Neutral Citation Number: [2022] EWCA Crim 9

Case No: 201903074 B2, 201903111 B2 & 201903120 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM SOUTHWARK CROWN COURT
His Honour Judge Beddoe

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 January 2022

Before:

LORD JUSTICE MALES
MR JUSTICE GOOSE
and
HER HONOUR JUDGE DHIR QC

- -

Between:

REGINA	**Respondent**
- and -	
1) PAUL JOHN ASPLIN	**Appellants**
2) DAVID MARK KEARNS	
3) SALLY ANN JONES	

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- -

Adrian Waterman QC and **Eleanor Mawrey** (instructed by **Bindmans**) for **Paul Asplin**
Polly Dyer (instructed by **Hutton's**) for **David Kearns**
Martin Evans QC and **Henry Hughes** (instructed by **Edmonds Marshall McMahon**) for the **Respondent**
Kennedy Talbot QC (instructed by **Burges Salmon LLP**) for the **DAS Legal Expenses Insurance Company Limited Pension and Life Assurance Scheme**

Hearing date: 21st December 2021

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Draft Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10.30 a.m. on 13 January 2022

Lord Justice Males:

1. On 25th August 2021 we gave judgment in these confiscation proceedings on appeal from the Crown Court at Southwark following the conviction for conspiracy to defraud of Paul Asplin, David Kearns and Sally Jones. Reference should be made to that judgment ("the August judgment" [2021] EWCA Crim 1313) for the facts of the case.

2. The confiscation orders made by HHJ Beddoe in the court below were as follows:

Defendant	**Benefit**	**Realisable assets**	**Confiscation order**
Paul Asplin	£6,914,257	£5,285,300	£5,285,300 to be paid within 6 months or to serve 8 years in default
David Kearns	£2,285,006	£1,439,729	£1,439,729 to be paid within 6 months or to serve 6 years in default
Sally Jones	£2,449,961	£1,558,155	£1,558,155 to be paid within 6 months or to serve 6 years in default

3. Compensation orders were also made in the same amounts pursuant to section 130 of the Powers of Criminal Courts (Sentencing) Act 2000. The judge found that the total loss suffered by DAS as a result of the conspiracy amounted to £11,231,397, but limited the compensation order to the defendants' realisable assets. As none of the defendants had sufficient means to satisfy both orders, he ordered that compensation be paid out of sums recovered under the confiscation order pursuant to section 72(7) of the Criminal Justice Act 1988 ("the 1988 Act"), which is the applicable confiscation regime in this case.

4. In the August judgment we held as follows.

Paul Asplin

5. In the case of Asplin, we held that the judge was right to make a confiscation order based on a calculation of benefit which included the salary paid to Asplin during the indictment period, but that the salary to be included in the calculation of benefit should be a figure net of tax. We held also that the judge was right to include Asplin's pension

in the calculation of his realisable assets, but that this figure should also be a figure net of tax.

6. We refused Asplin permission to appeal against the compensation order made by the judge. That was because, although we accepted that the calculation of loss should not have included the salaries paid to Asplin, the figures appeared to be such that this did not affect the amount of compensation ordered to be paid.

David Kearns

7. Similar points arose in the case of Kearns. We held that the judge was right to make a confiscation order based on a calculation of benefit which included the salary received, but that the salary figure to be included in the calculation should be net of tax, even though (because the realisable assets were considerably less than the benefit obtained) this did not affect the amount of the confiscation order.

8. We held also that the realisable amount, and therefore the amount of the confiscation order, needed to be adjusted so that the pension figure included would be a figure net of tax. We did so, notwithstanding that Kearns had not included any issue as to pension in his grounds of appeal, because it would plainly have been unjust to make an adjustment in the case of Asplin but not Kearns.

Sally Jones

9. In the case of Jones, we dismissed the appeal. Her case is not affected by the issues with which we now have to deal although, as we shall explain, we propose to reduce the compensation payable by her.

Consequential matters

10. We directed the parties either to agree the figures and consequential orders which needed to be made to the orders affecting Asplin and Kearns as a result of our judgment or, if they were unable to do so, to provide brief written submissions identifying the points of difference.

11. The parties have been able to agree the adjustments which need to be made to the benefit figures as a result of including salary figures net of tax. They are as follows:

Defendant	**Original benefit figure**	**Reduction for tax**	**Revised benefit figure**
Paul Asplin	£6,914,257	£2,085,529	£4,828,728
David Kearns	£2,285,006	£142,581	£2,142,435

12. However, the parties have failed to agree any adjustments in respect of pensions, the prosecution case being that it is impossible to do so. In fact, the parties have moved further apart, with the appellants contending that it has become clear as a result of what has transpired since our decision that the pensions are not a realisable asset of the appellants after all, while the prosecution contend that our decision that the figures should be net of tax, which was reached without the benefit of full argument, is wrong in law.

13. Because the figures needed to be determined, no order was drawn up following the August judgment. A number of issues now need to be addressed. They are as follows:

    (1) an application by Asplin and Kearns to reopen the issue whether their pensions form part of their realisable assets;

    (2) an application by the prosecution to reopen the issue whether the pension figures to be included in the realisable assets should be net of tax;

    (3) whether the pension figures to be included in the realisable assets should be the cash equivalent transfer value (CETV) at the time of the appeal;

    (4) calculation of the appropriate confiscation figures in the light of the foregoing;

    (5) the quantum of the compensation orders against each appellant;

    (6) a variation of the party to whom compensation should be paid;

    (7) an application by the appellants for further time to pay;

    (8) an application by the prosecution for their costs of conducting the conviction and confiscation appeals to be paid out of central funds; and

    (9) an application by Asplin for the court to reconsider its refusal to certify a question of general public importance for the Supreme Court.

14. We deal with these in turn.

Do the pensions of Asplin and Kearns form part of their realisable assets?

15. As explained at [61] to [67] of the August judgment, Asplin was the prospective beneficiary of a pension fund arising from his employment with DAS. The fund was held by trustees in an occupational pension scheme. After Asplin's employment was terminated, he sought to have his fund transferred to an independent SIPP. However, before the fund could be transferred, DAS requested the trustees to postpone its distribution pending contemplated civil proceedings against Asplin. The trustees acceded to that request. The trust deed contains provisions which enable the trustees to forfeit the pension in some circumstances, in particular if there is a court order in civil or criminal proceedings requiring Asplin to make a payment to DAS. Accordingly the trustees' decision to postpone the transfer of Asplin's fund to an independent SIPP meant that the fund remained in the hands of the trustees, effectively frozen as security for any judgment which DAS might obtain in the civil proceedings against Asplin. Those civil proceedings have since been stayed pending the criminal proceedings for

confiscation and compensation orders. We understand that DAS indicated that it would prefer to seek compensation via the criminal proceedings.

16. Kearns is in materially the same position, although the figures are different.

17. The confiscation and compensation proceedings before the judge were conducted by the prosecution (i.e. by DAS) on the basis that the pension fund would be made available to the appellants by the trustees of the pension scheme to satisfy any confiscation or compensation order which might be made. In our judgment this was clear and unequivocal. Mr Martin Evans QC for the prosecution stated to the judge:

> "It is not right to say that [Asplin] has no rights in relation to [the pension]. He has a right that the trustees act in accordance with the law. His rights are suspended in that he triggered the entitlement to the CETV by letter or otherwise, confirmation of which is the letter of 15 April 2015. So his rights were obtained some years ago now and are subject to a freeze as the letter itself says from DAS.
>
> [Mr Waterman] argues that he has no interest because it is frozen. [Your Honour] has seen that passage from Marshall's statement which indicates the position. It is as plain as a pikestaff that DAS will not obstruct the realisation of that valuable asset in the event of a confiscation being made."

18. We would add that, although not spelled out in the judge's ruling, the mechanism by which the pension fund would be realised to satisfy any confiscation or compensation order would be that the CETV would be transferred to a SIPP, where it could be drawn down by the appellants to satisfy the order; a High Court restraint order is in force which would enable the parties to agree (or the High Court to impose) terms to facilitate this without risk of dissipation.

19. In these circumstances the judge held that the trustees' action had the effect of suspending Asplin's and Kearns' right to access the funds, but that it was nevertheless to be included as part of their realisable assets for the purpose of the confiscation order. Having done so, he continued:

> "Moreover, I have no doubt and I consider it is a rational and permissible inference for me to draw, that if the trustees are invited to release the funds due to the defendant under the policy in order to satisfy or to help satisfy a confiscation order being made they will do so."

20. Nothing was said to the judge to disabuse him of this understanding.

21. We agreed with the judge's analysis in the August judgment. We did so on the basis that, if the confiscation and compensation orders stood, the trustees would make the CETV of the appellants' pension funds available to satisfy those orders. As we have said, this was the basis on which DAS as the prosecution conducted the case in the court below and nothing was said to us to suggest that this was wrong. However, at least on one reading of the correspondence which has taken place since the August judgment in

an attempt to agree the relevant figures, it appeared that the trustees sought to reserve their position as to whether the CETV will be made available and may instead (particularly if requested to do so by DAS) decide to forfeit the pension instead. Hence the application by Asplin, supported by Kearns, to reopen this issue, submitting that it is now apparent that the pension funds will not be made available to satisfy any confiscation or compensation order.

22. In these circumstances we directed that the pension trustees should be represented at the hearing before us and we are grateful for the attendance of Mr Kennedy Talbot QC on their behalf. We invited the trustees to clarify their position at the outset of the hearing.

23. In response Mr Talbot explained that the trustees' power to forfeit the pension funds arises in the event of a court order made in favour of DAS and applies up to the amount of any order which may be made. Accordingly the power to forfeit would arise in the event of a compensation order (but not a confiscation order) or in the event of a future judgment in the civil proceedings. The amount forfeited would be limited to the amount of the compensation order (or judgment). Mr Talbot explained that the trustees have not yet made any decision, but that there is a real possibility that in the event of a compensation order being made, they would forfeit the pension funds up to the amount of the compensation order. There would then be no power for the trustees to transfer the forfeited funds to a SIPP in order to satisfy the confiscation or compensation order. As we understood Mr Talbot, this has always been the trustees' position.

24. In our judgment this falsifies the basis on which the prosecution (who must have been aware of the trustees' position, even if counsel was not) conducted the proceedings in the court below and in this court. To put it bluntly, HHJ Beddoe and this court were allowed to proceed with a false understanding of the trustees' position. Moreover, as submitted by Mr Adrian Waterman QC for Asplin and Ms Polly Dyer for Kearns, there is a strong incentive for the trustees to exercise any right which may arise to forfeit the funds rather than to transfer them into a SIPP where they would be available to satisfy a confiscation or compensation order. There is an equally strong incentive for DAS to encourage the trustees to take this course. In the light of the material now before the court, it is clear that:

    (1) the DAS pension scheme is in deficit to the tune of more than £16 million;

    (2) DAS has an obligation to make good that deficit;

    (3) forfeiture of the appellants' pensions and retention of the forfeited value in the scheme, thereby reducing DAS's liability to make good the deficit, would (for tax reasons which it is unnecessary to explain) be far more advantageous to DAS (and to the trustees) than transfer of this value into a SIPP in order to satisfy a compensation order; and

    (4) DAS has not so far made any request to the trustees to release funds to enable the appellants to discharge the confiscation or compensation orders made by the judge.

25. None of this was explained to the judge or to us at the hearing of the appeal. It should have been.

26. Needless to say, if the appellants' pension funds are not made available by the trustees, it will be impossible for the appellants (whose pension funds are their principal remaining asset) to satisfy any confiscation order. In these circumstances it is necessary to reopen the issue whether the appellants' pension funds form part of their realisable assets for the purpose of a confiscation order. As no order has been drawn up on the appeal, it appears to us that this is not a case where the strict rigours applicable to reopening a decision arise (see *R v Gohil* [2018] EWCA Crim 140 at [95] to [120]). But even if they do, this is in our judgment a clear case.

27. Looking at the matter afresh in the light of the evidence as it now is, the position is that the trustees have not yet made a decision whether they will forfeit the funds, but there is at least a possibility that they will do so in the event of compensation orders being made; and, even if such orders are not made or are made in a limited amount, the trustees may seek to retain the funds in order to satisfy any future judgment which DAS may obtain in the civil proceedings in the event that it succeeds in obtaining the lifting of the stay.

28. As matters presently stand, therefore, the appellants do not themselves have any legal interest in their pension funds, which are held by the trustees on the terms of the pension scheme trust, but they do have a beneficial interest in those funds for the purpose of the confiscation regime in the 1988 Act, which is capable of being realised by transfer of the CETV into a SIPP. That interest may be forfeited in the future, but we take the trustees at their word in saying that they have not yet made any decision about this. The value of that interest is the CETV. Accordingly the pension funds are properly to be regarded as realisable assets of the appellants for the purpose of the confiscation proceedings and the order which the judge made, even though made on a false understanding of the trustees' position, was rightly made.

29. It would not, however, be right to leave this point there. It seems to us that a period of six months from the date of this judgment will give the trustees more than adequate time to decide whether to comply with the appellants' requests (already, in each case, made many months ago) to transfer the CETV of their pension funds into a SIPP. In the event that they do so, the funds will be available to satisfy the confiscation and compensation orders which we propose to make. But if the trustees have not transferred the funds within that period, either because they have been forfeited in whole or in part or because the trustees continue in effect to freeze the funds as security for a future civil judgment, the appellants will in our judgment have an irresistible case for a certificate from the High Court under section 83 of the 1988 Act that their realisable property is inadequate to satisfy the confiscation order and for a reduction of the amount to be recovered to be made by the Crown Court. (Unfortunately, because this is a 1988 Act case, this somewhat cumbersome dual procedure will be necessary). Indeed, Mr Evans confirmed that in the event of the pension funds being forfeited by the trustees, the prosecution would support such applications by the appellants. Any attempt by DAS to resile from that position should be given short shrift.

30. Mr Waterman and Ms Dyer submitted that the appellants should not be required to engage in this convoluted procedure and that, in reality, the pension funds are not available to them. They submitted that DAS and the trustees are in effect manipulating the statutory scheme. We have some sympathy with that submission. Nevertheless, in our judgment the appropriate course is to make a confiscation order treating the pension funds as presently realisable assets of the appellants, while making clear that if the

trustees do not transfer the funds, there can be no question of the confiscation orders being enforced. That accords with the terms of the legislation, as forfeiture has not in fact occurred and may never do so, in which case the funds are undoubtedly an asset of the appellants. It accords also with the statutory purpose of the confiscation regime which is that criminals should be deprived of the benefits which they have obtained from their criminal conduct. We would expect DAS (having urged the judge and this court to make confiscation orders on the basis that the pension funds form part of the appellants' realisable assets) to do everything within its power to enable the value of the pension funds to be realised in order to satisfy the order.

31. Mr Waterman submitted also that a certificate of inadequacy would not be available in the circumstances, pointing out that such a certificate is only available where events subsequent to a court's ruling mean that the amount available is less than had been thought at the time of the ruling (*In re McKinsley* [2006] EWCA Civ 1092, [2006] 1 WLR 3420). However, we agree with Mr Evans that this concern is misplaced. The trustees' failure to release the funds within six months from the date of this judgment, if that is what occurs, would clearly be a post-confiscation event and would entitle the appellants to a certificate of inadequacy.

Should the pension figures to be included in the realisable assets be net of tax?

32. We held at [66] of the August judgment that the appropriate figure to be included in the figure for realisable assets was the value of the pension net of tax. The prosecution seek to reopen this issue, contending that the gross CETV should be included, notwithstanding that the appellants will incur what may be a substantial tax liability when the pension is drawn down in order to satisfy the confiscation or compensation orders. We should explain that there is, as we understand it, no tax liability when the CETV is transferred into a SIPP, but the appellants will incur liability to income tax (the amount depending on their personal circumstances) when funds are drawn down in order to satisfy the orders.

33. The prosecution accept that costs inevitably incurred in realising an asset should be deducted when calculating its market value for the purpose of a confiscation order. Thus in *R v Cramer* (1992) 13 Cr. App. R (S) 390, costs inevitably incurred in the sale of a house (estate agent's fees and legal costs) were deducted in order to ascertain the net market value of the house. Mr Evans submits, however, that a personal tax liability is different, and that limiting the realisable assets to the net value of the pension fund (1) would have significant ramifications for other cases where the realisation of an asset to pay a confiscation order may give rise to a tax liability and (2) would give rise to difficulties of calculation in the Crown Court as a defendant's personal tax position may be unknown to the prosecution and in any event will depend upon the amount which is actually realised when the asset is sold.

34. Although at first sight there appears in principle to be something to be said for taking the net figure, we see the force of the points made by Mr Evans. With the benefit of fuller submissions on the point than were made at the hearing leading to the August judgment, we conclude that the practical difficulties which would result in this case from attempting to take a figure net of personal income tax liability are insuperable. As the pension fund trustees have pointed out, the tax payable will depend upon the amount which is drawn down in order to satisfy a confiscation or compensation order, which

means that including a net figure in a defendant's realisable assets is illusory, leading in effect to an impossible calculation.

35. The following example illustrates the difficulty. Assume a pension fund with a CETV of £5 million; assume also, that if the full £5 million were transferred into a SIPP and then drawn down there would be a tax liability of £2 million, leaving £3 million as the net figure available to satisfy a confiscation order. However, if the correct figure to be included in the compensation order is the net figure of £3 million, there will be no need to draw down the whole £5 million, so that the assumed tax liability of £2 million will not arise; instead it will be some lesser figure. So the whole purpose of including the net figure in the confiscation order is frustrated and the basis on which the calculation is made is falsified.

36. In the circumstances we accept the prosecution's submission that the correct solution to this difficulty is to include the gross figure in a defendant's realisable assets. That will enable the funds to be drawn down and the accurate tax liability figure to be determined. If the result is that the defendant becomes subject to a tax liability which he is unable to satisfy in addition to satisfying the confiscation order, the remedy is to obtain a certificate of inadequacy and a reduction of the amount payable under the confiscation order to take account of this liability to tax.

Should the pension figures to be included in the realisable assets be the CETV at the time of the appeal?

37. We indicated at [66] of the August judgment that the CETV to be included in the appellants' realisable assets was the value agreed in the court below. Since then, however, the value of the pension funds has increased and the prosecution submits that the appropriate figure is the value at the date of the appeal, subject only to the rule in section 11(3) of the Criminal Appeal Act 1968 that, taking the case as a whole, an appellant may not be dealt with on appeal more severely than he was by the court below.

38. We do not accept this submission (which Mr Evans did not pursue orally) and, in any event, see no reason to reopen our decision on this issue. Section 71(6) of the 1988 Act is clear. It provides that a confiscation order "must not exceed … the amount appearing to the court to be the amount that might be realised at the time the order is made". That amount is the CETV as at the date of the confiscation order made in the court below.

Calculation of the appropriate pension figures

39. It follows from what we have said so far that the appropriate pension figures to be included in the calculation of the appellants' realisable assets are those used in the court below, that is to say £4,616,598 in the case of Asplin and £1,053,518 in the case of Kearns.

40. In the result, taking into account the reductions in the benefit figures set out above and the fact that the realisable asset figures will remain unchanged, the confiscation order in the case of Asplin must be reduced as his realisable assets now exceed the benefit figure. The figures for Kearns and (for completeness) Jones are unchanged:

Defendant	**Revised benefit figure**	**Realisable assets**	**Confiscation order**
Paul Asplin	£4,828,728	£5,285,300	£4,828,728 to be paid within 6 months or to serve 8 years in default
David Kearns	£2,142,435	£1,439,729	£1,439,729 to be paid within 6 months or to serve 6 years in default
Sally Jones	£2,449,961	£1,558,155	£1,558,155 to be paid within 6 months or to serve 6 years in default

The quantum of the compensation orders

41. The judge found that the total loss to DAS from the appellants' criminal conduct amounted to £11,231,397. We held at [68] to [72] of the August judgment that the judge should not have included the salaries paid to Asplin and Kearns in the loss figures, but we understood that this would not affect the compensation payable in view of the appellants' realisable assets.

42. We are now informed, however, that when the salaries of Asplin and Kearns are removed from the loss figure found by the judge, the correct loss figure is £5,960,155.

43. In our judgment it is appropriate to reflect the relative culpability of each appellant in the compensation orders to be made. Applying a broad brush, we conclude that Asplin should pay compensation of £3.5 million (approximately 60% of the overall loss) with the remaining loss divided equally between Kearns and Jones, who will therefore pay compensation of £1,230,077 each. As before, the compensation should be paid out of sums recovered under the confiscation order pursuant to section 72(7) of the 1988 Act.

44. It is important to add that Mr Evans confirmed that, in the event that the trustees do decide to forfeit some or all of the appellants' pension funds, DAS would be compensated in the amount thus forfeited. There would, therefore, be no question of DAS seeking to enforce the compensation order to the extent that it had in effect been satisfied by forfeiture of the funds. The total amount payable by each appellant, whether by way of confiscation or compensation, and in the case of Asplin and Kearns whether the pension funds are transferred into a SIPP or are forfeited by the trustees, must not exceed that appellant's realisable assets.

Variation of the party to whom compensation should be paid

45. The prosecution seek a variation of the compensation orders to identify DAS Services Ltd as the party to whom compensation should be paid. This company, rather than DAS Legal Expenses Insurance Company Limited, was the employer of Asplin and Kearns. The application is not opposed and we make the appropriate order.

Application by the prosecution for its costs of conducting the conviction and confiscation appeals to be paid out of central funds

46. DAS seeks an order that its costs of conducting the conviction and confiscation appeals should be paid out of central funds. In view of our criticisms of the lack of candour on the part of DAS in conducting the confiscation proceedings, we are not prepared to make any such order.

Application by Asplin for time to pay

47. Asplin and Kearns point out that they are unable to pay confiscation or compensation until such time as the trustees agree to transfer their pension funds into a SIPP. Kearns' pension fund is his only remaining asset, his other assets having already been realised. The pension fund is Asplin's principal asset: we understand that a house has not yet been sold, but the reasons for this are unclear. Meanwhile statutory interest at 8% has been accruing since the date of the judge's order, increasing the appellants' liability which, in view of the trustees' position, they are unable to discharge. In our judgment it would be unjust for such interest to accrue in circumstances where the appellants are prevented from satisfying the orders by the conduct of DAS and the trustees, not least as the hearing below was conducted on the basis that the pension funds would be made available.

48. Accordingly we extend the time for payment of the confiscation and compensation orders until six months from the date of this judgment. As we have explained, that gives the trustees more than adequate time to transfer the funds to enable the orders to be satisfied.

Certification of a question of general public importance

49. We refused to certify a question of general public importance for the Supreme Court because, in our view, this appeal did not raise a question of general public importance. Mr Waterman invites us to reconsider this decision in the light of the fact that leave has now been given in *R v Andrewes* [2020] EWCA Crim 1055 for an appeal to the Supreme Court.

50. We have reconsidered, but maintain our decision. The law is well settled that in general the fact that a defendant has given some value not readily capable of quantification in return for the benefit which he has obtained does not mean that a confiscation order based on the full amount of the benefit obtained is disproportionate. As we made clear, however, this is only a general principle which may yield to particular facts.

51. The fact that there is to be an appeal to the Supreme Court in *Andrewes*, where on the facts it was held that full value had been given by the defendant and that confiscation would be disproportionate, does not in our judgment call into question the decision in this case. The position here is different: the judge found that some (but not full) value had been given which it was impossible to quantify and that the appellants' legitimate

work promoting DAS's interests was inextricably linked with their illegitimate work connected to the commission of the fraud.

Disposal

52. It may be helpful to summarise the result of the appeal now that we have dealt with the matters left over from the August judgment.

Asplin

53. In the case of Asplin, we grant permission to appeal on grounds 1 (salary) and 2 (pension).

54. We affirm the judge's rulings on the points of principle, that is to say:

(1) the judge was right to make a confiscation order based on a calculation of benefit which included the salary paid to Asplin during the indictment period; and

(2) the judge was right to include Asplin's pension in the calculation of his realisable assets.

55. However, we allow the appeal to the limited extent that the salary to be included in the calculation of benefit should be net of tax; the pension figure to be included in the calculation of realisable asset is the CETV determined as at the date of the hearing in the court below.

56. Accordingly the confiscation payable by Asplin is £4,828,728. Time for payment is extended until six months from the date of this judgment.

57. We grant permission to appeal on ground 3 (compensation) and reduce the compensation payable to £3.5 million, to be paid out of sums recovered under the confiscation order. The compensation is payable to DAS Services Ltd.

Kearns

58. In the case of Kearns, we grant permission to appeal on ground 1 (salary), but not on ground 2 (joint benefit). As in the case of Asplin, the judge was right to make a confiscation order based on a calculation of benefit which included salary, but the salary figure to be included in the calculation should be net of tax. We allow the appeal to that extent. The judge was right to include Kearns' pension in the calculation of his realisable assets, the applicable figure being the CETV determined as at the date of the hearing in the court below.

59. Accordingly the confiscation amount payable by Kearns is £1,439,729. Time for payment is extended until six months from the date of this judgment.

60. We grant permission to appeal against the compensation order and reduce the amount payable to £1,230,077, to be paid out of sums recovered under the confiscation order. The compensation is payable to DAS Services Ltd.

Jones

61. We grant permission to appeal against the confiscation order on both grounds (salary), but dismiss the appeal.

62. We grant permission to appeal against the compensation order and reduce the amount payable to £1,230,077, to be paid out of sums recovered under the confiscation order. The compensation is payable to DAS Services Ltd.

Other matters

63. We dismiss the prosecution's application for its costs of conducting the conviction and confiscation appeals to be paid out of central funds We decline to certify a question for the Supreme Court. No question of general public importance arises.