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**IN THE COURT OF APPEAL**
**CRIMINAL DIVISION**

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 28 February 2020

**B e f o r e**:

**LORD JUSTICE IRWIN**

**MRS JUSTICE CHEEMA-GRUBB**

**HER HONOUR JUDGE MUNRO QC**

(Sitting as a Judge of the CACD)

**R E G I N A**

v

**JOHN ANTHONY CARTWRIGHT**
**MICHAEL JOHN BANCROFT**
**DAVID JOHN MILLS**

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(Official Shorthand Writers to the Court)



**Mr A Kane QC** appeared on behalf of the **Applicant Cartwright**
**Mr S Reevell** appeared on behalf of the **Applicant Bancroft**
**Mr K Vaughan QC & Mr S Baker** appeared on behalf of the **Applicant Bancroft**
**Mr A Bunyan** appeared on behalf of the **Crown**

**J U D G M E N T**

1. LORD JUSTICE IRWIN: On 30 January 2017 at the Southwark Crown Court, following a trial before His Honour Judge Beddoe and a jury, the applicants, Cartwright and Bancroft, and the appellant, Mills, were convicted of the offences we shall recite in a moment. On 2 February 2017 they were sentenced as follows. Cartwright: for count 4, fraudulent trading, contrary to section 458 of the Companies Act 1985, three-and-a-half years' imprisonment and on count 6, conspiracy to conceal criminal property, contrary to section 1 of the Criminal Law Act 1977, three-and-a-half years' imprisonment concurrent. Bancroft: count 1, conspiracy to corrupt, 6 years' imprisonment; counts 3, 4 and 5, counts of fraudulent trading contrary to section 458, in each case 4 years' imprisonment consecutive to the sentence on count 1 but concurrent with each other. Finally, on count 6, the concealing of criminal property, 6 years' imprisonment again concurrent, and therefore a total of 10 years' imprisonment. Finally Mills: on count 1, conspiracy to corrupt, 7 years' imprisonment; on counts 2 and 3, fraudulent trading, in each case contrary to section 458, 4 years' imprisonment on each consecutive; on count 4, a fraudulent trading count, 4 years' imprisonment concurrent; on count 5, 4 years' imprisonment concurrent and on count 6, 7 years' imprisonment concurrent, and therefore a total of 15 years' imprisonment. Ancillary orders were made.

2. There were sentences on co-accused. Lynden Scourfield pleaded guilty to all the counts on the indictment, was sentenced to a total of 11 years and 3 months. He is the important co-defendant.

3. Cartwright renews his application for leave to appeal against conviction and for a representation order, after refusals of the applications by the single judge. Bancroft renews his application for leave to appeal against sentence likewise, and Mills appeals his sentence by leave of the single judge.

4. In summary, all three of these men were convicted of offences of fraud, centering on activities causing loss to HBOS, Halifax Bank of Scotland. The co-defendant, Scourfield, was a senior director of HBOS. He was a high risk relationship manager in the impaired assets division of the bank. An "impaired asset" was a debtor company, owing the bank money and in poor financial or commercial state. It was obviously in the bank's interests to promote the health of such companies, both for the sake of the company and to minimise exposure of losses to the bank. Scourfield was corrupted by Mills. Essentially for reward from Mills (and later Bancroft) he had connived at the activities of Mills and his associates including Bancroft and Cartwright.

5. Mills organised a campaign whereby he and his associates would act as consultants and often directors of the impaired assets. In a number of ways they then milked the companies. Excessive consultancy fees, organised illicit intercompany loans, prolonging trading beyond the point when trading should have ceased, and all that in order to maintain the flow of cash to them but not to the bank. They also acquired some of the better assets at very cheap cost when finally the companies were dissolved or the assets

sold off.

6. Mills was the most prominent and dominant figure. Bancroft was a senior figure. Cartwright was described by the Crown as Bancroft's lapdog.

7. Cartwright renews his application for leave to appeal his conviction following permission; Bancroft, his application for leave to appeal his sentence, not conviction, and Mills, as we have said, has leave to appeal his sentence, for reasons we will summarise below.

8. Some idea of the scale of what happened can be gleaned from the sentencing remarks of Judge Beddoe in remarking on the activities of Mills:

    i. "That was at the cost of enormous losses to the Bank of Scotland of some £245,000,000, I acknowledge a gross figure, as I conceded in my observations with Mr Vaughan earlier in the day. Some of the connections were already significantly in debt and the loss attributable to the actions of you, Mr Scourfield and Mr Mills and, in part, Mr Bancroft, do not extend nearly to that sum.

    ii. But also the cost, in many respects worse in my judgment, was that destruction along the way of the livelihoods of a number of innocent, hard-working people. Some of these connections were, at the very least, potentially capable of rescue but what you, Mr Scourfield, let happen through Mr Mills and Mr Bancroft predominantly ensured that they would not and could not."

9. We begin by considering the renewed application of Cartwright. It is necessary to focus more closely on the facts as they affect him. Cartwright and Bancroft were old associates. Bad character evidence was given in the trial about that. In the course of a previous business dealing Bancroft had used some £600,000 of the company money of a company called Lux Lux, for personal expenditure. Bancroft was Chief Executive Officer and principal shareholder. Cartwright had become financial director and from 1988 to 1991 had concealed these depredations in the accounts of the company by a number of means, including false invoices. Cartwright had obtained personal expenditure in about £12,000. These matters were discovered in 1991. Bancroft and Cartwright repaid these moneys with interest after admitting what they had done and, luckily for them, they were not prosecuted.

10. Mills and Bancroft were also old friends who had known each other since Mills was 19.

11. As we have said, Cartwright was charged on three counts. Count 3 was fraudulent

trading, contrary to section 458 of the Companies Act 1985. He was acquitted on that count. Count 4 was a fraudulent trading count and count 6 the conspiracy to conceal criminal property.

12. We will take these matters in turn. Section 458 of the Companies Act 1985, in its material part, reads:

    i. "If any business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner is liable..."

13. Then provisions for sentence are given.

14. As the judge directed the jury, it was not in issue that if the jury were sure of what it is alleged had been done, that would constitute carrying on a business dishonestly for personal gain and would be caught by the section. There is no submission here that there was insufficient evidence of fraudulent trading. There is therefore no need for us, in considering Cartwright's application, to rehearse the detail of that.

15. The point taken is a narrower one, derived from the language of the statute. Put shortly it is this: can a defendant, as a matter of law, be convicted of an offence under section 458 not on the basis that he or she was in a position to "carry on...the business" of the company fraudulently, but rather as an aider and abettor of another who was and who did? The defence said "no", the Crown said "yes". That is the issue in respect of which Cartwright seeks leave to appeal.

16. In this case the judge followed the modern practice. He split his summing-up in two, giving written and oral directions on the law before the closing speeches of counsel, and concluding with his summing-up on the facts after counsel had finished. On counts 2 to 5 as affecting those indicated he said as follows:

    i. "If any business of a company is carried on for any fraudulent purpose every person who is knowingly a party to the carrying on of the business in that manner commits the offence of fraudulent trading ...

    ii. A person is a party to the carrying on of a business if he is running the business or exercising a controlling or managing function in it such as would enable to have some say in what activities it should be involved in. It does not mean that he has to hold any formal post or title."

17. He then gave a direction concerning aiding and abetting as the issue affected firstly, a

co-defendant, Cohen, charged under count 2. Cohen was, it was argued, had no management or controlling role. The direction was in unimpeachable terms. This direction was a precursor to the specific direction he gave as affecting Cartwright.

18. The judge proceeded to count 3. In respect of Mills and Bancroft he had directed the jury to the same two questions as he had outlined in count 2: had the Crown made the jury sure in each case that the defendant held the controlling or managing function in the business at the time, and were they sure the company was being managed or controlled fraudulently?

19. Then he came to Cartwright. Referring to the written questions he had formulated for the jury he said this on count 3:

    i. "For Mr Cartwright there are four questions. Has the Crown made you sure that the defendant held a controlling or managing function in the business of the company during the period identified in the count? If no, you proceed to question 3; if yes, you go on to question 2.

    ii. Question 2: has the Crown made you sure that while Mr Cartwright held that function the company was being carried on by him dishonestly for a fraudulent purpose, namely personal gain, to which he or any of his co-accused were not entitled? If the answer to that is no you proceed to question 3. If the answer to that is yes Mr Cartwright would be guilty essentially as a principal rather than as a secondary party because the questions under question 3 and 4, as you have seen elsewhere, deal with the issue of potential liability as a secondary party.

    iii. So, question 3 in relation to Mr Cartwright: has the Crown made you sure that Mr Mills or Mr Bancroft is guilty of this count? If no, the verdict in relation to Mr Cartwright would be not guilty; if yes, you would proceed to question 4.

    iv. Question 4: has the Crown made you sure that Mr Cartwright at the time Mr Mills or Mr Bancroft was committing the offence: (1) knew that Mr Mills or Mr Bancroft was doing so; and (2) intentionally assisted Mr Mills or Mr Bancroft to commit [the offence]? If no, the verdict is not guilty; if yes, the verdict is guilty."

20. The judge next addressed count 4 in exactly the same way. For Mills and Bancroft the same two questions as in count 3, for Cartwright the same questions and in the same sequence or cascade as we have quoted above.

21. It follows that the judge left two routes to verdict against Cartwright on count 4. If they answered "yes" to questions 1 and 2, they would convict him as a principal; if they answered "yes" to questions 3 and 4 they would convict him in the alternative as an aider and abettor. It is the latter route that the applicant says is in error in law.

22. Before we address that, we must consider briefly the conviction on count 6, the conspiracy to conceal or otherwise deal with criminal property. The applicant submits that the conviction on count 6 is parasitic on the conviction on count 4, there having been the acquittal of Cartwright on count 3. The Crown rejects that proposition. In truth it might possibly depend on the basis of the conviction under count 4.

23. Returning to count 4 the submissions can be summarised as follows. Mr Kane says the language of the section requires the defendant to have been "party to the carrying on of the business" in a fraudulent manner.

24. In the case of R v Miles (The Times, 15 April 1992) and also reported and digested at [1992] Crim LR 657, this court considered a case of selling worthless shares. By the time the evidence was completed, there were two issues remaining in relation to that appellant: (1) was he a party to the carrying on of the business or was he merely a salesman taking orders? Issue (2): was he aware that the shares were worthless? Against that factual background the court looked at the history of section 458 and its forebears.

25. Section 75 of the Companies Act 1928 was in similar language, save that it created personal liability on the part of "directors" of the company, as defined. Section 75(5) defined a director as including "any person who occupies the position of a director, or in accordance with whose directions or instructions directors of a company have been accustomed to act." The section was amended subsequently, and in section 101 of the Companies Act 1947 for the words "any of the directors past or present", was substituted the words "any persons". That wording was consolidated into section 332 of the Companies Act 1948 and thereafter the wording of the 1985 Act was as the court recited.

26. In Miles the Crown argued that the substitution of the phrase "any persons" for "director" meant that the test caught anyone within the company, and indeed beyond. The Crown conceded that there would be many people within a company who could not be said "party to the carrying on of the business of the company". There would therefore need to be a direction as to the ambit of that test on the facts of a given case.

27. Having noted the dearth of authority on the section and its predecessors, and noted the decision of Re: Maidstone Building Provisions [1971] 1 WLR 1085, which turned on the

provisions of section 332 of the 1948 Act, the court reached the following conclusions:

i. "The cases to which we were referred upon the matter offer very little guidance. In our view, section 458 is designed to include those who exercise a controlling or managerial function or who, in Lord Lane's phrase, are 'running the business'. A salesman who is not a manager and who sells shares he knows are worthless can be charged with offences under the Theft Act or with conspiracy. Circumstances will vary infinitely but we accept the force of Mr Barnes' second proposition that where there is an issue as to whether or not a defendant comes within the ambit of the section, that issue should be put to the jury together with clear guidance, appropriate to the facts of the case, as to the meaning of 'party to the carrying on of the business of the company'".

28. The editors of Archbold (2020 edition, paragraph 30-7) attribute the reference to the phrase of Lord Lane CJ to the decision in Grantham [1984] QB 675; 79 Cr App R 86. The court was there dealing with the precursor provision (section 332 of the 1948 Act). That provision did create a criminal offence but also dealt with civil liability. It had very similar wording. The material parts read:

i. "Section 332(1) reads as follows: 'If in the course of... winding up ... it appears that any business of the company has been carried on with intent to defraud ... or for any fraudulent purpose, the court ... may... declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible ... for all or any of the debts or other liabilities of the company as the court may direct."

29. Then in subsection (3):

i. "Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) ... every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment..."

30. The difficulty with the attribution of Lord Lane's phrase is that the phrase "running the business" is hard to locate in the decision of Grantham. Doing the best that he could to assist the court, Mr Kane suggested to us that it derives from a passage on page 5 of the report, as it appears in the Criminal Appeal Reports, in the penultimate paragraph, where the Lord Chief Justice said:

i. "In the present case it was open to the jury to find, if not inevitable that they would find, that whoever was running this business was intending to deceive or was actually deceiving..."

31. He then continued with the facts of the case.

32. We find it hard to see how the use of the phrase in that way, which was clearly a comment on the specific facts, was intended by Lord Lane to constitute a restriction on the ambit of section 332 or on its successor, section 458.

33. The Court of Appeal in Grantham did approve the summing-up of the trial judge which began, "as against the individual ... the prosecution have to prove first that he took an active part in carrying on the business". That formulation merely reflected the language in section 332 and the way the matter was put by the Crown in that case.

34. Following the decision in Miles, the case was the subject of a digest and commentary in the Criminal Law Review. We have cited the reference above. The commentary was penned by that most authoritative figure, the late Professor JC Smith. He wrote:

    i. "Given the conclusion that not all those working for a company are 'party' to the carrying on of its business, the most obvious division seems to be that between the company's 'brains' and its 'hands' -- between those officers (called in the Draft Code 'controlling officers') whose acts are the company's acts and others. This is a well-established distinction even if the precise line of demarcation is not always clear; and it would be undesirable to have to draw two separate lines dividing those working for the company. If a person's acts are the company's acts it seems reasonable to say that he is party to the carrying on of its business.

    ii. A person who is party to the carrying on of the business is a principal offender. Does this leave any room for the application of the principles of secondary liability? These principles apply unless they are expressly or impliedly excluded. If they apply, then the limited construction put upon 'party' is much less significant. Provided that someone was party to the carrying on of the business, *anyone* who knowingly gave assistance or encouragement would be equally liable. Even if the appellant was, as he contended, 'merely a salesman acting under orders' he would be an abettor if he knew the relevant facts. The fact that he was acting under orders would have been no defence. The question of secondary liability is not discussed by the court though it refers to an argument of the Crown: 'The appellant and Linsdell [who was convicted] could equally have been liable on the basis of a joint enterprise.' Joint enterprise is only an instance of secondary liability. The quashing of the conviction might then be thought to suggest that these principles have no application, but it would be unjustifiable so to conclude. Even if they do apply the court might

have been unwilling to uphold a conviction on that basis unless the jury had been directed about it."

35. The essential submission from the appellant here is that Professor Smith was wrong. Mr Kane argues that the limitation placed on primary liability under the statute necessarily precludes the existence of secondary liability by an aider and abettor. Unless such secondary liability is precluded, it is said, the limitation on primary liability is a nullity.

36. Mr Kane QC, for Cartwright, in his careful and helpful submissions, has referred us to commentary on the section and on the decision in Miles, to be found in Arlidge and Parry on Fraud (fifth edition 2018). The editors suggest:

i. "In *Miles*, 'however it was said that the section was designed to include only those who exercise a controlling or managerial function, or who are 'running' the business. A person is not a party to the carrying on of a business merely because he is involved in the activities of the business. At first sight this is a significant narrowing of the offence. But the prosecution presented its case on the basis that Miles did have a managerial role. He claimed that he was only a salesman, acting under orders. The jury were directed that the offence could be committed by 'concurring in the trade which is involved in the business of the company'. The Court of Appeal seems to have concluded that this was a misdirection in view of the issue raised. 'Concurring in the trade which is involved in the business of the company' is not the same thing as participating in a fraud. It does not follow that *only* a person 'running' the business is a party to the carrying on of the business.

ii. Indeed, it is now clear that that test is too narrow in at least one respect, because it would exclude altogether persons who deal with the organisation carrying on the fraudulent business but are not its employees or agents. *Re Bank of Credit and Commerce International SA* concerned a claim against Banque Arabe under the Insolvency Act 1986, s.213(2) on the round that Banque Arabe had been party to the fraudulent carrying on of business by BCCI. Banque Arabe sought to raise as a preliminary issue the question whether it could be liable under s.213(2) if it had not exercised a controlling or managerial function within BCCI. Neuberger J held that it could, and that the contrary view was not arguable. Indeed the words 'any persons who were knowingly parties to the carrying on of the business in the manner above mentioned' referred more naturally to third parties than to persons employed by the company conducting the fraudulent business. He concluded that

iii. 'a company or other entity which carries on (so far as it is concerned) a bona fide business with the company, does not fall within s.213(2), but a company which is involved in, and assists

and benefits from, the offending business, or the business carried on in an offending way, and does so knowingly and, therefore, dishonestly does fall or at least can fall within s.213(2)."

37. Then a further passage from 8-051:

    i. "Even if *Miles* is authority for the proposition that an employee is not 'a party to' the carrying on of the fraudulent business merely because he plays a minor part in it, it may still be arguable that he commits the offence because he aids and abets those who *are* parties to it. Indeed the Crown argued in *Miles* that the conviction could be sustained on this ground. The court did not expressly decide the point. It may be arguable that by quashing the conviction, it implicitly rejected the argument. If so, this could only be on the basis that the fraudulent trading provisions by implication exclude the ordinary principles of secondary liability. But it is more likely that the court was simply unwilling to uphold the conviction on a basis other than that on which the jury had been directed."

38. In our judgment, the submission so carefully advanced by Mr Kane must fail. Accepting that primary liability is confined in the way indicated by Miles, and that therefore there can be no secondary liability without a primary offender (whether indicted or not), we see no reason why secondary liability is removed by necessary implication. Common law liability as a secondary party can only be excluded by express provision or necessary implication: that is a long-standing principle, but stated authoritatively in R v Jefferson [1994] 99 Cr App R(S) 13.

39. There is no question of the former here. For the latter to operate there would need to be direct authority making that conclusion clear. In our view, that is not to be found in Miles or elsewhere.

40. In his oral submissions Mr Kane took us to the provisions in section 9 of the Fraud Act 2006. He submitted to us that the adoption by the draftsman of the same phrase "party to carrying on the business of the company" indicated a similar policy objective in the drafting of that Act. We have considered that argument carefully, but we do not see how that carries with it a policy objective which should govern the interpretation of the earlier statute. It must remain to be argued whether that provision in the Fraud Act carries the necessary implication sought to be derived in this case from the Companies Act provisions.

41. It is difficult to see what legitimate policy objective would be achieved by the outcome advanced by Mr Kane.
42. What of other inchoate offences? It could hardly be said that aiding and abetting is

precluded by necessary implication, but conspiracy is not so precluded. Mr Kane accepted as much in the course of argument. Let us consider what would follow if this interpretation is correct. If an adviser or an accountant, or another outside the company who could not possibly be a principal within the definition, agreed with a director that the relevant company should be run fraudulently, so that the substantive offence is a breach of section 458, such a construction of the law would preclude such a one from being prosecuted for conspiracy to commit a breach of section 458. If the interpretation advanced were correct, such a person would be so precluded because a defendant cannot be charged with a conspiracy in respect of an offence, which it is impossible for that person to commit. If not conspiracy, then by what principle of policy should aiding and abetting be precluded?

43. For those reasons, we reject the submissions of Mr Kane in relation to the interpretation of section 458.

44. It follows from that fact that the conviction on count 4 will stand and it therefore follows as a consequence that there is no live argument that the conviction on count 6 should be impugned in any way.

45. Given the difficulty of the matter and the complexity of the argument, we grant Cartwright leave to appeal, and representation in respect of his appeal, but for those reasons we dismiss the appeal.

46. We turn to the questions of sentence.

47. As we have indicated, leave has been given to Mills to appeal. It is worth recalling what the single judge said when granting that leave:

    i. "You may argue that some discount for delay attributable to prosecution failures was appropriate. The Court may wish to consider whether a defendant who stands trial merits a lesser discount for delay than one who pleads guilty and also whether the enjoyment of a luxury lifestyle whilst on remand (attributable to the criminal conduct alleged and subsequently proven), distentitles a defendant to a discount for delay that he would otherwise receive. You may also submit that the total sentence was manifestly excessive."

48. The basis of the sentence here was clear. Mills was dominant, he corrupted Scourfield and Dobson, was dominant over the other defendants and profited hugely from the offending. He lied continually to police in the course of the investigation. The scale and duration of the corruption over at least 4 years was emphasised by the judge, and he

described Mills's character as follows:

i. "You are, in my judgment, a thoroughly corrupt and devious man, adept at exploiting the weaknesses of others, particularly where that weakness is money and adept, too, in getting others to do your dirty work for you. Standing in the shadows, you had Mr Bancroft and his loyal lapdog, Mr Cartwright, to get their hands dirty at your direction and for your mutual financial advantage, in your case, compared to them, it has to be said, a staggering financial advantage."

49. The judge bore in mind Mills' age (60 at the time of sentence), he bore in mind totality and passed the sentences in a total of 15 years.

50. The grounds before permission were granted were threefold: that there was good character before these offences; that the defendant Mills was 60, and delay. Unsurprisingly no great emphasis was or is put on the first two points. This was a hugely corrupt man, demonstrating his corruption and his corruption of others over years. He was not and is not of an age where any real impact could be sought to be derived on sentence from his age. The emphasis in submissions has been placed on delay.

51. A procedural timetable has been agreed with the Crown. The indictment period ran from 2003 to 2010. There was an arrest in 2010 and charge in January 2013. In October 2014 the Crown applied to delay the trial and it was refixed for January 2016. Then again in October 2015, a further application from the Crown to delay the trial to September 2016. The complaint here is that by undue delay in disclosure and progress towards trial, about 2 years was introduced into the timetable, and that there were two periods of build up to trial which were disruptive.

52. The judge was well aware of the issue of delay and he addressed it directly in sentence. The judge said:

i. "I accept that there were serious failings on the part of the Crown to get to grips properly with the exercise of disclosure and this explains at least two years of that delay to which I have referred and to a limited extent in reaching what I consider to be the just sentences for all of you in this case, I have taken that into account.

ii. For some of you I am not entirely persuaded that this has really added anything to your plight. Had, for example, you admitted your offending to the police or pleaded guilty in 2013 and then had, for example, to wait an inordinate amount of time for sentence because others had insisted on a trial, the delay would, of course, be of much greater significance and value to you now.

iii. Indeed, I am quite sure that Mr Mills, for example, has simply and smugly continued to enjoy the fruits of his wrongdoing and really could have no complaint about the delay that there has been."

53. Mr Vaughan, for the appellant, makes the following critical points. Firstly, count 1, the sentence of 7 years was the maximum. There was therefore no deduction for delay there. Secondly, a defendant who pleads not guilty is still entitled to mitigation derived from undue delay on the part of the Crown. Thirdly, that during his client's period on bail, his liberty was restricted and there was a considerable impact on him of the delay and of the build up to trial which was then frustrated. We accept that those are valid points to advance.

54. Mr Vaughan has taken us to the relevant passage, which we need not cite from Spiers and Ruddy [2008] 1 AC, and also referred to us the recent decision of this court in R v Beattie-Milligan [2019] EWCA Crim 2367. That was a case of a very different nature. This court addressed the question of delay in that case in the following useful terms:

i. "22. However, there is one feature of this case that was not expressly taken into account by the judge, namely delay. This case is an example of the increasingly common and unjustified delay between offending and charge. The appellant was arrested in September 2017 but not notified that she was to be prosecuted until August 2018, by way of postal requisition.

ii. 23. Such delay causes injustice to both sides, especially in this sensitive type of case. The entire sentencing landscape may change. Victims and their families have to endure the wait with all the extra stress that that brings. Whilst it is true that it was the appellant's choice not to admit the offence straightaway, she is not to be punished for that choice. The case was relatively simply and the delay appears to be unjustified. Where there is unjustifiable delay, it imposes extra strain on a defendant, particularly where, as in this case, not just the defendant but also her family will be affected. In such circumstances [it] may be justifiable for a court to take account of unjustified delay."

55. We have considered this aspect of the case carefully. However, in contrast with the position in Beattie-Milligan, this judge did consider delay and the impact of delay. In making the remarks he did highlighted by Mr Kane, that to the effect that Mr Mills lived the period of delay in luxurious circumstances based on the proceeds of crime, he was not stating that he did not allow for any effect of delay on the overall sentence.

56. Properly read, in our view, his intention was to make clear that the degree of impact of that delay on this appellant was mitigated by the conditions under which he lived. It was

mitigated by the luxury enjoyed by this appellant as a consequence of his offending.

57. We have considered the sentence overall. We have considered whether it was manifestly excessive in any sense. Although it was deliberately a severe sentence, in our view, it was not manifestly excessive. For those reasons the appeal in the case of Mills is dismissed.

58. We turn to the application of Bancroft. As we have indicated, Bancroft had no previous convictions, although there was significant bad character evidence in his case, as we have already indicated. The judge in addressing Bancroft for sentence again made the basis of sentence clear:

    i. "Mr Bancroft, you were already clearly a thoroughly dishonest man as is shown by what happened at Ritz, as I say, an aggravating feature in my judgment in your case. You were Mr Mills' frontman and heavily engaged in the process of maintaining the hold both you and he had on. Mr Scourfield. You are clearly a bully when it suits you to be and with Mr Mills you plundered Theros, MSG and Remnant for fees and any useful assets you could get your hands on.

    ii. In the extraordinary letter you sent to me, written, it seems, before verdict but rightly anticipating what that verdict, or, rather, what those verdicts would be, you profess remorse for what you describe as mistakes but you told me nothing about why you made them and you ask me to take into account how affected your family will be by your incarceration.

    iii. You have, in fact, put up no case since 2010 when you were first arrested and interviewed and none in this trial and the only conclusion that I have been able to reach is that this is because you remain the sidekick of your old friend.

    iv. Mr Mills, and you couldn't countenance doing anything that might harm his interests, for example by pleading guilty. So I conclude you have put his interests first and your own before those of your family, yet now you ask me to think of them for you."

59. Bancroft was part of the corruption of Scourfield, although the relationship between Scourfield and Mills was already in place before Bancroft was introduced to Scourfield in 2003.

60. Bancroft played an active role in the corrupt inducements of Scourfield, granting the use of his villa in Portugal, procuring prostitutes and lap dancers and passing over envelopes

of cash to Scourfield. The Crown accepted that he had a lesser role than Mills. For example, he had no part in corrupting Dobson (another HBOS employee who was involved). It is right that he played no part in the offending in relation to Clode, in respect of which he was not indicted. But he was instrumental in the fraudulent trading of FTR Magenta which alone gave rise to a debt to the bank of £11.1 million, and at MS Gee Ltd and Remnant Media, in each case with losses of hundreds of thousands of pounds.

61. In addressing Bancroft the judge made clear that he regarded him as next in line to Mills and there can be no criticism of that ranking of the defendants.

62. A number of points are made on behalf of Bancroft. First of all, it is said that there can be no impact on his offence by delay. The court should have regard to the analogy of bribery. Bribery carries a 10 year maximum sentence, whereas the 7 years maximum for corruption means that such sentences should overall be scaled down. There is a complaint about totality. There is a complaint that there is a degree of overlap between count 1 and of the other counts. There is a clear complaint that there is insufficient distinction between Bancroft and Mills on count 1. There is a complaint advanced in relation to Mr Bancroft's health and age. He was 73 at sentence and is 76 now. He has diabetes, hypertension and has undergone considerable psychological stress. We have read the medical reports produced concerning Mr Bancroft, from Dr Bell at HMP Onley and we have seen some of the character evidence there. The personal material advanced has also been thought of by the court.

63. We have considered all of those points and in particular, the complaints articulated by Mr Reevell today. Bearing on the individual sentences given by the judge to the different counts there is no need for us to recapitulate the way it was put, but the essence is one can determine that on some counts there was very little, if any, adjustment for the overall role of this applicant.

64. However, we have considered the remarks of the judge in full. It is clear to us that the appropriate approach he took was to aim at an end point of sentence so that the total sentences reflected the proper differential between Mills and Bancroft.

65. One might say that intellectually the adjustment of sentences to gain that relationship between 15 years and 10 years, could have been done in a different way. But, in our view, that is neither here nor there.

66. This judge saw the trial, knew the offenders, gave close attention to their individual activities and clearly was taking an overall view on totality as to what the proper relationship between sentence for Mills and sentence for Bancroft should be. We have

considered the position carefully. We have considered that there was sufficient in the arguments advanced by Mr Reevell to grant leave to appeal to him, and so here too we grant leave to appeal and representation. But for the reasons we have given, the appeal is dismissed.

67. We would like to thank you all for the clarity of what you have said.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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