

JERSEY / JUDGMENT

W v The Jersey Financial Services Commission

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Business – application for leave to appeal the decision of the Commissioner dated 8th January, 2015. [2015]JCA060 Court of Appeal 26 March 2015 Before : Sir Hugh Bennett., President; Sir Richard Collas., and Anthony George Bompas, Esq., Q.C. Between W Appellant And The Jersey Financial Services Commission Respondent Advocate P. C. Sinel for the Appellant. Advocates B. H. Lacey and E. M. Layzell for the Respondent.

judgment

the president: This is the judgment of the Court. 1. This is an application on behalf of the proposed appellant, W, for leave to appeal from the decision of Commissioner Clyde-Smith dated 8th January 2015 whereby he dismissed W's appeal from the decision of Master Thompson dated 23 October 2014 (U V and W-v-JFSC [2014] JRC 202). The Commissioner's judgment giving his reasons for dismissing W's appeal was handed down on 23 January 2015, (W-v-JFSC [2015] JRC 017) when he formally dismissed the appeal and refused leave to appeal. 2. The background to this matter is succinctly contained in the judgments of the Master and the Commissioner which we largely repeat with particular reference to W. On 17 July and 21 August, 2014 W, as he was entitled to do, issued Notices of Appeal in the Royal Court in relation to the decisions of the Respondent on 19 June, 2014, whereby the Respondent issued a public statement pursuant to Article 25 (a) of the Financial Services (Jersey) Law 1998, as amended ("the Law") and directions under Article 23 (1) of the Law prohibiting him from undertaking certain functions, which are set out in the Notices of Appeal, without having successfully applied to the Respondent for the variation or withdrawal of the direction. W was a principal person in a financial services business which was a trust company. W wishes to challenge the Respondent's decisions. This challenge is by way of an administrative appeal to the Royal Court. 3. On an administrative appeal against the decision of an administrative body (in the present case the Respondent) the court has to satisfy itself (a) that the proceedings of the administrative body were in general sufficient and satisfactory, (b) that the decision was one which the law empowered the administrative body to make, and (c) that the decision reached was one which the body could reasonably have come to having regard to all the circumstances of the case. The requirement at (a) includes, materially, that the proceedings were fair to the appellant. The requirement at (c) is that the decision should not be one which the court considers to be unreasonable: the decision may not have been one which the court would have itself come to, but still be a decision which was not unreasonable. These principles are those which were explained by the Royal Court (Birt, Deputy Bailiff, with

Jurats Le Cornu and Morgan) in *Anchor Trust Company Ltd v Jersey Financial Services Commission* [2005] JLR 428, in particular at paragraphs 7, 13 and 14. That was of course a case in which the relevant administrative body was the Respondent in the present case. 4. In the present case the grounds relied upon by W in his challenge to the Respondent's decisions are set out in the Notices of Appeal. These include challenging findings of facts to assert that the decisions were unreasonable and unfair. Unfairness is alleged in respect of the procedure adopted by the Respondent and in respect of the sanction imposed. W also challenges a decision of the Respondent to issue a public statement in respect of other individuals as being unlawful and also causing prejudice to W. Finally, W challenges the sanctions imposed on him by the Respondent. 5. Production notices were issued by the Respondent to the trust company and its affiliates pursuant to Article 32 (1) (a) of the Law covering a wide range of matters. At para 5 of his judgment the Commissioner records that, as a result, the Respondent received over 10,000 documents for review. It conducted interviews with some 15 individuals. There were two interviews of W lasting some two days. Beforehand W was provided with an interview bundle of documents extracted by the Respondent from the documents received pursuant to the production notices. A draft of the final report into the trust company, in so far as it related to W, was provided to him before finalisation. The decision making process of the Respondent followed that set out in paras 6 and 7 of the Commissioner's judgment. During the process before the Respondent W was requesting sight of all documentation held by the Respondent pursuant to the production notices and transcripts of the interviews of all the other individuals involved, which the Respondent regarded as restricted information and therefore was unable to provide. That was the position of the Respondent before the Master. W applied to the Master for discovery of documents over and above that provided by the Respondent in the two affidavits sworn by John Clark Averty, Deputy Chairman of the Respondent, pursuant to Rule 15/3 (1) of the Royal Court Rules 2004. 6. The matter is then taken up by the Commissioner in paras 9 to 13 of his judgment, which we set out fully:- "9 It is intended that the appeal of W and the appeals of the other two individuals should be heard by the same Court consecutively immediately after each other in order to ensure consistency, but as the Master observed at paragraph 36 of his judgment, this would result in the Court being in possession of more material than the individual appellants. In his judgment, that was potentially unfair, given that these are appeals alleging unreasonableness on the part of the Board's decision, including unfairness and inconsistency, for the appellants not to be placed in the same position as the Board and the Royal Court as far as can be achieved. The Master therefore ordered, subject to a number of safeguards, that there should be disclosure to each of the appellants of the minutes of each stage of the Commission's decision-making process, minutes and notes of deliberations of the Board of any relevant Board decision relating to any of the appellants or other persons, the Individual Criticism Papers for each appellant and other persons where public statements have already been made and the final statement to be issued. 10 The Master was not prepared, however, to order discovery beyond that. Quoting from paragraph 40 of his judgment:- "40 However, that was as far as I was and am prepared to go. I do not consider that notices of appeal, affidavits filed by the Commission, interview transcripts, objections filed by any of the appellants to draft of the ICPs or drafts of the public statements or submissions made to the Board should be disclosed. This includes notes of

meetings between any of the appellants, or the other persons where public statements have been made and the Board. All those documents are confidential to those parties and the respondent. The information contained in them goes far beyond how the Board exercised its powers against an appellant, what it took into account, understanding the factual matrix known to the Board, or the Board's deliberations. In my judgment, the orders I have made provide an appellant with sufficient information to evaluate the findings made against other individuals involved, in the financial service business the Board is concerned about, and to assess whether the findings made against a particular appellant are unreasonable. I also accept that some of the material I have ordered to be produced will contain information supplied in confidence. This is inevitable, if an appellant is to know what the Board had in mind when deliberating its conditions. However this does not mean that disclosure as sought by Advocate Sinel should be produced. Advocate Sinel's approach in that regard again appeals to me to be looking for something to support his case. In reaching this view I accept that there may be some material not disclosed that is possibly relevant which might assist an appellant. However in my judgment the possibility of something being found that might assist an appellant is outweighed by preserving confidentiality." He went on to conclude at paragraph 49 that he considered this was:- "sufficient to enable each appellant to evaluate the full factual matrix known to the Board at the time as well as the Board's thinking contained in its deliberations and therefore to advance arguments as to why the Board's decisions were unreasonable." 11 The Master made it clear that his decision did not mean that W could not make a further application for specific categories of documentation on a much more limited and precise basis once he had had a chance to consider the material that he had ordered to be produced, but any such application should be justified on the basis of the approach set out in *Science Research Council v Nasse* [1980] AC 1028 which Advocate Lacey, for the Commission, had referred to him and should be supported by an affidavit explaining what is required and why it is relevant, necessary and proportionate to the appeal. 12 The Master also pointed out that it was open to W to apply for further reasons for the Board's decision and for documents in support of those further reasons by reference to Rule 15/3 of the Rules, following *Finance and Economics Committee v Bastion Offshore Trust Company Limited* [1994] JLR 370. 13 In addition to appealing the decision of the Master not to order this further discovery, W has issued a further summons dated 3rd December, 2014, seeking more specific discovery as set out in an extensive schedule and supported by an affidavit from W. That summons, somewhat confusingly, also extends to the more general discovery declined by the Master and which is the subject of this appeal. That summons is due to be heard by the Master on 27th January, 2015." 7. Before we turn to consider the Commissioner's judgment we should set out the law, as we understand it to be, to be applied in considering whether or not leave to appeal from a decision of the Royal Court should be granted by the Court of Appeal. The law was very recently considered by the full Court of Appeal in *Crociani, Foortse, BNP Paribas Jersey Trust Corporation Ltd and Appleby Trust (Mauritius) Ltd v Crociani and others* [2014] JCA 089. The then President of the Court of Appeal, the Hon. Michael Beloff Q.C., set out his views at paras 50 and 51 of his judgment, with which Sir John Nutting and Martin JJA agreed. We set out these paras in full:- "50 In order to dissuade us from granting permission or (if need be) from allowing the appeal Rs relied on a well-known principle of Jersey jurisprudence, namely that:-

- (i) in order to obtain permission to appeal As must show:-
 - (a) there is a clear case that something has gone wrong;
 - (b) a question of general principle falls to be decided for the first time; or
 - (c) there is an important question of law upon which further argument and a decision of the Court of Appeal would be to the public advantage (see *Glazebrook-v-Housing Committee* [2002] JLR Note 43). And that:- (ii) In so far as the Royal Court was exercising discretion that the Court of Appeal will only interfere if:-
 - (a) It had misdirected itself as to the principles governing the exercise of its discretion;
 - (b) It had taken into account matters which it ought not to have done or had failed to take into account matters which it ought to have done; or
 - (c) Its decision was plainly wrong (see *United Capital Corporation-v-Bender*

[2006] JLR 269, paragraph 25). 51 I myself consider that criterion (i)(a) for permission to appeal i.e. that there is a clear case that something has gone wrong requires revisiting, since it would appear as a matter of language to be a basis for allowing an appeal rather than merely granting permission (see my dicta in *Cotterill v Ozanne* (2) 2011 – 12 GLR 1 para 11 and *Warren v. Attorney General* [2012] (2) JLR 286 para 15) and I find illuminating and supportive the observations in *McNamara v Gauson* (2009-10 GLR 387 at paras 21-32). While my doubts about criterion (i)(a) as currently formulated matter not since in this case criterion (i)(c) is obviously satisfied, nonetheless in my view the time has come to align the tests in each Bailiwick, there being no cultural or other reasons to distinguish them, and I propose, if my brethren concur, that henceforth the Royal Court and Court of Appeal in this jurisdiction should apply the criterion, in lieu of (i)(a) that the appeal “has a real prospect of success” when considering whether or not to grant permission under the Court of Appeal (Jersey) Law 1961 Article 13(i)(e).” 8. Accordingly, we must consider W’s application for leave to appeal in the light of that dicta, with which we respectfully agree. 9. At para 14 of the Commissioner’s judgment he records that W’s advocate, Advocate Sinel, did not take issue with the legal principles to be applied to the issue of discovery of documents in an administrative appeal, as set out in the Master’s judgment. The Master had explained in para 39 of his judgment that he considered that W should be provided with materials relating to the decision making process followed by the Board of the Respondent both as regards W and as regards other individuals who were also seeking to appeal decisions of the Respondent related to those concerning W; and he further explained that what he was ordering to be disclosed at that stage was in his judgment “sufficient to enable [W] to evaluate the full factual matrix known to the Board [of the Respondent] at the time as well as the Board’s thinking contained in its deliberations and therefore to advance arguments as to why the Board’s decisions were unreasonable”. He added that his decision did not preclude any further application by W for disclosure of “specific categories of document on a much more limited and precise basis once [W’s

Advocate] has had a chance to consider” the material ordered to be produced.

10. The Commissioner recorded that Advocate Sinel did take issue with the application of the relevant principles by the Master to the facts of this case. The Commissioner then, between paras 15 and 21 inclusive, reviewed certain authorities. He thereupon set out the broad arguments of Advocate Sinel advanced as to why the Master’s decision was wrong. The Commissioner accurately summarised the arguments, advanced on behalf of W in support of his appeal against the Master’s decision, between paras 22 and 28 inclusive, which we set out in full:- “22 Advocate Sinel did not suggest that Interface or Anchor were wrongly decided or that the principles enunciated by the Court of Appeal in *Volaw* had no application. He focused on the terms of the proposed public statement which concludes that W had acted “with a most serious lack of integrity and his displayed level of incompetence was of a most serious kind”. The facts upon which these conclusions were based, as set out in the proposed public statement, came as close as can be, he said, to suggesting serious dishonesty on W’s part and if published will have a devastating effect on his reputation and future employment prospects whether within or without the finance industry. 23 The Board had got itself into this position, he said, by adopting such extreme language and fairness dictated that W have full disclosure of all of the documentation that could possibly assist his case so that he could challenge these findings; the Master had erred in not making orders to this effect. It was a question of equality of arms with the Commission. 24 W’s position was exacerbated by the fact that he had been removed from the Trust Company some time before the production notices had been issued and so he did not know what documentation had been provided to the Commission and no longer had direct access to the Trust Company’s records. It was highly relevant, Advocate Sinel submitted, that W know what other individuals may have said in their interviews about W, as there was a strong possibility that they would seek to point the finger of blame at him, which in turn would have affected the Board’s thinking. 25 The Executive, he said, was acting as judge and jury, deciding what documents were relevant and thus cherry picking what suited them effectively as prosecutors. Because of the seriousness of these allegations being made, he characterised this as a quasi criminal process that would be bound to result in the appeal being turned into a trial of the factual allegations made by the Board. 26 In addition to equating it to a quasi criminal process, Advocate Sinel also referred to the duty of disclosure in civil proceedings citing *Victor Hanby Associates v Oliver* [1990] JLR 337 and the obligation upon parties in civil proceedings to make disclosure of documents which might enable the other party to advance his case or to damage the case of his opponent and which might fairly lead to a train of inquiry which might have either of these consequences. 27 Advocate Sinel argued that the documents required were not in any real sense confidential, as W had been a director and “the owner of the Trust Company in question” – in fact, as I understand it, he owned just over 50% of the issued share capital. Even if confidential, there is no bar in law, he said, to discovery being ordered by the Court. 28 I was informed by Advocate Sinel that whilst a subpoena duces tecum had been issued against the joint liquidators of the Trust Company and his firm had received a number of discs which they were starting to analyse,

the starting point for the defence of W was to know what the Commission had received at the outset.”

11. The Commissioner was careful to note at para 29 that the test for appeals from Masters is well known; the court must reach its own decision whilst paying due regard to the decision of the Master. Having reviewed Article 37 of the Law and the decision of the House of Lords in *Science Research Council v Nasse* [1980] A.C. 1028, at paras 35 to 37 inclusive the Commissioner said:- “35 The starting point, therefore, in ordering disclosure of confidential information is that relevance alone is not enough. Disclosure must be necessary for disposing fairly of the proceedings. The Court will need to consider carefully whether the necessary information has been or can be obtained by other means not involving a breach of confidence. 36 Where the Court makes an order for disclosure, there is no obligation to obtain the consent of the person to whom the restricted information relates, but nonetheless that person’s views may be a material consideration. 37 For that reason, the Master, I believe appropriately, required, before the Commission made the disclosure he had ordered to the appellants, that notice should be given to the other individuals concerned so that they could apply to object to such disclosure within a time frame set down. As it transpired, I understand no such applications were made.”
12. The Commissioner concluded his judgment from paras 39 to 44 as follows:- “39 Administrative appeals are concerned with the challenging of administrative decisions, in this case the decision of the Board to issue directions to W and a public statement. Disclosure of documentary evidence is therefore properly restricted to documentary evidence which relate to the facts material to the decision under appeal. Bearing in mind the quantity of documentation likely to be held by the Commission and its confidential nature, it is important in my view that such boundaries are maintained. That documentary evidence is required to be set out by way of affidavit and by analogy to the position with discovery in civil proceedings as set out in *Hanby*, further discovery should only be ordered by the Court where the appellant presents a *prima facie* case that there are undisclosed documents in the respondent’s possession which relate to the facts material to the decision under appeal, disclosure of which is proportionate and necessary to dispose fairly of the appeal. 40 The Commission had, through the two affidavits sworn by the Deputy Chairman, disclosed all documentary evidence relating to the facts material to the decision under appeal, but following W’s application for further discovery, the Master has ordered, to the extent indicated above, further disclosure of documents relating to third parties in order to dispose fairly of the appeal. W has not made out a case for disclosure of third party documentation beyond that point. As to the remaining documentation received by the Commission pursuant to the production notices and not used in relation to the decision-making process in relation to W, he has made out no case for that being disclosed simply so that he can, as Advocate Lacey put it, trawl through the same to see if some of it might assist his appeal. 41 Advocate Lacey analysed the further discovery now being sought by W pursuant to his summons of 3rd December, 2014, and asked me to find that the disclosure that has already been made is more than ample to ensure the fair disposal of the appeal, relying on the

Master's statement set out at 10 above. However, the Master was careful not to close the door on further applications for specific categories of documents on a much more limited and precise basis. Advocate Sinel complained, for example, of disclosure of parts of emails or of individual emails taken out of a chain and therefore arguably out of context. The Master has the procedural conduct of the substantive appeal at this stage and it is proper to leave it to him to evaluate this further application for specific categories of documents. 42 With respect to Advocate Sinel's submission that because of the serious nature of the findings of the Commission against W set out in the proposed public statement, the appeal, out of fairness, was bound to turn into a quasi criminal trial, with the Commission in the guise of prosecutor and with extensive cross-examination of witnesses, the Court of Appeal in Volaw has made it clear that the Court should not be tempted down this slippery path. Leave has I believe been granted by the Bailiff under Practice Direction RC05/25 for the appeal to be allotted more than half a day but it still remains subject to the requirement that such appeals are dealt with primarily by means of affidavit evidence and that leave to cross-examine deponents may only be granted in exceptional circumstances. 43 I would summarise the position as follows:-

- (i) In an appeal against an administrative decision, disclosure of documents is governed by Rule 15/3/(1). Subject to the respondent's obligation to disclose all documentary evidence relating to the facts material to the decision under appeal (save and to the extent released by the Court from that obligation), it is not subject to the duties of disclosure applicable to a prosecution in a criminal case or in civil proceedings. (ii) Further discovery of restricted information would only be ordered by the Court where the appellant presents a *prima facie* case that there are undisclosed documents in the respondent's possession which relate to the facts material to the decision under appeal, disclosure of which is necessary and proportionate to dispose fairly of the appeal. (iii) In any event, the Commission can only provide documentary evidence that is in its possession. If W wishes to have access to the records of the Trust Company, then he must apply, as he has done, to the joint liquidators for such access. (iv) The issue for the Court in the substantive appeal will be whether the subject decision was reasonable in all the circumstances of the case. The Court must be careful, therefore, not to be tempted down the slippery path of allowing W's appeal to be turned into a quasi criminal trial with the Commission in the guise of prosecutor. 44 The decision of the Master was carefully thought out and fair. There are no grounds, in my view, to interfere with it. The appeal is therefore dismissed."
13. This matter was listed before us, as a matter of urgency, without being considered by a single judge. In order that this matter before us could be heard expeditiously we directed on 12 March 2015 that the matter was to be listed as "application for leave to appeal, with appeal to follow if granted". We further directed that Advocate Sinel should have a maximum of one hour in which to seek to persuade us that leave to appeal should be granted, that Advocate Lacey should have a maximum of 30 minutes to give any oral response, and that Advocate Sinel could make a brief reply. The parties were also informed that we would then decide whether or not to grant leave to appeal, and that if we did, we would then and there go on to

hear the appeal. In the event, Advocate Lacey was unable to appear due to a family bereavement. The Respondent was represented by Advocate Layzell. We did not call upon Advocate Layzell to address us but invited Advocate Sinel to make any submissions he might wish directed at the written submissions put forward on behalf of the Respondent.

14. The submissions in support of the application for leave to appeal the decision of the Commissioner are to be found in the written submissions dated 27 February 2015 and the oral submissions to us of Advocate Sinel. As we understand them, they broadly followed the pattern of his submissions to the Commissioner. The findings of the Respondent could not be more serious for W, as he has been found to have displayed “a most serious lack of integrity” and a level of incompetence of “the most serious kind”, which is reflected in the heavy sanction imposed by the Respondent. We were taken to the Public Statements of the Respondent at bundle 2 tab 3 and the Respondent’s Report of 1 July 2013 at bundle 2 tab 1, where, it was submitted, are several statements of lack of integrity, bordering on dishonesty, on the part of W. The findings of fact of the Respondent are challenged, root and branch, by W in the Notices of Appeal, and will be challenged, root and branch, before the Royal Court. Advocate Sinel did not shrink from submitting that the Royal Court itself, when hearing W’s appeals, will have to retry the issues of fact leading to the Respondent’s decisions because of the seriousness of the case. W was entitled to a fair hearing by the Respondent and, thus, to be informed of the detailed accusations against him, to examine witnesses against him; and it is a fundamental aspect of those rights that W is entitled to have disclosed to him the documentary material relied upon by the Respondent adverse to him. It is argued that W is being denied and/or hampered in the exercise of all these human rights by the decision of the Master and of the Commissioner. It is further submitted that, since W’s appeal concerns a root and branch attack on the findings of the Respondent and thus a challenge as to the reasonableness of its decisions, the Respondent, in declining to disclose material and evidence which would allow the validity of its findings to be challenged, is acting unfairly. Much emphasis is placed by Advocate Sinel on W’s Article 6 rights in relation to the Respondent, its substantive decisions and its procedures, and of his Article 6 rights in relation to the court.
15. Advocate Sinel (orally) emphasised that the hearings before the Master and the Commissioner were not just case management hearings in a run of the mill appeal from the Respondent. W in his Notices of Appeal challenged all the grave factual findings made by the Respondent against him and was entitled to a complete retrial of those findings before the Royal Court.
16. It is further submitted that the Master and the Commissioner erred in their approach as set out in paras 44 to 52 inclusive of the written submissions of Advocate Sinel. First, they failed to take into account the factual matrix. Second, they erred in misconstruing the applicable law by reference to *Interface Management Limited v JFSC*, *Anchor Trust v JFSC* and *Volaw v Comptroller of Income Tax*, which decisions were distinguishable on their facts and did not relate to discovery of documents. Third, they erred by treating W’s requests for discovery as

an application for discovery, rather than treating the matter as one of principle where discovery should be granted in a case of this nature. Fourth, the Master and the Commissioner misapplied or misunderstood Article 38 of the Law as impeding the Respondent in its disclosure of documents, whereas the Article permits disclosure for the purposes of proceedings, including appeals, under the Law. Fifth, W is seeking discovery of the documents that he had supplied to the Respondent, none of which could be deemed confidential. Sixth, the Commissioner failed to address W's argument that the rules of natural justice and/or basic fairness enable him to see what has been said about him by others to the Respondent.

17. The Respondent's submissions before us are to be found in the written submissions of Advocate Lacey dated 13 March
2015. She reminded us of the test for leave to appeal set out by this court in *Crociani v Crociani*, to which we have already referred. At paras 48 to 51 of her submissions she submitted that in the instant case there is no general question of general principle to be decided for the first time and that there is no important question of law, upon which argument and a decision of the Court of Appeal would be to the public advantage, for the reasons therein set out.
18. Advocate Lacey directed most of her written submissions to whether or not W can persuade us that the appeal against the decision of the Commissioner "has a real prospect of success". Her submissions were broadly as follows. The decision of the Commissioner relates to the exercise of a discretion in the course of case management and should not be interfered with by the Court of Appeal unless either the Commissioner misdirected himself as to the principles governing the exercise of his discretion, or he took into account matters he should not have taken into account or he failed to take into account matters which he ought to have done, or his decision was plainly wrong. Advocate Lacey reminded us of what the Court of Appeal had said in para 27 of its judgment in *Alhamrani and others v Alhamrani and others* [2009] JLR 301, which is to the effect that the court of appeal counselled "particular circumspection" in overruling a first instance tribunal in a decision involving case management.
19. As to the matters of human rights raised by Advocate Sinel in his written submissions, Advocate Lacey submitted that in the instant application for leave to appeal the focus was on not whether the Respondent breached W's human rights but on whether the Commissioner in reaching his decision acted compatibly with W's human rights. The question whether the Respondent acted compatibly with W's Article 6 rights in reaching its decisions or procedures is one for the Royal Court when hearing W's appeals and is not one for either the courts of first instance or this court to grapple with at the interlocutory stage. Further, the level of disclosure as ordered by the Master and the Commissioner was proportionate and necessary to dispose fairly of W's appeals to the Royal Court, see in particular para 36 of the Master's judgment and para 39 of the Commissioner's judgment. Accordingly, it was submitted that the decision of the Commissioner was not unlawful because of any

incompatibility with W's Article 6 rights.

20. Advocate Lacey submitted that the general principles to be derived from Interface, Anchor, and Volaw, were clearly of application to W's case despite the different factual scenarios. Rule 15/3(1) of Part 15 of the Royal Court Rules governed the disclosure of documents. This rule does not impose any form of general discovery obligation upon the Respondent, a factor noted by the Master at para 34 of his judgment.
21. Advocate Lacey submitted that the Commissioner did not find that Article 38 of the Law operated to impede the Respondent in the disclosure of documents; indeed quite the contrary.
22. As to W asserting that in relation to discovery of documents that he had provided to the Respondent, which it is alleged that the Commissioner did not specifically consider, Advocate Lacey referred to para 27 of the Commissioner's judgment where he recorded Advocate Sinel's submission that the documents were not in any real sense confidential as W had been a director, and had owned just over 50% of the issued share capital, of the trust company. She submitted that a distinction could properly be drawn between what were the trust company's documents and what were truly W's, and that to have concluded that these were in fact W's and not those of the trust company would have been erroneous. The trust company was a separate entity.
23. Having read and listened to the submissions of the advocates we retired to consider whether we should grant or refuse leave to appeal. We then informed the advocates that we refused leave to appeal and would give our reasons later, which we now set out.
24. 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 upon the three authorities referred to in para 16 above, given that it is quite apparent from para 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, and from para 22 did not suggest to him that any of the principles in those authorities were not applicable in the instant case. And, we might add, Advocate Sinel relied upon the authorities of Interface and Anchor Trust in his written submissions to the Commissioner dated 19 December 2014 – see tab 20 of Bundle 1 before us.
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.

26. Accordingly, we have concluded that there is no real prospect of success of the proposed appeal against the decision of the Commissioner, that there is no question of general principle falling to be decided for the first time, and that there is no important question of law upon which further argument and a decision of the Court of Appeal would be to the public advantage. The application for leave to appeal is refused. Authorities U V and W-v-JFSC [2014] JRC 202. W-v-JFSC [2015] JRC 017. Financial Services (Jersey) Law 1998. Anchor Trust Company Ltd v Jersey Financial Services Commission [2005] JLR 428. Royal Court Rules 2004. Crociani, Foortse, BNP Paribas Jersey Trust Corporation Ltd and Appleby Trust (Mauritius) Ltd v Crociani and others [2014] JCA 089. Science Research Council v Nasse [1980] A.C. 1028. Alhamrani and others v Alhamrani and others [2009] JLR 301.

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