

JERSEY / JUDGMENT

W -v- JFSC [2016] JRC 231A (14 December 2016)

[2016] JRC 231A

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JUDGMENT

the master:

Introduction

1. This judgment represents my decision in relation to the applications by the appellant:- (i) seeking a detailed statement of findings of fact made by the respondent to justify the proposed public statement and specific requests for further and better particulars or for details of certain paragraphs of the proposed public statement; (ii) to amend its grounds of appeal; and (iii) for discovery/specific discovery. 2. The present application follows on from my decision in this matter dated 1 st November, 2016, reported at W-v-JFSC

[2016] JRC 199 where, at paragraph 34, I required any applications for specific discovery or for better reasons, or to file any further affidavit evidence to be issued, in the sense of arranging a date fix appointment before my secretary, before close of business Friday, 28 th October, 2016.

Background

3. The relevant background to this matter is set out in the judgment of Commissioner Clyde-Smith in the present proceedings at W v JFSC

[2015] JRC 017 at paragraphs 4 to 8 which I adopt including the definitions and which state as follows:- "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 27th May, 2009, (and as revised on 5th August, 2011,) which comprised, following a Preliminary Review, four stages:- Stage 1 - disclosure and verification of information. Stage 2 - Review Committee. Stage 3 - Board - first meeting. 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." 4. It is also right to add that W, albeit under protest, has participated fully in each stage of the decision making process referred to at paragraphs 6 of Commissioner Clyde-Smith's judgment. A summary of W's submissions at each stage of the respondent's process is set out in the affidavit of Lord Eatwell filed on behalf of the respondent on 5 th October, 2016, (filed in accordance with directions previously given by me) at paragraph 7. 5. In particular, W provided two responses to the Individual Criticism Paper ("the ICP") produced by the executive about W, provided written submissions for the Stage 3 meeting, and in advance of the Stage 4 meeting and orally addressed the Stage 4 meeting. 6. The Royal Court at the determination of this appeal will have access to all written submissions and the full transcript of the oral submissions made by W. It is not in dispute that W addressed the board of the respondent for a number of hours at the stage 4 hearing. 7. The decision of the board was communicated to W by a letter dated 19 th June, 2014. W was informed that the respondent through the board had resolved to give certain directions under various regulatory laws and to issue a public statement under the Financial Services Law. 8. The letter of 19 th June, 2014, on page 2 stated "The reasons for giving directions are contained in the public statement issued under the Financial Services (Jersey) Law 1998." Enclosed with the letter of 19 th June, 2014, was the public statement

the board had resolved to issue. It is this public statement which is the subject matter of W's application for a statement of findings of fact or for particulars because the board has stated that the reasons for giving directions are contained in the public statement. 9. The letter of 19 th June, 2014, referred to the public statement as containing the reasons for the decision to issue directions because Article 23(5) of the Financial Services Law 1998 at subparagraph (a) requires a notice of a direction to specify the reasons for giving directions. Each of the directions issued under the relevant regulatory law also refers to the reasons for the directions being the findings set out in the public statement. 10. It is also appropriate at this point to refer to Article 25A of the Financial Services Law which provides in summary that where the respondent intends to issue a public statement identifying any registered or formerly registered person (which would include W) , notice of this intention is to be given under paragraph 3 of Article 25A to the person concerned. The notice to be given is required to set out the reasons for issuing a public statement. 11. However, neither the board minutes recording the decision to issue a public statement in respect of W, nor the letter of 19 th June, 2014, nor the public statement itself nor any of the affidavits filed on behalf of the respondent contain any reasons for the decision to issue a public statement. This is a breach of Article 25A. I address the significance of this failing later in this judgment. 12. It is also necessary to refer to some aspects of the procedural history of this matter. 13. The primary appeal challenging the decision of the board to issue directions and make a public statement in respect of W was served on the respondent on 17 th July, 2014. A second appeal was issued on 21 st August, 2014, concerning the decision to make public statements in respect of others associated with the Trust Company before W's appeal had been determined; nothing turns on the second appeal for the purposes of the present application. 14. On 13 th October, 2016, for the reasons set out in the judgment given in this matter reported at W-v-JFSC

[2014] JLR 202, I ordered certain further discovery as recorded at paragraph 36 of the judgment as follows:- "I therefore have reached the view that there should be disclosure to each of the appellants of minutes of each stage of the respondent's decision making process, minutes and notes of deliberations of the Board of any relevant Board decisions relating to any of the appellants or other persons, the ICP for each appellant and other persons where public statements have been made, and the final statement to be issued. I accept that disclosure of notes of deliberations may lead to disclosure of some information supplied in confidence. I consider this is outweighed in this case by the importance of allowing each appellant to be aware of what the Board took into account when reaching its decision in this complex case." 15. The remaining requests for discovery were refused by me and I stated at paragraph 40 as follows:- "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 services 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 appears 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." 16. At paragraph 41, I left open the door (slightly) to a further specific discovery application "on a much more limited and precise basis". I also directed that any further applications for discovery should be made by Friday, 28 th November, 2014, (see paragraph 23 of the Act of Court of 13 th October, 2014). 17. I also directed, by paragraphs 9 and 10 of the Act of Court of 13 th October, 2014, that the appellant should make any application for better reasons based on a failure to comply with Royal Court Rule 15/3(1)(b) by the end of October 2014 and for any such application to be determined by 1 st December, 2014. 18. No such application was made. Instead an application for additional discovery was issued on behalf of the appellant by a summons dated 3 rd December, 2014, seeking 51 categories of documents. This included at paragraph 32 a request for copies of all objections from any of the appellants to the drafts of the public statements or submissions made to the board of the respondent including notes of meetings between any of the appellants or other individuals where public statements have been made. 19. This summons was not however pursued as set out below. This was initially because W had appealed my decision ordering limited disclosure only. While that appeal was unsuccessful for the reasons reported at W-v-JFSC

[2015] JRC 017 , at paragraph 43 (iii) W was also directed, if he wanted have access to the records of the Trust Company, to make an application to its liquidators. 20. W's application for additional discovery was further adjourned on 10 th February, 2015, for a date to be fixed for 23 rd March, 2015. 21. On 30 th March, 2015, W's application for additional discovery was adjourned to the week commencing 11 th May, 2015. 22. By an Act of Court dated 11 th May, 2015, W's application for additional discovery which had been listed for th May, 2015, was adjourned indefinitely. This application has never been restored. 23. Finally, it is right to record that W has been suffering health problems since March 2015 some of which were referred to in my judgment in this matter reported at W-v-JFSC

[2015] JRC 241 , which led to the determination of the appeal being stayed for a number of months. However, by an Act of Court dated 11 th May, 2016, the appellant was sufficiently well to file his affidavit and accordingly was given until 19 th August, 2016, to file his substantive affidavit which was ultimately filed on 25 th August, 2016, (time having been extended by agreement). The affidavit of Lord Eatwell referred to above was filed on 5 th October, 2016. 24. I have set out the above matters because they are relevant to any question of delay in respect of the different parts of the application brought by W. It is also appropriate to review the relief sought by the present summons against the context of applications previously made and determined or not pursued. Application for reasons 25. I consider it appropriate to start by reference to the general application for reasons and for a detailed statement of the findings of fact upon which reasons were based, (paragraphs 2 and 3 of W's summons) and the detailed requests for particulars/reasons found at paragraphs 7 to 39 of W's application. The parties' contentions 26. Advocate Sinel in support of his client's application for reasons or findings of fact, including in relation to specific paragraphs of the public statement, relied on the following statements of general principle:- (i) His client was entitled to know what the board had decided and on what basis. At present the public statement did not make this clear. (ii) The affidavit of W made it clear that the present application was not a fishing expedition but was seeking to understand the basis of what had been decided. (iii) Without reasons W could not test the evidence. (iv) The obligation to provide reasons was so that the Royal Court could ascertain whether or not the respondent had acted in error. 27. Relying on *R v Lancashire County Council ex*

p. Huddleston

[1986] 2 All ER 941 Advocate Sinel emphasised the observations at page 945 lines E to F as follows:- "The analogy is not exact, but just as the judges of the inferior courts when challenged on the exercise of their jurisdiction traditionally explain fully what they have done and why they have done it, but are not partisan in their own defence, so should be the public authorities, it is not discreditable to get it wrong, What is discreditable is a reluctance to explain fully what has occurred and why." 28. Advocate Sinel also relied on the general observation at page 945 line G that judicial review was "...a process which falls to be conducted with all the cards face upwards on the table and the vast majority of the cards will start in the authority's hands." He argued that exactly same position applied where there was a right to appeal. 29. The extent of the reasons required depended on the type of appeal being dealt with. 30. His client should not have face the dilemma of proceeding on the basis that the reasons given might be found to be insufficient at the final hearing and therefore the decision was unreasonable. His client was entitled to know what those reasons were to be able to challenge them. 31. The obligation to provide reasons was also clear from *Finance and Economics Committee v Bastion Offshore Trust Company*

[1994] JLR 370 . 32. The obligation to provide reasons was particularly significant because the criticisms made of W were according to Advocate Sinel's skeleton "...the most detailed savage and damning indictments ever issued". This was despite the fact that there was no allegation of money laundering, no alleged breach of the criminal law and it was contended no investors had lost money. In other words, W wanted to know what he had done wrong. 33. The need for reasons and findings of fact was particularly important because investors had not lost anything like the losses that the public statement implied. The approach of the executive had been accepted by the board. Yet the executive in respect of the investments criticised in the public statement into "Structure X" had failed to take into account that the investments were secure. 34. In addition it was now accepted, by reference to paragraph 61 of the affidavit of Lord Eatwell, that the documents said to create security for investors had not been put in any interview bundles or considered by any of the investigating officers of the executive. Any complaints of investors on the basis of incomplete documentation could not therefore be relied upon. The board of the respondent should explain its conclusions in light of these admitted failings. 35. W had rights including the right to have his case determined in a fashion that was compliant with Article 6 of the European Convention on Human Rights to have his case before both the respondent and the Royal Court determined lawfully, to be treated fairly and to know in straightforward terms what he was accused of, and any evidence against him, so he might challenge the evidence upon which the decisions were based. 36. The more complex or draconian the powers being exercised by an administrative body the more that body had to explain its decision and the reasons why. 37. He agreed that the extract produced by the respondent from De Smith's Judicial Review 7th Edition at paragraph 7-103, set out below was an accurate summary of what was required. 38. In relation to the public statement, Advocate Sinel made the following criticisms:- (i) Paragraph 1.3. did not contain any reasons; (ii) Paragraph 2.6 did not identify what the conflicts of interest were; (iii) In relation to paragraph 2.7, fundamentally W did not understand the respondent's criticisms of the structure that was created. He was being left to guess; (iv) In relation to paragraphs 2.10 and 2.11 W was seeking clarity as to which customers the respondent was talking about. This was significant because some sophisticated individuals had invested directly in what was described in the public statement as FilmCo whereas others had invested in FilmCo and through Structure X. it was not clear which customers the public statement was referring to; (v) It was not clear in respect of any sub-paragraph complained of, what beach of duty by the Trust Company or W or what beach of any code of practice by the Trust Company was being relied upon. His client was entitled to know the breaches he is said to have committed or what breaches of duty or Codes of practice by the Trust Company he is said to be responsible for; (vi) In relation to paragraph 3.1 W wanted to understand what was meant by the final sentence at paragraph 3.1 and what was meant by the term "shadow director"; (vii) In relation to paragraph 4.1, W wanted to know whether the board had accepted all the matters set out in the ICP report prepared by the executive for W, or had relied upon matters in the report prepared in relation to the Trust Company and if so in either case which parts were relied on. At present W was being left to guess.

The board might have accepted the entirety of both documents or some of them, or may have accepted that some of the evidence adduced by W. W simply did not know; (viii) In relation to the suggestion that W lacked integrity and this was effectively an allegation that W was dishonest. W was entitled to know why it was said he had been dishonest each time there was a statement that he lacked integrity. This submission applied to paragraphs 4.3, 4.4, 4.5, 4.6, 4.7 and 4.8. (ix) Where it was alleged that W lacked competence, again W was entitled to know the facts relied upon for such a conclusion and the reasons why. This applied to paragraphs 4.3, 4.4 and 4.6. (x) In respect of paragraph 4.4, W was entitled to know why the matters identified in each sub-paragraph of paragraph 4.4 were conflicts of interest. (xi) In respect of delay Advocate Sinel contended that the present application could not have been brought until W and his advisors had sight of Lord Eatwell's affidavit in reply. The application was only necessary because Lord Eatwell's affidavit still failed to give reasons required. The fact that the appellant's affidavit only had been served in August was due to the serious health problems W had suffered since the spring of 2015. 39. Advocate Lacey in response contended as follows:- (i) Effectively W by making the present application was trying to restart his appeal from scratch which was impermissible; (ii) There were no reasons that needed to be expanded; (iii) The respondent at this stage could not alter the basis upon which matters had already been decided. It would be wrong for the board to formulate additional reasons now; (iv) Further reasons could not be provided in any event because the board was now constituted differently; (v) The appellant was not entitled to the same level of reasoning that should ordinarily emanate from a judge; (vi) In respect of the Stage 4 process, W was taken line by line through his statement and asked whether he agreed or disagreed with it; (vii) The current process was post the decisions in *Interface Management Limited & Ors v JFSC*

[2003] JLR 524 and *Anchor Trust v JFSC*

[2005] JLR 428 and *Anchor Trust v JFSC*

[2006] JCA 040 and followed the reasoning in those cases; (viii) All materials before the board had been provided to W including a transcript of his submissions. W and his advisers were therefore in a position to set out why the board had erred; (ix) There was a danger of applying hindsight. The assessment the Royal Court had to make was whether the board had acted reasonably in preceding on the material available to it at the time; (x) The question of applying hindsight was particularly important in relation to the question of loss. The appellant's submissions failed to address the risk of loss faced by investors in Structure X at the time of the board's decision. What may have happened subsequently was irrelevant to the reasonableness of the board's decision; (xi) The reasons in the public statement had stood unchallenged for two and half years. (xii) The place for determination of the adequacy of the reasons was at the hearing of the appeal itself not on an interlocutory application. The Master therefore did not have jurisdiction or power to require better reasons to be given. (xiii) W was aware of what the board had considered because this was set out in the board's letter of 19 th June, 2014, where the board made it

clear that it had given very careful consideration to all the documents and information placed before it including the submissions made by W and Advocate Sinel on 1 st May, 2014. W therefore knew what the board had relied upon. (xiv) The court should not strive for perfection in relation to a notice of appeal. The issue was whether the approach in paragraph 7.103 of De Smith had been met. W's approach was trying to backfill the reasons already given. (xv) The application had also been left far too late. Had the recent adjournment not been granted, then the appeal would have proceeded without the present application which had been raised at the last minute. Granting W's request would open the door to more evidence and more delay. The obligation to give reasons 40. I have already referred at paragraphs 9 and 10 above to the obligation to give reasons in respect of a decision to issue a direction and to make public statement as contained in Articles 23 and 25A of the Financial Services Law. 41. In addition to these specific statutory obligations, there has also been academic and judicial comment on the obligation of administrative bodies to give reasons. 42. I have already referred to the fact that both parties agreed that De Smith's Judicial Review 7th Edition contained useful guidance on the approach to be adopted by an administrative body. I firstly refer to paragraph 7-102 at page 455 where the authors state:- "The reasons must generally state the decision-maker's material findings of fact (and, if the facts were disputed at the hearing, their evidential support), and meet the substance of the principal arguments that the decision-maker was required to consider. If a decision is made on the basis of the evidence of witnesses or experts, reasons for preferring one witness or expert over another should generally be explained. In short, the reasons must show that the decision-maker successfully came to grips with the main contentions advanced by the parties, and must tell the parties in broad terms why they lost or, as the case may be, won. Provided the reasons satisfy these core criteria, they need not be lengthy." 43. At paragraph 7-103, which both parties accepted was a helpful synopsis, De Smith continues as follows:- "Some general guidance on the standard of reasons required may also be derived from a consideration of the purposes served by a duty to give reasons. Thus, reasons should be sufficiently detailed as to make quite clear to the parties-and especially the losing party-why the decision-maker decided as it did, and to avoid the impression that the decision was based upon extraneous considerations, rather than the matters raised at the hearing. Reasons must be sufficient to reveal whether the tribunal made any error of law. Reasons must also enable the court to which an appeal lies to discharge its appellate function, and when this is limited to questions of law, it will only be necessary to explain the exercise of discretion and to set out the evidence for the findings of fact in enough detail to disclose that the decision-maker has not acted unreasonably. The reasons should refer to the main issues in the dispute, but need not necessarily deal with every material consideration. Brevity is an administrative virtue, and elliptical reasons may be perfectly comprehensible when considered against the background of the arguments at the hearing." 44. There has also been judicial comment in Jersey on the obligation to give reasons; a useful statement of principle is found in the Bastion decision starting at page 383 line 29 down to page 384 line 22 as follows:- "In the case of appeals against administrative decisions, such as the one in

question here, there is a strong policy in the Island in favour of ensuring that the aggrieved subject who wishes to appeal knows the basis of the decision and the process of reasoning by which it was arrived at. First, there is the requirement in art. 5(4) of the 1973 Law that the Committee must give a written statement of its reasons for the decision. Secondly, 35 r.11/3(1) of the Royal Court Rules 1982 requires the Committee to lodge "a statement of the decision" within a month of receiving notice of appeal. Thirdly, r.11/3(5) requires the Committee to lodge "the contentions to be urged by the Committee at the hearing of the appeal." In his judgment the learned Bailiff said this:- If it is the case that in civil cases, i.e. cases between citizen and citizen, each party should know precisely the facts upon which his opponent is going to rely, how much more important it is, in my opinion, for an appellant against an administrative decision of a Committee of the States of Jersey to know precisely the grounds upon which the Committee bases its case and precisely the reasons which prompted them to refuse to grant the application, because in most cases, an appeal would be against a refusal of a Committee to grant a particular application based on the relevant Law. I consider it of the utmost importance that a citizen who feels that his common law rights have been restricted, as statutes do restrict them, should be entitled to say to every Committee properly carrying out the Law: 'Please tell me precisely and in detail why it is you have refused my application.' Such an entitlement, it seems to me, must not be subservient to the procedural requirements of this court. In my view, the procedure of this court and of the rules must enable the parties in a case such as an appeal from an administrative decision to be absolutely clear about the facts upon which the arguments are going to evolve. That, of course, does not include the Law which is to be advanced, which is a different matter. We entirely endorse what the Bailiff said about the desirability of giving full reasons. As to the last sentence in the passage cited, we would agree if what is meant is that the Committee cannot be ordered to supply lengthy legal arguments. But in the field in which we are operating, the borders between fact, law and policy are not always clearly visible and it would be a mistake to introduce too great rigidity, thereby depriving the court of the power to order that the Committee shall make clear the contention that it proposes to advance.'" 45. More specific observations in relation to what is expected from the respondent were considered in Interface . Firstly at paragraph 50 Sir Michael Birt stated as follows:- "We think that the Director General should have addressed the response of IML in rather more detail in his recommendation to the Board. An allegation of forgery is a very serious matter, particularly where it has been made against a director of a company which is applying for registration as a trust company. Having read the letter of November 23rd, we accept the broad thrust of Mr. Taylor's characterization of it. It does provide some apparently persuasive arguments to suggest that the grounds relied upon by the Beresford signatories in support of their belief that the signatures in this case had been forged were not necessarily correct. We are not for a moment saying that the Director General must deal in his submission to the Board with every response made by an applicant to every concern expressed by the Executive. In most cases the concern of the Executive and response of the applicant can be left to speak for themselves. But where a matter as serious as an allegation of forgery is raised and

where there is what appears on the face of it to be a reasonably persuasive defence, we think that the Director General should do more than simply refer to the fact that the response has been made but that his view remains unaltered. We think that the Director General should have either modified what he said in relation to the forgery allegation or explained why he remained unconvinced by IML's response." 46. I consider that by analogy, an allegation of a lack of integrity, in particular a serious lack of integrity (see for example paragraph 1.3 of the public statement) requires the same level of response as for an allegation of forgery. 47. I also consider it helpful to have regard to the guidance at paragraph 62 of Interface which states:- "62 The court is in no doubt that the Board acted in breach of art. 10(2) in its reply of April 11th to the request for a statement of reasons. As Mr. Taylor correctly submitted, an applicant should be able, after provision of a statement of reasons under art. 10(2), to know the answer to the question "Why did I fail?" In our judgment, IML could not ascertain the answer to that question from the information given at that stage by the Board. The only statement of reasons was to be found in the public statement attached to the letter of March 21st. That is a very general statement taken largely (although not entirely) from the wording of art. 8 itself. It gives no indication of the exact respect in which the company was found to be inadequate, or in breach of the Codes of Practice. The Chairman's response to the effect that the reasons could be ascertained from a reading of the public statement together with the papers before the Board at its two meetings was not helpful. The papers were extremely voluminous and contained a large number of matters which had not ultimately been pursued by the Executive or upon which the Board had not relied. It would have required a very detailed and painstaking analysis to try and ascertain which matters relied upon by the Executive had been supported by the Board; indeed, we are not sure that this matter could have been satisfactorily undertaken in the absence of the minutes of the meeting of the Board, which were not produced until later when Mrs. Hatton's affidavit was sworn for this appeal." 48. In relation to this paragraph, I accept that every appeal to the respondent will turn on different facts and each matter where regulatory sanction is being considered will have its own level of detail

- straightforward in some cases and complex in others. However, generally, the more complex the factual the dispute or the more serious the proposed sanction, in my judgment the greater the obligation to explain why particular conclusions have been reached. 49. Sir Michael Birt in Interface then continued at paragraph 64 as follows:- "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 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 ." (emphasis added) 50. The passages to which I have just referred do not mean that the respondent is required to produce a reasoned judgment to the same level of detail as set out in a reasoned judgment of the Royal Court. The respondent in particular is not required to set out why it has preferred the view of the executive over submission of W. This was dealt with in the Anchor decision of the Royal Court at first instance at paragraph 113 as follows:- "113 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." 51. While the Anchor decision was appealed (unsuccessfully), paragraph 113 does not appear to have been the subject of any judicial comment when the matter came before the Court of Appeal. 52. Although Advocate Sinel pays much emphasis on Huddleston , I do not regard Huddleston as adding anything to the observations setting out above or saying anything different in principle. 53. In drawing these principles together, in relation to the obligation to give reasons, I summarise the position as follows:- (i) There is an obligation on an administrative body to give reasons; (ii) The extent of the reasoning required is to allow the person affected by the decision to know exactly why a decision has been reached and what material has been relied upon by the decision maker in reaching that decision; (iii) The reasons can be brief; indeed brevity is to be encouraged as long as the obligation in the preceding subparagraph is met; (iv) Reasons do not need to indicate why the material relied upon was preferred to other evidence; (v) Clarity of the explanation given is particularly important where any finding involves a conclusion as to the honesty or other similar characteristic of the person about whom a decision is being made. (vi) Any breaches of duty or codes of practice relied upon should be identified expressly. A power to order reasons 54. I next turn to deal with the issue of whether or not I have power to require the respondent either to provide reasons or to amplify its reasons. 55. I start by reference to Rule 15/3(1) which provides as follows:- "15/3 Documents for use of the Court (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." 56. Rule 15/3 (1) is found in Part 15 of the Royal Court Rules which is headed "Appeals from Administrative Decisions". 57. Within Part 15 is Rule 15/5(1) as follows:- "15/5 Dismissal of appeal for non-prosecution (1) Without prejudice to Rule 15/2(4), if the appellant or the respondent fails to comply with any requirement of this Part or with an order of the Court made in connexion with the appeal, the Court may, on the application of either party to the appeal, make such order as it thinks fit, including an order as to costs and, in the case of an application by the respondent, an order that the appeal be dismissed." 58. Rule 15/5(1) is not one of those provisions of the Royal Court Rules which does not apply to the Greffier (see Schedule 1 of the Royal Court Rules). 59. Accordingly, the short answer to Advocate Lacey's contention that I have no power to order the respondent to provide further reasons in advance of the appeal is that this submission is inconsistent with the power vested in me by Rule 15/5(1). Rule 15/5(1) clearly permits an application to be made where it is alleged that a respondent has failed to comply with any requirement found within Part 15. On such any application the Rule permits the Court including the Judicial Greffier (and therefore the Master) to make such order as he thinks fit. Such words are commonly found in different parts of the Royal Court Rules and other statutory provisions and it is clear that such words give the Court a broad discretion as to what orders it can make. 60. Part 15 applies to any appeal from any administrative body. The purpose of Rule 15/3(1) is to inform the person or entity about the decision has been made for that person or entity to know the reasons and material relied upon and to enable that person to formulate any evidence relied upon in response and its submissions as to why the body concerned had acted unreasonably and why its decision should be set aside. The detail provided may also lead to applications to amend a notice of appeal (e.g. if new material comes to light) or requests for relevant documents to be produced if the appellant does not possess the same. Rule 15/3(1) also assists the Court to understand why the particular decision was made in the context of whether or not it should be set aside. The information required by Rule 15/3(1) enables the Royal Court to evaluate any evidence supplied by any appellant and any respondent and any submissions made at the hearing of the administrative appeal. 61. In my judgment the power in Rule 15/5 allows the court to ensure that these purposes are met. To take an extreme example, if an administrative body notwithstanding the obligation in Rule 15/3(1) to file an affidavit, failed to do so, can it be said that the court possess no power to compel the respondent to file reasons before the final appeal. If that were the position, then any appeal would become time consuming and protracted because the Court would not have the material to decide whether or not the decision challenged should stand. This is not an efficient way to proceed and not consistent with the timely resolution of administrative appeals. I therefore conclude that I possess the power to require a respondent to comply with Rule 15/3(1) where they have failed to file any affidavit at all. If the court can compel a party who has not filed reasons or evidence at all in breach of Rule 15/3(1), I am of the view that it must possess the lesser power within the discretion vested by Rule 15/5 to compel a

party to take the step of clarifying reasons or evidence where that evidence is not understood for the same reason namely the efficient conduct of administrative appeals. 62. In this case, in addition, I observe that the evidence of Lord Eatwell in part provided such clarification which evidence goes beyond matters in the public statement. While the second affidavit of Mr Averty filed on behalf of the respondent is clear that the reasons relied upon for the issuing of directions is to be found in the public statement, at paragraph 80 of his affidavit Lord Eatwell in commenting on paragraph 49 of the public statement said this "where W did not expressly admit sections of the working public statement, the various explanations he offered for his refusal to accept each part of the public statement i.e. did it not accurately reflect his recollection or view of the facts, were not accepted by the board of commissioners. Instead the board concluded that the wording of the working public statement was accurate and appropriate based on its assessment of the contents of the material before it, in particular the individual criticism paper prepared by the investigating officers of the Executive and [W]'s own submissions to the board at the Stage 4 meeting." [added emphasis] 63. The extract I have underlined does not appear anywhere in the public statement or the affidavits of Mr Averty. Yet it is clearly a statement in summary that the reasons contained in the final public statement were based on acceptance of the ICP of W prepared by the executive for the board and acceptance of other material before it, albeit unidentified in paragraph 80. The ICP itself refers to both the report prepared for the Trust Company and to extracts transcripts of interviews of W. In my judgment the respondent cannot have it both ways. It cannot on the one hand seek to amplify or supplement its reasons in affidavit evidence filed and yet say that the court has no power to compel the respondent to clarify its

reasons.

64. This conclusion does not mean that care should not be taken in how the power in Rule 15/5 is exercised. There is a distinction between ensuring there is a "cards on the table" approach (per Huddleston) so that the parties and the court know the facts relied upon and the reasons why and requests which in reality are designed to attack the adequacy of the reasons given. If what underlies a request said to be a request to make a case clearer is in fact a challenge to a reason because the relevant body failed to take into account a particular fact, or such an approach is implicit in a request, the Court should be wary of being drawn into such a debate. The proper place for challenges to reasons not based on lack of clarity but based on a failure to consider matters or that they do not stand up to scrutiny is for the final appeal hearing itself. Each request will have to be reviewed to see on which side of the line it falls. 65. I should also make it clear that, in my judgment, requiring an administrative body to clarify its reasons or the facts relied upon for the purposes of that above, does not mean it should not be taken to mean that the relevant body's decision is one that is unreasonable. Once the relevant material facts are before the Court and the reasons known, the Court is entirely free to decide whether or not a decision is reasonable even if no reasons were given at the outset. The provision of reasons is therefore to assist the parties and the Court in

reaching its conclusion as I have set out above. 66. I accept in this case that one of the grounds relied upon as to why the respondent's decision is unreasonable is the failure to give proper reasons. For the purposes of this decision, however, merely because a government body does not give reasons, it does not automatically follow that the decision of that body is one that is unreasonable or should be set aside. Any initial failure to give reasons therefore is simply one of the factors that the court will evaluate and take into account in the round in deciding whether or not to any particular decision should be set aside. 67. In relation to this part of my decision I should also address paragraph 82 of Lord Eatwell's affidavit which provides as follows:- "82. Whilst I do not wish to make submissions on the Commission's behalf - the place for this is within the written submissions from our legal advisors - I would like to explain that the Board of Commissioners is not a judicial or quasi-judicial body. In communicating its final decisions to individuals the Board of Commissioners it is not under a statutory or other duty to provide a written, fully reasoned judgment. The Board of Commissioners is mindful of the decision of the Royal Court and Jersey Court of Appeal in the case of Anchor Trust, in which it was explicitly recognised that the Board of Commissioners does not sit as a judge giving reasoned judgments. The duty to give reasons imposed on an administrative body does not extend to a duty to explain in relation to each finding of fact exactly why it has preferred the submissions of the Executive over that of the individual in question. The Board of Commissioners comprises of practitioners from various fields, experienced in matters relating to the finance industry or financial regulations. Each Commissioner carefully brings his or her experience to the table in considering the evidence with a view to arriving at a consensus as to the appropriate and reasonable conclusions and decisions to arrive at." 68. I do not disagree with this statement in so far as it goes and I agree that it reflects paragraph 113 of the decision in Anchor Trust . However, it is also clear from the passages in Interface as set out above, that an administrative body should set out the material facts upon which it relies and its reasons for its conclusion, preferably as briefly as possible. Paragraph 82 is not an answer to the requirements set out in Interface . 69. I now turn to consider whether W's complaints or any part of them are justified. The adequacy of the respondent's reasons 70. I start by reminding myself that, in the respondent's letter of 19 th June, 2014, to W, the respondent stated that the reasons for giving the directions concerned were contained in the public statement. At paragraph 66 of the second affidavit of Mr Averty, then deputy chairman of the respondent, Mr Averty deposed "the board of commissioners closely considered W's case and made a series of carefully considered and reviewed findings of fact, as are detailed within section 4 of the public statement". I have referred to paragraph 66 as this clarifies where the findings of fact of the public statement are contained. 71. I have already referred to paragraph 80 of Lord Eatwell above which goes beyond the reasons set out in the public statement because paragraph 80 refers to the board's assessment of the contents of the material before it, in particular the ICP prepared for W. Yet neither the public statement nor any of the affidavits filed on behalf of the respondent indicate which parts of the ICP were relied upon by the board in deciding to issue directions. Neither do the board indicate which parts of the transcripts referred to in the ICP for W it relied upon. Nor has the board indicated which

parts of the Trust Company report it relied upon. Yet it is only the Trust Company report that identifies any breaches of the Codes of Practice by the Trust Company. No breaches of any duty or Codes of Practice by the Trust Company for which W is responsible are identified despite paragraph 64 of Interface cited above even though breaches of Codes of Practice are referred to in the Trust Company report. 72. There are also other paragraphs of Lord Eatwell's affidavit it is appropriate to refer to. In the section headed "Collective Responsibility" at paragraph 30 Lord Eatwell deposed that W's position had been summarised and addressed at the Stage 4 meeting and that the executive's conclusions as to W's role within the Financial Services Company were found at paragraphs 2.3 and 2.4 of the ICP relating to W. He further went on to state that why the executive disagreed with W was set out in its letter of 1 st November, 2013. However paragraph 30 leaves matters hanging in the air because it is at best implicit that the board of the respondent accepted the conclusions of the executive contained in the ICP for W, the letter of 1 st November, 2013, and the report of the Trust Company. This leaves W (and the Court) having to guess whether this is the case. W should not be left in this position. 73. Similarly in relation to the value of the entity that is referred to in the public statement as FilmCo, at paragraph 35, Lord Eatwell refers to a difference of opinion between the investigating officers on the one hand and W on the other, being explained by parts 13 and 14 the ICP. He also repeats his reference to the investigating officer's response in the letter dated 1st November, 2013. This letter runs to 23 pages and contains the executive's response to a draft of the individual criticism paper produced by the executive for W. Paragraph 39 of Lord Eatwell's affidavit also refers to other information before the board beyond that expressly outlined in paragraphs 13 and 14 of the final ICP of W. 74. Yet there are no conclusions drawn by the board set out in these paragraphs. In particular, it is not clear whether the board accepted the ICP, or part of it, whether the board relied upon any matters contained in the letter of 1 st November, 2013, from the executive to W and whether or not it relied upon the material referred to at paragraph 39 of Lord Eatwell's affidavit. I do not regard these paragraphs as providing the level of clarity required by Interface . They leave W having to guess what material the board relied upon in reaching its decision to issue directions. 75. In relation to that part of Lord Eatwell's affidavit which deals with Structure X at paragraphs 55 to 62, Lord Eatwell clarifies at paragraph 57 that the board did not make any finding that Structure X was a sham, but rather its conclusions were limited to the matters contained at paragraphs 4.3 to 4.8 of the public statement. However, in paragraph 62 Lord Eatwell refers to the investigating officers' assessment of the adequacy of the documentation produced in relation to Structure X within the report for the Trust Company found at paragraph 7.2. Apart from the board not finding a sham, again he does not state whether the board accepted the executive's conclusions. 76. At paragraph 67 Lord Eatwell in similar vein to the paragraphs I have just referred to sets out the material before the board in support of the executive's position namely the final version of the ICP for W, W's initial response to the ICP and the letter of 1 st November, 2013, as well as referring to W's oral submissions. It is clear that these matters were considered (see for example paragraph 71). The affidavit also sets out extracts from the transcript of the final hearing involving W. No indication is given of which parts of this material the board

accepted. 77. The conclusion to this part of Lord Eatwell's affidavit is found at paragraph 80 which I have set out above. The difficulty with this conclusion is again that the reader is left to infer from it which parts of the material supplied by the executive the board relied upon in reaching its decision. 78. I have set out the above in some detail because it is clear to me that in reaching its conclusions, the respondent had regard to significant amounts of material. The specific issue I have to determine is whether W's criticisms of the specific paragraphs of the public statement are justified and whether the description of the approach taken by the respondent in the paragraphs to which I have referred are sufficient to address those criticisms. 79. In approaching the appellant's criticisms, I have also borne in mind that care should be taken to review the public statement as a whole and not to fall into the trap of analysing individual paragraphs and W's criticisms of those paragraphs without reviewing those paragraphs in the context in which they appear and in particular in the context of the entire public statement. 80. For the purposes of this judgment, given that the appeal has yet to be determined and therefore it is not appropriate to reveal the identity of the appellant, or the Trust Company, I have described W's criticisms of the relevant part of the public statement only in summary form and to the extent necessary to explain my decision. The parties and the Royal Court will of course have the benefit of the full public statement so the context of my reasoning should be apparent to both the parties and the Royal Court. 81. I start by reference to paragraph 1.3 of the public statement. The criticism of this paragraph was that it was too broad and it did not contain any detailed findings of fact. 82. In my view, part 1 of the public statement headed "Action" is in effect an executive summary of the decision made. I do not regard it appropriate to order findings of fact to be made of a summary. Rather the issue for me to determine is whether the more detailed observations contained in later parts of the public statement meet the legal tests I have set out above in relation to the obligations on an administrative body to provide reasons. The adequacy of paragraph 1.3 will therefore stand or fall with the court's ultimate assessment of the overall adequacy of the reasons provided, and the reasonableness of the decision. These observations also apply to Advocate Sinel's criticism of paragraph 1.4. 83. I next deal with paragraph 2.6 of the public statement. Paragraph 2.6 appears in a section headed "Background". The specific criticism of paragraph 2.6 is that the acquisition of FilmCo and the appointment of the Trust Company to provide administration services created numerous conflicts of interest. W's application in essence seeks identification of the conflicts of interest be and why any such conflicts give rise to a breach of statutory or other duty by the appellant. 84. The conclusion I have reached is that if I were considering paragraph 2.6 alone, I would require paragraph 2.6 to identify what the conflicts of interest were because at present it does not do so. However, it is not appropriate to take Clause 2.6 in isolation because five conflicts of interest are listed at paragraph 4.4 of the public statement. The respondent through paragraph 66 of Mr Averty's second affidavit is clear that part 4 of the public statement contains the board's findings of fact. In light of this position, I consider W is entitled to know whether the reference to the numerous conflicts of interest at paragraph 2.6 is a reference to those conflicts listed at paragraph 4.4 of the public statement. If these are the only conflicts of interest the respondent is referring to, then it is unnecessary to

require the respondent to identify the conflicts of interest, if they are already listed elsewhere in the public statement. If however the respondent is referring to other conflicts of interest, then I would grant this part of the application. Ultimately, therefore I accept that the appellant is entitled to know what conflicts of interest are being referred to and if they are not those in paragraph 4.4, then the conflicts should be identified. 85. Also in relation to paragraph 2.6 W sought details of the extent to which the conflicts of interest gave rise to a breach of statutory duty or other duty by the appellant. However, no such statement is contained in paragraph 2.6. The conflicts of interest are also those of the Trust Company. Paragraph 2.6 does not contain any criticism of W. The criticism is found at paragraph 4.4 which I address later. The request requiring the respondent to identify breaches of duty arising out of paragraph 2.6 is therefore refused. 86. In respect of paragraph 2.7, this paragraph contains a description concerning the price at which Structure X had purchased certain loan notes; in particular it contains a finding that the loan notes were purchased for £X "despite only recently having been acquired for" £Y." Underpinning this request was in effect a submission that the executive and the board did not understand Structure X. In my judgment, this request is an attempt to challenge what is said at paragraph 2.7 to try to draw out of the respondent admissions to support W's appeal. I therefore regard this request as an attack on the unreasonableness of the decision and the reasoning upon which it is based. I also consider that paragraph 2.7 in the context of the whole of part 2 of the public statement, in particular the remaining paragraphs, is clear. 87. In relation to paragraph 2.10, the request sought details of the customers concerned because the final sentence at paragraph 2.10 criticised the Trust Company for not informing customers about FilmCo's serious financial difficulties. In his submissions, based on the affidavits supplied by W, Advocate Sinel draw a distinction between Ultra High Net Worth individuals who had invested directly in FilmCo and investors into FilmCo via Structure X whose investments he contended had the benefit of security. It was therefore important for his client, in order to be able to respond to the public statement, to know which customers were being referred to in paragraph 2.10. This was so firstly that W could identify whether the customers being referred to were those who had invested directly or whether they were individuals who had invested through Structure X. Secondly, identification of the customers specifically allowed W to consider whether or not he accepted the criticism. In reaching my conclusion I should make it clear that the criticism that the customers were not informed is clear. The issue is simply the identity of the customers being referred to. I agree that without this identification, W cannot assess whether the criticism in paragraph 2.10 is one he accepts or whether he wishes to challenge it. 88. The next request in respect of paragraph 2.10 also asks the respondent to identify any breaches of duty or codes of practice by W. While the codes of practice are for a registered person to comply with, as distinct from a principal person, a principal person could well be criticised if a regulated entity is found to have breached any part of the codes of practice. A principal person is therefore entitled to know what breaches of the codes of practice by a regulated entity have occurred where it is said that a principal person is responsible for such breaches. However, paragraph 2.10, like paragraph 2.7 does not contain any criticisms of W or that he was responsible for any breaches of duty or codes

of practice by the Trust Company. Accordingly, the request to identify any breaches of duty or any code by the appellant is refused. However if the board by paragraph 2.10 was relying on the actions of the Trust Company as amounting to a breach of the codes then this should breach should be identified. 89. Also in respect of paragraph 2.10 W asked for details of which assets were not impaired. Paragraph 2.10 does not contain a statement that assets were impaired. Rather it contains a statement that the customers concerned were not informed about FilmCo's serious financial difficulties. W did not dispute that FilmCo had serious financial difficulties. The view I have reached in respect of this request therefore is that it is not necessary for W to understand the criticism made against him by the board and it is therefore refused. 90. Paragraph 2.10 refers to customers not being able to recover their investments or loans. W therefore seeks details of which customers made investments and which customers made loans. For the same reasons that I granted the request to identify the customers concerned, I also accede to this request. W is entitled to know the nature of the investments made by the customers' concerned. 91. In respect of paragraph 3.1 of the public statement, W seeks particulars of the final sentence at paragraph 3.1 and in particular what is meant by acting as "shadow director". Lord Eatwell in his affidavit at paragraphs 71 explains the board's conclusions in relation to this sentence. In my judgment W's criticism of paragraph 3.1 is an issue to be determined at the substantive hearing of the appeal. The request is in reality a critique of the respondent's reasoning as distinct from seeking clarity of that reasoning. In addition in my view the term "shadow director" is well known. W is therefore able to make submissions to the Court as to whether the approach and the conclusions reached by the respondent can be justified or not and does not require any further clarity from the respondent in respect of this paragraph in order to do so. 92. The next series of requests relate to paragraph 4.2 of the public statement. Paragraph 4.2 is concise and addresses the following:- (i) Firstly, in five sub-paragraphs it summarises a series of failings by the Trust Company; (ii) Secondly, it states that W bore significant responsibility for those failings; (iii) Thirdly, it concludes that W's conduct lacked competence; and (iv) Fourthly, it concludes that W's conduct lacked integrity. 93. The requests drafted sought clarity in respect of each of these parts of paragraph 4.2. 94. In relation to each of the sub-paragraphs, it is clear that the sub-paragraphs are a summary of the failings of the Trust Company. It appears that this summary is based on the final report into the Trust Company. What the public statement as a document giving reasons does not do however is confirm the underlying material upon which the summary in each of these sub-paragraphs is based. Rather W (and the Royal Court in due course) is left to infer that the sub-paragraphs are based on criticisms found in other documents in particular the Trust Company report. In my judgment this approach does not meet the legal tests I have set out above. The respondent should therefore identify the relevant parts of the final report or any other documents relied upon to support the summary in the five sub-paragraphs of 4.2, so that W and the Royal Court know what the summary is based on. 95. This conclusion does not require the respondent to produce reasons afresh. It is also sufficient to cross-refer to documents relied upon. To this extent the requests in respect of each of the said sub-paragraphs are granted. Otherwise they go too far. All the respondent has to do is identify

the material facts relied upon for each of the said failings and the documents where such facts are contained. 96. In respect of the second part of paragraph 4.2 namely that W bore significant responsibility for the Trust Company's failings, subject to one point, this has been dealt with in paragraphs 25 to 30 of Lord Eatwell's affidavit in response. Accordingly, generally the question of the reasonableness of this conclusion is a matter to be determined at the substantive hearing of the appeal. 97. The one qualification to this conclusion concerns paragraph 30 of Lord Eatwell's affidavit because in that affidavit it is implicit that the board accepted the executive's conclusions. However, he does not say so expressly, as I have noted above. Accordingly, the respondent should clarify whether the board's conclusion that W bore significant responsibility was based on acceptance of the executive's conclusions set out in paragraph 30 of Lord Eatwell's affidavit. 98. In relation to why the respondent concluded that W lacked competence in respect of the matters listed in paragraph 4.2, this conclusion is not supported by any reasons. Accordingly, I have concluded W is entitled to know why the board concluded that W lack competence. While it is not for me to speculate on what those reasons might be, any reasons do not have to be lengthy. At present however W is left with a finding that his conduct lack competence without being told expressly why. 99. For the same reason, I also accept that the respondent should set out why W's conduct lacked integrity in respect of paragraph 4.2. In addition, there is a distinction between a lack of competence and a lack of integrity. In the decision I reached in this matter concerning whether or not to stay the final appeal on the basis of *maxim le criminal tient le civil en etat* reported at

[2014] JRC 250 , I stated the following at paragraphs 35 to 37:- "35. To decide whether or not there is a real risk of prejudice, it is necessary for me to consider the effect of the proposed public statement and in particular the references to W acting with a most serious lack of integrity. The view I have reached is that a criticism that W acted with a most serious lack of integrity is capable of overlapping with a finding of dishonesty in a criminal trial. Indeed I note that the first definition relied on in the internal note of the respondent states:- "A person lacks integrity if unable to appreciate the distinction between what is honest and dishonest by ordinary standards." 36. In *Bhojwani v AG*

[2011] JLR 249 the Court of Appeal approved the definition of dishonesty in *R v Gosh* [1982] QB 1064 namely, that for a jury to decide whether the prosecution has proved that the defendant was acting dishonestly, it must first of all decide whether, "according to the ordinary standards of reasonable honest people, what was done was dishonest". (See paragraph 110). 37. Although other cases referred to in the respondent's internal note suggested it was unwise to attempt a definition of integrity, and one case notes that a lack of integrity does not necessarily equate to dishonesty (see *First Financial Advisers Ltd v The Financial Services Authority* [2012] WL 2500434), in my judgment a lack of integrity can amount to dishonesty. While it may not do so in every case, there can be a sufficient overlap between someone reaching a view that a person lacks integrity and a finding that someone is dishonest. To the extent it was suggested by Advocate Lacey that the two concepts are mutually exclusive, I do not accept that submission." 100. In my judgment

anyone faced with the finding that they lacked integrity is entitled to know why because a lack of integrity can amount to or be seen as lacking honesty. In particular in this case, W has said to have acted with "a most serious lack of integrity". That is clearly an allegation of dishonesty. W is entitled to know the reasons why the respondent reached that

conclusion.

At present neither the public statement nor any of the affidavits filed explain why. It is also important to differentiate a criticism of a lack of integrity from a lack of competence so that an individual or entity understands why they lack both attributes. 101. In addition, in providing reasons as to why W is said to lack competence or integrity, by reference to paragraph 64 of Interface , any relevant breach of duty, whether statutory or at common law whether by the Trust Company or W and any breach of any codes of practice by the Trust Company relied upon, should also be identified. 102. The first criticism of paragraph 4.3 is that the documents it is said W should have reviewed are not identified. Secondly, W is criticised for not identifying numerous discrepancies and inconsistencies. It is clear that more detailed criticisms in respect of the failure to review documents are found at paragraph 7.3 and 11.4 of the ICP for W and Part 7 of the report into the Trust Company. However, again what is not clear is the extent to which the board accepted these criticisms. There is a reference to paragraph 7.2 of the Trust Company report at paragraph 62 of the affidavit of Lord Eatwell but without any indication as to whether the board accepted that conclusion. The only finding where it is clear that the board did not accept the conclusions of the executive in relation to Structure X is at paragraph 57 of Lord Eatwell's affidavit referred to at paragraph 75 above where Lord Eatwell deposed that the board did not find that Structure X was a sham. I have concluded that the respondent should make it clear what documents the board concluded W failed to review and the discrepancies and inconsistencies relied upon. This requirement can be met, if this is what occurred, by identifying any relevant parts of W's ICP, the Trust Company report or other documents relied upon in relation to paragraph 4.3. 103. I have also concluded that the respondent should set out why W's conduct lacked integrity and lacked competence, separately in each case. My reasons for reaching this conclusion are the same as those in respect of paragraph 4.2. 104. In relation to paragraph 4.4, W made a series of requests in relation to five matters identified as conflicts of interest. In my judgment all these requests can be dealt with together. I am not prepared to grant these requests because I consider that paragraph 4.4 is clear. The conflicts of interest have been listed as is what should have happened. In my judgment, the requests for more detail fall into the category of seeking admissions in order to determine that the respondent's decision was unreasonable. As with paragraph 2.7, W's criticisms of paragraph 4.4 are therefore a matter for the substantive hearing of the appeal. 105. However, I do consider W is entitled to know why the matters set out in in paragraph 4.4 mean that W lacked integrity and competence for the same reasons as for paragraph 4.4 and to the same level of detail. While it may be said that a failure to deal with conflicts of interest almost inevitably leads to a conclusion that a person lacks competence, where the criticism is that a failure to address conflicts also amounts to a lack of integrity the reasons for each conclusion should be made clear expressly and separately. 106. In relation to

paragraph 4.5, W again seeks details of why his conduct is said to lack integrity. However, in my judgment paragraph 4.5 is different from the other paragraphs where I have ordered particulars of an allegation of a lack of integrity to be provided. I consider that the criticism in paragraph 4.5 is clear. Furthermore paragraph 75 of Lord Eatwell's affidavit in the final sentence makes it clear what the board's focus was, namely the failure to notify. It is clear that this failure to notify is what is said to amount to a lack of integrity. W therefore knows the case he has meet. 107. In respect of paragraph 4.6, I have reached the same conclusion as for paragraph 4.5 namely that no particulars are required of why W's conduct is said to lack integrity or competence because paragraph 4.6 speaks for itself. 108. In respect of paragraph 4.7, I have reached the same conclusion as in respect of the allegations of a lack of integrity in respect of paragraphs 4.5 and 4.6 and for the same reasons. 109. In respect of paragraph 4.8, I agree that the customers referred to should be identified for the same reasons that the customers referred to in paragraph 2.10 should be identified. Again, I am not prepared to order particulars of why W's conduct lack integrity because I consider that paragraph 4.8 speaks for itself. It is also clear that W is able to advance criticisms of the finding of fact that customers (once identified) faced losses and to argue that in fact that they did not do so or did not do so to the degree suggested. This issue is therefore a matter for determination by the Royal Court. 110. In relation to paragraph 4.9, I have reached the same view as in respect of 4.8 and therefore refuse to give effect to these requests. 111. I do wish to observe however in respect of paragraphs 4.5 to 4.9, that while these paragraphs are clear in themselves, they are clearly based on an acceptance by the board of more detailed matters either contained in the individual criticism paper of W or the report of the Trust Company. At present I therefore agree with Advocate Sinel that W is left to guess of what parts of the material before the board these conclusions are based on. Although W has not sought specific particulars of the underlying facts relied upon, the general request in paragraph 3 of the summons does seek a statement of findings of fact relied upon to justify the public statement. This includes either stating expressly any breach of duty by the Trust Company or W or any breach of any code of practice by the Trust Company relied upon and identifying any part of either the ICP for W or the Trust Company report which refers to such breaches to the extent they are relied upon. The respondent should therefore identify the relevant parts of the final report or any other documents relied upon including any breaches of duty by the Trust Company or W or breach of any code of practice by the Trust Company in respect of paragraphs 4.5 to 4.9. 112. I next turn to deal with my observations at paragraph 11 above concerning the lack of reasons in relation to the decision to issue a public statement. The conclusion I have reached is that the board must explain its reasons for its decision to issue a public statement. This is because there is firstly a separate obligation in Article 25A of the Financial Services Law to do so. Secondly, there is a distinction between a decision to issue directions and a decision to make a public statement. While in many cases one may follow the other, such a decision should never be automatic. In each case the board is required to make a decision as to whether a decision to issue directions should be made public. I accept there may be many cases where it is entirely appropriate to do so (and this may be one of them). However, there may also be cases where it is not appropriate to do make a public statement. Where a decision has been made to issue a public statement, the person affected should know the reasons why. That is so even if in the most serious of cases

where it might be said that the reason to issue a public statement is obvious and relates directly to the seriousness of the matters leading to the decision to make a direction. However, the fact a decision may be obvious does not mean that the respondent should not consider whether to exercise the power and furthermore does not mean that the respondent should not give reasons for exercising the power. 113. I wish to add that I think that the respondent's error in this case is to have used the public statement as the reasons for its decision. The essence of a public statement is ultimately to warn individuals, whether in Jersey or elsewhere, not to deal with the subject matter of the public statement. Such statements are likely to be concise and only contain an outline or summary of the matters that have led to the necessity for a public statement. The obligation to give reasons however fulfils a different function. It is so that the person affected knows why the decision has been made and what material has been relied upon in making that decision. The more difficult the issue being considered by the respondent, the more potential there is for tension between the simplicity required by a public statement and the level of detail needed to meet the applicable legal obligations when giving

reasons.

In future cases I therefore encourage the respondent to reflect on its current practice and whether or not the respondent should keep separate any public statement, if it decides to issue one, from any reasons it is required to provide. 114. In light of my conclusions in this part of the judgment, subject to hearing further from counsel when judgment is handed down, I consider that the additional reasons or facts required from the respondent should be provided by way of a supplemental affidavit. In requiring such an affidavit, in respect of the requests that I have granted, whether in whole or in part, I am simply asking the respondent to expand upon the reasons for its decision at the time (and in respect of the decision to make a public statement to give its reasons). I am not asking the respondent to formulate now any additional reasons or conclusions above and beyond those already reached. How far the respondent is able to address the matters where I have found that reasons need to be explained and the facts relied upon set out is a matter for the respondent and its advocates. To the extent that the respondent at this point in time is unable to provide any further reasons, then this should be made clear in its affidavit, including setting out why it is unable to expand any further at this point in time. It will then be for the Royal Court at the substantive hearing or of the appeal to evaluate the response contained in the affidavit. 115. The basis for the approach suggested in the preceding paragraph arises out of certain observations of the Court of Appeal in *Volaw Trust and Corporate Services Ltd & Anor v Comptroller of Taxes*

[2013] (2) JLR 499 at paragraphs 46 and 54: "46 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)." and "54 We envisage, accordingly, that the following procedures will be consistent with the 2008 Regulations and legal principle. In the normal course of events, the Comptroller will have given the opportunity for the production of the documents and/or representations to have been made as to why the documents should not be produced, prior to the issue of the notice. If the documents are not provided and the Comptroller is not persuaded by the representations the Comptroller will then issue his notice. At that point the putative appellant/s will have to decide whether or not to appeal. 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 Acts 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." 116. While Volaw was an appeal against a decision of the Comptroller of Income Tax to serve a notice under the Taxation (Exchange of Information With Third Countries) (Jersey) Regulations 2008, the Court of Appeal, in the present matter, when dismissing W's application for leave to appeal (2015 JCA 060) against the decision of Commissioner Clyde-Smith at

[2015] JRC 017 refusing discovery referred to above, at paragraph 24 stated "in our judgment the Commissioner was entirely correct to emphasise that the role of the Royal Court, when hearing the appeals is not to conduct or be tempted to conduct a quasi-criminal trial or otherwise, but to consider, in the context of the appeals being from an administrative body whether the decisions arrived at by the respondent were reasonable or not. We are satisfied that the Commissioner was correct to apply the law as he did in his

judgment.

We do not understand the submission that he should not have relied on the three authorises referred to in paragraph 16 above given that it is quite apparent from paragraph 14 of the Commissioner's judgment that Advocate Sinel did not take issue with the legal principles to be applied to the issue of discovery in an administrative appeal but rather to the application of those

principles to the instant case....". The legal principles Commissioner Clyde-Smith had referred to were paragraphs 64 of Interface , paragraphs 112 and 113 of Anchor and paragraphs 46 and 54 of Volaw set out above apart from paragraph 112 of Anchor . 117. An additional affidavit I consider complies with the approach in Volaw and addresses the dangers of the appellant starting again or the hearing dates being vacated. 118. As far as the timing of the response is concerned, the fundamental principle is that the current hearing dates should not be placed in jeopardy. I am therefore minded to require the affidavit I have referred to be provided by Friday, 27 th January, 2017. I further propose to allow the appellant liberty to file an affidavit in response in respect of any reasons provided to issue the public statement by Friday, 17 th February, 2017. At this stage however because I consider that the reasons provided implicitly cross-refer to either the ICP for W or the Trust Company report which W has had sight of for a number of years, I am not prepared to give in principle consent to W filing a further affidavit in response to the reasons or findings of fact I have ordered to be provided. That is not to say W cannot apply to file such a further affidavit if W is advised to do so, but any such application must seek express permission from me by arranging for a hearing to take place before Friday, 17 th February, 2017. At any such hearing W must produce a draft of the affidavit he wishes to file in response to the additional reasons or findings of fact that I have ordered to be provided. 119. I am adopting this approach because the lateness of this application. But for the very last minute adjournment I granted, this appeal would have already have been determined. This decision should not allow W an opportunity to file further swathes of evidence at this stage. I have also reached this conclusion because in my judgment the applications for better reasons and for the respondent to set out the findings of fact it relied upon in deciding to issue directions and the public statement is an application that could have been made a long time ago. In particular it could have been made in 2014 or early 2015 before any health issues of W arose. At this stage, given the amount of time that has passed already it is important for this appeal not to be delayed any further or to be driven off track by attempts to file significant further amounts of evidence. 120. Finally, the respondent will be permitted three weeks to reply to any affidavit evidence filed by W permitted by this decision or any application that I have just referred to. Conclusion on the application for reasons 121. For the reasons set out in the previous part of this judgment the respondent must therefore:- (i) provide reasons for its decision to issue a public statement; (ii) identify whether the conflicts of interest referred to in paragraph 2.6 of the public statement are those conflicts of interest listed at paragraph 4.4 of the public statement; (iii) identify any other conflicts of interest intended to be referred to by paragraph 2.6; (iv) identify any breach of any codes of practice by the Trust Company relied upon in respect of the conclusions in paragraph 2.10 (v) identify the customers referred to in paragraphs 2.10 and 2.11 and the nature of the investments made by the customers referred to in paragraph 2.11; (vi) identify the relevant parts of the Trust Company report or parts of any other documents relied upon to support the summary in the five sub-paragraphs of 4.2; (vii) clarify whether the board's conclusion at paragraph 4.2 of the public statement that W bore significant responsibility was based on acceptance of the executive's conclusions set out at paragraph 30 of Lord Eatwell's affidavit; (viii) set out in relation to the conclusions in paragraphs 4.2, 4.3 and 4.4 why it is said W lacked competence; (ix) Also set out in respect of paragraphs 4.2, 4.3 and 4.4 why W's conduct lacked integrity; (x) In providing reasons as to why W lacked

competence and/or integrity, identifying any relevant breach of duty, whether statutory or at common law by the Trust Company or W and any breach of any codes of practice by the Trust Company relied upon; (xi) Identify the documents relied upon in relation to the conclusion at paragraph 4.3 of the public statement; (xii) Identify in respect of paragraphs 4.5 to 4.9 of the public statement, the material parts of the individual criticism paper for W or the report for the Trust Company or any other documents relied upon. 122. These requirements shall be addressed by the respondent filing an additional affidavit by Friday, 27 th January, 2017, with liberty to the appellant to file an affidavit in response in respect of reasons provided for the decision to issue a public statement only as set out at paragraph 118 above. Any documents relied upon required to be identified by this decision should also be identified by the affidavit. The application to amend 123. In relation to the application to amend the grounds of appeal, W wished to add two allegations as follows, namely that the respondent:- "Failed to give the appellant any opportunity to challenge or test the evidence given against him"; and "was unduly influenced by the submissions of the Executive which were often pejorative and failed to take any or adequate notice of contrary submissions and evidence supplied the appellant and his co-workers in respect of [Trust Company] and their individual criticism papers." 124. Advocate Lacey in relation to this part of the summons firstly contended that this application was far too late. Secondly the approach I should take is to treat this application as equivalent to a late application to amend a pleading. Therefore I should apply the approach set out in *MacFirbhisigh & Ching & Ors v CI Trustees & Executors Ltd & Ors*

[2014] (1) JLR 244. Thirdly, she was concerned about the effect of allowing these amendments that it might lead to further evidence being filed and to an adjournment of the current dates fixed for the appeal April 2017. Enough delay had already occurred and therefore the court should not accede to this request if it was going to lead to further delay. 125. Advocate Sinel in response indicated that the amendments sought were simply to clarify what was already contained in his client's affidavit. He did not want to find his client in the position where Advocate Sinel could not make submissions by reference to the matters set out in his client's affidavit because the evidence did not fall within one or more of the existing grounds of appeal. There was therefore no prejudice to the respondent. 126. I agree with Advocate Lacey that the approach I should take in allowing such amendments is that set out in the *MacFirbhisigh v Ching* case. I am therefore of the view that in context of an appeal against an administrative decision (which should normally be concluded within four months of service of a notice of appeal), this is a late application to amend, coming as it does over two years after the original notice of appeal was served. However it is also right to note that some of the delay in this matter relates to matters beyond W's control, in particular his health. The timing of the present application, given when the appeal is now to be heard, is not so late that it places the dates listed for the hearing of the substantive appeal in jeopardy. The amendments sought do not therefore lead to an adjournment being required. Furthermore, while the amendments, if allowed, will require the respondent to respond to them expressly in submissions, in my judgment this is outweighed by the importance of not denying the appellant an opportunity to advance

arguments he wishes to advance, given the serious consequences for him should the appeal be dismissed. 127. In relation to the strength of the amendments, I consider that what underpins the first of the amendment sought concerns an argument about the scope of Article 37 of the Financial Services Law and what is restricted information where both a regulated entity and individuals within it are under investigation. In particular, I consider it to be a matter of general importance for the Royal Court to rule on how far directors or principal persons of a regulated entity which is under investigation can discuss matters with each other where they are also under investigation. Clearly an entity under investigation must be able to respond to that investigation through its directors. It would also be unfair to prevent a regulated individual from responding to an investigation or criticisms made about that person. On the other hand the respondent is also under an ongoing duty to satisfy itself that individuals running regulated entities remain fit and proper and to investigate their individual conduct if matters come to their attention that warrant such an investigation. This is to protect both the public and the Island's reputation as a financial centre. It may be therefore be important to ensure that any such investigation is not compromised or to manage the risks of the public obligations of the respondent being undermined because individuals are able to discuss freely the respondent's concerns with each other and the approach being taken by the respondent. The answers to these competing considerations are not straightforward. While at this stage it is difficult to say what conclusions the Royal Court might reach, in particular in the context of the present dispute, the question in issue means that I am satisfied it is appropriate to grant leave to amend in respect of the first additional ground asked for by the appellant. 128. In relation to the second ground, I am prepared to allow this amendment in part. The part I am not prepared to allow concerns the reference to evidence supplied by co-workers either in respect of the report or their individual criticism papers. This is because I have already refused to supply the material implicitly caught by the amendment from other individuals at paragraph 40 of my decision of 23 rd October, 2014, reported at

[2014] JRC 202 set out at paragraph 15 above. The amendment sought by referring to these individuals is inconsistent with my earlier decision. For reasons I set out below I am also not prepared to grant the applications for discovery which cover or may contain information received from these other individuals. I therefore do not consider it appropriate to allow the amendment in its present form insofar as it refers to co-workers. As the appellant is not going to receive by reference to this decision information from such individuals held by the respondent, he should not be entitled to amend his notice of appeal to refer to such information. In addition, the substantive evidence W has filed to date does not adduce any evidence from any such individual on which W relies for his appeal. 129. Subject to this qualification however, I am otherwise prepared to allow the second amendment sought because I consider that these matters are raised by the affidavit filed by W at paragraphs 28 and 113. Lord Eatwell also responded to this criticism at paragraph 165 of his affidavit. The applications for discovery 130. In relation to the

applications for discovery, the documents sought were as follows:- (i) All the documentation and the testimony upon which the respondent relies in respect of each of the findings of fact of the respondent; (paragraph 4 of the summons). (ii) All documents and copies of all testimonies relative to the affairs of Film Co., Structure X, a particular fund, individual customers and to identify the source of such documents provided to it; (paragraph 5 of the summons). (iii) All testimony (written or oral) supplied to the respondent relative to the actions of W which are to be relied upon by the respondent to make the findings which it has made and proposes to publish; (paragraph 6 of the summons). (iv) Notes of meetings between W and the former employees of the respondent in May 2011, March 2012 and May 2012 (see paragraphs 40 to 42 of the summons). (v) All responses to the report of the fifteen individuals interviewed in relation to the report (paragraph 43 of the summons). (vi) All or any notes or minutes of meetings in relation to oral and/or any approvals, licenses or permits from the respondent in respect of any applications and notifications of the board and shareholders of HTJL; (paragraph 44 of the summons). (vii) All notes of a meeting in respect of a visit to the respondent by Mr Jamie Biddle and other employees of the respondent; (paragraph 45 of the summons). (viii) All notes of minutes of meetings between an employee of the respondent and an advocate retained by the Trust Company; (paragraph 46 of the summons). (ix) All email correspondence between various individuals and the said advocate in relation to the Trust Company and/or Film Co.; (paragraph 47 of the summons). (x) Finally the appellant requested a subpoena be issued to a particular individual who I shall refer to as X. 131. Advocate Sinel contended that the discovery requests were much specific and fell within paragraph 41 of my decision of 23 rd October, 2014, referred to at paragraph 16 above. Without this documentation, he contended his client would not be able to challenge effectively or fairly the decisions of the respondent. The documentation requested was therefore essential. 132. Advocate Lacey contended that the requests were far too broad to fall within paragraph 41 and in effect was another attempt to recover vast amounts of documentation from the Commission. Again she argued that this application could have been made much earlier. The matter was also ready for the appeal to be determined but for the latest adjournment and so the hearing of the appeal should not be derailed by these requests. The application also lacked the required affidavit evidence in support. 133. Insofar as communications were sought involving other individuals who were directors of the Trust Company, the application was also defective in that it did not explain why these communications had not been recovered from the liquidators. The relevant test on a specific discovery application had not therefore been met. 134. Insofar as what was sought were notes of employees of the respondent, these were matters private to the respondent and were restricted information. They should not be disclosed without some particular justification which had not been shown in this case. 135. Photographs of the visit to Maxwell Chambers had recently been disclosed and therefore this part of the application fell away. This was accepted by Advocate Sinel. 136. The request to issue a summons for X to appear should be refused. Firstly it was not clear whether this was a summons to give oral evidence or to produce documents. Secondly, X had his own right to appeal. There

was nothing in the grounds of appeal which indicated the relevance of any evidence that X might give; the issue for the court was the reasonableness of the respondent's conduct in relation to the appellant. How it might have dealt with third parties was not a relevant consideration. 137. In respect of these applications, firstly in paragraph 41 of my judgment of 23 rd October, 2014, I envisaged quite specific and focused applications for particular categories of documents. The present requests received in this case go far beyond what was envisaged by paragraph 41. 138. Furthermore Commissioner Clyde-Smith in his judgment dismissing the appellant's appeal against my decision of 23 rd October judgment, at paragraphs 38 and 39 stated as follows:- "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." He also concluded at paragraph 43 (ii) as follows:- "43. I would summarise the position as follows:- (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." 139. The Court of Appeal judgment reported at

[2015] JCA 060 dealing with the appellant's application for leave to appeal against Commissioner Clyde-Smith's judgment Sir Hugh Bennet stated at paragraph 25 as follows:- "25. We reject the argument that discovery of documents as asked for by the appellant should have been granted as a matter of principle. Rule 15/3(1) is very much in point. The Master and the

Commissioner had a discretion, in what were essentially case management hearings, to decide whether to grant the very extensive discovery sought by W and, in our judgment, were entitled to limit it in the way they did. We do not accept that the Commissioner misapplied or misunderstood Article 38, (see para 33 of the Commissioner's judgment), where he said that the Respondent was able to disclose restricted information without fear of breaching Article 37 and the court had a discretion to order disclosure of restricted information. We do not accept that either the Master or the Commissioner failed to take into account any of the submissions made on W's behalf. Overall, the Master and the Commissioner were satisfied that the documentation disclosed by the Respondent in the affidavits sworn by the Deputy Chairman of the Respondent, together with the further disclosure as ordered by the Master, was sufficient to enable the Royal Court to carry out its functions in relation to the appeals." 140. The first three requests made by W clearly do not fall within these principles and are far too widely drawn. The way in which the requests have been formulated is extremely broad and comes close to effectively applications for orders for general discovery, in particular the first and third request (paragraphs 4 and 6 of the summons). The second request (paragraph 5 of the summons) is in effect a request for all documents relating to individuals identified in that paragraph and is far too broad. I also regard these requests as effectively an attempt to reformulate requests that were previously rejected or not pursued. I therefore do not consider it necessary or proportionate to give effect to these requests. 141. In relation to the request for notes of meetings raised by paragraphs 40, 41, 42 and 45 of the summons, I agree these are notes are confidential to the respondent. The affidavit of W filed in opposition does not set out why this presumption of confidentiality should be disturbed. Accordingly, no case has been made out why these notes are relevant. Nowhere in his affidavit filed in response does W stated why he needs each of these notes specifically. Yet he was in attendance at each of the meetings and would have been able to depose as to what statement made to him he wishes to confirm or challenge by access to a relevant note and the reasons why. W has also not filed any affidavit in support of the present applications for specific discovery containing any justification for the documents sought. This is despite what is contained in paragraph 41 of my judgment of 23 rd October 2014. 142. Paragraph 43 of the summons also falls within the scope of the matters I refused to order the respondent to produce by reference to paragraph 40 of my decision of 23 rd October. Even if it is said that the question of the responses of other individuals to the report for the Trust Company was not expressly considered by my previous decision, I consider that the reasoning in paragraph 40 applies to those responses in the same way as it applied to the categories of documents identified in paragraph 40. Accordingly, the request at paragraph 43 of the summons is refused. 143. In relation to paragraph 44 of the summons, by reference to paragraph 15 of W's affidavit filed in support of his appeal, he refers to the Trust Company having a good relationship with the respondent and refers specifically to a visit by the respondent in February 2010. In my judgment, W is entitled to contrast the criticisms made of him with previous assessments of the Trust Company pursuant to the respondent's supervisory visits carried out in the ordinary course of the latter's obligations as regulator. Accordingly,

I order the respondent to produce any communications in 2010 or 2011 sent to the Trust Company prior to the commencement of the investigation that has led to the present proceedings and which arise out of supervisory visits carried out in the ordinary course of the respondent's supervisory role. 144. In relation to requests 46 and 47 of the summons W has firstly not provided any affidavit to justify or explain these requests. Secondly, in any event, these requests appear to be similar to the categories of documents refused by paragraph 40 of my judgment of 23 rd October, 2014. It should be remembered that W, by reference to the third affidavit of Mr Averty, received significant quantities of material including individual criticism papers for a number of individuals and therefore has been granted access to what was before the board in respect of the executive's criticism of each of those individuals. Yet the appellant has not justified by reference to any of those statements why any further material is required. Requests 46 and 47 are therefore refused. 145. Had I not refused the majority of the requests for discovery on the grounds set out above, I would not have refused the requests on the basis of delay because the discovery sought could have been provided without placing the trial dates in jeopardy. 146. In relation to the request for a subpoena, apart from the obvious point that neither the Judicial Greffier nor the Master possess the power, at present, to issue a subpoena, I am not satisfied, even if I had the power, that it should be exercised. This is because I am not satisfied that the evidence of X is relevant for the reasons advanced by Advocate Lacey. Furthermore Advocate Sinel has not explained why this application has not been made earlier and at least before the deadline for filing of evidence by the appellant. Although at times W was unable to give instructions, between May 2016 and the filing of his affidavit he was able to do so; yet there was no intimation to the respondent or the Court of any desire to adduce evidence from X. This application is also refused on the ground therefore that it has been left far too late in the day. Conclusion on discovery application 147. In relation to the discovery application, for the reasons set out in this part of the judgment, the respondent shall produce a list of documents containing any communications in 2010 and 2011 sent to the Trust Company prior to the commencement of the investigation that has led to the present proceedings which relate to visits carried out in the ordinary course of the respondent's supervisory role. Authorities W-v-JFSC

[2016] JRC 199 . W v JFSC

[2015] JRC 017 . Financial Services Law 1998. W-v-JFSC [2014] JLR 202. Royal Court Rules 2004, as amended. W-v-JFSC

[2015] JRC 241 . W-v-JFSC

[2014] JRC 250 . W-v-JFSC

[2015] JCA 060 . R v Lancashire County Council ex p. Huddleston [1986] 2 All ER 941. Finance and Economics Committee v Bastion Offshore Trust Company

[1994] JLR 370 . De Smith's Judicial Review 7th Edition. Interface Management Limited & Ors v JFSC

[2003] JLR 524 . Anchor Trust v JFSC

[2005] JLR 428 . Anchor Trust v JFSC

[2006] JCA 040 . Volaw Trust and Corporate Services Ltd & Anor v Comptroller of Taxes [2013]

(2) JLR 499. Taxation (Exchange of Information With Third Countries) (Jersey) Regulations 2008. MacFirbhisigh & Ching & Ors v CI Trustees & Executors Ltd & Ors

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