Neutral Citation Number: [2020] EWCA Crim 1110

Case Nos: 201804541 C4
201804543 C4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM SHEFFIELD CROWN COURT
MR RECORDER PRESTON
S20150019

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/08/2020

Before :

LORD JUSTICE DAVIS
MR JUSTICE SWEENEY
and
HIS HONOUR JUDGE KATZ QC

- -

Between :

REGINA		**Respondent**
(The Environment Agency)		
- and -		
(1)	**DEAN ANDREW RYDER**	**Appellants**
(2)	**ANDREW LAWRENCE GREEN**	

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- -

Mr Ivan Krolick (instructed by **the Registrar of Criminal Appeals**) for the **First Appellant**
Mr Andrew Copeland (instructed by **Lowell Solicitors**) for the **Second Appellant**
Mr Kennedy Talbot QC and **Mr Syan Ventom** (instructed by **the Environment Agency**) for the **Respondent**

Hearing date: 30th July 2020

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Approved Judgment

LORD JUSTICE DAVIS:

Introduction

1. These applications for leave to appeal have been referred to the Full Court by the single judge. They raise issues in confiscation proceedings conducted in consequence of the applicants' conviction in the Magistrates' Court for certain environmental offences, and in particular an offence under Regulation 12 (1) (a) and Regulation 38 (1) (a) of the Environmental Permitting (England and Wales) Regulations 2010 ("the 2010 Regulations") and related provisions. We have decided to grant leave.

2. The essential, although not only, complaint of both appellants is that, in making confiscation orders in the Crown Court, the Recorder was not entitled to include in the benefit figure an asserted pecuniary advantage in the form of avoidance of paying the costs of removal of contaminated waste stored on a site owned and controlled by the appellants. It is said that such asserted benefit did not result from and was not in connection with the particular conduct with which they had been charged. It is in the alternative said that the confiscation orders in any event were disproportionate.

3. An entirely discrete point is raised by the appellant Green. In his case, it is said that the Recorder erred in law, when determining the available amount, in including the entirety of that appellant's half-share in a jointly owned property without bringing into account an asserted equitable charge in favour of a Mrs Greenwood-Slater as security for a loan of £125,000 allegedly made by her.

4. Before us the appellant Ryder was represented by Mr Ivan Krolick. The appellant Green was represented by Mr Andrew Copeland. The respondent, the Environment Agency, was represented by Mr Kennedy Talbot QC and Mr Syan Ventom. We are grateful to them for their arguments.

Background Facts

5. Put shortly, the background was this.

6. The appellants were and are the legal owners of a site at Goodwin's Yard, Carlton, near Barnsley. In 2005 a company called Grantscope Limited, which they controlled, became tenant of the site. That company obtained an environmental permit as a regulated facility to store and treat waste there. Other companies controlled by the appellants also seem to have operated from the site. The main activity was receiving waste from skips for storage and treatment.

7. On the 7 February 2012 the Environment Agency issued a notice to Grantscope Limited, requiring it to take certain steps with regard to the site. That company did not do so. On 10 April 2012, the Environment Agency, pursuant to Regulations 22 and 23 of the 2010 Regulations, issued a revocation of the company's environmental permit with effect from 10 May 2012. In addition, the company was required after the revocation had taken effect, in order to return the site to a satisfactory state, to remove all waste from the site by 10 July 2012. It did not do so.

8. An appeal against the revocation notice was lodged. That appeal was dismissed on 20 November 2012 and the revocation thereupon took effect.

9. It appears that in the meantime Grantscope Limited had in fact been placed into liquidation on 3 September 2012 and its lease was either forfeited or disclaimed. However, certain waste activities continued on the site, in particular in the production from the waste of what were known as trommel fines, which were then mixed and bagged up for onward sale to the public as topsoil. The waste on the site was not itself removed.

The Proceedings in the Courts Below

10. On 10 April 2014 summonses were issued against the appellants in the Barnsley Magistrates' Court. The appellants were charged as follows:

> "1. On or before 28 December 2011 on land adjacent to Goodwin's Yard, Boulder Bridge Lane, Carlton, Barnsley, R G Wastecare Limited did deposit controlled waste without the benefit of an environmental permit and you were a director of the Company and the offence was attributable to your neglect.
>
> **Contrary to Section 33 (1) (a) and 157 (1) of the Environmental Protection Act 1990.**
>
> 2. Between the dates of 20 November 2012 and 8 May 2013 at Goodwin's Yard, Boulder Bridge Yard, Carlton, Barnsley, you did operate a regulated facility without the benefit of an environmental permit.
>
> **Contrary to Regulations 12 (1) (a) and 38 (1) (a) of the Environmental Permitting (England and Wales) regulations 2010 and Section 2 and 7 (9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.**
>
> 3. Between the dates of 20 November 2012 and 1 March 2013 at Goodwin's Yard, Boulder Bridge Lane, Carlton, Barnsley Ltd R G Wastecare Ltd did operate a regulated facility without the benefit of an environmental permit and the offence was attributable to your neglect.
>
> **Contrary to Regulations 12 (1) (a) and 38 (1) (a), and 41 (1) (b) of the Environmental Permitting (England and Wales) Regulations 2010 and Section 2 and 7 (9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.**
>
> 4. On or before 8 May 2012 at Goodwin's Yard, Boulder Bridge Lane, Carlton, Barnsley, Grantscope Ltd were in breach of steps 2 to 7 inclusive as they appear in schedule 1 of an enforcement notice dated 7 February 2012 pursuant to Regulation 36 of the Environmental Permitting (England and Wales) Regulations 2010 and the offence was attributable to your neglect.

> **Contrary to Regulations 38 (3) and 41 (1) (b) of the Environmental Permitting (England and Wales) Regulations 2010 and Section 2 and 7 (9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.**"

11. The appellants pleaded guilty to Charge 4. They contested Charges 1-3 but were convicted in the Magistrates' Court on 15 December 2014. The matter was then committed to the Crown Court for confiscation and sentence. A Restraint Order was made in the Crown Court on 14 July 2015 against the assets of each appellant. A restriction was entered at HM Land Registry accordingly, which extended to the joint interest of the appellant Green in the matrimonial home at Ashwell Close, Shafton, Barnsley.

12. In the meantime, the appellants had themselves appealed to the Crown Court against their convictions in the Magistrates' Court. There was, for whatever reason, significant delay. Eventually the matter came before Ms Recorder Tulk, sitting with justices, on 11 March 2016 in the Sheffield Crown Court. The appeal was allowed on Charge 3, essentially because it was not proved which particular company controlled by the appellants was involved. But the appeal was dismissed on Charges 1 and 2.

13. In giving judgment, Ms Recorder Tulk reviewed the evidence. It was found that after the date of revocation of the company's environmental permit the appellants had continued to operate the facility. In particular, an item of machinery called a trommel had been operated to treat contaminated waste stored at the site so as to produce what were known as fines. There was evidence that such processed fines could still be contaminated and could not be properly classified as soil.

14. The court in terms found that after the revocation of the environmental permit as from 20 November 2012 the site continued to be operated as a regulated facility "in that a waste operation continued to be carried on, on the site, comprising the treatment of waste." It was found that the operation continued after the revocation of the environmental permit by processing the waste into trommel fines which were then bagged up to be sold as topsoil. The court, after allowing the appeal on Charge 3, concluded the judgment with regard to Charge 2 in these terms:

> "We are, however, sure that both appellants operated the regulated facility without the appropriate permit in their personal capacity as owners of the land as the people who stood most to benefit from clearing the site of the waste in a way which would not only not cost them significant amounts of money but would also have made some money for them. The appeal against conviction for that offence is accordingly dismissed."

15. The appellants sought to challenge this outcome by judicial review proceedings commenced in the High Court. But that challenge failed, as permission to apply was refused.

The Confiscation Proceedings

16. The confiscation proceedings took their course in the Crown Court, again rather slowly. Ms Recorder Tulk had for some reason recused herself from taking such proceedings. Complaint was made to us about this but, even if this was not a desirable step, it cannot of itself afford a ground of appeal.

17. The prosecution made clear that it was pursuing the confiscation proceedings by reference to the second offence as charged.

18. The matter was initially heard in the Sheffield Crown Court on 15 December 2017 by Mr Recorder Preston. Detailed s.16 and s.17 statements had been served. The prosecution was arguing that there had been benefit in the form of the pecuniary advantage said to have been obtained from avoiding the costs of the removal of the contaminated waste from the site. The appellants, on the other hand, disputed that. They said that they were under no obligation to remove the waste from the site (whatever may have been the obligation on Grantscope Limited). They said, among other things, that no notice had been served on them requiring them to remove the waste and that no offence alleging a breach of the notice dated 10 April 2012 had been charged.

19. The Recorder gave a detailed ruling. He found that the waste had been kept stored on the site pending disposal. He then went on to say this:

> "So, the first question is whether there existed a liability? This site contained a large amount of waste more, in fact, than the previous permit allowed. But once the permit was revoked, and they no longer had permission to act as a regulated facility, there fell upon them, as a matter of law and of practical fact, a responsibility to deal with it by clearing the site in a lawful manner. The same is actually, it seems, conceded in a written argument put forward by Mr Ryder, as is pointed out in the [prosecution's] latest skeleton argument. As a matter of common sense that must be so. Consequently, for that action, there must, inevitably, be cost implications. The defendants decided to avoid those cost implications by continuing to act as a facility, as before, despite not having any more a licence. In doing so they avoided their legal responsibilities to dispose of the waste lawfully and the costs which would have, inevitably, have gone with that."

After referring to the case of *Morgan* [2013] EWCA Crim 1307, [2014] 1 WLR 3450, he then went on:

> "I think this was my fault but we headed down a particular route involving the enforcement notice and questions whether it was still in force demanding the waste removal and also whether it was levelled at the defendants individually or as a corporate entity. They did have corporate responsibility but they also had responsibility, as individuals, as owners of the site which they were running as found, very clearly, as part of Recorder Tulk's factual analysis of the case and so it matters very little if an enforcement notice was still extant or whether,

> in fact, it was levied at them as individuals or as a corporate body. So, I find, as a fact, that there was in existence a liability."

He concluded his ruling on this aspect of the matter in these terms:

> "Consequently, my judgment is that there is benefit to the defendants from their criminal conduct, namely a pecuniary advantage comprising an amount equal to the costs of waste removal. That being so, there is a plainly a benefit derived in this case from the operation of the site as a regulated facility without the required permissions. The criminality being the operation of the site. The avoidance of the inevitable costs involved in disposing of the waste legally amounts, in my view, to the gaining of a pecuniary advantage and that benefit has accrued to the defendants through their criminal conduct and, therefore, confiscation stands to be considered."

20. After a further hearing, involving several days of complicated evidence, the Recorder on 7 February 2018 made detailed findings as to the valuation of the benefit (representing the cost of removal of the waste) which enabled the figure then to be agreed at £276,004.

21. The matter then came back again before the Recorder on 8 October 2018. Perhaps generously to the appellants, he apportioned benefit equally between the two of them. A confiscation order in the amount of £138,002 was made on 8 October 2018 against the appellant Ryder. A confiscation order in the amount of £121,422.72 was made against the appellant Green.

22. A further issue had arisen in this respect. The appellant Green was, at law and in equity, co-owner of a property at Ashwell Close, Shafton, near Barnsley (the matrimonial home). But what was being said was that a written Charge had in the interim been made by this appellant and his wife in favour of Mrs Greenwood-Slater on 21 February 2015 to secure a loan of £125,000. It was executed following the convictions in the Magistrates' Court but before the Restraint Orders were made on 14 July 2015. This Charge had not been registered at HM Land Registry before the Restraint Order was made and restriction entered.

23. The Recorder conducted a hearing under s.10A of the Proceeds of Crime Act 2002 ("the 2002 Act"). Mrs Greenwood-Slater had made a witness statement for this purpose and was represented by counsel but did not herself attend the hearing. The Crown was not accepting the bona fides of this Charge: it was saying that it was a device to frustrate any confiscation order. But the Recorder did not make any findings on the evidence on this. Instead, he held, as a matter of law, that since the Charge had not been registered before the Restraint Order was made and restriction entered, that Restraint Order took priority over the Charge under the provisions of the Land Registration Act 2002. Consequently he made a confiscation order against this appellant in the full amount of his available assets, valued at £121,422.72. That conclusion is also challenged on this appeal.

24. On 9 October 2018 the Recorder passed sentence. He imposed sentences of imprisonment of 12 months, suspended for 18 months in each case, with an unpaid work requirement as an additional condition. In passing sentence, the Recorder commented with regard to the second charge:

> "You tried not only to save money from [the waste's] disposal because you didn't like the cost but you tried to make money from its disposal as topsoil and you did so persistently and over a prolonged period …."

This accorded, it may be noted, with the earlier findings of Ms Recorder Tulk.

The Applicable Environmental Protection Regulations

25. The 2010 Regulations are complex. For present purposes, we concentrate on those relating to the second charge, by reference to which the confiscation proceedings were conducted.

26. In Regulation 2, the interpretation Regulation, "waste" is generally defined by reference to the Waste Framework Directive 2008|98|EC ("the WFD"). "Waste operation" is defined to mean recovery or disposal of waste. Regulation 7 defines "operate a regulated facility" as meaning, among other things, operating an installation or mobile plant or carrying on a waste operation. (Both Ms Recorder Tulk and Mr Recorder Preston, it will be recalled, had, on the evidence, in terms found in this case that a waste operation had been carried on.) Regulation 8 confirms that a "regulated facility" can, among other things, mean a waste operation.

27. By Regulation 12 (1) (a) it is provided that a person must not, except where authorised by an environmental permit, operate a regulated facility. By Regulation 38 (1) it is an offence for a person to contravene Regulation 12 (1) or knowingly cause or knowingly permit the contravention of Regulation 12 (1) (a). Regulation 38 (2) then provides that it is an offence for a person to fail to comply with or contravene an environmental permit condition. Regulation 38 (3) provides that it is an offence for a person to fail to comply with the requirements of an enforcement notice.

28. By paragraph 2 of Schedule 9 to the 2010 Regulations, it is provided that "disposal" and "recovery" have the same meaning as in the WFD. Turning then to the WFD, by Article 3.1 "waste" is defined to mean any substance or object which the holder discards or intends or is required to discard. "Waste holder" is defined, by Article 3.4, to mean the waste producer or the natural or legal person who is in possession of the waste. By Article 3.15, there is provided a wide definition of "recovery": this includes a non-exhaustive list of recovery operations set out in Annex II. By Article 3.19 there is provided a wide definition of "disposal": this includes a non-exhaustive list of disposal operations set out in Annex I. Disposal operations and recovery operations extend in those Annexes, by D.15 and R.13 respectively, to storage pending any of the operations previously numbered (excluding temporary storage).

The 2002 Act

29. The scheme of the 2002 Act is all too familiar. The essential task, for confiscation purposes, is to ascertain whether the defendant has benefited from relevant criminal

conduct; if he has, then an assessment has to be made of the value of the benefit so obtained; and finally the court has to assess what sum is recoverable from the defendant.

30. For present purposes, the central provisions are those contained in s.76 of the 2002 Act: in particular s.76 (4) - (7). Those sub-sections provide as follows:

> "(4) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
>
> (5) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
>
> (6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.
>
> (7) If a person benefits from conduct his benefit is the value of the property obtained."

The 2002 Act contains no definition of "pecuniary advantage".

Submissions

31. In outline, the submissions on behalf of the appellants were to the effect that the Recorder had no entitlement to make a finding of benefit in the form of a pecuniary advantage represented by calculating the amount saved by avoiding the costs of removal from the site of the contaminated waste. At most, it was said, they should have been required to restore the proceeds of the sale of trommel fines as topsoil as the benefit obtained.

32. What is said is that, by reference to the second charge on the summons, the waste had in the first instance been lawfully deposited at the site by Grantscope Limited. Had the notice served on Grantscope Limited on 10 April 2012 been enforced, then no doubt, by operation of the provisions of Regulation 38 (2) and (3) taken with Regulations such as Regulation 23 and Regulation 36 (the precise terms of which we do not need set out), an offence could have been made out against Grantscope Limited and the appellants as its controllers. But that was not the case here: neither the appellants nor Grantscope Limited had been charged with, or convicted of, any failure to comply with a "Take Steps" condition. Further, and in any event, there was no evasion of any debt such as to give rise to a pecuniary advantage, not least because there was no "debt" to be "evaded"; and the requirements of s.76 of the 2002 Act thus were not met. Finally, as an alternative, it was suggested that, for the purposes of s.6 (5) of the 2002 Act, such a confiscation order was disproportionate: in that the appellants have a potential liability in the future to remove the waste or in that the value of the land to them is depreciated pro tanto by the potential costs of removal of the waste.

33. As to the Charge in favour of Mrs Greenwood-Slater, it is argued on behalf of the appellant Green that the Recorder had misunderstood, and so misapplied, the relevant provisions of the Land Registration Act 2002. This last point is now conceded by the Environment Agency.

34. For the Environment Agency it is argued that Mr Recorder Preston was correct on the issue of benefit. Here, the appellants at the relevant times had no environmental permit at all. Yet they had permitted the site where all the waste was stored to be used for a waste operation, thereby operating a regulated facility for the purposes of the 2010 Regulations: and so had committed an offence under Regulation 38 (1). That the waste had originally been lawfully deposited was nothing to the point. The point was that in order to comply with the 2010 Regulations, and to avoid committing such an offence, they had to remove the waste from the site. By not doing so, they had clearly obtained a pecuniary advantage, within the ambit of s.76 of the 2002 Act, in avoiding the costs of procuring such removal; and there was nothing disproportionate in the confiscation orders made.

Disposal

35. We are of the view that the appeal on the main issue must be dismissed.

36. The appellants themselves simply had no environmental permit at all at the relevant times. Consequently there could be no question of serving on them a revocation notice under Regulation 22 which also, by Regulation 23, could require them to take steps to restore the site, as was done with Grantscope Limited by the notice of 10 April 2012. Since the appellants themselves had no environmental permit, there could thus be no question of them being in breach of a condition of any environmental permit at the times which were the subject of the second charge. Accordingly, since they had no environmental permit they had no entitlement to continue to store the contaminated waste on the site in the way that they did, on the findings of the Recorder. On those findings, following the liquidation of Grantscope Limited the appellants, in their personal capacity as owners and controllers of the site, had caused a waste operation to be carried on there. Those activities, as found, showed that they were storing the waste for recovery or disposal, given the wide definitions contained in the 2010 Regulations which incorporated the wide definitions contained in the WFD. Thus their conduct was indeed within the ambit of the second charge on the summons. Such an approach to the 2010 Regulations also corresponds to the approach taken by Nicol J in the comparable case of *Stone v Environment Agency* [2018] EWHC 994 (Admin), [2018] Env. L. R. 32. Mr Krolick submitted that that case, which is not binding on this court, was wrongly decided. We consider that it was correctly decided.

37. This conclusion also accords with the broad approach which is to be taken as appropriate to the words “as a result of or in connection with” used in s.76 (4) and (5) of the 2002 Act: a width which is reinforced by the terms of s.76 (6).

38. The proposition that the saving of costs of removal otherwise required in an environmental context can be a pecuniary advantage is consistent with both the decision and the approach taken in the case of *Morgan* (cited above) and with the approach taken in cases such as *R.J Holbrook Limited* [2015] EWCA Crim 1908. We found, in fact, Mr Krolick’s insistence that there was no “evasion” of a “debt” rather puzzling. It seems, among other things, to hark back to the narrow definition of

pecuniary advantage in the relevant provisions of the Theft Act 1968 (since repealed). But it is established that the definitions in the Theft Act 1968 are not to be imported into the 2002 Act: see *Wright* [2014] EWCA Crim 382, [2014] 1 WLR 2913 at paragraph 11 of the judgment. Accordingly, "pecuniary advantage" is not legally limited by the wording of the 2002 Act as it is in the 1968 Act. We also found rather puzzling his attempted differentiation in this context between "avoidance" and "evasion". No doubt in some contexts, such as taxation, that differentiation can be very real. But in the present case the question was whether the appellants, by their conduct, were sparing themselves the costs of removing the waste from the site in accordance with their obligations. Here, as found on the evidence, they were. Once that was established, whether one styles it avoidance or evasion merely becomes, for these purposes, a matter of words.

39. A further complaint was that in reaching his conclusions Mr Recorder Preston departed from the conclusions of Ms Recorder Tulk. We do not follow that. For one thing, in assessing benefit Mr Recorder Preston was engaged on a task different from that before Ms Recorder Tulk. For another, his findings were in any event wholly consistent with the concluding findings of Ms Recorder Tulk as set out above. Both Recorders found that the appellants had operated a waste operation and had been motivated both to save on the costs of removal of the waste and to make a profit for themselves.

40. The argument as to disproportionality can be shortly disposed of. The scheme of the 2002 Act has never adopted the kind of balance-sheet approach being proposed here. Nor is there any proposal by the Environment Agency to require removal now. There is no question here of a double penalty or double recovery which would go against the "grain" of the statute.

The Charge of 21 February 2015

(a) Jurisdiction

41. A potential point of jurisdiction arises, which Mr Talbot very fairly and properly drew to the court's attention.

42. The Recorder had expressly dealt with the issue of the Charge dated 21 February 2015 by reference to s.10A of the 2002 Act, as he was perfectly entitled to do (although not obliged to: see, for example, *Hilton* [2020] UKSC 29). Having made his determination on that issue, he assessed the recoverable amount accordingly.

43. The possible problem is this. A confiscation order counts as a sentence. As such, it may be appealed under the provisions of s.9 or s.10 and s.50 (1) of the Criminal Appeal Act 1968. But s.50 (1) (ca) expressly excludes from that right of appeal a determination under s.10A of the 2002 Act. A right of appeal is, however, conferred with regard to a determination under s.10A of the 2002 Act by s.31 (4) of the 2002 Act. In that regard, s.31 (5) confers such right of an appeal on "(a) the prosecutor; (b) a person who the Court of Appeal thinks is or may be a person holding an interest in the property" in the circumstances set out in sub-sections (6) and (7). But a defendant, unlike a prosecutor, is not specifically named in s.31 (5) as having a right of appeal.

44. In the present case, this appellant unquestionably held an interest in the property. There would be a serious risk of injustice to him if the determination was given effect without a right of challenge available to him. So he would seem to fall within the ambit of s.31.

45. The potential problem perhaps arises from certain dicta in the decision of a constitution of this court in the case of *Ghulam* [2018] EWCA Crim 1691, [2019] 1 WLR 534. At paragraph 87 of the judgment it was suggested, after reference to the statutory provisions, that there was a "possible tension" between the relevant statutory provisions, where the confiscation order is made solely on the basis that the offender did have a particular interest in property.

46. In the present case, as we have previously indicated, it was common ground that this appellant had an interest in the property. In such circumstances, we see no reason to delimit the wording of s.31 (5) of the 2002 Act, which is broad. Further, there can be no obvious reasons of sense which would apply so as to deprive a defendant, where he has an interest in property, of all right of challenge to a s.10A determination. Mr Talbot in this regard also helpfully drew our attention to the explanatory notes to the Serious Crime Act 2015 (which introduced, by amendment, s.10A into the 2002 Act); those expressly contemplate that a defendant may have a right of appeal against a s.10A determination.

47. It may be that there is in any event another way in this case of reaching the same conclusion on jurisdiction. Here the challenge by way of appeal is as to the confiscation order itself. True it is that on this particular aspect of the case the objection, with regard to the recoverable amount, essentially derives from the Recorder's determination under s.10A. But the appeal itself was and is against the actual confiscation order. Consequently, it might be said that the confiscation order itself may be appealed, having regard to s.50 (1) of the Criminal Appeal Act 1968. That is another way of approaching this matter: albeit our preferred solution is by reference to the actual wording of s.31 (5) of the 2002 Act.

48. Overall, we accept that we have jurisdiction to entertain an appeal on this issue.

(b) The Charge

49. The Recorder held that the Restraint Order, which was the subject of a restriction entered on the register at HM Land Registry, took priority over the Charge made on 21 February 2015 in favour of Mrs Greenwood-Slater, which was not registered before the Restraint Order was made.

50. It was common ground before us that this was an error. The entry of the restriction on the register, whilst it might operate to prohibit future registration of dispositions, did not operate to make the Restraint Order of 14 July 2015 a registered charge having, for the purposes of confiscation proceedings, priority over a previous unregistered charge. Section 48 of the Land Registration Act 2002 does not apply in such circumstances.

51. The Charge of 21 February 2015 (provided, of course, it was not a sham or device) remained valid, even if unregistered, and so prima facie would need to be brought into account in valuing the available assets of this appellant under s.79 (3) of the 2002 Act.

Thus the critical question for this purpose was whether or not the Charge was genuine. But the Recorder made no findings of fact on that issue.

52. Accordingly it is appropriate to remit the matter back to the Crown Court for determination of that issue.

Conclusion

53. The appeal against the Confiscation Order with regard to benefit is dismissed. The appeal of the appellant Green with regard to the Charge and the calculation of the available amount is allowed; and that matter is remitted to the Crown Court for redetermination.