

Chapter 4: The Trials

A. The First Trials

4.1 The trials of defendants arrested in consequence of the investigations carried out by the NIS into diversion fraud from London City Bond began in 1998. Some defendants pleaded guilty. In some contested trials where Alf Allington had given a statement his evidence was read. The records retained by the Solicitor's Office of the trials before 1999 are such that it has been difficult to obtain a comprehensive list of the trials, and the Office has not been able to provide a wholly reliable list of those in which he gave live evidence. It is probable that he gave evidence in only two trials – those of Operation Fluke and Operation Sargasso – up to September 1998.

4.2 For a proper understanding of what was to follow in the trials of the London City Bond cases in 1999 and 2000 it is helpful to examine in some detail the events of late 1998.

4.3 By the autumn of 1998 Alf Allington was expressing his concerns to NIS officers from Manchester about what to say when giving evidence. He had given evidence in the trial of Operation Swap in Manchester on 29th September 1998 and was not cross-examined but was anxious about future trials. Alf Allington spoke to the Case officer in Operations Paleface and Manpower (*post*), Mr Allen, who reported the substance of his conversation to his SIO, Mr Hatch. Alf Allington expressed disquiet about what to say when giving evidence in relation to certain matters and wanted advice on how to deal with them. His concerns were particularly directed to the bribes he had accepted. Mr Allen noted in his report dated 29th September 1998:

Alf was concerned about how he was going to be seen when giving evidence, as he didn't want to be seen as an informant and felt that he was in a difficult position locally. He wanted advise (*sic*) on how to deal with the fact he was passing information to the Department and traded with people to allow him to do so.

4.4 The same day Mr Hatch in turn forwarded the memo to the Manchester SIO, Mr Hollier, adding:

...Alf expressed some concern in relation to the statements he has given...Some of his concerns related to the giving of information to the department and how he should respond if asked this question because he was concerned for his own safety. He also asked me for clarification in respect of being involved in an offence i.e. if he suspected or knew account customers may be diverting goods could it be alleged he was involved.

- 4.5 Thus as early as September 1998 Alf Allington identified to NIS officers the very point that resulted in the undoing of many of the later prosecutions: he himself was raising the issue as to whether he might be a participating informant. It is regrettable that so little was done to follow up Mr Allington's concerns
- 4.6 By a Memo of 30th September 1998 Mr Hollier passed on the memos to his ACIO Mike Packham, expressing as he did his own concerns over disclosure and the handling of Mr Allington as a trade source. He requested that Maureen Dunn, the senior solicitor in charge of the London-based prosecutions, and Tim Connolly SIO EXIRT put together a "sensitive disclosure package" and attend PII hearings if necessary. Mr Hollier added:
- ...he clearly feels vulnerable and perhaps the Officer who dealt with him as a trade contact could help and inform him of presentational skills when giving evidence.
- Whatever that means. I do not know whether Bernie Small or anyone else within the NIS helped Mr Allington with his "presentational skills." If any such advice was to be given to a witness it certainly should not have come from the NIS but from the prosecuting solicitor.
- 4.7 A handwritten note on the letter from Mr Hollier to Mr Packham dated 1st October 1998 records that Mr Packham spoke to Mr Connolly, by now Bernie Small's SIO, who assured the ACIO that he was dealing with the issue with Maureen Dunn. The issue of the status of Alf Allington, his vulnerability as a witness and his personal concern about his own status and position were thus clearly raised by early October 1998 and, according to Mr Connolly, presented to Maureen Dunn for her advice and assistance. There is no evidence that any of this correspondence or the potential problems it reveals was brought to the attention of counsel. Whether Mrs Dunn appreciated the full position I do not know: she was not well enough to attend the Liverpool hearings (Chapter Six) and gave no statement directed to this issue.
- 4.8 In October 1998 the trial of Operation Garner took place at the Luton Crown Court before HHJ Wilkie QC. The prosecution alleged that an outward diversion fraud had been committed, using goods sourced from London City Bond. In advance of the trial an application was made by the prosecution on 24th September 1998 for an order that they were not required to disclose to the defence documents in their possession relating to Alf Allington – a PII hearing.
- 4.9 Such an application is made under the provisions of Section 7(6) of the Criminal Procedure and Investigations Act 1996. The sub-section provides that material must not be disclosed to the extent that the

court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly. Often the prosecution seek to withhold documents that disclose the existence and identity of informants, because to do so either might put the informant in danger or hinder the detection of crime. The application is made by the prosecutor to the judge sitting in chambers and in the absence of the defence. The proceedings are recorded. Such applications seek immunity from the usual obligation to disclose on the ground of public interest: they are known colloquially as applications for Public Interest Immunity, hence the acronym.

4.10 The quality of the recording of the PII proceedings before HHJ Wilkie QC was such that the transcript is far from complete: however, it is possible to interpret the fragments of transcript that survive to a limited extent. It appears that the judge was told that Mr Allington had previously been thought to be a trade source but that inquiries had called that description into question. He had given information to HMCE over the years. In Operation Garner, however, he did no more than produce documents and had no knowledge of the frauds. Part of the material was a report dated 17th February 1996 from Bernie Small to his SIOs Mr Snuggs and Mr Woodward about information he had received from Alf Allington about the non-arrival of goods at a Spanish Bond. The judge agreed that the prosecution need not disclose it, adding that it may be that questions would be asked in cross-examination which would require him to reconsider the position.

4.11 Alf Allington duly gave evidence on 5th, 6th and 22nd October 1998. In cross-examination the amount of diversion fraud taking place through London City Bond was pointed out to him.

- Q. Is there any chance that you were in fact the inside man on any of these frauds?
- A. No, definitely not.
- Q. Is it not a feature of these frauds that in order for them to work there has to be a friendly person inside the Bond, someone who is in on the fraud?
- A. I would disagree.

4.12 He accepted that a single phone call to the Spanish Bond who were the supposed recipients of the goods would have exposed the fraud, but he said no such call was made even when stamped AADs were not returned. He did not say (as was the fact) that he had written to the Spanish Bond and been informed that no goods had been received. He was pressed on several occasions to accept that for the fraud in Operation Garner to have worked there must have been somebody on the inside in London City Bond. He disputed the suggestion. On one view, of course, he himself was the inside man at the Bond. He was not asked in terms (though it came very close to it) whether he knew that frauds were taking place. The prosecution did not invite the judge to revisit the question of disclosure of the

material relevant to Mr Allington's status despite the questions asked of him.

- 4.13 Two further trials were due to begin in the first months of 1999, Operation Puma at Southwark Crown Court and Operation Fallover at Kingston Crown Court. The solicitor in charge of each prosecution was Maureen Dunn. On 30th October 1998 Mr Bartlett, the Case Officer for Operation Fallover, sent an email to Ian Donald, an HEO in EXIRT and a member of the same team as Bernie Small, as follows:

I am in the process of preparing the PPI (*sic- plainly PII*) schedule for Operation FalloverAs part of a meeting held with Tim Connolly the other day he mentioned that Alf had featured on other operations. For ours his evidence consists only of producing LCB documents and explaining procedures. Please explain as to how I deal with the other operations as part of the PII.

- 4.14 Mr Donald replied on 6th November 1998, explaining that he had spoken to Maureen Dunn. He advised:

...whilst Alf's position will have to be covered in PII it can be dealt with in very general terms. The fact is that Alf has given witness statements in a number of other excise frauds and his conduct throughout has wavered between that of Informant and Trade contact. Alf is not registered as an informant and in his eyes is only performing the function of trade source, answering queries put to him. In particular his involvement in Fallover goes no further than production of documents.

- 4.15 I have no knowledge of the source of that account. On its face it is inconsistent with the concerns expressed by Mr Allington to NIS officers a month earlier. If it is an accurate description of what Mr Donald told Maureen Dunn then it was consistent with the reports provided to her in advance of the trials from Bernie Small, Bob Snuggs and Ian Donald, all setting out what was said to be the position of Alf Allington.

- 4.16 In an undated memo, but plainly written in early January 1999 for the purpose of a PII application in relation to Alf Allington, Bernie Small wrote:

I would receive from Alf Allington notification of all new companies who had opened trading accounts at London City Bond. I occasionally spoke to him as the bond holder and this enabled me to have an overview of the bond's business activities and to target investigation resources when and where I thought necessary. Alf Allington is the authorised warehouse keeper and as such his information was thought to be no more than was expected of him; consequently he was neither registered as an informant nor was he paid.

4.17 Mr Snuggs set out his account for the same purpose in a memo dated 9th January 1999. He wrote:

In the course of his duties Bernie Small visited the premises of London City Bond in order to examine the records made in the normal course of business with particular emphasis on returned discharged AADs...To the best of my recollection all fraudulent activity identified by Bernie Small in respect of goods released from warehouse for export was well in issue prior to his identification of possible suspects. Given that the primary focus was the returned AAD that style of work was inevitable...At no time was London City Bond encouraged to accept business with any particular trader. There was no collusion...between London City Bond and officers of NIS to...facilitate business that would not otherwise have occurred.

4.18 Mr Donald's contribution was contained in a document entitled "Alf Allington and the London City Bond". The material part of Mr Donald's summary reads:

Since 1995 there has been a regular dialogue between London City Bond and the then Investigation Division of HM Customs & Excise (now the National Investigation Service) which has taken the format of Edward Allington, the brother of the managing director Alf, passing information about loads of duty suspended alcohol being despatched to alleged foreign destinations. Edward Allington was subsequently registered as an informant and his handler duly maintained logs of information passed. On occasions information has also been received from other people at London City Bond, notably Alf Allington, and on more than one occasion, whilst the handler was on leave, this information has been recorded on the informant logs proper to Edward Allington...As the relationship with London City Bond has developed more and more investigations have included information given to the NIS and at times this information has been so prolific that the information recorded was distilled to the more important information about companies using the bond.

4.19 If intended as a full and frank disclosure of the involvement of Ed Allington and Alf Allington with the NIS at London City Bond these documents were woefully inadequate. The accounts of the activities of Alf Allington and his involvement with the NIS at his Bond do not accord with the reality of what had been happening. Whether Bernie Small, Mr Snuggs or Mr Donald or any of them intended to portray a sanitised and misleading picture to their own lawyers – whether, in other words, they were deliberately covering up the true position - is not something about which I can properly comment. To do so would be to trespass on the territory covered by the police investigation. But undoubtedly the consequence of what they did was to mislead the lawyers. However it came about, the result was that the reality was distorted by what they presented.

4.20 In advance of the trial of Operation Puma a PII hearing took place on 19th January 1999. In the light of what the NIS officers had written it is perhaps no surprise that the application passed without problems. It has not proved possible to identify all the documents placed before the judge, but the informant logs relating to Ed Allington were shown to him. Counsel said:

There were two Allingtons. There's Ed Allington, who is the principal informant, and his brother Alf. Alf is the main witness from the bond. The Allington folder ...is really information from within the bond that certain companies are still working, and that on given days they're proposing to move loads out of the bonds, supposedly for export. It's no more information than that. It enabled therefore the HMCE when they chose to do so to set up surveillance and to follow lorries to see where the goods were ultimately delivered...There is scope, I suppose, if defendant wanted to take this line, to cross-examine Mr Allington along the lines that there have been many frauds out of London City Bond, his bond, and that surely he knew what was going on, and either he was part of it or in some way was turning a blind eye to it...it's open to them to say that you've been involved in a number of Excise jobs, not just this one, and this file supports that argument. Now if they did take that line of cross-examination we still would say that the contents of this folder should remain undisclosed...

4.21 No disclosure was ordered. Alf Allington gave evidence, in the course of which he was asked a number of questions to which he gave misleading answers. It was put to him that he thought the principal fraudster was a perfectly plausible businessman until the day of the arrests in September 1997 when a witness statement had been taken from him. He agreed. In fact Alf Allington had been informing Bernie Small of his suspicions about the principal fraudster since June 1996, information which Bernie Small had recorded in his daybook. Whilst the informant logs were provided to the disclosure officer and counsel and made the subject of the PII application, the daybook was not.

4.22 One defendant in the trial of Operation Puma pleaded guilty. The remaining four were convicted in March 1999 after a trial lasting several weeks.

4.23 On 1st February 1999, even as problems were developing in the trial of Operation Fallover (*Part B post*), a conference was held with prosecuting counsel in advance of the trial of Operation Fajita (*Part C post*) attended by, amongst others, Maureen Dunn and Tony Bond of the NIS. The notes of the conference demonstrate that those present were extremely concerned as to the consequences for the pending prosecutions of disclosure of the true position of Alf Allington. The documents examined by counsel in the course of the conference, in particular the informant logs, showed that Alf

Allington was at least closely involved with those suspected of fraud, if not a participant himself.

4.24

A number of options were discussed, including proceeding with the prosecutions in the hope that the information did not break. Counsel were firmly of the view that Alf Allington's role should be disclosed to the defence and that thereafter he give full and frank evidence. Had that course been taken it is likely to have been of positive assistance to the prosecution in a number of trials. However, the NIS were unenthusiastic. They considered that it might expose Mr Allington to serious risk of harm. As a result of counsel's advice Alf Allington was visited and asked whether he would consider being exposed as an informant. He refused. A year later he was approached again but still refused. Another option considered was not calling Alf Allington as a witness at all: however it was thought that the defence would force him into the witness box one way or another. Reporting on the conference Maureen Dunn wrote:

The bottom line for these cases is...that...there is a strong probability that Alf Allington is either going to be exposed or he will become apparently a guilty party to the frauds or ...to have positively acted to "set up" a defendant.

4.25

None of this was communicated to Mr Anthony Glass QC, prosecuting counsel in Operation Fallover.

B. Trial of Operation Fallover

- 4.26 The seeds of disaster were sown in the course of the trial of Operation Fallover in early 1999.
- 4.27 In December 1996 HMCE enquiring into excise fraud began an investigation into the business activities of Bhandal Enterprises Ltd. That company operated a Cash and Carry warehouse in West London. The company director was Sukhdev Bhandal. HMCE investigations led to another Cash and Carry business trading as Multi-Rush. That company ran two warehouses in South East London. The sole director was Madhusudan Maganbhai Patel (MM Patel). On 15th December 1996, a lorry was seen by Customs officers to go from Bhandal's premises to Multi-Rush and back again. On 19th December, following a raid on all the cash and carry premises, duty-suspended goods diverted from London City Bond were found at each.
- 4.28 Five defendants - Sukhdev Bhandal, MM Patel and three others - were charged with offences of conspiracy to cheat by failing to pay the duty payable. The case against MM Patel was that he and Bhandal had provided warehouses for the storage and onward sale of duty-suspended goods obtained from London City Bond. The goods had, it was alleged, been obtained from London City Bond principally through two companies, Richview Ventures Ltd and Culvane Ltd. The other defendants were involved in the operations of those companies or the management of the warehouses.
- 4.29 In interview, MM Patel claimed that his stock came from a man he identified and had been bought in good faith. He produced invoices to support his contention. The prosecution alleged the invoices were fraudulent. It was said that fraudulent trading in diverted spirits involving the Fallover defendants had been going on since at least September 1996. The loss of duty was put at in excess of £7 million.
- 4.30 In due course the case came on for trial at the Kingston-upon-Thames Crown Court before HHJ Hucker. The investigation had commenced before April 1997: thus the provisions of the Criminal Procedure and Investigations Act 1996 did not apply. There were no defence statements. However the prosecution were aware that the defence were likely to suggest that Alf Allington was in some way himself involved in the frauds. In preparation for the trial the Prosecution asked the judge to hold a PII hearing on Wednesday 27th January 1999. At that hearing junior counsel for the Crown read out a note relating to Alf Allington which had been prepared by Maureen Dunn at his request. In preparing this note I assume that Maureen Dunn relied on the memoranda prepared by Bernie Small, Bob Snuggs and Ian Donald; memoranda which counsel had not seen. The note reads:

Mr Allington has moved from being merely a trade source - i.e. one who is asked to advise as to straightforward business issues as a trader in an excise business with a responsibility to assist the Commissioners in their duties in this regard - to being an informant. The move has been a gradual one, so that in some cases he has given, for example, identification evidence or advised as to meetings to be held so that the investigating officers can be in the vicinity for surveillance, for instance indicating when a particular movement is going to be made. For Operation Fallover, Mr Allington's assistance has been limited to that of a trade source. However, his assistance beyond that on the face of the papers is not to be disclosed since there are valid concerns that to do so would open the floodgates to his assistance becoming known. An application is therefore needed so that there can be no question of his extended role becoming known.

4.31 Counsel went on to disclose that allegations of fraud had been made against Alf Allington by a defendant in another Operation, and explained that they had been investigated and that no evidence to substantiate them had been found. He went on to say that Alf Allington had not provided any information to HMCE in connection with Operation Fallover as an informant. Counsel continued:

He is certainly going to be giving evidence but what we seek to conceal at the moment is that Mr Allington in other cases has acted as a confidential informant.

The judge agreed.

4.32 Four of the five defendants in Operation Fallover pleaded guilty to one or more of the Counts acceptably to the Crown. The defendant MM Patel pleaded not guilty. A jury was sworn and the prosecution then opened the case in full. At that stage the defence sought further disclosure of HMCE files relating to other investigations concerning London City Bond. The information was required, it was said, to test "the credibility of London City Bond, their true role, and the accuracy and honesty of its documentation."

4.33 The case for wider disclosure was advanced thus. The Crown's case was that London City Bond were effectively the victims of a conspiracy by others. They were used as an innocent conduit through which duty-suspended goods passed without themselves knowing about it. The defence were suspicious of that assertion. They had reason to believe that Alf Allington and London City Bond had been encouraging the commission of criminal offences and may have been actively engaged in providing information to other Customs officers.

4.34 The judge embarked upon a further and protracted PII hearing which extended over several days. Mr Payne, the case officer in Operation Fallover, gave evidence. He was asked about the position of Alf Allington. He said that up to 19th December 1996 – the date of the

raid on the defendants' warehouses - Alf Allington was no more than a trade source of information. Asked what he meant by those words Mr Payne replied:

He would be visited, or the warehouse would be visited, by officers who were there making inquiries regarding investigations and Mr Allington would provide the necessary documents and if necessary give a witness statement.

4.35 Mr Payne went on to explain that Ed Allington was a registered confidential informant who provided information to NIS Intelligence officers who would then put together a package which would result in an investigation.

Q. Since the 19th December [1996] has Alf Allington also become a confidential informant like his brother?

A. That is correct your Honour.

Q. Are you able to say from what date or approximately what date?

A. I do not have that knowledge your Honour. ... It was I believe early 1998.

4.36 There came a time when information would come from Ed Allington and he would ask Alf Allington to pass the information on. Mr Payne explained the position thus:

Up until early last year (1998) we only had solely spoken to Ed Allington. However what happened was that it appears that Ed was actually saying "Well I'm doing something, Alf, can you ring the HMCE and tell them this information." What happened then at our end of the telephone those then got entered onto official logs so it appears Alf Allington's name was actually providing the information when he was in fact only a conduit.

4.37 Mr Payne said that Alf Allington was still registered with HMCE as a trade source. The foundation for the information provided by Mr Payne to the court is not clear. What is manifest is that it was completely inaccurate and grossly misled the judge as to the true position of Alf Allington. Mr Allington was not registered with HMCE as anything at all and the account of his dealings with HMCE was a distortion of the truth.

4.38 The prosecution brought to the attention of the judge the letters written by Mr Pratt and Mrs Blackburn to their superior officers in July 1997, to which detailed reference has been made in Chapter 3 Paras 40 – 46. Mr Payne was asked to express his view about Mr Pratt's letter. He said that it did not reflect what was happening at all and was totally misleading.

- 4.39 The PII hearing continued with the evidence of Mr Snuggs. He identified Bernie Small's responsibility as that of trying to identify fraudulent activity that may have occurred and particularly to examine the documents for signs of fraudulent discharge by way of forgery. Asked about the letter written by Mr Pratt, Mr Snuggs said that under no circumstances did the NIS ever encourage London City Bond to take on any business. The choice of phrase is highly inappropriate and totally wrong and Mr Snuggs found the note "quite astonishing". He confirmed on oath the misleading written account he had given to Maureen Dunn in January 1999: see Para 4.30 *supra*.
- 4.40 Bernie Small also gave evidence in the PII hearing. He disagreed with the content of the letters, asserting that NIS did not at any time encourage anyone to trade with any particular company or not to trade with any particular company. The Audit staff must have allowed their imaginations to run riot, he said. Mrs Blackburn too gave evidence in the PII hearing. She said that at the time the documents were written her perception was indeed that the NIS were deliberately encouraging Alf Allington to take on as a customer a suspect, someone he knew or believed was likely to be a dodgy trader. Asked if she thought her perception might be wrong, she said it was very difficult for her to answer.
- 4.41 The Judge ultimately agreed not to order disclosure of the letters. He concluded that even if London City Bond had been party to some agreement with HMCE to encourage fraudulent traders to use the Bond, that could not be relevant to the defence being advanced. Because it was not being asserted that the goods had come directly from London City Bond either by prosecution or defence it was unnecessary to disclose the documents.
- 4.42 The PII hearing over, proceedings on the *voir dire* seeking further disclosure continued in open court. The prosecution tendered Mrs Blackburn. She was taken to a copy of the Audit of Despatch System Report 1997/98 which had been disclosed to the defence and in which Mrs Blackburn had written: "Suspect transactions encouraged by NIS.". Confronted with that, she accepted that originally those had been her suspicions. In consequence of the cross-examination counsel for the Crown invited the Judge to revisit his order about the two letters. The Judge agreed and the documents were disclosed.
- 4.43 By 10th February 1999, six days into the *voir dire*, the defence position had shifted from an application for full disclosure of all HMCE documents in relation to London City Bond, to an application that the proceedings should be stayed as an abuse of the process and the remainder of the *voir dire* was conducted on that basis.

- 4.44 Alf Allington himself gave evidence. He told the court that he understood if the goods went astray he might have to face the ultimate liability for payment of duty. After notification of the Hare Wines fraud London City Bond was alert to the problem and took steps to stop it happening again. The Bond was the innocent conduit of diversion fraud: if a stamped AAD was returned he would not know if there had been a fraud. He was also asked about being granted an indemnity from liability to pay for duty evaded by fraudsters and agreed that he had never been asked to account for the duty which had gone missing in relation to diverted goods.
- 4.45 In the light of the questions about indemnities the Crown disclosed to the Judge and sought PII in relation to the letters written in October 1996. (See Chapter Three Paras 36 and 37.) Alf Allington was asked to express his views about whether the exchange of correspondence should be disclosed to the defence. In the course of his evidence he explained that his support of HMCE did not go beyond that of an honest trader giving the sort of assistance that he felt he was required to give. In answer to the judge he explained that he had no knowledge when lorries left the warehouse with the AADs that the goods were going to be diverted. He did express concern about the letters being disclosed to the defence. However, the judge was not prepared to grant PII in respect of them and they were accordingly disclosed.
- 4.46 In the resumed *voir dire* Alf Allington maintained that the letter of 17th October 1996 meant that he wanted HMCE to underwrite all operations or else he would stop all exports. He did not know any of the detail as to which consignments were potentially fraudulent and did not wish to know. His reference to “continued support” referred to his time and information and the fact that new account forms were given to HMCE and the time they spent in digging paperwork out. He had no discussion with Bernie Small about an indemnity.
- 4.47 Mrs Blackburn, Mr Pratt and Mr Hobley all gave evidence to the effect that they had made their comments in 1997 in ignorance of the true position and without a real appreciation of what was happening. In hindsight, none of them adhered to those views. However, it is clear that in resiling as they did, they relied on assurances from members of the NIS that they had misunderstood the position.
- 4.48 Mr Pratt was later to explain how it all came about when he gave evidence before Mr Justice Grigson nearly three years later. In relation to his letter of July 1997 Bernie Small did not actually say to him that he was encouraging Alf Allington to take on suspect customers: he had made that assumption because of what was happening at London City Bond. The NIS took issue with what Mr Pratt was suggesting, saying that he had got the wrong end of the stick. It was in those circumstances that he made a statement on 11th

February 1999 in which he said of his original reading of the situation:

Our department's perception has changed as a result, so that we now understand that the NIS are not encouraging and have not encouraged in the past LCB to open accounts with suspect customers.

The only reason why Mr Pratt's understanding changed is because of what he was told by Bernie Small.

4.49

Mr Snuggs gave evidence in the *voir dire*. He was pressed about his letter to Alf Allington of 30th October 1996 and the fact that no assessment had been raised despite the loss of duty in excess of £40 million. Mr Snuggs did not accept that it suggested Alf Allington enjoyed any special status and expressly asserted that Alf Allington was not giving information beyond that which he was required to provide when asked. The judge suggested to the witness that a decision involving duty of that amount might involve a ministerial input. The witness did not correct that false impression:

- Q. ...presumably HM Customs and Excise have a Minister who is responsible for HM Customs and Excise?
- A. Yes, that's right...the line goes up through the Chairman to the Financial Secretary.
- Q. The Financial Secretary to the Treasury, right. I know the Treasury deal with billions but even £40 million, this would be something that would have to be taken at around that level, wouldn't it, if a decision was taken, ministerial level?
- A. The problem created by the size of these frauds, your Honour, is a matter which I am aware is discussed at the very highest levels and I think your Honour is quite right. The matter would have gone well above me.

4.50

Again, in the light of the reality of what was happening, that answer was at best distinctly misleading. Mr Snuggs must have known perfectly well that Ministers knew nothing of the level of the frauds and the extent to which they had been allowed to run, let alone approved the waiver of duty. Mr Snuggs was Bernie Small's SIO, his controller, and he did not know how much was involved: how could others above him be aware? His own email, sent to Maureen Dunn on the day he gave evidence, is illuminating:

I have just spent a most uncomfortable afternoon in the witness box trying to defend the indefensible, that no assessment has been issued against London City Bond. The argument by the defence was that Alf Allington has obviously received a guarantee that his bond will not be called, as a reward for his cooperation. Arguing that the Department has no definite policy seemed hollow and embarrassing...Defending the indefensible is very damaging to my credibility.

- 4.51 On that evidence the defence submitted that the indictment should be stayed as an abuse of process. Removal of the goods from London City Bond and the evasion of duty had been provoked, encouraged or facilitated by Customs officers working for the NIS in collusion with Alf Allington. Counsel submitted that Alf Allington was “in truth a participating informant” and the evidence to support such a suggestion was quite overwhelming. The offences would not have occurred if that encouragement and facilitation had not taken place. The NIS were encouraging the warehousekeeper to participate in crime: he was actually despatching goods that he knew or suspected would be duty-diverted. He was agreeing with companies that he knew or suspected would be suspect companies. The NIS had encouraged London City Bond to facilitate the fraud by giving Alf Allington a nod and a wink, according him special status. It was reasonable to conclude the NIS had failed to disclose all relevant material. HMCE involvement went beyond passive investigation.
- 4.52 With the benefit of hindsight and a full knowledge of what had happened at London City Bond the thrust of those submissions was, in my view, broadly accurate. The judge could have accepted the submissions and ruled that nonetheless they did not amount to an abuse of the process in the circumstances of Operation Fallover, which was effectively a retrospective investigation. Had he done so his decision could not sensibly have been impugned. But the judge had not been provided with a truthful and accurate picture. The evidence from Mr Payne, Alf Allington, Bernie Small and Mr Snuggs was seriously misleading, and it was on that evidence that the judge relied.
- 4.53 The judge ruled against the defence submission. He found that Alf Allington’s co-operation was not given because he had been positively encouraged to set up despatches to “dodgy” destinations: he simply passed on information of a trade nature which he was contractually bound to do. In the light of the amount of annual excise duty on goods passing through London City Bond the judge concluded that the policy of not assessing for duty and not stating it in writing must have been taken not by the NIS, as suggested by counsel, even at the top level, but by the Excise Board who have a direct duty to the Cabinet and Parliament for the conduct of HMCE. The Judge found that the purpose was to allow a series of operations to be mounted to stem the vast flow of revenue from the Exchequer. The conduct of HMCE was a thousand miles from being unworthy, shameful or an affront to public conscience. There was no sufficient direct link between London City Bond and MM Patel and no evidence that he was tricked by HMCE or anyone at London City Bond to commit fraud. There was no evidence that Alf Allington was induced or pressured into taking part in unlawful activity. The judge rejected submissions that to proceed with the trial of MM Patel would amount to an abuse of process.

- 4.54 Following the ruling MM Patel pleaded guilty acceptably to the prosecution. On 19th March 1999, MM Patel and his four co-accused were sentenced to 30 months imprisonment and disqualified for 5 years under s2 of the Company Directors Disqualification Act 1986. On 27th April 2000, a confiscation order was made against MM Patel of £600,000, with 4 years imprisonment, consecutively, in default of payment within 6 months.
- 4.55 The abuse application occupied the court for 10 days. The return of the jury had to be repeatedly postponed, probably at considerable inconvenience to them and certainly at considerable expense to the public.

C. Operation Fajita Part 1

- 4.56 Shortly after the trial of Operation Fallover a further trial arising out of diversion fraud from London City Bond took place. The 10 defendants arrested in Operation Fajita were tried at Wood Green Crown Court before HHJ Maher on charges of conspiring to cheat the public revenue of the duty payable on the sale of alcoholic beverages and being knowingly concerned in the fraudulent evasion of the duty payable on goods.
- 4.57 The loss to the exchequer from the frauds with which the defendants were charged exceeded £35 million. Bajwa was said to be one of the principal organisers, and behind the operation of four bogus companies. Each company bought large quantities of duty-suspended spirits from London City Bond, ostensibly for the spirits to be exported to a bonded warehouse in Spain. In fact, the goods were diverted to the home market. Early and Vickers organised transport for the removal of the spirits from London City Bond and each were involved, it was said, in the manipulation of the bogus companies allegedly trading in London. Thomas was said to be responsible for managing the remaining bogus companies, which operated from Swansea. The remaining five defendants either assisted in providing transport or actually transported spirits from London City Bond.
- 4.58 As with the other conspiracies, goods accompanied by false AADs were removed from London City Bond. There were many other documents, including instruction faxes from Bajwa and consignment notes in relation to the movement of goods. There was substantial observation evidence by Customs officers in relation to the various loads which had been followed after leaving London City Bond. The arrests were made in February 1998.
- 4.59 The provisions of the Criminal Procedure and Investigation Act 1996 applied. Primary disclosure under section 3 was given on 6th October 1998. Bajwa, Vickers and Thomas failed to serve a defence statement. The drivers by their respective defence statements essentially maintained that they had no reason to believe that in removing spirits from London City Bond or providing lorries to do so they were doing anything unlawful. They had no knowledge of the diversion fraud and were not parties to it in any way.
- 4.60 The trial was due to begin in May 1999. On 1st March 1999, Bajwa pleaded guilty to four counts of being knowingly concerned in the fraudulent evasion of duty payable on goods and, subsequently, to a further count. Before the trial began submissions were made on behalf of a number of the defendants that there had been insufficient disclosure. It was said that London City Bond was a honey-pot; HMCE were intimately involved in the running of the Bond which they had permitted to operate as a fraudulent base when they had the

means and the opportunity either to nip the frauds in the bud or prevent them operating at all. It was believed that disclosure would give substance to the defence case that entrapment was going on and/or that the conduct of the prosecution, in the shape of HMCE, was unconscionable. With those submissions in mind the judge examined material which the prosecution wished to withhold in a PII hearing over several days in early May 1999.

4.61 Counsel for the prosecution informed HHJ Maher of the situation at London City Bond, as he understood it. Essentially he repeated the line adopted by counsel in Operation Fallover. He told the Judge that for a considerable period of time Ed Allington had been a registered informant to HMCE, informing HMCE of suspicious movements out of the bonded warehouse. On occasions when he did not pass on the information, it was passed on by Alf Allington. There were informant contact sheets for Ed Allington. There were some scanty records of the information passed on by Alf Allington. Counsel further explained about the receipt by Alf Allington of large sums of money from dishonest traders given as bribes, whilst stressing that none of the payments came from defendants in Operation Fajita. Counsel reminded the judge of allegations made by Bajwa about Alf Allington in the course of his interviews, allegations which had been investigated independently, found not to be established and in any event withdrawn. By this time, of course, Bajwa had pleaded guilty.

4.62 In the course of the PII application Bernie Small gave evidence. He produced contact sheets of his dealings with Ed Allington and also his daybook. This was the first occasion on which the daybook was available for inspection by the court and prosecuting counsel. However, in every trial thereafter prosecuting counsel were provided with both the contact sheets and the daybook entries, and thus had copies of all the information passed by Ed and Alf Allington which had been recorded by Bernie Small. Counsel went on to describe the position of Alf Allington. He put to Bernie Small the proposition that Alf Allington was a “trade source” who would be asked questions and would answer them about the goings on at the bonded warehouse but that as time went by on occasions he volunteered the information. Bernie Small agreed with that proposition but went on to say that in addition Alf Allington provided full information about all new customers, including the principals of the company, their contact telephone numbers, their addresses, and their VAT numbers. He also sometimes expressed an opinion as to whether the new customers were dodgy but his personal opinion was very often misguided. He did however have a wealth of knowledge about the import/export business. He could spot a false HMCE stamp much quicker than Bernie Small could and would often bring it to Bernie Small’s attention. He also passed on snippets of conversation he had with several of his customers. As to the cash paid to Alf Allington, when he received the sums he notified Bernie Small in writing and it

was agreed that the monies should be placed into an account over which HMCE had control.

- 4.63 The Judge ruled that none of the material which the Crown sought to withhold either undermined the Crown's case or assisted the defence case in the light of the defence submissions advanced. He was satisfied that it was in the public interest to withhold the material from the defence. The trial then began.
- 4.64 On 11th May 1999, Vickers pleaded guilty, on re-arraignment during his trial, to two counts of being knowingly concerned in fraudulently evading duty chargeable on goods. On 24th May 1999, Early pleaded guilty, on re-arraignment, to a single count of conspiracy to cheat. On 27th May 1999, Dowell pleaded guilty on re-arraignment during trial to a single count of conspiracy to cheat. At that point the prosecution decided that it would not be proper for them any longer to rely on a witness (wholly unconnected with HMCE) whose evidence had been opened to the jury and there were problems with a juror.
- 4.65 In the result the first jury were discharged and the retrial of the remaining defendants adjourned to early 2000. On 4th June 1999 Vickers was sentenced to 18 months imprisonment, consecutively to a sentence of 10 years imprisonment being served for an unrelated offence. On 30th July 1999, Bajwa was sentenced to two years imprisonment, concurrently on each count, but consecutively to a term of six years imprisonment for another conspiracy to cheat in relation to a bonded warehouse in Ipswich, Operation Stockade.

D. Operation Fusion

- 4.66 The problems which began in Operation Fallover were greatly exacerbated by the events in the trial of Operation Fusion, which took place over four months in the summer of 1999.
- 4.67 There were 13 defendants. As in other cases, duty-suspended goods, ostensibly destined for France or Spain, left London City Bond with false AADs and were dispersed in the United Kingdom. The transactions were carried out through front companies purchased for the purpose. The prosecution case was that the defendants Rahul and Nilam Patel, who were husband and wife and took instructions from a man called Bhandari, were concerned with purchasing, finance, storage and distribution of the alcohol. Sihota, Dhillon and Basram, with Sihota as ringleader, were responsible for the setting up and day-to-day running of the “front” companies used to acquire goods from legitimate wholesalers at London City Bond. Brown and Hulse operated R C Brown European and were responsible for the physical removal of goods from London City Bond during the early part of the fraud. However the principal haulier used was Reynolds Transport Ltd of which Percy and Reynolds were directors. The remaining five defendants were drivers employed or subcontracted by Reynolds Transport to remove and divert goods from London City Bond. Most of the defendants were arrested on 30th September 1997.
- 4.68 The fraud was alleged to have run between September 1996 and September 1997 and involved evasion of excise duty in excess of £18 million and evasion of VAT in excess of £5 million. All the defendants were charged with conspiracy to cheat the public revenue and appeared at the Crown Court at Southwark before HH Judge Mota Singh QC in 1999.
- 4.69 Their trial was fixed for 4th May 1999. On that day Sihota, Dhillon, and Rahul Patel pleaded guilty to the charge of conspiracy. The prosecution indicated their intention to call Sihota and Dhillon as witnesses for the prosecution. The case was adjourned until Monday 17th May for the prosecution to interview those two defendants and take statements from them, and thereafter serve those statements as part of their case. The court resumed on 17th May. The case was then adjourned to 24th May because the defence required more time to consider the new statements along with further material which had been disclosed by the Crown. On 24th May Basram, Percy, Montague and Bothwell all pleaded guilty.
- 4.70 Sihota’s statement referred to two meetings with Customs officers, one in 1997 and the other in 1998. No reference to those meetings was contained in the schedule of unused material which had been provided by Mr Bowie, the officer in the case, although a note of the 1997 meeting with Sihota was included on the sensitive schedule. The 1998 meeting had been recorded by Bernie Small but he had

been unable to locate that record when asked to do so by Mr Bowie. There were requests from the defence for additional material and further unused material was disclosed. It soon became apparent that disclosure had been far from adequate. There were a number of requests by the defence for further disclosure, a spate of PII applications and the supply of further material.

4.71 The remaining defendants applied for the proceedings to be stayed as an abuse of process because:

- a. Incomplete, misleading and far from frank disclosure had occurred. Further disclosure had been made piecemeal and only when the defence had identified the areas. The disclosure had been reactive rather than proactive. The defence submitted that there was a deliberate culture of withholding information and that disclosure was on a need-to-know basis.
- b. The Allingtons and/or Pearson and/or LCB generally were *agents provocateurs* who entrapped the defendants directly or indirectly into the commission of the offence. The undercover status of LCB was not disclosed properly or at all.
- c. Mr Allington, Mr Pearson and other staff at LCB were criminally involved in the fraud.

4.72 There followed an application to stay the proceedings which continued until 21st July 1999, some eight weeks later. Central to the application was the status of Alf Allington. The Crown made a PII application in respect of that issue before the application itself began. By this time counsel had been given somewhat more information about the status of Alf Allington than had been provided at Luton, Kingston or Wood Green. Counsel for the Crown summarised the nature of the evidence which it was anticipated Alf Allington would give on behalf of the prosecution, namely a description of the system operating at London City Bond and production of business documents. On the face of the statements the material was non-controversial and it was the Crown's position that Alf Allington's status as an informer, as counsel put it, appeared to be irrelevant to the defence of the remaining defendants. Counsel described Mr Allington's position as having been providing information to HMCE for about three years. He was not a registered informant although he had been virtually treated as such. There was, said counsel, quite extensive documentation which had come into being as a result of contact with him. Counsel also informed the judge about Ed Allington, and the fact that he was a registered informant.

4.73 The complication arose because of the witness statement given by the defendant Sihota. He had said that Alf was aware of the fraud

and had even offered to open London City Bond at the weekends because HMCE were not about then. Counsel anticipated that a problem might arise if the defence, in efforts to discredit Sihota, cross-examined him on the basis of that part of his statement and then in due course cross-examined Mr Allington on similar lines. Mr Sihota was quite right in his belief that Mr Allington was aware of the fraud but quite wrong in his belief as to the reasons why, namely that he had been bribed.

4.74 Similar allegations had been made in another case. The position of Alf Allington and the challenge to his honesty and veracity was not something new or something that took the Crown by surprise. The Crown asked the Judge to sanction non-disclosure of the status of Alf Allington, the information which he had provided and the documents in which the information was recorded. It was said to be vital that his true status was not disclosed because of his involvement in other cases. There would, said counsel, be “serious concerns for his safety should it become public knowledge that he has been providing information on the scale which he has over a considerable period of time.” He went further and asked the judge to prevent irrelevant cross-examination which might tend to reveal Alf Allington’s status. Counsel assured the judge that there was nothing in the written material which would be relevant to the defence of any of the defendants. The judge accepted what he was told and made the order sought.

4.75 Alf Allington gave evidence for more than three days in the *voir dire* between 14th and 17th June 1999. He was cross-examined in detail about the operations of LCB, the employees there and the fact that he had made substantial profits from the business activities of the company in the last few years. Alf Allington was pressed about his knowledge of frauds taking place at LCB. He denied that HMCE had told him any frauds were taking place. He accepted that fraudsters had used the Bond but, though he was suspicious, he was not aware it was going on.

4.76 A series of exchanges in the course of Alf Allington’s evidence during the *voir dire* illustrates the thrust of his testimony.

Q. Certainly from the end of 1995, you were aware that fraud was taking place, utilising your bond?

A. I was aware it had utilised that bond, yes.

Q. Mr Allington, you were aware it was going on, were you not?

A. No, I was not.

Q. At any stage were you aware it was going on?

A. No.

Q. Never?

A. No.

Q. Is that your considered answer?

A. It is an honest answer.

4.77 In a later passage later he was asked about his relationship with Bernie Small.

- Q. Mr Allington, the position here is this, is it not: your relationship with HM Customs and Excise was far, far closer than that of an arms length trader?
- A. No I disagree with that.
- Q. You were providing information were you not?
- A. We were providing new customers addresses.
- Q. You were an informant, were you not?
- A. No I was not.

4.78 Alf Allington explained the position so far as the bank guarantee was concerned. There was a bank guarantee or bond in place to pay HMCE £250,000 on demand. Any demand beyond that would have to be met from the assets of the business and would be likely to lead to bankruptcy.

- Q. Have HM Customs and Excise ever said to you: Mr Allington, if you help us, we will help you?
- A. No.
- Q. Never?
- A. Never.
- Q. Not even a wink, a nudge, a gesture?
- A. The only thing that has ever been said...was that basically Customs don't call on people if they are innocent and that is the only thing I have ever really heard.

4.79 A number of features which, it was said, indicated that transactions were plainly bogus were drawn to Alf Allington's attention. He explained that he was not aware of these matters and was not himself in any way encouraging the continuation of fraud at London City Bond.

- Q. If you had appreciated the nature and extent of this fraud while it was going on, what would you have done about it?
- A. If I was aware of a fraud I would have stopped dealing with the company.
- Q. Unless you had some assurance from Customs and Excise that you would not be held accountable?
- A. Which I've never had.

4.80 He was asked about a number of specific companies. It was pointed out to him that the handwriting on documents relating to a number of separate companies was all the same.

- Q. You say you were wholly unaware that this is what was happening?
- A. I say I was unaware there was a fraud happening.

- Q. Unaware that the same person was writing all these various guises?
- A. No, I said I was unaware there was a fraud going on.

4.81 Alf Allington was also asked about the description which had been applied to him by HMCE.

- Q. You would describe yourself as a trade source that provides information to assist Her Majesty's Customs & Excise in their determined fight against crime?
- A. Yes, I would.
- Q. And you seek to distinguish such a person as yourself from an informant?
- A. Yes.
- Q. What's the difference Mr Allington?
- A. I suppose in my mind whether you are pro-active.
- Q. Whether you are pro-active. So in order to be an informant in your mind, you have to participate in the events?
- A. Yes.

4.82 Bernie Small also gave evidence in the course of the *voir dire*. He was asked about his document handling and recording of the seizure of exhibits. He said that it was not his practice to make a record of the origin of every document he seized. Usually the record would be in the witness statement producing the document. He only uplifted original AADs as a result of an operation coming to a conclusion as potential evidence. It was not his normal practice to take away an original document in the course of an investigation. If he wanted to examine a document more closely he would take a copy of it and leave the original behind. It was not his practice to make a note of the date that he took such a copy or a note of the document he had taken. He had possibly taken a few originals, perhaps for the purpose of forensic examination.

4.83 He regarded Alf Allington as a trade source. By that description he meant someone who could supply him with information about the trade in which they work, information as to how his business runs or how the industry in which he works runs. The information given by a trade source is that which is easily obtainable in any public library. He did not accept that the label of trade source applied to Alf Allington had trespassed beyond that into the definition of informant. He would apply that label to all bonded warehousekeepers whatever information they provided.

- Q. I suggest that Mr Allington was indeed within the terms of Customs and Excise an informant and that you have simply driven a coach and horses through the regulations that require you to keep proper records of contact with him?
- A. That is not correct.

The evidence given by Bernie Small of Alf Allington's status and involvement with the NIS was the subject of censure by the CACD three years later. It certainly differs markedly from my conclusions about those issues and at the very least was misleading.

- 4.84 At the conclusion of the evidence in the *voir dire*, which had itself occupied about seven weeks of court time there followed eight full court days of submissions to HHJ Mota Singh QC. Those submissions have been transcribed into 700 pages of transcript. On 21st July 1999 the judge ruled on the submissions. After reviewing the relevant authorities the judge observed that the need to encourage the voluntary disclosure before trial of material and information in the hands of the prosecution relevant to the defence is a matter of public policy to which great weight is to be attached. The omission to make such disclosure is a matter the court should take into account in exercising its discretion. The judge commented on the length of the *voir dire*. He observed that every conceivable point had been taken and some inconceivable ones.
- 4.85 The judge commented on the inadequacy of disclosure. Rod Bowie, the officer in charge of the case had asked Bernie Small for all London City Bond documents but did not receive them. Bernie Small had himself taken documents from London City Bond but made no note of what documents he took, and gave no receipts. No one in London City Bond would know what documents he had taken, only that he had taken them and there was no way of telling what copies he had made. After reviewing all the evidence on the issue of disclosure the judge found that the prosecution had correctly identified their duty of disclosure and disclosed the material to which the defendants were properly entitled. Although the prosecution viewed as an entity had made errors they had now disclosed all the material to the defence. The complaints made about disclosure taken collectively would not have any significant impact on the ability of the defendants to challenge the prosecution case or the integrity of the prosecution witnesses.
- 4.86 As to entrapment the judge found that there was a massive fraud at London City Bond. Further, he concluded that both Alf Allington and Mr Pearson probably knew of the fraud but they did not participate in that fraud. The plea of entrapment was only available to a defendant who admits the offence but says he was incited to commit it. If he is wrong about that he found that there was no evidence the defendants were entrapped or that they were encouraged or incited or enticed by Mr Allington, Mr Pearson, London City Bond or HMCE to commit an offence which they would not otherwise have committed. They applied themselves voluntarily to the fraud.

- 4.87 The application to stay the prosecution failed. At that point Nilam Patel pleaded guilty. The trial of the remaining five defendants then continued before the jury. It began on 23rd July 1999.
- 4.88 Further documentation was disclosed during the trial after requests from the defence. The prosecution produced at a PII hearing the weekly notes of the investigation team for Operation Fusion. Counsel emphasised that they were the only weekly notes that were in existence; those that would have been prepared by Bernie Small's teams no longer existed. The judge enquired as to whether counsel for the prosecution was quite satisfied that all relevant documentation in this respect had been obtained. He was assured that enquiries had been made of every avenue that counsel could think of. Counsel emphasised that they had to rely on what they were told but they had pressed for searches to be made both physically of documents and of personal computers operated by the senior officer in charge of the two branches.
- 4.89 In the course of this PII counsel again referred to the "difficult and sensitive position of Alfred Allington." In the course of Operation Fusion Alf Allington was supplying intelligence above and beyond that which would ordinarily be supplied by a trade source. Much of the material of which the Crown sought redaction from the weekly notes was material which would have been obtained from Alf Allington in his "quasi-informant" status. The redactions were sought to protect the status of both Alf Allington and Ed Allington. The court agreed to the proposed redactions.
- 4.90 Following that PII and in the course of the prosecution case Alf Allington gave evidence. His evidence in chief occupies 12 pages of transcript. He was then cross-examined for four days. It is difficult to understand the relevance of many of the questions asked of him in the *voir dire* on the abuse of process application. It is frankly impossible to comprehend the relevance of many of the questions asked of him during the trial. There was not a word of challenge to the evidence he had been called to give: the defence in effect sought to re-litigate the possibility that there had been some form of entrapment or encouragement to the defendants to participate in the fraud. That was not the case being advanced by any of them. Even if it had been, entrapment is not a defence but a ground on which proceedings may be stayed as an abuse. The judge had already determined that issue.
- 4.91 It is regrettable that the defence chose to embark on this sustained line of attack and unfortunate that the prosecution did not seek to prevent the asking of irrelevant questions.
- 4.92 Alf Allington, despite the stance taken at the outset by the Crown that there was a "vital need that the true status of Alf Allington was not disclosed" and the "serious concerns for his safety" was left

isolated and unprotected. That situation is even more regrettable given the extensive irrelevance of the cross-examination in the *voir dire*.

4.93

Alf Allington was questioned in much the same way as before. He was repeatedly pressed about the extent of his knowledge of the fraud, and permitted to dissemble and mislead in order to protect his position. The transcript is littered with such exchanges. A small selection will suffice by way of illustration.

Q. You said until 30th September (1997) 'I was unaware that these frauds were taking place'?

A. That is correct.

Q. If you had been aware that these frauds were taking place, or any of them, would you have carried on doing business with these people?

A. No, we would not.

Q. What would it have taken for you to stop doing business with these people?

A. As I say, if we knew a fraud was taking place.

Q. Because on the face of it, you would be liable?

A. We could be, yes.

Q. Indeed, if you were supplying or moving quantities of alcohol to dishonest people you would be participating in the fraud, would you not?

A. That is correct, yes.

4.94

A day or so later, the following exchange took place.

Q. Mr Allington, your evidence to the jury comes to this, does it not: You only became aware of the fraud in this case after the arrests had been made?

A. That's correct.

Q. And so therefore the discovery of the fraud must have been a surprise to you?

A. Yes.

Q. And that was also true in each of the cases which preceded this one?

A. That's correct, yes.

Q. So in each of those operations where people were arrested, likewise it came as a surprise to discover that fraud was going on?

A. That's correct.

4.95

The impermissible question was asked yet again.

Q. How do you regard your relationship, please, with Customs?

A. Very good.

Q. Are you an informant for Customs and Excise?

A. No.

4.96

Prosecution Counsel objected, but by then the question had been asked and the answer given. The questioning continued.

- Q. If the truth of the matter, Mr Allington, is that you did in fact tell Customs that you knew or believed that fraud was going on, but they instructed you to carry on trading with these fraudulent companies, please tell us so.
- A. That has never happened.
- Q. So we can exclude that, can we, that you knew or believed that fraud was going on but you were acting under instructions from Customs? We ought to exclude that as a possible explanation for the events that we see in this case.
- A. That is correct.

4.97 In re-examination Alf Allington denied the suggestion that he had given lying and dishonest evidence. It was not true that he had turned a blind eye to what he knew was going on.

4.98 At the close of the prosecution case on 17th September 1999 the judge withdrew the case from the jury. He did so on the basis that the prosecution had failed to adduce evidence from which it would be safe to infer that the defendants knew that they were acting dishonestly when doing what had been established against them. Not Guilty verdicts were entered in respect of the five defendants still on trial.

4.99 Sentence on those who had pleaded guilty was postponed to December 1999. Shortly before the sentencing hearing the Crown sought another PII hearing to disclose to the judge information that had recently come to light to the effect that the bribe of £100,000 received by Alf Allington had been held by him for two years without handing it over to HMCE. The Judge was invited to revisit his decision on the *voir dire* in the light of this additional information. Counsel brought to the attention of the judge correspondence from Alf Allington disclosing receipt of the cash to HMCE. The money had nothing to do with Operation Fusion. Alf Allington was not in any way to blame for the delay in sorting the matter out. Having been fully apprised of the situation the Judge ruled that he would not have been affected by that material.

4.100 The conspiracy theorists might take this belated revelation as an indication of a deliberate attempt to conceal from the lawyers the fact that Alf Allington was still in possession of the money two years after receipt of the bribe. I reject that possibility out of hand. Mr Donald had already made reference to it in his memorandum of 12th January 1999 provided for Maureen Dunn. He wrote

There are also entries on the Edward Allington logs which relate to the passing of a large sum of money by suspect persons to Alf for his alleged assistance to them, this information was recorded on the informant log (probably contrary to procedural requirements) as it was thought so important it had to be maintained with all other sensitive London City Bond notes. The

money is now something of an embarrassment as clearly it cannot be returned nor can it be disposed of and it currently sits in a suspense account.

There were other internal documents making some reference to the bribe. It was in my view muddle and confusion that lead to Maureen Dunn thinking that the money was being held in a HMCE suspense account whereas in fact it was held in a London City Bond suspense account.

4.101 However, it remains of concern that the information was not communicated to counsel at the time of the PII hearings in Operation Fusion. The searchlight was shining directly on the question of the possible involvement of Alf Allington in frauds at London City Bond. Sihota expressly alleged that Alf Allington had co-operated in the frauds because he had been bribed. Bernie Small, who knew all about it, actually attended court to assist the judge during the PII hearing and was present when the status of Alf and Ed Allington was explained. He later gave evidence on the voir dire. Mr Donald had written the note set out above to the HMCE solicitor responsible for the prosecution. Yet despite all that, those responsible for disclosure in Operation Fusion – the Disclosure Officer Rod Bowie and the Solicitor Maureen Dunn - were apparently not aware that Alf Allington was still holding the massive bribe until months later. As an incident it illustrates graphically a failure in cross-investigation communication, a failure in disclosure and a failure to instruct counsel adequately on matters of relevance.

4.102 On 21st December 1999 Rahul Patel was sentenced to five years imprisonment, subsequently reduced by the Court of Appeal Criminal Division to four years. Nilam Patel was place on probation for 12 months and Percy was sentenced to two years imprisonment and confiscation orders made. Dhillon and Sihota were sentenced to three years imprisonment and a confiscation order was made. Other co-accused Basram, Montague, and Bothwell were each ordered to carry out community service.

E Operation Techo

- 4.103 Operation Techo was another massive diversion fraud with a loss of duty in excess of £40 million. It operated from 1995 until following extensive surveillance a number of arrests were made in November 1996. A lengthy investigation took place after the arrests and ultimately 13 defendants stood trial at the Kingston Crown Court before HHJ Macrae.
- 4.104 The allegations in this case concerned not only London City Bond but other bonded warehouses both in the United Kingdom and in France. The allegations also included inward diversion fraud, a fraud in which duty-suspended goods, accompanied by an AAD, arrive in the United Kingdom from an EC bonded warehouse ostensibly bound for a UK bonded warehouse, but are diverted onto the domestic market once they clear frontier controls.
- 4.105 Five of the defendants were connected with companies buying or selling bonded goods. They all pleaded not guilty. These men set up or ran companies or trading entities which either purchased the goods in bond immediately prior to their release and subsequent diversion, or, in relation to inward diversions, held themselves out as accepting the goods at the receiving Bond in France. A sixth defendant who also pleaded not guilty was said to be the organiser, facilitating the setting up of companies and dispersing and concealing the profits of the fraud.
- 4.106 The provisions of the Criminal Procedure and Investigations Act 1996 did not apply to this trial and accordingly there were no defence statements. In broad terms their defences were that they had not acted dishonestly and had not knowingly diverted duty-suspended goods. In some cases they asserted they or their companies had been set up and used by other fraudsters; in other cases they maintained that they were ignorant of things done through the companies they controlled.
- 4.107 A second group of defendants were mainly concerned with organising transport for and distribution of the duty-suspended diverted goods. They pleaded guilty before the trial began. A third group of defendants comprising those who acted as drivers of lorries concerned in the diversions initially pleaded not guilty: their trials were severed, to be heard after the trials of the principal defendants.
- 4.108 On 19th April 1999 the prosecution made a PII application seeking an order protecting sensitive material generated during the course of the investigation from disclosure, including that relating to Ed Allington and Alf Allington. The judge, sitting regularly at Kingston Crown Court and thus no doubt broadly familiar with the problems surrounding the trial of Operation Fallover two months earlier, expressed concern about the position of London City Bond.

Counsel identified the defence argument deployed in that case: if there had been co-operation between HMCE and London City Bond by HMCE turning a blind eye or actively encouraging the release of the goods knowing that they were never going to their destinations, that was arguably encouraging the commission of a crime. Thus there ought to be disclosure of that background material in order that there might be advanced an argument that it was an abuse of the process to try the defendant in the first place.

4.109 However in Operation Techo no defendant had intimated such an argument and accordingly the prosecution's position was that the material was not relevant. Counsel produced Mr Donald's précis "Alf Allington and the London City Bond"¹ and also produced the informant logs, explaining:

My understanding is that Edward Allington, the brother, was the one who was always treated as a registered informant and that because Alf Allington, from time to time, phoned up to say that there was a lorry leaving or whatever information it was he was giving, somewhat regrettably because he was not a registered informer and was never treated as such information that he was giving also went onto the informant logs. The other information that Alf Allington gave to the Techo investigators went into another book, as did some of the information given by Ed Allington.

4.110 It is understandable that counsel had the impression he explained to the court in the light of the misleading nature of Mr Donald's account. Counsel observed that there had always been a blurring of the lines between somebody who was a registered warehousekeeper and who was obliged as a matter of duty to provide information as to the happening at the Bond and something which went further than that, providing other assistance. The judge was understandably critical of the position as disclosed to him. He said:

If a person is a registered informant, he is a registered informant ... Information from him should always be properly dealt with. As a starting point, that registered informant's handler should be the person who, all other things being equal, gets the information and nobody else because of the need to protect sources of information and their identities. ... If there are not already clear instructions, I would have thought that there ought to be clear instructions distinguishing between what a trader is expected to do as a legal obligation and what might come from him above and beyond the call of duty. What may come from him above and beyond the call of duty is information in the clandestine sense.

4.111 I add by way of comment on the judge's observations that there were, of course, clear guidelines available to Customs officers handling informants. (See Chapter Three para 21) The problem in

¹ See para 4.18

the London City Bond cases was that the guidelines were largely ignored.

4.112 The judge ruled that on the basis of the defence position as it was then understood it was not necessary to disclose the documentation to the defence. Later the judge examined Bernie Small's day-book and the informant logs. There were a few entries touching on the investigation, the detail of which was considered by the judge. He did not order disclosure. The trial began.

4.113 By that time events at Southwark in Operation Fusion were unfolding. Prosecuting counsel in Operation Techo was understandably becoming increasingly concerned. In a Note dated 15th June 1999 he set out his understanding of the position, namely that Alf Allington was a trade source who supplied information as such. He was not to be protected, nor had he sought protection and if asked was to answer questions about the sort of information he gave to the NIS. The Note continued:

It is very important that all counsel have clear instructions in relation to Alf Allington: if he is simply a trade source, then surely no question of PII arises other than the documents where information was (inappropriately) recorded? Material cannot be withheld simply because - if it be the case - that it was recorded in the wrong place.

4.114 No written instructions were provided for counsel, but it is clear from events the following day that his understanding as set out in the Note - which was palpably incomplete and inaccurate - was not corrected.

4.115 On 16th June 1999 there was a further PII hearing. Counsel indicated that anything which had been disclosed in the Operation Fusion hearing would be made available to the defence. He produced a Note for the purpose of the application. The note included the following:

Allington is a trade source: this has been disclosed. The Court has already ruled that non-disclosure of three records is justified: these are the Red book, the Blue book [*Bernie Small's daybooks*] and the informant logs. The same ruling has been made at Southwark. The Crown has made or proposes to make disclosure of the same material (on the basis of it being in the public domain) as that disclosed at Southwark. If relevance (and thus admissibility) is justified, the Crown has no objection to Allington dealing in general terms with his status as a trade source and (again in general terms) with the type of information he would pass on, as a trade source.

4.116 However the Crown sought to resist any further disclosure. The contents of the defence statements and the conduct of the trial did not in any way suggest that any information contained in the additional documentation was relevant or possibly relevant to any

issue in the case. No argument similar to that advanced in Operation Fusion had been raised. The Crown submitted that the proper course was any cross-examination outside the ambit of Alf Allington's evidence as foreshadowed in his witness statements must be justified in argument in advance of it being conducted.

4.117 Alf Allington gave evidence on 21st and 22nd June 1999. He gave unchallenged evidence about the system in place at London City Bond, the procedures to be followed when transferring duty-suspended goods, and the documents relevant to such transfers. He also produced documentation relevant to the companies involved in Operation Techo and went through a schedule of telephone calls also relevant to that investigation.

4.118 However, when he was cross-examined the questions ranged more widely and touched on the areas about which he had been asked at Southwark Crown Court in Operation Fusion four days earlier.

Q. If you were asked to transport goods by a haulier that you knew was suspected as dishonest and had been guilty of diverting goods, what would you do?

A. Again, we wouldn't load the goods.

Q. Equally if you knew the purchaser of the goods was suspected of diverting them on to the open market, or you knew there was a possibility that that would happen, what would you do?

A. Again, we wouldn't load the goods.

.....

Q. When did you know that the Customs & Excise had an interest in IFA (*a company involved in diversion fraud*) in relation to these proceedings?

A. Probably on the day of the raid, I would think. ...

Q. Are you saying that you had no knowledge of Customs involvement in these enquiries until September 1997?

A. As far as I'm aware yes.

4.119 Alf Allington was asked about returned AADs. He said that they would simply be filed in London City Bond's records. They were not sent to the NIS and officers from HMCE did not come and collect them. He was also asked about his letter of 17th October 1996. The support his company had given in the "continued fight against fraud" was, he said, to give HMCE access to all London City Bond's records. He was asked to comment on despatches to a non-existent Bond in Spain. That activity produced a potential tax liability of £12.8 million in consequence of 201 separate movements of goods. London City Bond never had confirmation that the Spanish Bond was authorised. It was put to Alf Allington that movements to IFA were part of an evidence-gathering exercise rather than an ordinary commercial transaction. Alf Allington told the jury that was incorrect. He did, however, confirm that no part of his guarantee had been called in.

- Q. Were you ever informed by Customs & Excise during the period – we will say 1996 – that goods leaving your warehouse had been diverted to the open market?
- A. Only if there's a statement that I've given at a court case: that's the only time there has been a problem.

- 4.120 In the light of what is now known, Alf Allington's evidence in the trial of Operation Techo was misleading. It conveyed a picture of London City Bond as the innocent victim of fraud, far removed from reality. Of course, Alf Allington was placed in an impossible position. He should never have been exposed to a situation in which he was forced to lie to protect himself, but lie he did, and HMCE must have known that was what he was doing.
- 4.121 In the event no argument similar to that advanced in Operation Fusion was raised. On 11 January 2000, after an eight-month trial, all six defendants were convicted of conspiracy to cheat the Public Revenue. They were sentenced on 11 February 2000 to substantial periods of imprisonment of between nine years and five years.
- 4.122 After the conclusion of the main trial the three remaining defendants whose trials had been adjourned all pleaded guilty and in the Spring of 2000 were sentenced to terms of imprisonment ranging from 16 months to four and a half years.

F Operation Paleface

- 4.123 Operation Paleface was linked to another investigation, Operation Escapade. Both operations were concerned with the activities of defendants allegedly involved in outward diversion fraud centred on London City Bond but operated in the north west of England. Excise duty evaded was in excess of £45 million. The Prosecution alleged that there was a conspiracy to divert duty suspended spirits, which were apparently destined for export, onto the open market in the UK. The defendants agreed that there was a wholesale fraud going on and diversion of spirits on a massive scale. It was based almost exclusively at London City Bond. Each defendant denied that he or she was a party to the conspiracy.
- 4.124 There were in total 12 defendants charged with conspiracy to cheat the Public Revenue. There were however two indictments and two trials. The first group of defendants (Operation Paleface), Hutchinson, Ratcliffe, Marshall, Atul Kumar Patel, Huddart, and Brierly were tried at the Manchester Crown Court before HHJ Hammond between 27th September and 6th December 1999. The remaining defendants (Operation Escapade), Michael Villiers, his son Darren, Sewell, Ford and Jay were tried at the same court before the same judge between 20th February and 4th April 2000.
- 4.125 Carl Hutchinson was a haulier with premises at Trafford Park, Manchester. He owned several lorries, which he frequently sent to London City Bond. It was the prosecution case that duty was evaded on every load collected by his lorries. Instead of being taken to foreign Bonds the duty-suspended goods were diverted to premises in Southeast England and Birmingham. He was arrested and bailed on 28th February 1997. Thereafter on 1st July 1997 a van was detained outside his Trafford Park premises and officers went to Hutchinson's address. When he was stopped from running away he said his name was Robert Brown and cases of spirits on which duty had not been paid were found. It was also alleged that he was more than a mere haulier in the fraud, since documents found at his premises showed sales of spirits and transfer through an account operated by Hutchinson. An address-book, asserted to be his, contained entries for both Michael and Darren Villiers, Sewell and the defendant Atul Patel.
- 4.126 Atul Patel was also allegedly concerned in the diversion of spirits from London City Bond and their distribution once the goods had been successfully diverted on to the home market. At his premises were found stock lists from and other documents referring to bonded warehouses and invoices for non-existent companies with forged or fraudulent stamps purporting to show export of goods. He tried to distance himself from any conspiracy and put the blame on his cousin Sanjay Patel. He made what the prosecution contended was a lying written statement, refused to sign a handwriting sample and declined to account for the apparently incriminating documents

found at his home.

- 4.127 In broad terms, the defence of Hutchinson, Patel and indeed all the defendants in the trial of Operation Paleface was that, while fraud and diversion of duty occurred at London City Bond at the relevant time, it was nothing to do with them and they knew nothing of it.
- 4.128 In advance of the trial of Hutchinson and others in Operation Paleface Mr Birkett QC on behalf of the Prosecution made a PII application extending over two days, 10th and 13th September 1999. He explained the position relating to London City Bond. He told the judge that Ed Allington was a confidential informant who had been recruited by Bernie Small and who had supplied information to HMCE since the summer of 1995. As to Alf Allington, Mr Birkett told the judge he was the authorised warehousekeeper who was legally responsible under warehousing regulations for supplying the department with information about the company's business. Alf Allington was a trade source under "something of a public obligation to notify Customs of events as he saw them".
- 4.129 In making the application counsel disclosed the existence of the informant logs in relation to Ed Allington and told the judge that there were entries in that log showing information coming from Alf Allington even though he was never a formal confidential informant. The judge considered the log and discovered within it information that Alf Allington had been bribed and had paid the money into a suspense account. Counsel reassured the judge that the bribe had not been made by any of the defendants in the current trial and the Judge was prepared to sanction non-disclosure of the information. He indicated that the matter would be reviewed if it were suggested to Alf Allington that he had been offered a bribe at some point. The judge concluded that the public interest lay in not disclosing any part of the London City Bond file and none was made. The trial proceeded. No further disclosure was made to the defence in the course of the trial nor was any further PII application held.
- 4.130 In opening the case for the prosecution Mr Birkett QC told the jury that the fraud in the case was that those controlling the bonded warehouse were deceived into releasing spirits on the understanding that they were being sent overseas or transferred to another bonded warehouse. He also said that supervision at London City Bond failed to discover the systematic fraud taking place. He could not have opened the case in that way had he known the true position.
- 4.131 Alf Allington gave evidence in the course of the trial and said that he had not been encouraged by HMCE to have dealings with suspicious companies and that he thought the goods leaving London City Bond were going to foreign warehouses.
- 4.132 Hutchinson and Patel were convicted. The remaining defendants

were acquitted. On 21 February 2000 Patel was sentenced to three years imprisonment and Hutchinson to seven years imprisonment.

G Fajita Part II

- 4.133 The trial of Operation Fajita, which had ended with the discharge of the jury in May 1999, recommenced in January 2000, again at Wood Green Crown Court before HHJ Maher. At the outset counsel for the prosecution informed the judge of events at Southwark Crown Court during the trial of Operation Fusion. In consequence the prosecution had made available to the defence everything that had been disclosed in the course of the hearings. After the defence had examined the additional material further submissions were made by them about the honesty, probity and general reliability of Alf Allington. They sought further disclosure. That in turn led to the need for repeated and prolonged PII applications on 10 separate days in January and February 2000.
- 4.134 At the outset of the PII hearings no transcripts of the Southwark proceedings were available. On 24th January 2000 the judge was accurately informed in general terms of what had taken place and ruled that no disclosure beyond that already given need be made to the defence. He took the view on what he was then told that Alf Allington, however informally, was in effect an informant but thought that there was no need to reveal that fact to the defence because it did not undermine the case for the prosecution or assist the defence case. Submissions in open court continued.
- 4.135 The judge became increasingly concerned about the position of Alf Allington as the days passed and the material already disclosed was analysed by defending counsel. In a further PII hearing on 31st January the judge expressed the view that it was an irresistible conclusion that the HMCE were aware, in some detail, of the initiation and development of frauds. He considered the possibility that the defendants could successfully argue entrapment or perhaps a stay on some broader basis. In the course of the hearing the judge further identified the argument that Alf Allington was participating in the fraud by supplying AADs knowing perfectly well that they were required in order to effect a diversion fraud.
- 4.136 On 1st February 2000 a conference about the London City Bond issues was held at Custom House in London. It was attended by Bernie Small, a number of the Case Officers and SIOs involved in the prosecutions and by Maureen Dunn. The purpose of the meeting was to consider the role of Alf Allington at London City Bond. The note of the conference made by Maureen Dunn was not disclosed until 9th September 2002, after the Liverpool abuse hearing had begun and was not examined critically in the course of the Liverpool evidence. Maureen Dunn was not well enough to attend and thus the interpretation of her Note must to some extent be speculation.
- 4.137 The Note records that Bernie Small told those present that Alf Allington had always been helpful and happy to help HMCE. Then

he became proactive and would ring Bernie Small to say what was happening and what seemed wrong. In 1996 the arrangement was formalised: Alf Allington wanted a record of what information he had passed to HMCE in case they came back to him later. He thus wrote to Bernie Small about new customers and his information formed the basis for intelligence checks. People then started to offer Alf Allington inducements for his help and drivers would pay staff to work faster when loading goods. The height of it was a six figure cash payment to Alf Allington, which he recognised as a bribe and told HMCE.

4.138 The Note suggests that Bernie Small was asked whether EXIRT had ever given consideration to registering Alf Allington as an informant. The Note continues:

B said no because of concern he might be seen as Agent Prov. Never put to Alf Allington that he be anything more than Trade source.

4.139 On one view that Note might suggest that EXIRT decided to conceal Alf Allington's status because if he was registered as an informant his true role would be revealed. But that is by no means the only interpretation and I have no evidence from the author of the Note about what she intended to convey. As far as I can ascertain, counsel in Fajita (or indeed counsel in other London City Bond prosecutions) was not informed of the detail of the meeting and in particular Bernie Small's apparent explanation for the failure to register Alf Allington as an informant. That may be because what was said at the meeting is not accurately recorded in the Note or because, put in context, the Note does not carry any sinister interpretation, or in order to conceal the truth from counsel. If the last possibility is the truth it is curious that Bernie Small chose to make his public confession in front of 16 people, including the prosecuting solicitor, and even more curious that she should note it and then keep it to herself. It may well be that the improbability of that possibility provides the explanation of why no significant use was made of the document at Liverpool.

4.140 By 17th February 2000 a transcript of the Fusion hearing was available for the judge hearing the Fajita PII application. The prosecution drew the judge's attention to Alf Allington's evidence in the course of that hearing, identifying all occasions when it might be said that he had given inaccurate, misleading or untruthful answers. The judge articulated the problem. The essence of Alf Allington's evidence about goods leaving London City Bond in a duty-suspended state was not in dispute. However there were a number of peripheral matters on which Alf Allington had given inaccurate and misleading answers. He was concerned that there came a time when the prosecution and the court were being drawn into an "unhappy collusion" in protecting a witness in areas where his real nature

ought to be revealed even if at the end of the day no effective use could be made of it. At the request of counsel Alf Allington was visited on 29th February 2000 and again asked to consider allowing his role to be revealed. He remained adamant that he did not wish to be revealed as an informant or to have the nature of the information he was giving revealed. He had complained to senior Customs officers about the treatment of himself and Mr Pearson and their failure to protect him after all the hard work and assistance he had given.

4.141 Throughout the PII hearings further documents had been brought to the attention of the prosecution by Customs officers. An issue arose which required the attendance at court of Tim Connolly, Bernie Small's former SIO and now retired. He brought with him yet further documents some of which were letters from London City Bond to Bernie Small which confirmed that information, advice and help was given by the Bond which went over above and beyond what would ordinarily be expected of a trade source.

4.142 There was also a file the contents of which had never been seen by the officer in Operation Fajita, Mr Bond, nor by Maureen Dunn the solicitor conducting the prosecution. In the file was a copy of the e-mail dated 24th June 1997 from John Hoblely to Andrew Scott, Mr Scott's e-mail to Mr Marsden and the round-robin sent by Cedric Andrew to all ACIOs on 3rd April 1998. (Chapter 3 Paras 41, 42 and 58). The documents were immediately disclosed to the judge. They made anxious reading. Up to that point the prosecution had presented Alf Allington to the courts as a willing supplier of information but nothing was done by HMCE either to encourage or discourage the activities of criminals operating out of London City Bond. Counsel frankly observed that the content of the e-mails seemed to show Alf Allington to be an unofficial participating informant: he was being asked to continue trading with people who had been identified as fraudsters. The judge agreed that the contrary was not arguable.

4.143 Counsel sought nonetheless to resist disclosure of the recent documents on the ground that they would not assist the defence in advancing an abuse of process argument of entrapment. In the course of the argument the judge made some observations of general relevance. He said :

There are many lessons here to be learned generally for Customs and Excise in the conduct of these operations in future. The fragmentation of paperwork has caused considerable delays here and putting the most innocent of interpretations on it has caused delay, inconvenience and, no doubt, anxiety. This is the classic example of paperwork being scattered and then by the most accidental of side winds being blown into Court for the Court to examine. It is a good indication as to the bureaucratic mess that all large organisations fall into.

- 4.144 The judge was clearly of the view that not only was Alf Allington an informant but he was participating in the fraud. He knew that goods leaving his warehouse were going to be diverted. He could stop the fraud by refusing to issue AADs, but instead he actually facilitated it by permitting the AADs to issue. Counsel accepted that he was in effect a participating informant in respect of whom none of the formalities had been put in place. The emails demonstrated that the extent of his involvement and assistance was known to the higher management of the NIS but it appeared that no one had ever analysed his role and taken advice as to how objectively speaking he was to be regarded. What started off as a helpful source of information simply developed without any proper overview being given to it.
- 4.145 The conclusions of both judge and prosecuting counsel on the role and involvement of Alf Allington, reached even then on only part of the full picture, were in my view undoubtedly right, and for the reasons given by the judge in ordering disclosure.
- 4.146 In so ordering the judge concluded that whilst an argument based on abuse of process would probably fail he did not feel he could say that it was doomed to failure. If the matters in respect of which PII was sought were put into the public domain it may well be that an argument could be advanced more attractively than otherwise would be the position. He ruled that disclosure to the defence of Alf Allington's full role should be made, including the payment of £100,000 to him. The irresistible inference from all the material was that Alf Allington must have been given encouragement by HMCE to do that which he did. He sought comfort as to his own financial exposure. An internal policy decision was taken that the bond would not be regarded as being at risk. The judge strongly suspected that the policy decision was conveyed to Alf Allington, if not expressly, then on a nod and a wink basis. He would hardly have carried on trading, exposing himself and his business to the risk of disaster.
- 4.147 None of the participating informant safeguards were in position. By drift no one sufficiently senior had a proper appreciation of the role of Alf Allington and where he might be led and where he might be leading himself. It tipped the balance in favour of the interests of justice requiring disclosure whatever the consequences. "Let justice be done though the heavens fall"² said the judge.
- 4.148 They did. Alf Allington declined to allow his full involvement to be disclosed. HMCE rightly considered that they owed a duty of care to him and were not prepared to disclose without his consent. The prosecution accordingly had no alternative but to withdraw and on 1st March 2000 offered no evidence against the remaining

² *Fiat justitia, ruat coelum* Lord Mansfield in *Rex v John Wilkes Esq* (1770) 4 Burr 2527.

defendants. Verdicts of Not Guilty were entered. The unsentenced defendants applied to withdraw their pleas of guilty. Their applications were refused. On 22nd September 2000, Early was sentenced to three years imprisonment, consecutively to other unrelated terms of imprisonment, Thomas to two years imprisonment and Dowell was ordered to undertake 100 hours of community service.

H Operation Escapade

- 4.149 The hearing of the second part of the Manchester trials began in February 2000, just as the trial of Operation Fajita was coming to an end at Wood Green. Again, the trial was heard at the Manchester Crown Court before HHJ Hammond.
- 4.150 In Operation Escapade the prosecution alleged that between 1st January 1995 and 16th July 1998 the defendants conspired with others, including Carl Hutchinson and Atul Patel, (the convicted defendants in Operation Paleface) to cheat the public revenue of duty chargeable on spirits. As in the trial of Operation Paleface the defendants agreed that there was a wholesale fraud, a diversion of spirits on a massive scale from the warehouse of London City Bond but each defendant denied his own involvement.
- 4.151 It was the prosecution case that Michael Villiers was the principal orchestrator and financier of the fraud and the chief beneficiary. He had opened accounts with London City Bond and, through his company World Wide Trade, sold goods, on which duty was payable, to fictitious companies. Further, alleged the prosecution, Michael Villiers had arranged for hauliers to collect such goods, pursuant to fax instructions from the fictitious companies to London City Bond, and caused the goods to be diverted to Villiers' own premises in Barking or elsewhere within the United Kingdom market without duty being paid. The goods were usually paid for from the bank account of JWS Holdings, a name used by John Sewell, said to be Villiers' right hand man. Money from sales was paid into the JWS Holdings account and thereafter into the account of World Wide Trade; it was then drawn out by either Michael Villiers, or his son, Darren Villiers, the only two signatories on the account. Michael Villiers, in particular, had an expensive lifestyle which, said the prosecution, could only have been funded by evasion of excise duty.
- 4.152 John Sewell was alleged to be a henchman of Villiers, responsible for the day-to-day arrangements for purchase, sale and transport of duty suspended goods. He, it was said, set up bogus companies and operated the bank accounts of World Wide Trade and of JWS Holdings.
- 4.153 Terry Ford was a haulier who took loads from London City Bond over a period of months to premises controlled by Villiers in Barking. He used unregistered trade names. He must have known, said the prosecution, that the goods he was carrying were released from a bonded store, were ostensibly destined to go abroad, but were in fact delivered to domestic destinations. He received documentation, including AADs, which he must have known were false.

- 4.154 Darren Villiers was said to be the knowing assistant to his father in carrying out the fraudulent activities. Of the two remaining defendants, Shadbolt was allegedly concerned in sending faxes to London City Bond to secure release of stock from bond and Jay was a driver who picked up stock from London City Bond and took it to domestic outlets.
- 4.155 At the beginning of the trial Sewell pleaded guilty to the conspiracy. Villiers in due course gave evidence and asserted that he had not been in any way concerned in the fraud, instead blaming Sewell. He accepted that money had been used emanating from his businesses to purchase alcoholic drinks and that diversion had taken place. But the person responsible was Sewell. Villiers' money had been used by Sewell to perpetrate the fraud completely unknown to him. Ford did not give evidence.
- 4.156 There were, it appears, no PII applications to the judge before the trial of Operation Escapade started. Mr Birkett QC opened the case to the jury on the basis that London City Bond were prevailed upon to release stock on the pretext that it would be exported whereas the truth was that it never went overseas at all, thus effectively repeating his earlier approach that London City Bond had themselves been deceived.
- 4.157 The trial had been running for some days when news of events at Wood Green Crown Court in respect of the trial of Operation Fajita reached Manchester. It appears that there was little if any effective communication between the London Solicitor's office and the Manchester Solicitor's office. On 2nd March 2000 counsel for Michael Villiers informed the judge that in Operation Fajita following an order for disclosure of material that went to the credibility of Alf Allington the prosecution had offered no evidence. Counsel submitted that the defence in the current trial were entitled to disclosure of any material that went to the credibility of Alf Allington, pointing out that the defence did not admit the truth of the schedules setting out the documents relied on by the prosecution to establish the fraud.
- 4.158 Counsel for the Crown accepted that he must examine the material, both that disclosed and that withheld at Wood Green, to see whether it had any direct relevance to the current trial. He pointed out, however, that there had been no abuse of process application, Alf Allington gave purely formal evidence in the current trial and in any event if it was thought not appropriate to call Alf Allington there were other witnesses from London City Bond who would be in a position to produce the business documents. Mr Birkett contemplated seeking to introduce all the documents uplifted by HMCE as business records pursuant to Section 25 of the Criminal Justice Act 1988.

- 4.159 Having examined the documents then available the prosecution decided not to disclose the material in respect of which disclosure had been ordered by HHJ Maher at Wood Green in Operation Fajita. Counsel accordingly made a PII application on Friday 3rd March 2000. The Judge was provided with notes from prosecuting counsel in both Operation Fusion and Operation Fajita setting out the difficulties in each case and counsel's note of the judgment given by HHJ Maher ordering disclosure in Operation Fajita.
- 4.160 Counsel repeated to Judge Hammond the substance of his understanding of the situation which had already been disclosed to the judge before the trial of Operation Paleface. He explained that in the summer of 1995 Bernie Small recruited Ed Allington as a confidential intelligence source. Through Bernie Small's relationship with Ed Allington he was introduced to Alf Allington. At no stage was Alf Allington formally an informant; he was a trade source but, said counsel, "rather more than a trade source in reality." That was a considerable understatement.
- 4.161 Counsel emphasised that Operation Escapade was an investigation that went backwards in time from discovery of diverted goods emanating from London City Bond rather than an ongoing investigation. An examination of the informant's log revealed only two entries relevant to Operation Escapade where information was given to Bernie Small: however, that information came not from Alf Allington but from Ed Allington. On the face of it there was no occasion when Alf Allington gave any information about the case.
- 4.162 The judge was provided with the transcripts of the evidence and ruling in Operation Fusion, the trial at Southwark in the summer of 1999. Counsel brought to the judge's attention the untruths or at least lack of frankness showed by Alf Allington in his evidence in the course of that hearing. Counsel was concerned that if credibility became an issue in the trial of Operation Escapade there might be difficulties. However, he submitted, there was a distinction between the need to disclose material for an abuse of process argument and material to be disclosed when running a trial on its merits.
- 4.163 It is quite clear that counsel for the prosecution considered that whatever might be the position of Alf Allington in connection with other trials and investigations he was not a participating informant in respect of Operation Escapade: indeed, in those proceedings he was barely even an informant.
- 4.164 The judge ruled that in respect of the informant log Alf Allington had a duty to provide information which he had done regularly. However he had gone over and above what he was obliged to do and become an informer, as opposed to an informant on about 3 or 4 occasions. None of those occasions concerned any of the defendants in Operation Escapade. PII should attach to that material unless and

until the time came when something emerged in the course of the trial requiring the judge to reconsider his conclusions. Counsel also provided the judge with the daybook of Bernie Small and cross-referenced the entries in the informant logs with the daybook to highlight further examples of Alf Allington passing on information which went beyond that which he was strictly bound to give. However none of the information concerned any of the defendants.

4.165 The attention of the judge was drawn to a series of questions submitted to the prosecution by counsel for Michael Villiers which they wished the Crown to consider when dealing with the issue of disclosure. The first question was whether the Crown were aware of anything that reflected adversely on the honesty or integrity of Alf Allington or any other director of London City Bond. The judge did not consider that the answers Alf Allington had given in Southwark were such as to reflect on his credibility. The judge was shown and reviewed all the material that was before HHJ Maher at the Wood Green trial and ordered that there be no further disclosure beyond that which had been given in those proceedings.

4.166 The trial then continued and Alf Allington gave evidence. He was asked about the documentation relied on by the prosecution and produced as part of the business records of London City Bond.

Q. Can I ask you this: have Customs and Excise asked to take away from your premises a large quantity of documentation dealing with transactions which took place in 1995, 1996 and 1997?

A. Yes they have.

Q. Have the documents that they have taken away included amongst other documents, consignment notes?

A. Yes.

Q. Documents that we have referred to as AADs?

A. That's correct ...

Q. Those things that were taken away, were they part of the business records of the London City Bond?

A. Yes, they were.

4.167 Alf Allington was taken through a number of documents which related to specific transactions concerning the companies operated by or on behalf of the defendants in Operation Escapade. He described the general procedures for consigning duty-suspended goods and the documentation necessary so to do. When Alf Allington was cross-examined by counsel for Michael Villiers, there was no attack upon his credibility or accuracy. Counsel's questions were directed to showing how successful Mr Villiers had been in his business as a haulier.

4.168 Indeed, far from attacking the veracity of Alf Allington counsel used him to emphasise the efficient record keeping by Mr Villiers, and his knowledge that there was a frequent presence of Customs officers at

London City Bond and that details of account holders were sent to HMCE to make whatever checks they wished. Alf Allington agreed that the fact that he was co-operating with HMCE was something that he may have discussed with Mr Villiers. It enabled counsel to make a comment by way of question:

Q. He (Michael Villiers) knew that of all the bonded warehouses in England yours was the one being operated in close cooperation with the Customs and Excise as regards the provision of information?

A. Yes, I would think he would know that.

Other cross-examination was equally non-controversial.

4.169 Ed Allington was also called. He simply gave evidence about the system of dealing with returned AADs. He explained that they should come back by post but he would not know necessarily how they had come back. They were then filed in the office and he made a computer entry to show that the AAD had been returned. It is thus apparent that the evidence of Alf Allington and Ed Allington in the trial of Operation Paleface was of positive assistance to the defendants.

4.170 On 31st March 2000 Michael Villiers, Ford and Jay were convicted. Shadbolt was acquitted and the jury were unable to agree in respect of Darren Villiers. Villiers, Sewell and Ford were sentenced on 4th April 2000 to 12, seven and three years imprisonment respectively.

I Operation Manpower/Chamfer

- 4.171 Operation Manpower was an HMCE investigation centred on criminal activity involving diversion fraud in the North West of England. Shakeel Awan, Imran Awan, Shahid Baig, John Hogger, Colin Gray, and Peter Best were charged with conspiracy to cheat the Public Revenue between 1st January 1997 and 11th February 1998 with each other and with Nisar Afzal, Ibrar Afzal, Imran Afzal and Saghir Ahmed. The essence of the prosecution case was that the defendants had been engaged in large scale fraudulent diversion from London City Bond of beers and spirits onto the English domestic market without payment of the excise duty due. This was done under cover of the pretence, supported by false documentation, that the goods were being exported, still duty-suspended, to a bonded warehouse in another member state of the EC. Devices to conceal the fraud were employed, including the use of nominal or fictitious companies, to which ownership of the goods was actually or purportedly passed.
- 4.172 The first three named defendants were said to have controlled the diversions together with co-conspirators all of whom lived in the Birmingham area. The stock was largely dispersed in the Manchester area through a Cash-and-Carry outlet and a wholesale supplier operated by those defendants. The vehicles used to transport the diverted stock came from a haulage company in Nottingham under the control of John Hogger. The principal drivers of the vehicles used to transport the diverted stock were Colin Gray and Peter Best.
- 4.173 A second conspiracy to cheat the Public Revenue between 1st January 1997 and 1st October 1997 was charged against Shakeel Awan, Imran Awan, Shahid Baig and Asheem Sobti. That was an allegation of diversion fraud from two other bonded warehouses, Fort Patrick in Ipswich and Entire in London. The prosecution could not identify the persons responsible for the diversions but diverted goods went to Sobti's storage facilities to accounts of companies set up by Sobti in false names. He, it was said, knowingly acquired diverted stocks which he then supplied onwards to the Manchester outlets operated by the first three defendants.
- 4.174 Operation Chamfer was a related investigation concerned with diversion fraud activity in the Midlands involving, it was alleged, Nisar Afzal, Ibrar Afzal, Saghir Ahmed and Imran Afzal. The prosecution applied to join those men to the Operation Manpower indictment, it being their case that they were associates of the Manpower defendants and involved in managing companies in the Birmingham area used to acquire and distribute diverted stock. The application for joinder failed. In consequence it was intended that Nisar Afzal, Ibrar Afzal, and Saghir Ahmed would be tried separately after the conclusion of the trial of Operation Manpower.

Imran Afzal, the fourth alleged conspirator, had left the jurisdiction and had not been charged.

- 4.175 In their original defence statements the defendants made no admissions that there was any diversion fraud. If there was, it was asserted that the defendants had no connection with such frauds and if a defendant was shown to be involved in any such fraud then he had done so unwittingly.
- 4.176 Following the collapse of the trial of Operation Fajita at the Wood Green Crown Court a number of defendants in the trial of Operation Manpower served amended defence statements. By his amended defence statement Shakeel Awan questioned the integrity of the operations at London City Bond and asserted that Alf Allington was not a witness of truth and had a financial interest in giving false evidence. He further asserted that HMCE must have known of large-scale diversions through London City Bond and accordingly must have encouraged it so that persons sourcing goods from these bonds were unfairly entrapped. A number of the other defendants made similar allegations.
- 4.177 The amended defence statements clearly heralded a sustained challenge to the honesty and reliability of Alf Allington, the nature of his relationship with the NIS and in particular whether he was a participating informant. Further, questions were raised about the role he played in relation to allegedly fraudulent transactions and in particular whether his conduct was such as to create an unfair entrapment. The defence statements further called into question the reliability of the London City Bond records, the honesty and fairness of the actions of the NIS in investigating liquor diversion at London City Bond and to comparable matters in relation to Fort Patrick Bond and its directors.
- 4.178 All defendants proposed to make application that the proceedings should be stayed as an abuse of process.
- 4.179 It was originally intended that the trial of Operation Manpower should begin in June 2000 at the Manchester Crown Court before HHJ Hammond following the conclusion of the trial of Operation Escapade. In anticipation of the trial a PII application was made by the prosecution on Friday 16th June 2000 to HHJ Hammond in which Mr. Birkett QC revisited some of the material withheld in the trials of Operation Paleface with particular reference to material which might assist the defence on the issue of entrapment. Counsel again put before the judge Bernie Small's daybook and the Ed Allington informant log, now highlighted to identify any reference to matters relevant to Operation Manpower. Counsel again told the judge that Alf Allington was a trade source who had on occasion gone beyond that. Ed Allington was an informant.

- 4.180 The judge drew attention to the question of bribes. In the trial of Operation Escapade he had ruled that disclosure of the receipt by Mr. Allington of a substantial bribe did not assist the defendants but he was concerned that in Operation Manpower the payment of the bribe was allegedly made by one of those actually involved. The prosecution submitted that the information about the bribe did not undermine in any way the prosecution case against the defendants and provided no support for any defence. Because of the events of earlier trials, urged counsel, every defendant was saying that Mr. Allington was a witness whose integrity was an issue and was doing so because that had been the line which had led to cases being stayed elsewhere. Indeed that was what had been asserted in the trial of Operation Escapade but in that case no one could have thought that Mr. Villiers was really disagreeing with anything Mr. Allington had said. The Crown's position on the £100,000 bribe was that it should not be disclosed but the position should be monitored. The judge eventually agreed.
- 4.181 With the benefit of hindsight the approach taken by the prosecution on this application is susceptible to criticism. If the defence case was that Alf Allington's integrity was in issue, the fact that he had accepted a bribe was relevant. It may be that the defence were seeking a purely tactical advantage: but that could not be a reason for withholding the information if it assisted the defence case. The genesis of the problem lay in the prosecution seeking to rely on the evidence of an informant (and held to be a participating informant by a judge in other proceedings) who had accepted bribes, both of which facts they wished to conceal from the defence. The solution lay either in full disclosure or in no longer relying on the evidence of Alf Allington. The solution urged by the prosecution and accepted by the judge was not appropriate in the circumstances.
- 4.182 However the judge's decision was overtaken by events. Alf Allington had become increasingly concerned about his position. His friend Michael Villiers had been convicted and sentenced to a long term of imprisonment. Alf Allington himself had been exposed to sustained and hostile cross-examination on a number of occasions; he had not been protected, as he had been assured he would be, and was now expected to endure more of the same. He had been forced into situations where he either had to lie to protect himself or reveal that he was an informant. He indicated that he was not prepared to give evidence in any further trial.
- 4.183 On 18 October 2000, Alf Allington and Ed Allington made lengthy statements to the solicitors acting for Michael Villiers. The statements were to the effect that HMCE were aware of the fraud and encouraged London City Bond to let it happen. Further, they said that many of the documents which had been produced in earlier trials had in fact never been part of London City Bond's business records but had been taken from London City Bond by a Customs

officer before ever reaching their document files. On 29th November 2000 two other employees at London City Bond, Brian Davies and Ray Buckledee, made statements which in part confirmed the assertions of the Allington brothers. The statements were adduced on behalf of Michael Villiers in support of an application for leave to appeal against conviction and leave was granted on that basis.

- 4.184 The hearing of the abuse application in the trial of Operation Manpower was adjourned for all parties to reflect on the new developments. There was additional delay after the judge identified an area in which it might be perceived that he would be biased in hearing the abuse application. Alf Allington had said that Customs officers, seeking to persuade him to give evidence, had told him that HHJ Hammond would “protect him”. The judge decided that in the light of that assertion it was not appropriate for him to continue: he recused himself. The hearing was adjourned for the appointment of another judge. HHJ Harris QC was nominated.
- 4.185 The trial finally began at the Manchester Crown Court on 4th April 2001 with the defence application that the proceedings be stayed as an abuse of process. That application lasted for 13 weeks. The whole of the hearing was concerned with submissions. No oral evidence was called on either side but extensive disclosure had taken place and in reaching his conclusions the judge considered the witness statements of Alf Allington, Bernie Small and Bob Snuggs. The hearing concluded on 19th July 2001 when the judge rejected the applications and ordered that the trial should proceed.

The Abuse Application Ruling

- 4.186 In his reserved ruling HHJ Harris QC reviewed both the law and the facts in detail. He identified the law which he had to apply as being whether there had been abuse by HMCE so that the defendants could no longer have a fair trial. He considered whether there had been abuse of executive power making it unfair to try the defendants, asking himself whether the executive abuse which had been established fatally undermined the morally acceptable foundation of the proceedings. He pointed out that events may supervene which reduce the unacceptable consequences of executive abuse so that, whilst the abuse remains deplorable, it would no longer be offensive to the conscience of the court to try the defendants. As to entrapment he concluded that the essential issue was whether the undercover officer or informant did no more than provide an opportunity to offend.
- 4.187 Before HHJ Harris QC the prosecution accepted that Ed Allington had been a registered informant from about 18th April 1995. His handler was Bernie Small. The prosecution further accepted that whilst Alf Allington had originally been a trade source he became an informant and was never registered as such. No handler was assigned to him and no full record kept of his contacts with HMCE or the information he supplied to them.
- 4.188 However, the prosecution did not accept that Alf Allington was a participating informant. The judge ruled to the contrary. He found that Alf Allington relaxed the controls required by law and good practice at London City Bond with the object and effect of facilitating fraud through the Bond. He considered that the day book record showed that Alf Allington passed much information to NIS in relation to fraudsters and impending fraudulent diversions, and was permitted by NIS to take on the fraudulent accounts and allow transactions to take place. He continued:
- I conclude that Alf Allington knowingly participated in the frauds. On very many occasions when he participated in fraudulent diversions his role was known in advance to officers of the NIS, including Small. There is no doubt that he should have been managed by NIS as a participating informant.
- 4.189 As to any question of indemnity, HHJ Harris QC referred to the exchange of correspondence between Alf Allington (17.10.96) and Bob Snugg's "obscure reply" of 30.10.96. [Chapter Three Para 37 - 19] He concluded that at some relatively early stage it was accepted by NIS that London City Bond would be indemnified against any liability to the revenue for unrecovered duty. He reached that conclusion on the basis of the documentation showing that it was the policy at the time to allow operations to run in order to try to find the criminals at the head of each operation, an understanding that there would be no co-operation from the warehousekeeper without an

assurance that no liability would be imposed on him and further the fact that there was no attempt ever to bring any claim against Alf Allington. Such an indemnity was given to the knowledge of both Bernie Small and Bob Snuggs. Bob Snuggs, the judge concluded was aware of the extent of the revenue loss, concerned about the propriety and legality of indemnities but not wishing to reject the request expressly.

- 4.190 London City Bond relaxed the controls and safeguards needed to prevent diversion fraud. Containers were not sealed, little or no effort was made to verify the legitimacy of customers and hauliers, and no attempt was made to confirm that the goods were exported and had been received by the consignee warehouse. All those practices were known to and sanctioned by the NIS.
- 4.191 The question of removal of documentation from London City Bond was an evidential issue between Alf Allington and Bernie Small which was unresolved in the hearing before HHJ Harris QC.
- 4.192 The judge then turned to consider the question of the management of informants. He concluded that Bernie Small and Bob Snuggs, his line manager and responsible for his supervision, must have been aware of the existence and provisions of the HMCE Guidelines on the management of informants. Alf Allington, he held, should have been categorised as a participating informant and managed in rigorous compliance with the Guidelines.
- 4.193 London City Bond denied any major financial benefit from the actions of Alf Allington but the reality was that a minimum of £340 million of revenue was lost through London City Bond. Every transaction involved a financial benefit to the bond. In one year Alf Allington withdrew £800,000 from the company, a financial benefit to him in consequence of his encouraging fraudulent business and potentially crossing the line into unfair entrapment. Control and recording of the activities of Alf Allington was therefore vital.
- 4.194 On this issue the judge concluded that there was an unacceptable and widespread breach by the NIS of important procedures required by their own Guidelines. However HHJ Harris QC concluded that the failures did not demonstrate any bad faith on the part of NIS officers. The failures were due, he held, to maladministration, but in consequence the court was deprived of an important resource in assessing whether the evidence of Alf Allington and the officers of the NIS was honest and reliable.
- 4.195 The judge considered the statements made by Bernie Small, Bob Snuggs and Ian Donald in January 1999 explaining the involvement of Alf Allington with the NIS for Maureen Dunn to which reference is made elsewhere in this section. He considered that the statement by Bernie Small was “a gross misrepresentation of the true position

that had evolved prior to and was continuing during Operation Fallover” (i.e. from December 1996 onwards). The statements from Ian Donald and Bob Snuggs were, in his view, likewise less than frank.

- 4.196 The judge concluded that at the very, very least the Fajita ruling required reappraisal of the categorisation of Alf Allington and the need for full disclosure if he was to be called as a witness. However, notwithstanding his findings he concluded that the failure to make disclosure did not amount to abuse of executive power. He said:

The relevant officers of Her Majesty's Customs & Excise, its Legal Department and team of counsel sought to do their best to present the Crown's case fairly and in accordance with their legal and ethical responsibilities.

- 4.197 Up to the autumn of 2000 the received wisdom was that Alf Allington was a reliable and credible witness who had given HMCE invaluable and unqualified assistance; the allegations made against him were malicious and without substance; he was a non-participating informant whose status could and should be protected. It was the statements made on 18th October 2000 by Alf Allington to the solicitors of Michael Villiers about the NIS which resulted in a change of that perception.

- 4.198 HHJ Harris QC concluded:

- a. Although the prosecution was seriously at fault in its categorisation and management of Alf Allington as an informant, permitting him to give misleading evidence without correction and its approach relating to disclosure of his role, those faults did not constitute the sort of abuse of power which could form the basis of a stay.
- b. There was no bad faith proved on the part of the prosecution.
- c. The mischief had been substantially remedied by the new statements of Alf Allington.
- d. There was no evidence that Alf Allington or any officer of NIS acted as an agent provocateur or otherwise incited or stimulated any criminal conduct by the defendants.
- e. Accordingly the defendants had failed to prove that there could not be a fair trial.

Events after Ruling

- 4.199 The parties thereafter prepared for trial. But there was to be yet another development. Gordon Smith had been a senior prosecuting solicitor employed by HMCE in the Manchester office until his retirement on grounds of ill-health in June 2000. He had been the Instructing Solicitor responsible for the trials of Operations Paleface,

Escapade, Manpower and Chamfer. On 30th May 2001 he contacted Inspector Colin Proctor, a professional colleague in the Manchester branch of the National Crime Squad. Mr Smith told Inspector Proctor that he had grave concerns with regard to a number of prosecutions he had been involved in. He believed that persons were acting as participating informants without the necessary authorities being in force and the courts were being misled and deceived by members of the NIS.

4.200 Mr Smith expanded these concerns at a later meeting with Inspector Proctor, who reported on the complaint in writing on 23rd July 2001. Solicitors acting for the Operation Manpower defendants were aware of what was happening and drew the attention of HHJ Harris QC to the situation. The defence wished to reopen the abuse application in the light of the additional information now available to them. A witness summons was issued compelling Mr Smith's attendance at the Manchester Crown Court on 26th September 2001, when he produced all the documents then in his possession touching on the trial of Operation Manpower. At that hearing HHJ Harris QC asked Mr Smith to provide some clarification about matters contained in the Police Report which he had asserted were not accurate.

4.201 Whilst the lawyers in Manchester awaited clarification and detail from Mr Smith, the Court of Appeal Criminal Division heard the appeal in the trials of Operation Paleface and Operation Escapade over two weeks in October 2001, handed down judgement on 9th November 2001, allowed the appeals but ordered retrials in respect of all appellants. When doing so, however, the court did not have available to it and thus did not consider the report of Inspector Proctor containing the allegations of Mr Smith. It was clear that the new material from Mr Smith might generate applications not only to renew the abuse hearing in Operation Manpower but also to stay the retrials ordered by the Court of Appeal on the ground of abuse of process. So indeed it proved to be.

4.202 Mr Smith's clarification, requested by HHJ Harris, arrived in the form of a lengthy witness statement dated 15th November 2001. That statement alleged that by the end of February 2000 everybody involved in the London City Bond cases was aware that Alf Allington was a participating informant. Thus those involved were party to a conspiracy to conceal from judges and the defence the true status and conduct of Alf Allington and Ed Allington. It was not clear from the statement whether the allegations extended to counsel. The judge invited Mr Smith to answer a series of written questions so that the position could be further clarified.

4.203 Mr Smith responded in writing on 18th January 2002. He did not assert that prosecuting counsel involved in the Manchester cases had deliberately sought to mislead the court or the defence; he did, however, set out his recollection of events surrounding the trial of

Operation Escapade which differed significantly from the recollections of prosecuting counsel in material respects. Further, despite the clarification offered by Mr Smith, a number of defence teams were instructed to attack the integrity of counsel.

4.204 The effect of all this was fourfold. First, as soon as it became apparent that there was a potential conflict in recollections prosecuting counsel returned their briefs: they might have to be witnesses in subsequent proceedings. Second, HHJ Harris QC considered that as he had known both leading and junior counsel for the prosecution for many years he was obliged to recuse himself from trying any issue which challenged their integrity. Third, in the light of instructions to make such allegations a number of counsel previously involved in the cases who knew prosecuting counsel well were similarly embarrassed: they too retired from the proceedings in order that fresh counsel could be instructed to pursue such allegations and applications as they considered proper. And fourth, in the light of the allegations made by Mr Smith the prosecution waived legal professional privilege in respect of all material touching on the trials and their preparation: all notes of conferences, correspondence, Advices and the like were to be disclosed.

4.205 The defendants in Operation Paleface and Operation Escapade, in respect of whom retrials had been ordered, now armed with the new material from Mr Smith, sought to raise arguments of abuse of process. Likewise and on a similar basis the defendants in Operation Manpower proposed to apply to reopen the abuse application already determined by HHJ Harris QC. The defendants in Operation Chamfer, yet to appear before a court, indicated that they too would apply for a stay on the like ground at the outset of their trial.

4.206 In the light of the related issues identified on behalf of the defendants in the three sets of proceedings the court itself ordered that a directions hearing should take place. The directions hearing was heard by Leveson J. on 11th February 2002 at the Crown Court at Manchester. He directed that any application or further application for a stay of any of the indictments should be determined at a concurrent hearing of each of the three trials before a High Court Judge. He made consequential administrative directions relating to skeleton arguments in the abuse hearing, the identification of potential witnesses for that hearing and the management of any subsequent trials. Mr Justice Grigson was thereafter appointed as the judge to hear the abuse of process applications, to begin on 2nd September 2002 at the Liverpool Crown Court. An account of those proceedings is to be found in Chapter Six.

4.207 In the course of giving directions on 11th February Leveson J said:

Although I do not deal with this by way of order, I expect certain other things to happen. First, given that it appears clear that

broadly the same arguments will be deployed on abuse of process in each case, I expect defence teams to liaise with the Crown as to the best and most economical way in which these matters might be addressed without requiring the attendance of each full legal team for each day of the hearing. Given the community of interest, there is no reason why specific teams should not deal with specific issues. Secondly I expect concentrated effort to reduce the issues to the essentials; by the time of the hearing, ample opportunity will have been available to strip the significant from the peripheral. It is not of course a matter for me but I anticipate that careful consideration will be given as to the extent to which it is worthwhile for anyone to re-tread the ground covered by Judge Harris.

That optimism proved sadly misplaced in both respects.