

JERSEY / JUDGMENT

Bisson v JPCA [2017] JRC 087 (12 June 2017)

[2017] JRC 087

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judgment

the COMMISSIONER:

Introduction

1. This is an application by the applicant filed on 16 th January, 2017, to leave to bring judicial review proceedings against a decision ("the Decision") of the Jersey Police Complaints Authority (" JPCA") contained in a statement dated 5 th September, 2016, indicating that the investigation of the applicant's complaints against DI Burmingham had been conducted by the investigating officer of the States of Jersey police to the satisfaction of the JCPA ("the statement of satisfaction"). 2. No issue now arises as to the timeliness of the application. The circumstances giving rise to the complaint 3. The applicant's father owned a 50% share in 3B Holdings Limited, a retail and online company ("3B"). 4. On 20 th October, 2008, pursuant to an application by the applicant's father against the co-owners of the other 50% share the Royal Court ordered that 3B should be wound up because it was just and equitable to do so. The reasons for the order are to be found in the Court's judgment *Bisson v Bish* [2008] JRC 193 which explains the breakdown of the relationship between the parties. 3B then became insolvent. 5. One of the trade creditors of 3B had been the Comptroller of Taxes ("the Comptroller") in respect of Goods and Services Tax ("GST") payable by 3B on sales in the period from the inception of GST) on 1 st May, 2008, until 3B's winding up. 6. On 31 st December, 2008, in consequence of various events which it is not necessary to detail, it was agreed that a company belonging to the applicant's father, Bissons Ltd ("BL") would acquire the stock business names and intellectual property of 3B net of GST liability for £80,000. 7. It is and was the applicant's belief that the Comptroller had fraudulently attempted to recover from BL GST due by 3B with the collusion or connivance of the liquidators Adrian Rabet (" Rabet ") and Alan Roberts ("Roberts"). 8. In or about mid-2009 the Comptroller issued a direction for BL to lodge security for the GST debt of 3B pursuant to a decision that the transaction between 3B and Bissons was to be treated as "transfer of a going concern" for the purposes of Article 17 of the Goods and Services Tax (Jersey) Law 2007 the result of which would be to transmit the GST debt of 3B to BL. 9. On 2 nd March, 2010, in *Bisson Ltd v Comptroller of Income Tax*

- [2010] JRC 009 an application brought by BL before the Bailiff for judicial review of the Comptroller's calculation of security was dismissed. 10. On 23 rd January, 2012, in *Bisson v 3B Holdings Ltd*
- [2012] JRC 021 , an application was brought by the applicant and his father before the Royal Court ("the Court") Commissioner Clyde-Smith ("the Commissioner"), sitting with Jurats Le Breton and Marett-Crosby ("the Jurats") to remove the joint liquidators of 3B on a number of grounds including an allegation of dishonesty in the conduct of the winding up in connection with an attempt by the Comptroller to assert a debt of 3B against BL was dismissed. 11. On 7 th February, 2012, the Commissioner gave judgment ordering the applicant and his father jointly and severally to pay the costs of 3B and the two joint liquidators incurred in the representation on the indemnity basis. 12. Shortly thereafter in February 2012 the applicant made his first complaint to the States of Jersey police (" SoJP ") that he had been the victim of criminal behaviour at the hands of various persons. 13. On 17 th September, 2012, the applicant made a formal complaint for the purpose of commencement of a criminal investigation. 14. On 21 st and 29 th November, 2012, 25 th and 29 th April, 2013, and 22 nd January, 2014, the SoJP , specifically DI Birmingham and Acting DS Angell, asked the applicant to supply detail of his allegations saying by way of example in the last of those letters:- "Contrary to your assertion, it is not sufficient, for present purposes, for you to merely place the States of Jersey Police on notice that a crime has been committed, without at least providing an indication as to the nature of that alleged crime. Owing to your assurance that the alleged matter is complex, it is perfectly reasonable for me to request from you, or via a legal representative, a precis of the allegation, in order that the documentation previously provided can be placed in context and the matter can be properly scoped. It is not appropriate for me to resource the recording of a formal statement until I can satisfy myself that the matter to which you refer constitutes a crime. Beyond the reason I have set out above, there is a clear rationale for requesting that you provide a written narrative of your complaint before any signed witness statement is compiled. The matter subject of your allegation appears complex and a signed statement, without some preparatory element, does not represent best practice. From experience in such complex matters, the premature recording of a statement can be counter-productive when trying to set out a complaint with suitable accuracy, clarity and brevity. The statement is the principal conduit for any criminal complaint and the more complicated the allegation, the more important it is to ensure that any completed statement be of sufficient quality. For this reason, it is common for a complainant to provide a narrative account of the allegation, in preparation to the compilation of a signed statement of complaint, if one is consequently deemed necessary." 15. The applicant did not do so until his letter of th January, 2014, ("the 29 th January, 2014, letter") considering, as I interpret the gist of his previous responses, that his complaint spoke for itself. 16. In the 29 th January, 2014 letter the applicant finally elaborated on his complaint. He wrote *inter alia* :- "Corruption Commissioner Clyde-Smith et al I allege that Commissioner Clyde-Smith and Jurat Le Breton and or Jurat Marett-Crosby (the 'Court') corruptly resolved

contentions arising in the Representor's application for the Joint Liquidators to be dismissed as liquidators of 3B Holdings Limited ("3B") with the intention of conferring a financial benefit upon the Joint Liquidators, and both a financial and a legal benefit upon the Office of the Comptroller of Taxes. The Commissioner also refused to allow the Representors to cross-examine the representative of the Comptroller of Taxes, Steve Lowthorpe, how a claim made by the Comptroller against Bissons Limited had been calculated, thereby preventing important corroborative evidence for the Representors' case to be heard before the Court. The Joint Liquidators sought and obtained an award of costs on the indemnity costs basis. The Joint Liquidators have claimed 'legal fees' of approximately £134,000, costs of taxation and 'professional fees' of approximately £39,000 payable to 3B, enabling them to draw further monies in respect of 'professional fees' in the course of the winding up. The benefit conferred upon the Office of the Comptroller of Taxes is principally the avoidance of liability arising under a potential application for judicial review, the Comptroller having made attempts to recover a debt of 3B against Bissons Limited in bad faith. Comptroller of Taxes et al I allege that the Comptroller of Tax corruptly withheld and is corruptly withholding documents and records relevant to Bissons Limited's tax affairs and, by doing so, has intended to support the Joint Liquidator's case in preference to the Representor's case. During the proceedings in the matter of 3B, the Court refused to request or require the Comptroller of Taxes to disclose Bissons Limited's GST records. Certain records are still being withheld despite manifold applications for them made by the Representors. Importantly, the Comptroller now claims a document he claimed existed in late 2010 does not and did not exist. The beneficiaries of this conduct are the Joint Liquidators and the Comptroller of Taxes himself to the same extent provided above. Steve Lowthorpe, witness I allege that Steve Lowthorpe perjured himself, corruptly, in the course of the hearings in the matter of 3B to avoid casting the Joint Liquidators in an unfavourable light because the Joint Liquidators held information on the Comptroller's conduct that would validate the Representor's position. The beneficiaries of the alleged perjury and corruption are the Joint Liquidators and the Comptroller of Taxes to the same extent provided above. Assistant Judicial Greffier The Assistant Judicial Greffier has, notwithstanding legal contradictions in the judgment of 23 January 2013 and the lapse of some 16 months since being placed in possession of the relevant documents, proceeded to 'tax' or validate the bill of costs thereby creating a financial instrument (a debt instrument) that is enforceable without more in the Royal Court. A local third party costs draftsman was approached by Collas Crill in Jersey to undertake production of the Joint Liquidators' bill of costs. I understand that person refused to produce the bill of costs when that person saw documents under which the case had been determined and refused to participate in the alleged corrupt scheme; accordingly Collas Crill referred the case to a company called Masters Legal Costs Services LLP based in London. The Assistant Judicial Greffier is fixed with a duty to review the Respondents' claims and report any evidence that the benefit of the costs order had been obtained in an unlawful manner; the Assistant Judicial Greffier is also subject to the articles 34A and 42 of the Proceeds of Crime (Jersey) Law 1999. I submit that, in common

with the third party costs drafts person above, the Assistant Judicial Greffier's delay in progressing taxation of the bill of costs is indicative of a measure of discomfort with the heavy duty that falls upon him in this case. Joint Liquidators The Joint Liquidators or their agents / insurers are due to accept and dissipate the monetary benefit of the alleged corrupt decision. Companies to whom the Joint Liquidators are affiliated are due to accept and dissipate the monetary benefit of the court's alleged corrupt decision . Summary I believe that all these allegations fall quite comfortably within the scope of Article 5(1) and 7(1) Corruption (Jersey) Law 2006 to which you have referred." 16. The applicant refers in his witness statement to such matters as signifying " judicial and political sensitivities concerning the total breakdown of the integrity of the judicial, executive and political functions in Jersey ". 17. On 21 st May, 2014, the applicant received a letter from Detective Inspector Birmingham ("the 21 st May 2014 letter") which stated:- "The States of Jersey Police has considered the dossier of material provided in support of your assorted complaints. In summary, this matter emanates from a reported larceny by business partners and the subsequent liquidation of the business. It might be helpful to set up the basis on which police have approached these allegations. The police have extensive powers in law to investigate allegations of crime. These include powers to search, arrest and seizure of evidence. However, in deciding whether to exercise these powers, police have to consider a number of things. In general, the making of an allegation does not itself justify the exercise of police powers. The police need to consider whether an allegation, if true, would amount to an offence in law, and if so, whether the circumstances are such that the investigative powers can be justified as a proportionate and necessary step in the circumstances. Police operating procedures and parts of the criminal law often include a requirement for 'reasonable suspicion' before police powers are used. With this in mind, police attention at this time has focussed on the question of whether there is a sufficient basis for an investigation to commence, and to ensure the necessary scoping work is completed. Your allegations are of criminal conduct. They are not for example allegations of poor judgment, mistake or inconsistency. Arising from the liquidation proceedings, you are making allegations including perjury and corruption and mention a range of individuals including a witness at the Jersey Tax Department, the judge in the case, the appointed liquidator, Assistant Judicial Greffier, Jurats, Comptroller of Income Tax, and HM Attorney General. In essence your assertion appears to be that their collective corrupt actions have resulted in a miscarriage of justice to your detriment. In Jersey, corruption law contains offences relating to public bodies, agents and public officials. Beyond the burden of proving some 'advantage' it is also necessary to establish that the act has been carried out 'corruptly'. Following a thorough review of the paperwork provided during the course of your contact with the Joint Financial Crimes Unit, the scoping exercise has now been concluded. From correspondence it is clear that you hold the view that offences are self-evident from the material provided. The review has found no evidence to agree with this position, or support the assertion that the criminal offences of perjury or corruption are made out. I write to confirm that the Joint Financial Crimes Unit will not be pursuing a criminal investigation or conducting any supplementary activities, and this matter will be

filed accordingly. Despite this, it is apparent that not all civil remedies have been exhausted, and this avenue appears to provide the appropriate mechanism to advance your case." 18. On 28 th April, 2016, following further correspondence between SoJP and the applicant, the Chief Officer of SoJP confirmed that the letter of 21 st May, 2014, was written " without referral for legal advice ". 19. By letter dated 12 th May, 2016, the applicant made a formal complaint that DI Burmingham has conducted a ' mock investigation ' of the 2014 complaint regarding 3B and "in particular" had failed " to refer any part of the evidence tendered to an independent legal adviser" . The applicant concluded by saying that he did not believe the complaint was capable of informal resolution. 20. On 16 th May, 2016, the Deputy Chief Officer of SoJP confirmed to the applicant that the complaint he had made had been registered. 21. On 20 th May, 2016, the same Officer advised the applicant that DCI Williamson had been appointed to investigate the complaint and confirmed that the investigation would be independently supervised by a member of the JPCA. 22. On 6 th June, 2016, DCI Williamson wrote to the applicant:- "For the purpose of clarity the role of the Professional Standards Department is to investigate the allegation outlined in your letter (12/05/16) that DI Burmingham failed 'to refer any part of the evidence tendered to an independent legal advisor'. As you are in effect seeking a review of that decision it would be helpful for you to include in your letter an explanation of why you believe this decision was inappropriate. It is not the role of the Professional Standards Department to initiate a criminal investigation into the matters raised in 2014, but to investigate and report the findings, including any potential shortcomings or lesson to be learnt in relation to your complaint against police. The role of the Jersey Police Complaints Authority (JPCA) is to independently supervise the investigation of complaints against police. Following completion of the investigation a copy of the report will be forwarded to the JPCA for consideration by the Supervising Member. I will of course copy this e-mail to the JPCA for the attention of the Supervising Member. Should you wish to contact the JPCA personally the email address is as follows:- admin@jpca.je. Following receipt of your letter I will seek to arrange a meeting." It does not appear from the file that he ever received the explanation sought. 23. On 14 th July, 2016, DCI Williamson wrote to the applicant:- "Whilst I currently have sufficient information on which to conduct an investigation of your complaint it would assist to have any further documentation or information you wish to submit. I am keen to ensure the information and content of your complaint is complete and addresses your concerns. However in light of the timescale since the initial service of a 'notice of complaint' I am increasingly open to a suggestion of an unfair delay. In short, whilst keen to extend the opportunity for you to submit further information or meet I am obliged to progress the investigation and submit a report to the JPCA. Please let me know how you would like to progress and should you have any questions queries or concerns don't hesitate to make contact." 24. On 18 th July, 2016, the applicant replied saying inter alia :- "I advise that late last week, I contacted the Jersey Police Complaints Authority to ask whether the Complaint against DI Burmingham was in fact being supervised by the JPCA and, if it was, what steps were being taken by the JPCA to mitigate the actual or potential, express or implied undue

influence by the Chief Officer and the Crown Officers in the instant complaint. The decision to contact the JPCA flowed from concerns in relation to the narrow scope of the investigation and the nature of correspondence received from you that has led me to question whether it is your intention to investigate the complaint properly, or whether you have been appointed simply to dispose of the complaint on behalf of the Chief Officer. Notably, whereas you confirm that you have sufficient information upon which to conduct an investigation in common with the behaviour and approach of various JFCU officers, including DI Burmingham , there seems to be a genuine reluctance on your part to genuinely immerse yourself in the wealth of concrete and circumstantial evidence of serious misconduct on the part of numerous persons all of whom occupy positions of the trust and responsibility in the relevant context. In the case of members of the judiciary, their own Code of Conduct implies that they are "to uphold the integrity... Of the judiciary", they are to "ensure that justice is done by giving each party a fair hearing according to law", and shall "carry out their duties....objectively and without fear, favour and partiality". I understand that the JPCA will be reverting back to me by or about 25 July 2016 upon the return of the Chairman of the JPCA. In the meantime, I bring the following evidence to your attention." 25. On 28 th July, 2016, Mrs D J Prosser, the Chairman of the JCPA ("the Chairman") wrote:- "The supervision of the investigation into your complaint is being carried out by a member of this Authority. As Chairman I also have oversight of the matter. The investigation is ongoing and we have yet to receive the Investigating Officer's report. However, the supervising Member has been actively liaising with the Investigating Officer throughout his investigation. The role of the Jersey Police Complaints Authority is limited to involvement into investigations into complaints against members of the States of Jersey Police for misconduct; the officer subject to your complaint is DI Burmingham . As indicated in our email to you of 14 July 2016 this Authority acts impartially at all times and will, when necessary and appropriate, challenge the conduct of any misconduct investigation and its findings. I am unable to comment further until the investigation is complete whereupon we will be in contact with you to advise of the outcome." 26. On the same day the applicant promptly replied:- "Your response to my earlier email does not answer the questions raised. Firstly, whether the JPCA is aware of (i) the seriousness of the allegations; (ii) the volume of evidence in support of the allegations; and (iii) the likelihood of undue interference in DCI Williamson's investigation by the Chief Officer and or Crown Officers. Secondly, what steps the JPCA has taken or proposes to take to mitigate undue interference in the investigation referenced at (iii) above by the Chief Officer and or the Crown Officers. It is my understanding that the JPCA has specific powers to ensure that complaints against Police Officers are wholly impartially conducted: see, for example, the power of the JPCA to require the Chief Officer to appoint a police officer from another force provided by Article 9(3)(b) of the Police (Complaints and Discipline) (Jersey) Law 1999"; Adding in an email of even date:- "Further to my email, below, it would be helpful if the Chairman, Mrs Debbie Prosser, might additionally comment on whether it is appropriate for her to act in any supervisory or other leadership role in the instant case having regard to her role as a Commissioner of the Jersey Financial Services Commission

("JFSC"), the relationship between the JFSC and the Joint Financial Crime Unit ("JFCU") which is headed by DI Burmingham . I should like to note that the instant case involves allegations of corruption, fraud and money laundering in respect of which, as a matter of law, DI Burmingham may be implicated ." 27. On 1 st August, 2016, the Chairman responded to these points:- "Dealing with your first email: the supervising member of this Authority is well aware of the circumstances of this case and has seen your correspondence. Can we assume that you have provided to the investigating officer all details of the allegations you have raised and the evidence in support? The Authority will only be aware of the information and evidence which has been provided during the investigation of the complaint. If you have other material please ensure it is disclosed to the investigating officer. The Authority only very rarely uses its powers under Article 9(3) (b) of the Police (Complaints and Discipline) (Jersey) Law 1999. There is no evidence in this case to suggest that the Authority should not be satisfied with the appointment of DCI Williamson as the investigating officer. The Authority's supervising member will challenge any aspects of or findings in the investigating officer's report which cannot be justified by the facts or evidence. In doing so any risk of undue interference by the Chief Officer or the Crown Officers, about which you are concerned, will be mitigated. Furthermore, the Deputy Chairman of the Authority will conduct a second review of the investigating officer's report and supporting evidence. Turning to your second email: in both my roles as Deputy Chairman of the Jersey Financial Services Commission and Chairman of the Jersey Police Complaints Authority I am always highly sensitive to perceived on potential conflicts. In my role at the Commission (which is effectively a non-executive position) I have no contact at all with the Joint Financial Crimes Unit or DI Burmingham . However, although I do not acknowledge that there is a conflict in this instance the perception of conflict is as much of an issue as the existence of conflict and now that you have raised it I will recuse myself and have no further involvement in this matter." It is not suggested that she did not accurately describe her positions in the JCPA or JFSC. 28. On 9 th August, 2016, the Deputy Chief Officer of SoJP wrote to the applicant to inform him that the professional standards department had finished their investigation into his complaint and had sent the completed file to the supervising member of the JCPA for its recommendations. 29. On 5 th September, 2016, the JCPA provided to the Chief Officer of the JSOP :- "PC/11/16 Complaint made by Mr Roger Bisson The supervising member appointed to oversee the conduct of this investigation has now completed the review of the Investigation Report. In accordance with Article 10(6)(b) of the Police (Complaints and Discipline) (Jersey) Law 1999 ("the Law"), I am writing to provide a statement on behalf of the Authority that the investigation has been carried out to its satisfaction. In accordance with Article 10(8)(a) of the Law, the Authority is required to provide a copy of this statement to the officer(s) under investigation. I should be grateful if a copy of this letter could be forwarded to the officer concerned. I confirm that a copy of this statement will be sent to the complainant in accordance with the Provisions of Article 10(8)(b) of the Law." 30. On 23 rd September, 2016, the Deputy Chief Officer wrote to the applicant again to inform him of the process which had been followed, in particular, summarising DI Burmingham's statement in these

terms:- "Detective Inspector Burmingham will state that you did not present any material to support a criminal investigation. Detective Inspector Burmingham further states that in May 2014 you were informed of the decision that the matter would not be investigated and was considered finalised. However, it was not until the Spring of 2016 that you responded stating that the matter had not been referred for independent legal advice. There is no evidence to support your assertion that offences have been committed by Her Majesty's Attorney General, Jurats of the Royal Court, the Assistant Judicial Greffier, the Comptroller of Income Tax and/or employees of the Income Tax Department. Furthermore Detective Inspector Burmingham concluded that your complaint did not constitute a criminal offence, did not warrant further investigation and did not meet the threshold test for referral for 'independent legal advice'. Despite Detective Chief Inspector Williamson's attempts to engage you in an attempt to clarify the extent of your complaint and to establish what evidence you have in support, this has unfortunately not proved fruitful" and continuing:- "Disciplinary Investigation With all the evidence having been gathered a file was submitted for independent review by the JPCA. On 5 September, 2016 the JPCA provided a Statement of Satisfaction with the investigation; I have now carefully examined the papers in conjunction with the Jersey Police Complaints Authority who have confirmed that there is insufficient evidence to substantiate disciplinary proceedings in this case.

Conclusion

In view of this finding, I have recorded the complaint as Unsubstantial and informed the officer of my decision. As a result of complaints made by members of the public, we are able to influence development of individuals and the working practices of the States of Jersey Police. As an Organisation we endeavour to ensure that we learn lessons from complaints in order to improve the service we deliver. I hope that this process and any future contact you have with the States of Jersey Police restores your confidence in our service." 31. On 2 nd October, 2016, the applicant wrote to DCI Williamson in connection with the letter which he had received from the Deputy Chief Officer:- "Complaint against Detective Inspector Burmingham I am in receipt of a letter dated 23 September 2016 from Deputy Chief Officer Rob Bastable concerning my complaint against Detective Inspector Burmingham . At paragraph 2 on page 2 of the letter, DCO Bastable alleges that you made enquiries of me that were unsatisfied. My recollection is that the last email I received from you expressly stated that you had sufficient information before you to conclude your investigation. I also recall that over a number of items of correspondence you were quite clear in stating that you were unwilling to listen or otherwise receive evidence relating to the matter in respect of which it had been incumbent upon DI Burmingham to refer for independent legal advice; that is, evidence of corruption in the matter of 3B Holdings Limited. According to the DCO's letter, it is not in dispute that DI Burmingham did not refer the complaint or the evidence provided to him for independent evaluation notwithstanding the serious nature of the allegations and the evidence in support. Further, it is important to note that, at the time I asked the Joint Financial Crimes Unit to investigate my allegations, I expressly asked the then officers

concerned to refer the matter for wholly independent legal advice. I also confirmed that my father was prepared to underwrite the costs of so doing. In the circumstances, I write to ask if you could point me to any correspondence sent, by you, to me to ask for specific information in relation to anything that formed part of your investigation into DI Birmingham's conduct." 32. On 12 th October, 2016, DCI Williamson responded to explain that no further information had been provided by the applicant, saying inter alia :- "Dear Mr Bisson I note the comments within your email dated 2 nd July 2016 and apologise for the delay in responding. My initial email to you in May 2016 outlined a desire to meet with you to discuss your complaint, clarifying your expectations and establish how it may be best resolved. A subsequent email in June indicated that the investigation would consider your complaint that DI Birmingham failed 'to refer any part of the evidence tendered to an independent legal advisor'. In July 2016, I emailed you outlining it would assist to have any further documentation or information you wish to submit. It was made clear that there was no intention to initiate an investigation into the matters raised by you in 2012. Despite this, an email response from you dated 18 th July 2016 is indicative that you were seeking to extend the parameters of the investigation to include the events of 2012. You were informed in May 2014, why the States of Jersey were not further investigating your allegation surrounding the liquidation of 3B Holdings. In March and April 2016 it was again made clear to you that there would be no further investigation of those matters. In September 2016, you were provided with the outcome of your latest complaint and why it was not possible to deal with your complaint further. I appreciate that you are dissatisfied with the outcome, however I have nothing else to add, the complaint is considered finalised and continuing correspondence will serve no useful purpose." 33. On 20 th October, 2016, the applicant responded at length, saying, inter alia :- "I write further to your letter dated 12 October 2016 concerning your "investigation" of my complaint against DI Birmingham relating to his failure to refer any part of the matter of 3B Holdings for consideration by independent legal counsel having regard to the evidence in support of my allegations that, inter alia, a number of officers of the court have committed serious offences under the provisions of the Corruption (Jersey) Law 2006, and under the Proceeds of Crime (Jersey) Law 1999. I note the comments you have made in your letter. Nevertheless, I refute the allegation made by you, in the contents of the report ultimately laid before the Jersey Police Complaints Authority (the "JPCA"), that I have been uncooperative in your investigation. In the first instance, you have not been able to provide a reference to any item of correspondence in which you have asked a specific question that has warranted a specific response. Moreover, at no point in the course of your investigation have you formally or informally requested a witness statement to be recorded despite the fact that I noted, in an email to you dated 7 July 2016, that I understood this to be a procedural step that was required before any complaint against a Police Officer would be entertained or progressed. I also note that at no point have I ever been asked by the Joint Financial Crimes Unit (the "JFCU") to record any such statement containing my allegations against the relevant officers of the court. This, I believe, is unusual. I respond to your specific comments appearing at paragraph 2 of your letter as follows -

1. There was no practical need for you and I to meet "to discuss [my] complaint, clarify [my] expectations and establish how it maybe best resolved" notwithstanding your "desire to meet". My expectations were simple: that my complaint would be investigated properly in good faith. These

basic expectations have not been filled. 2. It is unclear what further documentation or information I could submit to you in response to your statement that "it would assist to have any further documentation or information [I] wish to submit". In the course of our exchanges I expressly noted that, in common with DI Birmingham, you did not appear to be prepared to engage with the evidence I had provided to the JFCU. It is clear that you were not prepared to discuss the evidence. In respect of both of these issues, I refer you to the second and third paragraphs of my email to you dated 18 July 2016 at or about 00.29, reproduced here in full - "I advise that late last week, I contacted the Jersey Police Complaints Authority to ask whether the complaint against DI Birmingham was in fact being supervised by the JPCA and, if it was, what steps were being taken by the JPCA to mitigate the actual or potential, express or implied undue influence by the Chief Officer and the Crown Officers in the instant complaint. The decision to contact the JPCA flowed from concerns in relation to the narrow scope of the investigation and the nature of correspondence received from you that has led me to question whether it is your intention to investigate the complaint properly, or whether you have been appointed simply to dispose of the complaint on behalf of the Chief Officer. Notably, whereas you confirm that you have sufficient information upon which to conduct an investigation in common with the behaviour and approach of various JFCU officers, including DI Birmingham, there seems to be a genuine reluctance on your part to genuinely immerse yourself in the wealth of concrete and circumstantial evidence of serious misconduct on the part of numerous persons all of whom occupy positions of the trust and responsibility in the relevant context. In the case of members of the judiciary, their own Code of Conduct implies that they are to "uphold the integrity..... of the judiciary", they are to "ensure that justice is done by giving each party a fair hearing according to law"; and shall "carry out their duties.... Objectively and without fear, favour or partiality". My understanding is that you were appointed to investigate my complaint that DI Birmingham had failed to refer a complaint of substantive corruption and money laundering then held in prospect, now committed, to an independent legal practitioner in circumstances that he ought to have. Thus, the complaint comprises two parts: (i) that DI Birmingham did not refer my complaint, or any part of my complaint, for consideration by a person with sufficient legal experience, knowledge and independence to be able to determine the question of whether the crimes alleged had been committed as a matter of fact and of law; and (ii) that DI Birmingham did not refer the complaint when he ought to have. The answer to (i) is not in dispute and never has been. Both the Chief Officer and DI Birmingham himself has confirmed that my complaints of corruption and money laundering in prospect have not been referred to any legal practitioner for the purpose of determining whether a crime has been committed. You do not appear to have given any appropriate consideration to (ii), however. According to you, this element of the complaint lay squarely outside the scope of your "investigation". This is despite the fact that the Deputy Chief Officer appears to have made reference, in his letter dated 23 September 2016, to an attempt by DI Birmingham to address this point in his statement and to either the DCO or you having reached an independent conclusion on the matter entirely without reference to any of the evidence, or indeed my submissions. Respectfully, I believe that your investigation into my complaint is fundamentally flawed and that you appear to have attempted to mask these deficiencies by citing, entirely without foundation, non-cooperation on my part, I assert that the

deficiencies were intentional on your part and follow the intentionally defective "investigation" conducted by the JFCU, led by DI Birmingham . I acknowledge that you are of the view that the "complaint is finalised" however, given that any decision of the JPCA was wholly dependent upon the information you laid before it, and further given that both your investigation and the information provided in your report is inherently defective you have a professional obligation to remedy these faults without delay. I have no doubt that the relevant members of the JPCA will agree that it is extremely important that reports laid before them for consideration are both accurate and represent the product of a sufficiently robust investigation. Accordingly, I should be obliged if you would confirm that you have referred or intend to refer my complaint, the fact that misrepresentations have been made in the report, and the fact that your investigation was defective to the JPCA authority for directions; it is clear that the statement of satisfactory investigation cannot stand in the circumstances. It was and it remains my opinion that the complaint against DI Birmingham ought to have been referred for investigation to a member of another police force under the provisions of the Police (Complaints and Discipline) (Jersey) Law 1999 Article 9(3)(b) specifically due to the likelihood of undue interference in your investigation by the Chief Officer and or the Crown Officers. In light of the fact that you have evidently made serious material allegations against me in a report that has been laid before the Jersey Police Complaints Authority, I should be obliged if you would provide a copy of the report for my review and further comments. I should also appreciate a copy of the statement of satisfactory investigation allegedly provided to the States of Jersey Police by the JPCA in connection with this complaint; together with confirmation of the identity of the Supervising Member of the JPCA responsible for oversight of the "investigation". In the meantime, it would also be helpful if you would confirm whether your motivation to intentionally perform a defective investigation was personal, or whether it was the subject of an express or implied direction from the DCO, the Chair of the JPCA, the Supervising Member of the JPCA or some other person. Finally, it is not clear why, at paragraphs 3 and 4 of your letter, you make reference to the decision not to investigate issues of corruption and money laundering in relation to an application to the Royal Court in the matter of 3B Holdings: my email to you dated 2 October 2016 made no such reference. Nevertheless, it seems inappropriate for a senior officer of the States of Jersey Police, when presented with compelling evidence that one or more crimes have been committed , to rely solely upon a previous analysis performed by an inferior officer to avoid making further enquiries. You have had an opportunity to make full enquiries into DI Birmingham's decision not to refer the evidence tendered and further evidence available upon request for consideration by independent legal counsel. You have confirmed that, in conducting your investigation, you have not reviewed any of the evidence and have merely relied upon a statement made by DI Birmingham ." 34. On 25 th October, 2016, the SoJP confirmed to the applicant that the matter was considered finalised absent substantial new material evidence and there would be no useful purpose in continuing correspondence. 35. On 25 th October, 2016, the Chairman also wrote to the applicant to confirm that the investigation into his complaint had been carried out to the JPCA's satisfaction, enclosing a copy of the statement sent to the Chief Officer pursuant to Article 10(6) of the Police (Complaints and Discipline) (Jersey) Law 1999 ("the 1999 Law"). The Chairman also noted the correspondence which had taken place in that month, and confirmed that the

JCPA was satisfied with the observations and conclusions of Detective Chief Inspector Williamson set out therein. The Law 36. The 1999 Law provides so far as material as follows:- "A law to establish the Jersey Police Complaints Authority, to make provision for the investigation of complaints about and the procedures, rights and powers relating to disciplinary charges against members of the Force and members of the Honorary Police and for related purposes".

Establishment of the Jersey Police Complaints Authority (1) There shall be an authority, to be known as the Jersey Police Complaints Authority. (2) The Schedule shall have effect in relation to the Authority. PART COMPLAINTS AND OTHER MATTERS CONCERNING MEMBERS OF THE FORCE Interpretation of Part 2 In this Part- "complaint" means any complaint about the conduct of a member of the Force which is submitted- (a) by a member of the public; Preliminary procedure for a complaint about a member of the Force [7] (4) If it appears to the Chief Officer that a complaint is not suitable for informal resolution or that, after attempts have been made to resolve a complaint informally, informal resolution of the complaint is impossible or the complaint is, for any other reason, unsuitable for informal resolution, the Chief Officer shall- (a) notify the Authority of the complaint; and (b) subject to Article 9(3), appoint a member of the Force or a police officer from some other force to investigate it formally. (6) No officer may be appointed under this Article unless the officer is- (a) of at least the rank of inspector; and (b) of at least the rank of the member of the Force against whom the complaint is made.

Supervision of investigation of member of the Force (1) The Authority shall supervise the investigation - (a) of any complaint alleging that the conduct of a member of the Force resulted in the death of or serious injury to some other person; and (b) of any other description of complaint that may be prescribed by Order of the Minister. (2) The Authority may supervise the investigation - (a) of any complaint the investigation of which it is not required to supervise under paragraph (1); and (b) of any matter referred to it under Article 8, if it considers that it is desirable in the public interest that it should supervise that investigation. Reports etc. on supervised investigation of member of the Force (3) At the end of an investigation supervised by the Authority, the investigating officer shall - (a) submit a report on the investigation to the Authority; and (b) send a copy of the report to the Chief Officer and, in the case of a criminal allegation, to the Attorney General. (4) After considering a report submitted to them under paragraph (3), the Authority shall prepare a statement - (a) whether the investigation has or has not been conducted to its satisfaction; and (b) specifying any respect in which it has not been so conducted. (5) The Authority may prepare separate statements in respect of the criminal and disciplinary aspects of an investigation. (6) The Authority shall submit the statement to - (a) where the statement is in respect of a criminal allegation, the Attorney General; and (b) in any other case, the Chief Officer. (7) Where the Authority submits the statement to the Attorney General, it shall also send a copy to the Chief Officer. SCHEDULE [(Article 2(2)) THE JERSEY POLICE COMPLAINTS AUTHORITY Constitution of the Authority (1) The Authority shall consist of a Chairman and not less than 6 or more than 8 other members. Incorporation of the Authority The Authority shall be a body corporate. Method of operation (1) Subject to any Order or Regulations made under this Law - (a) the Authority will carry out its duties in such a manner as it from time to time determines and may regulate its own procedures; and (b) the Chairman may make arrangements for the discharge, under the general direction of the

Authority, of any of the Authority's functions by one or more of the Authority's members. (2) The Authority will prepare guidelines for the Authority's members to assist in the carrying out their duties." Discussion 37. The principles to be applied on an application for leave to apply for judicial review are authoritatively set out in the judgement of Lord Bingham of Cornhill and Lord Walker of Gestingthorpe in the Privy Council in *Sharma v Browne Antoine*

[2007] 1 WLR 780 (paragraph 14(4):- "The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: see *R v Legal Aid Board, Ex p Hughes* (1992) 5 Admin LR 623, 628 and *Fordham*, *Judicial Review Handbook* 4th ed (2004), p 426 . But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application". These principles have been consistently applied by the Jersey Court(s), see e.g. in *Welsh v Deputy Judicial Greffier*

[2009] JLR N37. 38. In my view:- (i) the Statement of Satisfaction is in principle amenable to judicial review. It is issued by a public authority, created by statute and vested with important functions in the public interest. It carries with its consequences in law i.e. the non-prosecution of criminal or disciplinary charges against the officer whose conduct was investigated; see generally the 1999 Law sections 11, 12 and 13). (ii) the applicant has locus standi to bring his application for leave for judicial review against the performance by the JPCA of its obligations under the 1999 Law. He has a sufficient interest in a proper investigation of his complaint against DI Birmingham , the officer to ensure that the latter who advised him on the outcome of his first complaint of criminal conduct did not commit a disciplinary offence in doing so. He cannot sensibly be characterised as a busybody poking his nose into affairs which had nothing to do with him. (iii) By Article 7(4) of the Law, the Chief Officer of the SoJP properly notified the JCPA of the applicants complaint as it did not appear to him to be suitable for informal resolution, not least because the applicant had expressly so informed him. (iv) The Chief Officer by appointing DC Williamson to examine the complaint, complied with Article 6(7) of the Law which requires that the officer must be at least of the rank of the member of the Force against whom the complaint is made. (v) The criteria of. Article 9(1) of the 1999 Law obliging the JCPA to supervise an investigation, not being satisfied JCPA had a discretion as to whether it would supervise the investigation of the applicant's complaints against DI Birmingham . (vi) Having decided so to supervise it was subject to the usual public law duties i.e. to act lawfully, fairly and rationally, bearing in mind that, absent any relevant Order or Regulation, it was master of its own procedure schedule 6(1)(a). 39. Putting it shortly I have to consider whether the applicant has shown that he has an arguable case with a reasonable prospect of success that the JCPA had breached one or more of its public law duties these principles in issuing its Statement of Satisfaction and ought not if faithful to those duties, to have declared itself satisfied that DCI Williamson had properly satisfied himself after a proper investigation that DI Birmingham had properly satisfied himself after a proper investigation that there was nothing in the applicant's various complaints

about various criminal conduct by the various persons referred to above. 40. The applicant contends in paragraph 77 of his witness statement, that DI Birmingham had (wrongly) dismissed his allegations of criminal behaviour on two grounds:- (i) the failure of the applicant to exhaust all his civil remedies; (ii) a misinterpretation or misapplication of Jersey corruption law, stemming from his relatively limited exposure to the theory and practice of law in his capacity as a police officer. 41. As to (i) on a proper reading of the last paragraph of the letter.in my view, it does no more than indicate that it was open to the applicant to continue with any civil claims, hitherto not pursued, not that the existence of any such civil claims was a bar to DI Birmingham's consideration or acceptance of the applicant's allegations of sundry crimes. In short the possibility for the applicant to pursue such claims was a consequence, not a cause of DI Birmingham's rejection of those allegations. 42. As to (ii) there is no basis to conclude that DI Birmingham either misunderstood or misapplied Article 7 of the Corruption (Jersey) Law 2006 which provides, in so far as material:- "Corruption by public official: It shall be an offence for a public official to do or not do any act in relation to the official's position, office or employment, for the purpose of corruptly obtaining any advantage, whether for his or her own benefit or for the benefit of any other person." 43. As DI Birmingham succinctly but sufficiently said " Beyond the burden of proving some 'advantage' it is also necessary to establish that the act has been carried out 'corruptly' ." (I would add that it is implicit in his letter that he recognised that none of those, the target of the applicant's allegations were above or beyond the reach of that law. By reason of Article 4(1), a judge of the Royal Court, a Jurat, the Attorney General, the Judicial Greffier and any Greffier Substitute and any employee of the States of Jersey such as Mr Lowthorpe and the Comptroller of Income Tax are all public officials.). 44. It is manifest that the real reason for DI Birmingham's conclusion is that whereas the applicant considered that the offences he purported to identify were self-evident from the material provided (which the applicant accepted in his oral submissions contained naturally the principal documents upon which he founded his allegations,) the police review had no evidence at all to support the assertion that the criminal offences of perjury or corruption or any cognate offences were made out and no ' reasonable suspicion ' (I emphasise the adjective 'reasonable') to justify the deployment of coercive police powers to delve further into the matter. 45. This was a conclusion that, as it seems to me, DI Birmingham was entitled, indeed compelled to reach. The applicant needed to establish, not simply to borrow, the officers own phraseology ' poor judgment, mistake or inconsistency ;'

- but something that savoured of bad faith or intentional breach of duty of the part of those actions or decisions were said to have disadvantaged him. Indeed it could be professional misconduct for a qualified advocate (which, I recognise, the applicant is not) to advance allegations of this character without clear instructions supported by plausible evidence; and it would require cogent evidence for a Court to find them made out beyond reasonable doubt. The applicant genuinely (as I would accept) believes that any such adverse action or decision was ipso facto improperly tainted but this is a non sequitur . There lies a legal

Rubicon between mistake and malice, between incompetence and corruption; the applicant never crossed it (indeed for the avoidance of doubt, I am not to be taken as accepting that he has been the victim even of mistake or incompetence; that is not a matter before me). 46. The Complaint made by the applicant as to the deficiencies (and worse) of DI Birmingham's investigation are twofold:- (i) that he did not carry out a full investigation; (ii) that he did not take independent legal advice. Both these matters are correct in point of fact, but in my judgment immaterial in point law. 47. As to (i), once he had concluded that the applicant had not provided any evidence of or even suggestive of corrupt or criminal behaviour, he did not need to embark on further investigation; his professional capacity to deal with such matter cannot be impeached. 48. As to (ii), there was no issue on which independent legal advice was required; given his factual conclusions the law became moot. The papers before me do not indicate what, if any, legal advice was taken by him. It is a matter of which I can take judicial notice that there are legal advisers attached to the Attorney General's Department working in Police Headquarters, and that they are available to give informal advice from time to time when requested. The applicant variously complains that no legal advice was taken, or that any legal advice was taken from the Law Officers' Department was tainted by conflict of interest. The nature of that conflict is not particularised and can only (but wrongly) stem from the applicant's belief that he was the victim of a conspiracy in which the executive and judicial branches of the Jersey government were all involved. 49. I cannot in such circumstances see how DC Williamson could other than acquit DI Birmingham of any dereliction of duty in his investigation. It was not for DCI Williamson to re-till the field tilled by DI Birmingham . The applicant conflates two distinct exercises to be performed by the two officers arising out of two distinct complaints; the first made to DI Birmingham about the alleged criminal conduct of several parties; the second made to DCI Williamson about the misconduct of DCI Birmingham . 50. As to the satisfaction expressed by the JCPA as to DCI Williamson's conduct of his discrete investigation I cannot see any basis for faulting it. If DI Birmingham's investigation was sufficient, DCI Williamson's conclusion as to its sufficiency was also sufficient (subject of course to the proviso that he directed his mind to the right question and did not simply rubber stamp the earlier investigation. Such Statement of Satisfaction was the inevitable consequence of such well-founded premise, with the same proviso *mutatis mutandis* . As to the proviso, there is a presumption of regularity (*omnia rite esse praesumuntur*) which operates not to immunise public persons or bodies from review of any public law errors but to cast the burden of proving such errors on the person who asserts them. Again it is not for the JCPA to re-till the field tilled by DI Birmingham or that tilled by DCI Williamson, but only to satisfy itself that DCI Williamson had conducted his investigation properly. The applicant in effect seeks three bites at the cherry when he is entitled to one only. 51. Many, if not all, of the applicants substantive allegations are classified as a failure to take into account relevant considerations, a taking into account of irrelevant considerations, a breach of legitimate expectations and pure irrationality; the entire *Wednesbury* canon is invoked. If I do not deal severally with these ways of putting his case, it is because the content, of the allegations is essentially the same. A change of packaging does not alter or, more importantly improve

them. In effect, the applicant has made a number of assertions which, if there were evidence to sustain them, would be sufficient for the purposes of enabling leave to be given, but there is not. It is as if his mere assertion is insufficient for the purposes of obtaining the relief he seeks. 52. I turn to other specific points raised by the applicant in his scattergun challenge:- (i) The applicant complains that that the JPCA makes its decisions "behind closed doors" in breach of Article 6 of the European Convention on Human Rights, incorporated by the Human Rights (Jersey) Law 2000 . In my judgment, the JPCA is not determining the civil rights of the applicant, a precondition of the engagement of Article 6 which does not therefore apply. The JPCA is reviewing the investigation carried out by the police (and not, incidentally conducting a public enquiry). Necessarily much of that activity will take place behind closed doors without offending any principle of law. (ii) The applicant asserts that the supervising member of the JCPA was a judge in his or her own cause when the decision to issue a Statement of Satisfaction was made. Applicant proposes theoretical complaints which do not identify any cause which is that of the JCPA in respect of which it is said to be the judge. In particular the applicant next complains that the JCPA will work closely with the police and be groomed by them; there is no evidence of any grooming. (iii) The applicant complains about the apparent involvement of the Chairman in connection with the supervision of the investigation into his complaint against DI Birmingham when she had indicated that she would recuse herself. The evidence which buttresses this complaint is contained in the letters of 5th September, 2016, to the Chief Officer on its face signed on behalf of the Chairman and the letter of 25th October, 2016, sent to the applicant actually signed by the Chairman. 53. In my judgment, the evidence falls far short of establishing any apparent bias for two main reasons:- (i) I do not consider that the Chairman was obliged to recuse herself from any involvement in the applicants complaint; (ii) Her involvement was de minimis . 54. As to (i), in my view the Chairman was inexplicably given the approach of the applicant, over scrupulous in recusing herself from any role. It is difficult to see what was the appearance still less the actuality of any conflict could be of interest. The matter must be tested against the perception not of the applicant but of the fair-minded observer who is not complacent but equally is not unduly suspicious and makes sufficient enquiry to become properly informed before reaching any view as to whether there is any real risk that there would be a lack of impartiality in the process (see *Helow v Home Secretary*

[2008] 1 WLR 2416 , per Lord Hope at paras 2 - 4). 55. As to (ii), on 14 th July, 2016, in answer to his enquiry, the JPCA wrote to the applicant in the absence of the Chairman, confirming that the complaint had been referred to the Authority and was being supervised by " one of our supervising members ". It is clear from that email that the supervising officer was not the Chairman herself, because she was away. Indeed in a further e mail, sent by the Chairman to the applicant on 28 th July, 2016, she said that the supervision of the investigation was being carried out by a member of the Authority, and that " As Chairman I also have oversight of the matter ". It can be inferred from her use of the word "also" and her reference to the fact that " the supervising member has been actively liaising with the investigating officer throughout his investigation " that she was not the person directly

supervising the investigation, but no more than in her capacity as Chairman she had official responsibility for the work of the supervising member. 56. In any event given the absence of any basis for impugning DCI Williamson's investigation the minimalist involvement of the Chairman in the supervisory process could not have led to a different outcome in terms of the satisfaction expressed by the JCPA. 57. The applicant complains that the JCPA made its decision having taken into account irrelevant considerations including the wrongful allegations of non-cooperation in the investigation against the applicant, and judicial and political sensitivities in particular the effect that prosecution of the alleged predicate crimes may have had on the perception of the Island's judicial, political and executive functions. The only detail such as it is, given of the non-cooperation allegation is that DCI Williamson was allegedly unable to support the allegations of non-cooperation directed at the applicant. In my view that assertion is not made out; on the contrary the applicant was throughout this entire saga repeatedly asked for further information and did not provide it. 58. The applicant complains that the JCPA like all others who disagreed with him wrongly took into account the irrelevant consideration of judicial and political sensitivities. I accept that such considerations would be irrelevant. But there is no evidence to suggest that they were taken into account. The applicant says in particular:- "60. Although no specific reference has been made to the judicial and political sensitivities by either the investigating officer, the supervising member of the JCPA or the JCPA itself the fact that neither the investigating officer, nor the JCPA have been prepared to review the alleged predicate crimes, or the predicate crime allegations in the course of investigating the complaint clearly indicates that they are nevertheless operative." 59. This argument is circular and assumes what it is necessary to prove. The only evidence of wrongful reliance on the judicial and political sensitivities lies in the fact that the professional standards department and the JCPA did not consider that DI Birmingham was wrong to take the view that there was no reasonable suspicion of the crimes having been committed, and so did not review the crimes themselves. Given that, as I have already concluded that the investigation of the complaint against DI Birmingham did not require an investigation of the alleged underlying crimes by DCI Williamson or the JCPA, no inference of the kind here alleged can be drawn. 60. The applicant complains for good measure that the JCPA made its decision for an improper purpose or motive and in bad faith. There is not an iota of evidence to support this serious complaint. Indeed the applicant nowhere explains what conceivable motive the various targets of his assault might have had to disadvantage or damage him. As was observed in *Sharma v Browne Antoine* arguability cannot be judged without reference to the nature and gravity of the issue to be argued. The gravity of a charge of bad faith means, in my view, that the bar of arguability is set higher than it would be for a lesser charge. 61. The applicant contends that the JCPA has taken two discrete decisions - the first that the investigation has been conducted to its satisfaction, and the second to issue the statement of satisfaction. In my judgment that is incorrect as a matter of law. While Article 10 of the 1999 Law requires the JCPA both to prepare a statement as to whether the investigation has or has not been conducted to its satisfaction, specifying any respect in which it has

not been so conducted, and to send a copy of the statement to the Chief Officer (unless a criminal allegation is involved in which case it must go to the Attorney General as well) this is in substance, if not in form, one function only. It has no separate decision to take in respect of issuing its statement. It has to do so. 62. The applicant contends that the JCPA's decision -or as he would say decisions should be set aside because it has not provided reasons for that satisfaction. In my judgment that is not correct as a matter of law: because:- (i) The 1999 Law and ,in particular Article 10(4) does not require reasons to be given for a statement of satisfaction; (ii) Article 10(4)(b) does by contrast require at least specification of any respect in which such Statement cannot be given; (iii) Where elsewhere the 1999 Law requires the giving of reasons, it so states expressly i.e. where the JCPA directs the Chief Officer to prefer specific disciplinary charges it shall furnish the Chief Officer with a written statement of its reasons for doing so (Article 12(4); (iv) There is still no general duty to give reasons in public law despite a recognition of the desirability of so doing; (Fordham: Judicial Review, 6th ed ., para 62.1.); (v) It is not easy to see how in this context reasons could usefully amplify the decision itself. JPCA exists to ensure that complaints against members of the Force are properly investigated, and, where appropriate, charged. The JPCA itself does not have any decision to make in relation to the investigation other than to be satisfied (or not) that the person carrying out the investigation has carried it out properly. 63. The applicant complains that the JPCA failed to comply with its obligations under the Law because it did not send a copy of its statement of satisfaction to the Attorney General. I disagree. It did not send such a copy to the Attorney-General because it did not need to do so. 64. Article 10(6) of the 1999 Law provides that:- "The Authority shall submit the statement to:- (i) Where the statement is in respect of a criminal allegation, to the Attorney General; and (ii) In any other case, the Chief Officer". 65. In my judgment, this provision is intended to address the possibility that the officer under investigation was suspected of committing a criminal offence. In that type of case, there is a clear purpose in sending the statement to the Attorney General, who has overall responsibility for criminal prosecutions. Where the complaint against the officer was of a disciplinary and not a criminal complaint, there would be no purpose in sending the statement to him. Here, the complaint against DI Birmingham was in its essence disciplinary only, even if, in the applicants mind, DI Birmingham was himself guilty of some unspecified criminal offence. It is in any event inconceivable that the Attorney-General in the circumstances would have initiated criminal proceedings against him. 66. I turn to a separate matter. It is elementary that judicial review is both a discretionary remedy and a remedy of last resort. (Fordham . P36). While I accept that there is no alternative route by which the applicant could challenge the statement of satisfaction, for example by way of appeal, I cannot ignore the fact that the applicant is responsible for the procedural position in which he now finds himself. He chose to embark on his allegations of criminal behaviour in lieu of appealing the order of the Royal Court of 23 rd January, 2012, and the costs order which then followed it. In his witness statement, the applicant to his credit candidly admits as much:- "40. Shortly after the Commissioner and the Jurats handed down the relevant judgments in the removal

application, I examined the question of whether I should appeal the judgment.

41. A number of factors were considered including but not limited to the following:- (a) the question of whether, having regard to the behaviour of the Commissioner and the Jurats, I could rely on the Court of Appeal to act with honesty and integrity, to allow the appeal, or whether the Court of Appeal would overlook the misconduct of the Commissioner having regard to the judicial and political sensitivities; (b) the risk associated with the Court of Appeal referring the Representors back to the Royal Court for re-determination at a fresh hearing, effectively multiplying the Representor's risk as to cost, leaving the joint liquidators in place and leaving the representors within proceedings that had to be fought or conceded; (c) the fact that I, as a litigant in person, had limited experience in litigation and had no experience managing a potentially hostile panel of judges that may be pre-disposed, by the judicial and political sensitivities, to dismiss the appeal; (d) the comments of the Commissioner relating to my interpretation of provisions of law and the extent to which the legal practitioners for the opponents were prepared to depart from their professional duties to the Court to advance their clients' positions based on falsehoods; (e) the availability of local legal practitioners that may have been qualified and willing to assist me in preparing the notice of appeal and the contentions given:- (i) the discriminatory judicial and political treatment that operates to marginalise legal representatives in Jersey that challenge the prior interests of the 'establishment'. (ii) the fact that the majority of local law firms rely, financially, on billable work generated by the LOD; (iii) the nature of the judicial and political sensitivities; (f) the need for me to be able to show, by reference to the joint liquidator's representation, that the joint liquidators intended to seek orders for costs, under the relevant provisions of the Act of Court dated 20th October 2008, that had been generated by them in the course of attempting to transfer, unlawfully, a debt of 3B to BL. 42. I have perceived a particular risk relating to the availability of an order of dégrèvement which has the potential to place the joint liquidators in possession of immovable property belonging to my father worth in excess of £2 million based on a judgment debt in the order of £200,000 - £400,000 if, for whatever reason, my father and I were unable to discharge a pecuniary claim advanced by the joint liquidators, in full, within the requisite period. 43. In the circumstances, I considered that the risks involved in referring the matter to appeal were so great, given the apparent 'policy' of the judicial apparatus in Jersey to 'punish' those commencing legal proceedings where a conflict exists between the interests of the individual and the state, that an appeal could not be contemplated." 67. The applicant may or may not have had a good basis upon which to appeal the decision of the Royal Court of January 2012. He has not appealed it and it is no part of my function to consider the merits of his complaint about it other than in the context of the present application for leave to commence judicial review proceedings against the JPCA. What is indisputable is that in lieu of taking the route, open to any litigant disappointed with a court judgment (the underlying casus belli), of appealing it, he has chosen the less expensive (to him) route of making

allegations of criminal conduct against various persons whose emptiness of content is only matched by the extravagance of language; examples of that extravagance in his correspondence set out above are highlighted, but there are further examples sprinkled throughout his witness statement- see paras 4 - 8, which are merely introductory, 63.65 etc). In my view, by itself, his deployment of this tactic provides itself a sufficient reason to refuse leave. 68. In his application for relief, the applicant seeks the following orders:- (i) That the statement of satisfaction issued by the Authority is quashed or otherwise declared void. (ii) That the Authority is directed to require the investigations against DI Birmingham to be conducted by a new senior investigating officer from another force, under the supervision of two or more members of the Authority, not being members that have been involved with the applicant's complaint to date. (iii) That the new investigating officer is drawn from a police unit that specialises in the investigation of crimes similar to the alleged predicate crimes behind the applicant's complaint. (iv) That the Authority lay its proposed methodology for the new investigation before the Royal Court. (v) That the results of the new investigation be laid before the Royal Court. (vi) That the recommendations of the supervising member of the Authority in relation to the results of the new investigation be laid before the Royal Court. (vii) That the Authority lay its considered decisions in relation to the results of the new investigation before the Royal Court. (viii) That the applicant be given liberty to apply. 69. Although the question as to what relief would be available to the applicant were I to have given leave which I have not, is moot. I will comment briefly on the prayers for relief at paragraphs (ii) to (viii) above in case this matter were to go elsewhere (though I cannot refrain from observing that the applicant had expressed a lack of faith in the impartiality or integrity of the Court of Appeal)see para. As far as paragraphs (ii) to (vii) are concerned, I do not consider that the Royal Court has jurisdiction to make the orders which are requested. In effect what the applicant is seeking is that the Royal Court exercise the executive powers which by statute are conferred upon the JPCA under Articles 9 and 10 of the 1999 Law. If therefore the statement of satisfaction issued by the JCPA were to be quashed, and the JCPA had power (which is not a matter on which, without full argument, I would wish to express a view) were directed to require investigations against DI Birmingham to be conducted afresh, it would be a matter for the JCPA to consider whether it was necessary to require a senior officer from another force, and if so, from what type of police unit, and what sort of methodology ought to be adopted and what ought to happen to the results of the investigation. As to the relief sought in (viii) that the applicant be granted liberty to apply, this appears to me to be meaningless. If leave to apply for judicial review is granted, the Court will deal with any interlocutory or other procedural matters which ensure. If judicial review is granted (or indeed refused), subject to appeal, the case is at an end. Any 'liberty to apply' can be given then, not now. 70. For all these reasons, leave to commence judicial review proceedings is denied. 71. Order accordingly. *Authorities Bisson v Bish*

[2008] JRC 193 . Goods and Services Tax (Jersey) Law 2007. *Bisson Ltd v Comptroller of Income Tax*

[2010] JRC 009 . Bisson v 3B Holdings Ltd

[2012] JRC 021 . Police (Complaints and Discipline) (Jersey) Law 1999. Sharma v Browne Antoine

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[2009] JLR N37. Corruption (Jersey) Law 2006. Human Rights (Jersey) Law 2000. Helow v Home Secretary

[2008] 1 WLR 2416 . Fordham: Judicial Review (6th edition). Page Last Updated: 19 Jun 2017
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