Neutral Citation Number: [2022] EWCA Crim 288

Case Nos: 201903008 B5, 201903010 B5, 202002337 B5 & 202002733 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM ISLEWORTH CROWN COURT
His Honour Judge JA Denniss QC
Ind. No. T20171258

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/03/2022

Before :

LORD JUSTICE DINGEMANS
MR JUSTICE HILLIARD
and
HIS HONOUR JUDGE ALTHAM
(Recorder of Preston)

- -

Between :

El Mehdi Zeroual	**Applicant**
- and -	
Regina	**Respondent**

- -
- -

Ms Csengeri (instructed by **The Registrar for Criminal Appeals**) for the **Applicant**
Mr Watkinson (instructed by the **London Borough of Hammersmith & Fulham**) for the **Respondent**

Hearing date : 1 March 2022

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Approved Judgment

Lord Justice Dingemans :

Introduction

1. This renewed application for an extension of time of 209 days and for permission to appeal against conviction, which was referred to the full Court after a hearing before the Court on 21 October 2021 (Spencer J and His Honour Judge Menary QC, Recorder of Liverpool) ("the referring court") raises an issue about whether a trial judge was required, in this particular case, to give directions to the jury about the legal differences between a lodger and a sub-tenant. The referring court found that this was an arguable ground of appeal, but they did not grant permission to appeal at that stage because the applicant also needs a substantial extension of time.

2. The applicant is a 58 year old man who was of previous good character and working as a civil servant before his conviction and sentence. In November 1996 the applicant became the tenant of a one bedroom flat in Blythe Road, London W14 ("the flat") owned by the London Borough of Hammersmith and Fulham ("the council"). The tenancy agreement was governed by, among other statutes, the Housing Act 1985.

3. The applicant was convicted on 18 December 2018, following a trial in the Crown Court at Isleworth (before His Honour Judge JA Denniss QC and a jury) of two counts of fraud, contrary to section 1 of the Fraud Act 2006, on a three count indictment. The conviction on count one was for dishonestly failing to disclose information that he was under a legal duty to disclose "namely that he had sub-let part of the premises" of the flat in breach of these conditions.

4. The conviction on count three was for dishonestly failing to disclose that the applicant's wife was living with him between 2010 and 2013 (before their later separation), which meant that he was no longer eligible for the single person's discount in respect of council tax payable for the flat. The applicant was acquitted on count two which alleged that he had dishonestly failed to disclose a change in circumstances in relation to his application to purchase the flat under the Right to Buy.

5. The applicant was sentenced on 23 January 2019 to 18 months imprisonment suspended for 18 months, with a 30 day Rehabilitation Activity requirement. By a judgment and order dated 6 July 2020 and a judgment dated 12 July 2020, the applicant was ordered to pay £89,074 (of which £17,500 was to be paid as compensation to the council) pursuant to the Proceeds of Crime Act 2002.

6. In addition the applicant has applied to vary the grounds of appeal to raise two new grounds of appeal against conviction in relation to the applicant's conviction on count three of the indictment. These have been drafted by Ms Csengeri after her instruction by the Registrar of Criminal Appeals. Ms Csengeri did not appear at the trial below. This application to vary raises issues identified in *R v James* [2018] EWCA Crim 285; [2018] 1 WLR 2749 and the Criminal Procedure Rules at 36.14(5).

7. Further, although the referring court could not detect any arguable grounds of appeal in relation to renewed applications for permission to appeal against sentence, for permission to appeal against the confiscation order and for permission to appeal against a costs order, these were formally referred to this court in case issues of sentence,

confiscation amounts and costs needed to be reviewed in the light of any decision on the renewed application for permission to appeal against conviction.

8. We are very grateful for the helpful written and oral submissions made by Ms Csengeri on behalf of the applicant and by Mr Watkinson on behalf of the respondent.

The extension of time

9. It was apparent that the applicant's conviction has had very serious consequences for him. He has been evicted from the flat, which he had intended to purchase under the right to buy scheme. He has lost his job with the civil service. His family circumstances have deteriorated. His savings have been confiscated. The applicant has suffered mental health problems being severe reactive depression, requiring treatment. As a result he had not been in a position to take forward his appeal after receiving negative advice from his former legal representatives. It was submitted on behalf of the applicant that these reasons justified an extension of time for seeking permission to appeal.

10. It became common ground at the hearing that if this Court considered that any of the grounds of appeal against conviction should succeed it would be in the interests of justice to grant an extension of time and to quash the relevant conviction. If, however, the court considered that any grounds of appeal, though arguable, should not succeed then it would be appropriate to refuse an extension of time. We therefore turn to the main ground of appeal on count one, which relates to whether there was a need to direct the jury on the difference between a lodger and a sub-tenant. In order to consider this ground of appeal it is necessary to: set out some relevant principles of law about the difference between a lodger and sub-tenant; identify what were the respective cases for the prosecution and defence at trial; and set out some of the evidence at trial.

Some relevant principles of landlord and tenant law

11. The relevant principles of law were not in dispute. The applicant had a secure tenancy from the council which was governed by the Housing Act 1985. Section 93 of the Housing Act 1985 provides that it was a term of such a tenancy that the tenant "(a) may allow any persons to reside as lodgers in the dwelling-house but (b) will not, without the written consent of the landlord, sublet or part with possession of part of the dwelling-house". Local authority housing is limited and these provisions help to ensure that the stock of housing is used by those needing it, but also that tenants have the right to have lodgers (although there was a contractual duty to notify the council about such lodgers).

12. In the course of the submissions before us, reference was made to various authorities including *Stening v Abrahams* [1931] 1 Ch 470 at 473, *Lam Kee Ying v Lam Shes Tong* [1975] AC 247 at 256 and *Street v Mountford* [1985] AC 809. It is established law that unless the occupier of premises has exclusive possession, they will not have a tenancy. On the other hand whatever label is attached to the agreement, if exclusive possession of the property has been granted to an occupier, a tenancy of some sort will have been created.

13. This means that for the purposes of this appeal the main difference between "sub-letting", which involves the grant of a form of tenancy, and "lodging", which involves the grant of a licence to live in premises, is whether the occupier of the flat had exclusive

possession. If a person has exclusive possession then they will, regardless of what terms are used to describe the relationship, be a tenant, and if there is no exclusive possession then the person will be a licensee or lodger. This analysis is consistent with the approach taken in *R v Adedeji* [2019] EWCA Civ 804; [2019] 4 WLR 135.

14. As already noted the applicant had the right to have lodgers, albeit there was a notification requirement under the terms of his lease. In practical terms if the applicant was living at the flat when permitting others to live at the flat, then he would not have granted exclusive possession to those occupiers, regardless of whether the occupiers were described as sub-tenants or lodgers. This meant that the applicant could not be guilty of count one which alleged that he had parted with possession of part of the flat to a sub-tenant. If, however, the applicant had moved out and charged someone a sum per calendar month, whether described as rent or a licence fee, for the right to occupy either the main room or the bedroom of the flat, then in the absence of any genuine reservation of rights to enter and control that room, exclusive possession would have been granted and a sub-tenancy granted.

The respective cases on count one

15. The prosecution case on count one appears most clearly from an opening note dated 4 December 2018. In that opening note it was made clear that the prosecution case was that the applicant had moved out of the flat and sub-let it to various persons receiving payments in cash which he had then banked. At times he had sub-let the bedroom to one person and the main room as another bedroom to another person. He had placed advertisements for the flat which made it clear that he was not living there. The prosecution stated that they would call witnesses who had lived at the flat either alone or with other persons in the other room who were not the applicant.

16. At paragraph 12 of the note it was stated: "there can be no doubt that the defendant was well aware of his obligations in relation [to] 7 Elgar Court, sub-letting and lodgers. The difference between sub-letting, and having a lodger, as the defendant well knew, is that to have a lodger you, as the tenant, have to actually be living in the property." Count one was addressed in paragraphs 13-15 of the note. It is relevant (to a second ground of appeal in relation to count one) to note that the note recorded "… it is not in dispute that if the defendant did in fact sub-let part of 7 Elgar Court then he was under a duty to disclose it to [the council], it is not in dispute that no such disclosure was ever made, it is not in dispute that the defendant would have intended to make a gain for himself, and it is not in dispute that this behaviour would be dishonest."

17. Mr Watkinson confirmed in written and oral submissions that the prosecution case had been reduced to the following proposition, whether "the prosecution had proved to the jury so that they were sure that the [applicant] was not living at the premises when the `lodgers' were, then they could not be `lodgers', and they would be sub-tenants".

18. The fact that this was how the prosecution case was understood at trial part appears from the note prepared by counsel who appeared on behalf of the applicant at trial. This note was produced because earlier grounds of appeal produced by the applicant had criticised counsel and a waiver of privilege had been provided to counsel (it is only fair to record that these complaints were found by the referring court to be unarguable). Trial counsel noted that the prosecution case was that the applicant had vacated the premises on occasions when tenants were there, and that the jury needed to be sure that

he had vacated the premises during the periods of occupation in order to find him guilty of count one. The referring court considered that trial counsel's reference to count one in the note was a mistake for count two. Now, however, that we have more information about the way that the prosecution case was put at trial, it is apparent that this was an accurate reference to count one.

19. The case for the applicant was that he had always lived at the flat. In the defence case statement it was said "I have resided at 7 Elgar Court since 11th November 1996 … During my residence at 7 Elgar Court, I have had a number of lodgers reside with me for a short period. Mr Xue and Mr Thalmeier both resided with me for a short period. They did not have exclusive right to the all or part of the flat because they shared the bathroom, kitchen, communal hall with me and all my facilities … I advertised 7 Elgar Court on the internet to look for lodgers not for sub-tenants. At the same time I also placed adverts for [a friend]'s apartment in Shepherd's Bush". The applicant's case was that there was no sub-letting because he was always living at the flat.

The evidence at trial

20. The applicant signed an original tenancy agreement with the council in 1996 and a further tenancy agreement for the flat in November 2004. The terms were changed in March 2013. So far as is material relevant conditions of the applicant's tenancy agreement were: "2.5 Residence To occupy the property as his/her principal home …"; "2.7 Sub-letting To obtain the council's permission before sub-letting or parting with possession of part of the premises"; and "2.8 To inform the council when lodgers are taken in".

21. The flat had a bedroom, lounge, kitchen and bathroom. In December 1999 Council Officers had visited the applicant after it had been suspected that he was charging people for staying at the property. This was denied by the applicant.

22. In relation to count one it was alleged that between February 2014 and March 2016 the applicant placed nine advertisements on the Gumtree website, targeted at overseas visitors and students, for the apparent rental of the flat. Six different email addresses were used to post the advertisements and the advertisements themselves provided contact mobile phone numbers which belonged, in some cases, to the applicant and, in others, to his ex-wife. Between October 2014 and February 2016 he posted a further nine advertisements relating to the property on another website, spareroom.co.uk. Each advertisement was for rental of the main living room in the flat and one advertisement specifically showed that a student was living in the small bedroom and the living room was available for separate rental.

23. In April 2016 two Housing Officers visited the property. They found Mahmoud Tariq and Yunis Ahmed living at the property. Two days later the applicant submitted for the first time an Additional Occupants Form requesting to have a lodger.

24. There was banking evidence between May 2014 and April 2016 which showed that the applicant regularly deposited large amounts of cash and also received bank transfers, some of which explicitly referred to 'rent' or 'flat fee'. The applicant was employed at the time as a civil servant and was not paid in cash. The cash deposits ceased in late April 2016 after the visit to the flat by the housing officers. The prosecution conducted a forensic analysis of photographs exhibited by the applicant showing his children at

the flat and concluded that the periods for when there existed no photos coincided with periods when substantial monies were being deposited into his account.

25. An Equifax report, obtained by the prosecution, which traced any debt footprint that had arisen from the occupation of a property, contained numerous names of people living at the address. Most of the names appeared to be Japanese but Mahmoud Tariq's name also appeared on the list.

26. There were witnesses who had lived at the flat. Rui Xue said that he answered a Gumtree advertisement and rented the living room at the flat from May 2014 and paid the applicant £1,500 per month. He had originally been intending to stay until July but he had been asked to leave. He said that a Korean student lived in the other room and the applicant did not live at the property.

27. Dominic Thalmeier made a statement which was admitted as hearsay evidence as he was overseas, and stated that he stayed at the flat for a month in April to May 2015. He paid the applicant £1,800. There was another person, who was not the applicant, living at the flat when he arrived and during the first week that he was there.

28. Bibier Gungor and Roxanne Gani-Kasmani, the two housing officers who visited the applicant's flat, gave evidence, admitted as hearsay evidence, as to what the two occupants said to them. Mahmoud Tariq said that he had been living in the flat for five to six months and paid the applicant £750 per calendar month in cash. Yunis Ahmed said he had just moved in to the flat having paid the applicant £250. He produced a "short-stay agreement" document. They both confirmed that the applicant did not live there.

29. The housing officers reported overhearing a phone conversation between Mr Ahmed and the applicant during which the latter was heard to say to Mr Ahmed that he should tell the officers that he was staying either as a lodger or as a friend. When the officers returned to the flat the same afternoon, the applicant was present but would not grant them immediate entry and asked them to wait. It became apparent that the applicant had changed the layout so that the living room had been converted back into just that, with Mr Ahmed's clothes and personal items having been removed.

30. So far as count three was concerned, between February 2010 and December 2013 a Single Persons Discount "(SPD)" of 25% (amounting to £808) was applied to the applicant's Council Tax bill. The claim forms which had to be completed to obtain the discount included an annual requirement to notify the council if the claimant's circumstances changed. The applicant admitted in interview that he had failed to inform the Council Tax department that his wife was living with him during this period and thus he was no longer eligible for the SPD. The monies wrongly rebated were subsequently paid back to the council by the applicant.

31. The applicant gave evidence on his own behalf that he was involved in a commercial deal with a female friend who owned a flat in Shepherd's Bush. He would pay her £1,000 per calendar month and rent her flat on her behalf, taking any profit he made on the rental. He used the details of his own flat in the internet advertisements so as to attract tenants for her flat in Shepherd's Bush. He had failed to mention these facts in interview because that interview had lasted 2 ½ hours and he was exhausted.

32. He was always living at the flat. Mr Tariq and Mr Ahmed were sharing the bedroom whilst he was living at the flat. He had been staying with a girlfriend the evening before the officers' visit and Mr Ahmed had taken the liberty of sleeping in the living room. The written agreement that Mr Ahmed provided to the officers was simply drawn up to assist him at his place of work. He was merely tidying up the flat, and not re-converting the lounge, when the officers returned and photos showed that many of his own personal effects were already in the lounge during the morning visit.

33. The applicant produced photos of his children living at the flat. The payments into his account were both from money he was receiving in relation to the rental of his friend's Shepherd's Bush flat and money from his brother who was purchasing a property from him in Morocco.

34. Many of the people whose names appeared in the Equifax report were girlfriends or friends who he had assisted by providing a residential address so that they could open bank accounts. The applicant also produced invoices from Amazon which gave the flat as his billing address and evidence from a boiler maintenance team as to their visits to the flat. Susan Batchelor, Jimmy Tirea, and Majic Shekarstan, all of whom lived in the same block as the applicant, and Abdellah Benali, a friend, gave evidence as to the fact that they regularly saw the applicant at Elgar Court.

35. In respect of Count 3 the applicant said that he had made an application to the Council to upgrade his accommodation from a one-bedroom to a two-bedroom property because his wife was pregnant. That amounted to sufficient notification that his wife was living with him. He had not realised that it was necessary for him to specifically inform the Council Tax Department. He was not acting dishonestly.

The relevant directions on count one in the summing up

36. The judge shared drafts of written directions headed "jury core legal directions" that he proposed to give to the jury. There was no objection from counsel to the terms of the draft and this was incorporated into the summing up.

37. In the summing up the judge gave conventional directions on the functions of the judge and jury, the burden and standard of proof before turning to the elements of the offence.

38. In the core legal directions the judge said that all three counts involved common ingredients being: "(1) the defendant acted dishonestly and with an intent to make a gain for himself or another. I do not need to define those concepts. (2) the defendant failed to disclose to the [council] information that he was under a legal duty to disclose." The directions continued "count 1 alleges a legal duty to disclose that he had sublet part of the premises at flat 7 Elgar Court. This duty arises by reason of the obligations he entered into in his tenancy agreement. The prosecution allege that he repeatedly sublet part of the premises, whether he used the expression lodger or paying guest, during the period 31st of May 2014 to 29 April 2016." These directions were read out as part of the summing up.

39. The judge then summarised relevant parts of the evidence. The judge referred to evidence from the advertisements showing that a room was being advertised and a student was living in the bedroom, with the applicant's explanation that these referred to his friend's flat. The judge referred to the evidence of the occupiers of the flat who

referred to another student or another person, not the applicant, living there, with the applicant's evidence that one of the occupiers had an argument with the applicant and was not telling the truth. The judge referred to the evidence from the housing officers to the effect that Mr Ahmed and Mr Tariq confirmed that they were both living at the flat, together with the applicant's explanation that they were both in the front room, he had been away for a night with his girlfriend, and one of them had taken the liberty of sleeping in his bed. The judge referred to the case on behalf of the applicant. The judge said "and throughout the case, the defendant has maintained that he was living at the premises …".

40. There was one part of the summing up where the judge said "insofar as the defendant has stated that these people were lodgers, the prosecution – sorry, the prosecution submit that despite what he must have known about his obligation, he never in fact declared any of these lodgers' existence and occupation in the premises. The prosecution again submit that it is evidence of sub-letting or having lodgers on a commercial basis."

Sufficient directions on count one

41. As already noted the ground of appeal on count one focuses on the directions given in relation to sub-letting and whether they were sufficient to deal with the issue of exclusive possession and whether any persons staying in the flat were lodgers.

42. Ms Csengeri submitted that the Judge did not direct the jury on the relevant law with respect to count one. The jury were not directed as to what was required for them to reach the conclusion that the applicant had failed to disclose information that he was under a legal duty to disclose, namely, that he had sub-let the property. This was because the Judge provided no directions as to the legal meaning of "sub-let". The effect was a repeated failure to distinguish between a sub-tenant on the one hand, and a lodger or paying guest on the other hand. The jury might have convicted the applicant in circumstances when in fact he had not parted with exclusive possession of the flat. Ms Csengeri highlighted the passage set out in paragraph 40 above, and submitted that it showed that the judge had given no relevant assistance to the jury.

43. Mr Watkinson submitted that the directions given to the jury were adequate. It had become clear in the preparations for the trial that there was a binary choice, either the prosecution had proved the applicant had moved out and sub-let the flat to others, or the applicant was living there at all times. There was, in the circumstances of this particular case, no middle ground where the applicant might have been convicted on the basis that he was still living at the flat, and had then let or licensed the other room at the flat to paying occupiers. In these circumstances the passage of the summing up at paragraph 40 above was not wrong, although it might have been more clearly expressed. This is because everyone was clear that the prosecution case was that the applicant was not living in the flat, and whatever he called the persons who he had let into occupation (sub-tenants or lodgers) they had exclusive possession because he was not there.

44. It is established law that any summing up must be tailored to the circumstances of the particular case. We accept that in this case the jury were presented with a case where the prosecution alleged that the applicant had moved out, and had sub-let the flat to others for monetary payment. In this case this meant that the person living at the flat

would have had exclusive possession. The applicant's defence was that he lived there throughout and anyone else who stayed there had been there with him so he had not sub-let the flat. It is plain that interesting questions of landlord and tenant law could have arisen if the prosecution case was that the applicant had continued to live in the bedroom at the flat and let (or licensed) the main room, or had lived in the main room and let (or licensed) the bedroom. That, however, was not the prosecution case and it was not the defence case.

45. In these circumstances it was sufficient for the judge to direct the jury in terms "the prosecution allege that he repeatedly sub-let part of the premises whether he used the expression `lodger' or `paying guest' during the relevant period from 31 May 2014 to 29 April 2016", and to remind the jury that the applicant's defence was that he "has maintained that he was living at the premises". That said we consider that it would have been helpful to have told the jury in terms that if the applicant was living at the flat then there could be no question of sub-letting because any other persons occupying the flat would not have had exclusive possession.

46. We have considered a further point made by Ms Csengeri to the effect that even if the applicant was not living at the flat, then he may still have retained some element of possession of the flat because there were no locks on the individual room doors, and the judge should have addressed that. We do not accept that the judge was wrong in this respect. This is because there was no evidence as to the terms of occupation to suggest that there was not exclusive possession of the flat once the applicant's evidence that he was living there had been (as it must have been) rejected by the jury. The evidence from the occupiers showed that they had been provided with a room for a sum payable each calendar month. There was no evidence to show that the applicant was providing services to those living in the flat, or retained some right to come into the flat, and the evidence was consistent only with those occupiers having exclusive possession of their rooms, compare *Street v Mountford*.

47. We have noted that there was an acquittal on count two. That count alleged a failure to disclose information relating to a change in his circumstances, namely that the flat was no longer "his principal or only residence". The judge directed the jury that they had to be sure that the applicant no longer "had the intention to use that property as his only or principal residence …". In circumstances where there was evidence that the applicant was intending to buy the flat under the right to buy provisions, it is apparent that the jury could have been sure that the applicant was sub-letting the flat and had moved out on occasions for that purpose, but had still maintained the intention to use the flat as his principal residence. This acquittal does not therefore take the appeal in relation to count one any further.

48. Ms Csengeri raised a second ground of appeal in relation to count one. We will address that ground even though it is not clear to us that it was a ground of appeal which the referring court considered arguable. This second ground of appeal is that the Judge failed to properly direct the jury as to the legal tests: for dishonesty; as to the meaning of intent to make a gain for oneself or another; and of the need for there to be a causative link between the two. It is correct to say that the judge simply referred to dishonesty and gain, and did not further define the terms. In our judgment this was sufficient in the circumstances of this case. As the prosecution's opening note recorded, it was common ground that if the applicant had sub-let the flat, he was intending to make a gain and he was acting dishonestly. This was not particularly surprising in circumstances where, if

they were to find the applicant guilty, the jury would have had to be sure that the applicant had moved out of the flat and sub-let it to others, and lied to the housing officers about who was present at the flat when this was discovered.

49. For all these reasons the judge's directions on count one were sufficient. Further we are sure that the conviction of the applicant on count one was safe. There was compelling evidence that the applicant had moved out of the flat and sub-let the bedroom and the main room to other persons.

The appeal in relation to count three

50. The applicant has, since the matter was referred to the full court, sought to raise new grounds of appeal which relate to the conviction on count three. As was made clear in *R v James* as a general rule all the grounds of appeal on which an applicant wishes to advance should be lodged with the notice of appeal. It is important not to bypass the filter mechanism of the single judge. If new grounds are raised at a late stage applicants have to address the reasons why the grounds are raised late. Ms Csengeri has pointed out that the applicant did not have the benefit of legal advice after receiving negative advice on appeal before she had been instructed on the applicant's behalf by the Registrar.

51. The proposed grounds of appeal are: (1) the Judge failed to properly direct the jury as to the elements required to convict the applicant on count three; and (2) count three should not have been left to the jury, because the failure of the applicant to disclose information charged under this count was not a failure to disclose information which he was under a legal duty to disclose for the purposes of the Fraud Act 2006.

52. The answer to the first proposed ground of appeal part mirrors the answer to the second ground of appeal in relation to count one. The judge's directions were sufficient in this case. There was no issue about an intended gain for count three. The term dishonesty did not require any further explanation from the judge. The judge specifically reminded the jury of some of the applicant's evidence about contact with the council which was "highly relevant", as the judge put it, to their determination of the issue of dishonesty.

53. As to the second proposed ground of appeal Ms Csengeri is right to identify that it was for the prosecution to adduce evidence from which the jury could be sure that there was an obligation to report the change in circumstances, and that an implied obligation to report might not arise in relation to certain statutory schemes, as appears from *R v D* [2019] EWCA Crim 209; [2019] 2 r App R 15. There are two answers to this point. First in the admitted facts made pursuant to section 10 of the Criminal Justice Act 1967, it was provided at paragraph 12 in relation to the SPD that "if someone claims one of these discounts and their circumstances change, for example because another adult moves in with them, then they are under a duty to tell the local authority …". This means it was an agreed fact that there was a legal duty to report the change of circumstances. Secondly it appears that the obligation derived from regulation 16 of the Council Tax (Administration and Enforcement) Regulations 1992, as amended. Ms Csengeri identified questions about commencement dates for various amending regulations, but was unable to show that the admission made at trial was not well-founded.

54. In these circumstances we can see no basis for permitting this late variation to permit the grounds of appeal relating to count three to be raised. The provisions of Crim PR 36.14(5) exist for good reason, which is in part to ensure that the court is not having to deal, at a very late stage in the proceedings, with matters which, if they were well-founded, should have been dealt with before the single judge.

The renewed applications for permission to appeal in relation to the sentence, confiscation order and costs order

55. We have looked at the renewed applications for permission to appeal against the sentence, confiscation order and costs order. We agree with the referring court that there are no arguable grounds of appeal. The sentence was as short as it could be, and was rightly suspended given the particular circumstances of the applicant. The judge had full regard to the consequences of the applicant's conviction. The confiscation order showed that there had been a careful analysis by the judge of the evidence of expenditure and a proper application of the assumptions. The costs order was properly made given the costs incurred, the time taken on the proceedings, and sums involved.

Conclusion

56. For the detailed reasons set out above we consider that the judge's directions on count one were sufficient, and we have therefore refused the application for an extension of time and refused permission to appeal on count one. We refuse the application to vary the grounds of appeal to challenge the conviction on count three because the judge's directions were sufficient and the evidence showed that there was a case to answer. We refuse the renewed applications for permission to appeal against sentence, the confiscation order and the costs order because we agree with the referring court that there are no arguable grounds of appeal.