Neutral Citation Number: [2021] EWCA Crim 399

Case Nos: 201800554 C1 & 201800556 C1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT BIRMINGHAM
HIS HONOUR JUDGE CARR
T20139007

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 March 2021

Before:

Lord Justice Stuart-Smith
Mrs Justice McGowan
Sir Alan Wilkie

- -

Between:

SHOKAT ZUMAN

and

ARSHID MAHMOOD KHAN

Appellants

-and-

REGINA

Respondent

- -

Brendan Kelly QC for **Shokat Zuman**
Simon Farrell QC for **Arshid Khan**
Martin Evans QC for the **Respondent**

- -

Hearing date: 25 February 2021

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Approved Judgment

LORD JUSTICE STUART-SMITH:

Introduction

1. In August 2015, after a trial before the Crown Court in Birmingham before HHJ Carr and a jury, Mr Khan and Mr Zuman were convicted with two others of conspiracy to defraud lenders by the obtaining of mortgages to purchase residential property. Mr Khan was sentenced to 5 years in prison; Mr Zuman was sentenced to 4 years and 6 months. Their renewed applications for permission to appeal against conviction and sentence were refused by the Full Court on 30 November 2016.

2. The nature of the fraudulent conspiracy was that the Defendants submitted false information and documentation that would exaggerate their incomes and means in order to obtain mortgage funds. The indicted period of the fraud lasted from 24 March 2003 and 18 May 2010. There was no doubt that Mr Khan and Mr Zuman had each built up a significant portfolio of buy to let properties in Birmingham and that they had carried on business as residential landlords both before and after the indicted period. Neither Mr Khan nor Mr Zuman gave evidence at their trial. Their case, which the Jury evidently rejected, was that false information had been submitted by intermediaries acting on their behalves but without their knowledge.

3. Their convictions opened the way to confiscation proceedings which were duly brought pursuant to the Proceeds of Crime Act 2002 ["POCA"]. Those proceedings resulted in a ruling by HHJ Carr given on 4 January 2018. It will be necessary to trace the course of the proceedings in some detail; but, in briefest outline, the Judge made confiscation orders in the sum of £8,010,811.05 against Mr Khan and in the sum of £4,058,852.02 against Mr Zuman. Prison sentences were imposed in default of payment that exceeded their primary sentences on conviction: 10 years for Mr Khan and 9 for Mr Zuman. Each now wishes to appeal against those orders.

4. We note immediately that none of the lenders who were the object of the false information and documents has lost as a result of the conspiracy. Although the obtaining of tainted loan advances may be a benefit for the purposes of POCA, we understand that the Appellants have complied with the terms of the loans that they fraudulently obtained. In some cases the underlying properties have been sold and the loans repaid; in others the properties have been retained and, subject to occasional re-mortgages, the loans continue in being. We shall later refer in some detail to the Appellants' attitude and approach to the POCA proceedings. One thing is abundantly clear, namely that the Appellants consider that confiscation of their property is unfair in circumstances where the lenders have raised no complaint and suffered no loss even after being informed about the unlawful obtaining of the tainted mortgage advances. We are in no doubt that this perception has coloured their attitude and approach markedly, and still does so, and that it has done so greatly to their disadvantage. We make this observation in the knowledge that each appellant is of full age and sound mind (though Mr Khan has suffered from a significant depressive illness such that we are told he is not presently able to give instructions). We do not endorse the Appellants' perception in any way: we merely state it as a fact because it is material to how events unfolded later. The Appellants had been represented by solicitors and counsel during the trial. By choice, they dispensed with legal representation for the POCA proceedings. This decision, for which of course the

appellants are also responsible, has also operated greatly to their disadvantage as will become clear later in this judgment.

The background to the present appeal

Mr Khan

5. The Appellants first came to the attention of the police in about 2010 or 2011 in connection with suspected money laundering offences, which did not lead to criminal charges. In April 2012 Mr Khan submitted a witness statement dated 5 April 2012 to the Police in connection with that investigation. Four features of the statement are material for present purposes. First, in relation to a number of properties that featured later in the POCA proceedings and proposed appeal (61 Alton Road, 70 Alton Road, 19 Croydon Road, 4 Holly Grove and 222 Tiverton Road) he gave details of the date of payment, source of funds (deposits and mortgages) and subsequent financial transactions, correcting what he said were errors made by the police in an earlier interview. Second, he gave a detailed description of his lifestyle. In summary he described how his properties took up all his time in maintenance and improvements that then enabled him to purchase further properties with the assistance of further mortgages. He maintained his mortgage payments from rents and proceeds of sale. Third, he provided a schedule of properties in his ownership which included properties of which the Police were then unaware. Fourth, by clear implication from the terms of his statement, he was saying that the schedule of properties he was providing to the police was a complete list of all his properties and that all of his economic activity was bound up in the purchasing, renovation, letting, and thereby financing the loans on his properties. His evidence may be summarised in the opening words of the statement: "I am [a] hardworking landlord and dedicated maintenance worker by occupation."

6. In 2015 the Crown obtained restraint orders against the Defendants. On 22 October 2015 Mr Khan produced a statement in relation to that order. He emphasised the information that he had already given to the police about his properties and referred to the fact that he had "voluntarily provided a detailed property schedule summary of my properties, dating as far back as 25 years in my prepared statement to the Police on 17 October 2011." It appears that this reference may be an error and that he was referring to the April 2012 prepared statement to which we have referred above, but this is not critical. What matters is that, once again, Mr Khan was clearly stating that the properties he had identified to the police (and which he listed again in the statement) that had not been sold were all of his properties. He again described himself as a "hard working landlord and dedicated maintenance worker by occupation" and (in summary) said or clearly implied that all of his economic activity was bound up in those properties. In other words, he had no other assets apart from those he had disclosed.

7. On 14 January 2016, Mr Khan produced a s. 18 statement of information. The perception of persecution is evident in the statement, with accusations that officers and counsel had exploited their position and that evidence had been fabricated with corrupt officers being "now … intent on robbing me of my 26 years worth of hard work". However, the statement included relevant information that was in accordance with the two previous statements to which we have just referred. Having again described himself as a "hard working landlord and dedicated maintenance worker by

occupation" he referred to the information he had voluntarily provided on previous occasions and re-listed his properties and the rents he was obtaining from those still held.

Mr Zuman

8. There is controversy about precisely what documents from Mr Zuman were before the Court in the POCA proceedings. However, it is common ground that Mr Zuman also produced a s. 18 Statement of Information, dated 4 January 2016. The sense of persecution is clearly apparent; but the Statement also contained relevant information. Specifically, Mr Zuman provided information similar to that given by Mr Khan, to the effect that all of his economic activity was bound up in his properties. He too referred to having answered all questions in relation to property in a voluntary statement given at interview in August 2011. It is the clear implication that the properties he had identified and identified in his s. 18 Statement were all of his property assets. He provided details of rents received for each property currently held, and identified bank accounts.

9. Shortly afterwards, Mr Zuman produced a further statement, dated 3 February 2016 in which he disputed his conviction and the existence of any basis for POCA proceedings. In it he stated that "the relevant properties for Mr Zuman are set out in Property Schedule at e7133… ." Before us, the prosecution did not accept that Mr Zuman's 3 February 2016 statement was put before the Court below; but it is common ground that the schedule at e7133 was before the Court. It is similar in form and content to the Schedule included in Mr Khan's April 2012 statement. It covered the period from 1998 to 2008 and listed 17 properties. For each property it stated the year of purchase, the purchase price, any deposit paid, any mortgage and the identity of the lender, the relevant solicitor, whether the property had been sold and, if it had been, the sold price and whether proceeds were reinvested.

The formulation of the Crown's case under POCA

10. The Crown's case was clearly set out in s. 16 Statements of Information made by the Financial Investigator, Mr Causier, in February 2016. He made separate statements in common form detailing the case against each Appellant, which (as with all other documents to which we have been referred) we have read in full. By then, Mr Causier had extensive information about the Appellants' properties and the dates upon which mortgage advances had been obtained. Much of that information had either come from or was consistent with the information that had been provided by the Appellants themselves and can be traced into the documents to which we have referred above; other information evidently came from separate enquiries. As a general observation, the Prosecution did not either then or subsequently identify property assets beyond those that had been identified by the Appellants. Mr Causier divided the properties into (a) those where there had been a financial transaction during the indicted period, which the Prosecution said supported a finding of particular benefit pursuant to POCA, and (b) those where the Prosecution relied upon the assumptions that followed the finding that the Appellants were to be treated as having a criminal lifestyle within the meaning of s. 75 of POCA despite their being what Mr Causier described as "outside of the indictment period".

11. It is convenient to note at this stage that there were 17 properties that were alleged to give rise to what was described as "Count 1 particular benefit. They were alleged to have benefitted the Appellants jointly; and they included three properties that feature specifically in the present appeals – 11 Clent Villas, 4 Holly Green, and 222 Tiverton Road. Mr Causier set out his approach to calculation of benefit in his s. 16 Statements. His evidence was that Mr Khan and Mr Zuman had jointly received Count 1 particular benefit in the sum of £3,174, 362.49.

12. Turning to general benefit asserted on the basis of the assumptions identified in s.10 of POCA, Mr Causier then set out his approach and calculations relying upon property which was transferred to the individual defendant after the relevant date (1 November 2007). This took the form of known or assumed rental payments in the sum of £1,899,888.81 (for Mr Khan) and £370,536.88 (for Mr Zuman). The calculation of assumed rent was on the basis that properties had been fully let throughout the periods for which actual rent was not identified. At the end of that section of each statement he said:

> "As the sources of the above transfers has not been identified, then in accordance with Section 10(2) of the Proceeds of Crime Act 2002 the Court shall assume that the money has come from the defendant's criminal conduct unless:
>
> The assumption is shown to be incorrect
>
> or
>
> There would be a serious risk of injustice if the assumption were made."

13. Mr Causier's statements then identified property alleged to have been held at any time after the date of conviction, making allowances where he considered appropriate. His net figures were £2,577,162.35 (for Mr Khan) and £490,446.25 (for Mr Zuman). At the end of that section of each statement he said:

> "As the sources of the above property has not been identified, then in accordance with Section 10(3) of the Proceeds of Crime Act 2002 the Court shall assume that the money has come from the defendant's criminal conduct unless:
>
> The assumption is shown to be incorrect
>
> or
>
> There would be a serious risk of injustice if the assumption were made."

14. Mr Causier then did a similar exercise in relation to alleged expenditure, identifying the sums of £359.668 (for Mr Khan) and £23,770 (for Mr Zuman). At the end of that section of each statement he said:

> "As the source of the above expenditure has not been identified, then in accordance with Section 10(4) of the

> Proceeds of Crime Act 2002 the Court shall assume that the money has come from the defendant's criminal conduct unless:
>
> The assumption is shown to be incorrect
>
> or
>
> There would be a serious risk of injustice if the assumption were made."

15. In summary, the sums asserted as benefit by the Prosecution on the basis of Mr Causier's calculations were:

i) For Mr Khan:

Source	**Amount**
Benefit from particular criminal conduct (*joint*)	£3,174,091.89
s.10 Assumptions	
Property transferred	£1,899,888.81
Property held	£2,577,162.35
Expenditure	£ 359,668
Total	**£8,010,811.05**

ii) For Mr Zuman:

Source	**Amount**
Benefit from particular criminal conduct (*joint*)	£3,174,091.89
s.10 Assumptions	
Property transferred	£370,536.88
Property held	£490,446.25
Expenditure	£ 23,777
Total	**£4,058,852.02**

16. Having calculated the benefit as summarised above, Mr Causier turned in each case to what amounts were available. He started the relevant section of each statement by stating that the onus is on the defendant to provide the Court with full details of all his free property and then listed the property that he had identified, most if not all of which had been identified in the statements from the defendants to which we have referred above. Before summarising his valuation of the identified property, Mr Causier said in each statement:

> "The above assets and their valuations are provided for the assistance of the Court. The onus remains with the defendant

> to show, with evidence that he does not have sufficient assets to meet the benefit. The Prosecution contends that the defendant may have unidentified assets."

17. Having stated this he provided an itemised valuation in the sum of £3,836,024.82 (for Mr Khan) and £1,202,651 (for Mr Zuman). The prosecution's contention that the defendants might have unidentified assets meant that the burden lay on the defendants to show that their available assets were less than the benefit for which the prosecution contended.

18. We should make plain, in case we have not already done so, that Mr Causier's original statements, and those he submitted later, were conventional in form and layout and were clear to an educated reader with some knowledge of POCA proceedings. In particular, as we have set out above, they stated the effect of the POCA assumptions on a finding of criminal lifestyle in clear English. One feature bears mentioning: in each case Mr Causier made plain that the figures he was asserting as the value of properties were reached without obtaining expert valuations and that "the Prosecution will seek, in due course, professional valuations in relation to some or all of the properties subject to the details disclosed in the Defence section 17 and 18 statements." In the event, neither the Defence nor the Prosecution obtained professional valuations of the properties despite the fact that it was being asserted that their value ran to many millions of pounds.

19. Mr Khan responded to Mr Causier's s. 17 Statement by a 38-page document which he signed on 10 March 2016. The greater part of the document attempted to revisit matters relevant to the trial, alleging incompetence and bad faith on the part of most if not all of those concerned with the investigation of the fraud and prosecution of the defendants. A flavour of the document appears from the allegation that the investigating officers (and others including prosecuting counsel) were motivated by corrupt financial gain as a result of which "they are intent on robbing Mr Khan of his 26 years of hard work." Viewed objectively, most of the document was quite irrelevant to the issues that arose on the POCA proceedings and was unlikely to appeal to the Court. There was, however, some relevant evidence included about the obtaining of a particular mortgage in order to pay defence counsel's fees, details of allegedly legitimate income year on year, details of properties, when they had been bought and other financial transactions, and reference to Mr Khan's honest work maintaining properties. Mr Khan also made express reference to the information he had provided in 2011/2012 including his property schedule, and listed 16 bank accounts. His list of bank accounts coincided with the list included in Mr Causier's statement. The clear implication of Mr Khan's statement was that he had no other properties or accounts.

20. Mr Zuman submitted a document entitled "Notice of Discharge" on or about 16 June 2016, shortly after he had dispensed with the services of his legal advisers. In the main the "Notice of Discharge" concentrated on making very serious allegations against all concerned with the prosecution of the trial and the POCA proceedings. Viewed objectively and putting it its lowest, this approach was never likely to appeal to the Court, partly because of the very serious nature of the unsubstantiated allegations being made by a convicted fraudster and partly because of the failure to address the real issues in the POCA proceedings. That said, the "Notice of Discharge" did contain some relevant information. First, it referred back to

information about properties that he had provided in 2011, which we have outlined above. Second, he listed properties that he said were purchased and still in his control using a mortgage advance. Third, he identified properties that had been sold in 2007. Fourth, he listed bank accounts and other assets, the implication being that they were all.

21. In January 2017 the Prosecution provided an Opening Note with supporting schedules drafted by Leading Counsel then representing the Crown. The opening note set out the relevant POCA principles, including the s. 10 assumptions, in form and terms that would have been entirely clear to a lawyer or judge. Similarly, the supporting schedules would have been readily understood by a lawyer or judge. In addition, and in advance of the start of the hearing, the prosecution disclosed a PowerPoint presentation which set out in somewhat more accessible terms the prosecution's approach to calculation of the Count 1 particular benefit.

22. In May 2017 each Appellant served an "Opening Note". The tenor of the note is immediately foreshadowed by the fact that it is headed as if counsel and the investigating officers were the defendants and that the document is more fully self-described as "Opening Note for Conspirators Hearing" – the "conspirators" being not the convicted defendants but those responsible for bringing them to justice. Mr Khan's document is 40 pages long. There is nothing in the first 30 pages which, by any stretch of the imagination, could be described as relevant to the issues in the POCA proceedings. At page 31 he returned to the familiar theme that he had worked tirelessly and exclusively on his properties with rental payments going to service the mortgages and other costs of running his business. Pages 33-36 provide limited information that could be relevant to the POCA proceedings. He referred back to the information he had provided to the authorities since 2011, including the statement "I have purchased all of my properties from 1992 to 2014." He included information relating to the original purchasing of 4 Holly Grove and about other assets and restated that he had in the past provided information to the authorities of which they were not aware.

23. Mr Zuman's document has passages in common with Mr Khan's and is 42 pages long. Like Mr Khan's, the great majority of it is devoted to revisiting what had happened at trial and making very serious allegations against all concerned. As with Mr Khan, however, the document was not entirely irrelevant. At page 29 he included a passage similar to Mr Khan's asserting that he had devoted all his time, energy and finances to building the property portfolio that had been identified, ploughing back the rental income to maintain properties and pay mortgage outgoings. What is apparent from both documents (and would have been apparent to anyone reading them at the time) is that each Appellant had a well-developed sense of grievance and considered the POCA proceedings to be unjust and driven by persons acting in bad faith to destroy and remove the fruits of the Appellant's working lives. Anyone hoping to find a reasoned approach to rebutting the POCA assumptions, such as could and should be put together by a lawyer acting for either Appellant, would look in vain. This is not to suggest that there unrepresented Defendants are not subject to the same POCA assumptions or the same need to rebut them: but it would have been entirely clear to any lawyer reading the materials submitted by the Appellants that either (a) they had failed to grasp the nature of the task before them in the POCA proceedings given the very high value of benefit for which the prosecution were

contending and the vast disparity between benefit and identified assets or (b) they had appreciated the nature of the task before them but were deliberately applying a litigation wrecking ball to try and demolish the proceedings. While the latter is possible, the former would, in our judgment, be the more natural interpretation, though the timing of Mr Zuman's sacking of his legal team immediately before his response was due may justify scepticism.

The POCA Hearing

24. On any view, the three day hearing did not run smoothly. Because of our conclusions on the disposition of this appeal it is possible to outline the difficulties relatively shortly. Two logistical problems arose. The first was that Mr Zuman was positioned in the dock which made him difficult to hear as well as being inconvenient for the management of his papers. The second was that Mr Khan was assisted by an interpreter who, for whatever reason, appears to have been frequently inaudible and not to have managed to translate the proceedings satisfactorily. Early on, the Judge gave a very concise summary of the procedure that would be followed, including that the appellants would be able to ask Mr Causier questions and that Mr Zuman would have his papers available when he did. He then told the Appellants that he would not "permit questions that relate to the trial." In further preliminary remarks the judge said that, when all the evidence was concluded, he would adjourn the case "and ask the prosecution to put their submissions in writing and serve it on the court and the other parties, particularly in this case where we have two unrepresented defendants who I will then give some to, to respond to me in relation to anything they want to say about it." In opening the case, counsel for the prosecution referred to hidden assets in terms that would have been clear to a lawyer but did not explain the nature of the inference or the onus that rested on the Appellants. At the conclusion of his opening, counsel referred in passing to the POCA assumptions, again in terms that would have been clear to a lawyer but without attempting to specify what they were.

25. On day 2, at the conclusion of Mr Causier's evidence in chief, the Judge told Mr Khan that it was his opportunity to ask the officer any questions and asked him "Do you have any questions of the officer?" Mr Khan replied that he hadn't prepared any paperwork. After some inaudible words, Mr Khan said "I want to just speak some truth about this case." The Judge demurred and, after some over-speaking, said:

> "Will you please do me the courtesy of listening to me. We have had plenty of hearings in this case and I have explained to you during those hearings that you will not be permitted in the course of these proceedings to go back over any of the stuff that was ventilated in the trial These are Proceeds of Crime Act proceedings and the issues are very different. I am not going to permit you to re-open matters that were canvassed in the course of the trial unless they have a direct bearing on any issues that I need to decide."

26. Although not transcribed, it is evident that the Judge understood Mr Khan to have suggested that Mr Zuman go first. He therefore asked "Mr Zuman, do you object to asking Mr Causier questions now?" To which Mr Zuman replied that he did not have any questions. After a short discussion which is inadequately transcribed because of

inaudibility, it is apparent that the position was reached that Mr Zuman would go first. Mr Zuman then said:

> "Before I start questioning, can I ask you a question please. The question is I have never been in this situation before and no one has explained the procedure to me. So (several inaudible words) no one has explained the procedure to me about this conversation."

The judge responded:

> "The procedure has certainly been explained to you on at least one occasion that I can remember by me. You have also had the opening from Mr Smith which sets out those issues that the court is going to be concerned with and the procedure is that this is the financial investigator who has served the statements on you. You can ask him any questions about anything that he has asserted in any of those statements as far as your case is concerned. When that has happened, thereafter you will have the opportunity, if you wish to do so, to give evidence about any of the issues that concern you and arise out of the statements that you have had. You have had months to prepare this."

Mr Zuman replied "I am prepared but I just don't know the procedure"

27. After further discussion, the Judge said, referring again to the written opening, that prosecution Counsel had "produced the document which sets out the procedure and sets out the issues this court is going to be concerned with. I assume you have read that." To which Mr Zuman replied that he thought he had missed that point. The Judge's reply was:

> "That is your problem, quite frankly. You have had it. You had months to prepare. I am not going to delay these proceedings."

28. Mr Zuman replied: "I am prepared. I'm just saying I just don't know the procedure." The Judge's response was:

> "You carry on and ask the questions you want to ask of the officer and I will explain. I will interrupt if I think the questions are not relevant or you are not following the procedures. I am going to give you plenty of latitude."

29. While the Judge's determination to proceed if possible is understandable and reasonable, it should have been apparent by now (based upon the documents he had submitted and the immediate exchange we have set out above) that Mr Zuman did not understand the procedure he was expected to follow. The Judge was correct to say that he had had months to prepare, and we have not forgotten that Mr Zuman is to be held responsible for his decision to appear unrepresented. It was therefore understandable for the Judge to assert that a lack of understanding of the procedure

was Mr Zuman's problem; however, in fairness to Mr Zuman, it is right to point out that neither the written opening nor any other document had set out the procedure to be adopted (as opposed to the issues that the Court had to decide)

30. It is apparent from the transcript that there were audibility problems when Mr Zuman attempted to cross-examine Mr Causier. He started by trying to identify a document of Mr Khan's, which appears to have been Mr Khan's property schedule. He then started asking questions based on the document to try to establish dates of purchase and purchase prices, identifying what he said were errors in the investigating officers' original information. In our judgment the apparent purpose of questioning, though relating to Mr Khan's schedule, was potentially relevant to whether property had been originally obtained without recourse to fraud, which could be relevant to assessment of benefit. Mr Causier typically took the position that he was not in a position to confirm or deny information from his own knowledge because he had obtained them from different sources; and in some cases he said he didn't have the figures before him.

31. After a while, the Judge asked Mr Zuman what was the point of his questions. Mr Zuman's answer is not fully transcribed (because of inaudibility) but included that his questioning showed how he (Mr Zuman) had been defrauded. A little later, the Judge intervened to say (not unreasonably) that what Mr Zuman was doing was giving evidence and that now was not the time for doing so. As the questioning progressed, so did both the Judge's interventions, suggesting with increasing firmness that the cross-examination was inappropriate, and Mr Zuman's apparent frustration because, as he saw it, he was being prevented from asking questions that he thought important. The progressive exasperation of both is apparent from the following exchanges:

> "JUDGE CARR: Ask him questions.
>
> MR ZUMAN: That will be on the – it is important that the (inaudible) are there.
>
> JUDGE CARR: I do not care what you think is important. What is important is what I think is relevant and I am telling you, please, to ask questions of the officer, not make statements.
>
> MR ZUMAN: Your Honour, I apologise if I said anything wrong. That's not my intention.
>
> JUDGE CARR: Right. Let us ask him questions, shall we, instead of making statements?"

32. This was shortly followed by:

> "JUDGE CARR: No. You are not asking him questions. I know what the document says. He knows what the document says. Ask him a question about it.
>
> MR ZUMAN: With the greatest of respect, your Honour. You are rushing me. This is important to me, your Honour.

> JUDGE CARR: I do not care whether it is important to you. What is important, Mr Zuman, with respect, is what is important to the issues the court has to decide. I repeat that which I said earlier. I am not going to sit here and listen to a rehash of the criminal trial. These are different proceedings and we will concentrate –
>
> MR ZUMAN: (Overspeaking)
>
> JUDGE CARR: -- we will concentrate on what is relevant to the issues that this court has to decide. Now I repeat. Please ask him questions based on the statements that he has served and the evidence that he has given."

33. A little later, the following exchange occurred:

> "JUDGE CARR: You do not need to answer that either.
>
> MR ZUMAN: Why is that wrong, your Honour?
>
> JUDGE CARR: Because it is not relevant.
>
> MR ZUMAN: It is relevant, your Honour, because it is part of the case.
>
> JUDGE CARR: No. You think it is relevant. I do not. I decide what is relevant and what is not. You do not have to –
>
> MR ZUMAN: You decide (Overspeaking) (Several inaudible words) isn't that right.
>
> JUDGE CARR: You do not have to answer that. I will not. Move on.
>
> MR ZUMAN: Your Honour, isn't that what your Honour has done? Please say (Inaudible) and I ask you a question, as a human being to a human being, your Honour. Why are you not answering what I say to you?
>
> JUDGE CARR: Do you want to move on and ask him a question, please.
>
> MR ZUMAN: Your Honour, I am a human being and so are you, your Honour. I feel, I feel that you are not answering what I am saying to you.
>
> JUDGE CARR: I am trying to explain, and I have explained on several occasions, what the purpose of DC [Causier] giving evidence is.

> MR ZUMAN: It is an important question. If you (Inaudible) an issue, you are saying to me – you know, what I am saying and I have said it to you (Several inaudible words).
>
> JUDGE CARR: I am saying it to you it is not relevant. You carry on and ask him the questions."

34. Shortly after that exchange the Judge said that Mr Zuman could have another 35 minutes to question the officer, to which Mr Zuman responded that he had "easily another few hours". The Judge then said:

> "You have not. You have until 1.00 pm and I exercise the powers that I have under the Criminal Procedure Rules to curtail unnecessary questioning and cross-examination."

35. Three things emerge from the full transcript up to this moment. First, Mr Zuman had no idea how to cross-examine on the issues. Second, the Judge was faced with an extremely difficult (though by no means unique) situation of a (convicted) defendant who was taking the Court's time with an approach that was not structured in accordance with normal proceedings conducted by lawyers so as to concentrate on the POCA issues. Third, although the Judge had at an earlier stage said that he would "explain", in fact he did not do so but merely stated that matters were irrelevant and that Mr Zuman should not ask them.

36. In his remaining time, viewed objectively, Mr Zuman went completely off the rails, attempting to read part of one of his submitted documents that denied the power of the Court or the Judge to adjudicate on the POCA proceedings. He tried to interrogate the Judge about his authority to sit. As the Judge (correctly) refused to engage with or answer Mr Zuman's questions, it is apparent from the transcript that Mr Zuman became more and more agitated, until he sat down.

37. After lunch Mr Khan attempted to cross-examine Mr Causier. The same difficulties arose because he asked questions that the Judge ruled were to do with issues at the trial rather than issues in the POCA proceedings, a distinction which Mr Khan did not appear to understand. The Judge repeatedly asked Mr Khan if he wanted to ask the officer questions and intervened when questions were then asked which did not go to issues in the POCA proceedings. When, in the course of one of these exchanges, Mr Khan asked what questions he could ask Mr Causier, the Judge replied, simply: "that is a matter for you." As with Mr Zuman, what he did not do at any stage, was to identify the issues which he had to decide in the POCA proceedings or to explain why the questions Mr Khan was asking were irrelevant other than to state that they related to issues that had arisen at the trial. The complete mismatch between the understanding of the Judge and the Appellants is encapsulated in an exchange with Mr Khan right at the end of his attempted cross-examination:

> "JUDGE CARR: No, stop. I am going to give you one last opportunity and I repeat, as I have done not only today on several occasions but on previous hearings as well, the jury's verdict in relation to this case is not what these proceedings are all about. Unless you ask relevant questions of this officer, I am going to stop you asking any further questions.

> MR KHAN: You are seeking permission to rob me and I'm not giving you that permission to rob me."

38. After the conclusion of the crown's evidence the Judge said:

> "Mr Zuman, Mr Khan, the stage of the proceedings has now been reached where, if either or both of you wish to, you may give evidence. The legal authorities indicate that it is unlikely that if somebody in a Proceeds of Crime Act proceedings does not give evidence, it is unlikely that the judge will be able to give effect to anything other than the evidence that is before him or her and namely that which is in the statements.
>
> So, what I am going to do is I am going to adjourn this case now until tomorrow morning. Whether or not or you do decide to give evidence, there will be an opportunity, even if you do not decide to give evidence, for both of you to address the court in relation to any issues that have arisen in the course of the case. The fact that, for example, you do not give evidence does not mean that you will not have a final opportunity to address me. You have the rest of the afternoon to think about that and then tomorrow morning I will ask you first, Mr Zuman, whether you wish to give evidence. If you do, you can come forward and give that evidence. Then that will render you liable to cross-examination, not only by the barristers representing Ms Hanna and Mr Mughal, it will also render you liable to being asked questions by Mr Smith for the prosecution. Do you understand that? Do you understand that?"

39. The following morning, the Judge attempted to ask Mr Khan if he intended to give evidence. The interpreter told the Judge that Mr Khan did not know what to do. When asked if Mr Khan has understood what the Judge had explained the previous afternoon, the interpreter told the Judge that he did not. The Judge then said:

> "I am going to explain again what it is that I told you yesterday. That is you now have the opportunity to give evidence if you wish to do so. You have a right not to give evidence or to give evidence; it is your choice. However, if you do not give evidence -- no, please translate to him and let me finish and then he can say whatever he wants, providing it is relevant. If you do not give evidence, then it is going to be very difficult for any court, including me, to displace the assumptions that the law entitles the prosecution to make. If you do give evidence, then those barristers, both for your co-defendants and for the prosecution, will have a right to ask you questions. It is entirely your choice. I am going to ask you one more time, do you wish to give evidence"

40. After explaining that it would be open to Mr Khan to call witnesses whether or not he himself gave evidence, the Judge asked three times if Mr Khan wished to give

evidence. The interpreter's answers have not been transcribed in full but it is evident that Mr Khan wanted to refer back to the trial and to assert that he had not committed any fraud. The Judge took this as a "non-answer" and moved on to Mr Zuman. In the course of a further exchange that demonstrates a clear lack of mutual understanding between Judge and Defendant, the Judge said:

> "You have the opportunity now to give evidence. That is your choice, the same explanation as I have just given to Mr Khan and which I gave yesterday applies. Once all the evidence has been called, as I explained on the first day, I am going to ask Mr Smith to set out the prosecution's position in writing. I will make sure that is sent to you and I will then give you the opportunity to reply to that in writing. That will be your opportunity to make any points that the prosecution have made against you. But at this stage, it is a question of whether or not you want to give evidence."

41. Rather than giving relevant evidence, Mr Zuman proceeded to read out a section of one of his documents that purported to withdraw any authority for the Court to adjudicate on the POCA proceedings. The Judge stopped him because it was nothing to do with the issues he had to decide.

42. The Judge adjourned the proceedings after the conclusion of the evidence, as he had said he would. The prosecution's closing submissions were dated 6 September 2017 and were in conventional form. The Appellants responded in October 2017, each submitting to the Court a document in similar form entitled "Notice of Request to Cease Harassment, Persecution and Abuse of Process with Malicious Intent in Order to Avoid a Serious Injustice."[1] Put shortly, each lashed out at the perceived failings of those involved in the trial and POCA proceedings, making very serious unsubstantiated allegations in all directions. The great majority of each of these documents was, viewed objectively, quite irrelevant to the issues to be decided on the POCA proceedings. That said:

    i) Mr Khan (at [153]) identified the various statements that he had provided since 2011 as reliable sources of information and listed his declared income (at [166]);

    ii) Mr Zuman (at [10]) referred back to the information he had provided in 2011, restated (at [50]) that the rental income from the properties had been used to service the mortgage payments and the other costs associated with running the business, and (at [170]) referred to his allegedly legitimate income as declared between 2004/2005 and 2016/2017.

The Judge's Decision

43. The Judge gave judgment on 4 January 2018. He summarised the relevant provisions and principles. He referred to the fact that neither Appellant had given evidence either at the trial or in the POCA Proceedings. Having cited from *Benjafield* [2002] Cr App R 72, 75 that "the fact that the appellant did not testify is, however, a

[1] We are informed that they were not provided to the Prosecution.

powerful point against him", he said that "[w]ith the greatest respect to the three first named defendants, assertions are not evidence." In the absence of evidence from the Appellants he accepted the submission that the defendants had jointly obtained property in the sum of £3,174,091.89 as alleged by the prosecution.

44. Moving on to the application of the POCA assumptions in relation to property transferred and property held, the Judge held that there was no evidence that the assumptions made by the prosecution had been shown to be incorrect or that there would be a serious risk of injustice if the assumption was made in each case. In relation to property held the Judge said that "there is nothing in DC Causier's statements in relation to [the Appellants] that indicates that either defendant had a declared legitimate income that could explain the ownership of the properties or cars set out." He accepted the evidence of Mr Causier and, accordingly, declared the benefit for the Appellants to be £8,010,811.05 for Mr Khan and £4,058,852.02 for Mr Zuman.

45. Turning to the recoverable amount, the Judge said:

> "None of the defendants in relation to whom I have declared a benefit have given any evidence to demonstrate that the available amount is less than the benefit, let alone that it is nil. There is simply no evidence. I have had no assistance from any of the defendants. They have each failed to discharge the burden upon them. Accordingly I make confiscation orders in the sums already indicated. There will be 3 months to pay, the maximum permitted by section 11. There will be default terms – … 9 years for Zuman and 10 years for Khan."

46. That was not the end of the POCA proceedings before the Court below. In late April 2018, Mr Kelly QC, who was now representing both Appellants, made an oral and written submission that HHJ Carr should recuse himself from hearing any further matter connected to the case. He relied upon (a) matters arising during the trial, (b) matters relating to the obtaining of a restraining order in October 2015, (c) the course of the confiscation proceedings, and (d) the last paragraph of the Judge's confiscation judgment, which we have set out above. In relation to the confiscation proceedings, the Appellants relied upon passages (some of which we have set out above) which they submitted would give rise to a perception of bias.

47. The application was opposed by the prosecution and rejected by the Judge. In his judgment refusing to recuse himself, the Judge pointed to steps he had taken to accommodate the unrepresented Defendants. Specifically he referred to (a) having delayed cross-examination by Mr Zuman because he had not been supplied with his papers from prison, (b) having explained the procedure to the Appellants, (c) asking DC Causier to speak louder so that he could be heard, (d) granting more time when it was needed, and (e) providing for sequential exchange of submissions in writing.

48. The date on which the Judge gave judgment refusing to recuse himself is not known to this Court. However, on or about 17 May 2018 he sent an email to prosecution Counsel which, without giving reasons, stated: "Since delivering my judgment in relation to recusing myself, I have reconsidered my position and have decided to

recuse myself." He asked prosecution Counsel to forward his email to whoever was representing the Appellants.

The appeal process

49. The appeal process has not proceeded any more smoothly than the hearing below. Original grounds of appeal were submitted in February 2018 in essentially identical terms for each Appellant. We mean no disrespect to the solicitor advocate who prepared those original grounds when we describe them as distinctly thin. They included a request for an extension of time in which to serve perfected grounds after a legal team had had the opportunity to review all the documents and indicated a wish to obtain a Forensic Accountant's Report and expert valuations of the Appellants' properties to support a submission that the benefit figure was excessive in each case. A respondent's notice was served in May 2018, drafted by Leading Counsel who had represented the Crown below. The single judge refused permission.

50. The Appellants renewed their applications to the full court on 18 February 2020. By then, as now, Mr Khan was represented by Mr Farrell QC and Mr Zuman by Mr Kelly QC. It is apparent from the transcript of the hearing that the proposed POCA application was not ready. Perfected grounds had not been served and Counsel told the Court that they needed more time to do so. Davis LJ directed that perfected grounds on the POCA issues should be submitted within four weeks, which was a final order.

51. Mr Khan's perfected grounds, which were drafted by Mr Farrell QC, raised the following grounds of appeal:

    i) *Failure to accommodate the defendant's lack of legal representation*. It was submitted that the Judge should have given Mr Khan adequate warnings about the need for legal representation, should have given him appropriate guidance during the hearing so that he understood the relevant law and procedure and was able to participate fully; and should have taken steps to ensure that Mr Khan understood the relevant matters. In briefest outline, it was submitted that the Judge should have tried to assist the unrepresented Mr Khan in the conduct of his defence, in particular when he was examining or cross-examining witnesses or giving evidence himself.

    ii) *Error in calculation of property values for the purpose of finding the benefit figure*. It was submitted that the prosecution and judge had failed to deduct from the various property values the inevitable costs of sale.

    iii) *Error in calculation of rental income for the purpose of finding the benefit figure*. It was submitted that it was wrong for Mr Causier to assume and for the Judge to accept that all properties have been fully rented during periods where no rental invoices existed.

    iv) *Error in finding that properties were jointly obtained for the purpose of calculating the benefit figure.* Mr Khan challenged the legal basis for Mr Causier's assertion and the Judge's acceptance of joint benefit.

v) *Failure to account for repayments of principal in finding the benefit figure.* It was alleged that the Judge failed to take into account repayments of the principal capital sums outstanding from time to time.

vi) *Error in approach to re-mortgages for the purpose of finding the benefit figure.* Mr Khan identified that, in relation to 11 Clent Villas, 4 Holly Grove and 222 Tiverton Road, the properties had already belonged to the Defendants before the relevant or indicted period but was re-mortgaged during the indicted period. It was submitted that, in those circumstances, the benefit from the re-mortgage was not the property itself but rather the loan obtained from the bank. Accordingly neither equity in the property nor rent received after the re-mortgage should not be treated as criminal property.

vii) *Misdirection as to defendant's failure to give evidence in finding the available amount.* It was submitted that the Judge erred in considering himself bound to hold that the available amount covered the entirety of the benefit simply because the Defendant had not given evidence, relying upon *McIntosh* [2012] 1 Cr App Rep (S) 60.

viii) *Default sentence manifestly excessive.*

52. Mr Zuman's perfected grounds, which were settled by Mr Kelly QC, raised two main reasons for setting aside the Confiscation Order. "First, procedurally, the hearing was defective and thus unfair. Secondly, the reasoning behind the confiscation order is flawed." More specifically, the following grounds were advanced:

i) With considerable understatement, it was submitted that "[Mr Zuman's] self-representation did not assist a proper determination of the issues." It was submitted that the Judge ought to have tried to persuade the defendant to seek representation in order to dispense with the issue fairly and property and, perhaps more importantly, should have explained to Mr Zuman how to go about discharging the burdens imposed by the POCA assumptions. The effect of judicial impatience and a failure to explain the procedure properly was submitted to have led to documentation not being properly examined in a process that became arbitrary and lacking in proper scrutiny;

ii) The calculation of particular benefit was submitted to be flawed in a number of ways including that re-mortgage advances were treated in the same way as mortgages advanced on purchase and rental monies were inflated (presumably by assuming full assumed rental throughout);

iii) The criminal lifestyle assumptions were challenged on the basis that the judge made adverse inferences in relation to all property acquired over the 27 year development of their property portfolios, and did so without taking any account of incurred expenses;

iv) The calculation of the available amount was criticised (relying upon *McIntosh*) on the basis that the Court should have taken into account the whole of the evidence before it and failed to do so;

53. The renewed applications came before the Court for a second time on 29 September 2020. The judgment of the Court was given by Lewis J (as he then was). In relation to Mr Khan the Court gave permission to appeal on Grounds 2 and 6, namely the alleged failure to deduct costs of sale and the alleged error in the treatment of properties that had been re-mortgaged within the indicted period: see [51] above. Ground 1 was rejected on the basis that the Judge had explained that, if there were no contrary evidence given, it would be difficult to proceed otherwise than on the basis of the evidence before him, namely the statements made by the officer and, more generally, that there was no arguable unfairness such as to render the procedure unfair. It is not necessary to refer to the full Court's reasons for refusing permission on Grounds 3, 4, 5, 7 and 8.

54. Turning to Mr Zuman's renewed application, the full Court refused the ground alleging that the hearing was unfair "essentially for the reasons given in Mr Khan's case". Permission on the other grounds outlined above was also refused. However, the Court took the view that Mr Zuman may have wanted to raise the question of a failure to deduct the reasonable costs of selling the properties in a manner similar to Ground 2 of Mr Khan's grounds. Permission was granted to amend the perfected grounds to raise such an argument.

55. Summarising the position at the conclusion of its judgment, the Court made clear that Mr Khan's permission under Ground 2 covered the three identified properties (11 Clent Villas, 4 Holly Grove and 222 Tiverton Road) but that permission to amend would be required if Mr Khan wished to extend the argument to other properties.

56. Both Appellants and the Respondent submitted skeleton arguments in advance of the hearing listed before a different constitution of the full Court for disposition of the appeals on 16 December 2020. The Appellant's skeletons were confined to the issues on which the Full Court had given leave in September 2020 save that Mr Farrell QC now wished to extend the Ground 6 re-mortgage argument to 6 further properties in addition to the 3 (Clent Villas, Holly Grove, and Tiverton Road) that had been identified in September.

57. The Respondent's submissions included reference to *Lowther* [2020] EWCA Crim 1387, which is binding authority that is now accepted to be conclusive against the Appellants on Mr Khan's Ground 2. It holds that costs of sale fall to be deducted only against the appellants' realisable assets in calculating the available amount: they are not to be included in the calculation of the benefit figure. The Respondent's submissions also conceded the principle underlying Mr Khan's Ground 6, accepting that neither equity nor rent derived from Clent Villas, Holly Grove and Tiverton Road should have been included within the calculation of benefit from Count 1 particular criminal conduct. However, it was submitted by the Respondent that they should have been included when calculating benefit from general criminal conduct, such that there should be no change in the aggregate total benefit. In relation to the six new properties, the Respondent rejected the submission that one (306 Selly Oak Road) was a re-mortgage case and in relation to the other five (5 Bankes Road, 19 Croydon Road, 61 Alton Road, 70 Alton Road and 36 Bournbrook Road) submitted that the re-mortgage argument had no application because the sums for equity and rent had been brought in as a result of the POCA assumptions which had not been displaced.

58. At the hearing, this apparently clear divergence of position in relation to limited issues led to an effective expansion of the Appellants' submissions because, in answer to the prosecution's submissions that the argument in relation to the additional properties was determined by POCA assumptions, Mr Farrell submitted that there had been material to rebut the assumptions which had not been taken into consideration by the Court below. Mr Kelly indicated his intention to pursue a similar line, if permitted to do so. The Court took the view that these matters could not be dealt with properly "on the hoof" and gave yet further directions for the Appellant's to finalise and submit the submissions they wished to make, with opportunity for the Prosecution to respond and for a list of issues to be prepared for the next hearing.

59. The parties complied cooperatively with these directions as a result of which Mr Kelly nailed his colours firmly to the mast: he now wished to revisit the decision of the full court to refuse permission on Mr Khan's Ground 1 i.e. that the POCA hearing was procedurally unfair and should be set aside.

The present appeal

60. In the light of discussions between the parties, it was agreed that the costs of sale argument fell away in the light of Lowther. The remaining issues for this appeal were agreed to be as follows:

Mr Khan
***Re-mortgage* ground:**
First issue: Should the value of fraudulent re-mortgages on 11 Clent Villas, 222 Tiverton Road and 4 Holly Grove be included in AMK's Count 1 (particular) benefit?
Second issue: Should the value (equity) of 222 Tiverton Road and 4 Holly Grove and the rental thereon have been included in AMK's benefit from general criminal conduct?
Third issue: If the Court concludes that (i) the judge erred in calculating the benefit figure but (ii) had the judge not erred, the correct figure would have been the same or higher, does s.11(3) Criminal Appeal Act 1968 mean that the appeal should be dismissed?
The *new re-mortgage* ground:
Issue: Should permission be granted to argue that the equity and rental payments in respect of 19 Croydon Rd, 61 and 70 Alton Rd, and 5 Bankes Road were wrongly included in AMK's general benefit figure and if so should AMK's confiscation order be reduced on this account?

and

Mr Zuman
***Revisited* ground:**
First issue: Is CrPR 36.15 is engaged?
Second issue: Are these "exceptional circumstances"?
Third issue: Has any a material error of law or fact was made to justify this Court reconsidering these grounds?
***Re-mortgage* ground:**
First issue: Should leave to appeal be granted?
Second issue: Should the value of fraudulent re-mortgages on 11 Clent Villas, 222 Tiverton Road and 4 Holly Grove be included in SZ's Count 1 (particular) benefit?
Third issue: Should the value (equity) of 11 Clent Villas and the rental thereon have been included in SZ's benefit from general criminal conduct?
Fourth issue: If the Court concludes that (i) the judge erred in calculating the benefit figure but (ii) had the judge not erred, the correct figure would have been the same or higher, does s.11(3) Criminal Appeal Act 1968 mean that the appeal should be dismissed?

61. At the hearing, the attempts to persuade the Court to permit Mr Zuman to revisit the full Court's prior refusal of permission led to wide ranging submissions that required close examination both of the decision of the Court below and, yet again, of the manner in which the Court below conducted the proceedings. Before addressing the scope of those submissions and this Court's conclusions in any detail, we remind ourselves of the relevant principles.

The legal framework

POCA

62. The provisions of POCA have been set out in full countless times and it is not necessary to repeat that exercise. In the present case, the Court is concerned with benefit attributable to both particular criminal conduct and general criminal conduct because of the inevitable finding of a criminal lifestyle. The relevant assumptions (which were summarised by Mr Causier as we have set out above) therefore fell to be made unless shown to be incorrect or unless there would be a serious risk of injustice if any assumption were made. Once the defendant's benefit has been established, that is the recoverable amount unless the defendant shows that the available amount is less than the benefit. If and to the extent that the Defendant shows that the available amount is less than the benefit, the recoverable amount is either the available amount is less than the benefit or, if the available amount is nil, a nominal amount.

63. The difficulties facing convicted criminals where the POCA assumptions apply are deliberately imposed by Parliament. They may be particularly acute in relation to property held by them at the time of conviction which they say they have held for a

long time, pre-dating the period of their convicted criminality. In *Briggs* [2018] EWCA Crim 1135 property had been held for a long time but was included by the Judge in the defendant's benefit because the second POCA assumption had not been rebutted. Upholding the decision of the Judge below, the Court pointed to the absence of a witness statement, let alone supporting documentation, to say how the Defendant had paid any deposit for the property or how he had funded mortgage repayments over a long period: see [22]. However, we do not understand *Briggs* (or any other authority to which we have been referred) to lay down prescriptive criteria for what will be necessary or sufficient to rebut either the second POCA assumption or any other of the POCA assumptions. What is required is judicial assessment on the facts of each case, always bearing in mind that an assumption shall not be made if *either* the assumption is shown to be incorrect *or* there would be a serious risk of injustice if the assumption were made. There is no reason in the statute or in principle why, in an appropriate case, it could not be possible for the second assumption to be rebutted by the provision of information showing that the property had been held by the Defendant (or someone else) for a long time. *Briggs* shows that it is likely to be difficult for a Defendant to rebut the assumption solely by reference to length of tenure, but it is not impossible in principle: it will all depend upon the facts of the case and the Judge's assessment of all available information.

64. It is axiomatic that confiscation proceedings under POCA are an extension of the sentencing hearing and are therefore criminal in nature: see *Clipston* [2011] EWCA Crim 446 at [45]. *Clipston* provides a useful overview of the principles relating to the admission of "evidence" for the purposes of confiscation proceedings. Although at first blush it would be natural to adopt the hearsay regime in the Criminal Justice Act 2003, there are formidable difficulties in treating the CJA regime as directly applicable to confiscation proceedings. POCA ss. 16-18 provide that confiscation proceedings proceed on the basis of "information" not "evidence": see *Clipston* at [55]. Second, the demanding evidential requirements for the proof of guilt are not generally transposed to post-conviction proceedings: see *Clipston* at [56]. Thus the Court may have available to it both evidence and information, both of which should be examined judicially with great care: see *Clipston* at [59]. Accordingly, the CJA 2003 hearsay regime does not apply strictly and directly: see *Clipston* at [61]. While in a given case admissibility may be a live issue, in principle the non-applicability of the CJA 2003 hearsay regime means that the Court is more likely to be concerned with questions of weight than of admissibility when considering information that has been put before it in confiscation proceedings. Where admissibility is really in issue, the CJA 2003 regime, applied by analogy, will furnish the most appropriate framework for adjudicating on such issues. When considering questions of weight, the "checklist" contained in s. 114(2) (and the matters set out in s. 116) of the CJA suitably adapted to address weight rather than admissibility will provide a valuable (if not exhaustive) framework of reference: see *Clipston* at [64].

65. It is in this context that the observations in *McIntosh* [2011] EWCA Crim 1501 at [15] should be understood:

> "[T]here is no principle that a court is bound to reject a defendant's case that his current realisable assets are less than the full amount of the benefit, merely because it concludes that the defendant has not revealed their true extent or value, or has

> not participated in any revelation at all. The court must answer the statutory question in s.7 in a just and proportionate way. The court may conclude that a defendant's realisable assets are less than the full value of the benefit on the basis of the facts as a whole. A defendant who is found not to have told the truth or who has declined to give truthful disclosure will inevitably find it difficult to discharge the burden imposed upon him. But it may not be impossible for him to do so. Other sources of evidence, apart from the defendant himself, and a view of the case as a whole, may persuade a court that the assets available to the defendant are less than the full value of the benefit."

66. It is in our judgment plain that the mere fact that a Defendant does not give evidence in POCA proceedings (whether or not he has given evidence during the underlying trial) does not preclude a finding that one or more assumptions have been shown to be incorrect. Equally, it is possible in principle for a Court to be satisfied that the available amount is less than the Defendant's established benefit, whether or not the Defendant has given evidence.

Re-opening a previous decision of the Court

67. The refusal of permission by the full Court in September 2020 determined the appeals on the Grounds that were refused.

68. The procedure to be adopted when a party wishes to re-open the determination of an appeal is now set out in CrPR 36.15(1) which provides as follows:

> "36.15.— Reopening the determination of an appeal
>
> (1) This rule applies where—
>
> (a) a party wants the court to reopen a decision which determines an appeal or reference to which this Part applies (including a decision on an application for permission to appeal or refer); or
>
> (b) the Registrar refers such a decision to the court for the court to consider reopening it.
>
> (2) Such a party must—
>
> (a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and (b) serve the application on the Registrar.
>
> (3) The application must—
>
> (a) specify the decision which the applicant wants the court to reopen; and
>
> (b) explain—

> (i) why it is necessary for the court to reopen that decision in order to avoid real injustice,
>
> (ii) how the circumstances are exceptional and make it appropriate to reopen the decision notwithstanding the rights and interests of other participants and the importance of finality,
>
> (iii) why there is no alternative effective remedy among any potentially available, and
>
> (iv) any delay in making the application.
>
> (4) The Registrar—
>
> (a) may invite a party's representations on—
>
> (i) an application to reopen a decision, or
>
> (ii) a decision that the Registrar has referred, or intends to refer, to the court; and
>
> (b) must do so if the court so directs.
>
> (5) A party invited to make representations must serve them on the Registrar within such period as the Registrar directs.
>
> (6) The court must not reopen a decision to which this rule applies unless each other party has had an opportunity to make representations.
>
> [Note. The Court of Appeal has power only in exceptional circumstances to reopen a decision to which this rule applies.]

69. The note at the end of the rule reflects established principles developed by a line of authority that includes *Daniel* [1977] QB 364, *Yasin* [2015] EWCA Crim 1277, *Gohil* [2018] EWCA Crim 140, *Rostami* [2018] EWCA Crim 1383, *Cunningham and Di Stefano* [2019] EWCA Crim 2101 and, most recently, *Court* [2021] EWCA Crim 242.

70. For present purposes it is sufficient to cite the comprehensive summary provided by the Court in *Gohil* at [129] which was citied with approval by the Lord Chief Justice in *Cunningham and Di Stefano* at [31]:

> "We venture to pull the threads together as follows:
>
> (i) The CACD has jurisdiction to reopen concluded proceedings in two situations. First, in cases of nullity, strictly so-called and distinguished from "mere" irregularities. Secondly, where the principles of *Taylor v Lawrence* [2003] QB 528 as adopted in *R v Yasain* [2016] QB 146 are applicable; thus where the necessary conditions are satisfied. For ease of reference, though not to be interpreted as a statute, the necessary conditions are:

> the necessity to avoid real injustice; exceptional circumstances which make it appropriate to reopen the appeal, and the absence of any alternative effective remedy. It is to be emphasised that these are almost invariably cumulative requirements, though not necessarily sufficient for the exercise of the jurisdiction, in that the court retains a residual discretion to decline to reopen concluded proceedings even where the necessary conditions are satisfied;
>
> (ii) Though the principles of *Taylor v Lawrence* apply in both the Court of Appeal (Civil Division) and the CACD, as underlined in *R v Yasain* the jurisdiction need not necessarily be exercised in the same way, bearing in mind both the triangulation of interests in criminal proceedings (the state, the defendant and the complainant/victim) and the general availability of the CCRC to remedy the injustice of wrongful convictions;
>
> (iii) In exercising the jurisdiction to reopen concluded proceedings, the test applied by the CACD will be the same, regardless of whether the application is made by the Crown or on behalf of the defendant;
>
> (iv) We respectfully agree with the observation of the court in *R v Yasain* that the jurisdiction of the CACD to reopen concluded proceedings is probably best confined to "procedural errors". Indeed, at least generally, we see the *R v Yasain* jurisdiction as directed towards exceptional circumstances involving (as submitted by the Amicus) the correction of clear and undisputed procedural errors "where it is simpler and more expedient for the court itself to reopen the appeal and correct a manifest injustice without the need for further litigation". Such an approach is healthy as it does not altogether exclude room for pragmatism in practice, while confining its scope to appropriately very limited circumstances, where, even if recourse to the CCRC were otherwise available, it would be a wholly unnecessary exercise. As it seems to us, fashioning the jurisdiction in this manner accords with authority, principle, practicality and policy - not least the great importance of finality in criminal proceedings.

71. The reference to confining the exercise of the jurisdiction to "procedural errors" is not an absolute prohibition on exercising it in other circumstances. We are mindful of the overarching obligation upon the Court to further with the Overriding Objective of dealing with criminal cases "justly". However, that does not give any encouragement to re-open the determination of an appeal simply because a later court takes a view of the merits of an appeal that differs from the view taken by the Court that determined it. Without attempting an exhaustive catalogue, "procedural errors" will typically encompass circumstances such as the failure to notify a party of a hearing, or where it can be shown that the determining Court did not have all the information that it

should have had when reaching its decision. Beyond such cases we bear in mind the observation of the Lord Chief Justice in *Cunningham and Di Stefano* at [32]:

> "We entirely agree with the approach of this court in *Yasain* and *Gohil* that, save for decisions that are a nullity, the usual exercise of this jurisdiction is to be confined to correcting "procedural errors" that are clear and undisputed and when there is no alternative effective remedy (*albeit we do not wish to close the door entirely on exceptional circumstances, when the lack of an alternative effective remedy, or some other reason, may lead the court to reopen a decision in order to avoid a manifest injustice*). As Gross LJ observed in *Gohil* , although the jurisdiction to reopen concluded proceedings has not been removed by the availability of recourse to the CCRC, that will almost invariably be the proper route."

72. We highlight the passage in brackets to emphasise that (a) the jurisdiction is not rigorously confined to cases involving procedural errors but (b) it is likely to be confined to exceptional circumstances when the lack of an alternative effective remedy (or some other reason) would or might otherwise lead to manifest injustice.

Expanding Grounds of Appeal

73. In *James* [2018] EWCA Crim 285, the Court gave trenchant guidance on the circumstances in which it is appropriate to allow an appellant to advance fresh grounds of appeal before the Full Court: see [14]-[37] and the summary of general principles at [38]. At [38(v)-(vi)] the Vice President (Hallett LJ) said:

> "(v) In deciding whether to vary the grounds of appeal, the full court will take into account the following (non-exhaustive) list of issues: (a) the extent of the delay in advancing the new ground/s; (b) the reason for the delay in advancing the new ground/s; (c) whether the issues / facts giving rise to the new grounds were known to the applicant's representative at the time he or she advised the applicant regarding any available grounds of appeal; (d) the overriding objective (Crim PR r 1.1), namely acquitting the innocent and convicting the guilty and dealing with the case efficiently and expeditiously; (e) the interests of justice.
>
> (vi) The application to vary would not require "exceptional leave" (by demonstrating substantial injustice) but the hurdle for the applicant is a high one. Counsel should remind themselves of the provisions of PD 39C.2 namely that "Advocates should not settle grounds unless they consider that they are properly arguable. Grounds should be carefully drafted." They should also bear very much in mind their duty to the court."

74. With these principles in mind, we turn to address the issues now raised on this appeal.

Preliminary Observations

75. It is not unusual for criminal proceedings, including POCA proceedings, to involve defendants who represent themselves. The general principle is clear: in such circumstances the Court should attempt to assist the unrepresented defendant in the conduct of his defence, in particular when he is examining or cross-examining witnesses, or giving evidence himself. As in the present case, that may present extreme challenges for the Court; but the principle still applies. One typical aspect of the challenge will be that explanations or rulings that would be appropriate and readily understood if directed to lawyers or sophisticated litigants may not be appropriate or understood if directed to an unsophisticated litigant in person. Another typical aspect of the challenge will be that unrepresented defendants may, either deliberately or through lack of understanding, pursue courses of action that are not merely irrelevant but downright provocative. As we have indicated, a person who choses to represent themselves bears responsibility for that choice; but it does not obviate the principle that the defendant may need assistance from the Court – we leave on one side the extreme example of a defendant who deliberately sets out to wreck the proceedings, where additional considerations may arise.

76. In order to assess Mr Zuman's application to re-open the previous determination of the Full Court, we have examined all the available information about the POCA hearing that led to HHJ Carr's judgment of 4 January 2018. We have reached clear conclusions based upon that examination. First, as we have said, Mr Causier's evidence was presented in conventional form and would have been readily understandable by anyone with the benefit of representation. Second, much of the content of the documents submitted by the Appellants for the hearing was positively unhelpful and irrelevant to the issues that the Court had to decide. It is easy to understand a sense of frustration on the part of the Court when faced with such material. Third, the scale of irrelevance and the terms in which it was presented indicated that neither Appellant understood the nature of the hearing in which they were engaged. Fourth, it was clear at the hearing that Mr Khan and Mr Zuman did not understand the way in which the hearing was meant to proceed or how they should set about addressing the issues and rebutting the POCA presumptions. They may have been personally responsible for the fact that they were unrepresented; but they needed help and explanation from the Court in terms that they could understand and implement. Fifth, there is clear evidence of frustration on the part of the Court and the Appellants, impatience on the part of the Court, and a continued failure of understanding despite the various interventions by the Court. Sixth, although the Judge's summaries of what was to happen that we have set out above might have been sufficient if addressed to represented Defendants, it was clear that they were not being understood and acted upon by these Appellants. As we have said, the most natural interpretation is that they did not understand them. Seventh, although the Judge said early on that he would explain and would give Mr Zuman plenty of latitude, he did not thereafter explain what was wrong with questions that he found to be objectionable or assist either Appellant in seeking to formulate appropriate and relevant lines of questioning. His response to Mr Khan, when asked what questions he could ask Mr Causier, that it was a matter for him, was an unhelpful response when dealing with an unrepresented litigant who was clearly struggling to understand the issues or to address them. We place less weight on the fact that the Judge said that, if they didn't give evidence, the Appellants would have a final chance to address him, as

he gave them that opportunity by adjourning for sequential closing submissions. Regrettably, that opportunity only served to show the unrepresented Appellants' failure to understand the proceedings or what was required of them. Eighth, we are driven to the conclusion that, in the face of what we accept was a challenging hearing, the Judge lost patience with the Appellants, as is apparent from the citations from the transcript that we have set out above.

77. The Appellants' failures of understanding were recognised by the Judge. At [5] of his judgment, he said:

> "… it seems to me that the responses received by the court from [the Appellants and one other Defendant] fail to appreciate the legislative provisions (and the law) as it applies in this case. In many documents received by the Court … three of the four defendants have time and again sought to attack these proceedings, and sought to re-litigate those matters that were raised in the course of the trial. The responses by the defendants Khan and Zuman (described as the defendants' s. 17 statements) contain – for the purposes of these proceedings – immaterial matters which, as I have indicated, seek to re-litigate complains made on their behalf in the course of the trial."

He then referred to the wide-ranging allegations to which we have referred above, but noted that none of his decisions had been challenged and that he had not been asked to recuse himself.

78. At numerous points in the judgment, having stated that "assertions are not evidence" the Judge referred to the fact that the Appellants had not given evidence. In relation to the POCA assumptions he stated that there was no "evidence" to show that the assumptions were incorrect. We have set out the Judge's paragraph which gave his reasons for holding that the available amount was not less than the established benefit: see [45] above. He did not at any stage draw the distinction between evidence and information in the context of POCA proceedings; nor did he identify or analyse any of the potentially relevant information provided by the Appellants, which we have summarised briefly in the course of this judgment.

79. The features we have outlined give cause for concern. What is exceptional about this case, in our judgment, is that the Judge ultimately recused himself. As he did not give reasons for his decision, we do not know what they were. What we do know is that the application had been made on four grounds of which one was the Judge's conduct of the POCA hearing.

The re-mortgage ground

80. The relevant day for the purposes of s. 10(8) and 85 of the Act was 1 November 2007. Some of the properties were owned by one of the conspirators before the indicted period and before the relevant day but were re-mortgaged during the indicted period by a tainted re-mortgage. The Appellants' submission is that the benefit from the tainted re-mortgage was not the underlying property itself but rather the loan obtained

from the bank. Accordingly it is submitted that the calculation of Count 1 particular conduct benefit is overstated.

81. The Full Court gave Mr Khan permission to pursue this ground in relation to three properties that were identified before it. Each of the three properties were particularised under Count 1 of the indictment. The three properties were:

i) 11 Clent Villas. It was said that the property register showed Mr Zuman to have an absolute title and that £26,000 was paid for it on 20 September 2001. It was re-mortgaged during the indictment period and rent received in the sum of £72,000 was included in the calculation of benefit. Mr Khan submitted that, since the property was owned by a co-defendant before the relevant day, it cannot have been obtained by him and the co-defendant as a result of the conspiracy. Accordingly, he submitted that the rental income could not be included as part of Mr Khan's benefit for the purposes of the POCA determination;

ii) 222 Tiverton Road. This property was purchased in 1997 by Yasmin Khan, the Appellant Mr Khan's sister. In December 2007 it was transferred to him for no consideration. The fraudulent re-mortgage application was made and the loan received in December 2008. On his instructions the loan was paid to a Mr Farooq. It was treated as a tainted gift in the calculation of benefit from Particular Criminal Conduct;

iii) 4 Holly Grove: This property was purchased by Mr Zuman in 2002 for £141,000. In December 2007 it was transferred for no consideration to Mr Khan's brother and a re-mortgage application was made in the sum of £207,699. It was the prosecution case that Mr Khan controlled his brother's finances.

82. The prosecution's calculation of benefit included the net value of the properties after deducting the sums outstanding on the re-mortgages and the rent that had been received for the two properties. The aggregate of the net value and the rent were included as Particular Benefit referable to Count 1.

83. Before us the Crown concedes that neither the equity nor the rent from these three properties should have been included within the benefit from particular criminal conduct. On that basis, the Count 1 particular benefit has been overstated by £543,831. However, the Crown submits that they are correctly included when calculating benefit from General Criminal Conduct, either pursuant to the "property transferred" or the "property held" assumptions raised by ss. 10(2) and 10(3) of the Act. As presented to the Court below, the three properties were treated as jointly obtained benefit; but if the properties are to be included as general criminal conduct benefit, then 222 Tiverton Road and 4 Holly Grove are to be attributed to Mr Khan and 11 Clent Villas to Mr Zuman. In addition, the Crown submits that the proceeds of the fraudulent re-mortgages themselves (£433,900) should have been included when calculating the Count 1 (particular) benefit for each Defendant. The net effect of these adjustments, according to the Crown, is that Mr Zuman's confiscation order should be quashed and an order in the lesser sum of £4,010,169 substituted in its place. It submits that the adjustments lead to no net reduction in Mr Khan's benefit and that, accordingly, the appeal should be dismissed.

84. We accept that the concession by the prosecution that "where the real property was already owned and rented, neither can be said to have been obtained "as a result or in connection with the fraudulent loan" as required by s. 76(4) of the Act" is correctly made. Accordingly we agree that neither the equity in nor the rent received for the three properties should have been included as benefit from particular criminal conduct.

85. That disposes of the underlying point raised by the Appellants. However, the Crown's submissions raise a new point: it submits that the concession, which we have accepted to be correctly made, necessarily has the consequential effect that the rent and equity from the properties should have been included in the benefit from general criminal conduct by operation of the s. 10(2) and 10(3) POCA assumptions.

86. The question whether the rent and equity from the three properties should be included as benefit from general particular conduct is a question of fact in the case of each property. The facts relating to each property are different (as they are with the additional properties that Mr Khan now wishes to raise). The first question is whether the rent and equity from these three properties trigger the assumptions. On the information that is available to this Court they do. 11 Clent Villas haw been owned by Mr Zuman throughout. He has therefore held it "at any time after the relevant day" for the purposes of s. 10(3) and rent received since the relevant day has been transferred to him within the meaning of s. 10(2). For similar reasons, Mr Khan has owned 222 Tiverton Road since the date of conviction and rent received by him since the relevant day has been transferred to him within the meaning of s. 10(2). The transactions we have briefly outlined in relation to 4 Holly Grove give rise to the inference that the property has been held by Mr Khan and that rents received by him since the relevant day fall within s. 10(2).

87. The next question is whether this Court should make the assumptions for which the Crown contends. The Court of Appeal is not a fact finding court. Had the rent and equity from three properties been included as benefit from general criminal conduct in the Court below, the burden of showing that the assumptions should not be applied on one or other of the grounds listed in s. 10(6) would have rested on the appellants. However, the Judge made no finding on this point in relation to the three properties because they were wrongly included as Count 1 particular benefit. The question, therefore, is whether this Court can be sure that the assumptions should apply. Given the approach adopted by the Judge overall, it seems probable that he would have held that the assumptions were not rebutted if the rent and equity from the three properties had been included in general criminal conduct. However, the reason the Judge gave for not disapplying the assumptions in relation to other property that *was* included in Mr Causier's schedules of benefit from general criminal conduct was that there was no evidence that the assumptions had been shown to be incorrect. This led directly to his conclusion that there was no evidence of a serious risk of injustice if the assumption were made.

88. We are unable to accept that there was *no evidence* to show that the assumptions would have been incorrect if applied to the three properties that were wrongfully included as Section 1 particular benefit. We have referred to *Briggs* and the difficulties that a defendant may face at [63] above. We recognise as entirely possible that, if a fact finding court were to consider the evidence and information that was relevant and before the Court below, it would conclude that it was inadequate to

displace the assumptions either on the basis that they were shown to be incorrect or because there would be a serious risk of injustice if the assumption were made. However, that is quite different from concluding that, in a case where the fact finding analysis should have been but was not carried out by the Court below, the Court of Appeal can safely apply the assumptions as if it were a fact finding Court or could be certain that every fact finding Court that directed itself properly must necessarily have concluded that the assumptions should apply.

89. For these reasons, we are not prepared to accede to the Crown's submission that we should apply the assumptions and recalculate the benefit attributable to each Appellant. Mr Khan's submissions on the re-mortgage ground for which he has permission therefore succeed: we would quash the judge's order against him and remit the case to the lower Court for re-determination by another Judge.

90. Mr Zuman's case is essentially identical to that of Mr Khan on the re-mortgage ground. This was recognised by the Crown which submitted that the Court should quash his confiscation order and substitute a lower figure. We agree that the confiscation order should be quashed; but we consider that there is a serious risk of injustice unless we remit his case as well as Mr Khan's for re-determination by another Judge.

The new re-mortgage ground

91. The additional properties to which Mr Khan now wishes to apply the same submissions as the original three properties are 5 Bankes Road, 19 Croydon Road, 70 Alton Road, 61 Alton Road. Leave is required to advance this new ground.

92. The application is made on the basis that these four properties are indistinguishable in principle from the original three. However, these properties were treated as giving rise to general criminal conduct benefit and were not included with the original three as giving rise to Count 1 particular criminal conduct benefit. They have therefore not been mis-attributed in the same way as the original three. The second feature, which flows from the first, is that they are included within the Judge's ruling that there was no evidence to show that the assumptions were incorrect in relation to them and no serious risk of injustice. Furthermore, the Crown submits that, if any adjustment is to be made, then the sum of the mortgages obtained on these properties should have been included as benefit obtained by Mr Khan's general criminal conduct pursuant to the "property transferred" assumption under s. 10(2) of POCA.

93. As we have indicated, we do not accept that there was no evidence relevant to the possible disapplication of the POCA assumptions. For the three original properties, where the Judge had not purported to consider the issue, that justifies quashing the confiscation orders for the reasons we have given. With some hesitation, we have come to the conclusion that leave should be given and the appeal in respect of these three properties be allowed because the Judge does not appear to have appreciated that the four additional properties were properties of long-standing which could be said to require separate consideration for that reason. As it is, the Judge appears to have adopted the approach that, with any properties included within the schedules of benefit from general criminal conduct, there was no evidence for him to consider. That was wrong, for the reasons set out earlier in this judgment. We make it clear

that, as with the three original properties, we are not determining what the answer should be when all relevant information is weighed by a fact finding court.

94. We therefore give leave to rely upon the additional four properties and, in relation to them, would also remit the case for reconsideration by the Court below before a different judge.

Revisiting the determination of the Court below

95. Since we have decided to quash the confiscation orders and to remit the case for a new determination, it is not necessary for the Appellants to rely upon this ground in order to achieve their purpose. However, in deference to the extended arguments that were advanced at the hearing we have examined the underlying materials and express our conclusions as shortly as possible.

96. We have been unable to identify significant materials that are before us but were not before the Full Court in September 2020 when it determined not to give permission on Ground 1. There is therefore no question of a procedural irregularity that could justify re-opening the Full Court's determination. We have identified points of concern in the way that the hearing was conducted; but we have no reason to think that they were not taken into account by the Full Court when reaching its determination. With one possible exception, therefore, the proper application of the principles that we have outlined above, would lead us to conclude that intervention by this Court would not be justified.

97. The possible exception is concern about the Judge's approach to the available amount. Even if it were accepted that in all other respects the judgment of the Court below were unimpeachable, the submissions before us focused with increasing clarity on the Judge's reasons for holding that the available amount was no less than the sum established as each Appellant's benefit. The Judge's bald statement that there was simply no evidence on that point was, in our judgment, wrong. It was true that neither Appellant gave evidence either at trial or during the POCA hearing; but on a proper reading of the information that they had provided and a proper understanding of what information could be admissible in POCA proceedings, the bald statement excluded consideration of admissible materials on the basis of which a Court properly directing itself could have concluded that the available amount for each Appellant was significantly less than the established benefit. The gist of all the information that each Appellant provided was that the properties, bank accounts and other assets that they had identified were their only assets. Nor was this inherently implausible so as to justify it being dismissed out of hand. As we have said, the Court of Appeal is not a fact finding court. We therefore do no more than say that, on the information that has been provided to us, there was information available to the Court below that could have supported a finding that all of the Appellants' economic activity was bound up with the purchasing, renovation and letting of properties and that the properties they had identified from 2011 onwards were or had been their only properties. If that evidence were to be accepted, then it would be open to the fact finding Court to hold that the available amount was materially lower than the established benefit.

98. As submissions before us focused on the available amount, the Court asked Mr Evans QC what it should do if it was satisfied that there was evidence that the available means were significantly less than the calculated benefit. His answer was that we

should remit the case to the Court below or reach our own available assets figure. We respectfully agree with and endorse that response. In a note submitted after the hearing, for which we are grateful, Mr Evans submitted that, if the Court concluded that the Judge erred in his approach to the recoverable amount, it may either (i) quash the confiscation orders made and make such an order in substitution as we consider appropriate or (ii) remit the matter to the Crown Court to proceed afresh (subject to any directions). He proposed as a pragmatic outcome that the appropriate course would be to make an order in the sums of the identified assets (i.e. £4,500,310 for Mr Khan and £1,731,250.20 for Mr Zuman). He made clear that the Respondent does not invite the Court to remit the matter to the Crown Court.

99. Mr Evans' proposal has the advantage of elegant simplicity, but is not agreed by the Appellants.

100. In the light of the submissions made to us and our examination of the materials that were before the Judge below, we are satisfied that there was evidence and information that the available assets were significantly less than the calculated benefit. We are, however, conscious that we are very close to, if not within, the scope of Mr Farrell's original ground (vii), on which the full Court refused permission in September 2020. Rather than engage in sophistical arguments to try to demonstrate a lack of overlap, we consider it preferable and right to grasp the nettle and to hold that this is an exceptional case where the lack of an alternative remedy should lead us to re-open the decision of the September Full Court in order to avoid what appears to us to be, at least potentially, a manifest injustice. As we have recognised in our summary of the applicable principles, a case must properly be characterised as exceptional before the Court will re-open concluded proceedings: the mere fact that the later court might have (or even would have) come to a different conclusion is not sufficient. While we rely upon our assessment of the materials we have had to consider, we are significantly influenced in our assessment that this case is exceptional by the prosecution's (entirely proper) concession that, if we were to be satisfied that there was evidence that the available means were significantly less than the calculated benefit (which we are), we should remit the case to the Crown Court.

101. In our judgment the Crown's concession justifies the conclusion that this is an exceptional case, which in turn justifies reopening the earlier determination of this issue. We do not consider it is open to us to settle on the identified assets, as suggested by Mr Evans QC. Rather, we consider that it is necessary to remit the case to the Court below on this ground also.

Conclusion

102. For the reasons we have set out above, we quash the confiscation orders made below and remit the case to the Crown Court for fresh determination by a different Judge. We make clear that, subject to the directions we give in a moment, the fresh determination will be a hearing de novo: arguments are not limited to those which have caused us to remit the case.

103. The directions we propose to give (subject to any further submissions from Counsel) are as follows:

i) The confiscation orders made in the Court below are quashed.

ii) The case is remitted to the Crown Court at Birmingham to be tried de novo by another Judge;

iii) Subject to (iv) below, the starting point for the new POCA proceedings shall be the s. 16 Statements of Mr Causier dated 3 February 2016 in the case of each Appellant;

iv) There shall be a directions hearing before the Crown Court to be arranged as soon as reasonably practicable and, in any event, within 28 days of the date of this Judgment. The Crown Court at that hearing shall give all necessary directions for the future conduct of the POCA determination. Without prejudice to the generality of the foregoing, the directions to be given by the Crown Court shall include (a) whether the s. 16 Statements of Mr Causier dated 3 February 2016 should be amended (and, if so, how) or superseded by new s. 16 Statements and (b) timetabling;

v) The determination of the Crown Court on the remitted hearing shall not exceed £8,010,811.05 in the case of Mr Khan and £4,058,852.04 against Mr Zuman. Resolution of all issues arising in the remitted hearing is otherwise at large.