IN THE CAYMAN ISLANDS COURT OF APPEAL ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS CIVIL DIVISION

CICA (Crim) Appeal 0006 and 0008 of 2023

BETWEEN:

CANOVER WATSON

AND

BRUCE BLAKE

APPELLANTS

AND

THE CROWN

RESPONDENT

Before:	**The Rt Hon Sir John Goldring, President** **The Hon Sir Michael Birt, Justice of Appeal** **The Hon Clare Montgomery, Justice of Appeal**
Appearances:	**Mr Andrew Trollope KC and Ms Amelia Fosuhene for the Appellant Canover Watson** **Mr Cairns Nelson KC and Mr. Jonathon Hughes for the Appellant Bruce Blake** **Ms. Eloise Marshall KC and Ms. Toyin Salako for the Respondent**
Heard:	**12 September 2024**
Judgment delivered:	**8 November 2024**

JUDGMENT

Goldring, President:

The convictions

1. On 28 October 2022 following a trial in the Grand Court of some 12 weeks before the Chief Justice (as she now is) and a jury, the Applicants were convicted as follows:

Count 1

Count 1 concerned Canover Watson. It alleged an offence of Secret Commissions contrary to section 21(1)(c) of the Anti-Corruption Act, 2008. The allegation was that Canover Watson submitted three false sales invoices to a total value US$1.54 million on the basis of which a Panamanian company which he controlled, namely Forward Sports International Management Inc (FSIMI), was paid that sum by the Confederation of North, Central America and Caribbean Associations Football (Concacaf).

He was sentenced to 3½ years' imprisonment on that count.

Counts 2-6

Counts 2 to 6 all related to the alleged laundering of the US$1.54 million.

Count 2

Count 2 concerned Bruce Blake. It alleged that contrary to section 134(1) of the Proceeds of Crime Act 2008, Bruce Blake had an arrangement with Canover Watson to launder US$500,000, by putting the money through M Management, a company Bruce Blake controlled. The money was not in the event transferred to M Management. Bruce Blake was found not guilty on count 2.

Count 3

Count 3 concerned Canover Watson. It alleged transferring criminal property, contrary to section 133 of the Proceeds of Crime Act 2008. The allegation was that Canover Watson transferred US$600,000 from FSIMI to the account of the Cayman Islands Football Association (CIFA).

Canover Watson was sentenced to 2 years' imprisonment consecutive on that count.

Count 4

Count 4 also concerned Canover Watson. It was a similar allegation to count 3, namely of transferring criminal property contrary to section 133 of the Proceeds of Crime Act 2008. The sum involved on this occasion was US$300,000. It was transferred from FSIMI to CIFA. Canover Watson was sentenced to years' 2 years imprisonment concurrent with count 3, but consecutive to the sentence on count 1.

Count 5

Count 5 concerned Bruce Blake. It alleged acquiring criminal property contrary to section 135 of the Proceeds of Crime Act 2008. The allegation was that using M Management, Bruce Blake acquired US$140,000 from FSIMI knowing or suspecting it was the proceeds of crime. Bruce Blake was found not guilty on count 5.

Count 6

Count 6 was the Canover Watson side of the alleged money laundering in respect of the US$140,000 referred to in count 5. It alleged that Canover Watson, contrary to section 134(1) of the Proceeds of Crime Act 2008, entered into an arrangement with Bruce Blake with respect to the US$140,000.

Canover Watson was sentenced to 2 years' imprisonment concurrent with counts 3 and 4, but consecutive to the sentence on count 1.

Count 7

Count 7 alleged false accounting contrary to section 255(1)(b) of the Penal Code (2013 Revision) against both Applicants. The allegation was that they dishonestly furnished for the purposes of an audit what purported to be a loan agreement between CIFA and FSIMI dated 31 December 2013 in the sum of $US600,000, when no such agreement had been entered into. Both Applicants were convicted.

Canover Watson was sentenced to 4½ years' imprisonment concurrent with the sentences on counts 3, 4 and 6, but consecutive to the sentence on count 1.

Bruce Blake was sentenced to 2 years' imprisonment.

Count 8

Count 8 also alleged false accounting contrary to section 255(1)(b) of the Penal Code (2013 Revision) against both Applicants. The allegation was that they dishonestly furnished for the purposes of an audit what purported to be a loan agreement between CIFA and Cartan International Management Inc in Panama (Cartan Panama) dated 31 December 2013 in the sum of $US600,000, when no such agreement had been entered into. Like FSIMI, Cartan Panama was alleged to be a Panamanian company controlled by Canover Watson. Both Applicants were convicted.

Canover Watson was sentenced to 4½ years' imprisonment concurrent with the sentences on counts 3, 4, 6 and 7, but consecutive to the sentence on count 1.

Bruce Blake was sentenced to 2 years' imprisonment concurrent.

Canover Watson, who was represented by Mr Andrew Trollope KC (who did not appear below), and Ms Amelia Fosuhene (who appeared below), now seeks leave to appeal against both conviction and sentence. Bruce Blake, who was represented by Mr Cairns Nelson KC and Mr Jonathan Hughes (both of whom appeared below) seeks leave only in respect of conviction. The Respondent was represented by Ms Eloise Marshall KC and Ms Toyin Salako (both of whom appeared below).

For consistency, and without intending any disrespect, we shall throughout the judgment refer to the Chief Justice as the judge.

The prosecution case

2. Although the case took a considerable time and involved many documents, the allegations were essentially simple. Canover Watson by submitting false invoices in the total sum of US$1.54 million obtained through FSIMI that sum of money. He then sought to make use of the US$1.54 million for his own purposes. They included paying off a substantial debt which CIFA had with Fidelity Bank in Cayman and which he, Canover Watson, had personally guaranteed. To enable him to do so he laundered the money, or a substantial part of it, so as to have it available in the Cayman Islands. Having succeeded in doing that, or doing that to a degree, he made use of a substantial part (US$600,000) to extinguish some of the CIFA debt. In order to explain the source of the funds credited to the CIFA bank account, Canover Watson, and, as the jury found, Bruce Blake, submitted a loan agreement to CIFA's auditors which falsely stated that FSIMI had loaned the US$600,000 to CIFA. A second false loan agreement was submitted which falsely stated that what had been a gift to CIFA from an American company called Cartan International (US), was a loan to CIFA from Cartan Panama.

More detail of the prosecution case

The background

3. CIFA was the local football association. Canover Watson was its Treasurer, Bruce Blake its General Secretary. Concacaf was the international football association. Canover Watson was a member of Concacaf's Audit and Compliance Committee, Bruce Blake was the Committee's Vice-Chairman.

4. Two other individuals played a part in the alleged dishonesty. The first was Jeffrey Webb, President of CIFA and subsequently of Concacaf. He had ambitions to be chairman of the Federation of International Football Associations (FIFA). *~~He died before the present trial took place~~. The second was Enrique Sanz, General Secretary of Concacaf from 2012 until his arrest in May 2015.

5. For reasons it is not necessary to go into, by January 2009 CIFA was significantly in debt to Fidelity Bank. It had an unsecured overdraft in excess of CI$500,000. In order to regularize the position, the overdraft was converted into a CI$600,000 business loan. Canover Watson and Jeffrey Webb guaranteed the loan. By the early summer of 2010 CIFA's debt had increased to over CI$1.5million. In late June 2010 CIFA gave Fidelity further security in the form of a mortgage over its main assets. They included a development known as the Centre of Excellence. In June 2012, this led to a major difficulty. The Centre of Excellence had been built with the aid of grants from FIFA. FIFA introduced a new rule preventing national football associations pledging as security property obtained from FIFA grants. CIFA could no longer mortgage the Centre of Excellence to Fidelity Bank. The charge had to be removed by 31 December 2013. CIFA therefore needed urgently to remedy the situation. Moreover, Fidelity Bank was becoming increasingly concerned about CIFA's servicing of the loan; repayments were not being made on time; the debt was increasing. There was the possibility of Fidelity Bank foreclosing, leading to the triggering of the personal guarantees.

Count 1

6. Forward Sports PVT Limited (Forward PVT) was a large sports clothing and equipment manufacturer in Pakistan. Shakeel Khawaja was a sales agent who represented Forward PVT. He was paid a commission on sales he made. He was entitled to form companies in different parts of the world in different brand names in order to sell Forward PVT's products. One company he formed was Forward Sports International AG (Forward Switzerland). In 2012 Bruce Blake met Shakeel Khawaja, and in May 2012, he introduced him to Canover Watson. They built up a business relationship. In October and November 2012 Forward Switzerland reached a sponsorship agreement with CIFA by which it was to provide uniforms and equipment. Because he was out of pocket in respect of these agreements, Shakeel Khawaja wanted to obtain orders from Concacaf. The relationship between Shakeel Khawaja and Canover Watson ultimately led to orders for the sale of Forward PVT products to Concacaf. However, importantly, Forward PVT would only start to manufacture goods ordered once they had been paid for. In other words, it was necessary to pay in advance of supply.

The first allegedly false invoice: invoice 791

7. During the course of trading in 2013 and early 2014 there were two significant orders placed and paid for. They were genuine transactions. The first was on 1 April 2013, the second 30 January 2014. However, on 9 April 2013 Canover Watson submitted invoice 791 to Concacaf which, although not charged on the indictment, was said to be false. It was headed Forward Sports PVT, apparently having been issued by its office in Germany. Its contents reflected to some extent the genuine order of 1 April 2013, although the number of items said to be supplied was reduced and their prices increased, so that the sum apparently owing on false 791 was the same as the genuine order of 1 April. It was the prosecution case that invoice 791 was created by Canover Watson and that Shakeel Khawaja knew nothing about it. By substituting false invoice 791 for the genuine invoice in respect of the supply for 1 April 2013, the records at Concacaf suggested receipt of fewer items at greater cost than was the case. One of the three false invoices making up count 1, that bearing the date of 30 September 2013, ostensibly made up the apparent shortfall in the number of items.

The three count 1 invoices

8. On 20 May 2013 FSIMI was incorporated on Canover Watson's instructions in Panama. The prosecution alleged it was intended to be a vehicle for fraud.

9. On 30 September 2013 Canover Watson sent three invoices totalling $US1.54m to Henrique Sanz at Concacaf directing payment to FSIMI's bank account in Panama for goods purportedly supplied to Concacaf by Forward PVT. The stated dates on the invoices were 15 July 2013, 18 September 2013 and 30 September 2013. The first stated that 15,000 ushers' vests for the Gold Cup event at a total price of US$148,500 had been supplied to Concacaf, the second that 20,000 Uniform sets and 20,000 footballs at a total price of US$750,000 had been supplied and the third that training vests, cones, disc sets, small balls, goals and training ladder sets to a total of US$642,400 had been supplied.

10. Versions of all three invoices were found on Canover Watson's tablet computer. The invoice bearing the date 30 September 2013 had been created on 28 September 2013.

11. On 15 October 2013, on the instruction of Henrique Sanz, the sum of US$1.54m was wired by Concacaf to FSIMI's Panama bank account. Save for those involved in the dishonesty, no-one at Concacaf had any idea of the truth of the transaction.

12. Shakeel Khawaja gave evidence. He said he knew nothing about these invoices. He had never seen them before. The items they referred to had never been ordered from Forward PVT. Their purported cost was significantly inflated. He knew nothing about the payment. He said Canover Watson had no authority to send out the invoices or take commission on sales using FSIMI.

13. The prosecution case on count 1 was that the invoices were, as it was put, entirely fake. Forward PVT and Shakeel Khawaja knew nothing about them. They had not authorized them. Concacaf had not ordered the products referred to in them. The prices were inflated. The goods were not manufactured or supplied. No payment was due to FSIMI in respect of them.

14. The falsity of the invoices was demonstrated, alleged the prosecution, not only by Shakeel Khawaja's evidence, but in other ways too. There was a complete lack of documentation in relation to the supposed Gold Cup order for ushers' vests for $148,500. By 15 July 2013, the ostensible date of the invoice, the tournament was half over. The maximum number of ushers would be in the order of a few hundred. There was never a requirement for 15,000 vests. The equipment used for the tournament was NIKE. No cones, goals or training ladders were ever delivered to Concacaf. Henrique Sanz said he would inspect the shipment himself, an unusual thing for the General Secretary of Concacaf to do.

Concacaf follows up the three invoices

15. Until November 2013, no one at Concacaf followed up on the invoices. However, on 11 November 2013 Mr Martinez of Concacaf queried the supposed supply with Ms Osbourne, an employee of Canover Watson. The next day, there was wired from FSIMI's account in Panama to a CIFA account at Butterfield Bank in the Cayman Islands approximately US$300,000, which was then dispatched to Pakistan as payment for the genuine second order. Payment for production to start on the second genuine order had not been made. The debt of US$300,000 was nothing to do with CIFA. Count 4, to the detail of which we shall shortly come, relates to this transaction.

16. Mr Martinez asked about the goals which had ostensibly been supplied under the invoice bearing the date 30 September 2013. Their apparent cost was in the order of US$163,000. No goals were ever supplied.

Canover Watson's case on count 1

17. Canover Watson's case was, as the judge put it [133/9] and following, "*very simple, very straightforward*." It was that under an agreement with Forward PVT, Shakeel Khawaja was entitled to set up companies to sell Forward PVT product. He and Shakeel Khawaja, with whom he had a close business relationship, agreed that he, Canover Watson, could similarly set up Forward companies in Cayman and Panama. Canover Watson said that one company he set up, Forward Sports International, Panama (Forward Panama) was set up with the knowledge and agreement of Shakeel Khawaja, who was a 51% shareholder. Email correspondence showed that Shakeel Khawaja knew about one Forward company in Panama and also about Forward Sports International Limited Cayman, although he initially said he did not. Canover Watson said Shakeel Khawaja also knew about FSIMI, which was set up as a genuine wholesaler for Forward PVT products, in accordance with an arrangement he had with Shakeel Khawaja. The arrangement was that Canover Watson would have the benefit of 100% of the wholesale sales of Forward PVT, while Shakeel Khawaja would have the benefit of retail sales, where the real profits lay. The three FSIMI invoices were legitimate. There was no reason for Shakeel Khawaja to know about them. As to the mark-up on Forward PVT's prices, that was no more than profit he, through FSIMI, was entitled to. Some of the items mentioned on the invoices were delivered.

Count 3

18. As we have said, it was the prosecution case that Canover Watson intended to use some of the count 1 proceeds to pay down the CIFA Fidelity loan and obtain his and Jeffrey Webb's release from their personal guarantees. On 24 September 2013, very shortly before the invoices were submitted, Canover Watson told Mr Hill of Fidelity Bank he would be making two payments of CI$500,000 (US$600,000), the first in October 2013 and the second before the year end. On 22 October, he repeated that promise. He claimed the funds were a fee from an Indian sportswear manufacturer, that CIFA had 'brokered' a contract between that manufacturer and Concacaf. On 23 October 2013 the first payment of US$600,000 was transferred from FSIMI Panama to CIFA's Butterfield Bank account, and from CIFA to Fidelity Bank. On Canover Watson's tablet computer was found a reference to the transfer of US$600,000. It spoke of it

being sponsorship of CIFA. It was the prosecution case that this payment was later covered by one of the false loan agreements, the subject of count 7.

Canover Watson's case on count 3

19. Canover Watson's case on count 3 was that he was doing no more than he was entitled to with what effectively was his money.

Count 4

20. As we have said, Mr Martinez of Concacaf was chasing the equipment referred to in the allegedly false invoices. Shakeel Khawaja was also pressing for payment in respect of the genuine order from 30 January 2014, payment for which was required before the goods would be manufactured and supplied. FSIMI could not pay Forward PVT directly; to do so would reveal the existence of FSIMI. The decision was taken, as the prosecution alleged, to utilise CIFA's Butterfield bank account as a means of hiding the true source of the money before it was passed on to Forward PVT. On 12 November 2013 US$300,000 was transferred from FSIMI in Panama to CIFA in Cayman and, next day, from CIFA's account to Forward PVT in Pakistan. As we shall come to in greater detail, when later asked by Mr Rankin, CIFA's auditor, about this payment, Bruce Blake said the funds had been wired to CIFA *"in error."* FSIMI were having difficulties wiring money to Forward Sports PVT. To seek to corroborate this explanation, Canover Watson produced a Bill of Lading for a genuine shipment of sportswear from Pakistan to Miami.

Canover Watson's case on count 4

21. Canover Watson's case on count 4 was that he was sending the US$300,000 to Cayman to facilitate the payment to Pakistan to obtain the balance of the uniform order, as he was entitled to.

Count 6

22. This count related to Canover Watson's use of M-Management, a company owned and controlled by Bruce Blake, to launder some of the count 1 FSIMI funds. As we have said, the

jury found Bruce Blake not guilty of dishonest involvement (count 5) in respect of the US$140,000 referred to as against Canover Watson in count 6.

23. In order to satisfy Cayman National Bank of the provenance of any payment from FSIMI to M-Management, there was drafted and given to the bank a 'Management and Consultancy agreement' between FSIMI and M-Management, among other things, seeking to justify future receipts of US$1m from FSIMI, and from Cartan Panama. One of the documents submitted to Cayman National Bank had on it the apparent signature of Shakeel Khawaja ostensibly signing on behalf of FSIMI. The prosecution alleged it was a forgery. On Canover Watson's tablet computer was stored a picture copy of Shakeel Khawaja's signature.

24. The US$140,000 was transferred from FSIMI to M-Management's account at Cayman National Bank in three tranches, namely US$49,937 on 20 January 2014, US$59,932 on 19 February 2014 and US$29,937 on 26th March 2014.

Canover Watson's case on count 6

25. Bruce Blake was his friend, confidante and legal advisor. He relied on him for drafting or reviewing documents. He signed nothing without Bruce Blake first looking at it. The payment of the count 6 money was for fees owing to Bruce Blake for the work he did. It was part of the money he had legitimately made as part of the FSIMI enterprise.

Counts 7 and 8

26. These counts refer to two apparent loan agreements, each bearing the date 31 December 2013. They were submitted to CIFA's auditor as genuine. Bruce Blake had apparently signed each "for and on behalf of…[CIFA]." The other signatory was Irena Abrego de Espinosa "for and on behalf of…[FSIMI]." The first agreement (count 7) explained the payment of US$600,000 into the CIFA account (the count 3 transfer) in terms of a loan from FSIMI to CIFA, whereas it was the prosecution case that the use of that account was a means of laundering part of the Count 1 money. A picture of Bruce Blake's signature was on Canover Watson's tablet computer.

27. The second agreement (count 8) apparently explained the receipt of a further US$600,000 into CIFA's account in terms of a loan from Cartan Panama. Canover Watson had set up that company in May 2013, at the same time as FSIMI. As in the case of FSIMI, the name of the company was chosen, submitted the prosecution, because it resembled the name of a genuine company which had dealings with Concacaf and/or CIFA, namely Cartan US. Cartan US provided travel and other services to CIFA and Concacaf. It had a sponsorship agreement with CIFA under which it had agreed to pay CIFA US$600,000. On 12 November 2013 Canover Watson sent an email to ISPORTSMARKETING, a subsidiary of Cartan US, attaching an invoice dated 1 November 2013, and asking when CIFA could expect payment. The email was copied to Bruce Blake. On 15 November 2013 Cartan US transferred US$600,000 to the CIFA account for sponsorship (not as a loan). That sponsorship money, taken with the US$600,000 referred to in count 3, entirely extinguished the CIFA debt as required by FIFA's requirement; also, Canover Watson's and Jeffrey Webb's guarantees to Fidelity Bank.

28. Bruce Blake drafted the Cartan US sponsorship agreement. There was a draft was on his computer. He sent a draft to Canover Watson on 26 November 2013. The draft states that US$600,000 was due for payment on 1st November 2013. By 26 November 2013, the sponsorship money had been paid.

29. It was the prosecution case that Canover Watson and Bruce Blake took the opportunity of the involvement of Cartan US with CIFA, and its payment of US$600,000, falsely to put in place an apparent loan from Cartan Panama. This second false agreement not only assisted in CIFA paying off its loan to Fidelity Bank, but also laid the ground, submitted the prosecution, for Cartan Panama to seek payment from CIFA as repayment for the loan in due course.

30. Bruce Blake was later asked about the sponsorship agreement and the email of 12th November to ISPORTSMARKETING, the subsidiary of Carton US. There was the following interchange:

> Q. "You knew on 12th November 2013 that an agreement had been reached for Cartan [US] to sponsor CIFA to the tune of $600,000"
> A. "Yes, I was copied into that"
> Q. "So you did know about it?"
> A. "I can't dispute that"

Q. "And just a very short time later exactly the same amount is dressed up as a loan agreement with your signature on"
A. "Correct".

31. The prosecution submitted that to Canover Watson, the treasurer of CIFA, and Bruce Blake, its general secretary, two loan agreements in such sums would self-evidently be false. Although from two supposedly different independent companies they were in identical terms. The identical signatures were not witnessed or dated. One signatory was Ms Irina Abrego de Espinosa, who was an employee of the company formation agents in Panama. The stated purpose of both loans was "To inject funds into…CIFA to assist with the construction of the National Training Center [sic]," which, submitted the prosecution, was self-evidently untrue. The schedule of loan repayments was wholly unrealistic. The first payment was to be on 1 July 2014. The loan was to be paid off by 31 December 2016. In fact, so parlous was the state of the finances at CIFA that by mid-April 2014 Bruce Blake was having to use his own credit card to pay for such things as referees' fees, travel and accommodation. Nothing was done to set up any method of repayment from CIFA to the lenders. Affordability was not discussed. Neither was the absence of repayment, the missed payments or the failure to pay being acts of default under the agreements. Although the ostensible loans bore the date 31 December 2013, this was long after the money had been transferred into the CIFA account. There was no provision for repayment until two months after the money was transferred. There was nothing to suggest anyone on CIFA's Board other than the Applicants and Jeffrey Webb was aware of the loans or had any involvement in them. There was no documentation regarding them found on CIFA's premises.

32. The first time the loan agreements were seen by witnesses was 11 August 2014 when they were submitted to Rankin Berkower, CIFA's auditors. However, on 28 January 2014 Bruce Blake, in response to a request from Canover Watson, sent Canover Watson an email entitled "Template Loan Agreement." A template was attached. In the email Bruce Blake spoke of 'a template loan agreement that can be amended as necessary.' There was reference to loans from FSIMI and Cartan Panama in an agenda that Canover Watson sent to Bruce Blake on 31 January 2014.

33. On Canover Watson's tablet computer were found several cropped images of Ms de Espinosa's signature. At 3.10am on 11 August 2014 Canover Watson sent the ostensibly signed loan

agreements to Rankin Berkower. Ms de Espinosa's signatures were last saved on Canover Watson's tablet computer at 1.48am, 1.49am and 2.03am on that date.

34. As we have said, also contained on Canover Watsons's tablet computer was a scanned picture of Bruce Blake's signature. It was last saved at 2.27am on 11 August 2014.

The 2014 audit

35. In the summer of 2014 Rankin Berkower were conducting the audit for 2013. The firm was pressing for information in respect of the loans. On 31 July 2014 Miss Jeanna Ebanks, the audit manager, requested the two loan agreements. As we have said, Canover Watson provided them on 11 August 2014. He had created the documents in the early hours of the morning of 11 August. On 12 August 2014 Canover Watson emailed the auditors, copying in Bruce Blake. He suggested some wording in respect of the loans. He asked Bruce Blake "PLEASE CONFIRM YOU ARE OKAY WITH THIS WORDING FOR THE LOANS." We shall return to this email.

36. In late May 2015, the FIFA scandal broke with the arrest of Jeffery Webb. Later in 2015, Mr Rankin decided to review the audit of CIFA's books for the previous year. By then the dates for repayment of the instalments of both loans for 1 July 2014, 1 January 2015 and 1 July 2015 had come and gone. On the face of it, CIFA was already over $300,000 behind with its loan repayments, as would have been plain to both Applicants, alleged the prosecution. Each missed payment was an act of default under the agreement.

37. On 21 July 2015 Mr Rankin told Bruce Blake that loan confirmation letters would be required and sent directly to Rankin Berkower. Bruce Blake, as an accountant, knew the significance of this requirement. He said he would request Canover Watson to meet them the following day.

38. On 22 July 2015 a meeting took place. It was attended by Mr Rankin, a colleague of his, Canover Watson and Bruce Blake. Both Canover Watson and Bruce Blake attempted to dissuade Mr Rankin from contacting FSIMI or Cartan Panama directly. Canover Watson said the transfer of $300,000 to CIFA (count 4) was made 'in error'. As the prosecution submitted, several attempts were made to throw the auditors off the scent. Canover Watson produced the documents for the first genuine order as part of the explanation for the transfer of the US$300,000 (count 4). He produced the company documents for Forward Sports Inc, a

Panamanian company which Shakeel Khawaja did know about. In the view of the auditors, Canover Watson was seeking to persuade them that Shakeel Khawaja was affiliated to FSIMI. He attempted a similar exercise in relation to Cartan Panama.

39. The auditors were not persuaded. Canover Watson and Bruce Blake said that as CIFA could not repay the loans, that FSIMI and Cartan Panama might be persuaded to convert their loans into sponsorship. Bruce Blake claimed he had already discussed this with Mr Gamba of Cartan, who had agreed to convert the loans into sponsorship. This was, submitted the prosecution, a lie. Mr Gamba, as Bruce Blake knew, worked for Cartan US. Bruce Blake knew it was sponsorship and not a loan.

40. Canover Watson said he would work on getting FSIMI to forgive its loan.

41. Both unsuccessfully sought to obtain signed letters from Shakeel Khawaja, Mr Elmore of Cartan US and a representative of the Company formation entity in Panama, confirming that the money specified in the loan agreements was not due and owing. In his interviews Bruce Blake confirmed that Shakeel Khawaja told him he knew nothing about the loan or FSIMI or any Forward activity.

42. The auditors sent FSIMI and Cartan Panama the respective loan agreements. The response was that there were no such loans. Following that, on 28 August 2015, the auditors met Canover Watson and Bruce Blake. Bruce Blake was visibly distressed. Canover Watson was 'icily calm' and told Bruce Blake not to worry. He said he would return with some documentation to prove that those denying the loans were in fact connected to the lending companies in Panama. Later that day, Canover Watson asked to speak to Mr Rankin alone. He said he was the ultimate beneficial owner of both the Panamanian entities on the loan agreements. When asked, "why then all the deception," he did not answer. He suggested the loan agreements were genuine documents.

43. The auditors wrote to Bruce Blake. The letter set out their understanding of the position. That afternoon Bruce Blake resigned from his employment with Maples & Calder.

44. Bruce Blake suggested to the auditors that Canover Watson, as CIFA's treasurer, was solely responsible for the accounts until August 2014; that all matters relating to FSIMI, Cartan

Panama and Forward Sports were dealt with by Jeffrey Webb and Canover Watson; that Canover Watson suggested that he should execute the loan agreements and that he (Bruce Blake) "attended no meetings or discussions" regarding the loan agreements. In a subsequent interview he admitted that in late 2013 he had extensive discussions with Canover Watson about the loan agreements and the documentation in support. Bruce Blake claimed that the Cartan Panama loan "was a charitable contribution," the loan agreement was no longer valid and that he would be investigating the FSIMI loan and sales invoices.

45. Subsequently Bruce Blake, as 'Acting President and Money Laundering Reporting Officer for CIFA' made a suspicious activity report to the Financial Reporting Authority in respect of what was said to be Canover Watson's conduct. He referred to the two loan agreements and the FSMI sales invoice to CIFA for uniforms. The report suggested that suspicions were raised as a result of the actions of auditors.

The prosecution case on counts 7 and 8

46. The allegation was that Canover Watson and Bruce Blake falsified and submitted the loan agreements to the auditors in order to mislead them regarding the sums of money which had been obtained and from which Canover Watson had benefitted and was continuing to benefit. Their intention in furnishing the false documents was to permit Canover Watson to retain those sums and that benefit.

Canover Watson's case on counts 7 and 8

47. Canover Watson said the documents were genuine. He could not locate the originals. He had cut and pasted the signatures on to a loan template which Bruce Blake previously had provided and which he had saved on his computer. He was merely recreating documents that had existed since February 2014.

48. As to the FSIMI loan, he said Jeffrey Webb, at a meeting after 6 February 2014, had agreed or approved it.

49. As to the Cartan Panama loan, he said that it was only when, on 27 January 2014 he received an email with an attachment from Cartan US that he understood that the money Cartan US had

paid to CIFA had been from money due to him under a profit sharing agreement he had with Cartan US relating to soccer travelling. He said that Jeffrey Webb approved that loan. Although there was a Cartan US email of 27 January 2014, it contained no attachment and, submitted the prosecution, never had.

50. Canover Watson said that following Jeffrey Webb's approval, the loan agreements were drafted and signed in person at the same time, by Bruce Blake and Ms Espinosa. The reference on the agreements to the construction of the National Training Centre was appropriate, as the loans were replacing a FIFA loan granted for the same purpose. He had made no demand for payment under the loans. If necessary, CIFA would find the means of paying them off. He had merely recreated the documents when asked for them at the audit. He was under time pressure. He and Bruce Blake collaborated fully in respect of this.

Bruce Blake's case on counts 7 and 8

51. Bruce Blake said he became aware of two sponsorship payments after the Cartan US payment (on 15 November 2013). He spoke to Canover Watson about them. There was on his computer a draft sponsorship agreement between CIFA and Forward Sports Switzerland. The draft was dated 15 August 2013 in the sum of CI$1,000,000. He said he prepared it on Canover Watson's instructions. He understood that at the time there were discussions about Forward Sports sponsoring CIFA. He agreed that there had been a change from sponsorship to a loan without an explanation. He frequently saw such arrangements change. It did not bother him. He was comforted by the fact the loans were on better terms than the Fidelity Bank loan. His only comment to Canover Watson was that proper documentation needed to be in place. As to the FSIMI loan, he said he thought Forward PSV was providing the money. He signed the original hard copies of the loan agreements when Canover Watson presented them to him at his office. In his interview, he had said he had done so in December 2013. In evidence, he said it was in January or February 2014. He said he could not say whether the documents submitted to the auditors were the same or similar to the ones he had signed. It was the prosecution case that he never signed the loan agreements.

52. Canover Watson said that on 27 January 2014 the two of them had discussed the loans. The next day he requested the loan template. Bruce Blake said he sent Canover Watson the template because he had asked him for it. Unlike Canover Watson, he said it was not intended to be used

to create the loan agreements. He pointed out the differences between the loan agreements submitted to the auditors and the template. He said he could not remember any discussion on 27 January 2014.

53. Bruce Blake said he recalled receiving the agenda on 31 January 2014. He would have been aware that loans were to be discussed with Jeffrey Webb.

54. He said he was very upset and shocked at the auditors' meeting when told that Shakeel Khawaja disavowed the FSIMI loan and that Cartan US had done likewise.

55. Bruce Blake also said that there was good reason to have loan agreements as opposed to sponsorship because sponsorship required FIFA approval, which CIFA did not have.

Arrest and interview

Canover Watson

56. On a number of occasions between June 2017 and August 2018, unsuccessful attempts were made to interview Canover Watson. Finally, on 29 August 2018 he was interviewed in the presence of Ms Fosuhene. He had been shown the salient documentation before the interview. He was asked about the detail of the case. To each question he made no reply. He produced a prepared written statement in which he denied committing any of the alleged offences and stated that he was exercising his right to remain silent because he distrusted the investigating officers and questioned their impartiality and independence.

57. After Canover Watson's arrest, the hard drive on one of his electronic devices was analysed. There was found a spreadsheet entitled "Forward Activity." It set out the income and expenditure of FSIMI. Among other things, it showed:

    (1) The US$1,540,838 incoming count 1 funds from Concacaf. They are dated "16-Oct."
    (2) A payment of US$600,064 on "23-Oct" to CIFA, described as "Fidelity Loan." The entry is in the column headed Concacaf. This relates to count 3.

(3) A payment of US$300,064 on "12-Nov." There is reference to "Pakistan." This relates to count 4 and, as the prosecution submitted, to payment for the genuine supply which, via CIFA's Butterfield account, went to Pakistan.
(4) Three payments to M-Management: US$50,000 on "17-Jan.", US60,000.00 on "18-Feb." and US$30,000 on "25-Mar." These relate to the US$140,000 referred to in count 5.
(5) There was reference to smaller payments made, for example, to Ms Osbourn.

58. There were also payments to Canover Watson or to companies on his behalf. None of the payments had anything to do with Concacaf or CIFA. On 23 October 2013 and 26 December 2013 US$200,000 and US$50,000 respectively was paid to HB (Highbridge), seemingly for consultancy services. Canover Watson's American Express bills were paid. Some US$17,614 was transferred to P&W Distributors, a company based in Eastern Avenue in Cayman. On 18 February 2014 US$10,000 was transferred to "Belmont."

Bruce Blake's arrest and interview

59. Bruce Blake was arrested on 29 June 2017. He was interviewed on three occasions. Throughout, he denied involvement in anything dishonest. He blamed Canover Watson and Jeffrey Webb. He said he relied heavily on Canover Watson. He described the US$300,000 laundered through CIFA in November 2013 as 'sent in error.' (Count 4) He was asked about FSIMI and Canover Watson's involvement in that company.

Q. "So Forward in Panama was established a decent time before the loans came in?"
A. "Yes"
Q "Who did you think or know the beneficial owners were?"
A. "I thought it was a partnership between Canover and Forward"
Q. "You knew before the loans came in that Canover had an interest?"
A. "Yes, correct"
Q. "Did you tell the auditors Canover had an interest?"
A. "I said that to them"
Q. "Did you?"
A. "Yeah".

60. It was the prosecution case that Bruce Blake did not tell the auditors of Canover Watson's interest in FSIMI.

61. Bruce Blake said that Canover Watson told him that there was no documentation to support the monies received into the CIFA account from FSIMI. He said he (Bruce Blake) 'grimaced' at that. He said the FSIMI loan agreement was created at his insistence. He told Canover Watson that 'my only requirement is that it is properly documented, one thing I don't want, I don't want any issue with the auditor … make sure that you have proper loan agreements and that they reflect exactly … the transaction'. Bruce Blake said his best estimate as to when the loan agreement was produced was mid-December 2013.

The trial

62. Each of Applicants unsuccessfully submitted he had no case to answer. Each thereafter gave evidence.

The summing up

63. The legal directions for the jury were, as we understand it, broadly agreed. The jury was given two documents, one setting out the more complex legal directions, the other a 'Route to Verdict.' Copies of the final documents are, we were told, unavailable. Some of the submissions made on appeal appear to go behind what was apparently agreed.

The grounds of appeal

64. By section 9 of the Court of Appeal Act (2023 Revision):

> "*…the Court shall allow an appeal against conviction if it thinks-*
> *(a) that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory;*
> *(b) that the judgment of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision on any question of law; or*
> *(c) that there was a material irregularity in the course of the trial,*

and in any other case shall dismiss the appeal:
Provided that the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if the Court considers that no substantial miscarriage of justice has actually occurred."

Canover Watson's appeal

Ground 1

65. The first ground of appeal is entitled "*the appearance of bias and abuse of the Court's process*." The foundation of the submission of abuse of process is said to be "*undisclosed conflict of interests of prosecuting [junior] counsel [Ms] Toyin Salako and the Senior Investigating Officer DI Richard Oliver from the Anti-Corruption Commission (ACC).*"

66. Although the Court has been provided with a great deal of material, we can summarise the background to the submission briefly.

67. The Financial Action Taskforce (FATF) sets international standards to prevent, among other things, money laundering. It identifies countries about which there is concern. The Cayman Islands was identified as such a jurisdiction and put on the grey list as requiring increased monitoring. The Cayman Islands' Government was anxious for the Islands to be removed. There were repeated notices from FATF reporting on the steps being taken "*towards strengthening the effectiveness of/improving its 'AML [anti-money laundering]…regime [that it should] continue to work on implementing its action plan to address its strategic deficiencies including by...demonstrating they are prosecuting all types of money laundering…and that such prosecutions are resulting in the application of dissuasive, effective and proportionate sanctions.*" (see the FATF reports of February, June, October 2021 and March, June and October 2022).

68. The Cayman Islands were still non-compliant when the present trial began in August 2022, the verdicts being returned on 28 October 2022. It was only in June 2023 that the FATF concluded there was sufficient compliance and removed the Cayman Islands from the grey list.

69. Detective Inspector Oliver, who was the investigating officer throughout, and Ms Salako, who, according to the Grounds of Appeal, took over as junior counsel in September 2021, had some involvement in the Cayman Islands Government's efforts to achieve FATF compliance. However, the terms of the indictment were finally settled by December 2020, before Ms Salako took over as junior counsel and after a first trial was terminated due to problems with disclosure.

70. Ms Salako's involvement is illustrated, among other things, by her role in group training for money laundering (which included the FATF recommendations) in 2017. In June 2022 (after the end of the case) the Attorney-General referred to Ms Salako in terms of being "*a central player in the jurisdiction's efforts as it [sic] relates to matters around the CFATF initiative…She continues to lead on…money laundering prosecution, especially stand-alone money laundering prosecution.*"

71. Both Inspector Oliver and Ms Salako were members of the Cayman Islands' delegation which met FATF regulators following Canover Watson's conviction. The delegation presented the conviction and sentence as evidence (it is said, as key evidence) of the Islands' compliance.

72. The Court was referred to a number of newspaper reports. We cite one as an example. In the Cayman Compass of 19 June 2023 there was reference to the 2023 Plenary of the FATF. The report stated:

> "*Money laundering convictions*
> *The verdict rests to some extent on whether global regulators are satisfied that the eight year sentence handed down to…Canover Watson on fraud and money laundering charges, is sufficient evidence that the Cayman Islands has bulked up its efforts to investigate, catch and prosecute crooks in complex cross-border cases.*
> *The Watson case is the most significant laundering trial in the jurisdiction since the islands were placed on the grey list following an assessment in 2019*."

73. Mr Trollope submitted there was a compelling connection between the trial of his client and the strenuous efforts, as he described them, of the Cayman Islands' Government in seeking removal from the grey list. Those efforts, he submitted, were taking place as the trial was proceeding. They were also material to the subsequent sentencing exercise.

74. He drew the Court's attention to two authorities as relevant.

75. In *Sharma v Antoine* [2007] 1 WLR 780 a case before the Judicial Committee of the Privy Council, Lord Bingham and Lord Walker, in their joint judgment, said [14]:

> "*…It is the duty of police officers and prosecutors engaged in the investigation of alleged offences and the initiation of prosecutions to exercise an independent, objective, professional judgment on the facts of each case. It not infrequently happens that there is a strong political and public feeling that a particular suspect or class of suspect should be prosecuted and convicted…This is inevitable and not in itself harmful so long as those professionally charged with the investigation of offences and institution of prosecutions do not allow their awareness of political or public opinion to sway their professional judgment. It is a grave violation of their professional and legal duty to allow their judgment to be swayed by extraneous considerations such as political pressure.*"

76. Baroness Hale, in her judgment and that of the other members of the Committee, said [32]:

> "*In our opinion, [the power of the Court to interfere with a prosecution]…extends to the oversight of executive action in the form of a police or other prosecutorial decision to prosecute. The power to stay for abuse of process can and should be understood widely enough to embrace an application challenging a decision to prosecute on the ground that it was arrived at under political pressure or influence or was motivated politically rather than by an objective review of proper prosecutorial considerations (such as, in England, those set out in the Code for Crown Prosecutors…).*"

77. In *R v Scott (Keith)* [2020] 4 WLR 2, the Court of Appeal considered the position where a prosecutor may benefit financially from a prosecution. Lady Justice Hallett, giving the judgment of the court, said [65]:

> "*…The decision to prosecute is a serious step and one that must be taken with the utmost care…[W]here there is a potential conflict of interest, namely a financial interest in the outcome of the prosecution set against the objectivity required of the prosecutor, the prosecutor must be scrupulous in avoiding any perception of bias. The*

possibility of a POCA order [a financial order] being made in the prosecutor's favour should play no part in the determination of the evidential and public interest test within the Code for Crown Prosecutors…"

78. It was submitted that the prospect of financial gain was inextricably bound up with the political imperative to have the Cayman Islands removed from the grey list.

79. Mr Trollope's submission can be encapsulated in the following way. It is a fundamental feature of the administration of justice that those who investigate and prosecute allegations of crime must be, and be seen to be, independent. That was not so in the present case. There was a Government imperative for the Cayman Islands to extricate itself from the FATF grey list. Both investigator and junior counsel were directly involved in its efforts to do so. There was political pressure upon them successfully to prosecute Canover Watson and seek to have him severely sentenced. Ms Salako's lack of independence was illustrated by her conduct of the sentencing hearing, when a severe sentence was sought. The conflict between Inspector Oliver's and Ms Salako's roles in seeking to advance the Cayman Islands' extrication from the grey list and independently to investigate and prosecute Canover Watson should have been disclosed. The fair-minded and informed observer, having considered all the facts would conclude there was a real possibility of bias. That being so, the proceedings were abusive: the integrity of the criminal justice system required they be stayed. Because the conflicts of interest were not disclosed prior to or during the trial, it now falls to this Court so to find. There is a second aspect to the abusive nature of the proceedings. Had there been disclosure, there would have been cross-examination in respect of the importance attached to the removal from the grey list and its relevance to the proceedings against Canover Watson. The integrity of the trial was affected. Canover Watson did not receive a fair trial.

80. The failure to obtain and disclose what were said to be a large number of exculpatory emails which led to the termination of the first trial was also said to illustrate a lack of independence and an unfairness of approach during the investigation and prosecution.

Discussion and conclusion

81. As Sir Brian Leveson put it in *Crawley* [2014] EWCA Crim 1028 [17]-[18]:

"*[T]here are two categories of case in which the court has the power to stay proceedings for abuse of process. These are, first, where the court concludes that the accused can no longer receive a fair hearing; and, second, where it would otherwise be unfair to try the accused or, put it another way, where a stay is necessary to protect the integrity of the criminal justice system. The first limb focuses on the trial process and where the court concludes that the accused would not receive a fair hearing it will stay the proceedings; no balancing exercise is required. The second limb concerns the integrity of the criminal justice system and applies where the Court considers that the accused should not be standing trial at all, irrespective of the potential unfairness of the trial itself.*

…[T]here is a strong public interest in the prosecution of crime and ensuring that those charged with serious criminal offences are tried. Ordering a stay of proceedings, which in criminal law is effectively a permanent remedy, is thus a remedy of last resort."

82. Sir Brian also stated [21] that:

"*…cases in which it may be unfair to try the accused…will include, but are not confined to, those cases where there has been bad faith, unlawfulness or executive misconduct…*"

83. The defence bear the burden of establishing abuse on the balance of probabilities: *Telford Justices, ex parte Badham* [1991] 2 QB 78.

84. In the well-known case of *Porter v Magill* [2001] UKHL 67, Lord Hope of Craighead defined apparent bias in the following way [103]:

"*The question is whether the fair-minded and informed observer, having considered the facts, would conclude that the tribunal was biased.*"

85. As Lord Hope observed in *Helow v Secretary of State the Home Department* [2008] UKHL 62 at [2], a fair minded person and informed observer:

"*…is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument…*"

86. As we have said, Mr Trollope's submission of abuse of process was primarily grounded on the second category of abuse of process, namely that the conflicts of interest and the consequential apparent bias require a stay in order to protect the integrity of the criminal justice system.

87. We do not agree that there were any conflicts of interest or apparent bias.

88. Firstly, there were clear reasons to prosecute Canover Watson for serious dishonesty, as any objective review of the evidence makes plain. There was a clear case for him to answer. There was, to reflect Sir Brian Leveson's words, a strong public interest in prosecuting him. There is nothing to suggest that the decision to prosecute was taken for political reasons or as a result of other influence or pressure or for any other malign reason; neither is there any reason to conclude that the proceedings continued for such reasons. The facts of this case are very different from those contemplated in the judgments Mr Trollope drew to our attention.

89. Secondly, the prosecution of this case did not depend upon Inspector Oliver or Ms Salako. Independent Leading Counsel from London was involved from its outset. Ms Salako was not involved until after the termination of the first trial.

90. Thirdly, the aim of assisting the Cayman Islands to achieve FATF compliance was not one which gave rise to a conflict of interest. It was a laudatory aim. The proper investigation and prosecution of money laundering and financial crime in the Cayman Islands is in the interests of justice. To seek to advance such an aim is in the interests of justice. Disclosure of such roles as Inspector Oliver and Ms Salako had, was not required.

91. Fourthly, the fact the prosecution (before Ms Salako's involvement) failed to obtain a cache of emails does not suggest a lack of independence. It suggests incompetence.

92. Fifthly, no fair minded and informed observer, conscious as they would be of all these facts, would begin to conclude there was a real possibility of bias arising from the roles of Inspector Oliver or Ms Salako.

93. As to the first category of abuse of process, there was no question of Canover Watson not being able to have a fair trial. As we have said, disclosure of the roles of Inspector Oliver and Ms Salako was not necessary. Had there been disclosure, it seems to us most unlikely there would have been cross-examination on the alleged connection between the prosecution and the grey

list. Its relevance would have been seriously questionable. It would also have been a tactically dangerous path to go down, as we have no doubt Mr Trollope would have appreciated.

94. There was in short no abuse of process.

Ground 2

95. This ground is encompassed by what was referred to as "*issues with the Judge's rulings and summing up to the jury*." We shall take the complaints in turn.

The wording of count 1: secret commission

96. The submission was that the charge of secret commission under section 21(1)(c) of the Anti-Corruption Act 2008 was wholly inappropriate.

97. That section states:

> "***21***. *(1) A person commits an offence who —*
>
> *(a)…*
>
> *(b)…*
>
> *(c) with intent to deceive a principal, gives to an agent of that principal, or, being an agent, uses with intent to deceive that person's principal, a receipt, an account or other writing —*
>
> *(i) in which the principal has an interest;*
>
> *(ii) that contains any statement that is false or erroneous or defective in any material particular; and*
>
> *(iii) that is intended to mislead the principal*."

98. Mr Trollope made a number of submissions which we shall endeavour to break down and deal with in turn.

Count 1 was inappropriate and unclear

99. Firstly, he submitted the charge under section 21(1)(c) was inappropriate and unclear. In substance, its allegations amounted to theft or to an inchoate offence. No complaint had (or has) ever been made by Concacaf. The prosecution was confused about what to charge. The allegation originally was that Canover Watson was an agent of Concacaf. At the first trial, the judge having ruled that he was not, the present charge surfaced. As that judge observed, the law was rather convoluted.

Discussion and Conclusion

100. In our judgment the prosecution was entitled to lay the charge in the way it did. In short, its allegation was Canover Watson, under the guise of his creature company FSIMI, and with the intention of deceiving Concacaf as principal, submitted to Mr Sanz, as Concacaf's agent, invoices which he (Canover Watson) knew to be false. Effectively, Canover Watson, through the medium of his creature company, was receiving a commission which he did not disclose to Concacaf. Such a charge was consistent with the prosecution's case. It was not unclear.

101. There is nothing in this aspect of the Grounds of Appeal.

The prosecution changed its case

102. Secondly, Mr Trollope submitted that during the course of the trial the prosecution changed its case in respect of count 1. At [12] of his skeleton argument, it was put in the following way:

> "*The falsity of the invoice was said to lie in [Canover Watson] inducing Concacaf to believe that the goods in question were being sold by Forward Sports PVT when they were not.*"

103. When, as it was submitted, the judge indicated there was a problem with that allegation because, among other things, the invoices suggested the goods were being sold through a Panamanian company with rights to sell goods on behalf of Forward PVT, the prosecution changed its case to allege that the invoice was false because FSIMI was not authorised by Forward PVT or Shakeel Khawaja to sell the goods in question.

104. Finally, so the submission ran, there was a further change in the case in that the prosecution broadened the allegation of falsity to claim, as Ms Marshall put it [217/20], the invoices were entirely fake because "*the goods were not ordered, manufactured or supplied but also because the amounts in them were lies, and also because CONCACAF were never going to get those goods and indeed never did get those goods*." That change was made because, so it was argued, Shakeel Khawaja's evidence was to the effect that Canover Watson was entitled to sell the goods itemised in the invoices and, accordingly, there was no case in respect of count 1.

105. The confusion about the prosecution case is highlighted, it was submitted, by the judge's apparent confusion both at the close of the prosecution case and during interchanges with Ms Marshall during the course of the summing up. We shall limit our references to the summing up.

106. At [212/9] and following, the judge told the jury that:

> "*You can only return a verdict [of guilty] on count 1 if you are satisfied so that you feel sure that the statements made in those invoices were false. You would be entitled to find that they were false if the statements made in those invoices were not made by an authorised reseller of Forward Sports Pakistan or Forward Sports Pakistan itself.*"

107. Ms Marshall (in the absence of the jury) expressed concern about that direction. At [213/8] and following, there was the following interchange:

> "*It may be that I've misunderstood it, but the way in which it appeared to be left to the jury was that the only way in which the jury could convict on count 1 was that if they took the view that Mr Watson did not have authority, as it were, to issue the invoices…*
> *THE COURT: Which was your case at the beginning.*
> *MS MARSHALL: Well, that was my case and also…*
> *And the other part of my case is that whatever the status in fact those invoices are fake full stop.*
> *THE COURT: No, what you said…in closing was this; that the goods in those invoices had never been ordered or sold.*
> *MS MARSHALL: Indeed.*
> *THE COURT: With respect, that's wrong…*"

108. There followed a discussion about the evidence after which there was this exchange [217/11] and following:

> "*THE COURT: We have to sort this out because really I thought your case was "had not sold" meaning the invoices have fake prices and fake goods on it.*
> *MS MARSHALL: Yes, it is. Can I simplify it in this way? Authorisation is just but one part of that- as part of our case. The fact he was not authorised to sell those goods is but one part of it. We say the invoices themselves were also entirely fake for a variety of reasons: One, that the goods were not ordered, manufactured or supplied but also because the amounts in them were lies, and also because CONCACAF were never going to get those goods and indeed never did get those goods…it doesn't just hinge on the question of authority, it hinges on whether or not those invoices for whatever reason were false, but what I don't want is the jury left with the only view that they can convict if they…were sure that Shakeel Khawaja had never given authority, that's but part of it.*"

109. There was then a further discussion about, among other things, the absence of any evidence from Concacaf to the effect they had never received any of the items on the invoices, to which Ms Marshall's response was that Concacaf paid for items which were never manufactured or supplied. At [224/17] the sort of interchange set out above was repeated. The judge again said [224/23] that she had "*really misunderstood the opening*."

110. At one stage there was discussion as to whether count 1 should be amended so as to remove the phrase '*in that*' from the twelfth line and replace it with '*because*,' a quite meaningless change, as it seems to us.

Discussion and Conclusion

111. In our judgment, both aspects of Mr Trollope's submission under this head are without merit.

112. At [27], [44] and [45] the prosecution opening note stated:

"*27. [Canover] Watson dishonestly formed, controlled and used FSIMI Panama, deliberately incorporated in a name very similar to the genuine company name…[he] created a structure where the people they were doing business with, such as [Shakeel] Khawaja and Concacaf, didn't know or appreciate exactly who they were contracting with, and in particular they didn't know that Watson was in a position where he had a grotesque and dishonest conflict of interest which he was keeping secret from them…*

44. [Shakeel] Khawaja was not a party to the creation of the three invoices and was never shown them. Moreover…[he] was unaware of the transfer of $1.54m by Concacaf and was paid nothing in relation to the three false invoices.

45. The invoices contain statements which were false or erroneous in a material particular, starting with the ***deliberately misleading corporate identities*** *and* ***the date****. On 30th September 2013, when the invoices were sent by Watson, Forward Sports had not sold, been paid for, manufactured, or delivered the specified goods to Concacaf. And on 30th September 2013 Concacaf had not ordered or purchased the goods specified, at the price specified, from Forward Sports (PVT) and no payment was due and owing by Concacaf to FSIMI in Panama. Moreover, the invoices do not reflect the terms on which any goods were supplied to Concacaf, if these invoices were for genuine Concacaf orders the money paid by Concacaf would have been sent to Forward Sports (PVT) to start production of those items and of course, the prices would be lower. Out of that $1.54m, only the money due for the second genuine order was paid to Forward Sports (PVT) and even then, not until November 2013.*" (Underlining added)

113. In our judgment that Note makes it quite plain that from the outset the prosecution was alleging that the invoices were in substance entirely false.

114. As Ms Marshall observed, the prosecution's position regarding the falsity of the invoices was also made clear in her closing speech, when she said [92/15] and following:

"*What we say…is that the invoices were completely false…they were sent to Concacaf to deceive them into believing they were buying goods made by Forward Sports PVT…and regardless of whether they thought they were buying them direct from Forward Sport PVT or an offshoot of Forward Sports PVT based in Panama is*

irrelevant. The purpose of those documents…being sent in by Mr Watson was to convince Concacaf that these were goods that they had ordered and in paying for them, they would receive them."

115. While we accept that in the judge's mind there appeared to be some confusion as to the prosecution case in respect of the invoices, we reject the submission that the allegation that the invoices were entirely false amounted to a change in the prosecution case. We do note that in directing the jury [131/4] and following, the judge did state, when dealing with one of the three count 1 invoices, that the prosecution's case was it was false "*from top to bottom.*"

116. As to the question of any authority to sell the goods, that became an issue during the course of the trial when, as part of Canover Watson's defence, the suggestion was made that he had, or believed he had, authority to act as he did. His case was that his position was similar to that of Shakeel Khawaja, who was entitled by a marketing agreement he had with Forward PVT, to sell their goods. The judge succinctly set out Canover Watson's case at [134/6] and [141/22] and following:

> "*When I set up Forward Sports Cayman and [FSIMI]…in Panama, Mr Khawaja and I had agreed that I would sell and market Forward goods under the Forward name….*
> *So it is his case that all the [count 1] invoices are legitimate. They were legitimate invoices issued by…FSIMI with the knowledge and consent of Mr Khawaja, who said he would operate the wholesale side of the business selling Forward [International PVT] equipment…That was the arrangement they made.* "

117. Albeit the defence argued to the contrary, Shakeel Khawaja said there was no such arrangement. He did not agree to Canover Watson setting up a company for himself. Although he said he knew of the setting up of one company in Panama, there was, unsurprisingly, some confusion in his mind about the different companies with similar names which Canover Watson set up. He said he was unaware of the existence of FSIMI and knew nothing about the count 1 invoices or the payment Concacaf made in respect of them.

118. Although given ample opportunity to set out his case, Canover Watson had made no comment in his interview. There was no defence case statement. Until the defence case unfolded, the

prosecution could not have foreseen what the defence would be. The prosecution did not accept Canover Watson had any such arrangement with Shakeel Khawaja as he claimed. The prosecution was bound to have to deal with it. To describe its response in terms of a change of case is in our judgment misconceived. It was doing no more than respond to the issues raised during the trial as they arose, as it was bound to do and as the defence should have anticipated.

119. We reject Mr Trollope's second submission.

The submission there was no case to answer

120. Thirdly, it was submitted that at the close of the prosecution case, Canover Watson had no case to answer. As we understand it, the submission was to the following effect. Count 1, submitted the defence, depended upon a direct relationship between Forward PVT and Concacaf into which Canover Watson, without authority and dishonestly, inserted himself. Firstly, submitted the defence, the prosecution could not prove such a relationship and, secondly, and in any event, the evidence was that Canover Watson was authorised to sell the goods and issue the invoices. Just as Shakeel Khawaja was authorised to sell Forward PVT's goods under his contract with them, so he, Canover Watson was similarly authorised. The defence also submitted that the evidence disclosed that Shakeel Khawaja knew of FSIMI: that he had agreed to Canover Watson selling Forward PVT product. Before us, Mr Trollope drew attention to several documents in the jury bundle which he submitted supported the defence case.

Discussion and Conclusion

121. The issue at the close of the prosecution case was whether, on the evidence, Canover Watson had a case to answer. In our judgment, he unarguably did. Put very shortly, the jury was entitled to accept Shakeel Khawaja's evidence. It was entitled to conclude, for the many reasons advanced by the prosecution (which we shall not repeat), that the count 1 invoices were entirely false. Its case did not depend upon the sort of relationship alleged by the defence. Until Canover Watson gave evidence, there was no direct evidence of such a relationship. As to the documents in the jury bundle which Mr Trollope drew to the Court's attention, their import was among the matters for the jury to consider.

122. We reject Mr Trollope's third submission.

The unfairness of the summing up

123. Mr Trollope's fourth submission related to the way the case against Canover Watson was summed up. As it was put in the Grounds of Appeal, '*…the delay and the way in which the matter was summed up lacked clarity, structure and precision…it failed to provide the necessary guidance for the jury to reach a just and safe verdict.*' It was said the judge should not have '*intertwined the prosecution with that of the defence.*'

124. There were two essential, although linked, submissions advanced by Mr Trollope. Firstly, he submitted that the judge failed properly to sum up Canover Watson's case and, secondly, that the summing up was biased.

125. Mr Trollope's submission on bias was founded on what passed during the course of the summing up between the judge and Mr Nelson, counsel for Bruce Blake, in which Mr Nelson was highly critical of the structure of the summing up. His criticism is encapsulated by the following exchange [296/3] and following:

> "*MR NELSON: My lady, in my view, with respect, this is a lengthy summation of the Crown's arguments and repeating their points. Now that's fine. And that's My Lady's prerogative. The important thing is that there is a point at which My Lady repeats, not verbatim, but pretty much a full summary of what the Defendant said in evidence…*
> *…without slant, without it being a response to a prosecution question…*
> *And I think it behoves My Lady…to sum up the case, the evidence for Mr Blake, in its entirety, reduced into manageable form, dealing with his answers to the evidence, without it being in the pejorative terms of Ms Marshall's questions.*"

126. It is axiomatic, submitted Mr Trollope, that the judge should have summed up Canover Watson's evidence as a piece. It was not good enough simply to interpose his account during the course of the summing up, particularly given his long and closely argued case. The summing up amounted to a very significant departure from the usual process. Mr Trollope drew the Court's attention to the observations of Moses LJ when giving the judgment of the English Court of Appeal in *Heppinstall* [2007] EWCA 2485 in which he said at [33]:

"*The longer the case the more important is a short and careful analysis of the issues*."

127. This very significant departure from the usual process was unfair to Canover Watson, submitted Mr Trollope. Mr Trollope was also, in general terms, critical of the judge's comments on Canover Watson's account.

Discussion and conclusion

128. The Court has carefully read the summing up. There is no doubt that the judge, sometimes at considerable length, set out fully Canover Watson's case, count by count. The jury could have been in no doubt what that case was. While she from time to time commented on that account, her comments did not, as it seems to us, overstep the line. However, at no point, to adopt Mr Nelson's phrase, did the judge set out Canover Watson's account 'in its entirety, reduced into manageable form.'

129. As it seems to us, no criticism can be attached to the judge's decision to sum up Canover Watson's evidence count by count. Breaking it up in that way could help the jury understand what the factual dispute was count by count. That may be particularly so for count 1, for the verdicts on the remaining counts substantially depended upon the jury's view of that count. However, the judge, particularly at the end of a long and complex trial, and following a lengthy summing-up, should succinctly and objectively have summarised the factual issues between the parties. That summary would have involved summarising the prosecution case and then setting out the essential features of Canover Watson's response in a reduced, coherent and manageable form for the jury. That having been said, we must ask ourselves whether the judge's failure to do so renders the jury's verdicts unsafe or unsatisfactory.

130. As we have said, the jury could have been in no doubt as to what Canover Watson's case was. He gave detailed and lengthy evidence. He was represented by Leading Counsel, whom we have no doubt set out Canover Watson's case meticulously in his final speech to the jury. The jury had the bundles of documents, including one introduced by Canover Watson as part of his case. The judge, when setting out his account in considerable detail, frequently emphasised it was not for him to prove his innocence. Bearing all those features in mind, we have concluded

that the judge's failure to set out Canover Watson's case as we accept she should have done, does not render the convictions unsafe or unsatisfactory.

131. Accordingly, we reject Mr Trollope's fourth submission.

The alleged lack of directions to the jury

132. The Grounds of Appeal next assert that the judge failed in a number of specific respects to direct the jury as she should have done. We shall take each assertion in turn.

The judge failed, or failed adequately, to direct the jury as to the meaning of 'material'

133. As it was put in the skeleton argument, the submission was that '*the judge failed in the course of her directions as to the elements to be proved in Count 1 in relation to the three invoices…to adequately direct the jury in relation to the phrase 'false or misleading in a material particular' as to the definition of 'material.'*

134. Question 3 of the written directions asked:

> "*Are you sure that the invoices contained statements that were false, erroneous or defective in any material particular?*"

135. At [29/15] and following the judge said:

> "*A material particular is something which is important or significant. It's a material particular. If it is trivial or inconsequential, it is not material…[The prosecution] must satisfy you so that you feel sure that the statements were intended to mislead CONCACAF and that when Mr Watson gave those invoices to Mr Sanz with those false and misleading statements, he intended to deceive CONCACAF*."

136. At [236/2] and following, she said:

> "*You are to consider…the invoices in their entirety. You can find one statement to be false, many statements to be false or no statements to be false…*

…You are to consider all the statements that those invoices make and when I say "those invoices a statement makes" I mean whatever is communicated by that invoice. So price is a statement. An address is a statement. When you present an invoice you make a statement that payment is due. So you must consider the statements in the round and decide whether you find that one or any of the statements they make are false…you need to find that each invoice makes a false statement in order to return a verdict on count 1."

137. Mr Trollope did not criticise the direction at [29/15]. He did criticise the second. His complaint was that it failed to give any guidance as to whether any particular had any importance or mattered to the recipient of the invoices or to its use as an accounting document.

Discussion and Conclusion

138. We can take this shortly. The initial direction on the meaning of a material particular was correct. The further directions were sufficient and correct. Further guidance was not in our view needed. The prosecution case was straightforward: the invoices were entirely false. Payment was not due as the invoices stated. That was the essential issue for the jury to resolve, as it could not have failed to understand.

139. This aspect of the Grounds of Appeal fails.

The failure to direct the jury as to the need for unanimity of the particular(s) found to be false or misleading.

140. As we understand the submission, it came to this. Count 1 depended, among other things, on the jury being sure in respect of all three invoices that they were false in a material particular. In order to be able so to conclude, all the members of the jury had to agree in respect of a specific particular. They should have directed to that effect. The submission is founded on the summary in the headnote in the case of *R v Kevin Brown* (1984) 79 Cr App R 115, which states:

"*(1) Each ingredient of the offence must be proved to the satisfaction of each and every member of the jury…*

(2) However, where a number of matters were in the charge as together constituting one ingredient in the offence, and any one of them was capable of doing so…then it was enough to establish the ingredient that any one of them was proved; but (because of the first principle above) any such matter must be proved to the satisfaction of the whole jury."

Discussion and Conclusion

141. The submission, as it seems to us, is misconceived. As the Lord Chief Justice said in *R v Jama (Yusef)* [2007] EWCA Crim 3269 at [14]:

> "*The purpose of a Brown direction is to avoid the mischief where there may be alternative bases upon which a jury could reach a verdict of guilty, but that one of the routes may in fact be a route which some of the jury would conclude should have resulted in a verdict of not guilty…That is not this case where both routes to verdict inevitably produce a verdict which was bound to be guilty.*"

142. The mischief to which the Lord Chief Justice referred is not present here. There were not alternative bases for the jury to convict. Assuming its members were all satisfied of the falsity of a material particular, a conviction would inevitably follow (assuming the other ingredients of count 1 were satisfied). Moreover, the underlying reality about which the jury had to be sure was whether the payment was due as the invoices claimed. No Brown direction was required.

143. This aspect of the Grounds of Appeal fails.

The lack of a dishonesty direction on count 1

144. Mr Trollope submitted that although dishonesty was not a specific ingredient of the offence, the requirement to prove an intent to deceive necessarily imported proof of dishonesty. The direction on count 1 should have included the requirement to find dishonesty for the jury to convict.

Discussion and Conclusion

145. We accept that dishonesty may be a necessary ingredient of an intention to deceive, although once an intention to deceive is proved, in most cases, dishonesty will also be established. In this case, the absence of such a direction did not render the verdict on count 1 unsafe or unsatisfactory. The jury were required to consider whether Canover Watson, intending to deceive Concacaf, submitted invoices which he knew to be false in a material particular. If the jury was sure that he did, it seems to us it would inevitably conclude he acted dishonestly, however dishonesty was defined. A dishonesty direction was not in those circumstances required. Moreover, its absence could not conceivably affect the safety of the conviction on count 1.

146. This aspect of the Grounds of Appeal fails.

The directions in respect of Counts 7 and 8

147. Mr Trollope's next submission concerned the judge's direction on counts 7 and 8. There were two aspects to the submission. Firstly, that the direction on dishonesty '*did not comply with the requirements of the approved definition*' as set out in *Ivey v Genting Casinos* [2018] 1 Cr App R 12 and, secondly, by reference to *R v Goleccha* [1989] 1 WLR 1050, that the requirement that the information be furnished "*with a view to gain for themselves or with intent to cause loss to CIFA*" was not made out.

The judge's direction

148. The judge said [38/23] and [42/16] and following:

> "*[The prosecution] must prove that [the defendants]…produced or made use of a document which they knew was false or deceptive in a material particular, that they did so dishonestly. If a man gives you something which is false, and he knows it's false, well you might consider that such conduct was dishonest, but it is a matter for you and I will give you an instruction…on dishonesty.*
> *So you must find that they did so dishonestly, with a view to gaining something for themselves or another, with the intent of causing loss to CIFA. And a gain there or the loss there is monetary or property…*

The defence for Watson is that the documents he furnished to the auditors were not false or deceptive but were true loan agreements…made between his companies…and CIFA…

…On counts 7 and 8, the prosecution must prove that the defendant whose case you are considering acted dishonestly at the time of the offence.

Now you all know what dishonesty means. So what you first have to do is decide what facts you find proved. What was the defendant's actual state of knowledge or belief? So if you were to find that…[the defendant]…made use of a document which was false and they knew it was false, if you found those facts, if you decided that that was their actual state of knowledge that the documents contained something which was false in a material particular and they knew it, then you would go on to consider whether you are sure that in furnishing such a document to the auditor the conduct was dishonest by the standards of ordinary and decent people."

149. *Barton* (2020) 2 Cr App R 7 followed the Supreme Court's decision in *Ivey*. The head note in *Barton*, upon which Mr Trollope relied, states that:

> "*The test established in Ivey was a two stage test: (a) what was the defendant's actual state of knowledge or belief as to the facts; and (b) was his conduct dishonest by the standards of ordinary decent people. It remained a test of the defendant's state of mind- his knowledge or belief- to which the standards of ordinary decent people applied.*"

150. As we understand the submission, it was to the following effect. The judge failed sufficiently or at all to direct the jury on Canover Watson's state of mind to which it should apply the standards of ordinary, decent people.

Discussion and Conclusion

151. We do not agree. The judge set out the competing submissions. When read as a whole, she set out both aspects of the test as identified in *Barton*. Moreover, she made it plain the jury had to be sure of the defendants' knowledge or belief before considering dishonesty. If it was sure that the prosecution allegations were correct (as on the verdicts it must have been), it seems to us it would inevitably conclude the conduct was dishonest by any standard.

'With a view to gain for themselves or with intent to cause loss to CIFA'

152. Section 255(1)(b) of the Penal Code (2013 Revision) states:

> "*A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another-*
> *(a)…*
> *(b) in furnishing information for any purpose, produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular,*
> *Commits an offence and is liable to imprisonment for seven years.*"

153. Section 234 sets out the meaning of 'gain' and 'loss.' It states:

> "*"gain" and "loss" are to be construed as extending not only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and-*
>
> *(a) "gain" includes a gain by keeping what one has, as well as a gain by getting what one has not; and*
> *(b) "loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has…*"

154. The submission was that Canover Watson obtained no gain nor occasioned any loss by furnishing the loan agreements. The funds had already been paid to CIFA. No advantage was accrued, nor any deficit suffered. No gain or loss occurred by furnishing the agreements. Relying on *Golechha* [1989] 1 WLR 1050, it was submitted that to furnish the agreements to the auditors in order to 'buy time' would not be enough.

155. The appellants in *Golechha* were charged with conspiracy falsely to account, contrary to section 1(1) of the Criminal Law Act 1977. The counts were based on section 17(1) of the Theft Act 1968, which defined the meaning of 'gain' and 'loss' identically to section 234 of the Penal Code. The issue in *Golechha* was whether the presentation of false bills of exchange in order merely to obtain the issuing bank's forbearance from enforcing their rights on an existing debt amounted to falsification with a view to gain under section 17(1). The court held that what was

brought into existence under the facility was a debt owed by Mr Golechha to the bank; that as a debtor, he possessed no proprietary rights, the chose in action represented by the debt being owned by the bank. Accordingly, the falsification did not constitute falsification with a view to gain by keeping money or property.

156. Mr Trollope's submission was that 'even if the provision of the 'loan documents' to the auditors was intended to and secured [the auditor's]…forbearance in requesting the actual agreements, this could not have amounted to the requisite intent for the purpose of the section.' He submitted that just as in *Golechha*, there was no money or property which Canover Watson could have intended to gain.

157. At [96/4] the judge read from the final version of the written directions. She said:

> "*Are you sure that when he furnished the information he did it with a view-that just means an intention- with a view to gain. He could either be gaining for himself or for somebody else, or-and you don't have to find both- or he could be causing a loss to somebody else. But you must be satisfied that he was acting with a view to gain for himself- or with an intent, it says, to cause loss to CIFA.*
> *Now, if you are satisfied that in furnishing that information to the auditors, the loan documents, that he did so with a view to gain for himself, or to cause loss to CIFA, if you are sure, you say yes, you return a verdict of guilty. If you are not sure, not guilty.*"

158. Mr Trollope was critical of that direction in that, as he submitted, it failed to direct the jury as to how providing the information to the auditors could have resulted in a monetary gain or loss.

Discussion and Conclusion

159. The facts in this case were different from those in *Golechha*. The allegation here was that Canover Watson and Bruce Blake falsified and submitted the loan agreements to the auditors in order to mislead them regarding the sums of money which had been obtained and from which Canover Watson had benefitted and was continuing to benefit. Their intention in furnishing the false documents was to permit Canover Watson to retain those sums and that benefit. There was, as Ms Marshall submitted, a clear and obvious link between furnishing the false loan documents and Canover Watson's financial gain and CIFA's loss. If the jury accepted the

prosecution case, the requirements of section 234(a) and 234(b) were in our view plainly satisfied. The judge's directions were in the circumstances adequate.

160. This aspect of the Grounds of Appeal also fails.

Overall conclusion

161. The case against Canover Watson was a strong one. He has sought to advance many disparate grounds of appeal against conviction, none of which in our judgment render the convictions unsafe or unsatisfactory. We refuse his application for leave to appeal against conviction.

Bruce Blake's appeal against conviction

162. Mr Nelson advanced four grounds of appeal, all related to the summing up. He submitted, firstly, that the summing up gave undue prominence to arguments and points favourable to the Crown, secondly, that it failed to balance that by identifying arguments and points favourable to the defence, thirdly, that the judge wrongly suggested that Bruce Blake might be guilty on his own version of events and, fourthly, that the judge failed to identify the key issues on counts 7 and 8, namely whether Bruce Blake was aware of and authorised Canover Watson in his presentation of forgeries, rather than the issue of Bruce Blake's knowledge of the fact the payments were to be treated as loans.

163. In accordance with the agreed written directions, the judge directed the jury regarding Bruce Blake's alleged involvement in counts 7 and 8 in the following way [38/17] and following, and [39/19] and following:

> "*…the prosecution must prove that both Canover [sic] and Bruce [sic] furnished the information to CIFA's auditors- remember they are jointly charged in this count…*
> *…we all know it is Canover who sent the loan agreement to the auditor. He is the one who actually sent it, yet they are both charged. So what we have is what we call joint-enterprise. What is alleged…is that they committed the offence jointly. They were acting together as part of a joint enterprise. A joint enterprise is when two or more persons…embark on a joint enterprise, each one is liable for the acts done by the other in pursuance of that joint-enterprise. If they had decided together to furnish that loan*

agreement to the auditors for any purpose, then they would have been acting jointly, even though only one of them actually furnished the document. So it is the agreement which makes it joint, not the actual production or furnishing of the information…
If the prosecution has proved to you that Blake intended that the crime of false accounting should be committed and assisted, encouraged, or caused it to be committed, then Blake is guilty of the offence of false accounting, even though it is Watson who furnished the document."

164. In accordance with the agreed route to verdict, the judge said [97/4] and following:

"*Are you sure that when Canover Watson furnished information to the auditors by producing or making use of the loan agreement…he, Watson, was acting within the scope of the joint enterprise with Bruce Blake as defined in the legal direction on joint enterprise?*
…A joint enterprise is when two people agree on a course.
Are you sure that…Bruce Blake caused or encouraged or assisted [Canover Watson] to furnish [the] information…
Are you sure that the loan agreement was false or deceptive in a material particular…
Are you sure…that when Bruce Blake caused or encouraged or assisted Canover Watson to furnish the information to the auditors that he was acting dishonestly…"

165. Mr Nelson had submitted at the close of the prosecution case that Bruce Blake had no case to answer on counts 7 and 8. The judge (albeit at that stage she mistakenly appeared to think it was the prosecution case that Bruce Blake had signed the loan documents submitted to the auditors), ruled against the submission. She said:

"*The purpose of the loan agreements, which Bruce [Blake] says he signed and which Canover [Watson] tendered to the auditors, their common purpose was to provide that information for the purposes of an audit. They both intended to use that document, those two documents as set out in the particulars, use those documents for the purposes of an audit.*"

166. In his submissions on appeal, Mr Nelson, while acknowledging the judge's error, realistically accepted that 'whether BB knew and authorised the forgery of the documents on 11 August was ultimately a matter for the jury…' He also made no criticism of the judge's legal directions.

167. Having summarised the evidence in respect of Canover Watson on counts 7 and 8, the judge said [365/21] and following:

> "*…when we look at Mr Blake, the question you have to answer- if you are sure Mr Watson is guilty on counts 7 and 8…the question you have to answer is whether Mr Blake assisted or encouraged Mr Watson committing those offences…*
>
> *So I'm going to start to look at the Crown's case so that we can look at Mr Blake's evidence in that context…the Crown's case is that the document was made on that night and sent by Mr Watson and that it was sent in the context that Mr Blake knew that Mr Watson created these loans [sic] documents. Knew it as an inference from the fact that he provided Mr Watson with the loan template. If you accept what Mr Watson says, he knew when the templates were provided what they were supposed to be used for because he discussed it with Mr Bruce [sic] and three days later sent him the agenda that he was meeting with Jeff [Webb] to discuss the Cartan and Forward proposals. Both of them say that Mr Blake signed the loan document on behalf of CIFA. If in that context then Mr Blake knew that Watson intended to create these loans, then the only purpose in creating such loan documents was to have documents that could support or explain the entry of loans in the CIFA's general ledger. Monies that Mr Blake knew had been received as sponsorship…*
>
> *…so that he knew that when he agreed with Mr Watson, another matter to be inferred from the circumstances, to create loan agreements for money he knew was sponsorship, he knew it was intended to be produced to the auditor for the purposes of an audit, he would therefore have assisted Mr Watson in furnishing documents to the auditors for the purposes of the audit.*
>
> *On the Crown's case- and I think Mr Blake said he knew- the money came in as sponsorship when the second tranche of money arrived from Cartan. On the basis that Mr Blake knew the money was sponsorship money, the Crown is inviting you to infer that he knew the loans were false…because the purported*

agreement to make these sponsorship monies into loans was not made until well after the monies had been received. They even assert that he knew the money was criminal property, because he was aware of Mr Watson's business dealings in Panama and had reason to know or suspect that monies sent to CIFA were proceeds which he wished to launder through CIFA's accounts.

If you are to draw those inferences…it would be open to you to find that, as I said, when Mr Watson gave the loan agreements to the auditors, he was acting within the scope of a joint agreement that the documents would be produced to the auditors for the purpose of the audit…

…If you are satisfied that the documents which were produced were false and Mr Bruce knew they were false and had been created simply to justify the entry in CIFA's books of sponsorship money as loans, then the Crown would invite you to find that in assisting Mr Watson in producing documents or creating documents that he could then use for the purpose of an audit, that Bruce was acting dishonestly." (Our emphasis)

168. Mr Nelson was critical of the judge's emphasised remarks. He submitted they were inadequate and misleading. It was Bruce Blake's case that he had previously signed loan agreements, but not the ones submitted to the auditors. It was the prosecution's case that he had never signed any previous loan agreement, that he was lying when he claimed to have done so and that Canover Watson created the agreements overnight on 11 August 2014 for submission to the auditors. The jury could not, submitted Mr Nelson, infer that Bruce Blake was telling the truth when, contrary to the prosecution's case, he said he had signed earlier loan agreements as evidence of his guilty knowledge of the different documents submitted on 11 August about which he said he knew nothing. In other words, his claimed knowledge of the earlier loan agreements could not be evidence of his knowledge and approval of the later created ones. He could not be guilty on his version of the case.

169. Moreover, submitted Mr Nelson, the judge failed to differentiate between a joint agreement to present the loan agreements that Bruce Blake said he had signed and an agreement, as Mr Nelson put it, to present a forged version that had been mocked up in the middle of the night by Canover Watson without Bruce Blake's knowledge. He submitted that the judge failed to make it clear that they could only convict Bruce Blake if they were sure, not simply that he knew the loan agreements were false, but that he agreed to Canover Watson creating and

submitting false agreements to the auditors. As he put it, the principal issue was what Bruce Blake knew of the documents that were furnished, not his knowledge of other documents. The evidence relating to that boiled down to the provision of the bank template seven months earlier.

170. Mr Nelson was also critical of the judge's direction in respect of what he submitted was a crucial issue. She should, he submitted, have pointed out to the jury that the template Bruce Blake sent to Canover Watson was entirely different from those created and submitted to the auditors. While Mr Nelson accepted that the judge did refer to the difference between the documents, he submitted she did so inadequately, when she said [380/9] and following:

> "*In answer to his counsel he said he would have sent the template simply because Canover had asked. It is his case, which was put to Mr Watson by Mr Hughes, that this was not a template at all for the loan agreements he drafted. And I think you will recall- and I don't intend to put it to you now in full- that Mr Hughes took Mr Watson to the details of the loan agreement to demonstrate that the two pages that Mr Watson had culled, or said he had culled from this agreement, that there was in fact no relationship between them.*"

171. What the judge failed to do, submitted Mr Nelson, was present the competing arguments on this very significant issue. He submitted that it is difficult to see how a fair-minded jury could infer that the sending of what was a bank loan template in January 2014 could raise the inference that Bruce Blake encouraged the making of the substantially different private loan documents in July 2014.

172. As we have previously touched upon, on the morning of 12 August 2014, almost immediately following their creation and submission to the auditors, Canover Watson emailed Bruce Blake. The email chain contained the email Canover Watson sent to the auditors at 3.10AM on 11 August referring to the 'attached loan agreements.' Among other things, the email stated:

> "…The loans from Forward and Cartan are Prime +1%
> The entire loan is unsecured from all three lenders as Fidelity released the charge on the property and Forward and Cartan did not implement a charge. Maybe we can use the following wording:

> **The Association has unsecured term loans outstanding from its finance partners totaling** [sic] **$1,398,152…**
> BRUCE, PLEASE CONFIRM YOU ARE OKAY WITH THIS WORDING FOR THE LOANS".

173. The judge said [370/14] and following:

> "*Bruce did not ask what loans? Who were these finance partners? Where did the money come from to pay out Fidelity? These are the sort of questions that the Crown invites you to ask to draw the inference that he knew that the loans had been tendered. He was party to their creation and knew they were false and being tendered for the purpose of an audit. Even on Bruce's case that he signed those agreements, the inference would be that he did so for the purpose of an audit.*"

174. Mr Nelson submitted that not only was this a 'very strong' comment, but it was also based on a false premise. Bruce Blake "did not ask what loans", because, on his case, he knew that there were two loans and he had signed agreements regarding them, but not these agreements.

175. In addition to his complaint about the 'very strong' comment, Mr Nelson made a number of further complaints about the fairness and balance of the judge's observations. We shall take some examples. He submitted that the judge continually recited the prosecution case. He submitted the lies direction suggested Bruce Blake was not telling the truth; the judge said [403/4] and following:

> "*…so if you write to FIFA and you tell them that you knew about the loan in December and you tell another person another thing, you come to court and you say something else in evidence, these are things from which you can infer the person is not speaking the truth and you might find some support in that for the Crown's case, as Ms Marshall has invited you to.*"

176. Although Mr Nelson accepted that the judge summed up part of Bruce Blake's evidence, she failed, he submitted, to summarise what he said about his lack of knowledge of the forged loan agreements. As we have said, he submitted that the evidence of Bruce Blake's participation in counts 7 and 8 boiled down to the provision of the bank loan template. Ultimately, he submitted,

there was no attempt to summarise the evidence which strongly suggested that Canover Watson acted on his own and without Bruce Blake's knowledge.

177. In short, he submitted the summing up was unbalanced in favour of the prosecution, it wrongly suggested Bruce Blake might be guilty on his own version of events and it failed to identify the key issues on counts 7 and 8, namely whether Bruce Blake was aware of and authorised or encouraged Canover Watson in his presentation of forgeries, rather than the issue of his knowledge of the fact that the payments were to be treated as loans.

Discussion and Conclusion

178. We start by noting that, rightly, Mr Nelson did not submit that it was not open to the jury to convict Bruce Blake on the evidence before it. In essence, it was his submission that the convictions were rendered unsafe by the way in which the judge directed the jury.

179. In our view, it was open to the jury to find:

(1) Bruce Blake knew that Cartan had not loaned CIFA US$600,000. He had drafted the Cartan US sponsorship document. There was no credible explanation for money given for sponsorship to become a loan.
(2) Bruce Blake lied when he said he had previously signed loan agreements. He knew there was no question of CIFA being able to repay such substantial loans. His evidence about when he signed any loans was inconsistent. Canover Watson would not have asked him for a template loan agreement in January 2014 had he signed them in December 2013 as he first said. No other versions of the loan agreements were ever recovered from Canover Watson, Bruce Blake or CIFA's office.
(3) On 27 January 2014 Canover Watson said he and Bruce Blake discussed the loan agreements. On 28 January 2014 Canover Watson asked Bruce Blake to send him a template for a loan agreement. Bruce Blake agreed to do so, stating it could be amended as necessary. He did not suggest loan agreements which he had previously signed existed.
(4) On Friday 31 January 2014 Canover Watson sent Bruce Blake an agenda for a meeting with Jeffrey Webb. Item 3 on the agenda was 'CIFA Loan Proposal-Cartan and Forward Loan Agreement.' Bruce Blake knew CIFA was not repaying the

loans. He knew it could not afford to do so. He knew the Cartan US payment was not a loan.

(5) Canover Watson said he used the template Bruce Blake had sent him. He did so when the auditors were pressing for them. Bruce Blake knew the auditors were pressing for the loan information for the August audit meeting. Had he signed them in December 2013, producing them should have been a straightforward matter.

(6) Almost immediately after creating and submitting the false loan agreements to the auditors, Canover Watson sought Bruce Blake's approval for the way the loans should be described. He would not have done such a thing unless he was confident Bruce Blake was content with his submission of the false documents and would raise no issue about them.

(7) Bruce Blake was present at the auditors' meeting on 22 July 2015, when several attempts were made to throw the auditors off the scent. Bruce Blake untruthfully said he had discussed with Mr Gamba of Cartan converting the loans into sponsorship, when he knew, firstly, that all along it was sponsorship and, secondly, that Mr Gamba worked for Cartan International in the United States.

(8) In response to the auditors' letter of 28 August, Bruce Blake claimed he "attended no meetings or discussions" regarding the loan agreements. He subsequently admitted that in late 2013 he had extensive discussions with Canover Watson about the loan agreements and the documentation in support.

(9) Bruce Blake told the auditors he had spoken to a representative of Cartan, who told him the loan was a gift. In fact, he had known that was so since the money had been transferred. He failed to mention this in subsequent emails.

180. It follows that the jury could infer from this evidence that Bruce Blake not only knew any agreement describing the loans would be false, but also that a document describing such an agreement did not exist until and unless Canover Watson created it, for which he requested and was sent the template. It was also open to the jury to accept Canover Watson's evidence that he made some use of the template. Although, given the auditors were pressing for the loan information, it would be open to the jury to infer Bruce Blake knew the false agreements had not been created until just before the audit meeting, to be guilty of counts 7 and 8, he did not need to know precisely when their creation was to happen. As Ms Marshall submitted, it was sufficient if he knew and agreed with Canover Watson that false agreements would be created as and when they were needed for the audit.

181. It therefore comes to this. Did the way the judge summed up render the convictions unsafe?

182. We start by noting that the judge summarised the template evidence in rather more detail than the extract referred to in paragraph 170 above might suggest. When summarising Bruce Blake's evidence, she said [380/20] and following:

> "*In every loan agreement, besides a borrower and lender, and apart from those particulars, there was nothing in this loan…template that could be said to have provided the basis for the loan agreement he made. Mr Hughes said the documents had nothing in common and Mr Blake said they were not provided for the loan agreements before the court. The loan agreements before the court are private lender loan agreements. This template was for a bank- a commercial lender template. He said if he was assisting Mr Watson with drafting a private lending agreement he would have provided a suitable template.*"

183. That, taken in conjunction with the earlier citation on this topic amounts in our judgment to a sufficient direction regarding the differences between the template Bruce Blake sent to Canover Watson and the loan agreement documents submitted by Canover Watson to the auditors. We would add that the jury could see the differences for themselves in the Jury Bundle.

184. The judge's comments set out at paragraph 167 above were not as clear as they could have been. However, what, as it seems to us the judge was intending to convey, as Ms Marshall submitted, was that when Canover Watson and Bruce Blake said the loan documents were signed, it was evidence from which the jury could infer they knew the audit materiality of such documents. She was not accepting that Bruce Blake had in fact signed the documents. In any event, the jury could have been in no doubt what the prosecution case on this issue was.

185. We do not accept that the judge failed to differentiate between a joint agreement to present the loan agreements that Bruce Blake said he had signed, and an agreement to present a forged version. Bruce Blake's knowledge of the alleged loans was an important element of the allegations against him. His sending of the loan template in the context of that knowledge went to his participation in counts 7 and 8. As we have pointed out, to convict did not require the jury to be sure as to when the false loan documents were to be created and submitted to the

auditors. It was sufficient if Bruce Blake knew and agreed with Canover Watson that they would be.

186. We do not accept that the case boiled down to the provision of the bank template or that the judge had to direct the jury that to convict it had to be sure that Bruce Blake knew that Canover Watson was to forge the false agreements in the early hours of the morning of 11 August 2014. His provision of the loan template was part of a wider picture from which the jury could infer Bruce Blake's participation.

187. We accept that in parts the summing up was not as clear as it might have been. We also accept that some of the judge's comments went further than they should have, and that she referred too often to the Crown's case. As in Canover Watson's case, there should have been an objective summary of the issues which including a summary of Bruce Blake's case. However, that said, the judge did set out Bruce Blake's account in some detail, she made it plain he rejected the prosecution's allegations and (continually) she reminded the jury that the prosecution was required to prove the case so that it was sure. There is no reason to think that the jury did not understand what the issues in Bruce Blake's case were. We have no doubt that Mr Nelson advanced his case to the jury with great skill. Indeed, that they considered the evidence regarding Bruce Blake with care may be suggested by his acquittals on counts 2 and 5.

188. In the result, having sought to stand back and consider the case against Bruce Blake as a whole, and in spite of the well-argued submissions of Mr Nelson, we have concluded the convictions on counts 7 and 8 are safe. In his case, however, we grant leave to appeal but dismiss the appeal.

Canover Watson's appeal against sentence

The judge's sentencing remarks

189. In her lengthy and considered sentencing remarks, the judge firstly set out in detail the principles of sentencing. Among other things, she considered the totality principle and the approach to concurrent/consecutive sentences. She referred [17] to paragraphs 6.1 and 6.2 of the Cayman Islands Guidelines of October 2015 which provide:

> "*…Concurrent sentences will ordinarily be appropriate where:*

(a) Offences arise out of a related incident or facts

(b) There is a series of offences of the same or a similar kind especially when committed against the same victim…

Consecutive sentences are ordinarily appropriate where:

(a) Offences arise out unrelated facts or incidents

(b) *Offences are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences…*"

190. The judge also referred to *Bouchard v R*, Criminal Appeal 9 of 2016, in which the Court approved the addition of money laundering counts where they added to the criminality involved in the initial offending.

191. The judge considered the detail contained in Canover Watson's social inquiry report. She referred to "*his fall from grace*" when, following a three month trial, he was convicted on 4 February 2016 of, among other things, conspiracy to defraud in respect of which he received a total sentence of 7 years' imprisonment, from which he was released on 4 June 2018. That case involved a breach of trust. He defrauded the Cayman Islands Government when chairman of the Cayman Islands Health Service Authority. A confiscation order in the sum of CI$950,000 was still outstanding.

192. The social inquiry report referred to Canover Watson's lack of remorse. It assessed his risk of re-offending as 'medium.' As the judge put it [37]:

> "*The suggestion is that, given the nature of his offending and his posture regarding the present convictions, Mr Watson is criminally disposed to 'white collar' offending for financial gain.*"

193. There were other, more positive elements to the report to which the judge referred.

194. The judge referred to the mitigation, again in some detail. Among other things, it was submitted that the present offences were historical and that since his release from prison there had been no further offending.

The sentence on Count 1

195. The judge accepted that some guidance on sentence could be drawn from the Definitive Guideline of England and Wales in respect of fraud on the grounds that obtaining a secret commission on the basis of statements which are false is similar to the offence of fraud by false representation, although, as she observed, it was necessary to bear in mind that the maximum sentence for that offence in England and Wales is 10 years' imprisonment, while that for obtaining a secret commission is 5 years' imprisonment. It was agreed that involving as it did the loss of more than £500,000, the offence fell into category 1 of the Guideline. The starting point of 7 years' custody in the Guideline is based on £1 million. The judge found that the offence was of high culpability as it involved an abuse of trust. Under the Guideline that would result in a starting point of 7 years' custody, with a range of 5 to 8 years. Having regard to the lower maximum sentence in the Cayman Islands, that translated, as she found, into a starting point of 30 months with a range of 18 months to 4 years.

196. Regarding the breach of trust, the judge said to Canover Watson [63]:

> "*…you acted in breach of trust. You were able to defraud CONCACAF because of your position within the organisation as well as your relationship with Jeff Webb who was then President of CONCACAF and with then General Manager, Enrique Sanz who, the evidence suggests, were also acting in breach of trust.*"

197. The judge referred to the fraud diverting funds from programmes intended to benefit young people, the financial and the reputational damage suffered by Concacaf and the "*significant planning*" involved in the offending. She did not regard the absence of any complaint by Concacaf as a mitigating feature. She said:

> "*To take the victim impact into account in assessing harm, I move up the range from a starting point of 30 months to a starting point of 3 years.*"

198. The judge had drawn to her attention previous authorities relevant to sentencing for financial crimes in the Cayman Islands. In *R v Michael Levitt* CICA (CRIM) 20/23, Martin JA cited the earlier decision of that Court in *Fyne v R* [2007] CILR 176 in which the Court observed:

"*In light of the economy of the Cayman Islands, the sentence imposed by the court in cases of theft involving breach of trust should be one which would act as an effective deterrent.*"

199. In *R v Patricia Glasgow* (Indictment No. 0021/2013), Quin J said [65]:

"*This type of offence has the potential to affect public confidence in Cayman Islands companies and our financial regulations which form an essential part of the financial services industry. In other words, the reputation of our financial services industry on which our economy depends is damaged every time this type of breach of trust criminal offence is committed. Should others contemplate embarking on this type of dishonest behaviour they must realise that, if they are apprehended and subsequently convicted, a long term of imprisonment will be imposed.*"

200. The judge said [67]-[75]:

"*67. The authorities establish that the injury to Cayman's reputation as a financial centre which results from offences committed in breach of trust, is a factor which increases the seriousness of the offence, and it is not double-counting to take it into account as an aggravating feature. It is a factor which is taken into account in determining culpability.*

68. That the offence was committed across borders is also an aggravating factor to be weighed in the balance…

69. It is not a mitigating feature of the offence…that some goods were delivered to CONCACAF and some paid for in the course of the scheme. The whole offence was made out when the false invoices were presented by you to CONCACAF for payment and the offence aggravated by the amount of money you were able to obtain…

…71. The fact you have been convicted of offences of a similar nature shows these offences were not out of character but rather a trend in offending behaviour. Although you had not been convicted for your earlier dishonest conduct before you embarked upon this enterprise- it was not strictly speaking a previous conviction- the fact of your having committed similar offences of dishonesty is a matter to be taken into account.

72. That said, those offences were committed between 2010 and 2013. The fact of your conviction in 2016 must be balanced against the fact you have not committed any

further offences since 2016 and you have responded well to rehabilitative interventions while incarcerated, as noted in the SIR.

73. The delay in the prosecution of these matters is a mitigating factor. The reasons for the delay cannot all be placed at your feet. It is right that your failure to submit to interview while seeking representation contributed to the delay, but I consider that the more substantial delay was caused by the failure of the police to obtain and disclose a significant cache of emails to which you no longer had access…

74. The offence of secret commission is now nearly 10 years old…I also take into account that you now have primary responsibility for your father's financial and emotional wellbeing. You have, however, expressed no remorse for what you have done which might have mitigated your sentence and allowed you to return to your father sooner.

75. Having considered the aggravating and mitigating features and in the round, I consider that there be…an adjustment of the starting point from 3 years to 3½ years' imprisonment on Count 1."

The sentences on counts 3, 4 and 6

201. The judge referred to the preamble to the money laundering offences issued by Chief Justice Smellie in October 2017, which states:

> "*The Cayman Islands are an international global financial services centre. These Sentencing Guidelines therefore recognise the great importance of both deterrence [and] denunciation in imposing sentences for money laundering offences.*"

202. The judge was of the view that these offences were of high culpability under the Guidelines, involving as they did transactions across jurisdictions and countries. The level of harm under the Guidelines relates directly to the sums involved. Counts 3 and 4 fell within Category 2, count 6 Category 3. The starting point for Category A2 offences is 7 years' custody, with a range of 6 to 10 years; for Category A3 offences the starting point is 5 years' custody with a range of 4 to 8 years.

203. In her sentencing remarks the judge told Canover Watson [86]-[87]:

"*I consider that a sentence at the lower end of the range would be appropriate having regard to the fact that the predicate offence of secret commission attracts a maximum sentence of 5 years only and I have sentenced you to 3½ years. Imposing a sentence for the money laundering offences which is higher than the sentence imposed for the underlying offence would be disproportionate, in my view. The mitigating features I have referred to above must also be taken into account.*

87. On the question of whether the sentences should be run concurrently or consecutively, applying the learning in Bouchard, I consider that the added criminality of the money laundering offences is sufficiently distinct from the underlying offence that the public interest would merit separate treatment. I am of the view that a sentence of 3 years would be appropriate for the money laundering offences but given that the sentences fall to be imposed consecutively to the sentence on Count 1, I consider that a sentence of 2 years consecutive will achieve a result which is just and proportionate."

The sentences on counts 7 and 8

204. The judge accepted that some guidance could be drawn from the Definitive Guideline for false accounting applicable in England and Wales, the maximum sentence for which is the same in both jurisdictions, namely 7 years' custody. The judge said [98]-[105]:

"*98.The level of culpability is high [under the Guidelines] as the offences involved a breach of trust given you were CIFA's Treasurer. There was a degree of planning although your attempts to outwit the auditors were doomed to fail in that neither of you…would ever have been able to obtain confirmation of these loans.*

…100. You asserted at trial that CIFA did not have the capacity to service the loans and would not have suffered a loss in any event, but the fact remains that if CIFA's fortunes had changed, CIFA was on paper indebted to you for monies given to it by a third party to develop football in the Cayman Islands and to repay funds stolen by you. There was no Robin Hood here taking money from CONCACAF and soliciting funds from the US company and beneficently giving it to CIFA so it could get the Fidelity Charge removed…

…102. I conclude…that the offending falls within Category 2A, with a starting point of 4 years' custody and a range of 2½ years' to 5 years' custody.

103. I cannot accede to Mr Singh's submission that the sentence for these offences should be made to run concurrently with the sentence for the secret commissions [sic] on the basis that the offences are "intimately connected." The presentation of the false loan documents, purportedly signed by CIFA's acting president, to the auditors in order to verify the entries made in CIFA's ledger book by you and thus oblige CIFA to repay your offshore companies monies it never borrowed, is additional criminality which properly ought to be dealt with by the imposition of a separate sentence.

104. I note too, in terms of seriousness, that the fact that these offences were in breach of trust and committed by a Cayman accountant are factors that damage Cayman's reputation as a financial centre and warrant adjusting the starting point from 4 year to 4½ years' custody.

105. Standing back and considering the totality of the offending, I consider that imposing a consecutive sentence of 4½ years would offend the totality principle. In order to achieve a result which is proportionate, I impose a sentence of 4½ years but order that sentence to run concurrent with the money laundering offences but consecutive to the offence of secret commission for a total sentence of 8 years' imprisonment."

Canover Watson's Grounds of Appeal against sentence

205. Mr Trollope submitted the judge erred in several ways. She imposed consecutive sentences when they should have been concurrent. As well as wrongly being consecutive, the sentences of 4½ years on counts 7 and 8 were substantially too high. The consequence, submitted Mr Trollope, was an overall sentence which was disproportionate and much too long.

206. Although Mr Trollope drew the Court's attention to English authority, the approach to consecutive/concurrent sentences is sufficiently set out in the Cayman Islands Sentencing Guidelines of October 2015, which the judge set out in her judgment. (See paragraphs 189-90 above)

207. In submitting that the sentences on counts 7 and 8 should have been concurrent, Mr Trollope argued that in essence, they added nothing to the criminality dealt with in the previous counts. They merely related to how the transfer to Fidelity Bank was dealt with in the books of CIFA.

They involved no further movement of funds. They did not involve an attempt to conceal the original obtaining. The loan documents themselves disclosed the parties and the source of funds. These counts did not amount to an aggravating feature meriting a consecutive sentence.

208. In order to illustrate his submission that the overall sentence was excessive, Mr Trollope drew the Court's attention to *Kallakis and Williams* [2013] EWCA Crim 709, in which the English Court of Appeal considered in some detail the correct approach to sentencing in fraud cases. Mr Trollope made the point that in what was on any view a massive bank fraud involving some £750 million, the starting point of 8 years' imprisonment in respect of one of the accused, Kallakis, was not found to be unduly lenient. Mr Trollope also sought support from other cases referred to in the Court's judgment. However, it should be observed that Kallakis was involved in offending in which there was no financial loss. Neither was there the element of breach of trust.

Discussion and conclusion

209. The reputation of the Cayman Islands as a financial centre is of fundamental importance to the well-being of every person who lives in the Cayman Islands. Sentencing those whose offending deleteriously affects that reputation must reflect that. We endorse and repeat the observations of the judge when she said [67]:

> "*The authorities establish that the injury to Cayman's reputation as a financial centre which results from offences committed in breach of trust, is a factor which increases the seriousness of the offence, and it is not double counting to take it into account as an aggravating feature. It is a factor which is taken into account in determining culpability.*"

210. We also would emphasise and repeat the words of Chief Justice Smellie in the preamble to the Money Laundering Guidelines to the effect that:

> "*The Cayman Islands are an international global financial services centre. These Sentencing Guidelines therefore recognise the great importance of both deterrence [and] denunciation in imposing sentences for money laundering offences.*"

211. With those general observations in mind, we turn to the sentences imposed. In doing so, we are bound to say that we have not found it entirely easy to follow how the sentence of 8 years' imprisonment was intended to be made up. In particular, we have not found it easy to understand where the concurrent sentences of 2 years' imprisonment on counts 3, 4 and 6 fit in, having regard to the fact they were to run consecutively to the 3½ year sentence on count 1. However, for reasons which will shortly be apparent, that may not matter.

212. For the reasons expressed by the judge, there can be no justifiable criticism of the sentence of 3½ years' imprisonment on count 1 and the concurrent sentences of 2 years' imprisonment on counts 3, 4 and 6 being consecutive to the 3½ years. We have however concluded that the sentence of 4½ years' imprisonment consecutive to the 3½ years' imprisonment on counts 7 and 8 is excessive for the following reasons.

213. As we have said, Canover Watson falsified and submitted the false loan agreements to the auditors in order to mislead them regarding the money he had obtained and benefitted from by his submission of the false count 1 invoices. The sentence on that count, which constituted the predicate offence, was constrained by the statutory maximum of 5 years' imprisonment, a maximum sentence half that of the broadly equivalent offence in England and Wales. The consequence of applying the Guidelines of England and Wales for false accounting has resulted in the sentence for seeking to mislead the auditors about the predicate offence being substantially greater than for the offence itself, which does not seem to us appropriate. The balance between the two should be proportionate having regard to the criminality involved. Given that the maximum sentence on count 1 is limited to 5 years' imprisonment, we feel driven to reduce the sentences on counts 7 and 8. In our judgment, it is appropriate to impose a sentence of 18 months' imprisonment concurrently on counts 7 and 8, however, to reflect the additional criminality involved, that 18 months should be consecutive to the 3½ years' imprisonment on count 1, and consecutive to the 2 year sentences on counts 3, 4 and 6 (which themselves are consecutive to the sentence on count 1). That results in an overall sentence of 7 years' imprisonment.

214. We therefore grant Canover Watson leave to appeal against sentence and allow his appeal to the limited extent that his sentence is reduced from 8 years' imprisonment to 7 years' imprisonment.