Neutral Citation Number: [2022] EWHC 1204 (Admin)

Case No: DTA/3/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/05/2022

Before:

MR JUSTICE CALVER

- -

Between:

CROWN PROSECUTION SERVICE	**Claimant**
– and –	
RAJA PARVEZ IQBAL	**Defendant**

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- -

Henry Skudra (instructed by **C.P.S. Proceeds of Crime)** for the **Claimant**
The Defendant appeared in person and by a McKenzie Friend

Hearing date: 18 May 2022

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 15:00 on Thursday 19th May 2022.

Mr Justice Calver:

(A) INTRODUCTION

1. This case concerns an application under section 16(2) of the Drug Trafficking Act 1994 ("**the DTA 1994**") for a certificate of increase to certify that the amount that might be realised in the case of the Defendant is greater than the amount taken into account in making the confiscation order, where the amount which the Defendant had been ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.

2. The Claimant was ably represented by Mr. Henry Skuda of counsel; the Defendant attended in person and presented his case in a measured way. He was assisted by a McKenzie Friend, Mr. Balthazar Martins ("**Mr. Martins**").

(B) FACTUAL BACKGROUND

3. The Defendant committed a number of offences between January 2000 and December 2004 related to conspiracy to transfer funds, obtained by third parties through drug trafficking, to overseas jurisdictions.

4. On 14 September 2007 the Sheffield Crown Court found that the Defendant had benefitted from money laundering in the sum of £1,053,054.35. At the time of sentence, the amount realisable was only £167,753.32, being based on the equity held by the Defendant in two properties, funds held in two bank accounts and the value of a Vauxhall Vectra motor vehicle which he owned. Accordingly, a confiscation order was made under the DTA 1994 against the Defendant for that sum.

5. On 20 September 2007 the Defendant was convicted at Sheffield Crown Court of 12 offences of conspiracy to transfer criminal property contrary to sections 327 and 334 of the Proceeds of Crime Act 2002 ("**the POCA 2002**") and 9 offences of conspiracy to transfer criminal property contrary to section 49 of the DTA 1994 and was sentenced to 11 years' imprisonment (concurrent on each count).

6. On 29 July 2009 the High Court varied the confiscation order downward to £109,680.07 pursuant to an application under section 17 of the DTA 1994, due to a diminution in the value of the properties which had been sold, leaving a disparity (between the amount of criminal benefit to the Defendant and the value of the Defendant's realisable assets) of £943,374.28. This had the effect that the confiscation order had in fact been satisfied in full at 16 January 2009.

7. On 10 September 2021, a restraint order was issued by Cutts J against the Defendant, Mrs Nasreen Khan (the Defendant's ex-wife) and Khatija Nawaz Iqbal (the Defendant's partner) ("**Mrs Iqbal**"), prohibiting the disposal of, dealing with or diminution of the value of the following assets ("**the relevant assets**"):

    i) £4,239.54 held in an Aviva Premier Savings Plan with the policy number 548302999, held in the joint names of the Defendant and Mrs Nasreen Khan ("**Aviva Premier Savings Plan**");

ii) 50% of the equitable share of 14 Carwood Road, Sheffield, S4 7SD with title number SYK654830 which is held jointly by the Defendant and Mrs Iqbal ("**the Property**"); and

iii) £200 held in a Halifax bank account with sort code 11-06-89 and account number 01049288 in the sole name of the Defendant ("**Halifax Account**").

8. On 18 October 2021 the Claimant issued this application under section 16(2) of the DTA 1994 for a certificate that the amount that might be realised from the Defendant was greater than the amount which was taken into account in making the confiscation order. The Defendant opposes the application.

(C) THE LEGAL FRAMEWORK

9. Section 6(1) of the DTA 1994 provides that "*the amount that might be realised at the time a confiscation order is made against the defendant is—(a) the total of the values at that time of all the realisable property held by the defendant* ...".

10. 'Realisable property' is defined under section 6(2) of the DTA 1994 as "*any property held by the defendant…*".

11. Section 16 of the DTA 1994, pursuant to which the Claimant has launched this application, applies where the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking. In this case, the prosecutor's application must in the first place be made to the High Court for a certificate that that court is satisfied that:

> "*the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased)...*" (section 16(2)).

12. If the High Court is so satisfied, then it must ("*shall*") issue a certificate to that effect, giving its reasons (ibid). Armed with such a certificate, the prosecutor can then apply to the Crown Court for an increase in the amount that may be recovered under the confiscation order, and the Crown Court can ("*may*") substitute an amount (up to the assessed value of the proceeds of drug trafficking) "*as appears to the court to be appropriate having regard to the amount now shown to be realisable*" (section 16(4)(a)).

13. The DTA 1994 has now been superseded by the POCA 2002, but that does not apply to the current proceedings.

14. The Supreme Court in *Re Peacock* [2012] UKSC 5 confirmed that section 16(2) encompasses all ways in which the amount might have grown and extends to concealed assets, undervalued assets, appreciated assets and after-acquired assets; and that section 16 contains no limitation period for the making of the prosecutor's applications to either the High Court or the Crown Court.

(D) THE PARTIES' SUBMISSIONS

15. I shall turn next to the parties' submissions as to the ownership of the relevant assets.

(1) AVIVA PREMIER SAVINGS PLAN

16. On 5 July 1996, the Aviva Premier Savings Plan commenced in the *joint* names of the Defendant and Mrs Nasreen Khan. The policy status became 'paid up' in April 2007 and no further premiums have been received since this date. This policy reached maturity on 5 July 2021 and has a claim value of £4,239.54.

17. The Defendant suggests in his letter to the Claimant dated 30 November 2021 that the Aviva Premier Savings Plan was primarily for the benefit of Mrs Nasreen Khan and that the funds held in the account should go to her. In his oral submissions, the Defendant suggested that this was a death benefit – if he should die first, Mrs. Nasreen Khan would obtain the benefit. He accepted, however, that they were in fact joint beneficiaries of this plan because Mrs Nasreen Khan "*forced me to sign it*" at the outset.

18. Whether that be true or not, the plan is nonetheless in the joint names of the Defendant and Mrs Nasreen Khan. Furthermore, in a letter dated 24 September 2021 to the Regional Economic Crime Unit, she disclaimed any entitlement to all funds currently held in the Aviva Premier Savings Plan. Although the Defendant hinted for the first time in his submissions before me, on the basis of some hearsay evidence, that Mrs Iqbal's disclaimer of any entitlement to these monies may have been obtained improperly by the CPS, I firmly reject that suggestion. The disclaimer was made as long ago as 24 September 2021 and itself states "*I have been told that I may obtain independent legal advice*". Mrs Nasreen Khan did not herself give any evidence suggesting that the disclaimer was not freely signed by her. I therefore find as a fact that the funds held within the Aviva Premier Savings Plan constitute the Defendant's property.

(2) THE PROPERTY

(i) Joint tenancy

19. Mrs Iqbal was for a number of years the sole tenant of the Property. However, on 18 September 2017, the Defendant *jointly* purchased the Property with her for £47,120 from Sheffield City Council ("**the Council**"). The amount allowed by way of discount under section 156 of the Housing Act 1985 was £28,880.

20. This is confirmed in a letter dated 21 December 2021 from LCF Residential, being the solicitors who acted for the Iqbals in respect of the purchase of the Property as follows:

> *"This was a purchase <u>by Mr and Mrs Iqbal</u> of the council property in which they were living… <u>Our instructions were that the property was to be held in the joint ownership of Mr and Mrs Iqbal</u>. The balance of the purchase monies amounted to £17,832.20 and were provided by the clients on 5 September 2017. Both parties quoted an account with Lloyds Bank, account number 13146268, sort code 30-97-51 from Lloyds branch at High Street, Sheffield. The loan was completed on 20 September 2017 and the monies provided in advance of completion of the purchase which was effected on 18 September 2017. We enclose herewith copies of the relevant documentation. The final document is an extract from the transfer from Sheffield City Council signed by the parties <u>where Mr and Mrs Iqbal agree they hold the property jointly in equal shares</u>."* (emphasis added)

21. The Defendant suggested in his letter to the Claimant dated 30 November 2021 that Mrs Iqbal is the *mortgagee* of the Property, that she had decided to purchase the Property under the right to buy scheme and obtained the discount in her own right, and that she had asked the Council to add his name at the time of purchase simply because he was the father of their children.

22. That may have been Mrs Iqbal's motivation, as the Defendant suggested in his oral submissions, although I did not hear from Mrs Iqbal. And it may have been that in acting as he did, the Defendant sought only to assist Mrs Iqbal. But be that as it may, it is apparent from the written document put before me by Mr. Martins, together with attached contemporaneous documents, that Mr. Iqbal personally obtained an unsecured loan[1] of £30,000 from a Mr. Mohammed Saddiq Khan on 12 September 2017 in order to purchase the Property by way of *joint ownership*. There is no mortgage on the Property.

23. The Land Registry title deed dated 4 August 2021 confirms that there is a single charge recorded against the title subsisting until 17 September 2022 *in favour of the Council* pursuant to section 156 of the Housing Act 1985, under a covenant to repay the discount contained in the transfer. There is no indication in the Land Registry title deed that any lender or mortgagee has registered a charge against the Property, and there is no mortgage connected to the purchase of the Property or any subsequent lending secured against the Property.

24. The Proprietorship Register records the following as Title Absolute:

> *"1. (26.10.2017) PROPRIETOR: KHATIJA NAWAZ IQBAL and RAJA PARVEZ IQBAL of 14 Carwood Road, Sheffield S4 7SD.*
>
> *2 (26.10.2017) The price stated to have been paid on 18 September 2017 was £47,000".*

25. Moreover, a number of other documents relating to the purchase of the Property clearly demonstrate the Defendant's primary role in (i) obtaining funding in his own name for the purchase of the Property and (ii) then purchasing the Property. Once the funds were in place he ensured that the Property was conveyed into the joint names of himself and his wife, Mrs Iqbal:

    i) An undated Landlord's Offer Notice (dating, it would seem, from around early to mid 2017) refers to both the Defendant and Mrs Iqbal as tenants with the right to buy the freehold of the Property.

    ii) A letter from LCF Residential (the firm which dealt with the conveyancing of the Property and who was instructed to act on behalf of the Defendant and Mrs

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[1] A letter from Mr Mohammed Saddiq Khan dated 19 June 2017 to the Defendant similarly states that the Defendant does not need to register a charge on the Property in respect of the "personal loan". It is therefore clear that this constitutes an unsecured loan as opposed to a mortgage. This is also confirmed in the letter dated 21 December 2021 from LCF Residential.

Iqbal) dated 17 March 2017 is addressed to both the Defendant and Mrs Iqbal and refers to their purchase.

iii) An instruction questionnaire dated 28 March 2017 includes both the Defendant and Mrs Iqbal as the buyers of the Property and is signed by both of them. This document also refers to £15,000 of the purchase monies being provided by way of gifts from three different relatives.

iv) A form of authorities dated 28 March 2017 is similarly signed by both the Defendant and Mrs Iqbal.

v) A letter from LCF Residential dated 5 May 2017 to the Defendant and Mrs Iqbal encloses a Joint Tenants form and a Joint Ownership form. The author of the letter states that "*it is extremely important that I know how you would like your ownership to be registered at Land Registry*".

vi) Mr. Mohammed Saddiq Khan wrote to the Defendant on 19 June 2017 confirming that he agreed to lend the Defendant £30,000 in order to purchase the Property. The Defendant then wrote to Lloyd's Bank to set up a standing order from his account of £250 per month in loan repayments, with effect from 4 October 2017. A letter from the Defendant and Mrs Iqbal dated 19 June 2017 to LCF Residential refers to the Defendant's unsuccessful attempts to obtain a mortgage and informs it that Mr. Mohammed Saddiq Khan has "*has agreed to loan me the balance that I require*". The Defendant then asks LCF Residential to complete the transfer into the joint names of the Defendant and Mrs Iqbal.

26. In all the circumstances I find as a fact that the Defendant and Mrs Iqbal hold the Property as joint tenants and that the Defendant has a one-half interest in the Property.

(ii) Market value

27. As regards the value of the Property, its market value at the date of purchase on 18 September 2017 was £76,000, as confirmed in a letter from the Council dated 29 September 2021.

28. The Claimant has disclosed an extract from the Nationwide House Price Calculator which is said to take into account the true value of the Property at the time of the sale, and it suggests that this Calculator shows that the value of the Property as at the second quarter of 2021 (i.e. April-June 2021) is £92,306, reflecting a 21.45% increase in house prices in that postcode area.

29. A letter from the Council dated 29 September 2021 notes that the Property is still within the 5 years repayment of discount period (if sold before 18 September 2022), meaning that £6,992 is repayable to the Council, based on a current market value of £92,000. The letter also confirms that the Property is within the 10 year Right of First Refusal period, meaning that the Council has a right of first refusal on the Property before it can be sold on the open market. An email from the Council dated 29 September 2021 confirms that if the Council take up the right of first refusal, they will give their own valuation of the Property, which is as set out above.

30. In his first witness statement served on behalf of the Claimant, Mr. Paul Harrison accordingly suggests that taking the current market value of the Property (as provided by the Nationwide House Price Calculator) of £92,000 and then deducting the amount owed to the Council of £6,992, together with 3% of the market value to allow for the costs of sale in the sum of £2760, leaves the total sum of £82,248 as representing the equity in the property. Since the Defendant is entitled to 50% of that value as a joint owner, that would equate to the sum of £41,124. Whether that figure correctly represents the extent of the Defendant's interest in the Property is not for this court to determine. It is sufficient for this court to find, and I do find, that the Defendant has a valuable (joint) interest in the Property.

(3) HALIFAX ACCOUNT

31. A Halifax Account with sort code 11-06-89 and account number 01049288 and to which the Defendant is the *sole* holder was opened on 24 August 2015. This was last used on 20 February 2020 when £100 was deposited, taking the account balance to £200 (as it currently stands).

32. Despite the reference in the Defendant's letter to the Claimant dated 7 December 2021 that he "*only thought it would be good for the children*", the account is not in the name of the children and there is no documentary evidence that the funds are held in trust for the Defendant's children. Whatever the Defendant's private motivation may have been for the payment of these funds into this account, the fact is that this account is in his sole name. I therefore find as a fact that the funds in this Halifax Account belong solely to the Defendant.

(E) CONCLUSION

33. The sum which was assessed to be the value of the Defendant's proceeds from money laundering was £1,053,054.35, as determined by the Sheffield Crown Court on 14 September 2007.

34. The revised confiscation order dated 29 July 2009 in the sum of £109,680.07 accordingly left a disparity of £943,374.28 to be satisfied, should further realisable assets become available (the revised confiscation order was satisfied in full at 16 January 2009).

35. I am satisfied in the light of the foregoing evidence that at the date of this judgment the amount that might be realised in the case of the Defendant is greater than the amount taken into account in making the revised confiscation order.

36. On the basis of that finding, this court must issue a certificate of increase and I accordingly allow the application under section 16(2) of the DTA 1994 for the relevant certificate for the reasons set out in this judgment. I emphasise that nothing in this judgment binds or is intended to bind the Crown Court as to the amount of any increase which it considers should be recovered under any (further) revised confiscation order.