

**[2023 Gib LR 204]****VERRALLS LEGAL LIMITED, C. MILES and J. MILES v.  
COMMISSIONER OF THE ROYAL GIBRALTAR POLICE and  
MAGISTRATES' COURT OF GIBRALTAR**

SUPREME COURT (Yeats, J.): February 27th, 2023

2023/GSC/011

*Police—entry, search and seizure—search warrants—Magistrate to form reasonable belief indictable offence committed—to be cautious before finding reasonable grounds for belief based solely on police officer's suspicions*

The claimants applied for permission to proceed with a claim for judicial review.

The claim arose from the execution of search warrants by RGP officers and from the arrest and detention of the second claimant, Mr. Miles. The search warrants were executed at the offices of the first claimant, Verralls, a law firm of which Mr. Miles was a director, and at Mr. Miles's home. The claimants sought orders quashing the warrants; a declaration that the entry into and search of Mr. Miles's home and Verralls' offices were unlawful and in breach of their statutory and/or common law and/or constitutional rights; a declaration that the arrest and detention of Mr. Miles was unlawful and/or in breach of his statutory and/or common law and/or constitutional rights; and damages.

The information laid before the Magistrate on the application for the warrants was that the RGP had received intelligence from Spain which suggested that Verralls had been used to transfer money and make payments of assets that, although registered in the name of third parties, were enjoyed by high end individuals involved in drug trafficking and money laundering; that Mr. Miles and others were facilitating the laundering of proceeds of criminal conduct; and that there were different investigations in Spain which substantiated the grounds to suspect Verralls and Mr. Miles had facilitated the purchase of real estate and other properties on behalf of third parties involved in drug trafficking using the suspected proceeds of criminal conduct. The information detailed four investigations in Spain. The first, "Operation Isco," was a money laundering investigation relating to FTC, the leader of an organized crime group in Spain, and part of the investigation related to the purchase by Mr. Miles of a house in which FTC and his family lived although Mr. Miles was the registered owner. The

second, “Operation Daotar,” related to a yacht registered to a Gibraltar, DV. The yacht had been purchased by an international transfer issued by Verralls. The third, “Operation Eroles,” related to another leader of an organized crime group in Spain, FRD. A townhouse in Spain had been purchased through FRD’s wife and transfers had been made via Verralls to a Spanish law firm’s account. The fourth, “Operation Uve,” related to FTC and to a property in which his partner resided. It had been acquired through DM, a local man suspected of being a drugs trafficker, and the purchase moneys had been paid via Verralls.

As to why a search warrant and not a production order was being sought, the information said that Mr. Miles was a key suspect and a senior person at Verralls, and that it was highly likely that he might destroy, alter, deface or conceal the material sought because it was evidence of his own wrongdoing.

As the material sought by the RGP was special procedure material as defined by the Criminal Procedure and Evidence Act (“CPEA”) the application for access to the material was made pursuant to Schedule 1 to the Act. Paragraph 1 of Schedule 1 provided that if any one of the two sets of access conditions were met, a judge or magistrate could make a production order. Paragraph 2 set out the first set of access conditions, which were the ones relied on by the RGP in this case:

- “2. The first set of access conditions is fulfilled if—
- (a) there are reasonable grounds for believing that—
    - (i) an indictable offence has been committed;
    - (ii) there is material which consists of special procedure material or also includes special procedure material and does not also include excluded material on premises specified in the application, or on premises occupied or controlled by a person specified in the application;
    - (iii) the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
    - (iv) the material is likely to be relevant evidence;
  - (b) other methods of obtaining the material have—
    - (i) been tried without success; or
    - (ii) not been tried because it appeared that they were bound to fail; and
  - (c) it is in the public interest, having regard to—
    - (i) the benefit likely to accrue to the investigation if the material is obtained; and
    - (ii) the circumstances under which the person in possession of the material holds it,
 that the material should be produced or that access to it should be given.”

The RGP did not seek a production order but a search warrant pursuant to para. 12 of Schedule 1:

“12. If on an application made by a police officer a judge or magistrate is satisfied—

(a) that—

- (i) either set of access conditions is fulfilled; and
- (ii) any of the further conditions set out in paragraph 14 is also fulfilled . . .

he may issue a warrant authorising a police officer to enter and search the premises.”

Paragraph 14 set out the further conditions. The RGP relied on para. 14(d):

“14. The further conditions mentioned in paragraph 12(a)(ii) are that—

- (d) . . . service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation.”

The Magistrate was satisfied that there were reasonable grounds for believing that an indictable offence had been committed and that other methods of obtaining the material had not been tried because it appeared that they were bound to fail.

The warrant in respect of Mr. Miles’s home was issued in respect of the property that was thought to be Mr. Miles’s home, No. 2, although Mr. Miles was in fact living at No. 5 whilst renovation works took place at No. 2. The RGP officers entered No. 2, realized it was uninhabited and then left. They then went to No. 5, where Mr. Miles was arrested. Mrs. Miles told the officers that they should not enter the property but they did so. They did not commence a search until the search warrant was amended by the Magistrate. Mrs. Miles was provided with a copy of the original warrant but not the amended warrant.

The claimants relied on seven grounds in support of the claim for judicial review:

(1) that there were no reasonable grounds for believing that an indictable offence had been committed;

(2) that there were no reasonable grounds for believing that the material sought was likely to be of substantial value to the investigation;

(3) that there were no reasonable grounds for believing that other methods of obtaining the evidence had been tried without success or were bound to fail;

(4) that the application for the search warrants was procedurally defective;

(5) that DI Goldwin and/or the RGP breached their duty to act fairly, their duty to respect the presumption of innocence, their duty of candour and their duty to provide the Magistrate with full and frank disclosure;

(6) that the warrant relating to Mr. Miles’s home was improperly amended and there was a trespass and unlawful entry into that property; and

(7) that the arrest of Mr. Miles was unlawful as it was not necessary or objectively justifiable.

The RGP claimed that none of these grounds was arguable and that permission to proceed with the judicial review should be refused.

The claimants submitted in relation to Ground 1 that (a) on the facts alleged by the RGP there were no reasonable grounds for believing that an indictable offence had been committed; (b) the indictable offence relied upon by the RGP was s.2(1) of the Proceeds of Crime Act which provided that “a person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person”; (c) in order for an offence under s.2(1) to be committed, the arrangement had to relate to property which was already criminal property and that for there to have been a reasonable belief that an offence under s.2(1) had been committed by Mr. Miles there had to be a reasonable belief that the funds transferred to Spain were themselves criminal property; *those* funds had to derive from the drugs trafficking, and Mr. Miles must have known or suspected the funds to be the proceeds of criminal conduct; (d) there was no evidence of this and the information in this regard was no more than mere supposition; and (e) the Magistrate was told that the RGP did not know whether the funds transferred through Verralls constituted proceeds of criminal conduct.

In relation to Ground 2, the claimants submitted that the requirement in para. 2(a)(iii) of Schedule 1 to the CPEA was not addressed in the information nor did the Magistrate refer to it when he issued the warrants. The RGP submitted in response that it was absurd to suggest that the material sought by the warrants would not be of substantial value.

In relation to Ground 3, the claimants submitted that (a) the RGP should have sought production orders and not search warrants; (b) Verralls and Mr. Miles, as regulated professionals, would have complied with orders requiring them to produce documentation; and (c) there were no reasonable grounds for believing that the requirement under para. 2(b) of Schedule 1 to the CPEA had been satisfied.

In relation to Ground 4, the claimants said the application for the search warrants was procedurally defective and they relied on three points: (a) the Magistrate did not consider whether service of notice of an application for a production order might seriously prejudice the investigation (*i.e.* the Magistrate did not consider para. 14(d)); (b) the information failed to address the statutory requirements, in particular those at paras. 2(a)(ii) or (iii) of Schedule 1 to the CPEA; and (c) the warrant in respect of Mr. Miles’s home was not sufficiently precise because it sought, among other things, “all documents relating to the purchase of assets” and “cash.”

In respect of Ground 5, the claimants relied on three matters which they said the Magistrate should have been made aware of when the application for the search warrants was made: (a) the purchase of a property by Mr. Miles which was central to the allegations made against him had been investigated by a Spanish court and the case had been archived, the judge finding there was no probable cause to investigate further; (b) certain individuals had been charged in Spain and had given evidence there and

the evidence provided in Spain was what was being sought in Gibraltar by the RGP; and (c) in relation to Operation Daotar and the purchase of a yacht, DV had already provided information in a witness statement to the RGP.

In respect of Ground 6 and the amendment and execution of the warrants at Mr. Miles's home, the claimants submitted that (a) the warrant was executed when the officers entered the incorrect property and it was therefore not capable of amendment or further execution; (b) the entry into Mr. Miles's home before the warrant was amended was unlawful; (c) s.19(7) of the CPEA required that two copies of a warrant were made and certified, and by amending only a single copy this requirement was not complied with; and (d) s.20(4) of the CPEA required that a copy of the warrant be provided to the occupier but Mr. Miles's wife was not provided with a copy of the amended warrant at the time.

In relation to Ground 7, the claimants submitted that his arrest could not be said to have been necessary to allow the prompt and effective investigation of the offence as claimed by the RGP, he had expressed a willingness to cooperate with the RGP, and therefore the arrest was unlawful.

**Held**, granting the claimants permission to proceed with grounds 1, 6 and 7; refusing permission to proceed with grounds 2–5:

(1) The claimants were granted leave to proceed with ground 1. The court did not disagree with the RGP that, based on the intelligence received from Spain, DI Goldwin was entitled to have formed a reasonable suspicion that an offence had been committed by Mr. Miles. However, that was not the test under Schedule 1 to the CPEA. The Magistrate had to form a reasonable belief that an indictable offence had been committed. It was a different and higher threshold. There was logic in the need for a higher threshold for the authorizing of a search of a person's premises. It was an invasion of privacy and was often described as a draconian measure. The Magistrate said at the conclusion of the hearing that he was satisfied that there were reasonable grounds for believing that an indictable offence had been committed, but all that the Magistrate had before him was DI Goldwin's suspicions. A Magistrate had to be cautious before finding that there were reasonable grounds for believing that an offence had been committed when all that was presented was an officer's suspicions. Whether the Magistrate in this case could have been satisfied that there were reasonable grounds to believe that an indictable offence had been committed by Mr. Miles was arguable. There had to be more than just a suspicion that the funds transferred to Spain by Mr. Miles and/or Verralls were proceeds of criminal conduct. The only basis for saying that those funds were proceeds of criminal conduct was the undisclosed intelligence to the effect that Mr. Miles and others were using moneys generated from drugs trafficking to purchase real estate in Spain (paras. 43–46).

(2) Ground 2 was not arguable. The information did not expressly say why the material was likely to be of substantial value. However, the answer

was in the exchanges between the Magistrate and DI Goldwin in which DI Goldwin explained that the RGP needed to investigate how the funds transferred to Spain were deposited into the Gibraltar bank accounts in the first place. Although the words “substantial value” were not used, it was clear that the material would be of substantial value to the investigation. In addition, the warrants, which were all individually signed by the Magistrate, contained the statement: “I am satisfied that: The first set of access conditions specified in Paragraph 2 of Schedule 1 of the [CPEA] are satisfied, and, that at least one of the further conditions set out in Paragraph 14 of Schedule 1 of [the CPEA] are also fulfilled.” This statement must be taken as showing that the Magistrate did consider para. 2(a)(iii) of Schedule 1 to the CPEA even if he did not expressly refer to it when delivering his reasons (paras. 51–53).

(3) Permission to proceed with ground 3 would be refused. Paragraph 2(b) of Schedule 1 to the CPEA provided that the first set of access conditions would be fulfilled if “(b) other methods of obtaining the material have—(i) been tried without success; or (ii) not been tried because it appeared that they were bound to fail . . .” The court made two observations. First, there was no requirement for the court to be satisfied that there were reasonable grounds for believing anything. The requirement was simply that the officer believed that other methods of obtaining the material had failed or that other methods had not been tried because it appeared that they were bound to fail. Second, the parties seemed to be conflating the requirement in para. 2(b) with the requirements which needed to be satisfied before a search warrant issued pursuant to para. 14. In fact, the information did not deal at all with the requirement under para. 2(b). The information said that service of notice of an application for a production order would prejudice the investigation and therefore an application was being made for a search warrant. The mechanics was as follows. An application for a production order had to be made on notice. A production order could only be granted if other methods had been tried without success or were bound to fail. Typically this could be a bank or similar institution saying they could not release information without a court order. If it was not practicable to communicate with the person entitled to grant access to the premises, or who had possession of the material, or notice would seriously prejudice the investigation, then the police could apply for a search warrant instead. In this case, the RGP considered that notice of the application would seriously prejudice their investigation and therefore sought a search warrant instead of a production order. Although the court appreciated that it was perhaps taking an overly technical stance, the claimants’ submission was contradictory. On the one hand they said that the RGP should have sought production orders and not search warrants, and on the other they said that para. 2(b) of Schedule 1 was not satisfied. However, the only way that a production order could issue was if the requirements of para. 2(b) were met. They must therefore necessarily consider that those requirements were met (paras. 56–59).

(4) Permission to proceed with ground 4 would be refused. In relation to para. 14(d), the information set out reasons why DI Goldwin was seeking a search warrant and not a production order. He said that service of a notice might seriously prejudice the investigation and he gave two reasons for it. First, that it was considered highly likely that Mr. Miles might conceal or destroy evidence of his wrongdoing, and secondly that Verralls was acting for DV who was contesting a production order issued in a related matter and DI Goldwin was therefore of the belief that Verralls and Mr. Miles would not cooperate in this case either. The Magistrate signed all the warrants. The warrants confirmed that the Magistrate was satisfied that at least one of the conditions in para. 14 of Schedule 1 to the CPEA was satisfied (the RGP plainly relied on para. 14(d)). The court therefore had no hesitation in finding that the Magistrate must have considered that service of notice of an application for a production order might have seriously prejudiced the investigation. Therefore there was no procedural error and this submission on ground 4 had no merit. The information did address the requirements of para. 2(a)(ii). DI Goldwin stated that the material sought consisted of special procedure material and that it was expected to include material which was subject to legal professional privilege. Consequently, this was similarly not an arguable claim. As to whether the information addressed para. 2(a)(iii), the court had already decided that DI Goldwin's oral evidence satisfied this requirement. The third complaint, that the warrant for No. 2 was not sufficiently precise, was not arguable. It was clear that the intention was to seek documents relating to the purchase of assets by the named individuals. This was in keeping with the allegations made in the information and the court could not see how this could be said to be impermissible. As to the complaint about the paragraph which simply stated "cash," complaint could not be made about the RGP wanting to seize any cash which might have been located in Mr. Miles's residence when the allegation was that he was assisting in the laundering of that type of criminal property. The reference to "cash" could only sensibly be taken as meaning money which might be the proceeds of crime. In the event, on execution of the warrant, the RGP seized two €500 notes (although not a significant amount of money, these notes were no longer being issued because of their widespread use by criminal gangs) (paras. 61–68).

(5) Permission to proceed with ground 5 would be refused. DI Goldwin was entitled to proceed on the basis of what he was told by the Spanish authorities. If that information was that Mr. Miles was being investigated for money laundering offences, why should DI Goldwin have made enquiries as to whether there had been previous proceedings in Spain on the same allegations? Secondly, the purpose of obtaining the warrants was to collect evidence for use in Gibraltar. The failure to inform the Magistrate that certain named individuals had given evidence in Spain was not material in any way. Thirdly, in relation to Operation Daotar and the purchase of a yacht, DV had already provided information in a witness statement to the RGP which DI Goldwin would have known about. The

RGP made the point that the Magistrate would have been aware of the DV matter as he had issued the production orders in that case. It might have been prudent to tell the Magistrate that DV had given a statement but this would not have affected the Magistrate's decision to issue the warrants. The claimants also said that there was a failure to consider alternatives to a search warrant under the CPEA and that a production order under POCA would have been a suitable alternative. There was nothing in this point. The RGP did not want to proceed by way of production orders because they feared that material could be destroyed. Further, it was submitted on behalf of the claimants that there was a breach of the RGP's duty of candour in that there could not have been an urgency to execute the warrants when they had received the intelligence from Spain in 2019. The court simply observed that the Magistrate was aware that the investigation had been running over a period of time. The reason why the warrants were to be executed at the particular date and time were also explained to the Magistrate (paras. 72–77).

(6) Ground 6 was plainly arguable. Sections 22 and 54 of the CPEA provided that a police officer could enter and search premises which were occupied by a person when he was arrested for an indictable offence. However, there was no suggestion at the time that this was the power actually exercised by the police when they entered No. 5 to secure the scene or when they actually searched it. On the contrary, the warrant was amended before the police proceeded with the search. As to the agreed fact that Mrs. Miles was not provided with a copy of the amended warrant, the RGP said that this was not important as she was shown the amended warrant and given a copy of the original one. However, conditions for the exercise of the power to enter and search someone's home should be properly complied with and careful consideration had to be given as to whether the failings in this case could be so easily dismissed (paras. 84–86).

(7) Ground 7 was arguable. The RGP claimed that Mr. Miles' arrest was necessary to allow the prompt and effective investigation of the offence (CPEA s.42(5)(e)). There was no basis for saying that this was not an honestly held belief. However, it was arguable that objectively, on the information known to DI Goldwin at the time, his decision was not made on reasonable grounds. The information stated that the RGP suspected that it was highly likely that evidence would be destroyed or concealed by Mr. Miles because it would be evidence of his own wrongdoing. However the court queried how reasonable it was to think that someone in Mr. Miles' position would do so in the presence of officers whilst a search was being carried out, and the court queried whether the officers should have waited until it became evident that Mr. Miles would not be cooperative and might hinder their search (paras. 92–94).



**Cases cited:**

- (1) *Bhatti v. Croydon Mags. ' Ct.*, [2010] EWHC 522 (Admin); [2011] 1 W.L.R. 948; [2010] 3 All E.R. 671, considered.
- (2) *Burgin v. Metropolis Police Commn.*, [2011] EWHC 1835 (Admin), considered.
- (3) *Hayes v. Merseyside Police (Chief Const.)*, [2011] EWCA Civ 911; [2012] 1 W.L.R. 517; [2012] Crim. L.R. 35; [2011] 2 Cr. App. R. 30, considered.
- (4) *R. v. GH*, [2015] UKSC 24; [2015] 1 W.L.R. 2126; [2015] 4 All E.R. 274; [2015] Crim L.R. 637; [2015] 2 Cr. App. R. 12, considered.
- (5) *R. v. Geary*, [2010] EWCA Crim 1925; [2011] 1 W.L.R. 1634, considered.
- (6) *R. (Hart) v. Blackfriars Crown Ct.*, [2017] EWHC 3091 (Admin), considered.
- (7) *R. (Parker) v. Chief Constable of Lancashire*, [1993] Q.B. 577; [1993] 2 W.L.R. 428; [1993] 2 All E.R. 56, considered.
- (8) *R. (Primlacks Hldgs. (Panama) Inc.) v. Guildhall Mags. ' Ct.*, [1990] 1 Q.B. 261, considered.
- (9) *R. (S) v. British Transport Police (Chief Const.)*, [2013] EWHC 2189 (Admin); [2014] 1 W.L.R. 1647; [2014] 1 All E.R. 268, considered.

**Legislation construed:**

Criminal Procedure and Evidence Act 2011, s.42(2): The relevant terms of this subsection are set out at para. 87.

Schedule 1, para. 2: The relevant terms of this paragraph are set out at para. 22.

Schedule 1, para. 12: The relevant terms of this paragraph are set out at para. 23.

Schedule 1, para. 14: The relevant terms of this paragraph are set out at para. 24.

Proceeds of Crime Act 2015, s.2(1): The relevant terms of this subsection are set out at para. 28.

s.182(1A): The relevant terms of this subsection are set out at para. 29.

*K. Azopardi, K.C.* with *C. Bonfante* (instructed by Hassans) for the claimants;

*N. Cruz* with *K. Reina* (instructed by Cruzlaw LLP) for the first defendant.

1 **YEATS, J.:** This is an application for permission to proceed with a claim for judicial review. The claim arises from the execution of search warrants by officers of the Royal Gibraltar Police (“the RGP”) on September 22nd, 2021 and from the arrest and detention of Christopher Miles (“Mr. Miles”) on that same date. The search warrants were executed at the offices of Verralls Legal Ltd. (“Verralls”) a law firm at which Mr. Miles is a director, and at the family home of Mr. Miles and his wife Jasmin

Miles at townhouse No. 5, The Island, Queensway Quay (“No. 5, The Island”).

2 The claimants seek the following principal relief:

(i) orders quashing the warrants;

(ii) a declaration that the entry into and search of No. 5, The Island and the Verralls’ business premises was unlawful and in breach of their statutory and/or common law and/or constitutional rights;

(iii) a declaration that the arrest and detention of Mr. Miles was unlawful and/or in breach of his statutory and/or common law and/or constitutional rights; and

(iv) damages.

3 As an order quashing the warrants is being sought, the Magistrates’ Court was added as a defendant to the claim but it is playing no part in the proceedings.

4 The judicial review claim is related to ongoing criminal investigations so it is important to note at the outset that any observations made and/or conclusions reached in this judgment are not intended to dilute or displace the presumption of innocence of any of the parties involved in the alleged criminal activity. Furthermore, when referring to persons suspected of illicit activity (other than Mr. Miles who is a party to these proceedings), I shall refer to them only by their initials.

5 The court’s permission is required for a judicial review claim to proceed—as per CPR r.54.4. The court considers whether the claimant’s grounds have a realistic prospect of success. At note 54.4.2 of the *White Book 2023* it is said that permission will be granted if:

“ . . . the court is satisfied that the papers disclose that there is an arguable case that a ground for seeking judicial review exists which merits full investigation at a full oral hearing with all the parties and all the relevant evidence . . . The purpose of the requirement for permission is to eliminate at an early stage claims which are hopeless, frivolous or vexatious . . . ”

The threshold is therefore a low one and what the court is simply doing at this stage is determining whether there are arguable grounds meriting full investigation at a substantive hearing.

6 The parties have not held back in their approach to this permission stage. There is a core bundle supported by seven lever arch files of documents. There are two separate bundles of authorities and lengthy skeletons. The hearing took place over the course of two days.

7 There are seven grounds being relied on in support of the claim:

(i) that there were no reasonable grounds for believing that an indictable offence had been committed;

(ii) that there were no reasonable grounds for believing that the material sought was likely to be of substantial value to the investigation;

(iii) that there were no reasonable grounds for believing that other methods of obtaining the evidence had been tried without success or were bound to fail;

(iv) that the application for the search warrants was procedurally defective;

(v) that DI Goldwin and/or the RGP breached their duty to act fairly, their duty to respect the presumption of innocence, their duty of candour and their duty to provide the Magistrate with full and frank disclosure;

(vi) that the warrant relating to No. 5, The Island was improperly amended and there was a trespass and unlawful entry into that property; and

(vii) that the arrest of Mr. Miles was unlawful as it was not necessary or objectively justifiable.

8 The RGP say that none of these grounds are arguable and therefore permission to proceed with the judicial review should be refused.

9 As a starting point, I agree with a fundamental submission made on behalf of the RGP by Mr. Nicholas Cruz. The court must assess the claimants' complaints as against what the RGP knew, suspected and presented to the Stipendiary Magistrate on September 20th–21st, 2021 when it applied for the warrants, and on how it behaved on September 22nd, 2021. This is important because following the execution of the warrants and the arrest of Mr. Miles on September 22nd, 2021, there have been significant exchanges and production of documents and information, and both sides have filed a number of witness statements.

#### **The information filed in support of the application for the search warrants**

10 The information laid before the Magistrates' Court on September 20th, 2021 by Detective Inspector Goldwin of the RGP ("the information") specified as follows:

"Intelligence has been received from Spain which suggests that:

(i) [Verralls] has been used to transfer money and make payments of assets that, although registered in the name of third parties, are enjoyed by high end individuals involved in drug trafficking and money laundering.

(ii) Mr. Miles [and other named persons] are facilitating the laundering of [proceeds of criminal conduct]. Further, it is alleged that [Verralls] and companies: Inversiones Wayne Enterprises S.L. and Inversiones del Norte Stark S.L. have been set up and used for the same purpose.

(iii) . . . there are large numbers of criminal groups based in the region of Cadiz dedicated almost exclusively to the transport and distribution of cannabis from Morocco. . . the profit generated by the different crime groups are mostly paid in cash to bolster the lifestyle and the acquisition of luxury items such as luxury vehicles and properties.

Information is that there are different investigations in Spain, which substantiate the grounds to suspect that Verralls and Mr. Miles have facilitated the purchase of real estate and other properties on behalf of 3rd parties involved in the drugs fraternity using the suspected [proceeds of criminal conduct] derived from this illicit activity.”

11 The information then details four separate investigations in Spain which the RGP says substantiated the grounds to suspect that Mr. Miles, through Verralls, had facilitated the purchase of property using proceeds of criminal conduct derived from drugs trafficking. The first is “Operation Isco.” This was a money laundering investigation relating to FTC, who is said to be the leader of an organized crime group in Spain. Part of the investigation in this operation relates to the purchase by Mr. Miles of a house in La Linea de la Concepcion known as “Casa Nueces” on June 4th, 2014. FTC and his family have lived in the house since it was purchased. The information states:

“The aforementioned house, since its purchase, has been lived in by the direct family of [FTC], however [Mr. Miles] is the registered owner of the property. Payment of 92,499.63 euros was made from [Verralls] and he directed mortgage payments for the rest that were made in cash instalments.

In this way, any relationship between the house and the owners of it, [FTC] and his family, was hidden.

Further, also in the scope of Operation Isco, an international transfer receipt was found in one of the vehicles seized from [FTC]. This transfer was dated 04/03/2014, issued by [Verralls] and in favour of [FTC], for an amount of €8908.”

12 The second case was “Operation Daotar.” This related to a luxury yacht (the MY “Nike Net”) registered to a Gibraltarian, DV. It is said that the yacht was used by one DOA. (Although not stated in the information, presumably the allegation is that DOA is a known criminal in Spain.) The information says:

“The yacht was acquired on 21/10/2016 for an amount of €160,000. It was paid by international transfer issued by Verralls. The Providence of these funds originated from the firms Barclays bank account.

[DV] is currently on police bail regarding this matter and the documents requested from Verralls were sought via production order. This process has been contested by the said firm and forms part of a judicial review. This matter will not feature in this case.”

13 The third was “Operation Eroles.” This operation related to the alleged leader of another organized crime group in Spain, FRD. A townhouse in La Alcaidesa, Spain was purchased on July 6th, 2018 through FRD’s wife. The purchase price is said to have been €180,000. Two transfers (of €20,000 and €154,600) were made via Verralls to a Spanish law firm’s account in a Spanish bank

14 The fourth case was “Operation Uve.” This also related to FTC and in particular to a luxury property in which his partner resided. It was acquired for €320,000 on June 30th, 2016 through DM, a local man who is suspected of being a drugs trafficker. The purchase moneys (€348,892.15) were paid via Verralls to a Spanish lawyer’s account in Spain. (The information states that the Spanish lawyer is being investigated in Spain for tax fraud.) The information then states:

“During the Guardia Civil investigation [DM] claimed that the money necessary to pay for it was obtained through a loan granted by Becket R Service Ltd a UK company that appears to have been active for a short period of time.”

(Becket R. Service Ltd. is said to have been incorporated on March 31st, 2016 and dissolved on September 5th, 2017. No accounts appear to have been filed for the company.)

15 The information also details how Mr. Miles owned two Spanish companies, Inversiones del Norte Stark S.L. (“Inversiones del Norte”) and Wayne Enterprises S.L. (Wayne Enterprises”). The former received a sum in excess of €300,000 from Verralls in four tranches. The company then purchased a property in Estepona, Spain. Wayne Enterprises also received the sum of €238,000 from Verralls which the information states was “supposedly” used to purchase a property in Aldea del Rocio, Spain.

16 On January 15th, 2020, the Additional Stipendiary Magistrate granted the RGP a production order against NatWest bank seeking disclosure of information relating to Verralls’ bank accounts. The production order sought disclosure of specific transactions and of transfers to Mr. Miles’ account in a Spanish bank and to Inversiones del Norte and Wayne Enterprises. The information sets out a list of eight transactions which are taken from the documents supplied by NatWest and which the RGP say

corroborate the intelligence received from the Spanish authorities. Critically, the information then says:

“Although we have the specific transactions we are not able to reconcile the origin of the funds as this information is held with [Verralls] accounting records.”

17 In a section entitled “Conclusion” the following is set out:

“All 4 areas abovementioned associates [Verralls] to leaders in the drugs trafficking world which generates a huge amount of cash which needs to be laundered into the financial system in exchange for assets such as real estate.

I suspect that [Mr. Miles] and [DM] have been used as fronts to own properties they do not use, but are lived in by [organized crime groups] leads me to believe that they are well connected to the aforementioned drug lords.

It is believed that [Mr. Miles], as a legal professional, has used his position within Verralls to facilitate the purchases of such properties using Gibraltar, a foreign jurisdiction, to layer, and integrate [proceeds of criminal conduct] into the financial system; a well-known money laundering typology.

This gives me reasonable grounds to suspect that both [Mr. Miles] and [DM] have committed the offence of arrangements contrary to section 2 [of the Proceeds of Crime Act 2015]; they have become concerned in an arrangement which they know, or suspect, facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person.”

18 The information also explained that the intention was to execute the search warrants at 06:00 hrs. on September 22nd, 2021—the precise moment that action was to be taken by Spanish law enforcement agencies in Spain against other suspects there. It was asserted that the reason why coordination was required was to “mitigate the risk of evidence being destroyed, altered, defaced or concealed.”

19 Finally, in relation to why a search warrant and not a production order was being sought, the information says:

“Mr. Miles is a key suspect in this case and a senior person within the above mentioned firm. We believe that he has facilitated the purchase of assets belonging to drugs traffickers through the firm using his position within. In the circumstances, we suspect that it is highly likely that he may destroy, alter, deface or conceal the material sought, because it is evidence of his own wrongdoing.”

**The issue of the warrants**

20 As the material sought by the RGP is special procedure material, as defined by the Criminal Procedure and Evidence Act (“the CPEA”), the application for access to such material was made pursuant to Schedule 1 of that Act.

21 Paragraph 1 of Schedule 1 provides that if any one of the two sets of access conditions are met, a judge or magistrate can make a production order. This is an order requiring a person with access to material to produce a copy for a police officer, or to give him access to it, within a certain timeframe.

22 Paragraph 2 then sets out the first set of access conditions (which were the ones relied on by the RGP in their application). This states:

“2. The first set of access conditions is fulfilled if—

- (a) there are reasonable grounds for believing that—
  - (i) an indictable offence has been committed;
  - (ii) there is material which consists of special procedure material or also includes special procedure material and does not also include excluded material on premises specified in the application, or on premises occupied or controlled by a person specified in the application;
  - (iii) the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
  - (iv) the material is likely to be relevant evidence;
- (b) other methods of obtaining the material have—
  - (i) been tried without success; or
  - (ii) not been tried because it appeared that they were bound to fail; and
- (c) it is in the public interest, having regard to—
  - (i) the benefit likely to accrue to the investigation if the material is obtained; and
  - (ii) the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.”

23 The RGP did not seek a production order but instead sought a search warrant pursuant to para. 12 of Schedule 1. This provides as follows:

“12. If on an application made by a police officer a judge or magistrate is satisfied—

- (a) that—
  - (i) either set of access conditions is fulfilled; and
  - (ii) any of the further conditions set out in paragraph 14 is also fulfilled . . .

he may issue a warrant authorising a police officer to enter and search the premises.”

24 Paragraph 14 then sets out the further conditions. In this case the RGP relied on sub-paragraph 14(d):

“14. The further conditions mentioned in paragraph 12(a)(ii) are that—

. . .

- (d) service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation.”

25 DI Goldwin attended before the Stipendiary Magistrate (“the Magistrate”) on September 20th, 2021 and September 21st, 2021 and gave evidence on oath. At the conclusion of the hearing the Magistrate said the following:

“After hearing the sworn evidence of Detective Inspector Craig Goldwin today and yesterday and upon reading the information in respect of Mr. Christopher Miles and also being satisfied that there are reasonable grounds for believing that an indicatable offence has been committed mainly the offence under Section 2 of the Proceeds of Crime Act 2015 and there’s other methods of obtaining the material have not being tried because it appears that they are bound to fail. Also it is in the public interest having regard to the benefit likely to accrue to the investigation the material is obtained namely by piecing together the last piece of evidence in the inquiry and that’s why I grant the three warrants as pleaded in connection with the investigation into the affairs of Christopher Miles.” [*sic*]

26 The Magistrate issued three warrants. The first was a warrant in respect of townhouse No. 2, The Island, Queensway Quay. (Mr. Miles was actually residing at No. 5, The Island as will be discussed below.) The second was a warrant for Verralls’ offices also in Queensway Quay. The third related to a property that the RGP believed was owned by Mr. Miles but had in fact been sold some months earlier. This last warrant was not executed.



**Ground 1: that there were no reasonable grounds for believing that an indictable offence had been committed**

27 The first ground raised by the claimants is that, on the facts alleged by the RGP, there were no reasonable grounds for believing that an indictable offence has been committed. As has already been set out, this is the first requirement under the first set of access conditions.

28 The indictable offence relied on by the RGP was s.2(1) of the Proceeds of Crime Act (“POCA”). This provides as follows:

“2.(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.”

29 The claimants focused on the term “criminal property.” Mr. Keith Azopardi, K.C. submitted that in order for an offence under s.2(1) of POCA to be committed, the arrangement must relate to property which is already criminal property. The term “criminal property” is defined in section 182(1A) of POCA as follows:

“Property is criminal property if—

- (a) it constitutes a person’s benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.”

30 In *R v. GH* (4), the UK Supreme Court considered a number of questions arising from a criminal trial in which the defendant had been accused of opening bank accounts in order to assist a second party to commit a series of frauds. There the court analysed and agreed with English Court of Appeal decisions dealing with the interpretation of the term “criminal property” in the equivalent provision in the English statutes to s.2(1) of POCA. Lord Toulson, JSC said ([2015] 1 W.L.R. 2126, at para. 20):

“There is an unbroken line of Court of Appeal authority that it is a prerequisite of the offences created by sections 327, 328 and 329 that the property alleged to be criminal property should have that quality or status at the time of the alleged offence. It is that pre-existing quality which makes it an offence for a person to deal with the property, or to arrange for it to be dealt with, in any of the prohibited ways. To put it in other words, criminal property for the purposes of sections 327, 328 and 329 means property obtained as a result of or in connection with criminal activity separate from that which is the subject of the charge itself. In everyday language, the sections are

aimed at various forms of dealing with dirty money (or other property). They are not aimed at the use of clean money for the purposes of a criminal offence, which is a matter for the substantive law relating to that offence.”

31 In the course of his judgment, Lord Toulson referred approvingly to *R v. Geary* (5), where Moore-Bick said ([2011] 1 W.L.R. 1634, at para. 19):

“In our view the natural and ordinary meaning of section 328(1) is that the arrangement to which it refers must be one which relates to property which is criminal property at the time when the arrangement begins to operate on it. To say that it extends to property which was originally legitimate but became criminal only as a result of carrying out the arrangement is to stretch the language of the section beyond its proper limits.”

32 It is therefore clear that in order for there to have been a reasonable belief that an offence under s.2(1) of POCA had been committed by Mr. Miles, there had to be a reasonable belief that the funds transferred to Spain were themselves criminal property. *Those* funds had to derive from the drugs trafficking. Furthermore, Mr. Miles must have known or suspected the funds to be the proceeds of criminal conduct. Mr. Azopardi submitted that there was no real evidence of this and that the contents of the information in that regard amounted to no more than mere supposition.

33 Despite what was contained in the information, the claimants say that the Magistrate was told that the RGP did not know whether the funds transferred through Verralls constituted proceeds of criminal conduct. Their position is best explained by reference to para. 31 of their written submissions where they say:

“it is clear from the terms of the central allegations in the Information that it was a core aspect of the RGP case that the monies transferred by or via Verralls and Mr. Miles were [proceeds of criminal conduct]. In practice however DI Goldwin resiled from that position in the presentation of the application for the warrants.”

34 The claimants also say that an analysis of the information shows that only Operation Isco raised a connection with Mr. Miles. The other transactions involved purchases by third parties in which transfers of funds had been made through Verralls but, significantly, DI Goldwin made no allegation of criminality against Verralls. In fact, the opposite was true with the officer confirming in his witness statement dated February 24th, 2022 that based on what was contained in the intelligence report from Spain, he “did not feel [he] had reasonable grounds to suspect that [Verralls] were involved in the suspected money laundering arrangement.”

35 In relation to *Operation Isco*, the allegation is that two transfers were made by Mr. Miles through Verralls (it was later established that one of them had in fact been made by Mr. Miles directly from a personal account). It was submitted by Mr. Azopardi that there had to be a reasonable belief that the funds transferred were actually proceeds of criminal conduct of themselves. The fact (which is denied) that the funds may have been used to buy a property in Spain as part of a scheme to launder funds is immaterial. In any event, that activity would not be taking place in this jurisdiction.

36 At the hearing, Mr. Cruz asserted that the RGP's position is that the funds transferred for the purchase of "Casa Nueces" was "dirty from the beginning." That those funds were the proceeds of drugs trafficking.

37 The intelligence from Spain upon which the information was based, was received in what is referred to by the RGP as an "Arrangement INT." This was received by the RGP from the Organismo de Coordinacion de Narcotrafico Sur, a branch of the Guardia Civil set up for the tackling of organized crime in the Campo de Gibraltar region. The Arrangement Int has not been disclosed but, significantly, the information states:

"Information is that there are different investigations in Spain, which substantiate the grounds to suspect that Verralls and Mr. Miles have facilitated the purchase of real estate and other properties on behalf of 3rd parties involved in the drugs fraternity *using the suspected [proceeds of criminal conduct] derived from this illicit activity.*" [Emphasis added.]

38 Mr. Azopardi referred to a number of extracts contained in the transcript of the proceedings in the Magistrates' Court which he says show that DI Goldwin was not in fact saying this. The first starts at p.11 of the transcript for the first day and is an exchange between the Magistrate and DI Goldwin:

"MAGISTRATE: . . . Do we know where the money came from?"

DI GOLDWIN: No. And that's what I'll explain later on. We have the association that Chris Miles is associated with these people that are involved in drugs trafficking . . . Now, when we look into Verralls' client account, all we see is the money coming in, but we don't know how the money was deposited, was it in cash or whether it was via bank transfer from somewhere else . . .

MAGISTRATE: But you don't know those particular euros or the amount that is represented by those euros got in there.

DI GOLDWIN: No.

. . .

MAGISTRATE: For all we know it could also be Verralls or Miles lending money to clients.

DI GOLDWIN: Yes. Yes, but the suspicion remains . . .

. . .

DI GOLDWIN: Yeah, yeah, I know exactly. We will never know. We know that the end product and we and we know the middle product so the end product is that we've got drugs trafficking and we say enjoined assets which are named in other people's names, used as figure heads, so that's the end product. The middle product is the money leaving Verralls' accounts, but we won't be able to know how the source of funds, whether it was loans, whether . . . however it got to, that we don't have, so that we suspect that . . . of the arrangements, but we don't have how the money was transferred and that is why, where we need the warrants, to be able to verify, as we said."

39 And at p.23 the matter is revisited by the Clerk to the Magistrates' Court:

"CLERK: How do you require [presumably the transcript should read "acquire"] reasonable suspicion that the €92,499.63 and €8,990.00 when transferred from Verralls was in fact criminal property?

DI GOLDWIN: Well, the criminal property is the end product, we say the end product, that is what we say is entering into an arrangement to facilitate the protocol of criminal conduct, once the criminal conduct . . . [unintelligible] the [unintelligible] property is a physical asset in Spain . . . How that money, the initial money is . . . the initial income is what we are trying to verify . . ."

40 I would make the following observations. When DI Goldwin says he does not know where the money came from, he was clearly referring to not knowing to whether the money was deposited into Verralls' account in cash by transfer *etc.* When he agrees that the funds could belong to Verralls and or Mr. Miles, he qualifies that by saying that the suspicion remains. In other words, he suspected that the funds were proceeds of drugs trafficking although he could not discard that the money originated from a legitimate source. The answer to the question put to him by the clerk suggests that he was proceeding as if the Spanish real estate was the criminal property. However, it seems to me that it is wrong to look at that answer in isolation. Looking at it holistically, it is clear from all that was said in writing and orally that DI Goldwin's suspicion was that the moneys used to purchase "Casa Nueces" was comprised of proceeds of criminal conduct and he required information from Verralls and Mr. Miles in order to investigate

the matter. Indeed, at p.21 of the first transcript the following is said by DI Goldwin:

“Well no, the crux of our accusation is we have the intention to see that these properties in Spain are owned by people in the drugs world. So, what we are saying or we suspect is that these . . . let’s call them drug lords, are entered into an arrangement with Chris Miles and [DM] to launder the proceeds of crime so. *The initial part would have been cash, transfers from other jurisdiction, God knows*, but the true owners are these drug lords and they’ve been used as figure heads to cover the true ownership of the properties and facilitate the payments through Verralls in that position. So that is our suspicion, our suspicion is that they have entered into an arrangement for the end product, the end product being the house and that arrangement has included, we say . . . we suspect, the facilitation of the transfers through Verralls accounts.” [Emphasis added.]

41 Based on what is contained in the Arrangement Int, the RGP say that the relationship between Mr. Miles and FTC is not one which can be explained away as a result of a professional relationship between barrister and client. The RGP also say that Mr. Miles’ explanation for purchasing “Casa Nueces,” namely that he had intended it as a family home, cannot be accepted. They say the evidence shows that it was always lived in by FTC and members of his family and in fact even after FTC had been imprisoned in Spain on drugs trafficking charges, Mr. Miles renewed the tenancy. That cash payments were received to service the mortgage in Spain and this is a common type of money laundering (a loan facility being serviced by cash derived from illicit activity).

42 Mr. Cruz relied on *Burgin v. Metropolitan Police Commr.* (2) as an example where the Divisional Court refused permission for a claim for judicial review to proceed in circumstances which are said to be analogous to this case. There, the Serious Fraud Office had obtained their information from the Swiss authorities.

43 I do not disagree with the RGP that, based on the intelligence received from Spain, DI Goldwin was entitled to have formed a reasonable *suspicion* that an offence had been committed by Mr. Miles. However, that is not the test under Schedule 1 of the CPEA. The Magistrate had to form a reasonable *belief* that an indictable offence had been committed. It is a different and higher threshold. I was not addressed on this by either party but, in my judgment, the distinction is evident—suspicion and belief are not interchangeable terms. In the context of the *mens rea* of an offence Archbold, *Criminal Pleading, Evidence & Practice*, para. 17–48, at 2180 (2022) states as follows: “Belief is a state of mind required in a number of criminal offences . . . It connotes a state of mind which is more than suspicion.”

There is logic in the need for a higher threshold for the authorizing of a search of a person's premises. It is an invasion of privacy and is often described as a draconian measure.

44 I note of course that the Magistrate did say at the conclusion of the hearing that he was satisfied that there were reasonable grounds for believing that an indictable offence had been committed, but all that the Magistrate had before him was DI Goldwin's suspicions. In the conclusion section of the information, DI Goldwin states that his enquiries corroborate the intelligence received in the Arrangement Int and then goes on to say that "this gives me reasonable grounds to suspect that [Mr. Miles] and [DM] have committed the offence of Arrangements . . ." In evidence, he maintained that he had a suspicion—for example in the exchange with the Magistrate where he says "Yes. Yes, but the suspicion remains . . ." DI Goldwin also tells the Magistrate the following "at this moment in time, I think what we need is reasonable grounds to suspect that the arrangements has taken place." This was wrong. (At the end of the information, in a paragraph numbered "5," DI Goldwin does say that there are reasonable grounds for believing that an indictable offence has been committed but it seems that the officer is simply going through a *pro forma* of the steps corresponding to the Schedule 1 requirements.)

45 My own research has taken me to *R. (Primlacks Hldgs. (Panama) Inc.) v. Guildhall Mags.' Ct.* (8). There the Divisional Court was considering the seizure of privileged items from a firm of solicitors. In *obiter* comments, Parker, L.J. said the following in relation to the powers of a magistrate under s.8 of the Police and Criminal Evidence Act to issue a search warrant ([1990] 1 Q.B. at 272):

"Before concluding this judgment I find it necessary to make certain observations with regard to applications under section 8 of the Act. It confers a draconian power and it is of vital importance that it should be clearly understood by all concerned that it is for the justice to satisfy himself that there are reasonable grounds for believing the various matters set out. The fact that a police officer, who has been investigating the matter, states in the information that he considers that there are reasonable grounds is not enough. The justice must himself be satisfied. In the present case Detective Inspector Keating did not even so state. He merely stated that the matters set out led to the belief that there were reasonable grounds for suspecting that the first of the conditions was satisfied. This would not be completely fatal, for a justice would be entitled to consider that the facts went further. But if the applicant goes no further than to speak of reasonable grounds for suspicion, a justice would in my judgment need to be very cautious indeed before he went further. In the present case he clearly could not have done so."

46 A magistrate therefore has to be cautious before finding that there are reasonable grounds for believing that an offence has been committed when all that is presented is an officer's suspicions. In my judgment, whether the Magistrate in this case could have been satisfied that there were reasonable grounds to believe that an indictable offence had been committed by Mr. Miles is arguable. There had to be more than just a suspicion that the funds transferred to Spain by Mr. Miles and/or Verralls were proceeds of criminal conduct. The only basis for saying that those funds were proceeds of criminal conduct was the undisclosed intelligence in the Arrangement Int to the effect that Mr. Miles and others were using moneys generated from drugs trafficking to purchase real estate in Spain. In the circumstances, I shall grant the claimants leave to proceed with their claims on ground one.

**Ground 2: that there were no reasonable grounds for believing that the material sought was likely to be of substantial value to the investigation**

47 The first set of access conditions for the grant of a production order (and therefore also a search warrant) require that there are reasonable grounds for believing that the material will be of substantial value to the investigation. This requirement is contained in para. 2(a)(iii) of Schedule 1 of the CPEA:

“2. The first set of access conditions is fulfilled if—

(a) there are reasonable grounds for believing that—

...

(iii) the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made . . .”

48 The claimants say that this requirement was not addressed in the information nor did the Magistrate refer to it when he issued the warrants.

49 Mr. Azopardi relied on *R. (S) v. British Transport Police (Chief Const.)* (9) as authority for the proposition that an information filed in support of an application for a warrant must contain particulars of how it is said the statutory requirements were fulfilled. In that case, the Divisional Court said the following ([2014] 1 W.L.R. 1647, at para. 43 and 45):

“43 . . . [T]he only document that will normally go before the circuit judge when a search warrant is sought under section 9 of and Schedule 1 to the 1984 Act is the information. The information must therefore be drafted with scrupulous care to ensure that it contains all relevant matters, because although the circuit judge who must consider it will have to do so carefully and in detail, he will be relying on it to make his decision on whether to grant the warrant.

...

45. In relation to the information itself, which as we say, is the sole basis upon which, ultimately, the judge will grant the search warrant, it is clear from the statutory provisions of the 1984 Act to which we have drawn attention above that it must deal with the following: (1) It must set out each of the statutory requirements which has to be satisfied in the particular case before the warrant in question can be granted. There are a number of different routes for obtaining a search warrant and only the route actually selected in a particular case should be dealt with, or else the judge will not know the precise basis of the application being made. (2) It must show, for each of the relevant statutory requirements, how that requirement is satisfied by setting out all the relevant facts relied on including all facts and matters which are said to show that a particular 'reasonable belief' is justified. It is not enough to assert that a particular requirement is satisfied without explaining how it is said to be so. It is only when the judge can review the facts set out in the information that he can decide for himself if a requirement has actually been satisfied. Furthermore, it is only then that a party wishing to challenge the warrant can decide whether the order could be challenged because of a failure to satisfy that particular requirement. Hence, an assertion that there are 'reasonable grounds' for a belief will require that basis of the belief to be explained in detail."

Therefore, it was submitted that the information had to explain why any material seized pursuant to the warrants would be of substantial value to the investigation.

50 The RGP's response is to say that it is absurd to suggest that the material sought by the warrant would not be of substantial value. The information sets out exactly what material was being sought and it would have been obvious why such material would be of substantial value. Mr. Cruz again referred to *Burgin* (2). There the District Judge had not set out his reasons for issuing the search warrants but the court nevertheless held that the information was sufficiently detailed and the judge was to be taken as having accepted and endorsed the reasoning in the information.

51 The information here does not expressly say why the material is likely to be of substantial value. However, it seems to me that the answer is in the exchanges that I have quoted above between the Magistrate and DI Goldwin. In these, DI Goldwin explained that the RGP needed to investigate how the funds that were transferred to Spain were deposited into the Gibraltar bank accounts in the first place. What was the origin of those funds? Although the words "substantial value" are not used, it is clear that the material would be of substantial value to the investigation. As the claimants themselves say, the case arguably depends on what the source of those funds is. The



passages that I have quoted from *R(S) v. British Transport Police* focus on the information being the only material which a judge relies on. That was not the situation here. DI Goldwin supplemented the information with the evidence he gave on oath.

52 In addition, the warrants, which are all individually signed by the Magistrate, have the following statement:

“I am satisfied that: The first set of access conditions specified in Paragraph 2 of Schedule 1 of the [CPEA] are satisfied, and, that at least one of the further conditions set out in Paragraph 14 of Schedule 1 of [the CPEA] are also fulfilled.”

This statement must be taken as showing that the Magistrate did consider para. 2(a)(iii) of Schedule 1 of the CPEA even if he did not expressly refer to it when delivering his reasons orally.

53 In my judgment, ground 2 is not an arguable claim.

**Ground 3: that there were no reasonable grounds for believing that other methods of obtaining the evidence had been tried without success or were bound to fail**

54 The claimants say that the RGP should have sought production orders and not search warrants. That Verralls and Mr. Miles, as regulated professionals, would have complied with orders requiring them to produce documentation.

55 In relation to this ground, the submission is that there were no reasonable grounds for believing that the requirement under para. 2(b) of Schedule 1 of the CPEA had been satisfied. That paragraph provides as follows:

“2. The first set of access conditions is fulfilled if—

...

(b) other methods of obtaining the material have—

(i) been tried without success; or

(ii) not been tried because it appeared that they were bound to fail . . .”

56 I make two observations. The first is that there is no requirement for the court to be satisfied that there were reasonable grounds for believing anything. The requirement is simply that the officer believes that other methods of obtaining the material have failed or that that other methods have not been tried because it appeared that they were bound to fail (see *R. (Hart) v. Blackfriars Crown Ct.* (6) ([2017] EWHC 3091, at para. 16)).

57 The second and more significant observation is that the parties seem to be conflating the requirement in para. 2(b) with the requirements which need to be satisfied before a search warrant issues pursuant to para. 14. In fact, the information does not deal at all with the requirement under para. 2(b). What the information does is say that service of notice of an application for a production order would prejudice the investigation and therefore an application was being made for a search warrant. The mechanics is the following. An application for a production order has to be made on notice (as per para. 7 of Schedule 1). A production order can only be granted if other methods have been tried without success or are bound to fail. Typically, this could be a bank or similar institution saying they cannot release information without a court order. If it is not practicable to communicate with the person entitled to grant access to the premises; or who has possession of the material; or notice would seriously prejudice the investigation, then the police can apply for a search warrant instead (see paras. 12 and 14). In this case, the RGP considered that notice of the application would seriously prejudice their investigation and therefore sought a search warrant instead of a production order.

58 Although I appreciate that I am perhaps taking an overly technical stance, the claimants' submission is contradictory. On the one hand they say that the RGP should have sought production orders and not search warrants, and on the other they say that para. 2(b) of Schedule 1 was not satisfied. But, the only way that a production order can issue is if the requirements of para. 2(b) are met. They must therefore necessarily consider that those requirements were met.

59 In the circumstances, permission to proceed with ground 3 is refused.

**Ground 4: that the application for the search warrants was procedurally defective**

60 The claimants say that the application for the search warrants was procedurally defective. They rely on the following three points:

(i) That the Magistrate did not consider whether service of notice of an application for a production order may seriously prejudice the investigation (in other words that the Magistrate did not consider para. 14(d)).

(ii) That the information failed to address the statutory requirements, in particular those at paras. 2(a)(ii) or (iii) of Schedule 1 of the CPEA.

(iii) That the warrant in respect of No. 2, The Island was not sufficiently precise as it sought, amongst other things, "all documents relating to the purchase of assets" and "cash."

61 In relation to para. 14(d), the information does set out reasons why DI Goldwin was seeking a search warrant and not a production order. At para. 7, he says that service of a notice may seriously prejudice the investigation

and he gives two reasons for it. The first is as set out in para. 19 above. The second is that Verralls was acting for DV who was contesting a production order issued in a related matter and DI Goldwin was therefore of the belief that Verralls and Mr. Miles would not cooperate in this case either.

62 As already noted, the Magistrate signed all the warrants. The warrants confirm that the Magistrate was satisfied that at least one of the conditions in para. 14 of Schedule 1 of the CPEA was satisfied (the RGP were quite plainly relying on para. 14(d)). I therefore have no hesitation in finding that the Magistrate must have considered that service of notice of an application for a production order may have seriously prejudiced the investigation. That being so, there was no procedural error and this submission on ground 4 has no merit. It is not an arguable claim.

63 The next point is the assertion that the information did not address paras. 2(a)(ii) or (iii). The information does address the requirements of para. 2(a)(ii) at para. 6. There, DI Goldwin states that the material sought consists of special procedure material and that it is expected to include material which is subject to legal professional privilege. Consequently, this is similarly not an arguable claim.

64 As to whether the information addressed para. 2(a)(iii), I have already decided that the oral evidence given by DI Goldwin satisfied this requirement. Having refused permission to proceed with ground 2, it must follow that I refuse permission to proceed with this part of ground 4.

65 The third complaint is that the warrant for No. 2, The Island was not sufficiently precise. It does not seem to me that this ground is arguable. The warrant describes the material being sought by the RGP in seven numbered paragraphs. The first three paragraphs concern documents relating to the purchase of three different properties (those referred to in “Operation Isco,” “Operation Erotos” and “Operation Uve”). The fourth paragraph relates to Wayne Enterprises and Inversiones del Norte. The seventh relates to Mr. Miles’ communication devices. The claimants complain about paras. 5 and 6.

66 Paragraph 5 states as follows:

“All documents relating to the purchase of assets, including but not limited to all accounting records, [source of funds], [know your client], transaction data of [FRD], [APN], [RPS] and [FTC], whether directly or indirectly.”

As I understand the complaint, it is said that the phrase “all documents relating to the purchase of assets” can stand alone and it is therefore impermissible, not relevant and too generalized. Whilst a forensic-type analysis of the grammar employed in the paragraph might yield that result, it seems to me to be clear that the intention was to seek documents relating to the purchase of assets by the named individuals. This was in keeping

with the allegations being made in the information and I do not see how this can be said to be impermissible.

67 As to para. 6, this simply states “cash.” The allegation contained in the information (which obviously comes as no surprise to anyone) is that drugs traffickers generate large amounts of cash and this is then laundered in different ways. I do not see how complaint can be made about the RGP wanting to seize any cash which may have been located in Mr. Miles’ residence when the allegation was that he was assisting in the laundering of that type of criminal property. I agree with Mr. Cruz that the reference to “cash” can only sensibly be taken as meaning money which might be the proceeds of crime. Clearly, the RGP was not seeking or interested in seizing cash in amounts which any family may have at home. In the event, on execution of the warrant, the RGP seized two €500 notes. (Although that is not a significant amount of money, these notes are no longer being issued because of their widespread use by criminal gangs.) If other cash was held in the house, none was seized.

68 At para. 77(4) of the detailed statement of grounds the claimants say that the Magistrate did not give “adequate reasons for this decision.” Although this is set out in a stand-alone sub-paragraph, I am taking this as referring to the decision to include paras. 5 and 6 in the warrant for No. 2, The Island and not to the decision to issue the warrants. (This is in fact how it is set out in the claimants’ written submissions at para. 119.) It seems to me to be clear from the contents of the information why documents relating to the named persons and cash would be sought. Whilst the Magistrate could perhaps have referred to this expressly in his reasons, I do not see that this complaint has merit.

**Ground 5: that DI Goldwin and/or the RGP breached their duty to act fairly, their duty to respect the presumption of innocence, their duty of candour and their duty to provide the Magistrate with full and frank disclosure**

69 In *R. (Hart) v. Blackfriars Crown Ct.* (6) (which I have referred to above at para. 56), the Divisional Court was concerned with whether officers of HM Revenue & Customs had misrepresented a number of matters when applying for search warrants. The court held that an applicant for a search warrant has a duty to disclose all relevant facts. Holroyde, L.J. said ([2017] EWHC 3091 (Admin), at para. 18):

“It is, of course, well established that when an application is made for a search warrant, the judge to whom the application is made must personally be satisfied that the material before the court is sufficient to show that it is proper to grant the warrant. In order that the judge has all the information which is necessary for him or her to make an informed, balanced and fair decision, the applicant is under a duty to

make full and frank disclosure, and to draw to the attention of the judge any material facts which may be relevant to the judge's decision, including any matters which indicate the issue of a warrant might be inappropriate."

70 The claimants rely on three particular matters which they say the Magistrate should have been made aware of at the time the application for the search warrants was made. If this was not known to the RGP, they should or would have known on proper enquiry.

71 The first is that the purchase of "Casa Nueces" by Mr. Miles in 2014 had been investigated by a Spanish court and the claimants say that the case "had been archived without appeal with the Spanish judge having found that there was no probable cause to investigate further." As the purchase of this property was central to the allegations made against Mr. Miles, this should have been brought to the Magistrate's attention. The RGP's response is that DI Goldwin was not aware of the precise nature of the investigations by the Spanish judge or that the investigation there had been stayed. DI Goldwin's belief, resulting from the Arrangement Int and discussions with the Spanish police, was that the investigation into Mr. Miles was continuing in Spain.

72 I have considered the documents exhibited by Mr. Miles as exhibit CLM 8 to his witness statement of December 20th, 2021. The court document dated December 18th, 2016, clearly states that there is insufficient evidence against Mr. Miles for the offence of money laundering on the basis that there was no link between the alleged offence and drug smuggling. The document does not however explain what the investigation was. In any event, I consider that DI Goldwin was perfectly entitled to proceed on the basis of what he was being told by the Spanish authorities. If the information that was being relayed to him was that Mr. Miles was being investigated for money laundering offences, why should he have made enquiries as to whether there had been previous proceedings in Spain on the same allegations? In my judgment, there is no merit to this part of ground 5.

73 The second is that DM and APN had been charged in Spain and had given evidence there. The evidence provided in Spain was what was being sought here in Gibraltar by the RGP. Whether or not that was the case, I agree with Mr. Cruz that the purpose of obtaining the warrants was to collect evidence for use in Gibraltar. I do not see that the failure to inform the Magistrate that DM and APN had given evidence in Spain was material in any way. This point has no merit.

74 The third is that in relation to Operation Daotar and the purchase of the yacht "Nike Net," DV had already provided information in a witness statement to the RGP which DI Goldwin would have known about. The RGP make the point that the Magistrate would have been aware of the DV

matter as he had issued the production orders in that case. Perhaps it would have been prudent to tell the Magistrate that DV had given a statement and what he had said. Nevertheless, it does not seem to me that this would have affected the Magistrate's decision to issue the warrants. I note that the section in the information dealing with Operation Doatar actually states: "This matter will not feature in this case."

75 The claimants also say that there was a failure to consider alternatives to a search warrant under the CPEA. That a production order under POCA would have been a suitable alternative. In my judgment, there is nothing in this point. The RGP did not want to proceed by way of production orders because they feared that material could be destroyed.

76 Further, it is submitted on behalf of the claimants that there was a breach of the RGP's duty of candour in that there cannot have been an urgency to execute the warrants at 6 a.m. on September 22nd, 2021 when they had received the Arrangement Int from Spain in 2019. I would simply observe that the Magistrate was aware that the investigation had been running over a period of time as the RGP had previously sought production orders at NatWest. The reason why the warrants were to be executed at the particular date and time were also explained to the Magistrate.

77 Permission to proceed with ground 5 is refused.

**Ground 6: that the warrant relating to No. 5, The Island was improperly amended**

78 The RGP sought, and the Magistrate issued, a warrant in respect of town house No. 2, The Island. Information obtained through the Civil Status and Registration Office indicated that this was Mr. Miles' residence. Mr. Miles had himself said so when applying for an identity card. However, at the material time Mr. Miles was actually residing in No. 5, The Island whilst renovation works were taking place at No. 2.

79 Although the precise facts are not agreed, broadly the following occurred. At around 06:00 hrs. on September 22nd, 2021, officers attended No. 2, The Island. They noticed that the door was unlocked and so they entered. After a few moments they realized that the property was uninhabited and left. The officers then proceeded to No. 5, The Island where they had seen a vehicle which they believed belonged to Mrs. Miles. At 06:15 hrs., they knocked on the door and this was opened by Mr. Miles. Mr. Miles was arrested. Mr. Miles told the officers that he wished to cooperate but said that they should not enter his property until they had a warrant authorizing them to do so. As Mr. Miles wished to change his clothing, two officers accompanied him into the house. After he was taken away, Mrs. Miles told the officers present that they should not enter the house. The officers ignored her plea and entered the house at around 06:40 hrs., although they did not commence the search. DI Goldwin also left in

order to attend before the Magistrate to have the warrant amended. At around 07:25 hrs., DI Goldwin returned with the amended warrant. The number of the town house had been amended from No. 2 to No. 5 in manuscript and the change initialled by the Magistrate. No copy of the amended warrant was provided to Mrs. Miles (she was only given a copy of the original warrant). A search was carried out and items were seized.

80 The claimants make the following principal submissions in relation to the amendment and execution of the warrants at No. 5, The Island:

(i) That the warrant was executed when the officers entered No. 2, The Island and therefore it was not capable of amendment or further execution. Section 19(6) of the CPEA provides that a warrant must authorize an entry on one occasion only unless it specifies that multiple entries are authorized. (In this case multiple entries were not authorized.) A fresh application should therefore have been made.

(ii) That the entry into No. 5, The Island before the warrant was amended was unlawful (even if the search did not commence until the amended warrant was produced).

(iii) That s.19(7) of the CPEA requires that two copies of a warrant are made and certified as such. By amending a single copy, this requirement was not complied with.

(iv) That s.20(4) of the CPEA requires that a copy of the warrant be provided to the occupier. The claimants say that this requirement was not complied with as a copy of the amended warrant was not given to Mrs. Miles at the time.

81 Mr. Azopardi relied on a number of authorities. In *R. (Parker) v. Chief Constable of Lancashire (7)*, the court held that a failure to provide a copy of the search warrant to the householder rendered the search unlawful. The headnote to the report states as follows ([1993] 2 W.L.R. at 428):

“Each warrant consisted of two documents, the authorisation and a schedule of the articles being sought . . . When the searches were carried out the warrants produced to the applicants consisted of the originals of the authorisations and uncertified photocopies of the schedules and the copies of the warrants supplied to the applicants did not include copies of the schedules . . .

[The court held] that together the original versions of the two documents constituted warrants lawfully issued by the judge but that no other versions of the warrants had been lawfully issued; that subsections 15(7) and (8) of the Act of 1984 required that two copies of the warrants be issued and certified as copies by the judge or officers of the issuing court; that since the copies of the schedules produced to the applicants had not been certified by the court the

warrants had not been lawfully produced to the applicants as required by section 16(5)(b), the entries, searches and seizures were, therefore, unlawful and the Chief Constable was deprived of any authority under paragraph 13 of Schedule 1 to the Act to retain any of the material seized; . . . accordingly, the applicants were entitled to have the documents and other material returned to them forthwith.”

82 In *Bhatti v. Croydon Mags. Ct.* (1), the warrant failed to specify the full details of the premises to be searched. The court held that the search had been unlawful. Elias, L.J. said the following ([2010] EWHC 522 (Admin), at para. 22):

“It has been emphasised in the authorities time after time, at least since Lord Camden CJ’s seminal speech in *Entick v Carrington* (1765) 2 Wils 275 that nobody should be allowed to enter uninvited into someone’s home without very clear justification in law. Where conditions for the exercise of the power to search are imposed they must be properly and stringently complied with. There is no doubt that the searches here were made in good faith, that the breach was not grave in the sense that the police thought that they were acting lawfully, and that they, or those framing the relevant templates, thought that they were achieving in substance the objective of the statute. That does not, however, assist the police if in fact they were not acting lawfully, save perhaps with respect to the amount of compensation.”

83 The RGP say that the mistake with the house number arose out of Mr. and Mrs. Miles’ own misrepresentation to the Civil Status and Registration Office and that the warrant was not executed at No. 2 because all that happened was that officers briefly entered unsecured premises. More fundamentally, it was submitted on behalf of the RGP that once Mr. Miles was arrested they were entitled to simply enter the property without a warrant as provided for by s.22 and/or s.54 of the CPEA.

84 Sections 22 and 54 of the CPEA do provide that a police officer may enter and search premises which were occupied by a person when he is arrested for an indictable offence. However, there was no suggestion at the time that this was the power actually exercised by the police either when they entered the house to secure the scene or when they actually searched it. On the contrary, DI Goldwin chose to have the warrant amended before proceeding with the search.

85 As to the agreed fact that Mrs. Miles was not provided with a copy of the amended warrant, the RGP say that this is not important as she was shown the amended warrant and was given a copy of the original one. In my judgment, in light of what has been said by the English Divisional Court in cases like *Parker (7)* and *Bhatti (1)*, careful consideration has to be given as to whether the failings in this particular case can be so easily dismissed.



86 This ground of judicial review is plainly arguable on all of the submissions made by the claimants.

**Ground 7: that the arrest of Mr. Miles was unlawful as it was not necessary or objectively justifiable**

87 Section 42 of the CPEA allows a police officer to arrest a person who he suspects has committed an offence. Section 42(2) states as follows:

“If a police officer has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.”

88 I have already discussed in relation to ground 1 how DI Goldwin suspected that Mr. Miles had committed an offence. The suspicion was based on the intelligence contained in the Arrangement Int and on the investigations that had been carried out by the RGP.

89 The power to arrest is however qualified. Pursuant to s.42(4) it is exercisable only if it is necessary for any of the reasons set out in s.42(5). In this case, the RGP say that the arrest was necessary to allow the prompt and effective investigation of the offence (s.42(5)(e)).

90 Mr. Miles asserts that there cannot have been any such necessity and that consequently the arrest was unlawful. The allegations dated to periods between 2014 and 2018. The Arrangement Int had been received in 2019, and the police had not sought to arrest him until September 22nd, 2021. Further, he had immediately expressed a willingness to cooperate. The RGP on the other hand say that there were reasonably held concerns that Mr. Miles would destroy or conceal evidence and therefore in order to ensure a prompt and effective investigation at the point of execution of the warrants, they had to arrest him. Otherwise, the search could have been hindered.

91 In *Hayes v. Merseyside Police (Chief Const.)* (3), the English Court of Appeal re-stated the correct test for exercising the power of arrest under the English equivalent to s.42 of the CPEA. First, there had to be reasonable grounds for suspecting that an offence had been committed and the person arrested was guilty of it. Second, the arrest had to be necessary. On this, Hughes, L.J. said ([2011] EWCA Civ 911, at para. 40):

“The liberty of the subject is amply safeguarded if the rule is as Mr Beer contends, namely (1) the policeman must honestly believe that arrest is necessary, for one or more identified section 24(5) reasons, and (2) his decision must be one which, objectively reviewed afterwards according to the information known to him at the time, is held to have been made on reasonable grounds.”

92 In this case it is clear that DI Goldwin thought that the arrest was necessary to ensure the prompt and effective investigation of the offence. There is no basis for saying that this was not an honestly held belief. The matter then comes down to the following: is it arguable that objectively, on the information known to DI Goldwin at the time, his decision was not made on reasonable grounds? It seems to me that this is arguable and therefore permission to proceed with this ground should be granted.

93 The information stated that the RGP suspected that it was highly likely that evidence would be destroyed or concealed by Mr. Miles because it would be evidence of his own wrongdoing. Mr. Cruz submitted that DI Goldwin's perception that the arrest was necessary to prevent Mr. Miles from re-entering his home and tampering with evidence was therefore reasonable.

94 I understand why the RGP would say that a person suspected of serious wrongdoing is likely to destroy evidence, but how reasonable is it to think that someone in Mr. Miles' position would do so in the presence of officers whilst a search is being carried out? Should the officers have waited until it became evident that Mr. Miles would not be cooperative and could hinder their search? It may be this is a principled stance which ignores the realities on the ground, but it seems to me that it is arguable.

### **Conclusion**

95 For the reasons set out in this judgment, I am granting permission to proceed with grounds 1, 6 and 7. Permission to proceed with grounds 2 to 5 is refused. I will now hear the parties as to the directions that should follow.

*Ruling accordingly.*

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