Neutral Citation Number: [2018] EWHC 1866 (Admin)

Case No: CO/3856/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN MANCHESTER
DIVISIONAL COURT

Manchester Civil Justice Centre
1 Bridge Street,
Manchester M60 9DJ

Date: 24/07/18

Before :

LORD JUSTICE HICKINBOTTOM
and
MRS JUSTICE MOULDER

- -

Between :

THE QUEEN on the application of
(1) ANTHONY RUSSELL FREEMAN
(2) LINDSAY HAMILTON
(3) MASON & VAUGHAN HOLDINGS LINMITED
(4) MASON & VAUGHAN GROUP LIMITED
(5) PINNACLE MC GLOBAL NETWORK LIMITED

Claimants

- and -

(1) THE CROWN COURT AT MANCHESTER
(2) THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Defendants

- -
- -

James K Pickup QC and **Simon Gurney** (instructed by **RH Law Solicitors Limited**) for the **Claimants**
The First Defendant neither appearing nor being represented
James Fletcher (instructed by **Her Majesty's Revenue and Customs**) for the **Second Defendant**

Hearing date: 5 July 2018

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Approved Judgment

Lord Justice Hickinbottom:

Introduction

1. On 6 July 2017, His Honour Judge Walsh, sitting in the Crown Court at Manchester, issued four warrants to enter and search premises under section 9 of and paragraph 12 of Schedule 1 to the Police and Criminal Justice Act 1984 ("PACE") on the application of Sarah Owen, an officer of the Second Defendant ("HMRC"). The relevant premises were at (i) The Old House, 12 Park Road, Cheadle Hulme, Cheshire ("The Old House"), and (ii) Ground Floor, Ocean House, Towers Business Park, Wilmslow Road, Manchester ("Ocean House"), as well as two identified vehicles. The Old House was the home address of the First Claimant ("Mr Freeman") and the Second Claimant ("Ms Hamilton"). The remaining, corporate Claimants ran their businesses from Ocean House. The warrants in respect of The Old House and Ocean House were executed simultaneously on 11 July 2017. The warrants in respect of the vehicles were never executed, those vehicles being found on the drive at The Old House.

2. In this claim, the Claimants challenge the lawfulness of the warrants. In short, they say that (i) the warrants were vitiated by a lack of full and frank disclosure by HMRC on the application, (ii) the application failed properly to identify the material sought, so that the warrants issued were uncertain, lacked adequate specificity and were too broad in their scope, and (iii) on the basis of the information before him, the judge could not have been satisfied that the statutory criteria for the grant of a warrant were met. In relation to (iii), they particularly rely upon the judge's failure to apply any or any adequate scrutiny to the application, and his failure to give any or any adequate reasons for granting the warrants as he did. The Claimants also complain that the seizure on the execution of the warrants was excessive and beyond the scope of the warrants as granted.

3. Before us, James Pickup QC and Simon Gurney of Counsel appeared for the Claimants, and James Fletcher of Counsel for HMRC. At the outset, I thank them for their helpful submissions.

The Relevant Statutory Provisions

4. Section 9(1) of PACE establishes a "special procedure" by which, for the purposes of criminal investigation, access to confidential business documents as defined in section 14 of PACE can be obtained on the application of a constable to a circuit judge under Schedule 1 to the Act for a production order or access order (under paragraph 4), or a search warrant (under paragraph 12). In this case, the application was for a search warrant under paragraph 12 of Schedule 1.

5. Two points are worthy of note.

    i) By virtue of section 114(2)(a) of PACE and the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2015 (SI 2015 No 1783), an officer of Revenue and Customs ("an HMRC officer") is authorised to apply for and execute a warrant as if he or she were a constable.

ii) "Special procedure material" is defined in section 14(2) of PACE by reference to several categories, the category relevant to this claim being "material… in the possession of a person who acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and… holds it subject... to an express or implied undertaking to hold it in confidence", but excluding items subject to legal professional privilege and "excluded material". "Excluded material" is defined in section 11, again by reference to categories, the category relevant to this claim being "personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence". "Personal records" are defined in section 12 to include records concerning an individual who can be identified from them and relating to his health, or to counselling or other assistance given to that individual.

6. Paragraph 12 of Schedule 1 to PACE provides that a judge may issue a warrant authorising a constable to enter and search premises if, on the application of a constable, the judge is satisfied that (i) one of two sets of "access conditions" set out in paragraph 2 of the schedule is met and (ii) at least one of four further conditions in paragraph 14 is fulfilled.

7. So far as is material for present purposes, paragraph 2 provides as follows:

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

> ii) to the circumstances under which the person in possession of the material holds it,
>
> that the material should be produced or that access to it should be given."

8. Paragraph 14 provides four further conditions, at least one of which must be fulfilled. The conditions are:

> "(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
>
> (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;
>
> (c) that the material contains information which—
>
> (i) is subject to a restriction or obligation such as is mentioned in section 11(2)(b) above; and
>
> (ii) is likely to be disclosed in breach of it if a warrant is not issued;
>
> (d) that service of notice of an application for an order under paragraph 4 above may seriously prejudice the investigation."

9. The procedure for applying for a search warrant under these provisions is subject to general safeguards set out in sections 15 and 16 of PACE. Under section 15(2)(c), where a constable applies for a warrant, it is his duty to identify, so far as is practicable, "the articles or persons to be sought"; and, by section 15(6)(b), a warrant "shall identify, so far as is practicable, the articles or persons to be sought". The safeguards also require any application to be ex parte and supported by an information (section 15(3)); and the constable making that application "shall answer on oath any question that the… judge hearing the application asks him" (section 15(4)). Any breach of section 15 or 16 renders the search and seizures unlawful (R v Chief Constable of Warwickshire Police ex parte Fitzpatrick [1999] 1 WLR 199).

10. The statutory provisions are supported by CrimPR rule 47.30, which was first introduced following observations by Sir John Thomas PQBD sitting with Silber J in R (Rawlinson & Hunter Trustees) v Central Criminal Court; R (Tchenguiz) v Director of the Serious Fraud Office [2012] EWHC 2254 (Admin); [2013] 1 WLR 1634 and the new powers given to the Criminal Rules Committee by section 82 of the Deregulation Act 2015 (see R (Newcastle United Football Club Limited) v Commissioners of HM Customs and Revenue [2017] EWHC 2402 (Admin) at [15] and following per Beatson LJ and Whipple J)). By rule 47.30(2)(c), the application for a warrant must "so far as practicable, identify the material sought". Rule 47.30(3) provides:

> "Where the applicant relies on paragraph 2 of Schedule 1 to [PACE] ('the first set of access conditions': general power to gain access to special procedure material), the application must—
>
> (a) specify the indictable offence under investigation;
>
> (b) explain the grounds for believing that the offence has been committed;
>
> (c) explain the grounds for believing that the material sought—
>
> (i) is likely to be of substantial value to the investigation (whether by itself, or together with other material),
>
> (ii) is likely to be admissible evidence at trial for the offence under investigation, and
>
> (iii) does not consist of or include items subject to legal privilege or excluded material;
>
> (d) explain what other methods of obtaining the material—
>
> (i) have been tried without success, or
>
> (ii) have not been tried because they appeared bound to fail; and
>
> (e) explain why it is in the public interest to obtain the material, having regard to—
>
> (i) the benefit likely to accrue to the investigation if the material is obtained, and
>
> (ii) the circumstances under which the material is held."

11. Rule 47.30(6) provides, so far as relevant to this claim:

> "In relation to premises which the applicant wants to be searched and can specify, the application must…
>
> …
>
> (c) in respect of each set of premises, explain the grounds for believing that—
>
> …

> (iv) service of notice of an application for a production order under paragraph 4 of Schedule 1 to [PACE] may seriously prejudice the investigation."

12. Paragraph 47A.1 of the Criminal Practice Direction requires CrimPR Part 47 to be followed, and the accompanying forms used. Form ENF3312 is the mandated form for applications for warrants under paragraph 12 of Schedule 1 to PACE. It assists both the applicant and the court by requiring the applicant to address each of the matters set out in rule 47.30(3) which themselves mirror the matters of which the statutory scheme requires the judge to be satisfied before he grants a requested warrant under paragraph 12. It sets out, in separate boxes, each of the various PACE criteria, with guidance for the completion of the form in respect of that criterion in italics, leaving space for the relevant information to be inserted by the applicant; and, at the end, it has an accompanying five-pages of "Notes for Guidance for Applicants".

13. There is a strong public interest in protecting the personal and property rights of citizens against infringement and invasion – as well as a public interest in the effective investigation and prosecution of crime – as Aikens LJ and Silber J said in R (S) v Chief Constable for the British Transport Police [2013] EWHC 2189 (Admin) ("S") at [44]):

> "All this shows that there has to be a very rigorous procedure both in preparing an information for the application for a search warrant and also when a judge is considering it";

with the primary duty to give effect to the scheme approved by Parliament resting on the judge who hears the application (R v Lewes Crown Court (1991) 93 Cr App R 60 ("the Lewes Crown Court case") at page 66 per Bingham LJ).

14. In addition to the authority to enter and search under a warrant, under the heading "Additional powers of seizure from premises", section 50 of the Criminal Justice and Police Act 2011 ("the 2011 Act") provides:

> "(1) Where—
>
> (a) a person who is lawfully on any premises finds anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search on those premises,
>
> (b) a power of seizure to which this section applies or the power conferred by subsection (2) would entitle him, if he found it, to seize whatever it is that he has grounds for believing that thing to be or to contain, and
>
> (c) in all the circumstances, it is not reasonably practicable for it to be determined, on those premises—
>
> (i) whether what he has found is something that he is entitled to seize, or

(ii) the extent to which what he has found contains something that he is entitled to seize,

that person's powers of seizure shall include power under this section to seize so much of what he has found as it is necessary to remove from the premises to enable that to be determined.

(2) Where—

(a) a person who is lawfully on any premises finds anything on those premises ("the seizable property") which he would be entitled to seize but for its being comprised in something else that he has (apart from this subsection) no power to seize,

(b) the power under which that person would have power to seize the seizable property is a power to which this section applies, and

(c) in all the circumstances it is not reasonably practicable for the seizable property to be separated, on those premises, from that in which it is comprised,

that person's powers of seizure shall include power under this section to seize both the seizable property and that from which it is not reasonably practicable to separate it.

(3) The factors to be taken into account in considering, for the purposes of this section, whether or not it is reasonably practicable on particular premises for something to be determined, or for something to be separated from something else, shall be confined to the following—

(a) how long it would take to carry out the determination or separation on those premises;

(b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;

(c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;

(d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and

(e) in the case of separation, whether the separation—

(i) would be likely, or

(ii) if carried out by the only means that are reasonably practicable on those premises, would be likely,

to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used."

15. Section 53 of the 2001 Act provides for the examination of items so seized, in the presence of the person from whom it was seized if appropriate, to determine whether the item is excluded or special procedure material, or legally privileged. Items which fall into any of those categories have to be returned (section 55-56).

The Factual Background

16. The factual background to the warrants is uncomplicated. In short, the warrants were sought after HMRC had obtained evidence that Mr Freeman and Ms Hamilton had not declared or paid income tax on all their taxable income. Under the warrants, HMRC wished to obtain evidence as to the extent of the undeclared income received from various property companies, and also as to the relationship between Mr Freeman and Ms Hamilton on the one hand and the companies on the other, including the extent of their involvement in and control exercised over the companies.

17. Mr Freeman and Ms Hamilton are married. They are now estranged; but, at the relevant time, they were living together at The Old House.

18. Both had been employees of Mason & Vaughan Holdings Limited ("M&V Holdings"), a property company. The corporate organisation of which M&V Holdings forms part is explained in the statement of Carl William Mills dated 19 April 2018: at the material time (2017), Mr Mills was a director of M&V Holdings. M&V Holdings owns one, non-trading company. Its immediate 100% holding company is Hawksmoor Holdings Limited ("Hawksmoor"), which also owns Cromwell Equity Limited ("Cromwell Equity") which, trading as "We Buy Any House", is an on-line estate agency which purchases houses at below market price from "stressed vendors" and then sells them on or lets them through Bloom Group Limited or one of its associated companies ("the Bloom Group") (see below). In 2017, Allan Freeman (Mr Freeman's son) and a Michael Patterson were directors of the Hawksmoor group companies. Mr Patterson appears to have been particularly active in Cromwell Equity.

19. M&V Holdings traded from the ground floor of Ocean House. Mr Mills explains that, in 2017, a number of other companies also traded from that floor in a generally open-plan, hot desk working environment, with shared facilities including a shared computer server. The other companies were as follows.

    i) A group with MVG Holdings Limited ("MVG Holdings") as the ultimate holding company. In addition to several Special Purpose Vehicle companies ("SPVs") involved in particular property development projects (all but one of which included the name "Pinnacle" in its title, and most of which were in administration by 2017), MVG Holdings 100% owned Mason & Vaughan

Group Limited ("M&V Group") which in turn owned Pinnacle MC Global Network Limited formerly Pinnacle MC Global Limited ("Pinnacle MCG") as well as two Pinnacle SPVs. There appears to be no corporate relationship between MVG Holdings and M&V Group on the one hand, and M&V Holdings on the other. HMRC obtained evidence that, in the information provided for the opening of a bank account, Ms Hamilton was described as "Director/Principal Partner" in Pinnacle MCG. The judge below did not have – nor do we now have – any better information about the relationship between these companies.

ii) The Bloom Group comprised Bloom Group Limited and associated companies, which provided property letting/rental, building management and associated services. Mr Patterson was the director of these companies, and operated them. In 2017, the group employed ten people (including Mr Patterson) in the ground floor of Ocean House.

iii) JXT Consultancy Limited is a shared service marketing, human resources and finance consultancy based at the ground floor of Ocean House where it is run by its Managing Director (Jennifer Tappin). In July 2017, it employed 18 people. In her statement dated 19 April 2018, Ms Tappin says that the company provided services to the other companies that occupied the ground floor of Ocean House – and had employed Mr Freeman and Ms Hamilton as consultants – but it is corporately independent.

20. The application for the warrants in this case was made in connection with Operation Lemony 16, an HMRC operation into suspected evasion of income tax and associated offences. HMRC had obtained PAYE records for Mr Freeman as an employee of M&V Holdings, for the period 2010-17, which showed him earning less than £10,000 per year until 2016-17 when he was shown as earning just under £30,000. He submitted tax returns until 2010-11, but not thereafter. They also had PAYE records for Ms Hamilton, again as an employee of M&V Holdings, which showed her earning amounts from £624 to £11,666 from 2011-15, and then just under £30,000 per year for each of the years 2015-16 and 2016-17. In her tax returns for the years 2009-2015, she declared that the only other source of income was from rents and other income from property, which ranged from a loss of £168 in 2009-10 to a profit of £178,455 in 2014-15. She filed no self-assessment tax returns after that year.

21. On 5 October 2016, HMRC obtained a number of production orders in respect of Mr Freeman's bank accounts, which revealed that, during the period 6 April 2009 to 5 October 2016, he had received a total of £4,716,292 from six bank accounts of Mason & Vaughan group companies. On 28 February 2017, HMRC obtained eight production orders in respect of Ms Hamilton, which revealed that she had received a total of £2,021,988 from bank accounts of companies in that group or the Hawksmoor group of companies.

22. On the basis of that evidence, HMRC at least suspected that Mr Freeman and Ms Hamilton had not paid income tax on all their taxable income. The total loss to HMRC was estimated at nearly £3m.

23. The investigation discovered evidence that, on 16 May 2014, Mr Freeman and Ms Hamilton had jointly purchased The Old House for £1.14m without recourse to a

mortgage. It was suspected that that purchase was financed by funds of £1.7m paid to Mr Freeman by M&V Holdings and Pinnacle MCG between 2 and 13 May 2014. The investigation also revealed that nearly £0.5m had been spent on the refurbishment of the house, and Mr Freeman and Ms Hamilton had purchased two new cars on finance worth approximately £125,000 and £103,000 respectively.

24. On the basis of that evidence, HMRC at least suspected that Mr Freeman and Ms Hamilton had used the money derived from not paying due income tax on acquiring these assets, and thus maintaining a lifestyle which was beyond their declared means.

25. Until the execution of the warrants, the operation was covert.

The Application

26. The application for the warrants in this case was made by Officer Owen, who was at the material time an authorised HMRC officer.

27. In her statement dated 13 March 2018, made for the purposes of this claim, she briefly explained the background and focus of the application:

> "3. During the course of the investigation into Anthony Freeman and Lindsay Hamilton and prior to applying for search warrants I established that they had since 2009 received substantial monies from Mason and Vaughan Holdings and other linked companies. The investigation was focused on the personal income tax affairs of Freeman and Hamilton not the companies that they were associated. It would also be necessary however to consider their relationship with and the workings of the companies with which they were associated.
>
> 4. I did not, therefore, bring the details of the companies occupying the associated business premises to the court's attention. It was HMRC's intention to only seize material directly linking Anthony Freeman and Lindsay Hamilton financially or in a controlling capacity to Mason and Vaughan Holdings and/or associated companies.
>
> 5. I carried out open source internet searches with a view to obtaining floorplans detailing the layout of the premises in respect of which warrants were to be served. As a result of these searches I was able to find a floor plan for the residential premises [i.e. The Old House], but was unable to find one in respect of Ocean House."

28. So far as material to this claim, Officer Owen completed the application form, Form ENF3312, as follows.

 i) Box 1: In respect of the offences being investigated, she identified (a) fraudulent evasion of income tax contrary to section 106A of the Taxes Management Act 1970, (b) money laundering contrary to section 327-329 of

the Proceeds of Crime Act 2002 and (c) cheating the public revenue contrary to common law. In response to the following question:

> "Why do you believe that the offence(s) under investigation has/have been committed? *Explain clearly and succinctly the grounds for your belief. The court must be satisfied that your grounds for belief are reasonable.*"

Officer Owen set out particulars of the operation and the financial evidence to which I have referred above, although in somewhat more detail.

ii) Box 2(a): concerned "The material". She specified the material sought (in respect of which, the form indicated, "Identify the material in as much detail as practicable"), as follows:

> "1. Bank statements, cheque books, invoices, receipts and correspondence showing payments and benefits in kind, received by, or earned by, Anthony Freeman or Lindsay Hamilton from 6 April 2009 to the date of the search.
>
> 2. Correspondence between Anthony Freeman or Lindsay Hamilton and Mason & Vaughan and Pinnacle [MCG] from 6 April 2009 to the date of the search.
>
> 3. Bank and building society statements, cheque books, invoices, receipts in the name of Mason & Vaughan and Pinnacle [MCG] from 6 April 2009 to the date of the search.
>
> 4. Conveyancing documents evidencing the purchase or sale of real estate by Anthony Freeman or Lindsay Hamilton, Mason & Vaughan and Pinnacle [MGC] from 6 April 2009 to the date of the search.
>
> 5. Accounts for the self-employment activities undertaken by Anthony Freeman and/or Lindsay Hamilton from 6 April 2009 to the date of the search.
>
> 6. Articles of Association, Minutes of Board Meetings, Share Certificates, Accounts, Contracts and Share Certificates of Mason & Vaughan Holdings Ltd and Pinnacle [MCG] from 6 April 2009 to the date of the search.
>
> 7. Any computer, laptop, tablet, mobile phone, removeable storage media containing items listed in 1-6 above."

iii) Box 2(b): The information went on to say that the material was likely to be of substantial value to the investigation into the under-reporting of taxable income by Mr Freeman and Ms Hamilton; and (it continued):

> "Material sought is likely to evidence the suspicion that FREEMAN or HAMILTON have control over Mason & Vaughan Holdings Ltd and Pinnacle [MCG] and a number of other companies as yet unknown to HMRC. If control over these and other companies is proved, the[re] is likely to be sufficient evidence to support a prosecution for deliberate defrauding of HMRC on the part of the two named individuals."

From looking at the application as a whole – but particularly from that paragraph – it is clear that the identified material was sought, not only in connection with the investigation into the amount of earnings of Mr Freeman and Ms Hamilton from the companies, but also to ascertain the extent of their involvement in and control of those companies. In her statement, Officer Owen confirms that that was the intention of the application (see paragraph 52 below). Given the evidence available to HMRC at the time, that was clearly a legitimate area of investigation.

iv) Box 2(c): The form confirmed that Officer Owen had not tried to obtain the material in any other way, and explained the methods she had considered trying but had rejected as bound to fail as follows:

> "The suspected method of criminality under investigation is such that Freeman and Hamilton have actively distanced themselves from the companies under the Hawksmoor Holdings Ltd and Mason & Vaughan Groups in the eyes of HMRC. For this reason, it is suspected that if we were to approach Freeman or Hamilton, they would deny control over the companies, destroy potential evidence, and/or deny access to the premises to which the warrants are applied.
>
> Ex-parte production orders have been obtained in relation to bank accounts of Anthony Freeman and Lindsay Hamilton. These have revealed both individuals have received moneys in excess of income they have declared to HMRC. However, bank account details alone cannot reveal evidence of intent and the full extent of the alleged criminality."

v) Box 2(d): Officer Owen set out the basis of her belief that it was in the public interest and proportionate for HMRC to obtain access to the material, namely:

> "The two suspects are allegedly responsible for committing an offence with intent to defraud the Public Revenue, a serious offence carrying a custodial sentence;

> There is no other way of obtaining such material whilst protecting the evidence from destruction or concealment;
>
> Material that we intend to search for (outlined above) is likely to show:
>
> Intent to conceal monies or evade taxation;
>
> The true level of income received by Freeman and Hamilton between the period of 06/04/2009 and the date of the search;
>
> How payments and proceeds have been used and to identify whether this evidences aspects of money laundering;
>
> The extent of criminality or collusion of other persons connected with Freeman and Hamilton."

vi) Box 2(e): Officer Owen answered the following question, "No":

> "Is there any reason to think that the material may be mixed with items subject to legal privilege or items of excluded material?"

vii) Box 3(c): In respect of the paragraph 14 conditions (see paragraph 8 above), Officer Owen ticked (a), (c) and (d). The explanation was set out in a table attached to the application. In respect of the ground floor of Ocean House, the table said that the reason for believing material was on the premises was:

> "Checks confirm this is the business address of Mason & Vaughan Holdings Ltd and Pinnacle [MCG]. is believed to be in control of Anthony Freeman and Lindsay Hamilton"

As to why it was said that the further (section 14) conditions were met with regard to those premises, consistent with paragraph 3(c), that table said:

> "It is not practical to communicate with any person entitled to grant entry to the premises. It is believed if permission was sought then evidence related to the offences may be destroyed. Due to this entry to the premises will not be granted unless a warrant is produced."

viii) Nothing in the information in boxes 4-6 is relevant to this claim; although box 6 indicated that, as well as authorised HMRC officers, Officer Owen wished "independent counsel" possibly to take part in the search. The information explained:

> "Although we do not anticipate there will be any legally privileged material on the premises, if such claim is made, we can request independent Counsel on site."

29. It seems that the form was sent to the court the day before the hearing. The hearing took place before Judge Walsh on 11 July 2017. We have a transcript of that hearing, which shows that it lasted ten minutes (10.10-10.20am). Officer Owen having confirmed the contents of the application on oath, the judge said that he had read the application and was satisfied that the statutory criteria were met and that he would grant the orders sought. He then signed each page of the "financial file", apparently a reference to the warrants themselves. The signed endorsement of the application appears to be timed at "10.00".

30. The documents having been signed, Officer Owen asked for reasons, and the judge said (at page 3D-F):

> "There is an endorsement here on the form which says, in essence, and I have endorsed it, that I have considered the application today. The application satisfied me about his or her entitlement to make this application. The Applicant confirmed on oath or affirmation the declaration in Box 8, and on that basis I am satisfied that the requirements of paragraph 12 of schedule 1 are satisfied and accordingly grant the warrant, so the endorsement deals with that."

The Execution of the Warrant

31. The warrants were executed at The Old House and Ocean House on 11 July 2017. There are some factual disputes as to exactly what happened, but it is common ground that this is not an appropriate forum to determine such issues.

32. The following aspects of the execution of the warrants appear to be relevant to the claim before us, and appear to be relatively uncontentious as facts.

    i) HMRC seized various computers, tablets, mobile phones etc from The Old House. Mr Freeman says that some of these belong to his children.

    ii) HMRC seized data from the shared server at Ocean House. Mr Mills (in paragraph 13 of his statement) says that he expressed his concerns to HMRC Officer King that multiple companies worked off a shared server, and that confidential and legally privileged information would be on that server. He says that "he was told that the warrant allowed for this". He knew that "a good deal of material on the shared server would be confidential information about staff or be commercially sensitive advice received from external tax advisors, accountants, solicitors and Counsel". The officer encouraged him to contact his external IT consultants so that HMRC could liaise with them. Mr Patterson (in his statement of 20 April 2018) confirmed that the data seized included commercially sensitive material, staff personnel records and legal advice etc for both Hawksmoor and the Bloom Group.

iii) Officer Owen has confirmed, however, that all computer data were seized under section 50 of the 2001 Act and not under the warrant (paragraph 7 of her statement dated 13 March 2018).

iv) Officer Owen briefed the team that performed the searches that: "Any material thought/claimed to be LLP [legal professional privilege] should be uplifted under section 50 of [the 2001 Act] if the Officer believes it may be relevant to the investigation".

v) HMRC Officer McMahon identified an email chain as potentially relevant, but it contained correspondence with a firm of solicitors. She did not examine it, but, after consultation with Officer Owen, seized the documentation under section 50.

The Claim

33. This claim for judicial review was issued on 24 August 2017, seeking (i) an order quashing the warrants; (ii) a declaration that the entry, search and seizure made pursuant to the warrants were unlawful; and (iii) damages. The Claimants also sought interim relief in the form of an order prohibiting HMRC from examining, copying or in any other way using the property seized. That order was granted on the papers and without notice on 24 August 2017. HMRC applied to discharge that order; but, on 2 February 2018, Yip J refused that application and granted the Claimants permission to proceed with the judicial review. Thus, the substantive application is now before us.

The Grounds of Challenge

34. Mr Pickup's primary submission is that the warrants were unlawful, and should be quashed; but he submitted that the manner in which the warrants were executed was also unlawful.

35. He relied upon six grounds. For convenience, I have re-ordered and redesignated those grounds, as follows.

Ground A (original Ground 4): HMRC failed to give full and frank disclosure on the ex parte application for the warrants.

Ground B (original Ground 1): Contrary to her duty under section 15(2)(c) of PACE, in the application for the warrant, Officer Owen failed properly to identify the material sought. As a consequence, contrary to section 15(6)(b), the warrant too failed properly to identify that material.

Ground C (original Grounds 2, 5 and 6): The judge could not reasonably have been satisfied that the statutory requirements in paragraphs 2 and 12 of Schedule 1 to PACE had been satisfied. In making this submission, amongst other things Mr Pickup relied upon (i) the judge's failure to apply any or any proper rigorous scrutiny to the application, and (ii) the judge's failure to provide any or any proper reasons for making the order.

Ground D (originally Ground 3): In conducting the searches, both at The Old House and at Ocean House, HMRC unlawfully seized material outside the scope of the warrants.

36. I will deal with those grounds in turn.

Ground A: Non-disclosure

37. An application for a warrant to enter and search premises under section 9 of and paragraph 12 of PACE is not only made ex parte, it involves a potential infringement of important personal and property rights. It is therefore unsurprising that the courts have emphasised the duty on the officer making the application to make full and frank disclosure, described as "a heavy burden but a vital safeguard" (S at [45(4)] per Aikens LJ and Silber J). For example, in the Lewes Crown Court case, Bingham LJ said (at page 68):

> "… [T]here [is] a strict duty on the party applying to make full disclosure of all matters which might affect the court's decision to make or refuse the order and, in particular, to make disclosure of all matters known to the party applying which might militate against the making of an order."

38. This means, in the words of Hughes LJ in In re Stanford International Bank Limited [2010] EWCA Civ 137; [2011] Ch 33 at [191]:

> "… In effect a prosecution seeking an ex parte order must put on his defence hat and ask himself what, if he was representing the defendant or a third party with the relevant interest, he would be saying to the judge, and, having answered that question, that is precisely what he must tell…".

39. Mr Pickup submits that it seems from paragraphs 3-5 of Officer Owen's statement dated 13 March 2018 (quoted at paragraph 27 above) that she was aware that companies unassociated with the Claimants also occupied the ground floor of Ocean House; but she chose not to include this information in the application. Alternatively, if she did not in fact know of the office sharing arrangements, she ought to have known. For example, she could and should have performed searches, or asked those within HMRC who dealt with VAT as these other companies were all VAT registered and had had VAT inspections at Ocean House.

40. However, it is tolerably clear from her statement that Officer Owen did *not* know about the working arrangements at the ground floor of Ocean House. In her statement, she says that she carried out open source internet searches with a view to obtaining floor plans detailing the layout of the premises, but, although she found floor plans for The Old House she "was unable to find one in respect of Ocean House" (paragraph 5 of her statement). I accept that, with regard to whether she knew whether there were other occupants of the ground floor of Ocean House, paragraphs 3 and 4 of her statement are less clear; but it seems to me that, from those paragraphs, she probably did not. However, even if she had been aware that other businesses were located on the ground floor, it seems to me that that would have had little or no bearing on the application without an indication that they shared facilities.

41. Nor do I consider that Officer Owen acted unreasonably in failing to take further steps to find out about (and then inform the court of) the other businesses that operated from the ground floor of Ocean House, or the layout of those premises. As I have indicated, even if she had discovered that there were other businesses located on that floor, that was not to the point. In respect of the layout of the floor, Officer Owen had conducted an internet search to find a floor plan, without success. That seems to me to have been a reasonable step to have taken. I do not consider that it would be reasonable to have expected her to have made enquiries of other parts of HMRC to see whether any tax personnel had visited the address and, if so, whether they recalled the layout of the premises or the working arrangements of other companies that might be located there.

42. I am sceptical as to whether, even if the enquiries which Mr Pickup submits ought to have been made had been made, that might reasonably (or "may well") have led the judge to refuse to issue the warrant, which is the appropriate test for this court to apply (see R (Hart) v Commissioners of HM Revenue and Customs [2017] EWHC 3091 at [19] per Holroyde LJ). It is not uncommon for office premises to be occupied by multiple businesses, and the real complaint in this case arises not out of the fact of multiple occupation but from facilities being shared. Given the fact that the sharing of facilities was not known, I am entirely unpersuaded that any such further enquiries were reasonably required by HMRC and in the circumstances, the mere fact that the premises were shared would not in my view have led the judge to refuse to issue the warrant. Nor am I persuaded that, as Mr Pickup submitted, in the circumstances of the case the judge failed in any obligation upon him to ascertain the nature of the premises. There was nothing in the application reasonably to alert him to any matter that could have triggered any such obligation.

43. Therefore, I do not consider that there was any breach of the duty to make full and frank disclosure. This ground fails.

Ground B: The Material

44. Mr Pickup submitted that the warrant as issued was incorrect and misleading, and in any event broad and imprecise, rendering it incapable of performance, contrary to section 15(2)(c) and 15(6)(b) of PACE. Under the former, it is the applicant's duty – and, under the latter, the warrant is required – to "identify, so far as practicable, the articles… to be sought" (see paragraph 9 above)

45. The proper approach to these requirements is well-established. In terms of specificity of identification of the material sought, what is "practicable" will depend upon the circumstances of the case. It is recognised that, where there is an ongoing investigation into (for example) a complex fraud, it may be difficult to say what material (essentially, documentation) of value to the inquiry may be recovered from those who are reasonably believed to be involved:

> "… but nevertheless the warrant needs to be drafted with sufficient precision to enable both those who execute it and those whose property is affected by it to know whether an individual document or class of documents falls within it" (R (Energy Financing Team Limited) v Bow Street Magistrates'

Court [2005] EWHC 1626 (Admin) at [24(5)] per Kennedy LJ; and see [37] per Crane LJ to the same effect).

46. The material sought in the application, and included in the warrant, in this case is set out above (see paragraph 28(ii)). Mr Pickup focused on two matters, one specific and one more general.

47. First, classes of document 2, 3 and 4 refer to "Mason & Vaughan". For example, the first is:

> "2. Correspondence between Anthony Freeman or Lindsay Hamilton and Mason & Vaughan and Pinnacle [MCG] from 6 April 2009 to the date of the search."

In addition, Officer Owen's briefing note to other officers involved in the execution of the warrant at Ocean House referred to "Mason and Vaughan".

48. There is no corporate or other legal entity "Mason & Vaughan"; and, as I have described, there are a number of companies with "Mason & Vaughan" in their name, or associated with companies with "Mason & Vaughan" in their name. In those circumstances, Mr Pickup submits, these classes of document are uncertain, such that neither those who were required to execute it nor those whose property was affected by the warrant could know whether an individual document falls within it.

49. Mr Fletcher accepted that the use of the term was not optimal; and even that it might result in difficulties in executing the warrant. Indeed, in his oral submissions, he went so far as to describe the use of the term as "a major problem". Nevertheless, he submitted that it did not render the warrants unlawful for want of specificity.

50. In respect of this issue, paragraph 1.11 of HMRC's letter to the Claimants' solicitors dated 17 August 2017, sent in response to the pre-action letter, said this:

> "You also say that this reference to "Mason & Vaughan" in the search warrants was imprecise, incorrect and misleading. It is true that there are two companies with that name (Mason & Vaughan Holdings Limited and Mason & Vaughan Group Limited). However, the reference is quite clear, both were the subject of the investigation and there is no suggestion that those words led to any confusion among the HMRC officers or resulted in the seizure of any material that was not properly the subject of the search warrant."

However, I consider that that response is fraught with difficulties.

51. I have outlined the corporate structures, as the evidence suggests they are (paragraph 19 above). If "Mason & Vaughan" were restricted to M&V Holdings and M&V Group, it would exclude M&V Group Holdings and its subsidiary SPVs, and M&V Group's holding company (Hawksmoor) and subsidiaries (including Pinnacle MCG).

52. However, Officer Owen's evidence is that the investigation was not limited to just M&V Holdings and M&V Group: and that it was not intended to restrict the scope of

documents sought to those two companies. She refers to Mr Freeman and Ms Hamilton having received substantial monies from "Mason and Vaughan Holdings *and other linked companies*" (paragraph 3 of her statement); and that "it was HMRC's intention to only seize material directly linking Anthony Freeman and Lindsay Hamilton financially or in a controlling capacity to Mason and Vaughan Holdings *and/or associated companies*" (paragraph 4) (emphases added). Specifically in respect of the classes of document sought, she said that (a) the material under item 2 "would assist in establishing the level of involvement and control exercised by the suspects *over the above companies*", and (b) the material under item 3 "would assist in identifying the true level of income of the suspects and further evidence of payments from companies *believed to be under their control*" (paragraphs 12 and 13) (emphases again added). Furthermore, the application indicates that, in the relevant period, Ms Hamilton received over £2m from "Mason & Vaughan Group and Hawksmoor Holdings Ltd Group company accounts"; and that Mr Freeman and Ms Hamilton had "distanced themselves from the companies under the Hawksmoor Holdings Ltd and Mason & Vaughan Groups".

53. Perhaps recognising these difficulties, as I understood his submissions, Mr Fletcher accepted that "Mason & Vaughan" was a reference wider than just M&V Holdings and M&V Group. However, valiant as his submissions were, he was unable to give any certain scope to the term as used in the warrant, during the course of his submissions suggesting that it might be (i) M&V Holdings and M&V Group together with "companies to which they are related"; or (ii) any company with "Mason & Vaughan" in its name; or (iii) M&V companies "as HMRC understood them to be".

54. As is common ground, "Mason & Vaughan" is not a legal entity. If, nevertheless, in context its meaning were plain, that might not be fatal to the warrants. However, clearly, its meaning is not plain. As a result, on the face of the warrants, it is not clear whether documents which otherwise fall within the category of document but relate to (say) Hawksmoor are within the scope of the warrant. The evidence is that documents belonging to Hawksmoor (as well as electronic files held on the server) were searched for and seized (see paragraph 15(n) of Mr Mills' statement). Mr Mills indicates that documents were seized from over twenty companies other than M& V Holdings and M&V Group (see paragraph 15(a)-(y)).

55. In the circumstances, it is my firm view that the warrants are unlawful because of want of specificity in the materials they allowed to be searched for and seized.

56. I am, however, less impressed by Mr Pickup's more general complaint. He submitted that, given the focused nature of the investigation, the description of each of the classes of document sought was too vague, wide and imprecise.

57. In considering the scope of the material sought, it is important to bear in mind that the investigation was into, not only the amount of taxable earnings of Mr Freeman and Ms Hamilton from the companies, but also the extent of their involvement in and control of those companies (see paragraph 28(iii) above).

58. Dealing with the categories in turn (and leaving aside the issue of lack of specificity in the term "Mason & Vaughan", dealt with above):

1) Bank statements, cheque books, invoices, receipts and correspondence showing payments and benefits in kind, received by, or earned by. Anthony Freeman or Lindsay Hamilton from 6 April 2009 to the date of the search.

   As I understood him, Mr Pickup submitted that the material ought to have been restricted to the income set out in the warrant, which was limited in amount and from one source (i.e. M&V Holdings). However, although the evidence which HMRC had obtained to that date was in respect of those sums, the investigation was wider and legitimately so. HMRC wished to obtain material that went to establish the true amount of income etc (including "benefits in kind") earned by Mr Freeman and Ms Hamilton. The description of this class of documents was not too wide for that purpose: it was limited, not only by date ("the period after 6 April 2009"), but by the phrase "showing payments and benefits in kind", which is a term in common use. I consider there to be no lack of clarity in the term "benefits in kind". In my view, clearly, that material would be both relevant and likely to be of substantial value to the investigation of the identified offences.

2) Correspondence between Anthony Freeman or Lindsay Hamilton and Mason & Vaughan and Pinnacle [MCG] from 6 April 2009 to the date of the search.

   Mr Pickup's main objection to this description lay in the use of the term "Mason & Vaughan". He also criticised the use of the term "correspondence", on the basis that the investigation was restricted to the tax affairs of the Mr Freeman and Ms Hamilton. However, in my view, the description is not arguably too wide, given the purpose of investigating the extent of their involvement in and control of the companies.

3) Bank and building society statements, cheque books, invoices, receipts in the name of Mason & Vaughan and Pinnacle [MCG] from 6 April 2009 to the date of the search.

   Again, the objection focused on the use of "Mason & Vaughan"; but Mr Pickup also complained that this description was too wide by including material of a general financial nature beyond payments to Mr Freeman and Ms Hamilton. I consider that that submission has some force; but have concluded that, given the purpose included the extent of their involvement in and control of the companies, these documents as described were both relevant and likely to be of substantial value to the investigation.

4) Conveyancing documents evidencing the purchase or sale of real estate by Anthony Freeman or Lindsay Hamilton, Mason & Vaughan and Pinnacle [MGC] from 6 April 2009 to the date of the search.

   Mr Pickup again submitted that this description is both imprecise, and too wide as the detail in the application only refers to the acquisition and refurbishment of The Old House. I disagree. The evidence of the financing of The Old House was clearly evidence of the use of criminal monies in the purchase of real property that warranted a wider investigation into money laundering by the purchase of other property. The term "conveyancing documents" is not arguably lacking in adequate precision.

5) Accounts for the self-employment activities undertaken by Anthony Freeman and/or Lindsay Hamilton from 6 April 2009 to the date of the search.

I do not understand the submission that "it is not immediately apparent why and how such material could have been of value in the prosecution of any indictable offence, suspected or otherwise" (paragraph 5.1.8(5) of Mr Pickup's skeleton argument): such accounts are clearly relevant and likely to be of substantial value to the investigation of the identified offences as establishing true levels of income and verifying and identifying self-employed income, declared and undeclared. Although some might possibly have been obtainable from any accountants employed by Mr Freeman and/or Ms Hamilton, the scope of the description clearly goes beyond the accounts as lodged with HMRC as part of any tax return, and I note that Mr Freeman and Ms Hamilton no longer filed any self-assessment returns after 2010/2011 and 2014/2015 respectively.

6) Articles of Association, Minutes of Board Meetings, Share Certificates, Accounts, Contracts and Share Certificates of Mason & Vaughan Holdings Ltd and Pinnacle [MCG] from 6 April 2009 to the date of the search.

As the investigation covered the extent of the involvement of Mr Freeman and Ms Hamilton in and control of the companies, these documents were clearly properly the subject of the warrants. Although Mr Pickup submitted that all of these documents would be publicly available, the description goes beyond the documents which have in fact been registered or sent to Companies House.

7) Any computer, laptop, tablet, mobile phone, removeable storage media containing items listed in 1-6 above.

A warrant can properly specify computers and other electronic media without particularising documents on those media (R (Cabot Global Limited) v Barkingside Magistrates' Court [2015] EWHC 1458 (Admin); [2015] 2 Cr App R 26); and it is well-established that a warrant may permit the seizure of such media as a single entity so that they may be seized if there are reasonable grounds for believing that given the purpose was to investigate the extent of their involvement in and control of the companies they contain relevant evidence even if they might also contain irrelevant evidence (R (Faisaltex Limited) v Crown Court at Preston [2008] EWHC 2832 (Admin); [2009] 1 WLR 1687. I was not moved by the submission that the description referred to "any computer [etc] *containing* items listed in 1-6 above", rather than "any computer [etc] *which was reasonably believed to contain* items listed in 1-6 above", which, Mr Pickup submitted, would more accurately reflect the statutory requirement. It would, of course, be impracticable to ascertain during the execution of the warrant whether a particular computer in fact contained the identified material. Looked at in context, "containing" was an understandable shorthand. When the application is looked at as a whole, it is clear that the description is restricted to "any computer [etc] which was reasonably believed to contain items listed in 1-6 above" (see, e.g., the reference to the access conditions in the notes to the form, and the reference to "reasonable belief" immediately below the description of class of document 7). There is no evidence that anyone misunderstood the true scope of this class of

document: indeed, it seems that computers that were not reasonably believed to contain identified items were not seized (see paragraph 1.5 of HMRC's response to the pre-action letter dated 17 August 2017).

59. For those reasons, I am unpersuaded that any part of this second basis upon which Ground B was put succeeds. Nevertheless, the ground succeeds on the first basis.

Ground C: The Statutory Criteria

60. Mr Pickup submitted that, on the material before him, Judge Walsh could not have been reasonably satisfied that the statutory criteria in paragraphs 2 and 12 of Schedule 1 to PACE were met.

61. The criteria upon which he relied were as follows:

i) There are reasonable grounds for believing that an indictable offence has been committed (paragraph 2(a)(i) of Schedule 1 to PACE).

ii) There are reasonable grounds for believing that there is material in the specified premises which consist of or includes special procedure material and does not also include excluded material or material covered by legal professional privilege (paragraph 2(a)(ii)).

iii) There are reasonable grounds for believing that the material is likely to be of substantial value to the investigation and is likely to be relevant evidence (paragraph 2(a)(iii)).

iv) Other methods of obtaining the material have either been tried without success or have not been tried because it appeared that they were bound to fail (paragraph 2(b)).

v) It is in the public interest that access to the material should be given, having regard to the likely benefit to the investigation and the circumstances in which the person in possession of the material holds it (paragraph 2(c)).

62. There were five strands to this ground.

63. First, Mr Pickup submitted that the judge could not have been satisfied that there were reasonable grounds for believing that an indictable offence had been committed (as required by paragraph 2 of Schedule 1 to PACE), because paragraph 1 of the application referred to the relevant operation as being into "the *suspected* evasion of income tax and associated money laundering offences…"; and paragraph 2(c) referred to "the *suspected* method of criminality…" (emphases added). A "belief" is more than a "suspicion", and the need to have reasonable grounds for a belief imposes a higher threshold than the need to have reasonable grounds for a suspicion (R (Eastenders Cash & Carry PLC) v South Western Magistrates' Court [2011] EWHC 937 (Admin); [2012] 2 Cr App 11 at [13]). As the application only referred to and relied upon a "suspicion", the judge could not have been satisfied that there were reasonable grounds for believing that an indictable offence had been committed.

64. However, paragraph 1 concerns "The investigation", and the reference in paragraph 2(c) appears to be in the same context; and I consider that, as Mr Fletcher submitted,

the use of the word "suspicion" merely reflected the fact that the offences were under investigation and no charges had been brought, yet alone proved. It was correct that the operation was an investigation into "the suspected evasion of income tax and associated money laundering offences…". In my view, when looked at as a whole, the application was addressing the statutory criterion of there being "reasonable grounds for believing than an indictable offence has been committed" (to which there is express reference in the accompanying notes, and a clear reference in the rubric immediately before paragraph 1(b)); and, in any event, that criterion requires *the judge* to be satisfied that there are such reasonable grounds. There is nothing to suggest that the judge applied the wrong test – indeed, at page 3E of the transcript of the hearing, he expressly confirmed that he was satisfied that the statutory criteria in paragraph 2 were met.

65. Indeed, Mr Pickup accepted that the material already obtained by way of the production orders "would seem to prove the offences of tax evasion and cheating the Revenue"; but "the only detail as to the alleged money laundering offence is as to the acquisition and refurbishment of The Old House and the acquisition of expensive motor vehicles" (paragraph 5.2.2 of his skeleton argument). I reject any suggestion, insofar as it was made, that the application failed to put forward evidence upon which the judge could properly be satisfied that there were reasonable grounds for believing that an indictable offence has been committed. Mr Pickup accepted that there were reasonable grounds for believing that each of the two identified tax offences had been committed; and the evidence in relation to The Old House and cars was clearly sufficient to found a reasonable ground of belief that a money laundering offence had also been committed.

66. Mr Pickup also relied upon another reference to "suspicion" in the application, namely, in paragraph 2(b), that "[m]aterial sought is likely to evidence suspicion that FREEMAN and HAMILTON have control over [M&V Holdings] and [Pinnacle MCG] and a number of other companies as yet unknown to HMRC". However, I do not see that Mr Pickup's argument is any stronger in that context: indeed, it is difficult to see what is wrong with the concept of "suspicion" being used here.

67. Second, Mr Pickup turned to the criterion in paragraph 2(a)(ii), namely that there are reasonable grounds for believing that there is material in the specified premises which consist of or includes special procedure material *and does not also include excluded material or material covered by legal professional privilege* (paragraph 2(a)(ii)). From the witness statement of Mr Mills to which I have referred, it seems that the other companies occupying the ground floor of Ocean House held a significant amount of material, some of which was the subject of legal professional privilege and some of it being excluded material because it related to employees and was held in confidence (e.g. health records). In any event, M& V Holdings and Pinnacle MCG held such material.

68. This issue was considered by Davis LJ in R (Sharer) v Commissioners for HM Revenue and Customs [2016] EWHC 1412 (Admin), which concerned an application before a magistrate under section 8 of PACE, to which the same principles apply. He said this:

> "24. Mr Jones [Leading Counsel for the claimant, who challenged the relevant warrant] submits that it was obvious

that there would be legally privileged material included in the items sought to be seized at the premises. He further says that that also is the case with regard to special procedure material, and he notes that reference is positively made to the possibility of special procedure material being at the premises, or one of the premises, as set out in the application forms. Mr Jones also, tacitly at least, relied on what is said to be the fact that in the event there was indeed, as it is asserted, a considerable quantity of legally privileged material found at the premises and taken away by the officers. It is at all events the case that on the evidence the solicitor for Mr Sharer did ring the officers whilst they were undertaking their search at the business premises and allude to the existence of privileged material at least on the computer: which is precisely what prompted the officer then to exercise his powers under section 50 of the 2001 Act.

25. In my view, the fact that, as it is asserted, a significant quantity of privileged material was found at the business premises (and indeed it is said that some privileged material was also found at the residential address of Mr Sharer) does not of itself show that the warrants were incorrectly issued at the time. What has to be assessed is, at the time the applications were being considered by the Justice, whether that Justice could properly be satisfied that there were reasonable grounds for believing that the material for which the search was to be made did not include legally privileged material or special procedure material. That ultimately is a matter of evaluation for the Justice. Of course it is subject to the review of this court, because, amongst other things, there have to exist reasonable grounds for believing that the negative proposition in section 8(1)(d) has been satisfied.

26. In my view that is in fact a short point. I simply do not accept Mr Jones's assertion that a "big point of principle" arises in this case. It does not. What arises in this case is whether or not the Justice was entitled to be satisfied with regard to the prescribed conditions set out in section 8. In my view, having regard to all that was contained in the detailed applications as before the Justice, the Justice was entitled to be so satisfied, reading the contents of the applications fairly and objectively.

27. It is to be borne in mind that Mr Sharer was not engaged in the occupation of a solicitor or an accountant or anything like that. There was no reason in my view, and contrary to Mr Jones's assertion, to think that legally privileged materials or special procedure materials would be found at the premises in the context of that which the officers were seeking. One only has to see the materials sought to appreciate that legally privileged materials or special procedure materials were nothing to do with what the officers were after and were likely

> to be included. That is quite obviously so. They would have no interest in, and there would be no relevance in, letters of advice, if they existed, about whether or not to accept the terms of a contract for sale or purchase, or advising on pre-contract inquiries or anything like that, and there was no reason to think that they would be there. That material would have been irrelevant and was not being sought.
>
> 28. What was being sought was what Mr Bird, appearing for the respondent, described as transactional matters: that is to say the fact of sales and purchases, the price at which they were undertaken, the fact of rental receipts and so on. That is nothing whatsoever to do with privilege and nothing whatsoever to do with special procedure materials, save perhaps as to some possibility as was alluded to in the application notices themselves and as to which those conducting the search would have had no interest because they would have been irrelevant."

69. In my view, those helpful observations apply equally to this case. The companies in which HMRC had an interest, as paying and/or being controlled by Mr Freeman and/or Ms Hamilton, were property companies. Until the warrants were executed, the HMRC investigation was covert. In the circumstances, there was no reason to think that any legally privileged documents would be found at the premises in the context of that which the officers were seeking. As to excluded material, there was no reason to believe that personal information of the type falling within the definition of "excluded material" (and, in the event, apparently found) would be on the premises.

70. I do not consider that there is any force in this strand of this ground. I deal with the potentially legally privileged material that was found on executing the warrant below (see paragraphs 83-84).

71. Third, Mr Pickup submitted that the judge could not have been satisfied that the requirements of paragraphs 2(b) and 14 had been met. These can conveniently be taken together. Paragraph 2(b) requires other methods of obtaining the material to have been tried without success or not to have been tried because it appeared they were bound to fail. Paragraph 14 requires one of four conditions to be met. As set out in paragraph 28(vii) above, the application indicated that conditions (a), (c) and (d) were all met. However, only one of the conditions had to be satisfied, and Mr Pickup understandably focused his submissions on (d) ("that service of notice of an application for an order… may seriously prejudice the investigation").

72. Mr Pickup submitted that there was no justification for the contention that other methods of obtaining the material were bound to fail, because the material sought from the companies could have been obtained by way of production orders, and that sought from Mr Freeman and Ms Hamilton by making a simple request of them.

73. However, the application said that, if Mr Freeman, Ms Hamilton and/or the companies were given notice, HMRC feared the destruction or concealment of material documents because (i) Mr Freeman had a previous conviction for fraud and (ii) Mr Freeman and Ms Hamilton had "actively distanced themselves from the companies…". I appreciate that Mr Freeman and Ms Hamilton disagree; but, in my

view, that was a proper basis upon which the judge could conclude that the service of notice may seriously prejudice the investigation, and that production orders aimed at the companies and a request of Mr Freeman and Ms Hamilton themselves would not be a practicable course because of the risk of serious prejudice to the investigation.

74. Fourth, Mr Pickup submitted that the judge failed to apply any or any rigorous scrutiny to the application. He accepted that that was not, in itself, a discrete ground of appeal, but he submitted that it effectively betrayed the fact that the judge could not have been satisfied that the statutory criteria were met.

75. Mr Pickup submitted that it was clear from the transcript that the judge applied no scrutiny to the application at all, and appears to have endorsed the application at 10am, before the hearing had started. The hearing lasted only ten minutes. In the hearing, he asked no meaningful questions, except to ask Officer Owen to confirm that the contents of the application were truthful. He made no inquiry as to any of the details of the application, such as to whether other companies occupied the premises and the working arrangements at Ocean House, or as to whether material sought might include excluded material or documents subject to legal professional privilege, or as to the arrangements whereby, if privileged documents were encountered, independent counsel could be called for.

76. I reject the submission that the judge did not scrutinise the application properly. It seems that the (unsigned) application was lodged the day before the hearing, and the judge had ample opportunity to consider it. At the hearing, he confirmed that he had done so (page 3D of the transcript). The substance of the application was eleven pages long. It was in Form ENF3312 which, as I have described, is designed to assist both the applicant and the court in understanding the statutory criteria and whether on the evidence they are met in the particular case (see paragraphs 12 and 28 above). As I have indicated, the judge was entitled to conclude, on the basis of what was set out in the application, that the statutory criteria were satisfied. He stated at the hearing that he was satisfied, on the basis of what he had read (transcript, page 3D-E). It is noteworthy that, in Energy Financing, Keene LJ said that, as the magistrate had already considered the written application for a section 8 warrant in a major fraud case, he was "not surprised that the hearing lasted only ten minutes". The issue is whether the judge was satisfied on what was before him that the statutory criteria had been satisfied, and that the warrant should be issued. In a straightforward case such as this, it does not surprise me that, having considered the written application, the judge was satisfied; and the hearing was very short.

77. Fifth and finally, Mr Pickup submitted that the reasons given by the judge were inadequate, and were indeed no reasons at all, merely confirming that he was satisfied that the statutory criteria had been met and the warrants issued, but not indicating why. He relied upon authorities such as R v Crown Court at Lewes ex parte Nigel Weller & Co (12 May 1999, unreported), S at [46] and R (Glenn & Co (Essex) Limited) v HM Commissioners for Revenue and Customs [2011] EWHC 2998 (Admin) at [23]-[29].

78. There is nothing in PACE that requires the court to give reasons why it is satisfied that there are reasonable grounds for believing that the various matters set out in the relevant part of the statutory scheme are met; but the rationale for giving reasons was

given by Kennedy LJ in Nigel Weller (quoted and approved by Simon J (as he then was) giving the judgment of the court in Glenn), as follows:

> "The reality is that (1) the person or persons against whom an order is made are entitled to know why it is made; (2) the requirement to give reasons should help ensure that a judge does, as he must, address each of the statutory requirements before making the order, and (3) if it is necessary to review an order in this court reasons will be of great assistance. We will know why the judge decided as he did."

79. However, these cases make clear that it may be unnecessary for the judge to give express reasons. Citing the judgment of Lord Woolf CJ in R (Cronin) v Sheffield Justices [2002] EWHC 2568 (Admin); [2003] 1 WLR 752 at [15], Simon J in Glenn said:

> "One example would be where the written information was compelling as to the grounds for a belief, and clearly addressed the specific matters which are required to be addressed…".

80. As I have made clear, the application in this case was relatively straightforward and was in Form ENF3312 which required each of the statutory criteria to be addressed. In my view, this was a case in which the judge's reasons, brief as they were, were adequate. There was material enough in the application to satisfy him that the statutory criteria had been met; and this court is able to discern a sufficient basis for his decision. In those circumstances, there is nothing in this point to undermine HMRC's contention that the statutory tests have been appropriately applied, which is the ultimate question (see Glenn at [34] per Simon J).

81. For those reasons, I do not consider that any strand of this ground is made good, in the sense of adding anything to the ground upon which I have already found the warrants to have been unlawful.

Ground D: The Execution of the Warrants

82. Finally, Mr Pickup submitted that the manner of executing the warrants was unlawful. Before us, the Claimants made an application to include a new ground of challenge based on the failure of the HMRC officers who executed the warrants to give those on the premises a proper opportunity to look at and consider the warrants; but Mr Pickup (rightly) did not pursue that application at the hearing, as there were factual disputes as to precisely what had occurred in that regard. I need say nothing further about that.

83. However, Mr Pickup did pursue the submission that HMRC acted unlawfully in seizing material that was not covered by the warrants. In oral argument, he did not pursue the argument that the seizure of tablets etc belonging to the children of Mr Freeman and Ms Hamilton were seized. There is evidence that certain machines that were plainly the children's were not seized, and there is nothing to suggest that the seizure of those that were seized was unlawful. Ocean House was the focus of the submissions. The Claimants rely on evidence from Mr Mills, Ms Tappin and Mr Patterson that material belonging to their respective companies, in electronic form

from the shared server and hard copy form, was seized; and this contained legal advice and some excluded material in the form of staff health records etc.

84. However:

i) HMRC do not accept that any excessive seizure was made at all, or alternatively more than de minimis (see Mr Fletcher's skeleton argument at paragraph 91 and 94). Of course, they cannot check that that is the case, because of the order prohibiting them considering any of the material seized; but Mr Fletcher says, with some force, that the evidence of such seizures is thin and no application (or even approach) has been made by any company for the return of the material or any of it.

ii) This court is not in a position to make any determination of those factual issues. It is of course open to any claimant or other person (including company) to make a private law claim in which these issues can be considered and determined.

iii) The only specific item identified is the letter referred to in paragraph 32(v) above. Officer McMahon found an email chain which had "Shoosmiths LPP" in the title. After discussing this with the officer in charge, it was seized under section 50 of the 2011 Act as, without reading it, it was considered that it or part of it may attract legal professional privilege. It is not accepted by HMRC that it is in fact privileged – of course, again, because of the injunction embargo, no steps have been taken to consider that as an issue. But section 50 permits seizure of items where there are grounds for believing that they are or might contain something for which there is an entitlement to search but it is not practicable to establish then and there whether the item might also contain material in respect of which there was no entitlement to seize. Notwithstanding the reference in the application to the possibility of independent counsel being present at the execution of the warrant, in fact none was present and, in all the circumstances, HMRC cannot be criticised for not calling upon independent counsel to attend the site. I do not consider that the manner in which that document was dealt with warrants any criticism of the relevant HMRC officer, or was unlawful.

iv) In any event, seizure of the computers (which was under section 50, rather than the warrants) would not be rendered unlawful merely because there was some irrelevant, legally privileged or excluded material on it (see paragraph 14 and 58(7) above).

85. I do not find any element of this ground made good.

Conclusion

86. For those reasons, subject to my Lady, Moulder J, I would find that the warrants were unlawful, and I would quash them.

Mrs Justice Moulder:

87. For the reasons set out in the judgment of Hickinbottom LJ, I agree that the warrants were unlawful and must be quashed.

Lord Justice Hickinbottom:

88. It was agreed at the hearing that, if the warrants were held to be unlawful, the parties should be given time to consider an appropriate order. We would ask that the parties make written submissions by 4pm on 31 July 2018, and respond by 4pm on 7 August 2018. Unless we consider that a further hearing is necessary, we would propose that we deal with the form of the order on the basis of those written submissions alone.