Neutral Citation Number: [2025] EWCA Crim 1

Case No: 202302936 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT LEEDS
His Honour Judge Jameson KC
T20177045

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/01/2025

Before :

LORD JUSTICE EDIS
MR JUSTICE SAINI
and
HIS HONOUR JUDGE BLAIR KC
Honorary Recorder of Bristol, sitting as a judge of the Court of Appeal Criminal Division

- -

Between :

JASON BUTLER	**Appellant**
- and -	
THE KING	**Respondent**

- -
- -

Charles Bott KC (instructed by **Ison Harrison Solicitors**) for the **Appellant**
Michael Newbold (instructed by **CPS Proceeds of Crime**) for the **Respondent**

Hearing dates : 21 November and 18 December 2024

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APPROVED JUDGMENT

This judgment was handed down by release to the National Archives on Monday 13 January 2025 at 10:30am.

Lord Justice Edis:

1. This is an appeal against a confiscation order which was made in the Crown Court by consent. We heard full argument on 21 November 2024 and granted leave and the necessary very long extension of time. We adjourned the hearing part heard until 18 December 2024 in order that we could hear evidence from the appellant and from counsel and solicitors who represented him in the Crown Court. They advised him, negotiated the settlement on his behalf and consented to the order being made. The appellant was not present at the hearing when that took place, and much of the contact between him and his lawyers occurred by way of telephone calls and occasional video conferences because he was serving a sentence of imprisonment, and there were significant restrictions on access to prisoners because of COVID 19. In these circumstances we felt it appropriate to investigate the events which led the appellant to consent to the order with particular care.

2. We heard evidence and further argument on 18 December 2024 and reserved our decision. We also asked for some further documentation and gave Mr. Bott KC the opportunity to make further written submissions by 20 December. We received those documents and submissions in time.

3. On 24 December the court communicated with the appellant's solicitors to inform them that the appeal would be dismissed and that we would give our reasons in writing on 13 January 2025. We now give those reasons.

4. Mr. Charles Bott KC has conducted this appeal on behalf of the appellant, initially *pro bono*, but on 21 November 2024 we granted a representation order when giving leave. Mr. Bott had represented the appellant at his trial, but not

during the confiscation or enforcement proceedings. Mr. Michael Newbold was not counsel for the Crown at the confiscation hearing (where the Crown was represented by Mr Ian Cook). We are extremely grateful to both counsel for their clear and helpful presentation of a complex case.

Conviction and sentence

5. On 22 March 2018, in the Crown Court at Leeds (His Honour Judge R Jameson KC), the appellant (then aged 46) was convicted of cheating the public revenue. On 26 March 2018, he was sentenced to 9 years' imprisonment. His renewed application for leave to appeal against his conviction was refused by this Court on 6 March 2019.

6. On 13 December 2018, he admitted breaching a restraint order which had been made by the Crown Court in Leeds on 18 June 2015, and was sentenced to a further six months' imprisonment consecutive to the sentence already being served.

The confiscation proceedings

7. On 26 March 2018 an order was made under section 18(2) of the Proceeds of Crime Act 2002 requiring the appellant to disclose full details of his assets, and identified in detail a number of matters in respect of which disclosure was required. The order identified a list of 58 properties in the United Kingdom, with addresses and title numbers. This was a portfolio of cheap buy-to-let properties bought with the assistance of mortgages. It also contained a list of 16 bank accounts in various names in banks all round the world. The prosecution position, which they wished to investigate further with disclosure,

was that a substantial part of the proceeds of the fraud had been remitted to offshore corporate bank accounts and then laundered. On the same date, a timetable for confiscation proceedings was established. This was later varied.

8. The appellant supplied his answers to the section 18(2) Order on 21 September 2018. This gave a list of 79 UK properties and said:-

> "Please note Receivers have now been appointed over 2 of the aforementioned properties mortgaged by the Northern Rock and I expect the Birmingham Midshires to appoint Receivers over the remaining 15 properties imminently."

9. It also added this, about those properties:-

> "I do not have access to any debts which may be in existence in relation to the properties specified at No.3. I believe that the accounts in relation to those properties are already lodged with the prosecution authorities, and therefore any debts will be within their knowledge."

10. The properties were all mortgaged and the mortgagees, it would appear, were actively seeking sale. They were subject to a restraining order made on 18 June 2015. Experience suggests that when properties are sold in circumstances like this there is often nothing left for the mortgagor once the mortgagee has been paid the outstanding debt, interest and enforcement costs.

11. The appellant instructed Mr. Nicholas Hammond, then a solicitor and now a member of the Bar, in 2018. Mr. Andrew Haslam KC and Beverley Ibbotson, a forensic accountant, were instructed by him subsequently. Work on preparing the case for hearing went on throughout 2019. In March 2020, while much remained to be done, the COVID pandemic caused significant difficulties in accessing prisoners. These were not resolved at any time prior to the hearing of the confiscation proceedings and were exacerbated when the appellant himself

became seriously ill with COVID. The appellant was not allowed a laptop for some reason and Mr. Hammond had to arrange for his wife to access materials so that they could be printed and sent into him in the prison. Ms. Ibbotson nevertheless produced a report on 25 June 2020 which was disclosed in order to advance the appellant's case.

12. On 26 April 2021, the appellant was ordered to pay a Confiscation Order for £1,112,670.24, under Section 6 of the Proceeds of Crime Act 2002 ('POCA'). To be paid within 3 months, or in default to serve 7 years' imprisonment. The order was made by consent. Mr. Haslam KC appeared for the appellant, who was not present, and confirmed his agreement to the order being made. The order identified the benefit figure as £5,915,191.77. The available amount and the benefit figure were both the result of negotiation, being significantly lower than the figures for which the prosecution contended. The negotiations had been going on since the end of 2020 when the appellant's solicitors first intimated that they expected to make an offer. The negotiations occurred in correspondence and in oral discussions between the legal teams, including direct discussions between Mr. Haslam and Mr. Cook. The offer was linked to the value of two particular assets, namely (1) what remained of the portfolio of UK properties listed in the section 18 Order, and (2) the value of a debt.

13. The appellant accepts that he gave Mr. Hammond instructions by telephone that the benefit figure and the realisable amount figure contained in the order should be agreed by Mr. Haslam on his behalf.

14. On 13 July 2021 time to pay the Confiscation Order was extended by 3 months, to 21 October 2021.

15. On 22 November 2022, Leeds District Magistrates' Court activated the default prison sentence for non-payment and committed the applicant to prison (2317 days). The appellant was in custody at the time the appeal was heard, serving this default prison sentence. A total of £104,725.24 had been paid towards the order in a series of payments in 2021 and 2022 (prior to committal in default). Those payments were taken into account when the Magistrates' Court calculated the relevant part of the default term which the Appellant was ordered to serve in November 2022.

16. The appellant sought to judicially review the decision by Leeds District Magistrates' Court to commit him to prison in default of payment. Permission to apply for judicial review at the Administrative Court was granted on the papers on 1 September 2023. The substantive judicial review application was dismissed following a hearing (before Mr Richard Wright KC, sitting as a Deputy High Court Judge) on 16 November 2023, see [2023] EWHC 3420 (Admin).

The appeal in a nutshell

17. The appellant contends that the two assets on the basis of which he made an offer to consent to an available amount figure of £1,112,670.24 were in fact not available to him at the date of the order. He had thought that there were 16 properties remaining in the portfolio and there were in fact none, or at least none with any equity available to him. He believed that the debt was recoverable but it was not because the company which was to receive the money and pass it to him (Nudge Limited) had been removed from the company register in Gibraltar a few weeks before the order was made, and he was not aware of this.

18. The ground of appeal says:-

> "The Confiscation Order, terms of which were agreed in good faith at the time, was made on a basis which was incorrect. The assumed realisable assets had included two items (a UK property portfolio said to be worth £713,842 and the applicant's 30% share of a liability owed to Trilindist (UAE) Ltd by Nudge Ltd valued at £306,015.00), which were not and are not in fact available to the applicant in order to satisfy the Confiscation Order. The applicant, who was in custody serving his sentence at the time, did not attend the Confiscation hearing and owing to the strict regime which applied during the Covid pandemic, he had had limited access to documents and to legal advice. The Court is respectfully invited to quash the Confiscation Order and to substitute it with an order, in the lesser sum, which does not treat the two items as part of the available amount."

19. This means, so it is said, that the Crown Court has no jurisdiction to reduce the order and that the appellant is serving a sentence when he has no means of paying the Confiscation Order. This is unjust and this court has the power to remedy that injustice.

20. If, as is now said, the two assets were worth nothing on the 26 April 2021, then the only available assets were those which resulted in the payments of £104,725.24 in 2021 and 2022. If the benefit figure of £5,915,191.77 is right, this means that the appellant has managed to dissipate of £5,810,466.53 of the proceeds of his fraud without having anything at all to show for it.

The offending

21. The appellant's conviction arose from a fraud in which falsified invoices were submitted to HMRC in support of VAT claims for the period 11 October 2011 and 19 January 2015 in relation to the trading of 'data leads'. The total value of the fraud was said at trial to be approximately £9 million.

22. Data leads were used by companies for targeting advertising and marketing, as they were essentially a list of individuals who had previously expressed an interest in the commodity that the company wished to sell to them. The bulk of the leads in the UK were supplied by a group of nine companies who were referred to as the "Big 9". A company known as International Media Distribution purported to buy data leads from the Big 9 companies. Invoices, which included 20% VAT, were created for the transactions. The data leads were then sold to a series of intermediate companies tasked with removing any duplicate names and addresses for a modest profit. The data leads were then sold on to a company based in Gibraltar, before the final sale to another company based in the USA. As a result of selling the data leads to companies in Gibraltar (a country outside the European Union), VAT could not be recovered from the final sale price. Applications were made to the HMRC to reclaim the unrecovered VAT purportedly paid to the Big 9 companies for the initial acquisition of the data leads. The prosecution case was that the appellant controlled various companies within the structure and that he had knowledge of the fraudulent activity which was taking place.

23. The value of the fraud was, therefore, 20% of the initial purchase price of the data leads. When considering the value of any assets which may now be available to the appellant, it is relevant to observe that the profit on the sale of the data leads is not included in that value.

The appeal

24. **Fresh evidence:-** The appellant seeks leave pursuant to Section 23 of the Criminal Appeal Act 1968 to rely on his Witness Statement dated 19 August

2023. Although no criticism of solicitors or counsel is made in the ground, it plainly involves an examination of the circumstances in which the appellant gave his consent to the making of an order which he now says was based on two factual misunderstandings. Most of the property portfolio had in fact already been sold by the Receiver before the order was made, and the figure was in any event included in the available assets in too high a sum. The appellant's witness statement of August 2023 explains that months after the order had been made he was checking the figures and realised that:-

> "The figure of £713,842 was wrong. It had looked like the calculation contained items for tainted gifts of £379,260 which should indeed have been separated and/or removed prior to the drafting of the final order. This appeared to have been overlooked by both HMRC and my advisors. HMRC had agreed that this be removed in the section 16 statement dated 12th April 21, 9 days before the final order was agreed."

25. Nudge Limited did not repay the debt to Trilindist (UAE) Limited. The appellant's witness statement says this:-

> "The overseas equity held in Nudge Limited was to be realised by the repayment of a loan from a borrower named Brand Apps Limited. Nudge was struck off the company register shortly before the final POCA settlement. I had no knowledge that this had occurred. This asset was genuinely included as realisable - perhaps HMRC and or my lawyers should have checked the company status prior to the settlement but I certainly had no idea whilst confined to a cell.
>
> 20. An overseas agent was appointed to re-instate the company but this was refused by the Gibraltar authorities. Copies of these documents have been provided."

26. The appellant says that prior to the order being agreed, he had no way of checking the correctness of the figure of £713,842. The figure was said to represent the value of the appellant's interest in a portfolio of UK properties which had been bought with mortgages as "buy to let" investments. They were all subject to a restraining order from the very start of the criminal proceedings: it was made on 18 June 2015. That order contained a long list of properties. However, the lenders were able to seek possession and a variation of the order and so the property portfolio could reduce despite the order. By the time the

confiscation order was made he had been in prison for over three years and his ability to keep track of these restrained assets was limited.

The response

27. The respondent accepts that the facts identified above are correct, and that Nudge Limited had ceased to exist before the making of the order which included a debt which it was due to repay, and that the figure of £713,842 was overstated in error, and included properties which had been sold before the date of the order.

28. The prosecution contends that these facts should not lead the court to allow an appeal against the confiscation order both by reference to the facts of this case and by reference to decided authority.

29. We have now had an extended opportunity to review the material which the parties had prepared for the confiscation hearing in the Crown Court and it is plain that the business affairs of the appellant were extremely complex. The prosecution contended that there was a very large shortfall between the assets which had been identified as being available and the benefit figure. The difference between the figures which ended up in the order was £4,802,521.53. The prosecution contended that the appellant had failed to prove that the available amount was less than the benefit figure and this should lead to a confiscation order in a much higher amount than that contended for by the appellant. This is a line of argument often called "hidden assets". There was evidence to support the argument, and this created the risk of a much higher order with a much higher default term, and a liability to pay the whole order enduring for life even after serving that term. The prosecution say that the

appellant secured a significant benefit by putting forward the figures which were reflected in the order and may have preserved substantially greater assets by doing so.

30. The prosecution also rely on *Regina v Hirani* [2008] EWCA Crim 1463 at [35] (*Hirani*), and submit that the appellant has not established that "*the most exceptional circumstances*" apply. That judgment says:-

> "34. Additionally, the appellant was not representing that he had assets of £110,000. He was prepared to agree that figure as a matter of compromise to avoid additional potential liability. Similarly, the prosecution were not representing by this agreement that the appellant had no more than £110,000. This was in effect a consent order in which the appellant had bought off risk, both as to the amount of the confiscation order and the period he would be allowed to meet it. … .
>
> 35. In other jurisdictions, those who have entered into consent orders may set them aside on very narrow grounds. We do not exclude the possibility in the arena of confiscation orders that such circumstances might conceivably arise. But we do not consider that they arise where the essence of the complaint is that, in seeking to secure the best deal available, erroneous advice was given to one of those who was party to the agreement, save in the most exceptional circumstances. We would not wish to identify exhaustively what those circumstances might be but, in our judgment, there would need to be a well-founded submission that the whole process was unfair. We do not consider that the circumstances of this case come close to that."

31. It is right to record that the appellant denies that there ever were hidden assets.

What the lawyers say

32. Mr. Hammond resists a suggestion that the enforcement proceedings in the magistrates' court were deliberately delayed so that the appellant could be released before the default term was imposed and access his hidden assets. He says that the delays were caused by the familiar litany of events which have afflicted the criminal justice system since the pandemic. He also says that the

appellant never mentioned any hidden assets to him. He says this in his statement:-

> "15. I also wish to add that the POCA order was not made in the knowledge that the figures were wrong but it was made on the assumption that if they were wrong they could be corrected/amended by the section 23 process . D was advised accordingly."

33. It is agreed before us that this advice was wrong, and there is no route under the process established in section 23 of the 2002 Act by which the appellant can advance the case he makes in this appeal. We proceed on this basis, without deciding the question. Should the appellant seek to persuade the Crown Court that it does have jurisdiction to vary the Order under section 23, the Crown Court will have to decide whether that is right or not and this judgment is silent on that question.

34. Mr. Hammond deals with the appellant's consent to the making of the order quite briefly. He says this:-

> "6. The POCA proceedings had been dragging on, as is sadly in the nature of such proceedings, and a time arrived where an agreement on the benefit figure and the available amount was reached with the Prosecution. D had advice not just from me but from Leading Counsel, Andrew Haslam KC. The Prosecution and the Defence came to an agreement
>
> 7. D was advised not simply to agree figures just for the sake of getting the Order over the line but nonetheless there was an estimation, born of pragmatism, of the figures although the available amount was based on figures which the Prosecution was happy that could be achieved. Bearing in mind the restraint, and this point is worth repeating, they were in possession of information which would have assisted them in coming to that figure."

35. No attendance notes have been supplied to record the giving of advice and the receipt of instructions.

36. Mr. Haslam KC was invited to answer some questions by the Registrar. He said this:-

> Q1: "The reasons for the applicant not being in attendance when the confiscation order was made at the hearing on 26 April 2021. The Crown Court's log for the hearing on 29/03/2021 has the following recorded:
>
> *Case to be listed on 26 April 2021*
>
> *POCCA* [sic] *final hearing*
>
> *Time estimate 3 days*
>
> *It does not heed* [sic] *to be before HHJ Jameson QC*
>
> *Deft to be produced.*
>
> However, it is not clear from the papers why the applicant did not then appear/be produced on 26 April 2021."
>
> Answer: the applicant told us he did not want to attend the hearing on 26th of April 2021. For the avoidance of any doubt, the applicant fully consented to the making of the order in his absence. Mr Hammond and I had a conference [by telephone] with the applicant before and after the hearing. My recollection is that HMP Lindholme [where the applicant was remanded in custody] did not allow prison visits at the time of the hearing because of the Covid-19 pandemic.
>
> Q2: "Were the figures provided for consideration by the Crown Court on 26 April 2021 not the final figures? Please see Para. 15 of the second witness statement by Nicholas Hammond, dated 15 April 2024." [this is set out at [24] above].
>
> Answer: the figures provided for consideration by the Crown Court on 26th of April 2021 were 'the final figures' as understood by the defence [the applicant, Mr Hammond and myself] and the prosecution.

The oral evidence

37. On 18 December 2024 we heard oral evidence from the appellant, Mr. Andrew Haslam KC, and Mr. Nicholas Hammond. There appear to be very few written records of the discussions which took place with the appellant before the order

was made, and both of the lawyers had less than perfect recollections of the events in detail. The key events took place in late 2020 and continued up to April 2021. Both of them will have conducted a lot of cases since. No written memorandum of the advice given or the appellant's consent to the order was created which is perhaps a little surprising given the amount of money involved and the complexity of the appellant's financial affairs. All three witnesses agree that the appellant was advised that if the figures for the values of the assets which were being put forward on his behalf proved not to be realisable then a "certificate of inadequacy" could be obtained from the Crown Court. It does not appear that any potential obstacles to this course were discussed with him.

38. The phrase "certificate of inadequacy" actually relates to the predecessor legislation to the 2002 Act, see section 83 of the Criminal Justice Act 1988, but it is clear that the lawyers were actually advising about the correct provision, namely section 23 of the 2002 Act. On the basis recorded at [33] above, we proceed on the basis that this advice was wrong, without deciding whether that is right or not.

39. The appellant told us that he had understood that if the figures for the value of assets turned out to be wrong then the court could vary the order. By the time when he was discussing with Mr. Hammond what the available amount was, he knew that there were 16 properties left which were considered as available. He said he had no real idea what they were worth, but simply agreed the figure put forward by the financial investigator. That figure was £320,000, which was too high as things turned out. It was then increased to £713,842 in the final order by adding a further amount for "tainted gifts" which was a mistake because it

had been agreed that this would be omitted. The problem with that is that this figure of £713,842 was put forward by Mr. Hammond on behalf of the appellant in a schedule of his assets emailed to the prosecution in March 2021. This says:-

> "4. UK property portfolio £713,842"

40. The financial investigator said in his final statement dated 12 April 2021:-

> "I have accepted the defendant's valuation of his UK property portfolio of £713,842."

41. The appellant told us that he only queried the value of the properties six months after the order. This occurred when he instructed another firm of solicitors to investigate the position and they found there were only 4 properties left with no equity in any of them. He knew that the remaining properties could not even be worth the figure of around £320,000 which the financial investigator had put on them on his statement of February 2019. He said this:-

> "I made it clear that I did not know what was left [of the property portfolio], we would have to caveat with a reservation that we did not know what properties remained. I did not agree to a figure [which I knew to be without substance] to avoid a hidden assets finding."

42. The appellant's evidence was that he wanted to get the POCA proceedings settled, in particular because they imperilled his safety in prison. "Nefarious characters" who were aware of his alleged wealth put him under pressure and sought to extort money from him by threats to his family. He did not suggest that he saw any other benefit to him in the settlement than this. The subject of "hidden assets" was never discussed with his lawyers, and both Mr. Haslam and Mr. Hammond agree that this is so.

43. In relation to the debt owed to Nudge Limited, he said that this was collectible except that Nudge Limited could not collect it because it had been struck off for failing to file its annual return. The managing agent had resigned. He said that Nudge Limited was owned by Trilindist Limited in which he had an interest. He said he had never owned Nudge Limited. His written statement said it was owned by David Gill. This was not confirmed by the latest profile for Nudge Limited dated 9 February 2019 from Companies House Gibraltar which showed the appellant as the sole shareholder. Trilindist, he accepted, was used to launder the proceeds of the fraud. A document attached to an email from Mr. Hammond to the prosecution dated 2 March 2021 says this:-

> "Shares Held by Trilindist (UAE) Ltd £1 ,020,050 GBP @ Cost in Nudge Ltd (GIB) Jason Butler's Share of Trilindist £306,015 GBP Ltd(30%) "

44. This valuation of the appellant's interest in the debt owed to Nudge Limited appeared on a schedule of his assets supplied by Mr. Hammond to the prosecution along with the £713,842 figure for the property portfolio in March 2021. The appellant agreed that he had seen this schedule and discussed it with his lawyers in a conference on 16 March 2021, before it was sent to the prosecution on 22 March 2021.

45. The effect of his evidence was that, actually, at the date of the substantive hearing he had no assets at all, save for those which produced the payments in 2021 and 2022 of £104, 725.24.

46. He gave evidence, which we accept, that he has found being in prison for such a long time very difficult and distressing. He also said that he has not had access

to any assets from which he could satisfy the order and that his release date is March 2026.

47. Mr. Hammond said that he thought that the appellant agreed to the order for reasons of pragmatism. He would be able to move to open conditions within the prison estate once the confiscation proceedings were resolved. He said that he was not sure how the figure of £713,842 had been calculated. He confirmed that he had been told that Mr. Butler had provided £950,000 to Nudge Limited. This means that Nudge Limited received proceeds of the fraud and lent them to Brand Apps Limited which generated a debt in favour of Nudge Limited which became irrecoverable on that company being struck off the register.

48. Both lawyers confirmed that there was never any discussion of hidden assets with the appellant.

Discussion and decision

49. Mr. Bott KC says that a grave injustice has been committed because the appellant is serving a default term of imprisonment for failing to pay an order when there never were any assets from which it could be satisfied. He says that we can be satisfied that the appellant does not have any assets to pay the order because otherwise he would do so and secure his release from prison. The witness statement of the appellant is clear that prison is a great hardship for him.

50. That is not an argument which carries any weight. The appellant has been in prison since March 2018. We calculate that the time he must serve of the default term is 50% of 2317 days, or a little over 38 months. He has not much more than 12 months left to do. Paying the order now would not only cost him a large

sum of money, but would also cause him significant further problems. The assets which were used to calculate the available amount have either been realised or have proved to have no realisable value. If the appellant suddenly produced the sum necessary to pay the outstanding part of the confiscation order, this would suggest that he did indeed have hidden assets at the time it was made. This would undermine his evidence which was placed before the Crown Court in the confiscation proceedings which might lead to further criminal proceedings. Moreover, although prison is a serious punishment and never to be taken lightly, a further 12 months or so in order to retain a seven figure sum seems, at least financially, an attractive prospect. None of this amounts to a finding that he does have such assets. It is only an explanation of our rejection of the point made on his behalf that we should find positively that he does not.

51. *Hirani* has been followed, approved and applied on many occasions. It is clearly binding on us. It is not a statute and the test of "the most exceptional circumstances" should not be read as if it were. The approach has been considered and refined in other cases, such as *Ayankoya* [2011] EWCA Crim 1488 and *Ghulam* [2018] EWCA Crim 1691. In *Ayankoya* the court described the circumstances as exceptional and allowed the appellant to resile from a confiscation order to which he had agreed. In some respects the circumstances were similar to those of the present case. In *Ghulam* the court said that an appellant who alleged that he had agreed to a confiscation order relying on bad advice would have to show that he would have done better if he had been competently represented. This tends to suggest that the question is not whether the circumstances were exceptional in that they are quite unlike anything that has happened before, but rather whether they are exceptional in that the order

can be shown to have been procured by incompetent advice. The further analysis by this court in *R v. Miller* [2022] EWCA Crim 1589, in particular at [81]-[83], emphasises that although it will always be a wholly exceptional case where an appeal against a confiscation order made by consent is allowed, the court's focus is on fairness and justice.

52. The appellant's case is that he did not know, and could not have known, that Nudge Limited had been struck off the register of companies a few weeks before the order was made. In relation to the valuation of the property portfolio he says that he was not able to check the figures himself because he did not have access to the material in prison and was not present at the hearing. In his written evidence he says:-

> "22. I was not present at any of the hearings and therefore did not have the opportunity to check the document or figures. I genuinely believe that had I been in attendance I would have recognised this error. I am particularly familiar with the details of my case and I believe that I would have noticed the equity figure stated was too high. I also believe that the financial investigator should have noticed this figure was too high particularly given that it was twice the value stated within our forensic report and indeed their own section 16 documents. In my opinion it is not reasonable to review and include a figure that is double that as previously presented without raising a query."

53. But he told us that a short document which shows the value of the property portfolio as £713,842 was discussed with him at a conference with his lawyers on 16 March 2021. It is quite apparent that as long ago as 2018 he was aware that the portfolio was much reduced (he suggested it was 17 properties by then) and that the value of those properties was very questionable because of the appointment of receivers by the mortgagees. That is clear from his section 18(2) Response quoted at [8] above. This is one of the documents we asked to be

supplied to us after the hearing, because it is referred to in a footnote to Beverley Ibbotson's Report. The appellant is a resourceful businessman who built up this property portfolio, and he clearly knew that it was worth little or nothing as at April 2021. He certainly knew that the figure of £713,842 which was put forward on his behalf as being its value at that time bore no relation to the truth.

54. His evidence about the debt owed to Nudge Limited which was available to him to the tune of £306,015, see [44] above, is also unacceptable. He has no explanation for the entry at Companies House showing him as the sole shareholder of Nudge Limited. The sudden disappearance of that company apparently means that the funds laundered through it are now irrecoverable, which has the appearance of highly successful money laundering.

55. In March or April 2021 the appellant faced the task of proving that the available amount was less than the benefit. This involved explaining what had happened to £5,915,191.77, the negotiated figure, or over £9,000,000 on the prosecution case. Although he had served a section 18(2) response in 2018, and a forensic accountant's report in 2020, he never disclosed any witness statement from himself. We have not seen any proof of evidence or any other indication as to how he was going to attempt the task of explaining where all the money had gone and why none of it was still available. On the other hand, there was abundant evidence of a sophisticated network of offshore companies with multiple bank accounts through which money moved. If all he wished to do was to dissipate the money, why would any of that be necessary?

56. Of course, we accept from the lawyers that the phrase "hidden assets" was not used, but the reality of the appellant's position in the litigation must have been

discussed. As a convicted fraudster and an apparently accomplished money launderer, he was likely to fail to prove that the available amount was less than the benefit. This would mean the confiscation order would be made in a very much higher sum, with a significantly higher default term of imprisonment.

57. Therefore, in late 2020 and early 2021 he set about a strategy of offering to consent to a much lower order based on assets on which he placed a particular value in those negotiations. That value was unsustainable on examination as he knew. The properties were worth nothing, and the debt owed to Nudge Limited has never been convincingly explained. A number of documents concerning that transaction emanate from the appellant, and he has not been able to explain them either to us or, more significantly, in any document served or to be relied upon in the Crown Court in April 2021. The attempt to show that the available amount at that date was £713,842 plus £306,015 and the sums paid in 2021, 2022 of £104, 725.24 would have collapsed if properly examined at a hearing in the Crown Court. The result of that would have been an order in the amount of the benefit. He had every reason to consent to this order and this is why he appeared to his lawyers to be pleased with the outcome.

58. For these reasons we do not accept that it is unfair or unjust to hold the appellant to the order which he instructed his lawyers actively to seek. The appeal is dismissed.

Postscript

59. On 31 December 2024 Mr. Newbold sent an email to the Court of Appeal Office in which he said:-

"The position appears to be that:-

> A total of £104,725.24 was paid towards the order in a series of payments in 2021 and 2022 (prior to committal in default). Those payments were taken into account when the Magistrates' Court calculated the relevant part of the default term which the Appellant was ordered to serve in November 2022.
>
> On or around 27 December 2024, a further payment in the sum of £369,584.13 was made towards the confiscation order. That payment was, in light of the part of the default term which the Appellant has already served, sufficient to require his release from custody.
>
> It appears that confirmation of payment was received too late on 27 December for the relevant regional confiscation unit in HMCTS and/or HMP Humber to give effect to it (and that there were various emails between the HMCTS confiscation unit and the Appellant's solicitors in relation to this). The Offender Management Unit at HMP Humber confirmed yesterday that the Appellant would be released yesterday afternoon, however.
>
> In light of this, the Respondent anticipates that the Appellant will now have been released from custody."

60. We asked the Court of Appeal Office to communicate with the HMCTS Confiscation Unit for confirmation of what we were told, and on the 3 January 2025 received this information in an email:-

> "You are correct in stating that Mr Butler was released from custody on 30th December 2024. This was following a payment of £369,584.13 on 27th December 2024; this payment information was transmitted to the offender management unit at HMP Humber and they deemed that this payment was enough to secure Mr Butler's immediate release.
>
> Mr Butler still has a very large balance outstanding which will be enforced accordingly –

Current Financial Status Back to top

Original Order Amount:	**£1,112,670.24**	Balance outstanding:	**£638,360.87**
Variations:	**£0.00**	Cumulative Interest:	**£258,246.77**
Current Order Amount:	**£1,112,670.24**	Interest Outstanding:	**£258,246.77**
Amount Paid to Date:	**£474,309.37**	Total Amount Outstanding:	**£896,607.64**
Interest Repaid to Date:	**£0.00**	Daily Interest:	**£139.91**

61. As we recited at the start of the judgment, the appellant's solicitors were informed of the failure of the appeal on Christmas Eve. The payment of £369,584.13 would appear to have been made on the next working day. This judgment was drafted in advance of receipt of that news which is irrelevant to what we have to decide. Paragraph [50] gives an account of some problems which might arise if an order is suddenly satisfied by a person who has repeatedly denied having any assets. Whether any such difficulties may arise in this case is not for us to say.