

ENGLAND AND WALES / JUDGMENT

R v Amardeep Marwaha & Ors

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Neutral Citation Number [2026] EWCR 3 IN THE CROWN COURT AT SOUTHWARK 1 English
Grounds, London, SE1 2HU Date: 16 March 2026 Before: HIS HONOUR JUDGE BARTLE KC
Between: REX -v-

(1) AMARDEEP MARWAHA

(2) BARRY CHAMBERS

(3) MICHAEL WELHAM Prosecutor Defendants Paul Sharkey (instructed by the Crown Prosecution Service) for the Prosecutor David Walbank KC with Benjamin Waidhofer (instructed by Blackfords LLP) for the First Defendant; Alexander dos Santos (instructed by Blackfords LLP) for the Second Defendant: and Tom Price KC with Nick Barraclough (instructed by Bivonas Solicitors LLP) for the Third Defendant Hearing date: 17 October 2025

- ----- Approved Judgment I direct that pursuant to Crim. PR r.5.5(1) no official shorthand note shall be taken of this judgment and that copies of this version as handed down (subject to editorial corrections) may be treated as authentic. HIS HONOUR JUDGE BARTLE KC

INTRODUCTION

1. 2. On 17/10/25, I heard the confiscation proceedings against Amardeep Marwaha, Barry Chambers and Michael Welham who were each involved in a highly sophisticated fraud involving the smuggling of 1059 loads of alcohol into the UK, conducted over a substantial period of time, intended to cause and causing very serious loss to the Revenue. The particulars of the offence in Count 1 of the indictment were that, between 1 September 2009 and 8 December 2010, the named defendants including these three defendants with intent to defraud and to the prejudice of the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") conspired together and with the others named in the indictment and other persons to cheat the Commissioners of public revenue namely monies as being Excise Duty payable by dishonestly:
 - a. Making acquisitions (imports) of alcoholic drinks (wine, beer and cider) into the United Kingdom from the European Union without accounting properly or at all for the excise duty due;

- b. Establishing controlling and/or using bank accounts to convert, transfer, retain or dispose of sums of money from the sale of alcoholic drinks upon which the correct excise duty had not been paid.
- 3. The particulars of offence in Count 2 of the indictment were that, between 1 April 2009 and 8 December 2010, the relevant named defendants including intent to defraud and to the prejudice of the Mr Marwaha with Commissioners conspired together and with the others named in the indictment and other persons to cheat the Commissioners of public revenue namely monies being or purporting to be Value Added Tax (VAT) payable by dishonestly:
 - a. Establishing, controlling and/or using trading identities (missing and hijacked traders) registered for VAT in the United Kingdom to purchase or purport to purchase alcoholic drinks (wine, beer and cider) from other countries within the European Union upon which there was no requirement to pay VAT at the point of entry and not accounting for amounts charged as VAT on sales or purported sales of the same alcoholic drinks.
 - b. Establishing controlling and/or using companies registered for VAT in the United Kingdom (buffers) to purchase or purport to purchase the alcoholic drinks from the missing traders or other buffers.
 - c. Establishing controlling and or using companies registered for VAT in the United Kingdom (cash and carries) to purchase or purport to purchase the 4. 5. 6. 7. alcoholic drinks from the missing traders or buffers and make onward sales.
 - d. Establishing controlling and/ or using bank accounts to convert, transfer, retain or dispose of sums of money that should have been paid to the commissioners as VAT. In the first trial, on 08/03/23, Mr Marwaha and Alexander Windsor were found guilty of Count 1 and Count 2. In the third trial, Suraj Brar was found guilty of both counts. Sarbjit Singh Gill pleaded guilty to both counts. Mr Chambers and Mr Welham pleaded guilty to Count 1. Prior to the third trial, Avtar Hare and Kulwant Hare had been found unfit to plead. In the third trial, on 18/07/24 and 19/07/24, the jury decided that each did the acts alleged in counts 1 and 2. The sentences on Mr Marwaha, Mr Chambers and Mr Welham were as follows:
 - a. On 09/06/23, Mr Marwaha - concurrent sentences of Count 1, 4 years 10 months imprisonment; and Count 2, 4 years 6 months imprisonment.
 - b. On 09/06/23, Mr Chambers - 4 years' imprisonment on Count 1.
 - c. On 10/11/23, Mr Welham - 4.5 years' imprisonment on Count 1 Prior to the confiscation hearing, there had been the usual documents served in such proceedings as well as focused skeleton arguments. As a result, agreement had been reached in each case that the defendant had received a benefit and as to the available amount for each defendant and (in the case of Mr Marwaha) his interest in a particular property and a car. The principal issues at the hearing were (1) the benefit of each defendant; and (2) the applicability to each defendant of Regulations 21 and 22 of The Excise Goods (Accompanying Documents) Regulations 2002 ("the 2002 Excise Goods Regulations") and Regulations 13 and 19 of the

Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (“the 2010 Excise Goods Regulations”). SUMMARY OF THE CASES AT THE CONFISCATION PROCEEDINGS 8. In the confiscation proceedings, in reliance on case law and Regulations 13 and 19 of the Excise Goods Regulations, the prosecution case was that:

- a. On Count 1, the benefit to the fraudsters including these defendants was the full amount of the duty due on all of the smuggled loads, whether or not they were diverted to a cash and carry (a ‘Green’ load) or were sent to Rangefield Import and Export Ltd (“Rangefield”), a bonded warehouse in Purfleet, Essex run by Mr Welham, due to HMRC’s interest/attention (a ‘Red’ load). That sum was £31,615,930.65 including an uplift for the change in the value of money using the Consumer Prices Index Housing (CPIH).
- b. In respect of Count 2, the prosecution submitted that the benefit to the fraudsters including Mr Marwaha obtained as a result of the conspiracy to cheat the revenue by the evasion of VAT was £7,403,002.94 including an uplift for the change in the value of money using CPIH. 9. Each defendant denied that he had received that benefit, submitted that his benefit was limited to the amount that he had been paid and denied that the Excise Goods Regulations applied in his case. THE CONFISCATION HEARING 10. 11. 12. At the hearing, despite the factual disagreement between the prosecution and the defence, no evidence was called. I heard oral submissions from the prosecution and counsel for Mr Marwaha and Mr Chambers. Therefore, I was obliged to reach my decision as a result of the submissions, the documents provided at the various trials, at the sentencing and confiscation hearings and the appropriate inferences to be drawn from those documents. I informed the parties that, applying Ahmad, Fields (“Ahmad Fields”) 2015 AC 299, I accepted the prosecution submissions as to the benefit obtained by each defendant. I indicated that, if requested, I would give my reasons in a written judgment. I was requested to give such reasons. This is my judgment. I am very grateful for the submissions from counsel: Mr Sharkey (Prosecution); Mr Walbank KC and Mr Waidhofer (Mr Marwaha); Mr dos Santos (Mr Chambers) and Mr Price KC and Mr Barraclough (Mr Welham). If I do not mention a particular submission, that does not mean I have not taken it into account. THE ORDERS 13. 14. Following my decision, orders were drawn up in respect of each defendant. The order for Mr Marwaha was that:
 - a. The value of his benefit was £39,018,933.59 which was the total loss suffered as a result of the duty and the VAT fraud which included an uplift to reflect the change in the value of money.
 - b. The available amount was £18,008.55.
 - c. The court having determined that Mr Brar, Mr Marwaha, Mr Welham, Mr Chambers and Mr Windsor jointly obtained benefit from general criminal conduct in the sum of £31,615,930.65 in respect of count 1 on the indictment (conspiracy to cheat the revenue – excise duty).

- d. The court having determined that Mr Brar, Mr Marwaha and Mr Windsor jointly obtained benefit from general criminal conduct in the sum of £7,403,002.94 in respect of count 2 on the indictment (conspiracy to cheat the revenue - VAT).
- e. To prevent any double recovery of the benefit so obtained, the confiscation order is not to be enforced to the extent that a sum has been recovered by way of satisfaction of another confiscation order made in relation to the same joint benefit.
- f. A sentence of 6 months' imprisonment in default of payment. 15. Also, under section s. 10A of the Proceeds of Crime Act 2002 ("POCA"), I determined that Mr Marwaha had:
 - a. An 8.3% equitable interest in 25 Woodrush Way, Moulton, Northampton, NN3 7HU (Title Number NN55643), and
 - b. A 50% interest in a Ford Focus reg. A5 VXY, with the original registration being KT68 CHZ.
- 16. The order for Mr Chambers was that:
 - a. The value of his benefit was £31,615,930.65 which was the total loss suffered as a result of the duty fraud which included an uplift to reflect the change in the value of money.
 - b. The available amount was £30,368.56.
 - c. Identical orders made as were made in respect of Mr Marwaha to prevent double recovery.
- d. A sentence of 6 months' imprisonment in default of payment. 17. The order for Mr Welham was that:
 - a. The value of the benefit was £31,615,930.65 which was the total loss suffered as a result of the duty fraud which included an uplift to reflect the change in the value of money.
 - b. The available amount was £111,107.87.
 - c. Identical orders made as were made in respect of Mr Marwaha and Mr Chambers to prevent double recovery.
- d. A sentence of 9 months' imprisonment in default of payment. MY INVOLVEMENT IN THIS CASE 18. 19. I have been the only judge dealing with this case for the last three and a half years since Summer 2022. I have presided over three trials- the first against Mr Windsor, Mr Babbar and Mr Marwaha which lasted 6 months from 26/10/22 to 08/03/23; the second against Mr Chambers, Mr Gill and Mr Welham did not take place as each pleaded guilty before trial; the third trial against Avtar Hare, Kulwant Hare and Mr Brar which lasted about 8 weeks in Summer 2024; the fourth trial against Mr Panesar in 2025 began but the jury was discharged as there was insufficient time to complete the trial; the retrial is to be dealt with by me sitting in retirement in May and June 2026 after a preliminary hearing in March 2026. I sentenced all the defendants (including these defendants) who pleaded guilty or who were found guilty. In Autumn 2022, I dealt with a substantial abuse application by all defendants which I dismissed in a lengthy written judgment. Finally, also in Autumn 2022, I heard an application on behalf of Avtar Hare and Kulwant Hare that they were unfit to plead but,

having heard the defence experts, the application was adjourned as it was accepted that the condition of each of those defendants might well change before their trial in Summer 2024 so that any decision as to whether they were fit would almost certainly have to be revisited. THE FRAUD 20. 21. 22. 23. In these confiscation proceedings, as a result of my extensive knowledge of the case, I now set out my findings of fact in respect of the fraud and the roles played by these three defendants. Avtar Hare was the controlling mind of the fraud. Mr Windsor occupied the second rung together with Kulwant Hare, Mr Brar and Mr Gill. Mr Marwaha was on the third rung but senior to Satinderdeep Singh. Mr Chambers's role was similar to that of Mr Marwaha except that Mr Chambers received about 4 times as much pay as Mr Marwaha. Mr Marwaha received £400 p.w or about £20,000 pa. The alcohol diversion was carried out in two ways. First, French excise duty was paid, and the alcohol was removed from one of two bonded warehouses, Cotrama and IEFW, on the false representation by Illis Trading ("Illis") or Vereta Enterprises ("Vereta") that it was to be transported to named French cash and carry stores- Euro Negoce, Zamia and Vertdo. The latter two were sham companies which did not trade. Euro Negoce was a French Cash and Carry but it did not receive any alcohol as part of this fraud. 24. Second, alcohol was purchased in France free of duty from Cotrama or IEFW and removed from bond in a duty suspended state on the false representation by Illis or Vereta that it was to be transferred to Gold Drink 25. 26. 27. 28. 29. 30. 31. 32. Tomasz Szuba ("Gold Drink") a bonded warehouse in Aachen, Germany, about 240 miles away. In both cases, these actions were usually carried out on instructions by email from Mr Marwaha. The alcohol was loaded onto a lorry which then left the French bond. On average, a lorry could transport around 26 pallets of beer and wines which is approximately 2000 cases or 48,000 cans of beer (24 cans per case) or 3000 boxes of wine or 18,000 bottles (6 bottles per box). In both cases, the alcohol was smuggled into the UK under the cover of false paperwork which purported to show that it was being sent by Gold Drink to Rangefield and so did not require the payment of excise duty in the UK. If, on arrival in the UK, there was no interest from the authorities, the load was diverted to a UK cash and carry and so the duty payable on the alcohol was evaded. These loads were known as Green Loads which, therefore, refer to successfully smuggled loads. If the authorities showed an interest in a load of alcohol, it was sent to Rangefield and full documentation produced purporting to show that the load came from Gold Drink with an AAD provided by Gold Drink when in fact it came from Cotrama or IEFW. If a driver was stopped in one of the seizures, he would either say that the alcohol came from Gold Drink or produce documents pretending that they came from Gold Drink. The loads that were stopped were known as Red Loads. The AADs found at Gold Drink and on its computers purported to show that between January and September 2010, it had transferred 834 consignments of alcohol to Rangefield for the account of The Connoisseurs Choice ("TCC"), a Belgian registered company owned and operated by Mr Gill, which held a duty suspension trading account with Rangefield. However, only 81 of those had been lodged by Gold Drink with the German tax office as part of a routine audit. There were therefore 81 "on record" or "official" AADs and 754 "off record" AADs which were the consignments of alcohol successfully smuggled into the UK. Only those where there had been Customs intervention

would be promoted to “on record” so as to provide cover to show that the alcohol had been dispatched from Gold Drink to Rangefield. Therefore, no releases of alcohol were ever made from the French bonds on behalf of TCC which only became involved in the supply chain when a load went ‘Red’ and so had to be delivered to Rangefield. Given that no legitimate arrangements were ever in place for the movement of any of the loads, any that were diverted to Rangefield were not legitimate transfers between bonds under duty suspension. As a result, none of the loads were under duty suspension or qualified for excise duty to be deferred and thus as soon as the loads entered the UK, this became the excise duty point whereby the excise duty became immediately payable. 33. 1059 consignments of alcohol were smuggled into the UK from 05/12/2009 to 06/12/2010 without duty being paid and, by the use of missing traders, without paying VAT. Of those 1059 loads:

- a. 685 went to various Eastenders Cash & Carry's
 - b. 196 went to other Cash & Carry's.
 - c. 81 were Red Loads.
 - d. 97 were loads on which there was no information as to destination. 34. Of the 1059 consignments, 754 were Green Loads, 81 were Red and 224 neither Red nor Green loads –for this last category, no on-record or off- record AAD was found. The vast majority of the 224 loads were successfully and illegally imported into the UK. The fact that they do not appear as green loads merely demonstrates the incompleteness of the records maintained at Gold Drink.
35. Mr Chambers owned and controlled BC Service SIA (“BC Service”), a Latvian registered company, used to import 754 off-record consignments of alcohol and organised Latvian drivers. 36. 37. 38. Once the smuggled alcohol had successfully passed through UK border controls, the use of slaughter sites (premises used for the delivery on a temporary basis and subsequent collection, or onward distribution, of alcohol) and trailer swaps played a significant role in attempts to disguise the duty evaded nature of the alcohol prior to its delivery to the end-use customer. This lessened the risk of detection by keeping the importing HGVs, which might be identified as recently arrived in the UK, away from the Cash and Carry stores. Surveillance identified examples of HGVs, having earlier entered the UK, delivering to industrial units, where their trailers/loads were discharged - for example at Unit 9, Clipper Park, Tilbury. Thereafter, these loads were collected and delivered to customers such as Eastenders by shuttle lorries driven by, among others, David Hathaway. Surveillance also identified examples of HGVs, having earlier arrived in the UK, meeting with other HGVs, prior to deliveries into the Eastenders Cash and Carry stores. Trailer swaps took place at motorway service stations, at the rear of cafes or Staples the stationers, in circumstances that made no commercial sense, as the swaps took place, in some cases, minutes away from the end destination. If the consignments had been legitimate, the HGVs would have made delivery directly to the end destination. 39. 40. 41. 42. In an effort to disguise the duty evaded, those co-ordinating the diversion fraud created a false paperwork

trail, which made it look like the alcohol had been supplied with UK duty paid to Eastenders (and other Cash & Carry stores) either directly by a “missing” trader or via an intermediate or “buffer” company. The buffer traders were used to frustrate attempts by HMRC to defeat the fraud and give an appearance of legitimacy to what was, in reality, an artificial trade. The use of buffer and missing traders was also part of the framework of a VAT fraud. At the beginning of each false chain of transactions there was a trader, a company that existed on paper but did not carry out any real trade and which would disappear without accounting for the VAT it had invoiced when purporting to sell the alcohol. Thus, it became a “missing trader”. The missing traders were Transylvania Services Ltd (“Transylvania Services”) and Signature Drinks Ltd (“Signature Drinks”). This left substantial VAT liabilities unpaid, in addition to the excise duty already evaded. This VAT, the money that it represented, which would be funded by the ultimate consumer, UK taxpayers, was laundered and retained by the fraudsters. At the end of each of the false chains of missing traders and buffers was the Cash and Carry. They are buffer traders because they are a buffer between the cash and carry and the seller and so the buffer traders were as much part of the VAT fraud as the missing traders. The buffer companies were Turners Distribution, Athena International, Atcost and Jurby. The first way in which this worked was that the missing trader sold alcohol direct to the Cash and Carry. The missing trader charged and received VAT but then went missing and did not pay the VAT to HMRC that it had received from the Cash and Carry. Second, as a refinement to that crude system which left the Cash and Carry in a very exposed position if HMRC sought to investigate the trading chain for any alcohol, the missing trader sold alcohol to an intermediate or buffer company. Again, the missing trader charged and received VAT. The buffer trader paid the VAT and sold the alcohol on either to another buffer trader or to a Cash and Carry. The buffer trader(s) and the Cash and Carry, because they did not want to draw unwanted attention from HMRC, properly accounted for the VAT in terms of what they bought (on which there was input tax) and what they sold (on which there was output tax). However, the missing trader, at the beginning of this chain of transactions, did not account for the VAT on the alcohol they had sold and so the VAT was evaded. 43. At trial, there was a complete record of purported sales from Transylvania Services to the buffer companies and from the buffers to the Cash & Carrys from 13/01/10 to 26/11/10 showing the minute markup made by the buffers and the lack of commercial sense for any of these transactions. 44. Transylvania Services and Signature Drinks failed to account for VAT charged on their invoices to the sum of £5,227,659. 45. 46. During 2010, HMRC made 17 seizures of illicit alcohol linked to the defendants in this case. Several of these seizures are specifically connected to TCC, but none was challenged by TCC. When seizures took place, false documents were created to support that part of the fraud that represented that the smuggled alcohol should be sent to Rangefield. Two examples show this. On 09/04/10, there was a seizure at Signature Beverages in Bolton. On 07.05.10, TCC wrote to BC Service complaining that the load which had been picked up in Aachen had been picked up in Bolton when it should have been in Purfleet which is where Rangefield operated. On 8/9 September 2010 when a load was detained at J&J Wines in Southall, Mr Marwaha sent a false booking from TCC in an email to Rangefield from the fictitious ‘P

Martin'. The conspirators owned and/or operated the whole chain necessary to facilitate, perpetrate and disguise the frauds. As Mr Gill said in one of the recorded conversations: "We've got transportation. We've got the way to put the money into the system. We've got the way to get rid of the goods. Like I say three abilities: ability to buy, ability to sell and ability to launder money". As well as having access to massive quantities of duty suspended alcohol owned by them or by associates, the conspirators had the means and ability:

- a. to transport it from France to the UK.
- b. to avoid detection through the provision of false documentation which disguised the origin of the loads to make them look as though they had come, in a duty suspended state, from a complicit bonded warehouse in Germany and were destined to a complicit bonded warehouse in England.
- c. to ensure that facilities were available in southeast England where the alcohol could be unloaded and made ready for onward distribution.
- d. to swap the trailers full of alcohol to lorries (tractor units) to disguise the fact that the alcohol had originated from abroad
- e. to divert at short notice any alcohol which had been the subject of unwanted official attention to Rangefield,
- f. to ensure ready access to cash and carry outlets who were prepared to accept the undutied alcohol and to sell it on; and
- g. to create a false paper trail involving hundreds of fictitious invoices in relation to these undutied loads of alcohol 47. The fraud was carried on from an office at 32 Fowler Rd in London in particular the following was controlled from there:
 - a. The release of alcohol from Cotrama and IEFW by emailed instructions usually from Mr Marwaha.
 - b. The co-ordination of the transport of the alcohol to the UK which was carried in lorries on ferries from France to the UK.
 - c. The co-ordination of what happened to the alcohol when it reached the UK depending on whether or not it had been inspected by the authorities.
 - d. The creation of invoices and other paperwork purporting to be from the missing and buffer traders and which was supplied to Eastenders and other cash and carries when alcohol was supplied to them.
 - e. The opening and operation of bank accounts in order to move the proceeds of the excise duty and VAT frauds.

- f. The missing traders Signature Drinks and Transylvania Services operated from Fowler Road. Transylvania Services was the missing trader being used at the time of the arrests and searches in December 2010. On desk B (attributed to Marwaha) in the office at Fowler Road HMRC officers seized a black Nokia mobile phone marked on its rear “Rajesh (Sales New) Patel Trans” (ex 05493) and a folder marked “Transylvania” which contained banking documents from Barclays Bank regarding Transylvania Services Ltd (ex 05480) Clearly, Amardeep Marwaha was involved in the operation of Transylvania from Fowler Road.
 - g. Payments for loads of alcohol were made by Eastenders and other Cash & Carrys to the buffer companies and then credited to a series of accounts (known as billfold accounts) held in their name with an Australian funds transfer company called Technocash. These billfold accounts held the proceeds offshore and were part of a complex system that was used to protect and launder the proceeds of the fraud. Payments, for amounts which included UK duty and VAT, were transferred between billfold accounts at Technocash before being transferred back to the UK to pay the original brokers of the alcohol. The balance, representing part of the criminal proceeds, was transferred back to UK or to Swiss bank accounts controlled by a number of the suspects. THESE DEFENDANTS 48. I set out below the actions of each of these defendants in respect of the fraud. MR MARWAHA
49. Mr Marwaha’s role was extensive and pivotal. He worked in both Fowler Road addresses for a period of over 2 years from the end of 2008. 50. He was responsible for:
- a. Release instructions to Cotrama and IEFW.
 - b. Fictitious releases to Zamia, Euro Negoce and Vertdo in France and to Gold Drink in Germany.
 - c. Goods coming to the Cash & Carrys as a result of those releases.
 - d. Maintaining the stock and movement ledger.
 - e. Creation of delivery notes.
 - f. Reporting of red loads to Anna at Gold Drink so that fictitious documents could be created at Gold Drink and sent to Rangefield. A schedule of these contacts was at p.31 of the prosecution sentencing bundle.
 - g. Liaising with Mr Chambers and other hauliers to ensure that smuggled alcohol went to the right locations including when vehicles had to be moved at short notice because of surveillance by HMRC.
 - h. Giving instructions to destroy paperwork if HMRC was likely to stop a driver. Examples of Mr Marwaha giving instructions about transport were on 30/07/10, 03/08/10, 06/08/10, 10/08/10, 11/08/10, 13/08/10, 17/08/10, 19/08/10, 20/08/10, 24/08/10, 25/08/10, 02/09/10 and 15/09/10 of the Covert Recordings. The extensive contact between Mr Marwaha and Mr Chambers was shown by the very large number of texts between them between 22/11/10 and 06/12/10 in the schedule at pp 23-30 of the prosecution sentencing bundle. I have already

referred to the occasion on 8/9 September 2010 when a load had been detained, and Mr Marwaha sent by email a false booking from TCC to Rangefield from the fictitious 'P Martin'. This was done late at night but was the only occasion Mr Marwaha did this and he did so because the person who would have carried out this task was unavailable. He was involved in setting up Vertdo Distribution, a business registered in France purporting to be a Cash & Carry trading in alcohol purchased in France. However, it was a sham business. It was set up by Raimonds Ezerins but controlled at Fowler Road. Mr Marwaha arranged to rent a warehouse to Vertdo, but Mr Ezerins turned up to the meeting. The tenancy agreement was signed in September 2010. But no rent was ever paid, the keys were not provided, and the premises could not have been used as a cash and carry. Therefore, with no premises and no bank account, it was nothing more than an empty shell used in furthering the fraud. As I have already pointed out, the missing traders Signature Drinks and Transylvania Services operated from Fowler Road and Transylvania Services was the missing trader being used at the time of the arrests and searches in December 2010. On desk B (attributed to Mr Marwaha) in the office at Fowler Road, HMRC officers seized a black Nokia mobile phone marked on its rear "Rajesh (Sales New) Patel Trans" (ex 05493) and a folder marked 51. 52. 53. 54. 55. 56. 57. "Transylvania" which contained banking documents from Barclays Bank regarding Transylvania Services Ltd (ex 05480). As a result, I am satisfied that Mr Marwaha was involved in the operation of Transylvania from Fowler Road. He was not involved in making payments or dealing with cheques. He had no responsibility for making VAT payments. He did not set up any slaughter sites. He was paid £350 pw which rose to £400. He had the use of a second-hand car and stayed in Mr Brar's house. There was no dispute that his culpability was medium as the predominant factor was that he played a significant role in a fraud which was sophisticated, required significant planning and was conducted over a sustained period of time. He was junior to Avtar Hare, Mr Gill and Brar but senior to Satinderdeep Singh. MR CHAMBERS 58. As to Mr Chambers:

- a. He became involved in the conspiracy in about January 2010.
- b. He attended Fowler Road on a near daily basis: 82 occasions between 11 March 2010 and 7 December 2010.
- c. He owned and controlled BC Service which was run by him from Fowler Rd and used to import 754 off-record consignments of alcohol and organised Latvian drivers. I accepted in my sentencing remarks that Mr Chambers was referred to by other conspirators as Moody and, between November 2009 and the end of November 2010, Mr Chambers (referred to as Moody) was paid gross £1.18M for transport expenses. However, payments of £1.1M were made to Frenchy driver, £154,000 to Ron/Steve/Trident and £210,000 to Savas/OK Transport.

- d. I accepted in my sentencing remarks that Mr Chambers may not have been personally involved in every consignment in which BC Service was used to import alcohol. However, that is irrelevant because he took 10% of the monies BC Service was paid for each consignment it organised. The total amount he was due to be paid per load until the end of November 2010 was approximately £80,000. He was paid either £150 or £100 for the green loads and £80 for the red loads.
- e. Generally, phone records indicated his close and persistent contact with his co-conspirators.
- f. It follows from what I have said about Mr Marwaha that he and Mr Chambers were heard on the covert recordings (CR) discussing the movements of illicit loads of alcohol, the need to destroy paperwork and the unwanted attention of “the Church” (the term used in these recordings for Customs and Excise). CR 19/08/10 – he referred to Mr Hathaway destroying paperwork. CR 08/09/10 - he told the person to whom he was speaking to burn the paperwork and make sure the cab was empty of paperwork. As CR 19/08/10 shows, he knew why the trailer swaps took place.
- g. Analysis of call records from mobile telephones attributed to Mr Marwaha which were used to notify Gold Drink of loads being “Red” or “Green” showed that he was in regular contact with Mr Chambers on the haulage side of the operation in relation to the loads and whether they were “Red” or “Green”.
- h. Text messages found on the mobile phone of a Gold Drink employee (Anna Polak) had messages from a number attributable to Mr Chambers which referred to vehicle registrations and the “Red and Green” code.
- i. He was well aware that the documents asserting that the alcohol came from Germany were false. CR 03/08/10 - he complained to Mr Marwaha that lorries were supposed to have come from Germany, but they were parked up in Calais.
- j. From the documents found by the Latvian authorities when they searched the premises associated with BC Service, it is significant that all the CMRs and invoices related only to the loads which were classed as on- record and which were delivered to Rangefield. They found no trace of any off-record consignments despite the fact that BC Service was shown on the majority of the off-record AADs used to divert alcohol into the UK.
- k. There are numerous references involving Mr Chambers in the covert recordings at Fowler Road confirming his close and continuing co- ordination of slaughter sites and arrangements for trailer swaps. On 08/09/10, there was a seizure of alcohol at J&J Wines at Southall by HMRC. The following day 09/09/10, Avtar Hare and M r Chambers were in the office at Fowler Road discussing the seizure with Mr Brar. Avtar Hare said to Mr Chambers, “we haven’t got our slaughters in yet Barry”, a reference to having slaughter sites available, and there followed conversation between them about what slaughter sites would be available and their locations. l. In addition to slaughter sites, trailer swaps were effected in a number of ways including the operation of “shunts” where the last part of the journey to the Cash and Carry stores was carried out by a tractor unit with the trailer containing the

smuggled alcohol now attached to it. It is clear from the covert recordings at Fowler Road that this was one of Mr Chambers's areas of responsibility and would often involve the use of one of his drivers, Dave Hathaway.

- m. Although Mr Chambers was not in charge of the decision to obtain a new warehousing site which could be used to slaughter loads, he was involved in the finding of a new site at Folkes Farm, Wildhall Farm and Roffey Hall Farm (the latter two of which did not proceed). I accepted that this activity would not have taken much of Mr Chambers' time.
- n. On 07/12/10, when Mr Chambers's home was searched, £15,000 cash was found which was part of the payment for transporting the smuggled alcohol. In addition, officers found numerous documents on computers and in hard copy relating to the transportation of loads of alcohol, including a letter from TCC [x 07113] apparently complaining about the seizure of the alcohol in Bolton on 09/04/10. This document had clearly come from Fowler Road and was designed to give the false impression that the goods had come from Germany when they had not. At the sentencing hearing, I accepted the defence submission that a fair assessment of Mr Chambers's culpability was that it was medium as, although 799 of the relevant loads were transported by drivers organised by Mr Chambers, he played a significant but not the sole role in organising the transport required for the operation of the fraud. I agreed that his involvement in arranging slaughter sites was not sufficient to put him in a higher level of culpability as he was doing what he was told to do and the work was not complex. Although it did not alter my decision on Mr Chambers' culpability, in the same way that I accepted that Mr Windsor abused his trust as a director by using Eastenders as a vehicle for fraud notwithstanding that it carried out lawful activity, I accepted that Mr Chambers used BC Service as a vehicle for fraud notwithstanding that it also carried out lawful activity. 59. 60. Subject to one caveat, I agreed that the culpability of Mr Chambers was broadly similar to that of Mr Marwaha for the following reasons:
 - a. Mr Chambers's role was no more pivotal than Mr Marwaha's.
 - b. Mr Chambers and Mr Marwaha worked alongside one another on transport issues.
 - c. In disagreements between them, there was no suggestion within any of these disagreements that Mr Chambers outranked Mr Marwaha.
 - d. Mr Marwaha sometimes gave instructions to Mr Chambers about transport issues. See for examples in the defence covert summary document at line 158, line 232 (defence sentencing bundle p14), lines 684-691 (defence sentencing bundle p16) and 1763 (defence sentencing bundle p. 26). The covert recordings show Mr Marwaha sometimes giving instructions to drivers directly. 61. The caveat was that Mr Chambers received about 4 times as much pay as Mr Marwaha. Mr Marwaha received £400 p.w or about £20,000 pa. Mr Chambers earned about £80,000 from about January 2010 to early December

2010. Although this did not affect my decision on culpability, I took it into account on sentence. MR WELHAM 62. 63. Rangefield (and therefore Mr Welham) played a “pivotal role” in the conspiracy. The conspiracy could not have been carried out without Mr Welham playing his part at Rangefield. His involvement provided the safe harbour for the loads and reassurance to the other conspirators that should loads go “red” they could be quickly diverted from their intended cash and carry and sent to Rangefield. His involvement was not an afterthought or ad hoc but was part and parcel of the dishonest scheme to ensure the smuggled loads were not seized by HMRC. The covert recordings at Fowler Rd show that he was aware of the Red and Green Code to which I have referred. He discussed the red loads with Mr Marwaha, and he was in close and frequent phone contact with his co-conspirators.
64. Mr. Welham’s basis of plea contended that:
- a. He did not suspect that TCC was engaged in cheating the revenue until after 21/04/10 when HMRC interviewed him about a seizure on 19/04/10.
 - b. On 21/04/10 and subsequent occasions he queried with HMRC whether he should cease trading with TCC but was never advised to do so.
 - c. He was not a controlling mind in the conspiracy, had no influence on anyone else involved and was unaware of the scale of the offending.
 - d. By way of reward, he/Rangefield was paid the standard commercial rates in respect of the deliveries accepted and he had no share in the proceeds of the conspiracy beyond that.
 - e. Through the trade he had known of Mr Gill for a number of years prior to the offences but was unaware of his criminal past. He was also unaware of the convictions of other defendants.
 - f. His motivation throughout was to ensure the survival of Rangefield. 65. At the sentencing hearing, I did not accept that Mr Welham did not suspect that TCC was engaged in cheating the revenue until after 21/04/10 when HMRC interviewed him about a seizure on 19/04/10. By 21/04/10, there had already been 19 Red loads starting 05/12/09. I was sure he would have known about the fraud as these loads would have arrived at Rangefield at very short notice and without the usual prearrangement for booking in. 66. As there was no record at HMRC that Mr Welham queried with HMRC that he should cease trading with TCC, I did not accept that. 67. 68. 69. 70. 71. As to whether he was a controlling mind of the conspiracy, it is accepted that Avtar Hare was the controlling mind and that Mr Welham’s culpability had aspects of high and medium factors. It was also accepted that he was in Tier 3 of responsibility with Mr Marwaha and Mr Chambers. I rejected the submission that his role was lower than that of the others in that Tier. Each had their important role to play, and I did not accept that I should draw the distinction that I was asked to draw. As to whether Mr Welham knew the true scale of the offending, he went to Fowler Rd 11 times in 2010, and the first time was on 21/04/10. As Fowler Rd was the engine room of the conspiracy, he would

have been fully aware that this was a fraud factory operating on a massive scale and that he was playing a key role in that fraud. I did not accept that his motivation was to ensure the survival of Rangefield. I was sure that he was involved in the fraud to make money for Rangefield and himself. At sentence, as to whether Rangefield was only paid the commercial rates for deliveries at Rangefield, there was a dispute between the prosecution and the defence as to the sums he was paid in addition. I stated that I could only be sure that Mr Welham received £6,000 in addition to the sums he was paid for the deliveries. In the confiscation proceedings, the prosecution repeats what was said at the sentencing hearing namely that Mr Welham received £75,900 which was over and above the normal commercial charges levied by Rangefield, that Mr Welham was “hot water Mick” and that this represented his reward for his participation in and therefore his share in the proceeds of the conspiracy. In the skeleton argument served on his behalf, it was submitted that Mr Welham had only received £6,000, that he was not “hot water Mick” and that he disputed the figure of £75,900. 72. The prosecution submissions were set out in the Crown’s Further Prosecution Sentencing Note dated 08/11/23 following queries raised by the court. First: An Analysis of Payments Made By TCC

73. Within the exhibits, there are numerous invoices from Rangefield to TCC, instructions from Mr Gill for TCC to make payments on those invoices and details of the payments from TCC’s bank account. The spreadsheet attached to the Note gave examples of those documents which I accept have nothing to do with the amounts shown in the “SG Hand” tab of the computers found at Fowler Road. The schedule focuses on invoice and payments relating to RHD (Receipt, Handling and Despatch) and rent for storing the palletised goods rather than payments and invoices for payment of duty when goods were released on the domestic market. On the basis of these documents, I accept that the payments for Rangefield’s official services were made by transfer from TCC’s bank account in Belgium and are clearly documented. Second: SG Hand Expense payments 74. By contrast, I accept that the SG Hand expense payments were typically made in cash. They were fundamentally different to the payments made from TCC’s bank accounts and it was clearly intended that those payments went “under the radar” of any sort of scrutiny. Third: The Description of the Payments 75. I set out below the table at paragraph 3 of the Further Prosecution Sentencing Note. At paragraph 4 of the Note, the prosecution no longer asserted that it was safe to conclude that payments ascribed to “Aspra/Mick” and “Mick/Steve” should be attributed to Mr Welham as they could equally or even more probably refer to payments made to others. Date Reference 27/01/2010 20/09/2010 27/09/2010 29/09/2010 29/09/2010 28/10/2010 Totals: for Aspra /Mick payment hot water mick mick/steve payment hot water mick Micky Micky Payment out "EXS TRANS" -3600 -60000 -17600 -9900 Payment out "EXS" -3000 -3000 -6000 -91100 -75900 -97100 -75900 76. 77. As can be seen, the two largest payments made on 20/09/2010 (£60,000) and 29/09/10 (£9,000) are described as “payment hot water mick”. I have already referred to the seizure which took place in Southall on the night of 08-09/09/2010. In the original Opening Note for Trial 2 (in which Mr Welham was due to be tried) the evidence was described at paragraphs 5.25 to 5.39 as follows: “5.25 On 07/09/2010 and 08/09/2010, instructions were

issued by “M” (Marwaha) of Illis Trading to both Cotrama Logistique and IEFW to release goods – French Duty paid – to the French Cash and Carry, Zamia under references CB3631Z [J011269] & CB3623Z [J011259]. Those loads were subsequently collected by HGV HF6118.

5.26 On 8/09/2010 vehicle HF6118 travelled from Calais to Dover on the 17:40 ferry. [J011275].

5.27 At around 21:55 on 08/09/2010 officers detained a consignment of 26 pallets of mixed beers from lorry HF6118 which was parked outside J&J Wines in Southall. [J028344]

5.28 The driver produced an AAD which purported to show that the alcohol was under duty suspension from Gold Drink to Rangefield (TCC’s account) [J028341]. The goods matched those shown on the Cotrama and IEFW delivery documents –[J011265] and [J011256]. When asked why he was in Southall, rather than where he should have been on the other side of London at Rangefield in Essex, he said it was due to “safe parking”. [MAP of SEIZURES].

5.29 The lorry was detained because it was so far off its legitimate route. The driver and the vehicle remained with HMRC until a detention notice was issued to the driver at 00:35 on 09/09/2010.

5.30 Between 00:28 and 00:43 on 09/09/2010, Marwaha was in attendance at 32 Fowler Road, Hainault. He was heard on the phone a number of times in the office at Fowler Road. [Covert Recordings Revised]. The content of the calls clearly indicates that it related to the load that had been detained in Southall. Marwaha was heard asking what was happening to the driver, if he was being questioned, saying that it did not look good being parked near a garage and referring to J&J Wines. He is heard to say: “are they still there” and “they might be following the RDC trailers”. 5.31 Marwaha went on to say that, “it’s all booked I sent a message to Mickey, I sent him an e-mail, and that’s it so see (Barry/about it?) in the morning”, (Michael Welham and Barry Chambers).

5.32 This was the seized load being “booked in” at Rangefield by Marwaha sending a notice of arrival to Rangefield for the seized load to portray that it was expected at Rangefield.

5.33 Officers attended Rangefield early on 09/09/2010 when they saw Welham. He said that the notice of arrival from TCC for the detained load was received by email timed at 23:34 hours on 08/09/2010 and he provided officers with a copy of the notice. [J028342-J028343] This means it was not generated until after HMRC intervention.

5.34 Later analysis of one of the computers seized from Fowler Road revealed an email in the deleted items folder with an attachment dated and timed at 23:35 on 08/09/10 purportedly from TCC in Belgium to Rangefield Import & Export Ltd. [J042447- J042448]. The attachment was the ‘Notice of Arrival’ for goods which matched those on Gold Drink AAD TC/16/09/10 [J011273].

5.35 This clearly demonstrates that Mr Marwaha created this document when he visited Fowler Road office at around midnight on 08/09/2010 in order to create an air of legitimacy surrounding this load. The notice of arrival was signed ‘P Martin’. No real person with this name has been identified in the course of the investigation.

5.36 Later that day, Welham went to Fowler Road from about 12:00 to discuss what had happened following the visit by HMRC to Rangefield. [J031115] Brar asks: “Yeh, we was asking...what should we do Mickey?” Welham says “Well I don’t know, I really ain’t got a clue. You shouldn’t send a fax over that late, or an email”

5.37 From the covert recording Welham was heard discussing with Brar and Marwaha changing the clock on one of the computers, no doubt so misleading documents could be provided about when the notice of arrival was sent and received.

5.38 Brar suggests that in future, to get around the date and

time shown on the e-mail, “No no what I'm thinking is you know on efax (inaudible) clock (inaudible) computer, so what I'm gonna do is, I'm gonna take one computer and adjust the clock” Welham is also heard to suggest that someone, “will have to say he was going to do a trailer change”. Both Marwaha and Welham were heard discussing “red” loads and using the booking in notes as cover, showing that both were aware of the code used for bad loads (due to intervention by Border Force/Customs). These conversations show their joint involvement in discussions about ways to mislead HMRC and their complicity in the fraud. 5.39 At 13:30 on 09/09/2010, Avtar Hare and Barry Chambers were in the office discussing the seizure with Brar. Avtar Hare said to Chambers, “we haven’t got our slaughters in yet Barry”, a reference to having slaughter sites available, and there followed conversation between them about what slaughter sites would be available and their locations. At 13:40 Brar is heard to say to Avtar Hare, “that one’s went red”. 78. 79. The defence submit that Mr Welham only received £6,000 more than his salary. As already explained, Mr Welham did not give evidence at the confiscation proceedings and so he could not be cross-examined on what is asserted in the skeleton argument served on his behalf. Therefore, I have to decide this issue on the documentary evidence, the appropriate inferences to be drawn from that evidence and my knowledge of the fraud from the trials and sentences. I accept the prosecution submissions on this issue which I have set out in detail above namely that that Mr Welham was referred to as “hot water mick” and that the two significant payments of £60,000 and £9,000 containing the description “hot water mick” coupled with the events that preceded these payments make clear that these were payments to Mr Welham and were not legitimate but were a reward for his participation in the fraud. Therefore, I am satisfied that the amount paid to Mr Welham for his part in the fraud was £75,900 not £6,000.

SUBMISSIONS

SUBMISSIONS ON POCA Prosecution Submissions - General 80. In reliance on Takkar (“Takkar”) [2011] 1 W. L. R. 3062; Dimsey (“Dimsey”)

[2000] 1 Cr. App. R. (S.) 497; Smith (David) (“Smith”) [2002] 1 W. L. R. 54; Ahmad (Shakeel); Ahmad (Syed Mubarak) [2012] 2 Cr. App. R. (S.) 85; Ahmad Fields and Chahal; Singh [2015] EWCA Crim 816, the prosecution submitted that:

- a. The benefit obtained as a result of the excise duty fraud and the VAT fraud was a pecuniary advantage under s.76(5) of POCA.
- b. The overall benefit obtained as a result of the excise duty fraud and the VAT fraud was the value of the pecuniary advantage obtained by the evasion of the excise duty on all the smuggled loads and by the failure of the missing traders to account for VAT due on sales (or purported sales) of alcohol.
- c. In respect of the evasion of excise duty, the benefit at the time of the hearing was £31,615,930.65 including an uplift for the change in the value of money

- d. In respect of the failure to pay VAT, the benefit at the time of the hearing was £7,403,002.94 including an uplift for the change in the value of money.
- e. These defendants jointly obtained that benefit in respect of the counts for which they were found guilty or pleaded guilty namely all three defendants in respect of the evasion of duty and Mr Marwaha in respect of the evasion of VAT.
- f. The protection for a defendant in the making of a finding of joint obtaining of benefit, and the risk of a disproportionate order, is that the court will add a proviso to the confiscation order that it is not to be enforced to the extent that a sum has been recovered by way of satisfaction of another confiscation order made in relation to the same joint benefit. Given the sums involved in this case and the likely available assets of the various defendants, it is unlikely that anything close to the full benefit obtained will be recovered from all the defendants.
- g. The orders sought were proportionate.
- h. As each of the defendants were liable for the total benefit as set out above, it was not appropriate to apportion the benefit for each defendant. 81. The material facts relied on by the prosecution were that:
 - a. When each of the 1059 loads was smuggled into the UK without the proper payment of excise duty, the fraudsters obtained a pecuniary advantage in respect of each load to the value of the duty evaded on that load.
 - b. All the releases from the French bonded warehouses were made on the trading accounts of Illis or Vereta (usually upon instructions from Amardeep Marwaha) and were alleged to have been released either to a French cash and carry (French duty paid), or to Gold Drink under bond (duty suspension).
 - c. No releases of alcohol were ever made from the French bonds on behalf of TCC which only became involved in the supply chain when a load went 'Red' and therefore had to be delivered to Rangefield, where TCC held a duty suspension trading account. Given that no legitimate arrangements were ever in place for the movement of any of the loads, any that were diverted to Rangefield were not legitimate transfers between bonds under duty suspension. As a result, none of the loads were under duty suspension or qualified for excise duty to be deferred and thus as soon as the loads entered the UK, this became the excise duty point whereby the excise duty became immediately payable. Therefore, the benefit to the fraudsters was the full amount of the duty due on all of the smuggled loads, whether or not they were diverted to a cash and carry (a 'Green' load) or were sent to Rangefield due to HMRC's interest/attention (a 'Red' load).
 - d. The contrived chain of transactions in relation to the sale or purported sale of the smuggled alcoholic goods, allowed the fraudsters to obtain a pecuniary advantage which was the unpaid VAT by the missing traders Signature Drinks and Transylvania Services that had each failed to account for VAT charged on their invoices. Prosecution Submissions – Mr Marwaha

82. In reliance on the evidence that I have set out above when dealing specifically with Mr Marwaha and my sentencing remarks, the prosecution submitted that his role in the fraud was “extensive and pivotal”, he could not properly be described as a “minor contributor” to the offences, his benefit was the joint benefit obtained for both offences and was not limited to his salary. Defence Submissions - Mr Marwaha 83. 84. 85. It was submitted that: First, although the prosecution submissions are in respect of s.76(5) of POCA not s.76(4), “there is no reading of the relevant authorities, nor any analysis of the facts of this case, that could justify a multi-million-pound benefit figure based on subsection 76(4) alone”. Second, the reliance on s.76(5) of POCA was misconceived because it ignored the fact that, for the defendant to have obtained a pecuniary advantage, he would have to be shown to have been personally liable to pay the duty and VAT. Reliance was placed on [3] to [5] of White (“White”) 2010 EWCA Crim 978, (which in turn relied on May (“May”) [2008] 1 AC 1028 and Jennings as 86. 87. 88. 89. 90. applied in Chambers (“Chambers”) [2008] EWCA Crim 2467 and Revenue and Customs Prosecutions Office v Mitchell (Mitchell) [2009] 2 Cr App R (S) 66) which held that “the evasion by a smuggler of duty or VAT constitutes, for the purposes of confiscation proceedings, the obtaining of a pecuniary advantage only if he personally owes that duty or VAT”. It was submitted that Mr Marwaha could never have been held personally liable to pay the duty or the VAT since, regardless of his actions undertaken at Fowler Road (accepting the characterisation of them as ‘pivotal’ to the fraud), he had no or no sufficient relationship with and connection to the goods themselves for example as owner, importer or consignee. Third, the order proposed by the prosecution would breach the principle of proportionality. Fourth, although it was accepted that the Court is required to make an allowance for the change in the value of money, on the facts of this case, given the remuneration received by Mr Marwaha and the inordinate delay in bringing the proceedings, the uplift sought is wholly disproportionate. Therefore, the Court should not include any uplift for the change in the value of money in this case. Fifth of the 1,059 loads of alcohol brought into the UK, 81 Red Loads (involving duty of £1,688,983.80) did not successfully evade excise duty. Sixth, a number of assessments were issued in respect of duty evaded after the raids had been effected but before the commencement of criminal proceedings by charge. Those substantial assessments were issued to individuals other than Mr Marwaha. It was unclear whether any of them were paid. If they were, the prosecution application may well amount to double recovery. The defence sought disclosure of those assessments as being probative of the fact that liability for duty evaded does not rest with Mr Marwaha. Seventh, an application for disclosure of the product of civil enquiries in relation to the architects of the fraud (who were sentenced on 20 September

2024) was previously refused. However, the passage of time meant that the issue remained live. It remained unclear what recovery - if any - was likely to be achieved from the principal beneficiaries of the fraud. Given the age of the case and the history of litigation (with his arrest in December 2010), it was to be anticipated that an asset tracing exercise would have been conducted long before Mr Marwaha’s trial began on 26 October 2022, almost 12 years after his arrest. It was hoped that disclosure of the product in question would be made by

the time Mr Marwaha's contested hearing began. Prosecution Submissions – Mr Chambers 91. In reliance on the evidence that I have set out above when dealing specifically with Mr Chambers and my sentencing remarks, the prosecution submitted that he played a significant role in organising the transportation for the smuggled loads as 799 out of 1059 of the smuggled loads were transported by drivers organised by him. His role was not minor and in no way was he in the position of a mere courier or custodian such that he could not be found to have obtained the pecuniary advantage from the evasion of excise duty. 92. If the Court found that Mr Chambers's benefit should be limited to the payments made to him, the benefit gained is the total value of the property or advantage obtained, not his net profit after deduction of expenses or any amounts payable to co-conspirators: May para.48. Therefore, no deduction should be made due to sums paid out by Mr Chambers to others in relation to transport costs. Defence Submissions- Mr Chambers 93. 94. 95. Although the Court did not consider Mr Chambers's role to be minor, even on the Crown's case, he had a specific role and was not part of the wider management of the conspiracy. He was paid specifically per load, and his benefit was entirely limited to what he was paid. It was not suggested that he would have any disposition, control, knowledge or influence over the wider amount obtained by co-conspirators who clearly did. As he had a limited albeit important part to play, the ultimate benefit realised in the offence was gained by others. By way of business metaphor, Mr Chambers had a clearly defined role. He was a salaried employee (even if at the level of a manager), but he was not an equity partner. In the alternative, in the circumstances of this matter, if the Court were to take the amount evaded as the benefit amount rather than the amounts Mr Chambers was paid, benefit should be equally apportioned as between all defendants. Prosecution Submissions – Welham 96. 97. In reliance on the evidence that I have set out above when dealing specifically with Mr Welham and my sentencing remarks, the prosecution submitted that Rangefield (and therefore Mr Welham) played a "pivotal role" in the conspiracy. His involvement provided the safe harbour for the loads and reassurance to the other conspirators that should loads go "red" they could be quickly diverted from their intended cash and carry and sent to Rangefield. His involvement was not an afterthought or ad hoc but was part and parcel of the dishonest scheme to ensure the smuggled loads were not seized by HMRC. There was no basis, therefore, for limiting his benefit to what he was paid during the fraud which, as set out above, I have accepted is £75,900 over and above the normal commercial charges levied by Rangefield. Those payments were not, in any event, salary in the normal sense, but payment for involvement in the fraud, representing his very significant role in the fraud. The usual charges incurred by Rangefield from which his salary would be drawn were paid by TCC. 98. On a correct construction of s.80 of POCA, neither the fault of a defendant nor prosecution is a relevant consideration as to whether the benefit figure should be adjusted to reflect the change in the value of money Defence Submissions - Mr Welham 99. 100. 101. On behalf of Mr Welham, it was submitted that (I have changed the order from that submitted): First, his benefit should be apportioned, whether or not co-defendants are jointly and severally liable for it because of the detailed submissions set out below. Second, "Red" loads should be discounted from the benefit

calculation because the red loads were not diverted but were accepted into Rangefield under duty suspension and they would subsequently only have been released from bond once duty was paid or under duty suspension.

102. Third, however his part in the fraud is described, his participation does not justify a conclusion that he jointly obtained the full amount of the proceeds. The roles in the fraud played by Mr Windsor, Mr Gill, Mr Marwaha, Mr Chambers, Mr Brar, Avtar Hare and Kulwant Hare were very much more substantial and sustained than that played by Mr Welham. It is common ground that he was not a controlling mind of the fraud; he was not involved in the smuggling of 'green' loads; his role was ring-fenced, being restricted to the provision of services in respect of 'red' loads; there is no direct evidence he knew how many loads originated from Gold Drink; the fraud could have operated without him.
103. Fourth, the fact that Mr Welham may have known, or even knew, of the extent of the offending does not mean that he obtained the whole of the pecuniary advantage.
104. Fifth, Mr Welham did not 'obtain' a pecuniary advantage over and above the amount he was paid in respect of Red loads accepted into Rangefield. He would never have obtained the pecuniary advantage of the smuggled goods because he could not have been held personally liable for the 'red' loads: he was not the consignor, importer, or owner of the goods, and it was Rangefield that became liable for the duty once the smuggled goods reached the bond under a bond-to-bond movement.
105. Sixth, in respect of the suggested joint liability for the pecuniary advantage, Mr Welham never assumed any right or control over the funds; he had no involvement whatsoever in the banking or transfer of funds; and had no control or ownership of the funds or relevant accounts. Furthermore, the prosecution's very own tracing of the proceeds of the fraud prove Mr Welham did not obtain a benefit in the sums alleged.
106. Seventh, there is a tension between s.80 of POCA, and the delay caused by the prosecution which it was conceded was in breach of Mr Welham's human rights. Mr Welham was arrested on 7 December 2010 and subject of a requisition nearly a decade later on 5 October 2020. In those circumstances, it would not be fair or proportionate to permit the suggested uplift of c.£10 million.
107. Eighth, the s.10 POCA assumptions are rebuttable.
108. Ninth, it would be disproportionate to order confiscation in the sums suggested by the prosecution. 109. I have already explained why I accept that personal benefit should be assessed at £75,900 not £6,000 so there is no need to say anything further about that submission. 110. I need not deal with whether the s.10 assumptions apply as they have no impact on the issues I have to decide. SUBMISSIONS ON THE EXCISE GOODS REGULATIONS Prosecution Submissions - General 1 1 1 . Regulations 13 and 19 of the 2010 Excise Goods Regulations stipulate that any person whose conduct causes a contravention to the excise duty point for excise goods is jointly and severally liable to pay the excise duty at that excise

duty point along with any other persons specified in the respective regulations. Those regulations came into force on 01.04.20. The 2002 Regulations in regulation 22(4) provided for joint and several liability for the payment of excise duty for those that cause a contravention to the excise duty point. 112. Although Mitchell, White and Bajwa (“Bajwa”) [2012] 1 Cr App R (S) 23 dealt with regulations relating to tobacco, the cases are equally applicable to The Excise Goods Regulations which relate to the importation of alcoholic goods. Therefore, whether any of these defendants is liable for the duty on the alcohol in this case depends on whether he “caused” the product to reach the excise duty point and whether that person retained a connection with the goods at that point. Prosecution Submissions – Marwaha 113. In view of Mr Marwaha’s role in the fraud, and in particular his significant role in arranging the ordering and release of goods from the French bonded warehouses, and liaising with Mr Chambers (the haulier) and those at Gold Drink (German bonded warehouse) in relation to whether loads were red or green, he patently did have a real and immediate responsibility for the goods reaching the excise point and for their onward movement. Defence Submissions – Marwaha

114. Regulations 13(2)(a) and 19(7)(c) of the 2010 Excise Goods Regulations provide that “the person making delivery of the goods” is liable to pay the duty and that term applies to the haulier, but Mr Marwaha was not the haulier. However, if it applies to the consignor, Mr Marwaha was not the consignor but was an employee of the consignor. 115. In respect of the Regulation 19(8) of the 2010 Excise Goods Regulations, Mr Marwaha was not jointly and severally liable to pay the excise duty because, although he contributed to the physical movement of the goods, he did not retain a sufficient connection which requires a financial stake in the goods. Prosecution Submissions – Chambers 116. In view of Mr Chambers’s role in the fraud, and in particular his significant role in arranging the transportation of the goods, he patently did have a real and immediate responsibility for the goods reaching the excise point. His central role in the fraud is clear from the evidence. Defence Submissions – Chambers
117. Neither the Excise Goods Regulations nor Mitchell “help”. It is not ordinarily the case that the legal liability for the payment of excise duty on goods falls on a transporter, who acts under instruction and has no beneficial interest in the goods being transported. The correct approach is to apply the principles in May and Ahmad Fields. Prosecution Submissions – Welham
118. The prosecution submitted that, by reason of his role in the fraud, he was also liable under the Excise Duty Regulations. Defence Submissions - Welham 119. Insofar as the 2010 Excise Regulations may apply, they only came into effect on 1 April 2010, midway through the indictment period and so at best may only apply to part of the indictment period of 1 September 2009 to 8 December 2010. It is the relevant Regulations in force at the time that must apply Chambers. In any event, Mr Welham was not the consignor, importer, or owner of the goods and his conduct did not cause a contravention to the excise duty point and he

would not be personally, or jointly and severally, liable to pay the excise duty. THE LAW 120. In this section, I deal only with the law relating to the issues which were outstanding at the time of the confiscation hearing. POCA

121. When considering whether a defendant has benefited from his criminal conduct, s.76 of POCA provides: “(1) Criminal conduct is conduct which— (a) constitutes an offence in England and Wales, or
 - (b) would constitute such an offence if it occurred in England and Wales.(2) General criminal conduct of the defendant is all his criminal conduct, and it is immaterial—
 - (a) whether conduct occurred before or after the passing of this Act;
 - (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act. (3) Particular criminal conduct of the defendant is all his criminal conduct which falls within the following paragraphs— (a) conduct which constitutes the offence or offences concerned; (b) (c) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned; conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for the offence or offences concerned. A person benefits from conduct if he obtains property as a result of or in connection with the conduct. If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage. References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other. (4) (5) (6) (7) If a person benefits from conduct his benefit is the value of the property obtained.” 122. S.80 of POCA provides that: “Value of property obtained from conduct
 - (1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.
 - (2) The value of the property at the material time is the greater of the following—
 - (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property found under subsection (3).
 - (3) The property found under this subsection is as follows—
 - (a) if the person holds the property obtained, the property found under this subsection is that property;

- (b) if he holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in his hands;
- (c) if he holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.
- (4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 79. Obtaining 123. In *Ahmad, Fields*, the Supreme Court held at [42] that, in a case in which the court was considering whether conspirators had, pursuant to s.75(4) obtained property as a result of or in connection with criminal conduct, “Whilst a criminal may sometimes become the owner of property obtained through crime, in many cases he does not do so. When a person “obtains” a chattel, money, a credit balance or land through criminal dishonesty, he does not acquire title to, or ownership of, the item in question, although he does acquire control over it. As was pointed out by Lord Walker and Hughes LJ in *Waya*, para 68 a person who dishonestly obtains property has “at most a possessory interest good against third parties, and thus of no significant value”. When Lord Bingham spoke of obtaining something “so as to own it” he was doing so in the context of contrasting the position of someone who unlawfully assumes the rights of an owner (i.e. “a power of disposition or control”) with the position of a mere courier or custodian of stolen property – see *May* at para 48(6). In *Allpress* at para 64 the Court of Appeal helpfully interpolated the words “assumes the rights of an owner” to make this clear”. Pecuniary Advantage 124. S.76(5) of POCA is mandatory and does not merely create a rebuttable presumption (so as to allow the defendant to show that they did not actually 125. 126. obtain a sum of money equal to the value of the pecuniary advantage, and that their benefit was entirely notional): *Takkar*; Archbold 2026 Edition at 5B-222. In *Dimsey*, it was held that, where a fraudulent scheme to cheat the Revenue resulted in the evasion of tax, the unpaid tax of £4 million was a “pecuniary advantage” within s.71(5) of the Criminal Justice Act 1988 which was identical to s.76(5) of POCA. The court rejected the defence submission that, as the corporation tax liability, which formed the greater part of about £4 million, was a liability of the offshore companies in the case, any pecuniary advantage arising from its withholding would be their advantage not the defendants. The court held that it was incontestable that the corporate veil should be lifted where companies are used as a vehicle for fraud and, on the facts, the companies in question were the appellants’ alter ego. Therefore, the benefit was the amount of the tax evaded even though the defendants had no personal liability to pay that tax. In *Smith*, following *Dimsey*, it was held that, where a person is knowingly concerned in the fraudulent evasion of excise duty on goods which they import, but those goods are seized from them after the moment of importation but before being sold or otherwise dealt with by them, they obtain a “pecuniary advantage as a result of, or in connection with, the commission of the offence” within s.71(5) of the 1988 Act, the value of the advantage being the amount of duty evaded. The Supreme Court in *Waya*, regarded this as consistent with its conclusion about the need for any confiscation order to be proportionate: Archbold 2026 Edition at 5B-222. 127. In the endnote at (6) at [48] of *May*, the Supreme Court held that a defendant “ordinarily obtains a pecuniary advantage if (among other things) he evades a

liability to which he is personally subject. Mere couriers or other minor contributors to an offence, rewarded by a specific fee and having no interest in the property or the proceeds of sale, are unlikely to be found to have obtained that property". 128. In *White*, the Court held that: "3. Under both the Criminal Justice Act 1988 and its successor the Proceeds of Crime Act 2002 if a person obtains a pecuniary advantage as a result of or in connection with an offence (the 1988 Act) or with conduct (the 2002 Act), he is treated, for confiscation purposes, as having received a sum of money equal to the pecuniary advantage (see section 71(5) of the 1988 Act and section 76(5) of the 2002 Act). Thus, his benefit will be deemed to include a sum of money equal to the pecuniary advantage.

4. However, the evasion by a smuggler of duty or VAT constitutes, for the purposes of confiscation proceedings, the obtaining of a pecuniary advantage only if he personally owes that duty or VAT. This was established by the House of Lords in *May* [2008] UKHL; [2008] 1 AC 1028;

[2009] 1 Cr App R (S) 31 and *Jennings* [2008] UKHL 29; [2008] 1 AC 1046;

[2008] 2 Cr App R 29 and applied in *Chambers* [2008] EWCA 2467 and *Mitchell* [2009] EWCA Crim 214.

129. At paragraph 5, the Court quoted what I have just quoted from *May*. Joint Obtaining 130. In *Sivaraman* ("Sivaraman") [2009] 1 Cr. App. R. (S.) 80, the Court also addressed two misconceptions in conspiracy cases.

- a. One was that in assessing benefit in a conspiracy case each conspirator is to be taken as having jointly obtained the whole benefit obtained by "the conspiracy". A conspiracy is not a legal entity but an agreement or arrangement which people may join or leave at different times. In confiscation proceedings the court is concerned not with the aggregate benefit obtained by all parties to the conspiracy but with the benefit obtained, whether singly or jointly, by the individual conspirator before the court.
- b. The second misconception is a variant of the first. It is that anybody who has taken part in a conspiracy in more than a minor way is to be taken as having a joint share in all benefits obtained from the conspiracy. This is to confuse criminal liability and resulting benefit. The more heavily involved a defendant is in a conspiracy, the more severe the penalty which may be merited, but in confiscation proceedings the focus of the inquiry is on the benefit gained by the relevant defendant. In the nature of things there may well be a lack of reliable evidence about the exact benefit obtained by any particular conspirator, and in drawing common sense inferences the role of a particular conspirator may be relevant as a matter of fact, but that is a purely evidential matter. In *May*, the defendant pleaded guilty to a conspiracy to cheat which involved the wrongful withholding and reclaiming of VAT due on sales of high value computer processing units from four limited companies incorporated solely for the purpose of dishonestly retaining and reclaiming the VAT. The units were imported from abroad. They were purportedly sold to a buffer company thereby attracting liability to pay VAT. The buffer company purportedly paid the purchase price plus VAT to an

import company which was a missing trader which did not account for the VAT but retained it before disappearing as a trading entity. The buffer company then exported the same units back to the dishonest foreign supplier and reclaimed the VAT it had purportedly paid to the missing trader. There were 4 phases of the conspiracy. The defendant was involved with only the last two phases for which the unaccounted VAT was over £4million. The trial judge found that the companies defrauding Customs and Excise of the VAT were jointly controlled by a group of people including the defendant. Following *Dimsey*, the corporate veil was lifted. The House of Lords upheld the decision of the judge and the Court of Appeal that, once the corporate veil was lifted, the property was the joint property of those controlling the company. The sum which the appellant, jointly with others, was found to have fraudulently obtained from HM Customs and Excise was, in law, as much his as if he had acted alone. The court accepted the prosecution's submission (at [43]) that: "Where a benefit is obtained jointly each of the joint beneficiaries has obtained the whole of the benefit and may properly be ordered to pay a sum equivalent to the whole of it". In *Ahmad (Shakeel)*, it was held that the benefit obtained by the defendants, "as a result of or in connection with the commission of the offence" was the VAT that they had fraudulently reclaimed on the sale or purported sale of goods by buffer companies in the furtherance of a missing-trader carousel fraud. In particular, the court held that the judge was right to pierce the corporate veil as the benefit obtained by the relevant company was the benefit of the appellants and that the benefit for each appellant was therefore the amount of the benefit obtained by the company. It was undisputed that, where a benefit is obtained jointly, each of the joint beneficiaries has obtained the whole of the benefit and may properly be ordered to pay a sum equivalent to the whole of it. In *Ahmad, Fields* (in which there were two appeals one of which was from *Ahmad Shakeel*) it was held that (and summarised at *Archbold* 2026 Edition at 5B-212): First, "rather than invoking English property law concepts, it is more appropriate to treat such conspirators as obtaining the asset or money together, which has the same meaning as "jointly", provided that the latter word is understood in its ordinary English, and not its technical, legal sense. "Obtain" is the statutory word, and "joint" reflects the criminal enterprise. While some aspects of English property law in connection with ownership may be esoteric, there is nothing remote from daily life about two burglars jointly (i.e. together) obtaining a television. The burglars do not become the owners of the television, and the argument about them being "joint owners" or "owners in common" proceeds on a wrong premise. Each burglar has usurped the rights of the owner" at [44]. Second, "it is perfectly acceptable, as a matter of ordinary language, to describe the people involved in a criminal joint enterprise which results in the obtaining of a chattel, cash, a credit balance or land, as having jointly obtained the item concerned, in the sense of having obtained it between them. The fact that the item may have been physically taken or acquired by, or held in the name of, one of them does not undermine the conclusion that they jointly obtained it. The word "obtain" should be given a broad, normal meaning, and the non-statutory word "joint", referred to by Lord Bingham in *May*, paras 17 and 27-34, should be understood in the same nontechnical way" at [45].

136. Third, “accordingly, where property is 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 that property” at [46]. 137. 138. 139. Fourth, “as was said in Sivaraman, para 12 (6) and in Allpress, paras 30-31 (and approved in Mackle, paras 64-65), when a defendant has been convicted of an offence which involved several conspirators, and resulted in the obtaining of property, the court has to decide on the basis of the evidence, often relying on common sense inferences, whether the defendant in question obtained the property in the sense of assuming the rights of an owner over it, either because he received it or because he was to have some sort of share in it or its proceeds, and, in that connection, “the role of a particular conspirator may be relevant as a matter of fact, but that is a purely evidential matter” “ (The last sentence of this passage is a quotation from the last sentence of [31] of Allpress) at [47]. Fifth, “There has sometimes been a tendency to equate joint involvement in the crime with joint ownership of the fruits of the crime. But the fact that the defendants were jointly responsible for the crime in question does not automatically justify a conclusion that they jointly obtained the resulting property, a point well made by the Court of Appeal in Allpress, para 31” at [50]. Sixth, “The tendency to conclude that property is jointly obtained by criminals may also be attributable to the fact that it is often difficult to determine how the asset(s) obtained has, or have, been distributed between the defendants. Judges in confiscation proceedings should be ready to investigate and make findings as to whether there were separate obtainings. Sometimes of course this is too difficult or impossible. In many cases the court will not have before it all the conspirators for a variety of reasons. The indictment may well name other conspirators (as well as including the usual phrase “and other persons unknown”). A court should never make a finding that there has been joint obtaining from convenience, or worse from laziness. Where the evidence supports a finding that the asset acquired from a crime was obtained effectively on a several basis, the judge should make it, but there are cases in which a finding of joint obtaining is the proper, indeed the only available finding, especially but not only where an inference or presumption that the defendants before the court were the only joint obtainers would be contrary to the probabilities” at [51]. 140. Seventh, “In many cases it is often completely unclear how many people were involved in the crime, what their roles were, and where the money went. As a result, if the court could not proceed on the basis that the conspirators should be treated as having acquired the proceeds of the crime together, so that each of them “obtained” the “property”, it would often be impossible to decide what part of the proceeds had been “obtained” by any or all of the defendants. There is obvious cause for concern about having to inquire into the financial dealings between criminals who have together obtained property, especially given that the ringleaders are often not even before the court. It is one thing for the court to have to decide whether a defendant obtained any property, which the 2002 Act requires. It is another thing for the court to have to adjudicate on the respective shares of benefit jointly obtained, which the Act does not appear to require” at [57]. No Joint Obtaining by Mere Couriers, Custodians or Other Very Minor Contributors to an Offence 141. 142. 143. 144. I have already quoted that part of May which held that mere couriers or custodians or other very minor contributors to an offence,

rewarded by a specific fee and having no interest in the property or the proceeds of sale, are unlikely to be found to have obtained that property. In four cases, the court held (and, in each case, the judgment was by Toulson LJ as he then was) that the defendant's benefit was limited to what he received and was not the duty evaded. They were in the chronological order in which the judgments were delivered: Sivaraman; Chambers; Allpress ("Allpress") [2009] 2 Cr App Rep (S) 58; and Mitchell. In Sivaraman, the manager of a service station accepted delivery of fuel on behalf of the employer without excise duty being paid. His benefit was the £15,000 he was paid not the duty evaded since he was acting in his capacity as an employee albeit unlawfully. It was said that a person who, when acting purely in the capacity of an employee, receives property or a pecuniary advantage on behalf of their employer, but who, as a reward for doing so, receives only an enhanced wage or cash payment, must not necessarily be taken to profit to the same extent as the employer, since the court is concerned with the benefit not to an abstract entity called "a conspiracy", but with the benefit gained by each conspirator, whether individually or jointly, which is a question of fact: Archbold 2026 Edition at 5B-214. In Chambers, the defendant and a co-defendant pleaded guilty to an offence under section 170(1)(b) of the Customs and Excise Management Act 1979 of being knowingly concerned in carrying, harbouring, depositing, keeping, concealing, removing or in any manner dealing with goods, which were chargeable with a duty which had not been paid, with intent to defraud the Crown of the duty chargeable on the goods. His appeal against the confiscation order for the amount of the duty evaded was allowed because he had been dealt with on the basis of regulations which had expired at the time the order was made. However, the court also accepted that the prosecution was right to concede that the defendant would "only have obtained a benefit by way of a pecuniary advantage in the form of the evasion of excise duty if he was himself under a liability for the payment of that duty which he dishonestly evaded" at [52]. The court could not decide whether he had such a liability because there the court below had not made any relevant finding of fact. 145. 146. In Allpress, it was held at [80] and [82] that, if a defendant's only role in relation to property connected with his criminal conduct, whether in the form of cash or otherwise, was to act as a courier or cash custodian on behalf of another, such property does not amount to property obtained by him within the meaning of POCA: Archbold 2026 Edition at 5B-213. In Mitchell, the defendant unloaded tobacco unlawfully brought into the country and as a result of which he pleaded guilty to being knowingly concerned in the fraudulent evasion of duty payable on the importation of tobacco. The judge found that the prosecution had not proved that the defendant's role in the importation of tobacco was other than that of a loader, knowing that the goods were to be imported without the payment of duty, for which he was paid in the order of £100. It followed that he was not an importer and, for the purpose of POCA, his benefit for the particular offence was £100. That decision was upheld on appeal.

147. Allpress was extended in Clark [2011] 2 Cr. App. R. (S.) 55 to a person whose role in a conspiracy to handle stolen vehicles went beyond that of a mere custodian or courier. As a bailee of the vehicles, the defendant's function was to containerise the cars and transport

them to a port in preparation for their shipment abroad. Although “integral facilitators” of the overall conspiracy, there was nothing to link them either with the original thefts or with the onward sales abroad or the proceeds of such sales or to suggest that the cars were jointly owned by them with the other principal conspirators.

148. The Court held that the judge erred when he reasoned from the importance of the defendant’s role directly to a value judgment that the assessment of the benefit for the purposes of ss.76 and 84 of the 2002 Act should be the valuation of the motor vehicles that passed through their hands, and distinguishing *Sivaraman*, above and *Allpress* on the ground that there the offenders’ conduct was “of a limited nature, such as a courier”. Talk of “mere” couriers or custodians was not, or not only, a reference to the possibility that the roles of such persons are generally of a more minor nature, but rather, as a matter of principle, that such persons who are paid a fee or salary for their involvement, and who will also be bailees, are not conspirators or participants of such a nature as to make it likely, or to suggest the inference, that the property concerned is in their joint ownership; a defendant may play an important role in a conspiracy without obtaining property for the purposes of the test of benefit: *Archbold* 2026 Edition at 5B-214. 149. In *Ahmad, Fields* it was held that, “In some cases, one or more of the conspirators may be able to show that he was only involved to a limited extent, so that he did not in any way obtain the property which was obtained as a result of the crime. Examples include acting as a paid hand in the enterprise – e.g. an intermediary, a courier or a drugs “mule” (as considered in *May*, paras 15 and 17, and in *Allpress*, paras 80-82) or a latecomer to a conspiracy in which nothing was obtained after his arrival (as discussed in *May*, para 19)” at [48]. No Reduction for Expenses 150. In the endnote at (1) at [48] of *May*, it was held that: “The benefit gained is the total value of the property or advantage obtained, not the defendant’s net profit after deduction of expenses or any amounts payable to co- conspirators” *Appropriate Form of Order for Joint Obtaining* 151. In *Ahmad, Fields*, it was held that “...where a finding of joint obtaining is made, whether against a single defendant or more than one, the confiscation order should be made for the whole value of the benefit thus obtained, but should provide that it is not to be enforced to the extent that a sum has been recovered by way of satisfaction of another confiscation order made in relation to the same joint benefit” (my underlining) A subsequent confiscation order made against a later-tried defendant in relation to the same benefit may well be such an order. In theory a court might therefore need to consider whether to stay the enforcement of a confiscation order made against one or more defendants to await the outcome of a later criminal trial against other defendants in respect of the same criminal conspiracy. However, except perhaps when a second trial is imminent this would not normally be appropriate bearing in mind the purpose of the 2002 Act and the statutory stipulation for a speedy hearing” at [74]. 152. It also follows that, if the facts justify a finding of joint benefit in accordance with *Ahmad, Fields*, it will not be appropriate to apportion a defendant’s benefit. Proportionality

153. Confiscation orders must be read and given effect so as to be in compliance with the ECHR, including Protocol 1 Article 1: *R. v Waya (Terry)* [2012] UKSC 51, [2013] 1 A. C. 294 (“Waya”).
154. S. 6(5) of POCA was amended in 2015 following the judgment in *Waya* so that the principle of proportionality is now explicitly referred to: “(5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must —
- (a) decide the recoverable amount, and (b) amount. make an order (a confiscation order) requiring him to pay that Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount.² 155. 156. 157. 158. In *Waring* [2021] EWCA Crim 1369, the court stated at [31]: “We accept that the category of cases that are disproportionate is not closed”. However, on the facts of that case, it was held that order made was not disproportionate. In *Andrewes* [2022] UKSC 24, the Supreme Court held at [39] that it is for the prosecution to establish that it would not be disproportionate to require the defendant to pay the recoverable amount. I have set out above what was decided in *Ahmad, Fields* as to the correct order when there is a finding of joint benefit. Having set that out, it was held that “To take the same proceeds twice over would not serve the legitimate aim of the legislation and, even if that were not so, it would be disproportionate” at [72]. It follows that, although in *May* it was stated: that “There might be circumstances in which orders for the full amount against several defendants might be disproportionate and contrary to article 1 of the First Protocol, and in such cases an apportionment approach might be adopted”, if the facts justify an order as proposed in *Ahmad*, it would be proportionate. That conclusion must follow as the Supreme Court had identified at [72] what would be disproportionate and then decided the correct form of order at
- [74] and it could only have reached that decision because it regarded such an order as proportionate. THE EXCISE GOODS REGULATIONS
159. The 2002 Excise Goods Regulations came into effect on 01.04.22.
160. Regulation 21 provided as follows Excise duty point “(1) The excise duty point for excise goods to which these Regulations apply and in respect of which there has been a contravention described in paragraph (2), (3), or (4) below is the time specified in paragraph (5) below.
- (2) For excise goods to which Part II above applies (exports under duty suspension arrangements) the contraventions are—
- (a) removal of the goods from an excise warehouse in contravention of regulation 5 above (completion of accompanying administrative documents); and
- (b) whilst the goods are in the United Kingdom—

- (i) contravention of or failure to comply with regulation 6(1) or (2) or (4) or (5) above (accompanying administrative documents for exports— supplementary provisions); (ii) after removal of the goods from an excise warehouse, contravention of or failure to comply with the Community provisions; and (iii) contravention of or failure to comply with regulation 7 above (consignees). (accompanying administrative documents
- (3) For excise goods to which Part IV above applies (imports under Community duty suspension arrangements) the contraventions are—
 - (a) contravention of or failure to comply with regulation 12 above (accompanying administrative documents for imports);
 - (b) contravention of or failure to comply with regulation 13(1) or (3) above imports — supplementary provisions);
 - (c) contravention of or failure to comply with the Community provisions;
 - (d) delivery of the goods to a place other than the place for delivery specified in the accompanying administrative document; and
 - (e) except where the failure is occasioned by action or inaction on the part of the Commissioners, failure by the consignee(19) to comply with regulation 14 above (receipt of goods under Community duty suspension arrangements). for
- (4) For the excise goods to which Part V above applies (imports not under Community duty suspension arrangements) the contraventions are—
 - (a) contravention of or failure to comply with regulation 16 above (simplified accompanying documents for imports);
 - (b) contravention of or failure to comply with regulation 17(1) above (simplified accompanying documents imports—supplementary provisions);
 - (c) contravention of or failure to comply with the Community provisions;
 - (d) delivery of the goods to a place other than the place for delivery specified in the simplified accompanying document; and
 - (e) failure by the recipient(20) to comply with regulation 18 above (receipt of excise goods). for
- (5) The excise duty point is—
 - (a) for excise goods to which Part II above applies, the time the goods were removed from the excise warehouse;
 - (b) in any other case, the time the excise goods were imported”. 161. Regulation 22 provided as follows: Payment “(1) Subject to paragraphs (2) to (4) below, the person liable to pay the excise duty at the excise duty point is—

- (a) for excise goods to which Part II above applies (exports under duty suspension arrangements), the authorized warehousekeeper;
 - (b) for excise goods to which Part IV above applies (imports under Community duty suspension arrangements), the person shown as consignor on the accompanying administrative document or, if someone other than the consignor is shown in Box 10 of that document as having arranged for the guarantee, that other person; or
 - (c) for excise goods to which Part V above applies (imports not under Community duty suspension arrangements), the person shown as the recipient in the simplified accompanying document.
- (2) The authorized warehousekeeper is not the person liable to pay the excise duty in accordance with paragraph (1)(a) above in any case where—
- (a) the contravention that occasioned the excise duty point was not caused by the authorized warehousekeeper and occurred after the goods had been removed from the excise warehouse, and
 - (b) the authorized warehousekeeper did not provide security for the export, and
 - (c) the transporter or the owner of the goods did provide security for the export.
- (3) In any case where paragraph (2) above applies, the person liable to pay the excise duty due at the excise duty point is the transporter or the owner of the goods who provided security for the export.
- (4) Any person whose conduct caused a contravention described in regulation 21 above so that there was an excise duty point is jointly and severally liable to pay the excise duty at that excise duty point with the person specified in paragraph (1) or (3) above”.
162. The 2010 Excise Goods Regulations came into effect on 01/04/10.
163. Both regulations refer to the excise duty point which is the moment of importation: Mitchell at [20] and [21].
164. Regulation 13 of the 2010 Excise Goods Regulations provided as follows.
165. Goods already released for consumption in another Member State—excise duty point and persons liable to pay “(1) Where excise goods already released for consumption in another Member State are held for a commercial purpose in the United Kingdom in order to be delivered or used in the United Kingdom, the excise duty point is the time when those goods are first so held.
- (2) Depending on the cases referred to in paragraph (1), the person liable to pay the duty is the person— (a)making the delivery of the goods; (b)holding the goods intended for delivery; or (c)to whom the goods are delivered.

- (3) For the purposes of paragraph (1) excise goods are held for a commercial purpose if they are held— (a)by a person other than a private individual; or (b)by a private individual (“P”), except in a case where the excise goods are for P’s own use and were acquired in, and transported to the United Kingdom from, another Member State by P.
- (4) For the purposes of determining whether excise goods referred to in the exception in paragraph (3)(b) are for P’s own use regard must be taken of— (a)P’s reasons for having possession or control of those goods; (b)whether or not P is a revenue trader; (c)P’s conduct, including P’s intended use of those goods or any refusal to disclose the intended use of those goods; (d)the location of those goods; (e)the mode of transport used to convey those goods; (f)any document or other information relating to those goods; (g)the nature of those goods including the nature or condition of any package or container; (h)the quantity of those goods and, in particular, whether the quantity exceeds any of the following quantities— 10 litres of spirits, 20 litres of intermediate products (as defined in article 17(1) of Council Directive 92/83/EEC(1)), 90 litres of wine (including a maximum of 60 litres of sparkling wine) 110 litres of beer, 3200 cigarettes, 400 cigarillos (cigars weighing no more than 3 grammes each), 200 cigars, 3 kilogrammes of any other tobacco products; (i)whether P personally financed the purchase of those goods; (j)any other circumstance that appears to be relevant.
- (5) For the purposes of the exception in paragraph (3)(b)—
- (a) “excise goods” does not include any goods chargeable with excise duty by virtue of any provision of the Hydrocarbon Oil Duties Act 1979 or of any order made under section 10 of the Finance Act 1993;
- (b) “own use” includes use as a personal gift but does not include the transfer of the goods to another person for money or money’s worth (including any reimbursement of expenses incurred in connection with obtaining them).
- (6) Paragraphs (1) and (2) do not apply— (a)where the excise duty point and the person liable to pay the duty are prescribed by the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999); or (b)in the case of chewing tobacco”.
166. Regulation 19 of The 2010 Excise Goods Regulations provided as follows. “(1) The excise duty point for excise goods in respect of which there has been a contravention described in any of paragraphs (2) to (5) is the time specified in paragraph (6).
- (2) For excise goods to which Part 6 applies (exports of excise goods under duty suspension arrangements) the contraventions are— (a)the removal of goods from a tax warehouse in contravention of regulation 41(2) (completion of draft electronic administrative document for exports of excise goods under duty suspension arrangements). (b)the removal of goods from a tax warehouse in contravention of regulation 50(2) (procedure for exports when computerised system unavailable).

- (3) For excise goods to which Part 8 applies (movement of excise goods wholly within the United Kingdom under duty suspension arrangements) the contraventions are— (a) a failure to comply with regulation 57(2) (completion of draft electronic administrative document for movements of excise goods under duty suspension arrangements wholly within the United Kingdom). (b) a failure to comply with regulation 60(2) (procedure for movement of excise goods under duty suspension arrangements wholly within the United Kingdom when computerised system unavailable).
- (4) For excise goods to which Part 9 applies (simplified procedures for movements of excise goods wholly within the United Kingdom under duty suspension arrangements) the contraventions are— (a) a failure to comply with the conditions specified in regulation 62(3) (simplified procedures for certain movements of alcoholic liquors); and (b) a failure to comply with the conditions specified in regulation 63(3) (simplified procedure for certain movements of tobacco products). for consumption
- (5) For excise goods to which Part 11 applies (imports of excise goods after release in another member state) the contravention is the failure by the person making the delivery of the goods, the person holding the goods intended for delivery or the recipient of the goods to comply with regulation 69(1) (requirements).
- (6) The excise duty point is— (a) for excise goods to which Part 6 applies, the time when the goods were removed from the tax warehouse; (b) for excise goods to which Parts 8 and 9 apply, the time when the goods were removed from the tax warehouse or, as the case may be, the place of importation; and (c) for excise goods to which Part 11 applies, the time when the goods were first held for a commercial purpose in the United Kingdom.
- (7) The person liable to pay the duty when an excise duty point specified — (a) in paragraph (6) (a) occurs is the authorised warehouse keeper; (b) in paragraph (6) (b) occurs is the authorised warehouse keeper or, as the case may be, the UK registered consignor; 167. 168. 169. (c) in paragraph (6) (c) occurs is the person making the delivery of the goods, the person holding the goods intended for delivery or the person shown as the recipient of the goods in the accompanying document.
- (8) Any person whose conduct caused a contravention described in this regulation so that there was an excise duty point is jointly and severally liable to pay the excise duty at that excise duty point with the person specified in paragraph (7)". In *Mitchell*, the court considered regulations relating to tobacco which provided that "any person who caused the tobacco products to reach an excise duty point" was jointly and severally liable to pay duty with the person who was holding the products at the excise duty point. It was said that the word "caused" was directed at the person or body who had "real and immediate responsibility" for causing the product to reach that point, which would typically be the consignor. However, although someone who merely delivered duty evaded tobacco did not cause the tobacco to reach the excise point, his employer would have done so. In *White*, it was said that the tobacco regulations should be construed as catching only those who retained a connection

with the goods at the excise duty point. Such a person would normally have a “real and immediate responsibility” for the goods reaching that point. In *Bajwa*, it was held that the effect of the relevant tobacco regulations and CEMA 1979 were, as confirmed in *White*, that when tobacco is imported by sea, duty is payable the moment the ship comes within the limits of the port at which the goods are to be discharged; duty will be “evaded” when it becomes payable but is not paid, and a person fraudulently evades an obligation if, at the time the obligation arises, they dishonestly intend not to fulfil it. The phrase, used in *Mitchell*, that the person or body must have had the “real and immediate responsibility for causing the product to reach” the excise duty point is an elaboration that only underlines the fact that the person or body “causing” the product to reach that point must not have too remote a connection; it will be a question of fact whether a person has “caused” the product to reach the excise duty point and whether that person retained a connection with the goods at that point. DISCUSSION AND ANALYSIS LAW

170. Much of the law was not in dispute. However, I have to decide a number of issues in respect of POCA and the Excise Regulations POCA Pecuniary Advantage
171. As already explained, it was submitted on behalf of Mr Welham, Mr Marwaha and Mr Chambers that their benefit cannot be the total amount of the sums evaded on duty or VAT (in the case of Mr Marwaha only) because they were not personally liable to pay the duty or the VAT. Counsel for Mr Marwaha relied on [3] to [5] of *White* (which I have set out above) in which it was held that, in reliance on *May* and *Jennings* as applied in *Chambers* and *Mitchell*, the evasion by a smuggler of duty or VAT constitutes, for the purposes of confiscation proceedings, the obtaining of a pecuniary advantage only if he personally owes that duty or VAT. I reject that submission for the following

reasons.

172. 173. First, in *Dimsey*, the court decided that a defendant who was not personally liable to pay tax which has been evaded had benefited in the amount of that tax where he was jointly liable for the fraud which resulted in the evasion of that tax. As explained above, the court decided that it was a pecuniary advantage to evade payment of tax and rejected the defence submission that the defendants did not benefit as the taxpayers were various companies not the defendants. The court held that it was incontestable that the corporate veil should be lifted where companies are used as a vehicle for fraud and, on the facts, the companies in question were the appellants’ alter ego. Therefore, the benefit was the amount of the tax evaded even though the defendants had no personal liability to pay that tax. Second, the courts have decided that, where tax was wrongly reclaimed, the defendant’s benefit is the total amount of that tax even though it was a company which defrauded the authorities. I have set out above the facts of *May* and *Ahmad Shakeel*. In *May*, the trial judge found that the companies defrauding Customs and Excise of the VAT were jointly controlled by a group of people including the defendant. Following *Dimsey*, the corporate veil was lifted. The House of Lords upheld the decision of the judge and the Court of Appeal that, once the

corporate veil was lifted, the property was the joint property of those controlling the company. The sum which the appellant, jointly with others, was found to have fraudulently obtained from HM Customs and Excise was, in law, as much his as if he had acted alone. The court accepted the prosecution's submission (at [43]) that: "Where a benefit is obtained jointly each of the joint beneficiaries has obtained the whole of the benefit and may properly be ordered to pay a sum equivalent to the whole of it". There was a similar outcome in *Ahmad Shakeel* in which the court held that the judge was right to pierce the corporate veil as the benefit obtained by the relevant company was the benefit of the appellants and that the benefit for each appellant was therefore the amount of the benefit obtained by the company. It was undisputed that, where a benefit is obtained jointly, each of the joint beneficiaries has obtained the whole of the benefit and may properly be ordered to pay a sum equivalent to the whole of it. *Ahmad Shakeel* was upheld in *Ahmad Fields*.

174. Third, although *May* and *Ahmad Shakeel* are cases of obtaining property (the tax fraudulently obtained) not pecuniary advantage (where the tax is 175. 176. 177. evaded), the principle that, where a benefit is obtained jointly each of the joint beneficiaries has obtained the whole of the benefit, should apply to both scenarios as the court is applying two subsections, s.76(4) and s.76(5), of the same section of POCA. Fourth, although in *White* and other cases the purported principle that the evasion of duty or VAT can only amount to the obtaining of a pecuniary advantage if the defendant personally owes that duty or VAT is said to derive from *May*, that it is not what *May* decided. As set out above, in the endnote at (6) at [48], the Supreme Court held that a defendant "ordinarily obtains a pecuniary advantage if (among other things) he evades a liability to which he is personally subject". Therefore, the passage in *May* is not a basis for the purported principle relied on by Mr Welham and Mr Marwaha. Fifth, as stated in *May* at (1) of the Endnote at [48] "The legislation is intended to deprive defendants of the benefit they have gained from relevant criminal conduct". If the essence of the fraud is that the taxpayer will evade the duty/VAT and if the defendants are responsible for and have in fact benefited from such evasion, the submission that in law those defendants had not benefited because they were not the taxpayer is contrary to that stated purpose of the legislation. Sixth, the cases in which it was held that the defendant did not obtain a pecuniary advantage because he was not liable to pay the evaded tax are ones in which either the defendant had not jointly benefited from the fraud but was a mere custodian or equivalent or the court was not able to make a finding of fact. In *Sivaraman*, the defendant's benefit as manager of a service station who accepted delivery of fuel on behalf of the employer without excise duty being paid was the £15,000 he was paid not the duty evaded because he was acting in his capacity as an employee albeit unlawfully. In *Chambers*, the court could not decide whether he had a liability to pay the duty because there the court below had not made any relevant finding of fact. In *Mitchell*, the defendant's benefit for unloading tobacco unlawfully brought into the country was the £100 he was paid. These cases contrast with this case in which the allegation is that each of these three defendants are crucial to the conspiracy. Mere Custodians etc

178. All three defendants submit that they did not jointly benefit in the amount evaded because they played a limited role in the fraud and were paid sums which are a tiny fraction of the amount evaded. Reliance is placed on the endnote at (6) at [48] of May: “Mere couriers or other minor contributors to an offence, rewarded by a specific fee and having no interest in the property or the proceeds of sale, are unlikely to be found to have obtained that property”. It follows that this passage does not apply to those who are not “minor contributors”. Apportionment-No Double Recovery 179. I reject the submission that any defendant’s benefit should be apportioned because, as set out above, in Ahmad Fields, the Supreme Court held that, on a finding of joint obtaining, whether against a single defendant or more than one, the confiscation order should be made for the whole value of the benefit but should provide that it is not to be enforced to the extent that a sum has been recovered by way of satisfaction of another confiscation order made in relation to the same joint benefit. Therefore, the orders made in this case following my short extempore judgment were in accordance with what was decided in Ahmad Fields to prevent any double recovery.
180. The orders made in this case also provide the answer to two points made on behalf of Mr Marwaha, namely that there might be double recovery if any assessments in respect of the duty evaded were paid or if any civil proceedings against Avtar Hare or Kulwant Hare have resulted in recovery of assets. The order against Mr Marwaha prevents double recovery so neither of the suggested factual scenarios will result in Mr Marwaha paying money that has already been recovered from other defendants nor is any disclosure required from the prosecution on any of these issues. S.80 of POCA - Increase in the Value of Money
181. Whether there should be an uplift for the change in the value of money depends on the correct construction of s.80 of POCA which provides that the time that the court makes its decision is when it should decide the value of the property as a result of or in connection with the criminal conduct. I agree with the prosecution that the fault of either a defendant or prosecution is not a relevant consideration in the application of that section. That is because, on its correct construction, s.80 is a mandatory provision as a result of which the court is obliged to take account of the increase in the value of the property but makes no provision for the court to take account of anything other than the value of the property. Therefore, there is no justification for the submission on behalf of Mr Marwaha and Mr Welham that the court should reduce the benefit because of a delay by the prosecution in bringing the criminal proceedings 182. Further, I do not accept that it would be disproportionate to allow such an uplift. The Excise Duty Regulations
183. No defendant has disagreed with the prosecution’s submission that the cases of Mitchell, White and Bajwa dealing with tobacco regulations apply to the Excise Duty Regulations. I agree with the prosecution that, applying those cases to Regulations 21 and 22 of the 2002 Excise Goods Regulations and Regulations 13 and 19 of the 2010 Excise Goods Regulations, the question whether any of these defendants is liable for the duty on the alcohol in this case depends on whether he “caused” the product to reach the excise duty point and whether he retained a connection with the goods at that point.

184. As noted above, it is submitted that, in respect of Regulation 19(8) of the 2010 Excise Goods Regulations, Mr Marwaha was not jointly and severally liable to pay the excise duty because, although he contributed to the physical movement of the goods, he did not retain a sufficient connection which requires a financial stake in the goods. I reject the submission because, as a matter of statutory construction, there is nothing in Regulation 19(8) which restricts its ambit in the way suggested and there is no justification for reading into the words of the Regulations that a defendant must have a financial stake in the goods.
185. As the 2010 Excise Duty Regulations only came into force on 01/04/10, I agree with the defence that they can only apply to duty evaded after that date. However, as the 2002 Excise Duty Regulations came into force on 01/04/02, they applied to the duty evaded before 01/04/10. FACTUAL CONCLUSIONS What Benefit Was Obtained by The Fraud 186. It follows from Dimsey and Smith that the amount of duty evaded (Count 1), and the amount of VAT evaded (Count 2) was in each case a pecuniary advantage.
187. Upon the loads being smuggled into the UK without the proper payment of excise duty, the fraudsters obtained a pecuniary advantage in respect of each load to the value of the duty evaded on that load. Further, by way of the VAT missing trader fraud which evaded payment on sale or purported sales of alcohol, the fraudsters obtained a pecuniary advantage to the value of the VAT evaded.
188. As such, the benefit from the fraud was the full amount of the duty due on all of the smuggled loads, whether or not they were diverted to a cash and load) or were sent to Rangefield due to HMRC's carry (a 'Green' interest/attention (a 'Red' load). 189. I reject the submission on behalf of Mr Welham that the Red loads should be excluded because they were under duty suspension and would only have been released from bond once duty was paid or under duty suspension. I accept the prosecution submission that: (1) no releases of alcohol were ever made from the French bonds on behalf of TCC which only became involved in the supply chain when a load went 'Red' and therefore had to be delivered to Rangefield where TCC held a duty suspension trading account; (2) As no legitimate arrangements were ever in place for the movement of any of the loads, any that were diverted to Rangefield were not legitimate transfers between bonds under duty suspension; and, therefore, (3) none of the loads were under duty suspension or qualified for excise duty to be deferred so 190. 191. 192. that, as soon as the loads entered the UK, this became the excise duty point whereby the excise duty became immediately payable. I also reject the assertion on behalf of Mr Marwaha that no duty was evaded in respect of the Red Loads. No details are given of this assertion, and it is unclear if it relies on the same point made on behalf of Mr Welham or whether it is submitted that the duty was paid. As to the former, I have just explained why I reject the submission made on behalf of Mr Welham. As to the latter, the unchallenged evidence at trial was that the duty on the Red Loads was evaded and no evidence has been adduced at the confiscation proceedings to contradict that evidence. Accordingly, insofar as it is submitted that the duty on the Red Loads was paid, I reject that submission. In respect of count 1, it was not disputed on behalf of Mr Chambers that the

benefit obtained as a result of the conspiracy to cheat the revenue by the evasion of excise duty was £31,615,930.65 including an uplift for the change in the value of money. On behalf of Mr Welham, the sum was accepted subject to the submission on the Red Loads. On behalf of Mr Marwaha, in addition to the submissions on the Red Loads, although the amount of duty evaded was not disputed at the trial, in the confiscation proceedings it was not accepted but no alternative sum for the duty evaded was put forward. I am satisfied from the evidence adduced at trial and at the confiscation proceedings that the benefit obtained as a result of the conspiracy to cheat the revenue by the evasion of excise duty was £31,615,930.65 including an uplift for the change in the value of money. In respect of count 2, the prosecution submitted that the benefit obtained as a result of the conspiracy to cheat the revenue by the evasion of VAT was £7,403,002.94 including an uplift for the change in the value of money. Although it was admitted at trial on Mr Marwaha's behalf that VAT was evaded in the sum relied on by the prosecution, in the confiscation proceedings, the amount of evaded was not admitted. I am satisfied from the evidence adduced at trial and at the confiscation proceedings that the benefit obtained as a result of the conspiracy to cheat the revenue by the evasion of VAT was £7,403,002.94 including an uplift for the change in the value of money. Joint Benefit 193. I remind myself of the following parts of Ahmad, Fields: 194. 195. First, where property is 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 that property: at [46]. Second, when a defendant has been convicted of an offence which involved several conspirators, and resulted in the obtaining of property, the court has to decide on the basis of the evidence, often relying on common sense inferences, whether the defendant in question obtained the property in the sense of assuming the rights of an owner over it, either because he received it or because he was to have some sort of share in it or its proceeds, and, in that connection, the role of a particular conspirator may be relevant as a matter of fact, but that is a purely evidential matter.

196. Third, the fact that the defendants were jointly responsible for the crime in question does not automatically justify a conclusion that they jointly obtained the resulting property. 197. Fourth, judges in confiscation proceedings should be ready to investigate and make findings as to whether there were separate obtainings. A court should never make a finding that there has been joint obtaining from convenience, or worse from laziness. Where the evidence supports a finding that the asset acquired from a crime was obtained effectively on a several basis, the judge should make it, but there are cases in which a finding of joint obtaining is the proper, indeed the only available finding, especially but not only where an inference or presumption that the defendants before the court were the only joint obtainers would be contrary to the probabilities.
198. Also, I repeat my decision that those who are mere custodians or the equivalent are minor contributors to an offence.

199. As the trial judge in two trials which lasted in total 8 months and the judge who sentenced every defendant who was found guilty or pleaded guilty, I am satisfied that the fraud required that all its parts were carried out as, if they were not, the fraud would have failed. I am also satisfied from all the evidence in the case in particular the covert recordings that these three defendants were essential participants in the fraud, were aware of its extent and knew that, as a result of their role, the fraud could be carried out. None of them were minor contributors or involved to a limited extent. In that part of this judgment dealing with what each of these defendants did, I have set out in detail what their contribution to the fraud was so need not repeat that detail here. Without their important and knowing participation, essential aspects of the fraud would not have been carried out so it would have failed. Although none of them was liable to pay the duty evaded and Mr Marwaha was not liable to pay the VAT evaded, all knew that the purpose of the duty fraud was to evade the duty and Mr Marwaha knew that the purpose of the VAT fraud was to evade VAT and each defendant played his part in ensuring that the relevant tax was evaded. 200. In the language of Ahmad, Fields this is a case in which on the evidence a finding of joint obtaining is the proper indeed the only available finding. Therefore, as stated in May at [43] and applied in Ahmad (Shakeel), each of the defendants has obtained the whole of the benefit. Accordingly, I agree with the prosecution submissions that each of these three defendants jointly benefited in the total amount of duty evaded and that Mr Marwaha jointly benefited in the total amount of VAT evaded and I reject the defence submissions that their benefit was the amount that they were paid. Proportionate/No Apportionment
201. The order made in this case following my judgment was in accordance with the order proposed in Ahmad and will prevent double recovery. I have explained above why such an order is proportionate if, on the facts, there has been a joint benefit. As I have decided that, in the case of each defendant, there has been a joint benefit, it follows that I reject the submission by all the defendants that such an order is disproportionate and that there should be apportionment of the defendant's benefit. The Excise Regulations 202. In order to decide whether any of these defendants is liable for the duty on the alcohol in this case, I have to decide whether he "caused" the product to reach the excise duty point and whether he retained a connection with the goods at that point. Mr Marwaha 203. I accept the prosecution submission that, in view of Mr Marwaha's role in the fraud, and in particular his significant role in arranging the ordering and release of goods from the French bonded warehouses, and liaising with Mr Chambers (the haulier) and those at Gold Drink (German bonded warehouse) in relation to whether loads were red or green, he caused the alcohol to reach the excise duty point because he had a real and immediate responsibility for the goods reaching the excise point and for their onward movement. I reject the defence submission that Mr Marwaha is not liable because he was neither the haulier nor the consignor. I have already rejected the submission that he is not liable because he did not have a financial stake in the goods as the Excise Duty Regulations do not include such a requirement Mr Chambers 204. I accept the prosecution submission that, in view of Mr Chambers's role in the fraud, and in arranging the in particular his significant role transportation of the goods,

he caused the alcohol to reach the excise duty point because, as the haulier, he had a real and immediate responsibility for the goods reaching the excise point and for their onward movement. I reject the defence submission that the Excise Regulations add nothing to the prosecution case and that they do not apply to Mr Chambers because he was a transporter. Mr Welham 205. I accept the prosecution submission that Mr Welham provided a safe harbour for the illegally imported alcohol when it had been detected by HMRC and so provided a fictitious contract to justify why the alcohol was delivered to a bond without payment of duty. As a result of his frequent attendance at Fowler Rd, he was well aware of the importance of the safe harbour he provided as an essential part of the fraud. Therefore, although he was neither the consignor, the importer or owner of the alcohol, I accept that he caused the alcohol to reach the excise duty point and he had a real and immediate responsibility for the goods reaching the excise point and for their onward movement. I reject the defence submissions to the contrary. Disposal 206. For the reasons set out in this judgment, in addition to the agreement as to their available assets, the orders made at the confiscation hearing correctly set out the benefit that each defendant jointly obtained. 50

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