**[2024 Gib LR 212]**

# R. (VERRALLS LEGAL LIMITED, C. MILES and J. MILES) v. COMMISSIONER OF THE ROYAL GIBRALTAR POLICE and MAGISTRATES' COURT OF GIBRALTAR

SUPREME COURT (Dudley, C.J.): April 19th, 2024

2024/GSC/014

*Police—entry, search and seizure—search warrants—search unlawful because police officers entered property, without consent of occupant, pending amendment of warrant to show correct address and failed to provide occupant with copy of amended warrant*

*Police—arrest—prompt and effective investigation—not unreasonable to arrest director of law firm suspected of facilitating laundering of proceeds of criminal conduct when home searched*

The claimants applied for judicial review.

The claim arose from the execution of search warrants by RGP officers and from the arrest and detention of the second claimant, Mr. Miles. The search warrants were granted in respect of the offices of the first claimant, Verralls, a law firm of which Mr. Miles was a director; an apartment associated with Mr. Miles; and No. 2, The Island, thought to be Mr. Miles's home where he lived with the third claimant, Mrs. Miles.

The information laid before the Magistrate on the application for the warrants was that the RGP had received intelligence from Spain which suggested that Verralls had been used to transfer money and make payments of assets that, although registered in the name of third parties, were enjoyed by individuals involved in drug trafficking and money laundering; that Mr. Miles and others were facilitating the laundering of proceeds of criminal conduct; and that there were investigations in Spain which substantiated the grounds to suspect Verralls and Mr. Miles had facilitated the purchase of real estate and other properties on behalf of third parties involved in drug trafficking using the suspected proceeds of criminal conduct. The information detailed four investigations in Spain. The first, "Operation Isco," was a money laundering investigation relating to FTC, the leader of an organized crime group in Spain, and part of the investigation related to the purchase by Mr. Miles of a house in which FTC and his family lived although Mr. Miles was the registered owner. The second, "Operation Daotar," related to a yacht registered to a Gibraltarian,

DV. The yacht had been purchased by an international transfer issued by Verralls. The third, "Operation Erotes," related to another leader of an organized crime group in Spain, FRD. A townhouse in Spain had been purchased through FRD's wife and transfers had been made via Verralls to a Spanish law firm's account. The fourth, "Operation UVE," related to FTC and to a property in which his partner resided. It had been acquired through DM, a local man suspected of being a drugs trafficker, and the purchase moneys had been paid via Verralls. The information provided details of two Spanish companies, "Stark" and "Wayne," which it was said received transfers from Verralls and acquired property in Spain.

The information said that Mr. Miles was a key suspect and a senior person at Verralls, and that it was highly likely that he might destroy, alter, deface or conceal the material sought because it was evidence of his own wrongdoing.

Section 2(1) of the Proceeds of Crime Act 2015 ("POCA") provided:

> "A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person."

For the purposes of POCA, "criminal property" was defined in s.182(1A):

> "Property is criminal property if—
>
> (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and
>
> (b) the alleged offender knows or suspects that it constitutes or represents such a benefit."

As the material sought by the RGP was special procedure material as defined by the Criminal Procedure and Evidence Act ("CPEA") the application for access to the material was made pursuant to Schedule 1 to the Act. Paragraph 1 of Schedule 1 provided that if any one of the two sets of access conditions were met, a judge or magistrate could make a production order. Paragraph 2 set out the first set of access conditions, which were the ones relied on by the RGP in this case:

> "(2) The first set of access conditions is fulfilled if—
>
> (a) there are reasonable grounds for believing that—
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> (i) an indictable offence has been committed;
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> (ii) there is material which consists of special procedure material or also includes special procedure material and does not also include excluded material on premises specified in the application, or on premises occupied or controlled by a person specified in the application;
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> (iii) the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
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> (iv) the material is likely to be relevant evidence;
>
> (b) other methods of obtaining the material have—
>
> (i) been tried without success; or

(ii) not been tried because it appeared that they were bound to fail; and

(c) it is in the public interest, having regard to—

(i) the benefit likely to accrue to the investigation if the material is obtained; and

(ii) the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given."

The RGP did not seek a production order but a search warrant pursuant to para. 12 of Schedule 1:

"12. If on an application made by a police officer a judge or magistrate is satisfied—

(a) that—

(i) either set of access conditions is fulfilled; and

(ii) any of the further conditions set out in paragraph 14 is also fulfilled . . .

he may issue a warrant authorising a police officer to enter and search the premises."

Paragraph 14 set out the further conditions. The RGP relied on para. 14(d):

"14. The further conditions mentioned in paragraph 12(a)(ii) are that—

. . .

(d) service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation."

The warrant in respect of Mr. Miles's home was issued in respect of the property that was thought to be Mr. Miles's home, No. 2, The Island, although Mr. Miles was in fact living at No. 5, The Island. When they attended to execute the warrant, the RGP officers briefly entered No. 2, which was unsecured and unoccupied. It appeared that construction or refurbishment works were being carried out. The officers then went to No. 5, where Mr. Miles was arrested. He made clear that in the absence of a warrant in respect of No. 5, he would not allow access to the officers to search the property. He briefly went into the property accompanied by officers so that he could get dressed before being taken to the police station. Mrs. Miles told the officers that they should not enter the property until they had an amended search warrant with the correct address and asked them to wait outside. However officers did enter the property. They did not commence a search until the search warrant was amended by the Magistrate. Mrs. Miles was shown the original warrant as amended and she was provided with a copy of the original warrant.

Section 42 of the CPEA allowed a police officer to arrest a person who he suspected had committed an offence. The exercise of the power of arrest was subject to the provisions of s.42(4) and (5) which set out the reasons for which it could be determined "necessary" to arrest a subject. The RGP

relied on s.42(5)(e)—"to allow the prompt and effective investigation of the offence or of the conduct of the person . . ."

Sections 19 and 20 of the CPEA set out certain safeguards and requirements in respect of the issuing and execution of search warrants. Section 19 provided that "(2) An entry on or search of premises under a search warrant is unlawful unless it complies with this section and section 20." Section 19(6) provided that a search warrant must authorize an entry on one occasion only and specify the premises to be searched. Section 20(4) provided that the police officer executing the search warrant must produce the warrant to the occupier and supply him with a copy of it.

The claimants were granted permission (in a judgment of Yeats, J. reported at 2023 Gib LR 204) to apply for judicial review on three grounds: (1) that the warrants in respect of the offices of Verralls and premises associated with Mr. Miles should not have been granted because there were no reasonable grounds for believing that Mr. Miles had committed an indictable offence; (2) that the arrest of Mr. Miles was unlawful as it was not necessary or objectively justifiable; and (3) that the warrant in respect of No. 2, The Island, having been executed, was not capable of being amended; that in any event there was an unlawful entry into No. 5, The Island before the warrant was purportedly amended; and, in the alternative, that the failure to provide a copy of the amended search warrant rendered the search unlawful.

The claimants submitted in respect of the "reasonable grounds to believe" test that (a) there was no material before the Stipendiary Magistrate to establish that the moneys transferred by Verralls for the acquisition of assets identified in the information were "criminal property"; (b) the factual allegations in the information did not disclose grounds to establish to that standard that Mr. Miles had committed an indictable offence; (c) Mr. Miles's arrest was unlawful because it was not necessary or objectively justifiable; (d) the entry of the RGP officers into No. 5, The Island in circumstances in which it was apparent that Mrs. Miles was not consenting amounted to a trespass; (e) the warrant only authorized entry on one occasion and, entry into No. 2 having been effected, the warrant was exhausted and performed and was therefore not capable of amendment; and (f) alternatively, if the warrant was capable of amendment, the failure by the RGP to provide Mrs. Miles with a copy of the amended warrant rendered its execution unlawful.

The Commissioner of the RGP accepted that at the time of the application for the warrant, the RGP was not in a position to point to the origin of the funds but it was submitted that they were properly entitled to hold the belief that a s.2 POCA offence had been committed on the basis of the information and by drawing inferences from the material. It was also submitted that entry into No. 2, The Island, which was unsecured, was made under para. B2.3(a)(ii) of the Code of Practice for Searches of Premises by Police Officers and the Seizure of Property Found by Police Officers on Persons or Premises. The warrant had not therefore been executed by entry into No. 2 and was capable of amendment. Further, the failure to provide

Mrs. Miles with a copy of the amended warrant did not render the execution of the warrant unlawful.

**Held,** judgment as follows:

(1) Ground 1 would be refused. To issue the warrants the Stipendiary Magistrate had to be satisfied that the first set of access conditions in Schedule 1, para. 2 CPEA was satisfied and at least one of the further conditions set out in Schedule 1, para. 14 was satisfied. The only aspect of the statutory test which was subject to challenge was whether there were before the Stipendiary Magistrate "reasonable grounds for believing . . . that an indictable offence [had] been committed." Reasonable grounds would exist if the belief had an objective basis which was grounded on credible information. In making a determination to that standard it was legitimate to draw inferences from the primary allegations of fact in an information. The issue was therefore whether on the material before him it was properly open to the Stipendiary Magistrate to be satisfied that the statutory requirement of "reasonable grounds for believing . . . that an indictable offence [had] been committed" was clearly made out. A crucial aspect of the core allegations contained in the information was their provenance. Significant weight could be given to the fact that the information was premised on a number of investigations undertaken by Spanish law enforcement agencies into individuals involved in drug trafficking and money laundering activities. The principal allegation against Mr. Miles did not concern any specific individual case but rather that Mr. Miles as a senior person within Verralls facilitated the purchase of real estate and other properties on behalf of third parties involved in drug trafficking using the suspected proceeds of criminal conduct derived from this activity, with alleged instances providing the basis for that allegation. The Stipendiary Magistrate would properly have been entitled to take account of the totality of that material in reaching his determination that there were reasonable grounds to believe that a s.2 POCA offence had been committed. As to the sufficiency of the material to establish to the requisite standard that the moneys used or transferred for the acquisition of the assets was "criminal property," this was clearly capable of being inferred from the circumstances. The inference could be drawn (to meet the standard of reasonable grounds to believe) that proceeds of crime were being channelled through Verralls and used to acquire assets for the benefit of alleged drug traffickers and or money launderers (paras. 41–49).

(2) Ground 2 also failed. The claimants' submissions failed to take account of the fact that the decision to arrest Mr. Miles was taken in the context of a much wider cross-border operation and not on the basis of urgency. Viewed objectively the RGP decision that it was necessary to arrest Mr. Miles was reasonable. There was an objectively justifiable risk that if not arrested Mr. Miles could have attempted to contact individuals in Gibraltar or Spain to warn them of what had transpired and that any such communication could have impacted upon the effectiveness of the investigation. Moreover, given that the material which the RGP would

eventually want to retrieve would undoubtedly include mobile phones and electronic devices, objectively there was a risk that Mr. Miles might have attempted to delete material or dispose of devices. To the extent that the RGP did not have a valid warrant to enter No. 5, The Island when they first engaged with Mr. Miles, had he not been arrested and allowed to freely go back into his home, that perceived risk could legitimately have been seen as heightened (paras. 58–59).

(3) Ground 3 succeeded. There was no evidence which displaced the assertion by the RGP Detective Inspector as to the powers he believed he was exercising when gaining entry into No. 2, The Island. The warrant not having been executed when the RGP briefly entered No. 2, The Island, it was open to the Stipendiary Magistrate to amend it. There was nothing in s.19 and s.20 CPEA to indicate that it was unlawful to amend a warrant before it was executed. The Detective Inspector appeared before the same Magistrate who had granted the warrant, provided an explanation on oath as to the mistake in relation to the address, and the warrant was amended, there was nothing irregular with the process. As regarded the entry into No. 5, The Island prior to the amendment of the warrant, the court accepted the claimants' analysis that while the initial entry by a couple of officers was at Mr. Miles's invitation so that he could get dressed, the subsequent entry by the officers was carried out in circumstances in which Mrs. Miles repeatedly made clear that she was not consenting to officers entering and remaining upon the premises. Her submission, which took the form of behaving with decorum and restraint when the officers failed to act in accordance with her request, did not equate to consent. It followed that (save for those officers accompanying Mr. Miles so as to allow him to get changed) the entry by the other officers upon No. 5, The Island was unlawful as was their remaining upon the property until the Detective Inspector returned with the amended warrant. It was evident that the failure to provide Mrs. Miles with a copy of the amended warrant was a breach of s.20(4)(c) CPEA. The plain reading of the statute was that any failure to comply with the requirements of either s.19 or s.20 rendered the whole process of entry and search unlawful. There was undoubtedly a trespass by the RGP officers when they entered and remained within No. 5, The Island pending the amendment of the warrant and in any event the failure to provide a copy of the amended warrant rendered the search unlawful. The material obtained on the search of those premises was to be returned and the question of damages and costs would have to be considered at a further hearing (paras. 65–68; paras. 73–75).

**Cases cited:**

(1) *Bhatti* v. *Croydon Mags.' Ct.*, [2010] EWHC 522 (Admin); [2011] 1 W.L.R. 948; [2010] 3 All E.R. 671; (2010), 174 JP 213, considered.

(2) *Burgin* v. *Police Commr. of the Metropolis*, [2011] EWHC 1835 (Admin), considered.

(3) *Glenn & Co. (Essex) Ltd.* v. *H.M. Commrs. for Revenue & Customs*, [2011] EWHC 2998 (Admin); [2012] Crim. L.R. 464; [2012] 1 Cr. App. R. 22, considered.
(4) *Hayes* v. *Chief Const. (Merseyside)*, [2011] EWCA Civ 911; [2012] 1 W.L.R. 517; [2012] Crim. L.R. 35; [2011] 2 Cr. App. R. 30, considered.
(5) *Kensington Intl. Ltd.* v. *Republic of Congo*, [2007] EWCA Civ 1128; [2008] W.L.R. 1144; [2007] 2 CLC 791; [2008] C.P. Rep. 6, considered.
(6) *Police Commr. of the Metropolis* v. *MR*, [2019] EWHC 888 (QB), considered.
(7) *R.* v. *Anwoir*, [2008] EWCA Crim 1354; [2009] 1 W.L.R. 980; [2008] 4 All E.R. 582; [2008] 2 Cr. App. R. 36, considered.
(8) *R.* v. *Chesterfield Justices*, *ex p. Bramley*, [2000] Q.B. 576; [2000] 2 W.L.R. 409; [2001] All E.R. 411, considered.
(9) *R.* v. *Chief Const. of Lancashire*, *ex p. Parker*, [1993] Q.B. 577; [1993] 2 W.L.R. 428; [1993] 2 All E.R. 45, considered.
(10) *R.* v. *Lewes Crown Ct.*, *ex p. Hill* (1990), 93 Cr. App. R. 60, considered.
(11) *R.* v. *Solanki*, [2020] EWCA Crim 47, considered.
(12) *R. (Bright)* v. *Central Criminal Ct.*, [2000] EWHC 560 (QB); [2001] 1 W.L.R. 662; [2001] 2 All E.R. 244; [2002] Crim. L.R. 64; [2000] U.K.H.R.R. 796; [2001] EMLR 4, considered.
(13) *R. (Faisaltex Ltd.)* v. *Preston Crown Ct.*, [2008] EWHC 2832 (Admin); [2009] 1 W.L.R. 168; [2009] Crim. L.R. 358, considered.
(14) *R. (S)* v. *British Transport Police (Chief Const.)*, [2013] EWHC 2189 (Admin); [2014] 1 W.L.R. 1647; [2014] 1 All E.R. 268, considered.
(15) *Redknapp* v. *City of London Police Commr.*, [2008] EWHC 1177 (Admin); [2009] 1 W.L.R. 2091; [2009] 1 All E.R. 299; [2008] Po LR 106, considered.

**Legislation construed:**

Criminal Procedure and Evidence Act 2011, s.19(2): The relevant terms of this subsection are set out at para. 60.
s.19(6): The relevant terms of this subsection are set out at para. 60.
s.20(3):The relevant terms of this subsection are set out at para. 60.
s.42(2): The relevant terms of this subsection are set out at para. 51.
s.42(5)(e): The relevant terms of this paragraph are set out at para. 52.
s.332: The relevant terms of this section are set out at para. 72.
Schedule 1, para. 2: The relevant terms of this paragraph are set out at para. 19.
Schedule 1, para. 14: The relevant terms of this paragraph are set out at para. 20.

Proceeds of Crime Act 2015, s.2(1): The relevant terms of this subsection are set out at para. 34.
s.182(1A): The relevant terms of this subsection are set out at para. 35.

*K. Azopardi*, *K.C.* with *C. Bonfante* (instructed by Hassans) for the claimants;
*N. Cruz* with *A. Hernandez-Cordero* (instructed by CruzLaw) for the first defendant;
The second defendant did not appear and was not represented.

1 **DUDLEY, C.J.:**

**Introduction**

On September 21st, 2021 the then Stipendiary Magistrate, upon the application of Detective Inspector Goldwin ("DI Goldwin") of the Royal Gibraltar Police ("RGP"), granted a number of warrants to enter and search various premises. These included:

(i) the offices of the first claimant ("Verralls");

(ii) apartment 30, Quay 29 which were premises associated with the second claimant ("Mr. Miles") (a barrister and a director at Verralls); and

(iii) Town House No. 2, The Island ("No. 2, The Island") which was believed to be the residence of Mr. Miles and the third claimant ("Mrs. Miles") his wife.

2 In the event Mr. and Mrs. Miles were not living in No. 2, The Island but rather at Town House No. 5, The Island ("No. 5, The Island") of which Mrs. Miles was the tenant. In the process of executing the warrant in respect of No. 2, The Island, DI Goldwin and other officers of the RGP became aware of the error, DI Goldwin attended upon the Stipendiary Magistrate who amended the warrant which thereafter was purportedly executed at No. 5, The Island. As part of that operation Mr. Miles was also arrested.

3 On December 20th, 2021 the claimants filed a claim for judicial review advancing seven grounds. In a judgment spanning 95 paragraphs (reported at 2023 Gib LR 204), Yeats, J. refused permission in respect of four grounds and granted permission in respect of three grounds (which for the purposes of this judgment I have renumbered) and which can be briefly stated as follows:

(i) *Ground 1: the grant of the warrants*—that the warrants in respect of the offices of Verralls and premises associated with Mr. Miles should not have been granted because there were no reasonable grounds for believing that Mr. Miles had committed an indictable offence;

(ii) *Ground 2: the arrest*—that the arrest of Mr. Miles was unlawful as it was not necessary or objectively justifiable; and

(iii) *Ground 3: the execution of the warrant*—that the warrant in respect of No. 2, The Island, having been executed, was not capable of being

amended; that in any event there was an unlawful entry into No. 5, The Island before the warrant was purportedly amended; and in the alternative, that the failure to provide a copy of the amended search warrant rendered the search unlawful.

4 By way of preliminary observation, of note the caveat to be found in the judgment of Yeats, J., which I respectfully adopt and apply (2023 Gib LR 204, at para. 4):

> "The judicial review claim is related to ongoing criminal investigations so it is important to note at the outset that any observations made and/or conclusions reached in this judgment are not intended to dilute or displace the presumption of innocence of any of the parties involved in the alleged criminal activity. Furthermore, when referring to persons suspected of illicit activity (other than Mr. Miles who is a party to these proceedings), I shall refer to them only by their initials."

5 I also adopt the premise in that judgment as to how the claim is to be approached (*ibid.*, at para. 9):

> "The court must assess the claimants' complaints as against what the RGP knew, suspected and presented to the Stipendiary Magistrate on September 20th–21st, 2021 when it applied for the warrants, and on how it behaved on September 22nd, 2021. This is important because following the execution of the warrants and the arrest of Mr. Miles on September 22nd, 2021, there have been significant exchanges and production of documents and information, and both sides have filed a number of witness statements."

This not least because notwithstanding that at an earlier stage of the proceedings Mr. Miles was alleging that there had been unlawful use of a covert audio/video device by the RGP (albeit as I understand it not in respect of the matters presently under consideration) and that DI Goldwin was disposed to target Mr. Miles, if necessary, using unlawful methods, during the course of the hearing Mr. Azopardi made clear that no bad faith was being attributed to the RGP.

**The factual matrix**

6 On September 20th, 2021, DI Goldwin appeared before the Stipendiary Magistrate having that day laid an information ("the information") in support of the application for the search warrants. As is usual in this type of application, he also gave evidence on oath. A transcript of the hearing of that application spans 38 pages. The warrants were not issued at that stage but rather the hearing was adjourned to the following day. At the renewed hearing on September 21st, 2021, DI Goldwin provided the Stipendiary Magistrate with certain photographs which he said evidenced

a clear association well beyond a professional lawyer/client relationship between Mr. Miles, [FTC] who is one of the principal suspects in Spain identified in the information and [DMM] who also features in the information and against whom search warrants were also sought. At the conclusion of the hearing of the application, in so far as it related to Mr. Miles, the Stipendiary Magistrate gave the following reasons for granting the search warrants:

> "After hearing the sworn evidence of [DI Goldwin] today and yesterday and upon reading the information in respect of [Mr. Miles] and also being satisfied that there are reasonable grounds for believing that an indictable offence has been committed namely the offence under Section 2 of the Proceeds of Crime Act 2015 and there's other methods of obtaining the material have not been tried because it appears that they are bound to fail. Also, it's in the public interest having regard to the benefit likely to accrue to the investigation the material is obtained namely by piecing together the last piece of evidence in the inquiry and that's why I grant the three warrants as pleaded in connection with the investigation into the affairs of [Mr. Miles]."

7 As reflected in an RGP briefing sheet dated September 22nd, 2021 entitled "OP Fusion," the warrants in respect of Verralls' offices, No. 2 the Island, and of premises associated with [DMM] were to be executed simultaneously at 06.00 hrs. on September 22nd, 2021 as part of "a coordinated approach with [the RGP's] Spanish counterparts."

8 Following a briefing at New Mole House, police officers made their way to The Island. What transpired was (subject to the limitations of the medium) largely captured by the body worn cameras of various officers. The more consequential footage was played at the hearing before me.

9 It is not in dispute that at about 06.05 hrs. DI Goldwin and other RGP officers went to No. 2, The Island. The footage shows DI Goldwin opening the front door which was unsecured, looking inside but not entering upon the property and then closing the door. About one minute later DI Goldwin and at least two other officers entered the property and walked around. It is not in dispute that that property was unoccupied and it is apparent from the footage that construction or refurbishment works were being carried out within it.

10 According to DI Goldwin's evidence, police involvement in an unrelated matter connected Mr. Miles to No. 5, The Island. This together with a vehicle associated with Mrs. Miles being parked outside that property, led him to deduce that Mr. Miles was in fact residing there.

11 At 06.15 hrs., DI Goldwin knocked on the front door of No. 5, The Island. At about 06.20 hrs., Mr. Miles opened the door. Immediately

thereafter DI Goldwin addressed Mr. Miles on the following terms with some interjections by Mr. Miles which I do not set out:

> "I have reasonable grounds to suspect that you as a legal professional have used your position within Verralls Barristers and Solicitors, to facilitate the purchase of real estate and other property in Spain on behalf of third parties involved in drugs trafficking, [FTC] and [FDR]. I therefore have reasonable grounds to suspect that you have become concerned in an arrangement which you know or suspect facilitates the acquisition, retention or use of criminal property on behalf of other persons.
>
> . . .
>
> You are not obliged to say anything unless you wish to do so but . . .
>
> But what do you say will be put in writing and given in evidence Mr. Miles, we've got a warrant is for the wrong address . . . It's number 2 The Island."

Apparent that at that initial stage Mr. Miles was not on terms told that he was under arrest. There then followed exchanges in which Mr. Miles stated his willingness to co-operate. Thereafter and about one minute after Mr. Miles had opened the front door and had been cautioned, it was made clear to him that he was under arrest.

12 As the exchanges continued, Mr. Miles became somewhat impassioned and for his part made clear that in the absence of a warrant in respect of No. 5, The Island he would not allow access to the officers so that they could search the property. Notwithstanding, DI Goldwin and Mr. Miles agreed for him to go back into the house accompanied by officers so that he could change from his pyjamas into clothes. By about 06.34 hrs. Mr. Miles was leaving the property.

13 Although they did not have a warrant in respect of No. 5, The Island and despite repeated protestations by Mrs. Miles that absent a warrant the officers were not to enter upon the property, RGP officers entered and remained within. DI Goldwin instructed them:

> "The property remains secure. I don't want anyone moving unless it's accompanied by [an officer]."

And to Mrs. Miles:

> "We have a duty to secure evidence. Right? We are gonna get the warrant amended and it's gonna take a couple of minutes. In the meantime, do whatever you have to do but please I ask you nicely let the officer be with you . . ."

Mrs. Miles's retort was that in the absence of a warrant they could wait outside and she would make a cup of tea for the officers which she would hand through the window.

14 Officers remained inside No. 5, The Island and DI Goldwin, through Detective Chief Inspector Tunbridge, arranged to meet the Stipendiary Magistrate at his home. At about 07.00 hrs, DI Goldwin attended upon the Stipendiary Magistrate. A note produced by the Stipendiary Magistrate dated September 22nd 2021 and timed at 07.21 hrs reads:

> "DI Goldwin sworn in.
>
> Upon hearing Inspector Goldwin taken on Oath I am satisfied that the house number on the search warrant for [Mr. Miles'] house should be 5. I therefore amended the warrant to that effect."

Later that same day the Stipendiary Magistrate produced a slightly more detailed file note, it reads:

> "I was informed by Inspector Goldwin that they had the wrong house number down on the search warrant. He explained that their investigation had come up with Number 5 or 2 as the [*sic*] Mr. Miles' address. That on report about Mr. Miles in I think it was the O.B had the correct address but the investigating team went along with the address they had come up with. The correct address was in fact the other one.
>
> As a consequence of having the wrong house number they were not allowed into the house by Ms Miles in order to carry out the search. They therefore came to me for an amendment to the house number. The other house was unoccupied."

The amendment to the warrant was limited to the crossing out of the number "2" and its substitution in manuscript by the number "5" and initialled "CJP" by the Stipendiary Magistrate.

15 According to DI Goldwin's evidence, with the warrant amended he made his way back to No. 5, The Island. He showed the original as amended to Mrs. Miles, provided her with a copy of the unamended warrant and tasked an officer to ensure that she was provided with a copy of the original amended warrant. The search warrant was then executed. In the event Mrs. Miles was not provided with a copy of the amended warrant. In fact, a copy was not provided until October 5th, 2021 when it was emailed to the claimants' lawyers.

16 For her part Mrs. Miles stated that when shown the warrant with No. 2 crossed out and substituted by No. 5, the "CJP" initials were not endorsed on the document. It is not a factual matrix which is relied upon in argument by Mr. Azopardi.

**Ground 1—the grant of the warrants**

***The statutory framework for the grant of warrants in respect of excluded material***

17 The statutory provisions governing the grant of warrants issued in this case are to be found in the Criminal Procedure and Evidence Act ("the CPEA").

18 By s.13 of the CPEA a police officer may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application to a judge or magistrate under Schedule 1, CPEA. The special procedure for access to excluded material was evidently engaged by dint of Mr. Miles' profession and that Verralls is a law firm and consequently the likelihood of both having in their possession items subject to legal privilege.

19 One of two sets of access conditions need to be met for a judge or magistrate to order access to excluded material. In the present case, the first set of access conditions was relied upon. Paragraph 2 of Schedule 1 provides:

"2. The first set of access conditions is fulfilled if—

(a) *there are reasonable grounds for believing that—*

(i) *an indictable offence has been committed*;

(ii) there is material which consists of special procedure material or also includes special procedure material and does not also include excluded material on premises specified in the application, or on premises occupied or controlled by a person specified in the application;

(iii) the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and

(iv) the material is likely to be relevant evidence;

(b) other methods of obtaining the material have—

(i) been tried without success; or

(ii) not been tried because it appeared that they were bound to fail; and

(c) it is in the public interest, having regard to—

(i) the benefit likely to accrue to the investigation if the material is obtained; and

(ii) the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given." [Emphasis added.]

Access to the material may be obtained in one of two ways, either by the making of a production order requiring the person who appears to the judge or magistrate to be in possession of the material to produce it or give access to it to a police officer within a specified period, or, as in the present case, by the issue of a warrant.

20 By virtue of para. 12 of Schedule 1, a judge or magistrate may issue a warrant, *inter alia* if either set of access conditions is fulfilled and any of the further conditions found in para. 14 are met. Paragraph 14 provides:

"14. The further conditions mentioned in paragraph 12(a)(ii) are that—

(a) it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) it is practicable to communicate with a person entitled to grant entry to the premises, but not practicable to communicate with any person entitled to grant access to the material;

(c) the material contains information which—

(i) is subject to a restriction or obligation such as is mentioned in section 15(2)(b); and

(ii) is likely to be disclosed in breach of it if a warrant is not issued;

(d) service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation."

***The applicable principles when reviewing the grant of a search warrant***

21 The principles to be applied when reviewing the issue of a search warrant were considered by a Divisional Court of the English High Court in *R. (Faisaltex Ltd.)* v. *Preston Crown Ct.* (13) in which the court reviewed earlier authorities. *Faisaltex* concerned the grant of search warrants pursuant to s.8 of the Police and Criminal Evidence Act which is on very similar terms to s.12, CPEA. Although the warrants in this case were sought and issued pursuant to s.13, CPEA, the principles which can be derived from *Faisaltex* are nonetheless apposite. Keene, L.J. handing down the judgment of the court ([2009] 1 W.L.R. 168, at para. 29) quoted Bingham, L.J. in *R.* v. *Lewes Crown Ct., ex p. Hill* (10), which was a special procedure case, who said:

> "The 1984 Act seeks to effect a carefully judged balance between these interests and that is why it is a detailed and complex Act. If the scheme intended by Parliament is to be implemented, it is important that the provisions laid down in the Act should be fully and fairly enforced. It would be quite wrong to approach the Act with any preconception as to how these provisions should be operated save in so far as such preconception is derived from the legislation itself.
>
> It is, in my judgment, clear that the courts must try to avoid any interpretation which would distort the parliamentary scheme and so upset the intended balance. In the present field, the primary duty to give effect to the parliamentary scheme rests on circuit judges. It seems plain that they are required to exercise those powers with great care and caution. I would refer to the observation of Lloyd L.J. in Maidstone Crown Court, ex p. Waitt [1988] Crim L.R. 384 where he said
>
> > 'The special procedure under section 9 and Schedule 1 is a serious inroad upon the liberty of the subject. The responsibility for ensuring that the procedure is not abused lies with circuit judges. It is of cardinal importance that circuit judges should be scrupulous in discharging that responsibility.'"

In relation to the approach to be taken by a judge who is being asked to issue a search warrant he quoted (*ibid.*, at para. 30), Judge, L.J. in *R. (Bright)* v. *Central Criminal Ct.* (12) ([2001] 1 W.L.R. at 677):

> "[I]t is clear that the judge personally must be satisfied that the statutory requirements have been established. He is not simply asking himself whether the decision of the constable making the application was reasonable, nor whether it would be susceptible to judicial review on Wednesbury grounds (see Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223). This follows from the express wording of the statute, 'If . . . a circuit judge is satisfied that one . . . of the sets of access conditions is fulfilled'. The purpose of this provision is to interpose between the opinion of the police officer seeking the order and the consequences to the individual or organisation to whom the order is addressed the safeguard of a judgment and decision of a circuit judge."

Whilst as regards the role of the court in judicial review proceedings ([2009] 1 W.L.R. 168, at para. 31) Keene, L.J. said:

> "On the other hand, the role of this court in judicial review proceedings is not that of an appeal court but one of review on the usual principles. If it was properly open to the judge below to be satisfied as to the various requirements, then this court will not intervene. In addition, it has to be borne in mind that in both section 8(1) of PACE and the

> Schedule 1 first set of access conditions, what the judge must be satisfied as to is that there are 'reasonable grounds for believing', no less but no more. And in a number of the provisions, the belief is that something is 'likely': for example, in section 8(1)(c), that the material 'is likely to be relevant evidence'. As this court observed in *R v. Chief Constable of Warwickshire, ex parte Fitzpatrick* [1999] 1 WLR 564, 574H,
>
> > 'a likelihood is less than a probability.'
>
> The burden of showing that the judge acted ultra vires in issuing a warrant or that the police acted unlawfully in some way when executing a warrant rests upon the claimant."

22 An issue which arises in the present claim is the adequacy of the reasons given by the Stipendiary Magistrate in granting the application in that although he verbalized that the statutory test was met, he evidently failed to explain how this was so by reference to the information before him. In *R. (S)* v. *British Transport Police (Chief Const.)* (14), which involved a claim for judicial review by a solicitor and two firms of solicitors in respect of the issue and execution of search warrants to obtain access to "excluded material" and "special procedure material" pursuant to the procedures set out in s.9 of and Schedule 1 to the Police and Criminal Evidence Act 1984, the court considered the importance of reasons and Aikens, L.J. and Silber, J. giving the judgment of the court said ([2014] 1 W.L.R. 1647, at para. 46):

> "[T]he circuit judge making the decision leading to the issue of the search warrant must give reasons for either granting or refusing the warrant. (Sir John Thomas PQBD made the same point recently in the *PCJ Van der Pijl* case). The rationale for this requirement was explained by Watkins LJ in *R v Southampton Crown Court ex p J* [1993] Crim LR 962 quoted by Kennedy LJ in *R v Crown Court at Lewes, Ex p Nigel Weller & Co* (unreported) 12 May 1999:
>
> > 'The [1984] Act does not require a circuit judge to give reasons when making an order inter partes or issuing a warrant ex parte for access to special procedure material . . . However, challenges to decisions of circuit judges which have come before this Court demonstrate, in my opinion especially as to ex parte applications, the need for this to be done. Reasons need not be elaborate, but they should be recorded and be sufficient to identify the substance of any relevant information or representation put before the judge in addition to the written information. They should set out what inferences he has drawn from the material relevant to the statutory conditions governing the content and form of the order. Where he has considered the question of legal privilege he should explain why, if he does, he has included in the order or

> warrant material which is prima facie privileged, or why he has excluded material as subject to privilege.'"

23 That said, the failure to give reasons will not necessarily result in the issue of a warrant being quashed where the actual reasons for the decision are clearly discernible. In *Burgin* v. *Police Commr. of the Metropolis* (2), Sadlen, J. (with whom Laws, L.J. agreed) said ([2011] EWHC 1835 (Admin), at para. 34):

> "It is on the other hand in my view established that there is no rule of law which requires as an automatic consequence of the failure of the issuing Court to give reasons for the decision to issue a search warrant that the search warrant is to be treated as invalid and that the decision to issue it must be quashed for that reason."

Albeit with the following caveat (*ibid.*, at para. 37):

> "Lest it be thought that, because in an appropriate case the reviewing court may be prepared to infer what reasons lay behind the decision to issue a warrant, there is no practical sanction in the event of a failure to give and record reasons, the decision in *R (Lewes Crown Court)* provides a salutary example of a case in which the court was not prepared to infer from the background information the existence of adequate reasons justifying the issue of the warrant. The many statements in the authorities to the effect that the need to give reasons is not a formality reflect the fact that where reasons are not given the reviewing court will subject to particularly anxious scrutiny any submission that the reasons may be discerned from the Information and/or other background material and will be astute to quash any decision to issue a warrant where the reasons cannot clearly be inferred."

24 Also of relevance in the context of the photographs which were made available to the Stipendiary Magistrate at the adjourned hearing, the statement by Latham, L.J. in *Redknapp* v. *City of London Police Commr.* (15) ([2009] 1 W.L.R. 2091, at para. 13):

> "All the material necessary to justify the grant of a warrant should be contained in the information provided on the form. If the magistrate or judge in the case of an application under section 9 [the equivalent of s.13, CPEA], does require any further information in order to satisfy himself that the warrant is justified, a note should be made of the additional information so that there is a proper record of the full basis upon which the warrant has been granted."

***The information and application for the warrants***

25 The information laid before the Magistrates' Court by DI Goldwin stated:

"Intelligence has been received from Spain which suggests that:

(i) [Verralls] has been used to transfer money and make payments of assets that, although registered in the name of third parties, are enjoyed by high end individuals involved in drug trafficking and money laundering.

(ii) Mr. Miles [and other named persons] are facilitating the laundering of [proceeds of criminal conduct]. Further, it is alleged that [Verralls] and companies: Inversiones Wayne Enterprises S.L. and Inversiones del Norte Stark S.L. have been set up and used for the same purpose.

(iii) . . . there are large numbers of criminal groups based in the region of Cadiz dedicated almost exclusively to the transport and distribution of cannabis from Morocco . . . the profit generated by the different crime groups are mostly paid in cash to bolster the lifestyle and the acquisition of luxury items such as luxury vehicles and properties.

Information is that there are different investigations in Spain, which substantiate the grounds to suspect that Verralls and Mr. Miles have facilitated the purchase of real estate and other properties on behalf of 3rd parties involved in the drugs fraternity using the suspected [proceeds of criminal conduct] derived from this illicit activity."

Those assertions were underpinned by details of four distinct investigations in Spain. The information provided in respect of each of these "operations" is to the following effect:

(i) "*Operation Isco*"—relates to a money laundering investigation in which the main suspect is [FTC] who is said to be the leader of an organized crime group known as "Los Castanas." For the purposes of the application for the warrant, the relevant part of that investigation was the acquisition by Mr. Miles on June 4th, 2016 (that is to say, some seven years before the warrant was issued) of a property in Santa Margarita, La Linea de la Concepcion, Spain known as "Casa Nueces" for a total sum of €309,000. According to the information, €92,499.63 of the purchase price was paid through Verralls, with a mortgage in respect of the balance being serviced by cash payments. Since its acquisition, the property is said to have been occupied by [FTC's] "direct family." The allegation is that "[i]n this way, any relationship between the house and the owners of it, [FTC] and his family, was hidden."

As part of that investigation an international transfer was found in one of [FTC's] vehicles which showed a transfer of €8908 on March 4th, 2014 from Verralls to [FTC].

(ii) "*Operation Daotar*"—relates to a money laundering investigation in respect of [DOA]. The investigation revealed that a luxury yacht, the "Nike Net," although acquired for €160,000 in 2016 by a Gibraltarian [DMV] with Verralls transferring the funds for the purchase, was used by [DOA].

Although the information reflects that [DMV] was on police bail in respect of this matter and that Verralls in judicial review proceedings challenged production orders, there is properly in the statement "[t]his matter will not feature in this case" an acknowledgment that those factors were not relevant for the purposes of the warrants sought.

(iii) "*Operation Erotes*"—relates to a money laundering investigation in respect of [FDRD] who is said to be a "well known drug trafficker" and the leader of the "El Pincho" organized crime group. It is said that in 2018, through his wife [AMPN], he purchased a townhouse in La Alcaidesa, Spain for the sum of €180,000. It is said that for the purpose of that purchase two payments in the sums of €20,000 and €154,600 were made to a Spanish law firm from accounts held by Verralls in two different banks.

(iv) "*Operation UVE*"—also relates to [FTC]. It is said that [FTC's] current partner lives in a property in urbanization Altos de Santa Margarita. The information is to the effect that on June 30th, 2016 the property was acquired for the sum of €320,000 through [DMM] who is suspected of being involved in drug trafficking activities with [FTC]. Payment was effected by international bank transfer from Verralls to a Spanish lawyer. Also according to the information in the course of the Spanish investigation [DMM] claimed that the moneys were derived from a loan by Becket R Service Ltd., a United Kingdom company.

As alluded to previously, search warrants were also sought and obtained in respect of premises associated with [DMM], who is a Gibraltarian and who also appears in the photographs which were made available to the Stipendiary Magistrate at the adjourned hearing. According to the information, Becket R Service Ltd. was incorporated on March 31st, 2016 and was dissolved on September 5th, 2017, with no accounts having been filed during that period which it is said suggests that it had little activity.

26 Under the heading "Auxiliary Matters" the information then goes on to provide details of the two Spanish companies, Inversiones del Norte Stark SL ("Stark") and Wayne Enterprises SL ("Wayne"). In relation to Stark it is said that it received four transfers from Verralls totalling in excess of €300,000 and that the company acquired a property in an urbanization in Estepona. As regards Wayne it is said that it received transfers from Verralls amounting to €238,000 and it is understood that this company may have acquired a house in Aldea del Rocio, in Spain. In the information it is acknowledged that it is unknown whether anyone resides in either of these two properties, with reliance placed upon these transactions

only to the extent that they are said to be suspicious in that they share a similar *modus operandi* to that which can be identified in the "operations." Also in the information are details of various transactions which the RGP obtained through production orders in respect of various bank accounts held by Verralls and which are said to corroborate the intelligence received from Spain. That information is set out in tabular form as follows. I have added a column numbering the entries for ease of reference:

| | Date | Account in receipt | Beneficiary | Payer narrative | Amount |
|---|---|---|---|---|---|
| 1 | 28/06/16 | ES3 xxxx | [JVA] | [M] | €348,925.80 |
| 2 | 29/09/17 | ES66 xxxx | Inversiones del Norte Stark | N/A | €217,500.00 |
| 3 | 08/12/17 | ES11 xxxx | Wayne Enterprises s.l. | Chris Miles | €238,000.00 |
| 4 | 13/06/18 | ES11 xxxx | Inversiones del Norte Stark | [Loan] C L Miles | €30,000.00 |
| 5 | 22/06/18 | ES09 xxxx | Bufete Jimenez y Asociados s.l. | [APN] | €154,600.00 |
| 6 | 12/07/18 | ES11 xxxx | Inversiones del Norte Stark | [Loan] C L Miles | €65,000.00 |
| 7 | 13/09/18 | ES09 xxxx | Bufete Jimenez y Asociados s.l. | [APN] | €791.43 |
| 8 | 18/09/18 | ES09 xxxx | Bufete Jimenez y Asociados s.l. | [APN] | €46.67 |

Entry 1 relates to the transaction identified in "Operation UVE" whilst entries 5, 7 and 8 relate to "Operation Erotes." Self-evidently the remaining entries relate to transactions involving Wayne and Stark. The table is then followed by the following concession:

> "Although we have the specific transactions, we are not able to reconcile the origin of the funds, as the information is held with [Verralls] accounting records."

27 In the section of the information entitled "Conclusion" the following is set out:

> "All 4 areas abovementioned associates [Verralls] to leaders in the drugs trafficking world which generates a huge amount of cash which needs to be laundered into the financial system in exchange for assets such as real estate.

> I suspect that [Mr. Miles] and [DMM] have been used as fronts to own properties they do not use, but are lived in by [organized crime groups] leads me to believe that they are well connected to the aforementioned drug lords.
>
> It is believed that [Mr. Miles], as a legal professional, has used his position within Verralls to facilitate the purchases of such properties using Gibraltar, a foreign jurisdiction, to layer, and integrate [proceeds of criminal conduct] into the financial system; a well-known money laundering typology.
>
> This gives me reasonable grounds to suspect that both [Mr. Miles] and [DM] have committed the offence of arrangements contrary to section 2 [of the Proceeds of Crime Act 2015]; they have become concerned in an arrangement which they know, or suspect, facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person."

28 The information also explained that the intention was to execute the search warrants at 06.00 hrs, Wednesday, September 22nd, 2021 simultaneously with operations by law enforcement agencies in Spain against suspects there. It stated that the reason for the coordination was to "mitigate the risk of evidence being destroyed, altered, defaced or concealed." Finally, in relation to why a search warrant and not a production order was sought, the information states:

> "Mr. Miles is a key suspect in this case and a senior person within the above mentioned firm. We believe that he has facilitated the purchase of assets belonging to drugs traffickers through the firm using his position within. In the circumstances, we suspect that it is highly likely that he may destroy, alter, deface or conceal the material sought, because it is evidence of his own wrongdoing."

29 As aforesaid, during the course of the *ex parte* hearing and the adjourned hearing, DI Goldwin gave evidence. That evidence was peppered with references to "suspicion" and at times conflating "suspicion" with "belief." By way of example, on the second day of the hearing of the application, he said:

> "And we say, *we suspect that* Chris Miles is the lawyer facilitating the proceeds for these individuals in return for the endgame which is the asset itself. Yes, Verralls will hold the documents to support the conveyancing but the facilitation and the assistance will be held, *in my belief*, by Chris Miles and [DMM] in their properties . . ." [Emphasis added.]

30 In context of submissions advanced by Mr. Azopardi that the factual allegations in this case are insufficient to establish reasonable grounds for believing that the moneys used for the purchase of the properties in Spain

were criminal property, the following exchanges between the Stipendiary Magistrate and DI Goldwin also bear consideration. In relation to "Operation Erotes":

> "JUDGE: Do we know where the money came from?
>
> DI GOLDWIN: No. And that's what I'll explain later on . . ."

Whilst dealing with the eight transactions more generically:

> "DI GOLDWIN: Yes, we can see a total of eight transactions, leading Verralls to [unintelligible] this is not intelligence, this is our investigation.
>
> JUDGE: But you don't how those particular euros or the amount that is represented by those euros got in there.
>
> DI GOLDWIN: No.
>
> JUDGE: If it did got in there.
>
> DI GOLDWIN: Which we . . . exactly.
>
> JUDGE: For all we know it could also be Verralls or Miles lending money to clients.
>
> DI GOLDWIN: Yes. Yes, but the suspicion remains . . .
>
> JUDGE: Yes, I've just got to be careful both ways [unintelligible].
>
> DI GOLDWIN: Yeah, yeah, I know exactly. We will never know. We know that the end product and we and we know the middle product so the end product is that we've got drugs trafficking and we say enjoined [*sic*] assets which are named in other people's names, used as figure heads, so that's the end product. The middle product is the money leaving Verralls' accounts, but we won't be able to know how the source of fun, whether it was loans, whether . . . however it got to, that we don't have, so that we suspect that . . . of the arrangements, but we don't have how the money was transferred and that is why, where we need the warrants, to be able to verify, as we said."

***The case advanced for the claimants***

31 The basis upon which Yeats, J. granted permission for this ground to proceed is to be found in the following paragraphs of his judgment (2023 Gib LR 204, at paras. 43 and 45–46):

> "43 I do not disagree with the RGP that, based on the intelligence received from Spain, DI Goldwin was entitled to have formed a reasonable *suspicion* that an offence had been committed by Mr. Miles. However, that is not the test under Schedule 1 of the CPEA.

The Magistrate had to form a reasonable *belief* that an indictable offence had been committed. It is a different and higher threshold. I was not addressed on this by either party but, in my judgment, the distinction is evident—suspicion and belief are not interchangeable terms. In the context of the *mens rea* of an offence Archbold, *Criminal Pleading, Evidence & Practice*, para. 17–48, at 2180 (2022) states as follows: 'Belief is a state of mind required in a number of criminal offences . . . It connotes a state of mind which is more than suspicion.' There is logic in the need for a higher threshold for the authorizing of a search of a person's premises. It is an invasion of privacy and is often described as a draconian measure." [Emphasis in original.]

"45 My own research has taken me to *R. (Primlacks Hldgs. (Panama) Inc.)* v. *Guildhall Mags.' Ct.* . . . There the Divisional Court was considering the seizure of privileged items from a firm of solicitors. In *obiter* comments, Parker, L.J. said the following in relation to the powers of a magistrate under s.8 of the Police and Criminal Evidence Act to issue a search warrant ([1990] 1 Q.B. at 272):

> 'Before concluding this judgment I find it necessary to make certain observations with regard to applications under section 8 of the Act. It confers a draconian power and it is of vital importance that it should be clearly understood by all concerned that it is for the justice to satisfy himself that there are reasonable grounds for believing the various matters set out. The fact that a police officer, who has been investigating the matter, states in the information that he considers that there are reasonable grounds is not enough. The justice must himself be satisfied. In the present case Detective Inspector Keating did not even so state. He merely stated that the matters set out led to the belief that there were reasonable grounds for suspecting that the first of the conditions was satisfied. This would not be completely fatal, for a justice would be entitled to consider that the facts went further. But if the applicant goes no further than to speak of reasonable grounds for suspicion, a justice would in my judgment need to be very cautious indeed before he went further. In the present case he clearly could not have done so.'

46 A magistrate therefore has to be cautious before finding that there are reasonable grounds for believing that an offence has been committed when all that is presented is an officer's suspicions. In my judgment, whether the Magistrate in this case could have been satisfied that there were reasonable grounds to believe that an indictable offence had been committed by Mr. Miles is arguable. There had to be more than just a suspicion that the funds transferred to Spain by Mr. Miles and/or Verralls were proceeds of criminal conduct. The only basis for saying that those funds were proceeds of

> criminal conduct was the undisclosed intelligence in the Arrangement Int to the effect that Mr. Miles and others were using moneys generated from drugs trafficking to purchase real estate in Spain. In the circumstances, I shall grant the claimants leave to proceed with their claims on ground one."

32 The "Arrangement Int" is a reference to the way in which intelligence from Spain was received and upon which the information was based. It is not in issue that that intelligence was received by the RGP from the Organismo de Coordinacion de Narcotrafico Sur, a branch of the Guardia Civil set up for the tackling of organized crime in the Campo de Gibraltar region.

33 There are essentially two limbs to Mr. Azopardi's submissions, with both touching upon the "reasonable grounds to believe" test. The first is that there was no material whatsoever before the Stipendiary Magistrate to establish to that standard that the moneys transferred by Verralls for the acquisition of assets identified in the information were "criminal property"; the second, more broadly, that the factual allegations in the information do not disclose grounds to establish to that standard, that Mr. Miles had committed an indictable offence.

34 The starting point of Mr. Azopardi's submissions is s.2(1) of the Proceeds of Crime Act 2015 ("POCA") which was the offence identified in the information and referred to by the Stipendiary Magistrate in his reasons. It provides:

> "A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person."

A s.2 POCA offence is therefore constituted by the following ingredients:

(a) the entering into or becoming concerned in an arrangement;

(b) which the person knows or suspects;

(i) facilitates the acquisition retention, use or control;

(ii) of criminal property;

(iii) by or on behalf of another person.

35 Mr. Azopardi's submissions focus on the *criminal property* element. For the purposes of POCA *criminal property* is defined in s.182(1A) as follows:

> "Property is criminal property if—

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit."

He cogently submits that this pre-supposes the prior commission by any person of a crime which has yielded the proceeds that are the subject of the s.2 offence. Put another way, the property in question must be shown to be criminal by reason of criminal conduct, distinct from the act of laundering itself. In *Kensington Intl. Ltd.* v. *Republic of Congo* (5), the English Court of Appeal considered s.328(1) of the English Proceeds of Crime Act 2002 which is in identical terms to our s.2(1) and Moore-Bick, L.J. said ([2008] 1 W.L.R. 1144, at para. 67):

> "In order for an offence under section 328 to be committed, therefore, the arrangement into which the defendant enters, or in which he becomes involved, must be one which facilitates the acquisition, retention, use or control by another of property which has already become criminal property at the time when it becomes operative. That requirement is not satisfied if the only arrangement into which he enters is one by which the property in question first acquires its criminal character."

It is also evident from s.182(1A) that to prove that property is *criminal property*, the prosecution have to prove actual knowledge or suspicion on the part of the offender that the property in question represents the proceeds of crime.

36 Flowing from that, Mr. Azopardi submits that the factual allegations in this case are insufficient to establish "reasonable grounds for believing" that the moneys used for the purchase of the properties in Spain were "criminal property." He relies on those parts of the transcript of the hearing before the Stipendiary Magistrate in which DI Goldwin confirms what the provenance of the moneys transferred by Verralls to acquire the assets is not known.

37 As regards the second limb, Mr. Azopardi submits that each of the "operations" in the information are distinct operations by the law enforcement agencies in Spain, which for the purposes of the application for the warrant have been conflated into one. He submits that analysed distinctly, it is only in "Operation Isco" that there is a factual link between an alleged drug trafficker and Mr. Miles, whilst highlighting that in that operation the acquisition of the property by Mr. Miles and its alleged occupation by the direct family of [FTC] dates as far back as June 4th, 2016, that is to say, some seven years before the warrant was issued. As regards the other "operations" he submits that there is no link between any

of them and Mr. Miles except for the involvement of Verralls in the various transactions to which each of them relate.

38 For his part, as I understood his submissions, Mr. Cruz accepted that as at the time that the application for the warrant was made, DI Goldwin was not in a position to point to the origin of the funds. Indeed that much is apparent from the information itself and DI Goldwin's evidence before the Stipendiary Magistrate. However, he submits that DI Goldwin held and was properly entitled to hold the belief that a s.2 POCA offence had been committed on the basis of the Arrangement Int; the corroborative evidence obtained by the RGP and by drawing inferences from that primary material. That consequently the Stipendiary Magistrate could also properly, as he did, reach that conclusion.

39 In support of the proposition that for the purposes of our s.2(1) POCA the Crown can prove that property is derived from crime by drawing an irresistible inference from the circumstances in which the property was handled, Mr. Cruz relies upon the English Court of Appeal decision in *R.* v. *Anwoir* (7). *Anwoir* was an appeal against conviction by several defendants in respect of money laundering convictions contrary to s.328(1) of the English Proceeds of Crimes Act 2002. The principal ground of appeal advanced was that whilst the Crown did not have to establish precisely what crime or crimes had generated the property in question, it did have to establish at least the class or type of criminal conduct involved. Delivering the judgment of the court, Latham, L.J. said ([2008] 4 All E.R. 582, at para. 21):

> "[T]here are two ways in which the Crown can prove the property derives from crime, (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime."

40 *Anwoir* was followed in *R.* v. *Solanki* (11). In *Solanki*, the defendants were convicted of entering into or becoming concerned in a money laundering arrangement, contrary to s.328 of the English Proceeds of Crime Act 2002. The Crown's case was that they used a business to receive and transmit criminal property but did not allege that any particular item of money transmitted via the business had derived from crime. Its case was that there was an irresistible inference that the money could only have been derived from crime. The direction given by the Recorder included the following ([2020] EWCA Crim 47, at para. 57):

> "One way of proving that money comes from crime is to prove a specific offence was committed; for example, to show that a particular person had carried out a drug deal, had obtained a particular quantity of cash in exchange, and then given it to Laxcy. That is not always

> possible, as you may think that criminals will take steps to keep the person committing the crime away from the money chain, so even if the police become aware that large sums of money are being transferred, it will not be apparent how that money was obtained. So the law also allows you to draw inferences. If the evidence that the circumstances in which the property was handled were such as to give rise to an irresistible inference that it could only have been derived from crime, then you could also be sure that the money was the benefit from another person's offending . . ."

Giving the judgment of the court, Singh, L.J. said (*ibid.*, at para. 59):

> "In our view, it is clear from the way in which the Recorder directed the jury and from the issues which were live ones at the trial that this was not an indictment which required the jury to be satisfied that any particular money was criminal property. Indeed, as the prosecution have submitted in the Respondent's Notice, that would have been to drive a coach and horses through the essential nature of the case advanced by them at trial. It was precisely because they could not prove that any particular item of money was derived from crime that they relied on the second limb of *Anwoir*, namely that there was an irresistible inference that it could only have been derived from crime."

***Discussion***

41 To issue the warrant the Stipendiary Magistrate had to be satisfied that the first set of access conditions in Schedule 1, para. 2, CPEA WAS satisfied and at least one of the further conditions set out in Schedule 1, para. 14 was satisfied. Albeit approached from two perspectives, the only aspect of the statutory test which is subject to challenge is whether there were before the Stipendiary Magistrate "reasonable grounds for believing . . . that an indictable offence [had] been committed."

42 To state the obvious, this was a decision by the Stipendiary Magistrate on an application for search warrants. It was not a decision to charge which would involve consideration of whether there was enough evidence to provide a realistic prospect of conviction and it was not a decision to convict which would have required proof in respect of all the elements constituting a s.2(1) POCA offence, to the criminal standard. Reasonable grounds to believe does not require the allegations be proved, it is something more than suspicion but less than the applicable standard of proof in civil proceedings of balance of probabilities. In my judgment reasonable grounds to believe will exist if the belief has an objective basis which is grounded on credible information. Moreover, in making a determination to that standard it is legitimate to draw inferences from the primary allegations of fact in an information.

43 I am mindful of DI Goldwin's conflation of suspicion and belief and that no assistance can be derived from the reasons given by the Stipendiary Magistrate. The issue therefore is whether upon the information, the evidence of DI Goldwin and other material which was before the Stipendiary Magistrate it was properly open to the Stipendiary Magistrate to be satisfied that the statutory requirement of "reasonable grounds for believing . . . that an indictable offence [had] been committed" was clearly made out.

44 A crucial aspect of the core allegations contained in the information is their provenance. In evaluating its reliability, in my judgment, significant weight can be given to the fact that the information was premised on a number of investigations undertaken by Spanish law enforcement agencies into individuals involved in drug trafficking and money laundering activities. Moreover, the reliability of the intelligence provided by the Spanish authorities is, as regards "Operation Erotes" and "Operation UVE," corroborated by the information obtained by the RGP through production orders in respect of Verrall's bank accounts.

45 That of course is not to say that the contents of the information is to be accepted uncritically. In particular, in my judgment, as regards Stark and Wayne, in the absence of any intelligence linking these companies, or assets which may have been acquired by or through them, with individuals allegedly involved in criminal activities, that part of the information provides no support whatsoever for the grant of the warrants. Similarly, that Verralls may have been resisting production orders in respect of individuals in Gibraltar linked to "Operation Daotar" has no evidential value whatsoever in the context of the application for the warrants.

46 Dealing more specifically with Mr. Azopardi's submissions, in my judgment his broader submission, whilst superficially attractive, amounts to no more than the salami slicing of the allegations in respect of the various Spanish investigative operations. The weakness of that submission is that the principal allegation against Mr. Miles does not touch upon any specific individual case but rather that the information is formulated and was presented more generically in terms of Mr. Miles as a senior person within Verralls facilitating "the purchase of real estate and other properties on behalf of 3rd parties involved in the drugs fraternity using the suspected [proceeds of criminal conduct] derived from this illicit activity" with the alleged instances providing the basis for that allegation. The Stipendiary Magistrate would properly have been entitled to take account of the totality of that material in reaching his determination that there were reasonable grounds to believe that a s.2 POCA offence had been committed.

47 Although not required for the statutory test to be met, there are also the photographs which were presented to the Stipendiary Magistrate. Although evidently a snapshot in time they tend to suggest that the

relationship between Mr. Miles, DMM and FTC transcended the purely professional. This is evidence which, albeit only circumstantial and of limited value, tends to support the reasonable grounds to believe that Mr. Miles was involved in a s.2 POCA offence with those individuals. The fact that that material was not contained in the information but was rather presented to the Stipendiary Magistrate during the course of the hearing of the application is of no consequence, in that the material has been made available to the claimants and the reliance placed on them by DI Goldwin is apparent from the transcript.

48 As regards Mr. Azopardi's submission as to the sufficiency of the material to establish to the requisite standard that the moneys used, or transferred for the acquisition of the assets, was "criminal property," the short answer is that this is clearly capable of being inferred from the surrounding circumstances irrespective of the date of the transactions. There is one instance ("Operation Isco") in which Mr. Miles acquired assets which are ostensibly his but which are being enjoyed by the close family of an individual who is said to be the leader of an organized criminal group involved in drug trafficking. There are then two instances ("Operation Daotar" and "Operation UVE") in which assets which are said to be enjoyed by Spanish nationals said to be involved in drug trafficking or money laundering have been acquired by Gibraltarians with Verralls involved in the transfer of funds. Indeed, in the context of "Operation UVE" noteworthy that it is said that according to [DDM] he obtained a substantial loan from a company which it is said has had very little activity and is now dissolved. There is then a final instance in which Verralls transferred moneys for the acquisition of a property in Spain by an individual who can be understood to be a Spanish national and/or resident who is the wife of an individual being investigated in respect of drug trafficking and money laundering. To misquote Ian Fleming, "Once is happenstance. Twice is coincidence," and four times undoubtedly allows the inference to be drawn (to meet the standard of reasonable grounds to believe) that proceeds of crime were being channelled through Verralls and used to acquire assets for the benefit of alleged drug traffickers and or money launderers.

49 For these reasons this ground fails.

**Ground 2—the arrest**

50 Shortly put, the contention advanced on behalf of Mr. Miles is that his arrest was unlawful as it was not necessary or objectively justifiable.

51 Section 42 of the CPEA allows a police officer to arrest a person who he suspects has committed an offence. Subsection 42(2) provides:

> "If a police officer has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it."

Given my determination as regards the grant of the warrants that there were reasonable grounds for believing that Mr. Miles had committed an indictable offence there can be no issue that the requirement of s.42(2) was made out.

52 However, the exercise of that power of arrest is subject to the provisions of s.42(4) and s.42(5) which set out the reasons for which it can be determined "necessary" to arrest a suspect. In the context of the present case DI Goldwin relied upon s.42(5)(e) "to allow the prompt and effective investigation of the offence or of the conduct of the person . . ."

53 In *Hayes* v. *Chief Const. (Merseyside)* (4), the English Court of Appeal considered the mirror English provision in s.24(5) of the Police and Criminal Evidence Act and re-stated the correct test for the exercise of the statutory power of arrest. *Hayes* is authority for the proposition that a challenge to a police officer's decision to arrest is not one which is to be subjected to a full-blown public law reasons challenge but rather one which requires it to be shown that on the information known to the officer he had reasonable grounds for believing the arrest to be necessary. Hughes, L.J. said ([2011] EWCA Civ 911, at para. 40):

> "To require of a policeman that he pass through particular thought processes each time he considers an arrest, and in all circumstances no matter what urgency or danger may attend the decision, and to subject that decision to the test of whether he has considered every material matter and excluded every immaterial matter, is to impose an unrealistic and unattainable burden. Nor is it necessary. The liberty of the subject is amply safeguarded if the rule is as Mr Beer contends, namely (1) the policeman must honestly believe that arrest is necessary, for one or more identified section 24(5) reasons, and (2) his decision must be one which, objectively reviewed afterwards according to the information known to him at the time, is held to have been made on reasonable grounds."

54 The significance of the test of "necessity" was highlighted in the English High Court in *Police Commr. of the Metropolis* v. *MR* (6), in which Thornton, J. said ([2019] EWHC 888 (QB), at paras. 35–36):

> "35. The decision to arrest involves a deprivation of liberty. The purpose of the objective test of necessity is to protect the public:
>
> > 'Where the liberty of the subject is at stake, the decision of police officers is open to review by the court. Whilst the expertise, knowledge and operational judgment of the police officers is to be respected, what is required is careful scrutiny by the court.

> The second stage of the test therefore amply protects the liberty of the subject.' *R (B) v Chief Constable of NI* [2015] EWHC 3691 (Admin) Lord Thomas LCJ.'
>
> The accountability of officers for their actions is achieved by the requirement of necessity, which sets a higher bar than simply 'desirable' or 'convenient' *(R)L* [2017] EWHC 129 (Admin) at [40])."

55 The issue which in the present case therefore falls for determination is whether arresting Mr. Miles was objectively necessary to allow for the prompt and effective investigation of the alleged offence.

56 By his first witness statement, DI Goldwin appears to suggest that his decision to arrest Mr. Miles came about, at least in part, by virtue of the fact that they did not find him at No. 2, The Island. He said (at para. 51):

> "At that point during the dynamic operation, where simultaneous warrants were being executed in two different jurisdictions, I believed there was a real risk of collusion between co-suspects and feared that, if not arrested, [Mr. Miles] may destroy or conceal evidence. I therefore decided that in order to mitigate such risk [Mr. Miles] needed to be located and arrested immediately; time was of the essence."

However, the contemporaneous material exhibited by him shows that the decision to arrest had been taken before then. An operational plan dated September 18th, 2021 entitled "Barrister II," under the heading "Strategic Objective," states: "To arrest [Mr. Miles] and DMM for the offence of Arrangements." And in bold:

> "[Various warrants] will be executed simultaneously at 0600 hrs on Wednesday 22 September 2021 in order to minimise the risk of collusion and evidence being tampered or destroyed. This matter is a coordinated approach with our Spanish counterpart."

And later under the heading "Powers & Policy":

> "The aim of this operation is to secure evidence armed with a warrant and preserve evidence by questioning. In order to do so efficiently there is a necessity to arrest [Mr. Miles] . . . on suspicion of Money Laundering contrary to section 2 POCA 2015."

Those statements were then re-stated in a briefing sheet dated September 22nd, 2021 which were relied upon by DI Goldwin in a briefing which took place at about 05.15 hrs. at New Mole House. It is therefore apparent that the decision to arrest was a pre-determined operational decision premised upon a perceived risk of collusion and evidence tampering in the context of an operation which was coordinated to take place at the same time as similar operations in Spain.

57 On the premise that this was a pre-planned arrest Mr. Azopardi submits that it was not necessary for the purposes of carrying out a prompt and effective investigation, given that this was a case where the RGP had received intelligence two years previously and in respect of matters that dated back up to eight years. That there was hardly a need to act in the way they did in that this was self-created urgency. That Mr. Miles is a person of good character and a partner in what the RGP themselves describe is a "reputable" law firm and that he does not have a track record of lack of cooperation. That to the extent that there are instances where Verralls has defended client interests in objecting to search warrants in the past, that this evidently cannot be held against Verralls or Mr. Miles given that they would simply have been discharging their professional duties.

***Discussion***

58 As far as they go, Mr. Azopardi's submissions are undoubtedly cogent but they fail to take account of the fact that the decision to arrest Mr. Miles was one taken in the context of a much wider cross-border operation and not on the basis of urgency. In my judgment, and from the perspective of the second limb of the question as articulated in *Hayes* (4), viewed objectively DI Goldwin's decision that it was necessary to arrest Mr. Miles was reasonable. There was an objectively justifiable risk that if not arrested Mr. Miles could have attempted to contact individuals in Gibraltar or Spain to warn them of what had transpired and that any such communication could have impacted upon the effectiveness of the investigation. Moreover, given that the material which DI Goldwin would evidently want to retrieve would undoubtedly include mobile phones and electronic devices, objectively there was a risk that Mr. Miles might have attempted to delete material or dispose of devices. To the extent that the RGP did not have a valid warrant to enter No. 5, The Island when they first engaged with Mr. Miles, had he not been arrested and allowed to freely go back into his home, that perceived risk could legitimately have been seen as heightened.

59 For these reasons the second ground fails.

**Ground 3—the execution of the warrant**

60 Sections 19 and 20 CPEA set out certain safeguards and requirements in respect of the issuing and execution of search warrants. Significantly s.19 provides:

> "(2) An entry on or search of premises under a search warrant is unlawful unless it complies with this section and section 20."

In relation to this ground reliance is placed upon the following requirements:

> "(6) A search warrant must—

(a) *authorise an entry on one occasion* only, unless it specifies that it authorises multiple entries;

(c) specify—

. . .

(iv) the premises to be searched . . .

(7) Two copies must be made of every search warrant and be certified as such." [Emphasis added.]

And, s.20:

"(3) Entry and search under a search warrant must—

. . .

(b) be at a reasonable hour unless it appears to the police officer executing it that the purpose of a search may be frustrated by entry at a reasonable hour.

(4) If the occupier of premises which are to be entered and searched is present at the time when a police officer seeks to execute a search warrant in respect of them, the officer must—

(a) identify himself to the occupier and, if not in uniform, produce to the occupier documentary evidence that he is a police officer;

(b) produce the warrant to the occupier; and

(c) *supply him with a copy of it*." [Emphasis added.]

61 The case advanced in respect of this ground can be stated shortly. DI Goldwin executed the warrant which had been issued in respect of No. 2, The Island by entering upon those premises. Consequently:

(i) the entry by police officers into No. 5, The Island in circumstances in which it was apparent that Mrs. Miles was not consenting amounted to a trespass; and

(ii) the warrant only authorized entry on one occasion. Entry into No. 2 the Island having been effected, the warrant was exhausted and performed and was therefore not capable of amendment.

In the alternative, it is submitted that if the warrant was capable of amendment, the failure by the RGP to provide Mrs. Miles with a copy of the amended warrant rendered its execution unlawful.

62 For his part Mr. Cruz submits that the error in seeking a search warrant in respect of No. 2, The Island is attributable to Mr. Miles on the basis that upon the renewal of his ID card and supported by a solemn declaration and

an acknowledgment that knowingly or recklessly providing false information would make him liable to prosecution, that is the address he had given.

63 Reliance is also placed upon the evidence of DI Goldwin as set out at para. 49 of his first witness statement in which he says:

> "At about 0605hrs I entered No. 2 The Island, an unsecured premises which, without entering, appeared to be unoccupied. The Search Warrant I had for this property was not executed. Power of entry was sought from Code B2.3(a)(ii) discovery of insecure premises. Entry into this property confirmed that it was unoccupied and under construction."

Paragraph B2.3(a)(ii) of the "Code of Practice for Searches of Premises by Police Officers and the Seizure of Property Found by Police Officers on Persons or Premises" issued pursuant to s.690 CPEA provides:

> "This Code applies to searches of premises—
>
> (a) by police for the purposes of an investigation into an alleged offence, with the occupier's consent, other than—
>
> . . .
>
> (ii) . . . discovery of insecure premises . . ."

That therefore the warrant not having been executed was capable of amendment.

64 As regards the entry into No. 5, The Island, in effect the submission is limited to the assertion that although there was entry, no search took place until DI Goldwin produced to Mrs. Miles the amended warrant. As regards the failure to provide Mrs. Miles with a copy of the amended warrant Mr. Cruz accepts that it was not provided at the time but relies upon the evidence of DI Goldwin to the effect that she was provided with a copy of the unamended warrant and premised upon *Glenn & Co. (Essex) Ltd.* v. *HM Commrs. for Revenue & Customs* (3) he submits that the failure to provide a copy of the warrant does not render the execution of the warrant to have been unlawful.

***Discussion***

65 There is no evidence which displaces the assertion by DI Goldwin as to the powers he believed he was exercising when gaining entry into No. 2, The Island. Indeed, as far as it goes, the body cam footage is consistent with his evidence. Whilst Mr. Azopardi submits that the RGP has failed to identify the power to enter insecure premises, it seems to me that that is the wrong way to look at it. For the purposes of whether or not DI Goldwin executed the warrant by entering No. 2, The Island, the issue is not where the power to enter insecure premises is to be found, the crucial point is that

he was not relying upon the warrant. Should the owners of No. 2, The Island take the view that there was a trespass upon their property that must be a matter for other proceedings. In any event that there is a power to enter insecure premises appears implicit from the Code.

66 The warrant not having been executed, in my judgment it was open to the Stipendiary Magistrate to amend it. There is nothing in s.19 and s.20 CPEA to indicate that it is unlawful to amend a warrant before it is executed. D.I Goldwin appeared before the same judicial officer that had granted the warrant, provided an explanation on oath as to the mistake in relation to the address, and the warrant was amended; there is nothing irregular with such a process. The position would of course have been materially different if a different judicial officer had sought to amend the warrant; in those circumstances there would have had to have been a fresh application in which that judicial officer would have had to have been satisfied to the requisite standard that a warrant should issue.

67 As regards the entry into No. 5, The Island prior to the amendment of the warrant, I accept Mr. Azopardi's analysis that while the initial entry by a couple of officers, was at Mr. Miles's invitation so that he could get changed to be taken to New Mole House, the subsequent entry by the officers was patently carried out in circumstances in which Mrs. Miles repeatedly made clear that she was not consenting to the officers entering and remaining upon the premises. Her submission, which took the form of behaving with decorum and restraint when the officers failed to act in accordance with her request, does not equate to consent. It follows that (save for those officers accompanying Mr. Miles so as to allow him to get changed) the entry by the other officers upon No. 5, The Island was unlawful as was their remaining upon the property until DI Goldwin returned with the amended warrant.

68 It is evident that the failure to provide Mrs. Miles with a copy of the amended warrant was a breach of s.20(4)(c) CPEA. The more substantive issue is the relief that is to flow from that breach.

69 Three judgments of a Divisional Court of the English High Court bear consideration, namely: *Redknapp* v. *City of London Police Commr.* (15); *Bhatti* v. *Croydon Mags.' Ct.* (1); and *Glenn & Co. (Essex) Ltd.* v. *H.M. Commrs. for Revenue & Customs* (3).

70 *Redknapp* concerned the judicial review of the decision of a justice of the peace to issue a warrant, the manner of its execution by the police, and of the decision of the police in relation to the arrest of the first claimant. In relation to the execution of the warrant, one of the grounds advanced was premised on the fact that that the copy of the warrant provided failed to specify the address of the premises being searched. Latham, L.J. said ([2009] 1 W.L.R. 2091, at para. 21):

> "The second claimant was entitled to be shown the warrant, and to a copy of the warrant . . . What any householder wants to be satisfied about if his house is to be searched is not only that there is a warrant in existence, but that it refers to his or her address. There should be no difficulty in ensuring that the address is identified on the warrant . . . In my judgment, accordingly, the execution of the warrant was not valid, the requirements of section 16(5) of PACE had not been satisfied."

In *Redknapp*, the warrant was quashed although albeit on the back of a declaration that the warrant was issued unlawfully.

71 In *Bhatti*, police officers who executed the warrants had provided copies of the warrants to each occupier but the copies did not include on their face the addresses in question, as set out on the original warrants. Instead, a separate page was attached which included an empty box in respect of the premises searched stating "to be completed by officer," which the officers completed by hand at the time of the search. Documents and material were seized from the claimants who challenged the legality of the warrants and sought the return of all property seized by police together with damages. Elias, L.J. considered submissions as to the proper meaning of s.15(1) of the Police and Criminal Evidence Act 1984 ("PACE") (our s.19(1) CPEA) and in particular the possible ambiguity about the word "it" in the last sentence and whether it refers to the warrant or to the entry and search on the basis that if it refers only to the warrant, then as in the present case, there would be no reason to treat the entry or search as unlawful. Reviewing the authorities and relying upon *R.* v. *Chief Const. of Lancashire*, *ex p. Parker* (9) also an English Divisional Court decision, in which after citing s.15(1) PACE the court said ([2010] EWHC 522 (Admin), at para. 26):

> "We read 'it' as referring to the composite process of entering and searching under a warrant so that in order for that process to be lawful the application for and issue of the warrant has to have been in compliance with section 15 and its execution has to comply with section 16. This does no violence to the language of the subsection and gives effect to what seems to us to be its obvious legislative purpose."

And *R.* v. *Chesterfield Justices*, *ex p. Bramley* (8), another judgment of the Divisional Court, in which Kennedy, L.J. clearly considered the foregoing as the correct approach and who said (quoted *ibid.*, at para. 28):

> "I accept, of course, that any failure to comply with the requirements of either section 15 or section 16 renders the whole process of entry and search unlawful . . ."

Elias, L.J. concluded that the wording of s.15(1) PACE is plain and non-compliance renders entry, search and seizure unlawful and that the material

obtained on the search had to be returned. With the caveat that (*ibid.*, at para. 31):

> "Whether or not the property can be admitted in a criminal trial raises quite separate issues. It depends upon whether the property is available to the prosecution at that time and admissibility will be determined in the normal way, subject to section 78 of PACE."

72 In *Glenn & Co.* (3), also a judgment of a Divisional Court of the English High Court, the claimants challenged the legality of the issue and execution of search warrants. One of the grounds advanced related to a failure by the officers to hand over a copy of the warrant until the search was completed. Simon, J. (with whom Laws, L.J. agreed) having determined that s.16(5) PACE had been breached went on to consider the relief that should flow from such breach as follows ([2011] EWHC 2998 (Admin), at paras. 75–77):

> "75. On one view, the consequence of a breach should invariably be that the Court declares the execution of the warrant to have been unlawful and that any material obtained in the search should be returned, leaving the executing authority to try to obtain and execute further warrants if so advised. This was the approach of the Divisional Court in the *Bhatti* case at [32], where Elias LJ set out the reasons for adopting such an approach and cited a number of authorities in support of such a course.
>
> 76. However, this case has a number of features that distinguish it from other cases. First (at this stage of the argument), there was a valid copy of the warrant in contrast to the position in *R v. Chief Constable of Lancashire, ex p. Parker* [1993] QB 577 and the *Bhatti* case. Secondly, the warrant was both produced for his inspection and held out so that the 3rd Claimant could read it. The 3rd Claimant knew that there was a warrant which referred to his address. This, as Latham LJ said in the *Rednapp* case at [21], was an important safeguard. Thirdly, the 3rd Claimant had already been arrested at the time the obligation under section 16(5)(c) arose.
>
> 77. Paragraph 6.8 of PACE Code B provides that, if the occupier is present, copies of the warrant shall 'if practicable' be given to them before the search is begun. The Codes of Practice issued pursuant to the powers in sections 66 and 67 of PACE cannot override the express provisions of the statute; but they do suggest that the impracticality of handing over a copy of the warrant should not inevitably lead to the grant of what is discretionary relief. In these circumstances I would confine the 3rd Claimant's relief to a declaration that there was a breach of section 16(5)(c), leaving it open to the 3rd Claimant to argue what the consequences may by an application to the Crown Court

under s.59 CJPA for the return of property unlawfully seized or, in the event of a prosecution, under s.78 of PACE."

Section 59 of the English Criminal Justice and Police Act deals with applications for the return of property seized in exercise or purported exercise of powers of seizure by law enforcement bodies, the equivalent provision is to be found in s.38, CPEA. Section 78, PACE which deals with the exclusion of unfair evidence finds its equivalent in our s.332 CPEA which provides:

"332.(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section affects any rule of law requiring a court to exclude evidence . . ."

73 There are parallels between the present case and *Glenn & Co.* in that there was a valid copy of the warrant (as amended) with this being shown to Mrs. Miles. I also do not ignore that a copy of the unamended version was provided and that the only difference between the two was that the unamended reflected "No. 2" as opposed to "No. 5." Consequently, I struggle to see what prejudice if any the failure to provide a copy of the amended warrant caused. However, there is a material difference in that in *Glenn & Co.* a copy was provided at the conclusion of the search whilst in the present case the copy was not provided until some 13 days later. In any event, I respectfully prefer and adopt the analysis of Elias, L.J. precisely because, as Simon, J. puts it, the Codes cannot override the express provisions of the statute. The plain reading of the statute is, adopting the language of Kennedy, L.J., that any failure to comply with the requirements of either s.19 or s.20 renders the whole process of entry and search unlawful.

74 It may be that the nuances between *Bhatti* (1) and *Glenn & Co.* (3) are a distinction without much practical difference. Particularly in cases involving allegations of financial crime, where the items taken by officers will almost invariably be either documentation and/or digital information contained in electronic devices, it is likely that the police, whilst having to return the device and/or documents seized with the warrant, will have either digital or physical copies in their possession. They can of course also apply for a fresh warrant. Whatever may be the position it follows from my determination that the actual physical material obtained in the search of No. 5, The Island is to be returned. Whether copies which may have been made and are in the possession of the RGP can be used for the purposes of

a criminal trial falls to be determined in any such proceedings in accordance with s.332, CPEA.

75 Ground 3 succeeds. There was undoubtedly a trespass by the RGP officers when they entered and remained within No. 5, The Island pending the amendment of the warrant and in any event the failure to provide a copy of the amended warrant rendered the search unlawful. The material obtained on the search of those premises is to be returned and the question of damages and costs will have to be considered at a further hearing following the handing down of this judgment.

76 Orders accordingly.

*Judgment accordingly.*