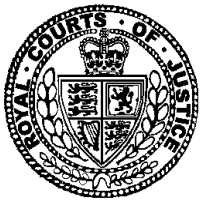

Neutral Citation Number: [2024] EWCA Crim 1570

Case No: 202400634 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM SOUTHWARK CROWN COURT
HIS HONOUR JUDGE BARTLE KC
T20177310

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 December 2024

Before:

LORD JUSTICE JEREMY BAKER

MR JUSTICE MORRIS

and

SIR NIGEL DAVIS
(Sitting as a Judge of the Court of Appeal (Criminal Division))

- -

Between:

Anthony Samuel Bond	**Appellant**
- and -	
REX	**Respondent**

- -
- -

Mr Trollope KC (instructed by **Bark & Co**) for the **Appellant**
Ms Osborne KC (instructed by **Crown Prosecution Service, Proceeds of Crime Unit**) for the **Respondent**

Hearing date: 3 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Jeremy Baker:

1. On 13 March 2019 in the Crown Court at Southwark Anthony Bond ("the appellant") was convicted of conspiracy to cheat (count 1).

2. On 4 April 2019, the appellant was sentenced by the trial judge, HHJ Bartle KC, to 7 ½ years' imprisonment. He was ordered to be disqualified from being a company director for 10 years and confiscation proceedings were postponed.

3. On 18 January 2024 the trial judge, having found that the appellant had benefitted from his particular criminal conduct under section 6(4)(c) of the Proceeds of Crime Act 2002 ("POCA") in the sum of £15m and that the recoverable amount under section 6(5)(a) was £1,839,317.20, made a confiscation order under section 6(5)(b) in the latter sum with 8 years' imprisonment in default.

4. In the meantime, although the appellant had appealed against his conviction, which was dismissed by this court on 27 November 2020, [2020] EWCA Crim 1596, he had not appealed against sentence. However, the appellant now appeals against the confiscation order with leave of the Single Judge.

The count 1 conspiracy

5. The appellant was the director of five companies ("the Bond Group of companies") which traded in scrap and precious metals, buying and selling gold, silver and other high-value metals, from premises in Chesham.

6. The prosecution case was that the appellant had the leading role in a conspiracy to defraud HM The Queen and Her Commissioners of Public Revenue, by dishonestly claiming VAT input tax on behalf of the Bond Group of companies to which they were not entitled.

7. It was alleged that the appellant had arranged for a series of VAT registered companies ("the defaulting traders") to provide the Bond Group of companies with false invoices

purporting to charge VAT inclusive sums for the sale of metals to the Bond Group of companies.

8. It was the prosecution case that these VAT inclusive sums were never paid to the defaulting traders, who in turn either did not account for the VAT to HM Revenue and Customs ("HMRC") or failed to pay those sums to HMRC.

9. There were a number of co-accused, one of whom, Stephen Goble, had been the bookkeeper for the Bond Group of companies, whilst the remaining co-accused were directors of some of the defaulting traders.

The trial

10. The trial lasted for a period of about 5 months, in the course of which the jury heard evidence that during the indictment period, between 1 January 2008 – 25 March 2014, approximately 87% of the trade conducted by the Bond Group of companies took place with the defaulting traders.

11. The trading records of the Bond Group of companies showed purported purchases from the 28 defaulting traders in the sum of £117,807,751.48, and consequential VAT input tax claimed in the sum of £17,972,993.17.

12. During the same period, the Bond Group of companies' VAT returns declared sales figures of £132,841,677.91, and declared purchases of £119,242,851.10. Moreover, the bank receipts for the Bond Group of companies, including cash deposits of about £4.8m, was in the order of £118m.

13. In so far as the defaulting traders were concerned, their dealings with the Bond Group of companies were broadly sequential, such that after HMRC became aware of a default by one of the companies, they ceased to trade, only to be replaced by another of the defaulting traders. The defaulting companies had a limited trading history, not for the most part in the metal trade, and ceased to trade entirely after they stopped trading with the Bond Group of companies. Moreover, the directors of those companies often had no known involvement in or connection to the metal trade.

14. The appellant and Stephen Goble had been arrested on 25 March 2014 and transported to Aylesbury police station in the rear of a police van which was fitted with covert audio

recording equipment. During the course of the journey the two of them made incriminating remarks to each other to the following effect, including:

i. Stephen Goble said to the appellant, "*I still don't think they can nail it on you,*" to which the appellant replied, "*I just haven't been in control of my offences…..I should have just stopped, I'm doing it because it just became a ….rollercoaster*." The appellant said that he should have stopped years ago when Taylor (one of the co-accused) came on.

ii. The appellant and Stephen Goble discussed whether it was, "*all these companies that were melted down*," that triggered the arrests.

iii. They talked about their phones, and computers and both agreed that there was nothing on the computers of any concern to them, only the accounting data which HMRC already had 99per cent of in any event.

iv. The appellant said that, "*We've got to 58/59 and it's the first time we've been caught*."

15. After his arrest, the appellant was interviewed by the police and he denied having knowingly made any false statement to HMRC.

The defence case

16. At trial, the appellant, who was of hitherto good character, gave evidence in which he denied being party to any conspiracy. On the contrary, he operated a legitimate business and dealt with the defaulting traders in good faith. He was not the individual who completed the VAT returns for the Bond Group of companies and he denied any knowledge that the defaulting companies failed to pay their VAT liability to HMRC. As far as he was concerned, the Bond Group of companies paid the VAT inclusive invoices in full to the defaulting traders, and was therefore entitled to claim the VAT paid on those invoices as input tax when accounting to HMRC for the VAT which the Bond Group of companies had charged on their own sales of materials to others.

Summing-up

17. The judge provided the jury with his legal directions in writing, which made it clear that for any of the accused, including the appellant, to be guilty of the conspiracy charged in count 1, the jury had to be sure that the accused dishonestly entered into what was termed variously as the "*count 1 agreement*" or "*wider agreement*" which was set out as follows,

> *"…that the Bond Group of companies would claim VAT credits (input tax) on sales when those companies were not entitled to*

> *such input tax because no sales had taken place between the Bond Group of companies and the traders in respect of which the input tax was claimed and the count 1 agreement was carried out so that the Bond Group of companies claimed input tax to which they were not entitled."*

18. Furthermore, that in order to convict the appellant, the jury had to be sure that he entered into the wider agreement with at least one or more of the co-accused in at least one of the ways alleged by the prosecution namely that the co-accused,

> *"…provided or permitted the provision of invoices from (one of the defaulting traders) to Bond Group of companies for sales knowing that there were no sales or no sales as described in all the invoices and that, although those traders would not pay VAT on sales which did not take place, the Bond Group of companies would claim input tax on such purported sales to which they were not entitled."*

Sentencing hearing

19. In preparation for the sentencing hearing, the prosecution provided a detailed sentencing note dated 28 March 2019 ("the 1st prosecution sentencing note"), in which it was submitted that,

> *"..Anthony Bond was the principal in this conspiracy. He was the main director and was in charge of the management and day to day running of the Bond Group of companies. He ran the fraud, which operated by using supplier traders' identity and VAT numbers to provide false evidence of payment of VAT for purchases. This was done either by using a company to evidence purchases when those responsible for the company had nothing to do with the trade or by purchasing goods for cash from those supplier companies without paying VAT and then claiming VAT repayment on the purchases using false invoices. Goods which were purchased for cash without paying VAT, both from the supplier traders named on the business records and from other sources were treated as VAT paid purchases in order to make false VAT repayment claims."*

20. It was submitted at [9] that the appellant benefitted financially from this fraud, in round terms in the sum of £2.5m, comprised of cash deposits into his bank accounts of £1,113,471.13 and net transfers into his accounts of £1,456,279.15.

21. Furthermore, for the purpose of the Revenue Fraud guideline, the conspiracy was a category A2 offence; high culpability due to the appellant having a leading role where the offending is part of a group activity, together with his abuse of his position of responsibility as a director of the Bond Group of companies, whilst category 2 harm was established by the loss to HMRC of approximately £17m.

22. Therefore, it was submitted that the appropriate starting point was 10 years' custody with a category range of between 8 – 13 years.

23. Thereafter, a written response was provided on behalf of the appellant dated 2 April 2019, in which it was submitted that as, in accordance with the legal directions, the jury could have convicted the appellant either because "…*there were no sales or no sales as described in all the invoices*…", the jury's verdict did not establish that "…*either the sales were either in toto fictitious or that no VAT was paid to the suppliers*."

24. Therefore, it was submitted that whilst the jury's verdict meant that some sales as claimed on the invoices did not take place, there was insufficient evidence upon which the value of the false claims could be quantified. In this regard it was pointed out that the documentary evidence was consistent with the purchases being made and the VAT paid in accordance with the invoices and VAT returns. Moreover, it was suggested that as a long-established bona fide trading entity, it was highly improbable that the appellant would have decided, and been able, to acquire tax-free supplies to the extent claimed by the prosecution. The extent of the appellant's alleged financial benefit of £2.5m was disputed, as being based upon a snapshot in time, and it could not be said that would have been the position at an earlier date.

25. In these circumstances, and for the purposes of the sentencing guideline, whilst it was conceded that the appellant's level of culpability was high, it was submitted that as the loss to the revenue was unquantifiable, the level of harm did not fall within category 2.

26. In response to these written submissions, the prosecution provided a further sentencing note, dated 3 April 2019, ("the 2nd prosecution sentencing note") entitled, "*Submission on factual basis of sentence*", which set the relevant principles to be derived from *R v King* [2017] EWCA Crim 128, ("*King*"), namely,

> *"31.In our view the correct approach by the judge, after a trial, to the determination of the factual basis upon which to pass sentence, is clear. If there is only one possible interpretation of a jury's verdict(s) then the judge must sentence on that basis. When there is more than one possible interpretation, then the judge just make up his own mind, to the criminal standard, as to the factual basis upon which to pass sentence. If there is more than one possible interpretation, and he is not sure of any of them, then (in accordance with basic fairness) he is obliged to pass sentence on the basis of the interpretation (whether in whole or in relevant part) most favourable to the defendant."*

27. It was pointed out that in order to convict the appellant, the jury must have been sure that he took part in the wider agreement, and that the case was never left to the jury on the basis that whilst the appellant was a party to the non-payment of VAT by the defaulting traders, the Bond Group of companies had paid the VAT in accordance with their invoices.

28. In these circumstances, it was submitted that as the jury's verdict did not delineate the extent of the benefit which the appellant derived from his involvement in the conspiracy, it was a matter for determination by the court and that the evidence presented to the jury was sufficient to enable the judge to be sure that the appellant had benefitted to the extent of the loss to HMRC, namely £17m, as reflected in the original sentencing note.

29. In detailed sentencing remarks, the judge stated that this was not a case where there was only one possible interpretation of the jury's verdict, and that it was for him, as the trial judge, to consider whether there was sufficient evidence upon which he could determine to the criminal standard, the financial value of the conspiracy; observing that if there was insufficient evidence, then he would be obliged to sentence the appellant upon the most favourable basis, which those acting on his behalf submitted would result in the court determining that under the sentencing guideline, the extent of harm was within category 7, involving either a benefit to the appellant or a loss to HMRC of less than £20,000.00.

30. The judge noted that the appellant had been convicted of the fraud alleged in count 1, and therefore the jury had found him guilty on the basis of the wider agreement. Although he acknowledged that it was possible that the jury may have concluded that the Bond Group of companies had paid some element of the sums claimed as input tax, he concluded that this was not a case in which there was insufficient evidence for him to determine the value of the fraud. On the contrary, he stated at [41] that,

> *"I am sure that no VAT was paid to the supplier traders and that either the trading did not take place with those traders, or, if it was, they were not paid VAT."*

31. He proceeded to set out the evidence upon which he relied in reaching this conclusion, including,

> *"(i) the use of companies with no trading history; (ii) directors with no knowledge of or involvement in the trade; (iii) the use of intermediary co-conspirators in organising the cash trade and the use of defaulting traders; (iv) absence of any evidence of purchases by suppliers of the goods purportedly sold on to the Bond Group; (v) the use of cash with no audit trail as to what the cash was spent on or who it was paid to; (vi) the arbitrary allocation of cash to invoices in the cash book and in the SAGE system; (vii) the discrepancy between the cash payments recorded against particular suppliers in the cash books and the amount on the invoices; (viii) the admissions made in the covertly recorded van conversation. I reject the defence arguments that the factors on which they rely point to a contrary conclusion. The fraud predated and post-dated the involvement of Ian Stewart, Eddie Ellis and Andrew Charalambides so I do not accept that Mr Bond's involvement was limited only to the period when they were involved."*

32. Thereafter between [42] – [53] the judge set out the details of how the fraud operated including the purported trade with suppliers which either failed to pay or account for or pay VAT on such sales or were in trading chains where a VAT default took place.

33. The judge observed at [54] that in the indictment period there were gross sales by the Bond Group of companies of £132,841,677.91 inclusive of VAT, but rejected the submission that this must mean that the bulk of the sales came from purchases upon which VAT had been paid by the Bond Group of companies, on the contrary he was satisfied that the bulk of those sales were from purchases upon which no VAT was paid.

34. He also noted at [55] – [58] the nature and extent of the recorded conversations between the appellant and Mr Goble following their arrests.

35. Furthermore, at [59] the judge took into account that during the indictment period, approximately 87% of the trade conducted by the Bond Group of companies took place with the defaulting traders.

36. He went on at [60] and [61] to state that,

> *"60.This fraud was carried out over 6 years. It was carefully and deliberately planned. It required the production of a considerable volume of false invoices, the provision of false accounting records and deliberate lies told to the HMRC officers to seek to persuade them that the Bond Group companies were paying VAT when they were not. A common feature was that the suppliers did not declare for VAT the trading relied on by the Bond Group in its trading records.*
>
> *61.Mr Bond was director of and controlled the Bond Group. He was in charge of the management and day to day running of the Bond Group. He ran the lawful part of the business but also ran the fraud and was involved in all its aspects. He knew that most of the traders he purported to purchase from would not pay VAT and, with others, organised the use of those traders in the Bond Group records to evidence VAT-rated purchases by the Bond Group. His use of cash to make purchases of metal and of catalytic converters disguised the fact that no VAT was being paid on those purchases. He moved to disguised silver importation towards the end of the period of the indictment as a new way to carry out the fraud. His reliance on due diligence documents on many of the suppliers was an attempt to disguise the conspiracy he was carrying out. I accept there were co-conspirators but Mr Bond's involvement both pre-dated and post-dated their involvement."*

37. Thereafter, the judge determined that,

> *"[66] I am sure that the value of this fraud was £17,779,986.46. Despite that finding, it is fair to take account of the fact that the jury may have concluded that only some of the input tax was wrongly claimed. Therefore, I deduct 15% percent from that sum to reflect that and round the sum down to £15millon as the basis for sentence.*

> *[67] Alternatively, if I am wrong in my assessment of gain, I assess the basis of sentence as loss to the revenue for the reasons submitted by the prosecution. Mr Bond knew that the defaulting traders would not account for or pay VAT in respect of the trading relied on by the Bond Group to claim input tax and that he organised the fraud. As the Bond Group claimed for input tax repayment on the basis of this asserted trading, the loss to HMRC is the level of default by those traders on trading with the Bond Group which is £17m. However, I consider that I should reduce the sum of £17million by 10% to take account of uncertainties of causation and round that sum to £15million as the basis of sentence."*

38. In the event, the judge determined that under the Revenue Fraud guideline the appellant's culpability was within category A, whilst his valuation of the fraud at £15m placed the level of harm within category 2. Thereafter, the judge took into account the mitigation available to the appellant, including his previous good character, and imposed a sentence of 7 ½ years' imprisonment.

Confiscation hearing

39. In the course of the confiscation hearing, those acting on behalf of the prosecution submitted that the judge having determined that the value of the fraud for the purposes of sentencing was £15m, and that the beneficiary of the fraud was the Bond Group of companies, which was synonymous with the appellant, the judge should determine that the appellant's benefit from the conspiracy for the purposes of confiscation was £15m.

40. On the other hand, those acting on behalf of the appellant submitted that, notwithstanding the determinations which had been made for the purposes of sentencing, the judge was now engaged in a wholly different exercise and that he should reach a different view as to the extent to which if at all the appellant had benefitted from the conspiracy.

41. It was submitted that there was insufficient evidence to enable the judge to determine whether and to what extent the appellant had benefitted from the conspiracy. Moreover, that in reliance upon *R v Harvey* [2015] UKSC 73, and because of the manner in which the VAT recovery system operates, there was a risk of double recovery which would render a confiscation order in such an amount disproportionate under section 6(5)(b) of the 2002 Act.

42. In the course of his ruling, the judge referred to *R v Ahmad* [2014] UKSC 36, and the three questions which the court was required to answer, as pointed out by Lord Bingham in *R v May* [2008] UKHL 28, firstly whether an accused has benefitted from the relevant criminal conduct, secondly the value of that benefit and thirdly what sum is recoverable from the accused.

43. He noted that at [46] and [47] of *Ahmad,* Lord Neuberger had stated that where property was obtained as a result of a joint criminal enterprise, it will often be appropriate for a court to hold that each of the conspirators obtained the whole of the property. However, the role of a particular conspirator may be relevant to whether and to what extent a conspirator has obtained property and in this regard commonsense inferences may be drawn from the evidence.

44. The judge stated that in the course of his sentencing remarks, his primary finding of fact had been that at [41], namely that, "*I am sure that no VAT was paid to the supplier traders and that either the trading did not take place with those traders, or, if it was, they were not paid VAT.*"

45. Thereafter, the judge dealt with the submissions made on behalf of the appellant in the following terms,

> *"As I have already said, I accept that what I am engaged on now is of course, a different process then sentencing somebody after a trial. However, what is of critical importance is, as I have pointed out from the case of Ahmad, that I as a judge, have to reach factual conclusions as to whether or not the defendant benefitted from criminal conduct and if so, in what sum.*
>
> *It is in my judgment completely unrealistic of the defence to submit, without adducing a shred of evidence, different from that which was adduced at the trial, that I should come to a factually different conclusion from that which… I came to in my sentencing remarks. It is – I repeat, completely unrealistic, to ask a judge without adducing any evidence, but merely making submissions to come to a different view. There is however, nothing unrealistic for a judge following the, the views to the Supreme Court in Ahmad to do what I am doing, which is to reach findings of fact as to whether or not the defendant has benefitted from his criminal conduct and as to what that value is.*
>
> *The only way in which I can do that is by looking at the evidence which I considered in detail in the course of a six-month trial. In*

> *the course of seeing Mr Bond give evidence and most importantly, in the course of detailed findings of fact which I made in my sentencing remarks.*
>
> *I do not accept for one moment that this is a case in which Mr Bond paid the VAT, I have not changed my mind. Applying the questions for the purposes of confiscation, I remain of the view - on the evidence which was called at trial – and I repeat no different evidence has been called today, indeed, no evidence has been called today, that I remain of the view – applying the test in Ahmad, that Mr Bond benefitted from his conduct and he did so to the value of £15 million.*
>
> *There is, in this case, no question of double recovery. First of all, the fact that HMRC may have pursued some of the defaulting traders, is not, in anyway, something which amounts to double recovery. First of all, it is entirely understandable that they would do that but the reality is, they have recovered nothing, and so there is no – in no way an inhibition on the prosecution from bringing these proceedings against Mr Bond. Nor, applying Ahmed is it inappropriate to find Mr Bond has obtained and retained the £15 million. That is because, as the trial judge, I am in a position to assess precisely what the role of the other defendants was.*
>
> *Mr Bond – as I said in my sentencing remarks, was a person who controlled this fraud. It was Mr Bond and Mr Bond alone, who was in charge."*

46. Thereafter, as the available amount under section 9 of the 2002 Act had been determined by the judge following a hearing on 19 December 2022 in the sum of £1,839,317.20, the judge made the confiscation order in the latter sum on 18 January 2024.

Grounds of appeal and response

47. In his written grounds of appeal, Mr Trollope KC, seeks to advance four grounds of appeal:

    i. The allegations in the indictment and the evidence in the case did not provide a basis for determining that the appellant obtained a benefit from the offence.

    ii. The basis upon which the appellant was sentenced coincided with, and was specifically recalled by the court, when determining the amount of benefit.

iii. The appellant was sentenced based on the court's interpretation of the verdict. The verdict of the jury was based on the learned judge's written directions and did not provide a basis for determining an amount of benefit in that or any amount.

iv. The ruling of the learned judge did not explain or justify his conclusions as to the amount of the benefit.

48. In response, it is submitted on behalf of the respondent that,

i. The judge was entitled to determine on the evidence heard at trial, the factual basis of the appellant's sentence and therefore the degree to which the appellant benefitted from the fraud.

ii. Having set out his conclusions for the sentencing hearing and sentenced the appellant on the basis that his gain from the fraud was £15million, it is unsurprising that the trial judge remained sure of this for the purposes of the sentencing hearing.

iii. The judge's conclusions were in fact supported by the evidence.

iv. There was nothing disproportionate about the order made.

Discussion

49. As one would expect, the manner in which the judge left count 1 to the jury reflected the terms of the indictment and in order to convict the appellant of count 1, although the jury had to be sure that he had entered into the wider agreement with at least one of his co-conspirators, it was open to the jury to convict the appellant even if they considered that the Bond Group of companies may have paid some element of the VAT charged on the false invoices.

50. In these circumstances, it is common ground that the verdict of the jury on count 1 did not of itself determine the extent to which the appellant had benefitted from the conspiracy.

51. Thus, for the purpose of sentencing, and in accordance with *King*, it was for the trial judge to determine the factual basis upon which to pass sentence. At that stage it was necessary for the judge to consider all of the evidence which had been presented at trial, together with any further evidence provided to him by the parties, and to seek to make factual determinations to the criminal standard of proof. In the event that the evidence was insufficient for him to be able to reach sure conclusions, then it was of course

necessary for him to pass sentence on the basis of the interpretation of the evidence most favourable to the appellant. However, in the event that there was sufficient evidence for him to make sure conclusions, he was entitled to sentence the appellant in accordance with those conclusions.

52. Some time was spent in the course of oral submissions before us as to the manner in which the prosecution had presented its case at trial, and in the way it had invited the judge to determine the basis upon which to sentence the appellant. In relation to the way in which the prosecution had presented its case to the jury, it was submitted on behalf of the appellant that because the prosecution had done so on the basis that the jury did not have to be sure that the Bond Group of companies had paid none of the VAT claimed on the disputed invoices, the prosecution was precluded from submitting to the judge at the sentencing hearing that he could be sure that none or indeed any of those sums had been paid. Likewise, in relation to the way in which the prosecution had invited the judge to determine the basis upon which to sentence the appellant, it was submitted on behalf of the appellant that the prosecution's alternative basis for determining sentence, being based on the loss to HMRC rather than the benefit to the appellant, amounted to a tacit acceptance that there was insufficient evidence upon which the judge could reach sure conclusions as to the extent to which the appellant had benefitted from the fraud.

53. We do not accept that there is merit in these submissions relating either to the manner in which the prosecution had presented its case at trial or in the submissions it made concerning the basis for sentencing the appellant. As we have already observed, it is common ground that the verdict of the jury was not determinative of the extent to which the appellant benefitted from the conspiracy, and it was always the prosecution's case that none of the VAT on the disputed invoices had been paid by the Bond Group of companies. Furthermore, we do not consider that the alternative way in which the prosecution submitted that the judge could approach the basis of sentence reflected an acceptance that there was insufficient evidence to enable the judge to reach sure conclusions in relation to the extent to which the appellant had benefitted from the conspiracy, rather it reflected the alternative manner in which the level of harm under the Revenue Fraud guideline can be determined, either on the basis of gain to the appellant or loss to HMRC.

54. It seems to us, that cutting through these submissions, the real issues for us to consider are whether for the purposes of confiscation there was sufficient evidence to enable the judge to determine the extent to which the appellant had benefitted from the conspiracy, and as to whether he was entitled to determine that the appellant had benefitted from the conspiracy to the extent of £15m.

55. There is one matter which we raised with the respondent during the course of the hearing, namely the reference in [9] of the 1st prosecution sentencing note as to the extent of the appellant's benefit being approximately £2.5m. On behalf of the respondent, Ms Osborne KC, accepted that this could have been more clearly drafted as it was intended to set out the extent to which it could be shown that the appellant had "individually" benefitted from the fraud, rather than suggesting this was the extent to which he, as the sole director and shareholder, and being in overall control of the Bond Group of companies had benefitted from the conspiracy.

56. We accept that when read in context, the reference to £2.5m was not intended to suggest that this was the extent to which the appellant had benefitted from the conspiracy, rather it was the extent to which the prosecution was able to trace unexplained sums of money into the appellant's bank accounts. Moreover, it has never been in dispute that the appellant controlled the Bond Group of companies, such that the extent to which it could be shown, if at all, that the Bond Group of companies had benefitted from the conspiracy, mirrored the extent to which the appellant had benefitted.

57. In these circumstances, and because the judge primarily determined the basis for sentence on the extent to which the appellant had benefitted from the conspiracy, it is necessary to consider the nature and extent of the evidence upon which he made that determination. In doing so it is right to acknowledge that the judge was extremely well placed to make any necessary findings of fact, having been the judge presiding over a trial which lasted for about 5 months, in the course of which he not only heard the detailed evidence relied upon by the prosecution, but the evidence of the appellant himself which, as we have observed, amounted to a complete denial of any knowledge of any conspiracy and an assertion that at all times the Bond Group of companies operated as a legitimate business, appropriately accounting for its VAT liabilities to HMRC.

58. The judge began to set out in summary form the evidence upon which he relied between [41] – [53] of his sentencing remarks, and continued through to [61], and on this basis, we reject the submission made that there was insufficient evidence to enable the judge to determine the extent of the appellant's gain from the conspiracy for the purposes of sentence. As we have observed, there was no dispute that the appellant controlled the Bond Group of companies, and was its effective beneficiary. It was inevitable that in a sophisticated fraud such as this one, business paperwork would be arranged so as to cover up the fraud, including the lack of paperwork for the purchase of metals from other sources where VAT was not paid. (see: *Ahmad* at [36]).

59. Moreover, in our judgment the submission made on behalf of the appellant that the fraud amounted almost exclusively to the non-accounting or payment of VAT to HMRC by the defaulting traders, on legitimate sales to the Bond Group of companies

which had paid their VAT inclusive invoices, is wholly unrealistic. If this were so, then there would have been no advantage to the Bond Group of companies in circumstances where the appellant had arranged for the purported purchase of materials from the defaulting traders, to the extent that 87% of its trade taking place with the defaulting traders, which not only had a limited trading history and for the most part not in the metal trade, but who were sequentially dealt with by the Bond Group of companies, as they ceased to operate after their default became known to HMRC.

60. Indeed, in the course of oral submissions Mr Trollope KC accepted, as the judge had observed at [27] of his sentencing remarks, that the case was not left to the jury on the basis that the indictment included conduct where the full invoice value was paid, including VAT, but the appellant was a party to the default on VAT by the defaulting traders.

61. In these circumstances, we are satisfied that for the purposes of sentencing, the judge was entitled to find at [41], *"…that no VAT was paid to the supplier traders and that either the trading did not take place with those traders, or, if it was, they were not paid VAT."*

62. It is less clear to us why it was that the judge thought it necessary that, from the total amount of VAT input tax claimed on purchases from the defaulting traders of £17,972,993.17, he should deduct 15% *"…to take account of the fact that the jury may have concluded that only some of the input tax was wrongly claimed."* The fact that he did so is prayed in aid by the appellant to suggest that he was not entitled to conclude that no VAT was paid to the defaulting traders, rather than some unquantifiable amount. We reject that submission as it clear from the sentencing remarks that the judge found that no VAT was paid to the defaulting traders, and as we have already stated he was entitled to reach that determination. As we have already observed as the verdict of the jury did not delineate the value of the fraud, it was for the judge, as he did, to determine the extent to which the appellant had benefitted from the conspiracy. In these circumstances, as the judge's decision to make the 15% deduction favours the appellant, we do not need to consider this matter further.

63. This being the position in respect of the appellant's benefit as found by the judge for the purposes of sentence, we agree with the submission of the respondent that in the particular circumstance of this case it is unsurprising that the judge reached the same conclusion for the purposes of the confiscation proceedings, that the appellant had benefitted from the conspiracy in the sum of £15m.

64. Although, of course, the judge's determination for the purposes of sentence was distinct from that in relation to the confiscation proceedings, in reality the question which he

was required to answer in relation to both aspects of the proceedings in this case was the same, namely the extent of the appellant's financial "gain" or "benefit" from the conspiracy.

65. In the light of the fact that the evidential framework for both aspects of the proceedings was the same, the appellant having provided no further evidence for the purposes of the confiscation hearing, it would indeed have been surprising if the judge had reached a different conclusion in relation to the confiscation proceedings, to the one which he had previously reached for the purposes of sentence.

66. It is correct that in the former proceedings, the judge also proceeded to assess the loss to the HMRC. However, it is clear from his sentencing remarks that this was an alternative basis as provided for by the Revenue Fraud guideline, and did not detract from his primary finding in relation to the appellant's benefit.

67. Moreover, it is of note that whilst the judge was required to determine the extent of the appellant's benefit on the criminal standard of proof for the purpose of the sentence, the standard of proof in relation to the confiscation proceedings was on the lower civil standard, (section 6(7) of the 2002 Act).

68. Finally, we are satisfied that there was no question of disproportionality arising from the making of the confiscation order in this case. This was not a case like *Harvey* where there was a risk of double recovery. It was unsurprising that at an early stage HMRC had sought to pursue the defaulting traders for non-payment of the output tax, but the reality of the situation was that the appellant had been convicted of a conspiracy in which the Bond Group of companies had falsely claimed input tax which they had not paid to the defaulting traders. None of the defaulting traders had paid nor would they be paying any VAT to HMRC, and accordingly there was no risk of double recovery arising and consequently it would not be disproportionate to require the appellant to pay the recoverable amount under section 6(5)(b) of the 2002 Act.

Conclusion

69. For the reasons we have explained, we are satisfied that the judge was entitled to determine the extent of the appellant's gain from the conspiracy to be at least £15m and to make the confiscation order in the sum of £1,839,317.20. Accordingly, the appeal is dismissed.