JUDICIARY OF
ENGLAND AND WALES

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-v-

Michael Richards,
Robert Gold,
Rodney Whiston-Dew,
Jonathan Anwyl and
Evdoros Demetriou

Sentencing Remarks of Mr Justice Edis

Southwark Crown Court

10th November 2017

GENERAL OBSERVATIONS ABOUT CASE

The five defendants for sentence today were convicted after a very long trial of an offence of conspiracy to cheat the Revenue. Michael Richards, Robert Gold and Rodney Whiston-Dew were also each convicted of a further substantive offence of cheating the Revenue, charged as counts 2, 3 and 4 on the trial indictment respectively.

Michael Richards is now 55 years old, Robert Gold is now 49, Rodney Whiston-Dew is 66, Jonathan Anwyl is 44, and Evdoros Demetriou is 78. The offending occurred when they were all much younger, between 2004 and 2010. They were arrested, for the most part, in July 2007 and, for the most part, charged in March 2010 and I will have to consider the reasons why the case has taken so long later. It is, on any view, an unhappy state of affairs.

This case involves a scheme whose chief characteristics were utter dishonesty, sophisticated planning, and astonishing greed hidden behind a mask of concern for the environment which adds an element of hypocrisy and cynicism to this case which is deeply distasteful.

The four defendants who gave evidence each professed his deep passion for the environment and his determination to protect it by re-forestation projects abroad which would absorb carbon and so address climate change. Whether that was ever truly the concern of any of them may be unclear, but by the time of this fraud I am quite certain that Richards, Gold and Whiston-Dew were simply motivated by a desire to become extremely rich and to evade tax on their proceeds of crime. The sums involved mean that these defendants were playing for high stakes and they have lost.

Taxation pays for public services which are stretched and which are designed to benefit or protect those in need and to improve and protect the conditions in which the whole population lives. The public needs protection from cheats who dishonestly seek to evade paying it. It is difficult and expensive to detect and prove cases such as this, and an element of deterrence in sentencing is required.

The sophisticated planning was devoted to the financial requirements of the fraud and of extracting its proceeds, and the determination to prevent anyone outside the conspiracy from learning the true extent of the common control of what appeared to be independent companies operating at arms' length. The arrangements for the work which was the ostensible purpose of the scheme were slapdash and amateurish. In the desperate rush to get hold of money in early 2005 the scheme was sold to investors before any of its key elements had actually been agreed. It was a scheme at that stage which was still under construction. Efforts to try and make something of it afterwards were genuinely made, but it was never possible to overcome the bungling at the start, and there was, in any case, nowhere near enough money or expertise to make it work. It was a very effective fraud based on a very bad reforestation project. I accept that Jon Awnyl worked very hard to try and make the reforestation project work, but he failed.

The scheme was sold on the basis of land options over land which no-one had bothered to ensure was actually available, and which was said to be owned by an entirely fraudulent entity called Growth Fund Partnership in the United States. This was little more than a set of dishonest accounts which showed an asset value of $11bn. As far as the evidence in the case reveals, it was actually worth nothing at all. Richards and Gold knew this perfectly well, having had extensive dealings with the man who commissioned that bogus set of accounts, Jack Birnholz, now deceased, when he swapped worthless shares in his company for their worthless shares in theirs. This was done to make readers of the accounts of both companies believe that they were worth much more than they were. It was not part of the count 1 fraud but gave Richards and Gold an insight into the true value of the Growth Fund when the count 1 was fraud was planned and executed. The Growth Fund Partnership was the company which granted the land options and which also granted the Business Asset Put Option (BAPO) of which more detail appears below. These were both key components of the scheme as marketed and they were simply dishonest from the start. There was no land and no cash and no security for the Put Option and there never could be. These dishonest fictions were central to the decisions of many people to invest in the scheme which generated money for the conspirators.

The agreements which were key to the scheme were concocted by the conspirators and were uncommercial and unreal. This had to be the case because any honest lawyer being asked to draft them would want to know a lot more than the conspirators could divulge. The Information Memoranda for the scheme were deeply dishonest documents for the same reason. When Mr. Sayer of Addleshaws (solicitors) quoted for the work necessary to prepare an honest Information Memorandum his instructions were discontinued. Any enquiry by that firm into the substance of what the document said would have shown its falsity. The firm's name appeared in the document nevertheless, a tell-tale sign of its bare-faced dishonesty.

Richards, Gold, Whiston-Dew and Demetriou had lived exemplary lives until this scam drew them in, but when it did so they entirely lost their moral compass and sold themselves to greed. This is less true of Anwyl who was then a young man who I am quite satisfied was corrupted by the others, having agreed to join his "dream opportunity" in good faith. By the time of the Scientific Research Agreements in March 2005, however, he knew that the scheme was based the fiction that Carbon Positive Trading Limited (CPTL) was an independent company providing services at arms' length when in reality he was working under the instructions of Richards, Gold, Whiston-Dew and, later, Demetriou. As a result of this he too became knowingly involved in very serious dishonesty and must pay the price. The use of his naivety by older and more experienced men is an aggravating feature in each of the cases of the other four defendants.

THE WAY IN WHICH IT WAS DONE

The conspiracy offence involved an intended loss to the taxpayer of £107m, in that the conspirators created, marketed and administered a tax incentivised investment scheme which was intended to create a claim for sideways loss relief against income tax for anyone who invested in it. This relief was available to them because the tax system was designed to encourage investors to support environmentally beneficial schemes and to fund research and development to improve the stock of human knowledge in the preservation of the natural world. The investors were able to save a lot of tax while believing that they were doing good for the world. Even better from their point of view, the scheme enabled them to claim tax relief on the spending of money which they had never actually had in the first place. This was a very popular device and some 730 people invested large sums of money and claimed tax relief in the total amount of £107m which they hoped they would not have to pay, or which would be repaid to them by HMRC. They were all high net worth individuals or sophisticated investors and most, perhaps all, were advised by Independent Financial Advisers. This is not a case where the sentence should be increased to reflect harm to vulnerable victims. The victims in this case were the public, those who pay the taxes which these defendants sought to evade.

The investors each became a partner in a Limited Liability Partnership which then commissioned Carbon Positive Trading Limited to carry out research and development at a cost of £7.1m per LLP. That was the price payable, up front, on the Scientific Research Agreement (SRA) which each LLP entered into with CPTL. There were, in the end, 38 LLPs. Each LLP purported to raise about £8.5m to fund the SRA and other costs. By the end therefore, a scheme was created which appeared to have raised investment of 38 x £8.5m = £323m. Of that, 38 x £7.1m appeared to have been spent on Research and Development namely £269.8m. The investors made tax relief claims on that basis. In fact, nothing of the kind had happened.

Rather less than 20% of the apparent value of the investment actually existed. This was the substantial sum of £65m. The remaining 80% was thin air. Each time an LLP was floated, money contributed by previous investors was passed to it by an offshore company which was owned and operated by the conspirators, namely Environmental Guarantee Corporation Limited based in the Isle of Man. The LLP then passed that money to CPTL, the Research and Development contractor, an another offshore company registered in the British Virgin islands. Each such payment was then recorded in the books of the LLP as a payment of £7.1m. The conspirators never intended that the whole sum would be spent on R&D. Instead, CPTL then passed 80% of it (£6.8m) back to EGC, where it was available to fund the next LLP or to be paid out according to the instructions of the conspirators for their personal benefit. These payments by EGC were recorded by it as loans, but there was never any remote prospect that any of it would be repaid. The same money went round and round in circles, and each time it passed Go it created an apparent expenditure which was the basis of a claim for tax relief by the investors.

Tax relief was then claimed on a spend of £269.8m, although only £64.6m had actually been paid. It was not even the conspirators' intention that this 20% of the apparent expenditure would actually be spent on the work abroad. In the end, only £16m was ever spent abroad on the reforestation project. The rest was carved up by the conspirators. £13.5m was paid from CPTL in Holland to a bank account set up in a Swiss Bank, EFG. It was then paid by CPTL to another offshore British Virgin Islands company set up by the conspirators. £12.5m was paid in this way in a 12 month period starting in October 2005 and divided between Richards, Gold, Whiston-Dew and Warwick Smith. In each case the money was paid from this offshore non-trading BVI company into trusts established in Mauritius which were wholly controlled by these 4 defendants. Each of these trusts had its own

secret bank account at EFG in Switzerland. During this period, substantial sums (over £1m) were paid on to Mr. Demetriou out of one of the trusts by Mr. Richards and payments were also made to Jon Anwyl, first in his own name and, later, to a trust which he set up in identical terms to those of the other conspirators.

At a later stage, in 2008, a further payment of £1m was made to Demetriou as his reward for agreeing to help in perverting the course of justice by trying to con the HMRC investigation and civil proceedings before the Special Commissioners into believing that he was the owner of CPTL from the start when he was not. Notes and fragments of paper show that that company was actually owned and controlled by Richards and Gold, with 42.5% each and Warwick Smith, with 10% and Rodney Whiston-Dew who had 5%. That agreement was hatched in October 2005 very soon after the civil enquiry began and involved all these defendants in one way or another. The lies told further to that agreement by Richards and Anwyl in those proceedings were told further to that agreement and each defendant is culpable in that respect. There was a sophistication to this which is an aggravating feature of the case. That is particularly so in the case of Richards who lied on oath before the Special Commissioner, when he pretended that CPTL and EGC were independent third parties and that he did not know what they did with the money which had been paid to CPTL or where EGC got its money from. He knew those things perfectly well.

The use of offshore trusts and companies is much in the news. In this case it occurred so that the UK authorities could learn nothing about the fund, or the companies or about the ownership of the companies. It was done dishonestly and for a fraudulent purpose.

The use of offshore BVI companies, Swiss Bank accounts and trusts which were solely created to hide and launder the proceeds of the fraud is a seriously aggravating feature of this case, and it features in all 5 cases, as I shall explain when I deal with them individually.

Other payments were made for the benefit of the conspirators by other means and the benefit figures in the benefit summary placed before the jury shows that a total of £23.5m was gained from the funds contributed by the investors and split between Richards (£7.4m), Gold (£5.3m), Whiston-Dew (£1.3m), Anwyl (£1.7m), Demetriou (£7.8m), and Warwick Smith (£2.1m). The shares of Richards and Gold and Warwick Smith include profits made from investments made into Sun Biofuels and New Forest Company Limited with money obtained from the fraud. These figures are not precise because some money moved between conspirators after initial receipt. The final resting place of some of this money has not yet been discovered. They are a broad indicator of the level of benefit from the scheme and of control over it. The ultimate destination of the money paid to Demetriou in Cyprus was not examined in evidence and I do not infer that this was all his proceeds. His involvement was as money launderer as well as to pretend to be the owner of CPTL. I simply do not know why he received as much as he did, or for whose ultimate benefit he held this money. He said nothing in interview and did not give evidence.

The Business Asset Put Option (BAPO) was a means of reassuring investors that they would never have to repay their capital loan to EGC. It was part of the "Risk Mitigation Strategy" put in place for this purpose and was necessary to make the scheme saleable. Although investors said that they were "on the hook" for he loans, this was only ever a theoretical liability. Anyone who was sued by EGC for repayment would want to know why the BAPO had turned out to be worthless and would rapidly discover that he had been defrauded. The BAPO was a seriously aggravating feature of the case and involved Richards, Gold and Whiston-Dew. There is no evidence that either Anwyl or Demetriou knew anything about this, and they were not involved in lying to investors in marketing the scheme. Their lies concerned CPTL and its ownership and control.

THE LOSS CAUSED

In the event, HMRC quite quickly formed the view that the scheme involved the same money being passed round in circles between connected companies so that it appeared to have been spent when it had not been. They rightly suspected circularity and common control and rejected the claims to sideways loss relief. They did not make any payments of claims, but where an investor met his claim by setting off the loss against an outstanding liability, HMRC could not prevent that. HMRC has sought repayments from such investors. The result of all this is that this is a case of intended loss and not actual loss for the purposes of sentence. I do not know how much loss was actually caused and will make this assumption which is favourable to the defendants, although its effect on sentence is limited in my judgment.

That is because this is a case where the conspirators had done everything necessary to inflict the loss on the public and continued to try to force the claims to be met by ever growing dishonesty when HMRC had challenged them. Although I shall sentence them on the basis that they failed entirely in this effort and were prevented from causing actual loss, in my judgment this has only a very limited impact on the gravity of the offence.

An additional consideration here is that many cases where there is no actual loss will also, as a consequence, mean that there is no gain to the cheats. That is not so here. All these defendants benefited from the fraud. The lowest level of benefit was to Anwyl, and he received a 7 figure sum. Further, Richards Gold and Whiston-Dew fall to be sentenced for personal tax counts where actual loss was caused in significant sums.

MY APPROACH TO LEVEL OF BENEFIT AND PERSONAL TAX COUNTS

The personal tax counts are very serious offences in themselves. Brazen, sophisticated and persistent dishonesty, and very large amounts of unpaid tax tell their own story. They are offences involving high culpability.

In the case of Richards, he cheated the Revenue out of £2,327,372 in income and capital gains tax which he was liable to pay. He did this over a 3 year period.

In the case of Gold, the figure is £1,564,931.

In these two cases the unpaid tax was due on the proceeds of the fraud. I will deal with this, therefore, as an aggravating feature of the fraud and will impose concurrent sentences but the sentence for the count 1 cheat will reflect the fact that tax on the benefit obtained was not paid, and that a sophisticated means of tax evasion was employed, as I have described above.

In the case of Whiston-Dew, the maximum tax evaded is £2,174,330, of which the majority represents the benefit of the count 1 cheat, but not all. I cannot measure the actual tax lost because of the outrageous way in which Whiston-Dew operated his business. He produced no accounts. He said in his evidence that his accountant had failed him and had thrown away his books and records because they were too bulky to keep. This absurd evidence was plainly rejected by the jury. It is true that by the time he was charged with cheat in relation to the profits of his business the period when he was required to keep records for tax purposes had elapsed by a short period, but he did not say that he had thrown away his books and records for this reason. His evidence was that many of the payments into his business account were capital items, loans or money being held for others. In many cases the transactions were still current in that loans have not yet been repaid. He would need records of these simply to ensure that they were ultimately repaid to the right lender or recovered from the borrower. I infer from his failure to keep or produce records that they would

show things which he has calculated that he cannot afford to reveal even at the cost of rendering his sworn evidence at this trial utterly implausible.

I can only deal with him on the basis that I do not know how much tax he has evaded on his business activities which do not relate to the count 1 cheat, but that it is a significant sum. He estimated it at the tax payable on a profit of £73,000 but that evidence is no more credible than anything else he said. He did not trouble to explain how he had arrived at this figure or produce any supporting evidence. Because I am sure that a significant amount of tax has been evaded under this heading not associated with the fraud, I shall impose a concurrent sentence in relation to count 4, but will adjust the sentence on count 1 to reflect the overall criminality disclosed by these convictions.

FINDINGS ABOUT ROLES OF OFFENDERS

MICHAEL RICHARDS AND ROBERT GOLD

Michael Richards and Robert Gold between them devised and ran the fraud.

It is unnecessary to describe the role of Richards in detail. He was closely involved in every aspect of the design and implementation of the scheme and in the extensive efforts to keep its true nature hidden. He described himself as the ringmaster and accepted responsibility for the whole thing, arguing that it was honest and legitimate. Richards devised it and Gold and he together ran it. Richards was also involved in marketing it and told lies to investors and their advisers in the course of that.

The lies told by Richards to potential investors about the BAPO were absolutely brazen. His attempts to explain them away in the witness box demonstrated that his dishonesty runs very deep and he believes that he has the ability to make anyone believe anything, a fraudster to his core.

Robert Gold had no involvement with investors. However, he did have a major role in recruiting the core team and in making available a key instrument of the fraud namely the Growth Fund Partnership. That was central to the claims made in the first 12 months of the fraud that land was available in Brazil so that the LLPs paid for land options which they never got (they got pieces of paper but no land). It was also central to the BAPO which the investors were told was cash collateralised which meant that the scheme was supported by a company which could afford to lodge £204m in cash with Barclays Isle of Man for up to 15 years. This was complete fiction, dishonestly created and maintained until 30th August 2006 when the diligence of Mr. Pirouet and Mrs Cazalet (auditors of the LLPs at Tenon) rooted out the truth. She had done quite brief checks on the accounts of GFP and correctly determined that it was worth very little, if anything at all. Robert Gold and Michael Richards had been closely involved with Mr. Birnholz since the share swap the effect of which was to make their company Landcom look as if it was worth £386m more than it was to anyone looking at its accounts. That was based on the fraudulent accounts of Growth Fund Partnership for the year ended 31st December 2002.

Robert Gold was, no doubt, a busy man not entirely engaged on this fraud. His emails are short and to the point, but always about some very important aspect of the scheme and they were instructions to others about what to do. He was in control, as the “Straw Man” emails between Warwick Smith and Jon Anwyl clearly confirm. He knew that the common control of EGC and CPTL and also of the manager of the LLPS, Carbon Capital Limited, had been dishonestly suppressed and hidden from all the advisers to the scheme, and that it was crucial to the advice they gave.

Richards and Gold established their offshore trusts on the same day in May 2005, just after they had persuaded the corporate directors of EGC, Trident Trust, to release the first tranche of funds it had

received from CPTL so that the circle could start. Gold was not at the meeting, but Richards, Warwick Smith and Whiston-Dew were and they represented the conspiracy and achieved this common aim. Swiss Bank accounts were then set up, but new ones were required at a different bank and this delayed the share out of the first tranche of investors' funds to the conspirators until November 2005. The Swiss Banks were told to "hold all mail" so that there would be no trace of these accounts on any document which might be recovered in the United Kingdom. This fraudulent system was operated with discipline by Richards, Whiston-Dew and Warwick Smith because no trace of any of those accounts or trusts was found on the searches. Mr. Gold had made a significant mistake by having two odd pages in his house which did provide a lead for HMRC which ultimately formed part of the chain by which these funds and fraudulent devices were discovered in late 2009.

There is no doubt that both Gold and Richards played a leading role in this conspiracy and benefited very substantially from it. Richards was responsible for making the early payments to Demetriou via his trust, and if his share of the proceeds is reduced to reflect that, then it becomes broadly comparable with that of Robert Gold. Richards, nevertheless, did extract more than Gold did by the time of the arrests in July 2007. Nevertheless, I consider that they were equal partners and both have benefited very substantially. I will treat them equally.

Their level of culpability is very high and the level of sophistication and planning also very high. They both had leading roles, and used their influence to recruit and corrupt others.

RODNEY WHISTON-DEW

Mr. Whiston-Dew is a solicitor of considerable experience. He was used as general counsel to the scheme, in particular to deal with the parts which were too dishonest to be shown to any honest solicitor. He was the man who owned and controlled EGC, as far as its corporate directors were concerned, although he manipulated them and that company for the purposes of the conspiracy. He created 10 "cash confirmations" by which he misled the readers into believing that the Growth Fund Partnership had paid cash to Barclays Bank Isle of Man where it was held as security for the BAPO.

The Trident Trust directors at the early stage do not emerge from this case with a great deal of credit. I do not understand why they released the funds after the meeting of 18th May 2005 on the basis of oral assertions unsupported by documents that CPTL was owned by Richards and Gold, especially when Gold was not at the meeting. They took a proper line in the letter of 9th May 2005 from Mr. Edwards and then caved in. I do not accept either that Mr. Coates was unaware until much later than Tenon were asking what cash was held by EGC under the terms of the BAPO. The email in which he claims not have understood the very direct questions which Tenon were asking, and which he answered in the precise terms demanded by Mr. Whiston-Dew on 29th June, were clear enough. Mr. Read emerges with credit, because he knew nothing about the case at all when he attended the meeting of 18th May and reacted with obvious probity to the Tenon requests for information in Summer 2006. In the end, I accept that Trident Trust did behave appropriately, but they allowed Whiston-Dew far too much leeway in 2005 and did his bidding too readily when he bullied and threatened them. This does not lessen his guilt, and illustrates the importance of his role in enabling the scheme to be perpetrated. Although he did not corrupt them, he did procure their compliance without which the scheme could not have operated as it did.

He provided the advice which led to the formation and abuse of the offshore companies and trusts and the contact with Rudolf Imringer and Jacques Delacave who were happy to accept fees to be named as trustees to give an appearance of substance to the trusts which were actually entirely operated by Whiston-Dew for the personal benefit of his fellow conspirators.

He drafted resolutions for companies which were needed to implement the conspiracy, and also helped in drafting the BAPO (2nd version) and the Line of Credit documents.

His culpability is high and he had a very important role in the fraud, but was not its controller. He was 1 rung down from Richards and Gold, and ranked somewhat below Warwick Smith.

EVDOROS DEMETRIOU

Demetriou was there at the start and received money from Richards in the first distribution of at least £1m. He later received much larger sums and actually is shown as having received the highest amount of money of all defendants although he may have been holding some of that to shield it for his accomplices. He is an accomplished launderer of money and helped Gold in that capacity after the arrests in July 2007 when the property at Canfield gardens was sold and the proceeds remitted through yet another dishonest offshore trust so that they could fund the purchase of a house in Dubai.

He asked Anwyl to lie about the ownership of CPTL in an email, and told numerous lies about this subject. He put himself forward as the owner and controller of CPTL when that fiction was required to persuade HMRC that it was an independent company. He was extremely well paid for doing this and it was a very dishonest act.

He acted under the directions of Richards and Gold in all that he did, and this follows from the fact that his claim to be a controller of CPTL was in fact false. His true rank was lower than he dishonestly claimed.

His role was a significant one where the offending is part of a group activity. The real aggravating feature in his case is that vast amount of money he received and the period over which he sustained his dishonesty. I accept the submission that his culpability is at level B in the relevant guideline, but the offence is a serious one within the range covered by that category.

JON ANWYL

Jon Anwyl, as I have said, was drawn into this by others. He was first attracted by a genuine motivation to work on a project which had a genuine ethical basis. He rapidly learnt enough to know that it was based on fraud and he was required to go through the charade of pretending to negotiate the Scientific Research Agreements which were in fact presented to him by Richards. He produced a spreadsheet (Appendix A) which pretended to justify the figure he had been told to put in the agreement and this spreadsheet dishonestly told the reader that some real work had been done to try to calculate a price for work which Anwyl had no idea how to do, let alone how to price. It was all going to be sub-contracted but no-one had identified the sub-contractor, or the land where the work was to be done, and obtained a quote for the work. Appendix A was based entirely on speculation and guesswork and designed to justify the price which had been fixed so that the fraud would work and which bore no relation to what was actually going to be spent.

Anwyl also lent himself to the task of lying to persuade HMRC that he and Demetrios owned and controlled CPTL whereas it was in fact Richards, Gold, Whiston-Dew and Warwick Smith.

He did this in return for a large sum of money in addition to his salary. His wife wrote him a letter in 2008 which made it clear that he was working very hard on the scheme and also that she was deeply concerned that it was a dishonest scheme and very worried about how, if ever, they could extricate themselves from the consequences of that. That was a moving, perceptive and, I think, accurate assessment of the position.

A decent young man who was corrupted by others and by the lure of very large amounts of money.

His culpability is in the level B range of the relevant Guideline because he played a significant role but acted under direction. It emerged in the evidence that although on the surface it appeared that he must have controlled the movement of the money through CPTL, in fact Warwick Smith was the key figure in doing that. Nevertheless, he knew the key fact in the case which was the amount of money which appeared to have been spent on Research and Development and the actual amount which was made available to him for that purpose. He had £16m out of an apparent sum of £269m, and he knew it.

MITIGATION: COMMON POINTS

WAS THE FRAUD HONEST AT THE START?

No. At the start it was hoped that a tax incentivised scheme could be devised which would not be a cheat on HMRC, but it would still be dishonest because the fact of common control was always going to be hidden. That is why lies were told to Mr. Sayer and Mr. Thornhill and why the banks which were approached were not told who owned EGC. If the common control were publicly known, no-one would invest in the scheme without very thorough enquiry and it would be far harder for the conspirators to help themselves to the money provided by the investors. If a bank had been persuaded to fund the scheme it would not have been a cheat on HMRC, but it would still have covertly benefited its orchestrators. They are not to be sentenced for offences which this would have involved, but it would strain the language to describe this project as having ever been honest. This does not aggravate the position but it does mean that this mitigating factor is not available to Richards, Gold and Whiston-Dew. Anwyl and Demetriou became complicit at a later time and can say that they joined what they thought was an honest scheme.

DELAY

The guideline allows that the lapse of time since apprehension where this does not arise from the conduct of the offender is a mitigating factor. The time taken to investigate and charge these defendants was entirely due to the sophistication and complexity of the fraud which understandably took a very long time to unravel. That was precisely why they used offshore companies, trusts and banks and they cannot complain about the consequences of that.

Having been charged the proceedings then took about 7 years to come on for trial. This was undue delay, as I have found in the context of an application for a restraint order in the cases of Richards and Whiston-Dew. By “undue”, I meant that the proceedings have taken far longer than they should have done, even though it is well known that these cases all do take a long time and do involve delays. This was at least in part because of submissions made to the previous trial judge about the disclosure process which the prosecution largely conceded and which he accepted. They were both wrong to do so. In my judgment the conduct of the defendants did materially contribute to this delay. By that I do not mean that they did anything improper, merely that the way in which they chose to conduct the proceedings did result in a very long pre-trial period. Despite this obvious truth, I consider nevertheless that their Convention right to trial within a reasonable period of time was infringed to an extent and the sentence should make a modest allowance to reflect that.

The particular factor which leads me to this conclusion is that there is an element of mitigation to be derived from the fact that these proceedings were stayed by a High Court Judge in May 2015 and the defendants then believed that they were at an end. It was not so long before they were resurrected

by the Court of Appeal (December 2015) but I consider that this aspect of the delay does need to be reflected in sentence.

In recent similar case the Court of Appeal Criminal Division on a reference by the Attorney General made deductions of about 20% for delay and other associated mitigation. I shall adopt a similar approach. This more than adequately addresses the individual adverse impacts which the delay has caused to individual defendants, which I have well in mind. I also have in mind the impact on the innocent and vulnerable people whose lives have been shattered by the conduct of those they have trusted and loved: Gold's children, Mrs. Demetriou, and Anwyl's child and mother. The discount includes a number of items of mitigation, some of which I deal with below, as it did in that earlier case.

INDIVIDUAL MITIGATION

All defendants are entitled to rely on their lack of previous convictions and on the evidence of good character adduced before the jury and since. They are all entitled to the benefit of previous exemplary conduct. This includes charitable work, as explained in the character evidence. The 20% discount for delay and personal mitigation in the recent Court of Appeal case included this item of mitigation, but I am particularly impressed by the character evidence I have heard and read in this case and will give it some additional weight.

Richards, Whiston-Dew and Demetriou have evidenced medical conditions which require long term treatment. Whiston-Dew has type 2 diabetes and Demetriou is 78. Both facts affect the length of time they have to live. These facts are relevant within the Guideline, but are of modest weight in view of the modern approach to sentencing offenders who are much older than they are.

The prison sentences which must follow will affect the Gold children, Anwyl's child and his mother. Demetriou is the sole or primary carer for his wife who is elderly and very dependent on him. I accept that he feels profoundly guilty about what he has done to her.

I have already explained my approach to Anwyl as the least experienced and most naïve of the defendants who was ruthlessly used and has been ruined by his involvement. None of the others has that mitigation. They were worldly-wise men who knew exactly what they were doing and all had the capacity to make good livings without fraud. They were just very greedy. Life had given them opportunities denied to others and they used the reputation they had earned to con others and to perpetrate fraud.

In the recent case in the Court of Appeal to which I have already referred the fraud involved £60m of tax at risk and was therefore a much smaller fraud. There were no personal tax counts and the level of benefit to the conspirators is not clear from the report. In those respects it was significantly less serious than the present case. Nothing at all was ever done by way of work abroad whereas here an underfunded unskilled and unsuccessful effort was made to achieve something. That factor is a slight distinction in favour of these defendants. Overall, this is significantly worse case.

SENTENCE

In the case of Richards and Gold this is a category 1A case with a starting point based on £80m loss of 12 years. The loss here is £107m of intended, not actual loss. The starting point needs to be increased to reflect this, and also the other seriously aggravating features I have already identified. I consider that a starting point in their cases of 14 years is appropriate. I make reductions from that for the factors I have identified and the sentence on count 1 is 11 years. The personal tax counts are high culpability offences and the level of harm indicates different outcomes as between Richards

and Gold. There will be concurrent terms of 7 years in the case of Richards and 6 years in the case of Gold. They will be disqualified from acting as a company director under the Company Directors (Disqualification) Act 1986 for 10 years because of the cynical manipulation of offshore limited liability companies.

Rodney Whiston-Dew starting point is somewhat less for the reasons I have given at 13 years, taking into account my rather different approach to his personal tax count which includes money outwith the scope of count 1. Applying a very similar discount in his case the sentence in his case is 10 years with a concurrent term of 7 years for count 4. He will also be disqualified under the 1986 Act for a period of 10 years. His role in the conspiracy directly involved the abuse of limited liability companies.

Evdoros Demetriou is in a lower category of culpability but elevated within that category because of the amount of money he received and because of his perversion of the course of justice. His starting point is 8½ years, and applying a discount for personal mitigation the sentence in his case is 6 years. I feel deeply sorry for his wife, but given that other arrangements for her care for a significant period of time will inevitably be required in any event, I cannot make more of an adjustment on her account than I have. The discount for mitigation in his case is somewhat higher than in other cases because of her. Given his role in the conspiracy he also will be disqualified under the 1986 Act for 10 years.

Jonathan Anwyl is also in the same category of culpability, category B. For the reasons I have explained his offence is not aggravated in the same way as that of the other defendants. His starting point is 7 years and the sentence in his case is 5½ years. I consider that the risk of his re-offending is low and that there is no need for a disqualification order in his case.

CONFISCATION AND ALL OTHER FINANCIAL ORDERS ADJOURNED. TIMETABLE SET.

THERE ARE NO QUALIFYING CURFEWS.

THE AGE OF THE OFFENCE MEANS THAT NO VICTIM SURCHARGE APPLIES.

IN THE ABSENCE OF THE DEFENDANTS

On Wednesday of this week after I had discharged the jury, I thanked them on behalf of the court and the public for their service in this case. I wish to repeat what I said in this rather fuller courtroom where the press are here to represent the public.

This jury served from mid-January to mid-early November 2017. They did so diligently, courteously and with very obvious attention to the long and complex evidence they were required to hear. This was an enormous burden imposed on them by the luck of the ballot. They did their duty without complaint and took it seriously.

At the end, they retired on 16th October and returned verdicts this week after long and careful deliberations. Some people think that juries cannot try complex fraud cases. I wish those people had been here to see this jury at work.

The observations I make are not comments on the verdicts: I would have said this whatever verdicts had been returned. The job of taking important decisions about other people is not easy, and not always agreeable. This jury did that job, and took those decisions. I said to them on Wednesday that they should be proud of the way they have done their work, and that the public of this country should be, and are, very grateful to them.

I discharged them from jury service in the future so that if they are ever summoned again, it will be their choice whether they serve or not.

An event took place in this trial which is unprecedented in my experience. A juror found early in the trial that she was pregnant and her child was born about 1 month early, while the jury was in retirement. I discharged her from further service so that she could be with her child, and she expressed frustration (through her delight) that she could not see her job here through. This attitude typified that of the whole jury. Another was told that she could go on holiday on 6th November long ago when we thought it would be over by then, and she made arrangements accordingly. She volunteered, without any request from me, to change that when it became clear that the jury would not be finished by that date.

The trial itself has taken a very long time and there are multiple lessons to be learnt from it. One thing I wish to say is that the use of iPads (or other tablet devices) was used in this trial very successfully. Each juror had an iPad on which the whole of the evidence was available through chronological schedules of events which contained links. They also had the legal directions, the Indictment, the admissions and everything else they required. They could annotate these, highlight them and so on. The support we received from the contractor was admirable. I am very grateful to the team for all that they have done. The jury very quickly learned how to operate their iPads and were able to access them in retirement. They had almost no paper at all.

We also benefited from a Livenote instant transcript which was, again, also provided with great efficiency, courtesy and with a really constructive approach to the proceedings.

I would like to thank all counsel and the other members of the legal teams for their assistance throughout the time when I have been associated with the case.

I wish to commend formally Mr. Paul Maybury and the whole HMRC team which has supported the case during this trial and also Ms. Hilary Gladding whose civil enquiry set the ball rolling in 2005 when she rightly suspected what was happening. Events proved her right. Although in some respects the history of this trial has not always reflected well on the way in which it was conducted, the individuals concerned have rendered real public service and deserve the commendation.

Finally, I would like to thank all the staff here at this court, in particular Paul Carter, the court associate, Mark Hyde, the usher, Debbie Clarke who was the jury manager, and Sharon Bell who succeeded her during the trial. Their expert management of the jury's administrative needs contributed greatly to the fact that, but for the early arrival of Evie, we would have ended this case with a jury of 12 people. This is highly unusual in a case as long as this and a great tribute to their work.