Neutral Citation Number: [2018] EWCA Crim 440

Case No: 2017/5454/C1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM LEEDS CROWN COURT-
HIS HONOUR JUDGE MARSON Q.C.
T20167745

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/03/2018

Before :

LORD JUSTICE TREACY
MR JUSTICE KING
and
MR JUSTICE NICOL

- -

Between :

Regina	**Appellant**
- and -	
Naveeda Ikram	**Respondent**

- -
- -

Mr Richard Wright QC (instructed by **Crown Prosecution Service**) for the **Appellant**
Mr Paul Greaney QC and Mr Nicholas De La Poer (instructed by **Minton Morrill**) for the **Respondent**

Hearing date: 21st February 2018

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Approved Judgment

Lord Justice Treacy:

Introduction

1. This is an application in relation to a terminating ruling brought by a prosecuting authority in respect of a case tried at Leeds Crown Court. The indictment contained a single count of misconduct in public office. The application has been referred to the Full Court by the Registrar. The particulars of the offence alleged that the respondent, *between 1 November 2014 and 31 August 2015, whilst acting as a public officer, namely, an elected member of Bradford Metropolitan District Council, wilfully misconducted herself by seeking contracts between a number of District Councils and Nexus Assist Limited, failing as she did so to declare that she held a financial interest in that company*. The indictment containing those particulars was uploaded in November 2016. The respondent appeared at the Crown Court in December 2016 and pleaded not guilty. Her trial was fixed to start in November 2017.

2. In October 2017 a defence statement was served. In general terms, it asserted that:

   i) she did not wilfully misconduct herself;

   ii) she did not abuse the public's trust in her;

   iii) she did not seek contracts for Nexus Assist Limited (Nexus);

   iv) she did not hold a financial interest in Nexus.

3. The defence statement went into a degree of detail, explaining the detail of certain financial transactions involving herself and a Mr Arshad, the sole director of Nexus. In addition, whilst acknowledging contacts with certain local authorities in relation to Nexus, the respondent asserted that Nexus would have to go through a transparent tender process, which she had nothing to do with, and that the allegation that she had sought contracts for Nexus failed to recognise the structure under which any contract would be allocated. The making of introductions and facilitation of meetings for Nexus was not improper.

4. There are two rulings of the trial judge which the Crown seeks leave to appeal. Firstly, there is a ruling at the outset of the trial (on 23rd November 2017) whereby the judge refused leave to amend the indictment. This is a nominated ruling under s.58(7)(b) of the Criminal Justice Act 2003. The second ruling is one of no case to answer made on 6 December 2017.

5. In relation to the first ruling the Crown had sought to amend the particulars to allege that the respondent had misconducted herself "*by promoting Nexus Assist Limited to employees working for various district councils, failing as she did so to declare that she was herself associated with the company*".

The Facts

6. The facts of the case show that the respondent was elected as a councillor for the City of Bradford MDC in 2004. She had been Lord Mayor between 2011 and 2012. In June 2015, (towards the end of the indictment period), whilst still a councillor, she

became executive assistant to a councillor holding the portfolio for health and social care within the council area.

7. In late 2015 complaints emerged that the respondent had been lobbying officers within the council to secure work from the council for Nexus. The declarations of interest she had filed with the council made no mention of any such business. The matter was reported to the police.

8. Investigations showed that in late February/early March 2015 Ali Arshad had enquired about renting a property in North Park Road in Bradford. It had previously been occupied by a business involved in looking after young adults leaving care. Arshad said he wanted to set up a similar business at the same premises. He failed a credit check and was told that he would need a guarantor to secure a tenancy for the property. The respondent, a friend of Arshad, was then put forward as a guarantor. On 18 March 2015 they attended the management company's office and signed a tenancy agreement of which the respondent was guarantor. The tenancy was not a business tenancy. It was an assured shorthold tenancy (i.e., a residential tenancy). The respondent had acted as a personal guarantor for Arshad's tenancy, rather than a tenancy held by the company.

9. Arshad paid the necessary bond and first month's rent, but three subsequent payments, (April, May and June 2015), were made from an account in the respondent's name. After other problems with rent payment, the tenancy was brought to an end. The evidence showed that, before any such payment was made from the respondent's account, there had been a payment of £2,700 into that account by Arshad. The respondent had said in interview that Arshad was a poor manager of money and that, in order to ensure that rental payments were made, and thus avoid exposure of the respondent to the guarantee, that sum had been paid. Accordingly, rent was paid only to the extent that it came from monies provided by Arshad and not from her personal funds.

10. Nexus had only ever received a single payment, one of £530, from Leeds City Council, in respect of an emergency placement. That sum was paid into the respondent's bank account. There was no evidence that she had caused this to occur and in interview she had stated this had occurred without her knowledge or encouragement.

11. In March 2015 Arshad had formed Nexus in order to provide assistance to young people leaving care in the Bradford area. The Bradford council was part of a consortium of councils, (the White Rose Consortium), who collectively organised their affairs to have a number of approved service providers on their books to tender for providing such care. If a young person was leaving care the local council would look to one of the approved service providers to assist them. This was known as "on-contract" work. Such placements would only be made with White Rose approved organisations, save in exceptionally rare (i.e., emergency) situations when council staff could look outside the approved list to what was known as an "off-contract provider".

12. Nexus did not exist at the time of a January 2015 deadline for seeking approval by the White Rose Consortium. On 6 May 2015 another opportunity arose and Nexus submitted a tender document, but its application failed at the initial screening stage so

that a formal tender could not be submitted. At about the same time, Leeds City Council was looking to secure an emergency placement. A council officer had seen a Nexus advertising leaflet and used Nexus as an emergency measure. When staff from Leeds sought to learn more about Nexus, and attended its premises, it found that certain important documents were not in place. As the inspection team was about to leave the company's premises the respondent appeared. She introduced herself as a Bradford councillor. She said she knew the service provider and indicated that Nexus was keen to build up links with Leeds.

13. Because of shortcomings identified in the service the Leeds officials removed the young person from Nexus. A payment was due for the services which had been provided and an invoice was raised by Nexus. It was that invoice for £530 which was paid into the respondent's bank account in accordance with the instructions on the invoice. The invoice was referred to as the "Paige invoice".

14. There was other evidence of the respondent's activity in relation to Nexus. In about June 2015 the commissioning manager at Leeds City Council received a phone call from the respondent saying she was calling on behalf of Arshad, her constituent. She was encouraging Leeds to use Nexus and said that she felt a business opportunity was being prevented because care leavers were not being placed with Nexus. Mr Nelson, the manager, had the impression that the respondent was "overstepping the mark" and seeking to use her position to influence his council's decision-making process as to who to use when contracting for such services. The respondent had not mentioned any links of her own to Nexus.

15. There was evidence from Ms Collingwood, a manager at Bradford City Council, who said that the respondent had been anxious to promote the services of Nexus at a meeting in March 2015. Ms Jenkins, another official responsible for children's specialist services, was at the same meeting and recalled the respondent referring to Nexus and asking how organisations like that could get onto the approved list.

16. In April 2015 team managers from Bradford council went to a meeting at North Park Road. The respondent was present with Ali and another couple. She is said to have tried to promote the business to the Bradford officials without at any time mentioning her links to Nexus. In the following weeks there was further contact by texts and e-mails from the respondent about getting Nexus approved by the White Rose Consortium. Ms Collingwood became concerned about the role the respondent was playing in relation to Nexus and brought the matter to the attention of her manager.

17. A Ms Hellowell worked for Bradford and recalled being contacted by the respondent in April or May of 2015, asking for a meeting to discuss leaving care services. A meeting took place and the respondent, who was with two males, handed her a brochure and asked her to pass it on to children's services. At no time was any link mentioned between the respondent and the business being promoted.

18. Ms O'Sullivan, an official at Kirklees council, also recalled receiving an e-mail in July 2015 from the respondent, promoting Nexus. The e-mail simply forwarded an e-mail written to the respondent by Arshad, and on the face of the correspondence, there was nothing to show a connection between Arshad and the respondent.

The Crown's Case at Trial

19. On the basis of this evidence the Crown's case was that the respondent was a long-established and good friend of Arshad, and had supported him financially. She had guaranteed his tenancy. She was closely involved with Nexus and had a financial interest in its success. She must have known that there was a need to declare any such interest in Nexus. The Crown alleged that her misconduct was to use her position and status as an elected councillor to lobby for paid work on behalf of Nexus, raising the company with numerous council officials and encouraging them to consider using the services of Nexus. In all of those dealings, she had made no mention of her connection with Nexus nor explained her association with it. She had been advancing the interests of Nexus whilst concealing her true purpose in doing so, so that her association with the company and its director amounted to misconduct by the respondent in her role as an elected councillor.

The Application to Amend the Indictment

20. When the case was brought on for trial the prosecution sought to amend the particulars of the count in the way described at [5] above, submitting that it did no more than put in clearer terms the factual situation that had been consistently alleged in this case. The nature of the charge and the substance of the allegation remained unchanged and no injustice could flow from the proposed amendment since it did no more than clarify the wording of the particulars of the behaviour. Counsel for the respondent objected and submitted that far from making the allegation clear, the proposed amended indictment would contain terms of a nebulous nature and make matters less clear for the jury, in particular by the use of wording such as "promoting Nexus" and "associated with that company".

21. The written application to amend stated:

> "This is a case where the prosecution alleges that the defendant actively promoted Nexus…by encouraging council employees to use the services being provided by Nexus…(i.e., encouraging them to form contractual agreements with them) – whilst failing to disclose her own close connection with Nexus…arising through:
>
> i) her close personal friendship with its sole director, Ali Arshad;
>
> ii) her acting as a guarantor to Ali Arshad in respect of the tenancy of the premises from which he operated Nexus Assist;
>
> iii) rent payments for the premises being made from the defendant's own bank account on three occasions (April, May and June 2015;
>
> iv) payment in respect of the Nexus Assist 'Paige' invoice being made into her bank account.

> The proposed amendment does no more…than put into clearer terms the very factual situation that has been consistently alleged in this case."

The defence said it had been preparing its case for many months on the basis of the indictment as framed, and that the proposed amended indictment did not reflect the case the Crown proposed to advance.

22. The judge accepted the defence submission and refused the amendment. He said that the proposed new terms referring to "promoting" and "associated with" were so vague that it would not be possible fairly to give the jury clear directions in relation to those concepts. That inevitably could lead to injustice to the respondent, not only in jury deliberations but also in the case the respondent had to meet.

No Case to Answer

23. In relation to the submission of no case to answer it was common ground that the prosecution case depended upon proof of, *inter alia*, three matters:

    (a) that the respondent at the material time had a financial interest in Nexus;

    (b) that she sought contracts between a number of district councils and Nexus;

    (c) that she was under an obligation to declare her financial interest in Nexus when seeking those contracts.

24. The respondent submitted that there was no evidence of any of those three elements or, alternatively that, taking the evidence at its highest, it was not such that a properly directed jury could be sure that the elements, or any of them, were established. If the respondent was correct as to any of the three elements that would be the end of the Crown's case.

25. The Crown sought to rebut the defence submissions in relation to each of the three matters identified. It argued:

    i) Although the financial links shown might not of themselves give rise to a financial interest in Nexus, they provided evidence of one which a jury could interpret for itself.

    ii) There was evidence upon which a jury could conclude that the respondent's efforts were designed to secure "off contract" work.

    iii) The respondent was aware of a need to be open and honest about her dealings with Nexus, and she had not been.

26. The judge upheld the defence submission. He noted that the Crown accepted that the Localism Act 2011 provided a statutory framework for disclosure requirements of a "pecuniary interest" with a view to ensuring that the register of interests was correctly filled in. The Crown accepted that the respondent had correctly filled in that register and that the respondent's asserted financial interest in Nexus was less than that required by the Localism Act. The judge also referred to the importance of clarity in

the particulars of offence when considering the offence of misconduct in a public office.

27. As to financial interest in Nexus, the judge rejected the Crown's submission that the jury could look at the circumstances as they found them to be and decide whether the respondent had a financial interest in Nexus without any real guidance as to what that term, as a matter of law, meant. That would be a dangerous, unclear and unfair approach. He said:

> "Financial interest must mean shareholding or something akin to it or at least something more than in the present case, i.e., generating rights and responsibilities on the part of the holder of the interest."

He continued that as the evidence stood, the respondent

> "had no more financial interest in Nexus than a guarantor of a mortgage would have in property in respect of which the mortgage had been taken out."

28. As to the seeking of contracts, the judge accepted the submission that the Crown had shifted its ground at the time of submissions. Having alleged the seeking of contracts within the White Rose Consortium framework, it now sought to focus on "off-contract" placements. Until the point of submissions the judge had always understood the allegation as relating to the seeking of contracts within the framework. It was clear that the defence would have conducted the case differently had it realised that the focus would shift. There was little by way of evidence of "off-contract" placements. They were impossible to predict and such work would not have been allocated without a careful assessment as to suitability. The only occasions on which emergency placements had been mentioned by the respondent to an officer from Bradford were in a telephone call and e-mail on 11 May 2015. That evidence was wholly insufficient to permit the case to go to the jury on the basis upon which the Crown now wished to proceed.

29. As to failure to disclose, since there was no or no sufficient evidence that the respondent had a financial interest in Nexus, it followed that there was no duty to disclose and therefore no failure. It was an agreed fact that the respondent had completed the declaration of interest form correctly.

30. For these various reasons, the submission of no case was upheld.

The Crown's Submissions on Appeal

31. Mr Wright QC, (who did not appear below), submitted that the Crown's broad case was that the respondent was a public officer against whom there was ample evidence of misconduct by seeking to advance the interests of Nexus and that she had so abused the trust of her office as to have committed a criminal offence. He acknowledged that the particulars of the indictment were couched in narrow terms and that they did not happily match the way in which the case had been opened, or indeed

the Crown's case summary. He acknowledged that the way in which the case had been opened to the jury did not address the particulars of the indictment at all.

32. Nonetheless, he submitted that the judge's decisions, both on amendment of the indictment and on the submission of no case to answer, were wrong and unreasonable. He submitted that the judge had interpreted the particulars of the indictment when the submission of no case was made in a manner which was unreasonably narrow. As to the question of seeking contracts, there was evidence from which the jury could conclude that the respondent had been seeking to obtain work for Nexus by promoting it generally. He accepted that there was no case to answer on the basis that she had been seeking contracts within the Consortium framework but submitted that there was a basis for the case to go forward to the jury in relation to "off-contract" approaches.

33. As to the question of financial interest, he submitted that the judge had taken too narrow a focus in considering the respondent's obligations under the Localism Act 2011 and by making reference to other statutes which led him to the conclusion that an interest akin to a shareholding must be shown. He submitted that such financial connections as had been shown by the evidence amounted to a financial interest in the success of the company and that the jury should have been allowed to consider the case in that respect on that basis. His overall submission on the no-case issue was that the judge could not reasonably have reached his conclusion on the evidence as it stood in relation to both the issue of financial interest and that relating to seeking contracts.

34. On the separate ground relating to amendment of the indictment Mr Wright submitted that even if there had been a lack of focus by the Crown in framing the original indictment, the facts and the evidence to be relied on were clear from the case summary and the witness statements. The proposed amendment would not have resulted in a nebulous or vague indictment, and even though the application had come at a late stage, there would have been no prejudice to the respondent by an amendment. She was represented by experienced counsel who would have been able to meet the allegations on an amended indictment at trial.

The Respondent's Submissions

35. On behalf of the respondent, Mr Greaney QC resisted the application on the no case to answer ruling. He emphasised that the Crown had accepted the need to prove the three matters set out [23] above, which derived directly from the unamended indictment. As to the seeking of contracts, the Crown had accepted before the judge and before this court that the evidence did not establish a seeking of contracts under the Consortium framework. As to the belated attempt to rely on "off-contracts", the evidence simply failed to establish a case, as the judge had pointed out, and in any event, the judge had concluded that it would be unfair to allow the Crown to proceed on that hitherto unadvanced basis. Turning to financial interest, Mr Greaney submitted that the judge's approach was correct. What needed to be considered was whether the respondent had a financial interest in the company. It was relevant to look at what the Localism Act required and the fact that the Crown accepted that there had been no breach of the disclosure provisions under that legislation. It was accepted that that could not be dispositive of the issue. However, Mr Greaney urged that the judge had been right to hold that the evidence adduced fell short of anything that could properly be described as a financial interest in the company.

36. On the issue of amendment Mr Greaney submitted that there was a need for clarity in the particulars of the indictment which the judge had rightly held would be lost by the proposed amendment. The justification for replacing the "seeking contracts" element had been lost from the outset since the Crown equated promotion of the business of Nexus with seeking contracts in its application. To amend "financial interest" to "association with the company" would involve a loss of clarity.

Discussion and Conclusions

37. Section 67 of the Criminal Justice Act 2003 provides that this court may not reverse a terminating ruling on appeal unless satisfied that the ruling was wrong in law, involved an error of law or principle, or was a ruling that it was not reasonable for the judge to have made. Mr Wright QC for the Crown characterised the two challenged rulings as falling into the third category.

38. At the outset of the hearing the court raised with Mr Wright a point which had not been addressed in the parties' written submissions to the court. It arises from the fact that the Crown has sought to challenge a ruling additional to the finding of no case to answer, namely, the refusal to allow an amendment to the indictment. Section 58(7) of the 2003 Act permits the Crown to nominate an additional ruling or rulings and, if it does, that other ruling (or rulings) is also to be treated as the subject of the appeal.

39. Section 61 provides:

> "(1) On an appeal against s.58, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates."
>
> (2) Sub-sections (3)-(5) apply where the appeal relates to a single ruling
>
> …
>
> (4) Where the Court of Appeal reverses or varies the ruling, it must, in respect of the offence…do any of the following –
>
> (a) order that proceedings for that offence may be resumed in the Crown Court,
>
> (b) order that a fresh trial may take place in the Crown Court for that offence ,
>
> (c) order that the defendant in relation to that offence be acquitted of that offence.
>
> (5) But the Court of Appeal may not make an order under sub-section (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under sub-section (4)(a) or (b).

> (6) Sub-sections (7) and (8) apply where the appeal relates to a ruling that there is no case to answer and one or more other rulings.
>
> (7) Where the Court of Appeal confirms the ruling that there is no case to answer, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.
>
> (8) Where the Court of Appeal reverses or varies the ruling that there is no case to answer, it must in respect of the offence or each offence which is the subject of the appeal, make any of the orders mentioned in sub-section (4)(a) to (c) (but subject to subsection (5)).”

40. In the light of the wording of s.61(6) to (8) the court invited submissions as to whether the approach to this application should be governed by a consideration of the ruling as to no case to answer with the court only going on to consider the issue of amendment of the indictment if the court accepted the Crown’s submission that the ruling that there was no case to answer should be reversed or varied.

41. Mr Wright asked for time to consider the matter which was granted by the court. On the resumption of the hearing he conceded that the correct approach of s.61 was that which the court had invited him to consider. Mr Greaney subsequently allied himself with that approach.

42. The phrase “terminating ruling” is not used anywhere in Part 9 of the Criminal Justice Act 2003. However, it has entered the terminology used for appeals of this sort as convenient shorthand and is to be distinguished from evidentiary rulings which are specifically defined in s.62(9). (The provisions creating rights of appeal from evidentiary rulings are not yet in force). A ruling upholding a submission of no case to answer plainly has the characteristic of a terminating ruling. However, a refusal to permit amendment of an indictment does not necessarily have that effect. In this case, the trial carried on.

43. Section 58 provides…

> “(7) Where –
>
> a) the ruling is a ruling that there is no case to answer, and
>
> b) the prosecution, at the same time that it informs the court in accordance with sub-section (4) that it intends to appeal, nominates one or more other rulings which have been made by a judge in relation to the trial on indictment at an applicable time, and which relate to the offence or offences which are the subject of the appeal,

> that other ruling, or those other rulings, are also to be treated as the subject of the appeal.
>
> (8) The prosecution may not inform the court in accordance with sub-section (4) that it intends to appeal, unless, at or before that time, it informs the court that it agrees that, in respect of the offence or each offence which is the subject of the appeal, the defendant in relation to that offence should be acquitted of that offence if either of the conditions made in sub-section (9) is fulfilled.
>
> (9) Those conditions are –
>
> a) that leave to appeal to the Court of Appeal is not obtained, and
>
> b) that the appeal is abandoned before it is determined by the Court of Appeal."

44. The effect of those provisions is that if the prosecution nominates another ruling or rulings in addition to a no case ruling, it undertakes that if the prosecution fails to obtain leave to appeal or abandons the appeal an acquittal will follow by virtue of sub-sections (8) and (9).

45. The practical effect therefore is that, even if a ruling does not bring the proceedings to an end, by reason of the acquittal undertaking given it is to be treated as having that effect. The decision in *R v K(I)* [2007] 2 Cr App Rep 10 is an example of a case where two rulings came before this court, one of which was a ruling of no case to answer against K(I*)* on Counts 1 and 2. The other ruling challenged concerned Count 12 against SK and MR, where a successful submission of no case to answer had been made in relation to those two defendants on the basis of an erroneous finding as to what constituted "criminal property", within the meaning of s.340 of the Proceeds of Crime Act 2002. As a result of that ruling the trial judge also held that there was no case to answer in relation to K(I) on Counts 1 and 2. Although no appeal affecting SK and MR was brought, the Crown contested the correctness of the ruling on Count 12, which concerned them. Having held that the judge had fallen into error on that count the court allowed the prosecution's appeal against the judge's ruling in relation to Counts 1 and 2, insofar as it affected K(I).

46. *R v I* [2010] EWCA Crim 1557 was a case where there was a ruling of no case to answer in which the prosecution also nominated rulings made adversely to it on the admissibility of certain evidence which did not have the effect of bringing the proceedings to an end. This court proceeded by dealing with the appeal against the no case ruling first, before considering the application in the evidential rulings.

47. It seems to us that in any given case where there is an application made in relation to a ruling in addition to a no case ruling, the court will need to examine the relationship of that other ruling to the no case ruling in deciding how to proceed. Where, for example, the other ruling nominated relates to the admissibility of evidence it might be important to determine whether or not the correctness of that ruling impacted upon the submission of no case to answer. If there was no significant impact, the court will

probably proceed at first with consideration of the no case ruling. If the exclusion of the evidence in practical terms dictated the result of a submission of no case, then the court will probably wish to consider that ruling first. In the light of the concession made by the Crown arising from the facts in this case, we received no submissions from counsel relating to the observations made in this paragraph.

48. In the present case we have come to the conclusion that we should start with a consideration of the ruling as to no case to answer, since the decision not to permit the amendment of the indictment did not prevent the trial proceeding, and since we have to consider the judge's ruling of no case to answer on the basis of the case as it was before him at the point of his ruling. It would, in the circumstances of this case, where the judge made a specific finding that the case for the defence would have been conducted differently had the indictment been amended, be wrong for us to assess the merits of his ruling as to no case as if the indictment had been amended. His ruling must be judged on the basis of the indictment as it actually was before the court.

49. Accordingly, we go on to consider the ruling of no case to answer. In this respect it is important to note that the element of "seeking contracts" was one which the Crown itself acknowledged it had to prove as a necessary element of showing that there was a case to answer. Up to the point of the submission of no case, the Crown had conducted proceedings on the basis that the contracts being sought were those available through the Consortium framework process. Once the defence submission was made, the Crown abandoned any reliance on that basis, and instead sought to argue that there was a case available to it based on "off-contracts". Mr Wright QC has confirmed today that there was no evidence to support the Consortium framework basis. It is also noteworthy that although the Crown had sought to amend the language of the indictment from "seeking contracts" to "promoting Nexus", its application to amend described the "promoting" as encouraging councils to form contractual agreements with Nexus. There was considerable force in Mr Greaney's observation that the proposed, (but refused), amendment in relation to contracts made no difference to the allegation being made. In any event, it is now conceded that the judge was bound to uphold a submission based on the "seeking contracts" element of the indictment insofar as it related to the way the case had been presented by the Crown up to the point of submissions of no case.

50. As to the alternative basis, ("off-contract") which the Crown sought to adopt in the course of submissions below, the judge found in terms that there was no sustainable evidence capable of leading to a basis for conviction in that respect. There had only been a single occasion when an "off-contract" had been placed. It had been placed by Leeds City Council in circumstances where the respondent had not been involved at all. The only other evidence related to contact with an official at Bradford City Council in mid-May 2015 whose high point was an e-mail sent in somewhat equivocal terms. Mr Greaney's forceful analysis was not rebutted by Mr Wright. We note that the judge was unimpressed by that evidence, describing it as "wholly insufficient".

51. We also bear in mind the observations of Lord Judge CJ in *R v B* [2008] EWCA Crim 1144 at [19] where he stated that, where a judge has exercised his discretion or made his judgment in the course of a criminal trial, the fact that he has had carefully to balance conflicting considerations will almost inevitably mean that he might reasonably have reached a different conclusion to the one he did reach. The mere fact

that a judge could reasonably have reached the opposite conclusion does not begin to provide a basis for a successful appeal. As it happens, we do not think that the judge's decision on this point comes anywhere near the category of unreasonable. It follows that there is no sustainable challenge on the ruling insofar as it related to "seeking contracts".

52. Given our conclusion set out above on the issue of "seeking contracts" it must follow that the Crown's application cannot succeed since an essential strand of showing a case to answer was properly held below to have been lacking.

53. The judge also found that the requirement of "a financial interest" in Nexus had not been made out. It seems to us that the attempt to amend the indictment almost certainly reflected the realisation at a late stage on behalf of the Crown that it could not, on the evidence it proposed to adduce, prove a "financial interest" in Nexus. That was why, no doubt, it sought to import into the indictment the much more elastic concept of association with the company. There is force in Mr Greaney's submission that the evidence going to show a financial interest in Nexus advanced at trial was not of a sort which would give her the sort of stake in the company identified by the judge as required.

54. The judge found that the evidence had simply not reached the sort of level which would constitute a financial interest which should have been declared. In the course of argument before us the distinction was drawn between a "financial interest" in the company and a "financial interest" in the success of the company. Whilst the evidence might have established the latter, it was not sufficient to establish the former. The judge was unwilling to permit the jury to approach the matter on this looser, more informal basis, stating that it lacked clarity and would be dangerous and unfair.

55. We rather tend to the view that the judge's conclusion was not unreasonable and that it was one which was properly open to him to make. In the light of our earlier conclusion, we do not need to make a final judgment on this point.

56. It follows from the foregoing that the Crown's application in relation to the ruling of no case to answer cannot succeed. We therefore refuse leave and confirm the ruling that there is no case to answer in relation to the offence of misconduct in public office. By reason of s.61(7) we order that the Respondent be acquitted of that offence.

57. In conclusion, we observe that the problems which arose for the Crown in this case appear to be due to an insufficient consideration as to how the case was to be framed, and an insufficiently rigorous analysis of what the evidence available could prove. Our decision has been based on the way the Crown chose to frame its indictment until a late stage and upon the evidence available on that indictment as originally framed. In the light of our conclusion as to the ruling of no case to answer, the issue as to amendment of the indictment becomes moot and we propose to say no more about it. It should not be thought that the acquittal which we are required to enter in any way implies an endorsement or vindication of the behaviour of the respondent. On one view at least, it was questionable, and the result might have been different had the Crown from the outset framed its case with a greater degree of clarity.