

JERSEY / JUDGMENT

W -v- JFSC [2015] JRC 017 (23 January 2015)

[2015] JRC 017

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

the commissioner: 1. This is an appeal by the appellant ("W") against the decision of the Master, given on 13 th October, 2014, to decline to make certain orders for disclosure against the respondent ("the Commission"). The reasons for declining those orders were set out in the Master's judgment of 23 rd October, 2014, (U V and W-v-JFSC

[2014] JRC 202). 2. The case was listed to be tried with Jurats. Counsel were unsure as to whether Jurats were required and rested on the wisdom of the Court. It seemed to me that an application for discovery of documentation is a matter of law and procedure which pursuant to Article 15(1) and 1(A) of the Royal Court (Jersey) Law 1948 falls to be dealt with by a single judge. Certainly if the application for discovery had been made before the Royal Court as opposed to the Master, it would, in my view, have been dealt with by a single judge, and it would have been incongruous for an appeal to the Royal Court from a decision of the Master under delegated authority from the Royal Court to be required to be heard by a Court comprising Jurats. No findings of fact are made in such an application and in reality the Jurats had no role to play. I therefore released them from the hearing. 3. The application for discovery was made in the context of an appeal brought by W (and two others) against decisions by the Commission to give certain directions to the appellants and to make public statements relating thereto. Consistent with the judgment of the Master, this judgment is being issued in the same anonymised form so that the identities of the appellants remain confidential until the appeal is determined. 4. I describe the background, as I understand it to be, taken from the information supplied by the Commission but I make no findings in that respect. As a consequence of the need for anonymisation, the description will be brief. Consistent with the judgment of the Master and the parties, I will refer to the board of commissioners as "the Board" and to those full-time directors and employees of the Commission who are not members of the Board as "the Executive". 5. Production notices were issued by the Commission to the trust company concerned ("the Trust Company") and its affiliates, pursuant to Article 32(1)(a) of the Financial Services (Jersey) Law 1998 ("the Financial Services Law") covering a very wide range of matters, as a consequence of which the Commission received over ten thousand documents for review. It also conducted interviews with some fifteen individuals, exercising its powers under Article 32(1)(b) of the Financial Services Law. There were two

interviews of W conducted by the Executive lasting some two days each in advance of which he was provided with an interview bundle of documents extracted by the Executive from the documents received pursuant to the production notices. 6. A draft of the final report into the Trust Company (in so far as it related to W) was provided to him before being finalised. Thereafter the decision making process in respect of W (as with the Trust Company) followed that set out in the Commission's guidance note of 5th May, 2009, (and as revised on 5th August, 2011,) which comprised, following a Preliminary Review, four stages:- (i) Stage 1

- disclosure and verification of information. (ii) Stage 2 - Review Committee. (iii) Stage 3 - Board - first meeting. (iv) Stage 4 - Board - second meeting. 7. Pursuant to that process, a draft Individual Criticism Paper was prepared by the Executive and disclosed to W for his review and verification of the factual information contained within it. The process culminated in the decision of the Board taken at its Stage 4 second meeting to give directions to W and issue a public statement, against which decision he is now appealing. 8. It is fair to say that throughout this process W and from the time they were instructed, his advocates, Sinel's, were requesting not only extensions of time to respond to the Executive but also sight of all the documentation held by the Commission pursuant to the production notices and transcripts of the interviews of all of the other individuals involved, which the Commission regarded as restricted information and therefore was unable to provide. That remained the position of the Commission in the application made by W to the Master for discovery of documentation over and above that provided by the Commission in the two affidavits sworn by Mr John Clark Averty, Deputy Chairman of the Commission, pursuant to Rule 15/3(1) of the Royal Court Rules 2004 ; the first of which set out generic matters in respect of the Commission's powers and procedures and the second of which concerned the particular case of W. 9. It is intended that the appeal of W and the appeals of the other two individuals should be heard by the same Court consecutively immediately after each other in order to ensure consistency, but as the Master observed at paragraph 36 of his judgment, this would result in the Court being in possession of more material than the individual appellants. In his judgment, that was potentially unfair, given that these are appeals alleging unreasonableness on the part of the Board's decision, including unfairness and inconsistency, for the appellants not to be placed in the same position as the Board and the Royal Court as far as can be achieved. The Master therefore ordered, subject to a number of safeguards, that there should be disclosure to each of the appellants of the minutes of each stage of the Commission's decision-making process, minutes and notes of deliberations of the Board of any relevant Board decision relating to any of the appellants or other persons, the Individual Criticism Papers for each appellant and other persons where public statements have already been made and the final statement to be issued. 10. The Master was not prepared, however, to order discovery beyond that. Quoting from paragraph 40 of his judgment:- "40 However, that was as far as I was and am prepared to go. I do not consider that notices of appeal, affidavits filed by the Commission, interview transcripts, objections filed by any of the appellants to draft of the ICPs or drafts of the public statements or

submissions made to the Board should be disclosed. This includes notes of meetings between any of the appellants, or the other persons where public statements have been made and the Board. All those documents are confidential to those parties and the respondent. The information contained in them goes far beyond how the Board exercised its powers against an appellant, what it took into account, understanding the factual matrix known to the Board, or the Board's deliberations. In my judgment, the orders I have made provide an appellant with sufficient information to evaluate the findings made against other individuals involved, in the financial service business the Board is concerned about, and to assess whether the findings made against a particular appellant are unreasonable. I also accept that some of the material I have ordered to be produced will contain information supplied in confidence. This is inevitable, if an appellant is to know what the Board had in mind when deliberating its conditions. However this does not mean that disclosure as sought by Advocate Sinel should be produced. Advocate Sinel's approach in that regard again appeals to me to be looking for something to support his case. In reaching this view I accept that there may be some material not disclosed that is possibly relevant which might assist an appellant. However in my judgment the possibility of something being found that might assist an appellant is outweighed by preserving confidentiality." He went on to conclude at paragraph 49 that he considered this was:- "sufficient to enable each appellant to evaluate the full factual matrix known to the Board at the time as well as the Board's thinking contained in its deliberations and therefore to advance arguments as to why the Board's decisions were unreasonable." 11. The Master made it clear that his decision did not mean that W could not make a further application for specific categories of documentation on a much more limited and precise basis once he had had a chance to consider the material that he had ordered to be produced, but any such application should be justified on the basis of the approach set out in *Science Research Council v Nasse*

[1980] AC 1028 which Advocate Lacey, for the Commission, had referred to him and should be supported by an affidavit explaining what is required and why it is relevant, necessary and proportionate to the appeal. 12. The Master also pointed out that it was open to W to apply for further reasons for the Board's decision and for documents in support of those further reasons by reference to Rule 15/3 of the Rules, following *Finance and Economics Committee v Bastion Offshore Trust Company Limited*

[1994] JLR 370 . 13. In addition to appealing the decision of the Master not to order this further discovery, W has issued a further summons dated 3rd December, 2014, seeking more specific discovery as set out in an extensive schedule and supported by an affidavit from W. That summons, somewhat confusingly, also extends to the more general discovery declined by the Master and which is the subject of this appeal. That summons is due to be heard by the Master on 27th January, 2015. The law 14. It is clear from Advocate Sinel's submissions that he does not take issue with the legal principles to be applied to the issue of discovery in an administrative appeal, as set out in the Master's judgment, but he takes issue with the application of those principles by the Master to the facts of this case. 15. The Master referred to the duty of the Commission to act fairly as set out in the judgment

of the Royal Court in *Interface Management Limited, Interface Trustees, Interface Secretaries Limited & Rosenthal v Jersey Financial Services Commission*

- [2003] JLR 524, which involved an appeal against a decision of the Commission to refuse to register a trust company. At paragraph 13, Birt, Deputy Bailiff said this: "Taken in the abstract, the procedure established is one which complies with the legal requirements for fairness. It informs the applicant at all material stages of the case he has to meet and gives him an opportunity of convincing the relevant part of the Commission (i.e. the Executive in connection with its recommendation and the Board in connection with its decision) that it should reach a decision favourable to the applicant. However, whether the requirements of fairness are actually met in a particular case will of course depend upon how the system is put into operation." 16. Paragraph 64 of the same judgment went on to deal with the duty on the Commission to give reasons for its decision:- "It is a matter for the Board as to how much detail it gives when initially announcing its decision but we see nothing unlawful in its choosing to give only brief reasons at that time along the lines of those provided in this case. However, the purpose of art. 10(2) is to enable the applicant to know exactly why he is refused a licence and to decide whether he has grounds upon which to appeal. The statement must therefore be in a satisfactory form and in sufficient detail to achieve this purpose. (See *de Smith, Woolf & Jowell, Judicial Review of Administrative Action*, para 9-049, at 465-466 (1995). The applicant is entitled to know which matters relied upon by the Executive were accepted by the Board and which were not. To the extent that findings of fact were necessary to the Board's decision, those findings should be stated. So, for example, where a ground of decision is that the applicant has failed to comply with Codes of Practice, the statement under art. 10(2) should set out which provisions of the Codes of Practice were breached and the exact respects in which they were breached. Where financial resources are said to be inadequate, sufficient detail must be given so that it can be understood in what respect this was so. Where the "span of control" is said to be insufficient, the statement should explain how this is so. Where, as here, the issue is whether the applicant should be granted registration conditional upon proposed changes to cure the various deficiencies, the statement must set out why the Board has decided that that would not be appropriate." 17. Birt, Deputy Bailiff, went on to consider further the extent of the obligation on the Commission to give reasons in *Anchor Trust v Jersey Financial Services Commission*
- [2005] JLR 28, another case in which there was an appeal against the Commission's refusal to register a trust company, at paragraphs 112 and 113:- "112 The level of reasoning required will vary substantially according to the nature of the decision under review and we accept that a decision to refuse registration of a trust company under the 1998 Law is likely to require a greater level of detail than a decision to refuse a sex shop. However, the essential test remains the same, namely that the reasons should carry sufficient information to enable the applicant to understand why he has failed. Mr Scholefield submits that the letter of reasons explains how the Board has reached its decision but not why. He argues that it is silent as to why the Board preferred the views of the Executive and the inspector

to those of Anchor. In our judgment, this submission requires too much. The Board is not sitting as a judge to give a reasoned judgment. We consider that the reasons set out in the Board's letter fulfil the requirements imposed by art. 11(2) and those of fairness. Anyone reading that letter can understand exactly why Anchor has been refused registration. The Board states the findings of fact which it has made and explains the material upon which it has reached those findings (e.g. which passage in the inspector's report). It then goes on to relate those findings of fact to the criteria for refusal specified in art. 9(3) of the 1998 Law. We do not think that an administrative body such as the Commission is under a duty to descend into the level of detail suggested by Mr Scholefield and explain in relation to each finding of fact exactly why it has chosen the view of the Executive or the inspector rather than that of Anchor. As we say, one must stand back, look at the letter and ask whether the recipient of the letter would know why the Board refused the application. In our judgment, the letter explains why very clearly." 18. That decision was upheld by the Court of Appeal in *Anchor Trust v Jersey Financial Services Commission*

[2006] JCA 040 . 19. The Master also cited the more recent decision of the Court of Appeal in *Volaw & Corporate Services & Anor v Comptroller of Taxes*

[2013] 2 JLR 499 which, whilst being concerned with an appeal against a decision of the Comptroller of Income Taxes to exercise the powers vested to him under the Taxation (Exchange of Information with Third Countries)(Jersey) Regulations 2008 , contains statements of principle relevant to administrative appeals generally. At paragraph 46, the Court of Appeal stated as follows:- "In summary, while the grounds for a statutory administrative appeal may be wider than the grounds for a judicial review of an administrative decision, the adjectival machinery in this jurisdiction appears not dissimilar. Fairness, notoriously context-specific in its application, does not always require the full panoply of natural justice such as oral testimony or cross-examination; an attempt to read across without modification classic dicta on the reach of natural justice from the paradigm case of a trial is inappropriate (see the discussion in *Wade & Forsyth*, *Administrative Law*, 10th ed., at 432-434 (2009); *Fordham*, op cit. para. 60.2 at 625)." 20. At paragraph 54, the Court of Appeal went on to state as follows:- "If an appeal is instituted, the next step will be for the Comptroller to swear an affidavit. The Royal Court should then conduct a case management hearing. We recommend that the court should, absent truly exceptional circumstances, discourage any attempt for the appeal to be turned into a trial, with full deployment of lay or expert witnesses, whether testifying orally or on affidavit. The court's function, when hearing the appeal, will be to concentrate on whether the material in front of the Comptroller at the time he issued the notice provided him with reasonable grounds for his belief, and not to be drawn as happened in the instant case, albeit given the novelty of the situation understandably, into permitting adduction of an extensive volume of such evidence (see the Act of Court of March 8th, 2012; October 22nd, 2012; November 15th, 2012; and May 16th, 2013). Any affidavit evidence from the appellant should be concise and only entertained if it purports to contain some truly dispositive point. Cross-examination should only be permitted if the appeal (recollecting the limited

nature of the issue involved) truly turns on some point that can only be resolved by such method. It must be borne in mind by the court that the Comptroller has issued his notice as part of an investigation and that he himself is not obliged to conduct any sort of mini-trial. Nor, in our view, should a court be tempted down that slippery path." 21. Having cited these authorities, the Master reached the following conclusions at paragraph 34:- "I accept Advocate Lacey's submissions that an appeal against the decision of the respondent, which is undoubtedly an administrative decision, should not be turned into a trial. That includes whether or not to order discovery which is essentially what was being sought by Advocate Sinel from the respondent. Rather the approach to be taken by the Royal Court is to consider whether or not the Board or the respondent has acted unreasonably, by reference to the applicable principles discussed in Interface Management and Anchor Trust . I also agree that the respondent is not subject to the duty of disclosure applicable to a prosecutor in a criminal case or in civil proceedings. While the powers of the respondent as a regulator are extensive, the legislature has adjudicated that appeals are to be determined against the exercise of such powers by use of the test of unreasonableness which is well known as a basis for administrative appeals. The legislature is therefore taken to have accepted that such an appeal, as with administrative appeals more generally, does not create a general discovery mechanism. The appellant's protection is found in the obligation to give reasons supported by material documents. If there is an overlapping criminal process, the appellant's position can be safeguarded by the application of the maxim *le criminel tient le civil en état*, if the Court is persuaded it is appropriate to do so." W's contentions 22. Advocate Sinel did not suggest that Interface or Anchor were wrongly decided or that the principles enunciated by the Court of Appeal in *Volaw* had no application. He focused on the terms of the proposed public statement which concludes that W had acted "with a most serious lack of integrity and his displayed level of incompetence was of a most serious kind". The facts upon which these conclusions were based, as set out in the proposed public statement, came as close as can be, he said, to suggesting serious dishonesty on W's part and if published will have a devastating effect on his reputation and future employment prospects whether within or without the finance industry. 23. The Board had got itself into this position, he said, by adopting such extreme language and fairness dictated that W have full disclosure of all of the documentation that could possibly assist his case so that he could challenge these findings; the Master had erred in not making orders to this effect. It was a question of equality of arms with the Commission. 24. W's position was exacerbated by the fact that he had been removed from the Trust Company some time before the production notices had been issued and so he did not know what documentation had been provided to the Commission and no longer had direct access to the Trust Company's records. It was highly relevant, Advocate Sinel submitted, that W know what other individuals may have said in their interviews about W, as there was a strong possibility that they would seek to point the finger of blame at him, which in turn would have affected the Board's thinking. 25. The Executive, he said, was acting as judge and jury, deciding what documents were relevant and thus cherry picking what suited them effectively as prosecutors. Because of the seriousness of these

allegations being made, he characterised this as a quasi criminal process that would be bound to result in the appeal being turned into a trial of the factual allegations made by the Board. 26. In addition to equating it to a quasi criminal process, Advocate Sinel also referred to the duty of disclosure in civil proceedings citing *Victor Hanby Associates v Oliver*

- [1990] JLR 337 and the obligation upon parties in civil proceedings to make disclosure of documents which might enable the other party to advance his case or to damage the case of his opponent and which might fairly lead to a train of inquiry which might have either of these consequences. 27. Advocate Sinel argued that the documents required were not in any real sense confidential, as W had been a director and "the owner of the Trust Company in question"
- in fact, as I understand it, he owned just over 50% of the issued share capital. Even if confidential, there is no bar in law, he said, to discovery being ordered by the Court. 28. I was informed by Advocate Sinel that whilst a subpoena duces tecum had been issued against the joint liquidators of the Trust Company and his firm had received a number of discs which they were starting to analyse, the starting point for the defence of W was to know what the Commission had received at the outset. Decision 29. The test for appeals from a decision by the Master is well known; the Court must reach its own decision, whilst paying due regard to the decision of the Master. As with the Master, I accept the submissions of Advocate Lacey for the Commission. 30. Disclosure by the Commission is tightly controlled under penalty of criminal sanction. Article 37 of the Financial Services Law provides:- "Article 37 Restricted information Subject to paragraph (2) and to Article 38, a person who receives information relating to the business or other affairs of any person - (a) under or for the purposes of this Law; or (b) directly or indirectly from a person who has so received it, shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine, or both, if he or she discloses the information without the consent of the person to whom it relates and (where sub-paragraph (b) applies) the person from whom it was received." 31. A number of gateways for disclosure are provided by Article 38 of the Financial Services Law of which Article 38(f) is relevant for these purposes, and that does not preclude the disclosure of restricted information by the Commission "in connection with any other proceedings arising out of this Law". Thus, Article 37(1) imposes criminal liability in circumstances where the Commission receives information relating to the business or affairs of any person under or for the purposes of the Financial Services Law and the Commission discloses it (absent an order from the Court) without the consent of the person to whom it relates. In addition, criminal liability may also arise in circumstances where the Commission receives information relating to the business or affairs of any person directly or indirectly from another person who themselves received it under or for the purposes of the Financial Services Law and the Commission then discloses it without the consent of both the person to whom the information relates and the person from whom it was received. 32. Therefore, provided the consent of both the person to whom the restricted information relates and the person from whom it was received (if different) is obtained, that

information may be disclosed by the Commission. However, the Commission is not required to do so. Such an exercise would require identifying every person to whom each piece of information relates and the obtaining of their consent to the disclosure to be made.

Advocate Lacey submitted, and I am prepared to accept, that this could place a considerable burden on the Commission in the context of a regulatory investigation involving multiple third parties. In the case of this investigation, some fifteen individuals were interviewed under the Commission's compulsory powers. 33. This appeal from a decision of the Board constitutes proceedings arising under the Financial Services Law and the Commission would therefore be able to disclose restricted information in setting out all relevant matters concerning a decision which is the subject of the appeal, without fear of breaching Article 37 and the Court would have the discretion to order disclosure of restricted information. 34. Those who provide information relating to their business and affairs do so in the knowledge and understanding that it will be treated confidentially. Discovery of confidential information was considered by the House of Lords in *Science Research Council v Nasse*, a case in which an employee alleged discrimination for being passed over for promotion and sought an order from the industrial tribunal for discovery by the employer of confidential reports on the other two colleagues selected for interview (and which they had not seen). The objection of the employer to such disclosure was upheld. Lord Wilberforce said at page 1065 line 3:- "1. There is no principle of public interest immunity, as that expression was developed from *Conway v Rimmer*

[1968] AC 910, protecting such confidential documents as those with which these appeals are concerned. That such an immunity exists, or ought to be declared by this House to exist, was the main contention of *Leyland*. It was not argued for by the S. R. C.; indeed that body argued against it. 2. There is no principle in English law by which documents are protected from discovery by reason of confidentiality alone. But there is no reason why, in the exercise of its discretion to order discovery, the tribunal should not have regard to the fact that documents are confidential, and that to order disclosure would involve a breach of confidence. In the employment field, the tribunal may have regard to the sensitivity of particular types of confidential information, to the extent to which the interests of third parties (including their employees on whom confidential reports have been made, as well as persons reporting) may be affected by disclosure, to the interest which both employees and employers may have in preserving the confidentiality of personal reports, and to any wider interest which may be seen to exist in preserving the confidentiality of systems of personal assessments. 3. As a corollary to the above, it should be added that relevance alone, though a necessary ingredient, does not provide an automatic sufficient test for ordering discovery. The tribunal always has a discretion. That relevance alone is enough was, in my belief, the position ultimately taken by counsel for Mrs Nassé thus entitling the complainant to discovery subject only to protective measures (sealing up, etc.). This I am unable to accept. The ultimate test in discrimination (as in other) proceedings is whether discovery is necessary for disposing fairly of the proceedings. If it is, then discovery must be ordered notwithstanding confidentiality. But where the court is impressed with the

need to preserve confidentiality in a particular case, it will consider carefully whether the necessary information has been or can be obtained by other means, not involving a breach of confidence." 35. The starting point, therefore, in ordering disclosure of confidential information is that relevance alone is not enough. Disclosure must be necessary for disposing fairly of the proceedings. The Court will need to consider carefully whether the necessary information has been or can be obtained by other means not involving a breach of confidence. 36. Where the Court makes an order for disclosure, there is no obligation to obtain the consent of the person to whom the restricted information relates, but nonetheless that person's views may be a material consideration. 37. For that reason, the Master, I believe appropriately, required, before the Commission made the disclosure he had ordered to the appellants, that notice should be given to the other individuals concerned so that they could apply to object to such disclosure within a time frame set down. As it transpired, I understand no such applications were made. 38. Whilst the Court of Appeal in *Finance and Economics Committee v Bastion Offshore Trust Company Limited*

[1994] JLR 370 held that Part 6 of the Royal Court Rules governing procedure and pleadings was of general application which were intended to apply wherever it made sense to do so including administrative appeals, it is clear that Rule 6/17 relating to Discovery and Inspection of Documents has no application to administrative appeals, because discovery is governed by Rule 15/3(1) Part 15 of the Royal Court Rules 2004 dealing with Appeals from Administrative Decisions, which is in the following terms:- "(1) Within 28 days after receiving notice of appeal, the respondent must lodge with the Greffier and serve on the appellant an affidavit setting out - (a) a statement of the decision from which the appeal is brought; and (b) the facts material to the decision and the reasons for it and exhibiting all documentary evidence relating thereto." 39. Administrative appeals are concerned with the challenging of administrative decisions, in this case the decision of the Board to issue directions to W and a public statement. Disclosure of documentary evidence is therefore properly restricted to documentary evidence which relate to the facts material to the decision under appeal. Bearing in mind the quantity of documentation likely to be held by the Commission and its confidential nature, it is important in my view that such boundaries are maintained. That documentary evidence is required to be set out by way of affidavit and by analogy to the position with discovery in civil proceedings as set out in *Hanby*, further discovery should only be ordered by the Court where the appellant presents a prima facie case that there are undisclosed documents in the respondent's possession which relate to the facts material to the decision under appeal, disclosure of which is proportionate and necessary to dispose fairly of the appeal. 40. The Commission had, through the two affidavits sworn by the Deputy Chairman, disclosed all documentary evidence relating to the facts material to the decision under appeal, but following W's application for further discovery, the Master has ordered, to the extent indicated above, further disclosure of documents relating to third parties in order to dispose fairly of the appeal. W has not made out a case for disclosure of third party documentation beyond

that point. As to the remaining documentation received by the Commission pursuant to the production notices and not used in relation to the decision-making process in relation to W, he has made out no case for that being disclosed simply so that he can, as Advocate Lacey put it, trawl through the same to see if some of it might assist his appeal. 41. Advocate Lacey analysed the further discovery now being sought by W pursuant to his summons of 3rd December, 2014, and asked me to find that the disclosure that has already been made is more than ample to ensure the fair disposal of the appeal, relying on the Master's statement set out at 10 above. However, the Master was careful not to close the door on further applications for specific categories of documents on a much more limited and precise basis. Advocate Sinel complained, for example, of disclosure of parts of emails or of individual emails taken out of a chain and therefore arguably out of context. The Master has the procedural conduct of the substantive appeal at this stage and it is proper to leave it to him to evaluate this further application for specific categories of documents. 42. With respect to Advocate Sinel's submission that because of the serious nature of the findings of the Commission against W set out in the proposed public statement, the appeal, out of fairness, was bound to turn into a quasi criminal trial, with the Commission in the guise of prosecutor and with extensive cross-examination of witnesses, the Court of Appeal in *Volaw* has made it clear that the Court should not be tempted down this slippery path. Leave has I believe been granted by the Bailiff under Practice Direction RC05/25 for the appeal to be allotted more than half a day but it still remains subject to the requirement that such appeals are dealt with primarily by means of affidavit evidence and that leave to cross-examine deponents may only be granted in exceptional circumstances. 43. I would summarise the position as follows:- (i) In an appeal against an administrative decision, disclosure of documents is governed by Rule 15/3/(1). Subject to the respondent's obligation to disclose all documentary evidence relating to the facts material to the decision under appeal (save and to the extent released by the Court from that obligation), it is not subject to the duties of disclosure applicable to a prosecution in a criminal case or in civil proceedings. (ii) Further discovery of restricted information would only be ordered by the Court where the appellant presents a *prima facie* case that there are undisclosed documents in the respondent's possession which relate to the facts material to the decision under appeal, disclosure of which is necessary and proportionate to dispose fairly of the appeal. (iii) In any event, the Commission can only provide documentary evidence that is in its possession. If W wishes to have access to the records of the Trust Company, then he must apply, as he has done, to the joint liquidators for such access. (iv) The issue for the Court in the substantive appeal will be whether the subject decision was reasonable in all the circumstances of the case. The Court must be careful, therefore, not to be tempted down the slippery path of allowing W's appeal to be turned into a quasi criminal trial with the Commission in the guise of prosecutor. 44. The decision of the Master was carefully thought out and fair. There are no grounds, in my view, to interfere with it. The appeal is therefore dismissed. Authorities *U V* and *W-v-JFSC*

- [2014] JRC 202 . Royal Court (Jersey) Law 1948. Financial Services (Jersey) Law 1998. Royal Court Rules 2004. Science Research Council v Nasse
- [1980] AC 1028 . Finance and Economics Committee v Bastion Offshore Trust Company Limited
- [1994] JLR 370 . Interface Management Limited, Interface Trustees, Interface Secretaries Limited & Rosenthal v Jersey Financial Services Commission
- [2003] JLR 524 . Anchor Trust v Jersey Financial Services Commission
- [2005] JLR N 28. Anchor Trust v Jersey Financial Services Commission
- [2006] JCA 040 . Volaw & Corporate Services & Anor v Comptroller of Taxes
- [2013] 2 JLR 499 . Taxation (Exchange of Information with Third Countries)(Jersey) Regulations 2008. Victor Hanby Associates v Oliver
- [1990] JLR 337 . Finance and Economics Committee v Bastion Offshore Trust Company Limited
- [1994] JLR 370 . Page Last Updated: 27 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2015/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/w-v-jfsc-2015-jrc-017-23-january-2015>

Prepared on 27 October 2026 · Esheria