant obtained by myself in 2001 was still listed as active, hence their call to me."

262. As can be seen, Mr Broad's evidence in his trial witness statement was that he received a telephone call from Detective Sergeant Children in 2005, advising Mr Broad that Mr Bhandal had been arrested in relation to the conspiracy to kidnap investigation. Although described in this witness statement as *"DC or DS Children"*, in cross examination Mr Broad referred to this officer as a detective sergeant rather than a detective constable. The reason for this telephone call, as explained by Mr Broad, was that Mr Bhandal's name had been run through the Police National Computer, which showed the Warrant as still being active. This is difficult to reconcile with the information provided in response to Mr Bhandal's subject access request, unless one accepts that Mr Broad did return the Warrant to the Court and that this action, in turn, resulted in the removal of the Warrant from the Police National Computer. In this context, a further point which was put to Mr Broad in cross examination was that if the Warrant had been recorded on the Police National Computer, Mr Bhandal should have been arrested when he went through Heathrow in February 2005, using a false passport in the name of one of the aliases listed in the Warrant.

263. In cross examination it was put to Mr Broad that he had invented the telephone call from DS Children. I will need to come back to this telephone call in the next section of my analysis of the Forgery Case, when I come to consider the factual question of whether the Warrant was returned to the Court by Mr Broad. For present purposes my analysis of this evidence is as follows. Mr Broad was adamant that he did receive the telephone call from DS Children. He also asserted that the presence of the Warrant on the Police National Computer would not necessarily have resulted in Mr Bhandal being picked up when he passed through Heathrow in February 2005. In my judgment Mr Broad's evidence about the telephone call rang true. This evidence did not come across as evidence fabricated by Mr Broad. In addition to this, the telephone call was referred to by Mr Broad in a much earlier witness statement dated 24th August 2011, at paragraph 20. This earlier witness statement was made in the Section 89 Application, at a time when Mr Broad was not concerned with questions of the authenticity of the Warrant.

264. The absence of the Warrant from the information provided to Mr Bhandal in response to this subject access request is not satisfactorily explained. The position on the evidence, and on the relevant law and practice for that matter, is too opaque to satisfy me that this can all be explained on the basis that the Warrant was removed from the Police National Computer as a consequence of its formal withdrawal or cancellation, assuming that the same occurred. As however with other evidence in this case, this gap in the evidence does not persuade me that the Warrant was not issued or, for that matter, that Mr Broad fabricated his evidence in relation to the telephone call from DS Children. Equally, the fact that Mr Bhandal was not picked up when he came through Heathrow in February 2005 is not a matter which persuades me that the Warrant was not issued. I simply do not have sufficient information about the Police National Computer to know how it would have operated, in 2005, in terms of picking up persons passing through Heathrow who were subject to a warrant of arrest in the first instance.

265. One final example I give relates to the Commission Rogatoires which were prepared for the purposes of seeking the assistance of other jurisdictions in the arrest of Mr Bhandal. There is a Commission Rogatoire addressed to Switzerland and dated May 2002. The Commission Rogatoire was sent by Mr Broad to Mr Coussey by an email on 20th May 2002. In describing the case against Mr Bhandal, there is reference in the Commission Rogatoire to the Kegco Warrant. There is no reference to the Warrant. The Commission Rogatoire was signed by Annabelle Bolt, Assistant Secretary (Legal), Head of the International Criminal Division of the Solicitor's Office of HMCE. The omission of reference to the Warrant in this Commission Rogatoire was relied upon by Mr Newman as evidence that Ms Bolt was not aware of the Warrant. This reliance did however raise the question of why, if Ms Bolt was unaware of the Warrant, a number of other people appear to have been aware of the Warrant in the aftermath of 18th July 2001; see the Digest of References. This problem resulted in a convoluted submission from Mr Newman that, while Mr Broad was prepared to mislead a number of his colleagues on the question of whether the Warrant had been issued, he was not prepared to lie to Ms Bolt, apparently because she would have been involved in the obtaining of any arrest warrant. I understood the submission to be that Ms Bolt was not amongst those who were informed by Mr Broad, dishonestly on Mr Bhandal's case, that the Warrant had been issued.

266. There is however a separate Commission Rogatoire addressed to France. This Commission Rogatoire, which is entitled Supplementary Commission Rogatoire, is dated 3rd December 2001. It is signed by Ms Bolt and identifies Mr Coussey as the case lawyer. This document contains the following reference:

> *"Bhandal fled the jurisdiction of the English courts and a warrant now exists for his arrest on charges of Excise evasion and conspiring to enter into an arrangement with Pearce whereby the proceeds of Bhandal's criminal conduct was used for Bhandal's benefit to acquire a property."*

267. The description of the charges in this extract corresponds to the Charges, as they appeared on the Warrant. Accordingly, I take this extract to be referring to the Warrant. There is also an email sent by Mr Coussey to Mr Broad on 10th December 2001 attaching what was described as a further supplementary Commission Rogatoire for France. The attachment to the email is not available. The obvious inference, which I draw from this email, is that the attached document was the Supplementary Commission Rogatoire for France dated 3rd December 2001, which did make reference to the Warrant.

268. I was also provided with one other Letter of Request, signed by Ms Bolt and dated 14th June 2001, which was addressed to the British Virgin Islands. This document, which predated the issue of the Warrant (if the Warrant was issued), makes reference to the Kegco Warrant in similar, but not identical terms to those by which reference was made to the Kegco Warrant in the Switzerland Commission Rogatoire.

269. It is not necessary to go further into the question of why the Switzerland Commission Rogatoire makes reference to the Kegco Warrant, while the France Supplementary Commission Rogatoire makes reference to the Warrant. What is relevant is that there is a Commission Rogatoire signed by Ms Bolt and, it can be inferred, seen by Mr Coussey, which makes reference to the Warrant. This necessarily undermines the case theory advanced by Mr Bhandal that Mr Broad excluded certain persons from his alleged

deception in relation to the Warrant. If the deception did take place, it appears that it was extensive, and extended to Ms Bolt, who is said by Mr Bhandal to have been someone whom Mr Broad could not safely have deceived. The key point is this. The further one goes into this part of the evidence, the more difficult it becomes to accept Mr Bhandal's case and the more difficult it becomes to ignore the more obvious analysis of this part of the evidence; namely that the France Supplementary Commission Rogatoire confirms (i) that the Warrant had been issued, and (ii) that the omission of reference to the Warrant in the Switzerland Commission Rogatoire was simply the result of someone making an innocent error or choosing not to mention the Warrant for reasons which are now unknown..

270. It would be possible for me to continue my analysis of the evidence of references and non-references to the Warrant at much greater length, indeed more or less indefinitely, but this is neither necessary nor justified. As I have said, it seems to me that the relevant evidence is simply not capable of supporting or justifying the findings of forgery and fraud required to establish the Forgery Case. Rather, the relevant evidence seems to me to undermine the Forgery Case.

(vii) Analysis of the Forgery Case – was the Warrant returned to the Court?

271. The evidence of Mr Broad at the trial was that he returned the Warrant to the Court. His evidence was that he was instructed to do this by Mr Webb. By that time Mr Broad was working in Central London. Mr Broad's evidence was that he went to the Staines office of HMCE, picked up the Warrant, and returned the Warrant to the court office at the Court. Mr Broad explained to me, in his oral evidence, that his understanding was that taking back the Warrant to the Court had the effect of cancelling or deleting the Warrant.

272. In his witness statement for the trial, in paragraph 10, Mr Broad gave the following evidence (part of which I have quoted in the previous section of this judgment), in relation to the return of the Warrant:

> *"b) I believe it was in 2005, during my attachment to the Confiscation Enforcement Task Force in Central London, that I was telephoned by the Metropolitan Police (DC or DS Children) and advised that Mr Bhandal had been arrested by them in relation to a 'Conspiracy to kidnap' investigation, involving a flat in Shepherds Bush where walls and furniture had been covered in plastic wrapping. The reason that the Police phoned me was that they had run the Bhandal name through the PNC system and the Arrest Warrant obtained by myself in 2001 was still listed as active, hence their call to me.*
>
> *c) Not having worked Operation KITSCH since my ETF appointment, I was surprised that the Warrant was still Active. Resultantly, I contacted Paul Webb and a couple of days later he rang me back to inform me that the original Warrant was in storage in our Staines office. Arrangements were then made for me to collect the Warrant of Arrest from Staines and return it to Uxbridge Magistrates Court a few days later. I believe that I effected return of the Warrant to Uxbridge by the end of June 2005."*

273. I have also mentioned, in the previous section of this judgment, the earlier witness statement of Mr Broad, made in the Section 89 Application, which was dated 24th August 2011. In paragraph 18 of that earlier witness statement Mr Broad made a brief reference to returning the Warrant to the Court. So far as this earlier witness statement is

concerned, there is no evidence that, at the time when the witness statement was made, Mr Broad was aware or had any reason to believe that the authenticity of the Warrant was subject to challenge. In that earlier witness statement Mr Broad did not identify the date on which he said that he returned the Warrant, although the implication of paragraph 18 of this witness statement is that the Warrant was returned at some point subsequent to the discontinuance, in 2003, of the prosecution against Mr Pearce and others in the Leicester Crown Court. As I have also mentioned in the previous section of this judgment, in paragraph 20 of this earlier witness statement, Mr Broad made reference to the telephone call which he says that he received from DS Children, informing him that Mr Bhandal had been arrested on suspicion of conspiracy to kidnap. Mr. Broad says that this was when he was first made aware that Mr Bhandal had returned to the jurisdiction. This earlier evidence is therefore consistent with the evidence of this telephone call given in Mr Broad's trial witness statement.

274. The evidence of Mr Broad that he returned the original of the Warrant to the Court is supported by the evidence of Mr Webb, who made reference in his witness statement to a post-it note which makes reference to the withdrawal of the Warrant. The relevant evidence, which I accept, is in paragraph 9 of Mr Webb's witness statement, in the following terms:

> *"9. I have been shown a copy of a post it note, part of Item 257 page 2, this is in my handwriting. I recall sometime after our solicitors advised we had to drop the case from court proceedings I established who to contact for advice concerning the arrest warrant of Mr Bhandal. The post it note reads "Contact Geraldine Farmsworth ref withdrawal of arrest warrant! Friday 0870 785 8342" and next to this "Warrant to be sent back to Uxb Mags dropped ....." the last three words I am unable to decipher. I cannot recall the date or year this was written. I recall contacting Stephen Broad on receiving this advice and he agreed to collect the warrant and return it to Uxbridge Magistrate's court, I cannot recall when this was."*

275. I have to confess that I found the evidence in relation to the alleged return of the Warrant to the Court somewhat difficult to reconcile with the submissions which I received on the law in this respect. As I have already noted, in my analysis of the Court records, if the Warrant was issued, it would have had the effect of commencing a set of criminal proceedings against Mr Bhandal, pursuant to Section 15(2)(b) of the Prosecution of Offences Act 1985. Mr Newman submitted that criminal proceedings, once commenced by the issue of a warrant pursuant to paragraph (b) of Section 15(2), could only be terminated by a public formal act. He submitted that there was no such process as cancelling a warrant of arrest in the first instance by returning it to the magistrates' court out of which it had been issued. As I have said, Mr Newman compared this to attempting to bring civil proceedings to an end by returning the claim form to the court out of which it had been issued. I found the analogy a persuasive one.

276. The Defendants' counsel, in their closing submissions, appeared to be taking issue with Mr Newman's analysis. I was however shown no legal authority for the proposition that a warrant of arrest at first instance, issued pursuant to Section 15(2)(b) of the Prosecution of Offences Act 1985, could be treated as withdrawn or otherwise terminated by returning the same, unexecuted, to the magistrates' court from which it had been issued. I was told that the Warrant Book Records occasionally show warrants being returned or withdrawn, with no indication of formality in the process. It seems to me however that entries in the

Warrant Book Records should not be treated as a reliable guide to what the legal requirements were, in or around the time that Mr Broad is said to have returned the Warrant to the Court, regarding the withdrawal of a warrant of arrest at first instance.

277. As I have said, Mr Newman identified the public acts, by which criminal proceedings commenced by the issue of a warrant of arrest in the first instance could be terminated, as (i) withdrawal under Section 125 of the Magistrates' Court Act 1981 (ii) a notice of discontinuance under Section 23 of the Prosecution of Offences Act 1985, or (iii) an acquittal by operation of law pursuant to section 17 of the Criminal Justice Act 1967. Mr Newman's submission was that these statutory provisions provided the only methods by which a set of criminal proceedings commenced by the issue of a warrant pursuant to Section 15(2)(b) could be stopped. In relation to Section 125 of the Magistrates Courts Act 1981 Mr Newman referred me to two authorities; namely *R (Nicolaou) v Redbridge Magistrates' Court* [2012] EWHC 1647 (Admin) [2012] 2 Cr. App. R. 23 and *R (Lawson) v City of Westminster Magistrates' Court* [2013] EWHC 2434 (Admin) [2014] 1 WLR 2085.

278. I have read both of these cases, but I have not found either case to be of much assistance. In *Nicolaou* a warrant had been issued for the claimant's arrest from Redbridge Magistrates' Court. The issue before the Divisional Court was whether the warrant should have been issued. The claimant contended, successfully before the Divisional Court, that he had not committed the offence under Section 1 of the Child Abduction Act 1984 in respect of which the warrant had been issued. This issue first arose at a hearing before a District Judge in Redbridge Magistrates' Court, which was treated by the District Judge as an application for the withdrawal of the warrant, on the basis that the claimant had not had an opportunity to be heard when the warrant was issued. The issue reached the Divisional Court by way of an application for judicial review of the District Judge's decision that the warrant should not be withdrawn because the situation was capable of falling within Section 1 of the Child Abduction Act 1984. *Lawson* was also concerned with the question of whether a warrant should have been issued. This issue was first heard in Westminster Magistrates' Court, on an application for the withdrawal of the warrant by the claimant, who argued that the court had had no power to issue the warrant under Section 83(2) of the Magistrates' Courts Act 1980. This argument failed before the Magistrates' Court and the claimant's application for permission to apply for judicial review was refused on the papers and on a subsequent oral hearing by Treacy LJ and Foskett J. The judgment on the oral hearing was given by Foskett J, but his judgment was concerned with the question of whether it was arguable that there had been no power to issue the warrant.

279. So far as I can see, neither case addresses the means by which a warrant of arrest issued pursuant to Section 15(2)(b) may cease to have effect. Nor does either case address the question of whether a warrant of arrest can cease to have effect by being returned to the magistrates' court where it was issued. This is not surprising. In both cases the issue was whether the relevant warrant should have been issued. In each case the issue arose on the hearing or on what was treated as the hearing of an application to withdraw the warrant. The court was not concerned in either case with methods of withdrawal of a warrant.

280. In summary, the submissions on the law in relation to the withdrawal of the Warrant left me in a state of uncertainty as to whether a warrant of arrest at first instance could validly

be terminated, at the relevant time, by the act of returning the same to the Court, or whether a public and judicial act was required. I was not shown any authority which set out, in exhaustive fashion, the ways in which a warrant of arrest in the first instance may cease to have effect. My instinctive reaction to this question is that Mr Newman is right, and that this was not an effective means of withdrawing an unexecuted warrant. I do not think however that it is necessary for me to decide this question. The situation seems to me to be similar to the situation in relation to the question of whether the issue of a warrant of arrest at first instance constituted an adjudication, within the meaning of Rule 66(1)(a). I am not directly concerned with the law regarding the withdrawal of warrants of arrest in the first instance. I am concerned with the factual question of whether Mr Broad did return the Warrant, as he says he did, to the Court. This, in turn, engages the question of whether there is any reason to doubt the evidence given by Mr Broad in relation to the alleged return of the Warrant to the Court.

281. In cross examination Mr Broad was taken to an extract from the transcript of the hearing before Hickinbottom J, on 8th November 2011, of the application by Mr Bhandal to extend the time limit in the Burton Order for the commencement of the Section 89 Application. It will be recalled that, in that hearing, the question of when the Warrant was cancelled, if it was cancelled, was very much in issue. In the extract from the transcript, which was put to Mr Broad in cross examination, Mr Kent was arguing that the Mr Broad must have *"sent it* [the Warrant] *back"* to the Court (as opposed to returning the Warrant by hand) in 2003, when Mr Broad was still working in Staines, prior to his move to Central London. The essential point being put to Mr Broad was that his evidence in his trial witness statement was inconsistent with Mr Kent's argument before Hickinbottom J in two respects; namely (i) that Mr Kent was submitting that the Warrant had been sent back in 2003 and (ii) that Mr Kent was submitting that Mr Broad had *"sent"* the Warrant back to the Court, as opposed to returning the same by hand. It was put to Mr Broad that what Mr Kent was submitting to Hickinbottom J must have come from instructions given by Mr Broad.

282. In my view however Mr Kent's argument before Hickinbottom J, to the effect that the Warrant must have been sent back in 2003, did not serve to undermine the evidence of Mr Broad in his trial witness statement. Mr Broad did not concede in the cross examination that his evidence in his trial witness statement was wrong. In particular Mr Broad maintained that he had returned the Warrant while he was with *"the ETF"*, which he explained as a reference to the enforcement task force; that is to say the Enforcement Task Force in Central London, referred to by Mr Broad in his trial witness statement, to which Mr Broad had moved in 2003. In addition to this, Mr Broad was not a party to the Section 89 Application and there was no evidence that what was submitted to Hickinbottom J had come directly from Mr Broad. In addition to this, Mr Kent was, in this part of his submissions, making an argument on the evidence before Hickinbottom J, as opposed to reciting instructions given to him by Mr Broad. In my judgment the relevant extract from the transcript of the hearing before Hickinbottom J did not undermine Mr Broad's evidence that he had returned the Warrant to the Court, by hand, by the end of June 2005.

283. In his written closing submissions Mr Newman made the following submission:

> *"Mr Broad told Hickinbottom J (a Court) he sent it the warrant back, then he told Collins J and this court he took it back by official car"*.

284. In my view there is a distinction to be drawn here. It was Mr Kent, in his submissions to Hickinbottom J at the hearing on 8th November 2011, who referred to the Warrant being *"sent"* back. In paragraph 18 of his witness statement dated 24th August 2011 Mr Broad said that he *"returned"* the Warrant. I also note that Mr Broad referred to the *"return"* of the Warrant in paragraph 3 of a later witness statement in the Section 89 Application, dated 3rd November 2011. Mr Newman was entitled to point up this difference in wording between what Mr Broad said in his evidence and what Mr Kent submitted to Hickinbottom J, and to put it to Mr Broad that the form of words used by Mr Kent reflected the instructions of Mr Broad. I am not persuaded however that the difference in language will bear the weight which Mr Newman sought to place upon it. As I have said, Mr Kent was, in the relevant extract from the transcript of the hearing before Hickinbottom J, making submissions. I do not think that this can be treated as Mr Broad addressing the court directly or as necessarily reflecting, word for word, instructions from Mr Broad. What Mr Broad had told the court, in this context, was in his witness statements of 24th August 2011 and 3rd November 2011, where he used the words *"returned"* and *"return"*.

285. In addition to what I have said above, it is obviously important that Mr Broad's evidence is corroborated by the evidence of Mr Webb and the evidence of the post-it note referred to by Mr Webb. I also note that in his evidence at the trial of the Section 89 Application before Collins J, Mr Broad stated that he had returned the Warrant to the Court in an official (HMCE/HMRC) car, which was consistent with his evidence in cross examination at the trial. There is also the evidence of the telephone call from DS Children, with which I have dealt in the previous section of this judgment. As I have explained, it was put to Mr Broad in cross examination that his evidence of the telephone call was fabricated. I was not persuaded of this. Mr Broad's denial of this accusation rang true, independent of the point that the evidence of this telephone call was first given by Mr Broad in a witness statement made in 2011, when it is hard to see what reason Mr Broad would have had for inventing the telephone call. I find that Mr Broad did receive the telephone call from DS Children, as described in paragraph 10 of his trial witness statement and in paragraph 20 of his earlier witness statement dated 24th August 2011.

286. The return of the Warrant, at some point after 2003, may also explain why it was only a copy of the Warrant which could be found in 2008, when Mr Webb conducted his search of the 15 boxes of documents. There is, I acknowledge, a question mark over whether the return of the Warrant to the Court had the intended legal effect, but I am satisfied that both Mr Broad and Mr Webb believed that this was what was required to achieve the cancellation of the Warrant. If that belief was wrong, that was because Mr Broad and Mr Webb misunderstood the law. Such misunderstandings do occur and, I find, did occur in the present case if the belief of Mr Broad and Mr Webb was mistaken.

287. In summary, I can see no good reason to reject the evidence given by Mr Broad in relation to the return of the Warrant. I therefore find that the Warrant was returned to the Court, as described by Mr Broad in his evidence. On the available evidence, I am not able to identify the precise date when this occurred, but my finding on the evidence is that the return of the Warrant to the Court was effected by Mr Broad at some point in the first half of 2005.

288. If therefore the Warrant was forged, it would necessarily follow, and I will have to find that the exercise of returning the Warrant to the Court was a charade, carried out by Mr

Broad in order to maintain the fiction that the Warrant was genuine. I will come back to that particular question later in my analysis of the Forgery Case.

(viii) Analysis of the Forgery Case – overall assessment of the evidence of Mr Broad

289. I now come to the point in my analysis where it is necessary for me to make an overall assessment of the credibility of Mr Broad.

290. In cross examination Mr Broad was sometimes impatient with the questions, occasionally irascible, and occasionally defensive. In overall terms however Mr Broad did not come across as evasive or dishonest. For much of his cross examination, Mr Broad was being asked to recall events which occurred many years ago. When Mr Broad was unable to recall matters, he said so. When Mr Broad was unable to explain a particular item of evidence, of which the metadata information was a good example, he said so. Mr Broad did not try to deny what was demonstrated by the documentary evidence.

291. In giving his evidence, Mr Broad seemed to me to come across as what he is; a very experienced (albeit now retired) investigating officer of HMRC, without formal legal qualification but with considerable accumulated experience and expertise. Mr Broad clearly felt a strong sense of annoyance at being brought to court by Mr Bhandal, and at the allegations made against him, but I did not form the impression that this had affected the evidence which Mr Broad was able to give. In overall terms, I am not inclined to reject the evidence of Mr Broad unless it is clearly contradicted by other evidence or it is apparent from other evidence that Mr Broad's recollection is unreliable.

292. It was squarely put to Mr Broad in cross examination that he was lying in his evidence that he went to the Court on 18th July 2001 and obtained the issue of the Warrant. Mr Broad vigorously denied this. I will come back to the question of whether I should accept this denial.

(ix) Analysis of the Forgery Case – the evidence of the Permission Orders

293. In his cross examination of Mr Broad Mr Newman laid particular stress on the First Permission Order and the Second Permission Order (together **"the Permission Orders"**); that is to say the permissions granted by the Commissioners of Customs and Excise for the bringing of the Charges against Mr Bhandal, as required by Section 145 of the Customs and Excise Management Act 1979. As I have already recorded in the relevant narrative section of this judgment, the First Permission Order was sent by fax at 14:43 on 18th July 2001. The Second Permission Order, together with the First Permission Order, was sent by fax, marked for the attention of Mr Broad, at 14:38 on 20th July 2001. Mr Broad accepted that the second of these faxes had been sent to him, after he was shown the cover sheet marked for his attention. I did not understand Mr Broad to accept that the first fax, on 18th July 2001, was sent to him.

294. On 11th July 2001 Mr Broad was sent a fax by Mr Coussey. The fax referred to a discussion the previous day between Mr Coussey and Mr Broad, in the following terms:

> *"Further to our discussion yesterday regarding Proceedings Orders (and Section 145 of CEMA) and when they are required, l enclose copies of the Prosecution Group Circulars 15/99 and 8/2000 which deals with this subject which always raises much debate.*
>
> *As you will see from paras 9 and10 of the latter circular, arresting someone and charging them does not require a Proceedings Order.*

I will speak to you again."

295. In cross examination Mr Broad accepted that he would have discussed the circulars attached to the fax with Mr Webb and Mr Robertson, as his line managers, although he had no recollection of actually doing so. The circulars gave guidance on the importance of obtaining authorisation from the Commissioners whenever a defendant was prosecuted for an offence under the customs and excise legislation, and gave examples of prosecutions which had failed as a result of the failure to obtain the permission of the Commissioners for the prosecution. It was also made clear that a permission order was required where the defendant was not arrested and proceedings were instituted by way of information and arrest warrant.

296. What was put to Mr Broad in cross examination was that he was aware, on 18th July 2001, that he needed a permission order before the Warrant could be issued and that, without a permission order, there was a risk of the prosecution failing. It was put to Mr Broad that the First Permission Order was sent on 18th July 2001 because he had requested it, and that when it arrived, Mr Broad perceived that there was a problem with it, because it was missing the VAT Charge, either because he or someone at the Commissioners had forgotten to ensure the inclusion of the VAT Charge. It was put to Mr Broad that he then requested a further permission order, to make good the deficiency, and that the deficiency was made good when the Second Permission Order arrived on 20th July 2001. It was put to Mr Broad that the issue of the Warrant could not have been obtained from Ms Buckeldee because Mr Broad did not have all the permissions he needed for the Charges by 18th July 2001, and would not have sought the issue of the Warrant without them. Mr Broad accepted in cross examination that he was a stickler for the rules and somebody who always wanted to make sure that he did the right thing in his work. By the time the missing permission arrived, on 20th July 2001, Ms Buckeldee was no longer sitting as a magistrate, having retired on 19th July 2001 and having sat in the Court for the last time on 18th July 2001.

297. In response to this cross examination, Mr Broad said that he had no recollection of being sent the Permission Orders. He did not however accept that he would have been responsible for obtaining the Permission Orders or that he would have been the person responsible for ensuring that the right permission orders were in place, in relation to the Charges as set out in the Warrant.

298. I am unable to accept that the relevant sequence of events occurred in the way in which it was put to Mr Broad in cross examination, or that Mr Broad held off from issuing the Warrant by reason of the absence of the Second Permission Order. I say this for two reasons. First, Mr Broad's evidence that matters such as the obtaining of the permission orders were not his direct responsibility, within the team concerned with the prosecution of Mr Bhandal and the obtaining of the Restraint Order, rang true. Mr Broad had both Mr Webb and Mr Robertson in positions within the team senior to himself, while Mr Coussey was a qualified lawyer, and was clearly responsible, as demonstrated by the fax of 11th July 2001, for briefing Mr Broad on the law. 18th July 2001 was, and was intended to be, a busy day for the HMCE team, involving both the obtaining of the issue of the Warrant and attendance at the High Court to secure the Restraint Order, all in preparation for *"the knock"*, as it was referred to, on 19th July 2001 when the Execution Event took place. It does not appear to be in dispute, and it is clear from the evidence that Mr Broad's task was to obtain the issue of the Warrant from the Court, which was why he was not

present when the Restraint Order was obtained from Newman J. Given Mr Broad's position in the HMCE team, I am unable to accept that Mr Broad had direct responsibility for obtaining the Permission Orders, or orchestrated that process in the manner put to Mr Broad in cross examination.

299. My second reason engages a more fundamental problem with the Forgery Case. The hypothesis which was put to Mr Broad in cross examination was one where he realised that he did not have permission for the VAT Charge, and had to wait for the Second Permission Order to arrive. This, so it was put to Mr Broad, resulted in a situation where the issuing of the Warrant could not be effected on 18th July 2001, and where Mr Broad did not visit the Court on 18th July 2001. What was not apparent from the cross examination was what then is alleged to have happened. As I understand Mr Bhandal's case, I am asked to draw the inference that Mr Broad or someone acting at his instigation then resolved this problem by forging the Warrant, so as to create the appearance that the Warrant had been issued on 18th July 2001. This hypothesis gives rise however to a number of questions.

300. Given that all of the Charges required a permission order, it is not clear to me why the Warrant could not have been issued with the required paperwork, in the form of the Permission Orders, catching up later. This is effectively how Mr Broad left things in his witness statement in support of the application for the Restraint Order. Mr Broad's evidence is that he signed off this witness statement before he went to the Court on 18th July 2001. As Mr Broad was not attending the hearing of the application in the High Court, because his task that day was to secure the issue of the Warrant, he could not know what the timings would be, in terms of obtaining the Restraint Order and obtaining the issue of the Warrant. This explains why Mr Broad, in paragraph 20 of his witness statement dated 18th July 2001, stated that the Warrant would be issued and the extradition of Mr Bhandal would be sought within 7 days. This timetable looked forward, and took account of the fact that the Warrant had not yet been issued. The process is a familiar one to anyone involved in making an urgent without notice application. Some of the legal steps and/or legal paperwork required to support the application may have to catch up later. It seems to me much more likely in the present case that the late arrival of the Permission Orders was simply an example of required legal steps catching up with what had been done on 18th July 2001. It is also worth stressing that the problem, if it was a problem, with the Permission Orders, would have applied to both Permission Orders. The First Permission Order was sent by fax at 14:43 on 18th July 2001. If Mr Broad felt himself unable to go to the Court to obtain the issue of the Warrant until he had the required permissions in his hands, the timing of the arrival of the First Permission Order would, as it seems to me, have rendered it difficult for Mr Broad to reach the Court, on 18th July 2001, and lay the Information before a magistrate before the close of business at the Court.

301. Putting all of this together, it is not clear to me that the late arrival of the Second Permission Order created the insoluble problem put to Mr Broad in cross examination. At worst, Mr Broad could have attended at the Court on a later date to obtain the issue of the Warrant.

302. If however, contrary to my view, one assumes that Mr Broad had reached a state where he considered that there was such a problem with the Permission Orders that he could only resolve the problem by forging the Warrant, or by getting someone else to forge the

Warrant, how would Mr Broad have known what name to put on the Warrant and the Information as the magistrate? Mr Broad gave evidence that he was not aware of any other occasion on which he had appeared before Ms Buckeldee. Mr Broad also gave evidence that he did not have to go to the Court very often. His evidence was that he used to go to Oxford Magistrates' Court in relation to cases of heroin importation. I have not seen evidence as to whether, and if so by what means, Mr Broad would have had external access to the Court lists on 18th July 2001, if he did not visit the Court that day. In those circumstances, and to repeat a point already made, how could Mr Broad have known that he should forge, or arrange the forging of the Warrant in the name of Ms Buckeldee? Even more of a mystery is how Mr Broad would have been able to obtain a copy of Ms Buckeldee's signature, so as to ensure that the Information and the Warrant would contain what are, on any view of the matter, signatures which resemble what is known to be a genuine signature of Ms Buckeldee on her witness statement.

303. In the context of the Permission Orders, Mr Newman sought to make something of the fact that the First Permission Order was disclosed in 2012, but that the Second Permission Order was only disclosed in May 2024, when only one page was provided of the four-page fax which was originally sent for the attention of Mr Broad on 20th July 2001. The fax cover sheet which showed that the Second Permission Order had been sent for the attention of Mr Broad on 20th July 2001 was only produced later and under threat by Mr Bhandal of an application to court. In cross examination Ms Taylor accepted that all four pages of the fax of 20th July 2001 should have been disclosed in May 2024. While I can see, as Ms Taylor accepted, that the disclosure in respect of the Second Permission Order was not as full as it should have been in May 2024, I do not think it right to infer from this that the Defendants were deliberately withholding a document which they perceived to be unhelpful to their case, either in 2012 or in 2024. In summary, I do not think that this particular point on disclosure offers any support to the Forgery Case.

304. Mr Newman also sought to make something of the fact that the Defendants initially declined to plead to Appendix 1 to the Amended Particulars of Claim; see paragraph 47 of the Defence. The Defendants only pleaded to Appendix 1 pursuant to the order of Deputy Master Linwood made on 18th January 2024, by which the Defendants were required to respond to a request for further information from Mr Bhandal seeking the Defendants' response to Appendix 1. Mr Newman pointed out that it was only when the Defendants responded to Appendix 1 that they conceded that permission would have been required for the VAT Charge, when they had represented to Sir Anthony Mann at the hearing of the strike out application that permission was not required for the VAT Charge. I do not think it appropriate to draw any adverse inference against the Defendants in respect of this sequence of events. I can readily understand why the Defendants did not, initially, wish to plead to Appendix 1. As I have already pointed out in this judgment, Appendix 1, despite its title, does not contain particulars of the allegations which make up the Forgery Case. Appendix 1 is more akin to a set of submissions in support of Mr Bhandal's case that the alleged acts of forgery and fraud which constitute the Forgery Case did take place. My own view is that the stance taken by the Defendants in paragraph 47 of the Defence was a legitimate one. In a sense however, that is now water under the bridge, because an order of the court was made requiring a response to Appendix 1. I am however unable to draw any adverse inference from the Defendants' reluctance, in their Defence, to answer the arguments in Appendix 1. Equally, I am unable to draw any adverse inference from the Defendants' change of position on the need for permission for the VAT Charge. This seems to me to have been

no more than a change of position on a legal question, of the kind which often occurs in the course of litigation. I see nothing sinister in this change of position.

305. Drawing together all of the above analysis I find that the sequence of events in relation to the Permission Orders, as put to Mr Broad in cross examination, offers no support to the Forgery Case. I reject the hypothesis put to Mr Broad in cross examination. I find that what seems to me to have been the late arrival of the First Permission Order was not a matter which would have prevented Mr Broad from attending at the Court on 18th July 2001 in order to obtain the issue of the Warrant. I find that the late arrival of the Second Permission Order was not a matter which would have prevented Mr Broad from attending at the Court on 18th July 2001 in order to obtain the issue of the Warrant.

(x) Analysis of the Forgery Case – the evidence of the Warrant

306. I must now come back to the Warrant itself. I have already set out my analysis of the evidence of Ms Buckeldee. I must now come back to the findings on that evidence which I left outstanding, and to a number of other points which were made on the Warrant.

307. The starting point is an obvious, but important one. This is not a case where it is said that the Warrant was issued on 18th July 2001, but there is no sign of the document. What I have found to be a copy of the Warrant, as found in 2008, is available. If this is not a copy of a genuine warrant of arrest at first instance, issued by the Court on 18th July 2001, that is because Mr Broad, or someone acting at his instigation has forged the Warrant. More specifically, Mr Broad or someone acting at his instigation has forged the signature of Ms Buckeldee on the Warrant, and the counter-signature of Ms Buckeldee on the Information.

308. Starting with the Information, the signature page refers to the wrong court; namely Staines Magistrates' Court. The evidence of Ms Buckeldee, in her witness statement, was that she did not write in the date. These points have however been explained by Mr Broad in paragraphs 6-8 of his trial witness statement. Mr Broad has explained that he used a template, as one would expect, to prepare the documents, and left in the reference to Staines Magistrates' Court by accident. He has also explained that he wrote the date on the Information, before submitting the same to Ms Buckeldee. I see no reason to doubt this evidence, which constitutes the obvious explanation for these features of the Information. In particular, it is obvious that the reference to Staines was an error, because the Warrant does bear the name of the Uxbridge Magistrates' Court. It is also obvious that this error tells one nothing about whether the Information and the Warrant were forged. The error could have occurred because Mr Broad made a genuine mistake when he prepared and laid the Information before the Court. On the hypothesis of forgery, the forger could have overlooked the incorrect reference to Staines when forging the Warrant and the Information.

309. I do take careful account of Ms Buckeldee's evidence, in her witness statement, in relation to the erroneous reference to Staines. Ms Buckeldee says this:

> *"I have also noticed that the information says Staines Magistrates Court. Again I would not have signed this document as a Justice of the Peace for Staines Magistrates and I would have crossed this out."*

310. This evidence is potentially important, because it can be said to support the argument that the Information was never in fact laid before Ms Buckeldee. I note however that this part

of Ms Buckeldee's evidence was phrased in conditional terms, by reference to what she would or would not have done. In my judgment, this part of Ms Buckeldee's evidence does not rule out the possibility that the erroneous reference to Staines was missed by Ms Buckeldee, on the assumption that she authorised the issue of the Warrant on 18th July 2001, just as it was missed by Mr Broad.

311. Mr Newman submitted that the Court had no jurisdiction to issue the Warrant. This was a point originally raised by Ms Lewin in her witness statement of 8th October 2020, in relation to the attempted private prosecution of Mr Broad. The matter seems to me to be one for submissions rather than evidence, but those submissions were made by Mr Newman. In particular, my attention was drawn to Section 148 of the Customs and Excise Management Act 1979 which, it appeared to be common ground, governed the position in terms of jurisdiction in 2001. Section 148(1) provided as follows:

> *"(1) Proceedings for an offence under the customs and excise Acts may be commenced—*
>
> *(a) in any court having jurisdiction in the place where the person charged with the offence resides or is found; or*
>
> *(b) if any thing was detained or seized in connection with the offence, in any court having jurisdiction in the place where that thing was so detained or seized or was found or condemned as forfeited; or*
>
> *(c) in any court having jurisdiction anywhere in that part of the United Kingdom, namely—*
>
> *(i) England and Wales,*
>
> *(ii) Scotland, or*
>
> *(iii) Northern Ireland,*
>
> *in which the place where the offence was committed is situated."*

312. The relevant paragraph of this subsection, in the present case, would be sub-paragraph (c). As I understand the position in the present case, the offences which were the subject of the Charges were alleged to have been committed in a place or places in England and Wales. As such, it appears to me that the Warrant could have been issued in any court having jurisdiction in England and Wales, because *"the place where the offence was committed"* was situated in England and Wales. As such, it seems to me that the Court did have jurisdiction to issue the Warrant.

313. If, however, I am wrong in this conclusion, I do not think that this has an impact upon the factual question of whether the Warrant was forged. Mr Newman submitted that if the Court did not have jurisdiction to issue the Warrant, that was a powerful point indicating that the Warrant was not issued out of the Court. I do not accept this submission. On any view of the matter the position in terms of jurisdiction does not seem to be straightforward. I note that in Mr Bhandal's sixth witness statement there is reference made, at paragraph 105, to advice given to Mr Bhandal by Andrew Bird QC, in February 2021, to the effect that, by virtue of Section 148 of Customs and Excise Management Act 1979, an arrest warrant could be issued at any court. Mr Bhandal asserts that this advice was wrong, but even if Mr Bhandal's assertion is correct, leading counsel apparently advised that the Court would have had jurisdiction by virtue of Section 148. I also note that this was not a point which Ms Buckeldee raised in her witness statement. Mr Newman submitted that Ms Buckeldee, in retirement, would not have been likely to spot a point of this kind. I am more sceptical. My impression, from reading the witness statement of Ms Buckeldee, is that she went through the Information

and the Warrant with some care. If there was an obvious jurisdictional problem, I would have expected her to raise the same. In summary and if, contrary to my view, the Court did not have jurisdiction to issue the Warrant, I do not think that this provides any support for the allegation that the Warrant was forged.

314. Mr Newman also identified that the Warrant did not contain a court code, in contrast to the Kegco Warrant and in contrast to the prescribed form for a warrant of arrest in the first instance, or a warrant number, of the kind which can be seen on the warrants of first instance recorded in the Warrant Book Records. Mr Newman also suggested that the Warrant should have had a unique reference number, corresponding to the criminal proceedings which would have been commenced by the issue of the Warrant, if the Warrant was issued. It is unclear to me that the Warrant would have been expected to bear a unique reference number, but by reference to the evidence of the Kegco Warrant and the Warrant Book Records, Mr Newman appears to be correct in his submission, in the sense that one would have expected the Warrant to bear a court code and a warrant number. There is no explanation for the absence of these numbers from the Warrant. I will come back to this point when I have completed my analysis of the particular features of the Warrant which were raised in the submissions.

315. The real problem for Mr Bhandal, so far as the Warrant itself is concerned, is that both the Information and the Warrant bear signatures which (i) appear to resemble the signature of Ms Buckeldee on her witness statement, and (ii) have not been disclaimed by Ms Buckeldee as her signatures. As I have already noted, Ms Buckeldee has confirmed that the counter-signature on the Information resembles her signature and, as I understand the relevant part of her witness statement, gave the same confirmation in relation to the Warrant. In these circumstances the burden is upon Mr Bhandal to prove that these signatures are forgeries. In that respect Mr Bhandal faces two serious obstacles, both of which I have previously identified. First, there is no evidence from a handwriting expert to suggest forgery. Second, if the signatures were forged by Mr Broad or by someone acting at his instigation, this gives rise to some obvious questions. If Mr Broad did not visit the Court on 18th July 2001, but subsequently set out to pretend that he had, by forging or procuring the forging of the Information and the Warrant, how did Mr Broad know that Ms Buckeldee was sitting in the Court on 18th July 2001? Even more fundamentally, how did Mr Broad know what Ms Buckeldee's signature looked like, so that a convincing forgery could be produced? Mr Bhandal's case did not address these obvious questions.

316. In this context it was a notable feature of the cross examination of Mr Broad that these matters were not put to Mr Broad. There was no case theory put to Mr Broad as to how he would have known that Ms Buckeldee was sitting in the Court on 18th July 2001, or as to how he would have known what Ms Buckeldee's signature looked like. I stress that this is no criticism of Mr Newman. Mr Newman explained clearly to me that Mr Bhandal's case proceeded on the basis that I should draw the inference, from all the evidence, that the Warrant and the Information were forged, by Mr Broad or by someone acting at his instigation. Mr Newman squarely put it to Mr Broad that he was lying in his evidence. It follows that there was no deficiency in Mr Newman's conduct of the cross examination. The problem lay with Mr Bhandal's case, which had no answers to the questions, obvious as they were, posed in my previous paragraph. This, in turn, left Mr Newman with no answers to these questions to put to Mr Broad in cross examination. In my judgment this absence of such answers in Mr Bhandal's case was telling.

317. I acknowledge that I do not have an answer to the absence of the court code and warrant number which, it would appear, should have appeared on the Warrant. In this respect, as with the Court records, it would have been helpful to have direct evidence of the practice and procedures of the Court in this respect in 2001. There was however no such direct evidence. I also note that this was not a point which Ms Buckeldee picked up in her witness statement, which is a matter to which I attach some weight. I have already recorded my impression that Ms Buckeldee went through the Warrant and the Information with some care. In my judgment, the absence of the court code and warrant number, unexplained as this absence is, falls far short of what would be required to persuade me that the Information and the Warrant were forged.

318. I am deferring some of my findings on the evidence of the Warrant itself until I have completed the final part of my analysis of the Forgery Case. For present purposes, and drawing together of all of my analysis of the evidence of the Warrant and the Information, I find that there is nothing on the face of the Warrant or the Information to suggest that either document is a forgery.

(xi) Analysis of the Forgery Case – standing back

319. I now come to the final part of my analysis, in which I stand back and consider, in the round, the Forgery Case and the evidence and submissions in relation to the Forgery Case.

320. As presented by Mr Newman, the Forgery Case rested on two related pillars. The first pillar comprised a detailed analysis of the evidence, out of which Mr Newman extracted a number of different pieces of evidence which, so he submitted, all demonstrated that the Warrant could not have been and was not issued out of the Court on 18th July 2001, but was in fact forged by Mr Broad or by someone acting at the instigation of Mr Broad. The second pillar comprised a detailed analysis of the relevant law relating to (i) the commencement of criminal proceedings by the issue of a warrant of arrest at first instance and their termination and (ii) the keeping of records by Magistrates' Courts. The relevant legal requirements, so Mr Newman submitted, all demonstrate that the Warrant could not have been issued and was not issued out of the Court on the 18th July 2001, but was in fact forged by Mr Broad or another person.

321. The extent of the detailed analysis of the evidence in Mr Newman's submissions was impressive. The extent of the legal research and scholarship in Mr Newman's submissions on the law was equally impressive. I have made a detailed analysis of the evidence and the submissions on that evidence, and I have set out my findings and conclusions. If, however, one stands back and considers the position as a whole, it seems to me that there are some fundamental problems running through the whole of the Forgery Case.

322. First, there is no case theory advanced by Mr Bhandal which explains when and why Mr Broad or someone acting at his instigation sat down and forged the Warrant and the Information. I have already dealt with the cross examination of Mr Broad. In that cross examination Mr Newman was not able, through no fault of his own, to put a case to Mr Broad as to when and how the required acts of forgery took place. Mr Newman had to concentrate on the Second Permission Order as the cause of the alleged acts of forgery.

For the reasons which I have explained, I do not think the Second Permission Order, or the First Permission Order for that matter will bear this evidential weight.

323. Second, and to repeat a point which I have already made, how did Mr Broad know that Ms Buckeldee was sitting in the Court on 18th July 2001, if he did not visit the Court? Equally, how did Mr Broad obtain a copy of Ms Buckeldee's signature, which he must have had in order to perpetrate the forgery or to arrange for the perpetration of the forgery by an (unidentified) accomplice? Mr Bhandal's case provides no answers to these obvious questions.

324. Third, it is clear that there was considerable and intensive work by the HMCE team, of which Mr Broad was the junior member, in preparation for the obtaining of the issue of the warrant of arrest in the first instance, in preparation for the obtaining of the Restraint Order, and in preparation for the Execution Event. In these circumstances, why would Mr Broad not have done what he was supposed to do and what he intended to do; namely attend at the Court on 18th July 2001 in order to obtain the issue of the Warrant? Various attempts were made by Mr Bhandal to establish that Mr Broad did not want Mr Bhandal back in the country and/or to establish that Mr Broad knew that there was (so it was submitted) no case against Mr Bhandal and/or to establish that this was all part of a corrupt scheme by HMCE. None of these case theories had any support in the evidence. Rather, they were contradicted by the contemporary evidence. I did not find any of these case theories convincing. Equally, none of these case theories came anywhere near providing a plausible reason for Mr Broad to have forged or to have arranged the forgery of the Information and the Warrant.

325. Fourth, Mr Bhandal's case was riddled with contradictions and inconsistencies, which were themselves the direct result of the evidential problems with Mr Bhandal's case. Three examples will suffice:
    (1) In relation to Mr Bhandal's case on the Permission Orders, Mr Newman stressed, quite properly, that Mr Broad had accepted that he was a stickler for the rules and somebody who always wanted to make sure that he did the right thing in his work. If however this was a fair description of Mr Broad's approach to his work, and Mr Broad accepted in cross examination that this was a fair description of his approach to his work, why should Mr Broad put his own career at risk and imperil a prosecution into which he and his colleagues at HMCE had devoted considerable time and effort, by committing or orchestrating the most serious acts of fraud and forgery?
    (2) In relation to the evidence of Ms Buckeldee, it was stressed that Ms Buckeldee had made it clear that she would not have overlooked the mistaken reference to Staines in the Information. On Mr Bhandal's case however Ms Buckeldee did, when the Warrant and the Information were put before her in 2016, overlook the absence of a court code and warrant number on the Warrant and the fact, as alleged, that the Court had had no jurisdiction to issue the Warrant. There is an obvious inconsistency in the case put by Mr Bhandal on the evidence of Ms Buckeldee.
    (3) In Mr Newman's closing submissions, a determined attack was made on the credibility of Ms Germain's evidence. This included the suggestion that the Questionnaire *"was not assembled under the professional supervision of Withers"*, as part of the investigation process in relation to the attempted private prosecution of Mr Broad. Instead, it was suggested, as a possibility, that Ms Germain's answers had been dropped into the Questionnaire by someone else. It was suggested that

the role of Withers was restricted to being given the Questionnaire. I found these suggestions bizarre. The Questionnaire was completed and came into the hands of Withers at a time when they were carrying out their investigation, on the instructions of Mr Bhandal. The Questionnaire was headed *"Bhandal – Potential Private Prosecution"*. The questions in the Questionnaire had clearly been prepared by a person with legal experience and expertise. It seemed to me obvious, and I so find, that the Questionnaire was sent to the Court by Withers, found its way into the hands of Ms Germain as the person who agreed to deal with it, and was then returned by the Court to Withers. It seemed to me equally obvious, and I so find, that the attempt to separate Withers from involvement with the Questionnaire resulted from the perception of Mr Bhandal that the evidence of Ms Germain was unhelpful to the Forgery Case.

326. Fifth, and finally by way of standing back, there are simply too many pieces of evidence which will not fit with the Forgery Case. In terms of the material relied upon to support the Forgery Case Mr Bhandal's case has never been a simple one. Instead, Mr Bhandal's case has involved going into every detail of the history of this case, seeking to build the inferences on which the Forgery Case is based, and seeking to answer all the pieces of evidence which do not fit with the Forgery Case. The result is the huge volume of evidence in this trial, and this over lengthy judgment. Examples of evidence which does not fit with the Forgery Case can be found in the previous sections of my analysis of the evidence in relation to the Forgery Case. In addition to this, the evidence in this case has, on too many occasions, led into an effective blind alley, where the position is simply too uncertain to support the inferences on which the Forgery Case is based. The obvious example of this is provided by the Court records. The further and further the investigation into the Court records went, the more obvious it became that the conclusions argued for by Mr Bhandal could not safely be drawn.

327. Put simply, there is a bigger picture in relation to the Forgery Case, which Mr Bhandal's case did not address. If one stands back and surveys the evidence and submissions in relation to the Forgery Case as a whole it is, in my judgment, obvious that the Forgery Case was not, and is not viable.

(xii) <u>Analysis of the Forgery Case – concluding findings</u>

328. I can now return to the findings which I left outstanding in my analysis of the evidence of the Warrant. Drawing together all of my analysis of the relevant evidence, I make the following findings.
    (1) The position on the evidence in this case is not simply that Mr Bhandal has failed to prove that the signatures on the Information and the Warrant are forgeries. On the evidence and, in particular, on the evidence of Ms Buckeldee, I find that the signature on the Warrant and the counter-signature on the Information are the genuine signatures of Ms Buckeldee, meaning that Ms Buckeldee did herself sign both documents.
    (2) I accept the evidence of Mr Broad that the erroneous reference to Staines in the Information was the result of a drafting error on his part, which was missed by Ms Buckeldee.
    (3) I accept the evidence of Mr Broad that he wrote the date into the Information himself.
    (4) On the assumption that the court code and the warrant number should have appeared on the Warrant, I find that their absence was the result of an error on the

part of the Court on 18th July 2001; being either a particular error in the case of the Warrant or a more general error of procedure in the Court.

(5) I find that Mr Broad was honest in his evidence, and did not engage in any lying.

329. I find that Mr Broad did visit the Court on 18th July 2001, laid the Information before Ms Buckeldee, and obtained from Ms Buckeldee the issue of the Warrant. The precise timing of Mr Broad's visit to the Court is not material, but I find that Mr Broad visited the Court and obtained the issue of the Warrant at some point during the morning of 18th July 2001; meaning in this context at some point before the break for lunch in Court 1.

The Forgery Case – determination

330. For the reasons which I have set out in my analysis of the Forgery Case, the Forgery Case fails. This is not simply because Mr Bhandal has failed to prove the Forgery Case. I have found, and conclude, that the Warrant was issued out of the Court on 18th July 2001. The Warrant was not a forgery. Neither was the Information. Both are genuine. None of alleged acts of fraud and forgery which constitute the Forgery Case took place.

331. This determination is sufficient to dispose of the claims made by Mr Bhandal in these proceedings. By reason of the failure of the Forgery Case, the claims cannot proceed and fall to be dismissed. I did however hear argument on the remaining issues in the trial, on the hypothesis that Mr Bhandal proved the Forgery Case. In these circumstances I will deal, albeit only fairly briefly, with the remaining issues in the trial, and state what my conclusions would have been on those issues, had they arisen for determination. In dealing with those issues I assume, contrary to my determination, that Mr Bhandal has succeeded in establishing the Forgery Case. The assumed position is therefore that the Warrant was forged by Mr Broad or by someone at his instigation, that HMCE/HMRC was, at all material times, aware of the forgery, and that express and/or implied representations by HMCE/HMRC and/or Mr Broad to the effect that the Warrant had been issued were made and were made fraudulently.

Was the assumed fraud and/or forgery material to the making of the Orders or any of them?

332. It seems to me right to consider this question by reference to the Judgments although, as I have already commented, it seems to me that it is the Orders which, strictly, Mr Bhandal needs to have set aside. If the Judgments or any of them cannot stand, then clearly the relevant Order or Orders, which were made on the basis of the relevant Judgment or Judgments, equally cannot stand.

333. For the purposes of this question, it has to be assumed that there was a conscious and deliberate dishonesty on the part of HMRC and Mr Broad at each of the hearings before, respectively, Master Moncaster, Collins J and Judge Jarman. The conscious and deliberate dishonesty which falls to be assumed comprises representations that the Warrant had been issued, when it was known that it had not been issued, and the associated suppression of the facts, at each of the hearings, that the Warrant had never been issued and was in fact forged. It also has to be assumed that this assumed dishonesty has now been established in these proceedings. For ease of reference I will refer to this assumed dishonesty, which is assumed now to have been established in these proceedings, as **"the Assumed Dishonesty"**. I will refer to the assumed facts that the Warrant had never been issued and was in fact forged as **"the Assumed Facts"**.

334. I start with the Moncaster Judgment. Applying the principles stated by Aikens LJ in *Highland Financial Partners* the position seems to me to be straightforward. I have already outlined the essential reasoning of the Master earlier in this judgment. The Master's view was that Mr Bhandal had a remedy which he could pursue against HMRC by an application under Section 89. As such, it was an abuse of process for Mr Bhandal to be claiming what the Master regarded as effectively the same relief against HMRC and Mr Broad in the Chancery Proceedings. The core of the Master's reasoning can be found in the Moncaster Judgment at [10] and in the first part of [11], which are in the following terms:

> *"10. The more serious or at least the plainer, as it seems to me, application of the Revenue is based on the argument that it is an abuse of process for Mr Bhandal to bring these proceedings because the Act itself provides, by section 89, a route for compensation and Mr Bhandal, although initially apparently intending to go down that route, abandoned that intention. It is submitted that to start these proceedings now is an abuse of process, even if it is the case that there is in fact some residual tortious claim over and above the statutory right for compensation in section 89, although il is also submitted that, in fact, section 89 is exhaustive of Mr Bhandal's rights in relation to the restraint order.*
>
> *11. It is in my view, at the present stage of proceedings at least, an abuse of process for Mr Bhandal to have abandoned his claim for compensation under section 89 and instead to have brought these proceedings under the general law. It does not seem to me that as against the Customs there is any claim which is different from a claim for compensation under section 89."*

335. If the Assumed Dishonesty had not occurred, and if the Master had been aware of the true position, namely that the Warrant had never been issued and was a forgery (the Assumed Facts), it is obvious that this would entirely have changed the way in which the Master approached the Defendants' application. On this hypothesis the Master would have been aware that an application under Section 89 was not available to Mr Bhandal because, which I understood to be common ground between the parties, an application for compensation under Section 89 could only be made where criminal proceedings had been instituted against a person, for an offence or offences to which Part VI of the Criminal Justice Act 1988 applied. In these circumstances the Master could not have reasoned as he did in the Moncaster Judgment. Instead, the Master would have been confronted with a position where, in the absence of Section 89, the Chancery Proceedings would have been the only available route for Mr Bhandal's claim for compensation. Confronted with this situation it seems to me that the Master would have refused the Defendants' application.

336. It follows, on the hypothesis set out in my previous paragraph, that the Assumed Dishonesty was causative of the Moncaster Judgment being obtained in the terms in which it was obtained. If the Assumed Dishonesty had not occurred, and if the Master had been aware that no criminal proceedings had been instituted by the issue of a warrant of arrest in the first instance, that is to say if the Master had been aware of the Assumed Facts, it seems to me inevitable that the Master would have refused the Defendants' application, leaving Mr Bhandal free to pursue the Chancery Proceedings.

337. If therefore this question had arisen for my decision, I would have concluded that the Assumed Dishonesty was material to the obtaining of the Moncaster Judgment in the

terms in which it was obtained. I would also have concluded, as necessarily follows from this first conclusion, that the Assumed Dishonesty was material to the obtaining of the Moncaster Order, by which the Stay was imposed.

338. I turn next to the Collins Judgment. Here, the position is less straightforward. Collins J dismissed the Section 89 Application on two bases. First, Collins J found that there had been no serious default on the part of any person concerned in the investigation or prosecution of the offences which were the subject matter of the Charges. As such, the condition for the award of compensation in Section 89(2)(a) was not satisfied; see the Collins Judgment generally and, in particular, at [52]. Second, Collins J found, to the criminal standard of proof, that Mr Bhandal was guilty of the criminal conduct alleged against him, and that the Property had been acquired from the proceeds of crime; see the Collins Judgment at [64] to [74] and, in particular, at [74].

339. The Defendants argued that the findings made by Collins J against Mr Bhandal did not depend upon the existence of the Warrant or the credibility of Mr Broad. It was submitted that neither of these matters played any part in the findings of Collins J that Mr Bhandal was guilty of the criminal conduct alleged against him and that the Property had been acquired from the proceeds of crime (**"the Criminal Findings"**).

340. I accept this argument, so far as it goes. It is clear, from reading the Collins Judgment, that the Criminal Findings did not depend either upon the validity of the Warrant or the credibility of Mr Broad, in the sense of these matters playing a part in the reasoning of Collins J which resulted in the Criminal Findings. It seems to me however that there is a problem with this argument, in that it does not engage with two obvious difficulties.

341. The first difficulty is that the Defendants' argument proceeds on the basis that the Assumed Facts would have caused no difficulty at the trial of the Section 89 Application, if they had been known to Collins J. It seems to me that this assumption must be wrong. If the Assumed Facts had been known to Collins J this would have undermined the entire basis of the Collins Judgment. This point is well illustrated by quoting what Collins J said in the opening part of the Collins Judgment, at [1]:

> *"1. This is a claim for compensation pursuant to Section 89 of the Criminal Justice Act 1988. It relates to a prosecution of the claimant which was commenced by an arrest warrant on 18 July 2001."*

342. The Collins Judgment thus proceeded on the basis that there had been a prosecution of Mr Bhandal, which had been commenced by the issue of the Warrant. On the Assumed Facts, the Warrant had not been issued. As such, I have difficulty in understanding how the trial before Collins J could have proceeded or how the Collins Judgment could have been delivered in the terms in which it was delivered, in circumstances where there had in fact been no proceedings instituted against Mr Bhandal for the offences which were the subject matter of the Charges. Put more simply, and on the Assumed Facts, the jurisdictional basis for the Section 89 Application did not exist. I cannot see how it would have been open to Collins J, in any part of the Collins Judgment, to disregard this problem and to proceed to decide the Section 89 Application in the way in which he did.

343. The second difficulty, even if the first difficulty is disregarded, is that the entire landscape of the Section 89 Application would have been changed, if the Assumed Facts had been known to Collins J. On the basis of the Assumed Facts Collins J would have been

confronted with a situation where Mr Broad had forged the Warrant and where HMRC was responsible for that forgery. I should set out what Collins J said in the Collins Judgment, at [52]:

> *"52. I have no doubt that both Mr Broad and Mr Robertson were entirely honest in the evidence they gave before me. There were inevitable difficulties in recollecting details of events occurring up to 15 years ago. I am satisfied that Mr Mitchell was fully informed of all that was known by then and in particular was aware of the likely disclosure difficulties because of Alf Allington's position. There was in my judgment no default by either of them in connection with the institution of the prosecution. Mr Mallin in his skeleton argument sought to include Mr Small's conduct. But he was not concerned in the investigation or prosecution of the offences charged against the claimant. His conduct in other cases undoubtedly created problems but those were known to Mr Mitchell. Problems relating to an evidential trail were at that time unknown, but no officer concerned in the material offences was responsible."*

344. I cannot see how Collins J could have reached the same decision on the credibility of Mr Broad, in circumstances where it would have been known to Collins J that Mr Broad had committed a fraud of the most serious kind. This in turn would have had a consequential effect upon the findings in the remainder of the Collins Judgment. I can see the argument that the findings of the judge in relation to the conduct of Mr Bhandal and the funding of the purchase of the Property, that is to say the Criminal Findings, would not have been affected, even if the Assumed Facts had been known to the Judge. I find it difficult to accept however that the Criminal Findings can be treated as insulated from the remainder of the judge's findings in the Collins Judgment.

345. If the Assumed Dishonesty had not occurred, and if Collins J had been aware of the Assumed Facts, it seems to me that, as with the Moncaster Judgment, this would entirely have changed the way in which Collins J approached the Section 89 Application. On this hypothesis Collins J would have had to deal with the jurisdictional problem created by the Assumed Facts. Leaving this aside, Collins J would have had to approach the evidence on the basis that HMRC, by Mr Broad, had perpetrated a fraud of the most serious kind. It seems to me that these factors, if they had been known to Collins J, would entirely have changed the way in which Collins J approached and came to his decision on the Section 89 Application, whether these factors are taken together or separately. Indeed, it seems to me that the first of the two difficulties which I have identified above would have caused the trial of the Section 89 Application to collapse, if the Assumed Facts had been known to Collins J. I do not see how the trial could have proceeded, in circumstances where the condition precedent to a claim for compensation under Section 89, namely the prior institution of criminal proceedings against Mr Bhandal for the offences which were the subject matter of the Charges, was not satisfied. It is true that, on this hypothesis, the Section 89 Application would have failed, and that, in this sense, this outcome was the same as the actual outcome of the Section 89 Application. I cannot see however that this is an answer to the materiality of the Assumed Dishonesty. On this hypothesis the Section 89 Application would have failed on jurisdictional grounds, for reasons entirely independent of the merits of the Section 89 Application. As such, this hypothetical outcome would have been materially different to the actual outcome of the Section 89 Application.

346. In my view the Assumed Dishonesty was causative of the Collins Judgment being obtained in the terms in which it was obtained. I do not accept that the same outcome could have been obtained if the Assumed Dishonesty had not occurred and the Assumed Facts had been known to Collins J.

347. If therefore this question had arisen for my decision, I would have concluded that the Assumed Dishonesty was material to the obtaining of the Collins Judgment in the terms in which it was obtained. I would also have concluded, as necessarily follows from this first conclusion, that the Assumed Dishonesty was material to the obtaining of the Collins Order, by which the Section 89 Application was dismissed.

348. I come, finally, to the Jarman Judgment. As I have already explained, Judge Jarman was dealing with the application of Mr Bhandal to lift the Stay and amend his Particulars of Claim in the Chancery Proceedings in order to claim that the Warrant was a forgery. Judge Jarman was also dealing with the application of the Defendants for the Chancery Proceedings to be struck out, as against the Defendants, on the basis that the Chancery Proceedings were an abuse of process, or for summary judgment in favour of the Defendants.

349. By the time of the hearing before Judge Jarman the issue of whether the Warrant was genuine had been brought out into the open. Judge Jarman recorded in the Jarman Judgment, at [18] to [24], the attempt by Mr Bhandal to obtain permission to appeal against the Collins Order on the basis of fresh evidence of the alleged forgery of the Warrant. As Judge Jarman recorded, and as I have recounted earlier in this judgment, the attempt to obtain permission to appeal on this basis failed before Longmore LJ.

350. In the Jarman Judgment, at [25], Judge Jarman recorded Mr Bhandal's new case in the following terms:

> *"25. Mr Knox QC, for Mr Bhandal, realistically and properly accepts that in broad terms the present proceedings if allowed to continue, will amount to a collateral attack on the judgment of Collins J, but submits that this is an unusual case where such proceedings should be allowed to continue. Mr Bhandal's case now is that the warrant and information were not validly signed in 2001, but were created by Mr Broad in 2006 or 2008 when disclosure was being pressed for, to hide the fact that (perhaps by oversight) HMCE had not obtained them when it should have done."*

351. I have already quoted the key paragraphs of the Jarman Judgment, which contain the reasoning which caused Judge Jarman to conclude that the claims against the Defendants in the Chancery Proceedings should be struck out. For ease of reference, I repeat [30]-[33]:

> *"30. However, the question remains as to whether such a claim amounts to an abuse. In my judgment, it does. The Administrative Court was competent to hear the section 89 application, because the application was put on the basis, as it had to be, that proceedings had been instituted against Mr Bhandal. As Mr Knox realistically accepted, by the time that application had been made, Mr Bhandal's advisors were well aware that there was evidence to suggest that the warrant had not been issued in the Uxbridge Magistrates Court on the date appearing on it. Such evidence included the statement dated 6 May 2008 (which was not disclosed to HMRC until 2013) of a solicitor in the firm*

then instructed by Mr Bhandal who attended the court office and was shown the register of warrants by an officer which did not, as it should have done, contain details of the disputed warrant on the date which appeared on its face.

31. It is true that in May and June 2016 further evidence to cast doubt on the validity of the warrant and information was obtained on behalf of Mr Bhandal, including the statement from the magistrate who purportedly signed them, who had retired 15 years previously on the 19 July 2001, the day after her purported signature. In that statement, she said that the signature and date on the warrant resembled her handwriting, as did the signature on the information. However, the date on the information was not in her handwriting and she would not have signed it because it bore the name of Staines Magistrates Court, whereas she sat at Uxbridge.

32. As Longmore LJ observed, this evidence could and should have been obtained in or shortly after 2008, when Mr Bhandal's solicitors had evidence that the warrant had not been issued on the date which it bore. The fresh evidence does not entirely change the aspect of the case. I do not accept that he was misled by HMCE into making the section 89 application on the basis that the warrant and information were valid. It is true that that is what HMCE have always said and HMRC maintains. But Mr Bhandal's advisors had evidence to the contrary. He faced a choice, whether to proceed on the basis that proceedings had been instituted against him and to invoke a statuary procedure to apply for compensation on the basis of serious default on the part of the investigating officers, or to proceed on the basis which he now seeks to rely upon that the warrant and information had been created by Mr Broad later on.

33. He elected the former. In my judgment it is an abuse, after the application which he chose to make was dismissed as were his attempts to appeal that dismissal (including ultimately on the grounds of the forgery of the warrant and information), for him now to seek to pursue common law claims on the grounds of forgery which is the antithesis of the basis on which he pursued his section 89 application."

352. For ease of reference, I also repeat the Jarman Judgment, at [36], where Judge Jarman stated his conclusion:

> *"36. The case of forgery could not have been raised in the Administrative Court proceedings, because the basis of those proceedings was that proceedings had been instituted against Mr Bhandal. However, Mr Bhandal made an election, in full knowledge of evidence that the warrant had not been issued as it purported on its face. In my judgment, it would be oppressive for HMRC and Mr Broad to face these further proceedings. Looking broadly at the merits, the claim should be struck out on the basis that it is an abuse of process, whether as currently formulated or as proposed to be amended. It follows that the other applications are dismissed."*

353. Judge Jarman thus struck out the claims against the Defendants because, as he concluded, Mr Bhandal had made an election not to pursue what is now the Forgery Case, *"in full knowledge of evidence that the warrant had not been issued as it purported on its face"*. As the judge recorded, Mr Bhandal had faced a choice:

"whether to proceed on the basis that proceedings had been instituted against him and to invoke a statuary procedure to apply for compensation on the basis of serious default on the part of the investigating officers, or to proceed on the basis which he now seeks to rely upon that the warrant and information had been created by Mr Broad later on."

354. The question which now arises is whether the Assumed Facts, if they had been known to Judge Jarman, would have been material to his decision to strike out. Would the Assumed Facts, if they had been known to Judge Jarman, entirely have changed the way in which Judge Jarman approached and came to his decision? Was the Assumed Dishonesty causative of the Jarman Judgment being obtained in the terms in which it was obtained?

355. The reasoning in the Jarman Judgment is also relevant to the question of whether these proceedings are an abuse of process. I therefore find it convenient to come back to the question of whether the Assumed Facts would have been material to the Jarman Judgment after I have dealt with the abuse of process argument.

356. It will be noted that the conclusions which I have reached in this section of this judgment are confined to the materiality of the Assumed Dishonesty. They do not extend to the question of whether the relevant Judgments and Orders should be set aside. This is because it does not necessarily follow, from the conclusions which I so far have reached on the question of materiality, that the Moncaster Judgment and the Moncaster Order should be set aside, or that the Collins Judgment and the Collins Order should be set aside. This, in turn, is because I have yet to consider the Defendants' argument that these proceedings are an abuse of process, even on the basis of the Assumed Facts and the Assumed Dishonesty. If I conclude that the Proceedings are an abuse of process, and should be dismissed for that reason, my conclusions on materiality become redundant.

357. This brings me to the question of whether the Defendants are right in their argument that the proceedings are an abuse of process.

<u>Are these proceedings an abuse of process?</u>

358. As I have explained, the Defendants contend that these proceedings are an abuse of process, even if the Forgery Case is established. Their case is that Mr Bhandal made an election to seek compensation pursuant to Section 89, by the Section 89 Application. Mr Bhandal is now seeking to resile from that election because the Section 89 Application failed. At the time when Mr Bhandal commenced the Section 89 Application, so it is argued, he had the material before him on which he now relies to pursue the Forgery Case. Mr Bhandal elected to pursue the Section 89 Application, which necessarily relied on the proposition, asserted as a fact by Mr Bhandal in his Amended Points of Claim in the Section 89 Application, that criminal proceedings had been commenced against Mr Bhandal by the issue of the Warrant. The Defendants' case is that Mr Bhandal made a clear election, from which he should not now be permitted to resile by the pursuit of these proceedings, given that these proceedings depend upon the Forgery Case.

359. This case is also put on the basis that the Defendants rely upon the equitable doctrines of abandonment, election and/or acquiescence. I do not think that it is necessary go through these doctrines individually. The essential argument is that these proceedings are an abuse of process. Given what occurred in the Section 89 Application, it is said to be an

abuse of process for Mr Bhandal now to pursue the Forgery Case. This argument seems to me to encompass the Defendants' reliance upon the equitable doctrines of abandonment, election and/or acquiescence.

360. In proceedings, such as the present proceedings, to set aside a previous judgment or previous judgments of the court on the basis of fraud, there is limited space for an abuse of process defence of the kind advanced by the Defendants in these proceedings. This question was considered by the Supreme Court in *Takhar*. In that case the claimant was seeking to set aside a judgment against her in previous proceedings, where the claimant had sought to have certain property transfers set aside on the basis of undue influence or other unconscionable conduct on the part of the second and third defendants to the previous proceedings. The claimant sought to have the earlier judgment set aside on the basis that it had been obtained by fraud. The claimant relied on evidence that the second and third defendants had forged the claimant's signature on a document. The defendants sought to have the claim struck out, on the basis that the claimant could, by the exercise of reasonable diligence, have obtained the fresh evidence of alleged fraud before the trial of the original proceedings. The strike out application was refused by the judge at first instance, but an appeal against that decision was allowed by the Court of Appeal, and the claim struck out.

361. The claimant's appeal to the Supreme Court was allowed and the claim was restored. The Supreme Court decided that where it could be shown that a judgment had been obtained by fraud, and no allegation of fraud had been raised at the trial which led to that judgment, a party seeking to set aside the judgment was not required to show that the fraud could not with reasonable diligence have been uncovered in advance of obtaining of the judgment. As such, an absence of such reasonable diligence was not of itself a reason for staying, as an abuse of process, a claim to set aside the judgment on the grounds of fraud.

362. In his judgment in the Supreme Court Lord Kerr JSC (with whom Lord Hodge, Lord Lloyd-Jones and Lord Kitchin JJSC agreed) explained the position in the following terms, at [54] and [55] (the underlining is my own):

> *"54 For the reasons that I have given, I do not consider that Etoile and Bracco are authority for the proposition that, in cases where it is alleged that a judgment was obtained by fraud, it may only be set aside where the party who makes that application can demonstrate that the fraud could not have been uncovered with reasonable diligence in advance of the obtaining of the judgment. If, however, they have that effect, I consider that they should not be followed. In my view, it ought now to be recognised that where it can be shown that a judgment has been obtained by fraud, and where no allegation of fraud had been raised at the trial which led to that judgment, a requirement of reasonable diligence should not be imposed on the party seeking to set aside the judgment.*
>
> *55 Two qualifications to that general conclusion should be made. Where fraud has been raised at the original trial and new evidence as to the existence of the fraud is prayed in aid to advance a case for setting aside the judgment, it seems to me that it can be argued that the court having to deal with that application should have a discretion as to whether to entertain the application. Since that question does not arise in the present appeal, I do not express any final view on it. <u>The second relates to the possibility that, in some</u>*

circumstances, a deliberate decision may have been taken not to investigate the possibility of fraud in advance of the first trial, even if that had been suspected. If that could be established, again, I believe that a discretion whether to allow an application to set aside the judgment would be appropriate but, once more, I express no final view on the question. In Mrs Takhar's case, she did suspect that there may have been fraud but it is clear that she did not make a conscious decision not to investigate it. To the contrary, she sought permission to engage an expert but, as already explained, this application was refused."

363. Lord Kerr thus contemplated, in the underlined passage, the possibility that the court would have a discretion to refuse a claim to set aside a previous judgment on the basis of fraud if it could be established that a deliberate decision had been taken not to investigate the possibility of fraud in advance of the first trial, even if fraud had been suspected.

364. Lord Sumption JSC was more definite in his identification of the circumstances in which a claim might be refused, where the evidence of fraud had been available in the previous proceedings. In his judgment (with which Lord Hodge, Lord Lloyd-Jones and Lord Kitchin JJSC also agreed) Lord Sumption commenced, at [60], by explaining the juridical basis for an action to set aside an earlier judgment on the basis of fraud:

> *"60 An action to set aside an earlier judgment for fraud is not a procedural application but a cause of action. As applied to judgments obtained by fraud, the historical background was explained by Sir George Jessel MR in Flower v Lloyd (1877) 6 ChD 297, 299—300. Equity has always exercised a special jurisdiction to reverse transactions procured by fraud. A party to earlier litigation was entitled to bring an original bill in equity to set aside the judgment given in that litigation on the ground that it was obtained by fraud. Such a bill could be brought without leave, because it was brought in support of a substantive right. If the fact and materiality of the fraud were established, the party bringing the bill was absolutely entitled to have the earlier judgment set aside. In this respect, an original bill differed from a bill of review on the basis of further evidence, which was essentially procedural and did require leave. After the fusion of law and equity in the 1870, the procedure by way of original bill was superseded by a procedure by action on the same juridical basis."*

365. As Lord Sumption went on to explain, at [61], the cause of action to set aside a judgment in earlier proceedings is independent of the cause of action asserted in the earlier proceedings. As such, the doctrines of cause of action estoppel and issue estoppel cannot operate to defeat the claim to have the judgment set aside on the basis of fraud.

366. Lord Sumption then proceeded to explain the juridical basis for the rule, which is treated as deriving from *Henderson v Henderson* (1843) 3 Hare 100, to the effect that a party is precluded from raising in subsequent proceedings matters which were not, but could and should have been raised in earlier proceedings. It is helpful to set out this explanation, at [62], in full:

> *"62 The rule, originally stated by Wigram V-C in Henderson v Henderson (1843) 3 Hare 100, 115, that a party is precluded from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones, is commonly treated as a branch of the law of res judicata.*

It has the same policy objective and the same preclusive effect. But, it is better analysed as part of the juridically distinct but overlapping principle which empowers the court to restrain abuses of its process. The relationship between the two concepts was examined by this court in Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd) [2014] AC 160, paras 22—25. Whereas res judicata is a rule of substantive law, abuse of process is a concept which informs the exercise of the court's procedural powers. These are part of the wider jurisdiction of the court to protect its process from wasteful and potentially oppressive duplicative litigation even in cases where the relevant question was not raised or decided on the earlier occasion. Since the decisions of the House of Lords in Arnold v National Westminster Bank plc [1991] 2 AC 93 and Johnson v Gore Wood & Co [2002] 2 AC 1 it has been recognised that where a question was not raised or decided in the earlier proceedings but could have been, the jurisdiction to restrain abusive re-litigation is subject to a degree of flexibility which reflects its procedural character. This allows the court to give effect to the wider interests of justice raised by the circumstances of each case."

367. This brought Lord Sumption, at [63], to the question of whether the defendants could argue that the evidence of fraud not only had to be new evidence, but also evidence which could not, by the exercise of reasonable diligence, have been deployed in the previous proceedings (the underlining is my own):

> *"63 It is this flexibility which supplies the sole juridical basis on which the defendants can argue that the evidence of fraud must not only be new but such as could not with reasonable diligence have been deployed in the earlier proceedings. It is also the basis on which Lord Briggs JSC, in his judgment on the present appeal, suggests a less absolute rule than that proposed by Lord Kerr JSC. I cannot accept either the defendants' argument, or Lord Briggs JSC's more moderate variant of it. The reason is that proceedings of this kind are abusive only where the point at issue and the evidence deployed in support of it not only could have been raised in the earlier proceedings but should have been: see Johnson v Gore Wood & Co at p 31 (Lord Bingham of Cornhill) and Virgin Atlantic, para 22 (Lord Sumption JSC). As Lord Bingham observed in the former case, it is "wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive". The "should" in this formulation refers to something which the law would expect a reasonable person to do in his own interest and in that of the efficient conduct of litigation. However, the basis on which the law unmakes transactions, including judgments, which have been procured by fraud is that a reasonable person is entitled to assume honesty in those with whom he deals. He is not expected to conduct himself or his affairs on the footing that other persons are dishonest unless he knows that they are. That is why it is not a defence to an action in deceit to say that the victim of the deceit was foolish or negligent to allow himself to be taken in: Central Railway Co of Venezuela v Kisch (1867) LR 2 HL 99, 120 (Lord Chelmsford); Redgrave v Hurd (1881) 20 Ch D 1, 13—17 (Sir George Jessel MR). <u>It follows that unless on the earlier occasion the claimant deliberately decided not to investigate a</u>*

suspected fraud or rely on a known one, it cannot be said that he "should" have raised it."

368. Lord Sumption thus made it clear that a claim to set aside a judgment in previous proceedings, on the basis of fraud, could be an abuse of process, but only in the narrowly defined circumstances set out in the underlined passage.

369. In my view what was said by Lord Kerr and Lord Sumption in *Takhar* does establish that a claim to set aside a judgment in previous proceedings, on the basis of fraud, can be an abuse of process. The circumstances in which such a claim can be an abuse of process are narrowly defined. It must be demonstrated that, in the earlier proceedings, the claimant made a deliberate decision not to investigate a suspected fraud or rely on a known fraud. If this deliberate decision can be established, the court then has a discretion to refuse the claim to set aside the previous judgment, on the basis that the claim is an abuse of process.

370. Mr Newman argued that there could be no equitable defence to the claim to set aside the Judgments and the Orders on the basis of fraud, because Mr Bhandal's cause of action derived from the Assumed Dishonesty, which involved a fraud on the court. In support of this argument Mr Newman cited the decision of Foxton J in *Hotel Portfolio II UK Limited (in liquidation) v Ruhan* [2022] EWHC 383 (Comm), at [339]:

> *"339. Finally, Mr Ruhan was the principal mover in a major fraud from which he made very substantial profits. Even if there might be exceptional circumstances in which a defence of laches could successfully be advanced to a claim of this kind, the matters relied upon here do not come close to making it inequitable for HPII to pursue its claims. The complaints against TMP are largely over-stated (for the reasons set out in my findings in relation to Mr MacDonald and Mr Chesterton at [318]-[319] above), but even taken at face value, they would not make it inequitable to hold Mr Ruhan to account for his dishonest breaches of the duties he owed HPII as its fiduciary."*

371. I do not think that this extract from the judgment of Foxton J is directly in point in the present case. I am not concerned with a defence of laches. As I have recorded earlier in this judgment, the Defendants have elected not to pursue their case in laches at the trial. I am concerned with the question of whether Mr Bhandal's claims in these proceedings constitute an abuse of process, on the basis that Mr Bhandal previously made a deliberate decision not to investigate or pursue the Forgery Case. I have already concluded, on the basis of what was said by Lord Kerr and Lord Sumption in *Takhar*, that such a defence is available to the Defendants in the present case, if they can establish that Mr Bhandal did make a deliberate decision of this kind. I can find nothing in the judgment of Foxton J in *Hotel Portfolio* which prevents the Defendants from pursuing their case on abuse of process.

372. This then brings me to the factual question of whether there was such a deliberate decision in the present case and, if there was such a deliberate decision, to the question of whether, in the exercise of my discretion, I should refuse the claim to set aside the Judgments and the Orders, or any of them, on the basis that the claim is an abuse of process.

373. Before I answer these questions, it is convenient to deal with Mr Bhandal's argument that the question of abuse of process has already been decided, against the Defendants, by the Mann Judgment and cannot now be pursued.

374. As I have explained earlier in this judgment, the application before Sir Anthony Mann was the Defendants' application to strike out the proceedings on the basis that they were an abuse of process. In order to decide whether there has been a final determination of the abuse of process defence by Sir Anthony, it is necessary to go through the Mann Judgment in some detail, not least because it contains an extremely helpful analysis of the abuse of process defence in these proceedings.

375. The Mann Judgment is fairly lengthy, because it was necessary for Sir Anthony Mann to go through the background to the case and the history of the previous proceedings in a certain amount of detail. At [54] to [59] Sir Anthony explained the basis of the strike out application. It is helpful to set out this explanation, at [55] and [56]:

> *"55. The main point behind Mr Kent's submissions in support of his application is that in this action this court will be asked to reconsider matters which have been considered before, and the principle of finality mean that that should not be allowed; or if there are issues which have not actually been considered then that is because Mr Bhandal had an opportunity to raise them and failed to take it. Mr Bhandal would seek to revive (and doubtless amend) the Chancery proceedings in order to complain about the making of the restraint order, but all the issues raised in those proceedings were the same issues as have already been decided by Collins J in the section 89 application and Mr Bhandal should not be allowed a collateral attack on that decision. David Richards LJ was right to observe that what Mr Bhandal was seeking to achieve was an impermissible collateral attack at that time, and the same applies now. Insofar as it might be said that new material has emerged which should justify that attack, that is not true because there is no real new material, or not such as to make any material difference. Furthermore, HHJ Jarman in his decision has effectively decided whether any otherwise undecided forgery points (and their consequences) should be allowed to be run, and he decided that it would be oppressive to allow that to happen. What Mr Bhandal now seeks is a second bite at that particular cherry.*
>
> *56. He pointed out that the history of the matter clearly demonstrated that Mr Bhandal knew he had a claim or point based on the non-existence, and indeed forgery, of the warrant, and had actually tried to introduce it into section 89 proceedings in his evidence without a proper pleading. When that failed he actually positively pleaded that the warrant existed (see his amendments in those proceedings) and proceeded on that basis. It was now too late to resile from that, and if necessary he was estopped by convention from trying to do so."*

376. Sir Anthony then went on to consider the relevant law which was applicable to the strike out application, and the Jarman Judgment. As Sir Anthony pointed out, at [77], there is a difference between an action which seeks the same relief as a previous action on the basis of fresh evidence and an action which seeks to set aside a previous action on the basis of fraud. As such, the principles of election applied by Judge Jarman could not necessarily be transposed to these proceedings:

"77. The two types of action (one seeking the same relief as sought before on fresh material, and the other seeking to set aside for fraud) are not the same. This was pointed out by Lord Kerr in Takhar. In considering Phosphate, he observed:

"35. The contrast with the present case is immediately obvious. This is not an instance of the appellant seeking to adduce evidence of facts "going in the same direction" as facts previously stated, because Mrs Takhar had not asserted that the Krishans had been guilty of fraud, merely that she had no recollection of having signed the profit share agreement. The relief that she seeks now is quite different from that which she had earlier claimed. Previously, she sought to avoid the effect of the agreement because of undue influence and unconscionability on the part of the Krishans. Now she claims that the agreement on which they rely was, in its written form, a forgery.

36. Now, it is true that Earl Cairns had also said in the Phosphate Sewage case, at p 814, that "the only way in which [new evidence] could possibly be admitted would be if the litigant were prepared to say, I will shew you that this is a fact which entirely changes the aspect of the case, and I will shew you further that it was not, and could not by reasonable diligence have been, ascertained by me before." But the essential context of this observation is set by the earlier passage quoted above. It is where precisely the same relief as had previously been claimed is sought again. In my view, it is not appropriate to lift the requirement of reasonable diligence out of the context in which it appears and to import it into a different scenario, namely, where a changed basis for success for the appellant is advanced."

377. Sir Anthony then considered what was said by Lord Kerr and Lord Sumption in *Takhar*, which I have quoted above. The conclusions which he drew were expressed in the following terms, at [82]-[83] (the underlining is my own):

"82. A consideration of the scope of any election which might have been made involves venturing into territory which Lord Kerr did not actually traverse. An election of the kind said to have been made in the present case is closer to the limit envisaged by Lord Sumption, but it will obviously be a fact-sensitive issue. Furthermore, it will be a fact sensitive issue against the background of a fraud, with the additional care and consideration which that involves.

83. With those points in mind I come back to the decision of HHJ Jarman. I have already observed that he was considering an election in a different procedural context which did not necessarily attract the same considerations as arise in considering whether an impeaching action such as this is an abuse. It would therefore be wrong to decide that the election which he found operated for all purposes and in particular for the purposes of assessing an abuse in the present action. For that decision to be made it would have to be established that the election operated without more on the same principles, and it has not been. For my part I am confident that as a matter of principle a claimant could be held to have conducted himself/herself in such a way as

to be held to have elected not to pursue a fraud claim so as bar a later impeachment action, whether the conclusion is framed in terms of an election or in terms of the sort of estoppel suggested by Lord Sumption; but that would have to be properly established in the light of the particular considerations applying to fraud actions which are referred to by their Lordships in Takhar."

378. Sir Anthony thus accepted, as I have accepted, that as a matter of principle a claimant could be held to have conducted themselves in such a way as to be held to have elected not to pursue a fraud claim in earlier proceedings, so as to bar a later claim to set aside a judgment in those earlier proceedings on the basis that it was obtained by fraud. As Sir Anthony also pointed out, at [82], the question of whether there had been such conduct was a fact-sensitive issue, which Judge Jarman did not have to address.

379. In these circumstances Sir Anthony did not consider that he was in a position to decide whether it was an abuse of process for Mr Bhandal to pursue the Forgery Case in these proceedings. This question had not been decided by Judge Jarman, who had not been considering this question in the context of a claim to set aside on the basis of fraud. As such, Sir Anthony was not in a position where he could make a strike out order.

380. Sir Anthony did however consider whether the abuse of process issue would be suitable for determination by way of a preliminary issue. In this context Sir Anthony did engage in some analysis, at [85] to [87], which I should quote in full:

> *"85. Having said that, I should add that there really does seem to me to be something in the election point which underpins Mr Kent's case. Without in any way pre-judging it, it is reasonably apparent that most of the relevant facts said to justify the present pleading (including the identity of the magistrate) were known to Mr Bhandal before the Collins J trial, and probably before he started his section 89 proceedings. Before the trial before Collins J Mr Bhandal had material which he said pointed to the non-existence of a warrant and in his witness statement he expressed himself to be "concerned about the authenticity of the documents themselves (the information as laid by Mr Broad and the warrant of arrest obtained by Mr Broad)" (witness statement paragraph 81). I have already quoted paragraph 113 in which Mr Bhandal indicates an awareness of the fact that a warrant was necessary for section 89 proceedings. His witness statement indicates that he had at that time got a copy of the warrant showing the name of the magistrate (contrary to a later statement that the name was only discovered later, made in order to explain why the magistrate was not contacted until after the Collins J trial) and was aware of what were said to be oddities on emendations and additions and the identity of the Magistrate's Court out of which the warrant was issued. He raised copious other points.*
>
> *86. In his witness statement served in connection with the present application Mr Bhandal pointed out that he tried to raise the fact that the warrant might be a forgery but was prevented from adducing his evidence by the decision of King J. In those circumstances, he said, he decided not to pursue the forgery allegations because he was advised that suspicion was not enough and he was concerned that he had not got enough disclosure from HMRC to enable him to pursue it to the required standard. He was also hopeful that he would be able to explore the issue at the trial but was prevented from doing so by*

submissions made by Mr Kent at the outset. He decided to pursue the allegation when "by chance" he discovered the name of the JP involved and a private investigator tracked her down and got her statement.

87. This seems to me to be good material capable of supporting a clear allegation (if HMRC and Mr Broad seek to make it clearly enough) that there is the sort of abuse of process that Lord Sumption referred to, or an extension of the instances left open by Lord Kerr. In other terms, it might be said that there was some sort of election. Knowing that he had an apparently arguable case on fraud, and with (it might be said, and is probably said by Mr Kent) almost the same material as is now relied on in the present action (any subsequently discovered supporting material might be said not to add much more for these purposes) he chose to persist in a claim which was inconsistent with his present stance on the validity of the warrant and which actually pleads the warrant. However, I cannot decide the present application on that basis because it was not sufficiently articulated as being made on that basis and it was therefore not properly dealt with either in terms of evidence (though Mr Bhandal's witness statement goes a long way in that area) or submission. As I have already pointed out, when the application was made its basis was not really articulated at all either in the application notice or in the defendants' supporting evidence. Mr Kent's skeleton argument did not fully articulate or address this point either. It, and his submissions, were more focused on abuse arguments based on collateral attack."

381. Sir Anthony then noted, at [88] that the issue would be suitable for determination by way of preliminary issue. He expressed his conclusion on the application in the following terms, at [89]:

> *"89. I shall therefore make no order on the present application, save that I shall order that the pleading of "nullity" shall be struck out as legally and conceptually unsustainable. So far as appropriate, however, I would be minded to give directions for the trial of a preliminary issue on whether the facts surrounding the commencement and pursuit of the section 89 proceedings make the current proceedings an abuse on the basis of an election or some other form of complete answer to these proceedings."*

382. In the event, there was no preliminary issue. Instead, the Defendants have pursued the abuse of process argument at the trial. It seems clear to me, from the above analysis of the Mann Judgment, that Sir Anthony made no final decision on the abuse of process argument. To the contrary, Sir Anthony made it clear that he was not in position to do so, for the reasons he expressed in the Mann Judgment at [87]. In fact, Sir Anthony appears to have been attracted by the abuse of process argument, for the reasons which he gave at [85] to [87], but he did not consider himself able to make a final decision on the argument, and did not do so.

383. I therefore conclude that there is nothing in the Mann Judgment which prevents the Defendants from pursuing their case that these proceedings are an abuse of process.

384. This then brings me back to the factual question of whether Mr Bhandal made a deliberate decision in the present case not to investigate or pursue the Forgery Case in earlier proceedings, specifically in the Section 89 Application. I am in a position to decide this question, having heard all the evidence at the trial.

385. On the evidence in this case, it seems to me quite clear, and I so find, that Mr Bhandal made a deliberate decision not to investigate further or pursue the Forgery Case in the Section 89 Application. Mr Bhandal only sought to reverse that decision after he had lost comprehensively before Collins J and had also failed, on the paper application, to secure permission to appeal. At that point, Mr Bhandal sought to reverse his previous position, first on the renewal of his application for permission to appeal before Longmore LJ, then in his attempt to lift the Stay in the Chancery Proceedings, and then finally in these proceedings. My reasons for these findings, briefly stated, are as follows.

386. I have already set out the chain of investigation instigated by Mr Bhandal following the hearing before Master Moncaster, culminating in Ms Haddad's visit to the Court on 6th May 2008, which she set out in her witness statement of 6th May 2008. One can test the importance of this evidence to Mr Bhandal by considering the use which was made of this evidence in these proceedings. Ms Haddad's evidence was deployed as a major plank in the Forgery Case. At that time Mr Bhandal also obtained copies of the Information, as signed, and the Warrant, in draft and signed form. Mr Bhandal also knew, from Ms Haddad's conversation with the Debbie at the Court, that there was no record of the issue of the Warrant in the Court records for 18th July 2001 and that, at least so far as Debbie was concerned, this meant that the Warrant could not have been issued on that date. In summary, and as at May 2008, Mr Bhandal had evidence before him which not only supported the Forgery Case, but has also subsequently been deployed, in these proceedings, as a substantial part of the Forgery Case.

387. Mr Bhandal's attention to the question of whether the Warrant was authentic is confirmed by the further investigations which he instigated through Needleman Treon in 2010/2011. This was then followed by Mr Bhandal taking two procedural steps. The first procedural step was his instigation of the application in the Chancery Proceedings to lift the Stay. The application was made on 1st March 2011. I have already rejected Mr Bhandal's attempt to say that he was unaware of this application and did not authorise the application. The second procedural step was Mr Bhandal's commencement of the Section 89 Application, on 4th March 2011. The application to lift the Stay was withdrawn. The Section 89 Application was pursued to trial. It is true that the application to lift the Stay was made on the basis that there was a question mark over whether the Warrant had ever been withdrawn, not on the basis that there was a question mark over whether it had been issued. The important point seems to me however to be that Mr Bhandal made the decision to commit himself to the Section 89 Application, rather than raising questions about the Warrant in an attempt to secure the lifting of the Stay and thereby to enable him to pursue the Chancery Proceedings.

388. This was then followed by Mr Bhandal's application for an extension of time for making the Section 89 Application, which was heard by Hickinbottom J on 8th November 2011. The hearing before Hickinbottom J was conducted on the basis that the Warrant had been issued, so that there had been criminal proceedings instituted against Mr Bhandal.

389. Mr Bhandal did serve a witness statement in the Section 89 Application, in which he set out his reasons for saying that the Warrant was not a genuine document. The relevant parts of the witness statement were struck out by King J, by an order made on 13th May 2014. Mr Bhandal then amended his Points of Claim in the Section 89 Application in order to include a pleaded case that the Warrant had been issued. The trial before Collins

J then proceeded on the basis that the Warrant had been issued, so that the necessary jurisdictional basis for the Section 89 Application existed.

390. I do not accept that the decision of King J was one which forced Mr Bhandal to give up his case that the Warrant had been forged. Confronted with the decision of King J, Mr Bhandal could have abandoned the Section 89 Application, and sought to resume his pursuit of the Chancery Proceedings, on the basis of what is now the Forgery Case. Mr Bhandal could have applied for the lifting of the Stay, on the basis that Master Moncaster had imposed the Stay in ignorance of Mr Bhandal's case that the Warrant had been forged, and at a time when Mr Bhandal had not instigated the investigations which followed the hearing before the Master. Effectively, when confronted with the decision of King J, Mr Bhandal faced the same choice as he had had to make when he commenced the Section 89 Application; that is to say whether to pursue his case that the Warrant was forged or to accept the validity of the Warrant so that he could pursue the Section 89 Application. Mr Bhandal chose to accept the Warrant as valid and to pursue the Section 89 Application. If Mr Bhandal had been successful before Collins J, and if Mr Bhandal had been able to prove a loss of the kind which he was claiming, Mr Bhandal's choice would have paid off handsomely. Unfortunately for Mr Bhandal, it did not.

391. Mr Bhandal then sought to reverse this choice, as I have described earlier in this judgment, but only after he had lost the trial before Collins J, and had failed to obtain permission to appeal on the paper application. It was only then, in May 2016, that Mr Bhandal instigated the further inquiries, by which the witness statement was obtained from Ms Buckeldee and by which further information was sought from the Court. It was only then that Mr Bhandal raised the argument, first with Longmore LJ on the oral hearing of the application for permission to appeal, that the Warrant was a forgery.

392. It was put to Mr Bhandal in cross examination that he had made the clearest decision, with the benefit of legal advice, that whatever doubts there might have been expressed about the existence of the Warrant, he should proceed with the Section 89 Application, and that if he had recovered the compensation which he was seeking in the Section 89 Application, he would not have bothered to send anyone to interview Ms Buckeldee. I found Mr Bhandal's evidence in response to these suggestions difficult to follow and lacking in credibility. I have already commented, in my overall assessment of Mr Bhandal's evidence, that he had a tendency to trim his evidence when under pressure. In this context I quoted an extract from Mr Bhandal's his cross examination (**[T2/87/20-89/6]**), which I repeat, for ease of reference:

> *"And so I didn't understand the legislation as such, that whether I had -- whether I should abandon it and just go and try and lift the stay on a discrete application about the warrant. I understood that I had to go through the section 89 process before I could go back to the Chancery.*
> *Q. Yes.*
> *A. That's what I was led to believe.*
> *MR JUSTICE EDWIN JOHNSON: But you said a few moments ago that you were advised that you'd have no claim whatsoever.*
> *A. Yes.*
> *MR JUSTICE EDWIN JOHNSON: Because of the stay?*
> *A. Yes.*
> *MR JUSTICE EDWIN JOHNSON: When did you receive that advice?*
> *A. That was sometime in 2014, sir.*

MR KENT: So before it was too late to stop the case in front of -- in the administrative court?
A. Yes.
Q. Well, I suggest that that's not correct. You can't have been -- received that advice.
A. That's what I was told.
Q. Right.
MR JUSTICE EDWIN JOHNSON: But if you were advised you had no claim whatsoever because of the stay --
A. Yes.
MR JUSTICE EDWIN JOHNSON: -- then you didn't have the option of going back to the Chancery proceedings.
A. No I didn't. They said that I had no claim at that time. (Pause)
MR JUSTICE EDWIN JOHNSON: But I understood your more recent answers to mean that you thought you did have that option of going back to the Chancery proceedings?
A. At that time, I didn't understand my position, my Lord. But as time went on, I started to understand after the Jarman hearing, which was in February 2018, as to what my position was."

393. This extract formed part of Mr Bhandal's response to the suggestion that he had made a clear decision to pursue the Section 89 Application, and not to pursue his case that the Warrant was a forgery. As I have already found, this extract was an example of Mr Bhandal attempting to trim his evidence under pressure; in this instance in order to meet the claim that he had made the election described by Judge Jarman.

394. I am unable to accept Mr Bhandal's evidence that he was, in any way, unsure of his position in relation to the Warrant, in the course of his pursuit of the Section 89 Application. While it is true that Mr Bhandal subsequently obtained further evidence, in particular in the form of the witness statement of Ms Buckeldee, it seems to me, and I so find, that by the time Mr Bhandal came to commence the Section 89 Application he was well aware that he had a case for arguing that the Warrant was a forgery. Putting the matter more simply, I find that, by the time Mr Bhandal came to commence the Section 89 Application, he was well aware that there was available to him a case which was, essentially, what is now the Forgery Case. I do not consider that the evidence which has subsequently been obtained changed this position.

395. I also find, on the basis of the evidence, that Mr Bhandal made a deliberate decision not to pursue or investigate further his case that the Warrant was forged, at the time when the Section 89 Application was made. That deliberate decision remained in place, as a deliberate decision, following the rejection of his attempt to bring this case into the Section 89 Application, until he had lost the trial before Collins J and had failed in his first attempt to obtain permission to appeal. Thereafter, Mr Bhandal sought to reverse this deliberate decision, first in a final attempt to obtain permission to appeal against the Collins Order and then, by these proceedings, in an attempt to revive his claims against the Defendants. I find that, at the time when Mr Bhandal made this deliberate decision, and at all times thereafter while he maintained this deliberate decision, he was well aware of his case that the Warrant had been forged and of the material available to him to support that case.

396. In my judgment this conduct of Mr Bhandal brings Mr Bhandal squarely within the circumstances contemplated by Lord Kerr in *Takhar* and identified by Lord Sumption in *Takhar* where a claim to set aside an earlier judgment on the ground that it was obtained by fraud can be refused on the basis that it is an abuse of the process of the court.

397. So far as this factual question was concerned, Mr Newman sought to argue that the Defendants could not establish their case on abuse of process, on the facts, because the evidence in the Defendants' witness statements was insufficient to establish a deliberate decision of the kind which I have found. I confess that I did not really understand this argument. It was open to the Defendants to establish their case on abuse of process on the evidence in this case. The evidence was not confined to the Defendants' witness statements. Nor were the Defendants confined to their own witness statements in relation to their case on abuse of process or in relation to any other part of their case. The same applied equally to Mr Bhandal, who was not confined to his own witness statements, either in putting the Forgery Case or in putting any other part of his case.

398. Mr Newman also sought to argue that the abuse of process argument should not be entertained on the basis that the Second Permission Order should have been disclosed by the Defendants at a much earlier stage, and on the basis that the Defendants had changed their position in important respects in relation to the Permission Orders. I have already dealt with the Permission Orders, and with such change of position on the part of the Defendants as there has been in respect of the Permission Orders, in the relevant section of my analysis of the Forgery Case. I do not think there is anything in the Defendants' conduct, either in relation to the Permission Orders or otherwise, which disqualifies the Defendants from pursuing the abuse of process argument.

399. This then leaves the question of whether, in the exercise of my discretion, I should refuse the claim to set aside the Judgments and each of them, in the exercise of my discretion.

400. At this point it is as well to keep in mind that the Forgery Case has not been established. The question of whether these proceedings are an abuse of process is one which I am addressing for the sake of completeness. The question does not, strictly, arise for decision. Nevertheless, if the Forgery Case had been established, and further to my findings as to the conduct of Mr Bhandal, it would have been necessary for me to exercise my discretion as to whether to refuse the claim to set aside the Judgments. On this hypothesis I would have exercised my discretion to refuse the claim to set aside the Judgments, and I would have dismissed the proceedings as an abuse of the process of the court.

401. In saying this I recognise that, if the Forgery Case had been established, this would have been a very serious matter, for both of the Defendants and for the court. This is however a very unusual case. By his conduct Mr Bhandal has taken the Defendants through one lengthy and, I do not doubt, expensive set of proceedings, in the form of the Section 89 Application. When that failed Mr Bhandal sought to reverse his position, ultimately by the commencement of these proceedings.

402. It is a telling commentary on Mr Bhandal's pursuit of his claims against the Defendants that, as was made clear by Mr Newman in his written closing submissions, Mr Bhandal is still seeking to keep his options open, assuming success in these proceedings. For ease

of reference, I repeat the concluding paragraph of Mr Newman's written closing submissions:

> *"138. If C is successful in this case, and the three judgments are set aside, then it will be a matter for him whether he chooses to progress the 2007 claim or some different claim based* [on] *his understanding of what happened many years later. If the Ds to any such action feel that they can defend it on the basis of obiter comments from Collins J, in a judgment that has been set aside, and in light of the above princip*[l]*es, and where C has never been questioned by HMRC about any offence, that will be a matter for them following legal advice."*

403. In my judgment litigation should not be conducted as it has been conducted by Mr Bhandal in the years of proceedings inflicted on HMRC and Mr Broad since the commencement of the Chancery Proceedings in 2007. This factor seems to me to be decisive, notwithstanding the gravity of the fraud which would have been established if the Forgery Case had been established. If the Forgery Case had been established, and my discretion as to whether to dismiss these proceedings as an abuse of process had arisen, I would have exercised this discretion to dismiss the proceedings.

404. If therefore the Forgery Case had succeeded, I would have accepted the Defendant's argument that these proceedings are an abuse of the process of the court, and I would have dismissed the proceedings on that basis. I recognise that this conclusion, even though a conclusion reached on assumed rather than actual facts, may be thought a strong conclusion to reach. On the basis of the Assumed Facts and the Assumed Dishonesty my conclusion is that these proceedings are an abuse of process, notwithstanding the assumed commission by the Defendants of the most serious kind of fraud, and notwithstanding the (also assumed) subsequent dishonest concealment of that fraud from the court. Instinctively, it might be thought that the Defendants should not be permitted, in these assumed circumstances, to be able to argue that the current proceedings, which seek to reverse the consequences of that fraud, are an abuse of the process of the court.

405. This is however an unusual case, where, as I have found, there was a deliberate decision on the part of Mr Bhandal not to pursue or investigate further his case that the Warrant was forged, at the time when the Section 89 Application was made. Mr Bhandal then maintained that deliberate decision until the Section 89 Application ended in defeat. For the reasons which I have set out, I consider that these proceedings can be characterised as an abuse of the process, and I would have so decided, if the Forgery Case had been established.

406. In reaching the above conclusion, I have thought it right to leave out of account the preliminary views expressed by Sir Anthony Mann on the abuse of process argument; see the Mann Judgment at [85] to [87]. I have done so because I have heard all the evidence relevant to this argument, which Sir Anthony had not. I note however that my reasoning, in reaching the above conclusion, is much the same as the reasoning contained in the preliminary views expressed by Sir Anthony.

407. It also follows, from the above conclusion, that my conclusions on the materiality of the Assumed Dishonesty to the Moncaster Judgment and the Moncaster Order and to the Collins Judgment and the Collins Order become redundant. Given my conclusion that, even on the basis of the Assumed Facts and the Assumed Dishonesty, these proceedings

are an abuse of process, I would not have been prepared to make an order setting aside these Judgments and Orders on the basis of my conclusions on the question of materiality.

408. The same point applies to the Jarman Judgment and the Jarman Order, whatever my conclusion on the materiality of the Assumed Dishonesty to the Jarman Judgment and the Jarman Order. I will however, for the sake of completeness, return to the question, which I left outstanding at end of the previous section of this judgment; namely the question of whether the Assumed Facts, if they had been known to Judge Jarman, would have been material to his decision to strike out the Chancery Proceedings, as against the Defendants. As Sir Anthony Mann explained in the Mann Judgment, Judge Jarman reached his decision by the application of principles of election which do not apply in these proceedings.

409. Although, on the Assumed Facts, Judge Jarman would have been presented with a situation where HMRC, by Mr Broad, would have been responsible for the most serious kind of fraud, I have difficulty in seeing why the Assumed Facts would have affected the reasoning of Judge Jarman. As Judge Jarman pointed out in the Jarman Judgment, at [32], Mr Bhandal faced a choice:

> *"whether to proceed on the basis that proceedings had been instituted against him and to invoke a statuary procedure to apply for compensation on the basis of serious default on the part of the investigating officers, or to proceed on the basis which he now seeks to rely upon that the warrant and information had been created by Mr Broad later on."*

410. As Judge Jarman went on to conclude, at [33], Mr Bhandal elected for the former choice. In those circumstances Judge Jarman considered it an abuse for Mr Bhandal to seek to pursue common law claims on the grounds of forgery in the Chancery Proceedings; being *"the antithesis"* of the basis on which he had pursued the Section 89 Application.

411. I cannot see how this reasoning would have been undermined or altered, if Judge Jarman had been confronted with a situation where the fraud had in fact been established, as opposed to being alleged. On that hypothesis the election made by Mr Bhandal, which caused Judge Jarman to strike out the Chancery Proceedings would still have been in place.

412. Applying the principles identified by Aikens LJ in *Highland Financial Partners*, I cannot see that the Assumed Facts, if they had been known to Judge Jarman, would entirely have changed the way in which Judge Jarman approached and came to his decision. I cannot see that the Assumed Dishonesty was causative of the Jarman Judgment being obtained in the terms in which it was obtained.

413. If therefore this question had arisen for my decision, I would have concluded that the Assumed Dishonesty was not material to the obtaining of the Jarman Judgment in the terms in which it was obtained. I would also have concluded, as necessarily follows from this first conclusion, that the Assumed Dishonesty was not material to the obtaining of the Jarman Order. The consequence of these conclusions is that the Chancery Proceedings would have remained struck out, as against the Defendants. Whether this conclusion would have been sufficient to justify the dismissal of these proceedings, disregarding for this purpose my decision on the abuse of process argument, would have depended upon whether Mr Bhandal would have been able to persuade me that,

notwithstanding the strike out of the Chancery Proceedings, the setting aside of the Collins Judgment and the Collins Order left him with some other option to pursue in terms of proceedings against the Defendants, independent of the Chancery Proceedings. It is not obvious to me what that option would have been.

414. In reaching this conclusion I should make it clear that I have considered what seems to me to be a difficult question which arises in the context of the materiality of the Assumed Dishonesty to the Jarman Judgment. In considering the question of materiality I have considered the Jarman Judgment in isolation. I have not considered the Jarman Judgment in a counter-factual landscape where the Moncaster Judgment and the Moncaster Order and the Collins Judgment and the Collins Order are assumed to have been set aside on the basis of the materiality of the Assumed Dishonesty to those Judgments and Orders. This question matters, because if one assumes a landscape where the Chancery Proceedings had not been stayed by the Moncaster Order and where the Section 89 Application had not failed for the reasons set out in the Collins Judgment, it seems to me that the strike out application would have looked rather different. On that hypothesis, it is not obvious that the reasoning of Judge Jarman would have remained the same. The factual landscape, on this hypothesis would have been very different.

415. This is, as I have said, a difficult question. It is not one to which the arguments on materiality were particularly directed. I am also conscious that this question arises in circumstances where it is academic on two bases. First, the Forgery Case has not been established, and I have found that the Warrant was genuine. On this basis the proceedings fall to be dismissed. Second, even on the basis of the Assumed Facts and the Assumed Dishonesty, I have decided that I would have dismissed the proceedings, on the basis of abuse of process. It seems to me that a difficult question of this kind is better considered in a case where it arises directly for decision, based upon a full analysis of the relevant authorities. As however I have decided to address the question of the materiality of the Assumed Dishonesty to the Jarman Judgment I will, very briefly, express my view on the question of whether the Jarman Judgment should be considered in isolation.

416. In my view the reasoning of Judge Jarman in the Jarman Judgment should be considered in isolation or, which may put the matter more accurately, should not be considered on the hypothesis that the previous Judgments and Orders do not exist. I say this for the following reason.

417. When a claim is made to set aside a judgment on the basis of fraud, the question for the court is whether the conscious and deliberate dishonesty, assuming that this is established, was causative of the impugned judgment being obtained in the terms in which it was obtained. This requires a consideration of what effect the relevant dishonesty had upon the relevant judgment. Putting the matter another way, the court is concerned with the question of what impact the relevant fraud had upon the relevant judgment. The question is not, as it seems to me, a consequential one. The court is not considering whether the relevant judgment cannot stand because previous judgments were affected by the relevant fraud and cannot stand. If the question is treated as a consequential one, it seems to me that a judgment might fall to be set aside, as a consequence of earlier judgments being set aside, in circumstances where the reasoning in the relevant judgment was, in itself, entirely unaffected by the relevant fraud. It seems to me that if a judgment is to be set aside on the basis of fraud, the fraud must be demonstrated to have affected the reasoning in that judgment, as opposed to

demonstrating that the judgment cannot stand as a consequence of previous judgments, which were affected by the fraud, being assumed to have been set aside.

418. I therefore maintain my conclusion, notwithstanding this difficult question, that the Assumed Dishonesty was not material to the obtaining of the Jarman Judgment in the terms in which it was obtained. I also maintain my conclusion, as necessarily follows from this first conclusion, that the Assumed Dishonesty was not material to the obtaining of the Jarman Order. As with my earlier conclusions on the question of materiality, the point bears repeating that my conclusions on materiality are now academic on two bases. First, the Forgery Case has not been established, and I have found that the Warrant was genuine, so that the proceedings fall to be dismissed on this basis. Second, even on the basis of the Assumed Facts and the Assumed Dishonesty, I have decided that I would have dismissed the proceedings, on the basis of abuse of process.

Is there a clean hands defence?

419. The Defendants also argued that Mr Bhandal was not entitled to have the Judgments and Orders set aside, because he did not come to court with clean hands. The argument was that Mr Bhandal's alleged losses derived from an asset, namely the Property, which Mr Bhandal had purchased using the proceeds of crime. I will deal very briefly with this argument.

420. I do not think that this argument, if it had arisen for decision, would have succeeded, for at least three reasons. First, I am doubtful that a clean hands argument of this kind is available, as a defence to a claim that a previous judgment which was procured by fraud should be set aside. Second, the clean hands argument depends upon findings of fact made by Collins J in the Collins Judgment. I cannot see that it is open to me to rely on those findings of fact for the purposes of deciding whether Mr Bhandal has clean hands in these proceedings or not. This question is a question of fact, which I would have to decide on the evidence before me in these proceedings. I was not presented with evidence which would have permitted me to decide this factual question. Third, and independent of the point just made, it follows from my conclusions on the question of materiality that if the Forgery Case had been established, and if I had not concluded that these proceedings are an abuse of process, I would have been prepared to set aside the Collins Judgment and the Collins Order. On this hypothesis the findings made by Collins J would not have been available to me even if, contrary to my view, it would have been legitimate for me to adopt those findings of fact.

The relief sought in the proceedings

421. As I have explained earlier in this judgment, Mr Bhandal did not adduce evidence at the trial in support of the claims for financial relief pleaded in the Amended Particulars of Claim. Indeed, all questions of relief were left outstanding and open; see the final paragraph of Mr Newman's written closing submissions (quoted above). Given my decisions in this judgment, questions of relief do not in fact arise. I should however record that I would not have been in a position to address these questions, even if they had arisen for decision. This may be just as well. To repeat a point already made, it was not obvious to me what Mr Bhandal's options would have been, in terms of claiming relief against the Defendants, beyond the revival of the Chancery Proceedings, if the Judgments and Orders had all been set aside.

The outcome of these proceedings

422. For the reasons set out in this judgment the claims made in these proceedings by Mr Bhandal fall to be dismissed.

423. I will hear the parties further, as necessary, on other matters arising consequential upon this judgment. In the usual way the parties are encouraged to agree (subject to my approval) as much as they can, in terms of the order to be made consequential upon this judgment.