



Neutral Citation Number: [2014] EWHC 2068 (Admin)

Case No: CO/1148/2013

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/06/2014

Before :

LORD JUSTICE PITCHFORD AND MRS JUSTICE NICOLA DAVIES DBE

Between :

John Sweeney	<u>Claimant</u>
- and -	
Westminster Magistrates Court	<u>1st Defendant</u>
And	
London Regional Asset Recovery Team	<u>2nd Defendant</u>
And Environment Agency	<u>Interested</u>
	<u>Party</u>

Samantha Riggs (instructed by **Pannone**) for the **Claimant**
Elliot Gold (instructed by **London Regional Asset Recovery Team**) for the **1st Defendant**
Sailesh Mehta (instructed by the **Environment Agency**) for the **Interested Party**

Hearing dates: 13 May 2014

Approved Judgment

Mrs Justice Nicola Davies

1. The claimant challenges the lawfulness of a search warrant issued by the first defendant, the Westminster Magistrates Court, on 10 May 2013. Detective Constable Mary Allen from the Regional Asset Recovery Team (“RART”), the second defendant, applied pursuant to section 8 of the Police and Criminal Evidence Act 1984 (“PACE”) on behalf of the Environment Agency (“EA”) the interested party, to enter and search the claimant’s premises. The premises included the business premises at Trout Lane Depot, Middlesex (“The Site”), a waste transfer and recycling station operated by Ethos Green Ltd, together with the home of the claimant in Iver. Contained within the warrant was the identified purpose of the search. Set out in a schedule were the names of six individuals together with their home addresses plus the name and address of a firm of accountants, all premises were the subject of the warrant. Some of the individuals have been joined as interested parties in these proceedings. For the purpose of this application they have played no real part.
2. The ex-parte application for the warrant was made to Justices sitting in camera at Westminster Magistrates Court. No information was provided to the court in advance of the application. The written Information was given to the court, the application took 15 minutes. No contemporaneous record of the proceedings was made, neither the court nor DC Allen made any notes. DC Allen stated that she had no memory of what, if any, questions were asked of her. No written reasons were provided by the Justices as to the grant of the warrant. In a letter dated 8 August 2013, the legal team manager of the court stated that “The Magistrates were satisfied on the strength of the information that there were reasonable grounds to believe that PACE section 8 (1) (a), (b), (c), (d) and (e) were met. Further that without the grant of a warrant section 8 (3) (a), (c) and (d) applied. Their view was that the detailed summary provided by the applicant clearly addressed the necessary matters and gave compelling grounds for belief.”
3. On 16 May 2013 the warrant was executed at a number of premises. Officers accompanied by a film crew, executed the search warrant at the Site. The claimant declined to grant access to the film crew but showed the officers around the building and depot in order to identify any potential hazards. A search of the office block commenced at 7.15 a.m. and concluded at 10.30 p.m. Documentation found within the premises was removed as were two laptops and various discs. Simultaneously officers attended the home address of the claimant to execute the search warrant. The claimant provided keys to enable them to gain access. Correspondence, a camera, a Blackberry, a quantity of folders and files, £2000 in cash and coins and other items were seized. The property is presently held, in part, by RART and, in part, by the EA. At a date which has not been identified it was agreed between RART and the claimant that no further examination of the material would take place pending the outcome of these proceedings.
4. In support of his application the claimant relies upon 10 grounds. HH Judge Pelling QC, sitting as a judge of the High Court, granted permission in respect of Grounds 3 and 5. The claimant seeks an oral hearing on the issue of permission in respect of the refusal of the outstanding grounds. Prior to this hearing the claimant indicated that in the event that he was successful upon Ground 3 and/or 5 he would not pursue the oral application for permission upon the other grounds.

5. The claimant seeks the following relief:

- An order quashing the warrant;
- A declaration that the entry, search and seizure were unlawful;
- An order for the return of the items seized;
- Damages and costs.
- The court heard oral submissions made on behalf of the claimant, RART, the second defendant, and EA, the interested party. The Westminster Magistrates Court has declined to take part in the proceedings.

6. The challenges set out in Grounds 3 and 5 are:

Ground 3

The warrant, which was drafted in extremely wide terms (“evidence in documentary or any other forms”) was unlawful because it failed to identify so far as practicable articles being sought: Section 15(6)(b) PACE.

Ground 5

The warrant was unlawful because the Information relied upon in support of the application was defective in a number of material respects:

- (i) It failed to set out the statutory requirements, which have to be satisfied before a warrant can be granted.
- (ii) It failed for each of the relevant statutory requirements to set out how that requirement is satisfied by setting out the relevant facts relied upon including all the facts and matters which are said to show that a particular “reasonable belief” is justified.
- (iii) It failed to identify the offences with reference to the facts. E.g. “*Langdon Pumas Football Ground – This site is a small football ground just off A127 in Essex. There is no environmental permit on the site. Between the 7th and 10th October approximately 100 tonnes of transfer station waste deposited. Evidence found in the waste traces to Envirowasyste (London) Ltd. 100 tonnes at £64 per tonne landfill tax = £6,400.*” Is it being suggested that Envirowasyste tipped waste from their Site at the Football Ground?
- (iv) It failed to make full and frank disclosure about information within the knowledge of the EA. The EA knew that the Company was contracted by a third party to remove waste from the Langdon Pumas football ground because Gary Yardley from the EA telephoned the Company the day after the waste had been cleared to ask for the waste to be quarantined and spoke to the third party. The Company agreed to keep the waste for 24 hours. The EA failed to inspect. Further, the EA did not attend the football ground whilst the waste was on site. Approximately 30 tonnes of waste had been deposited by a third party, not 100 tonnes. Waste Transfer Notes are available to show the waste was carried away from the site by the Company, copies of which were never requested by the EA.
- (v) Although reference is made to “evidence”, (see for example (iii)) the Information fails to identify the evidence at any site. In these circumstances, it is difficult to assess how the tribunal could be satisfied there are reasonable

grounds for believing that an indictable offence had been committed. No explanation is provided for the belief held.

- (vi) It failed to make the court aware of the EA's statutory power of search and to request information (which have been exercised in the past).
- (vii) It failed to make the court aware that the EA made regular compliance visits to the Site and also attended Standlake, Oxfordshire. Once the Claimant is able to gain access to company records, a Chronology on Contact will be compiled.
- (viii) It did not give any factual basis for the assertion that requests had been made by the EA to interview company officers, however these have been ignored and significantly delayed. It is not accepted that any requests have been ignored. Conversely, the EA has failed to respond to correspondence sent on behalf of the company, which is not mentioned in the information. Further on at least two occasions, requests for interview were made in December and requests were made for the interviews to take place in January when Michael Krantz, the solicitor who regularly acted on behalf of the company was available.
- (ix) No explanation is given why it is believed that material likely to be of substantial value to the investigation and likely to be relevant evidence would be at the home address of those mentioned in the warrant as opposed to business address.
- (x) No explanation is given as to why the officer has reason to believe the purpose of the search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them. The first defendant was misled by: (i) not being made aware of the power of the EA to attend with a constable under section 108 Environment Act 1995; (ii) the co-operation of JS & the Company in the past; (iii) the fact the EA visited the Site on a regular basis in accordance with their statutory duties and (iv) (save for the fly tipping at sites completely unconnected with JS & the Company) JS & the Company were aware the EA were investigating the Site and Standlake because they had been invited in for an interview which undermines the argument that any search might be frustrated or seriously prejudiced if they were on notice.

The background to the application

8. It is suspected by the EA and RART that the claimant has generated considerable sums of money through unlawful waste activities over a number of years. The claimant has controlled, as a director or as the de facto controlling mind, numerous companies which have dealt in waste at a permitted site, Trout Lane and at a site at Standlake, Oxfordshire. Regular and persistent breaches of the environmental permits have occurred at those sites. Thereafter, unlawful deposits of controlled waste at unpermitted sites have taken place. These criminal activities have generated income through the collection of waste. Landfill tax has been avoided through unlawful deposits. It is estimated that the total sum generated through illegal activities is in the order of 3 million pounds. The claimant and others are said to have operated companies in an opaque way making it difficult to discover who is actually in charge and where money has flowed. Because of the sums of money generated the EA worked with the second defendant to investigate money laundering offences arising from the waste offences. The purpose of the warrant was to investigate money laundering offences.

9. The nature of the second defendant's investigation into money laundering required it to seek a Section 8 PACE warrant rather than the more limited s108 Environment Act 1995 warrant. The nature of the claimant's suspected criminality was such that it was reasonably believed by the EA that all of the businesses were connected to the claimant's waste activities.

Legislative background

10. The EA was created by the Environment Act 1995. Its stated purpose is "To protect or enhance the environment taken as a whole" so as to promote "its objective of achieving sustainable development". In order to discharge this function the EA possesses various powers pursuant to legislation. For the purpose of this application the following are relevant: The Environmental Permitting (England and Wales) Regulations 2010 (the "2010 Regulations") and the Environment Act 1995 (the "1995 Act"). In summary they provide:

"The EA is the regulator in relation to waste operations including waste facilities. Regulation 32;

A person must not, except to the extent authorised by an environmental permit, operate a regulated facility; Regulation 12;

A regulated facility means an installation i.e. waste transfer station; Regulation 8;

An environmental permit must specify (a) the regulated facility whose operation it authorises; and (b) the operator of that regulated facility; Regulation 14;

The EA may vary (Regulation 20) or revoke (Regulation 22) an environmental permit on application by the operator or on its own initiative;

The EA must periodically review environmental permits and make appropriate periodic inspections of regulated facilities; Regulation 34. Following these inspections the EA sends the operator a Compliance Assessment Report ("CAR");

Environmental permits can be transferred if the operator's legal entity changes, this is done by way of written application to the EA. Regulation 21. The EA can grant or refuse such an application. Where the EA grants an application it can impose such conditions as it deems appropriate;

Part 1 Schedule 5 of the 2010 Regulations applies to applications for transfer. Paragraph 4 permits the regulator to obtain further information to determine the application. Paragraph 13 provides:

“(1) Subject to subparagraph (3), the regulator must refuse an application for grant of an environmental permit or for the transfer in whole or in part of the environmental permit if it considers that, if the permit is granted or transferred, the requirement in sub-paragraph (2) will not be satisfied.

(2) The requirements are that the applicant for the grant for an environmental permit, or the proposed transferee, on the transfer of an environmental permit (in whole or in part) must –

(a) be the operator of the regulator facility; and

(b) operate the regulate facility in accordance with the environmental permit”.

The Regulatory Guidance Note number 5 issued by the EA, states that:

“authorities must not issue or transfer a permit if they consider the operator will not operate the installation in accordance with the permit. In making this decision the authority considers whether the operator cannot or is unlikely to operate the facility in accordance with the permit. The assessment includes:

- The operator’s management system;
- The operator’s technical competency;
- The operator’s record of compliance with previous regulatory requirements;
- The operator’s financial competency.

Enforcement notices can be issued if the EA considers that the operator has contravened a permit condition; Regulation 36;

Suspension Notices can be issued if the EA considers that the operation of a facility involves a serious risk of pollution; Regulation 37;

Regulation 38 identifies offences which can be committed by a person who acts in breach of the Regulations. Regulation 41 identifies offences by bodies corporate which act in breach of the Regulations”.

The Environment Act 1995

Section 108-Powers of enforcing authorities and persons authorised by them.

(1) A person who appears suitable to an enforcing authority may be authorised in writing by that authority to exercise, in accordance with the terms of the authorisation, any of the powers specified in section (4) below for the purpose –

- (a) in determining whether any provision of the pollution enactments in the case of that authority is being, or has been, complied with;
 - (b) in exercising or performing one or more of the pollution control functions of that authority;
 - (c) in determining whether and, if so, how such a function should be exercised or performed.
- (4) The powers which a person may be authorised to exercise under sub-section (1) or (2) above are –
- (a) to enter at any reasonable time (or in an emergency, or at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
 - (b) on entering a premises by virtue of paragraph (a) above, to take with him –
 - (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in execution of his duty; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
 - (c) to make such examination and investigation may in any circumstances be necessary;
 - (d) as regards to any premises which he has powers to enter, to direct those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respect) for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c) above; to require any person whom he has reasonable cause to believe to be able to gain information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than that person nominated by that person to be present and any persons that the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
 - (e) to require a production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records –
 - (i) which are required to be kept under the Pollution Control enactment of the enforcing authority and to whose authorisation he acts, or
 - (ii) which is as necessary for him to see for the purposes of an examination or investigation under paragraph (c) above,

And to inspect and take copies of, or of any entry, in the records;

Section 110 - offences

- (i) It is an offence for a person intentionally to obstruct an authorised person in the exercise or performance of his powers or his duties.
- (ii) It is an offence for a person, without reasonable excuse, -

- (a) to fail to comply with any requirements imposed under section 108 above;
- (b) to fail or refuse to provide facilities or assistance of any information or to permit any inspection reasonably required by an authorised person in the application of his powers or duty under or by virtue of that section; or
- (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to section (4) of that section.

11. The following statutory provisions are also relevant to this application:

Police and Criminal Evidence Act 1984

Power of justice of the peace to authorise entry and search of premises.

- (1) If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing -
 - (a) that an indictable offence has been committed; and
 - (b) that there is material on premises mentioned in subsection (1A) below which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
 - (c) that the material is likely to be relevant evidence; and
 - (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
 - (e) that any of the conditions specified in subsection (3) below applies in relation to each set of premises specified in the application,

he may issue a warrant authorising a constable to enter and search the premises.

- (1A) The premises referred to in subsection (1)(b) above are –
 - (a) one or more sets of premises specified in the application (in which case the application is for a “specific premises warrant”); or
 - (b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).
- (1B) If the application is for an all premises warrant, the justice of the peace must also be satisfied—
 - (a) that because of the particulars of the offence referred to in paragraph (a) of subsection (1) above, there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the material referred to in paragraph (b) of that subsection; and
 - (b) that it is not reasonably practicable to specify in the application all the premises which he occupies or controls and which might need to be searched.
- (1C) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is

necessary to authorise multiple entries in order to achieve the purpose for which he issues the warrant.

- (1D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.
- (2) A constable may seize and retain anything for which a search has been authorised under subsection (1) above.
- (3) The conditions mentioned in subsection (1)(e) above 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 evidence;
 - c) that entry to the premises will not be granted unless a warrant is produced;
 - d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them

15. -Search warrants – safeguards

- (1) This section and section 16 below have effect in relation to the issue to constables under any enactment, including an enactment contained in an Act passed after this Act, of warrants to enter and search premises; and an entry on or search of premises under a warrant is unlawful unless it complies with this section and section 16 below -
- (2) Where a constable applies for any such warrant, it shall be his duty - to state -
 - (i) the ground on which he makes the application
 - (ii) the enactment under which the warrant would be issued to specify the matters set out in subsection (2A) below; and
 - (iii) to identify, so far as is practicable, the articles or persons to be sought
- (2A) The matters which must be specified pursuant to subsection (2)(b) above are—
 - (a) if the application relates to one or more sets of premises specified in the application, each set of premises which it is desired to enter and search; if the application relates to any premises occupied or controlled by a person specified in the application—
 - if the application relates to any premises occupied or controlled by a person specified in the application—
 - i) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify;
 - ii) the person who is in occupation or control of those premises and any others which it is desired to enter and search;
 - iii) why it is necessary to search more premises than those specified under sub-paragraph (i); and

- iv) why it is not reasonably practicable to specify all the premises which it is desired to enter and search.
- (3) An application for such a warrant shall be made ex parte and supported by an information in writing.
- (4) The constable shall answer on oath any question that the justice of the peace or judge hearing the application asks him.
- (5) A warrant —
- (a) shall specify—
 - (i) the name of the person who applies for it;
 - (ii) the date on which it is issued;
 - (iii) the enactment under which it is issued; and
 - (iv) each set of premises to be searched, or (in the case of an all premises warrant) the person who is in occupation or control of premises to be searched, together with any premises under his occupation or control which can be specified and which are to be searched; and
 - (b) shall identify, so far as is practicable, the articles or persons to be sought.

Proceeds of Crime Act 2002

Part 7 Money Laundering

Offences

327 Concealing etc

- (1) A person commits an offence if he –
- (a) conceals criminal property;
 - (b) disguises criminal property;
 - (c) converts criminal property;
 - (d) transfers criminal property;
 - (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

328 Arrangements

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

329 Acquisition, Use and Possession

- (1) A person can commit an offence if he –
- (a) acquires criminal property;
 - (b) uses criminal property
 - (c) has possession of criminal property;

The legality of the warrant – case law

12. The principles relating to the legality of a warrant are identified in the following authorities:

R (On the Application of S, F, and L) v Chief Constable of the British Transport Police, the Southwark Crown Court [2003] EWHC 2189 (Admin). The court noted [37] that PACE seeks to reconcile two important and contrasting public interests identified by Bingham LJ in *R v Crown Court at Lewes ex parte Hills* [1991] 1993 Cr AppR 60, 66.

“There is, first of all, a public interest in the effective investigation and prosecution of crime. Secondly, there is a public interest in protecting the personal and property rights of citizens against infringement and invasion. There is an obvious tension between these two public interests because crime could not be most effectively investigated and prosecuted if the personal and property rights of citizens could be freely overridden and total protection of the personal and property rights of citizens would make investigation and prosecution of many crimes impossible or virtually so.”

At [38] it was stated:-

“Courts have always had a vital role in ensuring that any necessary invasion in the privacy of citizens is properly controlled. The power of the judiciary to scrutinize independently the requests of officers of the executive to enter a persons premises, search his belonging and seize his goods is a vital part of this role. Thus, Lord Hoffman explained in *A-G for Jamaica v Williams* [1998] AC 351 at 358 that:

“The purpose of the requirement that a warrant be issued by a Justice is to interpose the protection of a judicial decision between the citizen and the power of the State. If the legislature has decided in the public interest that in particular circumstances it is right to authorise a policeman or other executive officer of the State to enter upon a person’ premises, search his belongings and seize his goods, the function of the Justice is to satisfy himself that the prescribed circumstances exist. This is a duty of high constitutional importance. The law relies upon the **independent, scrutiny of the judiciary** to protect the citizen against the excesses which would inevitably flow from allowing an executive officer to decide for himself whether the conditions under which he is permitted to enter upon private property have been met”.

At [45] the court dealt with the Information and stated:

“...it is clear from the statutory provisions of PACE to which we have drawn attention above that it must deal with the following:

i) It must set out each of the statutory requirements which has to be satisfied in the particular case before the warrant in question can be granted. There are a number of different routes for obtaining a search warrant and only the route actually selected in a particular case should be dealt with, or else the judge will not know the precise basis of the application being made.

ii) It must show, for each of the relevant statutory requirements, how that requirement is satisfied by setting out all the relevant facts relied on including all facts and matters which are said to show that a particular “reasonable belief “ is justified. It is not enough to assert that a particular requirement is satisfied without explaining how it is said to be so. It is only when the judge can review the facts set out in the Information that he can decide for himself if a requirement has actually been satisfied. Furthermore, it is only then that a party wishing to challenge the warrant can decide whether the order could be challenged because of a failure to satisfy that particular requirement. Hence, an assertion that there are “reasonable grounds” for a belief will require that basis of the belief to be explained in detail. By the same token, an assertion that, in words of paragraph 2(b) of Schedule 1 of PACE, “other methods of obtaining the material – have not been tried because it appeared that they were bound to fail” would require details of the facts relied on by the constable for that statement.

iii) It must state whether, despite there being “reasonable grounds” for the constable believing that the material sought consists of or contains “special procedure material” or “excluded material”, there might be a claim for legal privilege in respect of any communication sought and, if so, how and why that would arise together with precise details of the arrangements which are to be taken to ensure that there will be an independent supervising lawyer present at the time of the search.

iv) It must make full and frank disclosure. This means, in the words of Hughes LJ in *Re Stanford International Limited* [2010] 3 WLR 941 at [191] that “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”. This is a heavy burden but a vital safeguard. Full details must be given. It is a useful reminder to the person laying the Information

to state expressly which information is given pursuant to the duty of full and frank disclosure.

v) If further information is supplied to the circuit judge during the hearing of the application, whether as a result of judicial questioning or otherwise, the Information should be supplemented by a witness statement or a further Information setting out such further information. This would follow what happens in civil proceedings. The objective is obvious: it is to ensure that the party against whom the order is made knows precisely and in full the basis on which the order against him or her was made.”

It is right to note that the court was dealing with a warrant sought pursuant to the provisions of section 9 PACE and not section 8. At [43 and 44] the particular requirements of section 9 PACE were noted.

“43 A further difference with the civil search order is the fact that, unlike applications for search orders, the only document that will normally go before the Circuit Judge when a search warrant is sought under section 9 and schedule 1 of PACE of the Information. The Information must therefore be drafted with scrupulous care to ensure that it contains all the relevant matters, because although the Circuit Judge who must consider it will have to do so carefully and in detail, he will be relying on it to make his decision on whether to grant the warrant.

44All this shows that there has to be a very rigorous procedure both in preparing an Information for the application for a search warrant also when a judge is considering it. ...”

13. A search warrant issued pursuant to section 8 (1) PACE can only be granted if the Justices are satisfied there are reasonable grounds to believe the criteria set out in section 8 (1) (a)-(e) PACE are made out. *Eastenders Cash and Carry Plc v. South Western Magistrates Court* [2011] 2 Crim App R 11[13] Sullivan LJ:

“... it is plain that a belief is more than a suspicion and that the need to have reasonable grounds for a belief imposes a higher threshold than the need to have reasonable grounds for suspicion”.

14. It is the responsibility of the Justices to apply the access criteria of section 8(1) PACE. Section 8 does not permit the Justices to delegate to the constable the responsibility which they are exercising. The Justices are responsible for ensuring compliance of the warrant with the requirements of section 15 PACE: *Global Cash and Carry Ltd* [2013] EWHC 528.

15. In *R (Austen and Others) the Chief Constable of Wiltshire Police and others* [2011] EWHC 3385 (Admin) Ouseley J [46] re-emphasised the point made in earlier authorities that as a matter of practice, hearings for a search warrant whether pursuant to section 8 PACE or of the “special procedure type” must be recorded so there can be no dispute as to what was or was not said to or by the judge. The judge making the decision must give reasons for either granting or refusing the warrant.
16. The need for precision in the terms of the warrant such that they are capable of being understood as a free standing document has been identified in a number of authorities. In *R (Energy Financing Team Limited) v The Director of the Serious Fraud Office* [2005] EWHC 6126 Crane J at [37] stated “a warrant should be capable of being understood by those carrying out the search and by those whose premises are being searched without reference to any other document”.
17. Whether the description of the material sought satisfies section 15(6)(b) PACE involves consideration of two competing factors – the specificity of the items sought and the nature of the investigation, whose scope may make it less practicable to identify the articles sought: *R (Glenn & Co (Essex) Ltd v Revenue & Customs* [2012] 1 Cr App R 22; [2011] EWHC 2998 (Admin) per Simon J:
 - “58. In this type of case, there will often be two competing factors.
 59. The first is the important consideration that the warrant should be sufficiently clear and precise for those interested in their execution to know precisely what are the limits of the power, see *Lord Clyde in McGrath v Chief Constable of the Royal Ulster Constabulary* [2001] UKHL 39; [2001] 2 A.C. 731 at [18] in the context of an arrest warrant.
 60. The second is the nature of the investigation. The broad scope of an investigation may require a correspondingly broad power of search, and make it less “practicable” (to use the word in s.15 (2)(b) and (6)(b)) to identify the article sought. This point was noted by Lord Woolf C.J in *Kent Pharmaceuticals Ltd v Serious Fraud Office* [2002] EWHC 3023 (Admin) at [24]:

“There is clearly difficulty in drafting a warrant when the scale of the investigation is of the nature of that in which the SFO is at present engaged ...”
18. Where a warrant may be required in relation to an investigation involving a company at the centre of fraud, the nature of the fraud may cause difficulty in identifying the nature of the documents sought. *R (Energy Financing Team Ltd) v Bow Street Magistrates’ Court and others (Practice Note)* [2006] 1 WLR 1316 at 1345D;
 - “When there is ongoing investigation into, for example, the affairs of a company such as EPRS, which appears to have been at the centre of a fraud, it will always be difficult to say precisely what documentation of value to the inquiry may be recovered from those who are justifiably suspected of being in contact with the main target company, 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 any individual document or class of documents falls within it... although the terms of the warrant may be wide it will not simply be fishing if it is directed to support an investigation which has apparent merit.”

In *Kent Pharmaceuticals Ltd* above Lord Woolf CJ at [25] considered the words “includes” or “including” in a warrant and stated:

“The words ‘including’ or ‘included’ have to be treated in a restrictive manner. What is specified thereafter is non-exhaustive, but it clearly gives a sufficient definition to the nature of the investigation and the nature of the documents which are being sought to comply with the requirements of section 15.”

The Warrant

19. The warrant, dated 10 May 2013, stated:

“... an application supported by information made by Detective Constable Mary ALLEN for the issue of a warrant under section 8 of the Police and Criminal Evidence Act 1984 to enter:

the sets of premises described in the Schedule attached ;

And search for “Evidence in documentary or any other form relating to the business activities conducted by the individuals named on the warrant. Those businesses included Sweeney Environmental Ltd, Ethos Recycling Ltd, Ethos Environmental Management Ltd, Earlose Golf and Leisure Ltd, Environwayste (London) Ltd, Sweeney Holdings Ltd, Sweeney Investments Ltd, Neptune Skips Ltd or variation or linked to the same. ...”

The schedule attached to the warrant identified eight premises ‘authorised to be entered and searched under the warrant to which this schedule is attached’. The first property was the home address of the claimant, the seventh, the Trout Lane Depot described as ‘business premises controlled by Mr J G Sweeney’. Five were homes occupied by persons described as directors, company secretaries or managers of waste companies. The eighth property was a firm of accountants in Middlesex.

The Information contained the following detail:

“ALLEGED OFFENCE

Acquiring and Concealing Proceeds of Crime – Section 327-329 Proceeds of Crime Act, 2002 (14 yrs on indictment)

Illegal Deposit of Waste – Section 33 Environmental Protection Act 1990 (5 yrs / unlimited fine on indictment)

Waste Duty Care – Section 34 Environmental Protection Act 1990 (Unlimited fine on Indictment)

Carrying on a Waste Operation, except under and to the extent authorised by an environmental permit – Regulations 12 & 38 Environment Permitting Regulations 2010 (5 yrs / unlimited fine on Indictment...)

This deponent DC Mary Allen

On oath *affirmation* says:-

This is an investigation in partnership with the Environment Agency and their agents along with the Metropolitan Police and their accredited financial investigators and HMRC representatives concerning six individuals, namely ...” The claimant was the first named individual. The remaining five were those whose homes were identified in the attached Schedule to the warrant. The individuals were described thus:

“... who collectively as Directors, Company Secretaries or managers have run multiple waste companies responsible for illegal deposits of waste across East London, Essex, Bedfordshire, Hertfordshire and Croydon, and a permanently non compliant waste site at Trout Lane, West Drayton in which they have consistently ignored or flouted their permit.

Trout Lane, Yiewsley, West Drayton UB7 7XE

This is a permitted waste site; permit no 80420 that was issued on 29/11/1999 to Sweeney Environmental Ltd. The permit allows storage of a total of 500 m³ of waste within the building on site – no waste awaiting or post processing should be stored outside the building. **Sweeney Environmental Ltd** and John Sweeney (director) were prosecuted by the Environment Agency (EA) in 2005 at Isleworth Crown Court but the case was stayed on abuse of process for failure to comply with policy and guidance. The company changed its name on 16/01/2007 to Ethos Recycling Ltd. **Ethos Recycling Ltd** was in consistent breaches of the permit for dust, quantities of waste on site, litter from the site and drainage issues. In May 2007 an enforcement notice to install dust suppression measures was not complied with. A further notice was served for breaches of condition and the company went into administration in March 2010. Ethos Recycling Ltd changed its name to Pit 101. The company secretary is Mr Green who is also the Director along with Mr Sweeney. A liquidator is shown to this company on 18/02/2011. The permit was transferred to Ethos Environmental Management Ltd.

Ethos Environmental Management Ltd was incorporated on 22/12/2009 with David Jenner as director however John Sweeney took over as sole director on 15/04/2010. A notice served on the company on 11/03/2010, the notice was not complied with. The permit conditions continued to be breached. Mr Sweeney wrote to the EA in April 2010 estimating clearance by 01/06/2010 and again on 5th May accepting that the notice had been breached. Breaches continued until it was transferred to Earlrose Golf and Leisure Ltd on 22/12/2010.

Earlrose Golf and Leisure Ltd also operated in breach of permit conditions and an enforcement notice was served on 24/03/2011. The permit was transferred to Envirowayste (London) Ltd on 06/02/2012. Current Director Ms Charnock however she was previously the company secretary along with Mr Green. Previous Directors were Mr Sweeney and Mr Barnett.

Envirowayste (London) Ltd was incorporated in March 2009 with Neil Hutton as the sole director and Avril Nevin as director of Envirowayste Ltd on matters for Envirowayste (London) Ltd. Recent intelligence (Google) shows the web address of Envirowayste is linked to another company Ethos Green. This company is also based at Trout Lane Depot in which the persons can hire skips. It appears that Envirowayste may be changing its name to Ethos Green.

From 2007 to present John Sweeney maintains an office at the Trout Lane depot. The land is held in trust by Sweeney Holdings Ltd (registered in Jersey), the director being Mr Sweeney.

Mr Sweeney, is the Managing Director who has overall responsibility for the operations and Richard Barnett is the Technically Competent Manager.

Taking account of the excess waste on the site on just the three dates when the notices were served: The following is a conservative amount earned after the breaches of the permit.

- 2010 notice @ £48/tonne landfill tax x 3000 tonnes = £144,000
- 2011 notice @ £56/tonne landfill tax x 3000 tonnes = £168,000
- 2012 notice @ £64/tonne landfill tax x 3000 tonnes = £192,000

Total avoided **£504,000**

Standlake

This land is situated in Oxfordshire, and was purchased in 2007 by **Sweeney Investments Ltd** (Guernsey registered). There is no environmental permit on the site. In the South East corner a small area is covered by a Certificate of Lawful Use and Development (CLUED) from Oxfordshire County Council (OCC) for waste storage.

In 2008 **Ethos Recycling Ltd** occupied the site and commenced works that became the subject of an EA investigation. Between April and October 2008 they deposited large amounts of waste materials at the site from the Trout Lane depot and construction wastes that is not suitable for the purposes stated.

A survey found 40000 tonnes of material on site. Samples were taken and showed that the waste was not inert and should be disposed of in a non-hazardous waste landfill. Landfill tax in 2008 was £32 per tonne so that is a minimum of **£1,280,000** avoided. The baled waste was mixed transfer station material. In 2011 the landfill tax was £56, so **£54,400** avoided just in landfill tax liability.

Airlinks Golf Course

In 2008 **Ethos Recycling Ltd** deposited waste at Airlinks Golf Course near Heathrow. Samples were taken and two of the three samples were contaminated and were classed as hazardous waste. Had all the material been inert waste then landfill tax at £2 per tonne would apply = **£40,000**. Samples showed it was hazardous and assuming it was all disposed of as hazardous then landfill tax of £32 per tonne will apply - **£640,000**.

Erith Quarry, Chatteris Road, Somersham

The site does not have an Environmental permit or exemption. In January 2012 three loads of waste were deposited. The landowners welded the gates shut to prevent further tipping. EA officers searched the waste and found documents that could be traced some to Envirowayste (London) Ltd.

The waste deposited amounted to 120 m³. Because it is not compacted a conversion of 0.6 tonnes/m³ has been used. 72 tonnes at 2011 landfill tax rate of £56/tonne = **£4,032**.

Aveley Landfill

This site is an old restored landfill and has an Environmental Permit to cover aftercare provisions but is no longer permitted to accept fresh waste deposits. Between 6-8th October 2012, 500 tonnes were tipped overnight. Waste was traced to Envirowayste (London) Ltd.

500 tonnes at £64 per tonne landfill tax avoided = **£32,000**

Langdon Pumas football ground

This site is a small football ground just off the A127 in Essex. There is no Environmental Permit on the site. Between the 7th and 10th October approx 100 tonnes of transfer station waste deposited. Evidence found in the waste traces to Envirowayste (London) Ltd.

100 tonnes at £64 per tonne landfill tax = **£6,400**

Globe Industrial Estate, Thurrock

This site is derelict land to the rear of an industrial estate in Thurrock, Essex. There is no Environmental Permit on the site. In September 2012 approximately 200 tonnes of transfer station waste was deposited. Evidence found in the waste traces to Envirowayste (London) Ltd.

200 tonnes at £64 per tonne landfill tax = **£12,800**

Linford Quarry, Essex

This site is an old quarry off the A13. There is no Environmental Permit on the site. In late August 2012 the site was broken into and 200 tonnes of transfer station waste was deposited. There is some limited traceable evidence found in the waste directed to Envirowayste (London) Ltd.

200 tonnes at £64 per tonne landfill tax = **£12,800**

Clock House Hotel, Welwyn

This site is a derelict hotel just off the A1 and Welwyn Garden City. There is no Environmental Permit on the site. Just prior to 17/10/2012 the site was broken into and 200 tonnes of transfer station waste was deposited. Evidence found in the waste traces to Envirowayste (London) Ltd.

200 tonnes at £64 per tonne landfill tax = **£12,800**

604 Mitcham Road Croydon

Waste was also illegally deposited at a yard at rear of 604 Mitcham Road. The site had no authorisation for waste activity. Evidence showed that Envirowayste (London) Ltd was responsible for the tipping.

The site was eventually filled with an estimated 12500 m³ of waste. Because it is not compacted a conversion rate of 0.6 tonnes per m³ has been used equating to 7500 tonnes. 2012/2013 landfill tax costs of £64 per tonne the estimated quantity of material would equate to avoidance costs of **£480,000**. The site has subsequently been cleared.

Estimated total money avoided, which equates as a minimum to the amount paid to Envirowayste (London) Ltd and previous companies to accept the waste for processing and onward disposal, totals **£3,079,232.00**

Repeated requests have been made by the Environment Agency to interview company officers; however these have either been ignored or significantly delayed. Given the conduct over the past 6 years where:-

- individuals put up for interview are not authorised or blame other directors,
- the company is voluntarily liquidated shortly after the Environment Agency start enforcement action and another company emerges with a similar management structure,
- the instance of illegal dumping has increased significantly in the last year,
- and the continued non compliance at the Trout Lane site

Search of the home address of: Mr SWEENEY, Ms CHARNOCK, Ms NEVIN, Mr GREEN, Mr HUTTON, Mr BARNETT also their Trout Lane Depot, vehicles associated with those addresses, their accountants, and linked companies is

requested as it is believed that there is material on these premises which is:-

- a) likely to be of substantial value to the investigation of the offence; and
- b) likely to be relevant evidence.

It is also believed that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

To assist Police Officers in the searches will be Metropolitan Police Accredited Financial Investigators, a HMRC representative and the Environment Agency officers who will also sample waste at the site.”

Ground 3

The claimant’s case

20. The warrant was drawn in very broad terms. It does not identify the offences being investigated, identify with any specificity the material sought, nor does it limit the scope of the business documents to those relevant to the offences under investigation. By reason of its breadth the warrant could not have been understood by those carrying out the search. The words “or any other form” are ambiguous and insufficient to demonstrate an intention to limit the search to documents contained in any medium.
21. No attempt was made to identify the articles sought with any degree of precision. The Working Plan for the Trout Lane depot required a record to be kept of the type, quantity and date of waste deposited at the site as well as a record of the type, quantity and date of materials leaving the site at the weighbridge. Data from the electronic system operated at the site had previously been requested and provided to the EA. The EA would have known, given the nature of the business and their previous investigation into the site, the type of items and documentation which would be relevant to their investigation. The warrant could have identified broad categories of documents without difficulty. In the written statement of DI Mahoney, one of the officers involved in the search, reference is made to the fact that Owen Bolton of the EA indicated items that would be of interest to the investigation during the search.
22. Any attempt to limit the number of companies linked to documents is compromised by the words “were linked to the same”. All of the companies who have held environmental permits at the Site were UK based. The EA would have known of the companies as it had authorised the grant of the environmental permit to them. A search of Company House records would have identified the management structure of the companies and the office holders.

23. In the Information is a misleading statement namely “recent intelligence (Google) shows the web address of Envirowayste is linked to another company Ethos Green. The company is based at Trout Lane depot in which persons can hire skips. It appears that Envirowayste may be changing its name to Ethos Green”. The EA was aware of the existence of Ethos Green and that it was a trading company at Trout Lane. In January 2013, an administrator for the company which held the environmental permit was emailing a member of the EA using an Ethos Green email address and signing with the company name Ethos Green, Trout Lane depot. There had been conversations between the two individuals about Ethos Green.
24. In the Information the claimant was identified as the managing director who had overall responsibility for the operations and who from 2007 had maintained an office at the Trout Lane depot site. The Information identified the fact that the land at the Site is held in trust by Sweeney Holdings Ltd (registered in Jersey) the director being the claimant. The statement in the Information that the investigation was “complicated by non-registration of land purchase, changing ownerships/deed of trust/finance agreements with many companies which were registered off shore or in off shore trusts” did not attempt to explain the relevance of the same to the investigation which involved UK based trading companies. The EA knew that a Guernsey registered company, Sweeney Investments Ltd, had purchased Standlake in 2007, this was stated in the Information. The EA was aware of the ownership of the land at Standlake as it had been in prolonged communication with the company solicitor in respect of the planning status of Standlake.

The second defendant’s case

25. The warrant limited the material sought to evidence in documentary or other forms that related to business activities, conducted by named individuals of named business or businesses which were a variation of or were linked to the same. The words “were linked to the same” were necessary and did not compromise the qualifications. The limitations took effect together. They limited the material to that relating to business activities conducted by six named individuals in relation to the named business and/or businesses linked to them. The word “variation” referred to the differences in wording of the business names. The words “linked to the same” identified that the search was limited to material linked to the named individuals and potentially unidentified business which were connected or linked to identified businesses. Given the difficulty of identifying the business and/or companies with which the claimant was associated and the links with other companies the description in the warrant provided an adequate balance between the competing factors of precision and certainty.
26. It is accepted that the words “or any other form” linked to evidence in documents arguably referred to a wide class of materials. However, when considered as part of the entire description of material sought it provides an adequate description. The nature of the documentation sought did not fall into readily describable categories including as it did, emails, informal/formal documents, electronically stored material and materials stored in hard copy. It is obvious that documents relating to business activities between specified persons and/or their companies would include those documents or information stored in computer equipment and mobile communication equipment. The description, in its totality, enabled the claimant and the second defendant’s officers to understand the limits of what the second defendant was seeking without reference to any other documents.

Conclusion

27. I accept the claimant's submission that the warrant did not identify the offence or offences being investigated with any specificity. It did not identify the nature of the investigation. No real attempt was made to identify with any precision the type and nature of material sought in the search. The business activities of the individuals named on the warrant are neither defined nor limited. The result being that the search could include any material relating to any business activity of any named individual. The fact that a number of companies were identified is diluted by the words "variation or linked to the same". This has to include unidentified companies. The wording does not limit the seizure of material to a fraud investigation nor to documents related to waste dumping or disposal. Given the knowledge possessed, the RART and the EA could have done considerably more to identify the nature of the investigation, limit the parameters of the search to specified business activities of the named individuals and identify the categories of material sought. In my view the warrant did not identify as far as was practicable the articles to be sought in the search in breach of section 15(6) (b) PACE.

Ground 5

The claimant's case

28. There is no detail in the Information as to the money laundering offences other than identification of sections 327-329 the Proceeds of Crime Act 2002 ("POCA"). No attempt is made to identify the relevant offence nor link it to the act alleged to constitute an offence within the facts contained in the Information. There are no identified facts or matters which can be relied upon in order to demonstrate that a "reasonable belief" is justified.
29. It is mandatory for the police officer applying for the warrant to make full and frank disclosure, this was not done. In particular, the officer omitted to inform the court of the following matters: (all references to the regulations are to the 2010 Regulations),
- i) The EA has the power to revoke (Regulation 22) suspend (Regulation 37) or vary an environmental permit (Regulation 20);
 - ii) The EA granted permission for the transfer of the environmental permit between various companies identified within the Information having satisfied itself of the operator's competence. (Regulation 21). On 29.11.99 a permit was granted to Sweeney Environmental Ltd and Ethos Recycling Ltd, the claimant was appointed a director of the companies in November 1993. On 2. 3. 10 the EA accepted a transfer of the permit to Ethos Environmental Management Ltd, the claimant was appointed a director of the company on 15.4.10. On 22.11.10 and 23.12.10 the permit was transferred to Earlose Golf and Leisure Ltd, a company of which the claimant was a director between June 1996 and June 2010. On 6.2.12 a transfer of the permit was granted to Envirowayste (London) Ltd. Accompanying the transfer applications would have been a Working Plan supplied by the company. The Working Plan dated 30 October 2007 remained in force throughout all the identified transfers. That plan stated "operations will be managed by John Sweeney, Managing Director, who would have overall responsibility for the operations. Mr Richard Barnett holds the WAMITAB certificate in respect of Managing Transfer Operations";

- (iii) During the transfer process the EA has the power to request any further information considered necessary for granting the transfer. If there had been any question about the management structure of the company, a request for more information could have been made at this time. Paragraph 13, Part 1 of Schedule 5 of 2010 Regulations state :
- (1) The regulator must refuse an application for the grant of an environmental permit or the transfer in whole or in part of a permit if it considers that, if the permit is granted or transferred, requirements of – Paragraph 2 will not be satisfied;
 - (2) The requirements are that the applicant for the grant of the environmental permit, or the proposed transfer in, on the transfer of an environmental permit must –
 - (a) be the operator of the regulated facility;
 - (b) operate the regulated facility in accordance with the environmental permit

It is the claimant's contention that if the EA had concerns it was open to it to refuse any of the applications for transfer given the role which the EA was aware the claimant was taking in the operation. The fact that it approved applications was relevant information which should have been before the Justices to permit a proper consideration of the application.

- (iv) Regulation 60 provides power to the EA to require the provision of information. Failure to comply with a notice requiring the information is a criminal offence. On a number of occasions the EA requested information from the company, a waste transfer notes was provided in September 2010, a request for waste transfer notes and site diaries were complied with in May and June 2011.
- (v) The EA has wide reaching statutory powers which include the right to inspect, and take samples (section 108 EA 1995). It is an offence to obstruct the EA (section 110 EA 1995). On 36 occasions the EA exercised their powers of inspection by making compliance visits specific to the Site in the years 2010, 2011, 2012 and 2013. These visits were carried out pursuant to the regulator's duty to periodically review environmental permits (Regulation 34 (1)) and make appropriate periodic inspections of regulated facilities (Regulation 34 (2)). Following each compliance visit, a compliance assessment report was issued notifying the operator of alleged breaches and putting the operator on notice that the EA will consider what enforcement action is appropriate. Between visits an employee of the EA was in email communication with employees of the Ethos companies
- (vi) During a number of the compliance visits the EA requested information about the management system of the company. In September 2011 the EA requested an up to date staffing structure which was supplied by the company. In January 2012 a revised Working Plan was submitted by the company to the EA, it was deemed deficient thus the 2007 plan remains in force.

- (vii) In December 2011 the EA had searched, taken photographs and seized documents from Standlake. On the day following the search, Trout Lane was also searched and waste transfer notes were seized.
- (viii) There was a history evidenced by correspondence between the companies (normally represented by a solicitor,) and the EA, of requests for interviews and arrangements for the setting up of the same. The correspondence demonstrates that the company solicitor was seeking disclosure prior to interview of alleged non compliances which were said to form the subject matter of the interviews. In October 2012 the solicitor requested the interview be re-scheduled for early November because he was away, the EA did not respond to his letter. In May 2012 the same solicitor on behalf of the claimant and an employee of the company sought confirmation of the subject matter of the alleged offence to be the subject of interview. In June the EA responded by stating that it was now also conducting other related investigations and the agency would be in touch to confirm the relevant areas of investigation to which they would wish to conduct interviews, nothing further was heard.

All this information should have been placed before the Justices given the assertion in the Information that “repeated requested had been made by the Environmental Agency to interview company officers; however these have either been ignored or significantly delayed.”

- (ix) In November 2008 an interview took place relating to Airlinks, and in June 2009 an interview took place in respect of Standlake. The Technically Competent Manager of Trout Lane was also interviewed. During the interview relating to Airlinks, issue was taken on behalf of the company that the material seized was not waste. This should have been disclosed as it demonstrated a dispute as to the nature of the product allegedly deposited.
- (x) The use of Standlake was the subject of a lengthy dispute between the companies and the EA. Standlake benefited from a Certificate of Lawful Use Planning Permission. Two applications had been submitted by Envirowayste for an environmental permit, both were rejected as not duly made. There was a dispute between the company and the EA as to the need for a permit. These events occurred between June and November 2012.
- (xi) Issues was taken as to allegations of alleged waste deposits. Soils (waste according to EA) deposited at Standlake were not accepted by, the company as constituting waste. Bales of waste (refuse derived fuel) deposited at Standlake were destined for Europe to be used to fuel power stations. Wood chip deposited at Standlake was destined for Belgium, this had been explained to the EA following a site inspection.
- (xii) The company did not avoid landfill tax in respect of 9,000 tonnes of waste at Trout Lane. The company is not liable for landfill tax, the landfill site owner is. Waste on this site was waiting to be processed. It was company policy to recycle 85 to 90% waste which is accepted by the EA. Only 10% to 15% goes to landfill. Such a working policy is consistent with the aims of the European Directive on waste. Further, the EA now state that the computation of landfill tax avoided was a ‘surrogate measurement’ designed to demonstrate the money illegally made by the claimant.

- (xiii) Erith Quarry. The officer failed to mention that also found in the fly tipped waste was a carrier bag full of office waste from Envirowayste (London) Limited. Fly tipping is said to be a clandestine offence, it is highly unlikely that the offender would leave a carrier bag of traceable office waste given it is traceable. This might have caused the court to doubt the assertion that Envirowayste was responsible for the tipping.
- (xiv) Langdon Pumas Football ground arranged for Envirowayste to clear the waste.
30. No evidence was presented to the magistrates court to enable it to be satisfied that there were reasonable grounds to believe that it was not practicable to communicate with any persons in order to gain entry to the site (section 8(3)(a) PACE). The court should have been made aware the EA had made a number of previous visits to the Site, access had never been denied. The companies and company officers had co-operated with the EA. No evidence was presented to the court to enable it to be satisfied pursuant to section 8(3)(c) that entry to the premises would not be granted unless a warrant was produced. Disclosure of earlier searches would be material to the issues of whether evidence of substantial value or relevance would still be on the premises. As to the contention that the purpose of search would be frustrated or seriously prejudiced were advance warning given (section 8(3)(d)) relevant would be the fact that the defendant had co-operated with earlier searches. The company had been warned on CARs about the possibility of enforcement action since 2010 and had been interviewed in respect of matters raised. Had the court been made aware of this it is unlikely that the statutory provisions of section 8(3) would have been met.
31. The Information does not identify how material sought to be seized is of substantial value to the investigation or likely to be relevant.
32. In respect of Aveley Landfill, Globe Industrial Estate Thurrock, Linfield Quarry Essex and Clock House Hotel Welling the Information fails to specify how waste was traced to Eurowayste.
33. No consideration was given in the Information or during the court proceedings to legally professional privileged material. DC Allen has confirmed that such material was seized and has now been separated. Given the EA's regular contact with the company solicitor it must have been within its contemplation that such material would be on the Site.

The second defendant's case

34. The purpose of the warrant was to investigate offences of money laundering. This was a fraud investigation directed at concealing proceeds of crime. It was not appropriate for the EA to carry out an investigation into money laundering nor to invoke environmental legislation in order to obtain the warrant.
35. The application for the warrant adequately identified the statutory criteria. It stated that there was likely to be material on the premises of substantial value to the investigation of the offence (section 8(1)(b)(PACE), that the material was likely to be relevant evidence (section 8(1)(c)) and that it was believed that the purpose of the search might be frustrated or seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them (section 8(3)(d)).

36. The second defendant provided the court with sufficient and material disclosure. It explained that the offences were in relation to money laundering and fraudulent behaviour. It was sufficient for the court to consider that one of a number of offences has been committed, the court is not limited to considering only one offence. Asked where in the Information the money laundering offences and the facts alleged to constitute the same were to be found Mr Gold on behalf of the second defendant identified the following:

- (i) The description of the alleged offences namely “Acquiring and Concealing Proceeds of Crime – Section 327-329 Proceeds of Crime Act 2002”.
- (ii) The money avoided as stated: “Estimated total money avoided, which equates as a minimum to the amount paid to Environwaytse (London) Limited and previous companies to accept the waste for processing and onward disposal, totals £3,079,232.00.”
- (iii) The final paragraph which states “To assist Police Officers in the searches will be Metropolitan Police Accredited Financial Investigators, a HMRC representative and the Environment Agency Officers who will also sample waste at the site.”
- (iv) The stated fact that Accredited Financial Investigators will be involved.”

The above are said by Mr Gold to provide the detail and the facts upon which the Justices could form a reasonable belief that a money laundering offence or offences had been committed. The Information provided adequate details of how the facts related to the offences in respect of each site, either specifically or by clear inference. The Information was clear that there had been the unlawful deposit of waste, the estimated amount, the estimated value to the claimant and that there is evidence which allowed the waste to be traced back to the Trout Lane site.

37. The Justices would not be assisted by knowledge of previous transfers of the Trout Lane permit as the EA in considering whether it was appropriate to transfer the environmental permit to a new company would look at the officers of the new company and these would not include the claimant. It was unnecessary to inform the court of the powers possessed by the EA to carry out inspections of the site as the previous inspections would not have been of use in obtaining documents for the purpose of investigating money laundering. As to the claimant’s contention that the history of the interviews or attempted interviews between the companies, their officials and the EA should have been disclosed to the Justices, Mr Gold said that the EA had the relevant correspondence between the parties. It could have been disclosed but had that been done it would have made no difference as the Justices would be able to judge for themselves that people were attempting to avoid responsibility. In short, the submission of Mr Gold was that disclosure of the matters identified by the claimant would have made no difference to the decision of the Justices.

38. It was clear from the application that the materials that the warrant sought did not include legally professional material or special material and that it was limited to evidence relating to the business activities conducted by six main individuals. The business being searched was not a firm of solicitors.

The interested party

39. The stance of the EA to these proceedings was to endorse and support the points made by the second defendant. It provided to the court a detailed description of the background of this matter and the concerns of the EA which led to the application for the warrant. The first paragraph of the Information identifies the concern of the EA, namely that there were illegal deposits of waste across a number of sites and permanent non-compliance with permits. The permit of the Trout Lane site was ignored or flouted. From the Trout Lane site, waste was transferred and unlawfully dumped on other land. A person who does not deposit waste lawfully makes money. In order to estimate the amount of money made the figure of the landfill tax avoided was used. This was regarded as a conservative assessment. These were significant offences by an individual who raised a huge amount of money and then laundered the same. The link of the claimant to the illegal dumping on other sites is, that in the majority of instances, the waste could be traced to Envirowayste Ltd.
40. The EA would not obtain the information required through its own powers as it was unlikely to receive answers to its questions. The power provided by section 108 of the 1995 Act has limited powers which are insufficient to properly investigate such large scale dumping. The Trout Lane site has a close connection with the claimant. He has a connection with almost all of the identified companies, generally as a director. Of the two sites identified in the Information, Trout Lane and Standlake, these can be proved to be controlled by the claimant. Both sites were full of waste, of significance is the fact that at Standlake there had been an increase in the amount of waste as the investigation had continued. The sites where waste was being illegally dumped were identified in the Information. It was unlikely that the claimant would make any admissions in respect of the waste dumping.

Ground 5

41. The Information was clear, there was material on the premises which was likely to be of substantial value to the investigation of the offence and was likely to be relevant evidence. It was believed that the purpose of the search may be frustrated or seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them. The Information gave adequate details as to how the facts related to the offences being investigated in relation to each site, either specifically or by clear inference. In relation to each site where there has been an unlawful deposit of waste, the estimated amount and the estimated value to the claimant is identified. There was evidence which traced the waste back to the Trout Lane site.
42. It was suspected that the manner in which the claimant ran his business was designed to make it difficult to discover the true nature of his connection with the companies involved and the flow of money generated by the alleged unlawful activity. The EA and the second defendant believed that the material sought in the warrant may well be at the claimant's home. It was also suspected that the claimant used a number of companies to mask his true position and the flow of money.

43. As to the previous history of transfers of the permit, on such an application an allegation that the company to whom the transfer is to be made has dumped waste unlawfully would of itself be insufficient to prevent a transfer. In assessing whether the company seeking to obtain the permit is a competent and suitable operator, the EA works within narrow parameters and will take account of e.g. previous convictions. The claimant has no convictions in this area of law.

Conclusion

44. The RART and EA made a decision to seek a search warrant pursuant to section 8 PACE. The purpose of the search warrant was to obtain documents relevant to an investigation, into an offence or offences of money laundering. Within the Information contained in the application before the Justices the relevant provisions of section 8 PACE and the provisions of POCA were not set out. No attempt was made to identify which particular provision of either statute related to any of the stated facts in the Information. Section 8(1)(a) PACE requires a Justice to be satisfied that there are reasonable grounds for believing that an indictable offence has been committed. The Information failed to identify which indictable offence or offences any one individual had allegedly committed still less how the same had occurred. Sections 327-329 of POCA contemplate a variety of means whereby a person can commit an offence which include concealing, disguising, converting, transferring or removing criminal property. There is nothing in the Information which identifies the activity said to have constituted a criminal offence by any one of the named individuals pursuant to these provisions.
45. In the letter written on behalf of the Westminster Magistrates Court it was stated that the Magistrates were satisfied on the strength of the Information that there were reasonable grounds to believe that section 8.1(a)-(e) PACE were met. Given the lack of any specificity as to the alleged indictable offences I have difficulty understanding how such a decision was reached. The absence of detail relating to the alleged offences together with the absence of any link between the offences and such facts as appeared in Information do not easily lead to the findings made by the Justices. The deficiencies in the warrant are compounded by the absence of any notes or record of the hearing and the absence of any reasoning by the Justices as to the basis of their decision. The courts have emphasised the need for notes, recordings and reasoning so as to enable those who are the subject of *ex-parte* warrant applications to better understand what has occurred. In this case there was a lamentable failure to observe the guidance given by the courts.
46. Section 8(1)(b) and (c) PACE require that the material on the premises, the subject of the search, is likely to be of substantial value and relevant evidence. Given the matters identified in the paragraphs above together with the breadth of material sought, it is difficult to see how the Justices could have had reasonable grounds for believing that relevant material was present. No attempt appears to have been made to identify items which could have been subject to legal privilege. (Section 8(1)(d)). It was only subsequent to the search, following representations from the claimant's solicitors, that such documentation was separated from the totality of material obtained.
47. The RART and EA made the decision to pursue this matter by the way of an *ex-parte* application. The means having been chosen, there was a duty upon them to

ensure that full and frank disclosure was given, a vital safeguard in such an application. Undisputed is the fact that as between the claimant, the companies in which he was or had been involved and the Trout Lane and Standlake sites there was a history, spanning a number of years, of communication between the claimant, the companies and the EA. The communication had taken the form of correspondence. It involved the EA invoking its powers pursuant to the 2010 Regulations to inspect the Site for compliance purposes, requiring information from the company relating to e.g. the management system and documentation on the Site. The requests by the EA were met. On no occasion did the claimant or a company refuse access to the EA to inspect the Site. Absent from the Information was the identification of these powers, details as to the exercise of them and the response of the claimant and the companies. Given the conditions identified in section 8(1)(e) PACE and set out in section 8(3) namely that it is not practicable to communicate with any person entitled to grant entry to the premises, or that entry to the premises would not be granted unless a warrant is produced, the history of previous inspections, visits and co-operation with requests by the EA for information was clearly relevant to the Justices' consideration of the provisions of section 8(3)(c).

48. No mention was made of the powers of the EA pursuant to the 2010 Regulations to revoke, suspend or vary an environmental permit. Absent were the details that in previous years the EA had granted permission for the transfer of the environmental permit relating to Trout Lane as between the various companies having been satisfied, pursuant to its own guidance, as to the operator's competence. This was material which had to be relevant to any consideration of an allegation of criminal conduct by the claimant in respect of any site or company with which he had an involvement.
49. The history of requests for interviews and the correspondence, in particular, between the company solicitor and the EA relating to disclosure in advance of the interviews as to its subject matter was of relevance, not least by reason of the criticism in the Information that unauthorised persons were put up by the company for interview. Disclosure of the history of the correspondence relating to the interviews would have enabled the Justices to form a view as to whether there had been resistance on the part of the company to interviews and whether this was a factor of which account should be taken in deciding whether to grant the *ex-parte* application. Interviews did take place with a representative of the company regarding both Standlake and Airlinks Golf course. At these interviews issue was taken to the allegation by the EA that what was being deposited was waste. None of this detail was contained in the Information. It was relevant to the issue of whether the underlying offences namely the illegal deposit of waste were being committed or whether in fact the company or companies had a possible or valid defence to the same.
50. The information identified in paragraphs 47-49 was relevant to the application. It should have been disclosed and would have provided the Justices with a broader and fairer evidential basis upon which to begin to assess the *ex-parte* application. The contention by the second defendant that disclosure of the material relating to inspections, obtaining of information from the companies, transfer of permits and correspondence prior to interviews would have made no difference to the decision, is untenable.

51. The challenges brought by the claimant as to the warrant and Information cannot be described as technical challenges, they go to the substance of the application. The absence of the identified information serves to undermine the decision of the Justices. For the reasons identified I find that the claimant has made out his case upon Grounds 3 and 5. It follows that the warrant issued by the Westminster Justices on 10 May 2013 is quashed. A declaration is made:
- (i) that the search warrant was unlawful because it failed to comply with section 8 and section 15 of PACE.
 - (ii) the search based upon the warrant was unlawful because it failed to comply with section 15(6)(b) PACE.

Lord Justice Pitchford:

I agree.