R v and others: adjournment

Ambit of this ruling

1. This ruling concerns an application by the Crown for an adjournment and parallel applications by each defendant for a stay of the indictment for abuse of process. I give this ruling on Monday 1st December 2014 at the start of the 5th week of this trial. The jury has sat on the evidence for no more than 5 days. All the adjournments and delays lie at the door of the Crown. Mr. C leading for the prosecution, now concedes he cannot proceed in front of this jury. He tells me he needs up to 3 weeks to re-prepare his own case and 6 weeks to complete disclosure duties. Allowing the defence time to absorb whatever then emerges, the earliest any re-trial could take place would be February 2015. He asks for this jury to be discharged and an adjournment till then.
2. The defence all agree it is utterly unrealistic to keep this jury, but say the Crown should be allowed no adjournment and if it can't properly proceed it must now offer no evidence. They each further argue that if they fail in that submission, it would amount to an abuse of process to allow the Crown to "have a 2nd bite of the cherry".
3. At first blush, the proposal that the Crown should offer no evidence in a case of this gravity where there is evidence against each defendant is unusual. But the events which have overtaken this trial are unusual in the extreme, and there are many other blushes lying beneath that first one.

Nature of allegations.

4. These 7 defendants face a joint count of becoming concerned in a money laundering arrangement to facilitate the retention, use or control of criminal property by another contrary to s328 Proceeds of Crime Act. There is at least one other trial pending involving a similar charge and a similar number of defendants. Those on trial 1 are particularised in the indictment as being concerned in an arrangement with those in trial 2 as well as some never arrested at all. The assignment of particular defendant to trial 1 or 2 has been – if not arbitrary – capable of having been differently arranged.
5. This trial was opened on the basis that over a period of 11 months they with others laundered approximately £37 million. Some were involved from the outset, others joined in later and for much shorter periods. Some are said to have set up accounts in spurious or ghost names. Others are said to have paid large sums of cash into those accounts. It is also said that money got into the accounts via 'mandate frauds'. Almost all the money thus accumulated quickly passed directly or indirectly through other accounts to Hong Kong. None of these defendants are said to have been at the top of this substantial laundering organisation and only and are said to have played any real organisational role.

History of the case:

6. I have been much assisted by a chronology prepared by Mr. M and Miss S from which I draw the following dates
    a. 27th March 2014 preliminary hearing of all defendants then charged. Trial was fixed for 8th September 2014
    b. 11th July PCMH. The Crown said it could not be ready for 8th Sept, pointing to a significant amount of evidence yet to be served. HHJ K QC said there should be 2 trials. He fixed trial dates of 3rd November 2014 and 3rd Feb 2015
    c. 8th September 2014 Crown extended custody time limits
    d. 2nd October before me, the Crown successfully opposed application to break the fixture insisting they were trial ready.

e. 24th October 2014 before me, the Crown (though asking for more time to serve their opening) continued to declare itself trial ready and said there was nothing significant left to be served in their case.
f. 3rd November the trial began. We selected a jury panel

The Crown's trial readiness

7. Investigation, evidential preparation and disclosure duties in this case have been in hands of a branch of the National Crime Agency (NCA) headed by Commander J B .The 'officer in the case' is Mr. R . The disclosure officer was M S .Commander B has told me that although she had no day-to-day part in the investigation she had frequent meetings with those under her and that as she put it 'the buck stopped with her'.I am told by Mr. C that the NCA is required to work with CPS as any other branch of the police force would, and ultimately with prosecuting counsel.

8. The picture painted by the chronology in paragraph 6 above conceals what was happening in the Crown's camp. I have before me the Crown's 'explanatory note' recently prepared in support of their application. According to it
   a. The Crown proposed to present the vast bulk of their case, little of which was in dispute, through a 'timeline'. On 7th August 2014 the NCA began to prepare this central plank of their case.
   b. During August it became clear they couldn't do it. Amongst their problems
      - They had no software to capture CCTV images and tried to do it by taking photographs of the stills on their phones
      - They had no software allowing them to cut and paste PDFs into their PowerPoint document and again tried to take photos on their phones
      - due to a security filter they could not access their own electronically served case papers which had been served by CPS on CD Roms so they had no paginated statements or exhibits
      - for the same reason they couldn't check statements served by CPS
   c. The 'case team' struggled on producing useless material. This remained the position on 8th September when there was a hearing to extend custody time limits. No hint was given to the court of the Crown's problems.
   d. It wasn't until 26th September the 'case team', in conference with counsel, accepted the timeline could not be prepared in-house and a budget was allocated for an outside contractor. The contractor was instructed on 30th Sept.
   e. On 2nd October an application was made by to break the fixture. It was opposed by the Crown who insisted they were trial ready and gave no hint of the difficulties they were facing.
   f. On 15th Oct the NCA received from the contracted analyst a 'useless' timeline. It needed to be redone.
   g. This was the position on 24th October when at a hearing in relation to trial readiness the Crown still insisted they were trial ready.
   h. On 26th October an incomplete 2nd draft was again returned to the contractor and that evening a complete version was received. It was circulated, unchecked, to defence counsel. It was in a form that a number of them couldn't open – they were the happy ones. Those who opened it found 'an extraordinarily poor document'. Mr. C brands it again 'useless'.

i. Next day (27th) the contractor was summoned to London and kept for 3 days while he and officers worked long hard hours. On 29th, Mr. indicated to counsel that there was a real problem with being ready.

j. But by 2nd November Mr. C 's natural optimism had reasserted itself. The Crown had their amended timeline and served it. Unwisely. Again it wasn't properly checked. When one defence counsel e-mailed to point out a fundamental error in the mathematics of the banking material and asked for 'breakdowns of the maths involved?' he didn't get it. But ...

k. ... on Monday 3rd November (the day the jury was selected) the Crown served substantial banking spreadsheets in PDF form, exhibited in G. W 's statement of 31st October. The spreadsheets were incomplete and again not properly checked. Neither – as it turns out – was Miss W 's statement. If anyone had read it between its creation on 31st Oct and its service on 3rd November they would have realised she was saying the figure of £37m was incorrect. It should have been nearly £40m. The underlying mathematical errors would have been uncovered, and perhaps other matters much more serious would have come to light. However it seems her statement sat in Mr. C 's chambers while he worked at court and he didn't become aware of its content until 12th November, by which time so much water had flowed under the bridge the prosecution were already drowning.

Course of the trial

9. On 3rd November we selected 18 potential jurors. They were told the trial would end before 31st January 2015 and possibly much earlier. Many counsel were hopeful of finishing before Christmas. Potential jurors were sent away to check their diaries. I began to get a hint of the Crown's problems when Mr. C told me he couldn't open the case the following day because the timeline and consequently his opening were not ready. The defence had seen neither. I adjourned to the 5th November.

10. On 5th the jury panel returned and 12 were chosen and sworn but the case couldn't start because the opening couldn't be served on defence till that afternoon and the timeline still wasn't ready. On the 6th I was told that although the timeline was now ready, network problems at the NCA meant it could not be amended or printed. That, as it turned out, was the least of the Crown's problems.

11. By the following week the Crown was ready to open and present its case, and did so relying almost exclusively on the timeline. The evidence began, again with extensive use of the timeline, and jury followed carefully, heavily marking their documents as they were taken through material and cross-references. By the end of the week, however, problems were apparent. It was evident to me that the totals at the foot of various columns of figures were simply wrong. Moreover the jury documents contained not only figures relating to cash payments in and transfers out, but very substantial sums of 'other credits' in. These were said to be unidentifiable bank accounts only representing double accounting of cash transfers, but it was becoming increasingly obvious the figures did not add up. The Crown asked for time to resolve the matter, the jury were sent away again.

12. Also during that week it became clear that over a dozen electronic storage items seized by the Crown had not been examined and, Mr. C accepted, should have been. He caused them to be.

13. By Tuesday morning 18th November Mr. C had discovered the following
    a. The figure subject of the indictment was not £37m but between 39 and 40m
    b. The other credits totalled £11½m some of which was indeed double accounting but some of it was not and represented separate payments in from identifiable accounts which had direct relevance to the case before the jury but which had never been examined.

    The jury was sent away again.

14. On Wed 19th November the Crown was still working on the problems. On Thursday 20th Mr. C told me that the figures before the jury under the heading 'other credits' reflected some £11½ m of which perhaps £8m was double accounting but there was, in contradiction to what he had understood and told the jury, a very substantial sum reflecting payments in from over 300 other identifiable and now identified bank accounts. Of these there were 228 significant payments in and some of the accounts reflected activity by at least 2 men named by the defendants as the true wrongdoers. He first thought it would take the Crown up to a month to look at this but in the end said it would take at least 6 weeks.

The Crown's application

15. Mr. C casts his application for an adjournment in terms of meeting his disclosure duties to assist the defence but in my judgement that is – I am sure unwittingly – disingenuous. In fact, as he accepts, entirely absent the issue of disclosure, he couldn't proceed in front of this jury as the position stands. He needs up to 3 weeks to put his case in order and the earliest he could proceed would be on the verge of the Christmas break. This would mean, in reality, starting some time in January. This court could not accommodate the trial before February; and only then by virtue of taking the date assigned for the 2nd trial. In reality the proposed adjournment to Feb will be necessitated by the Crown's failures, outwith the issue of disclosure. I turn to detail the failings now apparent in the Crown's case .

Failures of the Crown

16. The Timeline
    a. The case was opened, 'where there were no matching transfers on the timeline it was because the Crown couldn't identify the account into which money was paid. I am now told that's wrong in a significant number of cases.
    b. The timeline is missing some of the matching transfers and bank accounts
    c. The timeline is missing significant parts of the CCTV (stills) material
    d. The timeline in some instances wrongly attributes transfers to certain days creating a positively misleading impression
    e. The timeline is missing the IP transfers. They appear in a separate schedule but it is very difficult to cross reference them into the chronology and without that exercise the picture is misleading.
    f. None of the AR Seafood material is in the timeline
    g. Some of the days of surveillance observations of those visiting banks are missing which when set beside the payments into banks and transfers creates a misleading impression
    h. Some of the observations of money being passed between people are missing rendering the 'story' unintelligible

i. A significant number of mathematical errors have crept into the mathematical additions the Crown relies upon
j. The timeline shows many 'other credits' without explaining what is double accounting and what separate credits and from whom.

All of this I have taken from what Mr. C has told me.

17. The explanation offered by Mr. C is that many of these matters were overlooked because the Crown had no time to check the document and took on trust it said what it should. In my judgment – in the light of the fact it had appeared in poor or plain wrong form on earlier occasions – that was rash. In any event one might have hoped this catalogue of omissions and errors might have been noticed during the opening and corrected before being incorporated into the evidence before the jury. In any event I note that this cannot explain Mr. C s being told the 'other credits were all double accounting;' of which more below.

18. Electronic media:

One of the first problems to emerge was the discovery that electronic media items had not been examined which, said Mr. C , should have been. This has now been done. Although it was originally thought the omission was an oversight, Miss B tells me that (apart from a computer being misidentified as a monitor) it was a decision driven by cost analysis and the availability of the forensic analyst. The explanatory note says that until the matter emerged during the trial, CPS and prosecuting counsel were unaware of the existence of a forensic strategy that conflicted with their own disclosure protocol. This might have put Crown on notice to check if other protocols had been followed. It didn't, perhaps because they could not envisage what was to come in due course.

19. Surveillance:

The Crown proposed to adduce the surveillance of on the 5th Feb 2014. In fact there had been observations of the same man on the 3rd and 4th but these were irrelevant and not to be adduced. The crown wished to adduce the evidence in summarised form in the timeline. Defence counsel asked to see the underlying material. They did not receive it and accordingly required the attendance of the observing officers. However on the basis couldn't positively say it wasn't him, they finally agreed to it being adduced through the timeline. But Mr. J diligent junior as he is, remained disquieted and pursued the matter. I have heard the explanation from the Crown and also heard form Miss S I found it difficult to be clear about some of what she said, perhaps because she herself wasn't clear about it, trying to recall matters over many months when she had made no notes. The picture that emerged was this:

a. The officers on 5th (including the disclosure officer S) were sure the man observed was the same as on the 3rd and that it was
b. One of the officers on the 3rd, though not on the 5th was DC B
c. B arrested in March and on arrest felt certain this was not the man they had observed on the 3rd, and by inference, not the man seen on the 5th either.
d. He conveyed this to Miss S the disclosure officer who spoke to at least one (Miss R -S)) and possibly more of the surveillance officers from the 5th. For whatever reason S decided B was right.

e. I am satisfied Miss S did not follow the codes or do what was necessary. cause B to record the matter in note, statement or any other form. Instead she recorded on the disclosure schedule the following

- Item 519: MG11 K R confirms details of surveillance on 3/2/14 observes exit bus near R House, later sees exit a bus near R House (unused misidentification of)
- Item 520: MG11 K R confirms details of surveillance on 5/2/14 observes at a bus stop near R House, in vicinity of Norbury talking to occupant of PA03RAY and travelling in KL56WVB as a passenger to Tooting (unused misidentification of)
- The statements of identification should never have been served but they were. This was in error. She realised they had been in May or June. She knew the identification was in the timeline and being given in evidence but thought it would be challenged.

20. Miss S has clarified what she meant in a disclosure note she recently provided. She meant to accept that B was right since he was the one who saw face to face on arrest. She meant to indicate there had been a misidentification. Mr. C describes her conclusion "as having no rational reason". I'm not so sure. But in any event B 's view was significant and it wasn't recorded. Miss S 's failure was compounded when the reviewing lawyer marked these entries not to be disclosed as having no relevance to the defence's case. The compounded errors were not helped when Mr. J ,who had asked to see what underlay 519 and 520, was told he couldn't because it was the same as the witness's statement. The result was that the observation evidence was put before the jury apparently without counsel for either side realising that the one officer who at least arguably was in a position to say so, was sure it was wrong. This is the more extraordinary since Miss S was, as I understand it, at court.

21. Missing photographs

This is associated with the above, but represents a different sort of problem. In the course of trying to understand what has gone wrong with the Crown's case I was assisted by evidence from Commander B who, to prepare herself, spent the night before reviewing matters including the identification of . She saw from a document headed surveillance management that photographs had been taken. These photographs did not appear in the relevant observation logs nor in any list of exhibits nor were they mentioned in any statement. Neither was there any reference to the surveillance management document itself. It seems the photos were on a memory stick, they were not printed out immediately, perhaps because there was no photo paper available, and the stick was put in a drawer and forgotten about. Bylunchtime Miss had informed Mr. C but the information did not come to the attention of the defence of the court until, in response to a question from me towards the end of her evidence, she told us about it. Counsel, I am told and accept, overlooked passing on the information being very busy with the unfolding situation.

22. Failure to investigate relevant bank accounts

During the week of 3rd November the Crown served banking schedules. Parts were difficult – in some cases impossible – to read. They showed that the 'other credits' ran to over £11m. Mr. C says he was told and believed (i) that represented various passages of the £37m (or £39+m as we now know it to be) i.e. double accounting (ii)

that the bank accounts couldn't be identified. Once he had the schedules it might have been possible to discern the falsity of some aspects of his position but, as he put it in his explanatory note, "we were rather busy presenting the case at the time".

23. Inevitably there came a time when the true position began to emerge. It happened towards the end of the 2nd week of trial after questions were raised about the relevance of the appearance of "other credits" in very many pages of the timeline. It now seems
    a. Although the Crown still thinks the majority of the £11m is layering or double accounting for cash transfers, at least nearly £3m is not
    b. The "case team" were aware that the £11m 'other credits' included a mixture of sources but decided that any non-cash deposits fell outside the scope of their investigation and decided to ignore them.
    c. They did not tell the CPS they had made this decision nor did they tell counsel.
    d. In fact the accounts can be – and now have been – identified. There are some 300 of which at least 228 are or may be relevant to this investigation and transfers from them total almost £3m.

24. Mr. C says that by 'relevant' he means that either they may support the Crown's case or in particular may undermine it by
    a. Showing the Crown is wrong saying this is all 'dirty money' going through 'dirty accounts' or
    b. By supporting the defence case i.e. he is now aware that some of these accounts show the activities of men whose names have already been supplied by defendants as being those really responsible for the wrongdoing.

25. He says that in the light of this he cannot rule out that the further investigation may lead the Crown not to proceed against some of these defendants. He also says (paragraph 56 of the explanatory note) "it may change the nature of the Crown case as to whether this prosecution reflects one arrangement or more than one arrangement" and it may lead to the need or preference for reorganising which defendants stand in which trial.

26. In my judgement these are, as put by Mr. C , fundamental matters. So the question arises how can it possibly be the case they emerged only at the stage they did. I am told by Mr. C
    a. the decision to ignore this aspect of the case was one taken by the "case team"
    b. this was an error arrived at because they elided the disclosure strategy with the evidential strategy
    c. the strategy they adopted ran wholly counter to basic protocol of disclosure applied by the CPS and counsel and was wrong and unjustifiable
    d. if either CPS or counsel had known of the decision they would have insisted the disclosure exercise was properly carried out.

27. I had in papers I was given before the trial started a document headed 'disclosure note for assistance of judge and defence to accompany initial disclosure'. It was drafted by Miss C , junior for the Crown. She tells me it comes from a template she uses in all such cases, but was tempered to this particular investigation. It lays out in the clearest terms over some 21 pages the regime to be applied. On its face it is impeccable. I am told by the Crown and accept that this document was provided to the

NCA's 'case team' in conferences over the months of preparation of this case and that they must have been aware its contents. Miss S confirms this.

28. Mr C takes the view that the failures of disclosure overall mean that every aspect of disclosure must be revisited before this matter could be safely prosecuted.

29. Other complaints by the defence: For the sake of completeness I should add that Mr. M and Mr. B on behalf of and submit that there are other relevant failures of investigation e.g. it should have been established that was out of the UK for 3 of the relevant months and that phone data would show could not have opened various bank accounts on-line as alleged.

Findings

30. I make the following findings as to case preparation:
    a. The NCA undertook the task of creating the timeline far too late and were far too slow to realise they were not competent to do it
    b. It has been demonstrated that the analyst they chose was not competent to the task, perhaps because the limited time then available left then with little choice
    c. The Crown failed to bring the problems to the attention of the court so that proper case management could take place
    d. The Crown served the timeline without adequately checking its accuracy despite the fact that previous failures should have alerted them to the particular need in this case. The result was that it contained multiple omissions, inaccuracies and misrepresentations.
    e. Supporting documents / schedules which might have revealed some of the failings were served far too late and in poor format

31. I make the following findings as to obtaining of evidence
    a. Either because of the size of the case or because of financial constraints the NCA's 'case team' chose to ignore various routes of investigation including bank accounts some of which – according to Mr. C – have the capacity to change the 'arrangements' alleged, and the proper groupings of defendants
    b. They applied a forensic strategy outside that applied by the CPS without telling the CPS or counsel that was the case
    c. There was no adequate regime for recording/ exhibiting relevant items so that e.g. relevant photographs were 'lost' in a drawer, the surveillance management document disappeared from sight and electronic items not being examined.

32. I make the following findings as to disclosure
    a. In relation to matters which needed to be investigated the NCA 'case team' failed to apply the protocol which, both in principle and in the particular circumstances of this case, they were required to follow. This despite the fact that correct procedures in accordance with relevant Codes were brought to their attention in writing during conferences.
    b. The regime the 'case team' did follow was not brought to the attention of Commander B the CPS or counsel.
    c. The 'team', at the very least, confused the question of what might be evidentially useful to them with their duties of investigation of material that might assist the defence.

d. The disclosure officer did not operate a proper regime to record matters brought to her attention. E.g. Mr. B s view of the identification of appeared nowhere in a comprehensible form.
e. There was a breakdown in communication between the disclosure officer and the reviewing lawyer so that the latter could not properly carry out her duties.
f. Defence concerns were not taken sufficiently seriously

33. I can come to no other conclusion than that the Crown's failures have been multiple and profound. Mr. C has not sought to persuade me otherwise. The Crown has been the author of the misfortune which has overtaken it. In my view a number of these failures go beyond misfortune and even beyond negligence. The failure to follow the disclosure regime provided by CPS / counsel in conference borders, at least, on the reckless. It is against this background that I turn to the applications and the law.

Application for an adjournment

34. The Crown seeks the discharge of this jury and time to prepare their case properly. Mr. C has taken me to the principle laid out at Archbold 2015 at 4-307 that 'a jury sworn and charged in respect of a defendant may be discharged by the judge at trial without giving a verdict if a 'necessity' that is a high degree of need for such a discharge is made evident to his mind.' He has explained in detail all the many steps the NCA are willing to take to correct their acknowledged faults and says discharge is necessary to put these into effect.
35. However, I am unpersuaded that this correctly identifies the matter with which I have to deal. Mr K on behalf of R K submits that the Crown has no free-standing application to discharge the jury outside their need for time to put their case in order. It is common ground that this trial could not fairly proceed without an adjournment for the Crown to put their case in order and that given how long that would take it is unthinkable that I should keep this jury – who have heard 5 days worth of inaccurate evidence over the period of a month in Nov 2014 – to resume a trial in the early months of 2015. The only question is whether they should be discharged without returning any verdict, or whether I should refuse the Crown the adjournment so that they would have to, as Mr. C makes clear, offer no further evidence which would lead to the jury being directed to return verdicts of not guilty. It follows that the relevant law is not to be found so much in relation to the discharge of juries but rather in the law relating to adjournments.

36. The Crown's application to adjourn is the default position it has been brought to by virtue of being unable to proceed. Mr. C accepts (skeleton paragraph 9) the Crown has at times not acted in accordance with the overriding objectives laid down in 1.2 of the CPR. In my view that is putting it very low. He lists (skeleton paragraph 8) the reasons why I should nevertheless grant the adjournment. He submits
    a. I should adjourn because although the Crown has been at fault it is demonstrating a resolve to put things right
    b. the Crown sincerely and reasonably believed it was trial ready
    c. even if it means long delays for defendants it may ultimately put them in a better position and
    d. as far as the crown is concerned they can now have bail.

I find none of these arguments attractive. In my judgement a) remorse for failing is not the test I have to apply b) on the facts before me the Crown could not have reasonably thought it was trial ready, it could only have crossed its collective fingers and hoped so c) the defendants will not be in a better position than if I refuse the adjournment and they are acquitted forthwith and d) the Crown could not have thought of keeping these defendants in custody. If the true position had been known on 3rd November their application to adjourn would have been made then, and they could not have hoped to persuade me to extend custody time limits.

37. The more relevant matters raised by Mr. C are to be found in paragraph 8e-g. In effect that 'this is a serious and grave case and that the public interest is better served by it proceeding to trial at a later date' and that the core of the case remains sound and there is a realistic prospect of conviction. He points to the CPR 2015 submitting that these matters must be weighed in the balance with the need to deal with a case efficiently and expeditiously. They are all features in achieving justice, he submits.

38. The defence submissions, led on behalf of and supported and expanded by other counsel may be summarised thus:
    a. The Crown cannot now continue and any adjournment, however dressed up in the clothes of disclosure, is a device to allow them to have a second chance at the prosecution.
    b. Whilst it is in the public interest that a jury resolves alleged crime, there are other public interests to be served including that of cases being properly and efficiently brought before the courts and of the public being able to rely on the integrity and diligence of the prosecuting agencies.

39. In order to resolve this matter I have with counsel examined a number of cases. Taking them chronologically
    a. Lewis 1909 2 CrAppR 180 CCA suggests obiter that the court's discretion to adjourn ought not to be exercised merely because the witnesses for the Crown were not ready. Channell J said 'a jury should not be discharged in order to allow the prosecution to present a stronger case on another trial. That is the rule on which judges have acted and on which we think we ought to act, but we have no jurisdiction to deal with this matter.' I note that although this is a phrase on which defence rely heavily, it is not one I find repeated in other authorities cited to me, and I can find no reference to this aspect of the case in later appellate case law.
    b. R (Walden; Stern) v Highbury Corner Magistrates' Court [2003] EWCH 708 Admin. The importance of properly balancing the fault of the Crown against the public interest in proceeding was considered.
    c. R v Chaban [2003[EWCA Crim 1012 CA examined inter alia the trial judge's refusal to grant an adjournment mid-trial. Judge LJ said the judge had to be alert to the needs of everyone involved including defendant, prosecution, complainant, every witness and jurors. At para 36 he said, 'virtually any adjournment produces inconvenience for someone...adjournments have to be justified. If at all possible avoided. Proper case preparation is required from both sides. When asked to consider an adjournment the judge must closely scrutinise the application and unless satisfied that it is indeed necessary and justified, should refuse it.

d. Essen v DPP [2005] EWCA 1077 (Admin) indicated factors relevant in deciding if an adjournment should be granted are the listing history, where blame lays, any prejudice resulting from adjournment and the seriousness of the charge. The effect of Sedley LJ's observations was that whilst one understood the concern that an alleged serious crime may not be tried on its merits, if that was of itself a reason to adjourn no prosecutor of a serious matter need attend to the requirement to be ready for trial on the set date.
e. Picton [2006] EWCA 1108] when an adjournment is sought by the prosecution, magistrates must consider the interests of both the defendant ... and of the public that criminal charges should be heard and determined on their merits... The more serious the charge, the greater the likelihood is that the public interest will require a trial ... if it arises through the fault of the party asking for the adjournment that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault.
f. Visvaratnam v Brent nagistrates Court 2009 EWHC3017 (Admin). The prosecution was at fault in failing to warn a witness to attend court and failing to secure a date when a 2nd witness could attend. Openshaw J said, 'the sooner the prosecution understand ... they cannot rely on their own serious failures properly to warn witnesses – the sooner the efficiency in the Magistrates Court system improves. I note that whilst I am not dealing with that system Openshaw J cited Sedley LJ in Essen with approval.
g. I have also looked, at Mr. Kivdeh's request, at In the matter of Miller and others [2013] NIQB 57 which, though a Northern Ireland case, refers to a number of the aforementioned appeals.

40. From these I distil the following:
    a. The Crown is required to efficiently prepare and present its case
    b. An application for adjournment to make good failures in this respect should be carefully scrutinised and only granted if it is both necessary and justified
    c. It is the duty of the trial judge on such an application being made to weigh up the various factors. These include amongst others where fault lies and the gravity of the offence in order to assess the overall public interest and the justice of the situation.
    d. When assessing fault, the degree of fault is relevant
    e. When assessing the gravity of the offence, it should not be thought that an allegation of serious criminality will justify any degree of failing.

Application of the law to the facts in this case

41. In my judgment the following public interests that arise here include the following:
    a. that matters properly indicted are tried by a jury and verdicts reached upon a proper consideration of all the relevant evidence.
    b. that those who investigate and prosecute on behalf of the public do so in accordance with the rules laid down for them, so that justice is served
    c. that those who investigate and prosecute on behalf of the public do so efficiently and expeditiously

42. I have no doubt that the NCA has failed the public interest in this case. There can be no excuse or justification for the combination of multiple failures that have occurred or the very late stage at which they have emerged. There can be no justification for what these defendants and this jury have had to endure over the past month, nor the

public expense that has been incurred as one wheel after another has fallen off the prosecution train until it has finally rolled to a standstill.

43. However, against this I must set the public interest in matters being tried against these defendants, against whom – on the state of the evidence as it currently stands – there is a case. I bear in mind that the graver the crime the greater the interest in a trial taking place. In weighing up this aspect, although I have been assisted by the authorities put before me, I note many relate to Magistrates Court hearings and involved matters neither grave nor complex.

44. I bear in mind that this is a serious case. It involves allegations of money laundering of around £40m. Although the Crown does not say any of these defendants were at the 'top' of the wrongdoing and most appear to have been very far from that position, they are all said to have carried out some activity, for however short a time. Were they all to be convicted of the charge they face the sentencing brackets would vary greatly and for some would not be very high. I also bear in mind that, save for the 'mandate frauds' where the losers are all large organisations, there are no other identified individual 'victims' in this case. For completeness I note that no one has addressed me on the potential impact of any ruling I make on the 2nd trial.

45. I have concluded that there is a necessity for an adjournment if this trial is to be pursued. In deciding if it is a justified adjournment I find
    - All the many failings which have led to the need for the adjournment are to be laid at the door of the Crown
    - They embrace failings during the investigation, case preparation and disclosure exercise
    - The failings are in a number of respects very significant
    - They have arisen in some respects out of over-confidence, over-optimism or carelessness but in at least the respect of disclosure something more than mere carelessness.
    - No one could have confidence in this prosecution as it stands, and Mr. C concedes that, in particular in respect of disclosure.

46. I conclude as follows: A jury should return verdicts in a serious case. If this doesn't happen the public interest will not have been served in that case. But there is a wider public interest in the public having a justified trust that the investigation, preparation and disclosure that underlies such a prosecution and all prosecutions is properly carried out. In this case it has not been. I remind myself that the exercise I am engaged in has about it no element of punishing the Crown or marking displeasure at its failures. It is rather the balancing exercise of various competing interests in order to decide if the adjournment sought is justified. I have reluctantly come to the conclusion, putting together the totality of the failures and the way in which they have emerged, that it is not. Accordingly I decline to grant the Crown the opportunity it seeks to put its case in prosecutable order.