Neutral Citation Number: [2021] EWCA Crim 1170

Case No: 20200698 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE HARROW CROWN COURT
His Honour Judge Cole
S20150033

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/07/2021

Before :

LORD JUSTICE EDIS
MR JUSTICE SOOLE
MR JUSTICE MORRIS

- -

Between :

THE LONDON BOROUGH OF BARNET — **Appellant**

- and -

HAMID KAMYAB — **Respondent**

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- -

Andrew Campbell-Tiech QC and Richard Heller (instructed by **HB Public Law**) for the **Appellant**
Nathaniel Rudolf QC (instructed by **Janes Solicitors**) for the **Respondent**

Hearing dates: 7 and 8 July 2021

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Approved Judgment
(amended to correct an arithmetical error in paragraphs 33 and 34)

Lord Justice Edis :

1. This is the decision of the court on the appeal of the London Borough of Barnet ("Barnet"), as prosecutor, against a confiscation order made against Hamid Kamyab on 16 December 2019 in the sum of £270 by His Honour Judge Cole in the Crown Court at Harrow. It follows the decision of this court to allow the appeal and direct a hearing of the merits of the confiscation application before this court. Reasons for that decision were given in the judgment of the court on 15 April 2021, see [2021] EWCA Crim 543. This judgment is to be read with the first judgment and it is unnecessary to repeat any of its content here. In particular, we will not repeat any of the factual and procedural material there set out. The court then fully explained how and why this hearing has come about. It is, as Mr. Rudolf QC, who appeared for Mr. Kamyab in these proceedings submitted, perhaps a unique event.
2. The effect of our decision is that this court will determine issues of fact effectively at first instance, and the usual right of appeal against sentence will not be available to Mr. Kamyab. The right of appeal he has is the very circumscribed right of appeal to the Supreme Court which requires the certification of a point of law of general public importance. Such an application in relation to this part of the decision would face certain difficulties, not least because of the last sentence of paragraph 1 above. It appears to us that we should have regard to that in the way in which we deal with the case at this stage. We are constituted as a court of three judges and we have taken particular care to work collaboratively so as to ensure that Mr. Kamyab has the benefit of the same type of tribunal which would consider any sentence appeal. This is the judgment of the court to which we have all contributed. We have directed ourselves, in particular, that any issues of law which are genuinely arguable should be resolved for our purposes in favour of Mr. Kamyab. This means that our decisions on such points are not authoritative decisions of this court.
3. For this reason, and because it accurately reflects the true nature of what we are doing, this decision will be framed in the same way we would expect a Crown Court judge to express reasons for making an order following a complex and contentious confiscation hearing. We are not seeking to give guidance for other cases, or establishing any form of precedent. The purpose of this judgment is to explain to the parties and the public why we have come to the conclusions we have reached, and nothing more.
4. It is our function to determine the benefit which Mr. Kamyab derived from his criminal conduct, applying s.6(4)(b) and s.8 of POCA, and then to make a finding about the available amount before making a confiscation order in the appropriate sum. In the first part of that exercise, Barnet bears the burden of proving the benefit to the civil standard, see POCA s.6(7). This has not been advanced as a criminal lifestyle case, and the benefit which we will determine will be that derived from the particular criminal conduct of which Mr. Kamyab was convicted. In the second part of the exercise, Mr. Kamyab contends that the available amount is less than the benefit figure, and is, in fact, nil. He bears the burden of proving that the available amount is less than the benefit, and the standard of proof is the civil standard. He gave evidence before us on that issue. The process charts at paragraph 5B-3bff of Archbold encapsulate the task we are undertaking.
5. A question arose during the hearing about whether we are "proceeding under s.6" of POCA for the purposes of s.8(1). The answer is that we are not. S.32(1) is quite clear, as the first judgment decides. It confers a power in an appeal of this kind only to "confirm, quash or vary" the confiscation order made by Judge Cole. We are receiving fresh evidence in order to decide whether to vary it and, if so, what that variation should

be. We consider that we can only vary the order in a way which would be within the jurisdiction of the Crown Court. Although section s.6 does not directly apply (because we do not have the power ourselves to proceed under s.6 which arises in an appeal under s.31(2), see s.32(2)-(11)) it indirectly applies because a variation of an order which results from an application of the law which would have been unlawful if done by the Crown Court would be equally unlawful if done by this court in a situation such as this.

6. A further question arose about the significance of findings of fact by the Magistrates' Court and the Crown Court when Mr. Kamyab was convicted and when his appeal against that conviction was dismissed. The appeal was dismissed for reasons given by Mr. Recorder Rosen QC in a detailed ruling on behalf of himself and the justices with whom he sat. The nature of the appeal was that it was a re-hearing of the case by the Crown Court, as explained at [7]-[8] of our first judgment. It is therefore simply the findings of the Crown Court with which we are concerned, and we have a transcript of those reasons. The relationship of the factual basis of conviction and the subsequent factual findings required by a judge when proceeding under s.6 of POCA is perhaps not entirely settled, see *Mackle* [2014] UKSC 5, *Sangha* [2008] EWCA Crim 2562, *Knaggs* [2009] EWCA Crim 1363, and *Parveaz* [2017] EWCA Crim 873. For the reasons given above we will not approach this exercise on the basis that we are bound by any finding of fact by the Crown Court.

The benefit

7. Mr. Kamyab submits that the benefit from the offending should be assessed as nil for the period prior to June 2018 because all rents received had to be paid by him to HSBC during that period. For the reasons given below, when considering the evidence relating to that issue when assessing the available amount, we reject that submission. In essence, Mr. Kamyab agrees that he received the rents, but contends that they belonged to the Bank to whom he paid them. We reject the evidence he gave on that issue and there is therefore no evidence that he did not received, and use as he chose, the rents received. That being so, it is agreed by both parties that the determination of the issue before us requires us to determine (1) the point at which the enforcement notice became effective and (2) the date at which the continuing offence came to an end for the purposes of the confiscation order. The first issue requires us to construe the correspondence sent by Barnet. In particular, it requires us to decide for ourselves whether the Crown Court was right to say that the enforcement notice came into force on 1 June 2013, and that its operation was not suspended by any later extension, see s.173A(2) of the Town and Country Planning Act 1990 ("TCPA"). We have undertaken the same exercise as did the Crown Court and have come to the same conclusion. Mr. Kamyab has had an explanation of the reasons from the Crown Court for its conclusions and we do not need to repeat them here. This is a matter of fact and, in our judgment, the email of 1 March 2013 gave notice, to expire on 1 June 2013, that unless the enforcement notice was complied with by 1 June 2013 Mr. Kamyab would become liable to prosecution. That brought to an end previous extensions of the original date, and rendered non-compliance on and after 1 June 2013 a criminal offence. Subsequent correspondence in which Barnet had said that they would prosecute unless compliance took place occurred on 29 October 2013 and 17 March 2014. This is different in form, and did not withdraw the 1 June 2013 date. It is to be understood as two offers to overlook existing and ongoing criminality if it ceased within a stated period, rather than an amendment to the compliance date for the enforcement notice

which meant that the non-compliance ceased to be criminal. The start date of the offending was 1 June 2013.

8. As to the end date, there are three possible dates suggested by the parties. Mr. Kamyab contends that the end date for the period of the relevant benefit is 10 February 2015 because as from that date he was no longer required to comply with the enforcement notice because he had carried out work in, 24 Llanvanor Road, "the Property", and was operating it as a House in Multiple Occupation ("HMO") under the regime established in the Housing Act 2004 further to an offer from Barnet that he could do this as an alternative to complying with the enforcement notice. Barnet submits that the end date for the offending for the purposes of the ascertainment of benefit was either 16 December 2019 when the original confiscation order was made or the date in July 2021 when that order is varied.

The arguments on the end date

9. Mr. Rudolf on behalf of Mr. Kamyab submits as follows:
    a. From 10 February 2015 the Property was configured in such a way as to constitute, in law, a Class C4 use as an HMO for not more than 6 residents ("a small HMO") for the purposes of Part 3 of Schedule 2 of the Town and Country Planning (Use Classes) Order 1987) as amended ("the Use Classes Order").
    b. By the email dated 1 March 2013, Mr Henry of Barnet represented to him that, *as an alternative* to complying with the enforcement notice, he could re-configure the Property into a small HMO. He places reliance on the undoubted fact that Barnet subsequently (in pre-action correspondence associated with a wholly unmeritorious threatened claim by Mr. Kamyab for judicial review dated 16 May 2018) accepted that in the 1 March 2013 email Mr Henry had agreed that this was *an alternative* to compliance.
    c. In reliance upon this representation, he carried out the re-configuration with effect from 10 February 2015.
    d. Mr. Rudolf accepts that because the use of the Property immediately prior to the reconfiguration was unlawful it did not amount to permitted development. Nevertheless, he says, Mr Henry's representation, and Mr. Kamyab's acting upon it, broke the chain of causation so that from 10 February 2015 the benefit (i.e. the rental income from that date) was not "obtained … as a result of or in connection with" the criminal conduct, namely the failure to comply with the enforcement notice within the meaning of section 76(4) POCA; rather it was obtained as a result of the representation.

10. Barnet contends in response:
    a. The Property as reconfigured from 10 February 2015, did not constitute, in law, a small HMO, because it was a mixture of self-contained units and non-self-contained units. It was four self-contained flats, unchanged in use or configuration by the work done in 2015. In addition, three of the flats were now altered so that two of them did not have their own kitchen facilities and shared that which had formerly served only the third flat which was entirely converted into shared accommodation for the benefit of the residents. Two of the original nine flats were unused. Mr. Sutherland-Thomas, Barnet's Planning Officer who gave evidence, said that in his opinion this amounted to five planning units. One of them, the three flats including the shared kitchen, constituted a small HMO, but the other four were individual self-contained flats.

b. Even it was a small HMO, in his email of 1 March 2013, Mr Henry did not represent that conversion to an HMO was *an alternative* to compliance with the enforcement notice; what he said was no more than an indication of what might constitute lawful use of the Property, once Mr. Kamyab had fully complied with the enforcement notice.

The statutory framework of planning law

11. Class C4 use is "use of a dwelling house by not more than six residents as an HMO: see Schedule 3 to the Use Classes Order. In turn, an HMO is defined in section 254 of the Housing Act 2004. A change of use from a single dwelling house (class C3) to use as a small HMO (class C4) was, at the relevant time, permitted development pursuant to Schedule 2, Part 3, Class I of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("the GPDO"). "Permitted development" constitutes the grant of planning permission (Article 3(1) GPDO). Where planning permission is granted for any development, an existing enforcement notice ceases to have effect in so far as it is inconsistent with that permission: s.180(1) TCPA. However, any permission granted by Schedule 2 of the GPDO does not apply where the use existing immediately before the carrying out of the development (i.e. the change of use) is unlawful: Articles 3(5)(b) and 1(2), GPDO.
12. It is common ground that, in the present case, because the actual use of the Property immediately before its reconfiguration on 10 February 2015 was unlawful (use as a residential building with nine self-contained flats in breach of the enforcement notice), even if the Property as reconfigured constituted a small HMO and thus Class C4 use, no planning permission was granted for that change of use: Article 3(5)(b), GPDO. Thus, the enforcement notice continued to have effect.

Analysis

13. Whether or not the configuration of the Property from 10 February 2015 constituted, in law, a Class C4 use as an HMO for not more than 6 residents, (i.e. a small HMO for the purposes of Part 3 of Schedule 2 of the Use Classes Order as amended) raises complex questions of the application of sections 254 and 257 Housing Act 2004, which we do not need to determine for the purposes of this judgment. We proceed on the assumption in Mr. Kamyab's favour that the Property was a small HMO from that date.
14. Mr. Kamyab's case is dependent upon the contention that in his email of 1 March 2013 Mr Henry represented to or offered him the option of converting the Property into a small HMO *as an alternative* to complying with the terms of the enforcement notice. We do not accept this contention, as a matter of construction of the terms of that email. Even assuming (consistently with the assumption at [13] above) that Mr Henry's reference to a "six-person house in multiple occupation" includes a house in the post-February 2015 configuration of the Property, Mr Henry makes it clear in the email that compliance with the enforcement notice was (and remains) required. He was insisting on the creation of a single dwelling (the permanent removal of specified kitchen facilities, bathrooms and locks). In the passage relied on by Mr. Kamyab, Mr Henry is doing no more than pointing out that, once he has complied, it is open to him to convert the single dwelling into a small HMO (or a larger HMO if planning permission is applied for). Mr. Kamyab's contention cannot stand with Mr. Rudolf's correct acceptance, in argument, that the email did not constitute a variation in the terms of the enforcement notice in this respect. It did not absolve him of his obligation to comply

with it, and the reconfiguration he carried out on 10 February 2015 did not constitute compliance with the enforcement notice.

15. Barnet's acceptance in pre-action correspondence in threatened judicial review proceedings that the statement that Mr. Kamyab had the option of converting the Property into a small HMO was an offer of an alternative to compliance with the enforcement notice simply means that Barnet, at that much later date, failed to read its email of 1 March 2018 properly.

16. We therefore reject the submission that Barnet ever made the representation relied on. For this reason, Mr. Kamyab's case that the end date of the offence was 10 February 2015 fails.

17. Further, and in any event, we do not accept that the representation (even if construed as Mr. Rudolf submits) breaks the chain of causation between the criminal conduct (the offence of failure to comply with the enforcement notice) and the benefit (receipt of the rental income). We consider that rental income received after 10 February 2015 was "obtain[ed]… as a result of or in connection with" that conduct within the meaning of section 76(4) POCA. Applying a "but for" approach as identified in *R v. Andrewes* [2020] EWCA Crim 1055 at [74], strictly the relevant question is to consider what would have happened "but for" *the failure to comply with the enforcement notice*; (i.e. if Mr. Kamyab had created a dwelling for single use) and not what would have happened "but for" *the representation*. On this basis, if he had complied with the notice and created a single use dwelling, he would not have earned the rental income from the 6 occupants which he did earn. Indeed, Mr. Kamyab's case on this issue must be that either he would have complied with the enforcement notice, in which case he would not have earned the rent; or he would not have complied, but would not have converted to a small HMO, in which case he would have continued to act in breach of the enforcement notice and any rent received would have been obtained as a result of that criminal conduct. Mr. Kamyab does not say that the effect of the representation was that he was no longer legally obliged to comply with the enforcement notice.

18. We have had difficulty in understanding the suggested effect *in law* of the representation (even on the Defendant's construction). In substance the effect of Mr. Rudolf's argument here as to the effect of the representation upon "causation" is that the representation, by some mechanism, rendered lawful something which was unlawful, in circumstances where it is accepted that it did not vary the terms of enforcement notice itself. Having accepted that Mr. Kamyab remained obliged to comply with the notice, Mr. Rudolf has not been able to identify that mechanism.

19. We will deal at this point in this judgment with two submissions Mr. Rudolf made in relation to the proportionality of making an order in the full amount of the benefit assessed. We do so because they arise out of the same factual context which we are presently considering, namely the conduct of Barnet in its dealings with Mr. Kamyab. These are that it would be proportionate to make an order as if the criminality had ended when:-

    a. the Private Sector Housing Team at Barnet issued a licence for use of the Property as a large HMO with effect from 22 May 2017 under The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006; or when
    b. the Planning Team at Barnet published the outcome of a complaint on its website saying "Decision: no further action (lawful)" in July 2016, and that this in some way is relevant to the end date issue.

20. In relation to the HMO licence, the materials issued by the Private Sector Housing Team Barnet when dealing with the licensing application make it clear that the licensing

regime is unconnected with the planning regime. The licensing regime exists for the protection of those who live in HMOs. The tenants who were living in the Property were entitled to that protection, said the Barnet Housing Team, who decided, contrary to Barnet's case in these proceedings, that the post-reconfiguration use of the Property meant that it was a large HMO which required both licensing and planning permission. It had no licence for that use until May 2017 and has never had planning permission for it.

21. In relation to the July 2016 complaint from a local resident that the Property was being used as a large HMO without planning permission, that complaint, as we have just said, was (on the view of the Housing Team at Barnet) correct. If it was a large HMO it had neither planning permission nor a licence at that date, and needed both to be operated lawfully. We accept that the planning officer, Mr. Kraus, did visit the property and that he later spoke to Mr. Sutherland-Thomas as a result of which the "no further action" message was applied to this complaint. We also accept Mr. Sutherland-Thomas' evidence that this was a coding error, and the reason that this new complaint about the planning status of the Property was not pursued was that it duplicated an existing complaint (which always appeared on the website as an active investigation in the event that members of the public were concerned about the Property) which gave rise to these proceedings and was being dealt with by Mr. Sutherland-Thomas. Such was the software in use at the time that there was no code for "duplicate complaint, see existing file" and the computer entered "lawful use" automatically.

22. Mr. Kamyab does not suggest that he has relied to his detriment on either the HMO licence or the website entry in such a way as to render the inclusion of the benefit received after they occurred an abuse of the process of the court. It is not clear to us what relevance either of these events could therefore have to the determination of the benefit. Throughout the period when they occurred, Mr. Kamyab was receiving rents earned by his breach of the enforcement notice. He cannot have been in any doubt that Barnet were pursuing the enforcement notice through criminal proceedings. He was, after all, convicted in December 2014, his appeal was dismissed in August 2016, and confiscation proceedings began after that.

The end date

23. We have stated above that we will vary the confiscation order by making an order which the Crown Court should have made if it had proceeded to a conclusion under section 6 of POCA. This means that we will indirectly apply section 8(2) of POCA which requires the court to take into account property obtained up to the date when it makes its decision. This means that the end date is the date of the decision in the Crown Court, 16 December 2019. That is a decision in favour of Mr. Kamyab, because the rents for the last 18 months will not form part of his benefit under the confiscation order as varied.

The benefit figure

24. It is agreed that the effect of these findings is that the benefit figure is the rents received between 1 June 2013 and 16 December 2019, namely £499,363.00.

The available amount

25. Mr. Kamyab gave evidence. It is clear that he feels strongly that Barnet have not dealt fairly with him, and that all he has received is rental in return for providing people with

somewhere to live. He is not a criminal in the sense that most people facing confiscation proceedings are. He is a businessman with property interests and his evidence is to be approached without scepticism, and assessed carefully.

26. It is unnecessary to set out in this ruling the whole of his evidence. In summary, he said that he had been brought up in a family with considerable wealth but when his father became bankrupt in March 2016 with debts of over £20m this had a very adverse effect on his own personal wealth. He had bought four properties in London in his own name over 10 years ago. These were properties in Llanvanor Road, Willingdon Road, Vivian Way, and Chatsfield Place. He says that he gave the property in Vivian Way to his wife when they married, and that she rents it out. The income just about services a mortgage, and there is not much equity. The tainted gifts regime does not apply, and the evidence that he did give this property to his wife when they married is strong. There is a Deed which says that he holds the legal interest in the property on trust for her. In the absence of a sham, that is conclusive. We make no finding of sham or fraud in relation to it.

27. He disputes the prosecution valuation of Llanvanor Road at £1.4m but accepts that any value over and above a mortgage of around £975,000 in favour of Paragon Finance is available for the satisfaction of any confiscation order. That mortgage, he says, was taken out to replace a charge in favour of the HSBC by which his properties Llanvanor Road and Willingdon Road were mortgaged to the bank as security for his father's debts. He says there is no equity in Willingdon Road or Chatsfield Place. He owns nothing else at all.

28. The prosecution case is that Mr. Kamyab and his family together hold large assets and put them in the names of whichever family member is convenient. They do not say that there are identified assets available to Mr. Kamyab which equal in value the benefit figure, but assert that his evidence that he has nothing and cannot realise funds to pay £499,363 does not satisfy the burden of proof which is on him. It is wholly implausible that a man could spend so long dealing in London property during a time of very high and sustained growth in property values and have nothing.

29. In assessing this contention, it is necessary to return to the mortgages of Llanvanor Road and Willingdon Road. These were executed in July and June 2007 respectively. They declare that they are given "to secure the debt" of Mr. Kamyab senior. The terms of the mortgages include this:-

> "With full title guarantee, you, and if there is more than one of you, each of you, charge by way of legal mortgage and (as appropriate) assign and transfer to the Bank as continuing security for the payment and discharge of the Debt (and each and every part of it):-
>
> (a) The Property [named];
>
> (b) the benefit of all rights, licences, guarantees, rent deposits, contracts, deeds, undertakings and warranties relating to the Property….

> (e) any rental and other money payable under any lease, licence, or other interest created in respect of the Property…."

30. Mr. Kamyab told us in evidence that this meant that since the execution of these mortgages, he has been paying all the rental income to the Bank under their terms. If this is right, it appears that they have operated as an assignment of the rents to the Bank, as part payment of his father's debts rather than as security for them. The Bank did not demand repayment of the Debt from his father until 2 February 2016, and did not call on Mr. Kamyab to enforce the security provided by the mortgages until 7 December 2017. The suggestion that he was nevertheless paying the rents (which include the actual proceeds of crime in this case of £499,363) before those demands to the Bank is a surprising one, and it is important to examine the evidence about it with care. Only one witness gave evidence in support of it, Mr. Kamyab. His father was not called to give evidence although Mr. Kamyab told us he could have been. No-one from HSBC gave evidence orally or in writing on this issue.

31. Mr. Kamyab has produced some documents relating to the mortgages, the call on them from HSBC and the refinancing with Paragon. None of this material refers to any receipt of rents by HSBC prior to the time when they called on the security, or, come to that, after that time.

32. Mr. Kamyab has produced eight pages of bank statements relating to an account held by his father at HSBC. Each relates to a single month, (1) November/December 2011, (2) July/August 2013, (3) October/November 2013, (4) March/April 2014, (5) September/October 2014, (6) November/December 2014, (7) December/January 2015 and (8) August/September 2015. Approximately 40 months are missing from the period covered, and there is nothing before month 1 or after month 8. These are the only documents which are said to prove the payment of the proceeds of crime to the Bank. There is no invoice from HSBC, no receipt, no bank statement from Mr. Kamyab junior showing the receipt of the rent from the tenants and its payment to the father's account. There are no accounts. Mr. Kamyab said at one point in his evidence to us that the materials were prepared at short notice. The first hearing of the confiscation proceedings was a mention which took place in May 2017. His first statement under s.18 of POCA was dated 20 October 2016. He served a response to the prosecutor's s.16 statement on 20 February 2017, and another on 3 September 2019. In the appeal proceedings we gave judgment and made directions in April 2021, and he filed a s.17 response on 10 June 2021. In these circumstances we reject the suggestion that he did not have time to produce the necessary documentation. The only reason why he has not produced it is that it does not exist. His account of what he did with the proceeds of crime is not true.

33. This conclusion derives strong support from the bank statements which he did produce. They show the following credits from Mr. Kamyab:-

Month Number	**Name of Payer**	**Amount £**
1	Kamyab, H. Kamyab	5,000.00
1	Remittance received by order of Hamid Kamyab	25,000.00
2	Kamyab, H. Kamyab	19,000.00
2	Mr. Hamid Kamyab, Kamyab	10,000.00

2	Kamyab, H. Kamyab	16,000.00
3	Kamyab, H. Kamyab	9,000.00
4	Kamyab, H. Kamyab	10,000.00
4	Kamyab, H. Kamyab	10,000.00
4	Kamyab, H. Kamyab	5,000.00
5	Kamyab, H. Kamyab	20,000.00
5	Kamyab, H. Kamyab	10,000.00
5	Kamyab, H. Kamyab	10,000.00
5	Kamyab, H. Kamyab	10,000.00
5	Kamyab, H. Kamyab	10,000.00
6	Kamyab, H. Kamyab	8,448.00
7	Kamyab, H. Kamyab	10,0000
7	Kamyab, H. Kamyab	15,000.00
8	Kamyab, H. Kamyab	15,000.00
8	Kamyab, H. Kamyab	15,000.00
8	Kamyab, H. Kamyab	10,000.00
	TOTAL PAID TO FATHER	**242,448.00**

34. Averaged across the eight months for which statements have been produced, £30,306.00 was paid in Mr. Kamyab's name to his father's account in each of those months. The payments were very irregular. According to a rent statement drawn up by Mr. Kamyab for these proceedings, the rents received for the flats at Llanvanor Road for the period 1 June 2013 to 19 August 2018 were £386,298.00. This is about £6,131 per month. We have no evidence about the position at Willingdon Road, but these round sum payments received at such a high rate of payment do not appear to be the handing over to the Bank of the rental income on these two properties. What they actually are is not clear, but they show that during eight months, seven of which fall within the period of offending, Mr. Kamyab had large sums of money which were applied to the benefit of his father of which he has given no truthful explanation.

35. In case there is any doubt about this, we have turned to the first s.18 statement of Mr. Kamyab, dated 20 October 2016. This did not say that the rents from these two properties (which it mentions) were being paid over to the Bank. It does not mention the payments listed on the schedule above, all of which had been made by the time it was written. It says:-

> "My income declared to HMRC for the previous 6 years is as follows:-
> Financial year 2008/09: Income received from UK Land and Property (before tax) £5,666.
> Financial year 2009/10: Income received from UK Land and Property (before tax) £5,546.
> Financial year 2010/11: Income received from UK Land and Property (before tax) £7,486.
> Financial year 2011/12: Income received from UK Land and Property (before tax) £1,869.
> Financial year 2012/13: Income received from UK Land and Property (before tax) £19,142.

> Financial year 2013/14: Income received from UK Land and Property (before tax) £14,940.
> Pay from all other employments during the period (before tax) £15,181."

36. The court asked Mr. Kamyab why the sums paid to his father in each month for which there was a statement vastly exceeded the rental income received, and he said that it was received in fluctuating amounts and that it built up. The court also asked him why he was paying tax on the rents received from his property if in fact they belonged to the Bank. He did not have an intelligible answer to this.

37. This issue is the litmus test against which we measure Mr. Kamyab's evidence. On the most important issue, what he did with the actual proceeds of his crime, he has not told us the truth. We therefore reject his evidence that the available amount is nil, and find that he has failed to prove that it is less than the benefit figure.

38. That being so, there will be a confiscation order in the sum of £499,363. We will allow 3 months for this to be paid. The term of imprisonment in default will be 3½ years. The sum required by the order is very close to the higher bracket with a maximum term of 7 years, but it just falls into the lower level and the maximum term in default is 5 years. Mr. Kamyab is not a man to whom prison is familiar and we consider that a somewhat shorter term is likely to be adequate in his case to secure payment of the order than would be required in the case of an experienced criminal.

39. We invited submissions on costs, and on whether a compliance order should be made. We are required to consider this, but have decided not to make one. We consider that the threat of imminent and substantial imprisonment is likely to be the most potent means of securing compliance.

40. We have also received an application for costs and will receive a written response after this judgment is handed down. We will deal with that application on the papers.

41. An issue has arisen as to the time limit for making an application for a certificate that the decision involved a point of law of general public importance and leave to appeal to the Supreme Court. In our judgment it runs from the time when the appeal is disposed of, and a final order is made on it. Time therefore runs from the handing down of this judgment in relation to both parts of the decision. In case this is wrong, an application to extend time in relation to the first judgment was submitted by Mr. Rudolf in April. We extend time, if necessary, so that time in respect of both judgments will end at the same time.