

R v Luckhurst (Respondent) [2020] UKSC 23 On appeal from: [2020] EWCA Crim 1579

Date:20 July 2022

Justices

Lord Hodge (Deputy President), Lord Kitchin, Lord Hamblen, Lord Burrows, Lord Stephens

Background to the Appeal

This case concerns whether the Proceeds of Crime Act 2002 (**POCA**) permits a variation to a restraint order to cover reasonable legal expenses in respect of civil proceedings founded on the same or similar allegations or facts as those giving rise to the making of the restraint order.

POCA gives the courts the power to make a restraint order freezing the assets of an alleged criminal, with the overall aim of ensuring that the proceeds of crime can be confiscated by the State in the event a crime has been committed. Under POCA, a variation to a restraint order may be made to allow an alleged criminal to cover reasonable legal expenses except, as set out in section 41(4) of POCA, where those legal expenses "relate to an offence" which gave rise to the restraint order. As a result, alleged criminals cannot seek a variation of a restraint order to meet the legal costs of defending against criminal prosecution for the offence that gave rise to the restraint order, or for instance, in proceedings resisting the imposition of the restraint order.

Andrew Luckhurst, a former professional sportsman, is charged with offences of fraud and theft relating to his alleged involvement in a Ponzi scheme, and his assets are subject to a restraint order under POCA. He is due to stand trial in October 2022. Separately, Mr Luckhurst also faces civil proceedings brought by investors in the alleged Ponzi scheme. Mr Luckhurst applied for a variation to the restraint order so that he could pay £3,000 for legal representation in respect of the civil proceedings. The Crown Prosecution Service (**CPS**) opposed this variation, arguing that section 41(4) does not permit a variation to cover such legal expenses where the civil proceedings arose from the same or similar facts or allegations as the criminal offence that gave rise to the restraint order.

At first instance, the judge found that such a variation was not permitted by section 41(4) as the civil proceedings did "relate to" the offence giving rise to the restraint order. Mr Luckhurst appealed. The Court of Appeal disagreed with the judge, finding that section 41(4) does not prevent the variation requested by Mr Luckhurst. The CPS then appealed to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the CPS's appeal. Lord Burrows gives the judgment, with which Lord Hodge, Lord Kitchin, Lord Hamblen and Lord Stephens agree.

Reasons for the Judgment

The Supreme Court finds that the correct interpretation of section 41(4) of POCA does not prevent a variation of a restraint order to meet reasonable legal expenses in civil proceedings, even in circumstances where those civil proceedings arise from the same or similar facts or allegations as the offence that gave rise to the restraint order.

Lord Burrows sets out the correct modern approach to statutory interpretation, which is that the court is concerned to identify the meaning of the words used by Parliament, and in so doing, the context and purpose of the provision or provisions are important [23]. On a natural reading of the words in their

context, legal expenses in civil proceedings do not “relate to” a criminal offence [24]. Any attempt to link legal expenses in civil proceedings to a criminal offence requires reading into the statute a test which is not found in the words of the statute itself [26]. Lord Burrows therefore agrees with the reasoning of the Court of Appeal that the CPS’s preferred interpretation puts a strain on the words of the statute [27] and would present a judge with real practical difficulties when applying the provision [28].

The purpose behind the relevant statutory provisions is to balance the goal of enabling the confiscation of proceeds of crime with the need to ensure that the alleged criminal can apply for a variation of the restraint order to meet certain types of expenses [30]. Allowing a variation to cover reasonable legal expenses incurred in relation to civil proceedings does not contradict this policy, as it remains for the courts to follow the “legislative steer” contained in POCA to strike the correct balance in ensuring the expenses are reasonable and not excessive [33]. Therefore, the natural meaning of the words in the light of their context and purpose indicates that legal expenses incurred in respect of civil proceedings are not subject to a blanket prohibition, but rather a variation to a restraint order to cover such expenses is controlled by the courts’ discretion in the same way as other permissible variations, such as living expenses [41].

References in square brackets are to paragraphs in the judgment

Note

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available online. [Decided cases](#)