Case No.: T20220186

IN THE CROWN COURT AT SOUTHWARK

1 English Grounds, London, SE1 2HU

8 May 2024

Before:

HIS HONOUR JUDGE BAUMGARTNER
THE HON. RECORDER OF WESTMINSTER

- -

Between:

REX (BIN KHALIFA)

Prosecutor

- v -

GHADEER ALSAQABI

Defendant

- -
- -

Leila Gaskin (instructed by **JMW Solicitors LLP**) for the **Prosecution**
Anand Beharrylal KC with **Khadim Al'Hassan** (instructed by **EBR Attridge LLP**) for the **Defendant**

Hearing dates: 4 April 2023; 30 October 2023
Further written submissions: 22 December 2023; 28 January 2024

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Approved Judgment

I direct that pursuant to Crim.PR r.5.5(1) no official shorthand note shall be taken of this judgment and that copies of this version as handed down (subject to editorial corrections) may be treated as authentic.

HIS HONOUR JUDGE BAUMGARTNER:

Introduction

1. This is a private prosecution brought in the King's name by Wafa Bin Khalifa against Ghadeer Alsaqabi. Ms Alsaqabi lives in Kuwait. Ms Bin Khalifa died unexpectedly in Belgium on 31 August 2022, aged 41. Before she died, Ms Bin Khalifa was resident in the United Kingdom. Her death raises a preliminary issue as to whether the prosecution can survive her demise: Leila Gaskin, who appears for the Prosecution, argued that it can; Anand Beharrylal KC, who appears with Khadim Al'Hassan for the Defendant, submitted the prosecution (being brought privately in the King's name by Ms Bin Khalifa) cannot survive her demise. Even if the prosecution survives the death of Ms Bin Khalifa, two further issues arise regarding jurisdiction and the admissibility of her witness statements at trial as hearsay.

2. Applications to determine these three issues came before me in pre-trial hearings on 4 April 2023 and 30 October 2023, and were subject to further written submissions from the Prosecution on 22 December 2023 and the Defence on 28 January 2024. Those hearings were held pursuant to ss.39 to 41 of the Criminal Procedure and Investigations Act 1996 (the **"1996 Act"**) and, as such, this judgment is subject to the reporting restrictions set out in s.41 of the 1996 Act.

3. I shall consider these issues in turn, but before I do so it is useful first to set out the Prosecution case in its general terms.

The Prosecution case

4. The Prosecution case is that Ms Bin Khalifa and her husband Mohamed Tarabulsi were defrauded by Ms Ghadeer to the total sum of USD 185,000. Ms Ghadeer is said to have solicited a USD 160,000 "donation" from Ms Bin Khalifa and her husband in return for making Ms Bin Khalifa a Goodwill Ambassador for an international charitable organisation called the Inter-Governmental Institution for the use of Micro-Algae Spirulina against Malnutrition (**"IIMSAM"**). The IIMSAM's purpose is to solve the global food crisis by feeding algae to the malnourished. It has observer status at the United Nations Economic and Social Council, or ECOSOC as it is widely known. In return for the donation, Ms Bin Khalifa alleged Ms Ghadeer would arrange for the issue of a United Nations (**"UN"**) laissez passer (a diplomatic travel document) used for travel on UN official missions. Ms Bin Khalifa further alleged Ms Ghadeer told her that, for a fee of USD 15,000, she would organise a ceremony where the document would be presented to her, and for a further USD 10,000 Ms Ghadeer would arrange for articles about her appointment to appear in "Forbes" and "Pioneer" magazines.

5. In or about November 2018, Ms Bin Khalifa travelled to London. She entered the United Kingdom using her Saudi Arabian passport. Upon entry, Ms Bin Khalifa presented the UN laissez passer provided to her by Ms Ghadeer to the UK Border Force, but it was seized and Ms Bin Khalifa was told it was a fraudulent document. Ms Bin Khalifa spoke to Ms Ghadeer about what had happened at the airport over the telephone. Ms Ghadeer is said to have told her that she would sort out the matter with the IIMSAM, and that she had judicial powers in England that would allow her to resolve the issue. Ms Bin Khalifa's attempts to contact Ms Ghadeer thereafter proved unsuccessful. The IIMSAM has since confirmed that the travel document provided by

Ms Ghadeer to Ms Bin Khalifa was fake, that no money was received by way of a donation from either Ms Bin Khalifa or Ms Ghadeer, and that Ms Ghadeer had never had any involvement in the organisation.

Chronology

6. By a summons issued by Westminster Magistrates' Court dated 24 February 2022 upon the complaint of Wafa Bin Khalifa made on 15 December 2021, Ghadeer Alsaqabi was summonsed to appear before the Court on 12 April 2022 to answer two charges of fraud:

   (1) between 1 April 2018 and 1 April 2019, Ms Alsaqabi committed fraud in that she dishonestly made a false representation to Ms Bin Khalifa, which was and which she knew was or might be untrue or misleading, namely that if USD 160,000 was paid to her by Ms Bin Khalifa, she would (i) provide her with a genuine UN laissez passer, and (ii) forward the money to the IIMSAM as a donation, in breach of s.2 of the Fraud Act 2006 (the **"2006 Act"**), intending to make a gain for herself; and

   (2) between 1 April 2018 and 1 April 2019, Ms Alsaqabi committed fraud in that she dishonestly made a false representation to Ms Bin Khalifa which was and which she knew was or might be untrue or misleading, namely that if USD 25,000 was paid to her by Ms Bin Khalifa, she would provide beneficial services to her (i) in respect of the publication of an article in both Forbes and Pioneer magazines, and (ii) by organising a presentation ceremony in Dubai where a genuine UN laissez passer would be presented, in breach of s.2 of the 2006 Act, intending to make a gain for herself.

   Those charges were committed to this Court for trial by District Judge (Magistrates' Court) Sandhu on 12 April 2022, after Ms Alsaqabi indicated through an appointed representative not guilty pleas and challenged jurisdiction. Ms Alsaqabi herself was not present at this hearing, though she observed via CVP.

7. I am told that, beforehand, proceedings had been brought by Ms Bin Khalifa on 4 July 2019 in the (then) Queen's Bench Division of the High Court by way of an application for interim relief by a freezing injunction to prevent Ms Alsaqabi from disposing or dealing with the money that had been transferred to her account by Ms Bin Khalifa and Mr Tarabulsi. I am told that application was dismissed by the High Court on 24 July 2019 "*without prejudice to the Proposed Claimant's right to re-apply*".

8. On 6 May 2022 a draft Indictment, prosecution case summary and Plea and Trial Preparation Hearing (**"PTPH"**) form were served on the Defence and the Court. The Indictment sets out the two charges committed for trial as follows:

   "***Count 1***

   Statement of Offence

   Fraud, contrary to section 1 of the Fraud Act 2006.

   Particulars of Offence

Ghadeer Alsaqabi between 1st April 2018 and 1st April 2019 dishonestly and intending thereby to make a gain for herself or another made representations to Wafa Bin Khalifa which were and which she knew were or might be untrue or misleading, namely that if 160,000 USD was paid to her by Wafa Bin Khalifa she would (i) provide her with a genuine United Nations laissez passer and/or (ii) forward the money to the IIMSAM as a donation, in breach of section 2 of the Fraud Act 2006.

Count 2

Statement of Offence

Fraud, contrary to section 1 of the Fraud Act 2006.

Particulars of Offence

Ghadeer Alsaqabi between 1st April 2018 and 1st April 2019 dishonestly and intending thereby to make a gain for herself made representations to Wafa Bin Khalifa which were and which she knew were or might be untrue or misleading, namely that if 25,000 USD was paid to her by Wafa Bin Khalifa, she would provide beneficial services to her (i) in respect of the publication of an article in both Forbes and Pioneer magazines and/or (ii) by organising a presentation ceremony in Dubai where a genuine United Nations laissez passer would be presented, in breach of section 2 of the Fraud Act 2006."

9. The PTPH was held on 10 May 2022, stage dates were set and a date fixed for trial on 8 May 2023. A further hearing was fixed for 15 September 2022 to determine the jurisdiction issue. Ms Alsaqabi was not arraigned due to the jurisdiction issue; again, she was not present at this hearing. Sadly, Ms Bin Khalifa died before the hearing on jurisdiction. The matter was listed for further case management on several dates thereafter and directions for the further conduct of the case were given. On 5 October 2022, following a letter sent to the Court by those acting for Ms Alsaqabi the then Recorder of Westminster Her Honour Judge Taylor referred the matter to the Director of Public Prosecutions (**"DPP"**) for review.

10. On 25 January 2023, the matter first came before me. I was told by Ms Gaskin that the DPP had refused to take over conduct of the case under s.6(2) of the Prosecution of Offences Act 1985 (the **"1985 Act"**). I gave directions for the filing and service of submissions by the parties on the three issues I identified above and fixed a hearing for the determination of those issues on 23 March 2023. That hearing was removed to 4 April 2023 to accommodate Ms Gaskin, who was mid-trial elsewhere on the original date. In the meantime, Ms Alsaqabi served a Defence Statement dated 3 March 2023. In it, and relevantly for the purposes of the issues now before the Court, Ms Alsaqabi avers that Ms Bin Khalifa is the complainant, that Mr Tarabulsi has no locus in these criminal proceedings, and that, in any event, this Court does not have jurisdiction to hear this case.

11. When the matter came before me on 4 April 2023, Iain Suggett held the brief for Ms Alsaqabi. Through no fault of his own Mr Suggett had been very lately instructed by those acting for Ms Alsaqabi. He provided very shortly before the 4 April hearing a two page skeleton argument which dealt only with the issue of the effect of Ms Bin

Khalifa's demise on the prosecution, and referred me a recent authority of the Court of Appeal (Criminal Division) in *Asif v Ditta* [2021] EWCA Crim 1091. The limited scope of Mr Suggett's skeleton argument and the absence of any properly argued reply by Ms Gaskin was insufficient for a fully effective hearing to take place on 4 April. I referred the parties to a number of additional authorities not cited in written argument before the hearing (including *R v Truelove* (1880) 5 QBD 336; *R v Rowe* [1955] 1 QB 573; *R v Burt; Ex p Presburg* [1960] 1 QB 625; and *Hawkins v Bepey* [1980] 1 WLR 419), invited submissions on those authorities, and gave directions for the service of further submissions and for an agreed hearing bundle. I fixed the hearing of legal argument for the parties' convenience for two days beginning 30 October 2023, and vacated the trial date and refixed it for 22 July 2024.

Issues

12. The questions for me to determine on these issues are:

    (1) Can a private prosecution survive the demise of the private prosecutor?

    (2) Does this Court have jurisdiction to entertain Ms Bin Khalifa's private prosecution of Ms Alsaqabi?

    (3) If the Court does have jurisdiction, can Ms Bin Khalifa's statements be adduced at trial as hearsay evidence?

(1) Can a private prosecution survive the demise of the private prosecutor?

13. Any person may bring criminal proceedings or conduct any criminal proceedings to which the DPP's duty to take over those proceedings does not apply,[1] if it is in the public interest. Such prosecutions are brought in the name of the Sovereign: see *Hamilton v Post Office Limited* [2021] EWCA Crim 577, at [4] per Holroyde LJ. As with claims for judicial review which also are brought in the name of the King,[2] the Sovereign's involvement in criminal proceedings is nominal only.

14. Except for a limited category of case where statute requires the *fiat* or consent of the Attorney General or the DPP, there is no restriction on the right of any person to bring such or conduct proceedings. In *Gouriet v Union of Post Office Workers* [1978] AC 435, Lord Diplock set out at 497-498 the modern statement of this common law power to prosecute:

> "In English public law every citizen still has the right, as he once had a duty (though of imperfect obligation), to invoke the aid of courts of criminal jurisdiction for the enforcement of the criminal law by this procedure. It is a right which nowadays seldom needs to be exercised by an ordinary member of the public, for since the formation of regular police forces charged with the duty in public law to prevent and detect crime and to bring criminals to justice, and the creation in 1879 of the office of Director of Public Prosecutions, the need for prosecutions to be undertaken (and paid for) by private individuals has largely

[1] As to which, see s.3(2) of the 1985 Act.
[2] *R (Ben-Abdelaziz) v Haringey London Borough Council* [2001] 1 WLR 1485, at [29] per Lord Phillips of Worth Matravers MR, with whom Pill and Arden LJJ agreed.

> disappeared; but it still exists and is a useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders against the criminal law."

Earlier on, Lord Wilberforce said this, at 477:

> "The individual … who wishes to see the law enforced has a remedy of his own: he can bring a private prosecution. This historical right which goes right back to the earliest days of our legal system, though rarely exercised in relation to indictable offences, and though ultimately liable to be controlled by the Attorney-General (by taking over the prosecution and, if he thinks fit, entering a *nolle prosequi*) remains a valuable constitutional safeguard against inertia or partiality on the part of authority."

15. This right to bring a private prosecution is protected by statute, most recently in s.6(1) of the 1985 Act:

> "6 Prosecutions instituted and conducted otherwise than by the Service.
>
> (1) Subject to subsection (2) below, nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.
>
> (2) Where criminal proceedings are instituted in circumstances in which the Director is not under a duty to take over their conduct, he may nevertheless do so at any stage."

16. Ms Gaskin submitted that criminal proceedings brought in the King's name by a private prosecutor are, in fact and in effect, proceedings brought by the King, such that the private prosecutor's death is irrelevant to and has no effect upon the continuation of those proceedings. She relies upon a number of authorities for this proposition.

17. First, a case to which I had referred her at the hearing on 4 April 2023, *R v Burt; Ex p Presburg* [1960] 1 QB 625, where Lord Parker CJ (with whom Cassels and Ashworth JJ agreed) said this, at 635:

> "It has been conceded that, although the information was laid by a particular police constable, he must be taken in laying that information to be acting on behalf of the Metropolitan Police; it would be quite artificial to treat him as a private individual and to say that as a private individual he had been put to no expense or loss or trouble because he himself was being paid all the time. Not only would that be an artificial approach, but if one looks at section 17 (1) of the Act of 1952, it is expressly provided: '"Prosecutor" includes any person who appears to the court to be a person at whose instance the prosecution has been instituted, or under whose conduct the prosecution is at any time carried on.' Accordingly, Mr Miskin, quite rightly, has conceded that the prosecutor here and the person entitled to costs, if costs be payable, is the Commissioner of Metropolitan Police or the Metropolitan Police Force."

18. I do not think this case assists Ms Gaskin because it concerned an information laid in the Magistrates' Court by a police constable against a defendant for failing to conform to an indication given by a traffic signal. It is a case to which the Costs in Criminal Cases Act 1952 applied and fell for construction. The practice then, of course, was for such prosecutions to be brought by way of an information in the Magistrates' Court, laid by a police constable, although, as Lord Parker CJ rightly identified, the prosecution was brought by the constable for and on behalf of the Metropolitan Police Commissioner or the Metropolitan Police Force as s.17(1) of the Costs in Criminal Cases Act 1952 provided. That could not be said to have been the case here: these proceedings are brought by Ms Bin Khalifa in her personal capacity, not on behalf of anyone else. (I note in passing there is no modern day equivalent of s.17(1) in the Act which replaced it in 1973[3] or, indeed, in the 1985 Act which replaced that.) In this regard the fact that the prosecution is brought in the King's name is unimportant because all prosecutions are brought in the Sovereign's name. Lord Goddard CJ's observations as to artifice in the case of an information laid by a police constable are of no application here given the different circumstances in which these criminal proceedings are brought as a private prosecution.

19. Second, *R (Gladstone Plc) v Manchester City Magistrates' Court* [2005] 1 WLR 1987, a decision of Leveson J (as he then was) sitting with Rose LJ in the Divisional Court, as to whether a public company had the right to lay an information an alleged assault by a shareholder on a director at the company's annual general meeting. Leveson J held (at 1991) that, to bring a private prosecution, a corporate informant must establish a public interest or benefit (as opposed to a private interest) in the proposed criminal proceedings. Leveson J was in no doubt that the director himself could have brought the prosecution because he would have had an individual grievance in so doing. Rose LJ agreed, at 1993. In my judgment, *Gladstone* establishes no more than Ms Bin Khalifa's right to bring this prosecution. No question of the prosecutor establishing a public interest or benefit arises here (a proposition which in any event was doubted by Mitting J in *R (Ewing) v Davis* [2007] 1 WLR 3223 after a careful analysis of Victorian and other authorities on the point).

20. Ms Gaskin also relied upon *R (Gujra) v Crown Prosecution Service* [2013] 1 AC 484, a decision of the Supreme Court, but in my judgment it adds nothing to the restatement of the common law power set out by Lord Diplock in *Gouriet*.

21. Ms Gaskin further submitted that, once an indictment is signed, the proceedings thereafter continue in the name of the Sovereign. So much is evident from the *Hamilton* case, but Ms Gaskin seeks to take this proposition further in relying on *R v George Maxwell (Developments) Ltd* [1980] 2 All ER 99, a decision of His Honour Judge David QC sitting in the Crown Court at Chester, such that the subsequent death of the private prosecutor has no effect on the proceedings. In *George Maxwell* Judge David QC held that a complainant who brings a private prosecution in the Crown Court is not a litigant in person, and is not entitled to act as advocate in any way in the proceedings. On my reading of the learned judge's ruling, nothing he said could support any reasoning beyond the proceedings continuing in the Sovereign's name on the nominal basis I mentioned at [13] above. That decision was concerned only with whether or not the private prosecutor, as a litigant in person, had a right to appear in

[3] Costs in Criminal Cases Act 1973

person before the Crown Court. The learned judge held (at 100) that he did not, relying on a passage in *Halsbury's Laws*:

> "The clearest and plainest statement of the law on the point in question is to be found in 3 Halsbury's Laws of England (4th ed.), para. 1160 . I read the text: 'In criminal proceedings in the High Court and in the Crown Court prosecutors are not allowed to appear in person to conduct the proceedings, but prosecutions must be conducted by barristers, who, when acting in this capacity, are said to be in the nature of public officers.'"[4]

It does not take Ms Gaskin's argument further. It cannot be that these proceedings are brought by or at the instigation of the Sovereign (or, indeed, that the King has conduct of them, if that is suggested), whose involvement in them is as I have said only nominal. If it were otherwise, it begs the underlying rationale of s.6(2) of the 1985 Act: from whom does the DPP take over conduct of the proceedings, if not the private prosecutor?

22. Lastly, Ms Gaskin addressed the remaining authorities which I raised on 4 April 2023. She submitted that none of these cases are relevant to the question as to whether a private prosecution survives the demise of the private prosecutor because they concern only the death of a private prosecutor in the Magistrates' Court, or where a defendant has died post-conviction and pre-appeal.

(1) *R (Ingham) v Truelove* (1880) 5 QBD 336, a decision of the Divisional Court (Lush and Manisty JJ), where one of the questions for the Court was whether the prosecutor's death between the defendant's conviction in the Bow Street Magistrates' Court and his appeal to the Middlesex Sessions caused the proceedings to lapse through abatement. At 339-340, Lush J said this:

> "These proceedings, which were taken under 20 & 21 Vict. c. 83 [the Obscene Publications Act 1857], cannot be liable to abatement in the same manner as civil or quasi civil proceedings are liable to abatement by the common law, for they are essentially criminal proceedings. The Act enables a magistrate, upon a complaint upon oath that obscene books or papers are kept for sale in a house or shop, to grant a warrant authorizing a constable to seize and carry them before the magistrate granting the warrant. This warrant is therefore similar to an ordinary search warrant, and on the further prosecution of the proceedings the presence of the complainant is never necessary. I need not say that it cannot be desirable in the interests of the public that the complainant should have full control over the proceedings in a prosecution for selling obscene publications, so that it

[4] In any event, it is evident from paragraph D3.111 of *Blackstone's Criminal Practice 2024* that by operation of statute the common law position set out in *George Maxwell* no longer maintains:

> "… in *Southwark Crown Court, ex parte Tawfick* [1995] Crim LR 658, it was said that the discretion which was then conferred on the court by provisions now to be found in the Legal Services Act 2007, sch. 3 could be used to allow an unrepresented prosecutor to conduct a prosecution in the Crown Court. However, Glidewell LJ added that the discretion would be exercised only 'occasionally', and that it would be only in 'exceptional circumstances' that a Crown Court judge would allow the complainant to conduct the prosecution case."

> might be in his power at any stage to withdraw them, and to make terms with the defendant."

In answer to a submission that there should throughout be an informer who may be liable to pay costs in case the party convicted should be successful upon an appeal to sessions, Lush J said this:

> "… I cannot see why, if upon the death of the complainant some other person takes up the prosecution, he should not be liable to pay costs if the appeal should be successful. It could readily be ascertained as a matter of fact who was the party virtually prosecuting the appeal. There is nothing to shew that the same person who originally made the complaint must always be party to the appeal."

Truelove, however, is distinguishable from the present case in this way: there the informant was the complainant for the issue of warrant for the seizure of material within the scope of the Obscene Publications Act 1857. He had died after the order was made by the magistrates but before the appeal. As Lush J observed, it was not necessary for the complainant to be present on the further prosecution of the proceedings. Here, though, the criminal proceedings brought by Ms Bin Khalifa against Ms Alsaqabi have not resulted in an acquittal, conviction or some other final disposal. They remain pending. Had Ms Bin Khalifa survived, she would in fact have had full control over them, and at any stage discontinued the proceedings. No one has taken up the prosecution on her behalf, nor has anyone sought to do so. As to Lush J's statement that those proceedings – "essentially criminal proceedings" – could not be liable to abatement in the same way as civil or quasi civil proceedings, he offered no authority or reasoning for that very general proposition. No such authority was identified or offered to me by the parties, nor was I able to find any myself. As to Lush J's *obiter* observation that:

> "in cannot be desirable in the interests of the public the complainant should have full control over the proceedings in a prosecution for selling obscene publications, so that it might be in his power at any stage to withdraw them, and to make terms with the defendant",

that is, with great respect to Lush J, precisely within the scope of a private prosecutor's power, whether for prosecuting obscene publications or otherwise, subject only to the DPP's superintendence as provided for in s.6(2) of the 1985 Act.

(2) *R v Rowe* [1955] 1 QB 573, a decision of the Court of Criminal Appeal (Lord Goddard CJ, Hilbery and Pearce JJ), where the appellant died after conviction and sentence but before the hearing of his appeal. The Court held it had no jurisdiction to entertain the appeal unless the person seeking to appeal has a legal interest in the quashing of the conviction, such as the interest of executors in the quashing of the conviction in order to recover, for the benefit of the appellant's estate, money paid as a fine. Lord Goddard CJ, giving the judgment of the Court, said, at 574-575:

> "Mr Peter Lewis, instructed not by the prisoner, but by the prisoner's widow, applies to be allowed to continue the appeal, but in the opinion of

> the court we cannot allow a widow or an executor or an administrator of a deceased person to appeal to this court unless they can show a legal interest. If a person is sentenced to pay a fine and dies having appealed, or even if he dies after payment of the fine - it might be immediately afterwards - it may be that the court would allow executors or administrators to appeal merely on the ground that if the conviction were quashed they could recover the fine for the benefit of the estate of the deceased which they are bound to administer.
>
> …
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> It may be that it is artificial to say that if there is a pecuniary penalty an appeal might lie, whereas if corporal punishment or imprisonment is imposed there cannot be an appeal, but at the same time I do not see any ground on which we can say in the present case that anybody has an interest. It may be that the widow would be very glad to have her husband's name cleared, but we cannot take any notice of that sentimental interest. There is nobody affected now by the judgment of the court because the judgment was a sentence of imprisonment and the prisoner has died. It would be a very novel step if, in these circumstances, we said that the court would entertain an appeal. For these reasons, the application for leave to appeal must be refused."

Again, this case can be distinguished on its facts (as an appeal by a defendant who has died post-conviction, rather than criminal proceedings brought by a private prosecutor before final disposal). I can readily see why that position (at least before the Criminal Appeal Act 1968 (as amended by the Criminal Appeals Act 1995)) maintained for the reasons given by the Court: criminal appeals were a creature of statute, not governed by the common law in the way that private prosecutions are. As much was held by Widgery LJ (as he then was) in *R v Jefferies* [1969] 1 QB 120, who said (at 124) of the courts which do derive jurisdiction from statute:

> "Whatever may be the powers of courts exercising a jurisdiction that does not derive from statute, the powers of this court are derived from, and confined to, those given by the Criminal Appeal Act of 1907. We take it to be a general principle that whenever a party to proceedings dies, the proceedings must abate, unless his personal representatives both have an interest in the subject matter and can by virtue of the express terms of a statute (or from rules of court made by virtue of jurisdiction given by a statute) take the appropriate steps to have themselves substituted for the deceased as a party to the proceedings."

Mr Suggett earlier also referred me to decision of the Court of Criminal Appeal of the Supreme Court of New South Wales in *A reference by the Attorney General for the State of New South Wales under s.77(1)(b) of the Crimes (Appeal and Review) Act 2001 re the conviction of Frederick Lincoln McDermott* [2013] NSWCCA 102, which followed *R v Maguire* [1992] QB 936, which held (at 941) that an appeal by a deceased defendant could be entertained by the court. I do not derive any general principle or assistance from *Rowe* or the other authorities cited apposite to the question before me.

(3) *Hawkins v Bepey* [1980] 1 WLR 419, another decision of the Divisional Court (Browne LJ and Watkins J), and which considered both *Truelove* and *Burt*, where it was held that an information laid by a chief inspector was laid in obedience to the instructions of the chief constable, and that, accordingly, the real prosecutor in the case was either the chief constable or the force under his direction and control, such that the appeal did not lapse on the chief inspector's death since no party to it had died in a real sense, and the court had jurisdiction to deal with the appeal. Watkins J (as he then was) delivered the leading judgment. He held (at 423) that, in regard the principle which emerges from *Truelove* and *Burt* as being of general application in circumstances where a police officer dies after laying an information and before the relevant proceedings before the court:

> "The real prosecutor of these defendants was … the Chief Constable of Kent or the Kent Police Force. So, as counsel for the chief constable has submitted, in a real sense no party to this appeal has died. The recognizance entered into by the chief inspector was tendered by him on behalf of the chief constable, who is answerable for all the consequences of it."

23. What, then, of the case where the private prosecutor brings the prosecution? They must be the "real" prosecutor in such circumstances, as the Divisional Court's reasoning in *Hawkins v Bepey* suggests. In those circumstances, the only statutory provision which permits another person (and, even then, only the DPP) to take over the conduct of the proceedings is s.6(2) of the 1985 Act.

24. What, then, of the private prosecutor's demise? Does the prosecution survive in their estate to be prosecuted by those charged with administering it? I very much doubt that: only a deceased's rights *in personam* and *in rem* form part of their estate. Lord Goddard CJ made as much plain in *Rowe*, where the Court held that there must be a legal interest in pursuing the proceedings for them to survive the death of an appellant defendant. Had Ms Gaskin argued Ms Bin Khalifa held such an interest contingent upon a compensation order being made upon conviction, that interest (if it indeed exists) remains a contingent (as opposed to vested) interest subject to the sentencing judge's discretion (see s.134(2) of the Sentencing Act 2020).

25. In any event, I do not consider Ms Bin Khalifa's role as private prosecutor to constitute either a personal or proprietary right because it is not an action personal to Ms Bin Khalifa; it seems to me, rather, that the role of a private prosecutor is a public office voluntarily assumed or vacated by the private prosecutor without any attendant proprietary rights. If, *e.g.*, Ms Bin Khalifa discontinued the criminal proceedings against Ms Alsaqabi, then it would be open to the DPP or another private prosecutor to bring criminal proceedings for the same offences provided those proceedings did not amount to an abuse of the court's process (such as in *Jones v Whalley* [2007] 1 AC 63), and Ms Bin Khalifa would have no right to challenge that decision by the DPP or another private prosecutor simply by virtue of her former office. Mitting J's judgment in *Ewing* shows there is no impediment to a third party instituting a private prosecution, whether or not a public interest or benefit arises in such a prosecution.

26. Private prosecutors must comply with the overriding objective in the same way as a "public" prosecutor. In *R (Kay) v Leeds Magistrates' Court* [2018] 4 WLR 91, Sweeny J (with whom Gross LJ agreed) said this, at [23]:

> "(1) Whilst the Code for Crown Prosecutors does not apply to private prosecutions, a private prosecutor is subject to the same obligations as a Minister for Justice as are the public prosecuting authorities—including the duty to ensure that all relevant material is made available both for the court and the defence.
>
> (2) Advocates and solicitors who have the conduct of private prosecutions must observe the highest standards of integrity, of regard for the public interest and duty to act as a Minister for Justice in preference to the interests of the client who has instructed them to bring the prosecution—owing a duty to the court to ensure that the proceeding is fair."

27. In *R (Virgin Media Ltd) v Zinga* [2014] 1 WLR 2228, Lord Thomas CJ (delivering the judgment of the Court of Appeal (Criminal Division)) said as much again, at 2245:

> "60. … there may well be cases where concern arises as to the interrelationship between the prosecution in the public interest and claims for recompense by the private prosecutor for its own benefit. Although claims for a compensation order are not likely to be common in view of the limited nature of the order, it is always open to the private prosecutor to seek recompense in the confiscation proceedings in the way set out in *R v Jawad* [2013] 1 WLR 3861 …
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> 61. In such cases the court can in part rely on the professional duties of the advocates and solicitors under their professional codes and on the duties owed to the court. These are examined in detail by Sir Richard Buxton in "The Private Prosecutor as a Minister for Justice" [2009] Crim LR 427. Advocates and solicitors who have conduct of private prosecutions must observe the highest standards of integrity, of regard for the public interest and duty to act as a Minister for Justice (as described by Farquharson J) in preference to the interests of the client who has instructed them to bring the prosecution. As Judge David QC, a most eminent criminal judge, rightly stated in *R v George Maxwell (Developments) Ltd* [1980] 2 All ER 99, in respect of a private prosecution:
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> > 'Traditionally Crown counsel owes a duty to the public and to the court to ensure that the proceeding is fair and in the overall public interest. The duty transcends the duty owed to the person or body that has instituted the proceedings and which prosecutes the indictment.'
>
> There is no place in such a prosecution for what some have claimed as 'end to end' case management on behalf of the client who has initiated a private prosecution."

28. Lord Thomas CJ's observations in *Zinga* were quoted with approval by Gross LJ (with whom Nicol J agreed) in the Divisional Court in *R (Haigh) v City of Westminster Magistrates' Court* [2017] EWHC 232 (Admin), who referred further to the observations of Buxton LJ (delivering the judgment of the Divisional Court) in *R v Belmarsh Magistrates' Court; Ex p Watts* [1999] 2 Cr App R 188, at 200, as to private prosecutors being subject to the same obligations, as a Minister of Justice, as the public prosecuting authorities.

29. At the hearing on 30 October 2024, Mr Beharrylal KC and Mr Al'Hassan proceeded on the mistaken assumption that the private prosecutor in fact was not Ms Bin Khalifa but

her husband Mr Tarabulsi. That assumption was corrected during the course of the hearing, and, given the potential significance of the argument, I gave permission for the Defendant to provide further written submissions addressing the point following the hearing. In their written submissions dated 29 January 2024, Mr Beharrylal KC and Mr Al'Hassan drew to my attention the Private Prosecutors' Association Code for Private Prosecutors (the **"Code for Private Prosecutors"**). Although not binding anyone (even members of the Association), the Code for Private Prosecutors helpfully sets out in summary form the common law and statutory duties imposed upon private prosecutors.[5] For example, at paragraph 2.2.2 the Code sets out the obligations and duties incumbent upon a private prosecutor (and those acting for them) at law, and identifies other practicalities to be taken into account:

(1) That a private prosecutor is subject to the same Minister of Justice obligations as a public prosecuting authority: paragraph 2.2.2(a).

(2) That advocates and solicitors have a duty to act as Ministers of Justice in preference to the interests of the client who has instructed them to bring the prosecution: paragraph 2.2.2(b).

(3) That those acting on behalf of a private prosecutor must withdraw or refuse to act if they consider the conduct of the private prosecutor to be improper or vexatious: paragraph 2.2.2(c).

(4) The requirement to retain material which may be relevant to an investigation and to schedule such material where it will not form part of the prosecution case: paragraph 2.2.2(f).

(5) The prosecutor's disclosure obligations and the consequences of failing to comply with them: paragraph 2.2.2(g).

(6) The circumstances in which it may be necessary to waive or partially waive legal professional privilege in order for the proceedings to continue (or to stop proceedings if privilege is not waived): paragraph 2.2.2(i).

(7) The difficulties that are likely to arise where defendants or material are located outside England and Wales, which will include requirements to comply with applicable local law: paragraph 2.2.2(j).

(8) That information about the investigative process may need to be withheld from witnesses to avoid tainting their evidence: paragraph 2.2.2(k).

(9) The requirement to retain material which may be relevant to an investigation and to schedule such material where it will not form part of the prosecution case: paragraph 2.2.2(l).

(10) The circumstances in which a private prosecution can and cannot properly be terminated and the potential cost consequences: paragraph 2.2.2(q).

[5] In the Code for Private Prosecutors, the term "private prosecutor" is used to describe the person, organisation or body which brings the private prosecution, and the term "the prosecution" is used to describe the private prosecutor and those who either assist the prosecutor or who act on their behalf.

30. So far as the prosecutor's disclosure obligations are concerned, s.3(2) of the 1996 Act provides:

> "Prosecution material is material—
>
> (a) which is in the prosecutor's possession, and came into his possession in connection with the case for the prosecution against the accused,"

The term "the prosecutor" in this section imposes the duty upon the prosecutor, not those who act on their behalf. By s.2(3) of the 1996 Act references to "the prosecutor" are to any person acting as prosecutor, whether an individual or a body.

31. Other duties and obligations of the private prosecutor imposed by the Code for Private Prosecutors and/or at law are referred to further on in the Code:

> "*2.3.1 In all cases, the issue as to which individual has authority to give instructions and receive advice on behalf of the private prosecutor at any point should be clearly defined in writing. This will include the giving of instructions on the acceptability of pleas.*
>
> *...*
>
> *3.1.2 The person in charge of an investigation must ensure that proper procedures are in place for recording, retaining and revealing (to those acting on behalf of the private prosecutor) material obtained in the criminal investigation which may be relevant.*
>
> *...*
>
> *3.6.2 All normal rules of criminal procedure apply to a private prosecutor and should be observed, including the obligation to produce witness statements on the standard template, and to retain any drafts of witness statements, notes of interview and transcripts.*
>
> *...*
>
> *3.7.1 Should a private prosecutor seek the assistance of the Court to obtain material, the fundamental duty of candour must be observed in any application.*
>
> *3.7.2 The prosecutor has a duty of full and frank disclosure which necessarily includes a duty not to mislead the judge and which requires disclosure to the Court of any material that is potentially adverse to the application, which might militate against it or which may be relevant to the judge's decision.*
>
> *...*
>
> *4.4.1 The extent to which the private prosecutor is involved in the process of identifying relevant material must be given careful consideration by the prosecution at an early stage. Particular consideration must be given to whether in any given case it is appropriate for the private prosecutor to identify relevant material (or whether that role should be assumed by someone else) and how that*

> *process is to be managed and supervised. Material cannot be withheld, either from inclusion on the schedule or from disclosure, on the basis that its revelation is inconvenient or embarrassing to the private prosecutor or any other person.*
>
> *...*
>
> *11.3.1 The private prosecutor must be advised that there is a power to award costs against a private prosecutor, 'where the Court is satisfied that one party to criminal proceedings has incurred costs as a result of an unnecessary or improper act or omission by, or on behalf of, another party to the proceedings'.*[6] *In proceedings where, on proper analysis, the prosecution never had any prospect of success and thus should never have been brought, a private prosecutor should expect to have to bear the costs of the defendant.*[7]"

32. Ms Bin Khalifa's death makes the fulfilment of many of these duties and obligations as a private prosecutor problematic if not impossible. For example, absent Ms Bin Khalifa:

    (a) who fulfils the prosecutor's disclosure obligations;

    (b) who retains material relevant to the investigation into Ms Alsaqabi and schedules such material where it does form part of the prosecution case, where that material is not already in the possession of those acting for her;

    (c) who provides instructions in circumstances where the private prosecution can properly be terminated;

    (d) who has authority to give instructions and receive advice, including the giving of instructions on the acceptability of pleas;

    (e) who ultimately is responsible for the conduct of the investigation to ensure that proper procedures are in place for recording, retaining and revealing (to those acting on her behalf) material obtained in the criminal investigation which may be relevant;

    (f) where the assistance of the Court is sought to obtain material, who complies with the fundamental duty of candour in any application;

    (g) who discharges any duty of full and frank disclosure; and

    (h) who is responsible for satisfying any award of costs made against the prosecution?

    These are not matters or judgments which those acting for the private prosecutor can take absent Ms Bin Khalifa, as Ms Gaskin suggested.

33. In reply in oral argument before me, Ms Gaskin submitted Ms Bin Khalifa's husband, Mr Tarabulsi, could discharge these duties and obligations, either as her assignee or as

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[6] Section 19 of the 1985 Act.
[7] *R (Hubert) v Manchester Crown Court* [2015] EWHC 3734 (Admin).

the executor or administrator of her estate. I do not see how that can be so. As I explained at [25] above, a private prosecution does not constitute either a personal or proprietary right capable of assignment or transfer. Mr Tarabulsi is not a party to these proceedings. He has no *locus*. Ms Bin Khalifa laid the information which the Magistrates' Court found supported the issue of a summons. Mr Beharrylal KC and Mr Al'Hassan submit that, in any event, s.6(2) of the 1985 Act provides that only the DPP may take over the conduct of a private prosecution not brought by him. I do not read that section as so restrictive; as I read it, s.6(2) is an enabling provision which permits the DPP to take over their conduct where he is otherwise not under a duty to do so.

34. As I understand it, there has been no grant of probate or letters of administration to anyone in relation to Ms Bin Khalifa's estate. I am told that Mr Tarabulsi is, for the moment, providing instructions to Ms Bin Khalifa's solicitors on record. I do not know in what capacity those instructions are being given. He is not the private prosecutor, nor has he sought from this or any other Court recognition that he is.

35. Taking all that into account, I find that the criminal proceedings brought by Ms Bin Khalifa against Ms Alsaqabi in the public office of private prosecutor lapsed through abatement upon and cannot survive Ms Bin Khalifa's demise. I should say that I have not reached this conclusion lightly and without considerable pause for thought, and in so doing I have sought to draw together principles of general application and apply them to circumstances in which I am told there is no direct previous authority on the point.

36. The absence of authority on this point is not a neutral factor. Had there been past instances in which a private prosecution was assigned or transferred from one private prosecutor to another, or where a private prosecution having been brought by a private prosecutor before their demise had been prosecuted by the executors or administrators of the private prosecutor's deceased estate, no doubt they would have been drawn to my attention. None were. A public office and a chose in action are two very different things. What Ms Gaskin asks me to do in acceding to her submission is to recognise (if not create) a proprietary right in the prosecution of criminal proceedings when none exists at law and where none has been shown to exist. It would transform the private prosecutor from a public office into a potentially valuable commodity. That approach is wrong in law, and, in any event, is not the business of the Crown Court.

37. Having reached that conclusion, I find the criminal proceedings brought by Ms Bin Khalifa lapsed through abatement upon her death. It follows that these proceedings ended upon her death by operation of law, and, Ms Alsaqabi not having been arraigned, that is the end of the matter aside any question of costs. For those reasons, I answer this question, "no".

38. Although that finding disposes of the need to answer the second and third questions, I shall answer at least the second question in the event I am wrong about the first (both the first and second questions being questions of law relating to the case).

(2) Does this Court have jurisdiction to entertain Ms Bin Khalifa's private prosecution of Ms Alsaqabi?

Legal framework

39. Ms Alsaqabi takes issues with the appropriateness of trying these offences in England and Wales and takes the point as to jurisdiction on the basis that the allegations cannot and/or should not be tried here. In determining jurisdiction, I take the Prosecution case at its highest.

40. As I mentioned, Ms Alsaqabi is charged with two counts of fraud contrary to s.1 of the 2006 Act. Both offences are said to have been committed between 1 April 2018 and 1 April 2019. Both offences allege Ms Alsaqabi committed fraud in that she dishonestly made a false representation to Ms Bin Khalifa, which was and which she knew was or might be untrue or misleading, intending thereby to make a gain for herself or another. On Count 1, the representation was that if USD 160,000 was paid to Ms Alsaqabi by Ms Bin Khalifa, she would provide her with a genuine UN laissez passer, and forward the money to the IIMSAM as a donation. On Count 2, the representation was that if USD 25,000 was paid to Ms Alsaqabi by Ms Bin Khalifa, she would provide beneficial services to her in respect of the publication of an article in both Forbes and Pioneer magazines, and organise a presentation ceremony in Dubai where a genuine UN laissez passer would be presented.

41. Section 1 of the 2006 Act makes a person is guilty of fraud if (amongst other things) he is in breach of s.2 of the Act. Section of the 2006 Act provides that a person is in breach of that section if he dishonestly makes a false representation, and intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

42. The 2006 Act makes no provision for extraterritorial jurisdiction. A well-established presumption in statutory construction is that, in the absence of clear words to the contrary, a statutory offence is not intended to make conduct taking place outside of the territorial jurisdiction of the Crown an offence triable in an English court: see *Air-India v Wiggins* [1980] 1 WLR 815, at 819 per Lord Diplock (with whom Lords Edmund-Davies, Keith of Kinkel, Scarman, and Roskill agreed), where his Lordship said:

> "The presumption against a parliamentary intention to make acts done by foreigners abroad offences triable by English criminal courts is even stronger. As Lord Russell of Killowen CJ said in *R v Jameson* [1896] 2 QB 425, 430:
>
> > 'One other general canon of construction is this — that if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting.'"

43. The position at common law was set out by the Court of Appeal (Criminal Division) in *R v Smith (Wallace Duncan) (No.4)* [2004] QB 1418, where the Court (Lord Woolf CJ, Richards, and Henriques JJ) held that, where a substantial measure of the activities constituting a crime takes place within this jurisdiction, the courts of England and Wales have jurisdiction to try the crime, save only where it can seriously be argued on a reasonable view that these activities should, on the basis of international comity, be

dealt with by another country; in particular, it was held that it is not necessary that the "final act" or the "gist" of the offence should occur within the jurisdiction. The approach was endorsed by a differently constituted Court of Appeal (Criminal Division) (Holroyde LJ, Holgate, and Foster JJ) in *R v Laskowski* [2023] KB 602, at 618-619. Contrary to Mr Beharrylal KC and Mr Al'Hassan's written submissions dated 30 August 2023, the common law position no longer obtains for offences of fraud under the 2006 Act.

44. The Criminal Justice Act 1993 (the **"1993 Act"**) now makes specific provision about the jurisdiction of courts in England and Wales in relation to certain offences of dishonesty, including fraud which by s.1(2) of the Act is a "Group A" offence, such that any issue as to jurisdiction must be resolved by the application of the provisions of that Act rather than common law principles.

45. Section 2(3) of the 1993 Act provides (my emphasis):

> "A person may be guilty of a Group A offence <u>if any</u> of the events which are relevant events in relation to the offence occurred in England and Wales."

"Relevant event", in relation to any Group A offence, means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence: s.2(1). "Relevant event" includes, where the fraud involves an intention to make a gain and the gain occurred, the occurrence of that gain: s.2(1A).

The Prosecution case at its height

46. At its height, and as far as it is relevant to the issue of jurisdiction, the Prosecution case against Ms Alsaqabi can be summarised as follows. For this purpose, I have considered *de bene esse* the following documents said to contain Ms Bin Kalifa's version of events or relied upon by the Prosecution:

    (a) the First Affidavit of "Wafa Alsadik Ahmed Benkhalifa" dated 14 May 2019 (the **"First Affidavit"**), filed in proceedings brought in the Queen's Bench Division of the High Court (the **"High Court Proceedings"**);

    (b) a draft and unsigned Second Affidavit of "Wafa Alsadik Ahmed Benkhalifa", undated but marked July 2019, prepared for the purposes of the High Court Proceedings;

    (c) signed Witness Statements of "Wafa Khalifa" dated 25 November 2020 and 16 February 2021, made pursuant to s.9 of the Criminal Justice Act 1967 (the **"1967 Act"**) in these proceedings; and

    (d) a signed Witness Statement of "Wafa Bin Khalifa" dated 22 September 2021, made pursuant to s.9 of the 1967 Act in these proceedings.

    I have also considered the signed Witness Statements of Mohamed Tarabulsi dated 12 January 2021, 14 September 2021, and 21 December 2021, made pursuant to s.9 of the 1967 Act in these proceedings.

47. The relevant summary of the Prosecution case is:

(1) On 4 April 2017, Ms Bin Khalifa was in Kuwait. Whilst at a function, Ms Alsaqabi made a good impression on Ms Bin Khalifa. According to Ms Bin Khalifa, Ms Alsaqabi came across as honest, a committed Muslim, and both modest and trustworthy. This was the first time Ms Bin Khalifa met Ms Alsaqabi. All this took place in Kuwait.

(2) In April 2017, Ms Bin Khalifa was in London. She spoke on the telephone with Ms Alsaqabi. After an initial discussion about Ms Alsaqabi's charity called "Sustainable Development", which was working for UNICEF,[8] Ms Alsaqabi invited Ms Bin Khalifa to a ceremony she was holding for Sustainable Development, where Ms Bin Khalifa would be awarded a "blue card" which would show that Ms Bin Khalifa had participated in charity works for her charity. Ms Bin Khalifa was interested in meeting Ms Alsaqabi to see whether she might assist in obtaining UNICEF's help in building and maintaining a school Ms Bin Khalifa planned to build with her husband in Egypt. Ms Alsaqabi also told Ms Bin Khalifa that the ceremony would be good for networking with "*the UN Charitable organisation*", and it would also mean that Ms Bin Khalifa would receive a laissez passer, a form of diplomatic passport, from "*the UN Charitable organisation*".

(3) In April 2018, Ms Bin Khalifa was in Egypt. There she received a telephone call from Ms Alsaqabi. The two women met for dinner at the Four Seasons Hotel in Cairo. This was the second time Ms Bin Khalifa had met Ms Alsaqabi. Discussion touched upon several matters, including Ms Bin Khalifa's desire to complete the school building project in Egypt, her ability to collect donations for this project, and the need for her to renew an annual subscription to the Renewable Energy Development Organisation in Kuwait. The topic of a UN laissez passer was also raised during dinner, and Ms Alsaqabi said she would look into it on behalf of Ms Bin Khalifa when she returned to Kuwait.

(4) In or about April 2018, Ms Alsaqabi rang Ms Bin Khalifa in London from Kuwait and offered to apply for a UN laissez passer as part of a donation programme run by the IIMSAM in return for a donation to the IIMSAM of USD 160,000. Ms Bin Khalifa did not commit immediately as she needed to discuss it with her husband first. A few days after this discussion, Ms Bin Khalifa telephoned Ms Alsaqabi (who was in Kuwait) from London, and she accepted the offer.

(5) In May 2018, Ms Bin Khalifa was in Kuwait for another event attended by Ms Alsaqabi, and paid to renew her membership to the Renewable Energy Development Organisation. All this took place in Kuwait.

(6) In June 2018, Ms Bin Khalifa was in London when she was contacted by Ms Alsaqabi from abroad. Ms Alsaqabi asked her if she would like to become a Goodwill Ambassador for a charity called the IIMSAM. If so, then the IIMSAM would issue Ms Bin Khalifa with a UN laissez passer. Ms Bin Khalifa agreed as

[8] Originally called the United Nations International Children's Emergency Fund, now officially the United Nations Children's Fund.

she thought the IIMSAM could take control of her land in Cairo in order to build the school for which she had hoped. Ms Bin Khalifa was told by Ms Alsaqabi that the price of becoming a Goodwill Ambassador for the IIMSAM was a donation to the charity of USD 160,000.

(7) On 9 June 2018, Ms Alsaqabi wrote to Mr Tarabulsi in an email headed "*Mrs Wafa – Goodwill Ambassador*" seeking transfer of USD 80,000 ("*half the amount of the programme donation*") to what appears to be a bank account held with Banque Cantonale du Valais. She continued:

> "*As I have spoke* [sic] *with Mrs Wafa our goodwill Ambassador for new programmes that we would like her to donate & help refugees all around the world, this program will take 1 year of work* [sic].
>
> *Regards*
>
> *Ghadeer Alsaqabi*
> *Switzerland*"

Mr Tarabulsi forwarded Ms Alsaqabi's email to Ms Bin Khalifa on 25 June 2018, seeking his wife's confirmation of the transfer to be made.

(8) On 29 June 2018 and 26 July 2018, Mr Tarabulsi (who was in London) arranged for two transfers of USD 80,000 to Ms Alsaqabi's Swiss bank account from his Swiss bank accounts held with Citibank. These transfers were made from a bank in Switzerland – Citibank – and show Mr Talabusi's accounts with his Riyadh, Saudi Arabia address.

(9) In or about October or November 2018, Ms Alsaqabi telephoned Ms Bin Khalifa from Kuwait. Ms Bin Khalifa was in London. Ms Alsaqabi told Ms Bin Khalifa that, for a fee of USD 10,000, she would arrange for an article to be published in Forbes and Pioneer magazines, and, for a further fee of USD 15,000, to cover the costs to hire a ball room in a hotel in Dubai, she would arrange a ceremony in the presence of business people from the Gulf countries and representatives of television stations such as "*MBC*" (which I assume, are the channels broadcast by the Middle East Broadcasting Group), and Dubai and Kuwait television.

(10) In November 2018 Ms Alsaqabi contacted Ms Bin Khalifa (who was in London) saying the UN laissez passer was ready and arrangements for the costs of the presentation should be covered by her as well as the cost of the magazine publications. Ms Bin Khalifa transferred USD 25,000 from her Swiss bank account at First Abu Dhabi Bank to Ms Alsaqabi's Gulf Bank account in Kuwait. Ms Bin Khalifa flew to Dubai to attend a ceremony at the Intercontinental Hotel, during which she received a UN laissez passer.

(11) In her First Affidavit, Ms Bin Khalifa said that most of the negotiations between her and Ms Alsaqabi happened while Ms Bin Khalifa was in London, via telephone, emails and messages.

(12) On 24 July 2019, the High Court refused a freezing injunction on Ms Bin Khalifa's application to prevent Ms Alsaqabi from disposing or dealing with the

monies paid by Mr Tarabulsi and Ms Bin Khalifa. These were the High Court Proceedings.

(13) On 24 February 2022, Westminster Magistrates' Courts issued a summons to Ms Alsaqabi on the application of Ms Bin Khalifa.

(14) On 18 March 2022 that summons was served upon Ms Alsaqabi at an address in Kuwait.

Discussion and analysis

48. The offence created by s.1 of the 2006 Act (fraud by false representation) is a Group A offence under s.1(1)(bb)(i) of the 1993 Act.

49. Ms Alsaqabi's location at the times material to the Counts in the Indictment is immaterial: see s.3(1)(b) of the 1993 Act, which provides a person may be guilty of a Group A offence whether or not he was in England and Wales at any such time.

50. By s.2(3) of the 1993 Act, this Court has jurisdiction if any of the events which are "relevant events" in relation to the offence occurred in England and Wales. In this context, a "relevant event" means any act or omission or other event (including any result of one or more acts or omissions), proof of which is required for conviction of the offence: s.2(1). Where the fraud involved an intention to make a gain and the gain occurred, a "relevant event" includes that occurrence: s.2(1A). For the purposes of determining whether or not a particular event is a relevant event, any question as to where it occurred is to be disregarded: s.2(2).

51. In construing the provisions of the 1993 Act, I bear in mind Simon LJ's cautionary words in *R v Pogmore* [2018] 1 WLR 3237, at 3246:

> "… a penal statute is to be construed strictly in favour of those that may be prosecuted under them, see for example Lord Simonds in *London and North Eastern Railway Co v Berriman* [1946] AC 278, 313-314: 'A man is not to be put in peril upon an ambiguity, however much … the purpose of the Act appeals to the predilection of the court.'
>
> … To similar effect is the observation of Lord Reid in *R v Knuller (Publishing, Printing and Promotions) Ltd* [1973] AC 435, 457-458, that the courts do not have any general or residual power to 'so widen existing offences as to make punishable conduct of a type hitherto not subject to punishment'."

52. It is common ground that the "relevant events" for the Counts on this Indictment are (a) a fraudulent misrepresentation, and (b) resulting in a gain to Ms Alsaqabi, which are the elements of the offence of fraud by false misrepresentation which the Prosecution must prove.

53. By s.2(3) of the 2006 Act, "representation" means any representation as to fact or law, including a representation as to the state of mind of the person making the representation, or any other person. It can be express or implied: s.2(4). It must be made by the representor dishonestly, and with the necessary intent. In her written submissions dated 22 December 2023, Ms Gaskin sets out the position with regard to

the making of representations insofar civil law claims under statute (*i.e.*, the Misrepresentations Act 1967) and in contract and tort are concerned, but, as the authors of *Arlidge and Parry on Fraud* point out,[9] in civil law nothing actually turns upon on the narrow question of whether a false representation has been made.[10] This is because under the 2006 Act a false representation is complete only when it is received by the representee: see *Arlidge and Parry on Fraud*, at 4-082.[11] It does not matter whether the false representation is received but not relied upon, or received and believed but not relied upon; it is necessary, however, for the false representation to have been received by the representee. Thus, as a "relevant event" for the purposes of the 1993 Act, a false representation is not made until receipt by the representee.

54. Section 4(b)(ii) of the 1993 Act further provides:

> "In relation to a Group A … offence … there is a communication in England and Wales of any information, instruction, request, demand or other matter if it is sent by any means … from a place elsewhere to a place in England and Wales."

55. The Prosecution case is that the representation made by Ms Alsaqabi to Ms Bin Khalifa over the telephone in April 2017 was fraudulent in its entirety or, if not, part of a continuing representation which was fraudulent. Either way, Ms Gaskin submitted it does not matter materially for the purposes of determining jurisdiction, because Ms Bin Khalifa was in London when she received the representation (see (2), (4), and (6) of the Prosecution case summary at [0] above), and that is sufficient to ground jurisdiction in this Court. I note the dates in (2) of the Prosecution case summary is outside of the material dates averred in Count 1, but for the sake of this submission I shall treat it as falling within those dates.

56. I accept that submission:

(1) On the Prosecution's case on Count 1: (a) Ms Alsaqabi represented to Ms Bin Khalifa that she could procure a UN laissez passer from the IIMSAM in return of a donation of USD 160,000; (b) that representation was false; (c) Ms Alsaqabi first made the representation during the course of a telephone call to Ms Bin Khalifa in April 2017, when Ms Bin Khalifa was in London; and (d) that the representation was continued or repeated by Ms Alsaqabi in June 2018, when Ms Bin Khalifa was in London.

(2) On the Prosecution's case on Count 2: (a) Ms Alsaqabi represented to Ms Bin Khalifa that she would arrange for an article to be published in Forbes and Pioneer magazines, and for a ceremony in the presence of business people from the Gulf countries and representatives of television stations such as MBC, Dubai and Kuwait television, in return for payments of USD 10,000 and USD 15,000

[9] Sixth Edition, 2020, Sweet & Maxwell, at 4-011.
[10] The question is always whether the party wronged is entitled to relief for the consequences of his mistake, having relied upon the representation, and obviously he cannot rely on the representation until it has been made.
[11] The issue is one of statutory construction, which gave rise to a different result in legislation which has used the term "offer" rather than "representation": see *R v Laskowski* [2023] KB 602, where the Court held (at 615) that, in the context of an "offer to supply" in s.4(1)(b) and s.4(3)(a) of the Misuse of Drugs Act 1971, the offer is made to one or more persons in a manner which is capable of being heard or read by the person to whom it is sent, whether or not any person does in fact hear or read it.

> respectively; (b) those representations were false; (c) those representations were made during the course of a telephone call to Ms Bin Khalifa in or about October or November 2018, when Ms Bin Khalifa was in London.

These representations were complete when Ms Bin Khalifa received them in London, and were communications "from a place elsewhere to a place in England and Wales" that fall within the ambit of s.4(b)(ii) of the 1993 Act. They are "relevant acts" under the 1993 Act sufficient to ground the jurisdiction of this Court. The occurrence of only one such "relevant event" in England and Wales is required to ground the jurisdiction of this Court. That being so, I find that, having considered the Prosecution case as its highest, and having considered the evidence relied upon by the Prosecution *de bene esse* for this purpose, this Court has jurisdiction to try the two offences alleged in the Indictment.

57. As to the gains allegedly made by Ms Alsaqabi, Ms Gaskin placed significant emphasis on Mr Tarabulsi and Ms Bin Khalifa's transfer of the funds paid by them to Ms Alsaqabi (*i.e.*, the total sum of USD 180,000 alleged in Count 1, and the total sum of USD 25,000 alleged in Count 2) whilst they were present in London. She submitted that, although the monies were transferred from Mr Tarabulsi's bank accounts in Switzerland and Ms Bin Khalifa's bank account in Abu Dhabi to Ms Alsaqabi's bank accounts in Switzerland and Kuwait, on the facts and circumstances of this case, those funds were "despatched" from London, and, therefore, the gain occurred in England and Wales not Switzerland and Kuwait. She argued that Mr Tarabulsi and Ms Bin Khalifa's instructions to their respective bankers in Switzerland and Abu Dhabi whilst they were in London is, in effect, the despatch of property from London and therefore within the scope of s.4(a) of the 1993 Act, which provides:

> "In relation to a Group A … offence—
>
> (a) there is an obtaining of property in England and Wales if the property is either despatched from or received at a place in England and Wales …".

58. Creative as it is, that emphasis is misplaced because s.2(1A) the 1993 Act deems the occurrence of the gain averred to be "relevant event". The gain occurred only when the monies paid by Mr Tarabulsi and Ms Bin Khalifa, at the earliest, were transferred from the accounts in which they were held or, at the latest, received by Ms Alsaqabi, not when they authorised their transfer. The choses in action which Mr Tarabulsi and Ms Bin Khalifa's bank accounts manifest were not within England and Wales: they were within Switzerland and Abu Dhabi. Section 4(a) provides no assistance in these circumstances: when enacted, it was aimed primarily at dealing with the offence of obtaining property by deception, which was abolished by the 2006 Act. The monies were sent (or "despatched", to use the wording of s.4(a)) from Mr Tarabulsi's bank accounts held in Switzerland (for Count 1) and Ms Bin Khalifa's bank account held in Abu Dhabi (for Count 2) to Ms Alsaqabi's bank accounts held in Switzerland (for Count 1) and Kuwait (for Count 2). All that took place outside of England and Wales. There was no physical despatch of property from within England and Wales as s.4(a) of the 1993 Act envisages. In my judgment, to fall within s.4(a), the property must be physically present in England and Wales, or at the very least be held within this jurisdiction. On the evidence before me, the choses in action which Mr Tarabulsi and Ms Bin Khalifa's bank accounts formed were not.

59. To use the second limb in s.4(a) ("if the property is … received at a place in England and Wales") to demonstrate the impermissible reach of Ms Gaskin's submission on the first, it would mean that anyone who held a bank account outside of England and Wales who, at their instruction, received a payment into that account whilst they were physically present in England and Wales, would come within the scope of s.4(a). Applying the strict principles of statutory interpretation as I must, I do not consider that to have been within Parliament's intention in enacting this provision.[12]

60. As such, no gain "occurred" in England and Wales sufficient to ground the jurisdiction of this Court. That matters not, in any event, given the findings I have already made in this connection regarding Ms Alsaqabi's representations.

61. For those reasons, I find this Court is seized of jurisdiction to try both Counts and I answer this question, "yes".

(3) If the Court does have jurisdiction, can Ms Bin Khalifa's statements be adduced at trial as hearsay evidence?

62. Although I heard written and oral submissions on this question, I have come to the conclusion that an issue such as this is better determined by the trial judge (if there is to be a trial), and not a judge considering preliminary issues of law.

63. As I have found, however, these criminal proceedings have lapsed through abatement by operation of law upon Ms Bin Khalifa's death. Had they not done so, and on the basis this Court has jurisdiction to try both Counts, then the trial judge is best placed to determine an application of this nature in light of all of the evidence relied upon by the Prosecution at trial and after the Prosecution has fulfilled its disclosure obligations. I decline to answer this question for those reasons.

Disposal

64. I answer the first two questions respectively, "no" and "yes". The third question is, as I have said, one that is properly determined by the trial judge where the answer to the second question is, "yes".

65. I shall ask the parties to consider the need for any consequential orders which must follow, such as whether the Indictment (which remains before the Court) should be quashed or stayed, as well as any application for costs.

Postscript

66. The reporting restrictions imposed by s.41(1) of the 1996 Act were lifted by the Court on 5 June 2024 pursuant to s.41(3). Accordingly, this judgment may now be reported.

[12] See, generally, the discussion in *Arlidge and Parry on Fraud*, at 23-035 to 23-039, which does not directly consider the point raised by this submission but which helpfully sets out the underlying rationale of s.4(a) of the 1993 Act.