Neutral Citation Number: [2026] EWCA Crim 979

Case No: 202304377 B1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT
Her Honour Judge Rebecca Trowler KC
202304377 B1

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2026

Before:

LORD JUSTICE MALES
MRS JUSTICE CUTTS
and
HIS HONOUR JUDGE ANDREW LEES

- -

Between:

	REX	**Respondent**
	- and -	
	WILLIAM OSMOND	**Appellant**

- -
- -

Mark Fenhalls KC (instructed by **Janes Solicitors**) for the **Appellant**
James Waddington KC (instructed by the **Serious Fraud Office**) for the **Respondent**

Hearing date: 21 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on Tuesday 28 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE MALES:

1. William Osmond, now aged 72, qualified as a solicitor in 1979. On 14th November 2023 at the Central Criminal Court before Her Honour Judge Rebecca Trowler KC he was convicted of tipping off (contrary to section 333A(3) of the Proceeds of Crime Act 2002) and forgery (contrary to section 1 of the Forgery and Counterfeiting Act 1981). He was later sentenced to a total of nine months' imprisonment suspended for 18 months. His application for leave to appeal against conviction has been referred to the full court by the single judge.

The facts

2. Mr Osmond was the senior partner of Osmond and Osmond Solicitors, a firm which he founded in 2002. One of his clients, for whom he had acted for over 10 years, was a man called James Redding Ramsay. In late 2013 Mr Ramsay provided £4 million, through a company called Barrow Management Ltd ('Barrow'), as a loan towards the purchase of a property, 10 Hays Mews, in Mayfair. That was about half of the total purchase price of about £8 million. Mr Osmond acted as the solicitor for Mr Ramsay and his company in relation to this transaction and the money provided by Barrow was paid through the bank account of Osmond and Osmond. Mr Osmond's role was to deal with the formalities relating to the acquisition of Barrow, an off-the-shelf British Virgin Islands company, and the loan documentation.

3. This transaction came to the attention of the Serious Fraud Office ('the SFO') during an investigation into the activities of a company called Eurasian Natural Resources Corporation Limited ('ENRC'). That investigation, which commenced in 2013, was concerned with allegations of corruption, fraud and money-laundering in relation to ENRC's acquisition of mining contracts in Kazakhstan and in African countries. It was well-publicised. Mr Ramsay had not previously been a suspect in the investigation of ENRC, but had connections with a Mr Victor Hanna, who held a senior position at ENRC and was a suspect who had been interviewed by the SFO under caution. Mr Hanna's wife, Ms Mounissa Chodieva, who was the daughter of one of the founders of ENRC, had been the purchaser of the Hays Mews property.

4. When the SFO learned of the Hays Mews transaction, it used its statutory powers to seek information from Mr Osmond, including details of his relationship with Mr Ramsay, documents relating to the purchase of the Hays Mews property, and what explanation Mr Ramsay had given for providing half of the purchase price.

5. The SFO's first contact with Mr Osmond was a telephone call made by its investigator, Mr Jonathan Mack, on 7th June 2018. Mr Mack told Mr Osmond that the SFO was carrying out an investigation of ENRC which included investigating money laundering offences and that the investigation encompassed the purchase of 10 Hays Mews. He told Mr Osmond that the SFO would be requiring him to answer questions and provide documents about the purchase of the property and explained that it had suspicions about the £4 million which had passed through Mr Osmond's client account, including whether this was money-laundering. Mr Mack's evidence, which Mr Osmond disputed, was that Mr Mack also told Mr Osmond that he should not tell his client about this enquiry by the SFO. However, this issue is not critical because the legislation does not require that such a warning should be given and, in any event, as the money laundering reporting officer of his firm, Mr Osmond must have been well aware of this. Moreover,

although the issue might in theory have been relevant to Mr Mack's credibility, there was no dispute about what was said in the remainder of the conversation.

6. The telephone call was followed by a formal notice under section 2 of the Criminal Justice Act 1987 dated 15th June 2018. The notice was headed 'Investigation into the affairs of [ENRC] and others'. It ranged much wider than the 10 Hays Mews transaction and required production of all client files responsive to some 85 names, including both 10 Hays Mews and ENRC, as well as answers to specific questions. For example, the SFO wanted to know what explanation Mr Ramsay had given for providing half the purchase price of 10 Hays Mews. The covering letter required Mr Osmond to treat the request for information as confidential and referred expressly to the offence of tipping off.

7. Instead of keeping the SFO approach to himself, Mr Osmond's reaction was immediately to tell Mr Ramsay all about it. He telephoned Mr Ramsay on 8th June 2018, the day after his call from Mr Mack. On 14th June he flew to Malta, where Mr Ramsay lived, to discuss the matter, returning the following day. Over the following weeks he had numerous further communications with Mr Ramsay to discuss the SFO correspondence. As a result all of the information which Mr Osmond provided to the SFO was not his independent recollection, but was the product of his discussions with and instructions from Mr Ramsay as to how the information should be provided.

8. This is what gave rise to the tipping off count on the indictment.

9. The forgery count arose because the SFO asked Mr Osmond for the letter of engagement pursuant to which he had carried out the 10 Hays Mews transaction. However, Mr Osmond did not have and had never had such a letter. Instead of saying so, he created what purported to be a letter of engagement dated 24th October 2013 and provided this to the SFO.

Tipping off

10. Section 333A(3) of the Proceeds of Crime Act 2002 provides as follows:

> '**Tipping off: regulated sector**
>
> A person commits an offence if—
>
> (a) the person discloses that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out;
>
> (b) the disclosure is likely to prejudice that investigation; and
>
> (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.'

11. On its own, paragraph (a), disclosure that an investigation is being contemplated or carried out, is potentially of very wide scope. The disclosure may be to anybody, whether or not a suspect in (or even connected to) the investigation. However, the scope of the subsection is limited by paragraphs (b) and (c). Thus the offence is only committed if the disclosure is likely to prejudice the investigation. That requires an

assessment of the likelihood of prejudice, considered as at the time of the disclosure in question. It need not be proved, with the benefit of hindsight, that the investigation was actually prejudiced by the disclosure; and it is not a defence that it was not prejudiced.

12. Further, the offence is only committed if the information on which the disclosure is based came to the defendant in the course of a business in the regulated sector. The 'information on which the disclosure is based' is (or at least includes) the information that an investigation is being contemplated or is being carried out. The meaning of 'in the course of a business in the regulated sector' is explained in paragraph 1(1) of Part 1 of Schedule 9 of the Act, which lists over 20 activities which amount to businesses in the regulated sector. Relevant for present purposes is paragraph (n) which provides as follows:

> 'A business is in the regulated sector to the extent that it consists of—
>
> ...
>
> (n) the participation in financial or real property transactions concerning—
>
> (i) the buying and selling of real property (or, in Scotland, heritable property) or business entities;
>
> (ii) the managing of client money, securities or other assets;
>
> (iii) the opening or management of bank, savings or securities accounts;
>
> (iv) the organisation of contributions necessary for the creation, operation or management of companies; or
>
> (v) the creation, operation or management of trusts, companies or similar structures,
>
> by a firm or sole practitioner who by way of business provides legal or notarial services to other persons; ...'

13. The mental element required for the commission of the offence is explained in section 333D(4):

> 'A person does not commit an offence under section 333A(3) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 333A(3)(b).'

Forgery

14. Section 1 of the Forgery and Counterfeiting Act 1981 provides:

> '**The offence of forgery**

> A person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.'

15. The requirements of this offence are clarified by section 10, which provides as follows:

> '**Meaning of "prejudice" and "induce"**
>
> (1) Subject to subsections (2) and (4) below, for the purposes of this Part of this Act an act or omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs—
>
> (a) will result—
>
> (i) in his temporary or permanent loss of property; or
>
> (ii) in his being deprived of an opportunity to earn remuneration or greater remuneration; or (iii) in his being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration; or
>
> (b) will result in somebody being given an opportunity—
>
> (i) to earn remuneration or greater remuneration from him; or
>
> (ii) to gain a financial advantage from him otherwise than by way of remuneration; or
>
> (c) will be the result of his having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with his performance of any duty.'

16. In the present case it was paragraph (c) which was relevant, the issue being whether Mr Mack accepted the false letter of engagement as genuine in connection with his performance of any duty.

The proceedings

17. Mr Osmond was interviewed under caution on 10th and 11th April 2019 and again on 26th May 2021. He admitted speaking to Mr Ramsay about the telephone call from Mr Mack and admitted discussing with Mr Ramsay how the SFO's questions should be answered. Initially he claimed that the letter of engagement was genuine, but later admitted that he had created it for the purposes of the SFO investigation and had backdated it. He said that he had thought that if he provided the letter, that might satisfy Mr Mack who, by the time the letter was prepared, was adopting a more hostile tone, threatening prosecution for failing to provide information and documents.

18. Eventually, Mr Osmond was told that he would face no charges as a result of the wider ENRC investigation.

19. The indictment contained two counts. The first count, the tipping off offence, gave the following Particulars:

> 'WILLIAM JOHN GREGORY OSMOND, between the 7th day of June 2018 and the 7th day of November 2018, having received information in the course of a business in the regulated sector, namely that the Serious Fraud Office was investigating allegations of money laundering under Part 7 of the Proceeds of Crime Act 2002, disclose that information (and particulars relating to it" to James Redding Ramsay as the said disclosure was likely to prejudice the investigation.'

20. As can be seen, these Particulars did not identify precisely what allegations of money-laundering were being investigated.

21. The Particulars of the forgery count were as follows:

> 'WILLIAM JOHN GREGORY OSMOND, between the 6th day of June 2018 and the 12th day of October 2018, made an instrument, namely a copy letter of engagement from Osmond and Osmond Ltd (a solicitors firm) to Barrow Management Ltd (its client) which was false in that it purported to be a copy of a letter made on a date, 24 October 2013, on which the letter was not made, with the intention that he should use it to induce Jon Mack, an investigator employed by the Serious Fraud Office, to accept it as genuine, and by reason of so accepting it, to do some act, or not to do some act, to his own or any other person's prejudice.'

22. Mr Osmond's Defence Statement took two main points in response to the charge of tipping off. The first was that the 'information' in question was not received by Mr Osmond 'in the course of his business in the regulated sector'; but it accepted that the information was received 'in his capacity as solicitor to' Mr Ramsay. The second main point was that the investigation was not defined in the indictment, but that it had been identified and particularised by the SFO as the investigation into ENRC, which had the SFO reference QUT01; however, because the investigation into ENRC had been widely publicised, it was inevitably already known to Mr Ramsay well before the telephone call from Mr Mack; and therefore what Mr Osmond told Mr Ramsay fell outside the scope of section 333A(3), the purpose of which was to protect against the tipping off of information not already known. Reference was also made to the judgment of Mr Justice Waksman in a civil claim brought by ENRC against the SFO and a firm of solicitors, Dechert LLP, in which findings of serious wrongdoing by the SFO in connection with the ENRC investigation had been made (*Eurasian Natural Resources Corporation Ltd v Dechert LLP; Eurasian Natural Resources Corporation Ltd v The Director of the Serious Fraud Office* [2022] EWHC 1138 (Comm)). We shall refer to this judgment as '*ENRC 1*'.

23. In relation to the forgery count, the Defence Statement admitted that the letter of engagement produced by Mr Osmond was backdated, but said that the offence was not committed because Mr Mack had not received it in connection with the performance of

a duty. It made the point that the SFO had a power to carry out an investigation and to require the provision of documents and information, but no duty to do so.

The pre-trial rulings

24. These issues led the prosecution to seek pre-trial rulings from the judge as to the scope of the trial. The application was accompanied by a draft opening note setting out the prosecution case. The note referred to the investigation of ENRC under the heading of ‘Background’, saying that it was in that context that it had required Mr Osmond to provide information. However, it made clear that the tipping off charge against Mr Osmond was only concerned with the SFO’s investigation into the money provided for the purchase of 10 Hays Mews.

25. As to tipping off, the prosecution’s first submission was that the investigation referred to in the indictment was the investigation into suspected money laundering in relation to the Hays Mews transaction, an allegation which was not in the public domain, and that this needed to be clarified before the trial began. Its second submission was that the information on which Mr Osmond’s disclosure was based had come to him in the course of his business as a lawyer, which was a business in the regulated sector, as he was asked questions in his capacity as Mr Ramsay’s solicitor. It sought a ruling on this point also. Thus the issues for the jury on count one would be whether the disclosure was likely to prejudice the investigation into the Hays Mews transaction and whether Mr Osmond knew or suspected that it was likely to have that effect.

26. As to forgery, the prosecution submitted that Mr Mack had received the false letter of engagement in his capacity as an investigating lawyer and that, as a matter of law, he was acting under a duty which he owed to his employer, the SFO. It sought a ruling on this point.

27. The defence submitted that no pre-trial ruling should be made. As to tipping off, it said that the defence case would be that the investigation being carried out by the SFO was the investigation into ENRC, about which anyone connected with ENRC already knew; that all the SFO’s correspondence bore the reference QUT01, which was the reference for that investigation; that this would be confirmed by the evidence to be called as part of the prosecution case; that the enquiries about 10 Hays Mews were merely part of the investigation into ENRC; and that it was for the jury to decide what was the investigation referred to in the indictment which Mr Osmond was alleged to have disclosed. It submitted also that the information from the SFO did not come to Mr Osmond in the course of a regulated business; rather, he had received information about an already well-known investigation from a prosecuting authority, exercising its powers under section 2 of the Criminal Justice Act 1987. As to forgery, the defence submitted that Mr Mack was not performing any duty when he received the false letter of engagement.

28. The defence referred also to the fact that the investigation into ENRC had come to an end without any charges and questioned whether it was in the public interest for the SFO to proceed against Mr Osmond.

29. The judge decided that it was appropriate to rule on these issues to assist the parties and so that the jury could be directed to focus on what were highly likely to be the main issues in the trial. Her rulings were as follows:

'4. The first Issue on which I heard submissions on Friday 3rd November is whether, in this case, a "disclosure" for the purposes of s.333A has taken place given the fact that the broader SFO investigation into ENRC was well known and was well known at the relevant time by Mr Ramsay. It is common ground that Mr Ramsay was not aware of the investigation into [Hays Mews] until D told him about it. In my view there is no sensible basis on which it can be argued that a person cannot commit the offence of "tipping off" simply because the broader investigation is already known to the relevant parties. Such a position would frustrate the whole purpose of the relevant provisions which are to ensure that investigations are not impeded by persons of interest becoming aware of them, including, where the broader investigation is known, any investigation into a particular transaction which is hitherto unknown to them. In this case the investigation of the [Hays Mews] transaction was unknown to [Mr Ramsay] and, on [the] prosecution case, it is that investigation with which count 1 is concerned.

5. The second issue relates to whether the evidence as served demonstrates that the information on which the disclosure was based came to D in the course of a business in the regulated sector. In my view, on the evidence served, the only possible answer to this question is "yes". The Act and in particular para n of schedule 9 makes it clear that businesses in the regulated sector will, for these purposes, include a firm or sole practitioner providing legal services in relation to financial or real property transaction. D was approached and became subject to the relevant requests by reason of the fact that in relation to the [Hays Mews] transaction he acted in his capacity as a solicitor for Mr Ramsay, and indeed for Barrow Management, a relationship which, as it happens as far as Mr Ramsay is concerned, continued throughout the period charged in the indictment. Even if it had not persisted, the fact that D was made the subject of the section 2 Notice because he had provided legal services in relation to the purchase of HM is plainly sufficient to bring D within the scope of 333A.

6. Finally, I heard submissions from Mr Fenhalls that there is no evidence before the Court that, in receiving the relevant document, Mr Mack was acting in performance of a duty for the purposes of Count 2. It is common ground that the SFO and those acting for the SFO have a power to investigate a suspected offence but not a duty to do so. However, in my view there is no basis on which 'duty' in this context should be understood to imply a statutory duty. Plainly Mr Mack in his role as investigative lawyer for the SFO was acting under a duty to his employer to carry out that role and no argument has been advanced before me to the effect that a duty owed to an employer

> would not suffice for the purpose of the offence of forgery and section 1.'

30. The trial then began.

The submission of no case

31. At the conclusion of the prosecution case, the defence submitted that there was no case to answer on the tipping off count. The submission was that (1) on the evidence, the jury could not rule out that Mr Hanna, and possibly Mr Ramsay, already knew that the 10 Hays Mews transaction was under investigation, (2) even if they did not know, there was no evidence of actual prejudice likely to arise from the disclosure, and (3) in order to show likely prejudice, the prosecution had to prove more than the fact that the disclosure prevented the investigation being conducted without Mr Ramsay's knowledge.

32. The judge ruled against these submissions. She said that the words 'likely to prejudice that investigation' meant likely to cause harm or disadvantage to the investigation, that there was evidence that the investigation of the 10 Hays Mews transaction was unknown to Mr Hanna and Mr Ramsay, and that it would be open to the jury to conclude that the investigation had been prejudiced because of the risk of interference and because the information and documents provided were the result of a joint effort by Mr Osmond and Mr Ramsay, rather than, as was intended, with input only from Mr Osmond.

33. The defence then proceeded and Mr Osmond gave evidence.

The summing up

34. The judge set out in her legal directions the matters which had to be proved on count 1 as follows:

> 'In order to prove the offence of Tipping Off (Count 1) P must make you sure that
>
> (i) D disclosed to [Mr Ramsay] that an investigation into an allegation of money laundering via the 10 Hays Mews transaction was being carried out by the SFO.
>
> (ii) The disclosure to [Mr Ramsay] was likely to prejudice that investigation.
>
> (iii) D knew or suspected that the disclosure was likely to have that effect.
>
> and
>
> (iv) The information on which the disclosure was based came to D in the course of his business in the regulated sector.

35. She then explained the meaning of some of these terms:

> '"*Disclosed*"
>
> Disclosed to [Mr Ramsay] means told [Mr Ramsay] something he did not know.
>
> "*Likely to prejudice that investigation*"
>
> The word "*prejudice*" in the context of the section 333A(3)(b) offence of "tipping off" has its ordinary meaning, namely harm or disadvantage to a state of affairs. It follows that the words "*likely to prejudice that investigation*" mean likely to harm or cause disadvantage [to] the investigation.
>
> "*Business in the regulated sector*"
>
> "Business in the regulated sector" for the purposes of section 333A includes a legal firm providing legal services in relation to financial or property transactions.'

36. In relation to count 2, the judge directed the jury that:

> 'The word "prejudice" in the context of the offence of forgery has a particular meaning. The words "to do or not to do some act to the SFO's prejudice" mean "to do or not to do some act in connection with Mr Mack's performance of his duty to his employer the SFO".'

37. The jury convicted on both counts. It follows that the jury was sure that telling Mr Ramsay that the SFO was investigating the 10 Hays Mews transaction was likely to harm or disadvantage that investigation and that Mr Osmond knew or suspected this.

The appeal

38. Mr Mark Fenhalls KC for Mr Osmond submits that the judge unfairly narrowed the scope of the defence case that could be put before the jury by making rulings of law on issues which should have been left to the jury. He submits that the core issues to be considered on count 1 were (1) the source of the information that Mr Osmond disclosed to Mr Ramsay, and (2) what it was that Mr Osmond disclosed:

(1) Here, the information disclosed in 2018 (i.e. that an investigation was being carried out) did not come to Mr Osmond in the course of a business in the regulated sector, but from the SFO. The fact that, five years before, Mr Osmond had acted as a solicitor in relation to the 10 Hays Mews transaction was not enough. The purpose of this Part of the 2002 Act was to criminalise the tipping off of reports to the designated authorities, which was the opposite of what happened here as the information came from the authority itself.

(2) The investigation into ENRC and the enquiry into the financing of the 10 Hays Mews transaction was merely a part of that investigation. The judge's pre-trial ruling removed from the jury the important factual issue of what the SFO investigation was, and therefore presented the jury from considering whether prejudice had arisen to the investigation as a result of Mr Osmond's disclosure.

39. As to forgery, Mr Fenhalls submits that the term 'duty' in section 10 of the Forgery and Counterfeiting Act 1981 requires something more than the duty owed by an employee to their employer, and that because the SFO was exercising powers rather than performing any duty, it was at least open to the jury to conclude that Mr Mack was not performing any relevant duty when he received the false letter of engagement. Again, the judge's pre-trial ruling had wrongly taken this issue away from the jury.

40. In addition, Mr Fenhalls relies on a second judgment by Mr Justice Waksman in the ENRC civil litigation (*Eurasian Natural Resources Corporation Ltd v Dechert LLP; Eurasian Natural Resources Corporation Ltd v The Director of the Serious Fraud Office* [2023] EWHC 3280 (Comm)). We shall refer to this judgment as '*ENRC 2*'. In that judgment Mr Justice Waksman found that if it had not been for the SFO misconduct which he had found to have occurred in *ENRC 1*, there would have been no criminal investigation into ENRC in the first place. The relevance of this in the civil litigation is that ENRC was claiming damages from the SFO for the tort of inducing breach of contract, which had caused ENRC losses in the form of unnecessary work, unnecessary costs and wasted management time; and it was therefore necessary for ENRC to prove a causative link between the SFO wrongdoing and the losses which it claimed to have suffered.

41. The trial in *ENRC 2* took place in March 2023 and the lengthy judgment was handed down on 21st December 2023. This was after the conclusion of Mr Osmond's trial in November 2023.

42. Mr Fenhalls submits that the SFO should have disclosed the misconduct found by Mr Justice Waksman and that the defence should have been entitled to deploy this material at the trial of Mr Osmond. He submits also that this misconduct was relevant to the issue of prejudice because it is difficult to reconcile the concept of prejudice in the case of an investigation which has been adjudged to have been flawed and wrongfully instigated.

Discussion

Pre-trial rulings

43. We deal first with the submission that the effect of the judge's pre-trial rulings was to usurp the function of the jury by withdrawing issues which the jury should have considered. We do not accept this submission. In our judgment the judge's rulings were necessary to ensure that the case was dealt with efficiently and expeditiously, as required by the overriding objective (Criminal Procedure Rules, para 1.1), and that the jury was enabled to focus on the real issues in the case. There was a real danger, particularly on count one in relation to the issue as to the nature of the disclosure, that the trial would become bogged down in a morass of irrelevant material.

The disclosure

44. It is fundamental to our system of criminal justice that it is for the prosecution, who bring the case, to decide what charges are to be brought and to frame the indictment accordingly. In the context of the tipping off offence in section 333A(3), this means that it is for the prosecution to decide what it is that they allege that the defendant has disclosed. In this case the indictment did not identify the investigation which was

alleged to have been disclosed beyond saying that the SFO was 'investigating allegations of money laundering'. However, the prosecution made its case clear before the trial, namely that the investigation was into allegations that one or more money laundering offences had been committed in connection with the purchase of 10 Hays Mews; and that the fact of this investigation is what Mr Osmond had disclosed to Mr Ramsay. This was clear at latest from the draft opening note which was served well before the beginning of the trial and was fully understood by the defence.

45. The prosecution case, therefore, was that the disclosure by the defendant was that the SFO was investigating those allegations. It was not the prosecution case that there had been any disclosure, within the meaning of the section, of the wider investigation into ENRC. Although what Mr Osmond had told Mr Ramsay was not limited to the fact that the SFO was investigating the 10 Hays Mews transaction, the prosecution accepted that for there to be a disclosure within the meaning of the section, there had to be provision of information which the recipient did not already know, and that the fact of the wider investigation into ENRC was known to Mr Ramsay.

46. We can see no reason why the prosecution should not have been entitled to advance a case that there had been a disclosure by Mr Osmond of the fact that an investigation was being carried out into allegations of money laundering in connection with the 10 Hays Mews transaction. As the opening note explained, the 'context' in which these allegations had arisen was the wider investigation into ENRC, but that was merely background. There is no reason why an investigation should not be capable of being the subject of a disclosure under section 333A(3) even if that investigation is also an aspect of (or a strand within) a wider investigation – here, the investigation into the conduct of ENRC.

47. In our judgment, therefore, the judge was right to rule that the prosecution was entitled to advance this case. The prosecution could not be forced to advance a case, which would have been bound to fail, that the disclosure was of the wider investigation into ENRC. The fact that the investigation into 10 Hays Mews was part of a wider investigation into ENRC, the existence of which was public knowledge, did not give rise to any issue of fact for the jury.

48. If the trial was to be conducted efficiently and fairly, it was essential that the nature of the case which the jury had to decide should be made clear. There was, therefore, no question of usurping the jury's function. There was and could be no dispute that there was in fact an investigation into allegations of money laundering in connection with the 10 Hays Mews transaction, and that the fact that that investigation was being carried out was disclosed by Mr Osmond to Mr Ramsay. The real issues were whether his disclosure was likely to prejudice that investigation, and whether Mr Osmond knew or suspected the likelihood of such prejudice.

49. The judge was also right, in our judgment, to rule on the other two points which were the subject of her pre-trial rulings, to which we now turn. Both of them were questions of law which did not depend on any evidence to be given at the trial.

In the course of a business in the regulated sector

50. There can be no doubt that 'the information on which the disclosure is based' came to Mr Osmond 'in the course of a business in the regulated sector'. The 'information on

which the disclosure is based' was the information that the SFO was carrying out its investigation into the 10 Hays Mews transaction. It was on the basis of that information that Mr Osmond made his disclosure to Mr Ramsay. Mr Osmond's business was as a solicitor engaged in transactions concerning the purchase of real property, the acquisition of off-the-shelf companies and the handling of client money, all of which were involved in the 10 Hays Mews transaction. Undoubtedly that was a business in the regulated sector, within the definition in Schedule 9 set out above. It was in his capacity as Mr Ramsay's solicitor that he received the information from the SFO.

51. The fact that the information about the SFO investigation came from the SFO does not assist the defence. That is precisely what paragraph (c) of subsection (3) is directed towards. Its objective is to prevent a person carrying on business in the regulated sector from tipping off their client that an investigation by the SFO or other agency is under way. The subsection is not concerned with the source of the information (which will typically be the SFO or other investigating agency) but with the capacity in which the defendant receives it.

52. Nor does it assist the defence that the transaction about which the SFO was seeking information, namely the 10 Hays Mews transaction, had occurred some time in the past. That will inevitably be the position when an investigation into past events is being carried out.

In connection with his performance of any duty

53. In relation to count two, the question was not whether Mr Mack did in fact accept the false letter of engagement as genuine, or whether he was prejudiced as a result of doing so, but whether Mr Osmond intended to induce him to accept it and thereby to act to his prejudice. Thus the question of prejudice arises in the hypothetical situation whereby the false instrument is accepted as genuine in connection with the recipient's performance of any duty. Whether the recipient is under any duty is a question of law.

54. In our judgment deception (or attempted deception) of a public official carrying out a criminal investigation in the course of his employment is necessarily 'in connection with his performance of any duty', the duty being owed both to the employer charged with responsibility for investigating offences and to the public. It makes no difference that the employer, here the SFO, had a power rather than a duty to carry out the investigation in question. Once it has exercised that power by commencing an investigation, those conducting the investigation are carrying out a public function and have a duty to do so in accordance with the employer's instructions and in accordance with the law.

55. In short, therefore, we conclude that the judge was right to rule on these matters pre-trial and we agree with her reasoning and conclusions.

Submission of no case

56. Mr Fenhalls placed some emphasis on the fact that, as he submitted, the prosecution had not submitted, let alone proved, that the information and documents provided to the SFO were any different as a result of the disclosure to Mr Ramsay than if Mr Osmond had provided them without Mr Ramsay's input. He submitted, therefore, that the SFO had not suffered any prejudice as a result of Mr Osmond's disclosure. As

already explained, however, there is no requirement on the prosecution to show that the disclosure has caused prejudice to the investigation and it is not a defence that no prejudice has in fact been suffered. The issue, which was an issue of fact for the jury, was whether the disclosure was 'likely' to prejudice the investigation. Accordingly the judge was right to reject the submission of no case on count one. In any event, it seems to us that disclosure of the investigation to the target is inherently likely to prejudice the investigation because of the risk that evidence will be destroyed or compromised or that an offender may seek to evade justice. At any rate, a jury would be entitled to reach that conclusion.

The summing up

57. There was no complaint, independent of the matters which we have already discussed, about the judge's summing up. We commend her clear directions.

ENRC 2

58. Finally, we turn to the impact on this case of the judgment of Mr Justice Waksman in *ENRC 2*. However, it is important to recognise that all of the findings of misconduct made by Mr Justice Waksman against SFO officials were made in the *ENRC 1* judgment, not in *ENRC 2*. We refer to Mr Justice Waksman's own summary in *ENRC 2* of what he had found in *ENRC 1*:

> '25. As for the SFO, I found that, acting by Mr Alderman and/or Mr Thompson and/or Mr Gould, it was in serious breach of its own duties in relation to 15 out of the 30 [Disputed Contacts], which included engaging with and taking information from Mr Gerrard which was plainly unauthorised and against his client's interests. ... They have been referred to in submissions for the Phase 1A Trial as "the Induced DCs". I shall refer to them as "IDCs". On the facts, I found that in relation to the IDCs (and subject to proof of causation and loss) the tort of inducement to breach of contract on the part of Mr Gerrard had been established. Some but not all of the elements of misfeasance in public office were also established, but not sufficient to make out the tort itself.'

59. *ENRC 1* was not only available to the defence before the trial, but was referred to in the Defence Statement. It is therefore highly material that no attempt was made in the trial to deploy those findings or to ask prosecution witnesses about them. Nor was any submission advanced that, in the light of those findings, the prosecution was an abuse of process, or that evidence should be excluded pursuant to section 78 of the Police and Criminal Evidence Act 1984.

60. We do not find that surprising. The decision of Mr Justice Waksman was not that the investigation into ENRC was unlawful, but that it would not have occurred if it had not been for tortious conduct committed by senior SFO officials during the period December 2010 to June 2013. That tortious conduct consisted of inducing ENRC's solicitor, Mr Neil Gerrard of Dechert LLP, to provide privileged and confidential information about his client, ENRC. Even so, Mr Justice Waksman found that:

> '868 (4) ... from the SFO's own perspective, this was a case of bad faith opportunism rather than conspiring with Mr Gerrard to enable him to procure increased fees. This is not, in my view, a classic case of abuse of power; while the SFO was a willing audience for Mr Gerrard and encouraged him in terms of private meetings, he was not pressurised or threatened in any way by the SFO using its position as a prosecuting authority.'

61. In contrast, the conduct with which the trial against Mr Osmond was concerned was his disclosure in 2018 of the fact that the SFO was investigating the 10 Hays Mews transaction, a much narrower and more specific case than that with which Mr Justice Waksman was concerned, in which the officials who had committed the earlier misconduct were not involved.

62. Although it may be unnecessary to say so, in view of the fact that no abuse of process submission was advanced either at the trial or to us, we cannot see how such a submission could have satisfied the demanding test explained in many cases, most recently in *R v Ng & O'Reilly* [2024] EWCA Crim 493, [2024] 1 WLR 3221:

> '20. It is not necessary for present purposes to look further than the recent decision in *R v BKR* [2023] EWCA Crim 903; [2024] 1 WLR 1327 (at [34] to [50]) for an examination of the authorities and identification of the relevant legal principles, which are non-controversial.
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> 21. In summary, the power to stay criminal proceedings as an abuse of process is an important though exceptional remedy to be exercised with care and restraint. A stay of proceedings is the exception, not the rule; it is a measure of last resort.
>
> 22. There are two species (or limbs) of abuse justifying a stay, each of which is separate and distinct. The first is when a fair trial is not possible. The second is where it offends the court's sense of justice and propriety, or public confidence in the criminal justice system would be undermined, for the defendant to be tried in the particular circumstances of the case. The abuse must amount to an affront to the public conscience.
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> 23. Within the second category fall cases where the police or prosecuting authorities have engaged in misconduct. Category 2 abuse is by its nature very rarely found – such cases will be "very exceptional". As it was put in *R v BKR* at [34], the second limb does not arise "unless the defendant, charged with a criminal offence, will receive a fair trial…something out of the ordinary must have occurred before a criminal court may refuse to try a defendant charged with a criminal offence when that trial will be fair".
>
> 24. There is a two-stage approach when considering limb 2 abuse. First, it must be determined whether and in what respect the prosecutorial authorities have been guilty of misconduct,

> such as very serious examples of malpractice and unlawfulness (as opposed to state incompetence or negligence). Secondly, it must be determined whether such misconduct justifies a stay on the ground of abuse of process. This requires an evaluation on the particular facts and circumstances of each case, weighing in the balance the public interest in ensuring that those charged with crimes should be tried against the competing public interest in maintaining confidence in the criminal justice system.
>
> 25. Unfairness to the defendant is not required; rather the focus should be on whether the court's sense of justice and propriety is offended or public confidence in the criminal justice system would be undermined. Equally, a stay should not be imposed for the purpose of punishing or disciplining prosecutorial misconduct. The focus must be on whether a stay is appropriate in order to safeguard the integrity of the criminal justice system.'

63. Nor can we see how the evidence of earlier misconduct by SFO officials not connected to the prosecution of Mr Osmond would have been relevant to any of the issues which the jury had to decide.

64. Mr Fenhalls submits that *ENRC 2* takes a critical step beyond *ENRC 1*, in that while *ENRC 1* contains criticisms of individuals at the SFO, *ENRC 2* goes beyond this because it holds for the first time that a state entity was legally responsible for the individuals' wrongdoing. In our view that is a misunderstanding of the two judgments. There was never any doubt that the SFO would be vicariously responsible in tort for whatever wrongdoing was committed by the individuals in question, who were senior officials acting in the course of their employment. The new issue in *ENRC 2* was an issue of causation not of responsibility – namely whether the wrongdoing by those individuals was the effective cause of ENRC's losses for the purpose of liability in tort. Mr Justice Waksman held that it was, because without that wrongdoing the investigation into ENRC would not have taken place. But that did not mean, and Mr Justice Waksman did not find, that the whole investigation was unlawful. His findings have no bearing on the question whether Mr Osmond was guilty of the offences with which he was charged.

65. We see no reason to doubt that the prosecution has complied with its disclosure obligations. Once it is determined that the disclosure in issue in this case was the disclosure that there was an investigation into the 10 Hays Mews transaction, the documentary disclosure which the prosecution was required to give was properly focused on that transaction and not on the wider investigation into ENRC.

Disposal

66. For the reasons which we have explained, we do not consider that the proposed appeal is arguable and therefore refuse leave. However, because (as we are told) this is the first case about the tipping off provisions in section 333A(3) to reach this court, we give leave for this judgment to be cited.