IN THE CROWN COURT AT SOUTHWARK

Regina

-v.-

Christopher Walsh-Atkins and Christina Slater

Sentencing

I am very grateful to all counsel for the assistance they have endeavoured to give the court by their comprehensive written submissions and those they have made orally today. I have considered all I have been invited to read.

I have considered the relevant Sentencing Council Definitive Guideline and fully my obligations under s. 125 (1) of the Coroners and Justice Act 2009.

1. I have to sentence you for two distinct frauds – the first is covered by counts 1 and 4 and reflects the false invoice fraud in which you played a vital part of the scheme that TSP had concocted for his investor clients. The second fraud is one that TSP had not nothing to do with, and involved the two of you alone cheating the Revenue of monies paid out under the Film Tax Credit scheme as a result of you deliberately inflating the cost of the film in respect of which the claim for that credit was made.

Counts 1 and 4

2. Your involvement in the first fraud spanned 4 years – from late 2007 to 2011. Of the two of you, you CWA were the first to become involved in it agreeing as you did with TSP to supply him with the vital service without which his fraud could not work. You, CS, were not far behind in that complicity, joining in with it when CWA sold it to you, I suspect, as the only way to get the funds for the film you and he wanted to make.

3. The false budget for £1.6 million was a co-production concocted by the pair of you and once Mr Potter and Mr Walsh Atkins had finalised the "pass through arrangements", and confirmed the rake off you were to get for the service you were to provide, you were regularly engaged, at times and in

sums dictated by Mr Potter and Miss Murphy, in the provision of these many fictional invoices to which the jury were referred.

4. What followed was a sophisticated roundabout, using companies under your control on the one hand (some created solely for this purpose), and companies under the control of Mr Potter, on the other, to conceal the fiction which these invoices represented. It is an aggravating feature that along the way you encouraged others to act dishonestly to help you.

5. What is not an aggravating feature - because it relates to matters for which have not been specifically convicted – but is of course relevant to the context of your offending, is the evidence that you were quite happy to provide this service for other Potter schemes.

6. Concentrating on that of which you have been convicted, it may well be that you were not necessarily aware of quite how much was being claimed by those for whom TSP had provided his investment service, but your role in counts 1 and 4 provided the platform for losses to the Exchequer of about £1 million in frauds where the potential loss to the Revenue intended by those at the head of it was about £2m.

7. It follows from this analysis that as far as counts 1 and 4 are concerned your culpability is high. Although the frauds were the brainchild of TSP – reflected in the sentences passed upon him – I am quite satisfied on all the evidence which was presented to your jury that the Crown's analysis of your culpability is right: you each played leading roles, you sought to corrupt others into providing you with assistance that was dishonest, you abused your position of responsibility as company directors, the nature of the offending was sophisticated and involved considerable care and planning and it occurred over a sustained period of time. The *starting point* for sentence for each of you in such circumstances for counts 1 and 4 *alone* is seven years with (with a range of between five and eight years).

Count 5

8. As far as this part of your offending is concerned the two of you were the sole directors and controlling minds of the company in whose name the application for certification to the BFI, and in turn for FTC to HMRC, was made. In your case, CWA, you had particular knowledge of the system from your previous film tax credit application for the film "Taking Liberties" and you in particular were aware how vulnerable it was to dishonest exploitation [see # 60]. Arrangement for relief within any tax system depends on the integrity of the claimant, but those who make claims as officers of a company bear a particular obligation as a result of their office not to abuse the responsibility of their position. The two of you did just that. The email trail at Schedule of Events ## 369-371 provides the clearest evidence of your complicity in not only the fraud which you were already undertaking with

Mr Potter but also the clearest evidence of your ambition for, and complicity in, the fraud that you were about to embark upon.

9. Again, your level of culpability here is rightly put as high – you played leading roles, there was abuse of position, and there was significant and careful planning to make sure you secured the sums you claimed.

10. As far as harm is concerned there is substance to the Crown's submission that the harm here should be calculated by reference to the whole amount of FTC you secured, as it is all tainted by fraud, but the more realistic and fairer way is to take account only of the net loss, namely £92,000. Nonetheless this means that it is a category 6A offence, the starting point for which is a sentence of three years with a range between 18 months and 4 years imprisonment.

11. In summary these 3 counts represent a period of sustained and deliberate offending by you both. To finance your project you decided to achieve by dishonesty what it appears either you knew you couldn't achieve by legitimate means, *or* you simply could not be bothered to try and achieve in that way. But that was not the end of it, because your involvement in counts 1 and 4 continued after the celebrity film had been made, and when HMRC were questioning the sums, you were quite willing to sign any document (as you did with the Commissioning and other Agreements TSP sent you) in order to support the fraud and to distract HMRC from its investigation. That is a not insignificant aggravating feature.

12. These offences were committed at a time when public expenditure was under serious strain, but the two of you put the vanity of your ambitions above all else in order to chase for yourselves a kind of celebrity status, different in kind perhaps to the one that you despise but not in practice really very different. The idea that you should be the ones to decide how public money was spent rather than the government displays a terrible arrogance. You are intelligent well-educated people, you CS from a background of real privilege; you were not misguided amateurs with only the ambition of making a film which you thought might be in a public interest, but in the result, as you quite willingly and determinedly became, sophisticated fraudsters.

Some of the matters advanced in Mitigation.

13. I take into account your *previous good character*. Unfortunately it counts for little now and it is reflected to some degree already in the starting points set out in the sentencing guidelines. In the face of overwhelming evidence neither of you had the good sense to plead guilty.

I fail to see how giving evidence to the *Leveson enquiry* establishes any mitigation. I rather doubt had it been known what you had been up to in the previous 4 years you would have been asked to do so (and I know that what you did say was at the time not accepted by some parties as accurate).

As far as the complaint of *delay* made on your behalf is concerned, it has I am afraid no value. This sentencing exercise is indeed now being conducted some considerable time since these offences were committed, but the primary reason why that is so, is because on the 8th February 2012 when you were first questioned about your dishonesty you denied it and you have continued to do so ever since, necessitating the trial which we have just had. Had you admitted what you did back then the effect of some of the personal difficulties you ask me now to take into account might have been avoided.

14. *What you made out of it*. As far as the contrast suggested between you and others in this fraud is concerned I am asked to consider that you made little from this and that they were motivated by greed. I can find nothing to support that proposition. Between you, you got £400k from your participation in fraud either from the rake off or in FTC and whether a fraudster spends his money on a yacht, a Picasso or the making of a film I fail to see makes any difference. You were neither making nor playing Robin Hood. What is not to be ignored is that both directly and indirectly you cheated the revenue of large sums of money entirely for your own purposes and you put at risk the loss of even greater sums. Moreover what you actually took home is really neither here nor there. As far as counts 1 and 4 is concerned the potential loss from the schemes you were supporting was £2m although in the end such as was dishonestly obtained by it may have been recovered.

15. Although you ultimately worked as a team, and closely so, I do, however, consider that I can properly make *some* distinction in terms of responsibility between the two of you at least as far as Counts 1 and 4 are concerned. For this reason: you, CWA, were already alert to opportunities for dishonesty as far as HMRC was concerned and inclined to take them. I believe, however, that you Miss Slater were drawn into this dishonesty to begin with by Mr Walsh Atkins. He acknowledged that you were the *junior* partner. That said, that was not for very long: once you were drawn in, there is no evidence that you were anything other than a committed partner to the dishonesty with which you were both then involved. That is shown in the evidence that it was often you, CS, coming up with clever ideas for

deceiving the Revenue. I consider there is no practical distinction to be made between you when count 5 falls to be considered.

16. In your case CS I have been presented with a raft of evidence relating to your welfare, your husband's welfare and the welfare of your children. As far as you are concerned I take into account some of what has been written, but I believe – not least from what I have seen of you over the last year or so – that once some closure has been achieved by the completion of this exercise today – and a degree of uncertainty removed – it will be easier for you. Certainly your composure in the trial and the focussed and defiant way you dealt with your case in evidence suggested to me that the assessment made of you before trial was somewhat pessimistic.

What is of more obvious and immediate concern is the issue of the welfare of your children. I have read all that has been written - although a lot of it was not beyond either my imagination or my experience. I have also paid close attention to the observations of Lord Hughes as he now is, in R. v. Boakye and others [citation] and R. v. Petherick [citation]. I think it important to make reference to some of the things he said in each of these cases:

REGINA –v CHRISTIANA BOAKYE [2012] EWCA Crim 838

3 April 2012

Per Hughes, LJ.

> 29. We agree that the interests of affected children may frequently be of relevance to the sentencing process. That will especially be so where the crime is at the lower end of the criminal calendar, and especially where the sentencing decision is for that reason on the cusp of custody or non-custody.
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> 30. R v Bishop [2012] EWCA Crim 1446 is a decision of a two judge court which lays down no point of general principle and is not appropriate for citation as authority; but it is a good example of what we have just said. There the appellant was convicted of one offence of commercial burglary in which some chocolate was stolen and of dangerous driving in the course of attempting to escape. He was the carer for five children aged between 5 and 13. The sentences were consecutive terms of four months' imprisonment. This court, comprising two very experienced judges, felt able to order that those sentences, which it held were proper, could be suspended. It did so in part because the sentencing judge had not put into the equation the effect of an immediate custodial sentence on the children.
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> 31. Such decisions are undoubtedly proper if the facts justify them. They are made regularly by Crown Courts up and down the country. So to say] *That* is a very long way indeed from the proposition that in considering the sentence on a parent or other carer the interests of the

children are a primary consideration, and thus in some manner take priority over the necessity properly and consistently to punish different offenders who commit criminal offences -- and especially very serious criminal offences [-- such as those with which we are, unfortunately, here concerned.] Sadly, a very large proportion of sentences of imprisonment which simply have to be imposed will have an injurious knock-on effect on the children for whom the defendant is breadwinner, parent or carer. [The principles to which Laws LJ referred in RCHH apply with even greater force to the operation of sentencing practice within this country than they do to extradition to foreign countries.]

32. The position of children in a defendant's family may indeed be relevant, but it will be rare that their interests can prevail against society's plain interest in the proper enforcement of the criminal law. The more serious the offence, generally the less likely it is that they can possibly do so.

Regina v Rosie Lee Petherick [2012] EWCA Crim 2214 on 3 October 2012

Per Hughes, VP

18. "the right approach in all article 8 cases is to ask these questions: A. Is there an interference with family life? B. Is it in accordance with law and in pursuit of a legitimate aim within article 8.2 ? C. Is the interference proportionate given the balance between the various factors?

23. Seventh, the likelihood, however, of the interference with family life which is inherent in a sentence of imprisonment being disproportionate is inevitably progressively reduced as the offence is the graver and M v South Africa is again a good example. Even with the express Constitutional provision there mentioned, the South African Constitutional Court approved the result in which in one of the cases a sentence of four years was necessary upon a fraudulent mother, despite the fact that she was the sole carer for a number of children who were likely to have to be taken into care during her imprisonment - see paragraphs 43 to 44. Likewise, in HH, the majority of the Supreme Court was satisfied that there was no basis on which the extradition to Italy could be prevented of a father who was in effect the sole carer for three young children, but who had been a party to professional cross border drug smuggling. His extradition of course meant not only his imprisonment, but his imprisonment too far away from the children's home for there to be more than the most rare of contact.

24. Eighth, in a case where custody cannot proportionately be avoided, the effect on children or other family members might (our emphasis) afford grounds for mitigating the length of sentence, but it may not do so. If it does, it is quite clear that there can be no standard or normative adjustment or conventional reduction by way of percentage or otherwise. It is a factor which is infinitely variable in nature and must be trusted to the judgment of experienced judges.

17. *I have of course considered the welfare of your children but I am satisfied that their welfare can and will be attended to by your husband and your wider and obviously supportive families. Moreover I have established that Marnie will be able to join you – almost certainly within a week if the application is made today – and in the meantime arrangements can be made for expressed milk to be collected and taken to her.*

Nevertheless, as I have indicated, it is not only her welfare but also Hannah's that is of obvious concern and I assure you I have made as a significant reduction as I can to the sentence there would otherwise have been because of these issues but I cannot look at this case from only one side and with blinkers on. Without your participation TSP and his co-conspirators would have had no projects behind which to hide their substantial and determined attacks on the revenue. Separate from that you took it upon yourselves to commit your own and distinct fraud on the Revenue. I must follow the guidelines unless I am satisfied that it would be contrary to the interests of justice to do so. The welfare of your children enables me in your case CS to do that to some extent (and in CWA's case exceptionally to reduce his sentence because of the risk of disparity) but there is quite obviously no other way of dealing with you other than by sentences of immediate imprisonment.

Of the sentences that I am about to pass after serving half your sentence, you will be entitled to be released on licence and the balance of the sentence will then be suspended.

18. You will both be disqualified from being directors of or otherwise engaged in the management of a company under the Company Directors Disqualification Act for a period of 12 years.

19. For reasons I have already indicated count 5 is an entirely separate offence and subject to the issue of totality, to which I have had full regard throughout this difficult sentencing exercise, it would be wholly within principle for the sentence on count 5 to be consecutive in

each of your cases – resulting in a sentence somewhere in the region of that 7 year starting point. However I have decided that it is proper in considering not only the issue of totality, but also the issues of welfare, to approach sentence on the basis that the commission of count 5 aggravates your position in relation to counts 1 and 4 and to avoid a consecutive and longer sentence in that way.

That would result in sentences of 6 years and 5 years, but would not take into account either that there should be some distinction between you and NWD whom I sentenced and played a serious supervisory role in the processing of false claims and in the exercise of concealment and deception undertaken by him and TSP as far as the HMRC enquiries were concerned.

It would also not take into account the welfare issue to which I have referred. Furthermore I am aware that were I to impose a sentence of more than 4 years current HO policy would mean that you might well not get HDC whereas if the sentence is no more than 4 years you are very likely to do so. That reduces by a considerable margin the period of separation from Marnie once she is 18 months old and as current policy indicates she would have to leave you. I have also been advised that if the sentence is more than 4 years there is a risk you would not be accepted for the mother and baby unit at all.

I do not like the idea that sentencing policy may be seen to be being dictated by the HO rather than the SC but I have to deal with reality.

The result of all of this is that I have come to the conclusion that your sentence CS should be no more than that figure and in fairness some further adjustment to yours, CWA, should be made to reduce a perception of disparity.

CWA – on counts 1 and 4 – 5 years. Count 5 – 2 years but conc.

CS – on counts 1 and 4 – 4 years. Count 5 – 2 years but conc.

1st July 2016 **Martin Beddoe, HHJ.**