T2017/7931

IN THE BIRMINGHAM
CROWN COURT

Before :

HHJ STACEY

- -

BETWEEN:

REGINA

v

Marek Chowaniec (MC),Marek Brzezinski (MB), Juliana Chodakiewicz (JC), Natalia Zmuda (NZ), Justyna Parczewska (JP) Ignacy Brzezinski (IB), Wojciech Nowakowski (WN) and Jan Sadowski (JS)

PROCEEDS OF CRIME RULING: JS and JP

Hearing date: 12 December 2019
Hand down date: 14 February 2020

- -

APPROVED RESERVED JUDGMENT

HHJ Stacey:

1. The issues before the court concern the application of the Proceeds of Crime Act 2002 (POCA) to these long-running human trafficking and modern slavery cases in respect of two of the convicted defendants. A police investigation, Operation Fort, has resulted in two trials so far. Five defendants (Marek Chowaniec (MC), Marek Brzezinski (MB), Juliana Chodakiewicz (JC), Natalia Zmuda (NZ) & Justyna Parczewska (JP)) were found guilty in Trial 1 of a number of human trafficking, modern slavery and money

laundering offences. In Trial 2, Ignacy Brzezinski (IB) and Wojciech Nowakowski (WN) were found guilty after trial and Jan Sadowski (JS) pleaded guilty shortly before trial. A third trial has now been scheduled for September 2020 awaiting the extradition of two defendants who had absconded to Poland whilst on bail – both of whom are alleged by the prosecution as being the ring leaders – Adam Brzezinski, the son of IB and JP, nephew or cousin of MB and cousin of JS, and Dawid Kasperowicz cousin of AB, nephew or first cousin once removed of IB and JP, and a third individual who has now been traced and charged.

2. No one has suggested that the confiscation proceedings for those convicted should await the outcome of trial 3. Nor have there been any representations or suggestion that there are priority orders or reparation orders that should delay the confiscation proceedings in respect of the convicted defendants. However, in the case of IB - who absconded the day before the jury's verdict in trial 2, was traced to Poland and arrested and is now serving his sentence in a Polish jail - the parties requested the court not to proceed today. The defence sought an extension of time for service of his s.17 statement (or the opportunity to provide details of assets and a response to the s.16 statements in the event of s.17 being disapplied by virtue of s.27 POCA 2002) given the logistical difficulties of obtaining instructions. This was granted until 23rd January 2020. Both parties also asked for time to research and confirm how best to proceed in light of the potential impact of the disapplication of the first condition in s.6 pursuant to s.6(8) and the absconder provisions in ss27 and 28 POCA and the matter will come back to court on 14th February for further direction, order or ruling after the parties have considered the matter further.

3. Apart from IB, JS and JP, the other confiscation proceedings of those convicted have now been concluded by consent as follows:

Defendant	Benefit	Available	Order	Date
JC	£32 170.20	No assets	£1.00	05.07.19
NZ	£32 994.88	No assets	£1.00	01.08.19
MC	£1 715 771.61	No assets	£1.00	07.10.19
MB	£1 714 671.61	No assets	£1.00	12.12.19
WN	£634.22	No assets	£1.00	12.12.19

4. There are two issues for determination in this ruling relating to JP: the extent of her benefit – and proportionality in relation to the recoverable amount. JS also challenged the prosecution's assessment of the extent of his benefit. In other words, the first question identified in **R v May** [2008] UKHL 28 is in issue in the case of both defendants: to what extent did JP and/or JS benefit from their respective relevant criminal conduct? In relation to JP only, the third question identified in **May** is also in play: what sum is recoverable from her?

5. By way of background the Crown requested the court to proceed to confiscate under s.6(3)(a) of the Act and there was no dispute that all the Defendants have a criminal lifestyle pursuant to s.75 by dint of the nature of the offences for which they have been convicted which are specified in schedule 2 of the Act as per ss75(2)(a). It is for the court to decide if either of them have benefitted, and if so to what extent, from general criminal conduct as defined in s.6(4)(b) and s.76.

6. The summary of the conspiracies helpfully set out by Robert Saunders, financial investigator, Regional Asset Recovery Team of the West Midlands Regional Organised Crime Unit in his initial s.16 statements is accepted as accurate in general terms by both defendants – that there was a well organised crime group centred round the Brzezinski family, specialising in the human trafficking of vulnerable Polish nationals to the UK which, having trafficked the individuals into the UK subjected them to forced labour, controlled their wages, used them to claim state benefits in their names and fraudulently opened bank accounts in their names that were sold on to other organised crime groups specialising in financial fraud in need of clean bank accounts to be used for fraud and money laundering. It was a highly lucrative business. 66 victims gave evidence and a further 267 individuals were believed to have been victims, who after having been identified as victims and having provided varying degrees of assistance were lost track of, or chose not to continue in contact with the authorities. It is to be remembered that the gang targeted the vulnerable often with mental health, drug or alcohol issues, chaotic and precarious lifestyles and a wariness of the authorities that has made it extremely difficult for the police to remain in contact with them.

7. It is not disputed that the benefit from the indictments, calculated in accordance with s.80(2)(a) adjusted for inflation to take account of the value of money as at 4 November 2019 is £1,714,671.61 and that both MC and MB have accepted their role as equity partners in the enterprise and jointly obtained the property, hence the orders for the full amount in relation to both of them. It was accepted by the prosecution and the defence that JC's benefit was limited to the payments she received from the conspiracy for the

individuals she engaged at the employment agency that she worked at, knowing that those individuals had been trafficked and were subject to forced labour. In the case of NZ it was accepted by the defence and the prosecution that she was not an equity partner but her benefit was limited to the victims and complainants identified as being under her control. In the case of WN, the prosecution accepted the defence arguments that he did not receive benefits beyond £634.22 as his position was somewhat anomalous. Having been initially trafficked into the UK himself and initially put to work as a forced labourer, after a period of time he became an enforcer for the gang, with a degree of freedom and autonomy to bully and control the newer arrivals – corralling them to work, assisting with opening bank accounts, controlling the post, threatening them with violence on occasion if they did not fall into line, for example. However, he seemingly received little financial benefit for himself, but gained very considerable satisfaction and gratification from his power over the others and his position of favour with the OCG and privileged access to food and alcohol. You could perhaps say that unlike some of the others, he was not in it for the money.

Apportionment of benefit amount: the law

8. There is no dispute between the parties as to the applicable statutory provisions.

> "s.76(4) A person benefits from conduct if he obtains property as a result of in connection with the conduct
>
> (5) If a person obtains a pecuniary advantage as a result of or in connection with the 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"

9. "Obtains" should be given a broad and normal meaning. It is perfectly acceptable as a matter of ordinary language to refer to people having jointly obtained the item or thing concerned in the sense of having obtained it between them. The fact that it may have been physically taken or acquired by, or held in the name of, one of them did not undermine the conclusion that they had jointly obtained it. It would often be appropriate for a court to hold that each of the conspirators had "obtained" the whole of the property. However, that would by no means be the correct conclusion in every such case (**R v Ahmad and Fields** [2014] UKSC 36). The obvious reason for this is because the burden of proving that a defendant has obtained property is on the prosecution which must be proved to the civil standard (s.6(7)POCA 2002). Put simply: if there is insufficient evidence to find that a co-conspirator has jointly obtained the whole of the property, the prosecution will not have proved it.

10. In the skeleton argument for JP, it was submitted that the applicable test is as set out in **R v Jennings** [2008] 2 Cr. App R 29

> "It must ordinarily mean that he has obtained property, so as to own it, whether alone or jointly, which will ordinarily connote a power of disposition or control, as where a person directs a payment or conveyance of property to someone else" (at para 13)

11. But with respect, the problematic nature of the court of appeal's analysis in **Jennings** was fully explored in **Ahmad** by the Supreme Court (see paragraphs 41-48, and also noting the preliminary observations about the practical

difficulties in asset recovery set out in paragraph 36 of **Ahmad**). The statutory language is not concerned with ownership, and it is more appropriate (and less confusing) to treat co-conspirators "as obtaining the asset or money together" – in other words "jointly" in the ordinary English language rather than technical, legal sense, instead of invoking English property law concepts and agonising over chancery definitions of whether assets are held in common or jointly (**Ahmad** para 44). It is confusing and misleading to refer to paragraph 13 of **Jennings** post **Ahmad.**

12. The assessment of the importance of a particular defendant's role and the extent of his or her contribution to the property being obtained which is an essential exercise for sentencing, is a different exercise to the consideration of whether a defendant has obtained benefit from the offence (**R v Jennings**, **R v Sivaraman** [2009] 1 Cr. App. R (S) 80). WN and JC are prime examples of the distinction in this case. Without JC working on the inside embedded in the employment agency it would have been much harder for the OCG to get the trafficked men on to the employment agency's books and quickly into work after their arrival into the UK so that their wages could then be controlled. But although she was jointly involved in the conspiracies for which she was convicted, the property that she obtained was only the backhanders she received in respect of the workers she signed up with the agency, which in many cases was a small fraction of their wages being taken by the OCG over the weeks, and in some cases the years, that they were being exploited. WN's role too was significant and important to the gang in sentencing terms - living with the trafficked men and women, intimidating them and preventing them from running away was a crucial part of the enterprise - but as already noted

above, personally, he gained very little financially from his role and he lived in the same dreadful conditions as the victims. WN and JC are illustrative of the different considerations and different judicial exercise to be conducted in asset recovery process to the sentencing exercise. NZ was engaged in something of a side project and the prosecution have rightly assessed her benefit by reference only to the trafficked and forced labourers connected to her.

13. As succinctly put in **R v Ahmad and Fields** [2014] UKSC 36:

> "There has sometimes been a tendency to equiparate joint involvement in the crime with joint ownership of the fruits of the crime. But the fact that the defendants were jointly responsible for the crime in question does not automatically justify a conclusion that they jointly obtained the resulting property….judges in confiscation should be ready to investigate and made findings as to whether there were separate obtainings… A court should never make a finding that there has been joint obtaining from convenience, or worse from laziness"

14. Where a benefit is obtained jointly – in the **Ahmad** sense where co-conspirators have obtained the money or asset together - each of the joint beneficiaries has obtained the whole of the benefit and may properly be ordered to pay a sum equivalent to the whole of it (subject to any Human Rights Act arguments and infringement of Art 1 of the First Protocol to the Convention) (**R v May** [2008] UKHL 28 and that the state can only receive the total amount and double recovery is not permitted).

15. The way to approach these cases of conspiracies and joint or together obtaining in light of the Supreme Court's observations is crystallised in paragraphs 47 and 51of **Ahmad**

> "…When a defendant has been convicted of an offence which involved several conspirators, and resulted in the obtaining of property, the court has to decide on the basis of the evidence, often relying on common sense inferences, whether the defendant in question obtained the property in the sense of assuming the rights of an owner over it, either because he received it or because he was to have some sort of share in it or its proceeds, and, in that connection, "the role of a particular conspirator maybe relevant as a matter of fact that is a purely evidential matter"
>
> "The tendency to conclude that the property is jointly obtained by criminals may also be attributable to the fact that it is often difficult to determine how the asset(s) obtained has, or have, been distributed between the defendants. Judges in confiscation proceedings should be ready to investigate and make findings as to whether there were separate obtainings. Sometimes of course this is too difficult or impossible. In many cases the court will not have before it all the conspirators for a variety of reasons. The indictment may well name other conspirators (as well as including the usual phrase of "and other persons unknown"). A court should never make a finding that there has been joint obtaining from convenience, or worse from laziness. Where the evidence supports a finding that the asset acquired from a crime was obtained effectively on a several basis, the judge should make it, but there are cases in which a finding of joint obtaining is the proper, indeed the only available finding, especially but not only where an inference or presumption that the defendants before the court were the only joint obtainers would be contrary to the probabilities"

16. In other words, it comes back to the burden and standard of proof and the fact finding exercise required of the court.

JP

17. The prosecution argue that JP was an equity partner and obtained the full £1,714,671.61 which, accordingly, should be declared as her benefit. It is argued on her behalf that she could not be said to have obtained the property or be considered an equity partner in the enterprise, but her role was very limited, and to treat her as an equity partner is not supported by the evidence, a more nuanced approach is required, as was the case for JC and NZ,

especially bearing in mind the comments of Davis LJ in the sentencing appeal case which reduced her sentence from 8 to 5 and a half years.

18. JP was convicted of counts 5, 6 and 7 – conspiracy to control others from the purposes of labour exploitation between 1st June 2012 – 31 July 2015 and 1st August 2015 and 31 October 2017 and conspiracy to acquire proceeds of crime from 1st June 2015 – 31 October 2017. Her home was the head office of the OCG where bank cards and large sums of cash were stored and was the nerve centre. She was the matriarch of the family and mother of the alleged ring leader who lived in the family home and it was a family business. She was based there much of the time. On a considerable number of occasions her home was the first arrival point for the trafficked men and women – the coach brought them directly to her house, and someone from the house would pay the coach driver when the men and women were dropped off. She met and greeted the trafficked men and women on several occasions and lulled them into a false sense of security with welcoming cups of tea on their arrival in her immaculate, spotlessly clean house. On one occasion she handed over bank cards to MC to take to London and she was a frequent visitor to cashpoints to withdraw money from complainants and nominals bank accounts. She visited the houses the trafficked individuals were kept in.

19. It is to be remembered that unlike, for the sentencing exercise, for asset recovery the findings are made on the balance of probabilities with the prosecution bearing the burden. As the parties will recall I made detailed findings to ascertain to the criminal standard extent of the scale of the money laundering operation and concluded that I was sure that it went considerably

beyond the complainants and that very many of the nominals were also victims: the reasoning is set out in my sentencing remarks. It was a necessary exercise for the application of the Sentencing Council guidelines and the assessment of harm, as well as the exercise in analysing the individual culpability to the criminal standard of each defendant. Applying the civil standard, the prosecution assessment of the total benefit of £1,714,671.61 is very fair indeed to the defendants.

20. Whilst, for sentencing purposes, JP's involvement was not at the most significant and strategic level of that of some of her other family members, I have no doubt that for asset-recovery purposes she was co-obtainer of the total benefit. She was at the heart of the operation and I do not accept the assertion that her involvement stopped by 21 October 2015, although it is correct that by that date the police investigation had already succeeded in disrupting the conspiracy to a considerable degree. She may well also have stopped playing such a visible role after she became known to the police who had searched her house by that time, and other family members were brought it to help withdraw cash from cashpoints. But as is made clear in **Ahmad** and as set out above, role and reward, are not synonymous. In other words, although her active participation was more limited than that of some of the others, it does not mean her benefit was equally limited: she merely had to work less hard for it, as befits an elder respected family member. But she was still active and hands on. As the matriarch of the family business of human trafficking and forced labour and other forms of exploitation conspiracy she was an equity partner or joint obtainer. Her friendliness towards the complainants is neither here nor there in analysing the level of her benefit, although it was an

important feature of the sentencing exercise to bear in mind that she was kind to some of them. She also misled and duped them, for example reassuring one of them that her son would never not pay them the wages they were due, when she must have known the contrary to be the case.

21. Addressing the argument that the Court of Appeal found that JP had been "very much lower down in the scheme of things as compared to the others" and that her active participation was relatively limited (see para 74 CACD judgment Davis LJ), the findings were made for sentencing, not asset confiscation purposes, on the criminal standard. The evidence proved to the civil standard that JP obtained the money together with the major conspirators and jointly benefitted from it.

22. I find that she was an obtainer of the £13,000 cash found at her house and also the contents of the bank accounts of the bank cards with the PIN numbers written on the back that were found in her house. She controlled the house. I do not find that she was in thrall to her son and merely a money mule or cashpoint gopher for him as sought to be suggested by her legal team. Similarly, the fact she had major physical and psychological health issues, is not relevant to her obtaining a benefit together with other central family member, although it was of course important personal mitigation when it came to her sentence.

23. Also problematic for her in her denial of obtaining any benefit over any of the fruits of the conspiracy is the gap between her ostensibly living only on benefits (and prior to that a minimum wage cleaning job) and the manner of her living at 22 Beechwood Road with all its contents and immaculate and

expensive decoration and her own assertion that she also sent £50-£70 a month to Poland to her parents could not be supported only by state benefits.

24. A telling insight into the extent to which it was a family operation is gleaned from the photograph in pride of place next to the TV in her living room alongside other family photographs which shows two young girls in Burberry dresses posing in JP's living room at 22 Beechwood Road sitting on a heap of cash and waving bundles of notes at the camera – in a quite literal sense demonstrating that the family was in the money. It was business from which the family benefitted and her links to the cash, the cards, the properties and the complainants demonstrate that she jointly obtained the benefit from it. Unlike for example the fictional characters in Succession or the Sopranos, she was not a stand apart wife and mother such as Carmela Soprano or Marcia Roy, but an actively involved hands on inner circle close family business member co-obtainer, even if not at strategic decision making level such as Roman Roy or Christopher Multisanto.

25. The Act does not require the Court to adjudicate on shares of benefit jointly obtained (**Ahmad** para 56) but there is sufficient evidence before the court and the prosecution have proved to the civil standard from all the evidence before the court during JP's five month trial, that she obtained the assets together with the other high up family members in the conspiracy, as demonstrated by her house as head office, her direct involvement in bank cards, dealings with the trafficked workers, the properties they were housed in and cash handling. I reach that finding not out of convenience or indolence, but because the prosecution have proved it on the evidence.

JS

26. JS pleaded guilty to one count of conspiracy to arrange or facilitate the travel of persons within the UK for the purposes of exploitation, one count of conspiracy to control another for the purposes of labour exploitation and one count of conspiracy to acquire criminal property. He was a cousin of IB and JP and their children Adam Brzezinski (AB) and Romeo Brzezinski and cousin of Dawid Kasperowicz, all of whom are alleged by the prosecution to be at the centre of the conspiracies. It is common ground that he performed a lesser role in the conspiracy and told what to do, as reflected in his 3 year custodial sentence – the shortest of all the sentences.

27. He was born on 5 June 1991 and has been resident in the UK since 2006. Prior to sentence he lived with his wife and their two children and he has had no declared income since 2013. He had one active bank account during the relevant period.

28. The dispute of fact between the parties is whether the prosecution has proved that he obtained the benefit of wages and fraudulent funds paid in the accounts in the name of Tadeus Wolny and Michael Erlich since those two bank accounts received the wages of Jacek Kolodziejczak, a trafficked forced labourer who lived with JS and was, the prosecution say, controlled by him. The prosecution argument is that it is more likely than not that JS obtained the benefit of all wages paid into the accounts that also received Mr Kolodziejczak's income since an inference can be drawn that JS would have arranged for Mr Kolodziejczak's wages to be paid into bank accounts controlled by him.

29. The total amount of wages specific to Mr Kolodziejczak paid into those accounts was £1,485.03 and the total amount of wages going into those accounts from complainants and nominals, adjusted for inflation, is £67,376.32 (valued as at 4 November 2019).

30. JS argues that the evidence suggests that his cousin, Adam Brzezinski had power and control over any money relating to complainants linked to JS and the court is invited to find no benefit or alternatively further reduce the benefit figure proposed by the Crown for JS to reflect his lesser role and/or lack of power over financial gain. The Crown described JS in its sentencing note as a "lesser role administrator" which it was submitted by Mr Copeland was tantamount to a concession that he did not have power over the money and that the evidence suggests AB had power / control over any money relating to complainants linked to JS.

31. JS chose not to give evidence at the POCA hearing, although there is some evidential value in his signed ss.17 and 18 statement he could not be cross examined on it. In his s.18 statement he stated that he had no assets and had received cash in hand wages at around or below the minimum wage since 2012 for which he had no records and had spent what money he received. The records appeared to show that he received less than £1,000 for the entirety of tax years 2011/12 and 2012/3 from employment agency work. He points to the fact that child tax credits in the name of Sylwia Kasperowicz, thought to be the wife of AB were also paid into Michal Erlich's account as evidence that it is unlikely that JS had control of that account.

32. For reasons that were not explained to me the prosecution agreed with the defence that the bank account in JS's name (47332368 sort code 30-98-37) which received benefits – both working tax credits and work and child tax credit - in the names of Artur Bukowski and Tomasz Nowak should not be included in the POCA calculation. Nor did the prosecution argue that a number of payments from several employment agencies received into JS bank account that are not recorded by HMRC as being JS's wages should be included as a benefit obtained by JS. Again I was not aware of the reasons for this concession by the Crown.

33. JS's assertion in is s.17 statement that the total extent of his benefit from the three offences is £94.25 is not credible. It can be seen from his bank account and his declared source of income that it would be insufficient to maintain a lifestyle of any sort, not to mention his wife and two children: there must have been more. But, it is for the prosecution to prove the benefit.

34. I agree with Mr Copeland that to conclude that JS obtained the benefit of the monies paid into Mr Wolny and Mr Erlich's bank accounts just because those two bank accounts were used to launder Mr Kolodziejczak's wages goes beyond legitimate inference and amounts to speculation. I accept that by dint of his housing Mr Kolodziejczak JS will have obtained the benefit of his wages and I reject his assertion that he received nothing for having him live in his house beyond a paltry £9425. In the twisted way the conspiracy worked, he will have been seen as the beneficiary of wages and benefits of the people who lived with him and the prosecution have proved that Mr Kolodziejczak lived with JS and thus obtained his wages. But they have not proved that any other

specific complainants were housed by him, or that JS was involved in the wider conspiracy and he did not have a significant role in the conspiracy generally.

35. No other evidence linking JS to Mr Wolny, Mr Erlich or the nominals and complainants whose wages and benefits were paid into those two accounts along with Mr Kolodziejczak's wages have been shown. I therefore find that the prosecution have not proved that JS either jointly or alone obtained a benefit from those accounts, beyond the wages of Mr Kolodziejczak. The evidence that Ms Kasperowicz's child benefit was paid into Mr Erlich's account is evidence that JS was not in control of the contents of that account. But I am satisfied that JS jointly obtained the benefit of Mr Kolodziejczak's wages.

36. Mr Copeland sought to argue that Mr Kolodziejczak lived with JS and his family for a short period of time, less than the period covered by his wages, so that he should only be considered to have obtained a benefit from the period of Mr Kolodziejczak's stay. I reject that argument, as was rehearsed in **Ahmad** in paragraph 36, there is an inevitable degree of uncertainty in asset recovery proceedings given the fraud and dishonesty in conspiracies such as these. The fact is that JS has identified no legitimate income to live on – I was very dubious and did not accept his assertion of working cash in hand for a local supermarket – and he supported a wife and two children. If he did not obtain the benefit of all Mr Kolodziejczak's wages, I would have found in the alternative, that he must have had other complainants living with him at other times from which he would have benefitted. Without any other visible source

of income he must have done, so either way, the prosecution has proved that JS received at least the equivalent of Mr Kolodziejczak's wages as benefit for his role in the conspiracies.

37. I am therefore satisfied that Mr Saunders has accurately assessed the benefit figure of Mr Kolodziejczak's wages at £1,485.03.

38. As to the available amount the prosecution accept that no assets have been traced and ask for a nominal order of £1.

Proportionality

39. It was agreed that JP is the owner of a flat in Poland held in her sole name at U1 Edwarda 4, 97-200 Tomaszow Mazowiecki, Poland ("the Polish Property") with an agreed current value of £76,000. JP has proved that she does not have the full amount of the benefit that she jointly obtained and that the realisable assets so far discovered are limited to those two sources pursuant to s.9.

40. It was argued that a confiscation order which entails the enforced sale of JP's Polish Property would amount to a disproportionate interference with her Article 1 Protocol 1 ECHR (A1P1) rights as she is planning to live there when, or if, she is deported to Poland following serving her sentence in the UK, particularly given her health issues that were before the court at her trial.

41. It is certainly true that there was medical evidence before the trial at the end of 2018/beginning 2019 that said that JP was not well enough to give evidence at that time. There was however no up to date medical evidence to explain her failure to give evidence in the asset recovery proceedings. Her depressive

disorder is a fluctuating, not static condition, as too are her physical health issues such as oedema, and I do not infer from her inability to give evidence over 12 months ago that she is not fit to give evidence now. It also a different matter giving evidence before a jury in a crown court trial to the quasi-civil nature of confiscation proceedings: much less intimidating. Nor was there any other evidence before the court relevant to proportionality.

42. As per **R v Waya** [2013] 1 AC 294 the aim, or purpose of the legislation is to impose upon convicted defendants a severe regime for removing from them their proceeds of crime. The essence or grain of the legislation is not to deter criminals from committing acquisitive crimes, or to be punitive, but simply to deprive them of the pecuniary proceeds in so far as they are ascertainable from the application of the statutory regime and various presumptions (subject to their rebuttal).

43. This is not a case of stolen goods having been returned in tact: the forced labourers remain out of pocket and remain scarred by the psychological damage uncompensated for the psychological trauma they have suffered of being trafficked and subject to modern slavery offences and kept in squalor.

44. None of the statutory presumptions in s.10 have been rebutted by JP and nor has it been shown that there would be a serious risk of injustice if the assumptions were made. There is no reason why she should not be required to sell the Polish Property to go towards the benefit she has obtained from her criminal activity: it is not disproportionate for her to be required to sell it. Why should she live mortgage free after her release from custody in a property presumed to be part of the proceeds of her crime? Accordingly, I find that the

£13,000 cash recovered from her home address when the police searched it, together with the property held in her sole name at U1 Edwarda 4, 97-200 Tomaszow Mazowiecki, Poland ("the Polish Property") with its agreed current value of £76,000, are available property with a total value of available property is £89,000.

45. Finally, I did not fully understand the argument in the written submissions that it would be a breach of A1P1 to assess JP as a co-obtainer of the benefit figure of £1,714,671 as disproportionate as compared to the benefit figures for JC and NZ. Proportionality is not a relative concept as between different co-conspirators – as set out above, the assessment of the extent to which any one defendant has obtained a benefit is a factual exercise. Proportionality comes into play at the third of the questions identified in **May** in considering the recoverable amount of the benefit obtained- see s.6(5)(b) - and I have dealt with the arguments above. The skeleton argument appears to conflate questions 1 and 3 identified in **May**.

46. Accordingly, given that the crown have accepted that there are no available assets other than the two identified, and the Crown has not asked the court to draw any further inferences, it is not disproportionate to make the order in the sum sought of £88,000.

47. I therefore declare the benefit figure for JP to be £1,715,771.61 and the available amount is £89,000. Pursuant to s. 11 POCA the £13,000 must be paid within 21 days. The parties have agreed that JP e given a period of three months from the date of this order for her to sell the Polish Property and pay

the sum of £76,000. I order that JP serve an additional nine months in default of payment of the entire amount, pursuant to s.15 Serious Crime Act 2015.

48. For JS the benefit figure is £1, 4805.03 and the available amount is zero. I therefore make a nominal order of £1, payable in 21 days, with 2 days imprisonment in default