Neutral Citation Number: [2017] EWCA Crim 873

Case No. 2016/03816/B4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL
Date: Friday 19th May 2017

B e f o r e:
LORD JUSTICE DAVIS
MR JUSTICE STUART-SMITH
and
THE RECORDER OF LIVERPOOL
(His Honour Judge Goldstone QC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

- -

Between:

R E G I N A
- v -
MOHSIN PARVEAZ

- -

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Mr E Hetherington appeared on behalf of the Applicant
Mr J Haskell appeared on behalf of the Respondent

- -

J U D G M E N T
(Approved)

LORD JUSTICE DAVIS:
Introduction:

1. This appeal raises a point on the operation of the Proceeds of Crime Act 2002 with regard to the application of the assumptions arising under section 10 in the context of the criminal lifestyle provisions.

2. In the Crown Court, at a preliminary hearing and without hearing full evidence on the substantive confiscation issues, the judge decided that it would be disproportionate and unjust to allow the assumptions to be made. In consequence, he refused to permit the confiscation proceedings to proceed to a final hearing and declined on that occasion to make any confiscation order.

3. The prosecution have appealed against that decision under section 31(2) of the 2002 Act. We have granted leave.

The Proceedings Below

4. The background, shortly stated, is this. On 28th July 2014, in the Crown Court at Bristol, the respondent pleaded guilty to producing a controlled drug of Class B (cannabis, count 1), and also to possessing cannabis (count 2). Count 1 was particularised as follows:

> "Mohsin Parveaz, between the 1st day of January 2012 and 11th day of April 2012, produced cannabis, a controlled drug of Class B, in contravention of section 4(1) of the Misuse of Drugs Act 1971."

5. On 12th January 2015, following a *Newton* hearing, the court determined in relation to count 1 that the respondent had produced cannabis for his own personal use and not with the intention of supplying it on a commercial basis. We will return to the *Newton* hearing in due course. On 13th February 2015, the respondent (who had no previous convictions) was sentenced to a term of eight month' imprisonment suspended for 24 months, and with an unpaid work requirement. No separate penalty was imposed on count 2.

6. The prosecution had requested that there be confiscation proceedings and a timetable was set. In the event, on 27th June 2016 the judge declined to make any confiscation order. He

decided the matter by way of preliminary issue.

7. The respondent had pleaded guilty on a basis of plea which was in these terms:

> 1. . Mohsin Parveaz pleads guilty to count 1 on the indictment on the following basis:
>
> 2. The plants were found in a discrete cupboard in the garage which the [respondent] had originally built to store his valuable work tools. The [respondent] was given a number of cannabis branches from a fellow cannabis user. The [respondent] cut the saplings from the branches.
>
> 3. As Adam Booker the forensic scientist identifies, this was a fairly unsophisticated cannabis set-up which had been 'minimally' adapted for indoor cultivation.
>
> 4. All of the saplings were planted at the same time, but some developed faster than others. He intended to keep the best 30 plants and grow them in the empty tent found in his bedroom.
>
> 5. The [respondent] was going to use the 'Sea Green method' which is a process geared towards growing plants in confined spaces. He expected half to survive.
>
> 6. It is noted that Stephen Dorans, the police drugs expert, describes the [respondent's] explanation as 'credible' and indeed 'probable' if he did intend to employ the 'Sea Green method'. Literature regarding the 'Sea Green method' was recovered from the [respondent's] room.
>
> 7. The [respondent] would have discarded the remaining saplings. Their commercial value (as cuttings) was very modest.
>
> 8. The [respondent] was not cultivating cannabis to sell commercially but for his own personal use. The [respondent] has used cannabis since 1998. He can consume up to 7 grams per day."

The Crown refused to accept that basis of plea. In particular, it refused to accept that the respondent was growing the cannabis for his personal use, as opposed to for commercial purposes.

8. At the *Newton* hearing the Crown called two experts on cannabis production, as well as the officer in the case. The respondent called one expert on cannabis production. The Crown's case was that the number of cannabis plants which had been found at the respondent's home address included a number of seedlings. The position had been that on 11th April 2012 police officers had executed a warrant at his home address in Bristol. At the back of the garage they had found a total of 122 juvenile cannabis plants: 14 were on the ground; 108 were in three propagators. In an extension at the back of the garage, police officers found a quantity of bags containing 97 grams of cannabis, together with a written step-by-step guide to the cultivation of cannabis. In an upstairs bedroom, they found a small cannabis grow tent and set-up, as well as £750 in cash. A vehicle linked to the respondent was parked outside the address and found to contain more cannabis. Later that day police officers searched another property owned by the respondent. There they found a silver cannabis grow tent and eight discarded soil blocks which had been knocked out of plant pots.

9. On 16th April 2012, the respondent was arrested and interviewed. He said that he was a cannabis user and was trying to grow some cannabis plants for his own personal use. He denied any commercial activity. Seven months later, whilst he was on bail, the respondent was arrested in his van outside yet another property. Inside the van were found fertilizer, plant pots, silver tubing, scissors and electrical items.

10. It is perhaps unsurprising that in all such circumstances the prosecution had not been prepared to accept the tendered basis of plea. The Crown's position was that what was found, both at the respondent's home address and elsewhere, was consistent with commercial supply.

11. At the *Newton* hearing evidence was given by the respondent.

12. At the conclusion of the *Newton* hearing, in a careful and thorough ruling, the judge noted that there was on the evidence a difference in approach between the two experts called by the prosecution as to the extent to which the best and more mature plants (30 in number, as the respondent said) could or could not have been grown in the tent found in the bedroom to an extent consistent with commercial use. There was also a dispute as to whether the remaining juvenile plants or seedlings were simply excess production grown through inexperience on the part of the respondent and in expectation of wastage, with no intent or ability for further deployment.

13. The respondent had also given some explanation, which may or may not have been thought implausible, as to the circumstances in which paraphernalia had been found at the second property and in his van outside the third property.

14. In the course of his detailed and thorough ruling, the judge, amongst other things, said this:

> "I can well understand why the Crown are suspicious of the [respondent] and his account, but suspicion cannot be elevated to a standard where I find that I am sure that there was to be here commercial supply. It may be, and I accept it, that I might be suspicious of the account the [respondent] has given. He was not at all times a convincing witness, but loyal to the burden and standard of proof, which I have to apply, I cannot say that I am sure that he was to produce the cannabis for commercial supply."

In reaching that conclusion, the judge had fully appraised the evidence and noted the seeming discrepancy between the two prosecution experts. He concluded with these words:

> "In the circumstances, though some might regard him as being fortunate, I am not satisfied to the point where I am sure of it that this [respondent] was growing for commercial supply, and accordingly, in this *Newton* hearing, I find for the [respondent]."

15. It is important to bear in mind that, for the purposes of the *Newton* hearing, the judge was issues raised in the basis of plea.

16. In due course, the Crown pursued confiscation proceedings. It is also important to note that it was below, and before us is, common ground for the purposes of these proceedings that the offence to which the respondent had pleaded guilty was one which, by reference to section 75 of the 2002 Act, the criminal lifestyle provisions applied, the offence charged in count 1 of the indictment being a Schedule 2 offence. It is accepted that in Schedule 2 no distinction is drawn between production for commercial use and production for personal use.

The Statutory Scheme

17. We turn to the relevant statutory provisions. It is to be noted that, by section 6(1) and (4) of the 2002 Act, the Crown Court is in mandatory terms required to proceed where the two conditions set out in section 6(2) and (3) are satisfied. Here they were satisfied. By section 6(5) of the 2002 Act (as amended) it is provided as follows:

> "If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must -
>
> (a) decide the recoverable amount, and
>
> (b) make an order (a confiscation order) requiring him to pay that amount.
>
> Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount."

18. The proviso introduced by amendment was introduced in the aftermath of the decision of the Supreme court in *R v Waya* [2012] UKSC 51, [2013] 1 AC 294.

19. Section 10 sets out the four assumptions required to be made in a criminal lifestyle case. By section 10(6) it is provided as follows:

> "But the court must not make a required assumption in relation to particular property or expenditure if -
>
> (a) the assumption is shown to be incorrect, or
>
> (b) there would be a serious risk of injustice if the assumption were made."

20. "Criminal conduct" is defined in section 76(1) of the 2002 Act. "General criminal conduct" of a defendant is by section 76(2) stated to be: "all his criminal conduct".

21. By section 76(4), a person benefits from conduct, be it general criminal conduct or particular criminal conduct, if he obtains property as a result of or in connection with the conduct. As is clear, a distinction is drawn between general criminal conduct and particular criminal conduct.

The Confiscation Proceedings

22. In the confiscation proceedings in the court below, the Crown had put in a section 16 statement dated 21st May 2015 propounding benefit over the relevant six-year period on the application of the lifestyle provisions of some £215,000. The available assets of the respondent were assessed as at least £178,000. These assets included a share in a number of properties in the Bristol area. A section 17 response by a forensic accountant on behalf of the respondent, dated 27th October 2015, propounded a much lesser benefit figure over the six-year period, put at £71,688. On receipt of that report, and on consideration of it, the prosecution in due course adjusted its own benefit figure to a figure of just over £119,000. The forensic accountant instructed by the respondent had not commented on the available amount.

23. By a section 18 statement, dated 26th March 2015, the respondent had identified what he

said were his assets. However, he has (thus far at least) given no explanation as to how he had been able to fund his interest in the various properties and has given no explanation as to the various cash movements and transactions relied upon in the section 16 statement as to the figure of £71,688 put forward as benefit by his own expert. It has been stated that the respondent has given his own annual income as being in the order of £23,000, plus some further cash receipts on occasion, it being said that he had throughout this period worked as a builder.

24. That being the state of play, and at a time when the Crown was saying that it was ready for the final hearing, the respondent had applied, by way of preliminary issue, for the judge, in effect, to dismiss the confiscation proceedings. This was on the footing, put shortly, that it would be disproportionate to apply the section 10 assumptions and on the footing that there would be a serious risk of injustice if the assumptions were made.

25. There were a number of hearings before the judge which, unfortunately, became a protracted procedure. Amongst other things, what was being said on behalf of the respondent was that on the *Newton* hearing the judge had not been satisfied that there had here been any commercial production. It was said that since the identified production of the cannabis plants was to be taken as for personal use, there could be no proper or proportionate basis for applying the lifestyle assumptions and to do so would give rise to a serious risk of injustice. It was said that the respondent simply could not be regarded as a drugs trafficker benefiting from his drug trafficking over the relevant period. Alternatively, it was said that the pursuit of the confiscation proceedings constituted an abuse of process and accordingly they should be stayed.

26. The prosecution's case was straightforward: it was to the effect that, this being (as was conceded) a criminal lifestyle case, the assumptions applied. That is what the statute says. Further, thus far the respondent had not sought to explain how he had been able to fund his

acquisition of the properties, or to explain the various cash transactions identified in the forensic accountant's reports. It was said, accordingly, that if the judge were to disapply the assumptions under section 10(6) or were to make a finding that a confiscation order would be disproportionate, then that could and should only be decided properly when all the relevant evidence had been deployed, including the respondent's own evidence (if he elected to give any evidence): the Crown making it quite clear that it would wish to explore a number of matters with him in cross-examination if he did give evidence, and no doubt would be making submissions as to the inferences to be drawn if he did not give evidence.

27. In the result, the judge, as will be gathered, ruled in favour of the respondent. He referred to the background, he referred to his findings at the *Newton* hearing and he referred at length to the submissions of counsel. The judge indicated that a judgment of the present nature would be fact-specific and he then said:

> "... but in my judgment, where I have determined that the [respondent] grew a small number of plants for production purposes, it would be disproportionate to allow for the assumptions to be made in this case, and it would be disproportionate to allow proceedings to progress under the relevant Act. In essence, what we have here is a man who, on my finding, was growing simply for his own use and although there were, on the face of it, many cannabis plants within his possession, on my interpretation and supported by expert evidence, those could have been put legitimately to use to grow and to fulfil such as to provide for a crop that could be harvested. Those plants were limited to about fourteen, probably, in number.
>
> With that in mind, can it be proportionate to embark upon a Proceeds of Crime application, seeking the many thousands of pounds which, even on the limited defence case, the Crown would pursue?"

28. The judge went on to refer to the decision of the Supreme Court in *Waya* and also referred to the decision of a constitution of this court in *R v Shabir* [2008] EWCA Crim 1809, [2009] Cr App R(S) 81. He then said this:

> "But in my judgment, if I look at *Waya* and I look at *Shabir*, it seems to me that I have to consider the disparity between growing a few plants of cannabis and the many thousands that are sought by way of confiscation. That is not a proportionate approach to these proceedings and in my judgment is oppressive and as such should not be countenanced by this court."

That represents the essence of the judge's reasoning. He went on, however, to say that had this matter gone to a final hearing, he thought that it would be "highly unlikely" that he would have come to any other conclusion, and that his judgment "in all probability" would have been that there was serious injustice in the case. The judge also went on to make clear that he did not decide the matter on the footing that a stay should be granted on the ground of abuse of process and that particular aspect of his ruling has not been challenged by way of any Respondent's Notice.

Disposition

29. With all respect to the judge, we think that he took a wrong step here. We can perhaps understand why he saw attractions in the approach advocated by the respondent. But we simply do not think that it was open to the judge to do as he did in this particular case. Indeed, this case is perhaps an illustration of the dangers of proceeding by way of a preliminary issue in a confiscation matter.

30. Some initial observations can be made about the judge's approach. First, as is evident from his reasoning, the judge was focusing on his "finding" that the respondent had simply been growing a few plants for his own use. Two observations can be made as to that: first, it would be more accurate to say that at the *Newton* hearing the judge had not been made sure to the criminal standard that there was here production for commercial supply; second, to focus on the findings at the *Newton* hearing masks the true nature of the exercise now before the judge, which was to focus on the general criminal conduct of the respondent and not the particular criminal

conduct. At the *Newton* hearing, the judge had been concerned, and concerned only, with making findings of fact by reference to the basis of plea tendered with regard to count 1. The judge had not been concerned with the preceding six-year period, and rightly had made no findings in that regard. Third, with all respect, the judge was not entitled to address the question of whether or not it was proportionate to embark upon a Proceeds of Crime application seeking many thousands of pounds. The decision was one for the prosecution. They elected to pursue confiscation proceedings and, under section 6, it was then required that such proceedings should go ahead. It was not for the judge, even if he himself may have thought that this was not a good use of court time, to query the propriety of the prosecution's decision so to proceed.

31. That sets the scene for our reasons for thinking that the judge here did go wrong. First, as we have just indicated, it was the prosecution's decision as to whether or not to initiate and pursue confiscation proceedings. The court could not gainsay that under the guise of proportionality. If any challenge could be made to such a decision, it would have to be made by way of judicial review, and such proceedings very rarely can be successfully entertained. As has been stressed in, for example, *Waya* at [19] and in *Shabir* at [24], it is a matter for the prosecution.

32. Second, it cannot be said that, with regard to the lifestyle provisions, the amended provisions of the 2002 Act can be said to be of themselves inherently incompatible with or contrary to the Convention or Article 1 Protocol 1, or inherently disproportionate. For example, this was said in *Waya* at [25]:

> "A great many of the more serious cases in which confiscation orders are appropriate are criminal lifestyle cases. The statutory test for a lifestyle case is contained in section 75, read with Schedule 2, of POCA. In essence, a defendant who has in the past six years committed a number of offences from which he has benefited, or who has committed certain specified offences, will meet the statutory test. If he does, the calculation of his benefit will normally not depend

> on the known benefit obtained from identified offences, but will be made after applying the statutory assumptions set out in section 10 as to the criminal source of any assets passing through his hands in the six-year period. Although the starting point is that the assumptions 'must' be made (section 10(1)), this duty is subject to two qualifications contained in section 10(6). The assumptions should not be made if they are shown to be incorrect: section 10(6)(a). Nor should they be made if making them would give rise to a risk of serious injustice: section 10(6)(b). The combination of these provisions, and especially the latter, ought to mean that to the extent that a confiscation order in a lifestyle case is based on assumptions it ought not, except in very unusual circumstances, to court the danger of being disproportionate because those assumptions will only be applied if they can be made without risk of serious injustice."

33. Third, it cannot be said in this case that the Crown had made any concession at the sentencing stage, binding itself not to pursue a confiscation claim based on the lifestyle provisions. There can, we accept, be cases where, for example, a particular basis of plea is expressly accepted by the Crown, which may then be wholly inconsistent with pursuit thereafter of confiscation proceedings based on the lifestyle provisions. An example can be found in *R v Lunnon* [2004] EWCA Crim 1120, [2005] 1 Cr App R(S) 111, a case decided on the provisions of the Drug Trafficking Act 1994, where, amongst other things, it had been expressly accepted by the Crown at the sentencing stage that the defendant in question had had no previous involvement of any kind in drug dealing, apart from the index offence. In such circumstances a serious risk of injustice could arise if the assumptions were made.

34. In the present case, however, there was no such acceptance. The Crown never accepted that the respondent's production of cannabis was for personal use only at all times, whether during the indictment period or at any time earlier. The position here, therefore, was much more in line with *R v Lazarus* [2004] EWCA Crim 2297, [2005] 1 Cr App R(S) 98. That was a case which had been cited to the judge below but was not referred to by him in his ruling.

35. In *Lazarus* the defendant had pleaded guilty to drug offences on the express basis that for

about six months he had offered his home as a place of safe storage for laundered money and that the drugs actually found at the house were for his own use. In due course, he argued that subsequent confiscation proceedings brought under the Drug Trafficking Act 1994, and based on the lifestyle provisions and assumptions arising thereunder, gave rise to a serious risk of injustice. A constitution of this court rejected that argument. The defendant's basis of plea had left wholly open the question of whether there had been any benefit from drug dealing prior to the identified six-month period. Accordingly, the court held that there was no serious risk of injustice in making the assumptions. Amongst other things, this was said:

> "18. A confiscation order is not limited to the proceeds of the offence which is charged on the indictment. The effect of the Act is that any conviction for a relevant drug trafficking offence opens the confiscation enquiry into property which has passed through the defendant's hands, not simply during the period of the offence but for six years prior to the commencement of the proceedings. It is then for the defendant to show on the balance of probabilities that such property was not the proceeds of crime or drug trafficking as the case may be. It is also for the court to keep a careful eye on whether there is a serious risk of injustice if the statutory assumption is made. This obligation on the court is a critical part of the scheme of the Act and is essential if injustice is to be avoided - see *Benjafield* [2002] 2 Cr App R(S) 71 (p313). But what the scheme of the Drug Trafficking Act makes clear is that such risk of injustice does not and cannot arise simply because the assets in question were unrelated to the charge on the indictment. The confiscation scheme is subject to rules quite different from those which govern the laying of charges upon an indictment. When laying a charge on an indictment the Crown can charge only what it can prove to the criminal standard of proof. In the case, however, of confiscation proceedings the onus is not on the Crown but on the defendant (to the civil standard). Moreover the defendant can be ordered to provide information, which is something which he cannot be required to do when proof of the offence is in question."

36. That broadly corresponds with the position in the present case. As we have already foreshadowed, and with all respect to him, the judge seems to have thought that his own conclusions on the *Newton* hearing, to the effect that the prosecution had not made him sure that the offending the subject of count 1 on the indictment was for commercial supply, equated to a finding that there had likewise been no such commercial supply in the preceding six-year period. But it did not. The judge had necessarily not concerned himself at the *Newton* hearing with the

issue of general criminal conduct over the preceding six-year period.

37. Fourth, and reflecting the foregoing, the definition of "general criminal conduct" in the 2002 Act is wide: "all of the defendant's criminal conduct". It is to be distinguished from "particular criminal conduct". In such circumstances, the scheme of the Act is not to require that the benefit arising from the general criminal conduct be all directly linked to the particular criminal conduct which was the subject of the charge on the indictment.

38. Fifth, the conclusion which the judge reached was not on the evidence compelled by the decision in *Waya*. Of course, *Waya*, in general terms, decides that a judge should not make a confiscation order either at all or in a particular amount, if to do so would be disproportionate. But, that said, the respondent's present approach would not readily be consistent with the overall approach of the Supreme Court in *Waya*. Nor, indeed, would it be readily consistent with the Supreme Court's express approval of the decision of a constitution of this court in *R v Wilkes* [2003] EWCA Crim 848, [2003] 2 Cr App R(S) 625: see [31] of the joint judgment of Lord Walker and Sir Anthony Hughes.

39. In *Wilkes*, the property taken and handled by the defendant Wilkes was speedily recovered.

No other benefit was received by the defendant from his two offences of burglary and handling. The Crown, nevertheless, relied on the statutory assumptions in pursuing confiscation proceedings. The court was invited by the defendant to hold that the lifestyle assumptions could not apply because the defendant had not benefited from the two particular offences under consideration. The rejection by the Court of Appeal of such argument was endorsed by the Supreme Court in *Waya*. The only additional point made by the Supreme Court was that the value of the stolen goods recovered from the defendant Wilkes could not on proportionality

grounds be the subject of confiscation; otherwise, it had been entirely proper to apply the assumptions, leaving the defendant to make his own case at the hearing, which case had been rejected on the facts by the Crown Court.

40. Mr Haskell has doughtily sought to maintain that ultimately this was a matter for the discretion and evaluation of the judge by reference to the particular facts of this case. We have to say, however, that we can see nothing in the facts of this case to justify such an exceptional course as was taken by the judge. For example, Mr Haskell sought to place reliance on the fact that the prosecution had greatly reduced its claimed benefit figure arising under the lifestyle provisions on receipt of the defence expert report. But that sort of thing happens all the time and advances his argument not one jot. With all respect, Mr Haskell somewhat struggled to explain away the judge's apparent equation of his findings at the *Newton* hearing with the quite different assessment of what was the benefit arising from the general criminal conduct in the preceding six-year period. Aspects of Mr Haskell's arguments, in fact, would almost seem to suggest that there had in some way been resurrected a discretion in a judge whether or not to make a confiscation order. But that is simply not the scheme or structure of the 2002 Act. Of course, a judge has to take into account considerations of proportionality; but that ordinarily can only properly be done in a confiscation case when all the evidence is known. Further, as we have said, there was nothing to indicate, certainly at this stage of the proceedings, that there would be a serious risk of injustice if the assumptions were to apply; to the contrary.

41. Overall, therefore, with think, with all respect to him, that the judge's conclusion was both wrong and premature. Mr Haskell sought to appeal to "the realities of the matter" and urged the court not to over-complicate the issues. But a broad-brush approach is not always available in dealing with matters arising under the carefully structured Proceeds of Crime Act 2002. The Crown had been entitled to pursue these confiscation proceedings and it could not safely or

properly be assessed at this preliminary stage that there would be disproportionality arising in making an order or a serious risk of injustice arising from making the assumptions.

42. No long-term injustice arises to the respondent from such a conclusion. On the contrary, and by reference to the full evidence, he would be left free to advance his own case on this point: whether the assumptions should be disapplied or whether the order sought by the Crown would be disproportionate. That, indeed, is entirely inherent in the approach set out by the Supreme Court in *Waya*.

43. We add that the judge had placed some reliance on the decision on *Shabir*, which we have cited above. That case was on very specific facts. Indeed, the decision was to a considerable extent conditioned by the very unusual way in which the Crown had chosen to formulate its case in the indictment. Further, it was a decision on abuse of process - a point which is not now pursued - and it was also a decision which antedated the decision in *Waya*.

44. All the same, it may be worth noting that, as was observed in *Shabir*, there is not necessarily any oppression arising simply because the effect of confiscation on the operation of the lifestyle provisions may be to extract from a defendant a sum considerably greater than his profit from the specified crime. As was stated at [24]: "That is inherent in the statutory scheme ..." We would also draw attention to the observations of Hughes LJ in [27], where he said this:

> "The enormous disparity between the exercise of Shabir's inflated claims (some few hundreds of pounds) and the confiscation order of over £212,000 raises the real likelihood that this order is oppressive. As it seems to us, however, such a disparity will not in every case by itself establish oppression. If it is a case in which the criminal lifestyle provisions of the Act can legitimately be applied, and with them the several section 10 assumptions as to the source of assets, it may well be perfectly proper for a confiscation order to be massively greater than the gain from the offences of which the defendant has been convicted. That is the

> whole purpose of the criminal lifestyle provisions. They extend the reach of confiscation beyond the particular offences of which the defendant has been convicted."

45. In the circumstances, we allow the prosecution's appeal and we set aside the judge's decision. Mr Hetherington, quite rightly, was not prepared to say that a court should never stop a properly constituted confiscation case at a preliminary stage, short of an application of a stay on the ground of abuse. We agree that there may be exceptional cases where, possibly, such a course might perhaps be appropriate. But that is not so in this case and we venture to suggest that it is likely to be an exceptional case that a confiscation proceeding of this kind can be decided on the basis that it was decided here in advance of the final hearing.

46. This appeal is therefore allowed. We will now hear counsel as to whether the matter should be remitted back to a different Crown Court Judge in the Bristol Crown Court.