Trinity Term
[2025] UKPC 35
Privy Council Appeal No 0107 of 2022

JUDGMENT

The State of Trinidad and Tobago (Appellant) *v* Nawaz Ali (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Hodge
Lord Briggs
Lord Leggatt
Lord Richards
Sir Andrew Edis

JUDGMENT GIVEN ON
31 July 2025

Heard on 21 May 2025

Appellant
Peter Knox KC
(Instructed by Charles Russell Speechlys LLP (London))

Respondent did not appear and was not represented

SIR ANDREW EDIS:

Introduction

1. This is an appeal by the Director of Public Prosecutions (DPP) for Trinidad and Tobago against a decision of the Court of Appeal of Trinidad and Tobago on 21 October 2021. By that decision, the Court of Appeal dismissed the DPP's appeal against Mrs Justice Lucky's order of 31 July 2018 staying the proceedings against the Respondent ("Mr Ali") at a re-trial. Having found that the DPP was correct in his challenge to the basis of that decision, the Court of Appeal nevertheless upheld the stay on a ground which had not previously been mentioned in the lengthy history of these proceedings. The first trial had taken place in January 2010, when Mr Ali was tried on an indictment containing three counts. He was acquitted on counts 1 and 2 and convicted on count 3. He was sentenced to 5 years' imprisonment with hard labour. On 29 July 2010, the Court of Appeal quashed that conviction and ordered a re-trial ("the first appeal"). That is why Mr Ali appeared before Mrs Justice Lucky in July 2018, 8 years later almost to the day.

The allegations against Mr Ali

2. By the time of the first trial, Mr Ali was charged on an indictment which contained three counts.

> **FIRST COUNT**
>
> **STATEMENT OF OFFENCE**
>
> **CORRUPTION**, contrary to section 3(1) of the Prevention of Corruption Act, Chap. 11.11.
>
> **PARTICULARS OF OFFENCE**
>
> NAWAZ ALI, on the 29th day of December, 2005, at Cunupia in the County of Caroni, being a member of the Trinidad and Tobago Police Service, corruptly solicited for himself and another police officer the sum of $6,000.00 from Azard Hosein, as an inducement to or reward for an agent forbearing to do an act in respect of a matter in which the State is concerned, namely, the prosecution of the said Azard Hosein for the

offence of receiving stolen property, namely motor vehicle registration number PAA 9946.

SECOND COUNT

STATEMENT OF OFFENCE

CORRUPTION, contrary to section 3(1) of the Prevention of Corruption Act, Chap. 11:11.

PARTICULARS OF OFFENCE

NAWAZ ALI, on the 29th day of December, 2005 at Cunupia, in the County of Caroni, being a member of the Trinidad and Tobago Police Service corruptly received for himself the sum of $4,500.00 from Azard Hosein as an inducement or reward for an agent forbearing to do an act in respect of a matter in which the State is concerned, namely, the prosecution of the said Azard Hosein for the offence of receiving stolen property, namely, motor vehicle registration number PAA 9946.

THIRD COUNT

STATEMENT OF OFFENCE

CORRUPTION, contrary to section 3(1) of the Prevention of Corruption Act, Chap. 11:11.

PARTICULARS OF OFFENCE

NAWAZ ALI, on the 4th day of January, 2006, at Cunupia, in the county of Caroni, being a member of the Trinidad and Tobago Police Service corruptly received for himself the sum of $1,500.00 from Azard Hosein as an inducement or reward for an agent forbearing to do an act in respect of a matter in which the State is concerned, namely, the prosecution of the said Azard Hosein for the offence of receiving stolen property, namely, motor vehicle registration number PAA 9946.

The first trial

3. The first trial took place from 4 to 19 January 2010 before a jury. Azard Hosein ("Mr Hosein"), who was the person alleged to have been the subject of the solicitation in the offence in count 1 and the person alleged to have paid bribes of $4,500 (under count 2) and $1,500 (under count 3), was a principal prosecution witness.

4. He said that, on 29 December 2005, 30 police officers came to his car yard premises, and one of them accused him of having a stolen vehicle in his possession. This was the vehicle referred to in the indictment. Mr Ali, who was one of the officers, said that Mr Hosein would have to go to the police station. He was then taken to the Cunupia police station in a police car, and his son Sheldon Hosein ("Sheldon") drove there in the allegedly stolen car.

5. When they got there, Mr Hosein said that he sat in a room with Mr Ali and another officer (a slim dark officer) and answered questions. Mr Ali told him it was a serious matter, and asked him if he had an attorney. He replied that he had "about four of them". Mr Ali said that the case could be costly, and that Mr Hosein could save himself some money. Mr Hosein first understood that he would have to pay $300 to each of three police officers, but it was then established that the sum demanded was actually $3,000 per head, a total of $9,000. Mr Hosein said he did not have that, and said he could only find $3,000. Mr Ali then went to talk to "the sergeant", and on his return said "the sergeant said $6,000*"*. Mr Hosein said he was not sure if he could pay that, but that he would talk to his son, Sheldon. He called Sheldon on his mobile phone and asked him to see if he could get "$2,500 from the card*"*. After a while, Sheldon came to station with $4,500 in cash, which he handed to Mr Ali. Mr Ali asked him if he would have the balance of $1,500 by 4 January, and he said "Yes". Mr Ali took his phone number, put the money in his trouser pocket, and let him leave the station.

6. This account was confirmed by Sheldon in his evidence. In view of what later happened it is important to record that in the course of the investigation Sheldon produced three withdrawal slips dated 29 December 2005 which showed that he had made two cash withdrawals of $2,000 from a credit card and a further $500 from a savings account. The total sum in cash was therefore $4,500, and the three withdrawals occurred within a two minute period, at a time which was consistent with Mr Hosein's account that Sheldon had withdrawn the money at his request so that it could be paid to Mr Ali as a bribe.

7. Subsequently Mr Hosein went to the Anti-Corruption Investigations Bureau and told the police there what had happened. Sergeant Williams then gave him $1,500 to take to Mr Ali on 4 January 2006. This was made up of 15 x $100 dollar bills, which Sergeant Williams photocopied, and they both signed or initialled each photocopied page. Sergeant

Williams put the notes in a white envelope, which they both marked, and handed the envelope to Mr Hosein. The three withdrawal slips were also produced to Sergeant Williams.

8. Mr Hosein said that, at about midday on 4 January 2006, Mr Ali called him by phone. Mr Hosein told him that he had "the thing" ready, and they set up a time to meet at the station. He then made a phone call to the Anti-Corruption Investigation Bureau, and he met Sergeant Williams and other officers at a road junction from where he went to Cunupia police station. He was taken to the back of the station, where he and Mr Ali went into a room. He took out the envelope with the $1,500 in and gave it to Mr Ali, saying *"*I hope I don't have any problem with this after*"*. The slim officer was present again, and said that he would not.

9. Sergeant Williams gave evidence which confirmed what Mr Hosein had said about the events of 4 January 2006. He described how he, together with Inspector Thorpe and PC Dickson, went to the Cunupia police station. They saw Mr Hosein leaving as they entered, and they went to a room at the back of the charge room, where he saw Mr Ali and another officer. He told Mr Ali that he was investigating a report that he and other officers had arrested and demanded from Mr Hosein $6,000 on 29 December 2005 so that he would not prefer charges against him, and that he had received $4,500 as part payment, and that he had the balance of $1,500 in his possession. He cautioned Mr Ali, who replied *"*What money?*"*. He then searched him in the presence of Inspector Thorpe and PC Dickson and found a white envelope in his right back pocket. He opened the envelope, found the $100 bills, and showed Mr Ali his and Mr Hosein's markings on them. He showed him the photocopies that he had made of them and pointed out the identical serial numbers on the photocopies and the originals.

10. Mr Ali gave evidence in which he agreed with Mr Hosein about events on 29 December 2005 up to the point when they were at the police station. There, he said he had taken a witness statement from Mr Hosein on the instructions of the sergeant. He said that Mr Hosein said that he had four lawyers but he did not want to call any of them. He then gave the statement to the sergeant, who read it over and said that they would have to let Mr Hosein go as there was no "certified copy" to identify the vehicle. He returned Mr Hosein's documents and told him to bring back photocopies. He denied Mr Hosein's allegations about the conversation between the two of them at the station on 29 December 2005 about money, and Sheldon's evidence that he had handed over $4,500. On 4 January 2006, he said that Mr Hosein called him while he was at Cunupia police station. He asked him if he had found *"*the fellas*"* yet (presumably meaning the sellers of the car), to which Mr Hosein said *"*no but I have the thing for you – what time I could come to the station to bring it*"*. By *"*thing*"* he took Mr Hosein to mean copies of the pro-forma invoice and the receipt for the car. Mr Hosein then arrived at the station at about 1pm, and then went with Mr Ali to the CID office. He took out a folded envelope and handed it to him. Mr Ali put the envelope in his back pocket. There was no conversation about money. He said that he told Mr Hosein that the sergeant had still to make up his mind about the matter.

Mr Hosein then left the station. Mr Ali agreed with Sergeant Williams about the search and the finding of the money, but said that he was shocked when this happened and that he had not opened the envelope himself.

11. The trial judge summed the case up. No transcript exists, but there are notes which suggest that he warned the jury that it was dangerous to convict on the uncorroborated evidence of an accomplice. Both Mr Hosein and Sheldon were treated as accomplices for this purpose. The notes refer to the English decision of *R v Makanjuola* [1995] 1 WLR 1348. This concerned the discretion of a trial judge to give a warning about the need for supporting evidence following the abolition of a requirement to do so by section 32 of the Criminal Justice and Public Order Act 1994 in February 1995. (That change was introduced into the law of Trinidad and Tobago by the Evidence Act Chapter 7:02 as amended by Act No 28 of 1996.) Lord Taylor of Gosforth CJ, giving the judgment of the court, observed, at p 1351, that judges considering whether to give a warning as a matter of discretion "will often consider that no special warning is required at all." The warning given by the judge is quoted by the Court of Appeal in its judgment in the first appeal. He also directed the jury that they should consider each count separately and that their verdicts may not be the same on all counts.

The first appeal

12. On 29 July 2010, the Court of Appeal (Weekes JA, Yorke-Soo Hon JA, and Narine JA) allowed Mr Ali's appeal against his conviction on the third count, and ordered a re-trial.

13. The scope of this first appeal was limited to the suggested inconsistency of the verdicts of the jury. There was no criticism of the form of the indictment. Counsel for Mr Ali did rely on the fact that all three counts amounted to a single transaction but did not submit that the indictment was therefore defective. He submitted that, because there was only one transaction, the different verdicts defied any rational explanation, even though count 3 was corroborated by the evidence of the "sting" operation. The case was dealt with at trial on an acceptance by the prosecution that there had been no corroboration of the evidence of the suggested accomplices in respect of counts 1 and 2. This concession was, in the judgment of the Board, an error. The evidence of the sting operation in January was itself capable of corroborating the evidence about the events of December. Moreover, the evidence of the withdrawal slips showing the obtaining of $4,500 in cash by Sheldon at a highly material time was also capable of confirming the evidence of Mr Hosein and Sheldon in a material particular. Even if it were right that that evidence was not supported by independent evidence, the old-style warning that it would be "dangerous to convict" on it was no longer required by law. It was always an unsatisfactory direction because it instructed the jury that it would be dangerous to convict, but left it open to them to do that.

14. Nevertheless, the judge, according to the Court of Appeal's judgment in 2010 said:

> "The State must satisfy you that the Hoseins are telling the truth…In order to establish that fact so as to make you feel sure, the State must eliminate any reasonable doubt….My task is not more than to warn you of the possibility that such evidence may be unreliable and to explain why that is so, and thus [why] it would enable you to exercise the caution, which is required in determining whether to accept that evidence and what weight is to be given to it.
>
> "..we may even consider that [Mr Hosein] may have been an accomplice…I told you we approach it with caution…If you find that [Mr Hosein] spoke the truth on matters that substantiate and proved the elements of the crimes…you are entitled to deliver judgment accordingly…As an accomplice his testimony must be treated with great care and utmost caution…necessary for me to warn you that it is dangerous to convict the accused if it is that you view the evidence of [Mr Hosein] to be uncorroborated…..
>
> "…if it is that you also view [Sheldon] that he too may have been an accomplice…evidence of [Sheldon] may not also amount to corroboration."

15. The Court of Appeal did not consider whether that warning was necessary or appropriate in circumstances where the sting operation had been designed to test whether the account given by the Hoseins was true and had produced evidence which tended to show that it was. It clearly was not necessary or appropriate.

16. The court then cited the proper approach to an appeal based on a suggested inconsistency in verdicts by reference to a decision of Chief Justice de la Bastide in *Minnott v the State* (2001) 62 WIR 347. This was consistent with the later exposition of the appropriate test by the Court of Appeal Criminal Division in England and Wales in *R v Fanning and other cases* [2016] EWCA Crim 550; [2016] 1 WLR 4175 19 ("*Fanning*"). The Chief Justice set out some principles. He expressly said that they were "guidelines" only and "by no means exhaustive". The Court of Appeal set them out in this way, at para 12:

> "The Court of Appeal should be extremely slow to quash a conviction on the ground that it is supported by evidence from a source which must have been regarded by the jury as

unreliable having regard to a Not Guilty verdict which they returned against the same accused on another count or against a co-accused on the same charge. If there is any plausible way at all of explaining how a reasonable jury might have reached the two verdicts, the Court of Appeal will not quash the conviction.

If there is any evidence to support the conviction which is confirmatory of, or supplementary to, the evidence which has been rendered questionable by the acquittal, this is sufficient to justify different verdicts and the conviction will be upheld. [emphasis added]

If the implied rejection by a jury of a witness's evidence inherent in a verdict of acquittal can be explained on any basis which does not involve attributing to that witness an intention deliberately to mislead, eg faulty recollection, mistake, confusion, etc, a conviction based on other evidence from the same witness will not necessarily be regarded as unsafe.

Even if an acquittal connotes lack of confidence by the jury in the truthfulness of a witness, a conviction based on the unsupported and challenged evidence of that witness may nonetheless be upheld if from the evidence there is available some reasonable basis for believing that the witness may have lied in relation to the charge that failed, but told the truth in relation to the charge that succeeded.

In determining whether it was reasonable for a jury to have accepted one segment or aspect of a witness's evidence while rejecting another segment or aspect of his evidence, it is material to consider how closely linked in terms of time, place and subject matter are the two segments or aspects of his evidence.

If an acquittal cannot be explained on any other basis but that the jury doubted the truthfulness of a witness, a conviction which depends on the jury having accepted that same witness as a witness of truth, cannot in the absence of some explanation of the jury's differing assessment of that witness' credibility, stand. We are very far from suggesting that these propositions

> represent any sort of comprehensive statement of the law on the topic of inconsistent [sc verdicts]."

17. In England and Wales the issue has been definitively addressed in *Fanning*. The court found that there had been a departure from the common law test described in *R v Stone* [1955] Crim LR 120 CCA and *R v Durante* [1972] 1 WLR 1612, and reasserted that test as the proper approach. The test, derived from *Stone* and *Durante* and approved in *Fanning* (see paragraphs 6, 8, 15 and 16), may be stated in this way:

> In cases in which an appeal was brought on the ground of inconsistent verdicts there was a clear test in that the defendant had to satisfy the court that the two verdicts could not stand together, meaning thereby that no reasonable jury who had applied their mind properly to the facts of the case could have arrived at the conclusion being considered. The defendant had to satisfy the court that the verdicts were not merely inconsistent, but were so inconsistent as to demand interference by an appellate court.

18. Since this test dates back before 1962, and since it is not inconsistent with the principles identified as "guidelines" by Chief Justice de la Bastide, it represents the proper test for the purposes of the law of Trinidad and Tobago.

19. The paragraph from Minnott emphasised in para 16 above appears to be of critical importance but was not further discussed in the judgment.

20. The reasoning of the court was summarised in the judgment of Weekes JA, at para 13:

> "Inherent on the jury's findings on count 3, must have been a finding that the events of 29 December were as the virtual complainant had related. Had they reasonable doubt on counts 1 and 2 they could not properly find beyond reasonable doubt on Count 3. The counts were logically inextricably linked. There could be no rational explanation for their verdicts."

21. The court continued, at para 14:

> "Even where judges must direct that separate counts be given separate consideration it is appropriate where logic and

> common sense demand it that they explain to jurors why in certain circumstances consistency in their verdicts is warranted. If they were not sure beyond reasonable doubt that the bribes had been solicited and part payment made, they would not be certain of the events surrounding count 3. Count 3 could not stand alone even with corroboration. It could only be explained by reference to what had occurred at the earlier encounter."

and concluded, at para 15:

> "We allow this appeal. The conviction and sentence are quashed and we order a re-trial for the reasons that the offence is serious, the evidence on the prosecution case is strong, the matter arises out of events of 2005 and it is in the public interest that the matter be fully ventilated."

22. The court did not explain why the principles identified by Chief Justice de la Bastide did not lead them to uphold the conviction on count 3. Why was it not open to a jury, given the directions they had received, to say that it would be dangerous to convict Mr Ali on counts 1 and 2 and to decline to do so, but to hold that no such danger existed in respect of count 3 which was abundantly corroborated? In short, the peculiarity of the verdicts is explained by the way in which the jury was directed. This tends to suggest that the acquittals were anomalous and the result of a warning which should not have been given, but does nothing to undermine the conviction on count 3.

23. In any event, if the Court of Appeal were right that a conviction on count 3 could not stand alongside the acquittal on counts 1 and 2, that position would continue to apply to any re-trial. The decision to quash the conviction on count 3 on this basis and the decision to order a re-trial are inconsistent and cannot both be right.

The re-trial

24. At the re-trial, counsel for Mr Ali contended that the evidence upon which the State relied in the first trial in respect of counts 1 and 2 was inadmissible, because he had been acquitted on those counts. The State disputed this, on the footing that evidence may be adduced of the background of an offence, and therefore it was admissible in relation to count 3. Counsel for Mr Ali also contended that the indictment should be stayed, as it would offend public confidence and the court's sense of justice and propriety to allow it to be pursued. The State contended that this argument was not open to Mr Ali, given the Court of Appeal's order for a re-trial. In essence, the judge, Mrs Justice Lucky, was required to make sense of the problematic decision in the first appeal.

25. The State said that if the disputed evidence of what occurred in December was excluded it could not proceed at the re-trial.

26. On 31 July 2018, the judge gave her decision, in which she held that:

(i) The disputed evidence was inextricably linked to the count now being re-tried;

(ii) The order for a re-trial required the court on the re-trial to decide whether Mr Ali could receive a fair trial, which was a matter for the trial judge;

(iii) Allowing in the evidence on the acquitted counts would amount to the jury being asked to undermine the previous verdicts of not guilty on the first two counts;

(iv) Admission of the evidence would lead to satellite issues which would distract the jury from the central issues;

(v) The evidence would lead to confusion that could not be cured by any directions from her;

(vi) She would, therefore, not allow the evidence relating to the first two counts to go in, which meant that the State was unable to take the matter forward.

27. Accordingly, she ordered that *"*this indictment is stayed and you [Mr Ali] are therefore discharged*"*.

28. It appears that the judge decided that the re-trial on count 3 would be unfair, although the ruling is also phrased as a ruling that the disputed evidence was inadmissible. In reaching this conclusion she applied the reasoning of the Court of Appeal in quashing the conviction on count 3. Her fourth and fifth reasons, summarised above, are without substance. It was the supposed unfairness of the trial, given the acquittals, which was the real reason for the stay.

The second appeal

29. The State appealed to the Court of Appeal, on the basis that:

(i) The judge, in withdrawing the evidence relating to what had previously been counts 1 and 2, erred in law, in that she misdirected herself as to the status of the jury's verdict of not guilty on those two counts in the first trial; and further, she had no power to stay the indictment.

(ii) The judge's decision to exclude the evidence on those two previous counts was wrong in law because she misdirected herself as to the admissibility of the jury's verdict at the re-trial.

30. In a judgment handed down on 21 October 2021, the Court of Appeal agreed with the DPP that the disputed evidence should not have been excluded. The court held that the fact Mr Ali was acquitted of the first and second counts was not conclusive of his innocence, nor did it mean that all issues were resolved in his favour. Accordingly the judge erred in holding otherwise. The court further held that the evidence relating to the first two counts was admissible at the re-trial, and that the judge was plainly wrong to exclude it. The jury were not being asked to make a new finding on the first two counts, and any satellite issues or the like could easily have been addressed by robust directions to the jury.

31. However, the Court of Appeal dismissed the appeal on a new basis formulated by the court itself. It held that the way the indictment was framed was so unfair that the prosecution should not be allowed to proceed. This was because:

(i) there was no rational explanation for the jury's inconsistent verdicts at the first trial;

(ii) the jury's verdict of not guilty on counts 1 and 2 at the first trial involved the rejection of Mr Hosein's evidence; count 3 was part and parcel of just one transaction on all three counts; and charging three counts *"*was artificial leaving the door wide opened for inconsistent verdicts*"*;

(iii) fifteen years had now elapsed since the events in question;

(iv) Mr Ali's evidence on the second (acquitted) count was and would be the same as on the third count;

(v) had the DPP indicted on just one count, Mr Ali might have avoided an appellate process altogether;

(vi) the result at the first trial, at which Mr Ali was acquitted of the first two counts, but convicted of the third, was an illogical result which was grounded in the way the indictment was framed, and the DPP should not have charged both solicitation and receipt;

(vii) Mr Ali would also have been subject to two sets of punishment on each count of receiving corruptly had he been convicted on both counts.

32. Importantly, at para 23 of the judgment, the Court of Appeal said this:

> "We agree with counsel that it was juridically permissible to draft the indictment as it was done, however, the question arises as to whether in the circumstances of the case as a whole, it resulted in unfairness to the respondent."

33. For the reasons summarised above, the Court of Appeal found that the framing of the indictment had caused unfairness and therefore dismissed the State's appeal and upheld the judge's decision to stay the re-trial. This was not an acquittal on the merits, but a decision that it would, as things stood in 2021, be unfair to try Mr Ali on count 3. The court said this, at para 26:

> "In our view, the circumstances in this case can be considered to be exceptional and warrant the exercise of the court's power to grant a stay. This is not a case in which the question of whether the respondent could receive a fair trial arises since the approach of the DPP in framing the count on the indictment was fatally flawed from the outset. In the premises, we are of the view that the prosecution in this case amounted to an abuse of process of the court and is oppressive and that the respondent ought not to stand trial at all."

The powers of the Court of Appeal of Trinidad and Tobago on a prosecutor's appeal

34. The Court of Appeal of Trinidad and Tobago was set up by the 1962 Constitution of Trinidad and Tobago, the material parts of which came into effect immediately before 31 August 1962. Its powers are then set out in the Supreme Court of Judicature Act 1962, which came into effect on 31 August 1962.

The Constitution

35. The Board is satisfied that this appeal is properly brought and by s.109(6) and (7) of the Constitution of Trinidad and Tobago any decision by the Privy Council is to be enforced in like manner as if it were a decision of the Court of Appeal, and the Privy Council is to "have all the jurisdiction and powers possessed in relation to that case by the Court of Appeal".

The Supreme Court of Judicature Act 1962

36. Section 37(1) of the 1962 Act provides:

> "The jurisdiction of the Court of Appeal so far as it concerns practice and procedure in relation to appeals from the High Court shall be exercised in accordance with the provisions of this Act and Rules of Court and where no special provisions are contained in this Act or Rules of Court any such jurisdiction so far as concerns practice and procedure in relation to appeals from the High Court shall be exercised as nearly as may be in conformity with the law and practice in force in England on 30 August 1962 –
>
> (a) in relation to criminal matters, in the Court of Criminal Appeal;
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> (b) in relation to civil matters, in the Court of Appeal."

37. Sections 65E to 65Q of the 1962 Act were introduced by way of amendment in 1996, and they provide for a power in the DPP to appeal to the Court of Appeal. In particular:

(i) Section 65E(1) provides that:

> "Section 63 notwithstanding, the Director of Public Prosecutions may appeal to the Court of Appeal-
>
> (a) against a judgment or verdict of acquittal of a trial Court in proceedings by indictment when the judgment or verdict is the result of a decision by the trial Judge to

> uphold a no case submission or withdraw the case from the jury on any ground of appeal that the decision of the trial Judge is erroneous in point of law;….."

(ii) Section 65G provides that:

> "On an appeal from an acquittal the Court of Appeal may –
>
> (a) Dismiss the appeal; or
>
> (b) Allow the appeal, set aside the verdict, and order a new trial."

(iii) Section 65O provides:

> "An appeal from a decision of the Court of Appeal under this Part shall lie to the Judicial Committee as of right."

The challenge

38. The DPP is represented by Mr Peter Knox KC. Mr Ali is not represented and has not appeared or made any representations. Mr Ravi Rajcoomar SC and Ms Tiffany Ali did act for him when the Statement of Facts and Issues for this appeal was prepared. The issues were clearly identified there with their assistance.

39. The challenge is to the decision of the Court of Appeal in the second appeal to stay the proceedings as an abuse of process. It is phrased in this way:

> "It is respectfully submitted that the Court of Appeal erred in law in so ordering.
>
> (1) It had no power to reverse its previous order, save possibly in exceptional circumstances of a sort quite different from here. Further, the Court of Appeal did not even consider whether such exceptional circumstances existed.

> (2) In any event, there was nothing defective, or so defective, in the way that the indictment was framed which meant either that the proceedings so far had been unfair, or that it would be unfair for the trial to take place on count 3 as ordered by the previous Court of Appeal's order."

40. The second of these issues is phrased by counsel for both parties in the Statement of Facts and Issues in this way:

> "In any event, was there anything defective or improper in the indictment, and was it open to the jury to convict on count 3 even if they did not convict on counts 1 and 2?"

Discussion

Ground 1

41. The first ground relies on the submission that the decision to stay the proceedings as an abuse of process was inconsistent with the order in the first trial that a re-trial on count 3 should take place. It is submitted that the Court of Appeal effectively reversed the decision of the first Court of Appeal to order a re-trial. It is submitted that there is jurisdiction for the Court of Appeal to reopen its earlier decisions, as explained in the decision of the Court of Appeal in England and Wales in the civil case of *Taylor v Lawrence* [2002] EWCA Civ 90; [2003] QB 528, and affirmed in the criminal jurisdiction in *R v Yasain* [2015] EWCA Crim 1277; [2016] QB 146. However it is also submitted that those decisions establish conditions for the exercise of that power which were absent here.

42. The Board considers that it is not necessary for the purposes of this case to analyse this first ground at any length. The second Court of Appeal upheld a stay of proceedings. It did not set aside the order for re-trial made by the first Court of Appeal in 2010. Had it done so, this would indeed have been difficult to reconcile with the approach in *R v Yasain.* If the form of the indictment was such that it was incapable of being fairly tried in 2021, it was equally so in 2010, but no challenge to the form of the indictment had been advanced at the first trial or in the first appeal. The requirements of the jurisdiction identified in *Taylor v Lawrence* and *Yasain* are not met. There is, however, no doubt that the trial court has power to stay proceedings as an abuse of process at a re-trial ordered following the quashing of a conviction. This would usually occur because of some factor which had not formed part of the decision of the Court of Appeal when ordering a re-trial, perhaps because it had arisen since that decision. In the present case, by the time of the re-trial 8 years had passed since it was ordered, and a further 3 years passed before the second appeal. The reasoning of the Court of Appeal at the second appeal in 2021,

summarised at paras 31-33 above, relies in part on the passage of time and the oppressive nature of the proceedings as they then stood.

43. The first ground mischaracterises the decision of the second Court of Appeal and the Board rejects the appeal by the DPP against its decision to stay the indictment on this ground. The order staying the proceedings as an abuse made by Mrs Justice Lucky was within her jurisdiction and the second Court of Appeal had jurisdiction to hear an appeal against it, which it dismissed. The question is whether that power to stay the proceedings was properly exercised.

Ground 2: is the indictment defective?

44. This is an unusual situation in which the Board is considering an appeal against an order made in 2021 which followed a trial, an earlier appeal and a re-trial. Each of those events involved clear errors, but none of them involved any criticism of the form of the indictment.

45. The Board has attempted to identify the principal difficulties with these earlier judicial proceedings in the narrative above, and for ease of reference they are summarised here.

> (i) At the trial in January 2010 the trial judge directed the jury that there was no corroboration of the evidence of Mr Hosein and Sheldon and that it was dangerous to convict on their unsupported evidence. Their evidence in respect of the events in December 2005 in counts 1 and 2 was corroborated as we have explained above, and this was a significant misdirection in favour of Mr Ali which may have led to him being wrongly acquitted of those counts. We shall return to this issue at the end of this judgment.
>
> (ii) The first Court of Appeal in July 2010 should not have quashed the conviction on count 3 on the basis of inconsistent verdicts. That could only properly be done if the court found that the defendant had satisfied the court that the verdicts could not stand together, meaning thereby that no reasonable jury who had applied their mind properly to the facts of the case could have arrived at the conclusion being considered. The defendant had to satisfy the court that the verdicts were not merely inconsistent, but were so inconsistent as to demand interference by an appropriate court. This is the test re-established from earlier authority (going back before 1962) in *Fanning*, which is consistent with the law stated in *Minnott* which the court purported to apply. This test was not satisfied. The verdicts were perfectly explicable given the erroneous direction of law which the jury had received about corroboration, which led them to approach counts 1 and 2 on the basis that the Hoseins were uncorroborated accomplices, and that it

would be dangerous to convict for that reason. Count 3 was clearly not in that category. The Court of Appeal, having analysed the case in the way it did, quashed a perfectly safe conviction.

(iii) The first Court of Appeal then ordered a re-trial of count 3, without explaining why a conviction at such a re-trial would be any safer than the one it had just quashed. The logic of its decision to quash the conviction (wrong as it was) required the court to refuse to order a re-trial, which might have led the DPP to appeal against that decision then.

(iv) Mrs Justice Lucky, at the re-trial in 2018, was, therefore, confronted with a very difficult problem. She was required to conduct a re-trial, and to follow the reasoning of the decision of the Court of Appeal to quash the conviction on count 3. It was not possible to do both. She held herself to be bound to apply that reasoning. She does not appear to have been asked to stay the prosecution as an abuse of process by reason of the 8 year delay since the re-trial was ordered, although it is clear she was troubled by the age of the case. She was instead dealing with an application to exclude the evidence on counts 1 and 2 on the ground that it would be unfair to allow it to be adduced, essentially because of the inconsistent verdicts identified by the first Court of Appeal. She made a decision to stay the proceedings having ruled that the evidence of the Hoseins on counts 1 and 2 would be excluded from the material placed before the jury on the trial of count 3. The prosecution accepted that it could not proceed to trial on this basis, and instead sought to appeal against the order staying the proceedings.

46. That second appeal came on in 2021. The second Court of Appeal correctly agreed with the appeal against the decision of Mrs Justice Lucky to exclude the evidence. However, they then held that the indictment was, and always had been, drafted in a way which was "juridically permissible" but that it was the cause of such unfairness that no trial could be permitted to proceed. They therefore upheld the stay on that ground, referring also to the delay which had occurred and the oppressive nature of the proceedings as they then stood.

47. The decision that the evidence of the Hoseins about the events in December was admissible was taken because the court accepted that the acquittals did not mean that the evidence had been rejected by the jury, for the reasons given above when explaining why the first Court of Appeal was wrong to quash the conviction on count 3 on the ground of inconsistency of verdicts. It is difficult to reconcile that with some observations made by the same court in the same judgment when dealing with the form of the indictment and its impact on the fairness of the proposed re-trial.

48. The Board agrees with the Court of Appeal in the second appeal that "it was juridically permissible to draft the indictment as it was done", which means that there was no formal obstacle to charging three separate criminal acts in separate counts. It is true that they were closely connected criminal acts in furtherance of a single scheme, but this does not mean that each cannot be represented in its own count. This is trite law, and, given the agreement between the Board and the Court of Appeal on this question, further analysis is not required.

49. The Board does not, however, agree that no fair trial could ever have taken place on that indictment. The reasoning in this part of the judgment is not always easy to follow and it is clear that several strands are intertwined. That reasoning is summarised at para 33 above. Before turning to the parts which cannot be supported, it is appropriate to identify one of the strands more fully. The court said this:

> "24 ... (iii). [Mr Ali] was charged for this offence in 2006, the first trial occurred in 2010, the appeal was heard in 2010 and the re-trial came up in 2018. Some fifteen years have elapsed without the final determination of this case. Such a lengthy period would have, no doubt, caused [Mr Ali] many anxious moments as this case hung over his head.
>
> "25 The approach adopted by the DPP deprived [Mr Ali] of the opportunity of having all charges against him considered at the first trial, in a manner which would not have been oppressive to him by having the totality of the proceedings against him brought to finality. Over a decade has elapsed since the first trial and [Mr Ali] continues to have count three looming over his head with uncertainty. This placed him in the invidious and oppressive position of being faced with another trial and having to expend additional time and resources due to no fault of his while at the same time allowing the prosecution two bites at the cherry. This situation could have been wholly avoided had the acts of corruptly receiving been charged as one count since it was part and parcel of the same transaction."

50. It is true that a single charge might have produced a quicker final result, which may well have been the conviction of Mr Ali, but this does not mean that the drafting of the indictment was inappropriate. The reason for the adverse consequences identified by the court was the failure of the courts to deal appropriately with the indictment as laid.

51. The Court of Appeal relied upon the determination in the first appeal that the verdicts were inconsistent in support of its decision to stay the re-trial of count 3. That

determination was wrong, and in relying on it the second Court of Appeal acted inconsistently with its own approach to the DPP's appeal against Mrs Justice Lucky's admissibility ruling, in which they determined that it involved a legal error in that she had held that it would be unfair to allow the evidence because a jury had already made a finding about it. This was wrong because the verdicts of the first jury on counts 1 and 2 were, in law, irrelevant and the second jury would be free to examine the same facts and reach a different conclusion. They also held, at para 50, that the judge erred in the exercise of her discretion to exclude the evidence. In that respect she was "plainly wrong":

> "The jury was not being asked to make a new finding on solicitation and any satellite issues contamination or confusion of the jury could easily be addressed by carefully crafted robust directions from the trial judge."

52. The second Court of Appeal made two further points in support of its decision to uphold the stay. They said, at para 24:

> "(vi). … The events progressed from solicitation to the culmination in the receipt of the bribe. It is the criminality of the culmination of the wrongdoing which ought to determine the offence charged, rather than the initiation of the wrongdoing. This course resulted in the peculiar circumstances of the case and the corruption became the fruit of the solicitation. In our view solicitation ought not to have been charged at all. Although [Mr Ali] was acquitted on that count he nonetheless suffered the hardship of mounting a defence and going through the rigours of a trial.
>
> "(vii). [Mr Ali] would have been subject to two sets of punishment in respect of each count of corruptly receiving had he been convicted on both counts."

53. Neither of these points has any weight. It is not clear what "hardship" was caused to Mr Ali by the "rigours of a trial" on count 1, since what he said about that was inevitably required as part of his defence to counts 2 and 3. The sentence, in the event of conviction on more than one count, would have been proportionate to the totality of the offending which had been proved, and would not, as the court's seventh point would seem to imply, have inevitably been excessive.

54. For all these reasons, the court's criticisms of the form of the indictment (which by the time of the re-trial contained only one count anyway) were without substance.

The stay of proceedings

55. However, this appeal is not brought against the *reasoning* of the Court of Appeal which resulted in its decision to uphold the stay imposed by Mrs Justice Lucky, but against the *order* it made dismissing the DPP's appeal against her order. One strand of the reasoning cannot be supported, as we have explained. The concern of the Court of Appeal about the delay and its finding that the proceedings had become oppressive is a different matter. The Board unhesitatingly concludes that the State has failed to bring these proceedings to trial within a reasonable time and that it would be quite unconscionable to permit a further trial which would take place some 20 years after Mr Ali was charged with these offences. The decision to uphold the stay is justified on the ground of delay and was one which was plainly open to the second Court of Appeal in 2021. The Board considers that it would be wrong to interfere with it. The position is even clearer now, in 2025, than it was then.

56. The question whether to stay proceedings in a case where there has been long delay is always fact specific. The nature of the evidence and the seriousness of the offence will be significant considerations. The principles were summarised by the Court of Appeal of England and Wales (Criminal Division) in *R v LG* [2018] EWCA Crim 736. Davis LJ, giving the judgment of the court, said this:

> "21. We turn to the law. The authorities in this field are legion; but some of the relevant principles can be summarised as follows:
>
> 1. As is well-established, there are two bases on which a stay in this kind of context may be granted. Put shortly: first, where the defendant can no longer have a fair trial; and second, where it is not fair for the defendant to be tried at all: see [*R v Horseferry Road Magistrates' Court, Ex p*] *Bennett* [1994] 1 AC 42.
>
> 2. The granting of a stay is an exceptional remedy – a remedy of last resort (as it has been said).
>
> 3. That the delay may have been occasioned by fault on the part of the prosecution does not of itself mean that there should be a stay. Even where any delay is unjustifiable, still the imposition of a stay should be the exception: see *Attorney General's Reference (No 1 of 1990)* 95 Cr App R 296.

> 4. In cases based on limb 1 of the abuse principles, a stay should not ordinarily be granted in the absence of serious prejudice to the defendant which cannot be remedied through the trial process.
>
> 5. In cases where an indication has been given that there will be no prosecution, a stay of a subsequent prosecution will ordinarily not be granted unless there is an unequivocal representation to that effect and that the defendant in question has acted to his detriment in reliance upon that unequivocal representation: see, for example, *R v Killick* [2012] 1 Cr App R 10.
>
> 6. It is not the function of a grant of a stay simply to punish default on the part of the prosecution."

57. Here, there is no reason to suppose that the evidence on count 3 will be much less cogent now than it was in 2010. It was all given in court in that year and a record has been kept in the form of notes of evidence. Key documentary evidence has been kept. The charge is serious. Police corruption is always a grave matter because it undermines respect for the rule of law and public confidence in the police force. However, it is at a level of seriousness where very long delay may lead to a stay even if a fair trial remains possible. The length of the delay in this case is quite extraordinary, and is the principal determining factor. This case, on that ground, is wholly exceptional.

58. A further factor which distinguishes this case as exceptional is that it is a re-trial. It has always been thought that expedition in re-trials is of particular importance, see the recent decision of the United Kingdom Supreme Court in *R v Layden* [2025] UKSC 12; [2025] 2 WLR 740 for the proper approach in England and Wales. If the first Court of Appeal had appreciated that it would be 8 years before the re-trial would take place, they may not have ordered one at all. The power to decline to order a re-trial when quashing a conviction is a means by which a court of appeal can bring proceedings to an end when appropriate. It does not require a determination that continuation of proceedings would be an abuse of process, and is a broad discretion.

59. Another exceptional feature of this case is the cause of the delay. The reasons for the delay are not rendered irrelevant by the principles we have identified. We have no reason to believe it was the fault of Mr Ali, and Mr Knox very fairly did not suggest otherwise. The Court of Appeal sought to blame the prosecution because of the way it drafted the indictment and we have rejected that finding. It is not necessary for delay to be the fault of the prosecution for proceedings to be stayed. In this case the delay occurred because the courts made a series of decisions each of which we have found to be flawed.

In addition to these judicial failures, the courts failed to list the re-trial within a reasonable time of the order for a re-trial and then failed to list the appeal within a reasonable time of the decision of Mrs Justice Lucky to stay the proceedings. The time which elapsed between 2010 and 2018 and again between 2018 and 2021 was, in the judgment of the Board, a sufficient basis on which the Court of Appeal could properly conclude that it would be wrong to permit the State to continue to prosecute Mr Ali with a view to criminal sanctions being imposed on him in the event of conviction. The Board therefore upholds the decision of the Court of Appeal to dismiss the appeal against the stay imposed by Mrs Justice Lucky on this ground.

An explanation of the consequences of this decision

60. Mr Knox has explained that one reason why the DPP is concerned to bring this appeal is the potential consequence of the order of the second Court of Appeal. Mr Ali has been suspended without pay since his arrest. He may seek to advance a claim for re-instatement, back pay and pension entitlements. It is therefore, Mr Knox submits, in the public interest that his guilt or innocence on count 3 of the indictment should be determined in a criminal trial.

61. The Board does not accept that this justifies the removal of the stay. The events giving rise to the charge took place in December 2005 and January 2006, very nearly 20 years ago. These proceedings have been hanging over Mr Ali throughout that time, including the possibility of a 5 year prison term with hard labour. They are rightly stayed. A stay, however, is not the same as an acquittal. For all practical purposes it determines these criminal proceedings which will never now proceed to a determination on the merits.

62. Even if Mr Ali had been acquitted on all counts, this would not have prevented his employer from alleging and adducing evidence to prove in disciplinary or civil proceedings that Mr Ali solicited and received bribes. As it is, he was convicted by the jury on count 3 and it is a consequence of what has been said above that that conviction ought not to have been quashed by the first Court of Appeal. He was safely convicted and the way in which the case was left to the jury at the first trial on counts 1 and 2 was unduly favourable to him. There was corroboration of the evidence of Mr Hosein and Sheldon on those counts. It was to be found in the very strong independent evidence of Mr Ali's guilt on count 3 which was very closely connected with counts 1 and 2. It was also to be found in the withdrawal by Sheldon of $4,500 in cash from a credit card account and a savings account at the time when Mr Hosein said he had asked him to do this so that he could pay it to Mr Ali as a bribe. This was vouched by the bank withdrawal slips, which were an independent source of evidence. The very strong warning about the danger of convicting on counts 1 and 2 was, therefore, unwarranted.

63. It was never suggested that the evidence on count 3 depended on the uncorroborated word of two accomplices. The receipt of the $1500 was abundantly proved by the police evidence. Mr Ali did not say that he received it for a reason which was not corrupt. He said he received it without knowing what it was. He thought it was some documents to do with the car. Given that an envelope containing $1500 in cash does not at all feel the same as an envelope containing a few copy documents concerning a car, it is hardly surprising that the jury was sure this was a lie. They may also have wondered why Mr Ali put what he thought was evidence in his pocket rather than a file. Having rejected this defence case, the jury were understandably driven to the conclusion that Mr Ali could only have received this large sum in cash for a corrupt reason.

64. The first Court of Appeal correctly stated the principles later explained in *Fanning* about inconsistent verdicts and then, without explanation, failed to apply them. On this basis, the decision of the Court of Appeal in the first appeal that the conviction on count 3 should be quashed because it was inconsistent with the acquittals on counts 1 and 2 was plainly wrong for the reasons given above.

65. For these reasons, the outcome of these criminal proceedings will be of no assistance to Mr Ali in any disciplinary or civil proceedings.

Conclusion

66. This appeal is dismissed.