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In This Section[The Qatar Case](#)[JEP Victory](#)[The Judgement](#)[The Judgment \(PDF file\)](#)[Timetable](#)[Withdrawn appeal](#)[The Sheikh](#)[The State](#)[Jersey courts](#)[UK pressure](#)[International implications](#)[The Proceedings](#)[Original hearings](#)[National security](#)[The right to hear the case](#)[The principle of publicity](#)[In camera](#)**News**[Today's News](#)[Today's Business](#)[Comment](#)[Letters](#)[Finance in Jersey](#)**This is Jersey**

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The Qatar Case

The Judgement: Secrecy and Justice

Last week the JEP won a landmark press freedom victory in its bid to lift the secrecy surrounding court proceedings involving Qatar's foreign minister. In the first of a three-part series on the background to the case, Anthony Lewis looks at an earlier, secret judgment, now made public for the first time



IN July 2000, during the takeover of ANZ Grindlays Trust by Standard Chartered, senior staff became concerned about three trusts the Yaheeb Trust, the Havana Trust, and the Yaheeb No 2 Trust established on behalf of the Qatari Minister for Foreign Affairs, Sheikh Hamad bin Jassim bin Jabor al Thani.

Because of those concerns, Standard Chartered felt obliged to file a suspicious transaction report to the police under the Proceeds of Crime Law.

As a result, one of the biggest police investigations of its kind was launched, overseen personally by the Attorney General William Bailhache, who drafted in UK barristers to assist.

The allegation they were investigating was that more than £100 million had passed through the trusts and that some of that amount, if not all, was the proceeds of bribes paid to the Sheikh by British and European defence arms manufacturers in return for lucrative contracts in his home country.

The Sheikh denied any wrongdoing and in May 2001 sought assistance from the Royal Court to direct Standard Chartered to allow the trusts to operate as normal and to allow capital to be moved from the trusts. The police had refused to give their consent while the investigation was ongoing and Standard Chartered Grindlays feared that if they followed their client's wishes they could be prosecuted for assisting a crime.

The parties successfully applied for the hearings to be held 'in camera' with the press and public barred, as his lawyers argued that it was an administrative matter under the Trust Law, which would ordinarily not be heard in public. At that stage the Attorney General, William Bailhache, was not part of the proceedings.

But the Attorney General became concerned about the evidence which was being given, believing that the court was not hearing the whole truth. He applied to the Royal Court for permission to cross-examine both the Sheikh and the managing director of Standard Chartered Grindlays Trust Corporation (Jersey) Ltd, Clive Black, before any decision was taken to release the many millions still held in the trusts.

The Attorney General's application was heard by the Bailiff, Sir Philip Bailhache, sitting alone as a sole judge and again behind closed doors. His judgment of 14 December 2001 would have remained secret had it not been for the JEP's legal challenge.

The judgment of 14 December

The Attorney General's argument

Attorney General William Bailhache objected to the Sheikh's Royal Court application, believing it would be tantamount to directing Standard Chartered Grindlays to commit a criminal offence.

He said that papers put forward by the head of the police financial crimes unit, Det Insp David Minty, which contained the allegations about bribes, gave rise to 'serious questions as to the accuracy of the affidavits' filed by the Sheikh.

Mr Bailhache submitted that the court had been deliberately misled by the Sheikh over the actual nature and beneficiaries of the trusts, and that Standard Chartered Grindlays had colluded with him in misleading the court.

He did not accuse the company of fraud, but did allege that it had failed to draw the court's attention to flaws in the Sheikh's evidence that it knew about. The Attorney General said that Standard Chartered Grindlays had tried too hard to placate a valuable client and had failed in its duty to fully disclose of all relevant material.

He had a number of questions he wished to put to Mr Black including whether he personally suspected that the funds were the proceeds of criminal conduct and, if so, why?

He said it would be 'contrary to public policy' if the Sheikh was successful in his application to have funds in the trusts released because it could hinder the criminal investigation and any subsequent criminal proceedings against him or any other party.

The Sheikh's argument

THE Sheikh accepted that he had received 'substantial commissions' from companies seeking to do business with the State of Qatar. However, he denied that they were bribes to secure government contracts and said that his action was authorised by the ruling Emir and that he was not acting in conflict with any ministerial duty.

He said he was acting in a private capacity and that the trusts were not for the benefit of Qatar or any other person. The Sheikh argued that no purpose would be served in him being cross-examined by the Attorney General and that Det Insp Minty's inferences were 'misconceived'. The Bailiff remarked that there were 'unresolved ambiguities' in the Sheikh's evidence although he added that there may be entirely innocent explanations for those.

The Sheikh also argued that a Jersey court had no right to get involved in 'acts of state' of another power. His lawyers

were also concerned that any evidence obtained during cross-examination by the Attorney General during the ongoing civil proceedings could then be used against him if criminal charges were brought against him. The Attorney General, however, was prepared to give an undertaking that he would not use any of the information in any future prosecution.

The State of Qatar's argument

THE State of Qatar was also represented at the hearings and its counsel addressed the court on the fact that the State had been 'offended' by the course that the proceedings had taken. In particular, inferences in affidavits sworn by the head of the police financial crimes unit Det Insp David Minty, were said to be offensive to the ruling Emir.

The Bailiff remarked: 'It may be that one or two passages in the affidavits could have been expressed with greater sensitivity... it is not surprising that the investigation being conducted by the police should have given rise to acute concern in Qatar.'

However, the Bailiff went on: 'Both the State of Qatar and the Bailiwick of Jersey are subject to the rule of law. Bribery and corruption and misuse of public office for gain are offences equally under the law of Qatar as under the law of Jersey. An investigation cannot be stifled because it is the cause of political embarrassment. The law must take its proper course.'

The State also argued that no crime had been committed in Qatar by the Sheikh.

The argument of Standard Chartered Grindlays Trust Corporation

Counsel for the trust company said that it 'submits to the wisdom of the court' but argued that there was nothing that managing director Clive Black could say under cross-examination that would be relevant to the court.

The company said there had been no deliberate attempt to withhold relevant information from the court.

The Bailiff's decision

Sir Philip found in favour of the Attorney General on his application to cross-examine the Sheikh.

He said: 'The Attorney General... seeks to cross-examine the representor (Sheikh Hamad) in order, as he contends, that the court may have a fuller picture of the background. This does not seem to me to be in any way unfair to the representor. In my judgment the application is proper and is accordingly granted.'

He had concluded that the Sheikh's actions were not 'an act of state' despite the claim that the Emir had known about them.

He said: '... the representor asserts that he was acting in a private capacity when he received these commissions and not in a governmental capacity. It is difficult to see how the circumstances surrounding the receipt of commissions... can be regarded as acts of sovereign authority.'

The Bailiff said that the Sheikh's fears that he could incriminate himself were also not reason enough to block his cross-examination as the Attorney General had given an undertaking that he would not use the evidence in any future criminal prosecution.

However, Sir Philip was not prepared to allow the Attorney General to cross-examine Mr Black of Standard Chartered Grindlays, although he was critical of the company.

He said that they should have known that information relating to the possibility that the funds in the trusts were the proceeds of crime was relevant and should have been disclosed earlier. He also said that the Attorney General should have been convened to the earlier court hearings and that it was the company's duty to have done so.

But he accepted that Mr Black had no direct knowledge of the relationship between the Sheikh and the companies which contracted with the State of Qatar, nor anything about the procedures for awarding contracts in Qatar.

'Mr Black cannot, it seems to me, substantially assist on the question whether the trust funds are or might represent the proceeds of criminal conduct,' said the Bailiff.

In the event, the judgment of 14 December 2001 was never put into practice because the civil proceedings, like the criminal investigation, was discontinued. Sheikh Hamad has denied wrongdoing throughout. Details of the agreement to discontinue it, and the settlement reached between the parties, remains as yet secret.

BY ANTHONY LEWIS: 24/03/03

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