IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM THE CROWN COURT SITTING AT SOUTHWARK

JAMES ONANEFI IBORI

Applicant

V

THE CROWN

Respondent

APPLICANT'S GROUNDS OF APPEAL

References to documents are as follows

"Ws" followed by a page number	*The page number of witness statements taken for the prosecution of Bhadresh Gohil and first disclosed to the Applicant on the 29th March 2016*
"Xp" then a page number	*Page number of exhibits to the above witness statements – again disclosed to the Applicant on the 29th March 2016*
"D", then a page number	*Page number of disclosure made by the Prosecution from March 2016 to February 2017*

The Police Operations and Key Personnel

1. Operation Tureen was the name of the original Metropolitan police operation into the Applicant, his family and associates arising out of his Governorship in Nigeria, misappropriation of assets and laundering in this jurisdiction. This commenced in 2005 and led to the conviction of the Applicant in February 2012, and Bhadresh Gohil (and others) on the first indictment (mainly referred to in the papers as "the money laundering indictment").

2. Operation Augen was a Met police investigation arising out of Tureen. It concerned a mobile telephone company sale fraud and money laundering investigation. It led to the Applicant's conviction in February 2012, on the second indictment (and that of Mr Gohil). It is often referred to in the papers as the "V-Mobile Indictment" after the name of the telephone company.

3. Both Tureen and Augen were investigated by "SCD6" of the Metropolitan Police Service ("MPS"). This unit was established to investigate foreign corruption and appears to have been largely funded by the Department for International Development. DC McDonald was the officer in charge of the investigations. The CPS lawyer was David Williams. Counsel (for 10 years until January 2016) were Sasha Wass QC and Esther Schutzer-Weissman.

4. Operation Limonium was an internal investigation by the Directorate of Professional Standards ("DPS") of the MPS. It took place in 2007, and was into the practises of RISC, a private inquiry agency, into corrupting officers of the MPS. It focussed heavily on corruption by RISC (through one Clifford Knuckey) of DC McDonald. No prosecution arose from Limonium. It was closed abruptly in November 2007. A/DI Tunn was the officer in charge of the investigation (from July 2007) and DCS Spindler had oversight.

5. Operation Tarbes was an investigation into a complaint made by "Liberty Media" in August 2011 into RISC's relationship with the MPS, again making allegations against the MPS, SCD6 and DC McDonald in particular. The complaint seems to have originated from Mr Gohil. It too was investigated by the DPS of the MPS. The officers were DCI Neligan, DS David Wright and (again) DCS Spindler had oversight. This led to i) DC McDonald's arrest in May 2012, ii) a decision by the CPS not to prosecute him in June 2013 and iii) the prosecution of Mr Gohil for making a false allegation of corruption against Mr McDonald. This prosecution collapsed in January 2016, when the prosecution offered no evidence, accepting that the allegation of corruption was (or at least appeared to be) true.

6. Again, Ms Wass and Ms Schutzer-Weissman had the conduct of the Tarbes prosecution. Michael McCrone was the CPS lawyer in the Gohil prosecution. Another CPS lawyer, John Davies took the decision (with his superiors) in June 2013, not to prosecute DC McDonald.

7. Operation Phoenix was set up by the CPS in early 2016 following the collapse of the Gohil & Knuckey Tarbes prosecution. The purpose of Phoenix is (inter alia) to review the safety of the convictions, including that of the Applicant. The CPS lawyer is Rose-Marie Franton and counsel is Jonathan Kinnear QC and Michael Newbold.

8. Since March 2016, Operation Phoenix has led to the disclosure by the CPS to the Applicant of 13,274 pages of material. Virtually all of it was previously withheld. The Crown Court has been told by counsel for the CPS that this disclosure process is not yet complete.

9. These Grounds of Appeal are therefore unperfected and provisional.

Introduction

10. On 27th February 2012, before HHJ Pitts, the Applicant pleaded guilty to 10 counts of fraud and money laundering (the money laundering and V mobile indictments). On the 17th April 2012, he was sentenced to a total of 13 years' imprisonment.

11. He appealed against sentence and his appeal was dismissed. He did not appeal against his conviction.

12. He now applies for permission to appeal all of his convictions, and that the time for making this application be extended, on the grounds that, prior to his aforesaid pleas of guilty, and unknown to him at all material times, the investigating and prosecuting authorities were guilty of such misconduct that the proceedings were irremediably tainted and were an affront to justice, namely by:

    a) The police officer in charge of conducting the investigation into the conduct of the Applicant in the course of Operation Tureen, DC John McDonald ("DC McDonald") receiving unlawful and corrupt payments from a private detective (and former police senior officer) in 2007 and 2008;

    b) When conducting an investigation into the conduct of DC McDonald, in 2007, the MPS falsely and dishonestly stated that there was no evidence of such corruption, when there was such evidence, and falsified records of such investigation to show that there was no such evidence;

    c) Notwithstanding the fact that the MPS were aware of the aforesaid corruption, they permitted DC McDonald to continue to act as Officer in the Case, with the intention of concealing the aforesaid corruption;

    d) The Prosecution failed to disclose to the Applicant that, as was the fact, DC McDonald was in receipt of corrupt payments, and had been investigated for corruption, notwithstanding that DC McDonald was a witness for the Prosecution and had conducted the investigation against the Applicant;

e) From December 2011 to February 2012, when requested by the Applicant's solicitors to disclose whether there had been any investigation into the conduct of investigating officers, and to disclose particulars of such investigations, the Prosecution repeatedly denied that any officers were under investigation, and falsely and dishonestly stated that there was nothing to disclose, notwithstanding the aforesaid 2007 investigation; that the MPS were aware that DC McDonald had received corrupt payments; and that there had been commenced, in late 2011, an additional investigation into whether DC McDonald had received corrupt payments in relation to his investigations and conduct of the case against the Applicant. In so doing the Prosecution misled the Court and the Applicant;

f) The Prosecution induced the Applicant to consent to an amendment to a count in an indictment by misleading the trial judge and the Applicant and his lawyers into believing that there was no substantial change in the charge, whereas the charge had been changed from an allegation that criminal property amounting to $37 million were another person's criminal benefit, to an allegation that the $37 million was the Applicant's own criminal benefit. The Applicant pleaded guilty in the mistaken belief that there had been no misconduct on the part of the investigatory and prosecutorial authorities;

g) After the Applicant had pleaded guilty, the Prosecution (taken together) has attempted to conceal the true state of affairs, by hiding the fact that the above misconduct had occurred. This additional misconduct included continuing to inform the Applicant's solicitors there was nothing to disclose and instructing counsel to inform the Court of Appeal (Criminal Division) that there was no truth in assertions made by Bhadresh Gohil (Mr Gohil), an applicant for permission to appeal conviction that, in connection with his investigations in relation to Operation Tureen, DC McDonald had received corrupt payments, and that there was no material to disclose;

h) The Crown Prosecuting Service ("CPS") caused the MPS to charge Mr Gohil with perverting the course of justice by making false allegations that McDonald was corrupt, notwithstanding that, at all material times, the MPS and the CPS were aware that McDonald had received corrupt payments;

13. The Prosecution has failed to disclose the aforesaid misconduct to the Applicant and to disclose to him that he and the Court had been misled prior to his pleas of guilty.

The narrative

NOTE 1 : The source of some of the events and documents referred to below are facts and matters disclosed to the Applicant by the Prosecution in documentary form. References to "REDACTED" below are to information on disclosed documents which have been redacted by the Prosecution.

NOTE 2 : The Prosecution has disclosed to the Applicant a substantial quantity of internal police and prosecution documents. Given that it is the Applicant's case that police and prosecutors have falsified documentation in order to conceal misconduct (and that there are conflicting allegations of fact between police and prosecutors) the references made to internal documentation by the Applicant below do not amount to an admission that the documents are genuine, or made on the dates indicated thereon.

Pre-conviction

14. Until 2007, the Applicant was Governor of the Delta State of the Federal Republic of Nigeria. In about 2005, the Economic and Specialist Crime Command ("SCD6") of the MPS commenced an investigation into allegations of criminal conduct by the Applicant, his associates and members of his family.

15. The investigation was funded by the Department for International Development from at least as early as 2006 [D 4537/4539]. By 2013, the funding for the MPS on anti-corruption from DFID was about £4.9m [D 5141]. From the disclosure now made, it is apparent that the prosecuting authorities were reliant on the costs of the investigation and the prosecution being recouped from the proceeds of any confiscation order in the event of conviction.

16. At all material times, from March 2006, the Officer in charge of the Case was DC McDonald.

17. In connection with the investigation, in April 2006, DC McDonald arrested, inter alia, the Applicant's sister, Christine Ibori-Ibie; his mistress, Udoamaka Onuigbo, and Adebimpe Pogoson ("the three women"). In November 2007 he arrested the Applicant's wife, and in 2011 arrested the Applicant.

18. In about September 2006, Mr Gohil, a partner in the firm of Arlington Sharmas instructed another solicitor, Ian Timlin, of the firm Speechly Bircham ("Timlin") in relation to the criminal investigation.

19. In about November 2006, Timlin engaged Clifford Knuckey ("Knuckey") of RISC Management Ltd ("RISC"), a firm of private inquiry agents. Thereafter Mr Gohil and Timlin gave instructions to Knuckey to make enquiries and to provide advice. From time to time there were meetings which the Applicant attended, usually by telephone, but largely meetings and communications were between Timlin, Mr Gohil and Knuckey. Mr Gohil also instructed Knuckey to act and advise on his own behalf.

20. Knuckey was a retired MPS Detective Inspector. Immediately before retiring in about 2003, he had been a member of SCD6, and senior officer to DC McDonald. RISC seems to have been entirely staffed by ex-MPS officers. One of RISC's employees and another ex-MPS employee was David Thomson. He provided valuable information to DC McDonald on the 16th February 2007, when he told DC McDonald that "enquiries *[sic]* in Switzerland re air craft you are on the right track" and that the Applicant owned property in Hampstead. DC McDonald described this as "A1" quality intelligence.

21. Later, the MPS obtained an asset restraint order. Included was money which had been raised in Switzerland for the purchase of an aircraft (over $20m) and a house in Hampstead.

Operation Limonium

22. The Directorate of Professional Standards ("DPS") is the department of the MPS responsible for the investigation of police officers suspected of misconduct.

23. On the 26th March 2007, the Intelligence Development Group ("IDG") of the DPS decided to initiate an investigation into an allegation that RISC was attempting to access highly confidential information from serving MPS officers, including DC McDonald [D 4792]. The investigation was given the title "Operation Limonium".

24. Authorisation for directed surveillance against Knuckey (and his superior at RISC, Keith Hunter) was given on the 4th May 2007, the [REDACTED] DS saying that they both "have a history of corruption" [D 4712].

25. On 13th June 2007, DC [REDACTED] completed an application for access to the AWARE accounts of identified officers (including DC McDonald). The application was signed by DS [REDACTED] as supervisor, and was supported by a document dated 13th June 2007, entitled "Operation LIMONIUM: CLIFF KNUCKEY". The maker of the document is

unknown to the Applicant. The document stated that Knuckey had "2 corrupt contacts/sources of information within the MPS", one of whom was identified as DC McDonald. This seems to have been part of the intelligence gathering by IDG [D 6547].

26. Monitoring of DC McDonald's internal MPS office line then started on the 21st June 2007 [D 4667]. So far as the Applicant is aware, this is the only telephone line of DC McDonald's that was monitored.

27. On 10th July 2007, a [REDACTED] police officer applied for further monitoring of DC McDonald's telephone on the grounds that current intelligence and research indicates that DC McDonald was "involved in a corrupt relationship with KNUCKEY" and that DC McDonald had met with members of RISC since the 21st June 2007, and is believed to have passed material on the Applicant to Knuckey [D 4665].

28. At about this time and probably on the 11th July 2007, the IDG produced a final report for the DPS to take the investigation forwards [D 6442]. This report is clear that RISC represents a serious threat to the integrity of the MPS. It is described as "NIM Level 3 Organised Crime Network". It is said that:

> "Several strands of intelligence reporting…repeatedly describe Risc as corrupt and that significant revenue streams rely on corruptly obtained information much of it from the MPS."

29. It also stated that intelligence indicates that DC McDonald has passed information to Knuckey on the Ibori case and that there had been telephone contact between RISC and SCD6 on more than 300 occasions. Financial analysis had been done on McDonald's bank accounts and his personal financial position was described as "strained" [D 6470].

30. The Report identified that DC McDonald was withholding details of his contacts with RISC from the MPS, failing to declare at least one meeting with Knuckey [D 6471]

31. The Report is clear that RISC has a:

> "proven corrupt intent…Risc is trapped in a cycle of corrupt activity to fuel its business"

32. The contents of this Report seem to have been the subject of a "personal presentation" to DCS Spindler on the 5th July 2007 [D 4803]. Op Limonium investigation thereafter moved into the next stage [D 4792] and A/DI Tunn was the officer in charge of it. His supervising officer was DCI Wallace. As is MPS procedure a "decision log" was kept of the investigation.

33. On 9th August 2007 A/DI Tunn, recorded in the First Decision log for Op Limonium that he had decided [D 4561]:

> "to mount a covert proactive operation in order to undertake a scoping exercise and assess the threat and accuracy of intelligence concerning RISC Management Ltd and the MPS."

34. He stated that his reasons were:

> "It is apparent from information known to me at this stage that intelligence held by the IDG indicates that RISC Management Ltd or individual employees therein are either in corrupt relationships with serving police officers, or are seeking to cultivate MPS officers for sources of information leakage."

35. However, he also stated that he had not had sight of this intelligence nor did he know its origin or accuracy.

36. On a date in 2007, unknown to the Applicant the MPS received intelligence from HMRC that DC McDonald was providing information to Knuckey in return for payments. The Applicant is unable to state the identity of the recipient of the information, or the manner in which the information was conveyed, or the precise nature of the information or its source. This has been withheld by the Prosecution, although referred to by them in a disclosure management document in 2016, and other material as "SOURCE A".

37. However, counsel Ms Wass had conduct of the series of cases arising out of these investigations for over 10 years from some time in 2005 to the beginning of 2016. She has also had access to the redacted material, not available to the Applicant. She states, in a witness statement dated 16th July 2016, and prepared for this potential appeal, that after she learned of SOURCE A on 13th January 2016, she concluded that:

> "*Officers investigating Operation Limonium were aware in September 2007 that the case officer in Operation Tureen,* (i.e. DC McDonald), *had been paid money for information*."
>
> [D 5387]

38. On 13th September 2007, A/DI Tunn recorded in the Op Limonium Decision Log No 3, that intelligence received on 10th September 2007 "from a non-attributable source" indicated that Knuckey was in contact with MPS officers engaged in the Applicant's case, and had recently met and paid DC McDonald for information. No reference was

made to SOURCE A, and the nature and source of the intelligence was not specified. He also wrote that "Further non-attributable intelligence" had suggested that Knuckey intended to meet with DC McDonald in a central London public house on Monday 17th September 2007 [D 4571]. In fact, the meeting had already taken place, on 12th September. The decision log was an internal police document which would not be expected to be disclosed to defendants in criminal cases. However, the absence of any detail concerning the items of intelligence concealed the true nature and source of the information which had been received concerning DC McDonald's misconduct.

39. On 17th September 2007, a [REDACTED] PC applied for permission to conduct covert monitoring of, *inter alia,* DC McDonald's telephone, and to obtain transcripts of telephone conversations. The purpose was expressed to be to prove or disprove misconduct by DC McDonald. No reference was made to SOURCE A or to the source of any intelligence [D 4658]. No transcripts were made of DC McDonald's telephone conversations or, if they were, they have not been disclosed or summarised.

40. In approving the application, DS [REDACTED] stated the importance of Op Tureen highlighting the restraint of £20m and that, if it was compromised, it would have a detrimental effect on the MPS's ability to conduct money laundering investigations in the future [D 4663]. The Applicant will submit that by "compromised" the officer was referring to what would happen if it was made public that DC McDonald had acted corruptly in carrying out the investigation. Although the application was granted, as said, no telephone transcripts have been disclosed.

41. On 15th October 2007, A/DI Tunn attended a meeting with DCS Spindler to review Op Limonium. The Applicant does not know what transpired at the meeting, and no notes of the meeting have been disclosed. In a document purportedly drawn and printed on 16th October 2007 at 1558 hrs, said to be made for the meeting of 15th October with DCS Spindler [D 4646], in relation to the investigation into the alleged misconduct by McDonald, the document stated (*inter alia*):

> "1. Since 18/09/2007-No contact between KNUCKEY and McDONALD -no evidence of corrupt activity".

There was no physical surveillance during this period, and there was no basis for these assertions.

> "2. SX billing on phone number attributed to KNUCKEY - seven calls are made between the mobile attributed to KNUCKEY and the IPS line attributed to MacDonald & Radcliff (SIC) in the whole year period April 2006 to April 2007, all from the MPS Line to the Mobile.

"3. Billing for RISC management has been obtained for June and July 2007. Identifies 10 calls to MPS landlines - enquiries in hand to develop numbers and other billing".

"4. Mobile billing requested and awaits"

Thus, the outcome of the telephone monitoring operation had not concluded.

"*5.* Intel of meeting on the 12/09/07 between KNUCKEY, BAKER and McDonald where KNUCKEY later says he had to pay for info."

No such intelligence had been recorded. In fact, A/DI Tunn had originally believed that the meeting was to be on 17th September, and briefed a surveillance team for that purpose.

"6. DS Mark Radford has taken over as case officer for IBORI trial.".

That was not true. McDonald remained the Officer in the Case for the Ibori investigation and trial until 2012, and also for the trial of the three women.

"7. Aware account examined-No corrupt activity identified - Email from Radford re concerns over KNUCKEY & also CV of Dave THOMPSON, another RISC employee."

"8. Latest intel that KNUCKEY has resigned - will leave in 4 weeks to start new company up and take staff with him - Leaving do scheduled for 19th Oct ".

No such intelligence was recorded. In fact, Knuckey remained with RISC until 2009;

"9. Latest intel that McDONALD does not perceive KNUCKEY as corrupt.".

Given that Op Limonium was a covert operation, it is unclear when and in what circumstances McDonald made such an observation. This paragraph has been redacted in another copy of this report disclosed by the Prosecution.

"10. Latest intel that McDONALD recently lost a court hearing re IBORI."

"11. RADFORD has notified SCD6 management of his concerns over KNUCKEY".

This was very much an over simplification. On 22nd March 2007, DS Radford emailed his senior officer (copying in DC McDonald) informing him that Knuckey had been making urgent attempts to contact DC McDonald [D 4577/6494].

42. The effect of the above erroneous statements by A/DI Tunn was to conceal the serious and credible source of the intelligence, SOURCE A and the fact that, from September 2007, the police were aware that DC McDonald was guilty of misconduct by receiving corrupt payments. It is the Applicant's case that this document was written after the meeting with DCS Spindler, and not before.

43. Mr Spindler had (apparently) seen the worrying IDG intelligence about RISC in general and McDonald in particular some three months earlier.

44. A/DI Tunn has purported to make Decision Log No 6 in Op Limonium [D 4574]. The document was purportedly made on 16th October 2007, at 1313 hrs. He stated:

> "Other intelligence sources have indicated that KNUCKEY has told third parties that he has met with McDONALD and paid for information, but there is no evidence or other intelligence to corroborate this, and I have to bear in mind the possibility that KNUCKEY may be lying in order to increase his own fees. Other intelligence indicates that McDONALD himself does not believe that KNUCKEY is not corrupt. Recent intelligence also indicates that KNUCKEY has resigned, and will be leaving RISC within a four-week period to start up his own company."

45. The Op Limonium documents do not contain any record of either "other intelligence", or the sources thereof.

46. A/DI Tunn concluded:

> "At this stage, I have no corroborative intelligence or evidence that DC McDONALD has passed any sensitive intelligence on the IBORI case, or that the case itself has been damaged or compromised. With the departure of KNUCKEY, any possible threat to that case will also be lessened."

47. He decided that the investigation should remain in its "scoping stage", although efforts were being made with supporting agencies to enhance and develop intelligence. His decision log contained no reference to the source of the intelligence that DC McDonald was receiving corrupt payments from Knuckey, or reference to any communication from HMRC or anything which could have been SOURCE A. As a result, DC McDonald continued to be the Officer in the Case in relation to the Applicant.

48. No further work was effected or recorded by MPS in relation to Op Limonium until 19th November 2007, when further surveillance was discontinued on the grounds that telephone monitoring had shown that the target individuals were not engaged in corrupt activity with the persons they were talking to [D 4704]. No such monitoring records have been disclosed to the Applicant, and, so far as the Applicant is aware, the telephone billing records, which were incomplete on 15th October 2007, were neither received nor sought. The MPS did not record that, as was the fact, Knuckey did not leave RISC; that DC McDonald continued to be the Officer in the Case of the Applicant, and did not record whether Knuckey had any further meetings or communications with DC McDonald.

49. This then seems to be the conclusion of the Limonium investigation [D 4000].

50. On any view, the abrupt closure of the investigation is perplexing. RISC is initially identified as a corrupt private inquiry firm, described as a criminal organisation, who were actively engaged in extracting information on a current case, the investigation into the Applicant. This was, it seems being treated very seriously and at a high ranking level in MPS involving the personal involvement of DCS Spindler. Then a short period of limited investigation was undertaken involving techniques which would seem unlikely to provide positive evidence of corruption, yet at the same time reliable evidence (SOURCE A) demonstrating DC McDonald to be taking bribes is elicited. Then there is an apparently un-minuted meeting between DCS Spindler and the investigating officer and the Operation is suddenly shut down.

51. Although the Prosecution has taken statements from Counsel and CPS lawyers and an officer who was appointed in 2013 to investigate Gohil, no statements have been taken from anyone involved in Limonium (in particular DCS Spindler and A/DI Tunn).

52. The obvious inference is that the MPS deliberately chose to ignore the reliable and credible intelligence, set out in full in the IDG Intelligence report and confirmed by SOURCE A, concerning DC McDonald and Knuckey for the following reasons:

    a) It could compromise the financial support given to the MPS by the Department for International Development ("DFID") if it was publicised that DC McDonald was corrupt;

    b) It would adversely affect the reputation of the MPS with foreign governments and police authorities if it was publicised that its own officer of the SCD6, the department of the MPS responsible for investigation corruption was, himself, corrupt;

c) The MPS could rely upon information supplied by Knuckey to DC McDonald in connection with their investigation and prosecution of the Applicant; the three women; and others;

d) If the true source and credibility of the information concerning DC McDonald's corruption, the Prosecution would have been obliged to disclose it to the Applicant, or undergo the risks of a Public Interest Immunity application, with uncertain outcome, in the event of the record being read by the CPS or counsel.

53. In fact, Knuckey did not leave RISC until at least March 2009. The ledgers and records of RISC disclose that Knuckey continued to make payments to "confidential" sources. An example concerns a police interview which Gohil was due to undertake in April 2008. On 3rd February 2013, DS David Wright (NB to be distinguished from William Wright who was an officer involved in Limonium) made a witness statement to which he exhibited a schedule which he had prepared from the original RISC documentation. The entry for 8th April 2008 [Xp 2654] disclosed that Knuckey was:

> "From 6918. Engaged with source in eliciting information re forthcoming interview strategy to be deployed by police and obtaining general overview of police position to guilt or innocence of (Gohil)"

54. On the same day the RISC records show a £5,000 payment by Knuckey to a source [Xp 2654].

55. Moreover, on 23rd April 2008, Knuckey recorded that he had:

> "From 6198 Engaged with source in eliciting feedback of (Gohil)'s performance during earlier police interviews...".

56. "6198" was the RISC client file for Gohil. DC McDonald interviewed Gohil on 11th April 2008, having previously interviewed him on 7th November 2007.

57. On 3rd June 2008, an application was successfully made to the High Court for an assets restraint order against the Applicant. The application was supported by the witness statement of DC McDonald, dated 15th May 2008, in which he stated that, as was the fact, he had the conduct of the investigation into the financial affairs of the Applicant. In his 6th decision log for Op Limonium, A/DI Tunn had recorded that McDonald was no longer to have conduct of the restraint proceedings.

58. In connection with his duties as OIC, DC McDonald made 42 witness statements from 1st July 2007 to 11th May 2011; conducted numerous interviews, house searches and production order applications; and took scores of witness statements from Nigerian and foreign witnesses. One of the officers supervised by DC McDonald, DC Clark, in a witness statement dated 3rd June 2009, a colleague, stated that he and DC McDonald were the "two main witnesses in the Nigerian trial".

Another MPS investigation into DC McDonald – the Liberty Complaint

59. From 19th July 2011 to 23rd September 2011, a series of letters and documentation was sent by a purported organisation self-called "Liberty Media", but bearing an email address connected with Gohil, to the Prime Minister, the Metropolitan Police Commissioner, a member of Parliament, the Deputy Mayor of London and the press ["the Liberty Complaint"]. For the avoidance of any doubt, this complaint had nothing to do with the Applicant who knew nothing of it when it was made. The documentation alleged corrupt payments made by RISC to MPS officers, including DC McDonald, and included copies of RISC invoices and ledgers. These RISC documents detailed dates of meetings with police officers and other "sources" and payments to "confidential source[s]" of which the entries referred to above as exhibited by DC Wright are examples.

60. On 4th August 2011, the allegations and documentation were sent by "Liberty" to the Independent Police Complaints Commission [D 7125]. They were also referred to the IPCC by the MPS on the 14th October 2011 [D 4295/4300]. The IPCC decided to use the investigative services of the DPS (who were also investigating the Liberty Complaint). So, the investigation into police corruption became an IPCC supervised investigation, to be carried out by the DPS. The terms of reference between the IPCC and the MPS were:

> "Terms of reference.
> To investigate allegations that a private company RISC Management Limited is paying officers of the Metropolitan Police Service (MPS) to obtain sensitive information on cases that are being investigated by the UK authorities"
>
> [D 4398]

61. On 3rd October 2011, DI Greaney of the DPS prepared a 41 page assessment report concerning the allegations referred to in Liberty Complaint [D 6242] (referred to as "anonymous information on alleged corrupt activities") by RISC and SCD6 officers, including DC McDonald, which he submitted to DCS Heselden on 4th October 2011.

62. The report referred to DC McDonald and Op Limonium, and, having considered a schedule of telephone calls, DI Greaney commented about McDonald:

> "That calls are coming from McDonald's number to RISC is even more concerning. The calls would seem to bear the intelligence out; certainly the level of contact is improper at the very least".

63. The report did not contain any reference to information supplied by HMRC, or to SOURCE A.

64. Any notion that there was no continuity between Op Limonium in 2007 and the renewed investigation following the Liberty Complaint can be dispelled. In fact, DCS Spindler assumed control over the Liberty Complaint from the beginning (as he had over Limonium), as Ms Wass makes clear in her statement at D5373.

65. One of the officers working on the Liberty Complaint in the DPS was DI Angie Clarke. By the 10th November 2011, she had read the Limonium documents, including the decision logs and intelligence Report [D 4814-4816] and discussed the issues with DCI Neligan (also of the DPS) and William (Bill) Wright) who had been the original Limonium officer [D 4817]

The Applicant's disclosure requests prior to his forthcoming trial

66. Meanwhile, the Applicant's trial for money laundering arising of Op Tureen was due to commence on the 27th February 2017. The Applicant's solicitors were contacted by journalists of the Evening Standard who told the solicitors about the Liberty Complaint and that it concerned the officers investigating the Applicant. So on the 21st November 2011 the Applicant filed a skeleton argument paragraph 23.1 of which stated:

> "23.1 The Press has informed James Ibori's instructing solicitors that Metropolitan Police Officers involved in the investigation of James Ibori are currently the subject of an internal police investigation relating to the receipt of money for providing information in respect of the present proceedings to third parties. Abuse of process arguments may be made when fuller disclosure of these matters has been made by the Crown."

67. Within a few days of this and on the 1st December 2011, Ms Wass telephoned DCI Neligan of the MPS with reference to the Liberty Complaint. According to Ms Wass, this was her first contact with Mr Neligan [D 5330]. She had identified the allegation that £5,000 had been paid by RISC to McDonald for information. She had apparently come to the immediate conclusion there was nothing to disclose [D 4806]. This is surprising,

given that either i) DCI Neligan had reviewed the Limonium file and the wealth of material supporting corruption was known to him or ii) DCI Neligan had not reviewed or been apprised of it (unlikely given his meeting with DI Clarke who had), in which case it was far too early to express any opinion on disclosure obligations.

68. Ms Wass forwarded her negative opinion on disclosure to the CPS lawyers that day [D 4806]. The next day, the 2nd December 2011, she addressed the Southwark Crown Court in a preliminary hearing in the Applicant's case. She could not have expressed herself more strongly in respect of disclosure saying:

> "I have spoken to the Department for Professional Standards within the Metropolitan Police who are dealing with the matter and I say now formally there is no disclosure and there is nothing to assist the defence, there is nothing that might undermine the prosecution case. There is nothing to disclose following that suggestion that is being made. We are obviously taking it seriously. If there were any suggestion to support this type of allegation, of course it would be disclosable. I am aware of that and I am personally taking an interest in this and there is nothing to disclose. I think it is right the Court should know that straight away."

69. On 7th December 2011, addressing the Southwark Crown Court at a further preliminary hearing in the Applicant's case, Ms Wass repeated there was nothing to disclose. This was in the context of leading counsel for the applicant saying that it would be undesirable for there to be an internal investigation into the police itself at the time of the applicant's trial:

> MR PURNELL: …Can I finally say, and only do so by oblique reference, you see the matter we raised in paragraph 93 of our skeleton argument. I understand on Friday of last week, when there was a mention before you, my learned friend indicated that the matter which had been adverted to in the press was accurate in the sense that there was such an investigation.
> MS WASS: I am sorry to interrupt. I do not want Mr Purnell to mislead the court. He has not spoken to me about this this morning. I am not criticising him for not having done so. There is no suggestion that the report is accurate. There was a report. There had been matters investigated and I have found out, in effect, what it is all about. As I said to the court on Friday, there is nothing to disclose –
> MR PURNELL: My learned friend has not -- I have not finished what I was going to say. As I understand it, my learned friend has addressed the concerns, and I was aware that there is an investigation. What I do ask my learned friend to make clear to the court is that on the basis of her

knowledge and understanding, to confirm that that investigation will be concluded before the trial date of 14 February because clearly it would raise a major question mark if there was a continuing internal investigation at a time when this trial began in whatever form the trial will be.

70. This was the first time the defence and the Court were misled about disclosure. Over the next five years (to March 2016), this untruth was to be perpetuated. The Applicant cannot say whether Ms Wass had a genuine belief in what she said. If she did, given the fact that disclosure had not yet been properly considered and she had only concerned herself in it for less than 24 hours, the unqualified and unreserved way in which she expressed herself was reckless.

71. Then on 16th January 2012, the Applicant's solicitors submitted a written request for specific disclosure to the CPS [D 4807]. It included the following request:

> "3. Any information or evidence, which is relevant to the credibility, honesty and integrity of the investigating officers both in the UK and in Nigeria. In particular, what is the status of the current investigation by the IPCC into the conduct of investigating officers in the James Ibori case?"

72. The Prosecution failed to provide such disclosure.

73. This is despite the fact that on the 19th January 2012, and the 7th February 2012 (i.e. after Ms Wass had already said there was nothing to disclose), junior counsel for the Crown and Mr Williams, the CPS lawyer attended at the DPS and reviewed the material, including the Limonium documents. Junior counsel even records in an email of the 20th January 2012, that she saw an intelligence docket which showed that McDonald owed £14,000 at the relevant time and that he was identified as withholding details of his meetings and contact with RISC from the MPS [D 7118]. The police say counsel reviewed all the DPS paperwork which "included all of the sensitive intelligence logs from the 2007 investigation." [D 4430].

74. On the same date, Mr Williams wrote a report to the Director of Public Prosecutions telling him of the Applicant's disclosure requests [D 6885].

75. With no response to the disclosure request from the Crown, the Applicant's solicitors issued a formal application for disclosure pursuant to s.8 of the Criminal Procedure and Investigations Act 1996. This was on 3rd February 2012. Para 7.xi requests:

> "Any information or evidence relevant to the issue of the credibility, honesty and integrity of the investigating officers both on behalf of the Met Police and the EFCC" [*the Nigerian anti-corruption agency*].

76. The second of the two meeting referred to above (the 7th February 2012) was between junior counsel for the Prosecution Mr Williams, DI Clarke and another MPS officer of the DPS. As a result of this, junior counsel immediately prepared a written manuscript advice. The title of the advice, and the actual advice itself have been fully redacted [D 4828], and the Applicant reasonably believes that the advice related to disclosure in his case. On the same day, Mr Williams signed the Form MG6D, the schedule of sensitive unused material, which was a document not shown to the Applicant's solicitors [D 4827]. This Form contained references to some Limonium documents, but the Applicant is unaware of its full contents, except, since September 2016, he has learned that it contained the Limonium Decision Log 6, referred above.

77. The following day (8th February 2012), the Prosecution provided written responses to the Applicant's request for disclosure. In answer to question 3 above, the Prosecution response was:

> "35. There has been mention made in correspondence to HHJ Pitts and in open court about a complaint that may have been made to the Metropolitan Police. The Crown have stated that they have complied with their duties of disclosure but that there is nothing to disclose. There is no person who is currently or has recently been the subject of an investigation arising out of this complaint; although the provenance of the complaint is being investigated. The prosecutor and junior counsel have sought access to all records or material held that could relate to this and have reviewed the material with care."

78. This response was signed by leading and junior prosecuting counsel. It was false. DC McDonald had been one of the subjects of the 'complaint' and had been, and was currently the subject of investigation by the DPS, supervised by the IPCC. Furthermore, as a result of Op Limonium, particularly the IDG Report and the contents of SOURCE A supplied in September 2007, by HMRC, there was credible intelligence that DC McDonald was receiving corrupt payments from Knuckey. However, none of this was disclosed; instead DC McDonald continued to act as Officer in the Case and disclosure officer in respect of the Applicant's investigation and prosecution.

79. On the same day as the Crown's disclosure response (8th February 2012), Mr Williams wrote to a senior CPS lawyer about the requirement for a substantial confiscation order against the Applicant saying:

> "It is important that the costs of the prosecution are recovered so that for the CPS the prosecution is effectively cost neutral. Otherwise the costs will have to be found from another part of the CPS budget, which may make the taking on of similar cases in the future at a time when budgets are being cut, much more difficult to justify."
>
> [D 6889]

80. On the 27th February 2012, the Applicant entered pleas of guilty to the counts on the indictments in respect of which he now seeks leave to appeal. Prior to that, leading counsel for the Applicant specifically reminded both prosecuting counsel that he was relying upon their personal undertakings and assurances to him that there was no material capable of undermining the credibility or strength of the prosecution case. He received a categorical assurance that both counsel had examined 'the material' and that there was nothing "disclosable".

81. There is presently a conflict between prosecuting counsel, the CPS and the police, concerning who, in the Prosecution knew of the credible intelligence that DC McDonald was corrupt. Both leading and junior counsel claim that they were not aware of SOURCE A until 13th January 2016. Police witnesses have claimed that counsel was so aware. The Applicant has no means of knowing wherein lies the truth. It is sufficient for his purposes that the police were aware of considerable material supporting the assertion (by Mr Gohil) that DC McDonald was corrupt and in particular SOURCE A which showed that McDonald had been receiving corrupt payments in September 2007 to, at least, April 2008; that this was deliberately not disclosed to the Applicant prior to his pleas of guilty in spite of a request for specific disclosure on this issue; that the Applicant's counsel was deliberately lied to by the Prosecution (taken together); that the Court was also similarly deliberately misled; and that DC McDonald remained the Officer in the Case when the Applicant pleaded guilty; and had been the subject of an undisclosed investigation both before and at the time of the Applicant's request for disclosure.

The Applicant's pleas of guilty

82. The criminal proceedings against the Applicant involved two indictments. The first indictment, following Operation Tureen, contained 14 counts and was to be tried on 27th February 2012. The 2nd indictment, consisting of 9 counts, following Operation Augen, was not to be tried until later.

83. On the morning of Friday 24th February 2012, the Applicant's leading counsel wrote to the trial judge, HHJ Pitts, a letter which he copied to leading prosecuting counsel. In the letter he indicated the Applicant's intention to plead guilty to various counts in both

indictments. Of materiality to this appeal is the Applicant's intention to plead guilty to the 2nd indictment, and in particular Count 3.

84. The 2nd indictment charged the Defendant with:

    a) one count of conspiracy to defraud the two Nigerian states of part of the sale price of the shares which was paid to ADF "to a total sum to an invoiced value in excess of $37 million";

    b) conspiracy to make false instruments;

    c) jointly with identified others entering into a money laundering arrangement, knowing or suspecting that it involved using ADF "as a front to receive and launder on behalf of another person" sums relating to the bogus agreement "up to an invoiced total in excess of $37 million.

85. The letter indicated an intention on the part of the Applicant to plead guilty to 7 counts in the first indictment, and to the above 3 counts in the 2nd indictment.

86. Leading counsel for the Crown did not make any reply to the defence letter until the morning of Monday 27th February, when she sent an email to the judge, copied to leading counsel for the Applicant, and Mr Williams, of the CPS. Defence counsel received his email at 6.28 am.

87. There were attached to the email, copies of two amended indictments, and the email indicated that there would be an application to amend both indictments. This is how prosecuting counsel described the amendments:

> *"Essentially, the section 328 charges on the first indictment have been replaced with section 327 charges. This has been done at the suggestion of the defence during discussions last week. As far as the second indictment is concerned, Count 3 has been particularised."*

88. She stated that, "*in the light of* (the defence) *letter"* it was not imagined that there would be any objection. The email was copied to neither junior defence counsel nor the Applicant's solicitors, and no copy of the amendments was provided to them at the hearing that day.

89. In fact, the amended Count 3 of the first indictment was substantially different in effect from the original. Not only did it plead particulars (as indicated by prosecuting counsel in her email to the Court and to defence counsel) but it changed the entire nature of

the allegation. It now asserted that the entire proceeds of the VMobile fraud, amounting to UD$37 million, was the Defendant's own personal benefit. It was a very substantial amendment. It could have the effect of adding very substantially to any confiscation order.

90. The failure to disclose this important change to Count 3, and the statement by counsel that she did not imagine that there would any objection to the proposed amendments, seriously misled the Court and the Defence. Defence counsel did not observe the amendment to Count 3 of the 2nd indictment, and did not oppose the amendments. When in Court the judge said that the change to Count 3 of the 2nd indictment was to give particulars, the Prosecutor should have drawn his attention to the substantive amendment, but she didn't. The Applicant does not know who drew the amendment, but the effect of the covering email and what was said in Court had the effect of inducing the Defendant to plead guilty to a count which, unknown to him and his legal advisers was intended to inflate the confiscation order to be made by the Court.

91. The Applicant will apply under the provisions of section 23 Criminal Appeal Act 1968, to adduce in evidence at the hearing of the appeal, the witness statements of his leading and junior counsel.

The Applicant's Sentencing Hearing

92. On 16th April 2012, at the Defendant's sentencing hearing leading prosecuting counsel said *(transcript page 75 – 76)*:

> "As part of his defence to these charges Ibori has attempted to discredit the officers who have investigated his case and those of his associates. There was mention made in open court and in correspondence to your Honour about a complaint that may have been made to the Metropolitan Police. That allegation has been the subject of scrutiny and review and the Crown has stated in writing that they have complied with their duties of disclosure and that there is nothing to disclose which either assists Mr Ibori in this allegation or undermines the integrity of the officers. There is no person who is currently or has been the subject of an investigation arising out of this complaint, although the provenance of the complaint is being investigated.
>
> The prosecutor and junior counsel have sought access to all records and material held that could relate to this and have reviewed the material with care. As we have repeatedly stated, both in correspondence and in open court, had there been anything which either supported that accusation or

undermined the integrity of those who have investigated this series of cases over a number of years, it would have to have been disclosed to the defence."

93. This is a repeat of the untrue statements to the Court made in the response to the disclosure request. It can also be observed that counsel seemed to suggest that the Liberty Complaint originated from the Applicant (which it did not, as the Prosecution well knew) and relied on that false assertion as an aggravating factor.

94. Further, shortly thereafter, on the 23rd May 2012, DI White of the DPS stated to a solicitor acting for McDonald, in his formal interview under caution, that "We have intelligence that, that John MACDONALD met Cliff KNUCKEY on the 10th September 2007 and met him again on the 12th September 2007 with Rolly Baker" [D1744].

95. Since this plainly arose out of the Limonium document, which junior counsel and Mr Williams had reviewed in January and February of 2012**,** it is not understood how Ms Wass could truthfully assert at the sentencing hearing that there was nothing which undermined the integrity of the officers.

Supporting evidence of bad faith and malicious non-disclosure

96. After the Applicant's conviction, the Prosecution continued to conceal the corruption and made no disclosure of any part of it. This is in spite of increasing evidence of corruption emerging. This vividly demonstrates that the decisions not to disclose were deliberate and part of a course of conduct designed to maintain the convictions and the confiscation applications at all costs.

97. The evidence of this arises in the context of the continuing proceedings against Mr Gohil because i) Mr Gohil appealed against his convictions and the Prosecution (as it now admits) misled this Court by telling the Court there was no evidence of corruption and ii) the Prosecution then prosecuted Mr Gohil for perverting the course of justice by making false allegations against DC McDonald when it knew (as it now admits), that the allegations were true.

98. On the 11th April 2012, the CPS and junior counsel for the Prosecution, were told that the police wished to have an "oral briefing" on Op Limonium [D 4919]. From what happened thereafter, it would seem that this oral briefing was to be about the source of some intelligence. But although mentioned from time to time, the briefing was never pressed and did not occur.

99. Then at the beginning of May 2012, DCS Spindler (who had overseen Limonium and had overall responsibility for the ongoing Liberty Complaint) and Commander

Rodhouse of the MPS decided to brief the press. The motive seems to have been to deflect press reporting of corruption in the MPS, and the apparent inactivity of the investigators. In advance of the press briefing, the MPS press officer sent an email to DCI Neligan who was to front the case for the MPS giving Neligan a purported answer to the press complaints:

> "at the moment the documents are under investigation not the officers…don't go into easy checked fact, which Risc would know, they may ask why we didn't check it if is so easy to check"
>
> [D 1622]

100. At the press briefing DCI Neligan suggested that the invoices from RISC to Speechly Bircham could be false, but he admitted that in the 8 months of so since the police had the Liberty Complaint and the invoices, they had not checked their accuracy with Speechly Bircham. DCI Neligan said that the reason for this was to avoid "scuppering a multi-million pound investigation". In fact the invoices were genuine, a fact confirmed by Speechly Bircham.

101. DC McDonald was arrested shortly thereafter on the 23rd May 2012. Two days later, junior counsel e-mailed the CPS and leading counsel proposing that DC McDonald should be retained on the case as to remove him would send out "completely the wrong message" [D 6907].

102. Shortly after this on 1st June 2012 DC Palmer of the DPS obtained a production order for DC McDonald's banking records. This showed increasing indebtedness from January 2006 and DC McDonald drawing cash out of one account and (apparently) paying into another. DC Palmer described his finances as under "considerable pressure" [Sp225]. In the Tarbes prosecution of Gohil which followed, the bank records themselves were never disclosed to Gohil, despite the court ordering it. They still have not been disclosed to the Applicant.

103. On the 10th July 2012, Mr Williams and both leading and junior counsel again reviewed material at the DPS of the MPS [D 4857]. This included the invoice narrative showing Knuckey meeting with a confidential source on the 10th September 2007 [xp 13], an SB attendance note dated 11th September 2007 where Knuckey told SB that he had met a police officer the previous day and would be meeting McDonald in the next couple of days, then a further invoice narrative for the following day (12th September 2007) which referred to Knuckey meeting and paying a confidential source £5,000 p[xp13] and extracts from RISC's computer material showing that RISC raised £5,000 in cash on the 12th September 2007. They would also have seen the meetings and payments

made by Knuckey in April 2008 relating to the interview carried out by DC McDonald with Mr Gohil, referred to above.

104. This material was all part of the Liberty Complaint, seen by the Prosecution before the Applicant pleaded guilty (save the evidence of cash delivered to RISC) and was now shown to be genuine.

105. There is no sensible basis that this material could be described as not disclosable on the issue of whether DC McDonald took bribes from Knuckey. However, two days later the CPS filed a document in opposition to Gohil's application to adjourn the confiscation proceedings against him (because of his allegations against McDonald). In that document, the CPS said there was nothing to disclose, there had been no PII application and there was nothing which undermined the case for the Prosecution or assisted the Defence.

106. At a consultation with Ms Wass and Ms Esther Schutzer-Weissman on the 24th September 2012 with Mr Williams and a Tarbes officer (DI White), counsel was told that nothing had come to light to show DC McDonald had taken a corrupt payment and counsel advised nothing was disclosable [D 4494/4874]

107. The Applicant's solicitors became aware of the investigation into McDonald and wrote to Mr Williams of the CPS on the 2nd November 2012, asking if there was anything to disclose [D 4879]. There was no reply for 6 weeks until the 11th December 2012 when the Applicant's solicitors were informed tersely and untruthfully:

> "There was no material to disclose in February 2012. That remains the position to date"
>
> [D 4899]

108. On the same day in a response to Gohil's appeal to this Court, the Crown described Gohil's suggestion that Knuckey paid DC McDonald for information as "fanciful and devoid of any factual basis" [D 5302]

109. The Applicant's solicitors wrote to the CPS again on the 16th January 2013, asking various questions about disclosure, including what investigations have been underway by the DPS and when the prosecution first knew of the DPS investigation and examined material obtained by it [D 4905].

110. By 19th March 2013, the DPS had established the extent of payments by RISC to "sources" and it appeared to be over £300,000 from August 2006 to October 2008. [D 4337]. They had also determined that cash to the value of £5,000 was delivered to RISC

on 25th March 2008 and allocated to an Ibori payment [Ws 28/493] They had known from the Liberty Complaint in August 2011 that on the 8th April 2008 the RISC invoice narrative showed £5,000 being paid to a source in the Gohil and Ibori case [Xp 2654].

111. On the 11th April 2013, junior counsel for the Crown and Mr Williams met with the DPS. They were given a schedule of 22 telephone calls between RISC and DC McDonald between July 2006 and October 2007 [D 2680]. This was emailed to Ms Wass on the 15th April [D 7249]

112. 2 weeks later, on the 25th April 2013, DS William Wright, the original officer in Limonium made a statement which was later served in the Tarbes prosecution of Gohil. He had been one of the officers in the Limonium Operation. He said Limonium began on the 11th July 2007. This was not true as the intelligence gathering began in March 2007. He also said that "No evidence of any criminality or wrongdoing was identified by any individual" [D 4000/ s219]. This too was not true as Limonium produced overwhelming material demonstrating corruption between RISC and the MPS.

113. On the 5th April 2013, there was a meeting between DS Wright of the DPS and Mr Davies (who was to take the decision whether to prosecute DC McDonald) [D 5499]. DS Wright believes he told Mr Davies about Decision Log 3 and it was highly likely Mr Davies was told about Source A [D 5499-5600]. This is untrue.

114. On the 15th May 2013, there was a disclosure review at DPS attended by both leading and junior counsel, Mr Williams and DPS officers (DCI Neligan and DS Wright). Counsel seems to have accepted that the 11th September 2007 SB attendance note "may be disclosable" [D 4982]. Ms Wass's recollection of this meeting is that she was told that there was nothing from Limonium that would "impact upon this investigation" [D 5368] and that she concluded it was not necessary to inspect the Limonium papers. She describes what she was told by the DPS on this day as

> "disingenuous and wholly inaccurate" [D 5377]

115. Shortly before the 26th June 2013, DS Wright prepared a form of words regarding Limonium and in particular Decision Log 3. It was sent to Mr Williams with a reminder from DS Wright that Mr Williams had seen DL 3 "very early in our investigation". In context, that can only mean when Mr Williams and junior counsel attended DPS in January and February 2012, just before the Applicant's pleas. The form of words was [D 5194]:

> *"Decision number 3 in the Op Limonium decision log dated 19/09/07 suggests there was intelligence that DC McDonald had been paid money by Cliff Knuckey*

for information. No material now exists that corroborates this Decision Log entry. This Decision Log entry is the only existing record of this information held by the MPS".

116. This was forwarded to Ms Wass and Ms Esther Schutzer-Weissman who say that they believed at the time the source was anonymous [D 5306/5404].

117. This form of words is highly deceptive as DS Wright knew the source of information that Knuckey bribed McDonald is [SOURCE A] and reliable [see eg Wright statement at D 5504-5506a]

118. On the 10th July 2013, junior counsel undertook a further disclosure review at the DPS for the purpose of Mr Gohil's forthcoming appeal. Numerous documents were reviewed and considered for disclosure, including the schedule of phone calls between RISC and DC McDonald, the evidence of payment of money (including cash delivered to RISC for payment of source, the RISC invoice narratives and the 11th September attendance notes). Some disclosure to Mr Gohil was advised [D 5105].

119. On the 11th September 2013, Mr McCrone was appointed as the CPS lawyer in what became the prosecution of Mr Gohil for perverting the course of justice. DS Wright's communication to Mr McCrone the following day was to tell him that DC McDonald had been considered for prosecution and "no evidence of any police misconduct against any officer or any member of police force has been found" [D 7001].

120. Then at a conference with Mr McCrone on the 23rd September 2013, DCI Neligan and DS Wright told Mr McCrone that the Limonium Decision Log identifies that Knuckey had a meeting with McDonald to make a payment. Mr McCrone was told this was an HMRC operation which led to this intelligence, but that there was no evidence of corrupt payments. DS Wright was well aware that this was from SOURCE A [D 5506] and so what Mr McCrone was told was untrue. Mr McCrone clearly asserts that he was <u>not</u> told that this material came from SOURCE A [D 5464], but DS Wright says he was [D 5506a].

121. There is no room for innocent misunderstanding. DS Wright's statement in Op Phoenix is categoric that he was aware of SOURCE A, so he knew there was reliable material that McDonald took a bribe from Knuckey in September 2007. He cannot therefore honestly have told anyone in the CPS that there was no material arising out of Limonium which was disclosable.

122. DS Wright however repeats his position of the 23rd September 2013, in an email on the 22nd October 2013, saying A/DI Tunn has been spoken to about DL3 (he was its

author), the source was HMRC, DCI Neligan and DS Wright have met the HMRC and there is now no material [D 512]. DS Wright makes no mention of SOURCE A or that in fact the evidence of corruption is reliable. Similar assertions were repeated by DS Wright to the CPS on the 27th February 2014, [D 5127] and the 4th April 2014, [D 7036].

Gohil's appeal to this Court

123. Meanwhile, Mr Gohil's application for leave to appeal against conviction was approaching an oral hearing in Court. On the 21st March 2014, Ms Esther Schutzer-Weissman correctly identified in an email to Ms Wass and Mr Williams that an issue in the Gohil appeal was whether there was anything showing the authorities acted improperly, such that it was wrong for Gohil to be tried at all. She was particularly concerned about "any non-police covert intelligence that could assist BBG in showing that he was the victim of corruption" [D 5137]. This seems to have been forwarded to the DPS [D 5144].

124. Shortly after this on the 7th April 2014, the CPS filed in this Court its response to Gohil's appeal which included the statement that "Despite an extensive and lengthy investigation by the DPS, there is no evidence of corruption by the unit investigating the Applicant" [D 5150]. This was untrue as now appears to be accepted.

125. On the 10th April 2014, Ms Schutzer-Weissman sent an advice on disclosure to the CPS [D 5161]. It appears to have been agreed with Ms Wass, although she did not sign it [D 5308]. Junior counsel records she has read the Limonium decision log which shows some intelligence of corruption and (at § 23.f) sets out the essence of DL3 that Knuckey paid DC McDonald for information in September 2007. She advises that none of the material is disclosed as it would set a damaging precedent, but that the original source intelligence should be requested for review.

126. On the following day, there was a meeting between Mr McCrone, Mr Williams, DS Wright, DI Tunn and DCI Neligan [D 5174]. The purpose was to discuss what could be said to this Court about Limonium in Gohil's appeal. According to Ms Wass, counsel were not invited. The meeting lasted 5 hours [D 5501]. Mr Williams had prepared a 4 page draft containing quotes from Limonium. It would seem that this was from material in the Limonium file which Mr Williams and Ms Schutzer-Weissman had seen on 7th February 2012, before the Applicant pleaded guilty [D 5174]. DS Wright thought this contained too much "sensitive intelligence" and prepared a form of words saying that no evidence emerged from Limonium supporting any corruption which DS Wright was later to say contained "sensitive" material [D 5504].

127. From emails exchanged afterwards that day [D 5177/5178] between the CPS and Ms

Wass and Ms Schutzer-Weissman, Ms Schutzer-Weissman advised that a sentence that Knuckey had "bragged" or "boasted" about bribing DC McDonald ought to be included in the disclosure to this Court.

128. It wasn't included, but withheld. Ms Wass says that this information about bragging or boasting was critical, but junior counsel's advice to include it was "disregarded with no explanation" [D 5364].

129. The Note which was then filed with this Court is dated the 14th April 2014, and is at page D 5195. It refers to an investigation into whether officers were in a corrupt relationship with RISC. It is highly misleading as i) it says a covert investigation took place between May 2007, to October 2007, (in fact it was March to November 2007), ii) the investigation identified Knuckey contacting DC McDonald "in an effort to speak to him" (actually the intelligence showed they had spoken to each other and had met) and iii) no evidence was found to corroborate the intelligence (in fact the source of the evidence was the reliable SOURCE A and the intelligence included Knuckey himself saying he had bribed McDonald). It also omitted vast swathes of material identified in Limonium arising out of the IDG investigative stage all of which strongly supported corruption.

130. The following day in this Court (which turned out to be a directions hearing), Ms Wass said there was a "phonecall" to say there was a corrupt relationship, it was investigated "thoroughly" and "nothing untoward discovered". This was said in the context of an application for disclosure by Mr Gohil. It was refused, the Court saying there is no reason to doubt Ms Wass's assertion that disclosure has been complied with [D 5203].

131. Gohil's application for leave to appeal was then heard by the Court of Appeal on the 13th June 2014. Ms Wass made clear to the Court that if any evidence of corruption had been found it would have been disclosed to Mr Gohil and the Applicant. She referred to the Limonium and the Liberty Complaint investigations stating that the evidence there obtained did not support the allegations of corruption made in this Court. The Court of Appeal refused leave to appeal, on this issue saying there is no "arguable case of corruption" which is "complete speculation". It had no evidence from any evidence of RML itself". The covert surveillance between May and October 2007 found "no evidence of wrongdoing" and "no evidence that information was being supplied by RML to the unit". And that:

> "Ms Wass for the Crown has previously stated and stated again before us, that the prosecution are aware of nothing calling for disclosure in relation to these appeals:

Mr Gohil's prosecution for perverting the course of justice

132. Mr Gohil was then charged in mid-2014 with perverting the course of justice by making false allegations of corruption in the Liberty Complaint.

133. There was consultation between counsel, DS Wright, and Mr McCrone about disclosure on 5th November 2014 [D 5272]. There was (according to counsel and the CPS) no revelation of SOURCE A and the reliability of the intelligence.

134. Before the commencement of the trial Gohil issued an application to stay the prosecution for abuse of court. His grounds contained an assertion that his assertions about McDonald were in fact true; were known to the Prosecution to be true, and that the Prosecution had been guilty of misconduct by issuing proceedings against him which they knew were false, and had lied to the Court of Appeal and the Court concerning McDonald's corruption.

135. Then on the 11th January 2016, HHJ Testar who was due to try the Gohil case asked the Prosecution for a summary of Limonium [D 5442].

136. There was then an urgent consultation with the Prosecution the following day (12th January 2016). Ms Wass, Ms Schutzer-Weissman, Fiona Alexander (counsel who had been engaged 3 months earlier to deal with disclosure) DS Wright, DI Neligan, DI Moore, Mr McCrone and others attended [D 5277]. The fact that the intelligence of Knuckey bribing DC McDonald in September 2007, came from SOURCE A was discussed (a fact of which at least DCI Neligan and DS Wright were previously aware). Counsel and Mr McCrone assert that this was the first time they were informed of this. There is no statement from DCI Neligan or from DI Moore, but DS Wright now says [D 5502]:

> "Towards the end of the meeting Sasha Wass pulled out from her papers, a copy of DL3, and started talking about this 'intelligence'. I could not initially see the document and was uncertain what she was referring to. She then showed it to us all and from the layout and format I recognised it as a decision log, and said that it was not 'intelligence', meaning that is was not a 5x5x5 intelligence form, but a decision log. I could still not see the words and Sasha started talking about what was written on it. At this point Esther Schutzer-Weissman said 'This is from [SOURCE A]' or words to that effect. I then realised exactly which document Sasha was referring to and the discussion continued. Neither Sasha Wass nor Michael McCrone said anything to suggest this was the first they knew of DL3 and its provenance."

137. Before the Gohil abuse of process application could be heard, on 21st January 2016, leading counsel for the Crown informed the Court that the Crown would offer no

evidence against Mr Gohil. She explained that the decision was made following something which she had learned on 13th January 2016, but was not at liberty to offer any explanation as to what it was.

Operation Phoenix begins

138. Thereafter leading and junior counsel for the Crown withdrew from all of the cases involving the Applicant, Mr Gohil, and other related cases, and new counsel was instructed.

139. In early 2016, new leading counsel for the Crown informed the Southwark Crown Court (before whom the Applicant's and Gohil's confiscation proceedings were pending, but postponed) that the Prosecution had decided to undertake a full review of disclosure in all of the cases (including those where the proceedings had concluded) and also to review the safety of all convictions.

140. From March 2016 until 3rd February 2017, the Prosecution has made extensive disclosure to the Applicant, comprising over 13,000 pages. None of the facts set out in these Grounds of Appeal (save the reference to the forensic chronology concerning the Applicant) were previously disclosed. The Applicant has been informed that the Prosecution's disclosure review is still not complete. It has also served Disclosure Management Documents. It is the Crown's case that all the convictions are safe, but it is accepted that pre-trial disclosure was inadequate.

The legal and procedural framework

141. It is accepted that the general rule where a defendant pleads guilty is explained in *Asiedu* [2015] 2 Cr App R 8 para 19:

> "A defendant who pleads guilty is making a formal admission in open court that he is guilty of the offence. He may of course by a written basis of plea limit his admissions to only some of the facts alleged by the Crown, so long as he is admitting facts which constitute the offence ... But ordinarily, once he has admitted such facts by an unambiguous and deliberately intended plea of guilty, there cannot then be an appeal against his conviction, for the simple reason that there is nothing unsafe about a conviction based on the defendant's own voluntary confession in open court."

142. This Court then explained this was subject to exceptions. The first is where the plea follows an adverse ruling on the law (not applicable here). The second is where the

defendant should not have been tried at all because to pursue the case would have been an abuse of process: *Asiedu* para 21.

143. Abuse of process principles are well known to the Court. It is an abuse of process where it is unfair to try the defendant. It is also an abuse of process if to proceed (or allow convictions to stand) would be inconsistent with the administration of justice or a stay is necessary to protect the integrity of the criminal justice system: see *Beckford* [1996] 1 Cr App R 94.

144. In *Warren v Attorney General of* Jersey [2012] 1 AC 22 the Privy Council explained that in this latter type of abuse, the Court must strike a balance between the public interests of convicting and punishing the guilty and maintaining the integrity of the criminal justice system. The test was not whether "but for" the executive misconduct, the defendant would not have stood trial; it was merely a relevant factor.

145. Examples of where the Court has allowed appeals based on misconduct include *Joof* [2012] EWCA Crim 1475 (bad case of non-disclosure combined with the police lying to the Court of Appeal), *Bard* [2014] EWCA Crim 463 (non-disclosure to cover up police misconduct) and *Early* [2003] 1 Cr App R 19 (non-disclosure and police lying to the Court directly and through innocent prosecuting counsel in a disclosure / PII context).

Striking the balance in this Case

146. It is accepted the Applicant was convicted of serious offences. However, the effect of the concealment of the corruption has resulted in the Applicant completing his sentence. His punishment is complete. He was released in December 2016, and has returned to Nigeria.

147. There is an outstanding application for a confiscation order. However, given that part of the purpose of these proceedings was to recover the costs of the investigation and prosecution by a confiscation, it would be a startling application of public interest principles to allow the Crown to benefit by its own appalling non-disclosure and misconduct: see by parity of reasoning *Jennings v CPS* [2006] 1 WLR 182.

148. It is therefore submitted that the factors which point towards the public interest lying in maintenance of the conviction are largely answerable. Further that they are overwhelmed by the following features which demand the protection of the integrity of the criminal justice system:

a) DC McDonald, the officer in charge of the investigation, and disclosure officer in the Applicant's case received corrupt payments from September 2007 to, at least, April 2008.

b) The Applicant did not know or believe Mr Knuckey to have bribed or was intending to bribe DC McDonald.

c) If the current assertions by the CPS and prosecuting counsel are true, the DPS (itself responsible for bringing corruption to book) uncovered evidence of DC McDonald's corruption during the Limonium investigation in 2007, but did not disclose it to the CPS or any other person to ensure that the case against the Applicant was fairly investigated and the police and CPS met its disclosure obligations.

d) If what was advised by the MPS press officer, and adopted by DCI Neligan at his meeting with the press, were true, when investigating the Liberty Complaint in 2011, the DPS made no attempt to investigate it properly and in particular to assess the authenticity of the documents it had received, in order to avoid eliciting evidence which would undermine the forthcoming trial of the Applicant.

e) When the Applicant made requests for disclosure of any evidence of, or material relating to, corruption in January and February 2012, his leading counsel, his solicitors and Southwark Crown Court were repeatedly and untruthfully told there was nothing to disclose and in particular that police officers were not under investigation (when they were or if what was said by the press officer and DCI Neligan to the press was true, it had been dishonestly contrived that they were not).

f) The Applicant was induced to plead guilty to Count 3 of the V Mobile indictment by reason of misrepresentations made by the Prosecution to his leading counsel and the Court.

g) When the Applicant was sentenced, the Crown sought to aggravate his sentence by asserting that he Applicant had made false allegation against police officers when he had made no allegations at all but had merely requested disclosure to which he was entitled but was unlawfully denied.

h) After the Applicant's convictions, further requests for disclosure (of the material now disclosed) were untruthfully responded to with the assertion that there was nothing to disclose.

i) This Court was repeatedly lied to and misled in Mr Gohil's application for leave to appeal proceedings, the Crown untruthfully asserting that there was no evidence of corruption. This Court relied on these statements made by the Crown when i) refusing disclosure and ii) refusing Mr Gohil's application for leave to appeal.

j) Over the following 4 years the MPS (through its DPS) engaged in a persistent and unlawful concealment of what it knew to be relevant and cogent material demonstrating that DC McDonald had been bribed in order to maintain the Applicant's and others convictions, protect its own reputation and secure additional funding from DFID.

k) The Crown prosecuted Mr Gohil for making false allegations against DC McDonald when it knew the allegations were true.

149. The extent to which the CPS and Counsel were complicit in this conduct cannot be known to the Applicant. It is apparent from the torturous history of these proceedings set out above, that even if the CPS and Counsel were not complicit with the police, there was at least a gross dereliction of duty to ensure truthful accurate statements were made to the Applicant, Southwark Crown Court and the Court of Appeal and that there was compliance with duties of disclosure.

150. The Applicant may seek to amend these Grounds when disclosure is complete.

Grounds for extension of time for appealing

151. The above narrative explains the fact that the grounds for appealing conviction were concealed by the Prosecution and the Applicant was not aware of such grounds until disclosure was made by the CPS during 2016, and 2017. On 16th March 2017, the CPS have stated that their disclosure exercise is yet to be completed.

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17th March 2017