

ENGLAND AND WALES / JUDGMENT

Adams v Crown Prosecution Service (CPS)

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Neutral Citation Number: [2017] EWCA Civ 185 Case No: C1/2014/2864 IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT) THE HONOURABLE MRS JUSTICE DAVIES

[2014] EWHC 2639 (Admin) Royal Courts of Justice Strand, London, WC2A 2LL Date: 27/03/2017
Before : LORD JUSTICE LONGMORE LORD JUSTICE HAMBLÉN and LORD JUSTICE IRWIN

- ----- Between : Adams
- and - Crown Prosecution Service
- ----- Appellant Respondent Mr. Ivan Krolick (instructed by Clarke Barnes Solicitors LLP) for the Appellant Mr. Kennedy Talbot QC (instructed by Crown Prosecution Service) for the Respondent Hearing dates: 16 March 2017
- ----- Judgment Approved Judgment Approved by the court for handing down. Adams v CPS [2017] EWCA Civ 185 LORD JUSTICE HAMBLÉN:

Introduction

1. 2. 3. 4. This is an appeal against the decision of Nicola Davies J to refuse to issue the appellant a certificate of inadequacy under s.83(1) of the Criminal Justice Act 1988 (“the 1988 Act”). Such a certificate may be applied for where a defendant in respect of a confiscation order contends that his realisable property is inadequate for the payment of any remaining amount due to be recovered under the order. If the court is satisfied that this has been established then a certificate to that effect may be issued. Once a certificate of inadequacy is issued the defendant may apply to the Crown Court under s.83(3) of the 1988 Act for a reduction in a confiscation order made against him. In the present case the appellant (“Mr Adams”) was subject to a confiscation order requiring payment by 30th September 2007 of the sum of £750,000. Approximately £365,000 has been paid and in December 2012 Mr Adams was informed that the balance due was £380,713.81. Interest continues to accrue and by the date of judgment, 11 August 2014, £651,611 was outstanding under the order. The factual background 5. 6. On 6 February 2007 Mr Adams pleaded guilty to one count of conspiracy to conceal the proceeds of criminal conduct for which he received a sentence of 7 years imprisonment. On 9 March 2007 a confiscation order was made against him requiring him to pay £750,000 by 30th September 2007, with a default sentence of 4 years imprisonment. The background to the criminal proceedings against the appellant is set out

in the judgment of the Court of Appeal in his unsuccessful appeal against sentence, R v Adams [2009] 1 WLR 301: “4. The background facts are as follows. The defendant was for a significant period of time a highly successful career criminal and was well known as such. By his basis of plea it is plain that he was asserting and it was accepted by the prosecution, the criminality in question had ceased in or about 1993.... The basis of plea was: “(a) I will plead guilty to count 10 only excluding drugs on the basis of a full fact opening. (b) The prosecution will not undermine any suggestion that the criminality which created the funds was five to six years before 1998 (consequently the defendant will mitigate on the basis that although money from crime was laundered in accordance with the time frame in Count 10, no other crime has been committed since five to six years before 1998). (c) The prosecution are content for the defence to mitigate on the basis that the total value of the Judgment Approved by the court for handing down. Adams v CPS [2017] EWCA Civ 185 criminal activity at the time of offences was £1m. (d) Confiscation – figure for realizable assets is £750,000. (e) Prosecution cost £50,000.”

5. The defendant had clearly amassed a considerable fortune by the time of the end of his criminal activity and it was expended on a lavish lifestyle which involved, according to the prosecution, significant numbers of first class flights to different destinations around the world, expensive jewellery, private education for his child and the acquisition of antiques, works of art and other property. When he was ultimately arrested on 30 April 2003 his home, Fallowfields was a large property in a desirable area of North London. The police found substantial quantities of valuable property and the clear indications were that the defendant had been able to maintain his lifestyle because of the criminal activities in question.
6. The defendant had paid no income tax for a significant period. There was an investigation into his position in 1995, and eventually in 1996 he agreed to pay £95,000 settlement, covering his tax liabilities. But that was on the basis of false information that he had provided. It then became apparent to him that he would have, in some way or another, to account in a way which would satisfy the authorities for the wealth that he had amassed. It was in those circumstances that he obtained the assistance of others in order to disguise the proceeds of crime.
7. It was principally done through sham companies that were set up, in particular Skye Consultancy Ltd., and Clouds Consultancy Ltd., which gave him effectively bogus employment and an income generated by the companies on the basis that he was some form of consultant. The precise details of the way in which those companies were operated is not of any materiality for the purposes of the sentencing exercise. Suffice it to say that means were found to enable an apparently honest source of income to be developed over a substantial period of time. Indeed, the prosecution case was in reality that the whole of the period from 1996 onwards was a period in which the defendant was seeking, by bogus means, to hide the way in which he had come by his money.

8. Although, at the end of the day, the prosecution were prepared to accept the basis of plea, it remains to some extent uncertain what the full extent of the financial situation was or indeed is. None the less the Judge was prepared to sentence the defendant on the basis of the matters which were accepted by the prosecution on that basis of plea. ...” 7. Mr Adams’ wife Ruth Adams (“Mrs Adams”) had been jointly charged with Mr Adams with offences of fraudulent trading, furnishing false information and conspiring with others to conceal or disguise property which in whole or in part Judgment Approved by the court for handing down. *Adams v CPS* [2017] EWCA Civ 185 directly or indirectly represented the proceeds of relevant criminal conduct and/or drug trafficking. Mrs Adams became seriously ill before the hearing and the Crown decided not to pursue charges against her following Mr Adams’ plea to the conspiracy count. 8. As to Mrs Adams’ alleged role this was described by the judge as follows at [5]: “... It was in early 1995 that the Special Compliance Office of the Inland Revenue began an investigation into Terence Adams’s finances as a result of which it became necessary for him to provide details of his source of income over a period of some six years. Until he was murdered in November 1998, Solly Nahome played a principal part in organising Terence Adams’s financial affairs. Following his death his role in relationship to Terence Adams’s finances was assumed by three others – Ruth Adams, Nahome’s widow Joanna Barnes and a friend, an accountant/bookkeeper. It was the Crown’s case that these three individuals continued to practise the deceits necessary to conceal the fact that Terence Adams derived his income from the proceeds of crime. Joanna Barnes was also charged with forging a loan agreement ostensibly between her husband and Terence Adams, an offence to which she pleaded guilty.” 9. 10. 11. In addition to the confiscation order, a Financial Reporting Order (“FRO”) was also made in respect of Mr Adams on 21 May 2007 for a duration of 10 years. The FRO required him to submit financial reports (every 6 months when in custody and every 4 months when released). As for Mr Adams’ assets, Mr and Mrs Adams jointly owned the matrimonial home at Fallowfield, London NW7 (“Fallowfield”). Fallowfield was sold in 2009 and the proceeds were divided between Mr and Mrs Adams. Mr Adams’s share of the net proceeds of sale was £234,166.21. This was applied towards the confiscation order. A Receiver was then appointed and he published his final account on 31 August 2010. He had disposed of all of the assets of Mr Adams which had been referred to in his letter of appointment, and had realised the total sum of £160,866.06. After deducting the relevant fees and disbursements, his net realisation was £130,323.39, which he had paid in part satisfaction of the confiscation order. It was Mr Adams’s case that all assets held by him had then been realised. In 2012 a tax rebate of £1,374.60 was credited to the confiscation account, and in December 2012 Mr Adams was informed by the CPS that the balance due under the Confiscation Order was £380,713.81, but statutory interest continued at £88.44 per day. The total sum realised from disposal of Mr Adams’s assets, and paid in satisfaction of the Confiscation Order was accordingly £369,286.19.
12. Mr Adams was released from prison on 23 June 2010. He breached the terms of his FRO and was subsequently sentenced to 8 weeks imprisonment. He was returned to custody on 25 November 2011 and released on 25 July 2012. 13. On 30 May 2012, whilst still in custody, Mr

Adams applied for a certificate of inadequacy pursuant to section 83 of the 1988 Act. Judgment Approved by the court for handing down. Adams v CPS [2017] EWCA Civ 185 14. 15. 16. 17. It was Mr Adams's case that he had exhausted all of his assets; that he had received minimal remuneration for some work he had been able to obtain since his release from prison and that he is, effectively, dependent on his wife. He gave an account of his financial affairs, and drew attention to the fact that his financial affairs had been under intense scrutiny and investigation both before, and after, the making of the confiscation order, and this scrutiny continued. The CPS resisted the application. The CPS contended that Mr Adams could not prove on the balance of probabilities that that his current assets were worth less than the outstanding balance on the confiscation order. It was contended that Mr Adams had access to a substantial capital reserve which could be used to pay the confiscation order and that this was supported in particular by the financial transactions of Mrs Adams and what was alleged to be an expensive lifestyle on the part of Mr and Mrs Adams. No positive case was made that, at the time of the confiscation order, Mr Adams' assets exceeded the agreed amount of £750,000. The application was heard before Nicola Davies J over 3 days in July 2014. The judge heard evidence from a number of witnesses including Mr and Mrs Adams. In her judgment of 11 August 2014 the judge found at [92] that she was not satisfied that Mr Adams "has provided full and candid disclosure to the court as to the assets held in July 2014 which fund his life and that of his wife"; that she believed that "there are financial matters known peculiarly to Terence Adams which are not before the Court" and that upon the evidence presented to the court; she was "not satisfied that the current assets of Terence Adams are worth less than the outstanding balance of the Confiscation Order" and the application was accordingly refused. The law relating to applications for a certificate of inadequacy under the 1988 Act 18. Section 83 of the 1988 Act provides that: "(1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons.

- (2) For the purposes of subsection (1) above—
 - (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors; and
 - (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Part of this Act from any risk of realisation under this Part of this Act. Judgment Approved by the court for handing down. Adams v CPS [2017] EWCA Civ 185
- (3) where a certificate has been issued under subsection (1) above, the defendant may apply –

- (a) where the confiscation order was made by the Crown Court, to that court;....
- (4) the Crown Court shall, on an application under subsection (3) above –
 - (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
 - (b) substitute for the term of imprisonment or of detention fixed under subsection
- (2) of section 31 of the 1973 c. 62. Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.” 19. As section 83(1) makes clear, the application for a certificate is made by the defendant and the burden is on him to prove that the requirements of the sub-section are met if a certificate is to be issued. That means satisfying the court that his “realisable property” is “inadequate” for payment of the remaining amount outstanding under the confiscation order. It is concerned with the property which is realisable and its adequacy at the time of the application for a certificate, which may be many years after the confiscation order, as it was in this case. 20. In *Glaves v Crown Prosecution Service* [2011] EWCA Civ 69 [2011] 4 Costs LR 556 at [18] the Court of Appeal approved the following summary of the general principles to be applied in relation to section 83 applications: “... The general principles were succinctly summarised by Mr David Holgate QC sitting as a deputy High Court Judge, in *B* [2008] EWHC 3217 at para 74:
 - (1) The burden lies on the applicant to prove, on the balance of probabilities that his realisable property is inadequate for the payment of the confiscation order (see *Re O'Donoghue* [2004] EWCA Civ 1800, per Laws LJ at para 3).
 - (2) The reference to realisable property must be to “whatever are his realisable assets as a whole at the time he applies for the certificate of inadequacy. If they include assets he did not have when the confiscation order was made, it is by no means a reason for leaving such fresh assets out of consideration”(IBID and see also *Re Phillips* [2006] EWHC 623 (Admin)). Judgment Approved by the court for handing down. *Adams v CPS* [2017] EWCA Civ 185
 - (3) A s 83 application cannot be used to go behind a finding made at the confiscation hearing or embodied in the confiscation order as to the amount of the defendant's realisable assets. Such a finding can only be challenged by way of an appeal against the confiscation order. (see *Gokal v. Serious Fraud Office* [2001] EWCA Civ 368, per Keene LJ at para 17 and 24).
 - (4) It is insufficient for a defendant to say under s 83 “that his assets are inadequate to meet the confiscation order, unless at the time he condescends to demonstrate what has happened since the making of the order to realise the property found by the judge to have existed when the order was made”. (see *Gokal* para 24 and *Re O'Donoghue* at para 3).
 - (5) The confiscation hearing provided an opportunity for the defendant to show that his realisable property was worth less than the prosecution alleged. It also enabled the defendant to identify any specific assets which he contended should be treated as the only

realisable property. The s 83 procedure, however, is intended only to be used where there has been a genuine change in the defendant's financial circumstances. It is a safety net intended to provide for post-confiscation order events. (see *McKinsley v. Crown Prosecution Service* [2006] EWCA Civ 1092 per Scott-Baker LJ at paras 9, 21- 24, 34 and 35).

- (6) A Section 83 application is not to be used as a “second bite at the cherry”. It is not an opportunity to adduce evidence or to present arguments which could have been put before the Crown Court judge at the confiscation hearing (para 38 of *Gokal* at paras 23,24 and 37 of *McKinsley*.)” 21. In *Glaves Toulson* LJ identified the confiscation order as the starting point for consideration of a section 83 application (at [52]) and confirmed that clear and cogent evidence rather than generalised assertions will generally be required if the defendant is to discharge the burden of proof on him (at [53]). In this connection Toulson LJ commented as follows at [53]: “... there is a balance of judgment to be struck. The courts are right to treat with some scepticism generalised assertions by someone whose credibility may be deeply suspect by reason of the facts of the offence. Absence of independent credible evidence to corroborate a defendant's account is not fatal as a proposition of law, but it may well be fatal as a matter of fact.... At the stage of an application for a certificate of inadequacy the burden of proof is again on the defendant. He is unlikely to succeed unless the court is satisfied that he is being candid, and an application for a certificate of inadequacy is not intended to be a means of the defendant having a second bite at the same cherry.” 22. In support of the appeal Mr Adams relies in particular on the decision of the Court of Appeal in *In re McKinsley* [2006] EWCA Civ 1092; [2006] 1 WLR 3420. That case Judgment Approved by the court for handing down. *Adams v CPS* [2017] EWCA Civ 185 concerned section 17 of the Drug Trafficking Act 1994 which contains a parallel jurisdiction to section 83 of the 1988 Act. The issue on the appeal was in what circumstances, if any, it is possible for an applicant for a certificate to challenge the findings originally made by the Crown Court as to the applicant's realisable assets. The court held that there was no jurisdiction to do so. The court stated at [30-31]: “30. In our judgment a close examination of section 17 against the background of the 1994 Act as a whole points strongly to the construction that the Administrative Court is limited to consideration of post confiscation order events and is not entitled to go behind the confiscation order even if there has been a manifest error.
31. It is our view therefore that the structure of the Act points strongly towards the construction that it is not open to an applicant on an application for a certificate of inadequacy to challenge the Crown Court judge's findings as to the applicant's realisable assets. ...” The grounds of appeal 23. The grounds of appeal are:
- (1) The judge erred in law in permitting the CPS to assert that at the time the Crown Court made the confiscation order, Mr Adams's assets were greater than then identified.

- (2) The judge erred in law, or made an unreasonable finding of fact that Mr Adams had an undisclosed reserve of funds, notwithstanding that the Respondents were unable to prove to the appropriate standard, when or how he had obtained, or could have obtained, such reserve.
- (3) The judge erred in law and in fact in finding that the expenditure by Mr Adams' wife constituted expenditure by Mr Adams and his wife and that the financial transactions were conducted using undisclosed assets of Mr Adams.
- (4) The finding of the judge that by reason of the expenditure, the Mr Adams had not shown his assets were inadequate to pay the confiscation order was unreasonable and against the weight of the evidence. Ground 1 - The judge erred in law in permitting the CPS to assert that at the time the Crown Court made the confiscation order, Mr Adams' assets were greater than then identified. 24. 25. In reliance upon *In re McKinsley* Mr Adams argues that it is not open for the CPS to go behind the finding as to his realisable assets made by the Crown Court at the time of the confiscation order. Although there is no Schedule of Assets it was agreed what assets the order related to and that their value was £750,000. All those assets have been realised and accounted for. Just as the defendant cannot have a "second bite at the cherry", nor can the CPS. The CPS accepts that where a specific finding is made or agreed for the purpose of a confiscation order (such as whether a specific property belongs to the defendant) it may, depending on the circumstances, be an abuse of process for the CPS subsequently to seek to go behind that finding or agreement. I agree with the CPS that that is not this case. A figure was agreed as to the value of the defendant's Judgment Approved by the court for handing down. *Adams v CPS* [2017] EWCA Civ 185 realisable assets but there was no agreement or finding that the defendant had no hidden assets. Further, the CPS did not need to assert and did not assert that the Crown Court was wrong in the identification of assets when it made the confiscation order. The CPS case was simply that Mr Adams was unable to show that he had less than £651,611 of realisable property when the application for a certificate was made. 26. I accordingly agree with the judge's conclusion at [69] that: "...the legal point does not arise upon the facts of this case as the Crown is not challenging the finding made by the Crown Court. A positive case that the applicant's assets were greater than £750,000 when the Confiscation Order was made has not been raised. The respondent has no evidence of when the applicant's assets which it contends now exist were obtained nor, critically, is the court required to make a finding as to when the same occurred." 27. 28. 29. I am also in general agreement with the judge's further conclusion at [67] that it "cannot have been the intention of Parliament upon a Certificate of Inadequacy hearing that the court should ignore the existence of assets which are successfully concealed by a defendant when a Confiscation Order is made against him, but which are now available to pay the order". As the CPS point out, if the law were otherwise it would mean that that a defendant who successfully concealed assets when a confiscation order is made could obtain relief from payment of a confiscation order under section 83 on the ground he has no assets, whilst at the same time "brazenly flaunting them". This would be contrary to the purpose and scheme of the legislation. The purpose of the legislation is to ensure that the defendant

is parted from the proceeds of his crime and, not least because it relates to matters peculiarly within his own knowledge, the scheme of the legislation is to place the legal and evidential burden on the defendant. In my judgment the CPS are correct in submitting that the reasoning and decision in *In re McKinsley* does not prevent them from resisting the issue of a certificate of inadequacy on the basis that a defendant now has assets which, previously, were successfully secreted. 30. For all these reasons I would dismiss the appeal on ground 1. Ground 2 - The judge erred in law, or made an unreasonable finding of fact that Mr Adams had an undisclosed reserve of funds, notwithstanding that the Respondents were unable to prove to the appropriate standard, when or how he had obtained, or could have obtained, such reserve. 31. The alleged legal error is linked to that asserted in relation to ground 1. It is submitted that by reason of the realisable assets figure of £750,000, as agreed and found in the confiscation order, the CPS cannot contend that Mr Adams has a capital reserve other than by reference to: Judgment Approved by the court for handing down. *Adams v CPS* [2017] EWCA Civ 185

- (1) The value of any assets which were comprised in the realisable assets held by Mr Adams on 9 March 2007, but which have not been realised since that date, either with the consent of the CPS or by the enforcement receiver; or
- (2) Realisable assets which have been obtained by Mr. Adams, from whatever source, since 7 March 2007. In my judgment the nature of the exercise to be performed by the court in considering a section 83 application is not to be trammelled in the way suggested by Mr Adams. The issue for the court is whether it is satisfied on the evidence before it that the applicant's realisable assets are inadequate for payment of the amount remaining to be recovered under the confiscation order. The court is not limited as to the evidence that it may consider for this purpose. Although the CPS was contending that the inference to be drawn from the evidence is that Mr Adams has an undisclosed capital reserve it had no positive case as to when or how such a reserve was acquired, nor did it need to advance a positive case. As made clear in their skeleton argument at trial, the CPS contended that the Court was not required to reach findings on the date of acquisition of the assets but on the extent of their adequacy to pay the order at the time of the application (para. 16). As to the alleged unreasonable finding of fact, as stated by Toulson LJ in *Glaves*, in considering the evidence the judge was entitled "to treat with some scepticism generalised assertions by someone whose credibility may be deeply suspect by reason of the facts of the offence". In this case the offence itself involved disguising the proceeds of crime. That had involved the use of sham companies and bogus employment. On the Crown's case, it had also involved the assistance of Mrs Adams in the deceptions practised. The judge addressed the evidence in considerable detail and made a number of findings that supported her overall conclusion that Mr Adams had an undisclosed reserve of funds. Significant features of the evidence and the judge's findings thereon include the following: "Alleged bogus employment and use of sham companies 32. 33. 34. 35. 36.

- (1) Mr Adams was released from prison in June 2010 and he commenced work for Universal Imports as a jewellery designer in September 2010 until July 2011 when this was terminated due to the economic situation. In total, he received £14,650 net from the company. The judge found at
- [82] that this claimed employment lacked credibility and that “it is difficult to accept that a man who possesses no design training or qualifications, is employed and paid for hitherto unseen design work which is then deemed too expensive for the company to produce, is in fact engaged in legitimate employment by the company.”
- (2) In March 2011, a company called Broking Limited was incorporated, of which Mark King was Managing Director. In September 2011, Mrs Adams transferred £60,000 to Broking Limited’s account. No documentation was available in relation to this investment. No business was conducted by Broking Limited and there were very few transactions recorded. On 2 March 2012 and 31 July 2013, credits were Judgment Approved by the court for handing down. Adams v CPS [2017] EWCA Civ 185 made back to Mrs Adams’s account for £15,000 and £10,000 respectively. The judge found at [90] that “if it was the case that Ruth Adams wished to make a good investment she seems to have done remarkably little by way of research or proper enquiry as to what the likelihood of returns on her investment into Broking Limited would produce. This is a financial transaction which raises questions as to its purpose to which no good answers have been given.”
- (3) On 20 December 2012, Mrs Adams formed a company, N1 Angel Limited. This was an online clothing company for which Mr Adams, who has no training in design, was its chief designer and only employee. No draft accounts, management accounts, invoices, correspondence with purchasers or purchase orders were produced to evidence the work of this company. It made no profit and was in debt to Sterling Wholesale Limited owned by the Ellis family for £52,000. On 28 May 2013, a close friend’s partner, Dale Golder, transferred £35,000 to Mrs Adams on the apparent understanding that the funds were to be invested in N1 Angel Limited. There was no loan agreement drawn up until August 2013. At least £10,000 of this sum was used for living expenses for Mr and Mrs Adams. Additionally, Dale Golder is the only identified client of N1 Angel Limited. Although this was not disclosed in his first witness statement, Dale Golder is a partner in a firm known as JTD Sports Cars. As the judge found at [35] one of his associates in the firm is serving a 23 year sentence for drugs and firearm offences and many of the clients of the firm are known criminals. At the time of trial Dale Golder was on police bail in relation to an investigation into money laundering offences.
- (4) Mrs Adams incorporated another company, known as Stara Stara Limited, on 2 January 2013. There was no evidence provided of the business activity of this company and the only expense appears to be of £4,000 when Mrs Adams and her daughter went to China.

- (5) In relation to N1 Angel Limited and Stara Stara Limited the judge found at [86] that: “The two companies set up by Ruth Adams have done little by way of business but have provided a means of attracting investment or provide a vehicle for personal expenditure. It is impossible to look at either of these companies in isolation. When viewed in the context of the history of the entire matter, in particular the previous creation of companies in order to provide a seemingly legitimate form of income for Terence Adams, I am not satisfied that either company represents a wholly legitimate endeavour to sell clothes or jewellery.”
- (6) Ruth Adams Interior Design was the name of the business on an invoice produced by Mrs Adams which evidenced that Dale Golder paid Mrs Adams £16,630 for some design work in 2012. Save for an online course which she did not complete, Mrs Adams had no training in interior design nor any professional experience. There was no evidence as the source of the payment. The judge found at [83] that “employment of an individual with no proven design experience or training, no negotiated rates for payment, only one document to Judgment Approved by the court for handing down. Adams v CPS [2017] EWCA Civ 185 evidence payment and none from the company employing her does not provide the strongest of evidential bases for stating that the sums paid to Ruth Adams emanated from Montana and represent professional work done by her.” Alleged loans and investments
- (7) The following loans or investments were said to have been made by friends and family of Mr and Mrs Adams: b.
- a. Mr Adams’s uncle, Brian Higgins loaned Mrs Adams £30,000 in January 2008 and £10,000 on a subsequent occasion. There was no evidence of the source of this money and the loan has not been repaid. Brian Higgins’ family relationship is with Mr Adams. Given that relationship the judge stated at [75] that she had considerable difficulty in accepting that they had never discussed the loan and that Mr Adams was not involved. In June 2012, Mrs Adams’s mother, Mrs Josephine Tonna, loaned her £3,000 to assist with living expenses. There was no evidence of the source of the £3,000 or of how Mrs Tonna could afford to lend it. Her account was emptied on that day. Six days after the loan was allegedly made for living expenses Mrs Adams spent over £500 on a designer dress at Harvey Nicholls. The judge considered at [74] that there was force in the CPS’s contention that Mrs Tonna was provided with the £3,000 in order to give it to Mrs Adams. In 2014 Mrs Adams received a loan of £20,000 from an unnamed friend. She claimed that she did not have permission to name her. Given the importance of the evidence as the time involved in preparation for the hearing the judge found at [80] that it was “surprising” that her permission had not been sought. c.
- d. Following the sale of Fallowfield, Mr Adams’ cousin and his wife, Susan Evans, purchased Mr Adams’ furniture for £10,000. In December 2012, Susan Evans loaned Mrs Adams £10,000 to help her set up a clothing business. There is no evidence as to the source of the money and the loan was not repaid. The judge said at [76] that she had “real difficulty accepting that Terence Adams and Sue Evans's husband would have had no involvement in the transfer of these monies, given the family relationship and the fact that the monies came from Sue Evans's husband”.

- e. After the sale of Fallowfield, Mrs Adams moved into a property rented by a childhood friend Ian Haart. Mr Adams moved into the property on his release from prison. Mrs Adams maintained that Ian Haart paid her monthly rental for her of £1750. In total, Ian Haart paid £24,500. There was no documentation available in relation to this arrangement and Ian Haart had apparently disappeared to America in unexplained circumstances. The judge found at [81] that the legitimacy of these payments was questionable.
- (8) As the judge records at [33], when asked how these loans were going to be repaid Mrs Adams said that she hoped that N1 Angel would be successful. As noted above, this was a company which had made no Judgment Approved by the court for handing down. *Adams v CPS* [2017] EWCA Civ 185 profit, was £52,000 in debt and had only ever had Dale Golder as a client. Use of cash
- (9) Mrs Adams made extensive use of cash to purchase goods and services. Examples, as set out at [34], include Grove Spa, £3,850 (£3,640 in cash); dental treatment £12,044 (£11,756 in cash); purchase of Mr Adams' watch at auction £2700 (£1,000 in cash); Court House Clinic £2,583 (£1,068 in cash) and payments to A1 Self Storage Limited £5,176 (£3,250 in cash). Some of these payments were at a time when her share of the Fallowfield money was available but liable to be quickly exhausted by such expenditure. Others were after it had been exhausted. The cash element of these transactions was not apparent from Mrs Adams' bank accounts and were only discovered when investigations were made of the recipients.
- (10) The judge noted that payments made wholly in cash leave no evidence trail. She found at [88] that "the use of cash as a means of payment does indicate the existence of an unidentified cash reserve which is available to Terence and Ruth Adams." Expenditure alleged to be inconsistent with the Adams' circumstances (11) In relation to the lifestyle of Mr and Mrs Adams the judge found at [89] that it reflects "a liking for the more expensive items in life" and that it continued after the proceeds from Fallowfield were exhausted. She found that the evidence of their expenditure was inconsistent with Mr Adams's evidence that their weekly expenditure was £200 a week plus rent. She found that "the nature of the spending points to the fact that there is a reserve of funds which can be and is utilised by Terence and Ruth Adams." " 37. It will be apparent from the above summary that the judge found that there a number of gaps in the evidence and that unsatisfactory and implausible explanations had been provided. Of particular importance was the fact that there was no evidence of the source of the various loans and payments made to Mr and Mrs Adams and no satisfactory evidence of means to explain expenditure after the proceeds from Fallowfield were exhausted or how a similar lifestyle was seemingly maintained throughout. 38. In the light of the evidence as summarised above and the judge's findings as to that evidence she concluded at [91] that: "The spending in which Terence and Ruth Adams are engaged is inconsistent with their claim of having no assets and being reliant on friends and family for loans for living expenses. On their account they have lived in increasingly straightened circumstances with one rapidly diminishing and now extinguished cash asset and no apparent form of income. I do not accept that these two people would behave in the

manner Judgment Approved by the court for handing down. Adams v CPS [2017] EWCA Civ 185 identified by the expenditure or make substantial cash payments unless there was another source of funding. The pattern of behaviour demonstrated by Terence and Ruth Adams is consistent with the original case against Terence Adams namely of concealing his assets through associates and using companies to provide an apparent form of legitimate income.” 39. This was a conclusion which was open to the judge on the evidence before her and the findings she had made based on that evidence, as summarised above. Those findings provide a clear factual basis upon which to conclude that Mr Adams had an undisclosed source of funds. The making of that finding involves no arguable error of law and was by no means unreasonable. Ground 3 - The judge erred in law and in fact in finding that the expenditure by Mr Adams’ wife constituted expenditure by Mr Adams and his wife and that the financial transactions were conducted using undisclosed assets of Mr Adams.

40. Mr Adams contends that the judge wrongly treated the expenditure of Mrs Adams as expenditure of his and of evidence that he had a reserve of funds. In particular it is submitted that:
- (1) The transactions were effected by Mrs Adams and so there was no reason to attribute these to Mr Adams.
 - (2) Mrs Adams’s expenditure was not evidence of laundering the proceeds of Mr Adams’s criminal conduct since he retired from these criminal enterprises in the early 1990s.
 - (3) Much of the cash expenditure took place before January 2012 when Mrs Adams still had money from Fallowfield.
 - (4) There was no evidence that the funds transferred by Mrs Adams during these transactions emanated from Mr Adams.
 - (5) The transactions involving Mrs Adams were largely for her benefit. These are all arguments which were made to the judge and which she would have taken into account in reaching the conclusions which she did. They would have had more force if satisfactory evidence had been provided of the source of the funds made available to Mrs Adams. As the judge recognised, what was significant about the loans and payments made to Mrs Adams and her expenditure was the unexplained source of funds for those purposes rather than whether they involved Mr Adams or Mrs Adams. The relevant background includes the fact that Mrs Adams had latterly been closely involved in the organisation of the conspiracy to conceal the proceeds of criminal conduct, a conspiracy to which Mr Adams pleaded guilty. As the judge found at [70] extracts from the covert surveillance demonstrate “that even before their arrest Terence and Ruth Adams were prepared to devise and execute stratagems for channelling Terence Adams’s money to himself” and “the knowledge and involvement of Ruth Adams in her husband’s financial affairs”. The judge’s assessment at [71] of Mrs Adams and her involvement with her husband’s affairs was as follows: 41. 42. Judgment Approved by the court for handing down. Adams v CPS [2017] EWCA Civ 185 “Having noted her involvement in the handling of her husband’s affairs in respect of the FRO, the subsequent setting up by

her of two companies, having read her written evidence and listened to her oral evidence my assessment of Ruth Adams is that she is a shrewd woman, able to conduct financial matters which, in fact, are those of herself and her husband. Even upon their own evidence, the financial affairs of Terence and Ruth Adams are intertwined. Theirs is a lengthy relationship, Ruth Adams has played her own part in it.” 43. The judge found at [89] that once the proceeds of Fallowfield had been exhausted in January 2012 Mr and Mrs Adams had no income other than limited income obtained by Mrs Adams from acting. In those circumstances the source of all funds obtained and expended by Mrs Adams was of obvious importance, but there was no or no satisfactory evidence of that source.

44. Whilst it is correct that much of the evidence related to Mrs Adams rather than Mr Adams they live and work together and, as the judge found, their financial affairs are “intertwined”. 45. In the light of the evidence as summarised above and her findings it was open to the judge to find that Mrs Adams’s expenditure and financial transactions was conducted using undisclosed assets of Mr Adams. A further reason for the judge to find that this reserve was that of Mr Adams rather than Mrs Adams was that, as the judge observed at [89], she would have no reason to hide it. The judge’s finding involves no arguable error of law and was by no means unreasonable. Ground 4 - The finding of the judge that by reason of the expenditure, Mr Adams had not shown his assets were inadequate to pay the confiscation order was unreasonable and against the weight of the evidence. 46. This has largely been addressed above but five specific complaints are made about the judge’s treatment of the evidence. We agree with the CPS’s answers to each of the points raised.
- (1) £97,000 annual expenditure. It is said that the judge failed to consider that for some of the time Mrs Adams had Fallowfield sale proceeds available to her. However, the judge at [89] makes findings as to lifestyle relating to a time after the proceeds of sale had been exhausted. In any event, the judge was entitled to rely on the fact that people with only one dwindling capital reserve would not be expected to engage in the extravagant spending evidenced in this case (as she held at [89] and [91]).
- (2) £14,909 on hotels, flights restaurants and entertainment from August 09 to September 13. It is submitted that the judge took this into consideration but failed to consider that this expenditure was by Mrs Adams and that Mr Adams was in prison for some of this period. The Judge does not in fact mention this figure in her conclusions. In Judgment Approved by the court for handing down. *Adams v CPS* [2017] EWCA Civ 185 any event, some of this expenditure covered a period when Mr Adams was not in prison and after the Fallowfield proceeds had been exhausted.
- (3) Dale Golder’s loan of £35,000. It is submitted that the judge accepted the CPS’s assertion that this loan was fabricated as a loan document and was only created after a High Court directions hearing. The judge did not make such a finding. She merely recorded at [77] that the CPS’s case was that the timing meant there was a link and noted that was “difficult to understand” how such a sum came to be lent for a business venture by Mrs Adams, particularly when £10,000 of it was not used for business purposes, but on living expenses. It

was also submitted that the judge failed to have regard to the contemporaneous emails relating to the loan, but these were expressly addressed by the judge at [49].

- (4) Findings on excessive use of cash. It is submitted that there was no or insufficient evidence of cash. The judge made supportable findings on the use of cash as summarised above.
- (5) The Judge stated matters which she found suspicious, without making findings of the truth of those matters or explaining their relevance. The burden of proof was on Mr Adams and the judge was entitled to point out and to rely upon the unsatisfactory nature of much of the evidence without expressly rejecting it as untruthful. In the light of her consideration of all the evidence, her ultimate conclusion at [91-92] was that, contrary to the evidence of Mr and Mrs Adams, there was an undisclosed source of funding, that Mr Adams had not been truthful about his assets and that they had been “concealing his assets”. 47. I accordingly reject the specific criticisms made of the judge’s treatment of the evidence. The finding that Mr Adams had not discharged the burden of proof upon him was neither unreasonable nor against the weight of the evidence.

Conclusion

48. For the reasons outlined above I would dismiss the appeal. LORD JUSTICE IRWIN 49. I agree. LORD JUSTICE LONGMORE 50. I also agree.

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