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Case Nos: 202301938 A1/202301941 A1/202301942 A1

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**

**ON APPEAL FROM CROWN COURT AT READING**

**His Honour Nicholas Ainley**

**T20217219**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 4 September 2023

**Before :**

**LORD JUSTICE WILLIAM DAVIS**

**MRS JUSTICE CUTTS**

and

**MRS JUSTICE EADY**

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**Between :**

**A REFERENCE BY HIS MAJESTY'S SOLICITOR  
GENERAL UNDER SECTION 36 OF THE CRIMINAL  
JUSTICE ACT 1988**

**ANTHONY WILLIAM BEARD**

**ALAN THOMPSON**

**CHRISTOPHER ZIETEK**

**Respondents**

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**Jai Patel** (instructed by **Goldkorns Solicitors**) for **Anthony Beard**  
**Craig Rush** (instructed by **Ewing Law**) for **Alan Thompson**  
**David Nathan KC** (instructed by **Clarke Kiernan Solicitors**) for **Christopher Zietek**  
**Joel Smith** (instructed by **Attorney General's Office**) for **Solicitor General**

Hearing date: 25<sup>th</sup> August 2023

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 4 September 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

## **Lord Justice William Davis:**

### **Introduction**

1. On 3 January 2023 in the Crown Court at Reading Anthony Beard who is now aged 61 pleaded guilty to count 1 (conspiracy to pervert the course of justice) and count 2 (conspiracy to make a false instrument with intent) on a four count indictment. His pleas were tendered on the day his trial was listed to commence albeit they had been indicated to the court and the prosecution shortly before that day. Beard had several co-accused amongst them Christopher Zietek (now aged 67) and Alan Thompson (now aged 73). The start of the trial of the co-accused was delayed for a few days. It occupied approximately nine working weeks before HH Nicholas Ainley and a jury. Zietek and Thompson were convicted of counts 1 and 2. They were also convicted of count 4 on the indictment (converting criminal property), namely the proceeds of the criminal conspiracies.
2. On 16 May 2023 the trial judge sentenced Zietek to a period of eight years' imprisonment. This was made up of concurrent sentences of eight years on counts 1 and 2 and three years on count 4. He sentenced Beard to a period of six years eight months' imprisonment. This sentence was imposed concurrently on counts 1 and 2. Thompson was sentenced to three years' imprisonment on counts 1 and 2 and to 18 months' imprisonment on count 4, all those sentences to run concurrently.
3. HM Solicitor General applied for leave to refer those sentences to this court as unduly lenient pursuant to Section 36 of the Criminal Justice Act 1988. We heard the application on 25 August 2023. We announced our decision on the day of the hearing, namely that we granted leave to refer and that the sentences in relation to Zietek and Beard were unduly lenient. We quashed the sentence on count 1 in relation to those two offenders and substituted a sentence of 12 years' imprisonment in relation to Zietek and a sentence of 10 years 2 months' imprisonment in relation to Beard. We reserved our full reasons which we now give.

### **The offences in outline**

4. The conspiracies involved the acquiring of falsely obtained genuine ("FOG") passports. They were acquired for and at the request of people involved in very serious criminality. Those criminals thereby were enabled to live abroad with an assumed identity without fear of arrest or extradition and to travel freely under their assumed identity.
5. The mechanism by which FOG British passports were obtained was as follows. A real person would be recruited to provide their identity for the passport. A renewal application would be made either on the basis that the previous genuine passport had expired or on the pretext that the previous passport had been lost or stolen. The application would be made on paper. The details of the applicant would be those of the real person. Those details by way of date of birth and description would approximate to those of the criminal to whom the passport was to be provided. The photograph sent to the Passport Office would be a photograph of the criminal. The photograph would be countersigned by someone purporting to identify the person in

the photograph with the age and date of birth of the real person. The counter signatory would be available to confirm the details of the applicant in the event of any query from the Passport Office. Once approved and issued by the Passport Office, the FOG passport was genuine so far as any border or police checks were concerned. Since they were obtained with the knowledge and connivance of the people who were entitled to hold the passports, there was no real prospect of the fraud being uncovered.

6. As will become apparent, the conspiracies on occasion involved foreign passports. However, the principal focus was on the obtaining of British passports. Count 1 reflected the use to which the passports were put, namely to enable fugitive criminals to evade justice. Count 2 was the scheme by which the passports were obtained. Count 4 demonstrated that the scheme was profitable.

### **The offenders**

7. The indictment period was 1 January 2017 to 12 October 2021. The evidence before the jury concentrated on the period between early 2017 and the end of 2019. The offenders played different roles in the conspiracies. Zietek's main residence was in Spain though he also had an address in London. From his base in Spain, he had connections with those involved in serious criminality. He was particularly connected with an organised crime network in Scotland. Criminals within that network were the main clients for the scheme with which the indictment was concerned. The judge found that Zietek was the organiser of the scheme. He offered a bespoke service to those needing the means to evade justice. Although he had not been convicted for many years, in 1984 he had been sentenced to a term of 10 years' imprisonment for conspiring to rob using a firearm.
8. Beard lived in South East London. Once Zietek was contacted by someone who wanted a passport, Beard was the person who dealt with the entirety of the application process. As well as completing the relevant forms, he recruited the real person willing to give their identity for use in the application and the person willing to act as a counter signatory. Leaving aside his participation in the offences on the indictment, Beard between 2007 and 2019 committed 74 other offences of making a false instrument with intent. He acquired FOG passports on a regular basis throughout that period, the frequency of his fraudulent activity increasing as time went on. These passports were acquired for other people. More than 15 of the passports were provided to people who were subject to arrest warrants of one kind or another. By 2017 the acquisition of FOG passports was Beard's trade. He was a natural supplier of such passports to someone like Zietek. Beard asked for the other 74 offences to be taken into consideration when he was sentenced. He had a history of involvement in false documents prior to this. He had been convicted of such offences in 1993 (in Portugal), 1997 and 2008.
9. Thompson lived in South London. He had come to know Zietek because his partner sometimes cleaned at Zietek's London address and he would accompany his partner on those occasions. His part in the criminal scheme was to assist Zietek from time to time by (for instance) driving him around or delivering or collecting things. He participated in the criminal scheme and was useful to it. However, as the judge said when sentencing, he was never a necessity.

## **The offending behaviour in detail**

10. In the course of the trial evidence was called in respect of twelve individuals for whom a FOG passport was obtained. These individuals were wanted or fugitive criminals with the majority being linked to the organised crime group in Scotland with which Zietek was associated. In sentencing the trial judge gave what he described as “a few examples” as being illustrative of the criminal scheme. We shall deal briefly with nine of the individuals.
11. In 2013 a European Arrest Warrant (“EAW”) was issued in relation to a man named Michael Moogan. He was wanted for his involvement in a conspiracy to import cocaine from the Netherlands into the UK. He had agreed to purchase 60 kilos per month for importation. In May 2017 Beard applied for a passport in the name of Jack Perry. The photograph accompanying the application was a photograph of Moogan. Just after the issue of the passport Beard flew to Spain where he stayed for 36 hours. Unused passport photographs of Moogan were much later found at Thompson’s home. Those unused photographs bore traces of Zietek’s DNA. Moogan was eventually arrested in 2021 in Dubai. He did not then have the Perry passport. However, it had assisted in keeping him at large for nearly 4 years. He was extradited and pleaded guilty to drugs offences for which he was sentenced to 12 years’ imprisonment.
12. James Stevenson in 2017 was being investigated by the Scottish police. The investigation had the title Operation Escalade. He was suspected of involvement in the importation and supply of Class A drugs and associated firearms offences. In December 2017 Beard applied for a passport in the name David Morton. The photograph accompanying the application was a photograph of Stevenson. CCTV footage at around this time from Victoria station in London showed Beard and Stevenson together. It is apparent that Stevenson subsequently left the UK. An EAW was issued against Stevenson in August 2021 alleging involvement in conspiracies to import and to supply cocaine. A further EAW was issued in February 2022 for further offences involving the supply of cocaine and money laundering. He was arrested in May 2022 in the Netherlands. He is awaiting trial in Scotland. Stevenson was known to Zietek as evidenced by a photograph of them together at a party in 2004.
13. Graeme Wilson was a target of Operation Escalade. In 2014 he was imprisoned for supplying heroin and cocaine. After his release, he breached the terms of his licence and a notice of recall was issued. Further, in 2017 he was in possession of prohibited firearms (three sub-machine guns) and ammunition. He was wanted in respect of those offences. In May 2018 Beard applied for a passport in the name of David Cordell using a photograph of Wilson. It was issued in June 2018. It was passed on to Wilson. In July and August 2018 Wilson used the Cordell passport as identification in two different hotels in Spain. Subsequently, Wilson was stopped by the police in Spain. His true identity was discovered. He was extradited pursuant to an EAW which had been issued in February 2019. He has yet to be tried.

14. Paul Fleming was another man wanted by the Scottish police for offences involving importation and supply of Class A drugs, firearms offences and money laundering. In October 2019 Beard applied for a passport in the name of Joseph Allen. A photograph of Fleming was provided to the Passport Office. After the issue of the passport, there were meetings between Zietek and Beard which were the subject of NCA surveillance. Recordings of the meetings indicated that an item was to be delivered to a Scottish associate of Zietek. In May 2022 a TACA warrant (the successor to an EAW) was issued in relation to Fleming in respect of serious organised crime including supply of drugs. Fleming was arrested the following month in Alicante. He has been extradited and is awaiting trial.
15. Jordan Owen was wanted by the Scottish police for offences of murder and attempted murder. He was alleged to have shot two men (killing one of them) in July 2017. Thereafter, he was on the run. In January 2018 an EAW was issued in relation to those alleged offences. In September 2019 Beard applied for a passport in the name of Lee Bowler. He provided a photograph of Jordan Owen. The passport was issued after a short delay. In December 2019 recordings by the NCA of Zietek made it clear that he had initiated the order of the passport for Owen and that he knew the nature of the crimes alleged against Owens. He said that Owen “won’t get manslaughter, he shot a geezer in a motor....you were fucking organised crime...” In February 2020 Zietek was recorded as saying that he knew that Owen was wanted for murder. Owen had paid more for his passport than other criminals. The amount indicated was £17,000. Owen was arrested in December 2019 in Lisbon as a result of information provided to the Portuguese authorities by the NCA. At that point he did not have the Bowler passport. He was extradited. He has since been convicted of murder and sentenced to life imprisonment.
16. James White was alleged by the Scottish police to have been involved in the importation and supply of Class A drugs, possession of prohibited firearms and money laundering between 2015 and 2017. An EAW relating to those offences was issued in July 2018. In May 2018 Beard applied for a passport in the name of Christopher Lloyd using a photograph of White. Recordings by the NCA in May 2018 revealed discussions between Zietek, Beard and Thompson about the application. The discussions indicated their understanding of White’s status as a serious criminal. In the event the passport was not issued. However, in November of the following year Zietek obtained a FOG Latvian passport in the name of Svens Klave. Beard was not involved in this transaction. From recorded conversations it was apparent that the passport was provided via Russian connections of Zietek. It was delivered by Zietek’s daughter to White who by then was in Lisbon. In January 2020 White was stopped by Italian police. He showed the Latvian passport as proof of his identity. He was allowed to go on his way. White was arrested in Brazil in June 2020. He was extradited. He has since been sentenced for an offence of directing persons involved in serious and organised crime.
17. Christopher Hughes was a target of Operation Escalade. In 2016 he was involved in the murder of a Dutch crime blogger named Martin Kok. He was also involved in the supply of Class A drugs and firearms and associated offences. In August 2017 Beard applied for a passport in the name of Samuel May using a photograph of Hughes. The FOG passport was issued in the same month. In October 2018 Hughes was arrested in Portugal after a fight. He gave the name Samuel May and produced the FOG

passport. In November 2018 an EAW was issued in respect of drugs and firearms offences. In March 2019 a second EAW was issued in relation to the murder of Martin Kok. By the later part of 2019 the fact that Hughes was a wanted criminal was general knowledge. In November 2019 Zietek obtained a FOG Latvian passport for Hughes in the name Aleksejs Rustanovs in the same way he had obtained White's Latvian passport. It was delivered to Hughes in Lisbon at the same time as White received his Latvian document. Hughes was with White in Italy in January 2020. He had the Rustanovs passport with him. He was subsequently extradited. In 2022 he was convicted of murder and the drugs and firearms offences.

18. Barrie Gillespie was part of the Scottish police Operation Escalade. He was alleged to have been involved in the importation and supply of Class A drugs, grave assaults involving torture and supplying firearms. An EAW had been issued in his case as long ago as December 2012. In February 2017 Beard applied for a passport in the name of Glenn Cooley using a photograph of Gillespie. The passport was issued the same month. In October 2018 Gillespie was arrested in Portugal at the same time as Hughes. He produced the FOG passport in the name of Cooley. He was released on bail, the passport having protected his true identity. He did not answer his bail. His current whereabouts is unknown.
19. The offenders were arrested on 11 October 2021. Zietek made no comment in interview. In his evidence at the trial he said that he had no involvement in most of the FOG passport applications. Insofar as he had, it had been under duress from James White. Beard made no comment in interview. Thompson, having made no comment to the police, in evidence said that he knew nothing about the FOG passports and that, when he had handled documents, this had been in all innocence.

### **The material before the judge**

20. There were two reports from a drug and alcohol charity named Charis with which Beard had become involved following an admission to hospital in September 2022. From December 2022 Beard had been undergoing intensive therapy to address his very long standing alcohol addiction. His abuse of alcohol had caused minor brain damage which was likely to deteriorate. By the time of sentence Beard had been free from alcohol for around 20 weeks. He was said to be committed to continued abstinence from alcohol.
21. Anthony Thompson was the subject of a pre-sentence report. He was living in rented accommodation with a long term partner. His partner acted as his registered carer helping him with many day to day tasks including getting dressed. He was suffering from chronic lung disease and panic attacks for which he was prescribed medication. The author of the report concluded that Thompson lacked appreciation of the seriousness of the offending in which he had involved himself via Zietek. He said that Thompson would struggle in custody given his physical and mental condition.
22. The prosecution provided the judge with a full sentencing note. After setting out the prosecution case as to the respective roles of those to be sentenced, the note dealt with such sentencing guidance as there was for the offences of which the offenders had been convicted. Inter alia the note stated the following:

“18. In relation to the conspiracy to pervert the course of justice, there are no sentencing guidelines for this offence, which is at large (maximum life imprisonment). Given that the offence can be committed in a myriad of different ways, and without any obvious case law with which to draw comparison, it may be of assistance to look at law relating to the count 2 conspiracy to make a false instrument first, before considering the perverting element as a **highly significant aggravating** factor (given that a concurrent sentence appears appropriate).”

The note went on to refer to two particular authorities in relation to making a false instrument. The first was *Velev* [2008] EWCA Crim 2162 where the Court of Appeal said that:

“...in cases of that sort (involving sophisticated passport-manufacturing conspiracies) organisers can expect sentences of 9 years after trial, while those who are workers and lieutenants would receive sentences in the order of six-and-a-half years after a trial.”

It was conceded that *Velev* involved a very large quantity of counterfeit identity documents but they were of poor quality and there was no indication that they were to be put to use by sophisticated and serious criminals.

The second authority was *Mussa* [2012] EWCA Crim 693. That case concerned conspiracies to commit forgery on a vast scale with sophisticated passport factories at two addresses. The organiser/manager of that scheme was sentenced to 6 ½ years’ imprisonment after reduction for his plea of guilty. His appeal was dismissed.

The note in relation to sentence on the principal counts concluded as follows:

“...the court should consider that the starting point for the count 1 conspiracy for ZIETEK and BEARD should be in excess of, and likely considerably in excess of, the types of sentence envisioned in *Velev* & *Mussa* for those at the top of the hierarchy. It is submitted that a starting point in excess of 10 years is appropriate in this case, given the number of aggravating factors.”

Count 1 charged the conspiracy to pervert the course of justice. Thus, sentence was at large as opposed to the maximum sentence of ten years’ imprisonment available for the offence of conspiracy to make false instruments. The prosecution note provided the judge with no authorities relating to the offence of perverting the course of justice.

23. Counsel for Zietek and Beard also provided sentencing notes. Both adopted the approach taken by the prosecution, namely that the existence of the conspiracy to pervert the course of justice should be taken as an aggravating factor of the conspiracy to make false instruments. They argued that the facts in *Velev* and *Mussa* concerned more serious offending than had been committed by Zietek and Beard. Thus, they said that the starting point should be significantly less than 10 years. In relation to the offence of conspiracy to pervert the course of justice, counsel for Zietek referred to the consultation guideline issued by the Sentencing Council in 2022 which indicated the prevailing level of sentencing for the offence of perverting the course of justice. It was not suggested that the judge should have regard to the draft guideline. Rather, it was appropriate to consider the review undertaken by the Council of current sentencing practice.

## **The sentence**

24. The judge opened his sentencing remarks as follows:

“...all these counts are simply aspects of the same conduct and there will therefore be concurrent sentences passed. Counts 1 and 2 in particular deal with the same matters, though with a different emphasis. Count 2 is with the conspiracy with each other and with others to make fraudulent but genuine passports, and count 1 was merely providing those passports to the people who wanted or needed them to evade arrest or apprehension, the intention being that these people would use the passports that they would be obtaining to get out of the UK and travel freely, and so escape justice, thus perverting the course of justice. Count 4 is concerned with converting the cash proceeds that these services generated.”

The judge went on to deal with the method by which the passports were obtained and to rehearse some examples of what was done as part of the criminal scheme. He set out the circumstances relating to Hughes, Gillespie, White and Owens. He noted that Zietek had been provided in 2017 with an Encrochat device in order to communicate with members of the organised crime group in Scotland.

25. The judge then turned to the general purpose of the criminal scheme which he described as follows:

“It was to enable very rigid, sophisticated violent criminals to escape justice by providing them with documents that because they were genuine would deceive the authorities and enable them to escape. I regard this as an extremely serious aggravating factor. The use by criminals wasn’t just a possibility. It’s always a possibility when one is handing out false passports. It was the actual purpose of obtaining these passports and all three defendants knew it.”

The judge found that Zietek was the organiser of the conspiracies. He did so having referred in terms to the fact that he had heard nine weeks of evidence and submissions in the course of the trial. Beard was described as the essential leg man who did all the work necessary to obtain the passports. The judge said that Thompson’s role was very much less. He was never a necessity to the operation of the conspiracy.

26. The judge concluded that the overall financial gain to the conspirators was relatively modest. There had been evidence that the cost of a passport to a criminal was £10,000 though there was an indication of a larger amount in the case of Owens who was wanted for murder. Beard’s share (according to his sentencing note) was £1,500 to £2,000 from which he had to pay those who provided their identities and who counter signed the applications. The judge accepted that, if Thompson benefited at all financially, it would have been very marginal.

27. Having noted the poor health and age of each of the offenders, the judge said this:



“...I’ve considered the authorities that have been placed before me. I consider that this, because of the seriously aggravating feature, is a matter of – that comes very near the top of the scale when it comes to the conspiracy in count 2. But I will not double count and lengthen that sentence by imposing a heavier sentence than count 2 would permit on count 1. In my judgment, count 1 is simply, and is to be treated as, a deeply aggravating feature of count 2.”

He imposed sentences of eight years’ imprisonment on counts 1 and 2 in relation to Zietek. He would have imposed the same sentence after a trial in the case of Beard because of the offences to be taken into consideration and Beard’s previous convictions. He reduced the sentence by 15% to take account of Beard’s pleas of guilty which brought the overall sentence down to six years eight months’ imprisonment. The overall sentence in Thompson’s case was three years’ imprisonment.

### **The submissions**

28. On behalf of the Solicitor General the core submission was that the judge adopted the wrong approach. Rather than treating the element of perverting the course of justice as an aggravating factor of the making of false instruments, he should have treated the conspiracy to pervert the course of justice as the lead offence with the false instruments being the means by which the course of justice was to be perverted. A number of authorities relating to those who had assisted an offender after a murder were cited to us. It was submitted that these authorities indicated that the appropriate sentence in the case of someone who provided false documents on a single occasion to someone seeking to escape justice would be in the region of six years’ custody. From that it followed that the appropriate sentence for those involved in a continuing scheme should be significantly longer than eight years’ custody.
29. On behalf of Zietek Mr Nathan KC argued that the Solicitor General had not identified any principle or authority which had been ignored by the judge. He submitted that the judge, who had heard the trial, was well aware of the significance of the use to which the passports were put. He aggravated the sentence accordingly. He did not make the error purportedly identified by the Solicitor General. Mr Nathan also argued that the material revealed by the other offences which Beard asked to be taken into consideration shed a different light on the respective roles of Zietek and Beard. Whereas the prosecution had submitted that Zietek was the principal conspirator because he had the contacts with the Scottish organised crime group, a submission adopted by the judge when sentencing, the long list of other offences demonstrated that Beard had many criminal contacts of his own. Thus, Beard did not need Zietek to introduce him to people such as Hughes, White and Gillespie.
30. Mr Patel on behalf of Beard adopted the overarching submission made by Mr Nathan in relation to the approach taken by the judge. He noted that the judge had not been referred to any authority in relation to perverting the course of justice. Nonetheless, the judge had applied the principles set out in [2018] *Abdulwahab* EWCA Crim 1399 albeit without direct reference to that authority.
31. On behalf of Thompson it was argued that, irrespective of the view taken of the sentences imposed on Zietek and Beard, his sentence was not unduly lenient given his limited role, his age and his ill-health.

## Discussion

32. The correct formulation of what amounts to an unduly lenient sentence is still that provided by the then Lord Chief Justice in Attorney General's Reference (No.4 of 1989) [1990] 1 WLR 41:

“A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate.”

In this case, we must ask whether it was not reasonably appropriate to identify a sentence after trial of eight years' custody in relation to Zietek and Beard and a significantly lesser sentence in relation to Thompson.

33. The judge was not given the assistance by counsel to which he was entitled. The prosecution invited him to consider first the authorities relating to conspiracies to make false instruments and then to use the element of perverting the course of justice as an aggravating factor. They gave him no guidance as to how he might assess the level of aggravation. Though their sentencing note suggested a starting point in excess of 10 years' custody, this was in the context of the lead sentence being imposed on the count relating to making false instruments for which the maximum sentence was 10 years. The sentencing note submitted on behalf of Zietek referred him to the consultation guideline issued by the Sentencing Council in relation to perverting the course of justice. Although it was said that this was not done so that the judge could take the guideline into account (which would have been impermissible), that was the effect of the argument put on behalf of Zietek.
34. In those circumstances, it is not surprising that the judge took the approach as we have quoted at paragraph 27 above. Taking that approach meant that the maximum sentence open to him was 10 years' custody. It could be said that, even on that basis, the sentence ought to have been nearer to the maximum. It would be difficult to say that the sentence imposed was unduly lenient.
35. The submission made by the Solicitor General involves a departure from the approach taken by the prosecution at the Crown Court. The position here is similar to that which sometimes arises in relation to categorisation of offending within Sentencing Council guidelines. The prosecution may suggest that an offence falls within a particular category of harm and culpability. The judge will sentence on that basis. The sentence then is referred as unduly lenient because the offence properly should have been placed into a higher category of harm and/or culpability. This is permissible: *Stewart* [2016] EWCA Crim 2238. However, the court in *Stewart* said this at [36]:

*We also add that where the Attorney-General or Solicitor General does in any particular reference seek to depart from a concession or acceptance made below by counsel for prosecution in the Crown Court, either as to the correct level of categorisation under any relevant guideline or as to the existence or absence of aggravating or mitigating factors, then this should be clearly and expressly*

*flagged up in the text of Final Reference itself, with reasons given for so departing from the concession made below.*

We consider that the same principles apply where the Solicitor General seeks to depart from the approach to sentencing advanced by the prosecution in relation to different counts on the indictment. The Final Reference in this instance set out the error said to have been made by the trial judge. It did not say anything about the possible reason for that error or about the justification for departing from the approach taken by the prosecution in the Crown Court. On behalf of the Solicitor General it was said that both matters were implicit in the overall content of the Final Reference. That may be so. But the guidance in *Stewart* was that such matters should be expressly flagged up in the text. Having said that, we have concluded that the failure to follow that guidance has not caused any prejudice to the offenders. It formed no part of their submissions that the change of position in relation to the offending ought to prevent any exercise of our power under Section 36 of the 1988 Act. That is not to encourage a departure from the guidance in *Stewart* in future cases.

36. The authorities bundle provided to this court by the parties contained *Velev* and *Mussa* together with the authorities relied on by the Solicitor General involving assistance given by one or more persons to someone who had unlawfully killed another. The bundle also included *Abdulwahab*. We were not referred to the most recent decisions of this court relating to particularly serious instances of perverting the course of justice: *Beech* [2020] EWCA Crim 1580; *Ahmed* [2021] EWCA Crim 1786. The facts of those cases are different from each other and very different from the facts of this case. However, some general principles applicable to cases of real seriousness were outlined. In *Ahmed* at [45] and [46] the court said:

*A review of authority was undertaken in the application for leave to appeal in R v Beech (Carl) [2020] EWCA Crim 1580, and the Court said (at [36]) that counsel had been unable to find any reported case where a sentence in excess of 12 years had been imposed for this offence. The court dismissed as unarguable Beech's application for leave to appeal against sentence of 15 years imprisonment following a trial for a number of offences of perverting the course of justice. This was the well-known case where, as the Court said at [11], Beech (known at the time of his offending pseudonymously as 'Nick') had been convicted of 'maliciously making lurid and the most serious false allegations against distinguished former public servants no longer alive' and of accusing 'living persons of the highest integrity and decency of committing vile acts, including rape, torture and child murder.'*

*In fact, there is one reported case where a longer sentence was passed. On 19 November 2008 John Haase and Paul Bennett were sentenced to 22 and 20 years' imprisonment respectively for perverting the course of justice at Southwark Crown Court by Cooke J. The appeal of Haase and an application by Bennett were dismissed, see R v Haase and Bennett [2011] EWCA Crim 3111. That was a striking case in which it was a necessary part of the prosecution case that the appellants had had at their disposal substantial quantities of firearms and ammunition for use in furthering serious organised crime. Further, their conspiracy to pervert the course of justice had been successful. Twenty-two years imprisonment is, to the best of our knowledge, the longest sentence ever passed for this offence.*

The appellant in *Ahmed* had been made the subject of a discretionary life sentence for a course of conduct against a man with whom she had had an affair. The course of conduct included a false allegation of rape and a plan falsely to accuse the man of a serious assault. The appellant's life sentence was quashed but a determinate sentence of 10 years was imposed. The court said that "very serious offences of perverting the course of justice can properly attract sentences in double figures".

37. Self-evidently the judge was not provided with these authorities. They would have rebutted the reliance on the proposition drawn from the Sentencing Council consultation guideline in relation to a prevailing level of sentencing. They would have demonstrated that very serious offences would fall outside any boundary set by a prevailing level.
38. We consider that the conspiracy to pervert the course of justice was at the upper end of seriousness for such an offence. It persisted over a period of approximately three years. The provision of FOG passports to criminals who had committed grave crimes including murder prevented their apprehension and allowed them to travel freely. Where the criminals already were abroad, the passports were delivered to them. The execution of arrest warrants was impeded. Criminal proceedings whether in this jurisdiction or in Scotland were delayed. Zietek was fully aware of the nature of the crimes committed by those he assisted. In two cases he provided further false documents from a different source than the UK Passport Office. He was closely associated with professional organised crime at the highest level.
39. Mr Nathan's submission that the judge's characterisation of Zietek as the organiser of the conspiracy was potentially flawed because the material revealed by the other offences admitted by Beard showed that Beard did not need Zietek to introduce him to serious criminals is not of immediate relevance to our consideration of the Solicitor General's application. The judge made his findings on the evidence before him. Mr Nathan does not suggest that the judge erred in that respect. Even if he had, it would be an issue to be raised in an appeal against the sentence imposed. In any event, the fact that Beard had criminal contacts of his own did not alter the fact that the Scottish organised crime group members had come to him via Zietek. Beard held himself out as someone able and willing to provide FOG passports. Zietek used his services.
40. We are satisfied that the judge erred when he treated the conspiracy to pervert the course of justice as a grossly aggravating factor of the conspiracy to make false instruments. The criminality here was providing those who had committed very serious offences indeed with the ability to evade justice. The means by which they were able to do so was secondary. We again point out that the judge's error was one into which he was led by the prosecution. However, it is an error which we must correct if it led to an unduly lenient sentence. Had the judge approached the case in the correct way, he inevitably would have imposed a sentence in excess of the maximum sentence permissible for the conspiracy to make false instruments. The conspiracy to pervert the course of justice was very serious both in its purpose and in its persistence. Zietek was the organiser of the conspiracy. That is why we quashed the sentence of 8 years' imprisonment in respect of count 1 and substituted a sentence of 12 years' imprisonment.
41. Had Beard fallen to be sentenced solely for his participation in the conspiracies with Zietek and others, his sentence would have been less than that imposed in relation to

Zietek. Significant though his role was, he would not have obtained the FOG passports in question had Zietek not approached him. However, the other offences which he asked to be taken into consideration aggravated his position very substantially. We consider that the judge was entirely correct when he decided that Beard's sentence after trial would have been the same as that of Zietek. The same logic applies once the sentence after trial has been increased as we have determined. Beard's less significant role in the conspiracy to pervert the course of justice would have led to a sentence less than 12 years had that been the only criminality to be reflected in the sentence. However, his serial offending of a similar kind over a period of 10 years or more outside the conspiracy means that his sentence after trial would have been 12 years' custody. The judge gave him a reduction of 15% for his pleas of guilty. Applying that reduction to the appropriate sentence gives the sentence of 10 years 2 months' custody which we substituted for the sentence imposed in the Crown Court.

42. We are conscious that both Zietek and Beard are in their sixties. Neither is in the best of health. Beard was making good progress in dealing with his long standing alcoholism before he was sentenced. However, both men involved themselves albeit indirectly in professional crime of the most serious kind. Severe sentences were and are inevitable.
43. Although we granted the Solicitor General leave to refer the sentence in the case of Thompson, our conclusion was that his sentence was not unduly lenient even after the adjustment of the sentences of Zietek and Beard. His role in the conspiracies was relatively limited and it was a role which was not necessary for the success of the criminal scheme. We do not consider that his sentence should simply follow pro rata those of the principals in the scheme. Even if that were to be the proper approach, it would mean an increase from 3 years' imprisonment to 4 ½ years' imprisonment. That is not an obvious indication of undue leniency. Moreover, his sentence was in part dictated by the fact that he is a man of 73 who needs regular daily care and who would find any custodial term a struggle. Those matters have not changed.

## **Conclusion**

44. As announced at the hearing, we grant the Solicitor General leave to refer the sentences imposed on 16 May 2023. We quash the sentences imposed on count 1 in relation to Zietek and Beard. We substitute sentences of 12 years' imprisonment and 10 years 2 months' imprisonment respectively. We do not interfere with the sentence in respect of Thompson. His sentence is lenient but not unduly so.