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Case No: 2017/01351/C4, 2017/03178/C4, 2017/02836/C4  
2017/03975/C4, 2017/03260/C4

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM SOUTHWARK CROWN COURT**

**His Honour Judge Anthony Pitts**

**T20117192 and**

**His Honour Judge Christopher Hardy**

**T20097647 (2<sup>nd</sup> Applicant only)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17/10/2018

**Before :**

**LORD JUSTICE GROSS**  
**MR JUSTICE WILLIAM DAVIS**

and

**MR JUSTICE GARNHAM**

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**Between :**

**Regina**

**- and -**

**James Ibori**

**Daniel McCann**

**Udoamaka Onuigbo**

**Lambertus De Boer**

**Christine Ibori-Ibie**

**Respondent**

**1<sup>st</sup> Applicant**

**2<sup>nd</sup> Applicant**

**3<sup>rd</sup> Applicant**

**4<sup>th</sup> Applicant**

**5<sup>th</sup> Applicant**

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**Jonathan Kinnear QC, Thomas Payne and Michael Newbold** (instructed by **Crown Prosecution Service**) for the **Respondent**  
**Matthew Ryder QC, Kennedy Talbot QC, Ivan Krolick and Simon McKay** (instructed by **CLP Solicitors**) for the **1<sup>st</sup> Applicant**  
**Henry Blaxland QC** (instructed by **CLP Solicitors**) for the **3<sup>rd</sup> Applicant**  
**Christopher Convey** (instructed by **Cartwright King Solicitors**) for the **4<sup>th</sup> Applicant**  
**David Emanuel** (instructed by **CLP Solicitors**) for the **5<sup>th</sup> Applicant**

Hearing dates: 21-23 March 2018 and 21 June 2018

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**Approved Judgment**

## LORD JUSTICE GROSS:

### INTRODUCTION

1. This is the judgment of the Court to which we have all contributed.
2. Central to the Applicants' cases before us are grave allegations of police corruption and deliberate non-disclosure, such that, given the need to maintain the integrity of the justice system, it is said to have been unfair to try the Applicants. Accordingly, the Applicants submit that their applications for extensions of time ("EOTs") and leave to appeal should be granted and their convictions quashed.
3. As will be seen, notwithstanding the nature of the allegations necessitating close scrutiny, the tangled history, the large volume of materials and the strength of emotions generated, the disposal of these Applications (heard in March 2018), together with the "postscript" dealt with at the end of this judgment (and which gave rise to the need for the further hearing in June 2018), is relatively straightforward - and essentially involves matters of fact rather than any questions of law.
4. The Applicants, James Onanefe *Ibori* ("Ibori"), Udoamaka *Onuigbo* ("Onuigbo"), Christine *Ibori-Ibie* ("Ibori-Ibie") and Lambertus *De Boer* ("De Boer"), all apply for EOTs in which to apply for leave to appeal against conviction, the Registrar having referred their respective applications to the Full Court. The EOTs sought are substantial, ranging from 5 years (in the case of Ibori) to 7 years and 19 days (in the case of Onuigbo and Ibori-Ibie).
5. For completeness, a further Applicant, Daniel Benedict *McCann* ("McCann"), whose application for an EOT in which to apply for leave to appeal against conviction had also been referred by the Registrar to the Full Court, abandoned his application shortly before the March hearing.
6. In short summary, the proceedings which gave rise to these applications are as follows.
7. *Ibori*: On 27 February 2012, in the Crown Court at Southwark, before HHJ Pitts, Ibori changed his pleas to guilty on the First Indictment ("the Money Laundering Indictment") and pleaded guilty on the Second Indictment ("the V Mobile Indictment"), to the offences which follow. Sentencing, before the same Judge took place on 17 April 2012. As to the Money Laundering Indictment, 7 counts were involved; it suffices to record that concurrent sentences of 10 years' imprisonment were passed. In the light of one area of dispute before us, a little more needs to be said of the V Mobile Indictment. On count 1, conspiracy to defraud, Ibori was sentenced to 3 years' imprisonment, consecutive to the sentence on the Money Laundering Indictment. On count 2, conspiracy to make false instruments (in effect forgery), a sentence of 3 years' imprisonment concurrent was imposed. On count 3, money laundering contrary to s.327 of the *Proceeds of Crime Act 2002* ("POCA"), a sentence of 3 years' imprisonment *concurrent* was imposed. The upshot was a total sentence of 13 years' imprisonment. On 2 May 2013, another constitution of the Full Court (Treacy LJ, Edwards-Stuart J and the Recorder of Leeds (HHJ Collier QC)) dismissed an appeal by Ibori against *sentence*: [2013] EWCA Crim 815.

8. *Onuigbo*: On 2 June 2010, in the Crown Court at Southwark, before HHJ Hardy, Onuigbo was convicted by the jury on 3 counts of money laundering. On 7 June 2010, she was sentenced by the same Judge to 5 years' imprisonment concurrent.
9. *Ibori-Ibie*: On 1 June 2010, in the Crown Court at Southwark, before HHJ Hardy, Ibori-Ibie was convicted by the jury of the offences which follow. On 7 June 2010, before the same Judge, she was sentenced on 3 counts of money laundering to 5 years' imprisonment concurrent, on four counts of obtaining property by deception to 2 years' imprisonment concurrent and on one count of attempting to obtain property by deception to 1 year's imprisonment concurrent, a total sentence of 5 years' imprisonment.
10. *De Boer*: On 20 December 2010, in the Crown Court at Southwark, before HHJ Hardy, De Boer pleaded guilty, on re-arraignment, to 2 counts of money laundering and four counts of forgery. On 8 March 2011, before the same Judge, De Boer was sentenced to 30 months' imprisonment on each count, concurrent.
11. The applications are closely factually related to those decided by the same constitution of this Court in *R v Gohil* [2018] EWCA Crim 140; [2018] 1 WLR 3697. Where appropriate, we will draw on passages from that judgment – while keeping well in mind the principal (though not the only) difference between that case and this, namely, that in *Gohil*, Gohil and his co-applicant, Preko, sought to reopen final determinations of this Court. No such issue arises on the present applications.
12. The *Gohil* judgment, at [5] and following, furnishes the most convenient introduction to the facts. Ibori was the Governor of the Delta state of the Federal Republic of Nigeria from 1999-2007, during which time it was alleged that he defrauded the state of some US\$89 million and that he intended to secrete the proceeds of this political corruption in offshore accounts and trust funds. Subsequently, following extradition to this country, he pleaded guilty to various counts contained in the Money Laundering and V Mobile Indictments, as already recorded.
13. Interposing there, we were told by the Crown, that before Ibori was elected as Governor of Delta state, he had lived in this country and acquired a criminal record involving dishonesty; thus, on 25 January 1991, he was convicted of theft from his employer and on the 7 February 1992, he was convicted of handling stolen goods. Subsequently, he returned to Nigeria and – as again we were told by the Crown – did not disclose his previous convictions when he stood for election as Governor.
14. Reverting to the *Gohil* judgment, as to Gohil and his relationship with Ibori:
  - “6. Gohil was a solicitor and a partner in the firm of ...Arlingtons.. From 2005 that firm acted for Ibori. It was the Crown's case (*inter alia*) that Gohil provided a client account for Ibori, through which Ibori laundered money. On 22 November 2010, following a trial before Judge Hardy and a jury in the Crown Court at Southwark, Gohil was convicted of four offences of money laundering and one of prejudicing a money laundering investigation (the 'Tureen' indictment). On 6 December 2010, before the same judge, Gohil pleaded guilty to a further eight offences (the 'Augen' indictment), involving a conspiracy

together with Ibori and others to defraud two states in Nigeria regarding the sale of shares in a mobile telephone company (V Mobile) and allegations that Gohil had forged documents and laundered funds in relation to that fraud. The Augen fraud was said to involve some US\$37m. On 8 April 2011 Gohil was sentenced to a total of ten years' imprisonment, comprised of three years on Tureen and seven years' consecutive on Augen."

15. As in *Gohil*, to explain the background, it is necessary to step back in time:

"11. .... In about 2006, as the Metropolitan Police Service ('MPS') investigation into Ibori progressed, he hired private investigators, Risc Management Ltd ('Risc'), through solicitors, Speechly Bircham ('SB'), as part of his defence team. Gohil was either involved in obtaining this assistance from Risc or, on any view, very soon became aware of Risc's involvement. Risc employees included a number of former MPS officers; one such – and holding a senior position at Risc – was a Mr Cliff Knuckey ('Knuckey'), previously a MPS Detective Inspector. One MPS officer then engaged on the Ibori investigation was a Detective Constable John McDonald ('JMD'), who looms large in the story. Knuckey and JMD knew each other; before Knuckey's retirement from the MPS, JMD had worked with him.

12. The Ibori investigation was conducted by MPS officers from the Proceeds of Corruption Unit ('POCU'), part of what was then the SCD6 Fraud Squad. JMD was an officer in SCD6.

13. In 2007 the MPS Directorate of Professional Standards ('DPS') conducted a covert investigation (operation 'Limonium') into allegations of a corrupt relationship between Risc and serving police officers, in the event, JMD in particular. In the circumstances described below, no arrests were made, no charges were brought and Limonium was closed.

14. Following his convictions and sentence, Gohil launched a campaign alleging that MPS officers engaged on Tureen and Augen were corrupt – they had received corrupt payments from Risc and Risc had passed confidential information to them. Initially Gohil suggested that the origins of his complaint lay with material which had reached him post-trial from an anonymous source. It subsequently became clear that the source of his allegations came from invoices in the possession of SB and which were available to him from a time pre-dating his trials.

15. In 2013/2014, following a further MPS investigation (operation 'Tarbes'), the file was referred to the CPS, who took the decision that there was insufficient evidence to charge JMD. However, in June 2014 and also as a strand of Tarbes, the CPS took the decision to charge Gohil for attempting to pervert the course of justice, and Knuckey with false accounting (relating to

inflated payments and invoices appearing to record payments to ‘sources’ but which Knuckey now averred had been simply bills to cover his own losses in missing a holiday). The essence of the Crown’s case against Gohil, from June 2014 until January 2016, was that the suggestion of corrupt payments from Risc to MPS officers was false; as expressed in a Crown skeleton argument (dated 26 May 2015) resisting dismissal and severance of the Tarbes proceedings, ‘DC McDonald has been thoroughly investigated and exonerated and is actually free from blame’. The Court of Appeal had previously been told...that ‘nothing untoward’ had been found at all.”

16. In the event, on 21 January 2016, the Crown offered no evidence in relation to the Tarbes indictment, the day after the trial had been due to start. Leading counsel, Ms Wass QC (“SWQC”) told HHJ Testar, sitting in the Crown Court at Southwark, that a matter had been brought to her attention for the first time on 13 January 2016; that matter had been subject to careful scrutiny at a senior level in the Crown Prosecution Service (“CPS”) and it had been decided that the Crown would no longer proceed with the allegations in question and would formally offer no evidence against Gohil or Knuckey.

17. The fallout was considerable:

“17. As a result of offering no evidence and the serious nature of the allegations made against MPS officers and – by this stage – the CPS and counsel, the Crown took a number of important steps. First, leading, junior and disclosure counsel were replaced. Secondly a review was launched in respect of a number of aspects of disclosure in the Ibori series of cases (project ‘Phoenix’).....

18. Subsequently....the Crown has conceded that there was a failure of disclosure. A note dated 14 April 2014, entitled ‘Note of voluntary information provided by the Crown to the applicant for leave to appeal’ (‘the April 2014 Note’), provided both to Gohil and to the Court of Appeal in advance of Gohil’s renewed application for leave to appeal his convictions was ‘inaccurate, incomplete and misleading’. The Crown contends, however, that this was ‘the result of a combination of errors, contributed to by a number of different people, but there was no intention to deliberately mislead the court.’”

18. Against this background, Ibori seeks an EOT and leave to appeal to advance two grounds of appeal. Under *Ground 1*, it is contended that the prosecution was guilty of such misconduct that the convictions were irredeemably tainted and an affront to justice. In effect, this is an allegation confined to the police, as, in the light of the *Gohil* judgment, Ibori’s counsel (Mr Krolick and Mr Talbot QC) have, in terms, disclaimed any allegations of bad faith against the CPS or counsel. As refined in argument by Mr Talbot, this Ground falls under three headings:

i) JMD was corrupt and accepted bribes (“JMD”).

- ii) The MPS, through the DPS, deliberately covered up JMD's corruption by prematurely closing the Limonium investigation ("Limonium").
  - iii) From 2011 up until Ibori's pleas (27 February 2012), the DPS deliberately failed to give disclosure of material available from the Limonium investigation, contrived to say that no officer was under investigation and failed to make proper and relevant inquiries as to the allegations of bribes paid in 2007 ("Tarbes").
19. *Ground 2* is an entirely separate ground and was advanced by Mr Krolick. It alleges that the prosecution induced Ibori to consent to an amendment to count 3 of the V Mobile Indictment by misleading the trial Judge, Ibori and his (then) legal representatives, into believing "that there was no substantial change in the charge, whereas in fact the charge had been changed from an allegation of laundering \$37m of criminal property of another to that of the Applicant". Given the concurrent sentences imposed, it is immediately apparent that this complaint (even if well-founded) could have no bearing on sentence, although it could impact on confiscation proceedings (currently adjourned) in the future.
20. In the broadest outline, Mr Kinnear QC for the Crown responded to *Ground 1* as follows. All Ibori's convictions were safe. None of Mr Talbot's contentions as to JMD, Limonium or Tarbes had been made good. There had been no deliberate non-disclosure and hence no bad faith on the part of the Crown; the (admitted) disclosure failures were a result of confusion and error. In any event, if there had been corruption on the part of JMD, Ibori was responsible for it, or, at all events, he was intimately implicated in it and had full knowledge of it. That conclusion was fatal to *Ground 1*. Further and in any event, Ibori's guilty pleas had been entered unequivocally and there was no good reason for permitting him to vacate them.
21. *Ground 2* was devoid of merit. Ibori's (then) legal representatives had been provided with a copy of the amended V Mobile Indictment in advance and were present in Court when the Indictment was put and the guilty plea entered. Moreover, if Ibori and his legal team had been misled, it was remarkable that nothing had been said throughout the sentencing hearing or the appeal against sentence to this Court.
22. As to the Applicants apart from Ibori, it is convenient to defer any outline of their Grounds and the Crown's response until the sections of this Judgment dealing with them (below). In fairness to them, however, it may at once be noted that none of the Applicants (Ibori apart) were tainted by any involvement in JMD's corruption (if corruption there was). Moreover, in the case of Onuigbo and Ibori-Ibie, they were convicted after a trial, so they do not face the hurdle of overcoming guilty pleas.

### THE LEGAL FRAMEWORK

23. There was no dispute before us as to the applicable law, which, for present purposes, we venture to state as follows.
24. First, a Court has the power to stay criminal proceedings for an abuse of process in two categories of case: (1) where it will be impossible to give the accused a fair trial; (2) where it would not be fair to try the accused: *R v R* [2015] EWCA Crim 1941; [2016] 1 WLR 1872, at [61] and following, together with the authorities there cited, which can

be traced back to *R v Horseferry Rd Ct, Ex p. Bennett* [1994] 1 AC 42 and *R v Mullen* [2000] QB 520. In these proceedings, we are solely concerned with what may be termed *category (2)*.

25. Secondly, a category (2) stay involves a balance between competing interests. The Court is concerned to protect the integrity of the criminal justice system; an infinite variety of cases could arise, so that general guidance would not be useful and rigid classifications are undesirable:

“But it is possible to say that in a case such as the present the judge must weigh in the balance the public interest in ensuring that those that are charged with grave crimes should be tried and the competing public interest in not conveying the impression that the court will adopt the approach that the end justifies any means.”

Lord Steyn, in *R v Latif* [1996] 1 WLR 104, at pp. 112-113, cited in *R v Maxwell* [2010] UKSC 48; [2011] 1 WLR 1837, at [14]; see too, *Warren v Attorney General for Jersey (PC)* [2011] UKPC 10; [2012] 1 AC 22, at [26]. The interests of justice “is not a hard-edged concept” and the gravity of the alleged offence is plainly a factor of considerable weight for the Court to weigh in the balance: *Maxwell*, at [19] and [22], Lord Dyson JSC (as he then was). The discretion to stay is not, however, a disciplinary jurisdiction: *Maxwell*, at [24]. The Court exercises a broad discretion, striking a balance between the public interest in ensuring that those accused of serious crime are prosecuted and the competing public interest in ensuring that prosecution misconduct did not undermine public confidence in the criminal justice system and bring it into disrepute: *Warren*, at [25] and following. That matters complained of would not have occurred “but for” prosecution (or Executive) misconduct is not determinative and is no more than a relevant factor: *Warren (ibid)*. Ultimately, “...there is no bright line and a broad brush approach is likely to be necessary”: *R v R*, at [72].

26. Thirdly, a conviction in a trial which should never have taken place because of abuse of process warranting a category (2) stay, will be “unsafe”, within the meaning of s.2(1) of the *Criminal Appeal Act 1968*. As Rose LJ trenchantly observed in *R v Mullen*, at p.540:

“...for a conviction to be safe, it must be lawful; and if it results from a trial which should never have taken place, it can hardly be regarded as safe....

.... ‘unsafe’ bears a broad meaning and one which is apt to embrace abuse of process of the *Bennett* or any other kind.

It follows that, in the highly unusual circumstances of this case, notwithstanding that there is no criticism of the trial judge or jury, and no challenge to the propriety of the outcome of the trial itself, this appeal must be allowed and the defendant’s conviction quashed.”

27. Fourthly, though the gravity of prosecution non-disclosure when it occurs cannot and should not be minimised, *mere* non-disclosure does not of itself amount to an abuse

giving rise to a category (2) stay. In *R v Asiedu* [2015] EWCA Crim 714; [2015] 2 Cr App R 8, Lord Hughes observed (at [27]):

“...Non-disclosure is not by itself an abuse of the process of the court..... non-disclosure does not by itself amount to a circumstance making it unfair to put the defendant on trial at all and it does not afford grounds for a stay.”

Something more is required. The danger, were that not the case, appears from the observation of Sir Brian Leveson P, in *R v R*, giving the judgment of the Court, at [72], “...it is important that conduct or results that may merely be the result of state incompetence or negligence should not necessarily justify the abandonment of a trial of serious allegations”. The position was very different in *R v Early* [2002] EWCA Crim 1904; [2003] 1 Cr App R 19, at [17] – [18], where the deliberate non-disclosure concealed entrapment, which is a ground for a stay: *Asiedu*, at [28]. Though there are observations in *Asiedu* (at [28]) to the effect that even *deliberate* non-disclosure would not found an abuse giving rise to a category (2) stay, we are, with great respect, prepared to proceed on the assumption (without deciding) that *deliberate non-disclosure of sufficient gravity* is *capable* of constituting an abuse justifying a category (2) stay. We did not understand the Crown to contend otherwise.

28. Fifthly, a guilty plea entails a defendant making a formal admission in open Court that he is guilty of the offence; ordinarily, therefore, there can be no appeal against conviction when there has been a guilty plea – as there is “nothing unsafe about a conviction based on the defendant’s own voluntary confession in open court”: *Asiedu*, at [19]. There are, however, limited circumstances in which a guilty plea will not prevent an appeal against conviction: *Asiedu*, at [20] and following. For present purposes, the relevant situation is where there has been abuse warranting a category (2) stay; as Lord Hughes observed (*Asiedu*, at [21]):

“...if the trial process should never have taken place because it is offensive to justice, a conviction upon a plea of guilty is as unsafe as one following trial.”

Moreover, a defendant who pleads guilty at an early stage, on the basis of inadequate disclosure, should not be in a worse position than a defendant who does not plead and subsequently benefits from further orders for disclosure culminating in the abandonment of proceedings against him: *Early*, at [10]; *Asiedu*, at [24].

## ORAL EVIDENCE

29. In the event – nothing turns on the prior procedural debates – the Court ruled that it would hear oral evidence from three witnesses at the March hearing.
30. First, Ibori produced a witness statement dated 1 March 2018 (“the Ibori witness statement”) addressing in particular his alleged knowledge of Knuckey’s alleged payments to JMD, together with his understanding of the events said to give rise to Ground 2. Understandably, the Crown wished to cross-examine him. Arrangements were made for him to appear by video-link from Nigeria. On the first morning of the March hearing, he very briefly appeared. The link then failed and, it appears, could not be restored. The Court made it plain that it wished to hear from Ibori and that it would

set aside time on the second morning to do so. Ibori did not, however, appear. As we understood it, he was unable to attend the relevant location. *De bene esse*, we agreed to read and take into account the Ibori witness statement. That said, the weight to be placed on it can only be very limited, given his non-appearance (and even making every allowance for technical failure/s on the first day of the hearing). While we do not rest our decision in any way on his non-appearance, the inescapable impression was that Ibori was reluctant to have his account tested in cross-examination.

31. Secondly, the Crown called Mr Jason Tunn, a former MPS officer. Between 2003 and 2007, he served in the Anti Corruption Command (“ACC”). During that time, he undertook the role of Investigating Officer (“IO”) on Limonium. Mr Tunn was primarily called to deal with allegations that (in broad terms) he had falsified the records of Limonium by deliberately failing to record the true intelligence and evidence obtained during the course of the investigation, so leading (or contributing) to its premature termination. As will become clear, those allegations were ultimately never put to Mr Tunn and were abandoned. They should never have been advanced; the explanation proffered by Mr Krolick for having done so, did not, with respect, bear scrutiny. We return to Mr Tunn’s evidence when dealing with Limonium (below).
32. Thirdly, the Crown called Mr Timothy Neligan, also a former MPS officer. He had no involvement with Limonium. From January 2010, he served as a Detective Chief Inspector on the Specialist Investigations Directorate of the DPS, as a Senior Investigations Officer (“SIO”). His involvement with Tarbes commenced in October 2011; he was the SIO and was also performing that role on several other large and complex investigations. We return to Mr Neligan’s evidence when dealing with Tarbes (below).

## THE IBORI APPLICATIONS

### GROUND 1

33. (1) *Introduction:* Ground 1 can conveniently be considered under the following headings:
  - i) The facts;
  - ii) Ibori’s knowledge;
  - iii) Ibori’s guilty pleas;
  - iv) JMD;
  - v) Limonium;
  - vi) Tarbes.
34. (2) *The facts:* Again, the *Gohil* judgment is a useful place to start. At [23] – [29], we introduced Limonium, decision logs 3 and 6, Source A and Source B – the former assuming central importance in the proceedings:

“23. MPS decisions in connection with ...Limonium were recorded in a number of decision logs (‘D/Ls’). It appears that the entries were made by acting Detective Inspector Tunn.

24. As it transpires, D/L3, dated 13 September 2007, was of the first importance, including the following passages:

‘Intelligence from a non-attributable source was received on 10 Sept 2007 that indicates that KNUCKEY is currently in contact with officers working on the IBORI investigation and has recently met with DC John McDONALD and paid McDONALD money for information, whilst also attempting to meet with other officers namely DS RADFORD....

Further non-attributable intelligence has suggested that KNUCKEY intends to meet with DC John McDONALD in a central London public house on Monday 17 September 2007. If correct, then this new intelligence clearly indicates that KNUCKEY is currently engaged in an ongoing and corrupt relationship with DC John McDONALD and that this presents a potential risk to the IBORI investigation overall. That said, there is no evidence to corroborate that any such meeting did in fact take place or that DC John McDONALD was actually paid money for passing over any information whatsoever. It cannot be discounted that this intelligence may be wrong or even false.’

25. D/L6 was dated 16 October 2007 and records the following views:

‘So far as SCD6 are concerned, there has been a concentration of efforts on the relationship that exists between Cliff KNUCKEY and DC John McDONALD. The inquiries conducted into their relationship has been sparked by the fact that KNUCKEY is an ex-colleague of McDONALD, and both are considered to be long term friends....The complication and inappropriateness of this relationship stems from the fact that KNUCKEY is representing a client called James IBORI who is being investigated for fraud matters by SCD6, and DC McDONALD is one of the investigating officers. What has been essential in investigating this particular relationship is establishing whether or not KNUCKEY has been passed confidential and important information, whether or not McDONALD has been paid for such information, and also whether or not the IBORI case has been damaged or otherwise compromised.....

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. 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....’

The decision was taken not to notify JMD’s superiors in SCD6 and, in the event....no arrests were made or charges brought.

26. As ever, the distinction between *intelligence* and *evidence* is one of real significance – and is highlighted in both D/L3 and D/L6.

27. Pausing here, on the Crown’s case, the significance of the intelligence in D/L3 had not been appreciated by either the CPS or counsel until January 2016. It was only then that the link was made between the intelligence recorded in the first paragraph of D/L3 (set out above) and what has become known as Source A – intelligence received by the DPS from HMRC. That linkage, once discovered, resulted in the Crown offering no evidence against Gohil and Knuckey – on the case as then sought to be put against them. It is plain that the linkage between Source A and the D/L3 material was known about by MPS officers from a much earlier time, certainly 2012 but perhaps dating back to 2007.

28. The intelligence from what has come to be described as Source B, recorded in the second paragraph of D/L3 (set out above), was known about by the prosecution as a whole from about February 2012. However, at the time, it was not clear that the CPS or counsel understood the nature or content of the Source A intelligence and their evidence is that they did not. The Source B intelligence did not take matters much further by itself – because it did not suggest that there had been a payment in return for information – but it provided some support for the Source A intelligence.

29. Neither the Source A nor the Source B intelligence was admissible in evidence.”

35. The *Gohil* judgment dealt with the complaint as to prosecution disclosure failures at [144] and following. There, as here, the Crown properly conceded that there had been such failures. We held (at [147]) that those failures were eminently avoidable, even without hindsight but (at [148]) that they did not call into question the safety of Gohil’s convictions. We added this (*ibid*):

“ Nor could it be said that a communications breakdown or drafting error, even one misleading the court would, of themselves, give rise to an abuse of process so that it was unfair to try Gohil at all or such that his appeal must be allowed.”

36. We went on to conclude (at [158]) that it was fanciful to suggest that counsel (SWQC and Ms Esther Schutzer-Weissmann (“ESW”)) had knowingly misled the Court; likewise (at [159]), we held that there was no proper foundation for the allegation that the CPS had knowingly misled the Court. The position with regard to the MPS was different ([160] and following), not least as it was common ground that its officers, including Detective Sergeant Wright (“DSW”), who became Officer in Charge of Tarbes from about July 2012, knew much earlier than January 2016 that Source A was the original source of the first paragraph of D/L3. Our provisional conclusion was that DSW had not knowingly intended to mislead the Court but for the purposes of the Gohil applications we *assumed* (at [161]) “...that DSW knowingly observed counsel misleading the court in the 2014 hearings and did nothing to correct the error (although we repeat our provisional view that that is unlikely).” Even so, such conduct, however reprehensible *if* it happened fell well short of justifying the reopening of the concluded proceedings.
37. We shall return under later headings to consider the allegations made against the MPS in the present proceedings but the above provides a sufficient summary for the moment.
38. (3) *Ibori’s knowledge*: Here too, we start with the *Gohil* judgment. At [30] and following, we addressed Gohil’s knowledge of the alleged corrupt dealings between Risc and JMD. Our conclusions on Gohil’s knowledge are not, of course, determinative of Ibori’s knowledge – but they are of no little relevance, given the close connections between Ibori and Gohil already outlined. It must also be kept in mind that in the Gohil applications, Gohil was anxious to underline that it was Ibori who had retained Risc as part of the defence team, whereas in the present applications, Ibori has sought to highlight Gohil’s involvement with Risc as distinct from his own.
39. For present purposes, the most relevant passages are these:

“31. On 30 November 2006 Gohil forwarded an e-mail from Ibori (described in these messages as ‘HE’ or ‘His Excellency’ to Mr Timlin (‘Timlin’), a partner of SB, complaining that he should not be supplied with information he already had or knew; he was ‘more interested in the ‘inside stuff’’. On 24 April 2007 an attendance note of Timlin recorded a conversation with Gohil: Ibori wished to know when JMD would next be in Nigeria and Timlin was to ascertain that from Knuckey. On 25 April Knuckey sent an e-mail to Gohil and Timlin, saying that JMD’s investigation into Ibori ‘cannot be neutralised in the UK’ but could be neutralised from Nigeria. Having spoken to JMD, Knuckey commented on the lack of evidence from Nigerian banks. He had agreed to meet JMD on the next day and would provide an update thereafter. An e-mail of 14 June 2007 from Knuckey to Gohil and Timlin discussed the interview/s of Ibori by the Nigerian authorities; those authorities would provide some feedback to the MPS ‘and by the middle of next week

DCM [i.e., JMD] should know which means we will know...'. On 6 July there was a further e-mail from Knuckey to Gohil, copied to Timlin, as to JMD being the source of information as to the progress of the investigation. On 7 August there is an e-mail from Gohil to Timlin, saying that 'HE pulled it off' – a reference to Ibori having influenced the Nigerian Attorney General sufficiently so that the latter would write a letter assisting Ibori in frustrating the investigation in this jurisdiction.

.....

33. Matters do not end there. On 11 September 2007 (the day after the receipt of the intelligence referred to in D/L3), Gohil told Timlin that he and Knuckey would like a meeting as soon as possible 'to review certain matters which they could not discuss over the telephone'. They duly met (at 13.30) and SB's Meeting note records Knuckey explaining that he had met with a senior officer on 10 September. Knuckey then gave a number of details about the police investigation. Knuckey said that he had arranged to meet JMD 'in the next couple of days and that he would endeavour to extract further information about the investigation from him that may assist'. On 12 September the Risc invoice records a meeting with a 'confidential source' on 10 September 'to hand over source payment re information provided' in the amount of £5,000. ....

34. The plain suggestion is that: (1) Knuckey was meeting with JMD to obtain sensitive information, and (2) that JMD was being paid for the provision of that information. At the very least, Gohil either saw or wrote the communications to which we have referred and was present at the related discussions with Knuckey, Timlin and (sometimes) Ibori (who joined the meeting/s by telephone)."

40. In that case, we held (at [136] and following) that Gohil's knowledge of the alleged relationship between Risc and JMD, together with the tactical decision not to introduce the relevant material at his trials, of itself doomed his application to failure – regardless of any prosecution disclosure failures. In that regard, we referred (*inter alia*) to Gohil's close involvement with Ibori's defence strategy.
41. For Ibori, Mr Krolick valiantly submitted that though Ibori knew of contact between Knuckey and JMD, he thought there was nothing untoward in that and was unaware of moneys being paid by Risc/Knuckey to JMD. With respect, we are wholly unable to accept these submissions. For the reasons which follow we are entirely satisfied that Ibori was fully aware both of the contacts between Knuckey and JMD and any payments passing from Risc/Knuckey to JMD, *if payments there were*. In a nutshell, over and above any question of money changing hands, Ibori could not have failed to be aware that the contacts of the sort he was encouraging were improper. Moreover, *if* JMD was corrupt, Ibori was the instigator or at the very least intimately involved in any such corruption. Regardless of any disclosure failures on the part of the Crown, Ibori

was thoroughly informed on this topic prior to his pleas of guilty but, for understandable reasons, chose not to raise it.

42. First, Ibori retained Risc as part of his defence team. He was ultimately the paymaster. By itself of course, there is nothing wrong in retaining private investigators; the point that Ibori retained Risc is, however, worth underlining, given Ibori's attempt before us to distance himself from Risc.
43. Secondly, as is clear from the exchanges set out in the *Gohil* judgment at [31], Ibori could not credibly have thought that the contacts between Risc and JMD (as he understood them to be) were anything other than improper – quite apart from any question of money changing hands. Talk of obtaining “the inside stuff” and neutralising or frustrating the investigations do not bear an innocent explanation.
44. Thirdly, against this background it is fanciful to suppose that Gohil and Timlin (together with any other SB employees) were on some frolic of their own, with regard to the work undertaken by Risc. The email exchanges between SB and Risc (for example, those of 24 January and 9 July 2007), say that Ibori was questioning the amount of the fees charged by Risc. In the Ibori witness statement it is asserted that Timlin “was making these enquiries at his own behest”. We regard the suggestion as unreal and reject Ibori's assertion; the obvious inference is that Timlin did this on Ibori's behalf – either because Ibori had already queried the amounts and work done or because Timlin knew that he would have to explain these to Ibori in the future. Ultimately, payment would be made from Ibori's funds. If, however there was any doubt as to Ibori's involvement in the work done by Risc – a doubt we do not entertain - it is put to rest by the SB Attendance Note of 11 September 2007, which makes it plain that Ibori joined by telephone the important meeting attended in person by (*inter alia*) Timlin, Knuckey and Gohil on that day (referred to at [33] of the *Gohil* judgment). Further still, the SB email of 5 October 2007, sent by Ms Thrower (Timlin's assistant) to Ibori summarises, in clear and comprehensive terms, the efforts made to stymie both the Nigerian and United Kingdom (“UK”) investigations through action in Nigeria. Of itself, this email belies the efforts made to distance Ibori from the Risc work.
45. Fourthly and as is common ground, Ibori was asked to pay and did pay the SB invoice dated 31 October 2007, including the Risc disbursement of £5,000 on 12 September (referred to in the *Gohil* judgment, at [33]), sent to him under cover of a SB email of 8 November 2007. The explanation advanced in the Ibori witness statement is that, under pressure of time, he “...did not read any invoices or narratives contained in the two attachments which Mr Timlin attached to his email communication to me, or observe any reference to any payments to sources”. In the light of the matters already discussed, we are deeply sceptical as to this explanation. However, even were it true, it does not assist Ibori. The fact that the invoice was sent to Ibori with the accompanying attachments speaks volumes. SB were not to know that Ibori would not read the attachments. If indeed it had been the case that he knew nothing of payments to confidential sources, SB were at risk of a most unhappy client and some very awkward questions. Nothing like this appears to have been forthcoming; the reality, of course, was that there was no such risk. Ibori knew full well of the work undertaken by Risc, including the (alleged) payments to confidential sources.

46. Fifthly, on the evidence before us Ibori was engaged in a high level attempt in Nigeria to thwart the UK investigation there and appears to have paid a US\$15 million bribe in Nigeria, with a view to bringing a Nigerian investigation of his activities to an end.

- i) The email exchanges available to us are replete with references to Ibori's concern as to the progress of the UK investigation in Nigeria and the risk of the Nigerian authorities lending it assistance. As summarised in the 5 October 2007 email from Ms Thrower (see above), there can be no doubting Ibori's aim of undermining both the UK investigation and a Nigerian investigation. *If* Knuckey was to be believed, a part of his efforts were devoted to obtaining information from JMD as to the progress of the investigation/s in Nigeria. SB Attendance Notes of 23 and 30 October 2007 spoke in terms of seeking to agree a strategy with the Nigerian Attorney General, in effect to decline a UK request for Mutual Legal Assistance ("MLA").
- ii) Additionally and specifically, the materials before the sentencing Judge and before us include a witness statement from a Mr Ribadu, dated 26 March 2009 ("the Ribadu witness statement"). Over the period April 2003 – July 2008, Mr Ribadu was the Executive Chairman of the Nigerian Economic and Financial Crimes Commission ("EFCC") in Abuja, Nigeria. The Ribadu witness statement speaks in detail of an attempt to bribe him to stop the EFCC investigation into Ibori's affairs in Nigeria. He describes US\$15 million in \$100 bills being brought to him on 25 April 2007. The timing is significant, because Ibori's immunity as a Governor came to an end (with the expiry of his second term of office) in May 2007. This became a "sting" operation in that Mr Ribadu, without alerting Ibori, had the \$15 million taken to the Central Bank of Nigeria where it was counted and lodged as an exhibit.
- iii) On Ibori's behalf, Mr Ribadu's account is contested and there is a suggestion that Ribadu "framed" Ibori. Caution may well be justified in assessing rival accounts of these events in Nigeria. That said, for Mr Ribadu to have framed Ibori, he would have needed to acquire the \$15 million from another source and lodge it with the Central Bank; that is most implausible. Secondly, at Ibori's sentencing hearing on 17 April 2012, HHJ Pitts plainly accepted Mr Ribadu's account which had been opened by the Crown – without objection or denial from Ibori's highly experienced leading counsel. The Judge said this:

" ....I was told that the gentleman who headed the....[EFCC]...in Nigeria, a gentleman called Mr Ribadu...suffered what must have seemed to him a surprising visit from you. You walked into his office with a bag stuffed with \$15 million in cash, clearly designed as a bribe to head off the investigation. To his enormous credit, he refused the bribe and made it known what had happened."

It is fair to say that over a year later, in April 2013, leading counsel (in correspondence with the Registrar as to the summary prepared for the Ibori sentence appeal) maintained that neither he nor Ibori accepted that the "Ribadu" allegations were correct. Furthermore, in October 2013, in a skeleton argument prepared on Ibori's behalf for confiscation proceedings, the "Ribadu" allegations were disputed in some detail. It remains striking that nothing was

said of those allegations at the sentencing hearing in 2012. In all the circumstances, and whatever might yet be said in any future confiscation proceedings, we do not see any good reason to doubt the essentials of Mr Ribadu's account.

- iv) If Ibori was prepared to pay \$15 million in Nigeria on a single occasion in an attempt to thwart the investigation/s into his activities, not to mention engage with the Nigerian Attorney General to thwart MLA, there can equally be no doubting his readiness to pay JMD (in effect) "small change" for information as to the progress of the UK investigation – in part relating to inquiries in Nigeria.
  - v) For the avoidance of any doubt, we do not rest our decision as to Ibori's knowledge on the allegation of the bribe paid to Mr Ribadu but, if well-founded, it lends additional weight to the view we have in any event formed.
47. In our judgment, it follows that the whole edifice of the Ibori applications under Ground 1 crumbles. The hurdle is insuperable. It matters not whether there was significant prosecution corruption or not. The basis of Ibori's argument for a category (2) stay is the contention that JMD was corrupt. But *if* JMD was corrupt, Ibori was instrumental in that corruption. As discussed and is undisputed, a category (2) stay requires a balance between competing interests. The need to preserve the integrity of the criminal justice is plainly of the first importance. However, public confidence in the justice system would be undermined – not enhanced – if those responsible for the (alleged) corruption escaped justice because the prosecution failed to disclose that which they already knew and for which they were responsible. That would indeed be an affront to justice. In short, as Ibori was instrumental in JMD's corruption, if corruption there was, he cannot, even arguably, rely upon it to escape his convictions. This conclusion is of itself fatal to Ibori's applications under Ground 1 and requires their dismissal.
48. We nonetheless go on to deal with the remaining arguments under Ground 1 – which are academic in respect of Ibori but not the other Applicants.
49. *(4) Ibori's guilty pleas:* Subject to argument on Ground 2 in respect of count 3 of the V Mobile Indictment (see below), there can be no doubt that Ibori's guilty pleas were entered voluntarily and unequivocally. On this footing, there can be no basis for vacating those pleas unless Ibori succeeded in demonstrating an abuse of process sufficient to require a category (2) stay. We have already determined that Ibori's case for a category (2) stay is unarguable. It follows that (subject to Ground 2), Ibori has no arguable case to vacate his guilty pleas.
50. *(5) JMD:* Mr Talbot advanced the grave allegation that JMD "was corrupt and accepted bribes". As will be apparent, the allegation has to be put "high" on behalf of Ibori; if his applications under Ground 1 had not been derailed by the centrality of his own role in any corruption (if any there was), then his case of an abuse of process necessitates a clear finding that JMD *was* corrupt – and, in effect, that the decision not to prosecute him was one no reasonable prosecutor could have taken. Nothing less would assist the Ibori case.
51. In the *Gohil* judgment, we expressed the matter this way (at [162 (iv)]):

“For completeness, it may be noted that the CPS decision not to prosecute JMD...was taken in 2013, following advice from JD, who had no prior involvement with these matters whatever. It may be that JMD was indeed fortunate to escape prosecution (having regard to the totality of the material before us) but we cannot say that the decision taken was not tenable, especially bearing in mind the distinction between *intelligence* and *evidence*.”

“JD” was Mr John Davies from the Birmingham CPS. As also set out in the *Gohil* judgment (at [46]), JD was asked to give pre-charge advice with regard to the prosecution of JMD:

“Following interim advice given on 21 May 2013, JD followed up with advice dated 20 June 2013, in which he concluded that ‘currently there is insufficient evidence to provide a realistic prospect of conviction’ in respect of JMD.”

52. In revisiting the matter, going back in time to 2007, it can be seen that the Intelligence Development Group (“IDG”) of the DPS produced a Limonium Executive Summary, and a Report concerning Knuckey (this last document dated 13 June 2007). These documents chronicle the concerns that Risc was corrupt and posed a threat to the MPS. Concern focused in particular on Knuckey; there was intelligence that Knuckey and JMD had met on 23 May 2007; furthermore, there was material suggesting that JMD’s finances were strained. Still further, there was a good deal of telephone contact between Knuckey and JMD, over the period 15 May 2007 to 30 October 2007, including a 2 second call on 10 September 2007.
53. The question inevitably arises as to the conclusions which could properly be drawn from the 2007 IDG material. As it seems to us:
  - i) At the very least, there was material indicating that JMD had a compromising relationship with Knuckey who was representing and assisting the very person – Ibori – whom JMD was investigating.
  - ii) There was understandable anxiety as to JMD’s finances.
  - iii) The suspicion of Risc, Knuckey and JMD was sufficient to result in the decision by the MPS to undertake Limonium (to which we return later).
54. That said, none of this material went beyond the realm of *suspicion*. This reality was brought home later. First, though SB Attendance Notes and Knuckey emails contain various incidents of Knuckey telling Gohil, Ibori and others that he had obtained information from JMD, Knuckey, when interviewed, asserted that he had not received any information from JMD; instead, he had made all this up in order to give the impression that he had inside information. Secondly, as to Risc invoices recording cash sums paid to confidential sources, Knuckey stated that these were used to compensate him for returning from holiday early. Thirdly and in our judgment importantly, whatever the concerns as to JMD’s finances, no evidence emerged of any unexplained sums being paid into JMD bank accounts. Fourthly, Gohil (after his convictions) was

asked, as part of Tarbes, to provide any information he had about JMD acting corruptly – and refused.

55. In essence, as the Crown contended, rightly, the most cogent evidence as to the allegation of corruption on JMD's part relates to the events of 10 – 12 September 2007: see the *Gohil* judgment, at [33]. These events were fully taken into account in Limonium and we return to them in that context (below). Suffice for the moment to say that they underline the suspicions going to the relationship between Knuckey and JMD and as to a bribe being paid to JMD – but, deeply concerning as they are, evidential proof (let alone to a criminal standard) was fraught with difficulty – as JD, with no prior axe to grind, concluded (see above). In that regard, as neither Source A nor Source B were admissible in evidence, however cogent the intelligence they furnished, these did not bridge the gulf between suspicion and proof.
56. For completeness, though some play was sought to be made with a Risc schedule of (alleged) payments, we are unable to place any reliance on it. The schedule certainly falls well short of establishing that any payments, still less a number of payments, were made by Risc to JMD. At the highest, the schedule heightens the suspicion of a payment of £5,000 on the 12 September 2007 (a matter already well traversed) because *if* (which is not established) JMD was “C22” in the schedule, that particular payment is linked to the Ibori job number “0382C”. Not the least of the difficulties of this suggested exercise is that previous (alleged) payments are linked to another and wholly separate job number (0039C) – and there is no evidence linking JMD with that matter.
57. Finally, we turn to the various views expressed by SWQC in the material before the Court. Following the CPS decision to offer no evidence (21 January 2016) in relation to the Tarbes indictment, SWQC and ESW made it plain that they were not prepared to prosecute in any case in which JMD was a witness (for the prosecution). Subsequently, SWQC has maintained that MPS officers in Limonium were aware in September 2007 that JMD had been paid money for information. In a letter to the DPP dated 27 November 2016, SWQC stated that it was clear that JMD “had taken bribes” from Knuckey at the direction of Gohil. In a 30 November 2016 letter to the CPS, SWQC said that there were “multiple instances” when it was clear that JMD had accepted bribes.
58. Even allowing for the unfortunate personal tensions which had developed in the relationship between the CPS and former prosecution counsel after January 2016 – tensions which could cloud objectivity – SWQC's opinions are entitled to considerable weight as leading counsel with an extensive involvement in the litigation. They amply justify the *suspicion* attaching to JMD. They do not, however, of themselves furnish evidence establishing that JMD took bribes. Moreover, certain of SWQC's assertions, with respect, are not supported by the evidence. Thus, as will be apparent when dealing with Limonium (below), the evidence does not make good the charge that MPS were “aware” that JMD had been paid money for information. They suspected that he had been paid money but that is not the same thing as knowing that he had; nor did *intelligence* supporting the allegation equate to *evidence* establishing it. Equally, it is difficult to find support in the documentation for the charge that there were “multiple instances” when it was “clear” that JMD had been paid bribes. Accordingly, SWQC's opinions, while of note, do not significantly advance the issue of whether JMD *was* corrupt and accepted bribes.

59. For all these reasons and though repeating what we said in the *Gohil* judgment, namely, that JMD may indeed have been fortunate to escape prosecution, we are unable to accept Mr Talbot’s submission that JMD *was corrupt and accepted bribes*. Notwithstanding revisiting the issue, we remain of the opinion recorded in the *Gohil* judgment: we cannot say that the view taken by JD was untenable.
60. (6) *Limonium*: Though they are separate, there is an obvious overlap between this issue concerning Limonium and the previous issue, as to whether JMD was corrupt. Again, the Ibori case must be put “high” for it to be of any use to his applications – and so indeed it was; Mr Talbot’s submission was that the DPS *deliberately covered up JMD’s corruption in bad faith*, by prematurely closing down Limonium. The motive was said to be to protect the reputation of and funding for the MPS, together with the Ibori investigation. In their written submissions (dated 21 February 2018) prior to the March hearing, Ibori’s counsel had gone so far as to say:
- “ The Met Police, and in particular ADI Tunn falsified the records of Operation Limonium, by failing to record the true intelligence and evidence obtained in the course of the investigation, with the intention of allowing JMD to remain as OIC and concealing his criminal conduct.”
61. Without repeating ground already covered (see the *Gohil* judgment, at [13]), it can be seen that the material produced by the IDG resulted in the launch of Limonium in July 2007. ADI Tunn was the IO and made the entries in the various decision logs. D/L1, dated 9 August 2007, recorded concern as to Knuckey and JMD. ADI Tunn was not sure whether JMD was corrupt or simply vulnerable through his past association with Knuckey. With a view to an informed decision, ADI Tunn wrote:
- “...I need to further explore their [i.e., Knuckey and JMD’s] relationship and analyse their telephone communications to fully detail their contacts. I will also seek to make enquiries into...TUREEN and ascertain whether or not sensitive police intelligence on the case has been leaked. I am not going to apply for Directed Surveillance on McDONALD at this stage, but would seek to do so should I become aware of intelligence that indicates that he is to meet with KNUCKEY. In respect of this officer, I am keeping an open mind and will seek to prove or disprove against him.”
- D/L2, also dated 9 August 2007 added this:
- “...Police corruption is always a difficult offence to investigate, and for this reason this operation must remain covert at all times to enable me and the team to have the best chance of success...”
62. The decisions in D/L3 were made on the 13 September 2007 and written up on the 19 September. The relevant passages in D/L3 are set out in the *Gohil* judgment at [24] (see above), with Source A and Source B – which came to light through Limonium – explained at [27] – [29]. As appears from his written evidence for this Court, ADI Tunn was aware of the source of Source A. D/L3 also resulted in the decision to seek authority for “Lawful Business Monitoring” of JMD’s telephone. ADI Tunn regarded this as a

“proportionate and necessary response that may also afford me other avenues of enquiry to investigate in order to reach a proper conclusion”. A Directed Surveillance Authorisation, dated 17 September 2007, observed that the Knuckey-JMD relationship was “currently of particular concern”. The Ibori investigation was a high value money laundering investigation. If the investigation was compromised “...the impact on the MPS and our relationship with the Nigerian Government and other financial institutions could have a detrimental effect on our ability to conduct money laundering investigations in the future”.

63. The gravamen of D/L6 (16 October 2007) was set out in the *Gohil* judgment at [25] (see above). In the light of that summary, both ADI Tunn and the SIO (T/DCI Wallace) were of the view that there was no need to inform JMD’s superiors in SCD6. There appeared to be oversight and control in respect of the Ibori case “...and the ACC are managing any possible threat to that case by the deployment of LBM and other intelligence gathering products”. As ADI Tunn told us, Limonium remained a covert inquiry. Should the position change, the decision not to inform JMD’s superiors could be reviewed. D/L6 further records that ADI Tunn and the SIO met with DCS Spindler to brief him on the progress of Limonium and provide some oversight; ADI Tunn’s report to DCS Spindler for that meeting accurately reflected the contents of D/L6. Still further, D/L6 refers to “Efforts being made by supporting agencies to enhance and develop intelligence that may highlight corrupt activity taking place.” If that turned out to be the case, then the operational team would be in a position to respond. Both the SIO and ADI Tunn were of the view that Limonium remained “...in its scoping stage and...should remain with the ACC operational team who will be able to respond to any new or other relevant intelligence”.
64. Some time after 16 October 2007 and before 19 November 2007, ADI Tunn moved to other duties and his involvement with Limonium ceased. On 19 November 2007, the DPS took the decision to cancel the Directed Surveillance Authorisation. The reason given was as follows:

“ A review of the three months one-sided consensual monitoring of the MPS extensions associated with DS Colin Sims, DS Paul Simpson and DC John McDonald, shows that they are in contact with members of RISC Management. However the monitoring also shows that Sims, Simpson and McDonald do not appear to be engaging in corrupt activity with the persons they are speaking with via these MPS extensions. This in turn has meant that no conventional surveillance activity has been necessary.

In light of this and the fact that there is no other intelligence at this time to indicate any corrupt activity by the officers or members of RISC it has been decided that the most proportionate course of action at this time would be to cancel this authority.”

65. Our conclusions on Ibori’s allegations as to Limonium can be briefly stated. First, insofar as it was alleged that Limonium was not a genuine investigation and that records had been falsified, the charge is destroyed by the abandonment of the allegations of bad faith against Mr Tunn. As already observed, those allegations should never have been advanced.

66. Secondly, the allegation that Limonium was prematurely closed down in bad faith is not established. Even putting to one side the inability to pin this complaint on any identified individual, there is simply a wholly insufficient foundation for an accusation of this gravity. To the contrary, in 2007, the concern as to the reputation of the MPS led to the Limonium investigation being established and the surveillance undertaken. No trials had taken place; no convictions had been obtained. Even a cynical view of reputational concern pointed unequivocally towards investigating and removing JMD (or any other officer) if engaged in a corrupt relationship – not covering it up and permitting continued involvement of any such officer/s in the investigation.
67. Thirdly, it is difficult to criticise the DPS for its caution in employing surveillance or other intrusive tactics against those the subject of Limonium. The concerns that would have been expressed had the DPS been too ready to embark on such steps, can readily be imagined. Equally, the criticism that D/L6 should have been followed by arrests – in Mr Talbot’s submission, it “cried out for the arrest” of JMD - rather than the termination of Limonium, founders on the difficulties of converting intelligence into evidence. Source A, however impressive its pedigree, could not bridge that gap. Absent the emergence of supporting evidence, arresting JMD in October or November 2007 would have been anything but straightforward. By 19 November 2007, even further *intelligence* had not been forthcoming. Mr Tunn’s caution in avoiding premature arrests was perfectly intelligible. As he aptly observed in his written evidence before this Court, arresting a police officer on suspicion of corruption is not a step to be taken lightly; a glance at Gohil’s “Draft Strategy Plan” (*Gohil* judgment, at [37]) serves as a reminder as to why this is so. Furthermore, given that Limonium had not progressed beyond the scoping stage (as Mr Tunn expressed it), the decision not to inform JMD’s operational superiors was well within the ambit of sensible decisions. For completeness, no question arose then of informing JMD’s operational superiors for disclosure purposes – as no proceedings had yet been initiated.
68. Fourthly, we remind ourselves that the criticism of the termination of Limonium was and had to be put on the basis that it was done in bad faith with a view to covering up JMD’s corruption. The Ibori case was not that the approach to Limonium or its termination was timid, unduly cautious, negligent, or that other investigators might have adopted a more robust approach. Perhaps other investigators might have done (albeit with what outcome we know not). But that is irrelevant as those were not the allegations.
69. In the event, therefore, Limonium was brought to an end and there these matters rested until Gohil launched his campaign (described in the *Gohil* judgment, at [14]) in 2011. By then, Mr Tunn had long parted with this case and Mr Neligan, who became SIO of Tarbes in October 2011, had never been involved with Limonium.
70. (7) *Tarbes*: Timing is important here and essentially relates to the period October 2011, when Mr Neligan became SIO of Tarbes, until 27 February 2012, when Ibori entered his guilty pleas. Given the timing, this issue could only have impacted on Ibori (but for our earlier conclusion as to his knowledge). Tarbes has no possible bearing on the position of the other Applicants.
71. The case put on behalf of Ibori, was that Mr Neligan (and hence Tarbes) *deliberately* made no attempt to investigate JMD because, if JMD was corrupt, that conclusion would impact adversely on the reputation of the MPS and on Ibori’s (and the other)

convictions; for the same reasons, Mr Neligan *deliberately* failed to provide counsel and the CPS with the Limonium papers.

72. The starting point was the Gohil campaign, launched apparently anonymously and summarised in the *Gohil* judgment, at [14] and [41]. The campaign included a “Research” document, running to 102 paragraphs and making wide-ranging accusations against JMD and various other MPS officers. Understandably, anonymous documents attracted initial scepticism – a scepticism which was not at all allayed when it emerged that Gohil was behind the campaign.
73. On the evidence, Mr Neligan became involved on about 14 October 2011, as SIO; he allocated the day to day charge of Tarbes to DI Angie Clarke and, thereafter, to DI Emma White in early 2012 when DI Clarke left the unit. Mr Neligan referred the case to the Independent Police Complaints Commission (“the IPCC”) because it met the criteria of serious criminality involving the police. The IPCC determined the mode of investigation as “supervised”, i.e., that the IPCC would agree the terms of reference (“TOR”) and the DPS would conduct the investigation. The TOR, agreed on 26 October 2011, were as follows:

“To investigate allegations that a private company, RISC Management Limited, is paying officers of the....MPS...to obtain sensitive information on cases that are being investigated and prosecuted by the UK authorities.

Information obtained by RISC Management is allegedly then sold to the company’s clients, and in some cases is used to pervert the course of justice.

It is understood that RISC....was founded by Keith Hunter and Nigel Brown, who are both former Detectives with a reported wide contact base within the MPS. ”

For its part, the IPCC had no further information available to assist Tarbes.

74. DI Clarke’s contemporaneous notes record that on 1 November she needed to know what Limonium was all about and that on 2 November she was asking herself questions as to the motives of the anonymous informant, saying that she needed to speak to him. On all the evidence, though the scepticism as to the source of the material very likely skewed the reaction to it and the energy with which Tarbes was pursued, we are satisfied that officers involved retained an open mind. In a media interview in May 2012 (which he plainly did not want to give), Mr Neligan may have expressed himself unfortunately but, fairly construed, his reaction that he did not want a major investigation “scuppered” by anonymous material is defensible; what he was *not* saying was that he would not pursue Tarbes regardless of the truth of the allegations. To repeat, in early 2012, by when the material links between Gohil and the campaign had begun to appear, Gohil was approached as a potential witness to police corruption with a view to obtaining his assistance - but declined to assist Tarbes.
75. Mr Neligan himself became aware of D/L3 and the Limonium decision log in late December 2011 or early January 2012. On 1 December 2011, there was a discussion between SWQC and Mr Neligan. A contemporaneous email from SWQC to Mr

Neligan (of that date) shows that the discussion focused on the anonymous material, including the allegation of a £5,000 payment to JMD for providing information to those acting on behalf of Ibori. There was nothing to corroborate the allegation and as SWQC recorded, from what Mr Neligan had told her “there seems to be no material which falls to be disclosed by the Crown in the Ibori case”. At this stage the source of the anonymous documents had not yet been identified and Mr Neligan’s early assessment was that they potentially constituted an effort to discredit the MPS and the investigation of Gohil and Ibori.

76. In late December 2011, or early January 2012, Mr Neligan became aware of D/L3 and the Limonium decision log – but not for some time yet of Source A.
77. On 20 January 2012, ESW and DW (i.e., Mr David Williams of the CPS, referred to in the *Gohil* judgment) met with Mr Neligan, DI Clarke and other DPS officers. That day, ESW made a clear and, if we may say so, thoughtful note of the meeting, which she sent to SWQC and DW. For present purposes, suffice to say that counsel and the CPS were shown an “intelligence docket”, including the Intelligence Package from the IDG already touched upon, which made reference to JMD’s straitened finances.
78. In the light of the debate before us as to whether the DPS “contrived” to say that no officers were under investigation, it is of interest to see what was then said to counsel and the CPS:

“The DPS officers said that they were not yet looking at investigating the officers as they were by no means satisfied as to the bona fides of the complaint. However, our officers...have been pressing for an investigation in order to be exonerated. A compromise has been struck so that a notice is not sent out (because that contains an implicit statement that the subject of the notice is under suspicion for something) and in its place DPS have sent the officers letters setting out what the complaint is and inviting them to be formally interviewed at which time it will be suggested that material such as bank statements are provided....”

While views may differ as to whether the approach of the DPS was unduly narrow, if “contrivance” it was, it was one openly shared with counsel and the CPS. Later, in a Note of 8 February to the Crown Court in response to an application for disclosure on Ibori’s part, leading and junior counsel were prepared to say that there was “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”.

79. It is also striking that in her 20 January note and looking to the way ahead, ESW expressed the view that “...we should be slow to make a decision on this and we need to get to the bottom of what there is and what it may or may [not] show before we do”.
80. In the *Gohil* judgment (at [42]), we concluded that ESW and DW were made aware of Limonium and some material concerning Source B on 7 February 2012. Having anxiously (re)considered the surrounding contemporaneous materials, we see no reason whatsoever to revise that view. A documentary reference to Source B is difficult to explain unless ESW and DW had seen the relevant D/L. So too, a MG6D of that date refers by name to “Limonium” and was signed by DW. Still further, an internal email

from DI Clarke to others in the DPS, dated 15 February 2012, records that “In the interests of transparency and fulfilling our obligations under CPIA 1996 we have disclosed all material to prosecution counsel for consideration by them, and if necessary, the judge in this case”. Whatever criticism may be made of the conduct of Tarbes, materials such as these are difficult to reconcile with the allegation of bad faith on the part of the DPS, forming a necessary part of Ibori’s case. It follows that insofar as ESW has suggested otherwise, her recollection of the date of acquaintance with Limonium must, with great respect, be mistaken. Accordingly, the existence of Limonium had not been concealed from counsel before the date of Ibori’s trial (and, in the event, plea). What remained missing was an appreciation of the link between Source A and D/L3.

81. May 2012 saw a number of developments. Following receipt of a Suspicious Activity Report (“SAR”) from SB, inferring that JMD had received a payment from Knuckey, the DPS served a production order on SB and obtained further papers. Promptly thereafter, it may be thought, JMD, Knuckey and others were arrested and their homes and the Risc premises were searched. Timlin too was later arrested.
82. Some time in May but before 31 May 2012, following a meeting with DCI Wallace and DI Tunn (the former SIO and IO of Limonium), Mr Neligan became aware of the link between Source A and D/L3. In June 2013, when Mr Neligan met with HMRC, he was told they had no additional data to give him; no material then existed to corroborate the D/L3 entry, which comprised the only existing record of the information held by the MPS.
83. A meeting between leading and junior counsel, Mr Neligan and other DPS officers on 10 July 2012 included the observation by Mr Neligan that JMD’s change of status from witness to suspect resulted from the SB SAR, conveying the suspicion that he (JMD) may have committed a money laundering offence – with the caveat that SB did not know whether JMD had received the money in question. During the meeting, Mr Neligan and DI White expressed the view that (without more) there was still not enough to charge JMD; they were also of the view that nothing which they had seen had undermined the Tureen or Augen investigations.
84. We come to our conclusions on the Tarbes issue, reminding ourselves that the charge against the MPS, DPS and Mr Neligan is a *deliberate cover-up in bad faith*.
85. First, we reject that grave charge. The evidence falls well short of establishing it. Before the Ibori hearing on 27 February 2012, the CPS and (junior) counsel had been made aware of the existence of Limonium. The suggestion of a deliberate failure to investigate JMD is implausible in this light. Moreover, at that stage, Mr Neligan – whose evidence on this point we accept – was not yet aware of the source of the Source A intelligence. The assertion that no officers were currently under investigation was strictly, if very narrowly, true – and was known to counsel and the CPS.
86. Secondly with respect, making every allowance for the passing of the years, the changes in MPS personnel, doubtless the pressures of other investigations and the dubious provenance of an initially anonymous complaint, the Tarbes investigation was lacklustre – apart from the speed with which arrests were made in May 2012, following the developments which occurred in that month. Had a proper grip been taken, Mr Neligan should have been apprised of Limonium well before late December or early

January. Equally, there would have been much to be said in terms of disclosure in not taking the narrow and technical point that no officers were then under investigation. Furthermore, a more energetic and focused approach would have revealed the source of the Source A intelligence to Mr Neligan (and the DPS) well before late May 2012. Accordingly, there are proper grounds for criticising Tarbes – criticisms which have now taken far more time and cost to unravel than if the DPS had got it right first time. The DPS performance was unimpressive. But none of this amounts to the bad faith cover-up, essential for the purposes of Ibori’s case.

87. Thirdly, such failures as there were in the conduct of Tarbes did not begin to affect the safety of the Ibori convictions. The Gohil prosecution collapsed because, in the light of D/L3 and Source A in particular, the case against him *at least on the basis it had been advanced*, could not be sustained: *Gohil* judgment, at [147 (iv)]. There is no sensible basis for supposing that if counsel had in January or February 2012 obtained the knowledge of Source A which (as discussed in the *Gohil* judgment) they acquired in January 2016, the prosecution would have offered no evidence against Ibori. The obvious view, to which we subscribe, is that if all the information we now have had been available to the prosecution team as a whole in January or February 2012 (including as to Source A), the same conclusion would have been arrived at in terms of Ibori’s knowledge as we have reached above. If we may say so, the matter was well put in SWQC’s witness statement of 5 June 2016 (“the SWQC witness statement”), as follows:

“The material that both Mr Ibori and Mr Gohil now rely on to support the allegation of a corrupt relationship between DC McDonald and Cliff Knuckey indicates that they themselves must have been party to any corruption [if it existed].”

Such a conclusion would have been as fatal to Ibori’s defence in 2012 as it is now. Likewise, the difficulties in *proving* that JMD *was* corrupt (as opposed to suspicion that he was) would have been the same then as they are now.

88. Fourthly, if only for completeness (as these events are all too late to impact on any of the applications), we see no reason to revise the view expressed in the *Gohil* judgment (*passim*) as to the subsequent serious communications failure within the prosecution team with regard to the link between D/L3 and Source A, resulting in neither counsel (leading and junior) nor the CPS being aware of it before January 2016.
89. (8) *Overall conclusion on Ground 1*: For the reasons given, Ground 1 does not, even arguably, cause us to doubt the safety of Ibori’s convictions. Any EOT would be futile. We refuse all Ibori’s applications in this regard.

## GROUND 2

90. As outlined much earlier, the somewhat curious issue here is whether Ibori and his very experienced legal team were misled as to count 3 of the V Mobile Indictment and entered his Guilty plea on a false basis. It would appear that the origins of this issue can be traced to the assertion advanced by Mr Krolick in a confiscation proceeding hearing in September 2013, that Ibori had received no benefit at all in connection with the V Mobile matter.

91. It is convenient to begin with the relevant distinction between the provisions of ss. 328 and 327 of POCA. S.328 relates, in short, to money laundering “by or on behalf of another person”. S.327 contains no such limitation and therefore applies where the person charged with money laundering has himself benefited from the offence.
92. Initially, the money laundering counts in both the First Indictment and the V Mobile Indictment had charged offences under s.328 not s.327. In the week before the anticipated hearing on Monday 27 February 2012, in a development previously unheralded, Ibori’s legal representatives indicated that pleas of Guilty would be forthcoming, albeit not to all counts on the two Indictments. Matters then developed fairly rapidly. As it transpired, the extent of the pleas covered the full extent of the prosecution case. The suggestion was also made by Ibori’s legal representatives that the counts under the First Indictment should be charged under s.327 rather than s.328. It was made clear between counsel that no basis of plea would be advanced. In the event, all counts, on both Indictments, hitherto charged under s.328 were amended by counsel for the prosecution to plead a s.327 offence.
93. At 06.28 on the morning of the day of the hearing before HHJ Pitts – 27 February 2012 – SWQC sent an email, headed “Amended indictments”, to, *inter alia*, the Judge and Ibori’s leading counsel, Mr Nicholas Purnell QC. The email included the following:
- “At the start of proceedings this morning, there will be an application to amend both indictments. Essentially the section 328 charges on the first indictment have been replaced with section 327 charges. This has been done at the suggestion by the defence during discussions last week. As far as the second indictment is concerned, Count 3 has been particularised.
- I attach a copy of each of the amended indictments.
- In the light of the letter to you from Mr Purnell last Friday, we do not imagine that there will be any objection to the applications.”
94. Insofar as material, the amended count 3 of the V Mobile Indictment (*inter alia*) included a change from s.328 to s.327 and, in the particulars, substituted Ibori’s own criminal property for that of another person. Pausing there, the SWQC email (06.28 of 27 February) could, no doubt, have been better worded – insofar as it did not say that count 3 of the V Mobile Indictment had been amended (from s.328 to s.327). However, it drew attention in terms to the particularisation of that count.
95. It was common ground before us:
- i) At Court on 27 February 2012, Mr Purnell QC was provided with a hard copy of the amended Indictments.
  - ii) An application to amend the Indictments was made by SWQC in open Court; when doing so, she stated that both the Judge and defence counsel (leading and junior) had hard copies of the amended Indictments.

- iii) In response to a specific question from HHJ Pitts, Mr Purnell QC indicated that he did not object to the amendments to the Indictments.
- iv) Ibori was arraigned in open Court with the amended Indictments being put to him in the presence of his legal team and with junior counsel (Mr Akinsanya) standing beside him with a hard copy of the amended Indictments.
- v) HHJ Pitts gave leave for the Indictments to be amended in accordance with the drafts with which he had been provided.
- vi) At the sentencing hearing on 16 and 17 April 2012, the Judge sentenced on the basis of the amended V Mobile Indictment. No point was raised on Ibori's behalf as to the amendment to and particularisation of count 3. (For the avoidance of doubt, if, for any reason, this point was not strictly common ground, it is indisputable.) Ibori's legal team continued to include both Mr Purnell QC and Mr Akinsanya.
- vii) The consolidated bundle for the sentence appeal hearing on 2 May 2013 contained the amended V Mobile Indictment. No issue was raised at that hearing. Again, Ibori's legal team included Mr Purnell QC and Mr Akinsanya.

96. The SWQC witness statement is clear as to the nature of the prosecution case:

“It had always been the prosecution case that Mr Ibori had cheated the Nigerian public purse in the sum of approximately £50 million on the first indictment and that he was one of the two joint beneficiaries on the V mobile fraud of \$37 million on the second indictment.”

This observation is amply borne out, both by reference to the manner in which SWQC opened the Crown case at the sentencing hearing and by the Judge's sentencing observations – which included the following passage relevant to the V Mobile Indictment:

“ In effect, ADF was a sham, designed to hold assets only until they could be diverted to those who were intending to benefit from the fraud, namely James Ibori and Victor Attah.”

97. We unhesitatingly reject Ground 2.

98. First, we reject the submission advanced by Mr Krolick that SWQC may have acted in bad faith - if she was aware of the substantive change to count 3 and “had chosen not to draw it to the attention of the defence, or the judge”. The kernel of this submission was that at the very beginning of the hearing before HHJ Pitts on 27 February 2012, SWQC described the amendments as “minor”. She did indeed do so. But the notion that she was seeking to mislead the Judge or Ibori's legal team is absurd. By the time of the hearing, the Judge, Mr Purnell QC and Mr Akinsanya all had copies of the amended V Mobile Indictment. Mr Purnell QC was asked by the Judge and answered in terms that he consented to the amendments. Bad faith would have involved SWQC assuming that Ibori's experienced legal team would not trouble to read the amended V Mobile Indictment – including the new particulars of count 3, expressly flagged in the

06.28 email. Moreover, bad faith would have entailed SWQC further anticipating that when, in the course of explaining the position to the Judge and saying (in respect of the V Mobile Indictment) it involved “...Mr Ibori and his co-conspirators.....diverting the funds to their own pockets...”, even then no one would have noticed. There is nothing in this submission.

99. Secondly, we reject Mr Krolick’s alternative submission that SWQC had not noticed or had forgotten about the amendment to count 3. To begin with, having rejected the charge that SWQC was acting in bad faith, the precise distribution of knowledge within the team of prosecution counsel is irrelevant; as leading counsel, SWQC was responsible for the team. We cannot see how this submission advances the matter at all. In any event, we see no reason to conclude that SWQC was in error in this manner or at all. The 06.28 email could have been better worded (as already remarked) and the word “minor” may or may not have been the best description of the amendments. But SWQC was well aware of the particularisation of count 3 – to which she specifically drew attention in the 06.28 email – and that particularisation necessarily involved a s.327 rather than a s.328 charge. Moreover, the tenor of SWQC’s remarks to the Judge in the course of the hearing on 27 February was consistent and consistent only with a s.327 charge.
100. Thirdly (assuming, without deciding, that in the light of these conclusions there is room for Ibori to seek to vacate the plea), we are wholly unable to accept the assertion in the Ibori witness statement that, had he appreciated the nature of the amendment to count 3, he would not have entered a plea of guilty. Without straying into territory more properly the province of confiscation proceedings, this contention involves accepting that he committed the fraud (count 1 of the V Mobile Indictment, to which he entered a Guilty plea from which he does not seek to resile) to line his own pockets but benefited not at all from the money laundering (count 3). On this area too, Ibori could not be cross-examined. In any event, had this been the case, we regard it as incredible that the nature of the Crown’s case had not dawned on him either during the hearing on 27 February or, at latest, by the time of the sentencing hearing or the sentencing appeal; but, of all this, there was not a word until the confiscation proceedings.
101. Fourthly, with respect, we are unable to accept that if either Mr Purnell or Mr Akinsanya did not appreciate the import of the particularisation of count 3 of the V Mobile Indictment, such misunderstanding was a result of being misled by SWQC. In dealing with this unfortunate clash between counsel, we have only the witness statements to go on – no application was made to call SWQC, Mr Purnell QC or Mr Akinsanya. In this regard and doing the best we can, the witness statements of Mr Purnell QC and Mr Akinsanya are both dated May 2016, over four years after the hearing in question. They necessarily (without any impropriety) involve an element of reconstruction. All that said, as already underlined, if no more than the particulars of count 3 as amended had been read by them, it would have been manifest that a s.327 not a s.328 count was involved. If either leading or junior counsel did not read what was given to them, that must be a matter for them – in particular, with respect, for leading counsel who appears to have had the document longer than junior counsel. If the defence team needed longer to read the amendments, they only needed to ask. Even if, for any reason, the point had passed them by during the entirety of the hearing on 27 February 2012, it is simply inexplicable that it was not noticed before or during either the sentencing hearing or the sentence appeal. Had there been anything in the point now sought to be raised, it is

difficult to conceive that something would not have been said in the course of those further hearings.

102. For all these reasons, we think there is nothing in Ground 2 and entertain no doubt, even arguably, as to the safety of Ibori's convictions. Again, any EOT would be futile, so it is unnecessary to consider whether (had there been an arguable case on the merits) it would have been appropriate to extend time; on Ground 2 that would have been a separate issue, the outcome of which could not be assumed.
103. We accordingly, dismiss the application for an EOT and leave to appeal on Ground 2 as well as Ground 1. It follows that all Ibori's applications must be dismissed.

#### THE ONUIGBO AND IBORI-IBIE APPLICATIONS

104. As already recorded, Onuigbo and Ibori-Ibie were convicted in June 2010, after a trial, of the various offences set out above. Again as already recorded, each was sentenced to a total of 5 years' imprisonment.
105. Both applicants apply for an extension of time (of 7 years and 19 days) in which to apply for leave to appeal against conviction. The applications have been referred to the Full Court by the Registrar. Both applicants contend that the evidence in relation to JMD, which forms the foundation of the applications, was not available at the time of the trial and could not have been reasonably ascertained at that time.
106. The case against Onuigbo, was that considerable sums passed through bank accounts owned and managed by her. The prosecution relied upon evidence of Onuigbo's relationship with Ibori. She was his mistress and they have a child together. The prosecution also relied on evidence of Onuigbo's extravagant lifestyle, schedules of transactions through her UK bank accounts, proof of a contract for the sale of armoured vehicles to the Delta State at a grossly inflated price and movements of money into money laundering trust vehicles in Guernsey.
107. In particular, it was alleged she assisted Ibori through her use of three companies of which she was a director and shareholder, Sagicon, Sagaaris and Rivvbed; her bank accounts fed the personal accounts of Ibori and his wife Teresa; she paid for properties to be purchased in the UK (Hunter Lodge, Great Ground and Mayflower Lodge) and the USA; she facilitated the deposit of approximately \$5m into trust and company structures in Guernsey; and she diverted funds through the over-inflated contract for the purchase of Range Rovers, of one of which she was in possession when she was arrested in Nigeria in 2007. The three companies did no legitimate business; for example, the company address for Sagicon, a company said to be involved in high level government contracts was found to be a small shop-front selling spirits. There was no evidence that she had any legitimate means of income. In the trial the prosecution relied on her UK bank accounts, allegedly showing substantial sums being received by her and then being expended for the benefit of Ibori.
108. Amongst those who gave evidence for the Crown was JMD, the officer in the case. He took charge of investigating Ibori's wealth before acceding to the Governorship of the Delta State in 1999. His assessment was that he could not identify significant legitimate assets, although under cross-examination he accepted that it appeared from

documentation that Ibori had been a millionaire on assuming office in 1999. JMD stated that he had been unable to verify the accuracy of those documents.

109. The Defence case in outline was that Ibori had legitimately acquired assets and lawful sources of income. 14 volumes of documents were submitted to the court to support this contention. The applicants each asserted that they neither knew nor suspected the contrary to be the case. The case for each applicant was that they had acted honestly at all times.
110. Onuigbo gave evidence. She stated that she lived in Nigeria. She had been born into a wealthy family. Her father owned 600 acres of farm plantations and had been involved in public service, politics and the church. The applicant said that she had personally inherited land from her mother, who had died in 1987. Her father had lent her 1,000,000 naira in 1988, with which she had rented an office and established a fashion business. In 1992 she had opened a wine shop in Lagos, and in 1993 she had formed a company named Sagicon. In that year, her father had died and she had inherited shares in his company and a further 12.7 million naira. She went on to invest in property, and Sagicon was the holder of several large contracts to perform public services.
111. She told the court that she had first met Ibori in 1996. He became a customer of her wine business, and a friend. She had travelled with him during his unsuccessful campaign to become Governor in 1996. During the campaign, he would give her money to distribute amongst campaign workers. In 1997 she had met Ibori-Ibie in London, and they had become friends. She said that she did not have a business relationship with Ibori, although her business Sagicon did perform contracts for the Delta State. She rejected the suggestion by the prosecution that contracts carried out of behalf of the Delta State were a vehicle for taking money out of Nigeria. She was asked why Sagicon's name had been included in a money transfer to one of Ibori's family trusts. She explained that this was a mistake made by a man named "Ben" who she had asked to facilitate the transaction. In addition, she accepted that she had falsified documents to show Ibori as a shareholder in Sagicon in order to deal with a query from the Royal Bank of Canada about the provenance of some of the money that was transferred. However, she stated that she had thought that the monies had come from his legitimate assets. She said that she neither knew nor suspected that Ibori had any illegitimate assets.
112. She spoke about other property transactions. In relation to a property named "Hunter Lodge", she explained that the reason this had been put in the name of Ibori was because she had decided, having bought the property with her own funds, that the property was too close to a main road. When she told Ibori about this he had said that he would take over the purchase. She also described how, along with the Applicant Ibori-Ibie, she had lent around £300,000 to a man named Terry Waya, a very rich man with houses in London and Nigeria, who she had known since the 1970's.
113. Her explanations for the various transactions were challenged under cross-examination. It was put to her by prosecution counsel that, in essence, she had acted as Ibori's banker in the dispersal, or "washing", of various unlawfully obtained assets. She disputed this and denied that the contracts awarded to her company by the Delta State were vastly inflated. She denied having instigated the irregular applications for mortgages but stated that she had acted on the advice of others.

114. The case against Ibori-Ibie was that she had assisted her brother, Ibori, in his money laundering operation. During the period in question, she was living in the UK. Between 1999 and 2007 her bank accounts received in excess of £3 million from Nigeria. It was said that she was involved in the diversion and concealment of the money. In particular, she transferred large amounts into accounts controlled by Onuigbo.
115. Ibori-Ibie did not give evidence. She sought to rely on answers given in interview. Counsel on her behalf challenged the contention that Ibori's wealth was partly or wholly the proceeds of crime. The evidence suggested that he had been wealthy before he took office, with assets totalling around £2.2 million. He had appeared to have earned large sums working as an agent for the Nigerian government and an oil company. It was asserted that Ibori-Ibie did not have the resources to make the necessary enquiries in Nigeria to gather evidence which would have supported the notion that Ibori's assets were legitimately acquired. Ibori-Ibie was in her 50's, was of good character, and had been a long time resident of the UK. She had simply been included in the prosecution because she was the sister of Ibori.
116. The application for leave to appeal by both applicants is advanced on the ground that there is fresh evidence concerning the corrupt conduct of JMD. Both Applicants were tried before Ibori. It is said that JMD's evidence was central to their convictions and that misconduct by the prosecution in the form of suppression of information concerning his conduct was such as to render the prosecution an abuse of the process of the court.
117. The applicants' central argument before us was that JMD had been the principal witness concerning Ibori's conduct in Nigeria. It had been his evidence that he could identify no significant legitimate assets prior to May 1999 when Ibori became governor. In the light of the disclosures that have been made since the trial, it is argued that JMD can no longer be regarded as a witness of truth. Had the material now available been available at trial no reliance could properly have been placed upon his evidence. Further, had the jury known of his corrupt activities, they would not necessarily have convicted the Applicants.
118. We reject those arguments.
119. For all the reasons discussed above, the case against Ibori cannot, even arguably, be impugned. Accordingly, our starting point in considering the cases of Onuigbo and Ibori-Ibie is that Ibori's wealth was corruptly obtained. For the reasons we set out in relation to Ibori, we see nothing in the argument that there was a deliberate cover up of the corrupt activities of JMD (if such they were).
120. The Applicants point to the report in February 2007 which records the assertion that an employee of RISC had told JMD that they had been briefed before, and de-briefed after, their police interviews. In our judgment that fact was not privileged information in itself nor would it amount to special procedure material under s14 of PACE. It cannot properly be assumed that because this information was disclosed, other information was also disclosed. It is unnecessary to add to the observations we made at [22] and [155] of the *Gohil* judgment.
121. It is argued that the Limonium decision logs and the February 2007 intelligence report should have been disclosed and had they been that would have been the end of the

prosecution case. We agree that there should have been such disclosure as the intelligence justified. But we reject the argument that that would, even arguably, have led to the prosecution of Onuigbo and Ibori-Ibie being abandoned. JMD produced to the Court documents obtained by mutual legal assistance requests; JMD's alleged corruption did not impact upon either the letters of request or the responses obtained. Had the prosecution decided that they could not rely on JMD, they could and would have called another of the officers who accompanied him on his trips to Nigeria to give the same evidence. JMD was not the origin of that evidence, simply its conduit.

122. JMD's evidence in the trial concerned the apparent sources of Ibori's wealth. As is apparent from the summing-up, he made relevant concessions when cross-examined about those sources. It is accepted on Ibori-Ibie's behalf that it cannot now be said anything he said in evidence was incorrect. The evidence that the monies these two Applicants were handling came from the state coffers of Delta state, and the evidence that they each must have known of its corrupt source, was overwhelming.
123. In our judgment, given the nature of his evidence in the cases of the two Applicants, the allegedly corrupt nature of JMD's relationship with Risc cannot, even arguably, taint the case against either woman. Convictions would have been inevitable in any case. In those circumstances, the applications for leave to appeal and for EOTs by Ibori-Ibie and Onuigbo are refused.

#### THE DE BOER APPLICATIONS

124. De Boer was indicted with Gohil and McCann on a 17 count indictment to which we previously have referred as the Augen indictment: *Gohil* judgment, at [6]. De Boer was charged with offences of conspiracy to defraud and conspiracy to make false instruments (counts 1 and 2), six offences of money laundering (counts 3 to 8) and nine offences of forgery (counts 9 to 17). The offences were said to have occurred on various dates between 2005 and 2009.
125. On 6 December 2010 Gohil pleaded guilty to counts 1 to 8 on the indictment. This was after he had been convicted by a jury of five offences involving money laundering for the benefit of Ibori. On 20 December 2010 De Boer pleaded guilty to 6 counts on the indictment, a set out above. Thus, he admitted two offences of money laundering and four offences of forgery. On 10 January 2011 McCann pleaded guilty to counts 3, 4, 10, 11, 12, 13 and 15 on the indictment.
126. We dealt with the application by Gohil to re-open his appeal against the convictions he sustained by reason of his pleas of guilty on the Augen indictment in our earlier judgment. As already noted, McCann applied for leave to appeal against conviction in respect of his pleas of guilty and for an EOT - but abandoned his application. We need say no more about his position save that his involvement in the offences to which he pleaded guilty can be taken to be established as a fact.
127. The Augen indictment related to the sale of a company named V-Mobile, a privately owned Nigerian mobile telephone service provider. By the middle of 2005 it was the third largest mobile telephone operator in Africa. 18% of its shares were owned by Delta State of which James Ibori was Governor. Akwa Ibom State owned 10% of the shares in V-Mobile. Victor Attah was the Governor of that state. Both Delta State and Akwa Ibom State decided to sell their shares to raise money for the benefit of those

living in those states. When those decisions became known there was considerable market interest in the proposed sale. By November 2005 three different well-established mobile telephone providers had made offers for the shares, the price per share varying between \$7.58 and \$8.05. Thus, the market had been tested and likely price levels established.

128. This was the point at which Gohil set up a fraudulent scheme associated with the sale of the V-Mobile shares intended to benefit Ibori and Attah. He created a company called African Development Finance (“ADF”) which would charge a substantial fee for negotiating and advising on the sale of V-Mobile shares by the two states. No work in fact was done by ADF. None was necessary. The money paid to ADF was siphoned off to accounts controlled by Ibori and Attah.
129. De Boer was brought into the scheme to provide a veneer of City of London expertise and legitimacy. He worked as an independent contractor in association with a city-based brokerage firm. He was authorised by the FSA. ADF was incorporated in October 2005. The initial directors were Gohil and McCann. De Boer was appointed a director of ADF in June 2006 though this appointment was made retrospective to December 2005.
130. ADF supposedly entered into contracts known as Exclusive Arranger Agreements with the two states. The contracts were forged and backdated. The effect of the contracts was to provide a flat 5% commission to ADF together with a success fee of either 25% or 30% on any price of over \$6.50 or \$6.75 per share (the level being different as between the two states). The market value of the shares already had been established at a minimum of \$7.58 per share so ADF was bound to receive a very substantial commission and success fee. In fact, the shares were sold on 3 May 2006 for \$7.60 per share. ADF was paid around \$37.8 million by the two states. The money went into ADF accounts.
131. The first count of money laundering to which De Boer pleaded guilty reflected the receipt of the fraudulently obtained commission and success fee into the ADF bank accounts. The bulk of the monies in the ADF accounts were then laundered through four different vehicles. The first tranche of money laundered went by way of a supposed loan of \$11.4 million to a company named Brookes Aviation Limited, the stated purpose of the loan to be to purchase two aircraft. De Boer created a false loan document to support this transaction. His plea to count 16 (forgery) reflected his part in creating this false document. There came a point at which the sham transaction notionally fell through and the money was repaid. However, it was repaid to an account at a bank in Liechtenstein. This account was opened via the use of forged documents created by De Boer (count 15). De Boer had engaged in a similar exercise a few months earlier in relation to a bank in Luxembourg (count 13).
132. The second tranche of money laundered was \$10 million supposedly lent to a company named Ascot Offshore Nigeria Limited. The chairman of Ascot Offshore was a close friend of Ibori. After some repayment of this loan, Ascot Offshore defaulted on the agreement. No effort was made to recoup the monies paid. The loan was not a proper transaction. In the course of this process De Boer forged a letter indicating that due diligence had been undertaken prior to approval of the loan (count 17). It had not. The letter was created some 3 months after the loan had been made.

133. Other tranches of money were laundered via the Jersey account of a London based property management company and via McCann's company's account, De Boer having authorised the transfer of funds from the ADF accounts to these accounts.
134. By the early part of 2008 \$12 million remained under the control of ADF. Gohil proposed to launder this residue by selling ADF to a special purpose vehicle created by an associate of his, the sale to be at a very substantial undervaluation. That would have resulted in Gohil then having control of and access to the remaining fund as the result of an apparently genuine transaction. At this point Gohil on the one hand and De Boer and McCann on the other hand fell out. McCann told Gohil that the sale would not go through unless he and De Boer each were paid \$500,000 on termination of their directorships of ADF with a further \$1 million to be paid if either man were to be interviewed by the police. The arrangement by which the residue of the funds under the control of ADF (count 4) were to be laundered was not put into effect because of the police investigation.
135. As is apparent De Boer pleaded guilty to allegations of money laundering and forgery in December 2010. The issues raised in support of Ibori's application for leave to appeal by reference to events in the lead-up to the proposed trial date in 2012 cannot be of any relevance to De Boer's case. De Boer does rely on the matters raised by Ibori in relation to the alleged corrupt actions of JMD and the covering up of that alleged corruption by the (allegedly) premature closure in 2007 of Limonium.
136. As already flagged, there is an obvious distinction between De Boer's position and that of Ibori and Gohil. The latter Applicants knew about the contact between JMD and Risc, the company engaged by them. Insofar as there was a corrupt relationship involving JMD, it was instigated and encouraged by Ibori and Gohil. There is no evidence that De Boer was party to or knew of any corrupt relationship. Thus, an important strand of our conclusions in relation to Ibori and Gohil cannot apply to De Boer. Equally, there is a factor which is common to De Boer, Ibori and Gohil. Each of them pleaded guilty. De Boer has to overcome the fact of his pleas of guilty in establishing that his convictions were or might be unsafe. The principles set out in *Asiedu (supra)* apply in his case.
137. The argument put on behalf of De Boer mirrors the first two limbs of Ibori's principal argument: there was and is a very strong case in support of the proposition that JMD was corrupt and accepted bribes; JMD's activity was deliberately covered up by the MPS by the premature closure in 2007 of the Limonium investigation. It is not necessary for us to repeat the details of the argument as put by Ibori. We have concluded that, irrespective of Ibori's involvement in what occurred between JMD, Knuckey and Risc, it is overstating the case to assert that the case against JMD was "very strong". As we have already noted, there is an important distinction between evidence and intelligence. More to the point we have found no support for the proposition that there was a deliberate cover-up of JMD's activities whatever they may have been. This proposition could not survive, *inter alia*, the evidence of Mr Tunn and the content of his contemporaneous decision logs.
138. In those circumstances the argument that there was prosecutorial misconduct of a kind which rendered it offensive to justice for De Boer to be put on trial at all cannot succeed. There was a failure to disclose material. As we have already identified, non-disclosure

does not by itself amount to a circumstance making it unfair to put the accused on trial at all.

139. We have to consider the counts to which De Boer pleaded guilty. He admitted involvement in a scheme to launder the proceeds of a fraud involving the sale of shares in a mobile telephone service provider in Nigeria. His involvement consisted substantially of forgery by him of a loan document, of two documents relating to the opening of bank accounts in Luxembourg and Lichtenstein and of a due diligence letter. His pleas of guilty to the counts of forgery constituted an unambiguous confession that he had forged the documents. That confession could not sensibly have been affected by material suggesting misconduct on the part of JMD.
140. In the written argument submitted on his behalf De Boer argued that non-disclosure of material relating to JMD's alleged corrupt activity meant that he and his legal team were deprived of the opportunity to assess the strength of the evidence against him and the prospects of his defence succeeding by reason of the material which could have been deployed had proper disclosure been given. De Boer's defence as disclosed in his defence statement was that the share price offers received up to November 2005 were not true and effective and that ADF provided a valuable service. This defence would not have been assisted by the proposition that JMD was acting corruptly in the service of Ibori at the behest of Gohil. Since the primary purpose of the V Mobile fraud was to benefit Ibori and Gohil, any corrupt activity of JMD would hardly have been directed at concealing evidence that there was no fraud and that ADF provided a genuine service.
141. What has become apparent in the course of disclosure made for the purpose of these applications is that a statement from Roosevelt Ogbonna, an employee of Access Bank in Nigeria, was available to the prosecution prior to the point at which De Boer pleaded guilty but which was not disclosed. The statement should have been disclosed. It provided some support for De Boer's case as put in his defence statement. In argument before us it was asserted that Ogbonna gave ADF "a clean bill of health". We must consider the content of Ogbonna's statement in a little detail in order to assess the merits of that assertion.
142. Ogbonna's statement provides the following account. Access Bank was the bank at which the accounts were opened in the name of ADF. ADF was introduced to the bank by one of the bank's existing customers, a Mr Imosekha. The relationship with ADF was via the company's UK lawyers. Though Ogbonna does not identify him, the reference to the UK lawyers must be a reference to Gohil. In June 2006 (which is when ADF and the bank began their dealings) the bank sought a deposit or money market investment from ADF. ADF's response was that the company had entered into a consulting agreement with two state governments which would involve payment for services rendered. ADF provided formal documents executed on behalf of the company and a copy of the agreement with the state governments to show the bank that ADF was a "credible party". Thereafter the bank received around \$30 million and made transfers on the instructions of ADF in the sum of around \$24 million. The bank's "comfort for this relationship" was the reference from the existing customer and the nature of the contract executed with the state governments. The bank believed that the state governments would have evaluated the competence of ADF. The bank took account of the very high value of the transactions with the consequent value to the Nigerian economy and of the fact that the transactions had to be above board since they were public.

143. The evidence of Ogbunna provides no support for the proposition that ADF provided genuine services for the state governments. His assessment of the bona fides of ADF is based on the nature of the agreements with those governments and the belief that the state governments would have conducted their own due diligence. The prosecution case was that the governors of the states were party to the fraud practised by ADF and that the agreements were a sham. Ogbunna's evidence does nothing to meet or to contradict that case. Everything he says is consistent with ADF being an instrument of fraud, the bank being another victim of the fraud. His evidence does not provide any independent evaluation of ADF.
144. It is not apparent to us how disclosure of Ogbunna's statement would have affected the pleas tendered by De Boer. Ogbunna's evidence was and is irrelevant to the fact that De Boer forged documents. If the proposition is that evidence which indicated that ADF was a genuine concern would have led to De Boer contesting the indictment rather than pleading guilty, we note that the prosecution had served the statement of Umar Sanda, a Nigerian police officer as part of the evidence in De Boer's case. In 2007 Sanda was given the task of investigating allegations that ADF had been involved in money laundering. He gathered evidence from Access Bank, state government officials and officials of the company which made the successful bid for V Mobile shares. His evidence was that "no apparent case of money laundering was established at the time". Sanda's witness statement left many questions unanswered. Equally, on its face it was more helpful to De Boer's case than anything said by Ogbunna. Despite the service of Sanda's evidence, De Boer pleaded guilty.
145. We are wholly satisfied that additional disclosure would not have led to any different outcome in De Boer's case. He forged documents as part of a money laundering arrangement. That fact remains beyond dispute, not least because De Boer admitted it as did McCann and Gohil. Since his application for leave to appeal out of time has no merit, there is no basis to extend time. All his applications are accordingly refused.

#### POSTSCRIPT

146. With the observations thus far made, there matters should have ended and would have ended but for a Note to the Court from SWQC dated 25 March 2018 ("the Note") following closely upon the conclusion of the March hearing. As was appropriate, the Court circulated the Note to the parties. With great respect, the Note was unnecessary and one passage within it was distinctly unfortunate – prompting further submissions from the Applicants concerning the likely nature of the source of Source A intelligence. These submissions included the somewhat startling contention from those now representing Ibori for these purposes (Mr Ryder QC and Mr McKay), that a fair hearing was no longer possible, so that the Crown "must offer no further opposition to this appeal and the Court must allow this appeal". In the event, the Court took the view that all these submissions were best ventilated in an oral hearing, which took place in June.
147. The gravamen of Mr Ryder's submissions, attractively and carefully advanced, was that if the source of the Source A intelligence was intercepted communications, the applications could not continue without breach of the provisions of s.17 of the *Regulation of Investigatory Powers Act 2000* ("RIPA"). The upshot of this would be that Ibori could not have a fair hearing and, for that matter, Mr Ryder was himself inhibited from developing submissions as he would have wished to do. Accordingly, the applications should be granted and the Ibori appeal allowed. The other Applicants,

effectively following the lead of Mr Blaxland QC, all supported the position taken by Mr Ryder on behalf of Ibori.

148. For the Crown, Mr Kinnear QC resolutely opposed any such course; any breach of s.17 RIPA would not be fatal; fairness could be achieved. He questioned how far the Applicants' submissions went; did they mean that an inadvertent disclosure in breach of s.17 would produce the consequences for which the Applicants contended? Would a mere allegation of such a breach likewise be fatal?
149. We are wholly unpersuaded that any actual or alleged breach of s.17 RIPA in the present circumstances would point to – let alone necessitate - the Crown abandoning its opposition to the applications, the granting of the applications and the allowing of the Applicants' appeals. Neither practical justice nor principle requires such a course.
150. First, on the footing that disclosure in the course of Phoenix has not hitherto contravened s.17, RIPA – ground already traversed in the *Gohil* judgment, at [87] – [94] - we decline to accept that the subsequent act of a third party (outside the control or supervision of the Crown), with whatever motivation, intent or prudence, must result in the derailing of the proceedings. Were it otherwise, the scope for perverse incentives would be all too apparent.
151. Secondly, to dispose of it without more ado, though Mr Ryder approached this sensitive area with scrupulous care, he was in no way inhibited in the submissions he advanced, as the Court observed in the course of argument.
152. Thirdly, it is necessary to keep in mind the context in which this RIPA contention has been raised. The Applicants contend that if SWQC (amongst others) was deliberately misled by MPS non-disclosure, it strengthens their case of an abuse of process, rendering it unfair for the Applicants to have been tried. If, *hypothetically*, the source of Source A came within the purview of RIPA, the Applicants' argument is still further strengthened; not only would leading counsel have been misled but she would have been misled with regard to material for which there are stringent handling procedures which, it must be assumed, were not followed.
153. If, without expressing any view as to the nature of Source A, we treat it as material falling within RIPA (*for the purposes of this hypothesis*), then we are in a position to proceed on the assumption most favourable to the Applicants and without any unfairness or prejudice to them. Accordingly, we make that assumption – to repeat, without expressing any view (one way or another) as to the provenance of Source A.
154. Having done so, thus factoring in the gravity of the assumption, we remain of the same view as already expressed earlier in this judgment. Over and above Ibori's centrality to the corruption of JMD (if corruption there was) and Ibori's (and De Boer's) guilty pleas, none of the submissions prompted by the Note calls us to question our conclusions on the issues we have termed JMD, Limonium and Tarbes. It is unnecessary to slavishly repeat those conclusions here.
155. Fourthly, we make it plain that we do not for a moment accept that if this hypothesis had emerged earlier, the result would have been an end to the proceedings against the Applicants. In the case of Ibori, that is obvious given our conclusions as to his role in the (alleged) corruption of JMD. In the case of all the Applicants, we see no reason

why appropriate admissions and forms of wording by the Crown could not, adequately and fairly, have dealt with the matter.

156. It follows that our views on all the applications remain as set out earlier in this judgment.