

IN THE CROWN COURT AT INNER LONDON

THE QUEEN

v

Nathan NTEGE

Galina PETKOVA

Georgia FORTEATH

Brian MILLER

Maudlyn RIVIERE

Angela PALACHIE

Innocent ODOH

RULING ON DEFENCE APPLICATION
TO STAY FOR ABUSE OF PROCESS

1. Introduction

The seven defendants face seventeen counts alleging various degrees of involvement with marriages of convenience entered into to facilitate breaches of immigration law. The first defendant, the Reverend Nathan Ntege also faces one count alleging fraud. Yesterday, Day 31 of the trial, almost at the close of the prosecution case, counsel for all seven defendants submitted that the trial should be stayed for abuse of process.

I have helpful skeleton arguments from all defence counsel. Yesterday morning I heard oral submissions from defence counsel supplementing those skeleton arguments. I also have a very helpful Chronology of Service of Disclosure Before and During the Trial prepared by Ms Ertan, junior counsel for Ms Petkova.

Today, I have received a Skeleton Argument in Reply prepared by Edward Lucas and Joe Plowright for the Crown. That too has been supplemented by oral submissions.

The offences alleged by the prosecution are serious. So too are the allegations of abuse and misconduct made by the defence. So the reasons I am about to give are lengthy.

2. The Law

The law is clear. Criminal Procedure and Investigations Act (CPIA) 1996 section 3 provides that

(1)The prosecutor must—

(a) disclose to the accused any prosecution material ... which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused.

The Code of Practice to the CPIA which applies to immigration officers in the same way as to police officers provides, *inter alia*,

3.5 In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances.

5.1 The investigator must retain material obtained in a criminal investigation which may be relevant to the investigation.

5.4 The duty to retain material includes in particular the duty to retain material falling into the following categories, where it may be relevant to the investigation:

- crime reports (including crime report forms, relevant parts of incident report books or police officer's notebooks);
- final versions of witness statements (and draft versions where their content differs from the final version), including any exhibits mentioned (unless these have been returned to their owner on the understanding that they will be produced in court if required);

The prosecution's obligations in relation to disclosure are amplified by the Attorney General's Guidelines on Disclosure - For investigators, prosecutors and defence practitioners

The leading case on disclosure is *R v H & C* [2004] UKHL 3; [2004] 2 WLR 355. At paragraph 14, the Supreme Court stated

Fairness ordinarily requires that any material held by the prosecution which weakens its case or strengthens that of the defendant, if not relied on as part of its formal case against the defendant, should be disclosed to the defence. Bitter experience has shown that miscarriages of justice may occur where such material is withheld from disclosure. The golden rule is that full disclosure of such material should be made.

Turning to the law relating to abuse of process, in *R v Maxwell* [2010] UKSC 48, [2011] 1 WLR 1837, Lord Dyson said, at paragraph 13:

It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will 'offend the court's sense of justice and propriety' (per Lord Lowry in *R v Horseferry Road Magistrate's Court, ex parte Bennett* [1994] 1 AC 42 at 74G) or will 'undermine public confidence in the criminal justice system and bring it into disrepute' (per Lord Steyn in *R v Latif and Shahzad* [1996] 1 WLR 104, 112F).

In *R. (Ebrahim) v Feltham Magistrates' Court* [2001] 2 Cr. App. R. 23, Brooke L.J. said "the courts retain an inherent jurisdiction to restrain what they perceive to be an abuse of their process ... This residual (and discretionary) power of any court to stay criminal proceedings as an abuse of its process is one which ought only to be employed in exceptional circumstances, whatever the reasons submitted for invoking it."

At paragraph 18, he too made the distinction between (i) cases where the court concludes that the defendant cannot receive a fair trial, and (ii) cases where it concludes that it would be unfair for the defendant to be tried.

I intend to concentrate on the second category.

Brooke LJ referred to the second category of cases as those “in which a court is not prepared to allow a prosecution to proceed because it is not being pursued in good faith, or because the prosecutors have been guilty of such serious misbehaviour that they should not be allowed to benefit from it to the defendant's detriment.”

He continued

20. In these cases the question is not so much whether the defendant can be fairly tried, but rather whether for some reason connected with the prosecutors' conduct it would be unfair to him if the court were to permit them to proceed at all. The court's inquiry is directed more to the prosecutors' behaviour than to the fairness of any eventual trial.

21. ... In all such cases—and one hopes they will be very rare—the court has to make a value judgment about the character of the prosecutor's conduct. If it is satisfied that it would not be fair to allow the proceedings to continue, the court does not then concern itself with the possibility that any ensuing trial might still be a fair one, because it will have formed the prior view that it would not be fair to the defendant if it were to take place at all.

22 This, in our judgment, is the type of situation which Sir Roger Ormrod, sitting in this Court with Lord Lane C.J. in *Derby Crown Court, ex p. Brooks (1985) 80 Cr.App.R. 164* had in mind when he said at pp. 168–169 that it may be an abuse of process if:

“the prosecution have manipulated or misused the process of the court so as to deprive a defendant of a protection provided by the law or to take unfair advantage of a technicality.”

23 In one of the unreported cases we were shown, it was said that there had to be either an element of bad faith or at the very least some serious fault on the part of the police or the prosecution authorities for this ground of challenge to succeed.

Brooke LJ concluded

74 We would suggest that in similar cases in future, a court should structure its inquiries in the following way:

(1) In the circumstances of the particular case, what was the nature and extent of the investigating authorities' and the prosecutors' duty, if any, to obtain and/or retain the ... evidence in question?

(3) If such evidence is not obtained and/or retained in breach of the obligations set out in the code and/or the guidelines, then the principles set out in paragraphs 25 and 28 of this judgment should generally be applied.

(4) If the behaviour of the prosecution has been so very bad that it is not fair that the defendant should be tried, then the proceedings should be stayed on that ground. The test in paragraph 23 of this judgment is a useful one.

So, I have to ask myself whether there was either an element of bad faith or at the very least some serious fault on the part of the prosecuting authorities.

I proceed on the basis that the burden is on the party alleging abuse of process to satisfy the court, on the balance of probabilities, that there was such abuse or serious misconduct.

In determining whether there is Category 2 abuse, a balance must always be struck between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute.

Mr King in his skeleton at paragraph 53 argues

... both the disclosure officer and the OIC have demonstrably sought to mislead the CPS, the defence, prosecuting counsel, and the court. They have arguably destroyed evidence, tampered with evidence, acted dishonestly and interfered with the investigation log. They have flouted their statutory duties and the OIC has arguably committed a contempt of court. Such misconduct is unquestionably very serious.

Mr King concludes at paragraph 61

It is accepted that staying proceedings as an abuse ought only to be a remedy of last resort. However the circumstances of this case are extraordinary and the issues raised herein cannot be cured by the trial process.

Counsel for all the other defendants have adopted Mr King's submissions and made further submissions of their own in similar vein.

For the Crown, Mr Lucas submits in his skeleton argument that there are very few specific references as to what is alleged to be bad faith in this case. He denies that there was bad faith, whether individually or cumulatively. He denies that there has been misconduct. Today, he said that the officers were stretched and did their best in the circumstances. Mr Lucas conceded that there have been fundamental failures of disclosure which, to use his words, were "at times somewhat staggering" but he says that prosecution counsel have done their utmost to disclose all material requested by the defence. He says that the jury is best placed to decide whether it is fair for the trial to proceed.

In relation to the allegation of Category 2 abuse, I will consider in turn four aspects of the conduct of this prosecution.

3. *The video recording and photographic evidence*

On 4.6.2011 the Reverend Ntege and Maudlyn Riviere were arrested. The church of St Jude, the vicarage and Ms Riviere's home were searched. The question of whether or not the arrests and searches on 4.6.2011 were filmed has been an issue from an early stage of this trial. This was confirmed on 2.10.14, when, in the absence of the jury, Mr King for the Reverend Ntege said that he had clear instructions from his client and his wife that his search and arrest were videoed. His case is that the video footage was buried to prevent the jury hearing evidence which is either embarrassing to the prosecution or would undermine the prosecution case or support the defence case. The prosecution witnesses denied this.

On 6.10.2014, the disclosure officer, who attended the search of the vicarage, was asked by Mr King whether the search of the church was filmed. He answered "I don't know. I was not present." When asked again he answered "I was not made aware of any, so I say no."

On 7.10.2014 the prosecution served a copy of the operational order for 4th June 2011. At paragraph 5, this stated "Please ensure that evidence is photographed in situ before seizing. Also a video camera will be at the vicarage a walk through of the premises prior to the search will be carried out then the camera to the church for the same."

Despite being shown this, the disclosure officer repeated that he did not "think photos were taken." He was asked "why not?" and replied "It was so large. There were so many people. We spread out. It got over looked. ... I think it just got missed." He continued "No photos were taken at the vicarage where I was. I was not told

of any such documents from the church." He was asked whether there was a statement from a police officer, Helen Reid, who took part in the search of the church and vicarage. He said he had not seen one. He was then asked about the premises search book, the Book 101, for the vicarage and offered to collect it from the room used by the prosecution adjoining this court room. He then stated, in answer to a question from Mr King "Digital cameras were provided and a video camera was available, but no one was specifically tasked" with taking photos.

Ms Power, for Maudlyn Riviere, then took the disclosure officer to an entry in the Book 101 made by Officer Napolitano which stated "I moved from room to room to record a rough layout of the property on the back page of this book. I also recorded photographs of each room." When asked by Ms Power "Where are the photos?" the disclosure officer replied "I don't know. It's the first time I've read that."

In re-examination by Mr Lucas for the prosecution, the disclosure officer was asked whether he had been involved in removing any film or evidence. He said "I completely deny that." He was asked about the premises search book, the Book 101, for the church. He answered "I haven't got that" but went to the room adjoining the court to find it. He was then asked to read out the note summarising what the Book 101 officer did and, to prosecution counsel's evident surprise, read the following entry "Premises entered with keys. Vicar Nathan Ntege under arrest ... Officers entered church. T/DC Reid began filming the internal church premises on camcorder."

It later transpired that in response to defence requests for disclosure of the Book 101s, part of the Books had been served, but not those parts referring to the use of the camera and the camcorder.

The Book 101 officer was TDC Reid. No statement from her had been served by the prosecution. On 8.10.2014, Day 23 of the trial, a statement was taken from her, and she was called to give evidence. She confirmed that on 4.6.2011 she was the 101 officer at St Jude's Church. Initially, she said that she could not recall using a camcorder and that as she had left the unit two and half years ago, she had not spoken about the case to any other officer. However, when she was shown the Book 101, she said that her entry about use of the camcorder would have been correct. She continued "if an item was filmed on a camcorder or photographed, the data card in the machine would be removed after search. It would be put in a separate exhibit bag if it was from a camcorder.

If it was a stills camera I would print each picture. I would give it my exhibit number and do a statement covering that exhibit. ... [The completed statement and exhibit would be] given to the officer in the case, because it's their case and they collate all the evidence."

The next witness was the officer in the case. She was asked by Mr King why, when the defence asked for Book 101s she only produced extracts which were missing the references to TDC Reid using the camcorder. She answered "I don't know. I do normally photocopy the whole thing. I do not understand why they are not all there. I haven't hidden them, I have got them here." She was asked whether she had herself copied the Book 101 for disclosure purposes and answered "I think it was me who photocopied it. I have to say yes. I don't remember. It has to have been me."

She was asked by Mr King "Where is the filming?" She answered "I haven't got it, I never had it."

Mr Lucas says the evidence on this issue "remains unresolved". I do not accept that.

In my judgment, the following conclusions inevitably flow from this evidence

- (i) on 4.6.2011, photographs were taken at the vicarage and camcorder video filming took place at the church;
- (ii) the officer in the case and/or the disclosure officer have taken steps to ensure that the resulting photographs and video footage have not been served on the defence and have not been made available to the jury;
- (iii) the officer in the case and/or the disclosure officer have deliberately tried to conceal this by only serving extracts from the Book 101s and by not serving any statement of TDC Helen Reid until required to do so;
- (iv) the officer in the case and/or the disclosure officer have both lied about this on oath; and
- (v) each of these separate acts taken individually, and when viewed together, show both bad faith and serious misconduct on the part of the prosecution.

4. The log

Some of the Defence Statements requested copies of the CRIS – the Crime Report Information System. It transpired that at the relevant time the UKBA did not have a CRIS, but the officers working on this case operated a log in the form of a Word document on a shared drive. A version of this, headed "I.C.T. London

(South)" was served on 1.10.2014 (Day 18 of the trial.) I will refer to that as "the log". The log served referred to the case being allocated to an OIC in February 2011 and contained a log of events from 13/5/2011 to 02/07/2011. Subsequently the UKBA introduced a new system of recording steps in an investigation, known as the NOD. The NOD in this case was served on 31.7.2014 and re-served on 14.9.2014 or 15.9.2014 (Day 5 or 6 of the trial.)

It is immediately apparent from those brief descriptions that the period between July and December 2012, some five months, was not covered by the log or the NOD which were served. The Defence asked for an explanation. In a witness statement dated 3.10.2014 (Day 19 of the trial) the officer in the case stated "In relation to the query regarding the lapse in the time between the investigation log finishing and the "NOD" starting, I cannot recall why I did not complete this as it was some time ago."

In cross-examination, Mr King asked the disclosure officer if he was aware of the missing five months. He answered "Ask [the officer in the case]. I had a brief discussion with her when she made me aware about this. She said she was on holiday, on a training course. She missed a few entries perhaps which are in her diary."

Later, Ms Ossack for Mr Miller, asked the disclosure officer about the gap. He answered "It was pointed out by yourselves a couple of days ago. We moved to a new system. I did not refer back to this log. I did not notice the gap. I didn't read the log from start to end. I sat [with the officer in the case]. She took me through where we were up to. ... I said [there is a] gap. You are going to be asked to account for it. That is what she told me. She looked in her diary. [She referred to a] training course, a holiday, a couple of statements taken when she had been to visit." He continued "You will have to ask her, that's what she said to me. She told me she took a few statements."

When cross-examined by Mr King on 13.10.2014, the officer in the case was asked why there was no record between 2.7.2012 and 14.12.2012. She answered "I didn't update it. I didn't go in and update it. The Word document." She accepted that there was a five months gap and that there was a statutory requirement to keep proper records. She was asked if she could give any explanation for her failure. She answered "No. I can't. I have got to hold my hand up. I didn't do it. I can't remember why. It was a long time I ago. I can't remember why."

I adjourned that day at half past four, with the officer in the case still being cross-examined. At 17.58 that evening, Mr King emailed

Mr Plowright, junior prosecution counsel, who has dealt with disclosure issues throughout the trial asking "Could we also have written confirmation that someone other than the OIC and the disclosure officer has interrogated the Home Office computer in search of the missing investigation logs including the dates and manner of the search." The next morning, Day 27 of the trial, the prosecution served a short statement from DS Simpson and another version of the log. That version included the period between July and November 2012 and gave details of actions taken in the investigation on some 32 days in those five months.

Before that new version of the log was put to the officer in the case in cross-examination, Mr King asked her about the log and forensic investigations during the "missing" five month period. My note of those questions and answers is as follows

Q The missing 5 months. You said there is no record.

A Yes

Q During the five months when the hard drive in this case was found, it was examined.

A That is not correct, Mr King.

Q During that period, the examination of the hard drive and other forensic material in the case revealed nothing on there that would assist the prosecution.

A That is not correct. Are you saying we sent it away for forensics?

Q I am saying that.

A That's not correct.

Q All the computers were sent for forensic examination during the missing months. The results came back, that there was nothing that would assist the prosecution. That is why the five months are missing.

A. Not at all. The computers never went anywhere.

Q If we had the missing months, we would see an entry that the computers were sent for forensics with the phones, and it was found that nothing would assist the prosecution.

A Not at all. The computer was never sent anywhere until it was found here.

[I add in parenthesis at this stage that on 17.9.2014, Day 8 of the trial, the prosecution found a computer tower seized from the church on 4.6.2011 in a store room in Croydon. That computer tower had not been forensically examined prior to trial. When forensically examined during the trial it revealed over two hundred documents which referred to defendants in this case and many documents which in later cross-examination the officer in the case

accepted were disclosable because they undermined the prosecution case or assisted the defence case.]

The officer in the case was again asked about "the missing five months". She again said, "I hold my hands up. It's my fault. I haven't done it." Mr King sought confirmation that neither she nor the senior investigation officer who later became the disclosure officer made any entry during the missing months. The officer in the case answered "Correct."

Mr King's subsequent cross-examination proceeded as follows

Q There is a record of the five months

A No, there isn't.

Q There is a record of the missing months. You have deliberately lied because you know it contains information which is damaging to the prosecution

A No. Not true. I did not fill it in. I held my hands up.

When Mr King showed her the version of the log served that morning which included the "missing" five months, the officer in the case said "This is my document."

When he moved on to the entry for 8.8.2012, the officer in the case exclaimed "I did fill it in. Paragraph 4. I have updated it. Sorry." She was asked if that was her entry and replied "No, this isn't. This is the CIO review." [I add in parenthesis that the CIO subsequently became the disclosure officer in this case, to whom I have already referred.] The officer in the case was asked if other entries were hers. She answered "14th August down. The rest of it, I think is. Sorry." Mr King pointed out that the previous day she had given evidence on oath about the lack of entries for the five months and suggested that she had lied. The officer in the case's response was "Not at all. I wrote the statement. Previously I did not remember and I did not understand why I hadn't filled it in. But I have." She was referred to her statement of 3.10.14 and said "That is my answer. I did not remember why I did not fill it in. I have not seen this in quite a while. ... This makes me feel better, yes it does."

Mr King says that it is of significance that among the passages missing from the version served on the defence is the following for 08/08/2012 "We have the results of the computer and USB forensics. Nothing was found that will assist the investigation. The phone analysis has been completed. Very little was found that will assist the investigation." Mr King understandably says that the fact that there is no evidence of any communication between his client

and the alleged marriage fixers undermines the prosecution case and assists the defence case.

Also during cross examination by Mr King, the officer in the case accepted that an entry in the log for 2.3.2012 had been deleted from the version of the log served on the defence. When asked for an explanation, she said "because I didn't think it was relevant. It was something we couldn't take forward." It is clear that there is also at least one other discrepancy between an entry in the version of the log initially served on the defence and that served on 14.10.2014.

When Ms Ossack for Mr Miller and Ms Power for Ms Riviere cross-examined the officer in the case, it became clear that there was a further period of a few weeks in November and December 2012 which was not covered by the second version of the log. Ms Ossack pointed out that there was no entry on the log from 20.11.2012 to 20.12.2012. The officer in the case responded "Correct". When asked "why?" she answered "I don't know." She was asked whether she recalled making a record of anything between 20.11.2012 and 20.12.2012. She answered "No. It is so long ago, I can't remember." When it was pointed out that Mr Miller had been charged during this, missing, period, she said "I believe the first entry on the NOD report is about the Reverend Ntege charging, but I do not understand why Brian is not there." She was asked "Are you saying you put no entry on that month?" She answered "I don't recall." She was asked if other people in her team also put nothing on the record. She answered "There is nothing there. I can't answer for them. There is nothing there. .. I can't answer for anyone else in my team and I can't recall if it was written. It is so long ago." She denied deleting anything, but accepted that it was possible to delete from it, saying "It is a general Word document. It is possible. I can't say if it happened or not. I didn't do it." [i.e. delete from it]

This period is significant because during it

- Mr Miller went to Electric House and had a conversation with the officer in the case. The officer in the case gave evidence that no notes were taken at that meeting;
- Mr Miller was charged; and
- Ms Riviere who had been informed that the case against her had been NFAed made a witness statement on 29.11.2012 for the officer in the case.

Ms Ossack is right in submitting that this was incompetent, unprofessional and negligent, if not, as with the five month period, simply dishonest. Ms Power submits that the officer in the case

would have been aware that the obtaining of the statement from Ms Riviere prior to the decision to charge would have potentially been fatal to the prosecution case. She submits that someone has removed this section from the log in a deliberate effort to conceal the statement.

There was clearly an obligation to keep and retain a record during this December period. That obligation was breached.

Mr Lucas today said that the issues relating to the log are "merely incompetence" and amounted to "mistakes", not misconduct. I do not accept that.

In my judgment, the following conclusions inevitably flow from the evidence about the log

- (i) the officer in the case and the disclosure officer deliberately concealed the existence of entries on the log from July 2012 to December 2012;
- (ii) the officer in the case and the disclosure officer have repeatedly lied on oath about this;
- (iii) there is a clear inference that their reason for doing this was to deprive the defence of evidence which would undermine the prosecution case and assist the defence case;
- (iv) entries from the version of the log originally served on the defence have been altered and deleted; and
- (v) each of these separate acts taken individually, and when viewed together, show both bad faith and serious misconduct on the part of the prosecution.

5. The statement of DC Caterine Baptie

Maudlyn Riviere was arrested at her home address on 4.6.2011. No statement of the arresting officer, DC Baptie was served. It is Ms Riviere's case that on arrest she made an exculpatory statement which should have been recorded. On 7.10.2014 (Day 22 of the trial) a statement of DC Caterine Baptie dated 4 June 2011 was served. That statement recorded Ms Riviere's response on arrest as "I have done nothing wrong. I am the registrar administrator for the church, I just sign the marriage certificates or do the duplicates if people need them, I do the weddings when the vicar does weddings. When people come to get married, they speak to the vicar then he interviews them. After, he sets the date of the wedding. I complete all the different forms." Despite being told to stop, Ms Riviere continued "I haven't done anything." and gave an explanation about the banking of church moneys.

The disclosure officer accepted this was supportive of the defence case. He said "It should be in evidence. It is an arrest statement. I disclosed everything I was made aware of."

Today, Mr Lucas said that the failure to disclose the Baptie statement was "unfortunate". He did not accept that it was misconduct.

On its own, the failure to serve the statement of the arresting officer might be seen as an unusual but innocent lapse. However, in view of actions of the officer in the case and the disclosure officer to which I have already referred, I am satisfied that the officer in the case and the disclosure officer deliberately concealed the existence DC Baptie's statement and that there is a clear inference that their reason for doing so was to deprive Ms Riviere of evidence which would undermine the prosecution case and assist the defence case.

6. *The search of Galena Petkova's home*

Ms Petkova's home was visited by the police and the UKBA on 28.12.2011. Mr Townsend for Ms Petkova says that the defence were led to believe that only PC Andrew Birks and the officer in the case had attended the property. On 26.9.2014, IO Tina Lyonette gave evidence. Ms Petkova was not in attendance due to illness. No questions were asked of IO Tina Lyonette by her counsel. The Crown had led Ms Petkova's representatives to believe that IO Tina Lyonette had only peripheral involvement in relation to the investigation. Towards the end of the Crown's case Ms Petkova advised her lawyers that there was an immigration officer at her address that she had not seen give evidence. She mentioned that this officer had been writing notes and recording answers that she had given to questions asked by the officer in the case. She believed the officer had been referred to as 'Tina'. IO Tina Lyonette was recalled on 13.10.2014, day 26 of the trial. In cross-examination she denied having completed a search book. She denied that any exculpatory comments had been made by Ms Petkova. When cross-examined, the officer in the case denied having any recollection of a search book being completed. She denied that there had been any search of the property. She denied that Ms Petkova had made any exculpatory comment. She asserted that the only question asked of Ms Petkova was in relation to her use of the name Karkelenova. She denied having asked any questions about Iva Kombokova. On 6.10.2014, Day 21 of the trial, as a result of defence disclosure requests, the prosecution served a witness statement and notebook entries of DC Vanessa Sheehan. The existence of this material had not been disclosed by the officer

in the case or the disclosure officer. On 16.10.2014, DC Vanessa Sheehan gave evidence. She confirmed that a search of the property had taken place subject to s.32 PACE. She was adamant that notes had been taken by IO Tina Lyonette. She was clear that Ms Petkova had been asked about Iva Kombokova. She was clear that she had also been asked other questions, but could not recall their substance.

In view of the evidence of DC Sheehan, an officer with no subsequent involvement in this case, I am satisfied that a search did take place and that Ms Petkova was questioned.

Mr Lucas says that there are inevitably inconsistencies in presentation of any prosecution case and that these matters did not amount to misconduct.

On its own, the failure on the part of the officer in the case to recall the search or the questions asked, might be seen as an innocent lapse. However, in view of the other actions of the officer in the case to which I have already referred, I am satisfied that the officer in the case and IO Lyonette deliberately concealed the fact that Ms Petkova was questioned and her home searched. It is likely that their reason for doing so was to seek to deprive Ms Petkova of evidence which would undermine the prosecution case and assist the defence case.

At paragraph 49 in his skeleton, Mr Townsend listed a number of other examples of what he describes as factors which he describes as "lies and misinformation" including:

- (a) The existence of a witness statement assisting Tifinia Zlatanova in her sentencing;
- (b) The analysis of electronic communication;
- (d) the officer in the case's email to prosecution counsel during the course of her evidence;
- (e) The assertion by the officer in the case that no persons had been arrested, but not charged.

In view of my findings in relation to the four matters I have already considered, it is not necessary for me to form any conclusions in relation to these additional matters, or the submissions advanced by Ms Hallisday-Davis on behalf of Angela Palachie or by Mr Harrison on behalf of Innocent Odoh. I do though reject Mr Harrison's submission that this was a case of executive state entrapment.

7. Conclusion in relation to Category 2 abuse

In conclusion, I am satisfied that this is a case in which there has been both bad faith and serious misconduct on the part of the prosecution.

I am satisfied that officers at the heart of this prosecution have deliberately concealed important evidence and lied on oath. That bad faith and misconduct started on 4.6.2011, when two of the principal defendants were arrested, and has continued throughout the course of this trial. In my judgment, it has tainted the whole case. It has tainted the prosecution against all seven defendants.

When it comes to the balance between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute, I bear in mind Mr Lucas's submission that this is a serious case with significant public interest considerations. He does not concede there is not good evidence in relation to each defendant. However, in my judgment, the misconduct of the prosecution, and in particular the officer in the case and the disclosure officer, is so serious that these two officers have left me with no option other than to exercise my discretion to stay this prosecution.

I am satisfied that this is an exceptional case in which it would be unfair for the defendants to continue to be tried. I am satisfied that a stay is necessary to protect the integrity of the criminal justice system. If the trial were to be permitted to continue there is a real risk that public faith in the criminal justice system would be undermined. It is a case in which the prosecution should not be allowed to benefit from the serious misbehaviour of the officer in the case or the disclosure officer.

It is highly regrettable that the jury will not be able to return verdicts of guilty or not guilty based upon proper evidence and that a large amount of public money, probably hundreds of thousands of pounds, have been wasted in this investigation and trial. That though is the result of the misconduct of the officer in the case and the disclosure officer.

In view of my finding that there was Category 2 abuse, it is not necessary for me to consider the alternative submission that there was Category 1 abuse of process.

8. *The promise to Ms Riviere*

I should though say a few words about Ms Power's submission on behalf of Ms Riviere that the proceedings should be stayed as an abuse of process on the basis that the prosecution have acted in

breach of a clear and defined promise not to prosecute her. Ms Power submits that Ms Riviere acted upon that promise to her detriment and that these proceedings should be stayed as "a clear and flagrant" abuse of the courts process. She argues that to allow the case to continue against Ms Riviere would be an affront to the administration of justice.

In brief

- Ms Riviere was arrested on 4.6.2011. On 25.5.2012, following a review of the investigation, Inspector Shortland made a decision that no further action should be taken against her. Her bail to return on 10.7.2012 was cancelled and the police wrote to her and her solicitors informing her that no further action was going to be taken against her. The officer in the case also telephoned Ms Riviere to inform her of the decision not to prosecute. Her property was returned. I am satisfied that, taking those factors together, there was a clear and defined promise;
- The prosecution do not advance any change of circumstance or evidence justifying the subsequent decision some eight or nine months later to summons Ms Riviere and to join her to this prosecution;
- In the light of Ms Power's submissions, especially those set out in paragraph 16 of her skeleton, I am satisfied that Ms Riviere acted to her detriment as a result of that promise. I am satisfied that, given the inconsistencies, making the witness statement on 29.11.2012 was to her detriment. For the reasons given by Ms Power in her oral submissions this morning, I do not accept the submissions in paragraph 88 of the prosecution skeleton;
- When considered in conjunction with the bad faith and serious misconduct to which I have already referred, the promise to take no further action is a further reason why it would be an affront to the administration of justice to allow the case to continue against Ms Riviere.

So I stay the prosecution against all defendants on the ground of abuse of process.

HHJ Nic Madge
Inner London Crown Court
21st October 2014